

## Dana Nichols

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**From:** Vickie Crowley <vec@ti.org> on behalf of Vickie Crowley  
**Sent:** Thursday, February 11, 2021 9:15 AM  
**To:** Dana Nichols  
**Subject:** COPY of BBH Plan Review Comments -- App.# 20-078  
**Attachments:** Crowley Supplemental Testimony.pdf; Untitled attachment 01723.htm

*Hi Dana, I moved the pdf to the bottom so you can see that there's more. I hope this helps you figure out the original now? —v*

### Plan Review for Bandon Beach Hotel Proposal

1090 Portland Avenue, Bandon, Oregon  
Application Number: 20-078  
Date of review: Thursday, February 11, 2021, at 2:00 pm

Comments from: Vickie Crowley, 1425 Beach Loop, Bandon, OR 97411

**I object to the characterization of this review as a limited land use decision, this application is a land use decision. I request a full and fair hearing and also that the entire record of proceedings for the conditional use proceedings be incorporated into the record for this portion of the application.**

This is a new plan review application. The initial application was submitted in 2018 along with the supplemental conditional use application. Although the CUP was granted, the applicant did not complete the plan review process and allowed it to expire. So this is the second plan review application, pertaining to a conditional use permit. It is not a continuation of the initial plan review application, it is new.

This new plan review is incorrectly being processed as a limited land use decision. Oregon State Statute, **ORS 197.015 (12)(a)(B)**, defines limited land use decisions:

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1. **Decisions pertaining to** the following types of land use proposals shall occur only after a public hearing has been held: zoning text amendment, zoning map amendment, Comprehensive Plan amendment, urban growth boundary amendment, subdivision or major land partition, **conditional use permits**, variances. [Emphasis added.]

This plan review pertains to a *use permitted conditionally* and an approved conditional use permit. Much of the plans the Staff report mentions for various conditions of the CUP are not included in the record here and several plans required by conditions for review here, have no clear and objective standards.

The CUP requires plans for deferred approval be supplied that do not have clear and objective criteria by which to review them. They require subjective discretion of the planning commission or review body and the application of the comprehensive plan. For instance:

The Oct 22, 2020 Planning Commission minutes say on page 2 —

"In 2010 ... LUBA found during that case that the City development code's longstanding geotechnical reporting requirements were **not clear or objective** and were therefore unenforceable. LUBA asked the City to update its ordinance..."

Apparently the case is LUBA No. 2010-037 Rudell vs. City of Bandon and DLCDC

Ten years later... on Nov. 2nd, 2020, the Hazards Overlay Zone (HO) was passed -- BMC 17.78  
Minutes from the hearing and a final quote:

In answering further questions from Hundhausen, Lawrence explained that, with regard to "clear and objective" standards, the Planning Department is required to check applications against the code requirements, with no discretion. Current code requirements harken back to 1970's map and information, as well as any "suspected hazard." This item leads to questions as to who is suspecting the hazard, and what qualifications that person might have to suspect that a hazard exists. This is not a "clear and objective" standard. With regard to liability issues, she stated that allowing people to choose the level of "geoprofessional," leaves any liability with the property owner, and not the City.

Reviewing part of an expired plan review under one reviewing process and part of a new plan review under another, as well as different reviewing bodies, defies orderly land use planning. It is difficult to follow. Approval of the CUP cannot be used to circumvent the applicable standards for plan review. The materials provided are insufficient for a complete review. There is no conditional use permit and findings of fact attached nor the record for how those decisions were made. The application is relying on approvals that were made in that conditional use process, one that included the expired plan review. Difficult to sort out without incorporating the record of those proceedings.

For instance, at the January 24, 2019, Plan Review and CUP hearing, City Attorney Carleton explained "that the criteria of the geological hazard and showing it is safe to build really fall under Plan Review." Planning Commission Regular Meeting minutes, page 14. At that same hearing the plan review application was deemed incomplete and segmented out of the hearing and subsequently the applicant allowed it to expire.

Yet the current staff report has a finding on page 5 including: "To the extent that this criterion is applicable for plan review, the HO should be able to find it met. Criterion met." Begs the question of to what extent this criterion is applicable. Absent the facts in the record here what could a decision rely on, how was it met? There are four geology reports that are in the CUP record that are relevant to this decision.

My testimony on the application from the January 24, 2019 public hearing is attached:

Also about siting criteria — Below, listed in Exhibit B (under separate cover) you will see that Coquille Point is identified as a coastal headland and the hotel building site is within the Shoreland Boundary. This has not been addressed in the application nor the staff report. Alternative sites must be considered. The proposal contains several lots and the building, could be sited more appropriately on a lot more to the east.

### **Staff Report page 3, Project Impact**

"The project impacts will not be substantially different than the impacts that were already occurring on the subject p report... The project is a little bigger in scale in that it will involve a cafe... and three adjacent parcels will be developed as part of the parking plan." page 3, Project Impact

This statement has no basis in fact and quite the opposite is true. For Bandon this is considered a megaproject. The project will have significant increased impacts, size, bulk, land area, but especially in geology, hydrology, and groundwater of the area due to the excavation of the headland for a third story and an elevator shaft that goes below that level even more. See Dr. Robert Fischer comments submitted for this, all relevant to plan review criteria BMC 17.20.040.

**Application Attachment K — Parking and Delivery Program and Supplemental Attachment N, page 3 (dated Feb. 8. 2021)**

The Staff Report titles this plan review: "Site Plan Review for Bandon Dunes Hotel" which points to a question about destination resorts.

The hotel proposal violates Oregon's destination resort law because it requires Bandon Dunes to start a commercial service for people who are not visitors to the resort.

ORS 197.445 Destination resort criteria

(5) Commercial uses allowed are limited to types and levels of use necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

Attachment K —Delivery and Parking Logistics — (1 page) in the application.

"Plan is to limit the number of deliveries and vendors used at the Bandon Beach Hotel by deploying a strong concentrated program that utilizes abandon Dunes Golf Resort Central Commissary as primary delivery service."

"Maintenance staffers and vendors vehicles will be necessary as routine maintenance and emergency maintenance functions will be needed. Vendors/functions include but not limited to: general HVAC, electrical and plumbing — when possible Bandon Dunes Golf Resort will service the Hotel for minor and routine maintenance. The resort deploys a mixture of vehicles that range from pickup trucks, mini vans and 16 passenger cargo vans ...."

Supplemental Staff Report Finding, p 10

"As indicated in the applicant's Parking and Delivery Program, the objective is to keep all hotel-owned vehicles stored off-site at the Bandon Dunes Resort.

Attachment N, page 3 (dated Feb. 8. 2021)

"As alluded to in parking and Delivery Program (Attachment J), the objective is to keep ll hotel-owned vehicles stored offsite at Bandon Dunes resort. .."

Because of the above issues it is evident that the hotel proposal also violates the Bandon Municipal Code, BMC 17.92 Conditional Uses by not having adequate area for the activities involved in the use:

BMC 17.92.040(C) "The approval of all conditional uses shall be consistent with: That the site size and dimensions provide adequate area for the needs of the proposed use."

**Notice Requirements are violated.**

BMC 17.120.070 Notice requirements for public land use reviews or limited land use decisions.

"BMC 17.120.070(C) The application and staff report (if one is prepared) are to be available throughout the comment period for review ..."

There are several additions that have been appearing as supplements to the application and supplements to the staff report leading up to the plan review that are dated even as soon as one day prior to the end of the comment period. This violates notification requirements.

When the application and staff report are ready for review I request that this be correctly characterized and processed as a land use decision, not a limited land use decision, and scheduled for a full and fair hearing as required by Statute.

Sincerely,

Vickie Crowley, 1425 Beach Loop, Bandon, OR 97411

Exhibit attachments to follow

- Exhibit A — Landslide January 2021 — Article and photos
- Exhibit B — 1990 Palmer Geologic Evaluation — Coquille Point is a coastal headland. The building site is within the Shoreland Boundary
- Exhibit C — GeoScience, Inc. — Study and photos
- Exhibit D — Refuge Comprehensive Conservation Plan — individual chapters

Testimony of Vickie Crowley  
Supplemental to the Hearing of January 24, 2019  
Application for the Bandon Beach Hotel

Bandon's comprehensive plan as amended by the Coquille Point Ordinance requires that developments on properties adjacent to the Oregon Islands Wildlife Refuge "will have no adverse impact on the function of the Refuge" (Special Policy 2, Comp Plan p. 12). The burden of proof is on the applicants to show that there will be no adverse impact. Applicants have failed to meet this burden.

Page 24 of the application shows that the ground floor of the proposed building will be at 75 feet in elevation above sea level. The current elevations of the property where the building is to be located range from 80 to 87 feet, which means the applicant must dig varying from at least five to twelve feet into the soil and sand on the site. As described on page 5 of the geotechnical report from GeoScience prepared for Dr. Fischer, this is likely to interfere with groundwater flows and that could accelerate the movement of the landslide that is located just a few yards away from applicant property.

This landslide is clearly marked on page 14 of the HartCrowser geotechnical report that was prepared for the Fish & Wildlife Service in 2015 (page 51 of the full final report dated April 24, 2015). Page 2 of the HartCrowser report clearly specifies that this is an "active landslide." At the time of the HartCrowser on-site review in February 2015, the head of the landslide was about 60 feet from the applicant's property. Yet nowhere in the applicant's geotechnical report prepared by Cascadia Geoservices is this landslide specifically mentioned.

The GeoScience review, which was conducted about three years after the HartCrowser review, measured and found that the head of the active landslide had moved "around 30 feet" to the northeast in the intervening period. This can be seen in the stress cracks and settling of the asphalt path that is directly to the west of the applicant's property.

In testimony at the January 24 hearing, representatives of Cascadia Geoservices said they had inspected these cracks shortly before the hearing and concluded they were unrelated to the landslide and represented ordinary settling. But no other part of the asphalt trail system on Coquille Point has experienced such intense settling and stress cracks. While other trails show a few other cracks, no other cracks form a parabolic shape that is distinctive in roads and other surfaces that are being undermined by a slump to one side of the road.

In preparation for the January 24 hearing, I asked the project leader for the Oregon Coast National Wildlife Refuge Complex, Kelly Moroney, if the Fish & Wildlife Service had any concerns about the proposed hotel. His reply is attached.

"Our biggest concern is how the current foundation and lower level design and drainage system for runoff and subsurface water table could potentially impact the refuge," Mr. Moroney's letter states. He added that, "ground water drainage and slope stability at the site needs further analysis by the developer's engineer." In Mr. Moroney's opinion, issues raised by the GeoScience report "have not been fully resolved in the developer's analysis or design."

In testimony at the January 24 hearing, Cascadia representatives stated that the project plan would include a stormwater basin that would catch runoff from the project and eventually release it into the storm drain system. This is an extraordinarily vague plan: How big would the basin be? Where exactly would it be located? Will it require pumps and if so will there be a generator backup in case of power failure? What will be the effect of the added weight of this basin, on top

of the weight of the proposed hotel, on the top of the bluff? None of these questions have been answered or evaluated.

Even if these questions were answered, the Cascadia proposal only deals with runoff from the roof and other impermeable surfaces in the proposed hotel. It does not solve the problem of interference to groundwater flows caused by putting an impervious structure twelve or more feet into the ground for the entire 112-foot width of the building. Based on information in the HartCrowser report, figure 6 of the GeoScience report estimates that the wet-season groundwater flows are as little as two or three feet below the surface. The impermeable building will force those groundwater flows to go around the structure, increasing the saturation of the soils during storms. Heavily saturated soils are the most likely to suffer slope failures.

Page 9 of Cascadia's July 31, 2017 report claims that "bluff retreat does not pose a threat" due to the "hard, resistant bedrock. . . exposed at the base of the bluff." Yet there is no such hard bedrock at the base of the landslide. Understanding how this landslide works is critical to understanding the danger posed to and by the hotel.



The photo above, taken January 29, 2019, shows the base or toe of the landslide as seen from the beach. The red ellipse shows the face of this area which is regularly eroded by the ocean. This face is sand and soil, not hard, resistant bedrock. Without referring to it as a landslide, page 9 of the applicant's Cascadia report admits that this area is suffering from "over two (2) feet of beach erosion per year." As the toe erodes, gravity causes the earth above it to slide downward. The yellow ellipse shows a post that someone has placed into the ground; it was once vertical but

today is tilted due to differential movements in the soil. The green ellipse shows the “hummocky topography” described on page 2 of the F&W’s HartCrowser report. Each of these little hills represents a separate small earth movement.

Page 12 of the GeoScience report for Dr. Fischer shows a cross section of the landslide as several distinct “rotational translational slides,” each one following the others down the hill, which is what causes the hummocky surface. During Dr. Schlieder’s site review for Dr. Fischer, he and an assistant walked the length of this landslide from the beach to the top of the bluff. At one point, the assistant fell into a deep crevasse. A fissure such as this indicates active movement as, if the slide were inactive, this crevasse would have been quickly filled.

When the highest landslide in figure 6 moves to the west, the sand and soil to the east of it must sink to fill in the gap. Effectively, the head of the landslide moves to the east. This movement, not ordinary settling, is the reason for the stress cracks in the asphalt path. As the GeoScience report concluded, the head of the moving area has moved east by about 30 feet in three years and is now about 30 feet from the applicant’s property.

The city of Bandon planning staff proposal to consider plan review separate from the conditional use permit is inappropriate. The applicants can only meet their burden of proof that the project will not have an adverse effect on the wildlife refuge after a detailed plan review and should not be granted a conditional use permit until they have met that burden. As Bandon’s code states, “The documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public at the time the notice is provided as per Section 17.120.090.” Providing a 7-day open record to respond to information that has yet to be provided by the applicant does not meet this requirement.

In sum, the Fish & Wildlife Service is justifiably concerned about the effects of the interference in groundwater flows posed by the proposed structure on the wildlife refuge in general and the landslide in particular, and the planning commission should share those concerns. The creeping landslide is likely to begin undermining applicant’s property in a few years. Moreover, the interference in groundwater flows from putting a 112-foot-wide building 12 or more feet into the ground could easily accelerate the movement of the landslide. Neither the applicant nor the Cascadia Geoservices review have demonstrated that this will not have a serious negative impact on the function of the wildlife refuge.

2.11.21: Page added by Staff, Dana Nichols, to record to show time stamp of original submittal (4:34 PM on 2.10.21). Staff received this email prior to the deadline, however due to an email issue, the full text was not uploaded until the following day (2.11.21)

## Dana Nichols

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**From:** Vickie Crowley <vec@ti.org> on behalf of Vickie Crowley  
**Sent:** Wednesday, February 10, 2021 4:34 PM  
**To:** Bandon Planning Department  
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**Attachments:** Crowley Supplemental Testimony.pdf; Untitled attachment 01554.htm

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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