



NOTICE OF LAND USE DECISION

Coos County Planning
225 N. Adams St.
Coquille, OR 97423
<http://www.co.coos.or.us/>
Phone: 541-396-7770
Fax: 541-396-1022

This decision notice is required to be sent to the property owner(s), applicant(s), adjacent property owners (distance of notice is determined by zone area – Urban 100 feet, Rural 250 feet, and Resource 750 feet), special taxing districts, agencies with interest, or person that has requested notice. The development is contained within the identified property owners land. Notice is required to be provided pursuant to ORS 215.416. Please read all information carefully as this decision. (See attached vicinity map for the location of the subject property).

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 (ORS 215.513) REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

Date of Notice: Thursday, June 24, 2021

File No: ACU-21-002

Proposal: **The proposal is to alter the lawful use of a structure (Single Family Dwelling) to accommodate a short-term rental (Vacation Rental). This is not an approval for an event venue.**

Applicant(s): Kevin Wendelburg
PO Box 72177
Newnan, GA 30271

Staff Planner: Crystal Orr, Planner I

Decision: **Approved with Conditions.** All decisions are based on the record. This decision is final and effective at close of the appeal period unless a complete application with the fee is submitted by the Planning Department at 5 p.m. on **Friday, July 09, 2021**. Appeals are based on the applicable land use criteria. The proposal is subject to the following criteria: Alteration of a Non-conforming use in the Forest Zone pursuant to Coos County Zoning and Land Development (CCZLDO) § Article 5.6 Nonconforming. This proposal is not subject to review under Natural Hazards. **Civil matters including property or road disputes are outside of the criteria listed in this notice will not be considered. For more information please contact the staff planner listed in this notice.**

Subject Property Information

Account Number: 587503

Map Number: 26S143200-00401

Property Owner: BANDON LAND MANAGEMENT LLC
PO BOX 72177
NEWNAN, GA 30271-2177

Situs Address: 88515 PACIFIC SURF LN BANDON, OR 97411

Acreage: 54.25 Acres

Zoning: FOREST (F)

Special Development Considerations and overlays: ARCHAEOLOGICAL RESOURCES, FOREST MIXED USE, COASTAL SHORELAND BOUNDARY, FLOODPLAIN

This notice shall be posted from June 24, 2021 to July 9, 2021

HEADLAND AND COASTAL EROSION , NATIONAL
WETLAND INVENTORY, TSUNAMI AND WETLANDS (WET)

The purpose of this notice is to inform you about the proposal and decision, where you may receive more information, and the requirements if you wish to appeal the decision by the Director to the Coos County Hearings Body. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below pursuant to Coos County Zoning and Land Development Ordinance (CCZLDO) Article 5.8. If you are mailing any documents to the Coos County Planning Department the address is 250 N. Baxter, Coquille OR 97423. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

Mailed notices to owners of real property required by ORS 215 shall be deemed given to those owners named in an affidavit of mailing executed by the person designated by the governing body of a county to mail the notices. The failure of the governing body of a county to cause a notice to be mailed to an owner of a lot or parcel of property created or that has changed ownership since the last complete tax assessment roll was prepared shall not invalidate an ordinance.

The application, staff report and any conditions can be found at the following link:
<https://www.co.coos.or.us/planning/page/applications-2021-2> The application and all documents and evidence contained in the record, including the staff report and the applicable criteria, are available for inspection, at no cost, in the Planning Department located at 225 North Adams Street, Coquille, Oregon. Copies may be purchased at a cost of 50 cents per page. The decision is based on the application submittal and information on record. The name of the Coos County Planning Department representative to contact is Crystal Orr, Planner I and the telephone number where more information can be obtained is (541) 396-7770.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Reviewed by: Crystal Orr **Date:** Thursday, June 24, 2021 .
Crystal Orr, Planner I

This decision is authorized by the Coos County Planning Director, Jill Rolfe based on the staff's analysis of the Findings of Fact, Conclusions, Conditions of approval, application and all evidenced associated as listed in the exhibits.

EXHIBITS

Exhibit A: Conditions of Approval

Exhibit B: Vicinity Map& Template Map

The Exhibits below are mailed/emailed to the Applicant, Board of Commissioners and Planning Commission only. Copies are available upon request or at the following website:<https://www.co.coos.or.us/planning/page/acu-21-002-bandon-land-management> . **or by contacting the Planning Department at (541) 396-7770.**

Exhibit C: Staff Report -**Findings of Fact and Conclusions**

All comments and the application can be found on file with the Planning Department.

EXHIBIT "A"

The applicant shall comply with the following conditions of approval with the understanding that all costs associated with complying with the conditions are the responsibility of the applicants and that the applicants are not acting as an agent of the county. If the applicant fails to comply or maintain compliance with the conditions of approval the permit may be revoked as allowed by the Coos County Zoning and Land Development Ordinance. Please read the following conditions of approval and if you have any questions contact planning staff.

CONDITIONS OF APPROVAL

1. All applicable federal, state, and local permits shall be obtained prior to the commencement of any development activity. If there were comments from any other agency were provided as part of this review, it is the responsibility of the property owner to comply.
2. A rental agreement should be submitted to the Planning Department as a condition of approval with the emergency contact information of the property manager/caretaker. This will need to be someone local.
3. The rental, the venue, and the number of guests shall be limited to the number the dwelling can support. The dwelling can accommodate up to 18 people overnight.
4. Parking shall be limited to accommodate the vacation rental operation only.
5. Due to the fact the property is zoned Forest there could be impacts to the increased fire hazard. A statement from the Oregon State Fire Marshall should be included to ensure there is no limit on occupancy or if there is what the limit consists of for the vacation rental.
6. A license from the Health Department shall be obtained and maintained.
7. Keys to the gate or combination number shall be provided to Coos County Planning, Emergency Services and Health Department as long as the gate is in place.

EXHIBIT "B"
Vicinity Map



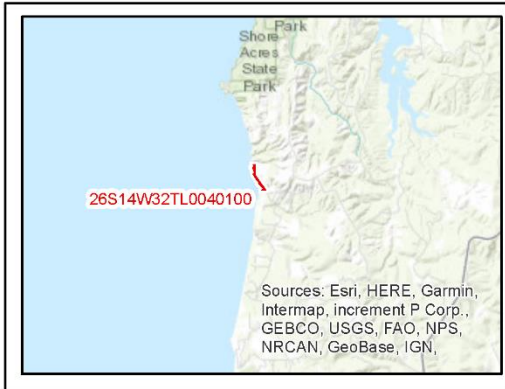
COOS COUNTY PLANNING DEPARTMENT

Mailing Address: 250 N. Baxter, Coos County Courthouse, Coquille, Oregon 97423

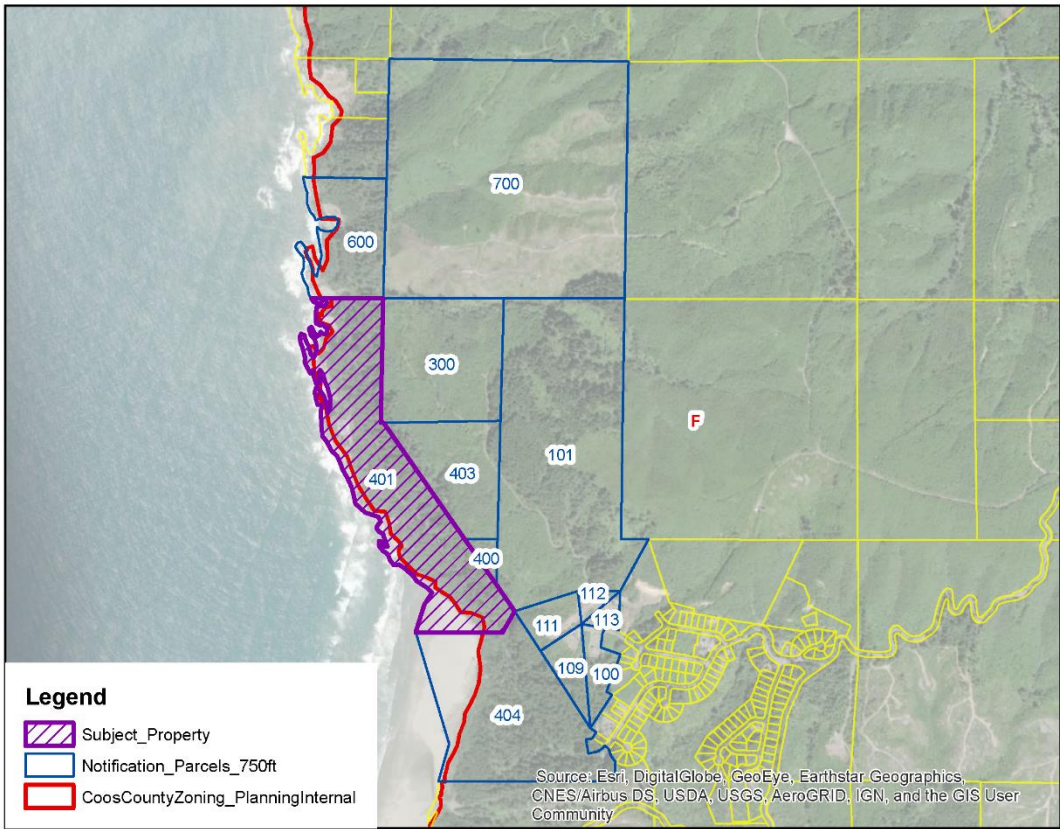
Physical Address: 225 N. Adams, Coquille Oregon

Phone: (541) 396-7770

Fax: (541) 396-1022/TDD (800) 735-2900



File:	ACU-21-002
Applicant/ Owner:	Kevin Wendelburg/ Bandon Land Management, LLC
Date:	March 25, 2021
Location:	Township 26S Range 14W Section 32 TL 401
Proposal:	Administrative Conditional Use



**EXHIBIT “C”
STAFF REPORT
FINDINGS OF FACT AND CONCLUSIONS**

I. PROPOSAL AND BACKGROUND/PROPERTY HISTORY INFORMATION:

A. PROPOSAL: The proposal is to alter the lawful use of a structure (Single Family Dwelling) to accommodate a short-term rental (Vacation Rental).

This application was reconsidered and the County is only issuing a Land Use Decision for the Vacation Rental. The application lacks information on how the wedding/event venue could be allowed. This may be applied for at a later date. The nonconforming use in this case is a Single Family Dwelling^{1 2} that was approved in 1986 as explained below.

On August 9, 1986 the Administrative Conditional Use (ACU-86-52) was approved, with conditions, for a Dwelling in conjunction with a Forest Use pursuant to Section 4.2.700 of the 1986 edition of the Coos County Zoning and Land Development Ordinance (CCZLDO). The property was a tract of land at the time (T26S, R14W, S32/33 Tax Lots 300, 400/101) and contained 292.24 acres. The condition of approval prior to receiving Zoning Compliance was to file a “Waiver of Right to Object to Forest Management Easement,” which is a deed declaration acknowledging that a residential use may conflict with Forest Practices and the property owner waives the right to object. The dwelling was constructed in 1986/1987.

The Single Family Dwelling was approved on the facts that it was necessary for and accessory to a permitted forest use addressing the following:

- i. The parcel upon which the dwelling is to be located was of sufficient size to perpetuate the existing or potential commercial forest enterprise of the particular area.
- ii. General guidelines to be used in making the determination included the types and sizes of commercial forest units in the area; types of “intensive forest products” (Christmas trees, nurseries, etc.) to be produced, value of products to be sold, expected yields, forest practices and marketing practices; specific site characteristics, such as soil productivity, special soil or land conditions, and terrain and drainage characteristics.
- iii. An assessment of the size of the entire forest unit (existing or proposed);
- iv. Operational requirements for the particular forest or woodlot activity proposed;
- v. The number of other permanent or temporary dwelling on or serving the entire forest unit.

The justification for the 1986 conditional use provided the size of surrounding properties at the time were from 5 to 15 acres to the south that were developed with single family

¹ DWELLING: Any building that contains one or more dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes. A dwelling shall consist of a kitchen, bathroom(s) and living space. Dwellings do not include a RV, tent, teepee, yurt, hotels, motels, vacation rentals or boarding houses.

² Single family dwelling: a single household unit of which construction is characterized by no common wall or ceiling with another unit, including a mobile home unless otherwise prohibited.

dwellings, 40 to 640 acres parcels to the east and north that were managed by commercial timber companies. The subject tract at the time was 292.24 acres and a plan for timber management was provided. The dwelling was described as necessary to primarily oversee the management of the forest unit. The plan was to clear the unproductive land (machinery, harvesting, burning), planning, manicuring, fertilizing and harvesting of the young firs as Christmas Trees and eventually harvesting of mature timber.

In 1993 HB 3661 was adopted which changed most if not all uses in the Exclusive Farm Use and Forest zones. OAR 660, Division 6 was revised on March 1, 1994. The changes to the statute and rule mandated amendments to the Counties Ordinances/Codes to change the type of dwellings allowed in Farm, Forest and Mixed Farm and Forest zones. Coos County finished the amendment process in 1995.

The current dwelling would not and will not currently meet the requirements for a Forest Dwelling. The CCZLDO explains that at the time of an amendment to the zoning any lawful use of any building, structure or land at the time of such enactment or amendment of this zoning ordinance may be continued. The dwelling has continued to exist and was lawfully sited in 1986. Alteration of any such use may be permitted subject to Sections 5.6.120 and 5.6.125. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. A change of ownership or occupancy shall be permitted.

In the Coos County Zoning and Land Development Ordinance the County can and has made the determination that Single Family Dwelling was vested. A parcel shall be considered vested for completion of the construction of a nonconforming use if the at the time of the development was completed it was based on the zoning laws at the time it was constructed. The dwelling was constructed based on prior zoning laws and there was a considerable amount of expenditures. Due to the change in law this dwelling is considered vested as a non-conforming forest dwelling. All changes to the property went through a legal land use approval and if there was any disagreement about the approval or the vesting of a non-conforming use it should have been appealed at that time. **This application is not re-establish the current non-conforming Single Family Dwelling that was approved as necessary and accessory to forest uses but to solely consider if the use of the Single Family Dwelling can be altered to use for short term occupancy as a Vacation Rental. There are no structural changes requested as part of this use. Parking may be changed as port of the change as a Single Family Residential only requires a minimum of two parking spaces but has no limit on the maximum spaces a Single Family can have in the Forest Zone. The reconsideration of this decision was at the request of the applicant considering the issues raised by the opponents.**

B. BACKGROUND/PROPERTY HISTORY:

Tax lot 401 is the subject property and is located west of the Sansaria Subdivisions (two phases) although the tax lot contains some of the same covenants and restrictions as the properties located within the platted subdivisions as explained further in this report.

Tax lot 401 was part of a larger property (1975 described as part of Deed 69-12-44813, Susan Chesterfield to Donald Ritter with the exception of the County Road 289). The property transferred ownership in 1979 (Deed 79-04-4704) from Donald Ritter to a Trust.

In 1985 tax lot 401 was deeded and sold as 63.84 from Marian Ritter Trustee (Donald Ritter Estate) to Georges C. St. Laurent, JR through deed document 85-02-7803 along with certain conditions and exceptions. Condition 8 found in the deed document states this property is subject to Covenants, conditions, restrictions and easements, but omitting restrictions, if any, based on race, color, religion or national origin, imposed by instrument, including the terms and provisions thereof, recorded June 24, 1968 in Microfilm Reel No. 68-6-29491, Records of Coos County, Oregon. The document referenced is the Sansaria Protective Covenants. Also, Conditions 9 and 10 of document 85-02-7803 also states that the property is subject to covenants, conditions and restrictions as shown on the recorded plat of Sansaria and the First Addition to Sansaria. Not only does this property appear to have deeded restrictions it was provided a separate easement, including the terms and provisions thereof for right-of-way and road purposes executed by Chesterfield Land Corp. recorded October 31, 1968 Microfilm Reel No. 68-10-33492, Records of Coos County, Oregon. Chesterfield Land Corp was the property owner of record that platted the Sansaria Subdivision and First Addition to the Sansaria Subdivision. In 1985 an easement (85-02-7840) was granted for beach access to be used for purpose of picnicking, clamming and other recreational uses by the owners of Parcel C, their licensees, permittees, heirs and assigns forever. Further, at such time, if ever, as the Coos County Zoning and other land use ordinances, and the laws of the State of Oregon, permit the transfer of that part of (Parcel B) situated in said Section 5 to the owners of (Parcel C) such then owner of (Parcel C) shall have the right and option to purchase the portion of (Parcel B). Which means the right-of-way would transfer to newly created units of land within Parcel B and C.

Therefore, tax lot 401 appears to have a legal right-of-way through what is platted as "Pacific Surf Drive". The application referenced an access easement as recorded deed document 97-12-1212 which also describes the access across tax lot 904 to and across Pacific Surf Drive. Although this property seems to have a deeded access this document clarifies the access easement.

On August 9, 1986 the Administrative Conditional Use (ACU-86-52) was approved with conditions for a Dwelling (on now tax lot 401) in conjunction with a Forest Use pursuant to Section 4.2.700 of the 1986 edition of the Coos County Zoning and Land Development Ordinance (CCZLDO).

On December 30, 1997 a Property Line Adjustment was applied for by Melvin McDougal (purchased the property in 1996) was approved pursuant to the CCZLDO (1991 edition) Section 3.3.150. The Property Line Adjustment involved Government Lot 5 of T.26S, R.14W, S.29 TL 600; Government Lots 1, 2 and 3 of T.26S, R.14W, S.32 TL 401; Government Lot 4 of T.26S, R. 14W, S.32 TL 400; and the NE1/4 of SE ¼ of T. 26S, R.14W, S.32 TL 100. This lawful action reduced the acreage the dwelling was located on to 54.25 acres. This action did not change the dwelling authorization or was the conformance of the dwelling required to be considered in this land use action. The property transferred ownership once the property line was completed. 54.25 acres was deeded to Frank & Helen Pekny in 1997. According to tax records this was not the primary dwelling for the Pekny's as their primary dwelling was located in South Pasadena, CA. The property retained the forest tax deferral and aerial images from the time showed the property was growing trees.

On December 6, 1999 the Coos County Road Department issued a Gate permit subject to conditions on Pacific Surf Drive (Public Dedicated Road). The conditions are specific that all property owners must be issued keys. All appropriate emergency services, fire,

ambulance, etc., will also be issued keys. The person issued the permit shall bear all cost of construction and maintenance of the gate. This gate must remain a safe distance from the junction with Seven Devils Road to allow vehicles to stop and open or close gate. This permit was issued pursuant to ORS 368.056. There was reference to a prior gate, but it was not lawfully sited, and the 1999 permit alleviated the noncompliance issue. The gate permit was requested by Frank Pekny and the permit has not been transferred.

The subject property was transferred to the Pekny Family Trust in 2004 and then sold to the Beetham Family in 2017. According to tax records and information provided by the applicant the Single Family Dwelling was not their primary dwelling. The records indicate they also allowed others to stay at the Dwelling, but it is unclear if there was money exchanged as a short-term rental but if so that appears to have been in violation. The Beetham Family sold the property to Bandon Land Management LLC at the beginning of 2020. Bandon Land Management LLC does not use the dwelling as a primary dwelling but does use it as a vacation home.

Since the purchase of the property in 2020 there have been calls and emails complaining about the increase of traffic caused by the subject property owner due to renting the property out for a wedding designation. While the roads within the Plat of Sansaria and First Addition to Sansaria Subdivision are deeded public dedicated access roads they were not adopted as part of the County Maintenance System and are privately maintained. The records for the Sansaria Subdivision, including the first phase, explain that there was supposed to be a Homeowners Association (HOA)³ established to cover the maintenance issues back when the Subdivision was created in the late 1960's. Staff cannot find any documentation prior to 2000 for the HOA. The research shows there was supposed to be a HOA started by the Chesterfield Land Corporation and then transferred to the Sansaria Club but there is no further information available to staff to explain if this HOA was completed. The records that are available show that on March 15, 2000 a new filing under the Sansaria Owners' Association, INC was filed with the State of Oregon. In 2005 it appears from the state records that the association was closed and a new filing with Sansaria Owners' Association was accepted by the State of Oregon but on May 16, 2014 a dissolution of the Sansaria Owners' Association was filed, and the status has been changed by the state as inactive with no official end date.

The covenants are valid unless there has been an instrument signed by the majority of the subdivision owners agreeing to the change in said covenants in whole or in part. This would also require an amendment to both plats filed with the County. The covenants have an enforcement section listed in the 1968 document that is not enforceable by the county but would be through a civil case for the owners within the subdivision. Therefore, if there are road concerns or issues outside of the land use process within the properties that are subject to the covenants and restrictions there may be an avenue for civil action. There seems to be a lot of concerns with road maintenance within the subdivision and staff suggested the owners consult with legal counsel to consider reinstating the HOA and set up a maintenance fund to help offset the cost. This does not change the status of the public dedicated roads unless they are vacated which given the amount of lots the roads provide access to, does not seem feasible.

³ The association's Declaration of Covenants, Conditions, and Restrictions (CC&Rs), Amendments to CC&Rs, Bylaws, Lien Notices, HOA Notices, Plats, Maps, and other community documents can be found by visiting the county recorder's office website in which the association is located. The association's CC&Rs must be recorded with the county land records to be enforceable.

On September 14, 2020 an official alleged violation application was set up (File No. AV-20-039) against Bandon Land Management alleging that the property owner was operating a wedding venue and a Bed and Breakfast in violation of State Land Use rules. The complaints filed demanded that the County shut down the wedding venue, Bed and Breakfast, Commercial Parking Lot and Vacation Rental but none of the complaints provided any evidence or cited to a State or County Law as basis for the request for enforcement.

When Coos County receives an alleged violation complaint there is a process the County follows within the Coos County Zoning and Land Development Ordinance. The first step is to review the complaint and screen it to see which department is best to handle the issues. Then if it is determined that a land use violation exists an alleged violation letter to the property owner(s) is drafted and mailed, they are then provided thirty-days (30) to respond. Upon the expiration of the thirty-day (30) time period or if a response is received then staff has forty-five (45) days to issue a final determination on the violation. One was not issued in this matter because the applicant filed for an application and a plan of compliance with the County. There have been three parties that have attempted to file a complaint with the department. The Planning Department notified the property owner that land use permits, parking permits and health permits were required to have a vacation rental as that was the only use that staff could determine was occurring without permits at that time. When staff investigated it was clear the use was a Vacation Rental. Staff sent a letter to the property owner on August 12, 2020 and requested a response to the allegations. The property owner had already been in contact with the Planning Department and explained he was unaware of the permitting process and was working on submitting a pre-application request to explore all permitting paths available to bring the property into compliance.

Despite the efforts of staff and the timely response of the applicant to this matter a letter was received on September 28, 2020 from Mr. Andrew Pinchin, Attorney for Mr. Johns stating the following:

“This law firm represents Tom Johns in relation to land use issues at the Sansaria subdivision. It is my understanding you have been contacted by multiple Sansaria residents about the use of the property located at 88515 Pacific Surf Ln, Bandon, OR 97411, also known as the Sea Winds Estate. Specifically, that the owner is ignoring the zoning restriction on his property, and marketing and using it as a wedding venue for up to 150 guests. The property is touted as such on the company website: <https://www.seawindsestate.com/>. We also suspect that improvements have been added to the property without permits, such as a parking lot for the wedding guests.

I understand there are many zoning complaints open at any given time. However, I would appreciate the Planning Department directing its resources to this matter given the flagrant nature of the ordinance violations, and the interference it causes the Sansaria owners' with use and enjoyment of their properties. Although the company website and promotional materials speak for themselves, we will also work to gather further evidence that might assist you. If possible, please provide copies of correspondence and emails regarding the zoning, applications, and permits for 88515 Pacific Surf Ln. If necessary I can prepare an Oregon Public Records Law request. I look forward to working with you toward a satisfactory conclusion of this matter.”

Just to be clear website links are not evidence submitted into a record. The decision makers are not allowed to follow links provided as websites may be changed at any point. Coos County has a code that covers records request as well and the appropriate form was provided to Mr. Pinchin along with the fees to cover the request. Staff responded to Mr. Pinchin record's request form with the correspondence.

The correspondence between Staff and the Property Owner shows that the property owner was working toward a solution to bring the subject property into compliance.

Mr. Pinchin was correct that there had been reports (verbal and emails) from neighbors, but no one filed an official code complaint as required by the Coos County Zoning and Land Development Ordinance until late summer of 2020 and there was no evidence beyond the link to the webpage provided which is not admissible evidence unless it is printed and submitted into the record as websites could be changed at any point in time.

Coos County Planning Department is a small department and Coos County is a very large area making it difficult to cover all enforcement issues. If someone finds that enforcement is not handled in a timely manner or they are not satisfied with the process, there is an option in the County Code for "Enforcement by Private Party" as cited below. Currently there are over 250 open cases and staff processes in accordance with the law evaluating the evidence and the type of violation.

SECTION 11.01.070 ENFORCEMENT BY PRIVATE PARTY

1. *A person other than an enforcement officer may commence a violation proceeding by filing a complaint with a court that has jurisdiction over the alleged violation. The filing of the complaint is subject to ORS 153.048. The complaint shall be entered by the court in the court record.*
2. *A complaint under this section must contain:*
 - a. *The name of the court, the name and address of the person bringing the action and the name and address of the defendant.*
 - b. *A statement or designation of the violation that can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the violation is alleged to have occurred.*
 - c. *A certificate signed by the complainant stating that the complainant believes that the named defendant committed the violation specifically identified in the complaint and that the complainant has reasonable grounds for that belief. A certificate conforming to this Section shall be deemed equivalent of a sworn complaint. Complaints filed under this Section are subject to the penalties provided in ORS 153.990.*
3. *Upon the filing of a complaint under this Section, the court shall cause a summons to be delivered to the defendant and shall deliver a copy of the complaint to the District Attorney and County Counsel for the county in which the complaint is filed. The court may require any enforcement officer to serve the summons.*
4. *If the complaint does not conform to the requirements of this Section, the court shall set it aside upon motion of the defendant made before the entry of a plea. A pretrial ruling on a motion to set aside may be appealed by the state.*
5. *A court may, acting in its sole discretion, amend a complaint filed under the provisions of this Section.*
6. *A court shall dismiss a complaint filed under this Section upon the motion of the Prosecutor if:*
 - a. *The Prosecutor has brought a proceeding against the defendant named in the complaint or intends to bring a proceeding against the defendant named in the complaint; and*

- b. *The proceeding is brought by the Prosecutor by reason of the same conduct alleged in the complaint.*

Throughout this time Staff was receiving email updates from the applicant and he did acknowledge he was continuing to operate his business without proper permits. Staff warned the property owner that he may be subject fines and penalties. At this time there are no reservations for weddings and no proof that a vacation rental is active at this time. However, the property owner has used the dwelling and staff has no control over the property owner and his personal guests.

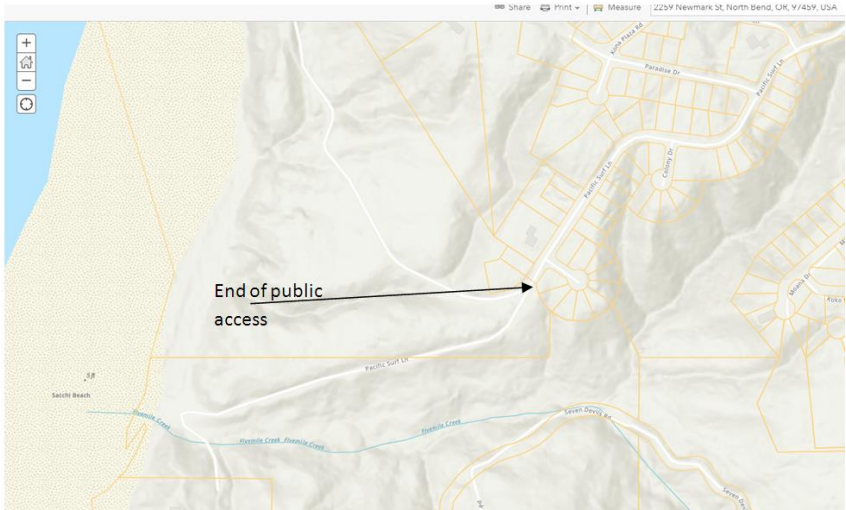
This type of violation offense is not the type of violation that can be physically abated as in the case of removal of an unauthorized structural improvement, RV's, vehicles or cleanup of solid waste. The property owner and neighbors seem to indicate that there may have been disputes between them outside of this issue but neither elaborated. Some of the complaints were for the road usage and enjoyment of their residential development. The County cannot control the number of vehicle trips per day on a public road outside of a new subdivision. There are certain mitigation measures that could be considered within a larger development but the road in this case does not meet that standard. The gate authorized by the County permit does not make this development a "gated" residential community and the gate shall not limit forestry practices. If there is some type of violation of the CCR's of the subdivision that is a civil matter. Pacific Surf road, like all interior roads within the Sansaria Subdivision, are public dedicated for public use. The other issue that was brought up by the neighbors was people using Sansaria's "private beach". There is no such thing in the State of Oregon as a "private beach". The applicant did provide proof of an easement to use the Road and an easement to the beach. The subdivision itself is not beachfront as there are private landowners between the subdivision and the beach it does appear there is legal access for the residence of the subdivision but that is not part of this review. If someone would like to understand about beaches in Oregon you are encouraged to contact Oregon State Parks.

After performing extensive research on this property and Sansaria Subdivision Residents it became clear to staff that there is some confusion about the Forest Zoning. There appear to be several violations and staff will address those separately. To be clear it is not lawful to live in an RV or build an accessory building without a dwelling. It seems that the people that live and use the subdivision are using their properties primarily as residential and recreational and not as Forest, which is not consistent with the zoning but understandable as the subdivision predates zoning. Staff can issue permits for temporary use of an RV for property owners who are in the process of building a permitted dwelling. The subdivision predates zoning and would not be allowed to be divided under the current land use regulation. This issue is beyond the scope of the review but many comments that have been received raised issues around the use of the property within the subdivision.

Coos County takes all enforcement matters seriously but does prioritize health and safety violations. This violation did not seem to pose an immediate health and safety violation such as enforcement matters that deal with raw sewage or solid waste. The complaints fall into the category of traffic concern and nuisance issues. The enforcement complaints did not contain evidence that the property owner had made structure improvements or other onsite improvements that required additional permitting. Some of the emails did state there was contractors removing trees and making a commercial parking lot but that is not consistent with any of the evidence, including aerial photos or plot plan provided. Someone reported that the contractor stated it was a commercial parking lot, but the

allegations are all hearsay because there is no evidence to support the claim. The removal of trees and landscaping activities are allowed. The parking area seems to be located just outside of the Coastal Shoreland Boundary.

As shown below the public road ends and then there appear to be access easements through the Muir's property to reach the subject property. Bandon Land Management's private access easement continues from the end of Pacific Surf Public Dedicated Road to the north. The applicant did provide the written easement to the beach and it does not restrict him from providing access for his guests. Tax lot 401 does have a portion of the beach within the ownership but it's unclear if that part of the beach is able to be accessed through that tax lot.



Signage was raised in prior verbal conversations as well. There have been no permits issued for private signs on public dedicated roads including on the gate. The County will not enforce covenants or restrictions as that is beyond the local land use ordinance or comprehensive plan.

The Sansaria Subdivision (including the First Addition) has several pending violation matters consisting of illegal uses of RV's and building without permits. The gate is problematic to Staff's investigation and causes delay in enforcement matters. Staff has not visited this particular site but the applicant has stated that anytime that County Staff would like to do a site visit they are welcome. Staff is familiar with this subdivision and properties from past visits, but the last visit was in 2019.

On August 27, 2020 Ms. Wendelburg (Bandon Land Management, LLC) submitted a pre-application to discuss the possibility of rezoning the property to recreational to allow it be used for recreational purposes. Please note: the pre-application included tax lot 600 as he owns that tax lot as well. At that time Staff completed a detailed research of the property and did discover that the dwelling was legal nonconforming and at that point the options were provided to the land owners and his legal representative. The options provided were to rezone the property or alter the nonconforming use. Mr. Wendelburg is not altering the dwelling or completing any structural improvements. The pre-application meeting was held on October 14, 2020 and the follow-up letter to that meeting was completed on October 29, 2020. The current application was submitted for

an alteration of a non-conforming use on January 6, 2021 and found to be complete for purposes of review on February 5, 2021. The use that is requested to be altered is the residential use that was approved through the 1986 Conditional Use.

- A. COMPLIANCE PURSUANT TO SECTION 1.1.300:** It shall be unlawful for any person, firm, or corporation to cause, develop, permit, erect, construct, alter or use any building, structure or parcel of land contrary to the provisions of the district in which it is located. No permit for construction or alteration of any structure shall be issued unless the plans, specifications, and intended use of any structure or land conform in all respects with the provisions of this Ordinance, unless approval has been granted by the Hearings Body.

Staff has reviewed the property history and county files to determine that at this time the property is not in compliance due to the unpermitted vacation rental. This application will bring the property into compliance.

II. BASIC FINDINGS:

- A. LOCATION:** The subject property is located northwest of the City of Bandon off of Pacific Surf Lane, which is a public platted road. The property has a situs address of 88515 Pacific Surf Lane, Bandon, OR 97411.
- B. ZONING:** - This property is zoned Forest (F).

ARTICLE 4.2 – ZONING PURPOSE AND INTENT

Section 4.2.500 RESOURCE ZONES

Forest (F)

The intent of the Forest District is to include all inventoried "forestlands" not otherwise found to be needed (excepted) for other uses.

The purpose of the Forest zone is to conserve and protect forest land for forest uses. Some of the areas covered by the "F" zone are exclusive forest lands, while other areas include a combination of mixed farm and forest uses.

Forest Mixed Use (FMU)

The purpose of the Forest Mixed Farm-Forest Areas ("MU" areas) is to include land which is currently or potentially in farm-forest use. Typically such lands are those with soil, aspect, topographic features and present ground cover that are best suited to a combination of forest and grazing uses. The areas generally occupy land on the periphery of large corporate and agency holdings and tend to form a buffer between more remote uplands and populated valleys. In addition, these "mixed use" areas contain ownership of smaller size than in prime forest areas. Some are generally marginal in terms of forest productivity, such as areas close to the ocean.

If land is in a zone that allows both farm and forest uses, a dwelling may be sited based on the predominate use of the tract on January 1, 1993.

If a use is only allowed in the mixed use zone it will be explained in the text. Otherwise the uses listed are allowed in both the Forest and Forest Mixed Use zones.

- C. SPECIAL DEVELOPMENT CONSIDERATIONS AND OVERALYS:**

SECTION 4.11.125 Special Development Considerations: The considerations are map overlays that show areas of concern such as hazards or protected sites. Each development consideration may further restrict a use. Development considerations play a very important role in determining where development should be allowed In the Balance of County zoning. The adopted plan maps and overlay maps have to be examined in order to determine how the inventory applies to the specific site

SECTION 4.11.200 Purpose: Overlay zones may be super-imposed over the primary zoning district and will either add further requirements or replace certain requirements of the underlying zoning district. The requirements of an overlay zone are fully described in the text of the overlay zone designations. An overlay zone is applicable to all Balance of County Zoning Districts and any zoning districts located within the Coos Bay Estuary Management Plans when the Estuary Policies directly reference this section.

This property does have special development considerations and overlays, but no structural development is being proposed. Therefore, additional review was not required.

D. SITE DESCRIPTION AND SURROUNDING USES: The subject property is zoned Forest (F) and contains approximately 54.25 acres. This property is located south of the City of Coos Bay and north of the City of Bandon between the ocean and the Sansaria Subdivision. The property is accessed via Pacific Surf Lane off Seven Devils Road. The property is surrounded by mostly Forest uses. There are some developed lots with Dwellings to the east within the Sansaria Subdivision.

E. COMMENTS:

- a. **PUBLIC AGENCY:** This property did not require any request for comments prior to the release of the decision.
- b. **PUBLIC COMMENTS:** This property did not require any request for comments prior to the release of the decision. However, there have been some emails provided from some of the residence in the adjoining subdivision. The application was received in January and all comments that have been received after it was submitted have been considered.

- **March 26, 2021 – Andrew Pinchin, Attorney at Law –**

Full comments are on file with Coos County in the official record. The exact wording could not be copied into this area from the letter but in summary the comments related to a rezone application which was not applied for and are not relevant to this review.

The letter provides links that staff is not able to view as part of this review. The main points are increase in traffic, unlawful use of the property, decrease in property values, nuisance issues, parking lot for up to 100 people, wedding venue is a non-conforming use. Noise is not regulated by Coos County Code or Zoning Ordinance.

- **March 26, 2021 – Staff’s response and request for the relevant criteria so to be addressed.**

I am not sure if your letter really addresses the application. I am aware of the violation, but what I am trying to review is the request to alter an already nonconforming use. All roads within the Sansaria Subdivision are public dedicated roads and I am struggling to regulate traffic on a public dedicated road

that were platted for large volumes of traffic or even how the county would restrict traffic in this particular case. I think the residents of Sansaria don't really understand that roads are public dedicated. One of the prior owners of this particular property (tax lot 401) was the one that actually applied to have the gate installed. The county provided a permit for the gate. I am not sure it was a good idea to have a gate given the size of this development but that is a side conversation. I have not found anything in case law relating to a non-conforming use alteration that was very helpful either so if you have anything that you could provide on behalf of your client that would be great or is your client simply just asking for offsite parking or a limitation on activities? Please let me know. Thank you for your assistance in this matter.

• **March 30, 2021 – Andrew Pinchin, Attorney at Law –**

The main points raised were the compliance with ORS 215.130(5) and (9). Many Sansaria owners relied upon the then-existing use of Sea Winds in choosing to purchase their properties, i.e., a quiet, and relatively traffic-free neighborhood abutting forest land and the coast. They have already seen a great adverse effect from Mr. Wendelburg's use and expect it would be far worse if the application is granted.

It is my understanding the Sansaria owners' association purchased the gate from the prior Sea Winds owner, Helen Pekney. In addition, the neighborhood roads may be public dedicated, but the Sansaria owners have maintained the roads, so they would bear the cost of increased maintenance from much greater usage of the gate and road. It seems inequitable for the highest user of the road and gate to be the Sea Winds property owner when such property, as I understand it, has no direct boundary with the Sansaria neighborhood. Again, it is counter to the "no greater adverse impact to the neighborhood" standard that should be applied.

The adverse impacts include potentially decreasing land values, interference with use and enjoyment, and the health and safety concerns described in my last letter.

• **March 30, 2021- Comments from Nick & Sherrel McGough –**

- 1- The only economic goal that will be accomplished is greed since the new owner did not do his due diligence, before he purchased the property. This is a gated residential community, that is why we all of us who have homes here purchased here, for the quietness & peacefulness, not to hear cars going back & forth to a wedding or another venue. If we wanted that atmosphere we would have bought in town.
- 2- If there is a precedence do it where it is zoned for it.
- 3- I do not believe the statewide coastal goal is to turn a residential forested neighborhood into a commercial business area.
 - 3.1 We are all in favor for tourism in the correctly zoned environment, which this is not.
 - 3.2 This does not create any jobs; this property has had a full time caretaker since its inception.
- 4- You are destroying this area.
 - 4.1- You have taken out at least 12 truckloads of trees without getting a forestry permit.
 - 4.2- What recreation, you are a wedding / party venue.
 - 4.3- Is that why you have removed several hundred yards of dirt from the muscle creek area?
- 5- Take your venue to an area zoned for your business.
- 6- We live by the entrance gate, and since Mr. Wendelburg, purchased the property the traffic has increased 10-fold between his guest loggers, truck drivers etc. On wedding day's there are 20 or more cars where someone is driving up to let them in, then late at night we have to hear them leave. People that live here do not leave every day since we live in a remote area, also Pacific Surf Lane is a County dedicated road, not a public access you need a card to get in through the gate. Which means us the owners of Sansaria properties, maintain & buy the gravel spread it, trim the trees & brush from encroaching on the road. We also pay for the electricity and phone for the operation of the gate. Prior

to Mr. Wendleburg, purchase, every other owner of that property pitched in for those improvements even though he is aware of this he has never offered to pitch in but feels entitled to all of it.

6.1- When outside we all hear each other when noise is made.

6.2- With the drinking at weddings and narrow road that Pacific Surf is at night it is a matter of time until someone drives into the beaver pond or of the cliff on the other side which is probably 100 ft. Drop. Someone did it while they filmed the movie, and were very lucky, but someone may not be that lucky, and could start fires. Plus most of them speed through the neighborhood.

- **March 31, 2021 – Tom Johns emailed testimony.**

RE: Please enter for Planning Departments consideration on Kevin Windelberg and Seawinds request for an alteration of a non-conforming use to allow for a wedding venue in an exclusive Forest zone.

Subject of this letter: To show how this change of use will have an extreme adverse impact on the Sansaria neighborhood.

Sansaria is a small original Polynesian themed community that was conceived and established by Mr. Chesterfield in the 1960's. His vision was to create a community that valued the natural beauty of Sansaria's remote and exceptional location on the Southern Oregon Coast, where an old growth Spruce forest met the sands of the expansive Sacchi Beach. His early records show he envisioned a place that people could relax and enjoy the quiet natural setting of the Polynesian themed development, and access to the beach. Mr. Chesterfield was before his time in this regard, and many people saw the value in his vision as most of the lots were sold before his untimely death in a plane crash. His death prevented his original plan to be fully developed, but the foundation of his vision has prevailed to this day. People like my wife and I purchased property in Sansaria for the very same reasons that it was conceived. We bought our land there 15 years ago. We bought from Helen Pekny who with her husband Frank developed what is called the second tier at Sansaria. We loved the beautiful deeded gate Frank and Helen built that is at the entrance of Sansaria as it really defines the community and is of utmost importance to all of us who own property in Sansaria. And of course the right of way road access to the beach is great. Above all else, it is quiet. Our place is on the main road; Pacific Surf which is how you get to the beach. Most neighbors walk to the beach, and I bet that no more than 10 cars a day drive by. A bit of that traffic was for Helens house. She was the previous owners of Seawinds, a single family residence. As Sansaria owners we are responsible for upkeep of the roads throughout Sansaria including the road to the beach. I have enjoyed working with my neighbors as it really brings out that 'Sansaria' spirit, and we became much closer working together.

I have served on the road committee in the past and we are responsible for everything including ditches, culverts, mowing the road shoulders, and brush removal. We have work parties once or twice a year and keep things tidy. We all contribute individually to buy and have gravel spread on the roads when needed. We also pay for the electricity and phone lines for the permitted gate operation, and any maintenance and repairs. All of us property owners have generally gotten along and worked together very well, I believe it's because we all bought in Sansaria for the same reasons. We want to maintain the natural quiet setting and the accompanying lifestyle that Mr. Chesterfield envisioned Sansaria to be all those years ago.

Ms. Rolfe, it is with great concern that I tell you our Idyllic community is under an inordinate threat. A vision that has been alive and flourishing for over 60 years could be extinguished. As we all know the current owner of Seawinds, Mr. Wendelburg is asking you to alter the current zoning restrictions to allow him to operate a wedding venue in a previous single family dwelling. Last summer Sansaria residence got a front row seat on what to expect from his non-conforming business and the negative effects our community can expect. Apparently Mr. Wendelburg did not do his due diligence when he purchased the house and claims he did not know that it did not have proper zoning. Astonishingly, he continued to

operate and host weddings there all year, even after you had told him not to. Here are the adverse impacts we experienced thus far.

1.) Road Usage: On this topic I note that Mr. Wendelburg claims in his application ‘talking points’ No. 6, that over a course of a year the traffic would not be much different than having a full time resident. Facts show otherwise. As I stated earlier, before the weddings started we averaged 10 cars a day driving back and forth, and let’s say it’s a down and back trip for a total 20 trips a day. Mr. Wendelburg states that his business can accommodate 150 wedding guests. Let’s assume most guests arrive two to a car that’s 75 cars in, and 75 cars out. Or 150 trips across the road for one wedding. For this example we will not count the caterers, DJ, preacher, cleaning crew etc. Before the weddings began 20 trips in and out a day times 30 days is 600 trips a month. So even if you only had 2 weddings a weekend, that’s 300 wedding trips a weekend, or 1200 trips a month. That number alone is 100% more than what has been ‘normal’ Sansaria traffic in a month. And that is only 2 weddings a week, which you know he will book much more than that if possible.

So let’s add this up, Mr. Wendelburg claims that the traffic would not be much different that a single resident would make in a year. Well the math says that on just two weddings a week over June to October, that’s 6000 trips, which over a years’ time would equal 19 trips a day in and out of Sansaria for a single family residence. Please, 19 trips a day? You can see how this huge increase will have an adverse effect on our community supported and funded roads, which Mr. Wendelburg does not contribute to, as Seawinds is not in Sansaria, but he needs our infrastructure. Same goes for the legally permitted gate. Over the summer that’s thousands more openings and closings it has to make. There are only some many times the gate will cycle before it breaks down. You can see how this too negatively affects our community.

2.) Weddings can be booze fueled bashes: Above I discussed how much traffic has and will increase and how that traffic affects our community. But we must talk about what *kind* of motorist we have encountered in Sansaria coming from the weddings. In his talking points Mr. Wedelburg gives the topic of drinking and driving just six words, as if to say it’s nonconsequential-and there is nothing to see here. He claims drinking at Seawinds is no different than any other restaurant or establishment. Here are some recent excerpts from wedding venue sources that better explain why we have, and what we’ll continue to deal with in Sansaria as wedding guests leave.

From the wedding planning site theknot.com

Study proves most Americans prefer boozy weddings

While wedding ceremonies are a celebration of love above all else, the receptions (and not to mention, after-parties) have gained a reputation for being booze-fueled bashes. Typically complete with an open bar, a dance floor and dozens of people celebrating a happy occasion, they can quickly become ragers—which usually comes as no surprise to guests.

And according to a recent [study](#), that’s how they like it. The team at Alcohol.org recently asked 1,000 Americans about their drinking habits and found 53 percent of Americans prefer alcohol-stocked weddings over dry ones.

From the Huffington post:

Weddings are the social event of the season and people drink more at weddings than any other social gathering. Couples often underestimate the amount of alcohol their guests will consume, so I caution them to slightly overestimate on this part of their budget.

Example of what guests will consume: - Cocktails for one hour (2 -3 drinks/person) + Reception for five hours (5-7 drinks/person) = 7-10 drinks per person for the event.
Younger people will drink more, and tend to head for the bar more often than they normally would as they are not paying.....

From Brides.com

What's the one thing wedding guests look forward to the most? Besides seeing two people they love tie the knot, there's a pretty good chance your guests are eager to make their way to the bar.
The one thing you absolutely do *not* want to happen at your wedding? [Running out of alcohol](#)
As Willy Wonka once said "Candy is dandy, but liquor is quicker"

From HupyandAhraham sc

Weddings are a wonderful opportunity to make lasting memories with friends and family that you can remember fondly for your entire marriage. There is an unfortunate possibility that one of your guests overdoes it and drinks too much. It's a time for celebration, but no one wants the fond memories of their wedding marked by a tragic accident if a guest chooses to drink and drive.

As you can see the bottom line is people drink more at weddings than at any other social event. Many Sansaria residents saw this first had last summer. When leaving Seawinds driveway, they have to drive through Sansaria. I have seen myself, cars late at night speeding up hill spinning out and throwing gravel. Drivers honking their horns on their through and out of our neighborhood, obviously taking the party with them on the way out.

Mr. Wendelburgs location is not like any other restaurant. Nothing could be further from the truth. First of all people will be drinking at a cliff side house. To access Seawinds one has to travel the most treacherous portion of Seven Devils Road. This extremely curvy gravel and dirt road is one of the most dangerous in the county, or in Oregon for that matter, and even has posted warnings that RV's are not recommended to travel this road. Signs like this are meant to discourage recreation in the area, not encourage it. Part of the reason for this is log trucks routinely use this road for their logging activities in the area. People who are not accustomed to negotiating their vehicles on this type of terrain can find themselves head on with a truck in a blink of an eye. Now imagine wedding guests have consumed those 7 to 10 drinks at the wedding and it's late at night and time for them to find their motel. Now that sunny day has turned to that coastal dark rainy night with winds howling from the north, trees violently swaying back and forth, and 75 cars some percentage with liquor fueled drivers running the hairpin curves abutting steep cliffs and ravens on the dirt portion of 7 devils road (aptly named) between Charleston and Bandon. If you have traveled this road, you know this is an invitation for trouble, especially for people who will be traveling from out of the area who simply have no experience driving in a Forest environment and conditions. No Mr. Wendelberg, drinking and driving from Seawinds would be MUCH different than dining at Lord Bennett's and stumbling into bed at the Sunset motel. Who really believes this is a good idea?

I respectfully submit this information to illustrate how adversely a wedding venue would be to the Sansaria community.

- **April 1, 2021 Don Brockmann –**

I am writing to express my concern regarding Seawinds application to use the residence as a wedding venue.

Since my wife and I purchased the Sansaria property and built our house 10 years ago. We have enjoyed the solitude of a forested living. I grew up in Coquille and lived most my adult life in Eugene. Being retired now I can enjoy the relaxed living environment here in our little neighborhood. One of my favorite

things to do here is walking to the beach in the morning after coffee. It's down the one lane road that goes to the beach. This is a quiet peaceful walk past other property's or scattered houses. You feel like you on a forested hike but on a one lane gravel road.

Typically over the years there is no car traffic during the walk. If there is it's a resident or lot owner . They usually stop and chat and catch up on whatever. Last summer was not the normal experience. It seemed that half the time you'd see a strange car drive by that you wouldn't recognize. If you did see them later during the walk or at the beach, they'd invariably tell you they were looking at having a wedding there. Even though Seawinds was told they were out of compliance.

Having strangers inside our gate unsupervised was disturbing to me under the pretense of breaking the law.

The weddings they have had there bring noises at day and night that we haven't been accustomed to the previous 9 years I have been here.

It doesn't seem right that an out of the State company can change the peaceful lifestyle of Coos County tax paying residents, so they can turn a profit just as they do where ever they do business.

Thanks for your work in this situation.

- **April 5, 2021 Don Brockmann –**

I am writing to express my concerns regarding the Seawinds non-conforming application. After reviewing the application there are various statements that are not correct and far from the truth. We have had a residence in Sansaria for ten years. Those years have enjoyed the peaceful solitude of being in a forested setting. One of the statements on the application states that there will be not any more traffic for the use of a wedding venue as opposed to a residential house. This could be as far from reality as possible. A typical resident might do 3 round trips a day. 21 trips a week. This proposed wedding venue has the capacity for 150 guests according to their website. At 2 guests per car. That's 75 round trips per event plus catering, bartender, DJ, decorations, clean up.

Weddings can be any day of the week depending. I'm sure Seawinds would like to book as soon many as possible.

We have experienced this first hand last year as they were having weddings without authorization all last summer and fall even though they were told they were out of compliance. The traffic noise, speed and disregard for our neighborhood was alarming.

Two years ago there was a movie filmed at the Seawinds. The movie people came around and talked to the neighbors personally and listened to our concerns and gave us a contact person to get in touch of in case of any issues.

This was a one time, one month deal and we adjusted knowing there would be an end. While point person for the wedding venue states he has made his contact information available to us is a stretch. Where would I find his contact information. On his application? He has never come to any residences and introduced himself to see if we have any concerns.

I have no problem with his proposal for a B&B if he meets the county requirements. This is his right. But his use of the residence for and wedding event center is detrimental to our neighborhood and should not be granted.

- **April 6, 2021 Tom Johns**

PLEASE ADD THIS ADDENDUM TO MY PREVIOUS RESPONSE OF LAST WEEK TO YOU:

RE: Kevin Windelberg and Seawinds request for an alteration of a non-conforming use to allow for a wedding venue in an exclusive forest zone.

Subject of this letter: To show how this change of use will have an extreme adverse impact on the Sansaria neighborhood

One of the main points in my response last week to Mr. Windelberg's request of alteration of a non-conforming use was the impact on our community/neighborhood supported and maintained roads. I got the impression from you that since the roads in Sansaria were dedicated, that somehow this fact made our position on negative road impact less relevant.

A dedicated road only means that the county has designated this road as being a road that exists, but it is not being serviced by the county municipality, and the property owners are responsible for the maintenance. In this case the Sansaria neighborhood, which again Seawinds is not a part of.

A dedicated road is much different than a county road, which is a road that has been formally accepted by county commissioners as a county road. Dedicated roads are prohibited from using county road funds for maintenance and upkeep.

When considering whether Seawinds operation as a wedding venue would have a negative impact on the Sansaria neighborhood you have no choice but to take the impact of our roads into consideration. You cannot have potentially 150 cars a day travel those roads without having a negative impact on the community, because the Sansaria owners will be left with the burden of paying for it. Not the county as they are prohibited for spending on a dedicated road, and not Windelberg or Seawinds because they are outside of Sansaria. Mr. Windelberg has already revealed his business model, as he will joyfully continue to use our Sansaria community roads just like he did all last summer leaving pot holes, and washboards in his wake. It says a lot that not once did he offer to even contribute to the wear and tear he caused. The elephant in the room is obvious and its existence cannot be denied. You need to ask yourself, will the enormous increase in the number of 'wedding' cars traveling across Sansaria's roads have a negative or positive effect on the roads? If you agree that it will be negative to the condition of the roads, then you must also agree that it will take a lot of additional costs for gravel, grading, and overall maintenance. Since Sansaria owners are the only ones paying for all this upkeep, would you agree this added cost will affect the neighborhood in a more negative way after a non-conforming use approval than the way our community was before? You must realize that if our community gets saddled with the increased financial burden caused by a drastic increase in 'wedding' road traffic while both Coos County and Windelberg's Seawinds get off Scott-Free, this added burden negatively effects our Sansaria Community members financially in a way that it would not if the non-conforming use was denied. Many people in our Sansaria community are retired and on fixed incomes. This burden very well may not be sustainable for them. These facts demonstrate the reasons why you must follow the guidelines and vote NO on the request for alteration if a non-conforming use.

Staff Response: There have been speculations made and comments that are not supported by fact. This is not a "gated residential community" in land use program Planned Communities can be gated communities but Sansaria (including the first addition not the second tier) was not filed as a

gated community. A gate permit was issued by Coos County pursuant to ORS 368.056, and the permit may be transferred to the party that applies as long as they can comply with ORS 368. A county governing body may issue a permit to a person to allow construction of a gate or stock guard on a public road under the jurisdiction of the county governing body. The county governing body may impose any conditions or specifications on the permit it determines advisable to preserve the purposes of the public road. Conditions on a permit under this section may include a requirement that the person issued the permit shall bear all costs of construction and maintenance of the gate or stock guard. Staff understands that the gate is maintained by residences but the person that was issued the actual permit (not kept current) was Mr. Pekney and that permit was never transferred. The County will at a later time discuss if the gate is even appropriate given the Zoning and level of development.

The zoning is Forest and not Forest Residential. The County has an acknowledged plan that is a local plan found to comply with all the Statewide Planning Goals. Therefore, the local ordinance is applied not the Statewide Planning Goals, Statute or Rural directly.

Any dwelling that was sited after 1993 in the Forest Zone was required to sign a waiver of objection to Forest Practices which means those people signed a covenant that they understood that they could not object to Forest practices such as tree removal and other forest practices. An approval to sell or remove trees is under the jurisdiction of Oregon Department of Forestry in the Forest Zone.

The consumption of alcohol is not relevant criteria when considering land use impacts. If someone believes there is drinking and driving or speeding then law enforcement should be contacted. The subject property is located outside of the Sansaria Subdivision including the First Addition but has a dedeed right-of-way over Pacific Surf Lane and the beach.

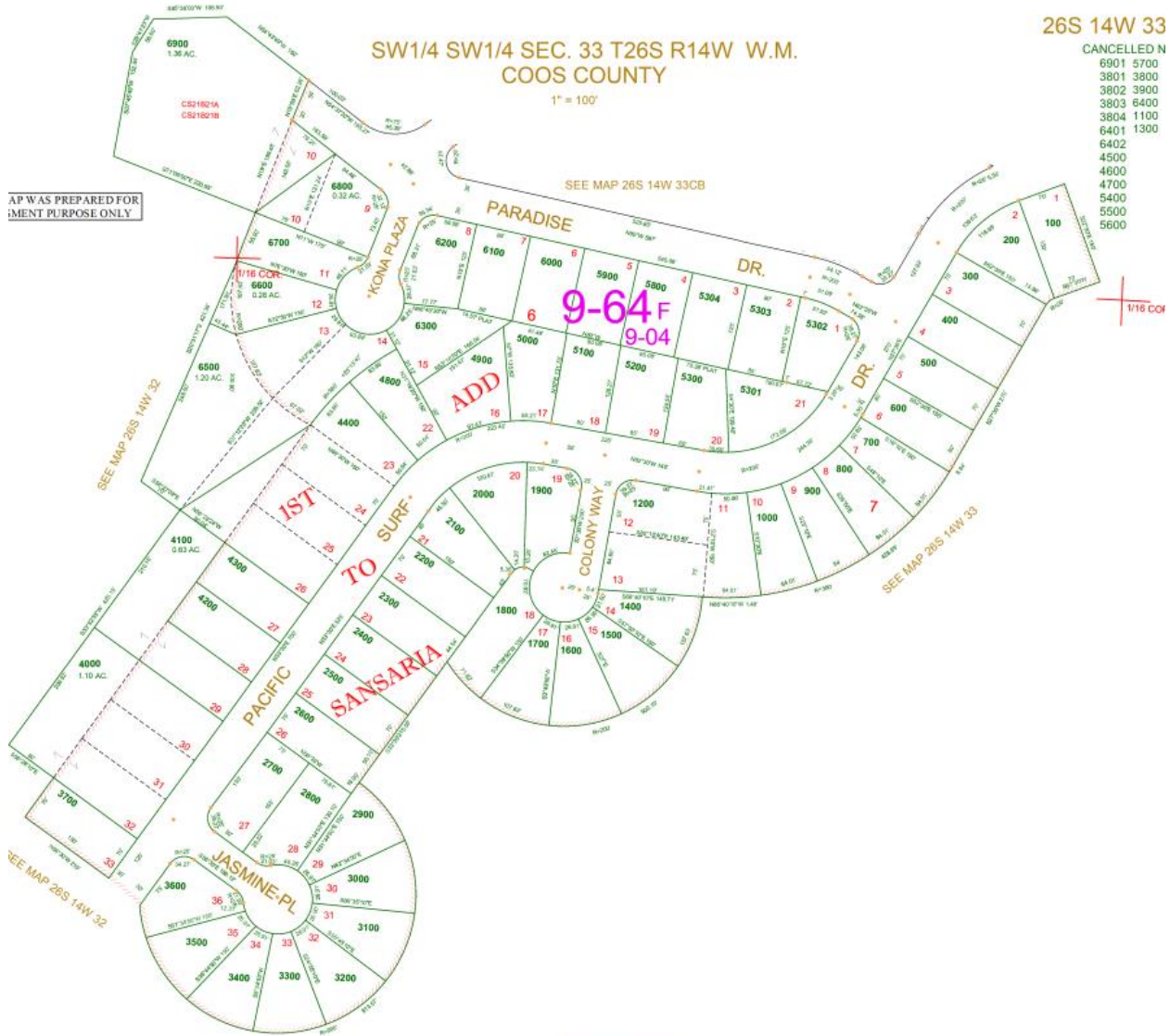
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COOS COUNTY

1" = 100'

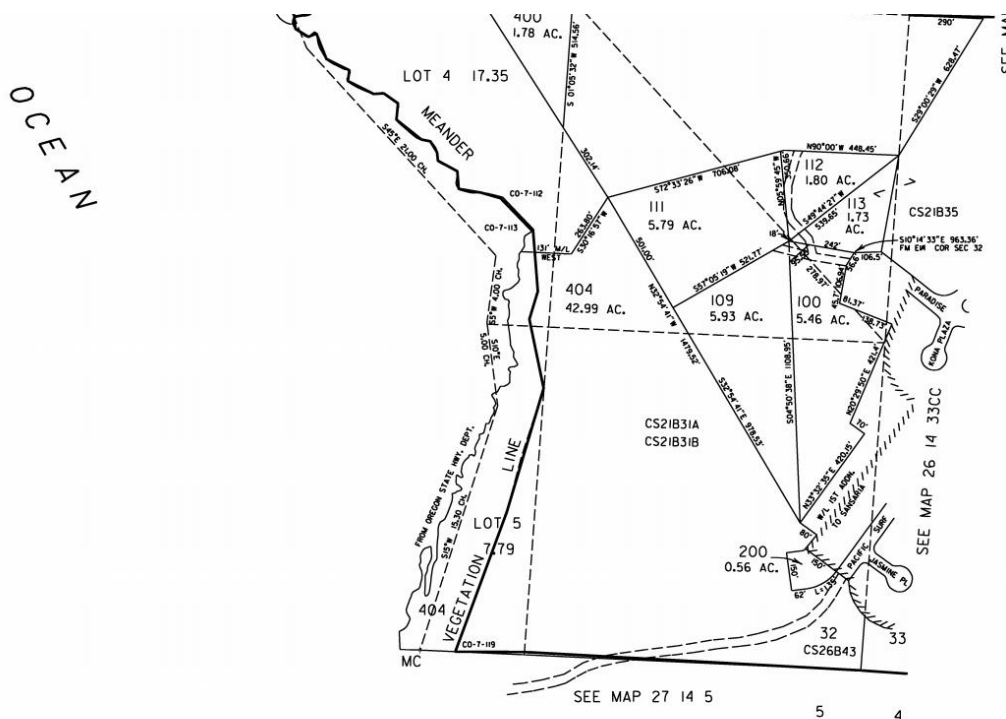
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AP WAS PREPARED FOR
MENT PURPOSE ONLY



SEE MAP 27S 14W 04



9-8-2004

26 14 32

It is clear, the line with the cross hatched area is the end of the platted dedicated road. The rest of the road is shown with dashed lines to show it is private. Use of public beaches are not relevant to this review. Beaches fall under the jurisdiction of the State of Oregon.

Offsite impacts and uncompensated taking of property. The Land Use Ordinance governs the land use laws that pertain to uses and activities outside of incorporated city boundaries in Coos County. In this case the impacts shall have a reasonable nexus and offsite impacts are limited by defining the “neighborhood”. Several people talk about the neighborhood or community of Sansaria (including the First Addition) but this property is not part of the subdivision and due to the size, location and zoning the “neighborhood is not easily defined” but staff has addressed the area considered the neighborhood using the guidance of the Ordinance. This does not mean that the vehicle trips per day have not been considered or objections the neighbors have raised.

The comments received speculate that the decision maker for this case cannot take into consideration “if this is a good idea” but the decision is required to be based solely on facts to support or deny the application.

Mr. Pinchin, Attorney at Law does provide some justification for the traffic impacts, but he contradicts himself by stating “It seems inequitable for the highest user of the road and gate to be the Sea Winds property owner when such property, as I understand it, has no direct boundary with the Sansaria neighborhood. Again, it is counter to the ‘no greater adverse impact to the neighborhood’ standard that should be applied.” I understand the point of the argument that is the cost of road maintenance but then he makes the statement that Sea Winds property is not part of the neighborhood which is not helpful. Staff has tried to find out what the actual objection is and if traffic was limited would that satisfy the objections but a direct answer was not provided. Although, Mr. Johns seems focused on the limited number of vehicles and visitors to ensure the “neighborhood” remain quiet.

Mr. Brockmann's April 5, 2021 emailed testimony also explains about traffic and how if there are larger events the neighbors should be notified to make plans. This makes practical sense and staff will consider that in the findings. Most of the properties seem to be used for recreational, weekends or vacation purposes. There are some fulltime residences within the subdivision.

It is important for residents and nearby property owners to realize the subdivision could accommodate up to 60 homes. The testimony received in the record states that there are only about 4 trips per day currently. Staff can use the table for calculating the type of road and what it is designated to accommodate for trips per day. Pacific Surf is considered either a Local Residential Road serving four or more dwelling units or minor collector which generally serve lower traffic demands than major collectors. Seven Devils Road is a major collector making Pacific Surf a minor collector and the other roads would be local residential given the configuration and intersections. The roads are platted at 60 feet and were designed to accommodate a minimum of 86 lots either directly or by connecting. According to the CCZLDO a local residential serving four or more dwellings is set up to accommodate 0 to 600 trips a day, even though Pacific Surf seems to fit the definition of a minor collector which accommodates 500 to 2500 trips per day as it collects traffic from other roads and connects to a major collector it does not seem meet the original purpose of the road. The purpose of Pacific Surf Public Dedicated Road was to support the Dwellings that were to be developed in the platted subdivision along with some open spaces and developments designed to support the subdivision. Therefore, Staff has taken the more conservative approach and designated the road as a local residential road serving four or more dwellings which shows the road would support 0 to 600 trips per day. Staff notes the road is not paved at this time which is one of the reasons staff finds this is a local residential road. There is no evidence that the average trips per day will exceed the capacity of the road. Staff cannot consider if it is fair that not everyone is paying a share that is a civil matter or a matter for the HOA to enforce but in a limited compacity can concern if one unit of land is created the majority of traffic for the impact analysis. The access easement does seem to indicate the property owners using the roads should be contributing but again, that is a legal matter that shall be considered outside of this process.

Public dedicated roads are regulated by the County but that does not mean that particular road(s) are within the County maintenance system (which are the ones the county can spend funds for development and maintenance). In reading the covenants and restriction placed on the subdivision a HOA was supposed to be developed and money collected to take care of the road system along with some other amenities.

Some of the comments received by opponents stated that the subject property was developing parking accommodations for up to 100 people but that seems to be hearsay and not based on facts and evidence. The facts do support the parking will accommodate thirteen spaces.

The opposition has requested that the county deny the application but none of the testimony recognizes that ORS 215.130(10)(c) allows for conditional approval of the alteration of a use in a manner calculated to ensure mitigation of adverse impacts as described in subsection (9) of this section. Staff did try to ask the opponents what would be acceptable by the opponents but apart from Mr. Brockmann who did suggest the applicant could notify the neighbors of large events and could communicate with the neighborhood the only response was a request for denial.

The Single Family Dwelling contains five (5) bedrooms and under parking for Single Family Dwelling use the minimum spaces required are two spaces. Under motel, hotel, rooming or boarding house, the parking standards require one space per guest accommodations plus one space per employee. This would mean at the minimum there would need to be five (5) spaces to accommodate the number of bedrooms and two spaces dedicated for maintenance, property

manager and housekeeping. This means the parking plan exceeds the minimum of seven (7) spaces.





- c. **LOCAL TRIBE COMMENTS:** Notification was provided to the Confederated Tribe of the Coos, Lower Umpqua, and the Siuslaw Indians as well as the Coquille Indian Tribe. The full comments can be found at Exhibit D.

The Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians responded that they have no objections to the proposed conditional use permit; however; due to the fact that the property is in close proximity to known cultural resource sites they request 72 hours notification prior to any ground disturbing activity, and that a staff member or designated member of the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians may be present.

The Coquille Indian Tribe response stated that their records show known cultural resources within close proximity to the project area. Due to the close proximity they request that the landowner and/or contractor contact their office to schedule a Cultural Resource Monitor to be on site during all ground-disturbing activities. They request that the monitor be scheduled a minimum of 72 hours in advance of the anticipated project start time.

- F. **LAWFULLY CREATED UNIT OF LAND:** The unit of land was created pursuant to 6.1.125.1.b through a prior land use decision. In 1997 it was determined to be a lawfully created unit of land; the current configuration was achieved through a multi property line adjustment.

III. **STAFF FINDINGS AND CONCLUSIONS:**

a. **SUMMARY OF PROPOSAL AND APPLICABLE REVIEW CRITERIA:**

The applicant is requesting to alter a nonconforming use in order to use the dwelling as a vacation rental in the Forest (F) zone pursuant to Coos County Zoning and Land Development Ordinance (CCZLDO)§ Article 5.6 Nonconforming.

b. **KEY DEFINITIONS:**

ACTIVITY: Any action taken either in conjunction with a use or to make a use possible. Activities do not in and of themselves result in a specific use. Several activities such as dredging, piling and fill may be undertaken for a single use such as a port facility. Most activities may take place in conjunction with a variety of uses.

DEVELOP: To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights to access.

DEVELOPMENT: The act, process or result of developing.

USE: The end to which a land or water area is ultimately employed. A use often involves the placement of structures or facilities for industry, commerce, habitation, or recreation.

ZONING DISTRICT: A zoning designation in this Ordinance text and delineated on the zoning maps, in which requirements for the use of land or buildings and development standards are prescribed.

DWELLING: Any building that contains one or more dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

c. CRITERIA AND STANDARDS

- **ARTICLE 5.6 NONCONFORMING**
 - **SECTION 5.6.100 NONCONFORMING USES:**

The lawful use of any building, structure or land at the time of the enactment or amendment of this zoning ordinance may be continued. Alteration of any such use may be permitted subject to Sections 5.6.120 and 5.6.125. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS215.215 (Reestablishment of nonfarm use), a county shall not place conditions upon the continuation or alteration of a use described under this Section when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

As used in this Section, alteration of a nonconforming use includes:

1. *A change in the use of no greater adverse impact to the neighborhood; and*
2. *A change in the structure or physical improvements of no greater adverse impact to the neighborhood.*

FINDING: Staff has explained in the background that the dwelling was originally approved under criteria that were valid in 1986 but the regulation that allowed the Single Family Dwelling was amended in 1993 with change in state law for Dwelling types in the Forest Zone. This property has had prior land use action in which the dwelling was considered vested as a lawfully non-conforming dwelling and at that time if there was a dispute about the Vested Non-Conforming Dwelling an appeal should have been filed. Due to the size and placement of the property it will not qualify for another type of Single Family Dwelling in the Forest Zone which makes the dwelling itself a legal non-conforming use and given the substantial development the ordinance classifies the Single Family Dwelling as a *VESTED NON-CONFORMING USE*. The ordinance does not regulate the residential use of the Single Family Unit until a change is made to allow for occupancy of multiple families on a short term basis. Short term rentals are considered commercial, similar in nature to a Home Occupation or Bed and Breakfast. The use also could be viewed as High Intensity Recreation as well but either way the correct path would be to alter the legal Vested Non-conforming Single Family Dwelling is through Article 5.6.

DWELLING: Any building that contains one or more dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes. A dwelling shall consist of a kitchen, bathroom(s) and living space. Dwellings do not including a RV, tent, teepee, yurt, hotels, motels, vacation rentals or boarding houses.

VACATION RENTALS: A furnished apartment or house rented out on a temporary basis to tourists or guests as an alternative to a hotel/motel or group cottage. The definition includes dwelling(s) or dwelling unit(s) for the purpose of being rented or occupied on a daily or weekly basis, or is available for use, rent, or occupancy on a daily or weekly basis, or is advertised, or listed by an agent, as available for use, rent, or occupancy on a daily or weekly basis and are predominately rented out less than 30 days.

RECREATION: Any experience voluntarily engaged in largely during leisure (discretionary time) from which the individual derives satisfaction:

- (1) *Coastal Recreation: occurs in offshore ocean waters, estuaries, and streams, along beaches and bluffs, and in adjacent shorelands. It includes a variety of activities from swimming, scuba diving, boating, fishing, hunting, and use of dune buggies, shell collecting, painting, wildlife observation, and sightseeing, to coastal resorts and water-oriented restaurants;*
- (2) *Low-Intensity Recreation: does not require developed facilities and can be accommodated without change to the area or resource. For example, boating hunting, hiking, wildlife photography, and beach or shore activities can be low-intensity recreation;*
- (3) *High-Intensity Recreation: uses specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource. Campgrounds, golf courses, public beaches, and marinas are examples of high-intensity recreation.*

These options were discussed in a pre-application meeting along with the possibility of a rezone from Forest to Recreational given the location of the property as beach front and a portion is located within the Coastal Shoreland Boundary. The Coastal Shoreland Boundary is a described as the areas immediately by oceans, and land next to estuaries. They are protected by an overlay but also provide for recreational opportunities. The applicant has chosen to apply for a Vacation Rental at this time through an alteration of a non-conforming use.

The criterion, case law or testimony received does not define what a “neighborhood” is or the distance to be considered a neighborhood. The testimony seems to agree that this property is outside of the Sansaria Platted Subdivision which is referred to by many as a community. Due to the property size and rural location it is difficult to define the study area. Staff is using the 750’ distance to determine impacts as if this was a compatibility⁴ test, as some of the language seems to be similar in nature to a compatibility test. The following properties fall within the study area:

Map	Tax Lot	Account	Acreage	Owner	Use
26S14W32	100	587300	5.46	Patterson	Residential / Forest
26S14W32	101	587302	97.02	CRPL-Meridian Development LLC	Undeveloped/Forest
26S14W32	109	587303	5.93	Moore	Residential/Forest
26S14W32	111	587304	5.79	Radovich	Undeveloped/ Forest/Future Dwelling approved
26S14W32	112	587305	1.80	Muldery	Undeveloped/ Forest/Future Dwelling approved/Recreational Used in the past
26S14W32	113	587306	1.73	Stenerson	Undeveloped/ Expired dwelling approval
26S14W32	300	587400	40.00	CRPL-Meridian Development LLC	Undeveloped/Forest

⁴ Section 2.1.200 Definitions - COMPATIBILITY: Means that the proposed use is capable of existing together with the surrounding uses without discord or disharmony. The test is where the proposed use is compatible with the existing surrounding uses, and not potential or future uses in the surround area. The surrounding area consists of the notification area for the project as set out in § 5.0.900.

26S14W32	400	587500	1.78	CRPL-Meridian Development LLC	Undeveloped/Forest
26S14W32	401	587503	54.25	Bandon Land Management LLC	subject property
26S14W32	403	587504	25.10	CRPL-Meridian Development LLC	Forest
26S14W32	404	587505	42.99	Muir	Undeveloped/Forest
26S14W29	600	587100	18.88	Bandon Land Management LLC	Undeveloped/Forest
26S14W29	700	587200	160.00	Weyerhaeuser NR Company	Undeveloped/Forest

The proposed Vacation Rental is located approximately 400 feet to the closest property line which is CPRL-Meridian Development LLC (tax lots 300 and 403). The closest developed property to the subject dwelling is more than 3000 feet or .62 of a mile away. It is not likely given the treed vegetation buffer from the dwelling and cleared grounds surrounding the property that any of the properties within the neighborhood would be adversely impacted. The use does not have to justify actions of people when they leave the property, but they must address the impacts to the neighborhood. The impacts identified by the opponents have been traffic and noise from traffic. Also, the use of the beach by people staying on the subject property.

The applicant has reviewed and compared the residential use to a short-term rental use by citing to another case that was appealed and upheld by the Board of Commissioners that is similar in nature. The difference is that property was smaller, had more neighbors than the subject property and did not have traffic impacts because it was boat access only.

The applicant provides the following justification by comparing a vacation rental to long term rental or fulltime residential use and references a prior county decision as justification:

Traffic: The proposed accessory use will result in a lower trip count than the primary use, residential. The ITE Trip Manual, 7th Edition lists the daily rates trip rates for select land uses. The daily rate for 210 Single Family Detached Housing= 9.57. The daily rate for 260 Recreational Homes= 3.16. (For comparison only: the daily rate for 310 Hotel= 8.92).

In addition, the Coos County Planning Department made the following findings regarding a similar application (ACU-17-015/AP-17-003: an application for the alteration of a non-conforming use, to allow for a vacation rental in a legally non-conforming residential dwelling in the Forest Zone), which also apply to this application:

Owner-Occupied Residential Use is Similar in Intensity to Vacation Rental Use:
 "Technically, there is not much difference between a home occupation and a vacation rental other than the property owner would not be on site. Consider that in the statute a Bed and Breakfast is permitted in the resource zones and this is not likely to be any more impactful than a Bed and Breakfast." (Notice of Decision AP-17-003, Exhibit A)
 This same finding applies to the applicant's proposal. In addition, a caretaker/ caretaker residence is located one mile from the Subject Property, at 88811 Pacific Surf LN. The caretaker monitors activity on the Subject Property and is available to renters, neighbors, and authorities. The dwelling at 88811 is owned by Bandon Land Management as well.

Renter-Occupied Residential Use is Higher in Intensity than Vacation Rental Use: "A full time residential use can be rented to others for a period longer than 30 days without any need for any county permits and a vacation rental can be rented to others. The entire house is rented in a vacation rental situation just as the entire house can be rented in a full time resident situation.

The vacation rentals here are likely to have fewer adverse impacts than are possible with a full time dwelling because the occupants of a vacation rental do not have children enrolled in public schools, are not running errands or to appointments, are less likely to go back and forth but rather are more likely to stay put and relax, and the vacation rental use is largely seasonal. "(Notice of Decision AP-17-003, Exhibit A) This same finding applies to the applicant's proposal.

Development/Use of Adjacent Parcels is Similar to the Proposed Use: "This area is highly parceled with many lots of five or less acres. A lot of the dwellings in this area are used for recreational/vacation purposes instead of fulltime residential dwellings." (Notice of Decision AP-I7-003, Exhibit A) This same finding applies to the applicant's proposal.

The nearby Sansaria subdivision (the nearest neighborhood to Subject Property) is also highly parceled with over one hundred less-than-one-acre platted Legal Non-Conforming Lots zoned Forest that are used for recreational vacation purposes instead of fulltime Single Family Dwellings.

The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood because there are no planned changes to accommodate the Vacation Rental. The regular maintenance and landscaping would be the same as if it were a Single Family Dwelling.

Due to the fact there are no alterations to the structural development the property standards will continued to be met.

The verification of the Vested Legal Non-conforming use was already determined so the relevant criteria to address is the alteration.

Staff would agree on most points but for clarification the case reference (AP-17-003) was boat access only so the traffic information may not be relevant. Staff can see the opponent's argument as well. Most of the dwellings are not occupied as a fulltime residence but for vacation purposes so the traffic volume is much lower than it would be if they resided in the dwellings fulltime. However, there is nothing to prevent the dwelling from being used for fulltime residential purposes. Therefore, the traffic calculation would not change. Staff does encourage everyone that has an easement or requires that use of Pacific Surf Lane to participate in the maintenance, but staff cannot legally require anyone to participate.

The findings presented with the application do address items that are not required such as expiration of a conditional use and Balance of County Zoning Article 4.3 and current development standards in the Forest Zone as the only relevant criteria is the alteration of a non-conforming use. Staff is unclear why some of the items were addressed as there is no structural development proposed and the use is Non-Conforming. Siting standards would only apply in the case of a conforming use or if structural development was proposed. Again, the findings are a bit confusing, but staff is able to navigate through the relevant portions. Non-conformation uses are not required to address conformance under other

zoning districts and that often time confuses the record. Administrative Conditional Uses (ACU) is a use or activity with similar compatibility or special conservation problems. An application for an administrative conditional use requires review by the Planning Director to insure compliance with approval criteria. The applicable relevant criteria in this case is found in Article 5.6 Non-Conforming Uses which is based on ORS 215.130. The language specifically states *“The lawful use of any building, structure or land at the time of the enactment or amendment of this zoning ordinance may be continued.”*

Some of the evidence presented is not relevant as it seems to support there has been an ongoing violation that appears to have been occurring prior to the owner using the property as a Vacation Rental or a Movie location. These activities should have received permits even if they were temporary in nature and do not help the current case other than the applicant’s consultant is trying to prove that there were no prior complaints filed against the prior owners and the impacts are similar.

However, Staff does not find the “Vacation Rental” was truly the cause of the complaints. The issue was a large wedding venue (150 people) and people using the road or interrupting people that live in the subdivision by asking for directions. Some of the emails and verbal questions about the property seemed to indicate that people were wandering around in the subdivision but it was not clear if they were “driving or walking”. Although, it is not clear how someone walking or driving on a public dedicated road would be adversely impacting other Single Family Dwellings. Impacts to the neighborhood mean physical impacts to the ability to use the property as regulated by the Coos County Zoning and Land Development Ordinance at the time the application has been submitted. There have been no actual impacts to proven from the use of a vacation rental. Stating there has been dust or other nuisances complaints are not relevant to this review. The Public Dedicated Roads within the Subdivision were designed to handle up to 600 trips a day. A Vacation Rental the has five guest rooms would not generate more trips than the road was designed for. It is true that maintenance may be an issue but that was supposed to be handled through the HOA.

The gate does not make a road private and it is possible the residents do not realize all the roads within the subdivision are public dedicated. Some of the opposing points became a bit clearer as emailed testimony was provided. The main issues seems to be from lack of contributing to road maintenance, increase of population, noise, speeding on Pacific Surf Road, trucking of trees and large equipment (this is part of a Forestry Practices which is not relevant) and an increase in deliveries. There is not much discussion on the special event venue itself which seems to be nexus of the complaints received; therefore, at this time Planning Staff is only approving the Vacation Rental and not the allowance for an event venue.

As explained prior Pacific Surf Lane was developed to handle traffic from the subdivision as well as the subject property and some exterior properties. The question is what the anticipated traffic was. There has been testimony received from Mr. Johns that states that subdivision was supposed to include additional properties but there is no official evidence to show the additional plans. The records support that Pacific Surf Lane was to be the main road platted at 60 feet wide. Access was granted to the subject property and there was no limitation on the egress and ingress in the deed. Therefore, this decision does not include any impacts there may be for Forestry Practices.

As for the rental the number of guests shall be limited to the number the dwelling can support. The dwelling can accommodate up to 18 people overnight within five bedrooms.

Under a boarding house it requires one space per guest accommodations plus one space per employee. This would mean at the minimum there would need to be five (5) spaces to accommodate the number of bedrooms or room accommodations. Given there were at least two staff people available (caretaker/property manager and cleaning/maintenance) that would provide two more spaces for up to seven (7) vehicles at one time on the premises. This seems like more than enough for the number of people that should be on site at one time.

The county does not believe there will be actual impacts but is requesting a statement from the Oregon State Fire Marshal be included to ensure there is no limit on occupancy or if there is what the limit consists of for the vacation rental.

○ **SECTION 5.6.110 INTERRUPTION OR ABANDONMENT OF NONCONFORMING USES:**

A non-conforming use or activity may not be resumed if it was subject to interruption or abandonment for more than one (1) year unless the resumed use conforms to the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

FINDING: There have been no reports or evidence to indicate there has been an interruption or abandonment of the dwelling for more than one (1) year. Therefore, the Single Family Dwelling is not considered abandoned.

○ **SECTION 5.6.120 ALTERATIONS, REPAIRS OR VERIFICATION:**

Alterations, repairs or verification of a nonconforming use requires filing an application for a conditional use (See CCZLDO Article 5.2). All such applications shall be subject to the provisions of Section 5.6.125 of this ordinance and consistent with the intent of ORS 215.130(5)- (8). Alteration of any nonconforming use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. The County shall not condition an approval of a land use application when the alteration is necessary to comply with State or local health or safety requirements, or to maintain in good repair the existing structures associated with the use.

FINDING: This review is a conditional use request and is consistent with ORS 215.130 which is what the language in the Ordinance is based on. Alteration of any nonconforming use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. The County shall not condition an approval of a land use application when the alteration is necessary to comply with State or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. The County has not exceeded their authority in this case as it is necessary to compare the effects of a Vacation Rental as the county believes the use is separate from form a Single Family Dwelling that was approved in 1986 deemed necessary and accessory to the Forest Use. The applicant will need to comply with health regulations, occupancy standards, parking and any sanitation requirements to ensure the use meets health and safety standards.

In addition, there needs to be information posted and available in case of an emergency as well as a local property manager available to address any emergency situations. This information shall be filed with the Coos County Planning Department as well as Emergency Services. A key card, key or access number should be provided to the Planning Department, Coos Health and Wellness and Emergency Services in case of inspections or emergency response as long as the gate remains on the public road.

○ **SECTION 5.6.125 CRITERIA FOR DECISION:**

When evaluating a conditional use application for alteration or repair of a nonconforming use, the following criteria shall apply:

- 1. The change in the use will be of no greater adverse impact to the neighborhood;*
- 2. The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood; and*
- 3. Other provisions of this ordinance, such as property development standards, are met.*

For the purpose of verifying a nonconforming use, an applicant shall provide evidence establishing the existence, continuity, nature and extent of the nonconforming use for the 10-year period immediately preceding the date of the application, and that the nonconforming use was lawful at the time the zoning ordinance or regulation went into effect. Such evidence shall create a rebuttable presumption that the nonconforming use lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of the application.

FINDING: The request is to alter the Vested Legal Non-conforming Single Family Dwelling to allow the structure to be used for a Vacation Rental. The Single Family Dwelling was approved in 1986 through a Conditional Use for a Single Family Dwelling in conjunction with a Forest Use referred to as necessary and accessory. The statute and ordinances were amended in 1993 changing the type of approval for a Single Family Dwelling in the Forest Zone is no longer permitted. The property in this approval at the time had acreage of 292.34 acres and consisted of multiple tax lots. In 1997 the lawfully created unit of land was completed, followed by a property line adjustment which resulted in the acreage of 54.25 acres. Due to changes to the Land Use Law this property would not qualify for a Single Family Dwelling. This is why in prior land use approvals the Single Family Dwelling has been treated as a Vested Non-Conforming Structure used for residential purposes. The request is to change the Single Family Dwelling to allow the rental of the structure for on a short term basis defined as a Vacation Rental. This does not change the structure.

Therefore, the existing development on the parcel was lawful at the time of enactment and amendment of the Coos County Zoning and Land Development Ordinance (CCZLDO) and may be continued.

The subject property has been used as a vacation home in the past. It may have been rented out occasionally as well but there is no evidence to support that it was legally allowed to be used for a short term rental. Apparently, the dwelling was used as a vacation rental by the previous owners in 2018 and 2019 without known incident. A major motion picture, titled “The Rental” was also filmed on the subject property in 2019. The nearest neighborhood is the Sansaria subdivision. The distance between the subject property and the border of that neighborhood is a half mile. Deep forest lies between the parcel and the subdivision. Any activity taking place on the subject property is highly unlikely to be heard or seen from Sansaria.

The proposed accessory use will result in a lower trip count than the primary use, residential. The Institute of Transportation Engineers (ITE) trip manual lists the daily trip rates for land uses. The daily rate for a Single Family detached house is 9.57. The daily rate listed for Recreational Homes is 3.16 and the daily rate for a hotel is 8.92. The access road is a public platted road.

A full-time renter occupied residential use is higher in intensity than vacation rental use. A full-time residential use can be rented to others for a longer period than 30 days without any need for any county permits. The entire house is rented in a vacation rental situation just as the entire house can be rented in a full-time resident situation. The vacation rentals here are likely to have fewer adverse impacts than are possible with a full time dwelling because the occupants of vacation

rentals do not have children enrolled in public schools, are not running errands or to appointments, are less likely to go back and forth but rather likely to stay put and relax. The vacation rental use is largely seasonal.

The nearby Sansaria subdivision is highly parceled with over one hundred less than one acre lots; many are used for recreational/ vacation purposes instead of full-time residential dwellings. There will be no change in the structure and no physical improvements are proposed.

The Vacation Rental is limited to the number of overnight guests the Single Family Dwelling could support with any modifications. The dwelling can accommodate up to 18 people overnight. The parking has been addressed. The Vacation Rental shall be limited to the number of paid guest on the rental agreement not to exceed 18.

A statement from the Oregon State Fire Marshal should be included to ensure there is no limit on occupancy or if there is what the limit consists of for the vacation rental as this is a change in occupancy type.

VI. DECISION:

There is evidence to adequately address the criteria for an alteration of the nonconforming use, therefore, this request has been approved. There are conditions that apply to this use that can be found at Exhibit "A".

VII. NOTICE REQUIREMENTS:

A notice of decision will be provided to property owners within 750 feet of the subject properties and the following agencies, special district or parties:

DLCD
Bandon Rural Fire Protection District
Coos Forest Protective Agency

Planning Commission
Board of Commissioner
Southern Coos Health District