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February 24, 2024

Coos County Planning Commission  
60 E 2nd St  
Coquille, OR 97423

RE: ACU-23-046 and AP-24-002

To Whom It May Concern,

I am writing today as a Fact Witness per CCZLDO 5.7.300 and to provide information for the record regarding the proposed vacation rental dwelling at 54916 Sadie Drive in Bandon. I will be present at the hearing, and this document outlines the information I will present.

Upon the request of the property owners, our office submitted an application for the proposed Vacation Rental use on September 1, 2023. As part of our application process, we submitted a driveway and parking plan to the Coos County Road Department who inspected the site and approved of the plan; approval was granted on September 20, 2023 under permit number DR-23-080. The requirements set forth in the CCZLDO for a Vacation Rental Dwelling with required parking, access and emergency vehicle turnaround were met or exceeded.

We provided Findings of Fact which outlined the various sections of the CCZLDO that are relevant to the proposed use as a Vacation Rental. The additional criteria for Vacation Rental Approval were met and concurred with by the Planning Department through the issuance of their Notice of Decision dated December 28, 2023.

The Planning Department provided a list of conditions to ensure compatibility with the existing residential neighborhood. These conditions are consistent with those outlined in "An Introductory Guide to Land Use Planning for Small Cities and Counties in Oregon" which is a publication of Oregon Department of Land Conservation and Development. Chapter 6 covers Conditional Use Permits and the types of conditions used for compatibility. The County provides a standard list of conditions for all Vacation Rental Applications. To date the conditions have proven to be enough for compatibility, otherwise the County would have considered

additional conditions to be added to their approvals. Coos County has approved other VRD uses that have gated entrances to neighborhoods with Private Road easements which further proves that there was nothing particularly special or unique about the request the Duran Family made to operate as a VRD under the current regulations.

An appeal of the Decision was made on January 10, 2024 by Carol Deadman. Attachment “C” lists four items in the petition. There are two names listed on the petition page, though only Carol Deadman is listed on the application. Comments from both property owners will be addressed below.

The appellant claims that a Vacation Rental Dwelling cannot be approved based on the Private Road that serves the subject property. James Sheets, states in the Petition that “The road through my property to the property in question is not shared. The multiple increase in maintenance will not be shared. Nor will the increase in nuisance.” This information is incorrect. The easement is a legally shared Private Road and the State of Oregon requires maintenance to be shared by the users of the road. Additionally, the number of trips per day is significantly less for a short term rental than a long term residence as shown below and in the original application findings.

In Attachment “C”, it is stated that the easements are maintained by the property owners which is accurate. Document number 2005-18144 specifically grants access over Daisy and Sadie Private roads for access to the subject site. ORS 105.170-185 specifically governs road easements and the maintenance thereof. The Duran Family has not been given a maintenance schedule to date, though they acknowledge the State requirement for contribution to the upkeep of the road. This is a topic for the Neighbors to speak to each other with, and is not a County matter for compliance, enforcement or discussion.

The State of Oregon has listed specific requirements for maintenance and provides an opportunity for civil action to be taken when the costs are not shared. ORS 105.170-185 are listed below for reference. According to the Oregon Revised Statutes, the Coos County Planning Commission is not the jurisdiction that reviews, enforces or otherwise makes decisions for the use or maintenance of Private Road Easements. The applicant has the same right as other properties in the RR-2 Zone to operate as a Vacation Rental Dwelling regardless of the easement or the gate.

The appellant claims that the Vacation Rental use would change the use of the community and that the RR-2 zoning district is not intended for short term rental use. This contradicts the CCZLDO and the applicable criteria that Coos County has outlined for allowed uses in each zone with compatibility requirements. Table 4.3.200 outlines the uses that are permitted in each zone and the type of permit needed for each use. A Vacation Rental Dwelling is permitted in the RR-2 zone as an Administrative Conditional Use per 4.3.200(64). The owner applied for an

Administrative Conditional Use permit and the Planning Department found that all applicable criteria have been met. Approval would not have been granted if the proposal is out of compliance with the CCZLDO. Additionally, there is not a Homeowner's Association or Restrictions on the use of the existing single family dwellings in this area. That means, no restriction on rentals- either long term or short term.

Further, the road easement specifically lists that the road use is for "Grantee, his agents, independent contractors, and invitees. There are no stipulations as to what "type" of Invitee is allowed, or prohibited, and therefore any Invitee is permitted to use the road for access purposes only. "Invitee" implies a visitor to the site including both a long term renter or short term visitor.

The appellant states that there was "no condition set forth for the use of the private land easement access. Usage was listed only for parking and driveway approval." That is correct. The Coos County Planning Department, Road Department and Commission do not have jurisdiction over a Private Road Easement, so the conditions of approval are specific to the applicable criteria for VRD use per the County Ordinances. The road is governed by ORS 105.170-185. Additionally, there are no Covenants, Conditions or Restrictions related to a Homeowners Association.

The appellant states that the private gated community has a "single use code that should not be given out arbitrarily." Gated communities are common in the Bandon area and gate codes can be changed. Additionally, gates can have multiple codes as is the case with the gate in question. I personally have been given two different gate codes to access sites within this neighborhood. I do not know who is in charge of these gate codes, nor is that the point. A full time resident has many visitors throughout the year. The gate code is given out arbitrarily on a daily basis to a multitude of people. The gated community does not have rules associated with gate access, so they cannot bias use based on the amount of time spent or visited to this neighborhood. In order to restrict visitation rights through the gated community, a Homeowners Association would need to be established. Evenso, the County does not enforce HOAs or their associated CC&Rs.

The information that follows is a review of the recorded Road Easement (document 2005-18144) and the Oregon Revised Statutes 105.170-185 that pertain to Private Road Easements. This additional information has been provided as evidence that the Vacation Rental Dwelling can be approved as submitted, and that the appeal does not show where in the CCZLDO that the Planning Department made the decision in error. All applicable criteria have been met.

Sincerely,

Sheri McGrath

CCZLDO 4.3.200(64)(87) reads:

*Vacation rental/short term rental - Subject to the following criteria:*

*(a) Shall be found to be compatible with the surrounding area.*

*(b) Shall be licensed by the Coos Health & Wellness (CHW) in accordance with ORS 446.310-350;*

*(c) Shall meet parking access, driveway and parking standards as identified in Chapter VII;*

*(d) Shall not be conveyed or otherwise transferred to a subsequent landowner without a the new property owner submitting a Compliance Determination Application showing compliance with this section; and*

*(e) A deed restriction shall be recorded with the Coos County Clerk's Office acknowledging that this is an accessory use to the approved residential use. If located within Urban Growth Boundary further restrictions may be required based on comments from the City.*

The conditions of approval were outlined in the Findings of Fact and concurred with by Planning Staff as evidenced in their Staff Report for the Notice of Decision. The proposed use as a Vacation Rental is considered an Accessory Use to the main Residential Use. The surrounding properties within this neighborhood have Accessory Uses including structures and hobby farms.

CCZLDO 5.0.350(1) reads:

*Conditions of approval may be imposed on any land use decision when deemed necessary to ensure compliance with the applicable provisions of the Ordinance, Comprehensive Plan, or other requirements of law. Any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both the extent and amount to the anticipated impacts of the proposed use or development.*

The conditions of approval were outlined in the Notice of Decision and are consistent with all conditional placed on Vacation Rental uses throughout the County.

County Code Section 04.08.020(4) defines a Private Road as:

*"Private Road" shall mean a private right of way created by a recorded easement or other instrument, not dedicated to or accepted by the County or other public body, and not designated as part of the County road maintenance system.*

The matter of a Private Road is outside of the purview of the County as it is not dedicated or a part of the County road system. The proposed use is considered compatible due to the use being *“an accessory use to the approved residential use.”*

After recording, return to:

Jerry O. Lesan  
P. O. Box 359  
Coos Bay, Oregon 97420

### EASEMENT

In consideration for good and valuable consideration, CLAIR L. CRISP, Grantor, conveys to DONALD E. BOLDUC, Grantee, his heirs, successors and assigns, a perpetual non-exclusive easement to use two strips of land each 30 feet wide across the property of Grantor the centerlines of which are described on the attached Exhibits "A" and "B".

The terms of the easement are as follows:

1. Grantee, his agents, independent contractors, and invitees shall use the easement strip for road purposes only for access to the property described in paragraph 5 and in conjunction therewith may construct, reconstruct, maintain and repair a road thereon.
2. Grantor reserves the right to use, construct, reconstruct, and maintain the road located upon the easement strip and grant such rights for such use to third parties. The parties shall cooperate during periods of joint use so that each party's use shall cause the minimum of interference to the others.
3. Grantee agrees to indemnify and defend Grantor from any loss, claim or liability to Grantor arising in any manner out of Grantee's use of the easement strip. Grantee assumes all risk arising out of the use the easement strip and Grantor shall have no liability to Grantee or others for any condition existing thereon.
4. The rights and obligations of all parties who have a right to use the road with respect to the maintenance thereof shall be governed by ORS 105.170 through 105.185, provided however, Grantee acknowledges that Grantor intends to grant rights to others to use the easement and reserves the right to require a more comprehensive maintenance agreement provided by the aforementioned statutes and that Grantee agrees to accept and be bound by any reasonable future changes made by Grantor to these maintenance obligations.
5. This easement shall be appurtenant to the real property owned by Grantee as described on the attached Exhibit "C". In the event Grantee acquires title to real property described on the attached Exhibit "D" after the execution of this easement, then it shall also be appurtenant to property described in Exhibit "D".

1 - EASEMENT

When reviewing the Easement Document, the following sections contain information that will be helpful for the Planning Commission to determine the approval or denial of the appeal. The sections will be discussed in order as they appear in the easement document and are as follows:

*In consideration for good and valuable consideration, Clair L Crisp, Grantor, conveys to Donald E. Bolduc, Grantee, his heirs, successors and assigns, a perpetual non-exclusive easement to use two strips of land each 30 feet wide across the property of Grantor the centerlines of which are described on the Exhibits "A" and "B".*

The current property owners, the Duran Family, purchased the property in good faith and under the real estate laws of Oregon. They are not an heir or successor of Mr. Bolduc; however, the property has been assigned to them for legal ownership. They therefore qualify as a user of the Private Road(s) in question. Both Sadie and Daisy roads are Private and access the subject property.

A "perpetual, non-exclusive" easement is one that is never-changing. The subject property, and the owners, have a right to use the road easement now and forever.

- 1. Grantee, his agents, independent contractors, and invitees shall use the easement strip for road purposes only for access to the property described in paragraph 5 and in conjunction therewith may construct, reconstruct, maintain and repair a road thereon.*

The current property owners have been given specific rights for "Invitees" to use the easement for road purposes only. The Vacation Rental use does not require any other use of the road easement outside of access to the subject property. The Grantee/Owner/Assigned is not proposing a "block party" or "parade" or any other activity, vehicular storage, structure or other use on the road easement. The proposed use as a Rental does not alter or change the requirement to use the road for access purposes only.

- 2. Grantor reserves the right to use, construct, reconstruct and maintain the road located upon the easement strip and grant such rights for such use to third parties. The parties shall cooperate during periods of joint use so that each party's use shall cause the minimum interference to the others.*

As noted in the Vacation Rental Application, a short term rental generates less vehicular trips per day than a full time residence. The Institute of Transportation Engineers (ITE) publication "Trip Generation, 7th Edition" shows that Recreational/Vacation Homes generate a daily average of 3.16 trips per unit. In comparison, a full time Single Family Dwelling generates a daily average of 9.57 trips per day.

Additionally, the Vacation Rental is required to restrict parking to two vehicles at a time and to enforce Quiet Hours. Coos County has these restrictions in place to ensure compatibility with the residential neighborhood that short term rentals are located within. Considering the low impact of rentals, and considering also that no other activity is proposed, required or needed for the vacation rental use, joint use or sharing of the road will not be a likely problem.

Land Use	Units	Average Trip Generation Rate (Trips/unit)
Single Family Housing	Dwelling	9.57
Apartment, Low Rise	Dwelling	6.59
Apartment, High Rise	Dwelling	4.20
Condominium/Townhouse, General	Dwelling	5.86
Condominium/Townhouse, High Rise	Dwelling	4.18
Mobile Home Park	Dwelling	4.99
Senior Adult Housing – Detached	Dwelling	3.71
Senior Adult Housing – Attached	Dwelling	3.48
Congregate Care Facility	Dwelling	2.02
Recreational/Vacation Homes	Dwelling	3.16

**ITE PUBLICATION “TRIP GENERATION, 7TH EDITION”**

- 3. Grantee agrees to indemnify and defend Grantor from any loss, claim or liability to Grantor arising in any manner out of Grantee’s use of the easement strip. Grantee assumes all risk arising out of the use of the easement strip and Grantor shall have no liability to Grantee or others for any condition existing thereon.*

The shared and mutual interest in the easement does not present an opportunity for a suit to be made by the property owners (Grantor and Grantee), their assigned or their “Invitees.”

- 4. The rights and obligations of all parties who have a right to use the road with respect to the maintenance thereof shall be governed by ORS 105.170 through 105.185, provided however, Grantee acknowledges that Grantor intends to grant rights to others to use the easement and reserves the right to require a more comprehensive maintenance agreement provided by the aforementioned statutes and that Grantee agrees to accept and be bound by any reasonable future changes made by Grantor to these maintenance obligations.*

ORS 105.170-185 sections are listed below for reference. As a result of ORS 105.170-105.185, the property owners are required to share in the maintenance of the road easement. The State of Oregon has listed specific requirements for maintenance and provides an opportunity for civil action to be taken when the costs are not shared. This proves that the Coos County Planning Commission is not the jurisdiction that reviews, enforces or otherwise makes decisions for



Private Road Easements. The applicant has the same right as other properties in the RR-2 Zone to operate as a Vacation Rental Dwelling regardless of the easement.

5. *This easement shall be appurtenant to the real property owned by Grantee as described on the attached Exhibit "C". In the event Grantee acquires title to the real property described on the attached Exhibit "D" after the execution of this easement, then it shall also be appurtenant to property described in Exhibit "D".*

The Exhibits outline the properties that benefit from this road easement. The subject property is specifically described in the legal description. Additionally, the easement is recorded and appears on a Title Report prepared by Ticor Title. Even so, ORS 105.170-185 applies to easement with or without a recorded agreement.

\* ORS 105.170-185 per *Easement Document Number 4* is continued here:

ORS 105.170 lists the definitions applicable to this section of the Oregon Revised Statutes. These definitions apply to this section of the ORS and are applicable to the specific access easement.

1. *"Easement" means a nonpossessory interest in the land of another which entitles the holders of an interest in the easement to a private right of way, embodying the right to pass across another's land.*
2. *"Holders of an interest in an easement" means those with a legal right to use the easement, including the owner of the land across which the easement passes if the owner of the land has the legal right to use the easement.*

ORS 105.175 requires that the easement be kept in repair. It reads as follows:

1. *The holders of an interest in any easement shall maintain the easement in repair.*
2. *The cost of maintaining the easement in repair shall be shared by each holder of an interest in the easement, pursuant to the terms of any agreement entered into by the parties for that purpose or any recorded instrument creating the easement. Any such agreement, or a memorandum thereof, shall be recorded in the real property records of the county in which the easement is located. Failure to record the agreement shall not affect the enforceability of the agreement among the parties to the agreement and any other person with actual notice of the agreement.*

3. *The cost of maintaining the easement in repair in the absence of an agreement and in the absence of maintenance provisions in a recorded instrument creating the easement shall be shared by each holder of an interest in the easement in proportion for the use made of the easement by each holder of an interest in the easement.*
4. *Unless inconsistent with an agreement between the holders of an interest in an easement or a recorded instrument creating the easement, in determining proportionate use and settling conflicts the following guidelines apply:*
  - a. *The frequency of use and the size and weight of vehicles used by the respective parties are relevant factors.*
  - b. *Unless inappropriate, based on the factors contained in paragraph (a) of this subsection or other relevant factors, costs for normal and usual maintenance of the easement and cost of repair of the easement damaged by natural disasters or other events for which all holders of an interest in the easement are blameless may be shared on the basis of percentages resulting from dividing the distance of total normal usage of all holders of an interest in the easement into the normal usage distance of each holder of an interest in the easement.*
  - c. *Those holders of an interest in the easement that are responsible for damage to the easement because of negligence or abnormal use shall repair the damage at their sole expense.*

ORS 105.180 requires that the property owners comply with the maintenance of the easement. It reads as follows:

1. *If any holder of an interest in an easement fails to maintain the easement contrary to an agreement or contrary to the maintenance provisions of a recorded instrument creating the easement or, in the absence of an agreement or recorded instrument imposing maintenance obligations, fails after demand in writing to pay the holder's proportion of the cost as indicated in ORS 105.175 (Easement to be kept in repair) (3) and (4), a civil action for money damages or specific performance or contribution may be brought against the person in a court of competent jurisdiction by one or more of the other holders of an interest in the easement, either jointly or severally. In any such civil action, the court may order such equitable relief as may be just in the circumstances. Nothing in ORS 105.170 (Definitions for ORS 105.170 to 105.185) to 105.185 (Application of ORS 105.170 to 105.185) shall impose a maintenance obligation on the holder of an interest in an easement based on the maintenance provisions in an instrument creating the easement if such holder is not a party to such instrument, whether the instrument is recorded or not, after such holder ceases to use the easement.*
2. *The prevailing party shall recover all court costs, arbitration fees and attorney fees.*

3. *Any holder of an interest in the easement may apply to the court of competent jurisdiction where the easement is located and that has jurisdiction over the amount in controversy for the appointment of an impartial arbitrator to apportion the cost, and the matter may be arbitrated in accordance with ORS 36.600 (Definitions) to 36.740 (Relationship to electronic signatures in Global and National Commerce Act). The application may be made before, during or after performance of the maintenance work.*