



CITY OF CANNON BEACH

AGENDA

To help minimize the spread of COVID-19, the City of Cannon Beach has issued an [Administrative Order](#). Effective August 27, 2021, all public access and participation for City Council, Commissions, Boards and Committees meetings will be virtual until further notice. Please visit the meeting page on our [website](#) for information on how to connect to Zoom or give public comment

Amended: February 25, 2022

Meeting: City Council
Date: Tuesday, March 1, 2022
Time: 6:00 p.m.
Location: Council Chambers, City Hall

CALL TO ORDER AND APPROVAL OF AGENDA

CONSENT AGENDA

- (1) Consideration of the Minutes of the
- | | |
|-------------|--------------------------------|
| February 1 | Regular Meeting |
| February 8 | Work Session & Special Meeting |
| February 22 | Work Session |

PUBLIC COMMENT

*The Presiding Officer will call for statements from citizens regarding issues relating to the City.
The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.*

PUBLIC HEARING

- (2) **Roberts' Driveway Access Easement**

ORDINANCE

- (3) **Consideration of Ordinance 22-01 for the Purpose of Amending the Municipal Code by Amending Chapter 5.04.060(C) Fees Imposed**
If Council wished to adopt Ordinance 22-01, the appropriate motions are in order
- (4) **Consideration Of Ordinance 22-02; An Ordinance Amending The Municipal Code Chapter 3.30 Prepared Food Sales Tax**
If Council wished to adopt Ordinance 22-02, the appropriate motions are in order
- (5) **Consideration of Ordinance 22-03; for the Purpose of Amending the Municipal Code Chapter 3.16 System Development Charges**
If Council wished to adopt Ordinance 22-03, the appropriate motions are in order

RESOLUTION

- (6) **Consideration of Resolution 22-08; for the Purpose of Adopting A New System Development Charge Methodology and Establishing New Rates for Water, Wastewater, Stormwater and Parks**
If Council wished to adopt Resolution 22-08, an appropriate motion is in order
- (7) **Consideration of Resolution 22-09; for the Purpose of Approving Increases and Decreases to the FY 2021-2022 Budget By Making an Intrafund Transfer Of Appropriations in Wastewater**
If Council wished to adopt Resolution 22-09, an appropriate motion is in order
- (8) **Consideration of Resolution 22-10; A Resolution of City Of Cannon Beach, Clatsop County, Oregon Authorizing the Issuance and Sale of General Obligation Refunding Bonds, Series 2022 to Currently Refund all or a Portion of the City's Outstanding General Obligation Bonds, Series 2010 and General Obligation Refunding Bonds, Series 2012; Designating an Authorized Representative, Bond Counsel, Independent Registered Municipal Advisor; Authorizing Appointment of a Paying Agent, Registrar, Escrow Agent And Verification Agent; And Authorizing Execution And Delivery Of A Purchase Agreement And Escrow Deposit Agreement.**
If Council wished to adopt Resolution 22-10, an appropriate motion is in order

PROCLAMATION

- (9) **Consideration of Proclamation 22-01, Red Cross Month**
If Council wished to adopt Proclamation 22-01, an appropriate motion is in order

ACTION ITEMS AND DISCUSSIONS

- (10) **Appointment of City Committee/Board/Commission**
Council will vote by roll call. If Council wishes to Appoint an appropriate motion is in order.
- (11) **Matanuska Lift Station Enclosure Project Award**
If Council wished to approve the award, an appropriate motion is in order
- (12) **Food Pantry Repairs**

INFORMATIONAL/OTHER DISCUSSION ITEMS

- (13) **Monthly Status Report**
- (14) **Mayor Communications**
- (15) **Councilor Communications**
- (16) **Good of the Order**

ADJOURNMENT

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Meeting ID: 992 6108 4699

Password: 365593

To join from your phone:

Phone: 1.669.900.6833

Meeting ID: 992 6108 4699

Password: 365593

View Our Live Stream: View our [Live Stream](#) on YouTube!

Public Comment: If you wish to provide public comment via Zoom for this meeting, you must submit it by noon, the day of the meeting, to cityhall@ci.cannon-beach.or.us. Except for a public hearing agenda item, all Public to be Heard comments will be taken at the beginning of the meeting for both Agenda and Non-Agenda items. If you are requesting to speak during a public hearing agenda item, please indicate the specific agenda item number as your comments will be considered during the public hearing portion of the meeting when the public hearing item is considered by the Council. All written comments received by the deadline will be distributed to the City Council and the appropriate staff prior to the start of the meeting. These written comments will be included in the record copy of the meeting.

Please note that agenda items may not be considered in the exact order listed. For questions about the agenda, please contact the City of Cannon Beach at (503) 436.8052. The meeting is accessible to the disabled. If you need special accommodations to attend or participate in the meeting per the Americans with Disabilities Act (ADA), please contact the City Manager at (503) 436.8050. TTY (503) 436-8097. This information can be made in alternative format as needed for persons with disabilities.

Posted: 2022.02.23

Amended: 2022.02.25

Minutes of the
CANNON BEACH CITY COUNCIL
Tuesday, February 1, 2022
Council Chambers

Present: Mayor Sam Steidel, Council President Mike Benefield, Nancy McCarthy, Robin Risley and Brandon Ogilvie

Excused:

Staff: City Manager Bruce St. Denis, IT Director Rusty Barrett, City Recorder Jennifer Barrett, Public Works Director Karen LaBonte, Emergency Manager Rick Hudson, Finance Director Laurie Sawrey

Other: City Attorney Ashley Driscoll via Zoom

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CALL TO ORDER AND APPROVAL OF AGENDA

Mayor Steidel called the meeting to order at 6:01 p.m.

Bruce re: moving up agreement for bond counsel to front of the agenda and want in place since we are using their resolutions. Sam – moving item 7 to item 1.

Steidel asked for a motion to approve the amended agenda.

Motion: Ogilvie moved to approve the amended agenda as presented; Risley seconded.

Vote: Benefield, McCarthy, Ogilvie, Risley and Steidel voted AYE: the vote was 5:0 and the motion passed unanimously.

CONSENT AGENDA

- (1) Consideration of the Minutes of the
- | | |
|------------|-----------------|
| January 4 | Regular Meeting |
| January 11 | Work Session |
| January 19 | Special Meeting |

Steidel asked for a motion regarding the minutes.

Risley requested a revision to January 19th minutes adding where she asked about the fees as it is important to be in the minutes.

Motion: Ogilvie moved to approve the minutes for January 4th as amended, 11th and 19th as amended; Risley seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

PUBLIC COMMENT

There was none

(7) Contract for Bond Counsel

St. Denis reported we had a contract for bond counsel that was older and wanted to revise the contract and bring to Council. Risley noted Wade Coykendall said in his email issue of banks requiring bonds to be insured, is that something that is addressed? St. Denis replied the insurance is all rolled into the debt service payment, Sawrey added and all financing costs. In response to Risley's question like flood insurance, Sawrey replied no. Risley added if we have an issue and can't get hotel/motel fees or restaurant fees what happens to the city when we can't pay our bills? St. Denis replied we will have other insurances. This was brought up before and investigated. The financial advisor was not aware of that particular insurance of economic collapse of some kind, we are still looking for insurance to cover that event. If building fell down, we would have replacement cost. In response to Risley's question do we need to consider that now, St. Denis replied not now, but once we start making bond payments, a discussion ensued. Benefield added it's something to look into along with normal hazard insurance. Council discussed the concerns from Wade's email. Driscoll noted the agenda item is the agreement with bond counsel as it is a very specialized part of law. These kinds of questions are what Courtney would discuss with Council. Council discussed the fees and interest rates.

Motion: Benefield moved to authorize the City Manager and City Attorney to sign the contract with Mersereau Shannon, LLP for Bond Counsel; Ogilvie seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

RESOLUTION

(2) Consideration of Resolution 22-04; Authorizing the Execution and Delivery of Full Faith and Credit Obligations in an Amount Not to Exceed \$4,600,000 to Finance Capital Projects; Designating an Authorized Representative and Special Counsel; and Related Matters.

St. Denis summarized the staff report. McCarthy noted the debt service for \$4.6M is \$51,000 and would also come from Clatsop TLT, St. Denis replied if we borrow another million after the initial 4.6 it would be another \$51,000. We would put a million on top of whatever we borrow for City Hall, and we would use those funds to pay the overall debt.

Motion: Ogilvie moved to adopt Resolution 22-04 to authorize the initial borrowing for the CBE rejuvenation project; Risley seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

- (3) Consideration of Resolution 22-05; Adopting a Statement of Official Intent to Reimburse Capital Expenditures from the Proceeds of a Borrowing Reasonably Expected to be Entered Into by the City

St. Denis reported this does not put us in position to borrow funds, it puts in the position to be able to be reimbursed for the general funds expenditures we have made or will be making. In response to Risley's question does this tie us to the architecture firm from before, St. Denis replied it doesn't tie us to anything, we haven't started the process to find an architecture firm. In response to McCarthy's question this doesn't mean we can reimburse the studies on city hall, St. Denis replied Courtney was looking at it, and believes we may be able to be reimbursed. The three years come into play based on when we do the bond. If we can claim based on these rules we will. McCarthy added but we may not be able to, St. Denis replied yes.

Motion: Benefield moved to adopt Resolution 22-05 for the purpose of Adopting a Statement of Official Intent to Reimburse Capital Expenditures from the Proceeds of a Borrowing Reasonably Expected to be Entered Into by the City; Ogilvie seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

- (4) Consideration of Resolution 22-06; for the Purpose of Approving Increases and Decreases to the FY 2021-2022 Budget by Making an Intrafund Transfer of Appropriations for the Wastewater Department

La Bonte read the staff report. In response to Risley's question do you have them already, La Bonte replied we have not, but we have an estimate and they said we can get the check valves immediately. When we had an overflow we had a check valve issue and was able to replace that one. In response to Benefield's question are you assured you can get them, La Bonte yes they said we'll get them ASAP.

Motion: McCarthy moved to adopt the Resolution 22-06 for the Purpose of Approving Increases and Decreases to the FY 2021-2022 Budget by Making an Intrafund Transfer of Appropriations Benefield seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

- (5) Consideration of Resolution 22-07; for the Purpose of Approving Changes to the FY 2021-2022 Budget by Increasing Appropriations in the General Fund to Allow for a Specific Purpose Grant from the State of Oregon, Department of Administrative Services, Coronavirus State Fiscal Recovery Fund for Emergency Management

Hudson read the staff report. In response to McCarthy's question what are the benefits of this, what will it do and look like, Hudson replied a project like this would probably take 10 years to realize. These cache sites are in the locations they are as they are in safe ground but also hard to get power to them. By adding power that's the first step to adding heart, maintaining them better, adding security cameras and lights. It's a place that will always be and continue to be maintained. The sites won't look much

different than now. These are utility infrastructure items that are usually hidden underground or on a light pole. We can consider these safe locations which gives the ability to invade additional resources. It gives people a safe place to go to that you can harbor for a period of time if we were not able to habit the city. this will also provide sanitation. Hudson noted other benefits and timeframes. St. Denis added we are starting to recognize that to be effective we need the resources already there and it makes us be more a more likely to be considered for other funding sources since we are being so active. Benefield noted it is impressive staff pulled this together in 6 days. There is a lot of reporting required. Have you yet started looking at the reporting requirements how done and who will do it, it looks like a big load. There is a time limit on when it has to be spent, over two years, that's a lot to be done in that time period and required a real concerted effort. Hudson replied I want to thank J Barrett and LaBonte for putting this together in 6 days. It was an incredible feat and what lead us to that is the budget committee who gave us shovel ready projects. This is intimidating and we are already a year behind due to their changes and if we qualify. It's a massive amount of project management time and I've had planning meetings with J Barrett and Sawrey and we separated duties and along with Driscoll's firm and Sawrey getting info to the state. My job is project management and I already have them penciled in. It will be a busy next two years and will be full of projects. St. Denis noted on top of what was going before we will have added \$20-25M of projects and we will be needing some help. I already authorized La Bonte to use engineers to assist. J Barrett gave overview of loan process and timing. Benefield replied that's why I brought it up. We may need staffing increase and causes concern that we haven't anticipated before. St. Denis added we do not have project management staff and it's been picked up by different people. We are most concerned about meeting the requirements. This is also happening during a year when we will be collecting prepared food tax. We are going to have to figure some way with consultants or someone inhouse we will have multiple projects. A discussion ensued regarding possible resources to assist. Hudson noted next week I'll give a rundown of what we did the last year, and I do take a lot of photos and videos of what we are doing.

Motion: Ogilvie moved to adopt Resolution 22-07 for the purpose for the purpose of approving changes to the FY 2021-2022 budget by increasing appropriations in the general fund to allow for a specific purpose grant from the Coronavirus State Fiscal Recovery Fund (CSFRF) and authorize the City Manager to sign the grant agreement; Benefield seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

ACTION ITEMS AND DISCUSSIONS

(6) Consideration of Appointment of City Committee/Board/Commissions

Renewal for Robert Lundy

Motion: Ogilvie move to renew Bob Lundy to the Farmers Market Committee; Risely seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

Renewal for Greg Swedenborg

Motion: Ogilvie move to renew Greg Swedenborg to the Tourism and Arts Commission; Risley

seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

INFORMATIONAL/OTHER DISCUSSION ITEMS

(8) Monthly Status Report

Risley asked why she is not seeing right-of-way tree notices. J Barrett replied there have not been any right-of-way removals in the last month.

Risley asked Community Development is working with Gearhart IGA what does that mean? St. Denis replied they do not have a building official and are asking for assistance to help like we did with Manzanita and Astoria.

Risley asked it says The Community Development Director and Planner met with Oregon Department of State Lands, Aquatic Resource Planner, Jevra Brown, on wetlands, wetland inventories and the WLUN process. What was that about? St. Denis replied I am not sure but will find out and email you.

McCarthy asked what is the work on the proposed reimbursement district? La Bonte replied that's for the proposed new home to be built and per our code the developer / homeowner is required to extend utilities from closest point (5th & 6th) and since they are so far away she's asked for reimbursement district so when others develop she can be reimbursed. It's still in application process giving an overview of the process.

(9) Mayor Communications

Steidel noted I made visit with 5 mayors from the County last week to catch up and see what's going on. A couple of interesting points that might come to us later as soon as they are written up. Interesting the county in a sea of mayor changes next year, noting the potential changes.

(10) Councilor Communications

(11) Good of the Order

In response to McCarthy's question what the status of Code enforcement office, Schermerhorn replied we are currently in the background phase and we are currently taking the code enforcement complaints as they come in.

In response to Ogilvie's request for an update on notifying restaurants for the prepared food tax, St. Denis replied it will probably be February 15th some issues that came up we are working through and getting the consultant. We will get information to the businesses by February 15th. In response to Ogilvie's question does Council want to see ahead of time, McCarthy replied might not be a bad idea, Risley replied yes. J Barrett gave an overview of where staff is in the process. Ogilvie offered to review documents and comment on the 8th. St. Denis added the thought is to do one separate letter to deal with potential grant, then another that covers what to expect. Now that we have the contract with consultant

we want to get letter out in the week to avoid situation of someone running out to get equipment evaluated now without the review of what they need. In response to McCarthy's question how sure are we that we can go ahead with tax, Driscoll replied the litigation is still pending. I sent email to council with an update, not much has changed and am pretty confident that it will be dismissed through a motion to dismiss. The petitioners requested one more week extension and it was granted. My advice is to move forward on the PFT. Driscoll added staff preparing for implantation and working through materials regarding how to apply certain aspects of PFT. I answered and sent it to Council and received feedback from two counselors separately regarding catering. A caterer located in Cannon Beach and if they have a gig in Cannon Beach or outside Cannon Beach would also be taxed with current language. The tax is on caterer located in city or event in city. The feedback I got was is this what we intended. I checked other jurisdictions. In Ashland and Yachats only imposed for event located in the city. I checked our meeting notes on the discussion and why we amended. In a June conversation with an email sent to council as a follow up and asked for feedback on that's how we wanted to move forward and council did not respond. Do you want to amend the language of happy with language as is? The amendment process is an ordinance. Do you want to talk about it further or bring an ordinance? Benefield replied I am happy as it. Ogilvie noted I have a different option and like to see it changed. Council discussed scenarios that could arise with the tax on caterers and how they would play out. Driscoll added part of conversation we had was would it disincentive events located in Cannon Beach as you wouldn't have to pay the tax if you had event outside city. Steidel replied I think you should, and we can get into the weeds. Driscoll added will also bring back the citation revision.

St. Denis noted Windsor Engineer who is doing our resiliency plan, submitted it to the American Council of Engineering company's and the city and Windsor won an award. Windsor was also awarded for another project they did. There was recognition about the important of that project. La Bonte and I have a call with the Business Oregon Board about that project and the agenda says recommend approval of the \$3.2M loan.

St. Denis added the Pan Wizard Steel Orchestra, which is kids who play steel drums, will be performing in the summer and will give us priority time in the schedule. No charge, they just ask for donations. A discussion ensued.

ADJORNMENT

The meeting was adjourned at 7:13 p.m.

ATTEST:

Jennifer Barrett, City Recorder

Sam Steidel, Mayor

Minutes of the
**CANNON BEACH CITY COUNCIL WORK SESSION
AND SPECIAL MEETING**
Tuesday, February 8, 2022
Council Chambers

Present: Mayor Sam Steidel, Council President Mike Benefield, Nancy McCarthy, Robin Risley and Brandon Ogilvie

Excused:

Staff: City Manager Bruce St. Denis, IT Director Rusty Barrett, City Recorder Jennifer Barrett, Emergency Manager Rick Hudson, Community Development Director Jeff Adams, Public Works Director Karen LaBonte and Finance Director Laurie Sawrey

Other:

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CALL TO ORDER AND APPROVAL OF AGENDA

Mayor Steidel called the meeting to order at 6:02 p.m.

Steidel asked for a motion to approve the amended agenda.

Motion: Ogilvie moved to approve the amended agenda as presented; Risley seconded.

Vote: Benefield, McCarthy, Ogilvie, Risley and Steidel voted AYE: the vote was 5:0 and the motion passed unanimously.

PUBLIC COMMENT

- Randy Neal, PO Box 1092 Cannon Beach, spoke of his concerns with the System Development Charges. Neal had a 5-page PowerPoint which has been included in the record.
- Deb Atiyeh, PO Box 1426 Cannon Beach, spoke about Sea Turtles Forever and micro plastics in Cannon Beach.
- Ed Johnson, Tumwater, WA, spoke about funding Sea Turtles Forever.

DISCUSSIONS

(1) Introduction of Ron Logan

Finance Director Laurie Sawrey introduced our new Assistant Finance Director Ron Logan.

(2) System Development Charges – Proposed Phased Rates

La Bonte read the staff report. La Bonte gave an overview of what SDC's are. Doug Gabbard gave an overview of the phases in the packet. Gabbard and LaBonte answered Council's questions. Gabbard noted the phased in spreadsheet was to show options, there is no obligation on the city's part to implement the full defeasible charges at any time. In response to McCarthy's question if we didn't institute the SDC charges the water rates may need to go up, La Bonte replied it's a strong possibility, adding Sawrey is doing an evaluation and then will be able to better answer the question. St. Denis added pretty much you will need to increase rates if you don't have cash on hand. Council discussed various options and scenarios. Council discussed how to proceed and the ties to the TSP. Council discussed the stormwater rate. McCarthy added I agree with Benefield and Risley about doing it all at once, starting in 6 months. Steidel replied one time implementation 6 months from now and more detail on the balance of the number to see how high we go. McCarthy added I support the \$8400 so we can avoid additional water increases. St. Denis asked Gabbard to look at rates at a more granular level and bring back to council for approval. Gabbard added if we go with one time even the detail numbers are the same, so it would be the what's listed. If you want to go less than 100% then you can not have all the different SDC's go up at the same rate, but it's not relevant if doing 100%. Benefield suggested to do something about TSP and streets will have impact on stormwater so I would see updating stormwater and transportation component with the proper technique. Steidel asked is everyone comfortable with 100% Risley, McCarthy and Benefield replied yes. Ogilvie replied I am not unless I know that there is a set time for council to review in the future and not giving them the chance to increase, Steidel added I agree. St. Denis added if another study was done with new costs and projects, it would substantiate if they wanted to adjust. Ogilvie suggested a review every 5 years.

(3) Annual Review of the Emergency Management Division 2021

Hudson presented a PowerPoint presentation; a copy is included in the record.

(4) TSP Update

Adams gave an update on the TSP. Adams noted thank you for those who joined us on Feb 3rd PAC or Open house. If you haven't seen it videos on the website and you can watch. Great discussion and good comments that will help form the project. You can still respond through the website or to me to comment, see technical memo #6 which is the preferred alternatives. Open house is online for alternatives in March, so there is another opportunity for more feedback. Then will move into draft plan and will go public in April. There will be a joint session with City Council and the Planning Commission. Don't forget, CannonBeachTSP.com.

(5) Affordable Housing

Adams gave examples of staff members facing housing issues. Adams gave a PowerPoint presentation; a copy is included in the record. Adams gave his thoughts on moving forward and answered Council's questions.

8:42 pm break. Reconveyed at 8:47 pm

(6) Farmers Market Business License Fees

St. Denis summarized the staff report. Council consensus to move forward with reduction. St Denis

noted the concern of losing prepared food vendors due to the tax.

(7) Discussion of a Committee for CBE Rejuvenation Project

St. Denis summarized the staff report. Steidel reported St. Denis and I were going to work on the letter and I realized we really didn't know what we are asking. If we can hammer out a little more of what we want to see, which one will work best, or if you think of something else. Steidel read the three items listed in the staff report. Ogilvie added at least 2, being advised on architect the public meetings will be sufficient. Risley added item 3 is later down the road. Benefield noted I agree with Ogilvie and Risley. Ogilvie noted my feeling is that is what the council intended when we originally discussed it. Benefield replied I agree but always open for other options. Risley added all the entities will help us not miss a piece that needs to be in there. Steidel replied we will go with 2 of creating a short single task committee to help us design the management system for operations of facility. That will then be coincidental to the designing of the buildings itself and they can provide input on what the building will need. St. Denis added they will work along design and decide how to manage the facility.

(8) Prepared Food Tax Materials

J Barrett overview of document. McCarthy asked about the exempt excluded in the form. Sawrey gave an overview of the process in that form adding we do the same with TLT. St. Denis added that is part of the reason we are bringing on Holland to work with the businesses to make sure they have the software in place to track everything. A discussion ensued regarding the form. Benefield added it is needed for the audit. Sawrey added we can add each category for clarity and will prefill in form for example. Council good to proceed.

Close Work Session and Start Special Meeting

ACTION ITEMS

(9) Warren Way & Hemlock Project Award

La Bonte read the staff report. In response to Risley's question how many other bids, La Bonte replied two, but one was disqualified for incomplete bid package and the other was McEewan. In response to Ogilvie's question are you certain about the completion date, La Bonte yes, that was part of the bid, the project is fairly simple, the construction company had no issue with the date. La Bonte gave an overview of the schedule.

Motion: Benefield moved to approve the contract award to Big River Construction for the Warren Way & Hemlock Project; Ogilvie seconded.

Vote: Benefield, McCarthy, Ogilvie, Risley and Steidel voted AYE: the vote was 5:0 and the motion passed unanimously.

(10) Bridge Reserve Fund – Unallocated Projects

La Bonte read the staff report. In response to Risley's question what will it look like, La Bonte replied I am not sure, however it shouldn't change the look based on the information I've seen adding if there was a change we would let you know. In response to Risley's question how long after submitting will

you know, La Bonte replied I would like to tell you but the process is quite long, I am in the 15th month of a generator application for FEMA.

Motion: Benefield moved to approve the use of \$8,592 in unallocated project funds under the Bridge Reserve Fund to pursue this FEMA grant opportunity; Ogilvie seconded.

St. Denis noted we don't know exactly what it will cost, will you allow us to use contingency funds if it exceeds, spending up to \$10,000, council agreed.

Vote: Benefield, McCarthy, Ogilvie, Risley and Steidel voted AYE: the vote was 5:0 and the motion passed unanimously.

(11) Good of the Order

Steidel reported I want to have discussion about beach cleanup, Sea Turtles Forever before we get into budget to decide how to approval. St. Denis replied I will put on March workshop.

St. Denis reported La Bonte and I just found out the Main Pump Station generator has failed. They are trying to convert another one to get to the voltage, and people from Caterpillar are coming tomorrow to evaluate. This is one that would be replaced under the FEMA grant, and even if we repurpose, we will be short one generator. My mind it's an emergency and the intent is to move forward to get generator as quickly as we can as it may take months and then work with FEMA to see if we can get reimbursed with the grant. It is approximately \$45-50,000. There is \$210,000 in contingency to fund that project. In response to Risley's question is it mobile, La Bonte replied Main is our largest and the generator we have outside now is a mobile we use at Midway and Siuslaw so if we lose power would need to move generators. Tomorrow we are going to try to hardwire in so we are covered and then rent a generator. The quote we got for the FEMA generator is old as it's taken a lot of time to process the paperwork, so the quote may not be good anymore. It's an emergency and we have contingency. Marty and Mike are rotating babysitting the pump station at night. Steidel replied lets do it.

St. Denis noted the Cannon Beach Elementary Request for Proposals are due tomorrow at 4pm. In response to Ogilvie's question any idea how many we will get, St. Denis replied we had 8 firms at the mandatory pre-bid, so I am guessing three.

ADJORNMENT

The meeting was adjourned at 9:25 p.m.

ATTEST:

Jennifer Barrett, City Recorder

Sam Steidel, Mayor

Minutes of the
CANNON BEACH CITY COUNCIL WORK SESSION
Tuesday, February 22, 2022
Council Chambers

Present: Mayor Sam Steidel, Nancy McCarthy, Robin Risley and Brandon Ogilvie. Council President Mike Benefield via Zoom

Excused:

Staff: City Manager Bruce St. Denis, IT Director Rusty Barrett, City Recorder Jennifer Barrett, Finance Director Laurie Sawrey

Other: City Attorney Ashley Driscoll via Zoom

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CALL TO ORDER AND APPROVAL OF AGENDA

Mayor Steidel called the meeting to order at 5:01 p.m.

Steidel asked for a motion to approve the amended agenda.

Motion: Ogilvie moved to approve the amended agenda as presented; Risley seconded.

Vote: Benefield, McCarthy, Ogilvie, Risley and Steidel voted AYE: the vote was 5:0 and the motion passed unanimously.

Steidel noted Council President Benefield is attending via Zoom.

PUBLIC COMMENT

- Deanna Hammond spoke of her concerns with the PFT on the point-of-sale system for a bakery due to the exemptions. Asked Council to exclude the bakery from the PFT.

McCarthy asked for clarification, I thought 6 bakery items were of the same thing or is it 6 items? Driscoll replied this is the same language as Ashland and Yachats, and they have multiple bakeries. Driscoll read the language and it is 6 or more bakery products. Steidel replied lets chat during good of the order.

DISCUSSIONS

(1) Refinance 2010 & 2012 GO Bonds

St. Denis summarized the staff report and introduced Matt Donahue from DA Davidson. Donahue gave an overview of the summary included in the packet. Donahue answered Council's questions. Council

discussed the benefits to the city. In response to Ogilvie's question what is the certainty that the rates will be at what you estimated, Donahue replied there is no 100% certainty. They could be higher or lower by the time we get to the market. Currently we are scheduled for March 17. Given the time period and how much rates move, what you would be approving would be the option. In response to Ogilvie's question so we wouldn't have to do it if the rates are higher, Donahue replied that is correct. A discussion ensued regarding the interest rate market. St. Denis added this brought to you tonight to keep CBE financing on track. Would like you to adopt the resolution at the March 1st meeting. We wanted to have a work session and allow people to listen in and check information. In response to Steidel's question whether we go with it or not does not interfere with what we are doing with the school if we do not move forward, St. Denis replied yes, the only thing that would impact it is if we said let's hold off on the March 17th date. Steidel noted I think this is a positive. Ogilvie added I agree, I'd like to do this. Risley replied I just want to make sure OWEB is involved. Steidel thanked Donahue. In response to Ogilvie's question will you be available on March 1st, Donahue replied yes.

(2) Good of the Order

Risley noted someone was contacted from Pacific Power and they said the power would be off for 9 different people for 5-6 hours. Do you know where that would be? St. Denis replied I am not sure. In response to Steidel's question when would this happen, Risley replied tomorrow and I didn't get a notice. Ogilvie replied it could be for a new home going in. St. Denis noted the communication company is doing the work in advance on Warren Way. I will contact La Bonte and see what details we can get.

McCarthy reported I am concerned about the bakery question, will you contact Ashland and see how they handle this? St. Denis replied yes and I will get a report from Holland on her findings with the bakery. Driscoll added I will email the list of bakeries in Ashland. Council discussed if 6 items of the same thing or not. Benefield added it seems to me when you make exemptions you end up with all these questions. If its prepared food they pay the tax. I think the problem is because you exempted certain items. St. Denis replied we will bring this back on the first.

(3) Executive Session

Steidel stated The Cannon Beach City Council will hold an executive session February 22, 2022 after the work session scheduled at 5:00 p.m. The Executive Session will be held at Cannon Beach City Hall, 163 East Gower Street, Cannon Beach, Oregon, and is being held pursuant ORS 192.660(2)(f), To consider information or records that are exempt by law from public inspection.

ADJORNMENT TO EXECUTIVE SESSION

The meeting was adjourned at 5:30 p.m.

ATTEST:

Jennifer Barrett, City Recorder

Sam Steidel, Mayor



Easement Revised 2/25/22

STAFF REPORT

ROBERTS' DRIVEWAY ACCESS EASEMENT PUBLIC HEARING

Agenda Date: March 1, 2022

Prepared by: Jeff Adams, PhD
Community Development Director

BACKGROUND

While the first building permit by Stan & Rebecca Roberts is currently tied up in legal hearings before the Oregon Court of Appeals, the Roberts have applied for an 'alternative' building permit. Any consideration or approval of the alternative building permit or one that complies with the Oceanfront Setback Standards will require a Driveway Access Easement Agreement to allow access off the Nenana Avenue right-of-way.

The original plans considered a public road off S. Hemlock, extending W. Nenana Ave. to the applicant's lot on the corner of the Ocean Ave. right-of-way and W. Nenana Ave., taxlot# 51031AA0600. The alternative plans call for an approximately 75-foot private drive utilizing the W. Nenana Ave. right-of-way.

The current W. Nenana Ave. right-of-way is in a semi-improved state, with a graveled travel path to service utilities along the W. Nenana Ave. corridor. The alternative plans provide a 12-foot wide private driveway, with parking for two and a turnaround area.

The City's Land Use Attorney, Bill Kabeiseman, has drafted a Driveway Access Easement, which provides for private driveway access that would be required to meet city safety standards for accessing onto S. Hemlock, agreement on the construction and maintenance of the private driveway, gate and signage, temporarily benefitting the Roberts, with an agreement on removal of all structures, at owner's expense, which run with the land, when future needs require a change in access.

The City Council held work sessions on November 9th December 14th, 2021 and January 11, 2022, and requested revisions to the draft agreement.

REQUESTED ACTION

After public input and Council consideration, the Council should provide direction on the Roberts Access Easement Agreement.

Attachments

A: Driveway Access Easement Agreement (***Revised 2/25/22***)



CANNON BEACH COMMUNITY DEVELOPMENT

163 E. GOWER ST.

PO Box 368

CANNON BEACH, OR 97110

B: Supplemental Driveway Plans

C: West Nenana Ave. Discussion Presentation, from December work session

D: Public Input



MEMORANDUM

TO: Honorable Mayor Steidel and City Council
FROM: Bill Kabeiseman
DATE: February 25, 2022
RE: Roberts Driveway Access Easement

I. INTRODUCTION

Over several work sessions, the City Council has considered a draft easement that would allow an abutting property owner to use a portion of unimproved Nenana Avenue as access to their property that, to this point, has not yet been developed. During the course of those work sessions, several issues have been brought up regarding the granting of the easement, including the ability of the City to grant the easement, as well as questioning the timing of the easement. The intent of this memorandum is to address those issues.

II. DISCUSSION

A. Why Discuss Providing an Easement Now Instead of After An Approval?

In reviewing applications for development in the City, one issue that is addressed early in every application is the provision of access; how will people come and go to whatever will be built on the site. In fact, Cannon Beach Municipal Code (CBMC) specifically requires all property in the City to have access:

“17.90.020 Access requirement.

“Every lot shall abut a street, other than an alley, for at least twenty-five feet. Lots which were created prior to adoption of the zoning ordinance which do not meet this provision may be accessed via an irrevocable recorded easement of a minimum of ten feet in width.”

In reviewing any proposed development, the City wants to make sure of at least three things regarding access. First, that the property being developed has access and the rights necessary to make the improvements to allow that access to happen. Typically, that is shown by abutting an improved City street but, as recognized in CBMC 17.90.020, that is not always the case. In the case of the Nenana Avenue development, the property abuts an unimproved City right-of-way, which, due to its geologic and topographical challenges, has never been contemplated as a future roadway. However, as discussed below, every property owner has the right to access city streets and one method to control that access over an unimproved right-of-way is through an easement.

Second, The City considers access in the review of any development and ensures that the access proposed is consistent with any proposed development on the property. In this review, the City ensures that the access is located appropriately to allow traffic to flow to and through the site. For example, see CBMC 17.78.030, containing design standards for parking lots and limiting the number of access points and the requirements for parking lots.

Finally, the City reviews the details of the access itself and whether it provides a safe way to enter into the City's street system. See CBMC Chapter 12.08, regulating "property entrances." That section provides standards to ensure the driveway is properly located and constructed.

Each of those inquiries is related to each other, but ultimately independent of the other and, to some extent, determining which one to require first sometimes results in a "chicken or egg" problem, e.g., why review the code consistency of a particular access if the development it will serve is never going to be approved? Or why review a development approval application if they do not have the right to access their property?

These conundrums can be solved by choosing one of the inquiries and resolving that inquiry, often with conditions requiring the resolution of the other inquiries as well. For example, if the City were to choose to review the development application first, it could place conditions on an approval (if the development application is approved) requiring the applicant to demonstrate the right to have the access where proposed and that the access that will be constructed meets City code requirements for accesses.

Historically, the City has approached reviewing these three elements in the order presented above, i.e., first resolving right of access, then the type of development, and finally the details of the actual access. This explains why City staff brought the easement to the City Council prior to the approval of any actual development and before the details of the actual improvement have been finally decided.

This is not the only way the City could review this process but, as discussed above, it is the way that the City has historically reviewed access.

B. The Right to Access City Streets.

A critical question throughout the process has been whether a property owner has a right to access public roads; the ability of a local government to regulate access has been a subject of litigation for as long as Oregon has been a state, if not before. The cases have involved everything from the building of bridge approaches in Portland to establishing limited access freeways. The Oregon Supreme Court and the Oregon Court of Appeals have decided multiple cases dealing with this issue and those cases have resulted in a multitude of decisions that have language that could be found to support any number of different approaches.

Typically, to fully capture the extent of those cases, a memorandum like this would go through the extensive case history and try to pull out the various legal principles embedded in those cases. However, the Oregon Supreme Court recently did exactly that in *State v. The Alderwoods (Oregon), Inc.*, 358 Or 501, 366 P3d 316 (2015), a relatively recent case involving a property owner in Tigard suing ODOT for eliminating the property's direct access to Highway 99, leaving access only off of a side street. In that case, the Oregon Supreme Court provided a comprehensive review of multiple cases involving the right of access and provided the following summary of the legal principles from the century and one-half of previous cases:

“The above cases demonstrate three governing principles regarding the common-law right of access of a property owner to an abutting public road. First, it is well established that a common-law right of access by property owners attaches to property as an interest in land. Specifically, **an abutting property owner holds an easement of access, appurtenant to the abutting land, for the limited purpose of providing a means of ingress and egress to and from the owner's property** by means of the abutting

public road. Second, the right of access to an abutting road is limited in scope. **An abutting property owner does not have an absolute right to access an abutting road at the most direct or convenient location.** Rather, the owner has a qualified right that is subject to the government's interest in regulating the safe use of public thoroughfares. Third, **the owner's right of access ensures only reasonable access to and from the owner's property** by means of the abutting road. Those three principles, in combination, reduce to this central proposition: **When governmental action interferes with an abutting landowner's right of access for the purpose of ensuring the safe use of a public road, and the abutting landowner retains reasonable access to its property, no compensable taking of the property owner's right of access occurs."** *Id.* at 517 (bold emphasis added).

In short, the Court characterized its previous cases as making the following four points:

- A property owner that owns property abutting a public road has an "easement of access" that allows "ingress and egress" to and from the owner's property. In other words, a property owner has the right to access their property from a public road;
- The "easement of access" is not absolute; the property owner does not get to choose how the property is accessed, that is entirely up to the city (or county) that controls the road;
- The right of access "ensures only reasonable access" to and from the public road. The property owner's access may be limited or changed at the direction of the local government; and
- The local government can interfere with the right of access to ensure "the safe use of a public road" and, so long as the property owner "retains reasonable access" to the property, no taking has occurred.

This pronouncement from the Oregon Supreme Court is the most recent and most comprehensive explanation of the rights of property owners abutting public roads and likely supersedes previous cases that are inconsistent with these cases, particularly those cases with conflicting language and, given the extensive history of cases involving a

multitude of scenarios, on this issue it is possible to find cases to support almost any position.

Applying the holdings from *Alderwoods* to the situation along Nenana Avenue, every property owner along that street has an “easement of access” that allows “ingress and egress” to their property. That easement is not absolute and the City can regulate access in any number of ways. The City can tell the property owner where along the street access can be taken and what improvements will be necessary to take access.

To the extent the City wishes to limit a property owner’s access to an abutting street, the Court indicated that is acceptable to limit access “to ensure the safe use” of the street, but has indicated that the property owner must “retain[] reasonable access” to their property. In other words, if there was not a safe way to provide access, the City does not have to allow access; however, if access can be provided, the City cannot prohibit access for, e.g., aesthetic reasons or other non-road related reasons.¹

One argument that has been raised against providing access through Nenana is that there are various cases where the courts have held that a city is not required to open a public street and can, in fact leave it in a state of nature. See *Prosch v. City of La Grande*, 14 Or App 546, 550, 514 P2d 351 (1973) (“The mere fact that a street has been dedicated by a developer to the public in a plat accepted for filing by a city planning commission itself imposes no duty upon the city to open that street.”); and *Hendrickson v. City of Astoria*, 127 Or 1, 7, 270 P 924 (1928) (“The city was not required to improve the street or sidewalk on Flavel Street, or any portion of it. It had the legal right to leave the street in a state of nature.”).

However, neither of those cases is on point; the *Prosch* case involved a property owner at the end of a platted street. When the owner built their home, the street was

¹ It is worth remembering that, when a property owner “dedicates” property to the City, it is “an appropriation of land by the owner for a public use.” For example, a private property owner may dedicate land to be used as a public roadway.” *Landis v. Limbaugh*, 282 Or App 284, 385 P3d 1139 (2008); *Dayton v. Jordan*, 279 Or App. 737, 746, 381 P3d 1031 (2016) (quoting *Security & Invest. Co. v. Oregon City*, 161 Or 421, 432, 90 P2d 467 (1939)). The land thus dedicated is not available for any use desired by the City; instead, “the governing body of a county or municipality becomes the trustee for the public to assure that the land is used for the dedicated purpose or purposes.” *Douglas Cty. v. Umpqua Valley Grange, Inc.*, 45 Or App 739, 743, 609 P2d 415 (1980)). Thus, Nenana Avenue may be used only for street or transportation purposes.

unpaved and they had a contractor grade and gravel the street for them. Subsequently, the road eroded away and the property owner sued the city, seeking to require the city to maintain the street. The court disagreed, noting that the city was not required to open a street to public use. However, there was no discussion about the fact that the city, in that instance allowed the property to, essentially, create a driveway on the unopened street, as would be the case here, in order to retain “reasonable access.” In other words, the point about the *Prosch* case is correct to the extent that a city does not have to “open” the public street. However, the facts of that case support the City allowing the property owner to use the right-of-way to access their property – it just needs to assure that the City is not responsible for maintenance of repair.

In *Hendrickson*, a pedestrian fell off of a raised boardwalk through a broken handrail and sued the city. The City argued the area was not a city street and, therefore, it had no liability. The court began by acknowledging that a city can choose not to open a street but, once a street is open to the public, the city may be subject to liability for negligently maintaining the street. This discussion has little bearing on whether the City must allow a driveway along an unopened public street in order to provide “reasonable access.”

The one case that seems to allow a local government to prevent all access entirely is *Robertson v. City of Turner*, 187 Or App 702, 706, 69 P3d 738 (2003). In that case, the property owner was completely surrounded by other properties – its only access was through one street; however, that street crossed a stream on a rotting wooden bridge. The City was aware of the dilapidated condition of the bridge and informed the property owner that the bridge would be closed and gave them the owner three options:

“They could take ownership of the bridge; they could pay the cost of bringing it up to the standards required by ODOT; or they could petition the county for a ‘way of necessity’ to [a different road] pursuant to ORS 376.155. A ‘way of necessity’ is a ‘road established * * * to provide motor vehicle access from a public road to land that would otherwise have no motor vehicle access[.]’” 187 Or App 704.

The Robertsons chose none of the above and sued the city, arguing that the closure of the bridge “took” the only access and, therefore, took their property. The Court of Appeals disagreed with that argument, finding that the closure of the bridge was in furtherance of

the government's "police power," which is commonly understood to be the "government's authority to promote the health and safety of the populace" and that there was no taking, even though the result was that the owner had no further access to the property. 187 Or App at 707.

This situation has significant differences, in that the property owner in *Robertson* was given an option to maintain access (i.e., take ownership of the bridge or pay to have it repaired) and, more importantly, there was a clear health and safety issue, tying back into the portion of the *Alderwoods* decision that the City may interfere with access to ensure the safety of the public.

Another argument that has been raised is that the City cannot allow private use of public property. As noted in the footnote one above, the City does not have the right to use the street right-of-way for any and all purposes. Instead, the City holds dedicated right-of-way in trust "to assure that the land is used for the dedicated purpose or purposes;" in this case, for transportation purposes. Thus, if the City were to block the street to install a sewer pump station, that would be illegal. *Public Interest Council v. City of Lincoln City*, 28 Or App 67, 558 P2d 1291 (1977). However, in this case, the allowance of a driveway in the right-of-way would not prevent any future transportation uses, should the City later decide to improve and open Nenana Avenue. That is to say that the use of the right-of-way for driveway purposes is consistent with the purposes of the dedication and is allowed. Any easement would be non-exclusive, meaning that the property would remain available for other property owners abutting Nenana Avenue, as well as to the public, should the City open that portion of the street to the public.

An additional concern has been raised about whether the City can grant a property interest without first finding that the land is "not needed for public use" under ORS 271.310(1). ORS Chapter 271 involves "the use and disposition of public lands generally" and provides one method of granting interests in land; however, it is not the only method. ORS 221.725 provides an alternative method for cities to grant interests in land. Under that statute, there is no need to first find that the land is not needed for public use. Instead, the City need only find that the disposition of the property be "necessary or convenient."

Additionally, a concern has been raised that the City does not have the right to grant an easement in Nenana Avenue, because the City only has an easement in the street

and the fee ownership of the property remains in the original owner. This concept is associated with several cases from early in the last century, such as *Portland Baseball Club v. City of Portland*, 142 Or13, 16, 18 P2d 811 (1933), *Huddleston v. City of Eugene*, 34 Or 343, 55 P 868 (1899), and *Kurtz v. Southern Pacific Co.*, 80 Or 213, 155 P 367 (1916). However, more recent cases provide differently. Most recently in *Landis v. Limbaugh*, 282 Or App 284, 385 P3d 1139 (2016), the Court of Appeals held that, in most situations, a right-of-way dedication results in the transfer of the fee ownership to the City:

“As we explained in *RealVest* [v. *Lane County*, 196 Or App 109, 100 P3d 1109 (2004)], “the conveyance of privately-owned property to a public body for a public ‘right of way’ is inconsistent with the understanding that the grantor retains some privately held right to use the conveyed property after the conveyance occurs.” 196 Or App at 117, 100 P3d 1109. *But see Wallowa County v. Wade*, 43 Or 253, 257-58, 72 P 793 (1903).”

In the *Realvest* case, the court relied on found that a dedication resulted in a transfer of the fee interest based on four factors; (1) the conveyance was for the purpose of a public right of way and was granted to a public body, rather than between private citizens, (2) the dedication used “inclusive language,” such as “all that portion,” (3) the word “easement” was absent from the dedication, and (4) the instrument did not otherwise purport to limit the nature of the estate being conveyed. *Landis*, 282 Or at 293.

In this case, the 1908 plat of Tolovana Park, the plat that dedicated Nenana Avenue, provides as follows:

“I hereby dedicate to the public for its use as thoroughfares forever, the streets and avenues therein.”

Each of those factors are present here as well – it was for a public right-of-way, it uses inclusive language, there is no mention of an easement, and the instrument was not otherwise limited. Accordingly, the City’s allowance of access along the public street right-of-way is consistent with and within the City’s authority.

Finally, one other issue that has arisen is the extent of the limitations that the City may place on any access and, in particular, whether the access must allow motor vehicles

or if it can be limited to pedestrian access. There is no case addressing this question and it would most likely be evaluated on whether pedestrian-only access is “reasonable.” Most of the reported cases in Oregon do not specifically distinguish between motorized and pedestrian access, although there are some cases that specifically address vehicle access, such as *Oregon Investment Co. v. Schrunk*, 242 Or 63, 72-3, 408 P2d 89 (1965).

In *Oregon Investment Co.*, the court allowed the city of Portland to block access to the plaintiff’s parking lot from one street, while still allowing it from a different street. In *Schrunk*, the court explained that the limitation on access “seems a reasonable exercise of the power of the city to provide for the public safety, convenience and welfare under the conditions created by *modern motorized traffic* in a large city.” (emphasis added). In other words, in a decision from 1965, the Supreme Court implied that the “access” at issue is for “motorized traffic.” However, that case is over 50 years old, so it is difficult to predict how the court would interpret that requirement should such a case be brought now.

Notwithstanding the above, should the City determine that providing motor vehicle access to the property via Nenana Avenue is unsafe, the City can prohibit access prevent access, just as the city of Turner did in *Robertson v. Turner*. It may be possible that motor vehicle access is unsafe, but limited pedestrian access can be provided in a safe fashion.

CONCLUSION

There is no doubt that there is language and arguments from Oregon case law that could be used to argue that the City can deny access for an abutting owner to Nenana Avenue and that those arguments can be made with a straight face. However, in the absence of a safety issue or any other alternative access, I believe it is very unlikely that the City would be able to prevail in a lawsuit should the property owner sue the City over the denial of access to his property. The City may well be able to limit the character of that access, but I believe that complete denial of any access would inevitably lead to a takings claim that the City is more likely to lose than not. To the extent there is a safety issue, the City can take steps to ensure that the City’s streets remain safe.

After Recording Return to:

City of Cannon Beach
163 E. Gower
Canon Beach, Oregon 97110
Attention: City Manager

DRIVEWAY ACCESS EASEMENT AGREEMENT

THIS DRIVEWAY ACCESS EASEMENT AGREEMENT (“**Easement Agreement**”) is made and entered into effective this ____ day of [_____] 2021 (the “**Effective Date**”), by and between the City of Cannon Beach, a municipal corporation (“**City**”) and Stanley Roberts and Rebecca Roberts (collectively, “**Roberts**”).

RECITALS

A. City owns and has jurisdictional control over the real property known as West Nenana Avenue and legally described on Exhibit A attached hereto and by reference incorporated herein (“**City Property**”).

B. Roberts owns real property adjacent to the City Property and legally described on Exhibit B attached hereto and by reference incorporated herein (“**Roberts Property**”).

C. The City Property is an unimproved public right of way. Roberts desires to construct a residential house on the Roberts Property and Roberts has requested the City grant Roberts an easement for a driveway providing access to the Roberts Property from Hemlock Street (the “**Driveway**”).

D. The City has agreed to grant such an easement to Roberts subject to the terms and conditions of this Easement Agreement. Such easement is not in derogation of the City’s obligations to manage the City Property for potential future opening of the City Property for transportation use as a portion of West Nenana Avenue.

EASEMENT AND AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Roberts agree as follows:

1. **Easement.** The City hereby grants to Roberts a nonexclusive easement (“**Easement**”) over and across a portion of the City Property as legally described in Exhibit C and depicted in Exhibit D hereto and by reference incorporated herein the (the “**Easement Property**”). Roberts accepts the Easement Property in its “as is” condition without representation or warranty by the City of any kind. The Easement is granted solely for the purpose of the construction and use of the Driveway to provide vehicular, bicycle, and pedestrian access from Hemlock Street to the Roberts Property. This Access Easement is expressly limited and may be used solely to access structures that are setback at least 119.1 feet from the Oregon Statutory Vegetation Line as

described in ORS 390.770. Should Roberts construct any structure closer to the Oregon Statutory Vegetation Line, the Easement created in this document shall terminate.

2. **Construction of Driveway.** Roberts shall construct the Driveway at Roberts' sole cost and expense. Roberts shall construct the Driveway in accordance with plans and specifications for a private driveway approved by the City in its capacity as having jurisdictional control and authority over the Easement Property. Such approval shall occur prior to beginning any construction on the Roberts Property that relies on this Easement. The design of the Driveway shall be as close to the existing grade as possible. Roberts shall, at Roberts' sole cost and expense, obtain all approvals and permits from the City's planning and public works departments necessary to construct the Driveway. Moreover, the design and construction of the Driveway shall not prevent or interfere with the potential future opening of West Nenana Avenue to public access.

3. **Gate and Signage.** Upon completion of the Driveway construction, the Roberts shall not place any gate or signage at the entrance to the driveway, other than that necessary to identify the address of the Roberts Property. The City may, at some point in the future, determine that it is necessary to place a gate and signage at the entrance to the Driveway to control vehicular traffic on the Driveway. If the City so determines, Roberts will, at Roberts' sole cost and expense, install and maintain a sign indicating "For Private Driveway Access Purposes Only." The design and location of such sign shall be subject to the City's approval. In addition, should the City so determine, Roberts will, at Roberts' sole cost and expense, construct a gate restricting access to the Driveway subject to the City's approval of the design and location of such gate.

4. **Additional Access.**

A. **City Access.** The City shall have access at all times to all portions of the City Property, as well as to the property known as Inspiration Point, immediately to the south of the City Property, to maintain all City infrastructure and to exercise all of City's rights as a municipal corporation. Without limiting the previous sentence, the City reserves the right for access to the Roberts Property by fire and other emergency vehicles, by garbage trucks collecting garbage and recycling, by public works vehicles and equipment for purposes including, but not limited to, maintaining City infrastructure, including drains and other infrastructure stabilizing Hemlock Street, and for the provision of other City services and other City needs.

B. **Neighbor Access.** By entering into this Easement Agreement, Roberts acknowledge that the City Property is dedicated right-of-way that is intended to provide access not just to the Roberts' Property, but to the property owned by other owners who abut the City Property (the "Abutting Owners"). Accordingly, Roberts agree that Abutting Owners shall have free and unencumbered access to the City Property, including the Driveway. To the extent any Abutting Owner takes access off of the Driveway prior to the City improving Nenana Avenue, that Abutting Owner will also be required to enter into an agreement similar to this Easement Agreement and pay its proportional share of any required maintenance and repair.

C. **Public Access.** By entering into this Easement Agreement, Roberts acknowledge that the City Property is dedicated right-of-way that the City Manages for the public. Accordingly, the

City may allow public access to and along the City Property for pedestrian, bicycle, and other access at any time.

5. **Term.** The Term of the Easement shall begin only upon the granting of all necessary permits to construct improvements on the Roberts Property, including all necessary land use approvals and building permits, and including the termination of all appeals and review periods, whether at the City, the Land Use Board of Appeals, or the courts of the State of Oregon. Once the Term has begun it shall be perpetual subject to the provisions of this Easement. Notwithstanding any other provision of this Easement, the City reserves the right at any time to construct and maintain a city street in the City's Property, which city street shall provide access to the Roberts Property. If the City determines to construct a City Street in the City's Property, the City shall give Roberts written notice of the same and Roberts shall, at its sole cost and expense, remove all or any portion of the Driveway as designated by the City within 90 days of receiving notice. If the City constructs a city street, Roberts shall pay to the City: (i) any fees or assessments payable by an owner of property in accordance with the then applicable ordinances of the City, and (ii) a proportionate share of the cost of the construction of the city street as determined by the City.

6. **Maintenance, Repair and Taxes.** Roberts shall at Robert's sole cost and expense, maintain the Driveway in good condition and repair. Roberts shall pay as and when due any real property taxes assessed against the Easement Property, to the extent any are assessed. In addition, Roberts shall post a bond, irrevocable letter of credit, or other surety acceptable to the City in the amount \$_____ to ensure the maintenance and repair of the Driveway. In the event the City determines that Roberts has not fulfilled its obligations under this provision, the City shall provide notice via mail to the address of the Roberts Property identifying any necessary repair or maintenance required for the Driveway. Roberts shall have 14 days from the City's mailing of notice to take action necessary to resolve the identified deficiency.

In the event of an occurrence resulting in death, significant bodily injury, or significant property damage related to the Driveway, the City may determine that the Driveway is no longer safe and require Roberts to remove the Driveway and return the Property to the condition it was in prior to the construction of the Driveway.

7. **Indemnification.** Roberts shall defend, indemnify and hold the City harmless from and against any and all claims arising from or in connection with the use of the Easement Property by Roberts or its invitees, guests, tenants and agents, together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorney fees and expenses.

8. **Insurance.** At all times Roberts shall maintain a commercial general liability insurance policy in an amount not less than \$3,000,000 combined single limit with an insurance company acceptable to City (the "**CGL Policy**"). The City shall be an additional insured under the CGL Policy. The CGL Policy shall be primary and noncontributing to any insurance maintained by the City. Contemporaneous with the execution of this Easement Agreement, Roberts is delivering to the City a certificate of insurance (with applicable endorsements)

evidencing the required CGL Policy. Roberts shall deliver to the City a certificate of insurance on each anniversary of the Effective Date.

9. **Attorney Fees.** In the event legal action is commenced in connection with this Easement Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and in the appeal therefrom. The term “**action**” shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction. The reference to “**costs**” includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out of pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

10. **Injunctive Relief.** In the event of any violation or threatened violation by Roberts of any of the agreements provided herein, Roberts acknowledges that the City will suffer damage which would be irreparable and not fully compensable by damage recovery. Consequently, the City shall have, in addition to the right to collect damages and other rights and remedies as provided herein and by law, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

11. **Run with the Land.** The Easement shall be appurtenant to and benefit and burden the City Property and the Roberts Property and shall run with the land as to all real property burdened and benefited hereby. This Easement Agreement and the Easement shall inure to the benefit and shall be binding upon Roberts and the City and their respective heirs, successors and assigns, tenants, mortgagees and beneficiaries under trust deeds.

12. **Capacity of City and City Approval.** City enters into this Easement Agreement in its capacity as the entity with jurisdictional control and authority over the Easement Property. For avoidance of doubt, the City reserves all of its authority and discretion in connection with any and all acts taken by the City in its capacity as a municipal corporation, including, but not limited to land use and development approvals. In connection with any consent, approval, or other right under the terms of this Easement Agreement, the City shall have the right to approve, consent, or exercise such other right in its sole and complete discretion.

[This space left blank intentionally – signature page follows]

IN WITNESS WHEREOF, the City and Roberts have executed this Easement Agreement as of the date set forth above.

CITY:

City of Cannon Beach

By: _____
Sam Steidel, Mayor

ROBERTS:

Stanley Roberts

Rebeca Roberts

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of [_____] 2021, by Sam Steidel, the Mayor of the City of Cannon Beach, an Oregon municipal corporation.

Notary Public for _____
My Commission Expires: _____

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of [_____] 2021, by Stanley Roberts.

Notary Public for _____
My Commission Expires: _____

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of [_____] 2021, by Stanley Roberts.

Notary Public for _____
My Commission Expires: _____

EXHIBIT A

[Legal description of City Property]

That portion of Nenana Avenue west of Atlantic Street (now known as Hemlock Street), between Block 1 and Block 2, Tolovana Park Subdivision, Cannon Beach, Clatsop County, Oregon.

EXHIBIT B

[Legal description of Roberts Property]

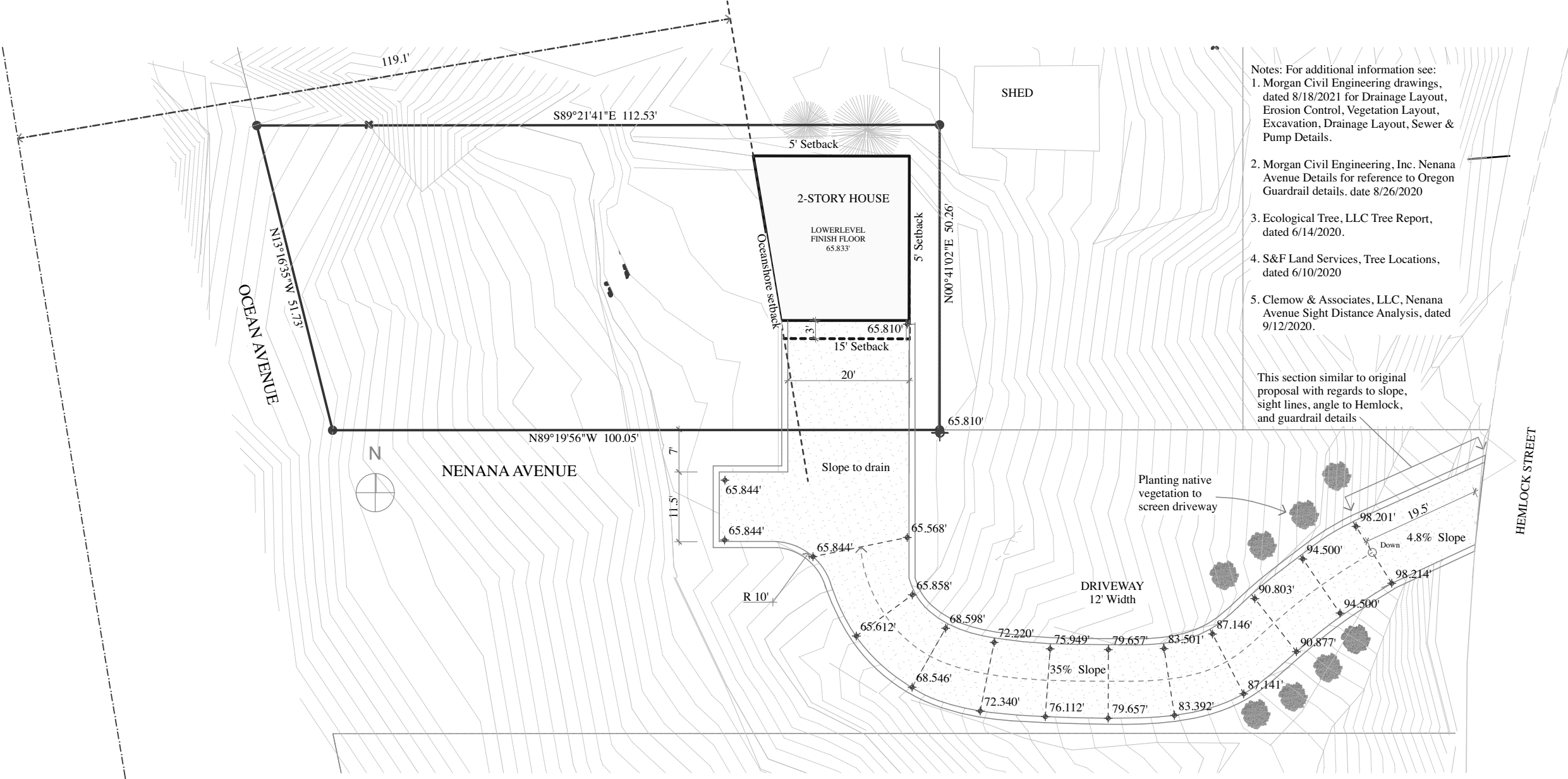
Lot 13, Block 1, Tolovana Park Subdivision, Cannon Beach, Clatsop County, Oregon.

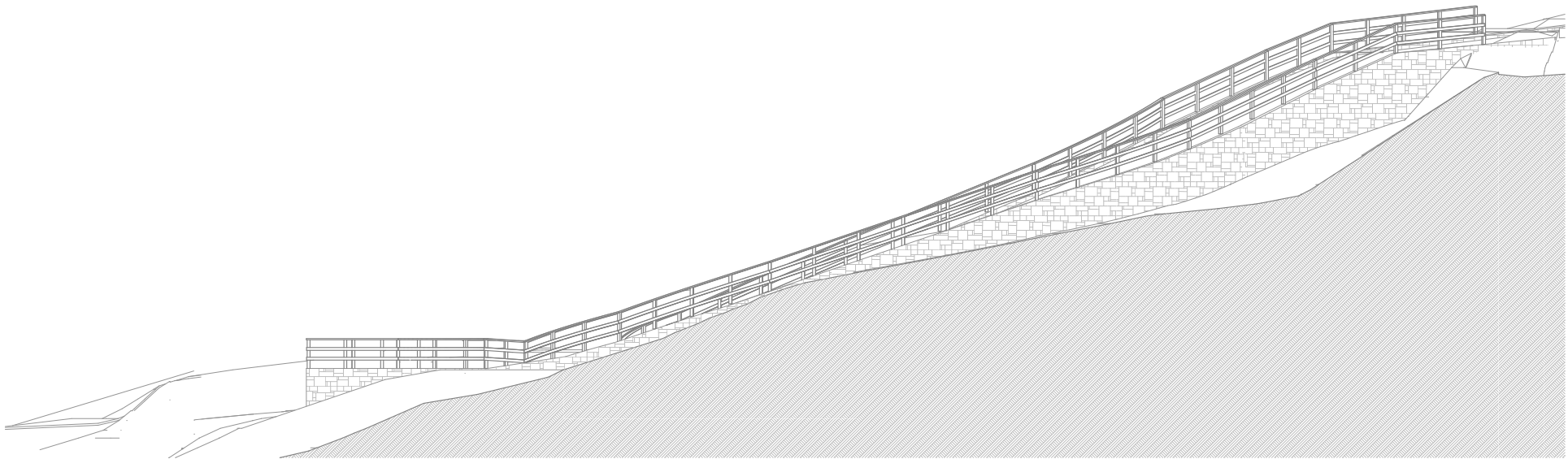
EXHIBIT C

[Legal Description of Easement Property]

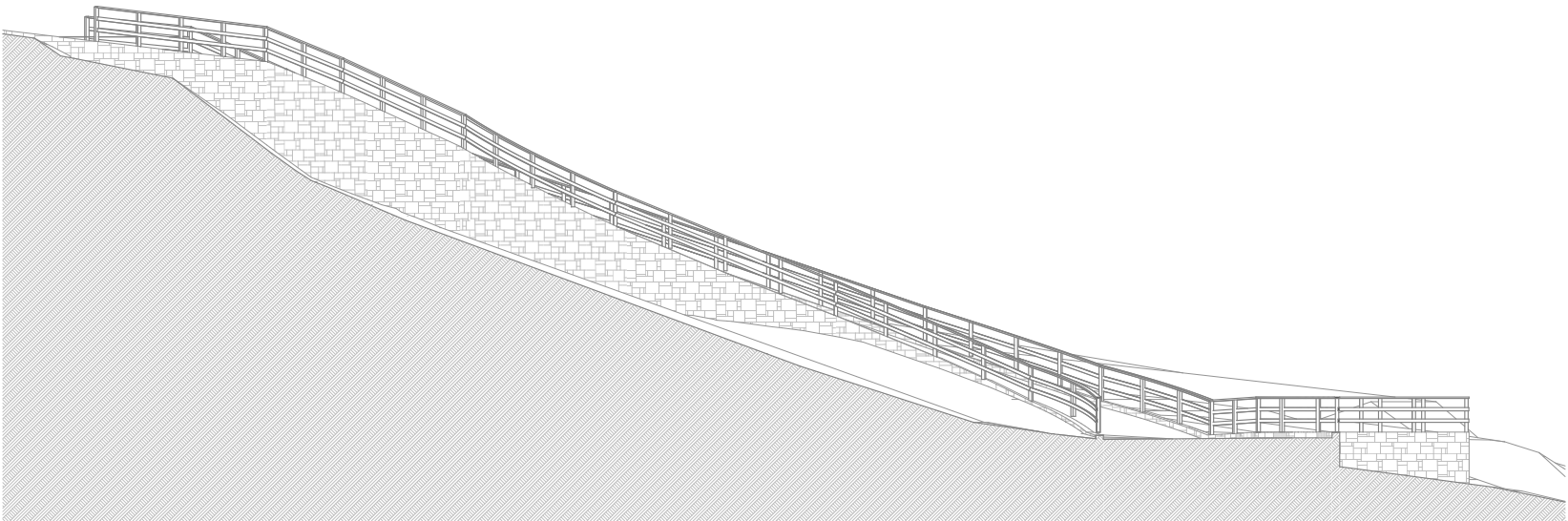
EXHIBIT D

[Depiction of Easement Property]

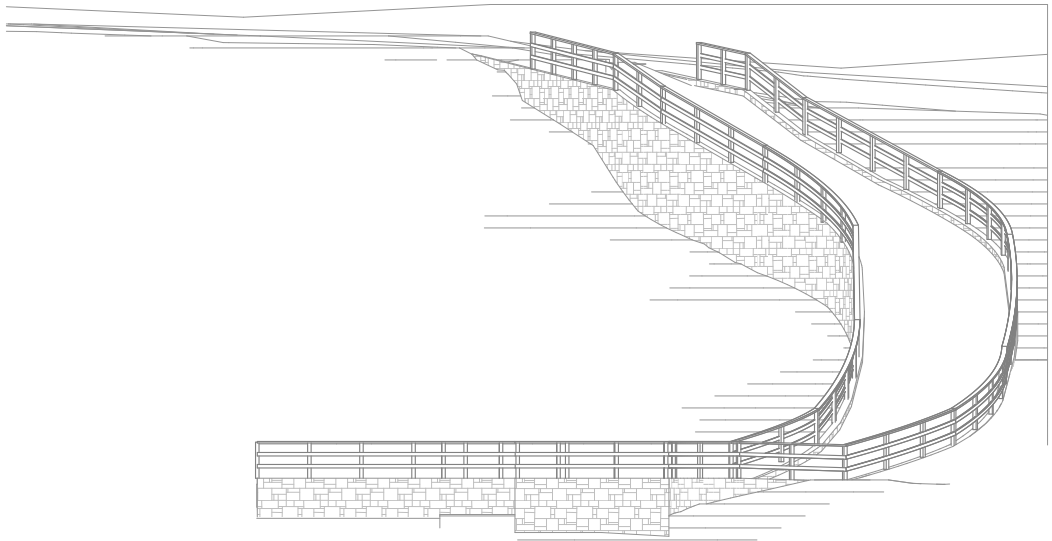




SOUTH ELEVATION

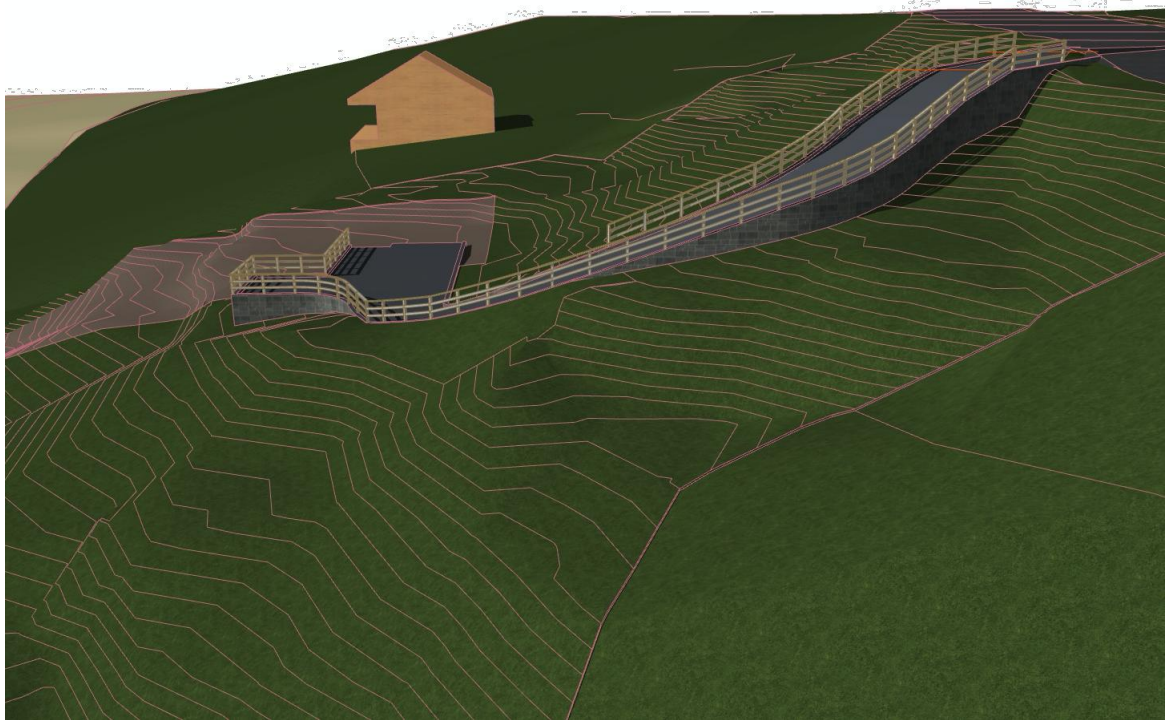


NORTH ELEVATION

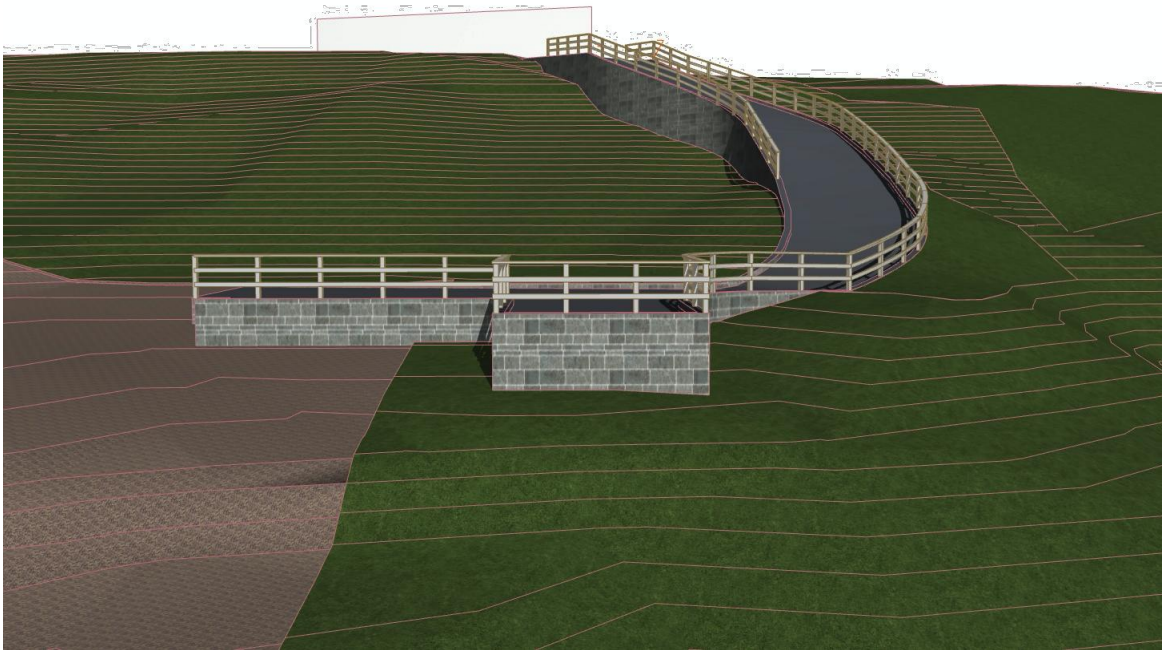


WEST ELEVATION

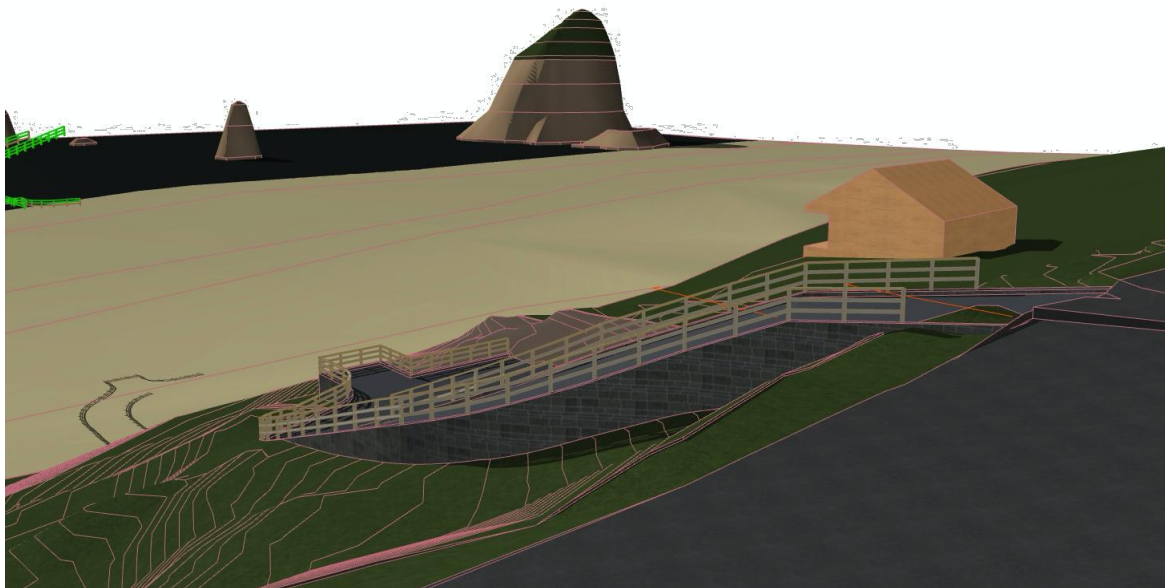
Note: See Morgan Civil Engineering, Inc. Nenana Avenue Details for reference to Oregon Guardrail details (Not shown on elevations)



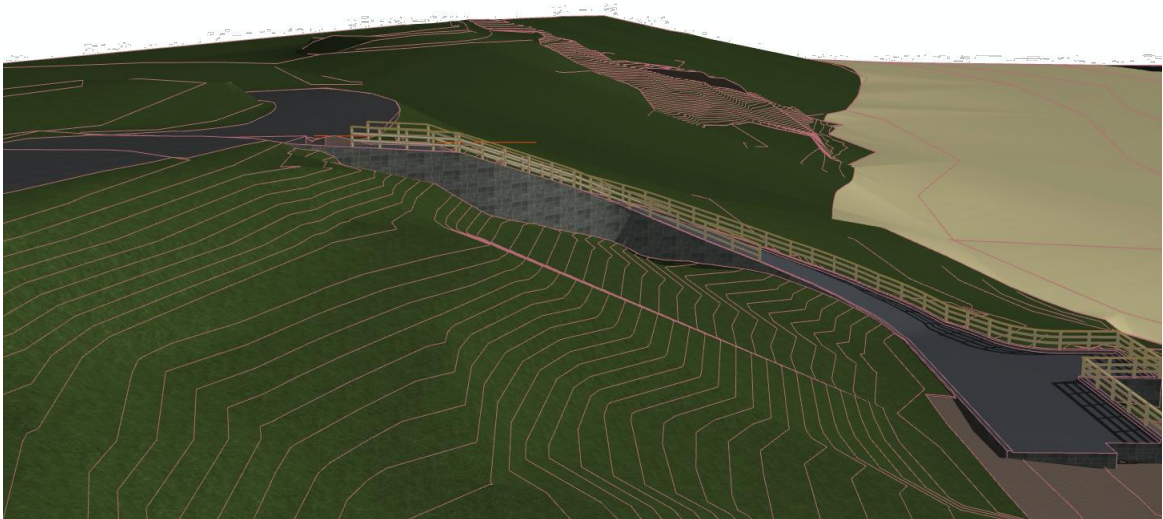
View from South



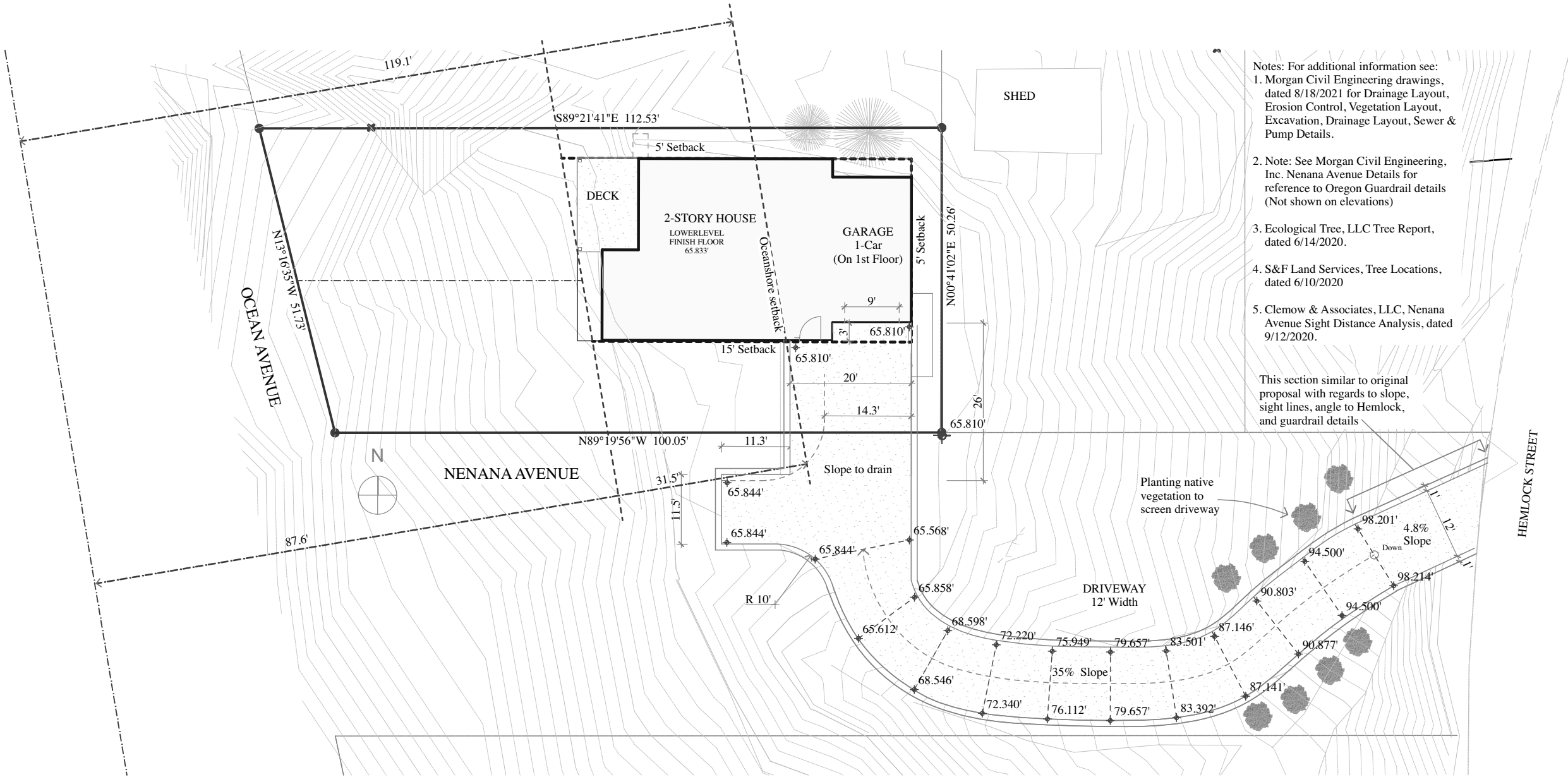
View from West



View from Hemlock



View from North



West Nenana Ave.

Proposed Roadway December 14th City Council Work Session



Existing Conditions



Vicinity



Existing Ownership



Existing Conditions





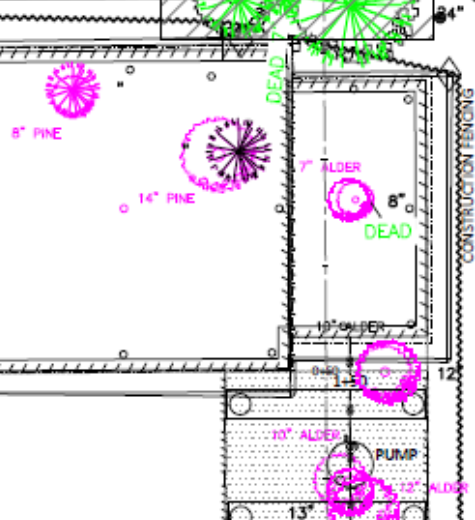
Original Plans

NENANA AVE
(50')

TAX LOT 600

TAX LOT 1300

20"
15" SPRUCE
15"
24" FROM
PROPERTY
LINE
24" SPRUCE 22"



14

15

TAX LOT 500



PRESERVE TREES

30"

30"

2" Ø SEWER SERVICE (PRESSURE)

48"

CONSTRUCTION FENCING

18"

22"

16" SPRUCE

20"

18"

36"

15"

15"

15"

15"

15"

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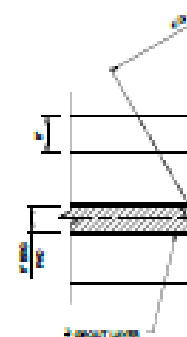
DOUBLE 12"

DO NOT REMOVE
TREE STUMP

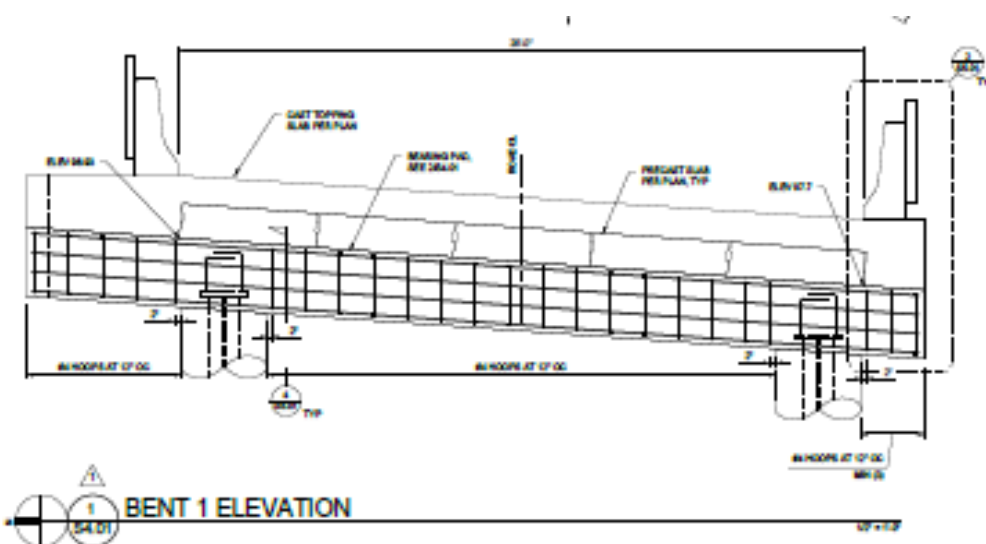
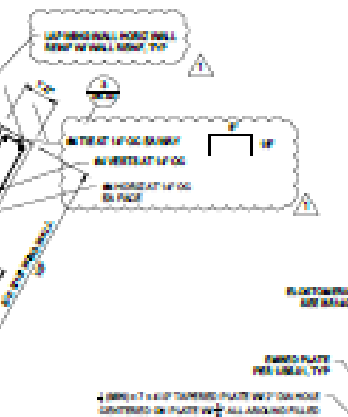
DO NOT REMOVE
TREE STUMP

TAX LOT 1200

Hemlock



2 BEARING PAD DETAIL

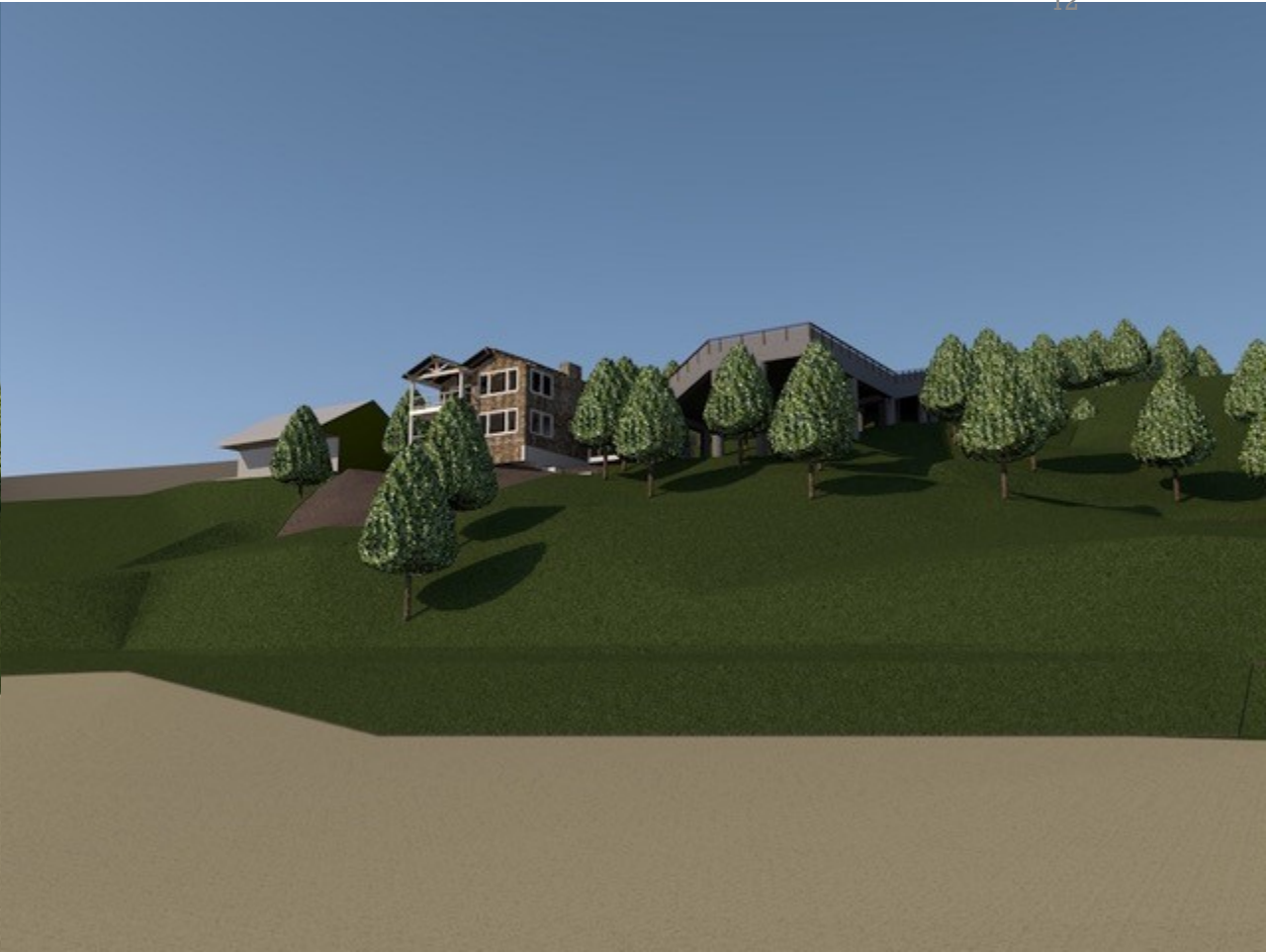
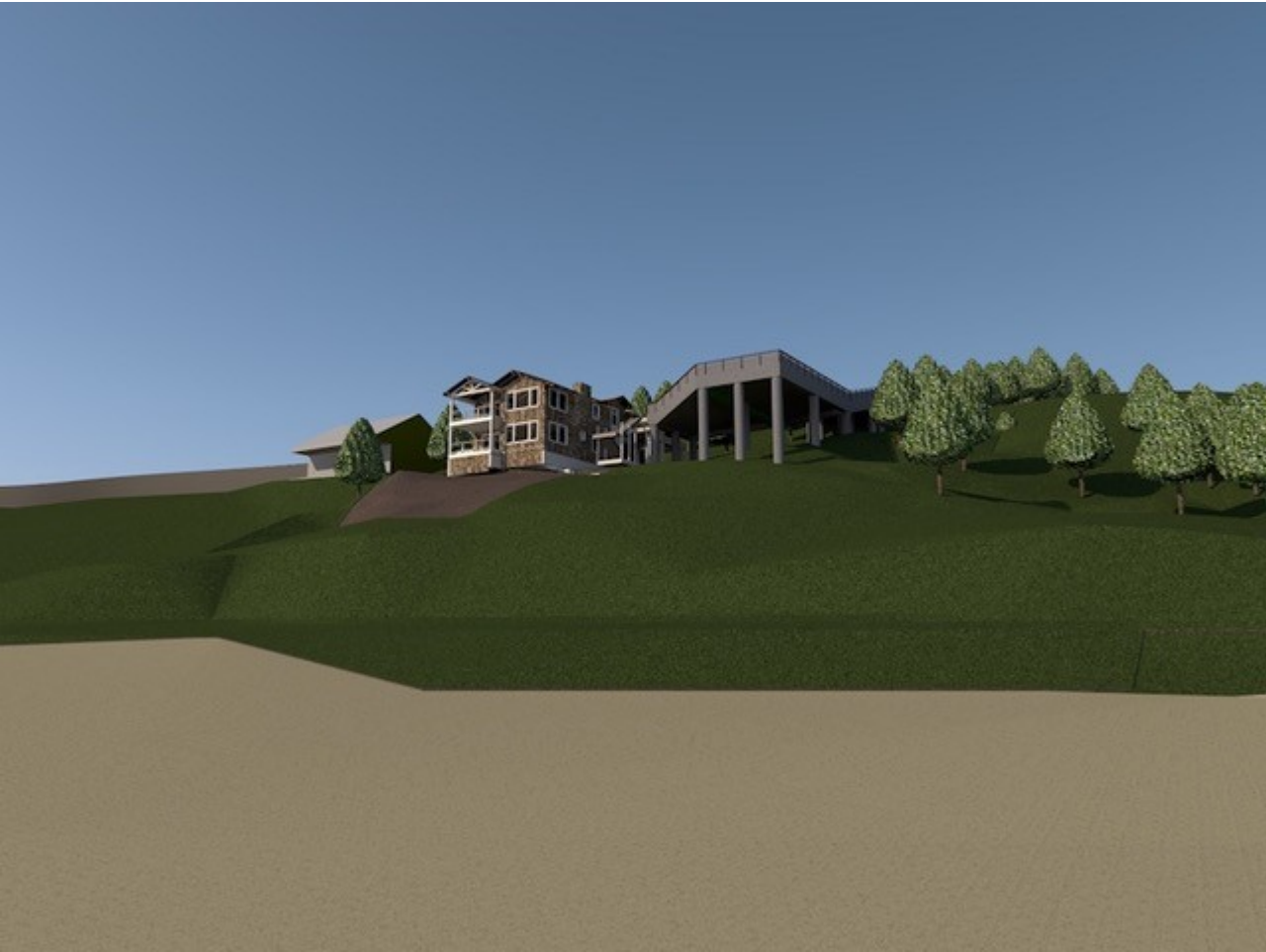


BENT 1 ELEVATION

Visual Renderings



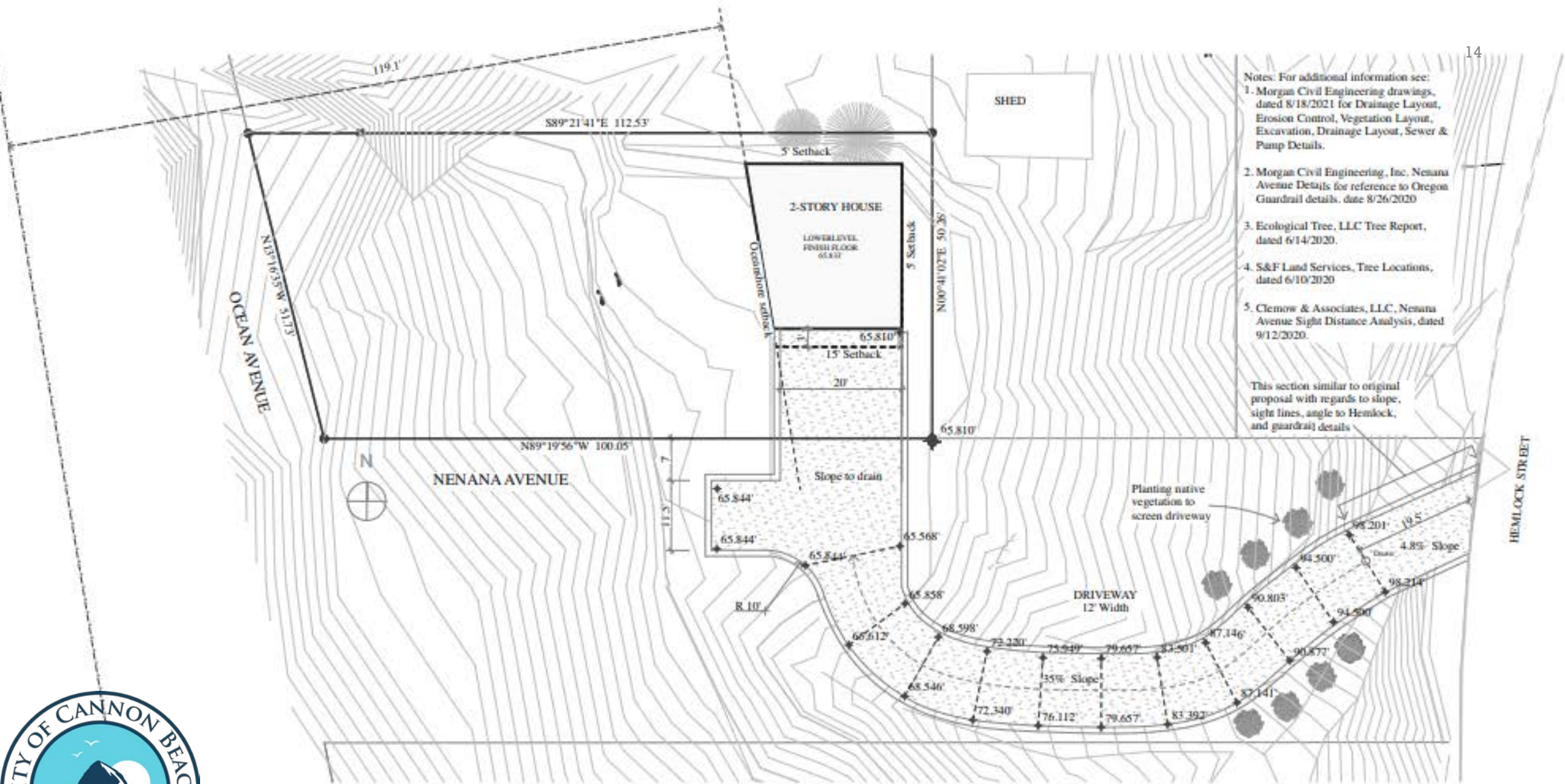
Visual Renderings



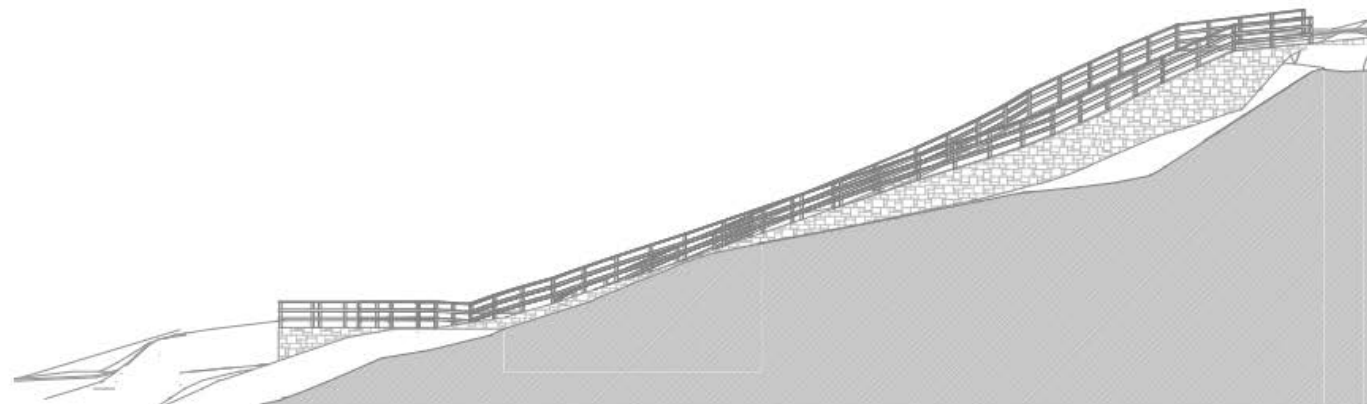
Visual Renderings



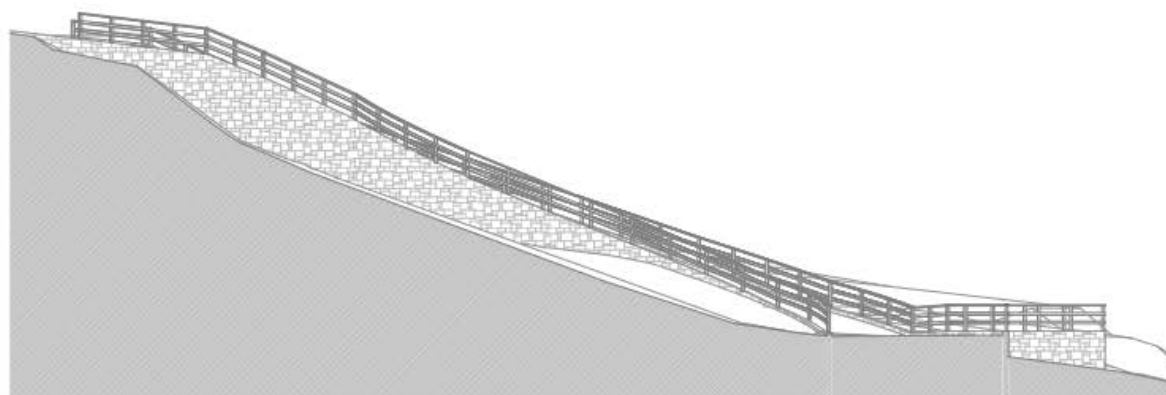
Alternative Plans



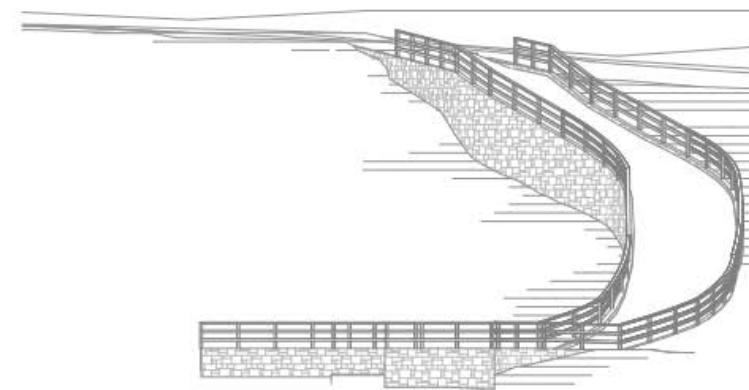
Alternative Driveway Plans: 1



SOUTH ELEVATION



NORTH ELEVATION

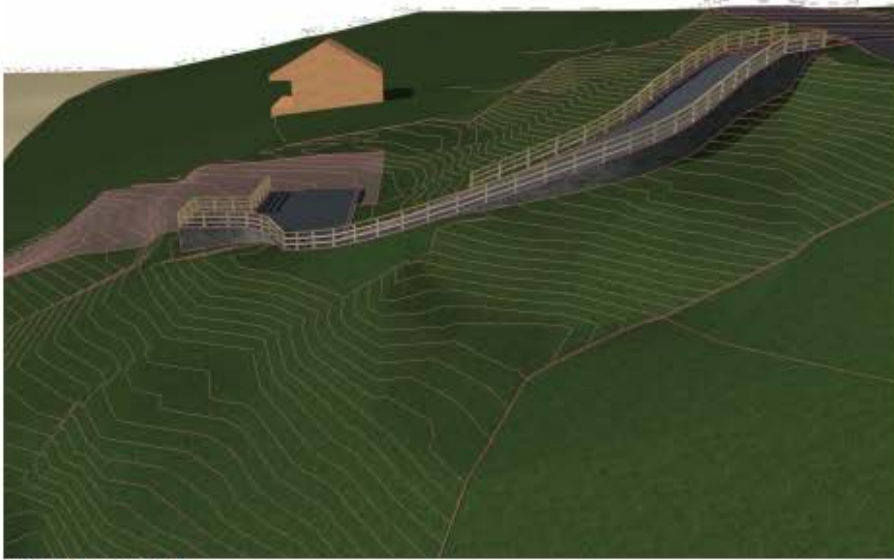


WEST ELEVATION

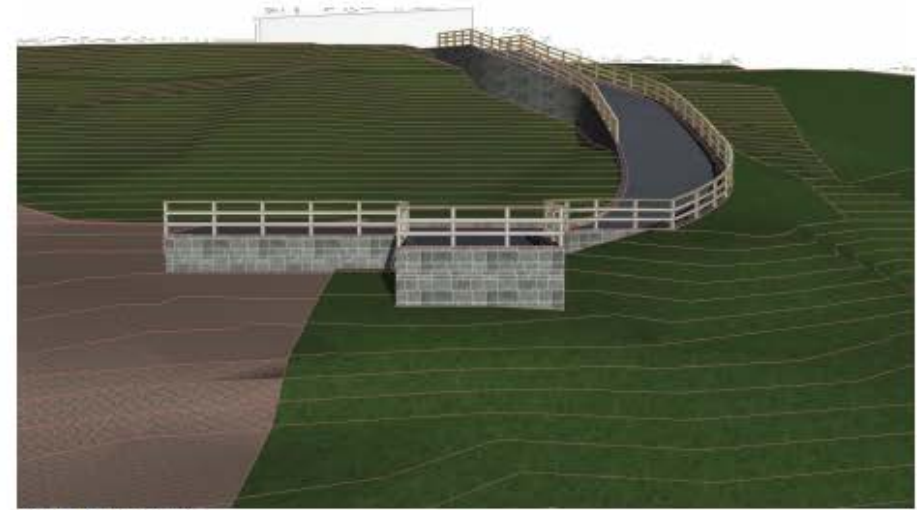
Note: See Morgan Civil Engineering, Inc. Nenana Avenue Details for reference to Oregon Guardrail details (Not shown on elevations)



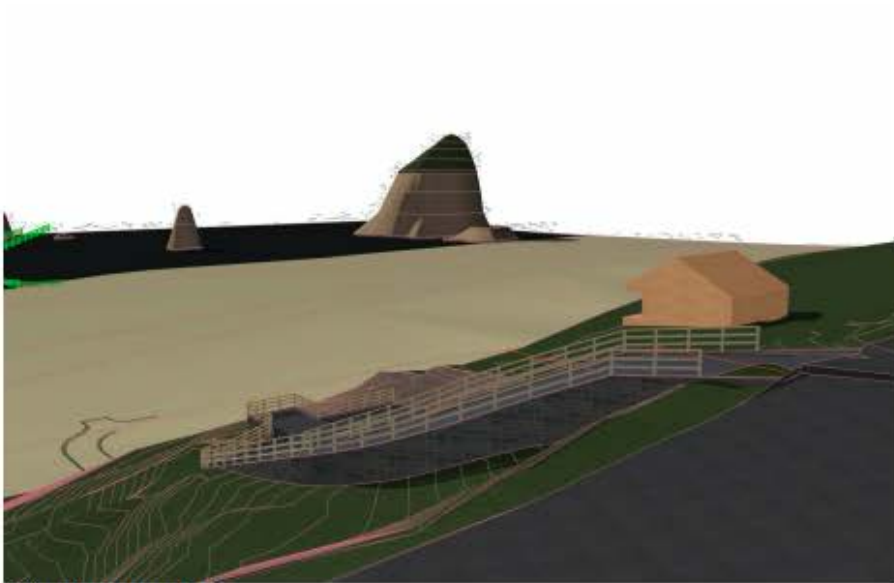
Alternative Driveway Plans: 2



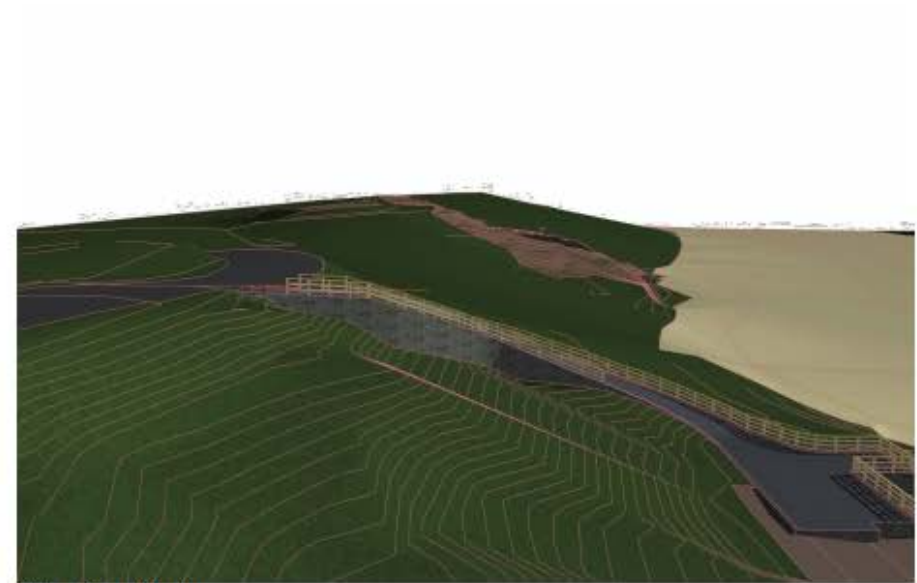
View from South



View from West

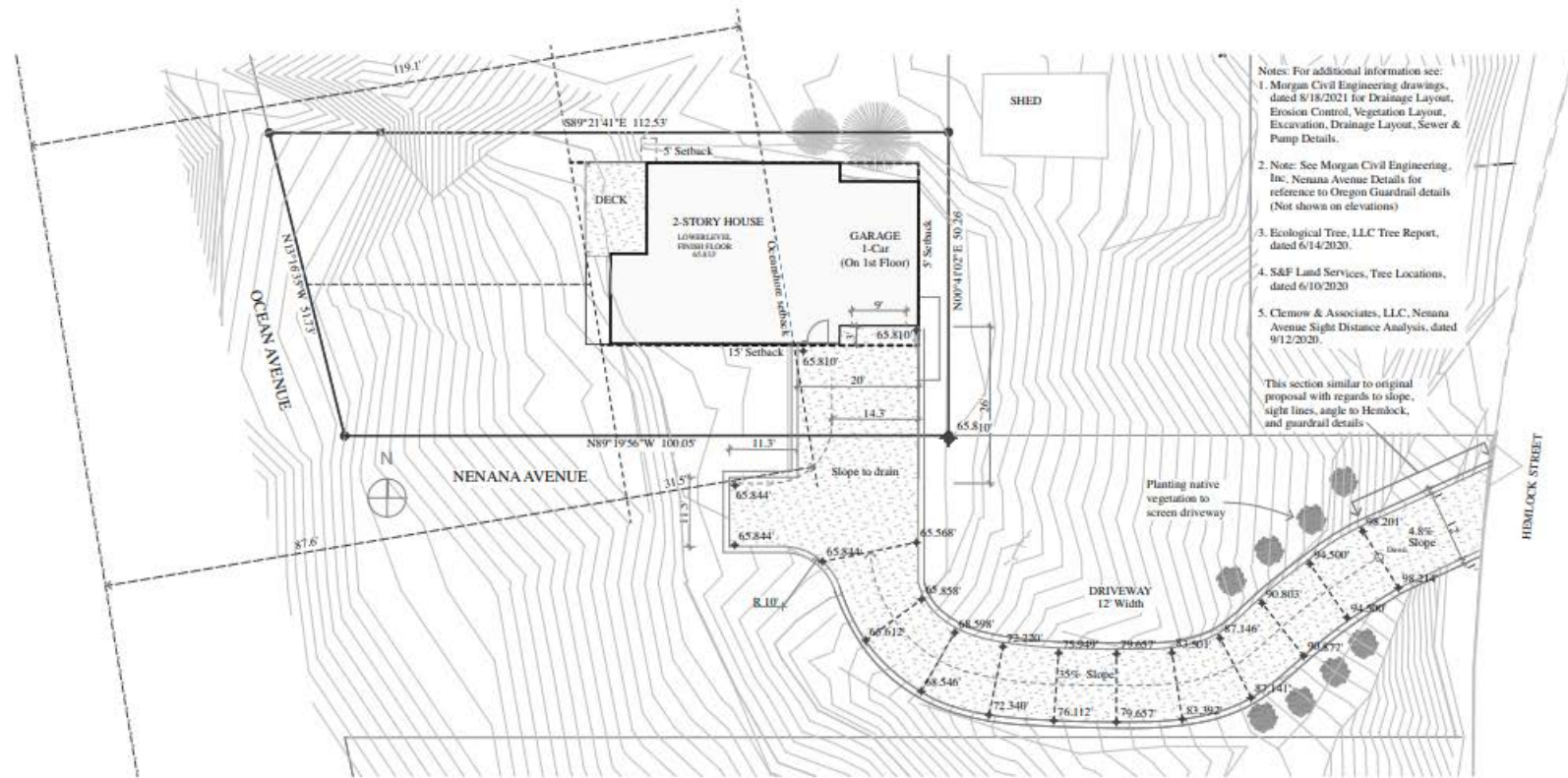


View from North



View from East





4


SUPPLEMENTAL SUBMISSION: DRIVEWAY-PROPOSED HOUSE
ROBERTS PROPERTY

7/9/21

1" = 20'

Alternative Driveway Plans: 4





Cannon Beach Comprehensive Plan Guidance

RECREATION, OPEN SPACE, NATURAL, VISUAL, AND HISTORIC RESOURCES POLICIES

2. The City recognizes the importance of the beach as a recreation and economic resource to the area.
(Ord 86-11; Res 79-02)

8. The City shall carry out a program of providing public access to the ocean beach and Ecola Creek by:
 - a. Retaining existing public ownership, rights-of-way, and similar public easements which provide access to coastal waters or replacing such access if they are sold, exchanged or transferred (rights-of-way may be vacated so long as equal or improved access is provided as part of a development project).
 - b. The City is developing a system of five major public access points to the ocean beach and Ecola Creek estuary. These five major public access points are: Les Shirley Park, 2nd Street street-end, Whale Park, Ecola Ramp and Tolovana Wayside. Each public access point consists of three elements: parking, physical access improvements and appropriate signage. Some access points shall be designed to permit access for persons with limited mobility.
 - c. If needed, the City will develop a system of secondary public access points upon completion of the major public access points. All street and alley ends abutting the beach are considered potential beach access points.
 - d. The City will work with affected property owners to establish a path along Ecola Creek between Ecola Creek Park and the City Park.
 - e. The City may require that proposed structural shoreline stabilization projects that abut street-ends and other public rights-of-way incorporate steps and paths or other improvements that improve public access.
(Ord 95-04; Ord 88-03; Ord 86-11)



AREA SPECIFIC HAZARDS POLICIES

1. The Curves Area (Tolovana Hill):

Further development within the large active landslide on either side of Hemlock must be carefully planned and closely monitored. *(Res 79-02)*

STREETS GUIDELINES AND RECOMMENDATIONS

1. Alternative transportation uses of City rights-of-way should be considered where they are not needed for streets. These uses may include bike paths and walking trails. *(Ord 95-04; Res 79-02)*
2. The City Council may consider blocking of streets which constitute public safety hazards because of poor visibility or steepness if other access is available. *(Res 79-02)*





Sit Rep

Building/Development permit for the construction of a house on the property was conditionally approved on August 27, 2020

CONDITIONS

1. A Tree Replacement Plan for the trees removed from the private property, as specified in Chapter 17.70.040 per 17.70.030(G). **A tree plan has been submitted, but not yet approved by community development director.**
2. An Oceanfront Setback Survey produced prior to the issuance of a building permit, which identifies all structures conform to Chapter 17.42.050(A)(6), or Setback Reduction approval from the Cannon Beach Planning Commission, under Chapter 17.64. **Applicant disagrees with this condition and has appealed. Awaiting a decision of the Oregon Court of Appeals.**
3. Approved Right-of-Way Permit for construction staging through the City of Cannon Beach Director of Public Works. **Development Permit and ROW Permit submitted for Phase 1 Stabilization, but has been appealed by the Neuperts and will be before the Planning Commission in November.**
4. Approved Roadway for the extension of W. Nenana or acceptable access easement through the City of Cannon Beach Director of Public Works. **Initial review of roadway extension has been completed and deficiencies noted to applicant. Awaiting re-submittal by applicant.**
5. An approved building permit through the City of Cannon Beach Building Official. **Plan Review pending before building official.**



Process: Where we stand 12.14.2021

Scenarios

Scenarios

1. Nenana – Full Buildout;
2. Nenana – Temporary Private Driveway Easement;
 - a. Public Drive;
3. Pacific Drive – Condemnation Approach;
4. Revised Roadway required.



Process: Where we stand 12.14.2021



Scenario 1: Nenana – Full Buildout

Scenario 1

Nenana – Full Buildout

1. Public Works Director issues an Approval of the Roadway Design for the W. Nenana that the Roadway meets Cannon Beach road standards under Chapter 12.34.030 & 040.

Pros:

- Provides safe access to subject property

Cons:

- High cost to owner to construct and maintain
- Public backlash concerning aesthetics and visual impacts to Inspiration Point
- New road monopolizes public ROW, without public benefits
- Expensive connection to roadway for any future development
- Presents potential public vehicular and pedestrian safety concerns
- Likely legal challenges by Neuperts





Scenario 2: Nenana – Private Driveway Easement

Scenario 2

Roberts Temporary Private Driveway Easement

1. Public Works Director issues a Right of Way permit, conditioned upon the recordation of a Temporary Private Driveway Easement, granting the Roberts:
 - a. Acceptable vehicular access to the property, until the City or any other property owner requests access via a Right-of-Way permit issued through Public Works;
 - b. Construction of a private gate, temporarily benefitting the Roberts;
 - c. Agreement that at the time when any future access is required, the driveway would be removed at owner's expense and the property owner obliged to contribute their fair portion to construct and maintain the agreed upon roadway;
 - d. All agreements and conditions are to run with the land.

Pros:

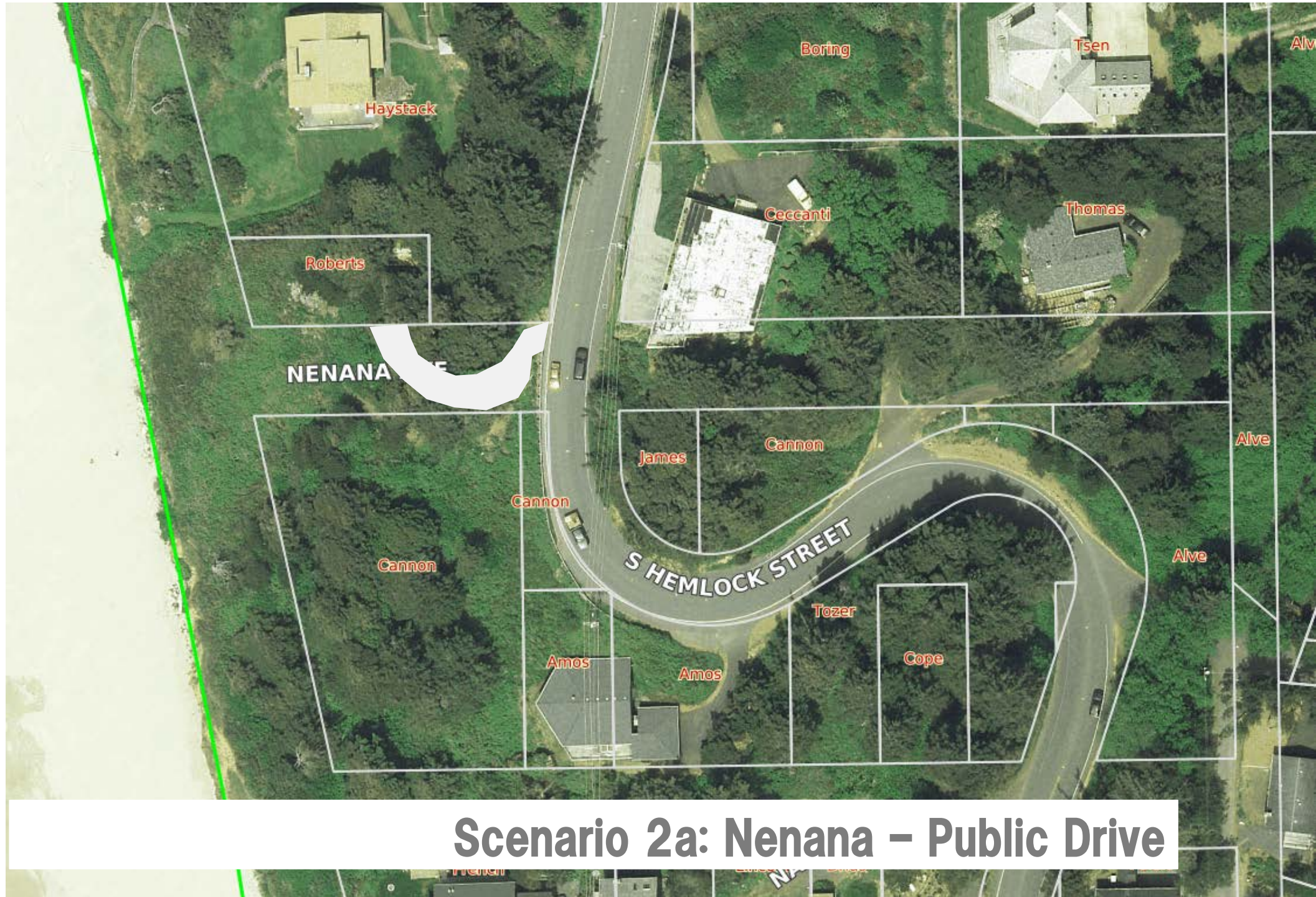
- Provides safe access to subject property
- Low impact temporary solution

Cons:

- Possible public backlash concerning private access on public property
- Precedent setting
- Likely legal challenges by Neuperts



Nenana – Temporary Private Driveway Easement



Scenario 2a: Nenana – Public Drive

Scenario 2a

Roberts Public

1. Public Works Director issues a Right of Way permit, and applicant constructs a public drive:
 - a. No temporary private access easement;
 - b. No gate;
 - c. Agreement that at the time when any future access is required, the driveway would be removed at owner's expense and the property owner obliged to contribute their fair portion to construct and maintain the agreed upon roadway;
 - d. All agreements and conditions are to run with the land.

Pros:

- Low impact solution

Cons:

- Possible public backlash
- Precedent setting
- Likely legal challenges by Neuperts
- Management concerns
- Safety concerns



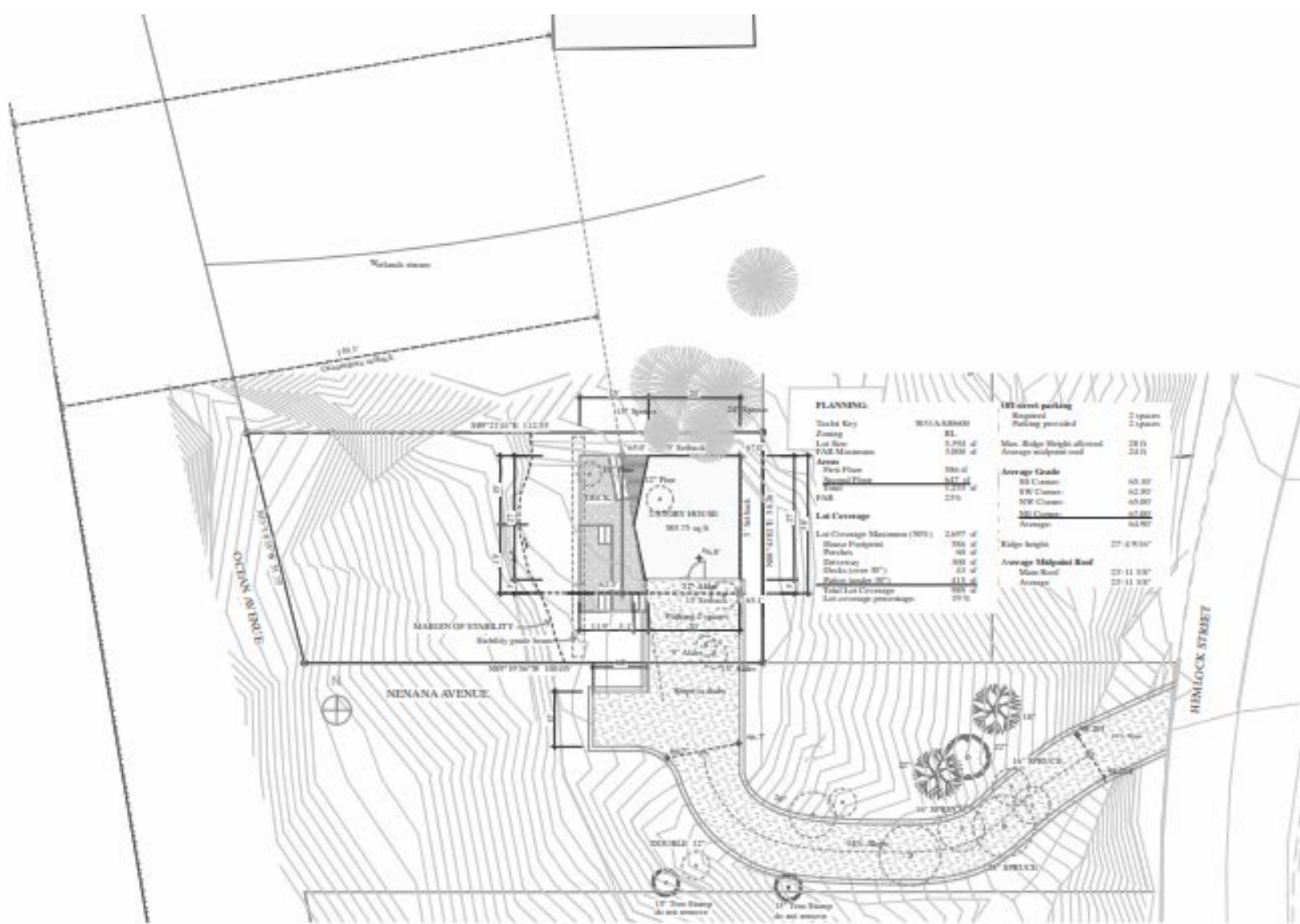


Scenario 3: Pacific Drive – Condemnation Approach



2 SITE PLAN

SCALE: 1" = 20'



Scenario 3: Pacific Drive – Condemnation Approach 32

Scenario 3

Pacific Drive – Condemnation Approach

1. City Council

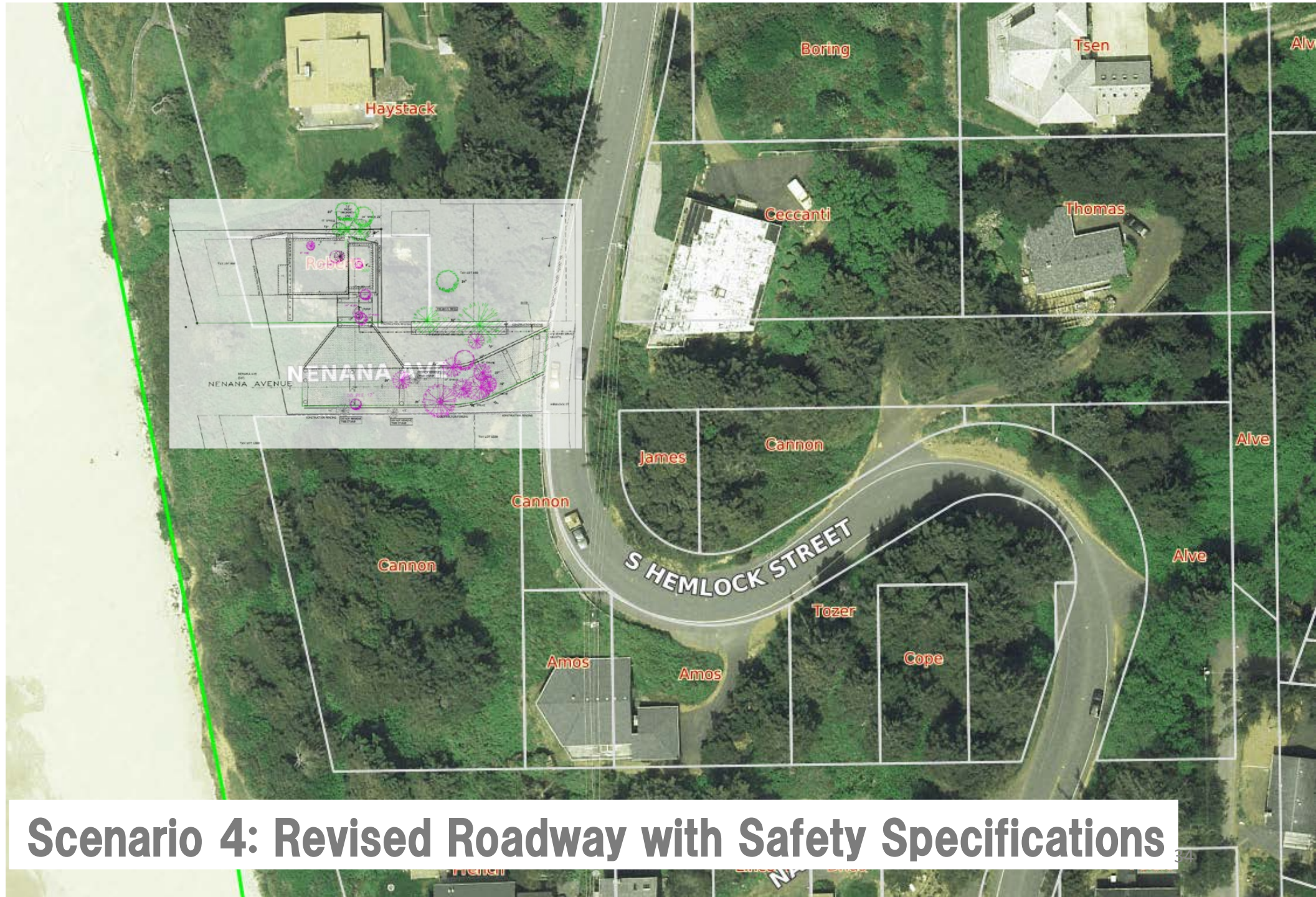
Pros:

- Provides safest access to subject property
- Limited aesthetic impact to beach and Inspiration Point

Cons:

- Public backlash concerning condemnation of private property
- Provides limited solution for other properties
- Certain legal challenges by Neuperts





Scenario 4: Revised Roadway with Safety Specifications

Scenario 4

Denial of Roadway or Approval with safety considerations, requiring revised Roadway benefitting all properties and meeting Safety Specifications

1. Public Works Director would deny roadway due to safety concerns, forcing the applicant to provide another alternative.

Pros: ?

Cons: Likely to present legal challenges
 Certain legal challenges by Roberts



Revised Roadway to Safety Specifications ³⁵

Decision Points

After Recording Return to:

City of Cannon Beach
163 E. Gower
Canon Beach, Oregon 97110
Attention: City Manager

DRIVEWAY ACCESS EASEMENT AGREEMENT

THIS DRIVEWAY ACCESS EASEMENT AGREEMENT (“**Easement Agreement**”) is made and entered into effective this ____ day of [_____] 2021 (the “**Effective Date**”), by and between the City of Cannon Beach, a municipal corporation (“**City**”) and Stanley Roberts and Rebecca Roberts (collectively, “**Roberts**”).

RECITALS

A. City owns and has jurisdictional control over the real property known as West Nenana Avenue and legally described on Exhibit A attached hereto and by reference incorporated herein (“**City Property**”).

B. Roberts owns real property adjacent to the City Property and legally described on Exhibit B attached hereto and by reference incorporated herein (“**Roberts Property**”).

C. The City Property is an unimproved public right of way. Roberts desires to construct a residential house on the Roberts Property and Roberts has requested the City grant Roberts an easement for a driveway providing access to the Roberts Property from Hemlock Street (the “**Driveway**”).

D. The City has agreed to grant such an easement to Roberts subject to the terms and conditions of this Easement Agreement. Such easement is not in derogation of the City’s obligations to maintain the City Property for potential future opening of the City Property as a portion of West Nenana Avenue.



Process: Where we stand 11.09.2021

After Recording Return to:

City of Cannon Beach
163 E. Cannon

Roberts Temporary Private Driveway Easement

1. Public Works Director issues a Right of Way permit, conditioned upon the recordation of a Temporary Private Driveway Easement, granting the Roberts:
 - a. Acceptable vehicular access to the property, until the City or any other property owner requests access via a Right-of-Way permit issued through Public Works;
 - b. Construction of a private gate, temporarily benefitting the Roberts;
 - c. Agreement that at the time when any future access is required, the driveway would be removed at owner's expense and the property owner obliged to contribute their fair portion to construct and maintain the agreed upon roadway;
 - d. All agreements and conditions are to run with the land.

D. The City has agreed to grant such an easement to Roberts subject to the terms and conditions of this Easement Agreement. Such easement is not in derogation of the City's obligations to maintain the City Property for potential future opening of the City Property as a portion of West Nenana Avenue.



Process: Where we stand 11.09.2021



Thank You

Input Received

From: [Marc Mueller](#)
To: [City Hall Group](#)
Subject: Please stop unsafe driveway near the Hemlock S-Curves
Date: Wednesday, February 16, 2022 5:36:40 PM

To those on the Cannon Beach City Council,

Please do not let the Roberts family and their attorneys continue to force their planned unsafe and unlawful developments on and around their property to continue wasting time and money for Cannon Beach. Their actions only benefit themselves and create hazards for others while not preserving precious coastal property and denying access that should be available to all with the City of Cannon Beach protecting the best public use.

It appears this issue will continue. Please stand firm opposing all of their tactics to get the council to back down.

The Muellers

From: [Aaron Matusick](#)
To: [City Hall Group](#)
Subject: Hemlock S Curves Driveway Testimony
Date: Thursday, February 17, 2022 2:16:56 PM

Hello City Council. I'm writing hoping this email is considered testimony for the upcoming March 1, 2022 meeting as I do not plan to attend in person or via zoom. I am against the proposed easement for a private driveway. I agree with and couldn't make any better arguments than Haystack Rock, LLC's lawyers, so I restate them here:

The driveway will cause a dangerous intersection on the Hemlock S-Curves. Applicants' prior traffic study shows that intersection sight-distance minimums cannot be met for all turns, resulting in cars having to slow to avoid collision and, in fact, likely unavoidable collisions once one car is stacked behind a turning car—and this analysis is based on only the 85th percentile speed.

The driveway will create increased risk of landslide for Hemlock Street and surrounding homes. Applicants' own geotechnical experts advised against an on-grade road because it would add substantial weight to the large, active landslide. Further, the driveway would complicate access for maintenance of the City's underground dewatering system, which is critical to the stabilization of the S-curves hillside.

It is unlawful for public right-of-way to be dedicated to private use. Common law and Oregon statute prohibit the grant of private rights in public land except in narrow circumstances—not present here.

Nenana Avenue can only be used for *public* thoroughfare. Use of Nenana Avenue was granted to the *public* as a "thoroughfare forever." As a mere trustee of the right-of-way, the City must put the property to the best public use. This proposal benefits only one property, creates unsafe conditions, needlessly removes trees, prevents alternative public uses, intrudes on the oceanfront setback, and mars the landscape above Haystack Rock. This is the opposite of in the public's interest.

Thank you for your time and consideration.

Aaron Matusick, General Counsel

Affinity Property Management, LLC

1303 SW 16th Ave

Portland, OR 97201

Ph:(503)892-0099 | F: (503) 892-3311

amatusick@affinityproperty.com

www.affinityproperty.com



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From: [ROBERT WAYNE](#)
To: [City Hall Group](#)
Subject: BOB WAYNE
Date: Thursday, February 17, 2022 3:08:51 PM

HI NANCY AND THE GANG OF 5COUNCIL

I LOVE YOU GUYS

am against the proposed easement for a private driveway. I agree with and couldn't make any better arguments than Haystack Rock, LLC's lawyers, so I restate them here:

The driveway will cause a dangerous intersection on the Hemlock S-Curves. Applicants' prior traffic study shows that intersection sight-distance minimums cannot be met for all turns, resulting in cars having to slow to avoid collision and, in fact, likely unavoidable collisions once one car is stacked behind a turning car—and this analysis is based on only the 85th percentile speed.

The driveway will create increased risk of landslide for Hemlock Street and surrounding homes. Applicants' own geotechnical experts advised against an on-grade road because it would add substantial weight to the large, active landslide. Further, the driveway would complicate access for maintenance of the City's underground dewatering system, which is critical to the stabilization of the S-curves hillside.

It is unlawful for public right-of-way to be dedicated to private use. Common law and Oregon statute prohibit the grant of private rights in public land except in narrow circumstances—not present here.

Nenana Avenue can only be used for *public* thoroughfare. Use of Nenana Avenue was granted to the *public* as a "thoroughfare forever." As a mere trustee of the right-of-way, the City must put the property to the best public use. This proposal benefits only one property, creates unsafe conditions, needlessly removes trees, prevents alternative public uses, intrudes on the oceanfront setback, and mars the landscape above Haystack Rock. This is the opposite of in the public's interest.

Thank you for your time and consideration.

ROBERT WAYNE MD KI7JWZ
kermit6@mac.com
CELL 503 440 3104
robertwaynemd.com



February 17, 2022

Dear Councilors and Mr. Adams:

The Roberts' are requesting a private easement over City right of way to enable them to build a private driveway to their proposed house on an active landslide and currently forested hillside just south of Haystack Rock. Red flags are waving and alarm bells are ringing.

This request is another attempt on their part to build on an unstable site and shows disregard for the environmental limitations the site presents. The Roberts property is on very steep unstable land; the last house built there slid off its foundation. Nenana Avenue has been granted to the *public* as a "thoroughfare forever." The City, being the trustee of the right of way, must consider the property's best public use. This proposal benefits only one property, creates unsafe conditions, needlessly removes trees, prevents alternative public uses, intrudes on the oceanfront setback, and mars the landscape above Haystack Rock. This is the opposite of in the public's interest. The proposal also ignores City Comprehensive Plan provisions that call for preserving the limited remaining natural shoreline in Cannon Beach and call for careful planning of any development on the Tolovana Hill Curves area. The City Council should not grant an easement to allow the Roberts' proposed private driveway.

Again, I reiterate my objection to the purposed easement and state that their "dream" does not take into consideration all of the environmental issues the City and our community may be facing as a consequence of their actions.

Their "dream" to build on an unbuildable site, cutting down a dozen or more trees on an already unstable site will create a "nightmare" for years to come for others in the community.

Sincerely,

Betty Gearen

263 S. Laurel St.

Cannon Beach, OR 97110

PO Box 137

808 927-2678

From: [Robert Post](#)
To: [City Hall Group](#)
Subject: Hemlock S-curves
Date: Friday, February 18, 2022 3:34:35 PM

Dear sirs:

The Hemlock curves are already a hazard albeit a lovely one. The abrupt, slanted roadway plus the distraction of the sudden view to the south affects traffic adversely even now.

Allowing another roadway at that steep point would be a dangerous and unsightly absurdity. Believe us. We treasure Cannon Beach.

Robert H. Post, Trustee
Rebecca H. Post Trust
Owner of 240 W. Nebesna

Sent from my iPhone

From: [DENNIS O. MAYER](#)
To: [City Hall Group](#)
Subject: Proposed construction of house near inspiration point
Date: Friday, February 18, 2022 6:21:36 PM

Dear Sir,

I am writing to address my concerns regarding the proposed construction of a home by Stan and Rebecca Roberts. I have never met the Roberts family and have no intention of causing them undeserved distress. My only concerns are in regard to the physical damage and costs to Cannon Beach and in particular to the area around Inspiration Point.

This particular project may benefit the Roberts family, but it comes at a serious cost to the neighborhood. Mr. and Mrs. Roberts will benefit by being able to have a small house on their property, but they have alternatives to this project. There has been property for sale to the south of their lot (although I admit I do not know the details of that property). There have also been ocean front houses for sale just to the north of their property.

The costs to the city of Cannon Beach and the neighborhood around Inspiration Point are huge. The city loses its public easement on Nenana trail. This could be improved to a public walkway at some point in the future and benefit the public.

The Roberts family has requested that the ocean setback be moved farther to the west. Climate specialists are warning that over the next 50 years the oceans may rise and storms may be more severe. If anything, the ocean setback should probably be moved to the east not to the west.

To build on this lot will require the removal of much vegetation which keeps the land stable. Also the construction would disrupt the water drainage system that has been effective in stabilizing the land and roadway through the curves. If Hemlock slides again, transportation between the south end of Cannon Beach and downtown becomes very difficult.

Adding another entrance/exit road to Hemlock does not seem wise. In the summer the road is very congested with cars, pedestrians and bicycles. Adding another driveway can only add to the congestion not detract from it.

Finally I am concerned about what the retaining wall would do to the aesthetics of Inspiration Point. Along with Haystack Rock it is one of the most beautiful spots on the Oregon coast. It seems to me a visible retaining wall is not what Governor Oswald West would have envisioned.

Sincerely yours,

Dennis O.

Mayer

From: [Claudia Toutain](#)
To: [City Hall Group](#)
Subject: Submission for March 1st Meeting, Agenda Item for Easement
Date: Friday, February 18, 2022 6:46:16 PM

To whom it May Concern,

I live on the corner of Haystack Lane and Hemlock, with a full view of the area being discussed for a private easement. More specifically, my office, bedroom, kitchen, and living room look out onto Hemlock and the area in question giving me perhaps an almost exclusive daily, year round view of the area in question.

Consider the people and traffic in this situation. There are several parking areas on the east side of Hemlock across or close to the proposed access point. During a good part of the year, the parking areas are congested with people on foot and with cars. Cars parking or leaving, others waiting to take their place all on a curve in the road. More importantly, on any given day (during the busy season and on busy weekends) sometimes a dozen or more cars make a u-turn at the intersection of Haystack Lane and Hemlock jamming traffic up and down Hemlock, near or in front of the proposed easement. I have witnessed many “almost” accidents and dangerous situations. There are adults, children, pets, and people with camera equipment, umbrellas, food baskets, surf boards and bikes all leaving their cars and crossing Hemlock to access the beach all day long into the evening. There is a surprising amount of general foot traffic up and down Hemlock in this area as well, people running, walking their pets, and mothers with strollers, etc. Additionally, my corner property and the area between me and the proposed easement is often congested in the off season due to elk. They visit sometimes once a week or more (at all hours of the day and night), walk down Hemlock and cars can be backed up 10 deep on both sides of the road, often people park dangerously to hop out and take pictures. In my opinion, it is a very dangerous area to add another access point.

For the safety concerns outlined above and for many other reasons I have not addressed, including that we need wild and natural areas to preserve our towns beauty and environment (it should be left alone and not developed in anyway), we are so lucky to see eagles and other birds in those trees everyday — **I very strongly oppose the proposed easement.**

Claudia Toutain-Dorbec
P. O. Box 576
Cannon Beach, Oregon 97110
503-717-3429
claudia@claudiatoutain.com

From: [Kate Ingram](#)
To: [City Hall Group](#)
Subject: Easement on S-curves
Date: Monday, February 21, 2022 4:25:34 PM

Cannon Beach City Council,

Our family has beach property at 1923 Pacific, just north of this proposed easement. Our history goes back to 1964 when our Grandparents bought the house and property. All this matters because we have witnessed the active shifting of the S-curves. We think it is a bad idea to try and develop in this extremely shifting environment.

We are also very aware of the dangers of traffic along this road. Many people are so distracted by the grand beauty and scenic views, that we have witnessed many accidents and/or near misses. The proposed site of this driveway seems down right dangerous.

Part of the beauty of this city's environment is the open green spaces that leave views and natural vistas. It seems like this is a violation of that idea. It is being proposed at one of the area's most beautiful viewing spots. In several recent communications from the Cannon Beach City Council, you've mentioned the need to retain the cottage-like feel our beloved town. This proposal seems selfish, where money is overwhelming good judgment and the needs of the common good. We are hoping you will stand for us and say no to this bad idea.

The Snook Family
1923 Pacific
Cannon Beach

From: [Karen La Bonte](#)
To: [Jennifer Barrett](#)
Cc: [Bruce St. Denis](#)
Subject: FW: Roberts Driveway Easement
Date: Tuesday, February 22, 2022 8:35:03 AM
Attachments: [image001.png](#)

Jen,

I received the email below regarding the Robert's driveway easement.



Karen La Bonte

Public Works Director

City of Cannon Beach

p: 503.436.8068 | **tty:** 503.436.8097 | **f:** 503.436.2050

a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110

w: www.ci.cannon-beach.or.us | **e:** labonte@ci.cannon-beach.or.us

DISCLOSURE NOTICE: Messages to and from this email address may be subject to Oregon Public Records Law.

From: cozzie@hevanet.com <cozzie@hevanet.com>
Sent: Sunday, February 20, 2022 6:22 PM
To: Karen La Bonte <labonte@ci.cannon-beach.or.us>
Subject: Roberts Driveway Easement

Karen, Please route this to the proper person conduction the hearing. Gracias!

To the City of Cannon Beach:

I am writing to express my opposition to granting a driveway easement the Roberts are requesting. If I am reading the proposed request properly It seems to me they are requesting to turn a designated street into a private driveway. On its face that has a bad smell. I have been aware for years that Cannon Beach prides itself on maintaining a "village look." The idea of a village look is a very inclusive idea. Turning a public street into a private driveway has a very exclusive connotation to it. I really rebel at the thought that Cannon Beach wants to turn itself into a snobby city where only the rich can live. I realize cities must change with the advent of increased population usage but lets do our best to keep it open for everyone, this includes designated streets. Cannon Beach has changed a lot since I first started coming there. I remember the skating rink and duckpin bowling... long gone now. As a child my parents brought me there. Now I have my own home there. I really appreciate how inviting the city still is. Lets not turn it into a haven for the rich. I worry that by turning a designated road into a private driveway might set a president for others to do the same, thereby creating more exclusivity. The beach is open for all to enjoy thanks to the Oregon Beach Bill. Lets keep the city the same way. Also that particular area in question is very slide prone. If the area in question is a designated street but also a private driveway who would be responsible for maintaining the street (driveway) should the area begin to move and require major repair? We all think we own our homes and property but we are all just temporary residents. Just try not paying

your property taxes and see who owns it then!! The properties will all be sold and new tenants will move in eventually. After many years and sales what a can of worms might prevail with new owners demands? It just seems to me a much safer option to reject this grant of easement instead of kicking the can of worms down the road for others to deal with. Traffic safety is another issue where the driveway would intersect with Hemlock St. It is a dangerous location to enter and exit a driveway. But that is an issue I am sure the city is already aware of.

Please include this into the March 1st hearing.

Blair Kramer
131 W. Nelchena St.
Cannon Beach

To The Cannon Beach City Council,

22 Feb 2022

I am writing to express my disapproval of the requested private easement, under consideration by the Cannon Beach City Council, at Nenana Avenue for a right-of-way. As the trustee for the Cannon Beach residents, the City and its representatives (the City Council) are charged with managing Nenana Avenue for the benefit of all city residents. Granting this proposed easement will benefit a single resident while damaging many others.

Granting this easement will cause increased traffic congestion in the South Hemlock "S" curves. My wife and I live at the north end of the "S" curves and already have difficulty walking, bicycling and driving through this area because of congestion. Including a blind driveway will only make matters worse!

Developing a driveway at the proposed easement will increase landslide risk in an area that already has observable landslide risk. Houses that have been in the "S" curves for years have been mitigating landslide issues by buttressing their homes and decks as the hill slides into the ocean. Developing the Nenana Avenue right-of-way will also exacerbate the difficulty of maintaining the South Hemlock "S" curves, adding additional burden to the city.

Finally, the applicants requesting this easement have indicated they intend legal action if the city does not grant their easement. Allowing the city to be bullied into a decision will open the door for more of the same. Stop this behavior in its steps!

The Cannon Beach City Council **should not approve** the requested private easement on Nenana Avenue.

Jim Benton
1831 S. Hemlock
PO Box 1831
Cannon Beach, OR 97110



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF ORDINANCE 22-01 FOR THE PURPOSE OF AMENDING THE MUNICIPAL CODE BY AMENDING CHAPTER 5.04.060(C) FEES IMPOSED

Agenda Date: March 1, 2022

Prepared by: Bruce St.Denis, City Manager

BACKGROUND

On June 9, 2020, Council approved Ordinance 20-15, reducing the business license fee for Farmers Market vendors only, for the 2020 season only. The 2020 Farmers Market was then cancelled due to the COVIC-19 pandemic. On April 6, 2021, Council approved Ordinance 21-02 reducing the business license fees to \$10.00 for Farmers Market vendors only, for the 2021 season only.

ANALYSIS/INFORMATION

This reduction was discussed at the February 8, 2022 work session. Council provided input and direction to further reduce the fee due to the unknowns of the 2022 market season.

RECOMMENDATION

Staff recommends Council adopt Ordinance 22-01.

Suggested Motion

“I move to approve the first reading of Ordinance No. 22-01”

“I move to approve the second reading and adopt Ordinance No. 22-01”

List of Attachments

A Ordinance 22-01

BEFORE THE COMMON COUNCIL OF CANNON BEACH

AN ORDINANCE AMENDING THE MUNICIPAL)
CODE BY AMENDING CHAPTER 5.04.060(C) FEES)
IMPOSED)

ORDINANCE NO. 22-01

WHEREAS, the City Council understand that because of the COVID-19 pandemic, the Cannon Beach Farmers Market may operate substantially fewer days in 2022; and

WHEREAS, the City Council wishes to reduce the business license fee for Cannon Beach Farmers Market participants in correlation with the possibility of reduction in market days.

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF CANNON BEACH ORDAINS AS FOLLOWS:

Section 1: Notwithstanding Cannon Beach Municipal Code chapter 5.04.060, for the 2021 Farmers Market Season, Cannon Beach Farmers' Market vendors shall be required to obtain a business license at a reduced fee of \$10.

Section 2: As the Cannon Beach Farmers' Market is scheduled to begin mid-June, and vendors must obtain a business license prior to operating at the market, this ordinance is an emergency and shall be effective upon adoption.

Section 3: This ordinance expires at the end of the 2022 Farmers' Market season. If a vendor continues to operate in the City of Cannon Beach after this time, the vendor must obtain an additional business license pursuant to chapter 5.04.060.

ADOPTED by the Common Council of the City of Cannon Beach this 1st day of March 2022, by the following roll call vote:

YEAS:

NAYS:

EXCUSED:

Sam, Steidel, Mayor

Attest:

Approved as to Form

Bruce St. Denis, City Manager

Ashley Driscoll, City Attorney



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF ORDINANCE 22-02; AN ORDINANCE AMENDING THE MUNICIPAL CODE CHAPTER 3.30 PREPARED FOOD SALES TAX

Agenda Date: March 1st, 2022

Prepared by: Bruce St.Denis, City Manager

BACKGROUND

On November 2, 2021 Cannon Beach electors approved Ballot Measure 4-210, adding chapter 3.30 to the Cannon Beach Municipal Code and imposing a 5% tax on prepared foods sold within Cannon Beach.

ANALYSIS/INFORMATION

In preparing documents for this tax, there were several areas of the code that needed housekeeping edits and clarification prior to the effective date. The revisions are noted in attachment B.

RECOMMENDATION

Council adopt Ordinances 22-02 to amend Municipal Code Chapter 3.30 Prepared Food Sales Tax.

Suggested Motion

“I move to approve the first reading of Ordinance No. 22-02”

“I move to approve the second reading and adopt Ordinance No. 22-02”

List of Attachments

- A Ordinance 22-02
- B Marked Up Version

BEFORE THE COMMON COUNCIL OF CANNON BEACH

AN ORDINANCE AMENDING THE MUNICIPAL) ORDINANCE NO. 22-02
CODE CHAPTER 3.30 PREPARED FOOD SALES)
TAX)

WHEREAS, on November 2, 2021 Cannon Beach electors approved Ballot Measure 4-210, adding chapter 3.30 to the Cannon Beach Municipal Code and imposing a 5% tax on prepared foods sold within Cannon Beach;

WHEREAS, the tax will become effective on July 1, 2022;

WHEREAS, the Council desires to amend Chapter 3.30 to only impose the tax on individuals purchasing food from caterers at events located within the City;

WHEREAS, the Council desires to perform housekeeping edits prior to the effective date of the tax, such as updating internal citations and the initial deadline for operator registration, as well as clarify the requirements for submitting returns.

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF CANNON BEACH ORDAINS AS FOLLOWS:

1. The Cannon Beach City Council amends Chapter 3.30.020 of the Cannon Beach Municipal Code as described in Exhibit A, which is attached and incorporated by reference.
2. This ordinance is effective 30 days after adoption

ADOPTED by the Common Council of the City of Cannon Beach this 1st day of March 2022, by the following roll call vote:

YEAS:

NAYS:

EXCUSED:

Sam Steidel, Mayor

Attest:

Approved as to Form:

Bruce St. Denis, City Manager

Ashley Driscoll, City Attorney

Chapter 3.30 Prepared Food Sales Tax

3.30.010 Definitions.

For purposes of this chapter the following words shall have the meanings set forth below.

- A. "Caterer" means a person who prepares food at a business site, for compensation, for consumption on or off the business premises but within the corporate limits of the City.
- B. "Combination food service establishment" has the same meaning as defined in OAR 333-150-0000(4)(i) which the State of Oregon Department of Agriculture licenses or inspects under OAR 333-158-0000.
- C. "Consumer" means a person who purchases food within the City's incorporated limits.
- D. "Food" means all prepared food items provided by and/or served by a Restaurant including, without limitation, "takeout," "to go" and/or delivered orders. "Food" does not include groceries or liquid drinks, whether alcoholic or non-alcoholic, such as soda, coffee, teas, or cocktails. "Food" includes non-alcoholic smoothies and shakes (whether dairy or non-dairy) that otherwise meet the definition.
- E. "Immediate consumption" means the item is intended to be consumed without the need for additional preparation.
- F. "Operator" means the person who is proprietor of the Restaurant, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. Where the operator is a corporation, the term "operator" shall also include each and every member of the Board of Directors of such corporation for the time involved.
- G. "Prepared" or "preparation" means altered, other than solely by washing or cooling, and includes mixing, combining, cooking, processing, heating, and/or serving for immediate consumption.
- H. "Restaurant" means any establishment required to be licensed as a restaurant, mobile unit and/or pushcart by the State of Oregon Health Division and includes, without limitation, any of the following: (a) any establishment where food is prepared and/or available for immediate consumption by a consumer including delis, coffee shops, and similar establishments; (b) any establishment including, without limitation, grocery store, market, convenience store and/or deli section of any store, where a consumer obtains food prepared on premises and/or off premises in form or quantity intended for immediate consumption, notwithstanding the location where the food is ultimately consumed; and (c) any establishment which prepares food for immediate consumption outside the establishment's premises. The term "Restaurant" does not include a restaurant licensed by the State of Oregon Health Division as a limited service restaurant.
- I. "Tax administrator" means the city manager or designee.

3.30.020 Tax Imposed.

A. Unless exempt as specified in CBMC 3.30.030, and in addition to all other taxes, fees and charges of every kind, the City imposes a prepared food tax at a rate of five percent (5%) of the total amount paid by the consumer on the following:

1. The purchase of food from Restaurants and/or combination food service establishments located within the City, including:
 - a. Salads from salad bars;
 - b. Items, including toppings or additions, scooped or otherwise placed into a cone, bowl or other container for immediate consumption whether or not consumed within the confines of the premises where scooped or placed, and

including any frozen dessert regulated by the Oregon State Department of Agriculture under ORS 621.311 and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under this subsection, however, on any item whose volume exceeds one-half (1/2) gallon or more.

c. All orders of bakery products, including “takeout” or “to go,” prepared on the premises except for: whole cakes, whole pies, or loaves of bread, even when sliced, and any order consisting of six or more bakery products.

d. Any other food prepared on the premises in form or quantity for immediate consumption whether or not it is consumed within the confines of the premises where prepared.

2. The purchase of food from a caterer for an event located within the City.

B. Use of a delivery service for any activity under this section, whether an independent delivery service or operator provided delivery service, does not excuse the consumer from paying the tax on the food purchased.

C. In the computation of this tax any fraction of one-half (1/2) cent or more shall be treated as one (1) cent.

3.30.030 Exemption.

The tax levied by CBMC 3.30.020 shall not be imposed on a consumer purchasing the following foods:

- A. Purchased from public or private schools or colleges except that food purchased from independent contractor operators at such schools or colleges shall be subject to the tax imposed by this chapter unless another exemption applies;
- B. Purchased by public or private schools or colleges to provide to students or faculty;
- C. Purchased from hospitals;
- D. Provided by motels, hotels, and bed and breakfast establishments to their guests if the food is provided as part of the cost of sleeping accommodations and if the establishment is taxed through the City’s transient room tax pursuant to Chapter 3.12;
- E. Purchased from vending machines;
- F. Purchased from nonprofit organizations or service clubs at temporary Restaurants including food stands, booths, street concessions and similar type operations.
- G. Provided by overnight or residential facilities including, without limitation, convalescent homes, nursing homes, and retirement homes, if the food is provided as part of the cost of sleeping accommodations;
- H. Purchased from nonprofit tax-exempt organizations to citizens over sixty (60) years of age as a part of a recognized senior citizen nutritional program;
- I. Purchased for resale to the public;
- J. Purchased in bulk for non-immediate consumption off the premises including but not limited to ice cream packed in a container of one-half (1/2) gallon or more; and
- K. Which are candy, popcorn, factory prepackaged nuts, chips, gum or other confections except that ice cream, frozen yogurt, cakes, pies or other desserts are taxed according to the provisions in this Chapter.

3.30.040 Operator’s Duties.

Each operator shall collect the tax imposed by this chapter, to the same extent and at the same time as the amount for the food is collected from every purchaser. The amount of tax need not be

separately stated from the amount of the food. Every operator required to collect the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes collected to defray the costs of collections and remittance.

3.30.050 Operator registration form.

A. An operator of a Restaurant or combination food service establishment shall register with the tax administrator, on a form provided by the administrator by July 1, 2022_or within fifteen days after beginning business.

B. The registration shall include:

1. The name under which the operator transacts or intends to transact business if different than the name of the operator;
2. The location of the Restaurant or combination food service establishment;
3. The signature of the operator; and
4. The name and mailing address of the agent, owner, host or other responsible person for the location if that person is not the operator.

C. Failure to register does not relieve the operator from collecting the tax or a person from paying the tax.

3.30.060 Certificate of authority.

A. The tax administrator shall issue a certificate of authority to the registrant within ten days after registration.

B. Certificates are nonassignable and nontransferable.

C. Each certificate shall state the place of business to which it applies and shall be prominently displayed in the office area, or other location in view of the general public.

D. The certificate shall state:

1. The name of the operator;
2. The address of the Restaurant or combination food service establishment, or name of the Restaurant or food service establishment, if applicable;
3. The date when the certificate was issued; and
4. "This Prepared Food Tax Registration certificate signifies that the person named on the certificate has fulfilled the requirements of the Prepared Food Tax Ordinance of the City of Cannon Beach by registering with the Tax Administrator for the purpose of collecting the prepared food tax imposed by the City and remitting the tax to the City of Cannon Beach."

3.30.070 Collections, returns and payments.

A. The taxes collected by the operator are payable to the city on a quarterly basis on the fifteenth day of the following month for the preceding three months and are delinquent on the last day of the month in which they are due. The initial return may be for less than the three months preceding the due date. The quarters are:

1. First Quarter: January, February, March;
2. Second Quarter: April, May, June;
3. Third Quarter: July, August, September;
4. Fourth Quarter: October, November, December.

B. The operator shall deliver the tax due and the return showing tax collections for the preceding quarter in a form prescribed by the city to City Hall, Attn: Tax Administrator, 163 E Gower, Cannon Beach, 97110, before the sixteenth day of the month following each collection

quarter. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

D. Returns shall show the total sales subject to this chapter and the amount of tax collected under this chapter for the related period. Returns shall also show the exempt sales and the basis for exemptions and a detailed explanation for each.

E. For good cause, the tax administrator may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the city council. An operator to whom an extension is granted shall pay interest at the rate of one and one-half percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section 3.30.080.

F. The city may require returns and payment of the taxes for other than quarterly periods in individual cases to ensure payment or to facilitate collection.

G. Failure to File a Return. The operator shall deliver the return by the due date. The filing of a return is required even if there is no taxable activity during the quarter. If the return is not delivered by the last day of the month following the quarter end, a penalty of one hundred dollars plus ten percent of the tax owed will be assessed for each return not filed by the due date.

3.30.080 Delinquency penalties.

A. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of ten percent (10%) of the tax due in addition to the tax.

B. Any operator who has not been granted an extension of time for remittance of tax due and who fails to pay a delinquent remittance before the expiration of thirty-one (31) days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the tax due, the amount of the tax, and the ten percent (10%) penalty first imposed.

C. If the tax administrator determines that nonpayment of a remittance due under this chapter is due to fraud or intent to evade the tax, a penalty of twenty-five percent (25%) of the tax shall be added to the penalties stated in subsections A and B.

D. In addition to the penalties imposed by this section, any operator who fails to remit the required tax shall pay interest at the rate of one and one-half percent (1½%) per month, without proration for portions of a month, on the tax due, exclusive of penalties, from the date on which the tax first became delinquent until paid.

E. Each penalty imposed and the interest accrued under provisions of this section shall be merged with and become part of the tax required to be paid.

F. Any operator who fails to remit the tax within the required time may petition the tax administrator for waiver and refund of the penalty or a portion of it. The tax administrator may, if good cause is shown, direct a refund of the penalty or a portion of it.

3.30.090 Deficiency determinations.

A. In making a determination that the returns are incorrect, the tax administrator may determine the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

B. Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice, after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in Section 3.30.080.

C. In making a determination, the tax administrator may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section 3.30.080.

3.30.100 Redemption Petition.

A determination becomes due and payable immediately on receipt of notice and becomes final within twenty days after the city has given notice. However, after payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed before the determination becomes final. If no petition is filed, the tax administrator's determination is final and the amount thereby is immediately due and payable.

3.30.110 Fraud, refusal to collect and evasion.

A. If an operator fails or refuses to collect the tax, make the report or remit the tax, or makes a fraudulent return or otherwise willfully attempts to evade the tax payment, the tax administrator shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the tax administrator shall give notice of the total amount due. The city may also proceed to revoke the operator's business license on the grounds that the licensee has violated this section.

B. Determination and notice shall be made and mailed within three years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt of notice and becomes final twenty days after the tax administrator has given notice.

C. The operator may petition for redemption and refund if the petition is filed before the determination becomes final.

3.30.120 Notice of Determination.

A. The tax administrator shall give the operator a written notice of the determination. If notice is mailed, it shall be addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is deposited in the post office.

B. Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the quarterly period for which the determination has been made or within three years after the return is filed, whichever is later.

3.30.130 Operator delay.

If the tax administrator believes that collection of the tax will be jeopardized by delay, or if a determination will be jeopardized by delay, the tax administrator shall determine the tax to be collected and note facts concerning the delay on the determination. The determined amount is payable immediately after service of notice. After payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed within ten days from the date of service of notice by the tax administrator.

3.30.140 Redetermination.

A. An operator against whom a determination is made under Sections 3.30.060 through 3.30.110, or a person directly interested, may appeal for a redetermination, redemption and refund of the amount of the tax, interest, and penalties, if any, and reinstatement of the business license within the time required in Section 3.30.110.

B. If a petition for redetermination and refund is filed within the allowable period, the city council shall reconsider the determination and, if the operator requested a hearing in the appeal, shall grant the hearing and give the operator ten days' notice of the time and place of the hearing.

C. The city council may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing. The city council may also reinstate the business license.

D. The decision of the city council on a petition for redetermination becomes final ten days after service of notice on the petitioner.

E. A petition for redetermination or an appeal is not effective unless the operator has complied with the payment provisions.

3.30.150 Security for collection of tax.

A. The tax administrator, whenever it is deemed necessary to insure compliance with this chapter, may require an operator to deposit security in the form of cash, bond or other security. The amount of security shall be fixed by the tax administrator and shall be no greater than twice the operator's estimated average quarterly liability for the period for which the operator files returns or five thousand dollars, whichever amount is less.

B. Within three years after the tax becomes payable or within three years after a determination becomes final, the city may bring an action in the courts of this state, another state, or the United States to collect the amount delinquent and penalties and interest.

3.30.160 Liens.

A. The tax, interest, penalty and filing fees paid to the city and any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the county clerk until the tax is paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's Restaurant. The lien may be foreclosed and the necessary property may be sold to discharge the lien.

B. Notice of the lien shall be issued by the city when the operator has defaulted in payment of the tax, interest and penalty. A copy of the notice shall be sent by certified mail to the operator.

C. Personal property subject to the lien may be sold at public auction after ten days' notice published in a newspaper of general circulation in the city.

D. A lien for the tax, interest and penalty shall be released by the city when the full amount has been paid to the city. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest and penalty has been paid, that the lien is released and that the record of the lien is satisfied.

3.30.170 Refunds by city to operator.

When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the city, it may be refunded if a written verified claim stating the specific reason for the claim is filed within three years from the date of payment. The claim

shall be submitted on forms provided by the tax administrator. If the claim is approved, the excess amount may be refunded to the operator or it may be credited to an amount payable by the operator and any balance refunded.

3.30.180 Refunds by city to customer.

If the tax has been collected by the operator and deposited with the city and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the customer if a written verified claim stating the specific reason for the claim is filed with the city within three years from the date of payment.

3.30.190 Records required from operators.

Every operator shall keep all records as may be necessary to determine the amount of the tax imposed by this Chapter for a period of three years and six months.

3.30.200 Examination of records.

During normal business hours and after notifying the operator, the city auditor, at the direction of the tax administrator, may examine books, papers and accounting records related to the sale of prepared foods to verify the accuracy of a return or, if no return is made, to determine the amount to be paid. The auditor may initiate audits regarding the imposition and administration of the prepared food sales tax.

Failure of an operator to allow the auditor to examine requested records is a violation of this provision and may constitute grounds for the tax administrator to revoke the operator's business license.

3.30.210 Confidentiality.

The tax administrator or a person having an administrative or clerical duty under the provisions of this chapter shall not make known in any manner the business affairs, operations or information obtained by an investigation of records and equipment of a person required to file a return or pay a prepared food sales tax or a person visited or examined in the discharge of official duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

A. Disclosure to or examination of records and equipment by a city official, employee or agent for collecting taxes for the purpose of administering or enforcing the provisions or collecting the taxes imposed by this chapter.

B. Disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected or interest and penalties. However, the city attorney shall approve each disclosure, and the tax administrator or city manager may refuse to make a disclosure referred to in this subsection when, in their opinion, the public interest would suffer.

C. Disclosure of names and addresses of persons making returns.

D. Disclosure of general statistics regarding taxes collected or business done in the city.

3.30.220 Disposition and use of tax funds.

Revenues received from the prepared food sales tax shall be appropriated annually as recommended by the city budget committee and adopted by the city council in accordance with Oregon Budget Law. Any reserve fund shall be accounted for in a prepared food sales tax reserve fund.

3.30.230 Duties of tax administrator.

The tax administrator:

- A. Shall enforce this chapter and may propose rules and regulations necessary for enforcement.
- B. May affirm or modify or deny a petition. In this process, he or she may take evidence and make investigations.
- C. May examine during normal business hours the books, papers and accounting records relating to prepared food sales of any operator, after notification to the operator liable for the tax; and may investigate the business of the operator in order to verify the accuracy of any return made; or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- D. May grant extension of time for filing a return or paying the tax of not more than one month.
- E. Shall give notice of its determination and shall file a certified copy of each determination with the city. Determinations become final after ten days and tax becomes due, subject to interest and penalties.
- F. May assess penalties when he or she determines that nonpayment of a remittance is due to fraud or an intent to evade the tax.
- G. Shall consider petitions for waiver/refund of penalties.
- H. May, for good cause, grant extensions of time in excess of fifteen days for filing a return or paying the tax.
- I. Makes investigations and initiates audits to be performed by the city auditor regarding imposition and administration of the tax; recommends to the city the adoption, amendment or repeal of legislation pertaining to the tax.

3.30.240 Appeals to city council.

A person aggrieved by a decision of the tax administrator may appeal to the city council by filing a notice of appeal with the city within twenty days of service or mailing of the notice of a decision. The council shall fix a time and place for hearing the appeal and shall give the appellant twenty days' written notice of the time and place of the hearing.

3.30.250 General penalty.

In addition to any other remedy available under the local, state or federal law, any person violating any of the provisions of this chapter may be punished by a fine of not to exceed five hundred dollars, in the discretion of the city manager, for each violation. Such fine may be adjudicated in the Cannon Beach Municipal Court

3.30.260 Effective Date

Having been referred by Council resolution to city's electors at the statewide election held on November 2, 2021 and the measure having passed, the tax shall be levied and imposed and this Chapter shall become effective on July 1, 2022.

Chapter 3.30 Prepared Food Sales Tax

3.30.010 Definitions.

For purposes of this chapter the following words shall have the meanings set forth below.

- A. "Caterer" means a person who prepares food at a business site, for compensation, for consumption on or off the business premises but within the corporate limits of the City.
- B. "Combination food service establishment" has the same meaning as defined in OAR 333-150-0000(4)(i) which the State of Oregon Department of Agriculture licenses or inspects under OAR 333-158-0000.
- C. "Consumer" means a person who purchases food within the City's incorporated limits.
- D. "Food" means all prepared food items provided by and/or served by a Restaurant including, without limitation, "takeout," "to go" and/or delivered orders. "Food" does not include groceries or liquid drinks, whether alcoholic or non-alcoholic, such as soda, coffee, teas, or cocktails. "Food" includes non-alcoholic smoothies and shakes (whether dairy or non-dairy) that otherwise meet the definition.
- E. "Immediate consumption" means the item is intended to be consumed without the need for additional preparation.
- F. "Operator" means the person who is proprietor of the Restaurant, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. Where the operator is a corporation, the term "operator" shall also include each and every member of the Board of Directors of such corporation for the time involved.
- G. "Prepared" or "preparation" means altered, other than solely by washing or cooling, and includes mixing, combining, cooking, processing, heating, and/or serving for immediate consumption.
- H. "Restaurant" means any establishment required to be licensed as a restaurant, mobile unit and/or pushcart by the State of Oregon Health Division and includes, without limitation, any of the following: (a) any establishment where food is prepared and/or available for immediate consumption by a consumer including delis, coffee shops, and similar establishments; (b) any establishment including, without limitation, grocery store, market, convenience store and/or deli section of any store, where a consumer obtains food prepared on premises and/or off premises in form or quantity intended for immediate consumption, notwithstanding the location where the food is ultimately consumed; and (c) any establishment which prepares food for immediate consumption outside the establishment's premises. The term "Restaurant" does not include a restaurant licensed by the State of Oregon Health Division as a limited service restaurant.
- I. "Tax administrator" means the city manager or designee.

3.30.020 Tax Imposed.

A. Unless exempt as specified in CBMC 3.30.030, and in addition to all other taxes, fees and charges of every kind, the City imposes a prepared food tax at a rate of five percent (5%) of the total amount paid by the consumer on the following:

1. The purchase of food from Restaurants and/or combination food service establishments located within the City, including:
 - a. Salads from salad bars;
 - b. Items, including toppings or additions, scooped or otherwise placed into a cone, bowl or other container for immediate consumption whether or not consumed within the confines of the premises where scooped or placed, and

including any frozen dessert regulated by the Oregon State Department of Agriculture under ORS 621.311 and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under this subsection, however, on any item whose volume exceeds one-half (1/2) gallon or more.

c. All orders of bakery products, including “takeout” or “to go,” prepared on the premises except for: whole cakes, whole pies, or loaves of bread, even when sliced, and any order consisting of six or more bakery products.

d. Any other food prepared on the premises in form or quantity for immediate consumption whether or not it is consumed within the confines of the premises where prepared.

2. The purchase of food from a caterer ~~located within the City or~~ for an event located within the City.

B. Use of a delivery service for any activity under this section, whether an independent delivery service or operator provided delivery service, does not excuse the consumer from paying the tax on the food purchased.

C. In the computation of this tax any fraction of one-half (1/2) cent or more shall be treated as one (1) cent.

3.30.030 Exemption.

The tax levied by CBMC 3.30.020 shall not be imposed on a consumer purchasing the following foods:

- A. Purchased from public or private schools or colleges except that food purchased from independent contractor operators at such schools or colleges shall be subject to the tax imposed by this chapter unless another exemption applies;
- B. Purchased by public or private schools or colleges to provide to students or faculty;
- C. Purchased from hospitals;
- D. Provided by motels, hotels, and bed and breakfast establishments to their guests if the food is provided as part of the cost of sleeping accommodations and if the establishment is taxed through the City’s transient room tax pursuant to Chapter 3.12;
- E. Purchased from vending machines;
- F. Purchased from ~~nonprofit organizations or service clubs at~~ temporary Restaurants including food stands, booths, street concessions and similar type operations. ~~operated by nonprofit organizations or service clubs;~~
- G. Provided by overnight or residential facilities including, without limitation, convalescent homes, nursing homes, and retirement homes, if the food is provided as part of the cost of sleeping accommodations;
- H. Purchased from nonprofit tax-exempt organizations to citizens over sixty (60) years of age as a part of a recognized senior citizen nutritional program;
- I. Purchased for resale to the public;
- J. Purchased in bulk for non-immediate consumption off the premises including but not limited to ice cream packed in a container of one-half (1/2) gallon or more; and
- K. Which are candy, popcorn, factory prepackaged nuts, chips, gum or other confections except that ice cream, frozen yogurt, cakes, pies or other desserts are taxed according to the provisions in this Chapter.

3.30.040 Operator's Duties.

Each operator shall collect the tax imposed by this chapter, to the same extent and at the same time as the amount for the food is collected from every purchaser. The amount of tax need not be separately stated from the amount of the food. Every operator required to collect the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes collected to defray the costs of collections and remittance.

3.30.050 Operator registration form.

A. An operator of a Restaurant or combination food service establishment shall register with the tax administrator, on a form provided by the administrator **by July 1, 2022** or within fifteen days after beginning business **or within thirty calendar days after passage of the ordinance codified in this chapter.**

B. The registration shall include:

1. The name under which the operator transacts or intends to transact business if different than the name of the operator;
2. The location of the Restaurant or combination food service establishment;
3. The signature of the operator; and
4. The name and mailing address of the agent, owner, host or other responsible person for the location if that person is not the operator.

C. Failure to register does not relieve the operator from collecting the tax or a person from paying the tax.

3.30.060 Certificate of authority.

A. The tax administrator shall issue a certificate of authority to the registrant within ten days after registration.

B. Certificates are nonassignable and nontransferable.

C. Each certificate shall state the place of business to which it applies and shall be prominently displayed in the office area, or other location in view of the general public.

D. The certificate shall state:

1. The name of the operator;
2. The address of the Restaurant or combination food service establishment, or name of the Restaurant or food service establishment, if applicable;
3. The date when the certificate was issued; and
4. "This Prepared Food Tax Registration certificate signifies that the person named on the certificate has fulfilled the requirements of the Prepared Food Tax Ordinance of the City of Cannon Beach by registering with the Tax Administrator for the purpose of collecting the prepared food tax imposed by the City and remitting the tax to the City of Cannon Beach."

3.30.070 Collections, returns and payments.

A. The taxes collected by the operator are payable to the city on a quarterly basis on the fifteenth day of the following month for the preceding three months and are delinquent on the last day of the month in which they are due. The initial return may be for less than the three months preceding the due date. The quarters are:

1. First Quarter: January, February, March;
2. Second Quarter: April, May, June;
3. Third Quarter: July, August, September;

4. Fourth Quarter: October, November, December.

B. The operator shall deliver the tax due and the return showing tax collections for the preceding quarter in a form prescribed by the city to City Hall, Attn: Tax Administrator, 163 E Gower, Cannon Beach, 97110, before the sixteenth day of the month following each collection quarter. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

~~D. Returns shall show the total sales subject to this chapter and the amount of tax collected under this chapter for the related period. Returns shall also show the exempt and excluded sales and the basis for exemptions and exclusions and a detailed explanation for each. Returns shall show the total sales subject to this chapter and the amount of tax collected under this chapter for the related period. Returns shall also show the exempt sales and the basis for exemptions and a detailed explanation for each.~~

E. For good cause, the tax administrator may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the city council. An operator to whom an extension is granted shall pay interest at the rate of one and one-half percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section ~~3.30.060~~ **3.30.080**.

F. The city may require returns and payment of the taxes for other than quarterly periods in individual cases to ensure payment or to facilitate collection.

G. Failure to File a Return. The operator shall deliver the return by the due date. The filing of a return is required even if there is no taxable activity during the quarter. If the return is not delivered by the last day of the month following the quarter end, a penalty of one hundred dollars plus ten percent of the tax owed will be assessed for each return not filed by the due date.

3.30.080 Delinquency penalties.

A. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of ten percent (10%) of the tax due in addition to the tax.

B. Any operator who has not been granted an extension of time for remittance of tax due and who fails to pay a delinquent remittance before the expiration of thirty-one (31) days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the tax due, the amount of the tax, and the ten percent (10%) penalty first imposed.

C. If the tax administrator determines that nonpayment of a remittance due under this chapter is due to fraud or intent to evade the tax, a penalty of twenty-five percent (25%) of the tax shall be added to the penalties stated in subsections A and B.

D. In addition to the penalties imposed by this section, any operator who fails to remit the required tax shall pay interest at the rate of one and one-half percent (1½%) per month, without proration for portions of a month, on the tax due, exclusive of penalties, from the date on which the tax first became delinquent until paid.

E. Each penalty imposed and the interest accrued under provisions of this section shall be merged with and become part of the tax required to be paid.

F. Any operator who fails to remit the tax within the required time may petition the tax administrator for waiver and refund of the penalty or a portion of it. The tax administrator may, if good cause is shown, direct a refund of the penalty or a portion of it.

3.30.090 Deficiency determinations.

A. In making a determination that the returns are incorrect, the tax administrator may determine the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

B. Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice, after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in Section ~~3.30.060~~ 3.30.080.

C. In making a determination, the tax administrator may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section ~~3.30.060~~ 3.30.080.

3.30.100 Redemption Petition.

A determination becomes due and payable immediately on receipt of notice and becomes final within twenty days after the city has given notice. However, after payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed before the determination becomes final. If no petition is filed, the tax administrator's determination is final and the amount thereby is immediately due and payable.

3.30.110 Fraud, refusal to collect and evasion.

A. If an operator fails or refuses to collect the tax, make the report or remit the tax, or makes a fraudulent return or otherwise willfully attempts to evade the tax payment, the tax administrator shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the tax administrator shall give notice of the total amount due. The city may also proceed to revoke the operator's business license on the grounds that the licensee has violated this section.

B. Determination and notice shall be made and mailed within three years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt of notice and becomes final twenty days after the tax administrator has given notice.

C. The operator may petition for redemption and refund if the petition is filed before the determination becomes final.

3.30.120 Notice of Determination.

A. The tax administrator shall give the operator a written notice of the determination. If notice is mailed, it shall be addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is deposited in the post office.

B. Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the quarterly period for which the determination has been made or within three years after the return is filed, whichever is later.

3.30.130 Operator delay.

If the tax administrator believes that collection of the tax will be jeopardized by delay, or if a determination will be jeopardized by delay, the tax administrator shall determine the tax to be collected and note facts concerning the delay on the determination. The determined amount is payable immediately after service of notice. After payment has been made, the operator may petition for redemption and refund of the determination if the petition is filed within ten days from the date of service of notice by the tax administrator.

3.30.140 Redetermination.

A. An operator against whom a determination is made under Sections 3.30.060 through 3.30.110, or a person directly interested, may appeal for a redetermination, redemption and refund of the amount of the tax, interest, and penalties, if any, and reinstatement of the business license within the time required in Section 3.30.110.

B. If a petition for redetermination and refund is filed within the allowable period, the city council shall reconsider the determination and, if the operator requested a hearing in the appeal, shall grant the hearing and give the operator ten days' notice of the time and place of the hearing.

C. The city council may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing. The city council may also reinstate the business license.

D. The decision of the city council on a petition for redetermination becomes final ten days after service of notice on the petitioner.

E. A petition for redetermination or an appeal is not effective unless the operator has complied with the payment provisions.

3.30.150 Security for collection of tax.

A. The tax administrator, whenever it is deemed necessary to insure compliance with this chapter, may require an operator to deposit security in the form of cash, bond or other security. The amount of security shall be fixed by the tax administrator and shall be no greater than twice the operator's estimated average quarterly liability for the period for which the operator files returns or five thousand dollars, whichever amount is less.

B. Within three years after the tax becomes payable or within three years after a determination becomes final, the city may bring an action in the courts of this state, another state, or the United States to collect the amount delinquent and penalties and interest.

3.30.160 Liens.

A. The tax, interest, penalty and filing fees paid to the city and any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the county clerk until the tax is paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's Restaurant. The lien may be foreclosed and the necessary property may be sold to discharge the lien.

B. Notice of the lien shall be issued by the city when the operator has defaulted in payment of the tax, interest and penalty. A copy of the notice shall be sent by certified mail to the operator.

C. Personal property subject to the lien may be sold at public auction after ten days' notice published in a newspaper of general circulation in the city.

D. A lien for the tax, interest and penalty shall be released by the city when the full amount has been paid to the city. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest and penalty has been paid, that the lien is released and that the record of the lien is satisfied.

3.30.170 Refunds by city to operator.

When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the city, it may be refunded if a written verified claim stating the specific reason for the claim is filed within three years from the date of payment. The claim shall be submitted on forms provided by the tax administrator. If the claim is approved, the excess amount may be refunded to the operator or it may be credited to an amount payable by the operator and any balance refunded.

3.30.180 Refunds by city to customer.

If the tax has been collected by the operator and deposited with the city and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the customer if a written verified claim stating the specific reason for the claim is filed with the city within three years from the date of payment.

3.30.190 Records required from operators.

Every operator shall keep all records as may be necessary to determine the amount of the tax imposed by this Chapter for a period of three years and six months.

3.30.200 Examination of records.

During normal business hours and after notifying the operator, the city auditor, at the direction of the tax administrator, may examine books, papers and accounting records related to the sale of prepared foods to verify the accuracy of a return or, if no return is made, to determine the amount to be paid. The auditor may initiate audits regarding the imposition and administration of the prepared food sales tax.

Failure of an operator to allow the auditor to examine requested records is a violation of this provision and may constitute grounds for the tax administrator to revoke the operator's business license.

3.30.210 Confidentiality.

The tax administrator or a person having an administrative or clerical duty under the provisions of this chapter shall not make known in any manner the business affairs, operations or information obtained by an investigation of records and equipment of a person required to file a return or pay a prepared food sales tax or a person visited or examined in the discharge of official duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

A. Disclosure to or examination of records and equipment by a city official, employee or agent for collecting taxes for the purpose of administering or enforcing the provisions or collecting the taxes imposed by this chapter.

B. Disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected or interest and penalties. However, the city attorney shall approve each disclosure, and the tax administrator or city manager may refuse to make a disclosure referred to in this subsection when, in their opinion, the public interest would suffer.

C. Disclosure of names and addresses of persons making returns.

D. Disclosure of general statistics regarding taxes collected or business done in the city.

3.30.220 Disposition and use of tax funds.

Revenues received from the prepared food sales tax shall be appropriated annually as recommended by the city budget committee and adopted by the city council in accordance with Oregon Budget Law. Any reserve fund shall be accounted for in a prepared food sales tax reserve fund.

3.30.230 Duties of tax administrator.

The tax administrator:

A. Shall enforce this chapter and may propose rules and regulations necessary for enforcement.

B. May affirm or modify or deny a petition. In this process, he or she may take evidence and make investigations.

C. May examine during normal business hours the books, papers and accounting records relating to prepared food sales of any operator, after notification to the operator liable for the tax; and may investigate the business of the operator in order to verify the accuracy of any return made; or if no return is made by the operator, to ascertain and determine the amount required to be paid.

D. May grant extension of time for filing a return or paying the tax of not more than one month.

E. Shall give notice of its determination and shall file a certified copy of each determination with the city. Determinations become final after ten days and tax becomes due, subject to interest and penalties.

F. May assess penalties when he or she determines that nonpayment of a remittance is due to fraud or an intent to evade the tax.

G. Shall consider petitions for waiver/refund of penalties.

H. May, for good cause, grant extensions of time in excess of fifteen days for filing a return or paying the tax.

I. Makes investigations and initiates audits to be performed by the city auditor regarding imposition and administration of the tax; recommends to the city the adoption, amendment or repeal of legislation pertaining to the tax.

3.30.240 Appeals to city council.

A person aggrieved by a decision of the tax administrator may appeal to the city council by filing a notice of appeal with the city within twenty days of service or mailing of the notice of a decision. The council shall fix a time and place for hearing the appeal and shall give the appellant twenty days' written notice of the time and place of the hearing.

3.30.250 General penalty.

In addition to any other remedy available under the local, state or federal law, any person violating any of the provisions of this chapter may be punished by a fine of not to exceed five hundred dollars, in the discretion of the city manager, for each violation. Such fine may be adjudicated in the Cannon Beach Municipal Court

3.30.260 Effective Date

Having been referred by Council resolution to city's electors at the statewide election held on November 2, 2021 and the measure having passed, the tax shall be levied and imposed and this Chapter shall become effective on July 1, 2022.



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF ORDINANCE 22-03; FOR THE PURPOSE OF AMENDING THE MUNICIPAL CODE CHAPTER 3.16 SYSTEM DEVELOPMENT CHARGES

Agenda Date: March 1, 2022

Prepared by: Karen La Bonte, Public Works Director

BACKGROUND

Oregon law (ORS 223.297-314) provides a framework through which municipalities can establish system development charges to pay for capital improvements. Per state law, allowed capital improvements are facilities or assets used for water, wastewater, stormwater, transportation, or parks.

Currently, the City of Cannon Beach imposes SDCs on the following utilities: water, wastewater, and stormwater. The current combined SDC rate for those three utilities is \$4,253.50. The methodology for water and wastewater was last updated in 2003, and the methodology for stormwater has remained unchanged since 1996. Through an RFP process, FCS Group was hired to review and update the City's SDC methodology and rates.

ANALYSIS/INFORMATION

City Council has been able to hear from and ask questions of consultant FCS Group in October, December, January, and February. Public input has been received on this topic. Council gave direction to staff that the SDCs should be implemented fully as outlined in FCS Group's methodology, effective on August 1, 2022.

A draft of the recommended ordinance is included in the packet, as well as the proposed Municipal Code updates in both the final version and a marked version showing the changes.

RECOMMENDATION

Council adopt Ordinance 22-03 to amend Municipal Code Chapter 3.16 System Development Charges.

Suggested Motion

"I move to approve the first reading of Ordinance No. 22-03"

"I move to approve the second reading and adopt Ordinance No. 22-03"

List of Attachments:

A Ordinance No. 22-XX

B Amended version of Municipal Code Chapter 3.16 with changes shown

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www.ci.cannon-beach.or.us • cityhall@ci.cannon-beach.or.us

BEFORE THE COMMON COUNCIL OF THE CITY OF CANNON BEACH

FOR THE PURPOSE OF AMENDING THE MUNICIPAL) ORDINANCE 22-03
CODE CHAPTER 3.16 SYSTEM DEVELOPMENT)
CHARGES)

WHEREAS, ORS Chapter 223 authorizes cities to assess System Development Charges (SDC) to fund capital improvement facilities or assets used for water, wastewater, stormwater, transportation and parks; and

WHEREAS, the City of Cannon Beach's SDCs are established in Cannon Beach Municipal Code Chapter 3:16; and

WHEREAS, it is important to the City that costs of growth are equitably and rationally shared by new growth and development activities; and

WHEREAS, City staff utilized a consultant to review the SDC methodologies for water, sewer and storm, and implement an SDC methodology for parks, that are consistent with common industry practice and treats all customers (residential, commercial, duplexes, multi-unit residential and mixed-use) consistently; and

WHEREAS, the consultant also recommended the City update Chapter 3.16 to include future transportation SDC, but is not recommending the City adopt a methodology to implement transportation SDCs at the current time; and

WHEREAS, it is advisable to update the City Code to reflect the updated and new SDC methodologies; and

WHEREAS, City staff and the consultant presented the updated and new SDC methodologies in meetings on October 12, 2021, December 7, 2021, December 14, 2021, January 11, 2022, and February 8, 2022;

NOW THEREFORE, THE CITY OF CANNON BEACH COUNCIL ORDAINS AS FOLLOWS:

1. The Cannon Beach City Council amends Chapter 3.16 of the Cannon Beach Municipal Code as described in Exhibit A to this ordinance, which is attached and incorporated by reference.
2. This Ordinance shall take effect on August 1, 2022.

ADOPTED by the Common Council of the City of Cannon Beach this 1st day of March 2022, by the following roll call vote:

YEAS:
NAYS:
EXCUSED:

Sam Steidel, Mayor

Attest:

Approved as to form:

Bruce St. Denis, City Manager

Ashley Driscoll, City Attorney

Chapter 3.16 SYSTEM DEVELOPMENT CHARGES

3.16.010 Definitions.

The following words and phrases, as used in this chapter, shall have the following definitions and meanings:

“Capital improvement(s)” mean(s) public facilities or assets used for any of the following:

- A. Water supply, treatment or distribution or any combination;
- B. Wastewater collection, transmission, treatment or disposal or any combination;
- C. Drainage or flood control;
- D. Transportation; or
- E. Parks and recreation.

“Development” means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas devoted to exterior display, storage or activities. Development includes redevelopment of property. Development includes improved open areas such as plaza and walkways which increase the usage of any capital improvements or which create the need for additional capital improvements, but does not include natural geologic forms or unimproved lands.

“Improvement fee” means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 3.16.040 of this chapter.

“Land area” means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of way or easement subject to a servitude for a public street or for a public scenic or preservation purpose.

“Owner” means the owner or owners of record title or the purchaser or purchasers under a recorded land sales agreement, an other persons having an interest of record in the described real property.

“Parcel of land” means a lot, parcel, block or other tract of land that in accordance with city regulations is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

“Permittee” means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right-of-way access permit is issued.

“Qualified public improvements” means a capital improvement that is:

- A. Required as a condition of development approval;
- B. Identified in the plan adopted pursuant to Section 3.16.080; and either:
 - 1. Not located on or contiguous to a parcel of land that is the subject of the development approval; or
 - 2. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
- 3. For purposes of this definition, contiguous means in a public way which abuts the parcel.

“Reimbursement fee” means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 3.16.040 of this chapter.

“System development charge” means a reimbursement fee, a improvement fee or a combination thereof assessed or collected at any of the following times: upon issuance of a building permit, a development permit for development not requiring the issuance of a building permit, or a permit to connect to the water, wastewater system, or storm drainage systems.

- A. A system development charge includes that portion of a sewer or wastewater system connection charge that is greater than the amount necessary to reimburse the city for its cost of inspecting and installing connections with water

and sewer facilities. Such fees are designed by the city only to reimburse the city for actual or average costs for such connections.

B. A system development charge does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision. (Ord. 03-1, § 1)

3.16.020 Purpose.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater, drainage, transportation, and parks upon those developments and redevelopments that create the need for or increase the demands on the water, wastewater, drainage transportation, and parks systems. (Ord. 03-1, § 2)

3.16.030 Scope.

The system development charge imposed by this ordinance is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, or fee otherwise provided by law or imposed as a condition of development. A system development charge is to be considered in the nature of a charge for service rendered or facilities made available, or a charge for future services to be rendered on facilities to be made available in the future. (Ord. 03-1, § 3)

3.16.040 System development charge established.

A. Unless otherwise exempted by the provisions of this chapter or other local or state law, a system development charge is hereby imposed upon all development within the city and upon all development outside the boundary of the city that connects to or otherwise uses the sanitary sewer system, storm drainage system or water system of the city.

B. System development charges for each type of capital improvement may be created through application of the methodologies described in Section 3.16.050 of this chapter. The amounts of each system development charge shall be adopted initially by council resolution. Changes in the amounts shall also be adopted by council resolution, except changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be measured and calculated each January by the city manager and charged accordingly. The city manager shall report to the city council annually with respect to the inflationary calculation. Such calculations will be based upon charges in the Engineering News Records Construction Index (ENR Index).

C. Notwithstanding subsection B of this section, administrative adjustment to charges resulting solely from inflationary cost impacts shall not exceed five percent within any twelve-month period without council approval. (Ord. 03-1, § 4)

3.16.050 Methodology.

A. The methodology used to establish or modify a reimbursement fee shall consider the cost of then-existing facilities including without limitation design, financing and construction costs, prior contributions by then-existing users, gifts or grants from federal or state government or private persons, the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the city manager. The methodology shall promote the objective that future system users shall contribute an equitable share of the cost of then-existing facilities.

B. The methodology used to establish or modify the public improvement fee shall consider the estimated cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related. The

methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.

C. The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the council. (Ord. 03-1, § 5)

3.16.060 Authorized expenditures.

A. Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.

B. Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fee is assessed, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities.

1. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to Section 3.16.080 of this chapter.

C. Notwithstanding subsections A and B of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development expenditures. (Ord. 03-1, § 6)

3.16.070 Expenditure restrictions.

A. Systems development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

B. Systems development charges shall not be expended for costs of the operation or routine maintenance of capital improvements. (Ord. 03-1, § 7)

3.16.080 Improvement plan.

A. Prior to the establishment of a system development charge, the council shall adopt a plan that includes a list of:

1. The capital improvements that may be funded with improvement fee revenues;
2. The estimated cost and time of construction of each improvement; and
3. A description of the process for modifying the plan.

B. In adopting this plan, the council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. The council may modify such plan and list at any time.

C. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on the periodic application of an adopted specific cost index or a modification to any of the factors related to the rate that are incorporated in the established methodology. (Ord. 03-1, § 8)

3.16.090 Collection of charge.

A. The system development charge is payable upon issuance of:

1. A building permit;

2. A development permit;
 3. A development permit for development not requiring the issuance of a building permit; or
 4. A permit or approval to connect to the water system; 5. A permit or approval to connect to the sewer system; or
 6. A right-of-way access permit.
- B. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.
- C. If development is commenced or connection is made to the water system, sanitary sewer system or storm sewer system without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- D. The city recorder or the recorder's designee shall collect the applicable system development charges from the permittee when a permit that allows or development of a parcel is issued or when a connection to the water, sewer, or drainage system of the city is made.
- E. The city recorder or designee shall not issue such permit or allow such connections until the charge has been paid in full or until provision for installment payments has been made pursuant to Section 3.16.110 of this chapter, or unless an exemption is granted pursuant to Section 3.16.120 of this chapter. (Ord. 03-1, § 9)

3.16.100 Exemptions.

The following are exempt from the system development charges:

- A. Housing for low-income or elderly persons which is exempt from real property taxes under state law;
- B. Development which is being financed by city funds;
- C. Structures and uses established and legally existing on or before July 26, 1991, are exempt from a system development charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.
- D. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
- E. An alteration, addition, replacement or change in use that does not increase the parcels or structures use of the public improvement facility are exempt from all portions of the system development charge. (Ord. 03-1, § 10)

3.16.110 Credits.

- A. When development occurs that is subject to a system development charge the system development charge for the existing use if applicable, shall be calculated and if it is less than the systems development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in use results in the systems development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this section.
- B. A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the city of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall be only for the improvement fee charged for the type of improvement being constructed.

- C. If a qualified public improvement is located in whole or in part on or contiguous to the property is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than sixty days after acceptance of the improvement by the city.
- D. When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.
- E. Notwithstanding subsections A and B, when establishing a methodology for a system development charge, the city manager may provide for a credit against the improvement fee the reimbursement fee, or both, for capital improvements constructed as part of the development that reduces the development demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the council finds reasonable.
- F. Credit shall not be transferable from one type of development fee to another.
- G. Credits shall not be transferable from type of system development charge to another.
- H. Credits shall be used within ten years from the date the credit is given. (Ord. 03-1, § 11)

3.16.120 Notice.

- A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least ninety days prior to the first hearing to establish or modify a system development charge. The methodology supporting the system development charge shall be available at least sixty days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city.
- B. The city may periodically delete names from the list, but at least thirty days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list. (Ord. 03-1, § 12)

3.16.130 Segregation and use of revenue.

- A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than set forth in Section 3.16.060 of this chapter.
- B. The appropriate city official shall provide the city council with an annual accounting, by January 1st of each year for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded in whole or in part, with system development charge revenues shall be included in the annual accounting. (Ord. 03-1, § 13)

3.16.140 Refunds.

- A. Refunds may be given by the city manager upon finding that there was a clerical error in the calculation of the SDC.
- B. Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative SDC rate calculation.

tion at the time of submission of an application for a building permit. (Ord. 03-1 § 14)

3.16.150 Implementing regulations—Amendments.

The city council delegates authority to the city manager to adopt necessary procedures to implement provisions of this chapter including the appointment of an SDC program administrator. All rules pursuant to this delegated authority shall be filed with the office of recorder and be available for public inspection. (Ord. 03-1 § 15)

3.16.160 Appeal procedures.

- A. As used in this section, “working day” means a day when the general offices of the city are open to transact business with the public.
- B. A person disagreeing with a decision on the amount of the system development charged, an expenditure of funds collected under this ordinance, or the methodology used to determine the system development amounts may file an appeal by complying with subsections C and D of this section.
- C. An appeal of an expenditure must be filed within two years of the date of alleged improper expenditure. An appeal contesting the methodology used for calculating a system development charge must be filed within sixty days of the council adoption or modification of the system development ordinance or resolution. Appeals of the calculation of any other decision must be filed within ten working days of the date of the decision.
- D. The appeal shall state:
 - 1. The name and address of the appellant;
 - 2. The nature of the determination being appealed;
 - 3. The reason the appellant believes the determination is incorrect; and
 - 4. What the appellant believes the correct determination should be.

An appellant who fails to file such a statement within the time permitted waives his or her objections and his or her appeal shall be dismissed.

- E. Unless the appellant and the city agree to a longer period, an appeal shall be considered by the city manager, or designee, within ten working days of the receipt of the written appeal. A written response must be given to the appellant within this time period.
- F. The appellant shall have ten days after receipt of the city manager’s decision to appeal this decision to the city council. An appellant who fails to file such a statement with the city manager within ten working days shall waive his or her objections and the city manager’s decision shall be final.
- G. The council shall consider an appeal filed under subsection C within twenty working days. The appellant shall be notified of the council hearing date ten working days prior to the council hearing. By council motion, the report and recommendations of the city manager shall be approved, modified or rejected. Council decision shall be final. Any legal action contesting the council decision shall be filed within sixty days of the council’s decision. (Ord. 03-1 § 16)

3.16.170 Prohibited connection.

No person may connect to the sanitary sewer/water system or storm sewer system of the city unless the appropriate system development charge has been paid or the lien or the installment payment method has been applied for and approved. (Ord. 03-1 § 17)

3.16.180 Penalty.

Violation of this chapter is punishable by a fine not to exceed five hundred dollars. (Ord. 03-1 § 18)

3.16.190 Construction.

For the purposes of administration and enforcement of this chapter, unless otherwise stated in this chapter, the following rules of construction shall apply:

- A. In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text shall control.
- B. The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
- C. Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D. The phrase “used for” includes “arranged for,” “designed for,” “maintained for,” or “occupied for.”
- E. Where a regulation involves two or more connected items, conditions, provisions, or events:
 - 1. “And” indicates that all the connected terms, conditions, provisions or events shall apply;
 - 2. “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- F. The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances of like kind or character. (Ord. 03-1 § 19)

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Cannon Beach Municipal Code

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The following words and phrases, as used in this chapter, shall have the following definitions and meanings:

“Capital improvement(s)” mean(s) public facilities or assets used for any of the following:

A. Water supply, treatment or distribution or any combination;

B. Wastewater collection, transmission, treatment or disposal or any combination;

~~C.~~ —~~C.~~ Drainage or flood control;

~~B.~~ Transportation; or

D.

~~C.E.~~ —~~D.~~ Parks and recreation.

“Development” means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas devoted to exterior display, storage or activities. Development includes redevelopment of property. Development includes improved open areas such as plaza and walkways which increase the usage of any capital improvements or which create the need for additional capital improvements, but does not include natural geologic forms or unimproved lands.

“Improvement fee” means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 3.16.040 of this chapter.

“Land area” means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of way or easement subject to a servitude for a public street or for a public scenic or preservation purpose.

“Owner” means the owner or owners of record title or the purchaser or purchasers under a recorded land sales agreement, an other persons having an interest of record in the described real property.

“Parcel of land” means a lot, parcel, block or other tract of land that in accordance with city regulations is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

“Permittee” means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right-of-way access permit is issued.

“Qualified public improvements” means a capital improvement that is:

A. Required as a condition of development approval;

B. Identified in the plan adopted pursuant to Section 3.16.080; and either:

1. Not located on or contiguous to a parcel of land that is the subject of the development approval; or
2. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.
3. For purposes of this definition, contiguous means in a public way which abuts the parcel.

“Reimbursement fee” means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 3.16.040 of this chapter.

“System development charge” means a reimbursement fee, a improvement fee or a combination thereof assessed or collected at any of the following times: upon issuance of a building permit, a development permit for development not requiring the issuance of a building permit, or a permit to connect to the water, wastewater system, or storm drainage systems.

- A. A system development charge includes that portion of a sewer or wastewater system connection charge that is greater than the amount necessary to reimburse the city for its cost of inspecting and installing connections with water and sewer facilities. Such fees are designed by the city only to reimburse the city for actual or average costs for such connections.
- B. A system development charge does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision. (Ord. 03-1, § 1)

3.16.020 Purpose.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater, ~~and drainage~~, transportation, and parks upon those developments and redevelopments that create the need for or increase the demands on the water, wastewater, ~~and drainage~~ transportation, and parks systems. (Ord. 03-1, § 2)

3.16.030 Scope.

The system development charge imposed by this ordinance is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, or fee otherwise provided by law or imposed as a condition of development. A system development charge is to be considered in the nature of a charge for service rendered or facilities made available, or a charge for future services to be rendered on facilities to be made available in the future. (Ord. 03-1, § 3)

3.16.040 System development charge established.

- A. Unless otherwise exempted by the provisions of this chapter or other local or state law, a system development charge is hereby imposed upon all development within the city, ~~upon the act of making a connection to the city water or sewer system within the city~~, and upon all development outside the boundary of the city that connects to or otherwise uses the sanitary sewer system, storm drainage system or water system of the city.
- B. System development charges for each type of capital improvement may be created through application of the methodologies described in Section 3.16.050 of this chapter. The amounts of each system development charge shall be adopted initially by council resolution. Changes in the amounts shall also be adopted by council resolution, except changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be measured and calculated each January by the city manager and charged accordingly. The city manager shall report to the city council annually with respect to the inflationary calculation. Such calculations will be based upon charges in the Engineering News Records Construction Index (ENR Index).
- C. Notwithstanding subsection B of this section, administrative adjustment to charges resulting solely from inflationary cost impacts shall not exceed five percent within any twelve-month period without council approval. (Ord. 03-1, § 4)

3.16.050 Methodology.

- A. The methodology used to establish or modify a reimbursement fee shall consider the cost of then-existing facilities including without limitation design, financing and construction costs, prior contributions by then-existing users, gifts or grants from federal or state government or private persons, the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the city manager. The methodology shall promote the objective that future system users shall contribute an equitable share of the cost of then-existing facilities.

- B. The methodology used to establish or modify the public improvement fee shall consider the estimated cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.
- C. The methodology used to establish or modify the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the council. (Ord. 03-1, § 5)

3.16.060 Authorized expenditures.

- A. Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- B. Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fee is assessed, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities.
1. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to Section 3.16.080 of this chapter.
- C. Notwithstanding subsections A and B of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development expenditures. (Ord. 03-1, § 6)

3.16.070 Expenditure restrictions.

- A. Systems development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- B. Systems development charges shall not be expended for costs of the operation or routine maintenance of capital improvements. (Ord. 03-1, § 7)

3.16.080 Improvement plan.

- A. Prior to the establishment of a system development charge, the council shall adopt a plan that includes a list of:
1. The capital improvements that may be funded with improvement fee revenues;
 2. The estimated cost and time of construction of each improvement; and
 3. A description of the process for modifying the plan.
- B. In adopting this plan, the council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. The council may modify such plan and list at any time.
- C. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on the periodic application of an adopted specific cost index or a modification to any of the factors related to the rate that are incorporated in the established methodology. (Ord. 03-1, § 8)

3.16.090 Collection of charge.

- A. The system development charge is payable upon issuance of:
 - 1. A building permit;
 - 2. A development permit;
 - 3. A development permit for development not requiring the issuance of a building permit; or
 - 4. A permit or approval to connect to the water system; 5. A permit or approval to connect to the sewer system; or
 - 6. A right-of-way access permit.
- B. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage.
- C. If development is commenced or connection is made to the water system, sanitary sewer system or storm sewer system without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- D. The city recorder or the recorder's designee shall collect the applicable system development charges from the permittee when a permit that allows or development of a parcel is issued or when a connection to the water, sewer, or drainage system of the city is made.
- E. The city recorder or designee shall not issue such permit or allow such connections until the charge has been paid in full or until provision for installment payments has been made pursuant to Section 3.16.110 of this chapter, or unless an exemption is granted pursuant to Section 3.16.120 of this chapter. (Ord. 03-1, § 9)

3.16.100 Exemptions.

The following are exempt from the system development charges:

- A. Housing for low-income or elderly persons which is exempt from real property taxes under state law;
- B. Development which is being financed by city funds;
- C. Structures and uses established and legally existing on or before July 26, 1991, are exempt from a system development charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.
- D. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
- E. An alteration, addition, replacement or change in use that does not increase the parcels or structures use of the public improvement facility are exempt from all portions of the system development charge. (Ord. 03-1, § 10)

3.16.110 Credits.

- A. When development occurs that is subject to a system development charge the system development charge for the existing use if applicable, shall be calculated and if it is less than the systems development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in use results in the systems development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this section.
- B. A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the city of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement

exceeds the applicable improvement fee and shall be only for the improvement fee charged for the type of improvement being constructed.

C. If a qualified public improvement is located in whole or in part on or contiguous to the property is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than sixty days after acceptance of the improvement by the city.

D. When the construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.

E. Notwithstanding subsections A and B, when establishing a methodology for a system development charge, the city manager may provide for a credit against the improvement fee the reimbursement fee, or both, for capital improvements constructed as part of the development that reduces the development demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the council finds reasonable. F. Credit shall not be transferable from one type of development fee to another.

G. Credits shall not be transferable from type of system development charge to another.

H. Credits shall be used within ten years from the date the credit is given. (Ord. 03-1, § 11)

3.16.120 Notice.

A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least ninety days prior to the first hearing to establish or modify a system development charge. The methodology supporting the system development charge shall be available at least sixty days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city.

B. The city may periodically delete names from the list, but at least thirty days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list. (Ord. 03-1, § 12)

3.16.130 Segregation and use of revenue.

A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than set forth in Section 3.16.060 of this chapter.

B. The appropriate city official shall provide the city council with an annual accounting, by January 1st of each year for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded in whole or in part, with system development charge revenues shall be included in the annual accounting. (Ord. 03-1, § 13)

3.16.140 Refunds.

A. Refunds may be given by the city manager upon finding that there was a clerical error in the calculation of the SDC.

- B. Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative SDC rate calculation at the time of submission of an application for a building permit. (Ord. 03-1 § 14)

3.16.150 Implementing regulations—Amendments.

The city council delegates authority to the city manager to adopt necessary procedures to implement provisions of this chapter including the appointment of an SDC program administrator. All rules pursuant to this delegated authority shall be filed with the office of recorder and be available for public inspection. (Ord. 03-1 § 15)

3.16.160 Appeal procedures.

- A. As used in this section, “working day” means a day when the general offices of the city are open to transact business with the public.
- B. A person disagreeing with a decision on the amount of the system development charged, an expenditure of funds collected under this ordinance, or the methodology used to determine the system development amounts may file an appeal by complying with subsections C and D of this section.
- C. An appeal of an expenditure must be filed within two years of the date of alleged improper expenditure. An appeal contesting the methodology used for calculating a system development charge must be filed within sixty days of the council adoption or modification of the system development ordinance or resolution. Appeals of the calculation of any other decision must be filed within ten working days of the date of the decision.
- D. The appeal shall state:
1. The name and address of the appellant;
 2. The nature of the determination being appealed;
 3. The reason the appellant believes the determination is incorrect; and
 4. What the appellant believes the correct determination should be.

An appellant who fails to file such a statement within the time permitted waives his or her objections and his or her appeal shall be dismissed.

E. Unless the appellant and the city agree to a longer period, an appeal shall be considered by the city manager, or designee, within ten working days of the receipt of the written appeal. A written response must be given to the appellant within this time period.

F. The appellant shall have ten days after receipt of the city manager’s decision to appeal this decision to the city council. An appellant who fails to file such a statement with the city manager within ten working days shall waive his or her objections and the city manager’s decision shall be final.

G. The council shall consider an appeal filed under subsection C within twenty working days. The appellant shall be notified of the council hearing date ten working days prior to the council hearing. By council motion, the report and recommendations of the city manager shall be approved, modified or rejected. Council decision shall be final. Any legal action contesting the council decision shall be filed within sixty days of the council’s decision. (Ord. 03-1 § 16)

3.16.170 Prohibited connection.

No person may connect to the sanitary sewer/water system or storm sewer system of the city unless the appropriate system development charge has been paid or the lien or the installment payment method has been applied for and approved. (Ord. 03-1 § 17)

3.16.180 Penalty.

Violation of this chapter is punishable by a fine not to exceed five hundred dollars. (Ord. 03-1 § 18)

3.16.190 Construction.

For the purposes of administration and enforcement of this chapter, unless otherwise stated in this chapter, the following rules of construction shall apply:

- A. In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text shall control.
- B. The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
- C. Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D. The phrase “used for” includes “arranged for,” “designed for,” “maintained for,” or “occupied for.”
- E. Where a regulation involves two or more connected items, conditions, provisions, or events:
 - 1. “And” indicates that all the connected terms, conditions, provisions or events shall apply;
 - 2. “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- F. The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances of like kind or character. (Ord. 03-1 § 19)

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CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF RESOLUTION 22-08; FOR THE PURPOSE OF ADOPTING A NEW SYSTEM DEVELOPMENT CHARGE METHODOLOGY AND ESTABLISHING NEW RATES FOR WATER, WASTEWATER, STORMWATER AND PARKS

Agenda Date: March 1, 2022

Prepared by: Karen La Bonte, Public Works Director

BACKGROUND

Oregon law (ORS 223.297-314) provides a framework through which municipalities can establish system development charges to pay for capital improvements. Per state law, allowed capital improvements are facilities or assets used for water, wastewater, stormwater, transportation or parks.

Currently, the City of Cannon Beach imposes SDCs on the following utilities: water, wastewater and stormwater. The methodology for water and wastewater was last updated in 2003, and the methodology for stormwater has remained unchanged since 1996. The Public Works Department budgeted \$45,000 for this long overdue project and conducted an RFP process to hire a consultant in late 2020. FCS Group's proposal was selected based on the company's expertise in this field, taking into account the City's positive experience with this team on past work (the recent utility rate study).

ANALYSIS/INFORMATION

City Council has been able to hear from and ask questions of consultant FCS Group in October, December, January, and February. Public input has been received on this topic. Council gave direction to staff that the SDCs should be implemented fully as outlined in FCS Group's methodology, effective on August 1, 2022.

Staff has drafted up a resolution that would adopt the updated SDC rates and methodology.

RECOMMENDATION

Staff recommends adopting Resolution 22-08 for the purpose of adopting a new system development charge methodology and establishing new rates for water, wastewater, stormwater and parks.

Suggested motion:

"I move to adopt the Resolution 22-08 for the purpose of adopting a new system development charge methodology and establishing new rates for water, wastewater, stormwater and parks."

List of Attachments:

A Resolution 22-08

BEFORE THE CITY OF CANNON BEACH

| | |
|--|----------------------|
| FOR THE PURPOSE OF ADOPTING A NEW SYSTEM) | RESOLUTION NO. 22-08 |
| DEVELOPMENT CHARGE METHODOLOGY AND) | |
| ESTABLISHING NEW RATES FOR WATER,) | |
| WASTEWATER, STORMWATER AND PARKS) | |

INTENT AND PURPOSE. The intent and purpose of this Resolution is to adopt a new system development charge (SDC) methodology and establish new SDC rates for water, wastewater, stormwater and parks for the City of Cannon Beach.

WHEREAS, the SDCs for stormwater were last established by Resolution 96-23 and the SDC for water and wastewater were last established by Resolution 03-09; and

WHEREAS, the City Council finds it is in the public interest to establish an SDC for parks; and

WHEREAS, Cannon Beach Municipal Code (“CBMC”) Sections 3.16.040 and 3.16.050 and ORS chapter 223 provide that the City Council shall by resolution establish and modify SDCs methodologies and rates; and

WHEREAS, the City Council finds it necessary to update the SDC methodology for water, stormwater and wastewater consistent with ORS 223.304 and CBMC Section 3.16.050; and

WHEREAS, the City Council finds it necessary to update the methodology and rates for water, stormwater and wastewater and to establish a methodology and rate for parks consistent with ORS 223.304 and CBMC Section 3.16.040; and

WHEREAS, the City Council heard presentations by City staff and consultants on October 12, 2021, December 7, 2021 and December 14, 2021 and believes that the methodology described in the City of Cannon Beach System Development Charge Update Report dated September 30, 2021, (“Methodology Report”) will improve program administration, provide clarity to city residents, property owners and developers and serve to better provide the necessary funds to construct the identified capital improvements; and,

WHEREAS, the Methodology Report is consistent with ORS 223.291 to 223.314; and

WHEREAS, the City Council has considered the Methodology Report and found it to represent the City’s best interests in moving forward with SDC administration and collection; and

WHEREAS, the Cannon Beach City Council, held a duly noticed public hearing on December 7, 2021, and provided the notice of the methodology used to establish the SDCs adopted by prior resolutions as required by ORS 223.304(7);

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Cannon Beach that Resolutions 96-23 and 03-09 are repealed and that system development charges for water, wastewater, stormwater and parks shall be established as follows:

1. The Methodology Report attached as Exhibit A is hereby adopted;
2. The system development charges shall be developed in terms of dwelling unit equivalents;
3. The following system development charges are consistent with the methodologies outlined in the Methodology Report and shall be adopted per dwelling unit equivalents as specified below:

- a. Water: \$2,034
- b. Wastewater: \$4,849
- c. Stormwater: \$424
- d. Parks: \$1,116

- 4. The City shall issue SDC credits against SDCs for the construction of a qualified public improvement pursuant to ORS 223.304 and CBMC 3.16.110.
- 5. This resolution shall go into effect on August 1, 2022.

PASSED by the Common Council of the City of Cannon Beach this 1st day of March 2022, by the following roll call vote:

YEAS: Councilors
NAYS:
EXCUSED:

Sam Steidel, Mayor

Attest:

Bruce St. Denis, City Manager

City of Cannon Beach

SYSTEM DEVELOPMENT CHARGE UPDATE

Draft Report
September 30, 2021

Washington

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Redmond, WA 98052
425.867.1802

Oregon

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FCS GROUP
Solutions-Oriented Consulting

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Section I. INTRODUCTION

This section describes the project scope and policy context upon which the body of this report is based.

I.A. PROJECT

The City of Cannon Beach (City) provides a variety of services to its residences, including water, sewer, stormwater, transportation, and parks. The City imposes system development charges (SDCs) to recover eligible infrastructure costs and provide partial funding for the capital needs of three of these five different systems; it does not currently charge an SDC for either transportation or parks. The existing SDCs are charged to all new developments that are either within the City's boundaries or are connected to the City's water or sewer system. For a typical single-family home, the current SDCs are \$1,631 for water, \$1,678 for sewer, and \$944 for stormwater.

In January 2021, the City engaged FCS GROUP to update its water, sewer, and stormwater SDCs, as well as to calculate new SDCs for transportation and parks.

I.B. POLICY

SDCs are enabled by state statute, authorized by local ordinance, and constrained by the United States Constitution.

I.B.1. State Statute

Oregon Revised Statutes (ORS) 223.297 to 223.314 enable local governments to establish SDCs, which are one-time fees on development that are paid at the time of development or redevelopment that creates additional demand for a city's facilities. SDCs are intended to recover a fair share of the cost of existing and planned facilities that provide capacity to serve future users (i.e., growth).

ORS 223.299 defines two types of SDC:

- A reimbursement fee that is designed to recover “costs associated with capital improvements already constructed, or under construction when the fee is established, for which the local government determines that capacity exists”
- An improvement fee that is designed to recover “costs associated with capital improvements to be constructed”

ORS 223.304(1) states, in part, that a reimbursement fee must be based on “the value of unused capacity available to future system users or the cost of existing facilities” and must account for prior

contributions by existing users and any gifted or grant-funded facilities. The calculation must “promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities.” A reimbursement fee may be spent on any capital improvement related to the system for which it is being charged (whether cash-financed or debt-financed).

ORS 223.304(2) states, in part, that an improvement fee must be calculated to include only the cost of projected capital improvements needed to increase system capacity for future users. In other words, the cost of planned projects that correct existing deficiencies or that do not otherwise increase capacity for future users may not be included in the improvement fee calculation. An improvement fee may be spent only on capital improvements (or portions thereof) that increase the capacity of the system for which it is being charged (whether cash-financed or debt-financed).

In addition to the reimbursement and improvement fees, ORS 223.307(5) states, in part, that “system development charge revenues may be expended on the costs of complying” with state statutes concerning SDCs, including “the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.”

I.B.2. Local Ordinance

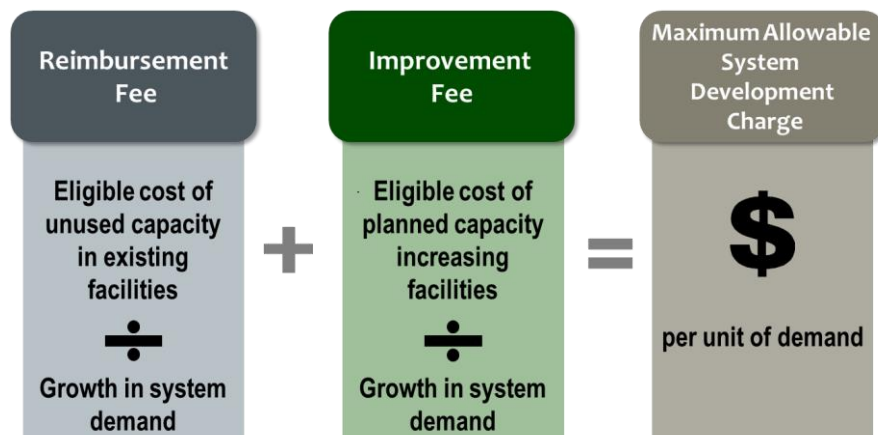
Chapter 3.16 of the Cannon Beach Municipal Code authorizes and governs the imposition and expenditure of SDCs in the City.

I.B.3. United States Constitution

The United States Supreme Court has determined that SDCs, impact fees, or other exactions that comply with state and/or local law may still violate the United States Constitution if they are not proportionate to the impact of the development. The SDCs calculated in this report are designed to meet all constitutional and statutory requirements.

I.C. SDC BACKGROUND

In general, SDCs are calculated by adding a reimbursement fee component (if applicable) and an improvement fee component—both with potential adjustments. Each component is calculated by dividing the eligible cost by growth in units of demand. The unit of demand becomes the basis of the charge. Below is an illustration of this calculation:



The inputs used for calculating each component of an SDC are unique to each service. Our primary concern is that the growth in the denominator matches the growth assumed in the development of the project list for each service. This may lead to growth or other assumptions differing among services.

The calculations for all five SDCs (water, sewer, stormwater, transportation, and parks) are detailed in the following sections.

Section II. WATER

This section provides the detailed calculations of the maximum allowable water SDC.

II.A. GROWTH

The calculation of projected growth begins with defining the units by which current and future demand will be measured. Then, using the best available data, we quantify the current level of demand and estimate a future level of demand. The difference between the current level and the future level is the growth in demand that will serve as the denominator in the SDC calculations.

II.A.1. Unit of Measurement

A good unit of measurement allows an agency to quantify the incremental demand of development or redevelopment that creates additional demand for water facilities. A great unit of measurement allows an agency to distinguish different levels of demand added by different kinds of development or redevelopment.

For water SDCs, the meter size necessary for a development is a measure of its potential water demand. In order to compare meters and calculate the total demand of the system, meters are often compared by their flow rates and measured by their resulting meter capacity equivalents (MCEs). In this system, the smallest meter employed by the City is one MCE, and every larger meter has a larger number of MCEs based on their relative flow rates.

Currently, the City charges its water SDC using equivalent dwelling units (EDUs), which is similar to using MCEs. This analysis uses MCEs. Flow rates are based on the American Water Works Association's (AWWA's) flow rates assuming a 3/4" meter base.

II.A.2. Growth in Demand

The City had 2,261 MCEs as of 2015 according to the Water System Master Plan. If MCEs grow at the same rate as population, then the City had 2,280 MCEs as of 2020 and will have 2,344 MCEs in 2036, based on population forecasts in the plan. Therefore, the City can expect to add about 64 MCEs during the planning period of 2020 to 2036.

These calculations are summarized in **Table 1** below. The growth of 64 MCEs will be the denominator for the water SDC calculation. Further, the percentage of users in 2036 that will be added between 2020 and 2036 is 2.38 percent. This number is called the growth share and will be used in the calculation of the improvement fee.

Table 1: Growth in MCEs for the Water SDC Calculation

| | 2015 | 2020 | 2036 | CAGR | Growth | Growth Share |
|------------|-------|-------|-------|-------|--------|--------------|
| Population | 1,705 | 1,720 | 1,768 | 0.17% | 48 | 2.73% |
| MCEs | 2,261 | 2,280 | 2,344 | 0.17% | 64 | 2.73% |

Source: 2017 Water System Master Plan, Table 1.2.2-1 (population estimates), Table 8.1.2-28 (MCE estimates)

II.B. IMPROVEMENT FEE

An improvement fee is the eligible cost of planned projects per unit of growth that such projects will serve. Since we have already calculated growth (denominator) above, we will focus here on the improvement fee cost basis (numerator).

II.B.1. Eligibility

A project's eligible cost is the product of its total cost and its eligibility percentage. The eligibility percentage represents the portion of the project that creates capacity for future users. Where possible, specific details about a project can provide an eligibility percentage.

The eligibility percentages for projects on the water SDC list were developed by sorting each project into one of three categories. Projects in the first category replace existing infrastructure without providing additional capacity for future users, and so they receive zero percent eligibility. Projects in the second category benefit existing and future users proportionately, and so they receive the growth share percentage discussed in **Section II.A.2**. Finally, any projects that provide capacity entirely for future users receive a 100 percent eligibility percentage.

II.B.2. Improvement Fee Cost Basis

Table 2 below shows all the projects in the water system improvement fee cost basis. The eligibility for each project is shown in the Eligibility Percentage column, and the SDC-Eligible Costs column shows that full amount of the improvement fee cost basis is \$87,720.

Note that this project list does not include the annual pipe replacement projects discussed in the 2017 Water System Master Plan. These projects were determined to be zero percent eligible, as they do not provide new capacity for future users.

Table 2: Water SDC Improvement Fee Cost Basis

| ID Project | Timing | Cost | Eligibility | Eligible Cost |
|---|-------------|---------------|-------------|---------------|
| | | | Percentage | |
| 1 Improve Existing Mission Control Services Monitoring Capabilities | 0-5 years | \$ 43,025 | 2.73% | 1,173 |
| 2 Water System SCADA Integration - Monitoring & Control Capabilities | 5-10 years | 368,901 | 2.73% | 10,059 |
| 4 City-Wide AMA Upgrades | 5-10 years | 614,150 | 0.00% | - |
| 6 Source Water Protection - Land Acquisition | 0-5 years | 500,000 | 2.73% | 13,633 |
| 7 Emergency Water Supply Planning & Treatment | 5-10 years | 523,255 | 2.73% | 14,267 |
| 9 Main Reservoir Seismic Resiliency Improvements - Tank Replacement | 0-5 years | 2,211,540 | 0.00% | - |
| 10 Tolovana and North Reservoir Seismic Resiliency Improvements | 5-10 years | 281,848 | 0.00% | - |
| 14 Ash Street Booster Pump Station Fire Pump Installation | 0-5 years | 115,710 | 2.73% | 3,155 |
| 15 New Fire Hydrant Installations on Pipes > 6" Diameter | 0-5 years | 324,128 | 0.00% | - |
| 16 New Fire Hydrant Installations for Pipes < 6" Diameter | 5-10 years | 589,454 | 0.00% | - |
| 17 Spruce Street/Hemlock Street 12" Transmission Main Replacement | 0-5 years | 1,822,661 | 0.00% | - |
| 18 5th Street PVC Transmission Main Replacement | 0-5 years | 596,411 | 0.00% | - |
| 20 Upsizing of Distribution Piping Along "President" Streets | 10-16 years | 632,531 | 2.73% | 17,247 |
| 21 Hemlock Street AC Distribution Main Upsizing | 5-10 years | 1,357,729 | 0.00% | - |
| 22 S. Pacific Street PVC Distribution Main Replacement | 5-10 years | 146,821 | 0.00% | - |
| 23 12" AC Transmission Main Replacement South of Hwy 101: Warren Way to Yukon St. | 10-16 years | 878,109 | 0.00% | - |
| 24 12" AC Transmission Main Replacement North of Hwy 101: Arbor Ln. to Dawes Ave. | 10-16 years | 317,281 | 2.73% | 8,651 |
| 25 12" AC Transmission Main Replacement Along Hwy 101 | 0-5 years | 587,946 | 0.00% | - |
| 26 Coho Pl. Distribution Line Upsizing | 0-5 years | 162,500 | 0.00% | - |
| 27 Haystack Heights Distribution Main Upsizing | 10-16 years | 833,199 | 0.00% | - |
| 28 Haystack Heights Service Line Replacements (with PEX) | 5-10 years | 257,680 | 0.00% | - |
| 31 Service Extension to North Cache Site via Old Cannon Beach Rd. | 10-16 years | 97,063 | 2.73% | 2,647 |
| 32 Antler Ave./Elm St. Distribution Line Looping via 6th St. | 10-16 years | 48,829 | 2.73% | 1,331 |
| 33 New 12" HDPE Pipeline - Tolovana Reservoir to Haystack Heights | 5-10 years | 570,558 | 2.73% | 15,557 |
| | | \$ 16,509,251 | | \$ 87,720 |

Source: 2017 Water System Master Plan, Tables 9.2.1-(1-3)

II.C. REIMBURSEMENT FEE

A reimbursement fee is the eligible cost of the water system facilities available for future users per unit of growth that such facilities will serve. Since growth was calculated above, we will focus on the eligible cost of existing water facilities available for future users. That is, we will focus on the cost of reimbursable water system facilities.

II.C.1. Reimbursement Fee Cost Basis

Table 1.4.4-1 of the 2017 Water System Master Plan outlines the treated water storage needs in Cannon Beach. According to that table, and the population growth estimates discussed in **Section II.A.2**, the City needed about 1.99 million gallons (MG) of storage in 2020, and will need about 2.02 MG in 2036. So, growth will require an extra 0.03 MG of additional storage over demands from current users. The City currently has 2.65 MG of storage capacity. Therefore, the percentage of total storage capacity available to growth is 0.03 MG divided by 2.65 MG, which is about 1.25 percent. That 1.25 percent will be the percentage of the original cost of storage assets eligible for collection in a reimbursement fee.

The City has four major water storage assets with a total original cost of just under \$1.5 million. Applying the eligibility percentage of 1.25 percent produces a total eligible cost of \$18,749. These calculations are summarized in **Table 3** below.

Table 3: Reimbursement Fee Cost Basis for Water Storage Assets

| Storage Asset | Original Cost | Eligibility | Eligible Costs |
|----------------------------|---------------------|-------------|------------------|
| Main Water Reservoir | \$ 629,314 | 1.25% | \$ 7,874 |
| Mainline Reservoir | 766,991 | 1.25% | 9,597 |
| North Side Water Reservoir | 92,142 | 1.25% | 1,153 |
| Land-Reservoir Road | 10,000 | 1.25% | 125 |
| Total | \$ 1,498,447 | | \$ 18,749 |

Source: 2017 Water System Master Plan, Table 1.4.4-1 (eligibility); City staff (original cost)

In addition to the eligible storage costs discussed above, in 2019 the City completed project number 30, *Connection of S. Hemlock Street Distribution Main "S-Curve,"* as discussed in the Water System Master Plan. About 2.83 percent (the growth share) of the project provided capacity for future users, and it can be reasonably assumed that about 95 percent of that capacity is still available, which means that the 2.69 percent of the project cost can be included in the reimbursement fee cost basis. The total project cost was \$111,480. Therefore, \$2,995 can be added to the reimbursement fee cost basis.

Therefore, the eligible cost for the storage assets combined with the eligible cost for the project discussed above yields a total reimbursement fee cost basis of \$21,744.

II.D. CALCULATED SDC

This section applies some adjustments to the improvement and reimbursement fee cost bases and then divides that by the expected growth. The result is a total SDC per MCE which can then be applied to each meter size using AWWA's flow factors.

II.D.1. Adjustments

Based on the cost of developing the SDC methodology and updating it over the forecast period, the City estimates that \$20,532 should be added to the cost basis to collect the compliance costs allowed by statute.

II.D.2. Calculated SDC

Table 4 below summarizes the calculation of the water SDC. As shown, the maximum allowable SDC is \$2,034 per MCE.

Table 4: Calculated Water SDC

| | |
|-----------------------------|-------------------|
| Cost Basis: | |
| Improvement Fee | \$ 87,720 |
| Reimbursement Fee | 21,744 |
| Compliance Costs | 20,532 |
| Total Cost Basis | \$ 129,996 |
| Growth in MCEs | 64 |
| Improvement Fee per MCE | \$ 1,372 |
| Reimbursement Fee per MCE | 340 |
| Compliance Fee per MCE | 321 |
| Total SDC per MCE | \$ 2,034 |

Table 5 below shows the proposed full water SDC fee schedule.

Table 5: Water SDC Fee Schedule

| Meter Size | MCEs by Meter | Improvement Fee | Reimbursement Fee | Compliance Fee | Calculated Full SDC |
|------------|---------------|-----------------|-------------------|----------------|---------------------|
| 3/4" | 1.00 | \$ 1,372 | \$ 340 | \$ 321 | \$ 2,034 |
| 1" | 1.67 | 2,287 | 567 | 535 | 3,390 |
| 1 1/2" | 3.33 | 4,575 | 1,134 | 1,071 | 6,779 |
| 2" | 5.33 | 7,319 | 1,814 | 1,713 | 10,847 |
| 3" | 10.67 | 14,639 | 3,629 | 3,426 | 21,694 |
| 4" | 16.67 | 22,873 | 5,670 | 5,354 | 33,896 |
| 6" | 33.33 | 45,745 | 11,339 | 10,707 | 67,792 |
| 8" | 53.33 | 73,193 | 18,143 | 17,132 | 108,468 |
| 10" | 76.67 | 105,214 | 26,081 | 24,627 | 155,922 |

Section III. SEWER

This section provides the detailed calculations of the maximum allowable sewer SDC.

III.A. GROWTH

The calculation of projected growth begins with defining the units by which current and future demand will be measured. Then, using the best available data, we quantify the current level of demand and estimate a future level of demand. The difference between the current level and the future level is the growth in demand that will serve as the denominator in the SDC calculations.

III.A.1. Unit of Measurement

A good unit of measurement allows an agency to quantify the incremental demand of development or redevelopment that creates additional demand for sewer facilities. A great unit of measurement allows an agency to distinguish different levels of demand added by different kinds of development or redevelopment.

For sewer SDCs, the meter size necessary for a development is a measure of its potential water and corresponding sewage flow. In order to compare meters and calculate the total demand of the system, meters are often compared by their flow rates and measured by their resulting MCEs. In this system, the smallest meter employed by the City is one MCE, and every larger meter has a larger number of MCEs based on their relative flow rates.

Currently, the City charges its sewer SDC using equivalent dwelling units (EDUs), which require the use of estimated volume by land use and other characteristics. This analysis uses MCEs. Flow rates are based on the AWWA's flow rates assuming a 3/4" meter base.

III.A.2. Growth in Demand

Because the Water System Master Plan and the Wastewater Facility Plan were developed at the same time, they make identical growth assumptions. The growth of 64 MCEs as outlined in **Table 1** will also be the denominator of the sewer SDC, and the growth share percentage of 2.38 percent will be used in the calculation of the improvement fee.

III.B. IMPROVEMENT FEE

An improvement fee is the eligible cost of planned projects per unit of growth that such projects will serve. Since we have already calculated growth (denominator) above, we will focus here on the improvement fee cost basis (numerator).

III.B.1. Eligibility

A project's eligible cost is the product of its total cost and its eligibility percentage. The eligibility percentage represents the portion of the project that creates capacity for future users. Where possible, specific details about a project can provide an eligibility percentage.

The eligibility percentages for projects on the sewer SDC list were developed by sorting each project into one of three categories. Projects in the first category replace failing infrastructure without providing additional capacity for future users, and so they receive zero percent eligibility. Projects in the second category benefit existing and future users proportionately, and so they receive the growth share percentage discussed in **Section II.A.2**. Finally, any projects that provide capacity entirely for future users receive a 100 percent eligibility percentage.

III.B.2. Improvement Fee Cost Basis

Table 6 below shows all the projects in the sewer system improvement fee cost basis. The eligibility for each project is shown in the Eligibility Percentage column, and the SDC-Eligible Costs column shows that full amount of the improvement fee cost basis is \$86,044.

Table 6: Sewer SDC Improvement Fee Cost Basis

| ID Description | Timing (Fiscal Years) | Total Cost | Eligibility | |
|---|-----------------------|---------------------|-------------|------------------|
| | | | Percentage | Eligible Costs |
| S1 SCADA Monitoring Big 5 | 2018 | \$ 570,240 | 2.73% | \$ 15,548 |
| S2 SCADA Monitoring Small 4 | 2018 | 212,220 | 2.73% | 5,786 |
| S3 SCADA Monitor/Control Big 5 | 2019 | 759,645 | 2.73% | 20,713 |
| S4 SCADA Monitor/Control Small 4 | 2019 | 350,460 | 2.73% | 9,556 |
| C3 Generator Sets and Enclosures | 2022-2023 | 396,675 | 2.73% | 10,816 |
| C4 Matanuska - Control/Generator Building | 2024-2025 | 299,505 | 2.73% | 8,166 |
| C5 Ecola - Control/Generator Building | 2026-2027 | 299,670 | 2.73% | 8,171 |
| C6 Annual Budget for 300' of 8" Replacement | Annually | 3,040,962 | 0.00% | - |
| T4 Grit Chamber | 2025-2026 | 267,290 | 2.73% | 7,288 |
| Total | | \$ 6,196,667 | | \$ 86,044 |

Source: 2017 Wastewater Facilities Plan, Table 9.1.3

III.C. REIMBURSEMENT FEE

A reimbursement fee is the eligible cost of the sewer system facilities available for future users per unit of growth that such facilities will serve. Since growth was calculated above, we will focus on the eligible cost of the sewer facilities available for future users. That is, we will focus on the cost of reimbursable sewer system facilities.

III.C.1. Reimbursement Fee Cost Basis

The 2017 Wastewater Facilities Plan outlines the capacity of the system's lift stations, as well as the current and future demands on those lift stations. The percentage of a lift station's design capacity that is available for users that will arrive by 2036 is its reimbursable capacity and is outlined for each lift station in **Table 7** below. The eligible cost for reimbursement is simply the original cost for each

lift station multiplied by its eligibility percentage. The total is \$47,770 and is shown in the last column of the table below.

Table 7: Reimbursement Fee Cost Basis for Sewer Lift Stations

| Lift Stations | Design Capacity (MGD) | Capacity for Future Users (MGD) | Eligibility Percentage | Original Cost | Eligible Cost |
|---------------|--------------------------|---------------------------------------|---------------------------|---------------------|------------------|
| Ecola | 0.58 | 0.00 | 0.00% | \$ 22,343 | \$ - |
| Main | 2.02 | 0.07 | 3.47% | 195,700 | 6,782 |
| Elkland | 0.36 | 0.01 | 2.78% | 159,298 | 4,425 |
| Pacific | 2.06 | 0.00 | 0.00% | 208,262 | - |
| Haystack | 0.37 | 0.00 | 0.00% | 32,621 | - |
| Matanuska | 1.71 | 0.06 | 3.51% | 1,037,275 | 36,396 |
| Siuslaw | 0.43 | 0.00 | 0.00% | 9,388 | - |
| Midway | 0.58 | 0.00 | 0.00% | 9,935 | - |
| Sitka | 0.63 | 0.01 | 1.59% | 10,587 | 168 |
| Total | | | | \$ 1,685,409 | \$ 47,770 |

Source: 2017 Wastewater Facilities Plan, Table 5.1.8(d,e) (capacity for future users); City staff (original cost)

In addition to the sewer lift stations, City staff also noted that there was at least enough capacity in its sewer treatment plant to accommodate growth over the forecast period. So, the growth share discussed in **Section II.A.2** represents the capacity available for treatment plant assets to be collected in a reimbursement fee.

The original cost for treatment plant assets is shown in the second column of **Table 8** below. There is some outstanding debt for treatment plant assets which is outlined in the third column of the table. The share of outstanding debt that will be paid for by future users must be removed from the eligible costs, because future users will pay for outstanding debt in their rates or taxes. The eligibility percentage for each project is the growth share, as shown in the fourth column. Finally, the last column shows the eligible costs for treatment plant assets after adjusting for outstanding debt, which totals at \$154,295.

Table 8: Reimbursement Fee Cost Basis for Treatment Plant Assets

| Treatment Plant Asset | Original Cost | Outstanding Debt | Eligibility Percentage | Eligible Cost |
|-----------------------------------|---------------------|---------------------|---------------------------|-------------------|
| Sewage Treatment Control Building | \$ 31,941 | \$ - | 2.73% | \$ 871 |
| WW Lab Offices | 386,181 | 240,939 | 2.73% | 3,960 |
| Magnesium Ladder-WWTP | 17,894 | - | 2.73% | 488 |
| Wastewater Treatment Plant 08 | 5,373,474 | - | 2.73% | 146,514 |
| WW Treatment Plant | 21,998 | - | 2.73% | 600 |
| WW Plant Improvements | 9,951 | - | 2.73% | 271 |
| WW Pave Around Basins | 13,864 | - | 2.73% | 378 |
| Lagoon Rehab | 44,471 | - | 2.73% | 1,213 |
| Total | \$ 5,899,774 | \$ 240,939 | | \$ 154,295 |

Source: City staff

The City has also recently completed a project from the master plan which provides capacity for future users. The *Pacific Lift Station Pump Capacity Upgrade* discussed in Section 9 of the facilities plan cost the City \$60,682. Because the project will benefit existing and future proportionately, the growth share percentage multiplied by the original cost provides the reimbursable cost at year of construction, which is \$1,655. Because the project was built in 2016, it is reasonable to assume that about 80 percent of its capacity is still available, and so the eligible cost of the project for the reimbursement fee is \$1,324.

The total eligible cost for the lift stations, treatment plant, and the recently completed project is \$203,389, which is the reimbursement fee cost basis.

III.D. CALCULATED SDC

This section applies some adjustments to the improvement and reimbursement fee cost bases, and then divides that by the expected growth. The result is a total sewer SDC per MCE which can then be applied to each water meter size using the City's flow factors.

III.D.1. Adjustments

Based on the cost of developing the SDC methodology and updating it over the forecast period, the City estimates that \$20,532 should be added to the cost basis to collect the compliance costs allowed by statute.

III.D.2. Calculated SDC

Table 9 below summarizes the calculation of the sewer SDC. As shown, the maximum allowable SDC is \$4,849 per MCE.

Table 9: Calculated Sewer SDC

| | |
|---------------------------|-----------------|
| Cost Basis: | |
| Improvement Fee | \$ 86,044 |
| Reimbursement Fee | 203,389 |
| Compliance Costs | 20,532 |
| Total Cost Basis | \$ 309,965 |
| Growth in MCEs | 64 |
| Improvement Fee per MCE | \$ 1,346 |
| Reimbursement Fee per MCE | 3,182 |
| Compliance Fee per MCE | 321 |
| Total SDC per MCE | \$ 4,849 |

Table 10 below shows the proposed full sewer SDC fee schedule.

Table 10: Sewer SDC Fee Schedule

| Meter Size | MCEs by Meter | Improvement Fee | Reimbursement Fee | Compliance Fee | Calculated Full SDC |
|------------|---------------|--------------------|----------------------|-------------------|------------------------|
| 3/4" | 1.00 | \$ 1,346 | \$ 3,182 | \$ 321 | \$ 4,849 |
| 1" | 1.67 | 2,244 | 5,303 | 535 | 8,082 |
| 1 1/2" | 3.33 | 4,487 | 10,607 | 1,071 | 16,165 |
| 2" | 5.33 | 7,179 | 16,971 | 1,713 | 25,863 |
| 3" | 10.67 | 14,359 | 33,941 | 3,426 | 51,727 |
| 4" | 16.67 | 22,436 | 53,033 | 5,354 | 80,823 |
| 6" | 33.33 | 44,872 | 106,067 | 10,707 | 161,646 |
| 8" | 53.33 | 71,795 | 169,707 | 17,132 | 258,633 |
| 10" | 76.67 | 103,205 | 243,953 | 24,627 | 371,785 |

Section IV. STORMWATER

This section provides the detailed calculations of the maximum allowable stormwater SDC.

IV.A. GROWTH

The calculation of projected growth begins with defining the units by which current and future demand will be measured. Then, using the best available data, we quantify the current level of demand and estimate a future level of demand. The difference between the current level and the future level is the growth in demand that will serve as the denominator in the SDC calculations.

IV.A.1. Unit of Measurement

A good unit of measurement allows an agency to quantify the incremental demand of development or redevelopment that creates additional demand for stormwater facilities. A great unit of measurement allows an agency to distinguish different levels of demand added by different kinds of development or redevelopment.

For stormwater SDCs, the square footage of the impervious surface area necessary for a development is a measure of its potential stormwater infrastructure demand. In order to compare developments and calculate the total demand of the system, impervious surface area is often compared by using an equivalent service unit (ESU) where one ESU represents the average impervious surface area of a single-family household. The impervious surface area of other developments is measured using ESUs.

Currently, the City charges its stormwater SDC using ESUs, where one ESU is equal to 3,125 square feet of impervious surface area. That is also the approach used in the calculation of this SDC.

IV.A.2. Growth in Demand

According to City staff, the City had 1,665 residential ESUs and 1,001 non-residential ESUs in 2020, for a total of 2,666 ESUs. Using Portland State University's (PSU) population forecasts for Clatsop County, ESUs are projected to reach 2,768 in 2035, for a growth of 102 ESUs.

These calculations are summarized in **Table 11** below. The growth of 102 ESUs will be the denominator for the SDC calculation. Further, the percentage of users in 2035 that will be added between 2020 and 2035 is 3.67 percent. This number is called the growth share and will be used in the calculation of the improvement fee.

Table 11: Growth in ESUs for the Stormwater SDC Calculation

| | 2020 | 2035 | Growth | Growth Share |
|----------------------|--------------|--------------|------------|--------------|
| Population | 1,652 | 1,715 | 63 | 3.67% |
| Residential ESUs | 1,665 | 1,728 | 63 | 3.67% |
| Non-residential ESUs | 1,001 | 1,039 | 38 | 3.67% |
| Total ESUs | 2,666 | 2,768 | 102 | 3.67% |

Source: PSU Coordinated Population Forecast for Clatsop County, 2020 through 2070 (growth projections); City staff (2020 ESU totals)

IV.B. IMPROVEMENT FEE

An improvement fee is the eligible cost of planned projects per unit of growth that such projects will serve. Since we have already calculated growth (denominator) above, we will focus here on the improvement fee cost basis (numerator).

IV.B.1. Eligibility

A project's eligible cost is the product of its total cost and its eligibility percentage. The eligibility percentage represents the portion of the project that creates capacity for future users. Where possible, specific details about a project can provide an eligibility percentage.

The eligibility percentages for projects on the stormwater SDC list were developed by sorting each project into one of three categories. Projects in the first category replace failing infrastructure without providing additional capacity for future users, and so they receive a zero percent eligibility. Projects in the second category benefit existing and future users roughly equally, and so they receive the growth share percentage discussed in **Section IV.A.2**. Finally, any projects that provide capacity entirely for future users receive a 100 percent eligibility percentage.

IV.B.2. Improvement Fee Cost Basis

Table 12 below shows all the projects in the stormwater system improvement fee cost basis. The eligibility for each project is shown in the Eligibility Percentage column, and the SDC-Eligible Costs column shows that full amount of the improvement fee cost basis is \$22,592.

Table 12: Stormwater SDC Improvement Fee Cost Basis

| Description | Timing (Fiscal Years) | Total Cost | Eligibility Percentage | Eligible Costs |
|--|-----------------------|-------------------|------------------------|------------------|
| Storm drains for Presidential Streets Area | 2023 | \$ 309,000 | 3.67% | \$ 11,351 |
| Storm drains for 7 th and Oak Streets | 2022 | 306,000 | 3.67% | 11,241 |
| Total | | \$ 615,000 | | \$ 22,592 |

Source: City staff

IV.C. REIMBURSEMENT FEE

A reimbursement fee is the eligible cost of the stormwater system facilities available for future users per unit of growth that such facilities will serve. The City finds that there is little eligible capacity in the stormwater system, and so there is no calculated reimbursement fee for the stormwater SDC.

IV.D. CALCULATED SDC

This section applies some adjustments to the improvement and reimbursement fee cost bases, and then divides that by the expected growth. The result is a total SDC per ESU which can then be applied to each development based on its number of ESUs.

IV.D.1. Adjustments

Based on the cost of developing the SDC methodology and updating it over the forecast period, the City estimates that \$20,532 should be added to the cost basis to collect the compliance costs allowed by statute.

IV.D.2. Calculated SDC

Table 13 below summarizes the calculation of the stormwater SDC. As shown, the maximum allowable SDC is \$424 per ESU.

Table 13: Calculated Stormwater SDC

| Calculated SDC | |
|---------------------------|---------------|
| Cost Basis: | |
| Improvement Fee | \$ 22,592 |
| Reimbursement Fee | - |
| Compliance Costs | 20,532 |
| Total Cost Basis | \$ 43,124 |
| Growth in ESUs | 102 |
| Improvement Fee per ESU | \$ 222 |
| Reimbursement Fee per ESU | - |
| Compliance Fee per ESU | 202 |
| Total SDC per ESU | \$ 424 |

Section V. TRANSPORTATION

The City's currently planned transportation projects fit one of two descriptions; either they are developer-driven and not dependent on the City's participation, or they are major repair or replacement projects. In both cases, the projects are ineligible for inclusion in an improvement fee cost basis as the City is not providing new capacity for future users. In addition, the City does not find that there is capacity in its existing system that is eligible for inclusion in a reimbursement fee.

Because there are no projects eligible for inclusion in the improvement fee cost basis, and there is no current capacity available for inclusion in the reimbursement fee cost basis, the City's total transportation SDC cost basis is zero dollars. Thus, the calculated SDC is also zero dollars. However, when the City finishes its transportation system plan, it may have a more complete list of projects and estimates of capacity that will enable the City to calculate the transportation SDC.

Section VI. PARKS

This section provides the detailed calculations of the maximum allowable parks SDC.

VI.A. GROWTH

The calculation of projected growth begins with defining the units by which current and future demand will be measured. Then, using the best available data, we quantify the current level of demand and estimate a future level of demand. The difference between the current level and the future level is the growth in demand that will serve as the denominator in the SDC calculations.

VI.A.1. Unit of Measurement

A good unit of measurement allows an agency to quantify the incremental demand of development or redevelopment that creates additional demand for parks facilities. A great unit of measurement allows an agency to distinguish different levels of demand added by different kinds of development or redevelopment.

The City finds that its parks demand comes from residential developments. For parks SDCs charged to residential developments, the number of residents added by a development is a measure of its potential parks system demand. To distinguish the levels of demand imposed by different developments, we will use data from the U. S. Census Bureau to estimate the number of residents for a typical dwelling unit.

VI.A.2. Growth in Demand

According to the City's 2017 Parks and Trails Master Plan, there were 1,922 residents in 2020, and there will be 2,705 residents in 2040, for growth of 783 residents. These calculations are summarized in **Table 14** below. The growth of 783 residents will be the denominator for the SDC calculation. Further, the percentage of users in 2040 that will be added between 2020 and 2040 is 29 percent. This number is called the growth share and will be used in the calculation of the improvement fee.

Table 14: Growth in Population for the Parks SDC Calculation

| | 2020 | 2040 | CAGR | Growth | Growth Share |
|------------|-------|-------|-------|--------|--------------|
| Population | 1,922 | 2,705 | 1.72% | 783 | 28.96% |

Source: 2017 Parks and Trails Master Plan

VI.B. IMPROVEMENT FEE

An improvement fee is the eligible cost of planned projects per unit of growth that such projects will serve. Since we have already calculated growth (denominator) above, we will focus here on the improvement fee cost basis (numerator).

VI.B.1. Eligibility

A project's eligible cost is the product of its total cost and its eligibility percentage. The eligibility percentage represents the portion of the project that creates capacity for future users. Where possible, specific details about a project can provide an eligibility percentage.

The eligibility percentages for projects on the parks SDC list were developed by sorting each project into one of three categories. Projects in the first category replace failing infrastructure without providing additional capacity for future users, and so they receive a zero percent eligibility. Projects in the second category benefit existing and future users roughly equally, and so they receive the growth share percentage discussed in **Section VI.A.2**. Finally, any projects that provide capacity entirely for future users receive a 100 percent eligibility percentage.

VI.B.2. Improvement Fee Cost Basis

Table 15 below shows all the projects in the parks system improvement fee cost basis. The eligibility for each project is shown in the Eligibility Percentage column, and the SDC-Eligible Costs column shows that full amount of the improvement fee cost basis is \$372,092.

Table 15: Parks SDC Improvement Fee Cost Basis

| ID | Project | Timing | Cost | Eligibility Percentage | Eligible Costs |
|--------------|--|-------------|---------------------|------------------------|-------------------|
| P-1 | NeCus' Park (school site) improvements | 1-5 years | \$ 1,200,000 | 29% | 347,479 |
| P-4 | Treatment Pond Improvements | 1-10 years | 2,000 | 29% | 579 |
| P-5 | Beach Access and Mini-Park Guide | 1-5 years | 3,000 | 0% | - |
| P-6 | Interpretive Signs | Ongoing | 10,000 | 29% | 2,896 |
| P-10 | Main City Park | 10-20 years | 70,000 | 29% | 20,270 |
| B-1 | Beach Access Signage | 1-5 years | 3,000 | 29% | 869 |
| B-2 | Ecola Court | 1-5 years | 1,600,000 | 0% | - |
| Total | | | \$ 2,888,000 | | \$ 372,092 |

Source: 2017 Parks and Trails Master Plan (projects); City staff (cost)

VI.C. REIMBURSEMENT FEE

A reimbursement fee is the eligible cost of the parks system facilities available for future users per unit of growth that such facilities will serve. The City finds that there is little eligible capacity in the parks system, and so there is no calculated reimbursement fee for the parks SDC.

VI.D. CALCULATED SDC

The section applies some adjustments to the improvement and reimbursement fee cost bases, and then divides that by the expected growth. The result is a total SDC per dwelling unit.

VI.D.1. Adjustments

Based on the cost of developing the SDC methodology and updating it over the forecast period, the City estimates that \$27,376 should be added to the cost basis to collect the compliance costs allowed by statute.

VI.D.2. Calculated SDC

Table 16: Calculated Parks SDC below summarizes the calculation of the parks SDC. As shown, the maximum allowable SDC is \$510 per resident.

To apply the SDC to new developments, the City should charge per dwelling unit based on the average occupancy of a dwelling unit in the city. The *American Community Survey* provides an estimate of 2.19 as the average number of residents per dwelling unit in the city. Thus, the parks SDC for a dwelling unit is \$1,116.

Table 16: Calculated Parks SDC

| | | |
|------------------------------------|------|-----------------------------|
| Cost Basis: | | |
| Improvement Fee | \$ | 372,092 |
| Reimbursement Fee | | - |
| Compliance Costs | | 27,376 |
| Total Cost Basis | \$ | 399,468 |
| Growth in Residents | | 783 |
| Improvement Fee per Resident | \$ | 475 |
| Compliance Fee per Resident | | 35 |
| Total SDC per Resident | \$ | 510 |
| | | Residents per dwelling unit |
| Total SDC per dwelling unit | 2.19 | \$ 1,116 |

Source : 2015-2019 American Community Survey 5-Year Estimates, Tables S25024 and B25033 (residents per dwelling unit)

Section VII. IMPLEMENTATION

This section addresses practical aspects of implementing SDCs and provides a comparison with relevant jurisdictions.

VII.A. INDEXING

ORS 223.304 allows for the periodic indexing of SDCs for inflation, as long as the index used is:

- (A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;
- (B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
- (C) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.

In accordance with Oregon statutes, we recommend that the City use the *Engineering News-Record* (ENR) Construction Cost Index (CCI) 20-City Average as the basis for adjusting SDCs annually. The value of that index is 12,464 as of September 1, 2021.

VII.B. COMPARISONS

This section provides comparisons for the city's current and proposed SDCs against those of comparable jurisdictions. As shown in **Table 17**, if all SDCs are implemented as proposed, the City will still have a lower total SDC burden than some comparable cities.

Table 17: SDC Comparisons with Comparable Cities

| | Water | Sewer | Stormwater | Transportation | Parks | Total SDC |
|--------------------------------|--------------|--------------|------------|----------------|--------------|--------------|
| Lincoln City* | \$ 2,264 | \$ 4,182 | \$ 94 | \$ 794 | \$ 2,286 | \$ 9,620 |
| Newport** | 1,300 | 2,300 | 1,313 | 3,100 | 1,350 | 9,363 |
| Tillamook | 6,754 | 1,994 | - | - | - | 8,748 |
| Cannon Beach (Proposed) | 2,034 | 4,849 | 424 | - | 1,116 | 8,423 |
| Warrenton | 1,409 | 1,409 | 168 | 857 | 641 | 4,484 |
| Cannon Beach (Current) | 1,631 | 1,678 | 944 | - | - | 4,253 |

*Assumes 3,125 square feet of impervious surface area

**Assumes a 2,500 square foot house with 3,125 square feet of impervious surface area



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF RESOLUTION 22-09; FOR THE PURPOSE OF APPROVING INCREASES AND DECREASES TO THE FY 2021-2022 BUDGET BY MAKING AN INTRAFUND TRANSFER OF APPROPRIATIONS

Agenda Date: March 1, 2022

Prepared by: Karen La Bonte, Public Works Director

BACKGROUND

The permanent generator located inside the Main pump station has failed. Because a generator is a critical part of pump station operation, this is a piece of equipment that must be kept in dependable operating condition. Peterson CAT, who performs the routine maintenance on the pump station generators, has advised us that this generator has reached the end of its life cycle and should be replaced. Temporary repairs have been made, but Peterson CAT can no longer guarantee repairs being made to this generator. Prior to receiving a replacement generator, Public Works has arranged for a rental generator to ensure the City has uninterrupted power to the pump station, as well as back-up power in the event of a power outage.

This is the second generator failure we've experienced this year. The generator at the Pacific pump station failed last December and we are currently operating off a temporary mobile generator until parts arrive to make the necessary repairs. Parts have been delayed due to the supply chain issues currently being experienced nationwide. The Pacific pump station is our largest pump station that moves the greatest volume of sewage to our wastewater treatment plant. Generator failure at this location could be catastrophic.

ANALYSIS/INFORMATION

Approximately seven months ago, the City applied for a FEMA grant with the hopes of receiving funding to replace four aging generators that continue to have performance difficulties. The state level team that coordinates the FEMA grant submissions has been made aware of the City's critical generator situation and the immediate need for generator replacement. They have not been able to provide a deadline on when the City might hear back on its request for grant funding.

The costs associated with the immediate steps taken to address the situation and ensure uninterrupted power at the pump stations with the associated failing generators have been absorbed within the Public Works operating budget. The cost of purchasing a replacement generator cannot be absorbed. The estimated quote for the new generator and the associated electrical work needed during replacement is \$50,000. This emergency equipment replacement was not budgeted in the FY 21-22 budget. Transfer of funds from the contingency line item to capital outlay will not result in a budget increase in the affected Fund.

RECOMMENDATION

Staff recommends adopting Resolution 22-09 authorizing the intrafund transfer.

Suggested motion:

“I move to adopt the Resolution 22-09 for the Purpose of Approving Increases and Decreases to the FY 2021-2022 Budget by Making an Intrafund Transfer of Appropriations.”

List of Attachments:

A Resolution 22-09

BEFORE THE CITY OF CANNON BEACH

FOR THE PURPOSE OF APPROVING INCREASES) RESOLUTION NO. 22-09
AND DECREASES TO THE FY 2021-2022 BUDGET)
BY MAKING AN INTRAFUND TRANSFER OF AP-)
PROPRIATIONS)

WHEREAS, the permanent generator located inside the Main Pump Station has failed; and

WHEREAS, a generator at this location is a critical part of the pump station operation; and

WHEREAS, the failed generator has reached the end of its life cycle; and

WHEREAS, there is an immediate need to replace the generator at a cost of \$50,000; and

WHEREAS, contingency will be used to amend the Wastewater Fund. This will increase budgeted expenditures and decrease contingency by the amount of \$50,000; and

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Cannon Beach hereby adopts the following FY 2021-2022 budget changes to the Wastewater Fund.

| <u>Wastewater Fund</u> | <u>Adopted Budget</u> | <u>Changes</u> | <u>Amended Budget</u> |
|------------------------|-----------------------|----------------|-----------------------|
| Wastewater Program | \$ 1,427,564 | 50,000 | \$ 1,477,564 |
| Debt Service | 28,500 | | 28,500 |
| Transfers Out | 1,260,000 | | 1,260,000 |
| Contingency | 210,093 | (50,000) | 160,093 |
| Total Expenditures | <u>\$ 2,926,157</u> | <u>0</u> | <u>\$ 2,926,157</u> |

Passed by the Common Council of the City of Cannon Beach this 1st day of March 2022, by the following roll call vote:

YEAS:
NAYS:
EXCUSED:

Sam Steidel, Mayor

Attest:

Bruce St. Denis, City Manager



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF RESOLUTION 22-10; A RESOLUTION OF CITY OF CANNON BEACH, CLATSOP COUNTY, OREGON AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2022 TO CURRENTLY REFUND ALL OR A PORTION OF THE CITY'S OUTSTANDING GENERAL OBLIGATION BONDS, SERIES 2010 AND GENERAL OBLIGATION REFUNDING BONDS, SERIES 2012; DESIGNATING AN AUTHORIZED REPRESENTATIVE, BOND COUNSEL, INDEPENDENT REGISTERED MUNICIPAL ADVISOR; AUTHORIZING APPOINTMENT OF A PAYING AGENT, REGISTRAR, ESCROW AGENT AND VERIFICATION AGENT; AND AUTHORIZING EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT AND ESCROW DEPOSIT AGREEMENT.

Agenda Date: March 1, 2022

Prepared by: Bruce St.Denis, City Manager

BACKGROUND

There are approximately five years of payments left on the bonds used to purchase the Ecola Creek Forest Reserve and the bonds used to finance the expansion of the Wastewater Treatment Plant.

At the February 22nd work session Council was presented with a draft Resolution that would allow the city to combine a refinancing of the two existing bonds with the financing of the Cannon Beach Elementary project, which will result in a small reduction of our taxpayers' annual tax assessments over the next five years

ANALYSIS/INFORMATION

The timing of these events has presented an opportunity to combine a refinancing of the two existing bonds with the financing of the Cannon Beach Elementary project, which will result in a small reduction of our taxpayers' annual tax assessments over the next five years.

The refinancing should result in a total reduction of \$60 to \$80 for each \$100,000 in assessed value at the end of the five years.

For example, if the savings is \$60 over five years for a \$700,000 property. $\$60 \times 7 = \420 savings

RECOMMENDATION

Staff recommends adopting Resolution 22-10.

Suggested motion:

"I Move To Adopt The Resolution 22-10 A Resolution Of City Of Cannon Beach, Clatsop County, Oregon Authorizing The Issuance And Sale Of General Obligation Refunding Bonds, Series

2022 To Currently Refund All Or A Portion Of The City's Outstanding General Obligation Bonds, Series 2010 And General Obligation Refunding Bonds, Series 2012; Designating An Authorized Representative, Bond Counsel, Independent Registered Municipal Advisor; Authorizing Appointment Of A Paying Agent, Registrar, Escrow Agent And Verification Agent; And Authorizing Execution And Delivery Of A Purchase Agreement And Escrow Deposit Agreement”

List of Attachments:

A Resolution 22-10

BEFORE THE CITY OF CANNON BEACH

A RESOLUTION OF CITY OF CANNON BEACH,) RESOLUTION NO. 22-10
 CLATSOP COUNTY, OREGON AUTHORIZING THE)
 ISSUANCE AND SALE OF GENERAL OBLIGATION)
 REFUNDING BONDS, SERIES 2022 TO CURRENTLY)
 REFUND ALL OR A PORTION OF THE CITY'S)
 OUTSTANDING GENERAL OBLIGATION BONDS,)
 SERIES 2010 AND GENERAL OBLIGATION)
 REFUNDING BONDS, SERIES 2012; DESIGNATING)
 AN AUTHORIZED REPRESENTATIVE, BOND)
 COUNSEL, INDEPENDENT REGISTERED)
 MUNICIPAL ADVISOR; AUTHORIZING)
 APPOINTMENT OF A PAYING AGENT, REGISTRAR,)
 ESCROW AGENT AND VERIFICATION AGENT;)
 AND AUTHORIZING EXECUTION AND DELIVERY)
 OF A PURCHASE AGREEMENT AND ESCROW)
 DEPOSIT AGREEMENT.

WHEREAS, Oregon Revised Statutes (“ORS”) Sections 287A.360 to 287A.380 authorize the issuance of obligations to refund outstanding obligations. The City of Cannon Beach, Clatsop County, Oregon (the “City”) is advised it may be desirable to currently refund all or a portion of the City’s outstanding (1) General Obligation Bonds, Series 2010 (the “Series 2010 Bonds”) and (2) General Obligation Refunding Bonds, Series 2012 (the “Series 2012 Bonds”).

WHEREAS, the Series 2010 Bonds are dated December 2, 2010, and were issued in the original principal amount of \$3,575,000. The Series 2010 Bonds maturing on June 1, 2025, and on any date thereafter are subject to redemption at the option of the City, in whole or in part on any date, on and after June 1, 2020, at a redemption price equal to 100% of the principal amount of the Series 2010 Bonds to be redeemed, plus accrued interest thereon to the redemption date.

WHEREAS, the Series 2012 Bonds are dated December 20, 2012, and were issued in the original principal amount of \$2,845,000. The Series 2012 Bonds maturing on June 1, 2023, and on any date thereafter are subject to redemption at the option of the City, in whole or in part on any date, on and after June 1, 2022, at a redemption price equal to 100% of the principal amount of the Series 2012 Bonds to be redeemed, plus accrued interest thereon to the redemption date.

WHEREAS, the proceeds of the Series 2010 Bonds were used to finance acquisition of land and to pay the costs of issuance of the Series 2010 Bonds.

WHEREAS, the proceeds of the Series 2012 Bonds were used to refund the City’s General Obligation Bonds, Series 2005 which financed capital construction and improvements to the City’s wastewater system, and to pay the costs of issuance of the Series 2012 Bonds.

WHEREAS, the proceeds of the General Obligation Refunding Bonds, Series 2022 (the “Series 2022 Refunding Bonds”) will be for the purpose of providing funds sufficient to (i) currently refund all or a portion of the Series 2010 Bonds, (ii) currently refund all or a portion of the Series 2012 Bonds, and (iii) pay the costs of issuance of the Series 2022 Refunding Bonds.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF

CANNON BEACH, CLATSOP COUNTY, OREGON AS FOLLOWS:

Section 1. Series 2022 Refunding Bonds.

A. Authorization of Series 2022 Refunding Bonds. The City authorizes the issuance and sale of the Series 2022 Refunding Bonds in one or more series. [The Series 2022 Refunding Bonds shall result in a total net present value debt service savings of at least ____% on bonds being refunded.] The Series 2022 Refunding Bonds shall be issued as negotiable general obligation refunding bonds of the City. The City authorizes the Authorized Representative, to determine and designate the principal amount, the dated date, interest rates, maturity dates, optional redemption dates and premiums, if any, principal serial maturities, term maturity or maturities, with or without premium, denominations, interest payment dates, applicable discount or premium, whether to obtain insurance or some other form of guaranty or security for the payment of the Series 2022 Refunding Bonds, to obtain one or more ratings for the Series 2022 Refunding Bonds, whether the Series 2022 Refunding Bonds are issued as taxable or tax-exempt obligations, and such other provisions as are deemed necessary and desirable for the sale and issuance of the Series 2022 Refunding Bonds and to determine if all, a portion of, or none of the Series 2010 Bonds and/or Series 2012 Bonds are to be refunded.

B. Method of Sale. The Series 2022 Refunding Bonds may be sold by a competitive sale, negotiated sale, or private placement as determined by the Authorized Representative. The Authorized Representative shall determine the requirements for the sale of the Series 2022 Refunding Bonds, subject to the provisions of this Resolution that provide the most advantageous terms to the City. The Authorized Representative is authorized to prepare a notice of sale for a competitive sale or negotiate and execute a purchase agreement for a negotiated sale or private placement setting forth the terms of the sale of the Series 2022 Refunding Bonds.

Section 2. Principal Amount.

The principal amount of the Series 2022 Refunding Bonds shall be in an amount sufficient to pay the principal of and interest on the Series 2010 Bonds and Series 2012 Bonds being refunded, and the costs of issuance of the Series 2022 Refunding Bonds.

Section 3. Title and Execution of Series 2022 Refunding Bonds. The Series 2022 Refunding Bonds shall be entitled “City of Cannon Beach, Clatsop County, Oregon, General Obligation Refunding Bonds, Series 2022”, or such other name designated by the Authorized Representative, and shall bear the manual or facsimile signature of the Mayor of the City and the manual or facsimile signature of the City Manager.

Section 4. Book-Entry-Only System. Ownership of the Series 2022 Refunding Bonds may be recorded through entries on the books of banks and broker-dealer participants and correspondents that are related to entries on The Depository Trust Company book-entry-only system. The Series 2022 Refunding Bonds may be initially issued in the form of a separate single fully registered type-written obligation or bond for each maturity of the Series 2022 Refunding Bonds (the “Global Certificates”). Each Global Certificate shall be registered in the name of Cede & Co. as nominee (the “Nominee”) of The Depository Trust Company (the “Depository”) as the “Registered Owner”, and such Global Certificates shall be lodged with the Depository until redemption or maturity of the Series 2022 Refunding Bonds. The Paying Agent shall remit payment for the maturing principal and interest on the Series 2022 Refunding Bonds to the Registered Owner for distribution by the Nominee for the benefit of the bondholder (the “Beneficial Owner” or “Record Owner”) by recorded entry on the books of the Depository participants and correspondents. While the Series 2022 Refunding Bonds are in book-entry-only form, the Series 2022 Refunding Bonds will be available in denominations of \$5,000 or any integral multiple thereof.

The City has filed with the Depository a Letter of Representation to induce the Depository to accept the Series 2022 Refunding Bonds as eligible for deposit at the Depository. The Underwriter for the Series 2022

Refunding Bonds is authorized to provide the Depository with the Preliminary Official Statement, together with the completed Depository's underwriting questionnaire.

The execution and delivery of the Letter of Representations and the providing to the Depository of the Preliminary Official Statement and the underwriting questionnaire shall not in any way impose upon the City any obligation whatsoever with respect to persons having interests in the Series 2022 Refunding Bonds other than the Registered Owners of the Series 2022 Refunding Bonds as shown on the registration books maintained by the Paying Agent and Bond Registrar. The Paying Agent and Bond Registrar, in writing, shall accept the book-entry-only system and shall agree to take all action necessary to at all times comply with the Depository's operational arrangements for the book-entry-only system. The Authorized Representative may take all other action to qualify the Series 2022 Refunding Bonds for the Depository's book-entry-only system.

In the event the Depository determines not to continue to act as securities depository for the Series 2022 Refunding Bonds, or the City determines that the Depository shall no longer so act, then the City will discontinue the book-entry-only system with the Depository. If the City fails to identify another qualified securities depository to replace the Depository, the Series 2022 Refunding Bonds shall no longer be a book-entry-only issue but shall be registered in the registration books maintained by the Paying Agent and Bond Registrar in the name of the Registered Owner as appearing on the registration books of the Paying Agent and Bond Registrar and thereafter in the name or names of the owners of the Series 2022 Refunding Bonds transferring or exchanging Series 2022 Refunding Bonds.

With respect to Series 2022 Refunding Bonds registered in the registration books maintained by the Paying Agent and Bond Registrar in the name of the Nominee of the Depository, the City, and the Paying Agent and Bond Registrar shall have no responsibility or obligation to any participant or correspondent of the Depository or to any Beneficial Owner on behalf of which such participants or correspondents act as agent for the Registered Owner with respect to:

(i) the accuracy of the records of the Depository, the Nominee or any participant or correspondent with respect to any ownership interest in the Series 2022 Refunding Bonds,

(ii) the delivery to any participant or correspondent or any other person, other than a Registered Owner as shown in the registration books maintained by the Paying Agent and Bond Registrar, of any notice with respect to the Series 2022 Refunding Bonds, including any notice of redemption,

(iii) the selection by the Depository of the beneficial interest in Series 2022 Refunding Bonds to be refunded in the event the City redeems the Series 2022 Refunding Bonds in part, or

(iv) the payment to any participant, correspondent or any other person other than the Registered Owner of the Series 2022 Refunding Bonds as shown in the registration books maintained by the Paying Agent and Bond Registrar, of any amount with respect to principal or interest on the Series 2022 Refunding Bonds. Notwithstanding the book-entry-only system, the City may treat and consider the Registered Owner in whose name each Series 2022 Bond is registered in the registration books maintained by the Paying Agent and Bond Registrar as the Registered Owner and absolute owner of such Series 2022 Refunding Bond for the purpose of payment of principal and interest with respect to such Series 2022 Refunding Bond, or for the purpose of giving notices of redemption and other matters with respect to such Series 2022 Refunding Bond, or for the purpose of registering transfers with respect to such Series 2022 Refunding Bonds, or for all other purposes whatsoever. The City shall pay or cause to be paid all principal of and interest on the Series 2022 Refunding Bonds only to or upon the order of the Registered Owner, as shown in the registration books maintained by the Paying Agent and Bond Registrar, or their representative attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligation with respect to payment thereof to the extent of the sum or sums so paid.

Upon delivery by the Depository to the City and to the Registered Owner of a Series 2022 Refunding Bond of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee then the word “Nominee” in this Resolution shall refer to such new nominee of the Depository, and upon receipt of such notice, the City shall promptly deliver a copy thereof to the Paying Agent and Bond Registrar.

Section 5. Transfer of Series 2022 Refunding Bonds. If the book-entry system is not utilized and if sold at a competitive sale or negotiated sale other than a private placement, the Series 2022 Refunding Bonds will be issued in certificate form. Then the Series 2022 Refunding Bonds are transferable, or subject to exchange, for fully registered Series 2022 Refunding Bonds, respectively, in the denomination of \$5,000 each or integral multiples thereof by the registered owner thereof in person, or by the owner’s attorney, duly authorized in writing, at the office of the Bond Registrar. The Bond Registrar shall maintain a record of the names and addresses of the registered owners of the Series 2022 Refunding Bonds. The records of the registered bond ownership are not public records within the meaning of Oregon Revised Statutes 192.410(4).

All obligations and bonds issued upon transfer of or in exchange for Series 2022 Refunding Bonds shall be valid obligations of the City evidencing the same debt and shall be entitled to the same benefits as the Series 2022 Refunding Bonds surrendered for such exchange or transfer. All fees, expenses and charges of the Paying Agent and Bond Registrar shall be payable by the City. The Bond Registrar shall not be required to transfer or exchange any Series 2022 Refunding Bond after the close of business on record date of the month next preceding any interest payment date or transfer or exchange any Series 2022 Refunding Bond called or being called for redemption.

Section 6. Payment of Series 2022 Refunding Bonds. If the book-entry system is not utilized and if sold at a competitive sale or negotiated sale other than a private placement, the principal of the Series 2022 Refunding Bonds shall be payable upon presentation of the Series 2022 Refunding Bonds at maturity at the principal corporate trust office of the Paying Agent. Payment of each installment of interest due each year shall be made by check or draft of the Paying Agent mailed on each interest payment date to the registered owner thereof whose name and address appears on the registration books of the City maintained by the Paying Agent as of the close of business on the record date as determined by the Authorized Representative.

Section 7. Form of Series 2022 Refunding Bonds. The Series 2022 Refunding Bonds shall be issued substantially in the form as approved by the Authorized Representative and Bond Counsel.

Section 8. Security. The Series 2022 Refunding Bonds shall be general obligations of the City. The full faith and credit of the City is pledged to the successive owners of the each of the Series 2022 Refunding Bonds for the punctual payment of such obligations when due. The City shall levy annually, as provided by law, a direct ad valorem tax upon all of the taxable property within the City in sufficient amount, without limitation, to pay the principal of and interest on the Series 2022 Refunding Bonds promptly as they become due and payable. The City covenants with the owners of the Series 2022 Refunding Bonds to pledge such ad valorem taxes in sufficient amount to pay the principal of and interest on the Series 2022 Refunding Bonds as they respectively become due and payable. Pursuant to ORS 310.145, the City hereby classifies the tax levy described in this section to be taxes imposed to pay the principal and interest on exempt bonded indebtedness and such taxes are not subject to the limits of sections 11 and 11b of Article XI of the Oregon Constitution. The owners of the Series 2022 Refunding Bonds shall not have a lien or security interest on the property refinanced with the proceeds of the Series 2022 Refunding Bonds.

Section 9. Covenant as to Arbitrage. The proceeds of the Series 2022 Refunding Bonds shall be used and invested in such manner that the Series 2022 Refunding Bonds shall not become “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and the applicable regulations. The City covenants that, within its lawful powers, it will not do, and will refrain from doing, anything in the issuance of the Series 2022 Refunding Bonds and in the investment and expenditure of the proceeds thereof

which would result in the interest on the Series 2022 Refunding Bonds becoming taxable for federal income tax purposes.

Section 10. Escrow Deposit Agreement and Escrow Agent. The City may enter into an Escrow Deposit Agreement for the establishment of an Escrow Deposit Fund to which may be deposited sufficient proceeds from the Series 2022 Refunding Bonds to acquire Government Obligations to provide funds sufficient to pay the principal of and interest on the Series 2010 Bonds and Series 2012 Bonds which are being refunded. The Authorized Representative is authorized to designate an Escrow Agent to administer the Escrow Deposit Fund and to execute the Escrow Deposit Agreement.

Section 11. Irrevocable Call and Redemption. The City does authorize the irrevocable call for redemption at par value the principal of the Series 2010 Bonds and Series 2012 Bonds being refunded. The irrevocable call and redemption of the Series 2010 Bonds and Series 2012 Bonds being refunded is subject to the sale and delivery of the Series 2022 Refunding Bonds.

Section 12. Effect of Refunding. The City determines that, upon deposit into the Escrow Deposit Fund of cash and Government Obligations in an amount calculated to be sufficient to pay the principal of and interest on the Series 2010 Bonds and Series 2012 Bonds being refunded, such deposit shall fully defease the Series 2010 Bonds and Series 2012 Bonds being refunded.

Section 13. Appointment of Paying Agent and Registrar. The Authorized Representative is authorized to appoint a Paying Agent and Registrar for the issuance of the Series 2022 Refunding Bonds. The Authorized Representative is authorized to negotiate and execute on behalf of the City the Paying Agent and Registrar Agreement. In addition, the City requests and authorizes the Paying Agent and Registrar to execute the Certificate of Authentication as of the date of delivery of the Series 2022 Refunding Bonds.

Section 14. Appointment of Independent Registered Municipal Advisor. The City hereby D.A. Davidson & Co. as an Independent Registered Municipal Advisor to the City for the issuance of the Series 2022 Refunding Bonds.

Section 15. Appointment of Bond Counsel. The City hereby appoints the law firm of Mersereau Shannon LLP of Portland, Oregon as Bond Counsel for the issuance of the Series 2022 Refunding Bonds.

Section 16. Appointment of Verification Agent. The Authorized Representative is authorized to appoint a verification agent to confirm that the funding the Escrow Deposit Fund is sufficient to pay when due the principal and interest on the Series 2010 Bonds and Series 2012 Bonds which are being refunded to the redemption date or the final maturity.

Section 17. Appointment of Bidding Agent. The Authorized Representative is authorized to appoint a bidding agent for the City in the event the Government Securities are to be purchased in the open market.

Section 18. Printing Series 2022 Refunding Bonds. If the Series 2022 Refunding Bonds are not in book-entry form, then the Authorized Representative is authorized to contract for the printing of the Series 2022 Refunding Bonds. The Authorized Representative may provide for the printing of, in addition to the original issue of Series 2022 Refunding Bonds, if any, additional obligations to be printed in blank form as to registration and to be designated by appropriate number for the Registrar for delivery to the registered owner upon transfer or exchange of Series 2022 Refunding Bonds. The additional obligations shall bear the dated date of the Series 2022 Refunding Bonds and the Paying Agent and Registrar shall manually sign the Certificate of Authentication as of the date of delivery or transfer of the Series 2022 Refunding Bonds.

Section 19. Conditional Redemption. Any notice of optional redemption may state that the optional redemption is conditional upon receipt by the Registrar of moneys sufficient to pay the redemption price of such obligations or upon the satisfaction of any other condition, and/or that such notice may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission or of the failure of any such condition shall be given by the Registrar to the owner as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Section 20. Defeasance. The City may defease the Series 2022 Refunding Bonds by setting aside, with a duly appointed escrow agent, in a special escrow account irrevocably pledged to the payment of the Series 2022 Refunding Bonds to be defeased, cash or direct obligations of the United States in an amount which, in the opinion of an independent certified public accountant, is sufficient without reinvestment to pay all principal and interest on the defeased Series 2022 Refunding Bonds until their maturity date or any earlier redemption date. Series 2022 Refunding Bonds which have been defeased pursuant to this paragraph shall be deemed paid and no longer outstanding, and shall cease to be entitled to any lien, benefit or security under the Resolution except the right to receive payment from such special escrow account.

Section 21. Contract with Registered Owners. In consideration of the purchase and acceptance of the Series 2022 Refunding Bonds, the provisions of this Resolution and the Series 2022 Refunding Bonds, shall be deemed to be and shall constitute a contract between the City and the Registered Owners of the Series 2022 Refunding Bonds, respectively. The covenants and agreements to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the Registered Owners of any and all Series 2022 Refunding Bonds, respectively, all of which shall be of equal rank without preference, priority, or distinction among the Series 2022 Refunding Bonds.

Section 22. Continuing Disclosure. The City covenants and agrees to comply with and carry out all of the provisions of a Continuing Disclosure Agreement to be entered into in connections with the Series 2022 Refunding Bonds, if applicable. Notwithstanding any other provision of this Resolution, failure by the City to comply with a Continuing Disclosure Agreement will not constitute an event of default; however, any Registered Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section and the Continuing Disclosure Certificate.

Section 23. Preliminary and Final Official Statement. If sold at a competitive sale or a negotiated sale other than a private placement, the City shall prepare or cause to be prepared a preliminary official statement for the Series 2022 Refunding Bonds which shall be available for distribution to prospective purchasers of the Series 2022 Refunding Bonds. The Authorized Representative is authorized to deem such preliminary official statement final pursuant to Rule 15c2-12 of the Securities and Exchange Commission. In addition, the City shall prepare, or cause to be prepared, a final official statement for delivery to the purchasers of the Series 2022 Refunding Bonds no later than the seventh (7th) business day after the sale of the Series 2022 Refunding Bonds. After determining that the final official statement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained in the official statement not misleading in the light of the circumstances under which they are made, the Authorized Representative is authorized to certify the accuracy of the official statement on behalf of the City.

Section 24. Closing of the Sale and Delivery of the Series 2022 Refunding Bonds. The Authorized Representative is authorized to determine and execute all the documents, including a tax certificate, and perform any and all other things or acts necessary for the sale and delivery of the Series 2022 Refunding Bonds and the redemption of the Series 2010 Bonds and Series 2012 Bonds being refunded or tendered, as herein authorized. Such acts of the Authorized Representative are for and on behalf of and are authorized by the Council of the City.

Section 25. Post Issuance Compliance Procedures. The Authorized Representative is authorized to establish post issuance compliance procedures to ensure that the interest on obligations issued by the City which is not included in gross income for federal income tax purposes remains exempt from federal income tax and the obligation of the City to provide continuing disclosure as described in the Continuing Disclosure Certificate, if any, is met.

Section 26. Effective Date. This Resolution shall take effect on the date of its adoption.

PASSED by the Common Council of the City of Cannon Beach this 1st day of Mach 2022, by the following roll call vote:

YEAS:

NAYS:

EXCUSED:

Sam Steidel, Mayor

ATTEST:

Bruce St. Denis, City Manager



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF PROCLAMATION 22-01, RED CROSS MONTH

Agenda Date: March 1, 2022

Prepared by: Bruce St.Denis, City Manager

BACKGROUND

Before Council tonight is a proclamation declaring March 2022 as Red Cross month. Every March, we honor people who make the lifesaving mission of the American Red Cross possible — the individuals across the country who turn compassion into action, helping others in times of crisis. The Red Cross Month celebration has been an annual tradition since 1943, when President Franklin D. Roosevelt issued the first Red Cross Month proclamation.

RECOMMENDATION

Suggested motion

"I move to adopt Proclamation 22-01, declaring March 2022 Red Cross Month in Cannon Beach"

List of Attachments

A Proclamation 22-01 Red Cross Month

BEFORE THE CITY OF CANNON BEACH

FOR THE PURPOSE OF PROCLAIMING THE) PROCLAMATION NO. 22-01
 MONTH OF MARCH 2022, AS RED CROSS)
 MONTH)

In times of crisis, people in Cannon Beach come together to care for one another. This humanitarian spirit is part of the foundation of our community and is exemplified by American Red Cross Cascades Region volunteers and donors.

In 1881, Clara Barton founded the American Red Cross, turning her steadfast dedication for helping others into a bold mission of preventing and alleviating people's suffering. Today, more than 140 years later, we honor the kindness and generosity of Red Cross volunteers here in Cannon Beach, who continue to carry out Clara's lifesaving legacy. They join the millions of people across the United States who volunteer, give blood, donate financially or learn vital life-preserving skills through the Red Cross.

In the Cascades Region, serving Oregon and SW Washington, the contributions of more than 2,500 local Red Cross volunteers give hope to the most vulnerable in their darkest hours. The Red Cross does so by providing more than 1,600 emergency overnight shelter stays, along with food and comfort for families devastated by more than 680 local disasters, like home fires. Through the generosity of those donating more than 182,000 units of essential blood for accident and burn victims, heart surgery and organ transplant patients, and those receiving treatment for leukemia, cancer or sickle cell disease. Or by supporting service members and veterans an average of eight times a day, along with their families and caregivers through the unique challenges of military life. And by helping to save the lives of others with first aid, CPR and other skills; or delivering international humanitarian aid.

Their work to prevent and alleviate human suffering is vital to strengthening our community's resilience. We dedicate this month of March to all those who continue to advance the noble legacy of American Red Cross founder Clara Barton, who lived by her words, "You must never think of anything except the need, and how to meet it." We ask others to join in this commitment to give back in our community.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Cannon Beach hereby adopts that March 2022, to be

RED CROSS MONTH

in the City of Cannon Beach and encourage all Cannon Beach residents to join in this observance.

PASSED by the Common Council of the City of Cannon Beach this 1st day of March 2022 by the following roll call vote:

YEAS:
 NAYS:
 EXCUSED:

Sam Steidel, Mayor

Attest:

Bruce St. Denis, City Manager



CANNON BEACH CITY COUNCIL

STAFF REPORT

APPOINTMENT OF CITY COMMITTEE/BOARD/COMMISSION

SHORT TERM RENTAL TASK FORCE: Two alternate positions available

Applicants: Virginia Wright, Jean Williams, Alaina Gigueire and Dorian Farrow

If Council wishes to appoint alternates to the STR Task Force, an appropriate motion is in order.

"I move to appoint _____ and _____ as an alternate to the Short Term Rental Task Force"

TOURISM AND ARTS COMMISSION: ONE (1) vacancy to fill four-year term immediately

Applicant: Elizabeth "Libby" Gast

If Council wishes to appoint Elizabeth Gast to the Tourism and Arts Commission, an appropriate motion is in order.

"I move to appoint Elizabeth Gast to the Tourism and Arts Commission"

| Timestamp | Name | Age | How many years have you been a resident of Cannon Beach? | Do you own or rent your primary residence | Do you currently own, operate or manage a STR in Cannon Beach? | Have you ever owned, operated or managed a STR? | Have you ever owned, operated or managed a second home? | Current Occupation | Community Service (please check all that apply) | If selected, could you dedicate two hours of your time per each meeting to discuss the future of STRs in Cannon Beach? (please check best representation of interest) [Meeting Quarterly] | If selected, could you dedicate two hours of your time per each meeting to discuss the future of STRs in Cannon Beach? (please check best representation of interest) [Meeting Monthly] | Please explain your interest for serving on the STR Task Force? |
|------------------|-----------------|-----|--|---|--|---|---|--------------------|--|---|---|---|
| 12/17/2021 15:25 | Virginia Wright | 56+ | 0-5 | own | No | No | No | Retired | | Up to 5 years | Up to 5 years | I know that STR are part of the economic blood of Cannon Beach. I want to be part of managing that interest along with the needs of the residents here. I feel like the task force is in a pivotal time to make sure that both interests are taken into account in recommending city policy or actions. I have only lived in Cannon Beach 5 1/2 years but I did move from Alaska, another tourist destination. Thank you, Ginny Wright |
| 12/29/2021 15:20 | Jean Williams | 56+ | 26-50 | own | No | Yes | Yes | Retired | Have served in the past on a Cannon Beach Board or Committee | Up to 5 years | For 2 years | I have many years experience dealing with this issue and willing to share my history |
| 1/20/2022 12:21 | Alaina Gigueire | 56+ | 25-Jun | own | No | No | No | Realtor | | For 2 years | For 2 years | I would like to be involved and share my thoughts on STR as I deal with questions about it all the time .. I feel I have an insight that would be valuable to share . |
| 2/4/2022 15:48 | Dorian Farrow | 56+ | 0-5 | own | No | No | Yes | Retired | | Up to 5 years | Up to 5 years | I would like to help by finding a balance between the needs of STR home owners with those of our community at large. After years in executive roles where finding balance was the key to the successes of the companies, these are skills that I can bring to this task force as well. |



CITY OF CANNON BEACH

APPLICATION FOR TOURISM & ARTS COMMISSION

| | |
|---|---|
| Applicant Name: <u>Elizabeth "Libby" EAST</u> | Type of Application: |
| Mailing Address: [REDACTED] | <input checked="" type="checkbox"/> Tourism & Arts Commission |
| Telephone (Home): [REDACTED] | |
| Alt. Telephone: [REDACTED] | |
| Email Address: [REDACTED] | |

Please answer the questions below and return with your application. Use extra pages as necessary.

1. Have you read the ordinance defining this committee to understand its purpose and duties?
Yes
2. Are you willing to learn and follow the Oregon ethics rules, including those regarding conflict of interest?
<https://www.oregon.gov/ogcc/Pages/Guide-for-Public-Officials.aspx> for details.
Yes
3. Will you be able to regularly attend the meetings and possible work sessions?
Yes
4. What is it about this committee that attracts you? I am attracted to this committee because I grew up in the performing arts. I have a degree in Business Marketing and my work experience includes promotion, advertising, marketing, and event planning. I ran and taught an art literacy program in a K-8 school as a high school PTA President for 4 years. I lead an annual grant funding program.
5. What would you like to accomplish by being a member of this committee?
I would like to make a contribution to my community in helping to promote Cannon Beach and our many talented artists.
6. Have you read and understand the TAC Guidelines as well as the ordinance and ORS that define the operating rules of this commission? Yes, I have read both and understand.



CITY OF CANNON BEACH

City of Cannon Beach
Finance Department

FEB 01 2022

Received

APPLICATION FOR CITY COMMITTEE, BOARD, OR COMMISSION

| | |
|---|---|
| Applicant Name: <u>Elizabeth "Libbi" GAST</u> | Type of Application: |
| Mailing Address: [REDACTED] | <input checked="" type="checkbox"/> New |
| Telephone (Home): [REDACTED] | <input type="checkbox"/> Renewal |
| Alt. Telephone: [REDACTED] | |
| Email Address: [REDACTED] | |

Which Committee, Board, or Commission would you like to serve upon (see full qualifications required for each Committee on reverse)? Submit completed application questionnaire with this application.

| | |
|--|---|
| <input type="checkbox"/> Budget Committee Must provide copy of voter registration card with application | <input type="checkbox"/> Parks & Community Services Committee |
| <input type="checkbox"/> Design Review Board | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Farmers Market Committee | <input type="checkbox"/> Public Works |
| <input checked="" type="checkbox"/> Tourism and Arts Commission (TAC) See specific requirements in Municipal Code Chapter 2.32.040 D | |

Please indicate which committee(s) you are already a member of: None

If you are applying for more than one committee, are you willing to serve on both? If not, indicate your order of preference for service:

Applicants must have resided within the city or its urban growth boundary during the one year immediately preceding appointment; or at the time of appointment, shall have owned real property located within the city or its urban growth boundary for at least one year immediately preceding appointment. **Note:** Tourism and Arts Commission applicants are not required to reside in Cannon Beach and are eligible if he or she has worked, at least part-time, within the City of Cannon Beach for at least one year immediately preceding appointment. Do you meet this criterion? Yes.

Why are you interested in this position? Please use extra sheets as necessary.

I am interested in becoming more involved in the community and this is an area in which I have experience.

What knowledge, skills or experience can you bring to this position? Please use extra sheets as necessary.

I have a degree in Business Marketing as well as experience in advertising, promotion, event planning, grant funding, and arts education.

Applicant Signature: Elizabeth J. Gast Date: 1/31/22

7. Do you work for, or are a member of any board or special committee of one of the non-profit organizations that typically apply for TAF grants? If so, please list.

No

8. Can you make an un-biased funding decision on a grant request that benefits an organization that either you or a member of your household is affiliated with?

yes

Applicant Signature: Elizabeth J. East Date: 1/31/22



CANNON BEACH CITY COUNCIL

STAFF REPORT

MATANUSKA LIFT STATION ENCLOSURE PROJECT AWARD

Agenda Date: March 1, 2022

Prepared by: Karen La Bonte, Public Works Director

BACKGROUND

In July 2020, the City entered into a \$300,000 loan agreement with DEQ through the Clean Water State Revolving Fund, for the purposes of constructing a cover over the Matanuska Lift Station generator. The project consists of a single wooden structure with cedar siding.

The objective is to provide protection for the City's infrastructure and the associated assets. Generators left uncovered and exposed to rain and salt-filled air have the potential to rust and are at a risk of malfunctioning. Should the City be without power, the onsite backup generator keeps Matanuska operational. The City spent \$63,000 to replace the failing generator at this lift station, and it is crucial to safeguard this new investment.

The Matanuska Lift Station Enclosure project was publicly bid after DEQ reviewed and approved the bid documents. Bids were opened on February 22, 2022. Two bids were received: Buildscape, LLC with a lump sum bid amount of \$375,385 and O'Brien & Company with a lump sum bid amount of \$245,637.

ANALYSIS/INFORMATION

The apparent low bidder was O'Brien & Company from Cannon Beach, Oregon. In accordance with our City ordinance, the City Council must authorize contract awards for construction projects of this dollar amount. Adequate funds for this project are budgeted in the 2021-2022 fiscal year, secured through the CWSRF. It is expected that the project will be completed by August 15, 2022.

RECOMMENDATION

Staff recommends Council authorize staff to award the contract to O'Brien & Company.

Suggested motion:

"I move to approve the contract award to O'Brien & Company for the Matanuska Lift Station Enclosure Project".



CANNON BEACH CITY COUNCIL

STAFF REPORT

FOOD PANTRY REPAIRS

Agenda Date: March 1, 2022

Prepared by: Bruce St.Denis, City Manager

BACKGROUND

The Food Pantry is one of the buildings that was included in the purchase of the Cannon Beach Elementary school site. It is in need of new siding, a new roof and replacing the 5 bad windows. Staff has received quotes for the necessary repairs.

It has been acknowledged for some time that the work on the Food Pantry building is necessary. Staff feels that it is advantageous to do this repair work now rather than wait for the FY 22-23 budget in July when the site might be busy with the preliminary work associated with the CBE rejuvenation project.

ANALYSIS/INFORMATION

The most responsive quote received was \$98,500 from AGS Construction. The building maintenance fund has \$300,000 budgeted for City Hall/Police Station Schematic Design. Because we are just initiating the CH/PD A/E selection process it is unlikely that we will have an A/E firm until the end of June or early July. This makes the \$300,000 available as a funding source for the Food Pantry work. Please note that we will need to re-budget the \$300,000 in FY 22-23 so we can start schematic design as soon as the A/E is on board.

RECOMMENDATION

Staff's recommendation is that Council reach a consensus to reallocate \$110,000 of the \$300,000 budgeted for the CH/PD schematic design to complete the Food Panty repairs.

List of Attachments

None

**City of Cannon Beach
Monthly Status Report**

To: Mayor and City Council

From: City Manager Bruce St. Denis

Date: March 1, 2022

Planning Commission: The Planning Commission met on February 24th, to consider the following items:

- Public Hearing and Consideration of AA# 22-01, Greg Hathaway request, on behalf of Jeff & Jennifer Harrison for an Appeal of an Administrative Decision to approve a building/development permit for Harding-Bouvet at 534 N. Laurel Street.

Design Review Board: The Design Review Board met on February 17th, to consider the following items:

- Re-opening of DRB 21-37, Jillian Eyerman application for tenant improvements for a new retail space on the ground floor and living space upstairs at 273 Beaver Ave.

The Chair of the DRB, approved minor modifications for the following addresses:

DRB #22-02 - 251 N Hemlock, replacement of back staircase

DRB #22-04 – 224 N Hemlock, reroofing

Short-term Rentals: Staff continued to process short-term rental permits in January:

| Program | Number of permits |
|-----------------------------------|-------------------|
| 14-day permit | 122 |
| Lifetime Unlimited permit | 47 |
| 5-year Unlimited permit | 30 |
| Total permits | 199 |
| New short-term rentals this month | 1 |
| Pending short-term rentals | 3 |

Building Permits: Staff processed a total of 10 building, 11 mechanical and 9 plumbing permits in January:

| Permit Type | # of permits | Permit Fees | Value | Affordable Housing Surcharge, Current Month | Affordable Housing Surcharge, Fiscal Year to date | Affordable Housing Surcharge, Total to Date |
|---------------|--------------|-------------|---------------|---|---|---|
| Building | 10 | \$14,058.76 | \$ 824,593.00 | \$ 8,245.93 | \$ 56,990.88 | \$ 234,740.88 |
| Mechanical | 11 | \$1940.92 | | | | |
| Plumbing | 9 | \$3,077.00 | | | | |
| Monthly Total | 30 | \$19,076.68 | | | | |

Other Planning/Building Matters:

- The CD Staff supported the City Manager' Office completing 1 Public Record(s) Request(s) for the month, accounting for approximately .5 hours;
- The CD Department supported the TSP 3rd PAC Meeting and Open House;
- The CD Director, City Planner and Assistant PW Director met with TSP PMT to discuss Preferred Alternatives and set the date for the third TSP Online Open House for March;
- The CD Director and Building Official provided the City of Gearhart a draft for an Intergovernmental Agreement to allow for Building Services support;
- The CD Director and Councilor Ogilvie met with Steve Wright, of Seaside City Council, to discuss regional workforce and affordable housing;
- The CD Director and City Planner met with Oregon Parks Service and local contractors regarding potential shoreline stabilization projects;
- The CD Director began work on yearly budget;
- The CD Director and City Planner met with Dianna Turner, of Friends of the Dunes, to discuss oceanfront grading and stabilization projects in relation to the updated ordinances;
- The CD Director served on the consultant selection committee for the Cannon Beach Elementary School revitalization project;
- The CD Director and City Planner met with property owners on W. Sitka regarding a Lot Line Adjustment;
- The CD Director served as City representative at the quarterly CREST meeting;

- The CD Director and City Planner hosted regional planners discussion on affordable and workforce housing;
- The CD Director, City Planner, PW Director, Assistant PW Director and Fire Chief met with representatives regarding potential development of Holland Hill;
- The CD Director continues to work with Code Audit PMT to prepare for the March 2nd Joint Work Session #2;
- The CD Director began drafting strategies for Next Steps for Emergency Zoning Provisions, regarding the proposed roll-back of COVID restrictions;

Tree Report – January

| Date | Name | Location | # Remove d | Removed Dead/Dyin g | Required to Replant |
|---|-----------------------|-------------------------------------|------------------|---------------------------|---------------------------|
| 1/3/2022 | City of CB | N Hemlock ROW (620 Ecola Park Road) | 11 | 0 | 0 |
| 1/4/2022 | Cannon Beach Conf. | 324 N. Spruce | 1 | 0 | 1 |
| 1/4/2022 | Joanne L. Davis Trust | 348 E. Jackson St. | 4 | 2 | 0 |
| 1/4/2022 | Schulte | 3964 S. Hemlock | 3 | 0 | 3 |
| 1/10/2022 | Bruton | 648 S. Spruce St. | 1 | 0 | 1 |
| 1/19/2022 | Coleman | 3615 S. Spruce St. | 1 | 0 | 1 |
| 1/19/2022 | Kiersey & McMillan | 115 N Hemlock | 1 | 0 | 1 |
| 1/24/2022 | Jenkins | 915 S Hemlock | 21 | | 4 |
| 1/25/2022 | Haystack Gardens | 148 E Gower | 2 | 0 | 2 |
| Number of Native Trees Planted by City Staff: 0 | | | | | |

Public Works Department Report – February

Water

- Repaired leaks at RV resort and 179 Elliott.
- Installed new water service at 220 Noatak.
- Installed new three-inch meter with pressure sensor at Hallmark Suites.
- Replaced two-inch compound meter at Lodges.
- Educated customers on Eye on Water (Total: 591 signed up).
- Installed 3 new cellular meters and LTE endpoints (Total: 1818 installed).
- Conducted monthly meter reads.

- Serviced water tank at Coaster Properties Building (designated Red Cross emergency resource).
- Notified multiple users of water leaks and high use.

Wastewater

- Removed auxiliary generator from the Matanuska pump station site.
- Installed temporary generator for Matanuska pump station, in preparation for new generator installation before construction of pump station cover.
- Conducted biannual air release/vacuum release valve maintenance on Matanuska's force main.
- Celebrated Marty Parsons passing level 1 collection and level 1 treatment certification exams.
- Discussed with chemical supplier about H2S and odor control in the city's collection system.
 - Talked about equipment and staging for future sites.
- Completed and submitted the Wastewater Solids and Biosolids Annual Report to DEQ.
- Completed and submitted the Inflow and Infiltration Reduction Annual Report to DEQ.
- Repaired the auxiliary generator at Main pump station.
- Repaired a service connection that was full of roots on Chinook Way.
- Repaired a clean out on the north end of Chinook Way.

Roads & Storm

- Conducted repairs to Larch Street between 1st and 2nd, in preparation for spring paving overlay.
- Repaired and extended storm system on Antler, adding two new catch basins and 75 feet of pipe.
- Cleared beach ramps and outfalls.

Parks

- Conducted routine wintertime landscape maintenance.
- Ordered hanging flower baskets for spring.

Emergency Management – February

- Assisted with Community Bulletin deployment – Improved results and feedback driving progress
- Sent out important message on city web site and social media -FB
- Wayfinding Wednesday –February 2nd
- Participate in State “Able Readiness” drill
- CBEMT – Emergency Volunteer meeting
- HAM radio testing site opened
- North Tank Radio shelter building progress
- Provide Emergency Management update for City Council -2021
- Assist community member with safety barrel into cache sites
- Move forward with improving the Tsunami Evacuation maps – New training in March
- DOGAMI “Beat the Wave” signs -Spring 2022?

- Communications and Coordination with Clatsop Plan (Clatsop County) - Cascadia Raising 2022
- Ongoing updates when significant issues arise to Staff, Council, Community (Weather, Outbreaks, State Mandates)
- Started Cascadia Raising 2022 planning – Scheduled staff training
- Awarded a large grant from the State/Fed for Cache Site development- Planning development for grant
- Schedule equipment drop off for Power vaults to be delivered, cache sites
- Communicated directly with staff and community to prepare for upcoming weather event
- Background research and future development of Tsunami -Costal Sirens
 - Working directly with fire district to reframe challenges
 - Scheduling inspection of system
- Safety group meeting for city employees
- PIO- emergency messaging training for city staff, Police, Fire members

Haystack Rock Awareness Program (HRAP) – February

- HRAP is back on the beach! Our seasonal staff is onboarding this month and next, new staff training is happening early March.
- New website is live: www.haystackrockawareness.com
- First event of the season is a beach clean-up in partnership with Pelican Brewery on Sunday February 27th
- Currently discussing a regular beach clean up partnership program with Surfsands

Public Safety Report – January 202

| Staffing: | Authorized | Assigned |
|---------------------|-------------------|-----------------|
| Sworn | 8 | 8 |
| Code Enforcement | 1 | 0 |
| Admin/Support | 2 | 2 |
| Parking/Information | 6 | 0 |
| Lifeguards | 10 | 0 |

| | January 2022 | January 2021 |
|--------------------------------|---------------------|---------------------|
| Station Activity: | | |
| CBPD Walk-in | 174 | 106 |
| CBPD Incoming Phone | 270 | 298 |
| SPD Dispatched Calls | 90 | 41 |
| Overnight Camping Warnings | 18 | 33 |
| Local Security Checks | 3320 | 2769 |
| Traffic Warnings | 294 | 109 |
| Traffic Citations | 38 | 33 |
| Parking Citations | 2 | N/A |
| DUI Arrests | 0 | 3 |
| Alarm Responses | 12 | 4 |
| AOA, Including FD | 32 | 43 |
| Citizen Assists | 17 | 10 |
| Transient Contacts | 12 | 5 |
| Total Case File Reports | 175 | 206 |

Cases of Significance:

| | | | |
|------------------------|---------|--------------------------|---------|
| Weapons Laws: | 1 Case | Disturbance Domestic: | 1 Case |
| Criminal Mischief II: | 3 Cases | Suspicious Circumstance: | 7 Cases |
| Theft I: | 3 Cases | Criminal Trespass II: | 1 Case |
| Disorderly Conduct: | 1 Case | Warrant/Fugitive Arrest: | 2 Cases |
| False Info to Officer: | 1 Case | Hit & Run: | 2 Cases |
| MIP Alcohol: | 1 Case | Unlawful Use of a MV: | 1 Case |

Traffic Citations:

| | | | |
|---|--------------|-------------------------------------|-------------|
| Driving with Suspended License: | 4 Citations | Careless Driving: | 1 Citation |
| Oper. Veh. Using Mobile Device: | 12 Citations | Illegal Alteration of Registration: | 1 Citation |
| Failure to Register: | 1 Citation | No Operator's License: | 1 Citation |
| No Proof of Insurance: | 2 Citations | Expired Tags: | 1 Citation |
| Violation of Basic Rule/Speeding: | 10 Citations | Passing in a No Passing: | 1 Citation |
| (75/55,77/55,76/55,40/25,70/55,63/50,35/20,87/55, 72/55, 86/55) | | MIP Alcohol: | 4 Citations |

Code Enforcement Activities: During this period, 6 municipal code violations were addressed and resolved or pending resolution.