



***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 9<sup>th</sup> December 14<sup>th</sup>, 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.<sup>1</sup>

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

<sup>1</sup> 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]

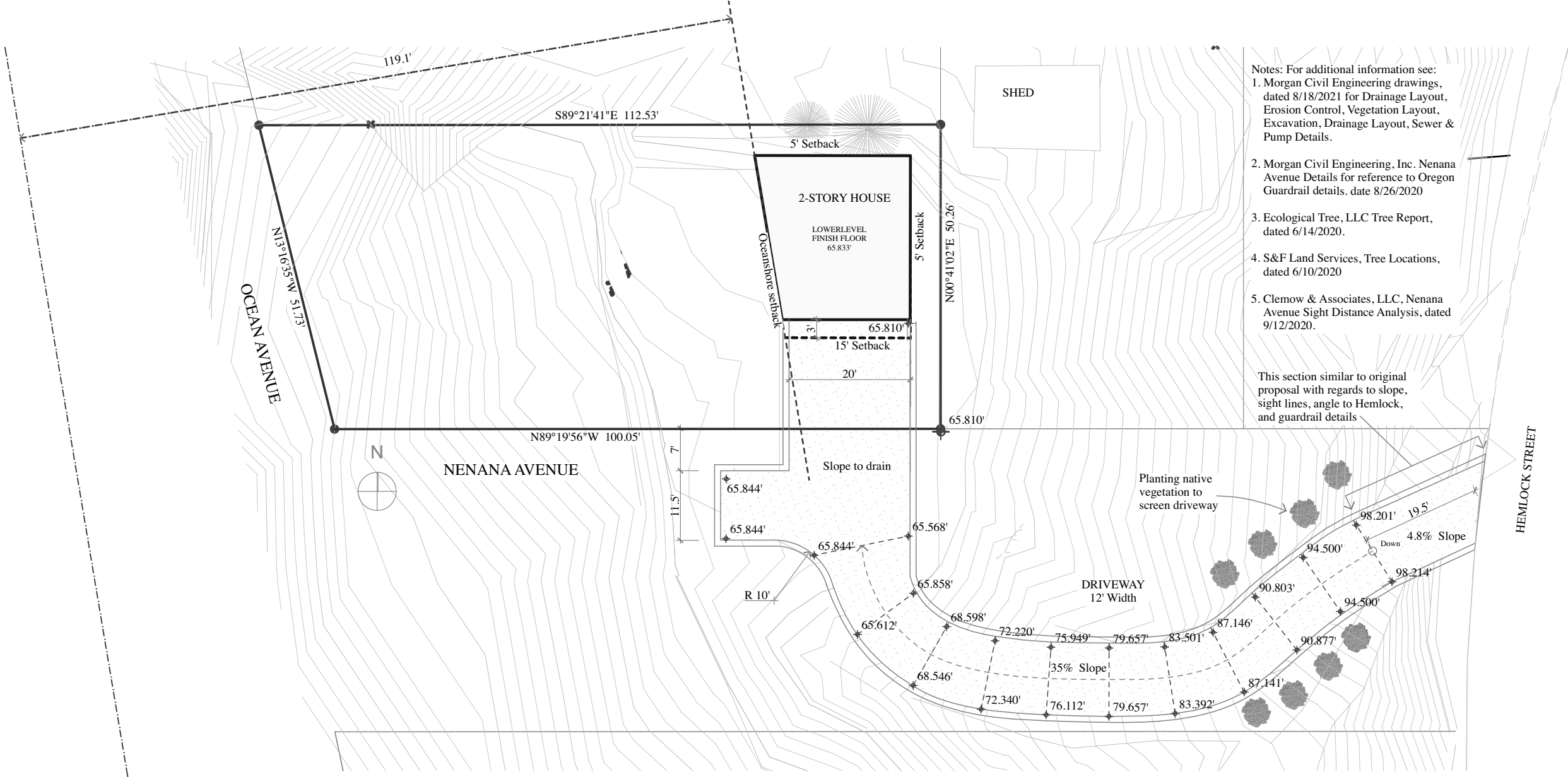
Lot 13, Block 1, Tolovana Park Subdivision, Cannon Beach, Clatsop County, Oregon.

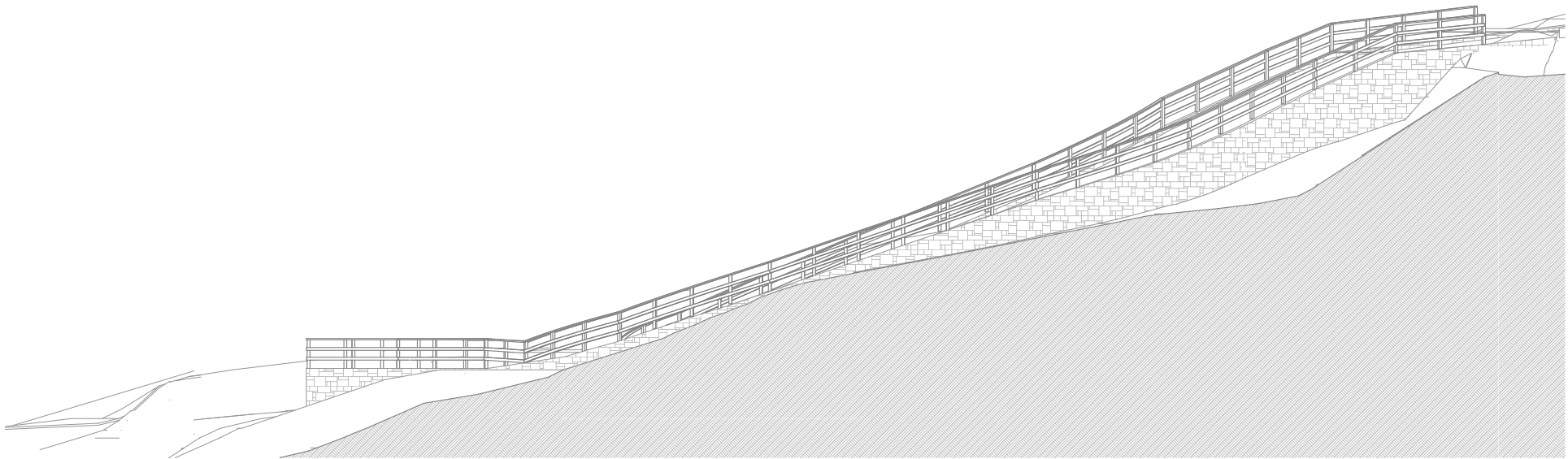
## **EXHIBIT C**

[Legal Description of Easement Property]

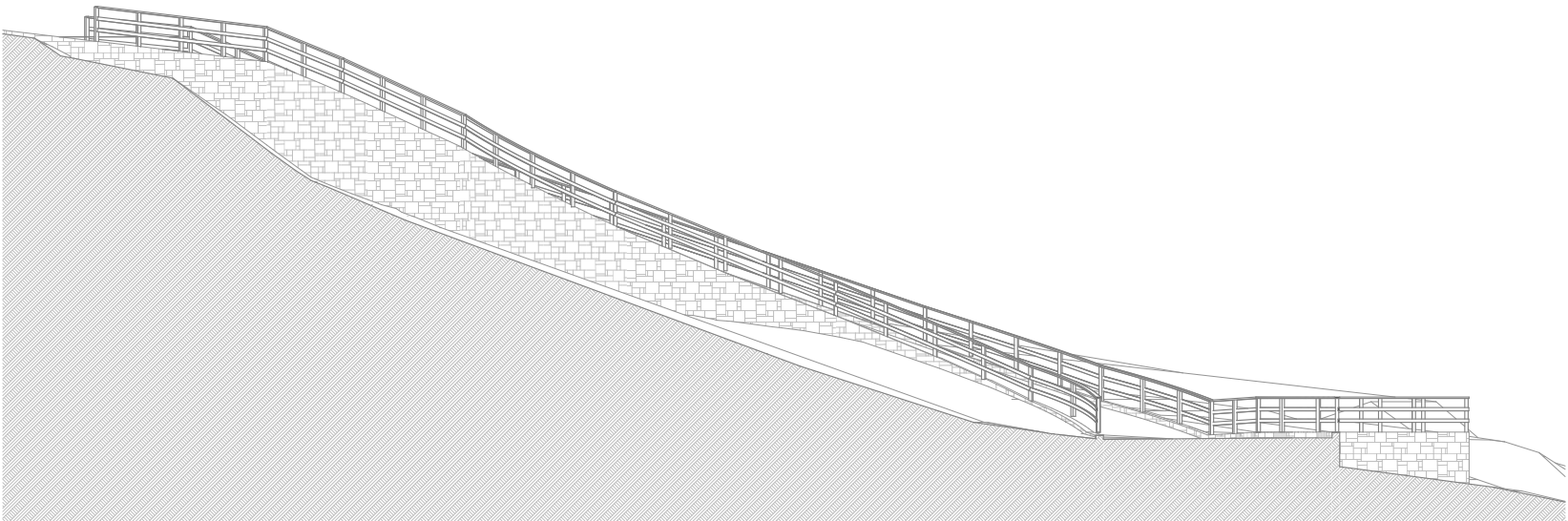
## **EXHIBIT D**

[Depiction of Easement Property]

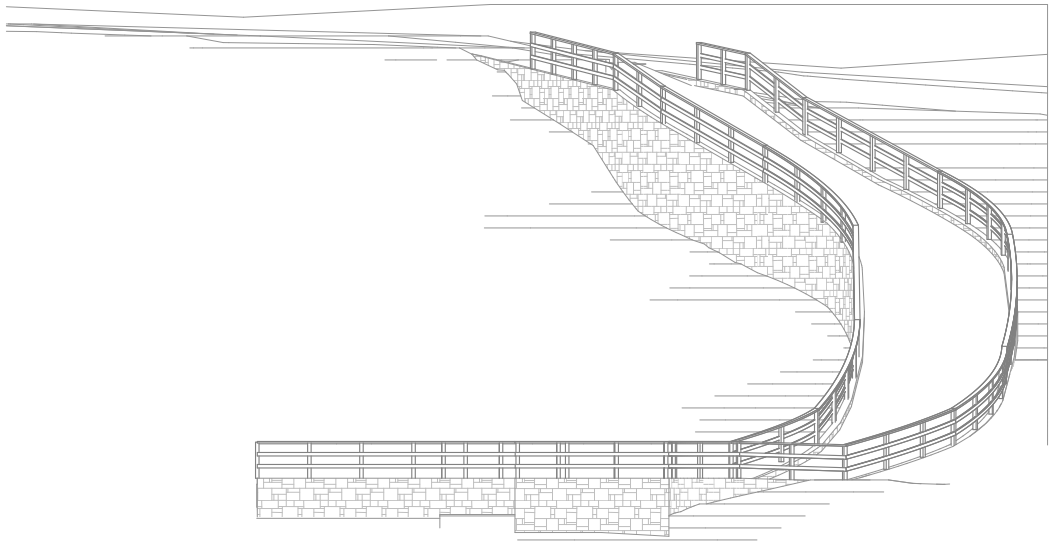




SOUTH ELEVATION



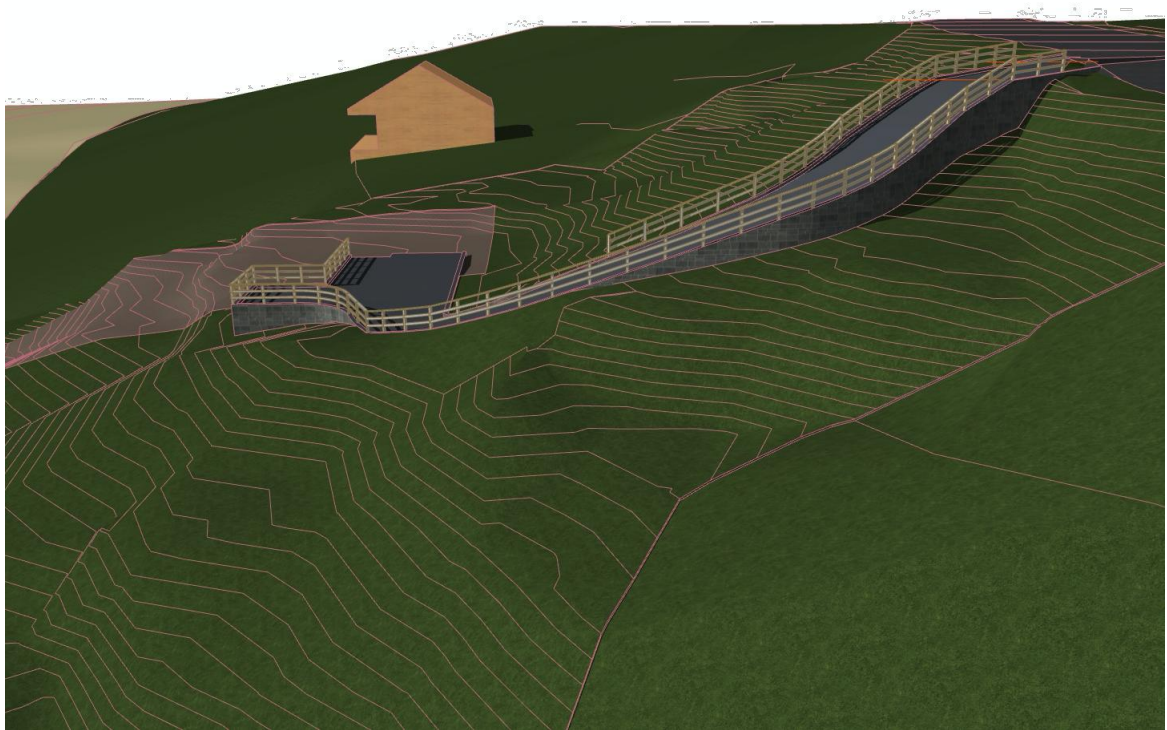
NORTH ELEVATION



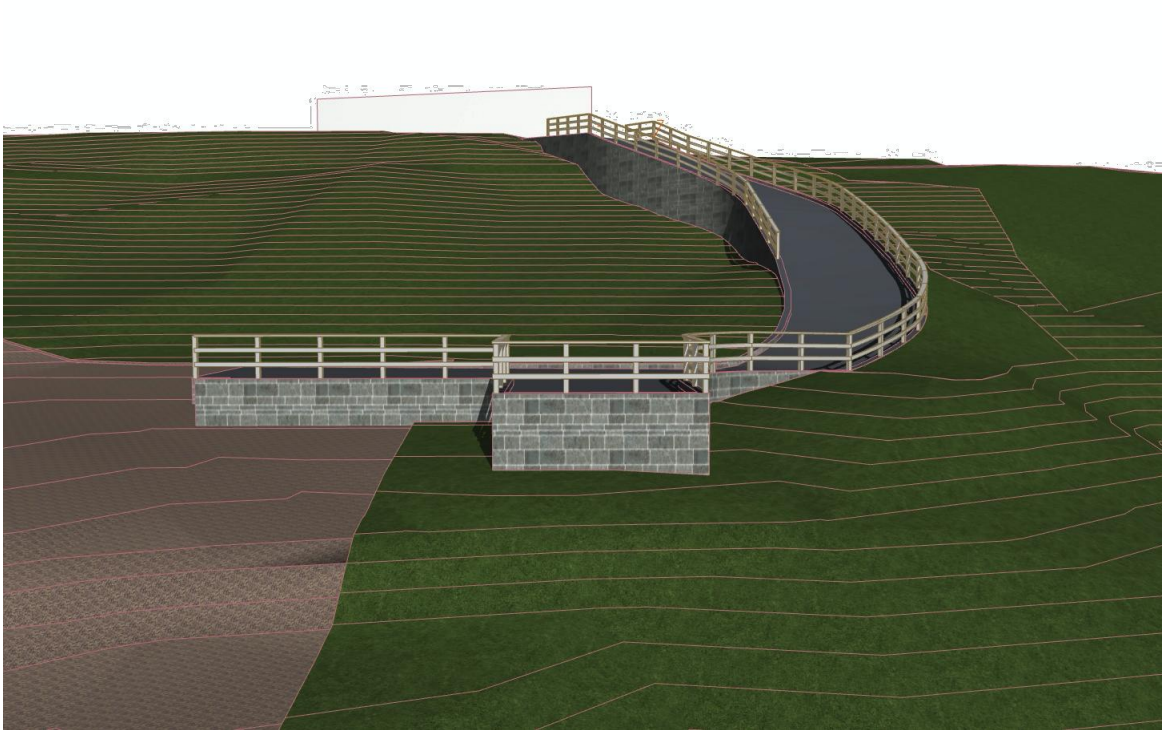
WEST ELEVATION

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

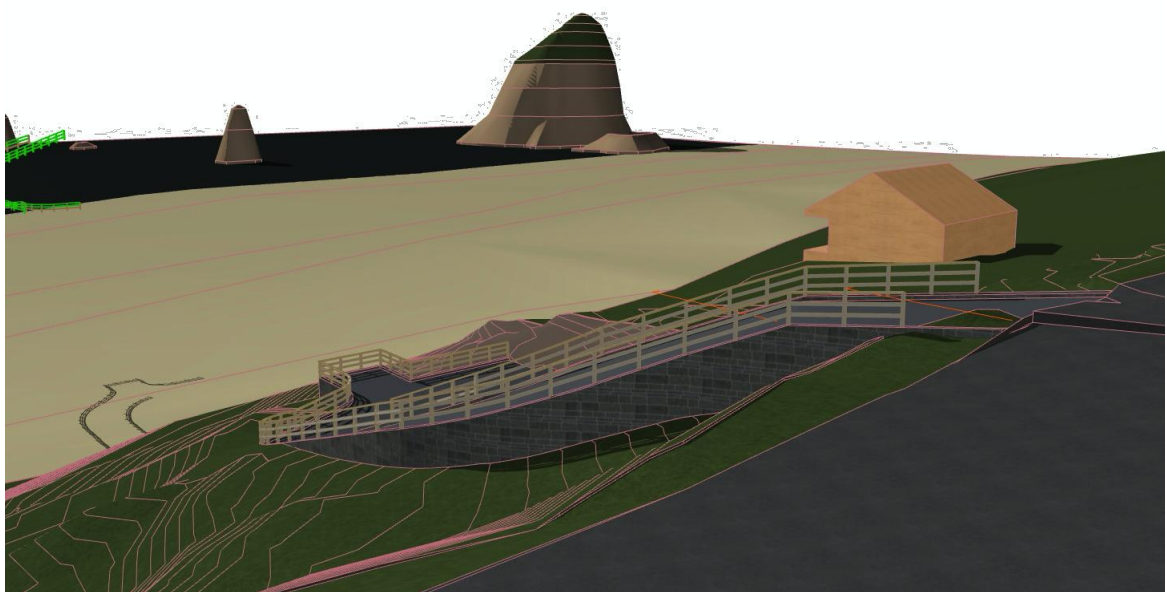




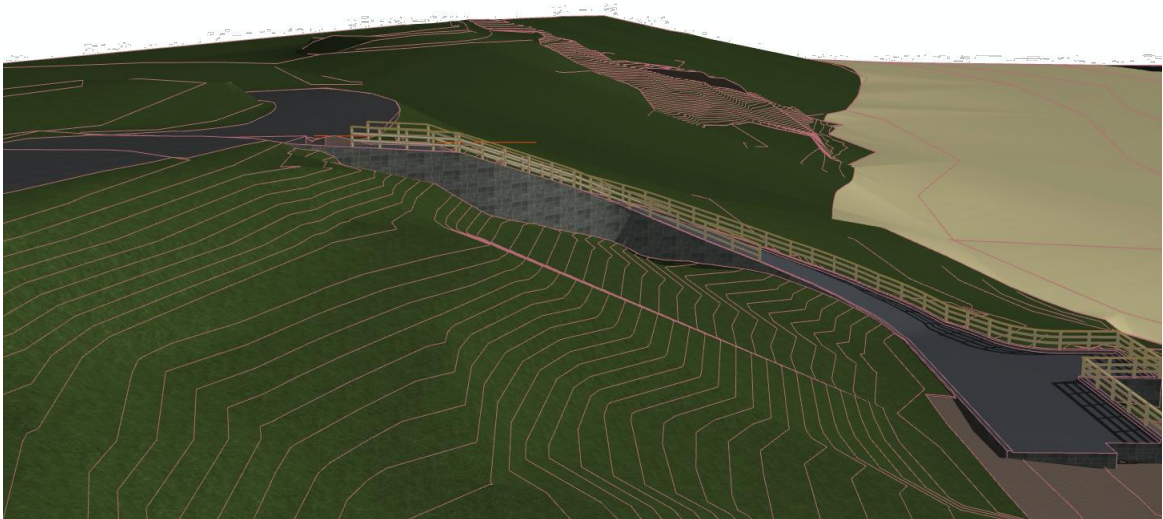
View from South



View from West

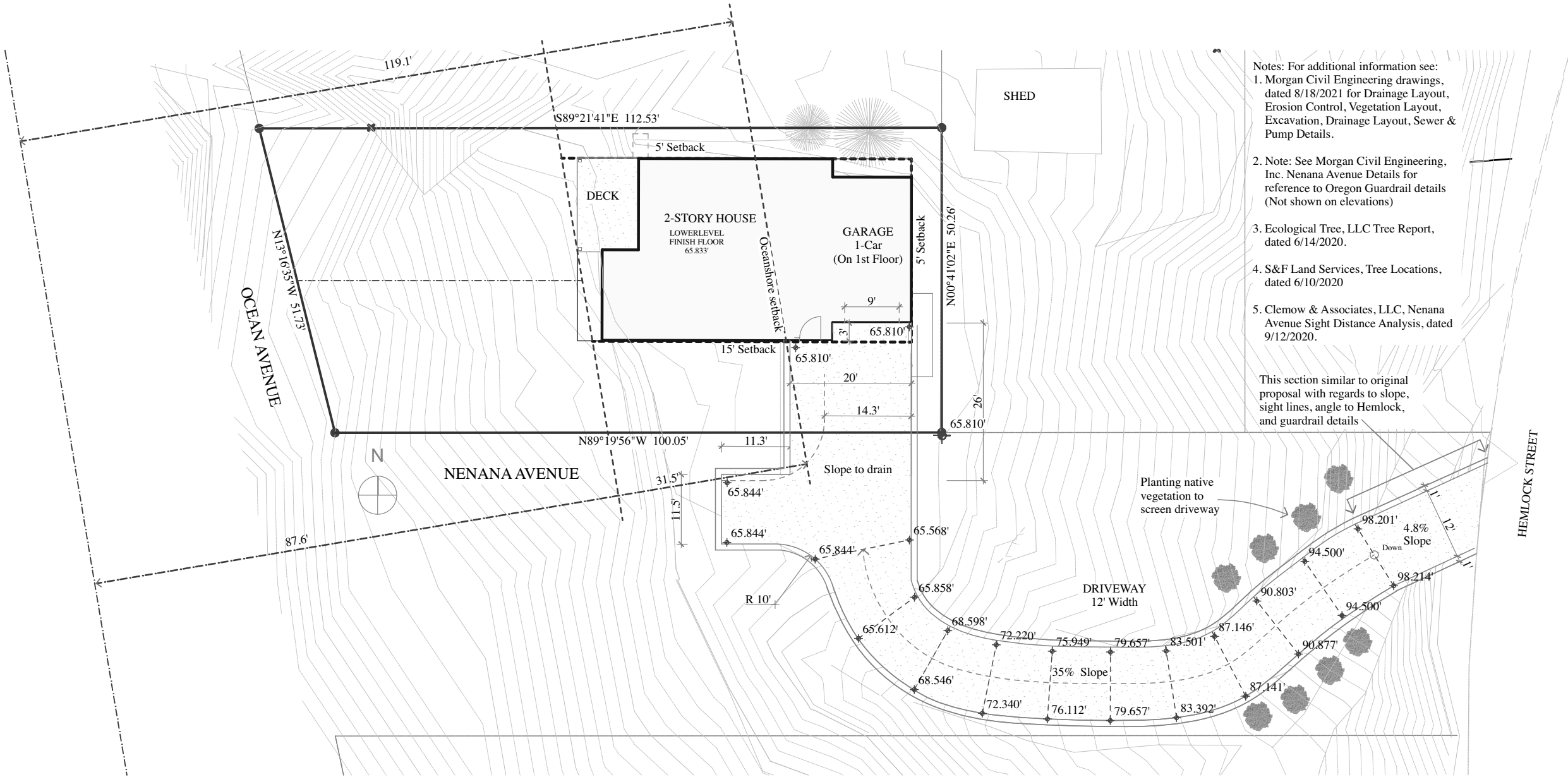


View from Hemlock



View from North





# West Nenana Ave.

Proposed Roadway December 14<sup>th</sup> City Council Work Session



Existing Conditions





Vicinity





**Existing Ownership**





**Existing Conditions**





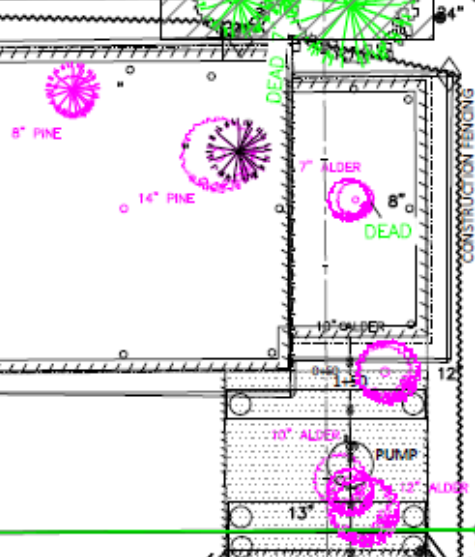
Original Plans

NENANA AVE  
(50')

TAX LOT 600

TAX LOT 1300

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



14

15

7

TAX LOT 500



PRESERVE TREES

30"

30"

2" Ø SEWER SERVICE (PRESSURE)

48"

CONSTRUCTION FENCING

4" Ø GRA

18"

22"

16" SPRUCE

20"

18"

SPRUCE

23"

36"

15"

15"

CONSTRUCTION FENCING

DO NOT REMOVE TREE STUMP

DO NOT REMOVE TREE STUMP

CONSTRUCTION FENCING

CONSTRUCTION FENCING

CONSTRUCTION FENCING

CONSTRUCTION FENCING

CONSTRUCTION FENCING

CONSTRUCTION FENCING

CONSTRUCTION FENCING

CONSTRUCTION FENCING

CONSTRUCTION FENCING

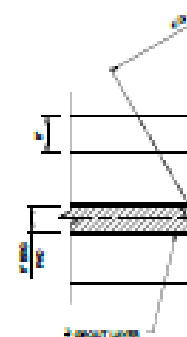
CONSTRUCTION FENCING

CONSTRUCTION FENCING

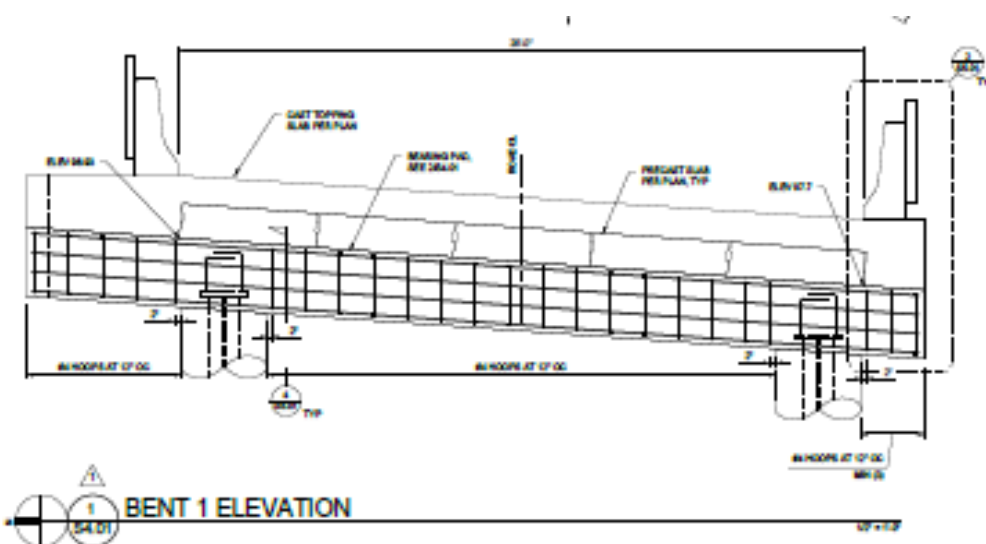
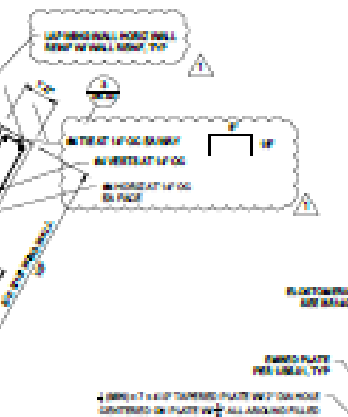
CONSTRUCTION FENCING

Hemlock





**2 BEARING PAD DETAIL**



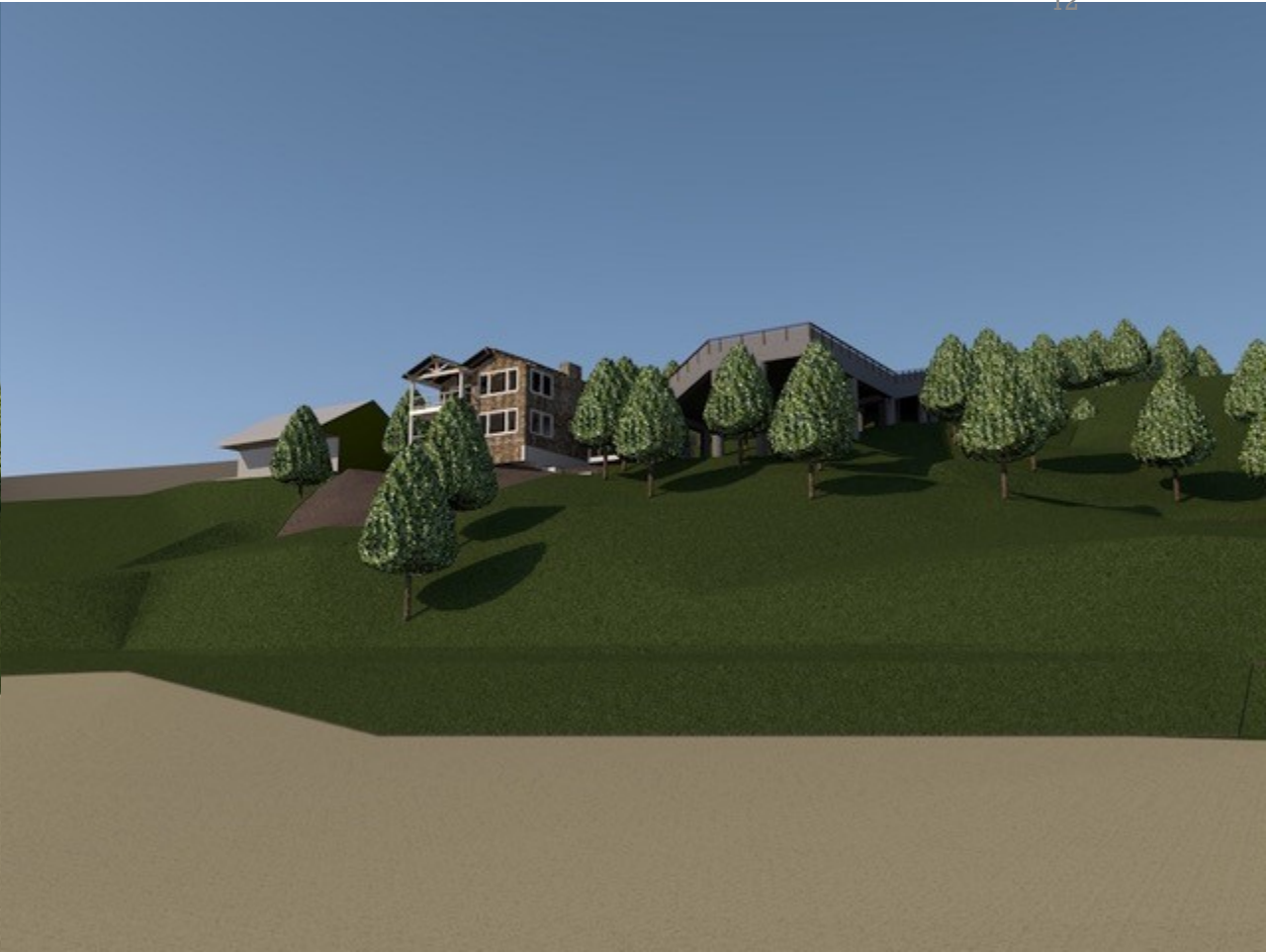
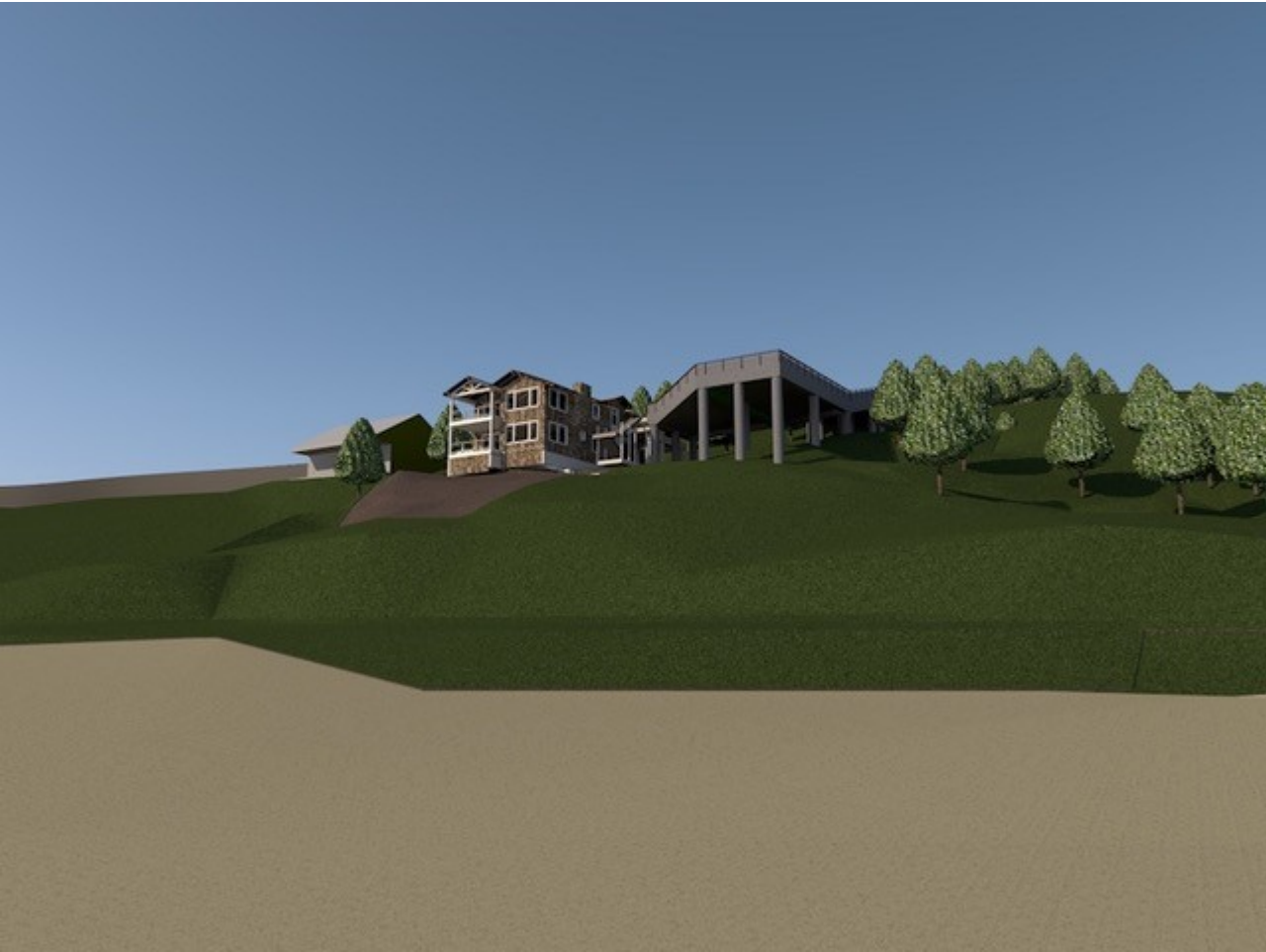
### BENT 1 ELEVATION

# Visual Renderings



**Visual Renderings**



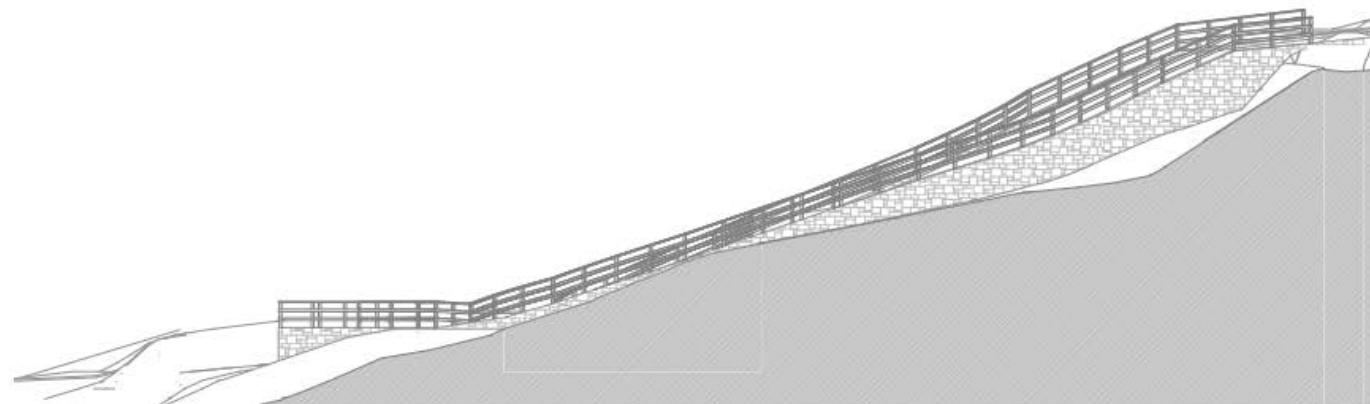


**Visual Renderings**

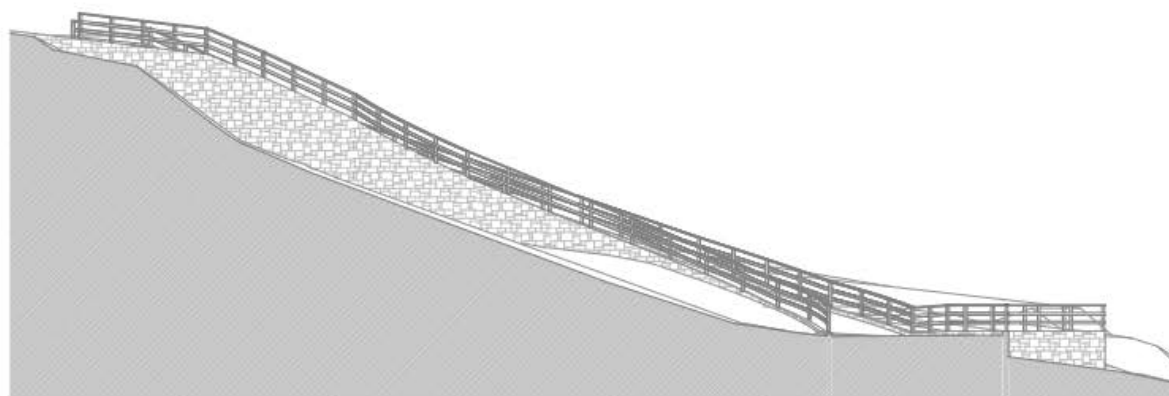


# Alternative Plans

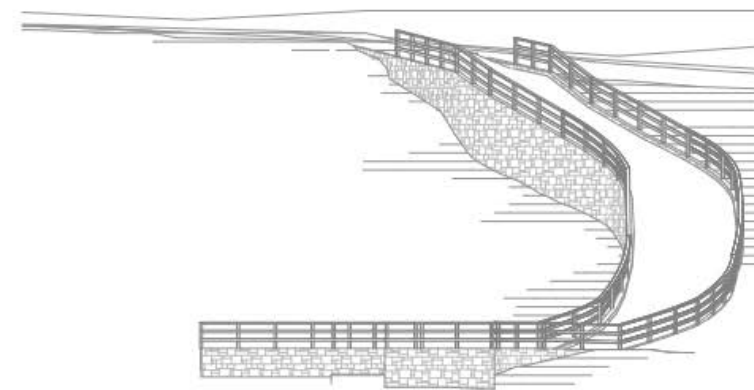




SOUTH ELEVATION



NORTH ELEVATION



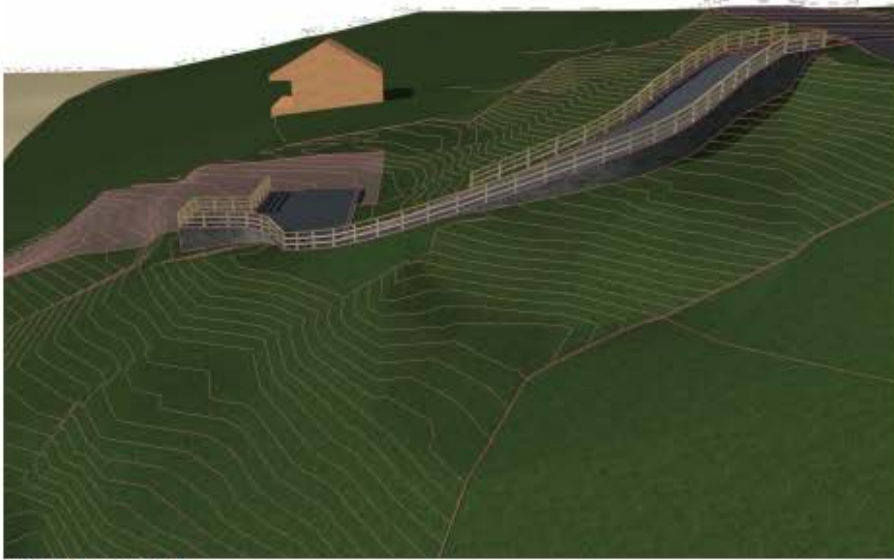
WEST ELEVATION

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

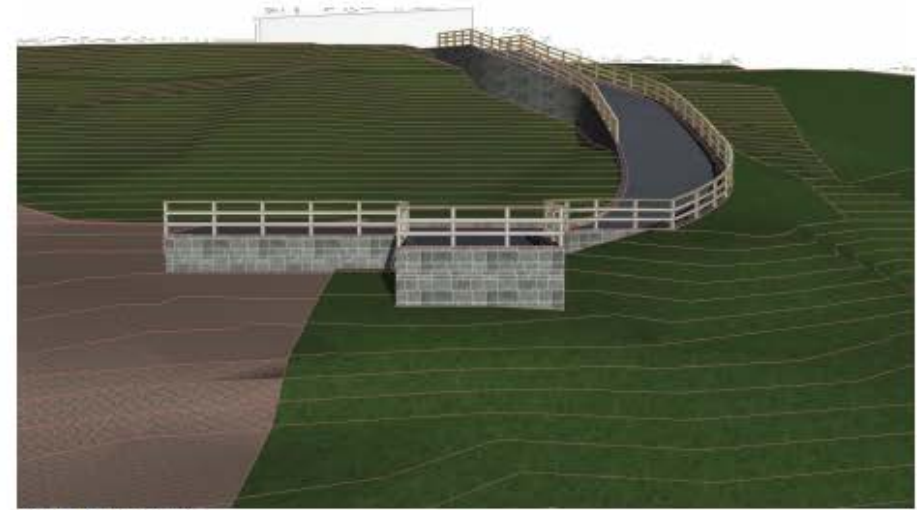


## Alternative Driveway Plans: 2

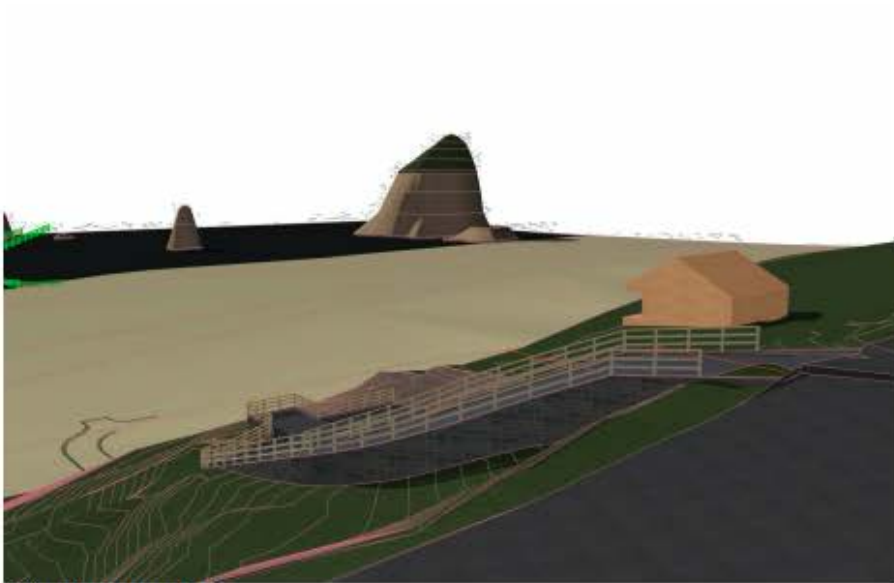




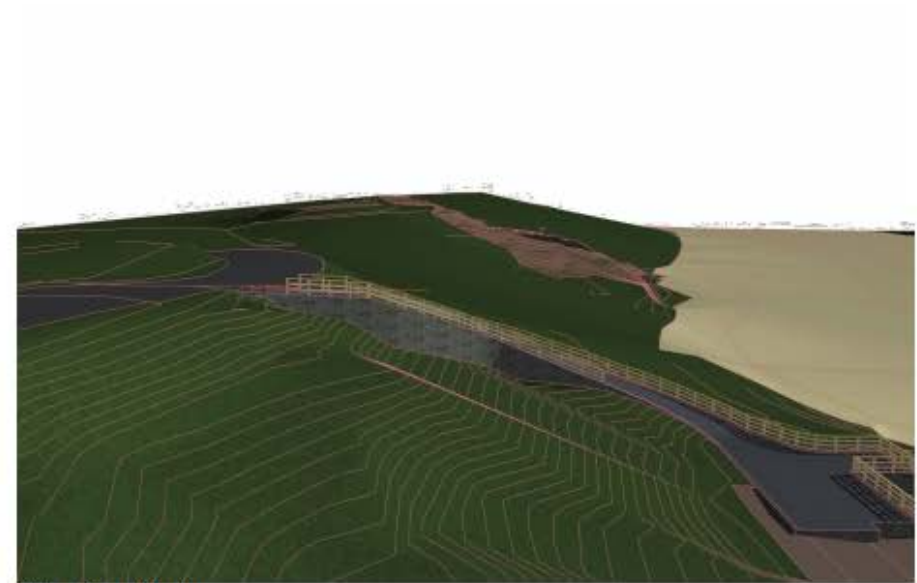
View from South



View from West

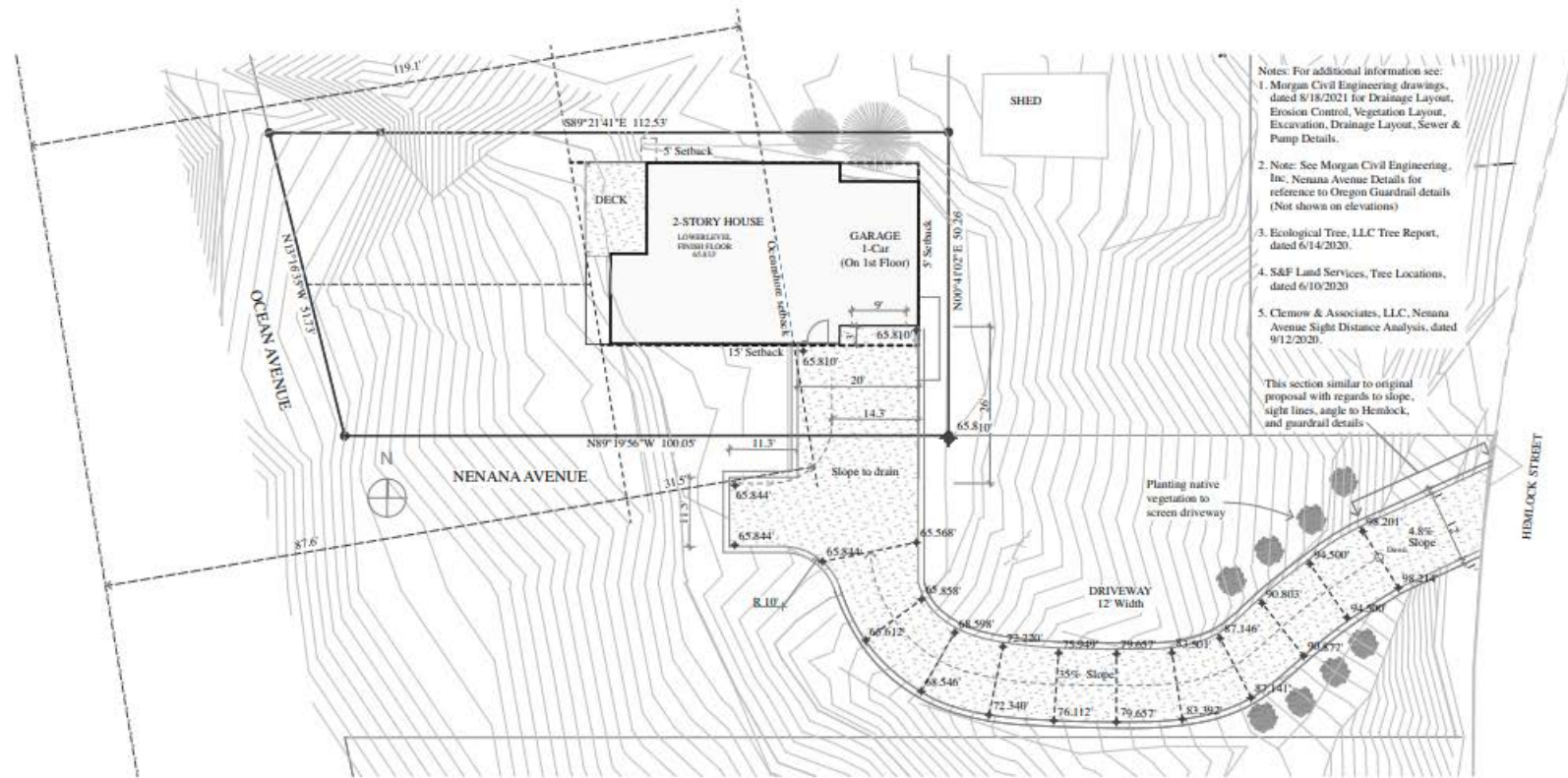


View from West



View from South





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

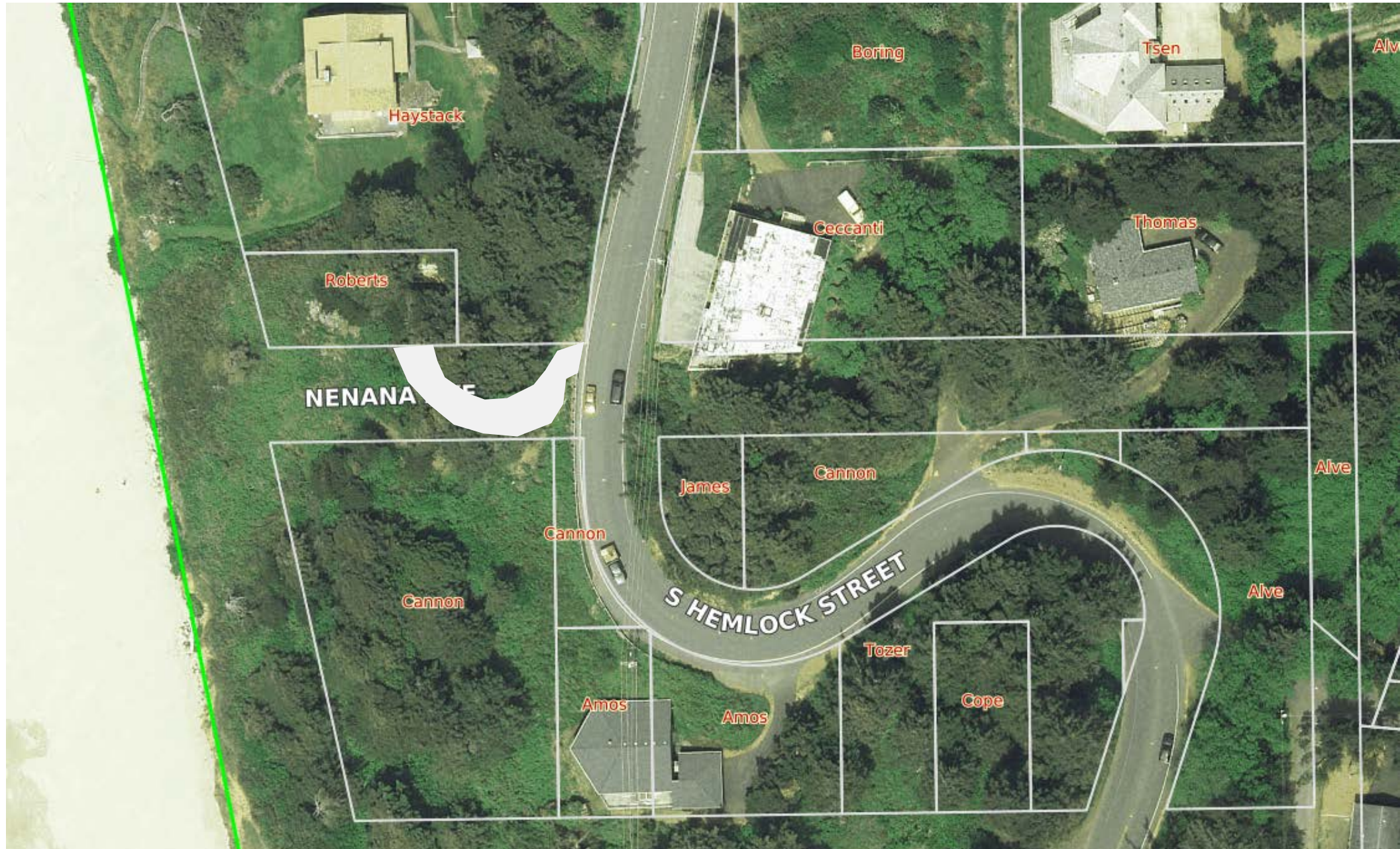
### Cons:

- 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:

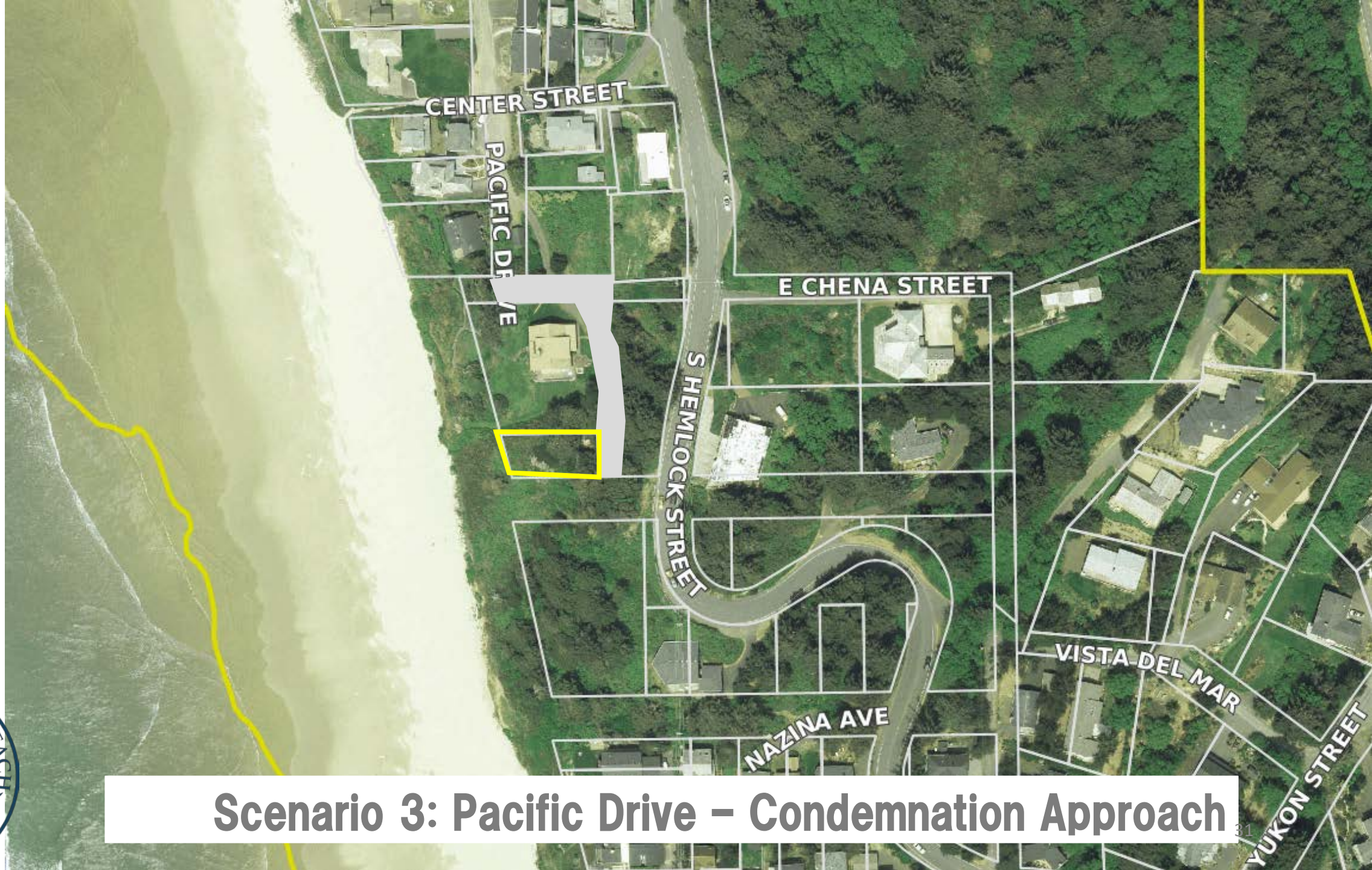
- Low impact solution

### Cons:

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







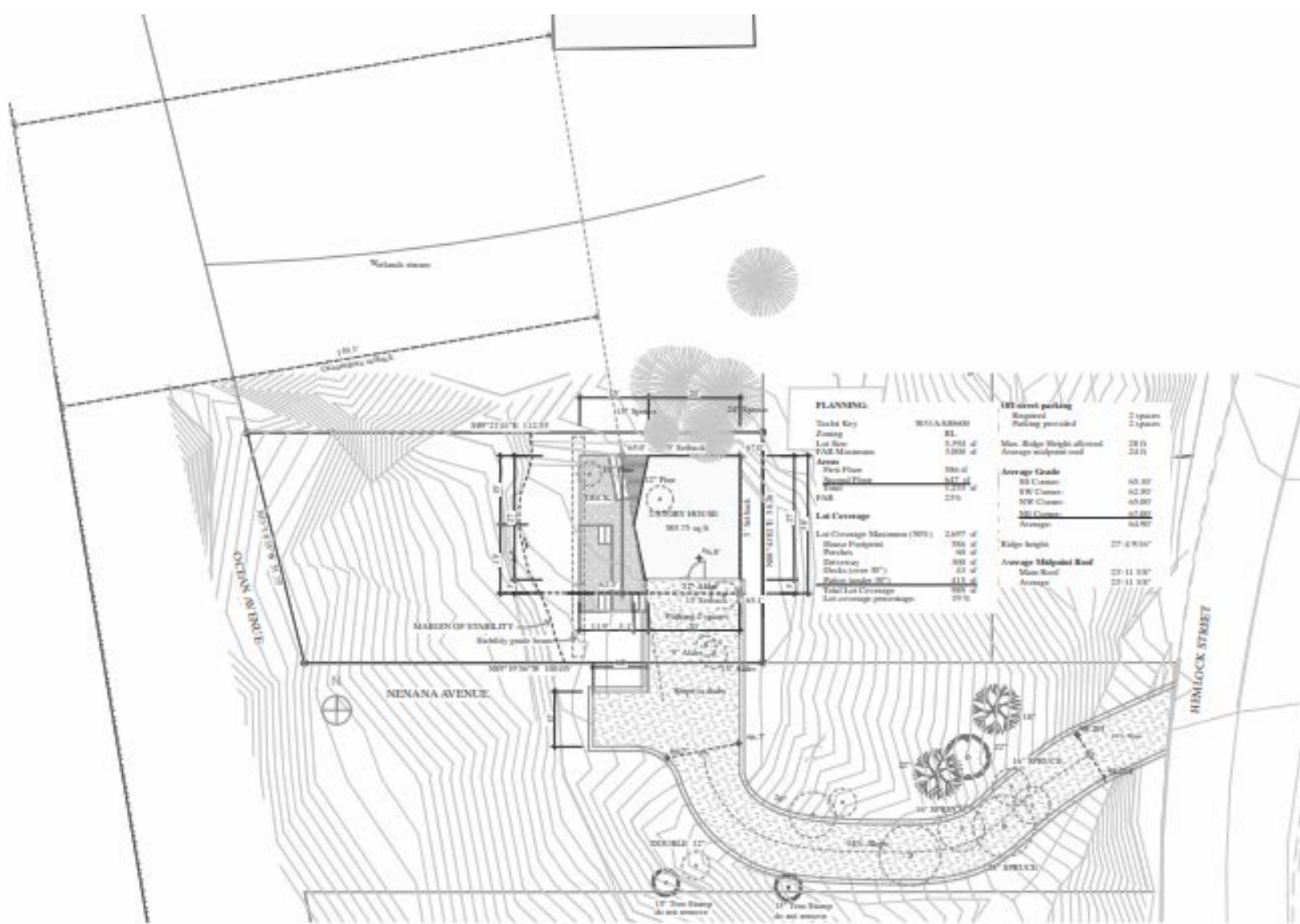
## Scenario 3: Pacific Drive – Condemnation Approach





## 2 SITE PLAN

SCALE: 1" = 20'



# Scenario 3: Pacific Drive – Condemnation Approach 32



# Scenario 3

## Pacific Drive – Condemnation Approach

### 1. City Council

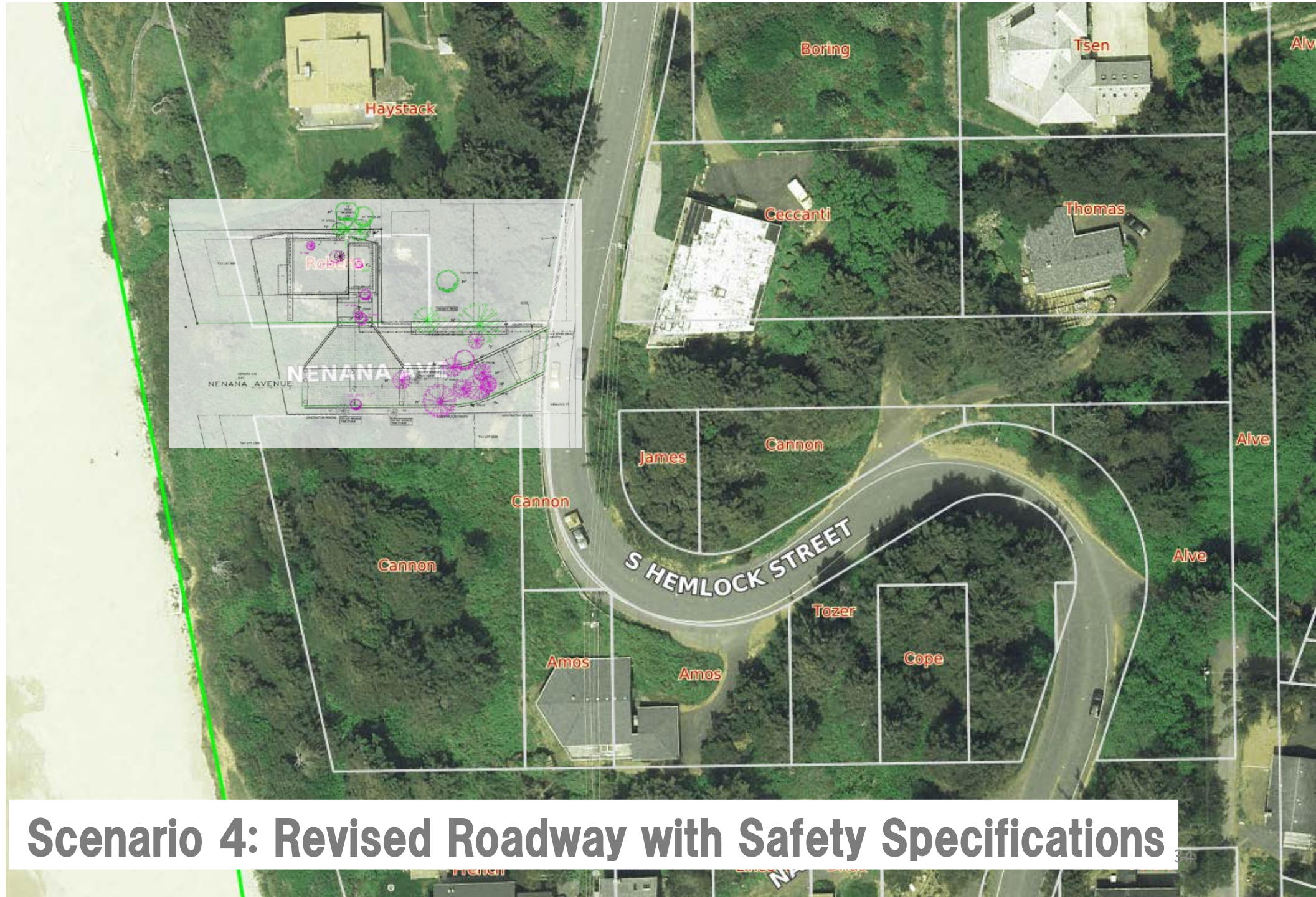
#### Pros:

- 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** <sup>35</sup>



# 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 16<sup>th</sup> Ave

Portland, OR 97201

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

[amatusick@affinityproperty.com](mailto:amatusick@affinityproperty.com)

[www.affinityproperty.com](http://www.affinityproperty.com)



-----  
**CONFIDENTIALITY NOTICE:** This e-mail message may contain confidential or privileged information. If you have received this message by mistake, please do not review, disclose, copy, or distribute the e-mail. Instead, please notify us immediately by replying to this message or telephoning us. Thank you.  
-----

**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 5 ....COUNCIL

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](mailto:kermit6@mac.com)  
CELL 503 440 3104  
[robertwaynemd.com](http://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](mailto: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](http://www.ci.cannon-beach.or.us) | e: [labonte@ci.cannon-beach.or.us](mailto: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 1<sup>st</sup> 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