



CITY OF CANNON BEACH

AGENDA

Meeting: Planning Commission
Date: **Thursday, October 27, 2022**
Time: **6:00 p.m.**
Location: Council Chambers, City Hall

6:00 CALL TO ORDER

6:01 (1) **Approval of Agenda**

6:02 (2) **Consideration of the Minutes for the Planning Commission Meeting of September 22, 2022.**
If the Planning Commission wishes to approve the minutes, an appropriate motion is in order.

ACTION ITEMS

6:05 (3) **Continuation of CD 22-01 & CU 22-03, David Vonada request, on behalf of Davidspruce LLC, for a seven-lot Conditional Use Permit Cluster Development Subdivision in the Wetland Overlay Zone.**

CD 22-01 & CU 22-03, David Vonada, on behalf of David Pietka, request for a Conditional Use Permit to allow a cluster development subdivision consisting of a seven-lot subdivision containing four single-family dwellings and a six-plex apartment building, with common lots for parking and wetland areas. The property is located on the southwest corner of 1st and Spruce St. (Tax Lot 04402, Map 51030AA) in a Limited Commercial (C1) Zone. The request will be reviewed under Cannon Beach Municipal Code, Titles 16 Subdivisions and 17 Zoning, including Sections 16.04.130 Subdivision-Applicable Standards, 16.04.400 Variance-Cluster Development, 17.22.030 Conditional Uses Permitted, and 17.43.040-050 Conditional Uses and Activities Permitted in Wetland and Wetland Buffer Areas, Standards.

6: 25 (4) **Public Hearing and Consideration of ZO 22-01, Will Rasmussen, on behalf of Haystack Rock LLC, requesting a text amendment of the Cannon Beach Municipal Code regarding notice requirements for applications and decisions.**

ZO 22-01, Will Rasmussen, on behalf of Haystack Rock LLC, requesting a text amendment of the Cannon Beach Municipal Code, Title 17 Zoning, regarding notice and procedural requirements for citizens to receive electronic notifications of application processed by the Community Development Department, administrative decisions, and expanded public notice for permits concerning hazard areas, environmentally sensitive lands, and new roads. The request will be reviewed against the criteria of Municipal Code, Section 17.86, Amendment Criteria.

6:50 (5) **Public Hearing and Consideration of CU 22-04, Mike Morgan, on behalf of Marilyn Epstein, request for a Conditional Use Permit to allow for the placement of a non-structural shoreline stabilization project at 4007 Ocean Avenue**

CU 22-04, Mike Morgan, on behalf of Marilyn Epstein, request for a Conditional Use Permit to allow for the placement of a non-structural shoreline stabilization. The property is located at 4007 Ocean Ave. in a Residential Moderate Density (R1) and Oceanfront Management Overlay (OM) zone. The request will be reviewed under Cannon Beach Municipal Code 17.12.030 Conditional Uses Permitted, 17.42.060 Specific Standards, and 17.80.230 & 360 Shoreline Stabilization & Preservation Grading.

WORK SESSION ITEMS

7:15 (6) **Review of draft letter to be sent to City Council regarding stormwater discharge on Forest Lawn**

(7) **Wetlands Task Force organization**

INFORMATIONAL ITEMS

7:40 (8) **Tree Report**

(9) **Ongoing Planning Items:**

Code Audit Update

(10) **Good of the Order**

8:00 (11) **ADJOURNMENT**

Please note that agenda items may not be considered in the exact order listed, and all times shown are tentative and approximate. Documents for the record may be submitted prior to the meeting by email, fax, mail, or in person. For questions about the agenda, contact Administrative Assistant, Katie Hillenhagen at Hillenhagen@ci.cannon-beach.or.us or (503) 436-8054. 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: October 20, 2022

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**Minutes of the
CANNON BEACH PLANNING COMMISSION**
Thursday, September 22, 2022

Present: Chair Clay Newton, Commissioners Barb Knop, and Les Sinclair in person
Commissioners Mike Bates, Charles Bennett, Aaron Matusick, and Anna Moritz via Zoom

Excused:

Staff: Director of Community Development Jeff Adams, Land Use Attorney Bill Kabeiseman, City Planner Robert St. Clair, City Manager Bruce St. Dennis, and Administrative Assistant Katie Hillenhagen

CALL TO ORDER

Chair Newton called the meeting to order at 6:00 p.m.

ACTION ITEMS

(1) Approval of Agenda

Motion: Knop moved to approve the agenda as presented; Sinclair seconded the motion.

Vote: Sinclair, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

(2) Consideration of the Minutes for the Planning Commission Meeting of August 25, 2022

Motion: Moritz moved to approve the minutes; Bennett seconded the motion.

Vote: Sinclair, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

(3) Continuation of CD# 22-01 & CU# 22-03, David Vonada request, on behalf of Davidspruce LLC, for a seven-lot Conditional Use Permit Cluster Development Subdivision in the Wetland Overlay Zone.

David Vonada, on behalf of David Pietka, request for a Conditional Use Permit to allow a cluster development consisting of five single-family dwellings and a fourplex apartment. The property is located on the southwest corner of 1st and Spruce St. (Tax Lot 04402, Map 51030AA) in a Limited Commercial (C1) Zone. The request will be reviewed under Cannon Beach Municipal Code, Titles 16 Subdivisions and 17 Zoning, including Sections 16.04.130 Subdivision-Applicable Standards, 16.04.400 Variance-Cluster Development, 17.22.030 Conditional Uses Permitted, and 17.43.040-050 Conditional Uses and Activities Permitted in Wetland and Wetland Buffer Areas, Standards.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Newton asked if any Commissioner had any conflict of interest. There were none. Chair Newton asked if any Commissioner had personal bias to declare. There were none. Chair Newton asked if any commissioner had any ex parte contacts to declare. There were none. The commissioners declared their site visits.

Chair Newton asked for the Staff Report. Adams reminded everyone that the record was closed under the Oregon 7-7-7 rules. He noted that the applicant made new evidence available after the record was closed. The applicant has requested to reopen the record and extend the 120 day rule.

The Commissioners discussed the request and agreed that the record should be reopened and continued at the next Planning Commission meeting.

Kabeiseman suggested publishing the documents that were submitted and reviewing it at the next meeting or continuing it as a 7-7-7 process.

Adams suggested re-noticing it and holding another hearing at the next meeting.

They discussed the timeline and the new deadline for the City to make a decision. The new deadline would be January 1, 2023.

Kabeiseman suggested doing a modified 7-7-7 as a 14-7-7 to ensure a final decision by January 1.

Kabeiseman gave an overview of the dates.

Motion: Knop moved re-notice and reopen the record re-notice folks and allow written material on any topic until Thursday 5 p.m on October 6th, then responsive materials to that anything that came in in the interim until Thursday October 13th at 5 pm, and then final written argument from the applicant only until uh due no later than 5 PM on Thursday October 20th with deliberations on Thursday October 27th ; Moritz seconded the motion.

Vote: Kerr, Matusick, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed

NON HEARING ITEMS

(5) Work Session review of a Zoning Ordinance Amendment request by Will Rasmussen on behalf of Haystack Rock LLC, for a text amendment regarding notice requirements for applications and decisions.

Rasmussen noted that they are scheduled for an actual hearing next month. Rasmussen got examples of other jurisdictions that have similar ordinances. He said he would follow-up with a letter with this information and summarized what he found. Rasmussen argued that the zoning change would lead to better decisions and save resources. He also argued that it would not take up too much staff time and resources.

Moritz asked about simplifying the process by sending just an email that notifies the interested party that a decision has been made on the property of interest and they need to follow-up.

They discussed electronic vs mailed notification.

They discussed the repercussions of mistakes made on notice. Rasmussen said that clerical errors that are not prejudicial are not usually an issue.

Newton said that he is leery of more ways for the City to make a mistake.

Adams answered questions from Rasmussen and the Commission. Adams said that either way his decision is going to be appealed and go to LUBA. He also noted that most appeals are between neighbors. Adams said that decisions are generally posted on Accela within 24 hours. Adams said that there are lots of ways for people to find information and he is worried about mistakes being reasons to throw out a decision.

Rasmussen clarified that things would go to the PC and CC before going to LUBA.

Adams said that his goal is to get things cleaned up through the Code Audit and not get bogged down in these sorts of issues. He said that the change would be a large strain on City staff.

Moritz asked Rasmussen to look at how this process could be simplified.

Rasmussen agreed to ask other jurisdictions about their workflow for similar ordinances.

Sinclair asked if it has to be in the code or if this could be a good faith effort.

Rasmussen said that it gives it more authority if it is in the code.

Kabeiseman noted that current notice standards comply with state law. This is a questions of if the City wants to go beyond that. He noted that this is the only jurisdiction that allows decisions of building permits to go before the PC. Kabeiseman noted that CB is small and and people care a lot. That means small things become a big issue. He noted that this prevents the PC and the City from looking at the larger issues.

They continued to discuss how they could change the proposal to make it more manageable.

Chair Newton asked if there was any more discussion. There was none.

INFORMATIONAL ITEMS

(6) Tree Report

No comments.

(7) Ongoing Planning Items

Adams noted that it was Katie Hillenhagen's last day tomorrow.

Adams gave an update on the Code Audit.

(8) Good of the Order

Newton thanked Adams and City Staff for all of the work that they have done. Newton also welcomed Les Sinclair as a new member to the PC.

They discussed a letter submitted by Rosanne Dorsey (attached at the end of these minutes).

Moritz said that they need to revisit their letter to the CC regarding stormwater discharge.

Kabeiseman clarified that the applicant for the development on Forest Lawn could still appeal the CC decision.

Newton asked St. Dennis if the City was doing anything in relation to the stormwater discharge on Forest Lawn. He said that he hoped the City was holding off on any action.

St. Dennis said that he was not aware of anything but he would have to look into it.

Bates had questions about why they were holding off on having a discussion.

They discussed the need to hold off on the discussion.

Sinclair thought it was open to interpretation and said that that emphasizes the importance of the code audit.

They discussed how to move forward.

Rosanne Dorsey said she got the letter late yesterday. She said she was fine with waiting until all decisions were made. She said that she thought it went to Public Works.

Dana Caldwell PO box 1305, Cannon Beach reiterated what Rosey was saying. She thought the pressure was on the City as well as Dorsey.

They continued to discuss stormwater on Forest Lawn.

St. Dennis said that staff has been directed not to do anything until the matter is resolved.

Newton summarized that during the discussion he heard that the City is not moving forward at this point and they are not compelled by the arbitrary timelines put forward by the developer.

ADJOURNMENT

The meeting adjourned at 7:40 pm.

Administrative Assistant, Katie Hillenhagen



Cannon Beach Planning Commission

Staff Report Addendum, (October 7th, End of Business):

CD 22-01 & CU 22-03, David Vonada, on behalf of David Pietka, request for a Conditional Use Permit to allow a cluster development consisting of four single-family dwellings and a six-plex apartment building. The property is located on the southwest corner of 1st and Spruce St. (Tax Lot 04402, Map 51030AA) in a Limited Commercial (C1) Zone. The request will be reviewed under Cannon Beach Municipal Code, Titles 16 Subdivisions and 17 Zoning, including Sections 16.04.130 Subdivision-Applicable Standards, 16.04.400 Variance-Cluster Development, 17.22.030 Conditional Uses Permitted, and 17.43.040-050 Conditional Uses and Activities Permitted in Wetland and Wetland Buffer Areas, Standards.

Agenda Date: October 27, 2022

Prepared By: Jeffrey S. Adams, PhD

GENERAL INFORMATION

NOTICE

Public notice for this October 27, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on October 7, 2022;
- B. Notice was mailed on October 7, 2022 to surrounding landowners within 100' of the exterior boundaries of the property.

DISCLOSURES

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on July 5, 2022 unless otherwise noted.

"A" Exhibits – Application Materials

- A-6** Ecola East Development, Site Plan, First and Spruce Streets, Revised Site Plan, A.1.1, Tolovona Architect, LLC, undated;
- A-7** Geotech Report for Proposed Ecola Square Development, First and Spruce, Earth Engineers, Inc., dated March 31, 2022, revised April 18, 2022;
- A-8** Tree Plan for First and Spruce Project, Todd Prager & Associates, LLC, dated September 21, 2022;

"B" Exhibits – Agency Comments

No new materials

“C” Exhibits – Cannon Beach Supplements

- C-3** Proposed Draft Development Agreement, for Ecola Square East Affordable Housing, dated September 28, 2022;
- C-4** HUD Clatsop County AMI Housing 2022 report;

“D” Exhibits – Public Comment

- D-9** Cameron La Follette letter, via email, on behalf of Oregon Coast Alliance, dated and received, October 6, 2022;
- D-10** Susan Glarum letter, via email, dated and received, October 6, 2022;

REVISIONS & NEW MATERIALS

The applicant has provided a new site plan, tree report and geohazard report in response to the previous meeting. The application now proposes four single-family dwellings (each 1,190 SF), with one containing a 360 SF Accessory Dwelling Unit. The new plan also proposes a six-plex multifamily housing complex consisting of two 510 SF studio apartments and three 646 SF one-bedroom apartment and one 772 SF one-bedroom unit, for a total of ten dwellings, with a common access and shared parking area, consisting of thirteen parking spaces.

The proposed pedestrian access to eight of the units is via an internal sidewalk system, with two of the units accessible via First Street. One of the one-bedroom apartment units is identified as ADA accessible. The parking standards of CBMC 17.78.020 require two spaces for each of the single-family dwellings, one space for each of the studio apartments and one and a quarter spaces for each of the four one-bedroom units, with one additional for the ADU, which equates to sixteen spaces required. The plans show thirteen parking spaces, the Cluster Variance would allow for a reduction or for the three spaces to be placed off-site.

Staff has provided the Ecola Square East Affordable Housing Development Agreement based on the Sea Lark Development agreement that was approved in 2018, as the only other ‘affordable’ or ‘workforce’ housing development in the City of Cannon Beach, since the passage of the construction excise tax ordinance. A copy of the Clatsop County Area Median Income limits from HUD are also included for consideration.

The Todd Prager & Associates Tree Report, dated September 21, 2022, recommends the retention of 23 trees, 12 within the site boundaries and 11 in the adjacent right-of-way, while 14 trees are recommended for removal. Project arborist oversight is required at excavation, along with TPZ fencing and geotextile and wood-chip compaction zones to assure the safety of the trees to be saved during construction.

The Earth Engineers Geotech Report, revised April 18, 2022, recommends 10 to 12 inch helical piers to be planned for lengths of 45 to 50 feet. As with most geohazard reports for structures in Cannon Beach, the site has the presence of weak, compressible, potentially liquefiable and expansive soils, with the presence of organics and shallow groundwater. As a result, the recommendations call for 80 steel pipe piles driven to practical refusal, with the cautionary warning that with the amount of heavy organics depths of pilings should reach over 40 feet. The City Building Official will require all structural plans meet Oregon Building requirements.

The Draft of the Proposed Ecola Square East Affordable Housing Development Agreement provides for two studio apartments and six one-bedroom, held to an 80% AMI, for a period of thirty years. The City of Cannon Beach in return would waive all building fees and system development charges. The Development Agreement is based on the 2018 SeaLark agreement and provides the basics for the City Council to work with the applicant on the details to provide the City more ‘affordable’ or ‘workforce’ housing.

PROCEDURAL REQUIREMENTS

This application is subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete. The application was submitted on July 5, 2022 and determined to be complete

on July 8, 2022. The applicant provided a written request to extend the 120-day deadline by sixty days to January 4, 2023, by which time the City is required to have a final decision.

The Planning Commission held a hearing on this matter on August 25, 2022. At that time, it closed the hearing, but left the record open consistent with ORS 197.763 for additional evidence. The applicant has now requested that the public record be re-opened to allow new evidence for CD 22-01 & CU 22-03, the Planning Commission granted the request to reopen the record. The Planning Commission will accept new written testimony and evidence for an additional fourteen days, from today, September 23rd, to 5:00 PM, October 7th, with a second period allowing for responsive evidence accepted until 5:00 PM, October 14th and final written argument by the applicant only, 5:00 PM, October 21st. The Planning Commission will then commence deliberations at its meeting on Thursday October 27, 2022.

RECOMMENDATION

Staff recommends approval with the following conditions.

DECISION AND CONDITIONS

Initial Motion: Having considered the evidence in the record, based on a motion by Commissioner (Name) seconded by Commissioner (Name), the Cannon Beach Planning Commission moves to (approve/approve with conditions/or deny) the Davidspruce LLC application for a seven-lot Cluster Development Subdivision, CD#22-01, for four single-family residential lots, one multi-family lot and two common space lots, through a Cluster Development Variance, (providing the following exceptions):

1. Shared off-street parking variance request for 13 spaces located on Lot 1 and three off-site;
2. Shared lot access and lot frontage on Lot 1; and,

Second Motion: Having considered the evidence in the record, based on a motion by Commissioner (Name) seconded by Commissioner (Name), the Cannon Beach Planning Commission moves to (approve/approve with conditions/or deny) the Davidspruce LLC application for a Conditional Use permit for a Cluster Development Subdivision in the Wetland Overlay zone, CU#22-02, as discussed at this public hearing (subject to the following conditions):

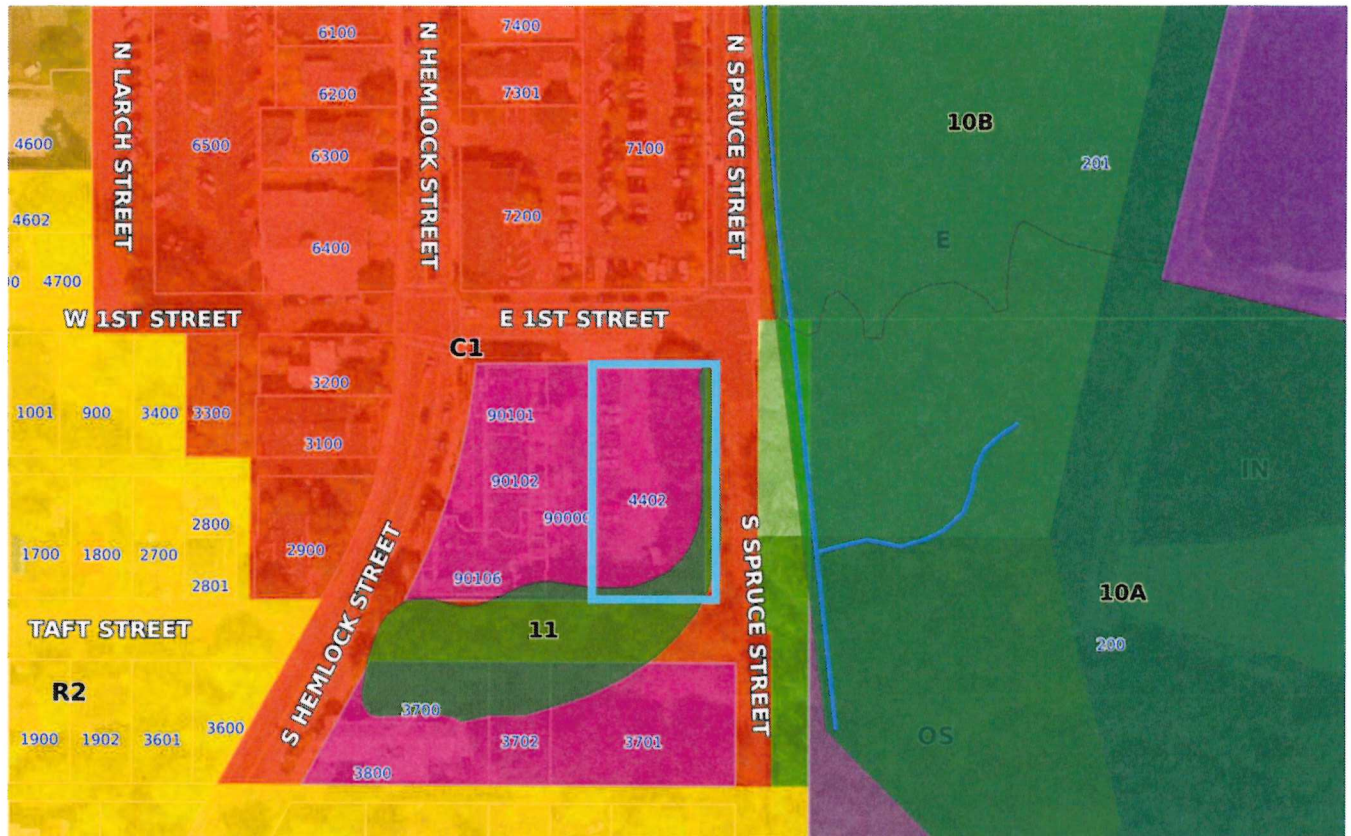
1. Development agreement containing 'affordable' or 'workforce housing' requirements, approved by City Council and recorded with Clatsop County;
2. Formation of a Home Owners Association, with Covenants, Conditions & Restrictions, describing shared access, parking and common space maintenance agreements, approved by City Council and recorded with Clatsop County,
3. Soils and Geohazard Report approved by the City Building Official prior to construction;
4. Tree removal application, including TPZ protection measures and on-site arborist oversight during excavation, reviewed by the City Arborist and approved by the City, prior to construction;
5. Plat note indicating no intrusions within the delineated wetland area and buffer areas, including accessory structures, fencing or pedestrian or vehicular use;
6. Plat note stating no future partition or subdivision permitted;

Notice of Approval

17.44.140 Final approval expiration.

The final approval of a design review plan shall be void after one year of the date of approval unless a building permit has been obtained. (Ord. 90-3 § 15)

Site Map





NEW MATERIALS



A-6

[illegible]

1 SITE PLAN
A1.1 1" = 10'-0"



A-7



Earth
Engineers,
Inc.

2411 Southeast 8th Avenue • Camas • WA 98607

Phone: 360-567-1806

www.earth-engineers.com

March 31, 2022

Revised April 18, 2022

Red Crow, LLC
P.O. Box 825
Cannon Beach, Oregon 97110
Attention: Jamie Lerma, President

Phone: (503) 849-0258
E-mail: jamie@redcrowgc.com

**Subject: Geotechnical Investigation Report
Proposed Ecola Square Development
Southwest Corner of First Street and Spruce Street
Clatsop County Tax Lot No. 51030AA04402
Cannon Beach, Clatsop County, Oregon
EEI Report No. 22-039-1-R1**

Dear Mr. Lerma,

Earth Engineers, Inc. (EEI) is pleased to transmit our **revised** report for the above referenced project. This report includes the results of our field investigation, an evaluation of geotechnical factors that may influence the proposed construction, and geotechnical recommendations for the proposed structure and general site development. ***This report has been revised to include helical pier recommendations, as requested. Report revision additions are denoted in bold, italics.***

We appreciate the opportunity to perform this geotechnical study and look forward to continued participation during the design and construction phases of this project. If you have any questions pertaining to this report, or if we may be of further service, please contact our office.

Sincerely,
Earth Engineers, Inc.

Troy Hull, P.E., G.E.
Principal Geotechnical Engineer

Jacqui Boyer
Geotechnical Engineering Associate

Attachment: Geotechnical Investigation Report

Distribution (electronic copy only): Addressee

GEOTECHNICAL INVESTIGATION REPORT

for the

**Proposed Ecola Square Development
Southwest Corner of First Street and
Spruce Street
Clatsop County Tax Lot No. 51030AA04402
Cannon Beach, Clatsop County, Oregon**

Prepared for

**Red Crow, LLC
P.O. Box 825
Cannon Beach, Oregon 97110
Attention: Jamie Lerma, President**

Prepared by

**Earth Engineers, Inc.
2411 Southeast 8th Avenue
Camas, Washington 98607
Telephone (360) 567-1806**

EEl Report No. 22-039-1-R1

**March 31, 2022
Revised April 18, 2022**



A handwritten signature in black ink, appearing to read "Jacqui Boyer", written in a cursive style.

**Jacqui Boyer
Geotechnical Engineering
Associate**



EXPIRES: 6/30 23

**Troy Hull, P.E., G.E.
Principal Geotechnical
Engineer**

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1.0 PROJECT INFORMATION

1.1 Project Authorization

Earth Engineers, Inc. (EEI) has completed a geotechnical investigation report for the proposed development on Clatsop County Tax Lot No. 51030AA04402 in Cannon Beach, Clatsop County, Oregon. Our services were authorized by Jamie Lerma with Red Crow, LLC on February 8, 2022 by signing EEI Proposal No. 22-P054 dated February 7, 2022.

1.2 Project Description

Our current understanding of the project is based on the information Mr. Lerma provided to EEI Principal Geotechnical Engineer Troy Hull. We were also provided the following document via e-mail:

- **Plat Map titled “Ecola Square Condominiums” prepared by HLB Otak, dated April 30, 2007.** This map shows the subject property boundaries with respect to the neighboring building and surrounding streets. See Figure 1 below.

Briefly, we understand the project consists of developing one of three options on the property:

1. Six to seven 2-story single family residences, or
2. 16-18 unit, 2-story apartment complex, or
3. 4,200 square foot, 2-story commercial building.

We have not been provided any detailed construction plans for the project. For the purposes of this report, we are assuming maximum foundation loads of 5 kips per linear foot for wall footings, 50 kips for column footings, and 150 psf for floor slabs. With regard to design grades, we are assuming that cuts and fills will be negligible (i.e. less than 2 feet). Finally, we have assumed that the buildings will be constructed in accordance with the 2021 Oregon Residential Specialty Code (ORSC), or the 2019 Oregon Structural Specialty Code (OSSC).

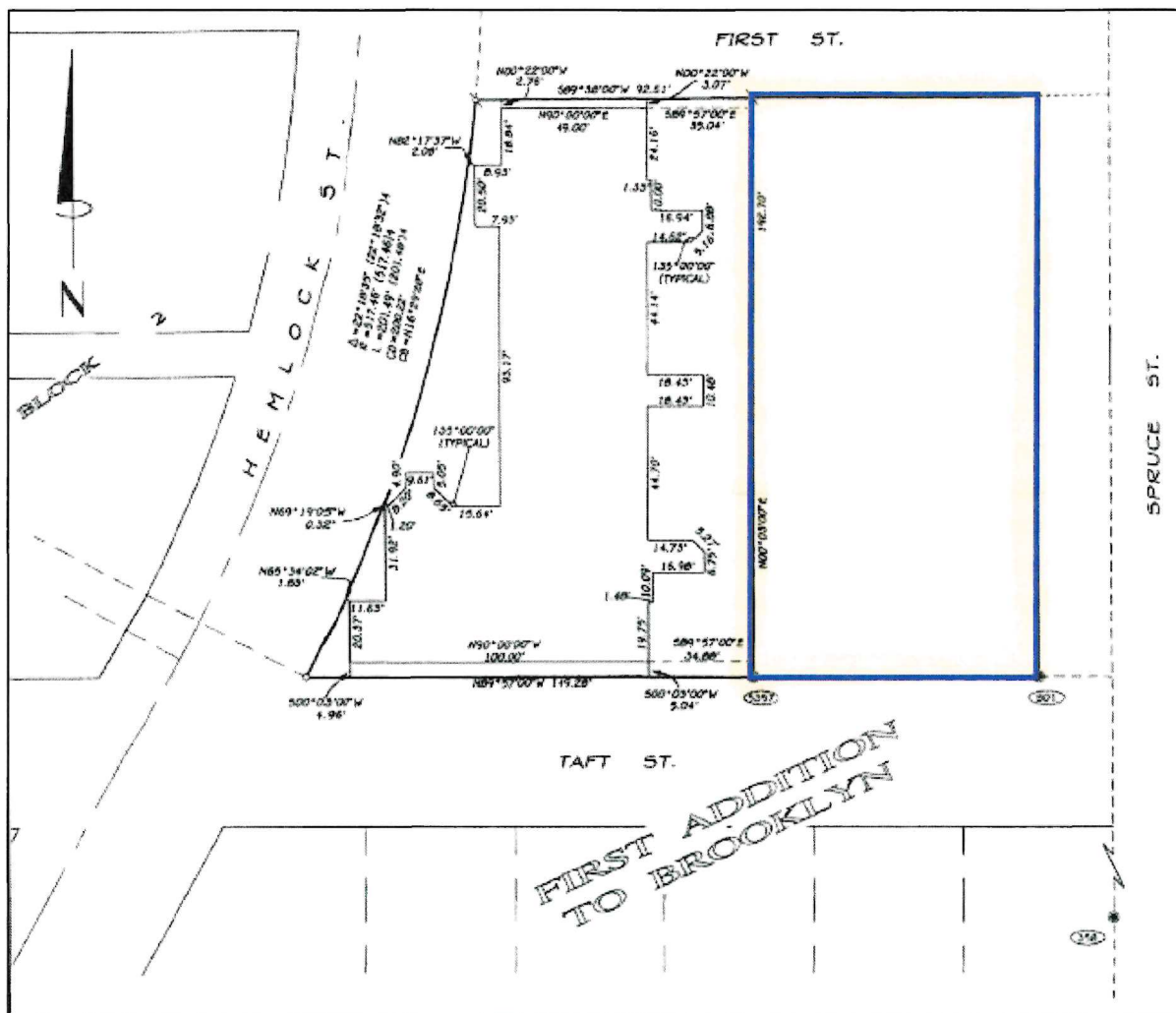


Figure 1: Plat map referenced above showing the project vicinity. The subject property is outlined in blue.

1.3 Purpose and Scope of Services

The purpose of our services was to explore the subsurface conditions at the site to better define the soil, rock, and groundwater properties in order to provide geotechnical related recommendations related to the proposed construction. Our site investigation consisted of advancing two Standard Penetration Test (SPT) borings (B-1 and B-2) located on the subject property using a B-58 truck rig subcontracted from PLi Systems of Hillsboro, Oregon. SPT samples were taken at regular intervals and transported to our laboratory for testing. Laboratory testing was accomplished in general accordance with ASTM procedures.

This report briefly outlines the testing procedures, presents available project information, describes the site, assumed subsurface conditions, and presents recommendations regarding the following:

- A discussion of subsurface conditions encountered including pertinent soil and groundwater conditions.
- Seismic design parameters in accordance with ASCE 7-16.
- Geotechnical related recommendations for deep foundation design.
- Structural fill recommendations, including an evaluation of whether the in-situ soils can be used as structural fill.
- Retaining wall design parameter recommendations, including coefficient of friction and earth pressures.
- Floor slab support recommendations.
- Pavement section thickness recommendations based on an assumed CBR value, as well as assumed traffic loading conditions unless provided to us by the project Civil Engineer.
- Other discussion on geotechnical issues that may impact the project.

It should be noted, our scope of services does not include a Geologic Hazard Assessment to satisfy Clatsop County. If required, we can modify our scope to include this service.

2.0 SITE AND SUBSURFACE CONDITIONS

2.1 Site Location and Description

The site for the proposed development is located at Clatsop County Tax Lot No. 51030AA04402 in Cannon Beach, Oregon. The site is bound to the north by East 1st Avenue, to the east by North Spruce Street, to the south by a vacant property, and to the west by a commercial development. See Figure 2 below for project vicinity.



Figure 2: Project vicinity showing the subject property (outlined in blue).

Source: <https://delta.co.clatsop.or.us/apps/ClatsopCounty/>.

The subject property is currently vacant. The majority of the property consists of a gravel pad. The western property line runs along the parking lot for the adjacent development. The eastern property line is vegetated with brush, trees and a drainage ditch. In terms of topography, the subject property is level. While on site, we did not observe any signs of soil movement (i.e. cracking in the soil, leaning trees, landscape head scarps etc.). See Photos 1 through 4 below for the current site conditions.



Photo 1: Current site conditions, taken from the northern property line facing south. The drill rig is set up at B-2.



Photo 2: Current site conditions, taken from the southwestern property corner facing northeast. The drill rig is set up at B-2.



Photo 3: Current site conditions, taken from the middle of the property facing south.



Photo 4: Current site conditions along the eastern property line showing the drainage ravine, facing south.

2.2 Mapped Soils and Geology

The underlying geology mapped in the area of the subject property is Miocene aged marine sedimentary rocks of the Astoria Group. This unit is described as “marine sandstone and siltstone, including shelf, slope channel, deltaic and turbidite sandstone, and slope mudstone. Pleistocene aged marine terrace deposits (Qmt) and Pleistocene and Holocene aged stable sand dunes (sd)¹.

The United States Department of Agriculture (USDA) Soil Survey provides geographical information of the soils in Clatsop County as well as summarizing various properties of the soils. The USDA shows the native soils on the property mapped as Unit 12A: Coquille-Clatsop complex on 0 to 1 percent slopes. This very poorly drained soil is formed on flood plains derived from mixed alluvium. A typical profile consists of silt loam overlying silty clay².

A review of the Oregon Department of Geology and Mineral Industries (DOGAMI's) Statewide Geohazards Viewer (HazVu) indicated that the subject property is within a severe earthquake hazard zone, a severe Cascadia earthquake shaking hazard zone, and a high liquefaction hazard zone. The database does not map the subject property within a landslide hazard area or in proximity to any mapped historic landslides.

2.3 Subsurface Materials

The site was explored with two SPT borings (B-1 and B-2). Both borings were advanced on the gravel pad. For approximate exploration locations see the Exploration Location Plan in Appendix B. The SPT borings were advanced with a subcontracted B-58 truck rig from PLi Systems of Hillsboro, Oregon. Using mud rotary drilling techniques, both borings were advanced to a depth of 51.5 feet below ground surface (bgs). SPT samples were generally taken at regular intervals within the boring and transported to our laboratory for testing.

Select soil samples were tested in the laboratory to determine material properties for our evaluation. Results of the drilled borings are reported in the Exploration Logs in Appendix C. Laboratory testing was accomplished in general accordance with ASTM procedures. The testing performed included moisture content tests (ASTM D 2216), fines content determinations (ASTM D1140) and Atterberg limit testing (ASTM D4318). The test results have been included on the Exploration Logs in Appendix C and the Report of Atterberg Limits Testing in Appendix E.

In general, we encountered a surficial layer of fill overlying coarse-grained soils overlying fine-grained soils which extended to the terminal depths of our explorations. Each individual stratum encountered is discussed in further detail below.

¹ Niem, A.R., and Niem, W., 1985, Geologic map of the Astoria Basin, Clatsop and northernmost Tillamook Counties, northwest Oregon: Portland, Oreg., Oregon Dept. of Geology and Mineral Industries Oil and Gas Investigation Map OGI-14, Plate 1, scale 1:100,000.

² Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at <http://websoilsurvey.nrcs.usda.gov/> accessed April 1, 2022.

FILL SOILS

In both of our explorations, we encountered fill as the surficial layer. The fill stratum was generally brown gravel with little silt. We also encountered rootlets in this stratum. Laboratory testing on a sample obtained within this stratum yielded a moisture content of 9 percent and fines content of 10 percent passing the #200 sieve. Based on SPT sampling data, this stratum was medium dense. The thickness of this stratum was 2.5 feet in B-1 and 6-inches in B-2.

COARSE-GRAINED SOILS

In both of our exploration, we encountered coarse-grained soils underlying the surficial fill layer described above. This stratum was generally a brown to gray sand with variable amounts of silt. We also encountered heavy organics within this stratum (i.e. wood debris, wood chips, rootlets). Laboratory moisture content testing on samples obtained within this stratum ranged from 22 to 351 percent. It should be noted the very high moisture readings are likely due to the presence of organics and/or ash. Fines content laboratory testing for a sample obtained within this stratum yielded a result of 1 percent passing the #200 sieve. Based on SPT sampling data, this stratum ranged from very loose to medium dense; however, we generally consider this stratum to be loose (N_{60} average of 10). This sand stratum extended to a depth of 10 feet bgs in both of our explorations.

FINE-GRAINED SOILS

In both of our borings, we encountered fine-grained soils underlying the sandy layer described above. The upper portion of this stratum was a gray to brown high plasticity silt with varying amounts of sand. We also encountered heavy organics (i.e. wood debris, wood chips, rootlets), and veins of blue-gray sand within this stratum. Laboratory moisture content testing on samples obtained within this stratum ranged from 34 to 252 percent. It should be noted the very high moisture readings are likely due to the presence of organics and/or ash. Fines content laboratory testing for samples obtained within this stratum ranged from 43 to 99 percent passing the #200 sieve. We also conducted Atterberg testing on samples retrieved within this stratum from B-1 at 10 feet bgs and 15 feet bgs. The testing indicated this stratum is a high plasticity silt (MH). Based on SPT sampling data, this stratum ranged from very soft to very stiff; however, we generally consider this stratum to be very soft (N_{60} average of 2). This very soft silt stratum extended to a depth of 40 feet bgs in both of our explorations.

At a depth of approximately 40 feet bgs, there were no more organics present in the samples obtained and the soil became much stiffer. This stratum was generally gray to blue-gray to brown silt with sand and gravel. Laboratory moisture content testing on samples obtained within this stratum ranged from 9 to 39 percent, indicating a dry to wet condition. Based on SPT sampling data, this stratum ranged from stiff to hard; however, we generally consider this stratum to be hard (N_{60} average of 42). This stratum extended to the terminal depths of our explorations (i.e. 51.5 feet bgs).

The classifications noted above were made in general accordance with the USCS as shown in Appendix D. The above subsurface description is of a generalized nature to highlight the major

subsurface stratification features and material characteristics. The exploration logs included in the Appendix should be reviewed for specific information. These records include soil descriptions, stratifications, and locations of the samples. The stratifications shown on the logs represent the conditions only at the actual exploration location. The fill extent at the exploration locations was estimated based on an examination of the soil samples, the presence of foreign materials, field measurements, and the subsurface data. The exploration performed is not adequate to accurately identify the full extent of existing fill across the site. Consequently, the actual fill extent may be much greater than that shown on the exploration logs and discussed herein. Variations may occur and should be expected across the site. The stratifications represent the approximate boundary between subsurface materials and the actual transition may be gradual. Water level information obtained during field operations is also shown on these logs. The samples that were not altered by laboratory testing will be retained for 90 days from the date of this report and then will be discarded.

2.4 Groundwater Information

During our subsurface investigation, we were not able to identify the depth to groundwater due to the drilling method used (i.e. mud rotary). It should be noted, standing water was observed in the drainage ditch that is located along the eastern property line approximately 4 feet below the elevation of our borings.

In addition, we reviewed publicly available well logs from the Oregon Water Resources Department website (http://apps.wrd.state.or.us/apps/gw/well_log/) for historic information. We found two historical logs for a property located approximately 0.2 miles southwest of the subject property, advanced on December 13, 2002. The logs indicate that groundwater was encountered at a depth of 3 feet below ground surface. See Appendix F for a copy of these well log reports.

It should be noted that groundwater elevations can fluctuate seasonally and annually, especially during periods of extended wet or dry weather, or from changes in land use.

2.5 Seismicity

In accordance with ASCE 7-16, we recommend a Site Class E (soft soil with an average standard penetration resistance less than 15 blows per foot) when considering the average of the upper 100 feet of bearing material beneath the proposed foundations. This recommendation is based on the SPT N-values in our boring B-1 and our local knowledge of the area geology.

Inputting our recommended Site Class as well as the site latitude and longitude into the Structural Engineers Association of California (SEAOC) – OSHPD Seismic Design Maps website (<http://seismicmaps.org>) which is based on the United States Geological Survey, we obtained the seismic design parameters shown in Table 1 below. Note that the values for F_a and F_v in Table

1 were obtained from ASCE's Supplement 3 dated November 5, 2021 and issued for ASCE 7-16 to correct some seismic design issues in the original publication.

Table 1: Seismic Design Parameter Recommendations (ASCE 7-16, including Supplement 3 dated November 5, 2021)

PARAMETER	RECOMMENDATION
Site Class	E
S_s	1.316g
S_1	0.691g
F_a	1.200
F_v	2.000
$S_{MS} (=S_s \times F_a)$	1.579g
$S_{M1} (=S_1 \times F_v)$	1.382g
$S_{DS} (=2/3 \times S_s \times F_a)$	1.053g
$S_{D1} (=2/3 \times S_1 \times F_v)$	0.921g
Design PGA ($=S_{DS} / 2.5$)	0.421g
MCE_G PGA	0.663g
F_{PGA}	1.100
$PGA_M (=MCE_G \text{ PGA} \times F_{PGA})$	0.730g

Note: Site latitude = 45.8961, longitude = -123.9601

The return interval for the ground motions reported in the table above is 2 percent probability of exceedance in 50 years.

Per Section 11.4.8 of ASCE 7-16 a site-specific ground motion hazard analysis shall be performed in accordance with Section 21.2 for the following conditions:

1. Structures on Site Class D sites with S_1 greater than or equal to 0.2g.

Exception: ASCE 7-16 does not require a site-specific ground motion hazard analysis when the value of S_{M1} is elected to be increased by 50% for all applications of S_{M1} by the Structural Engineer. If S_{M1} is increased by 50% to avoid having to perform the seismic response analysis, then the resulting value of S_{D1} shall be equal to $2/3 \times [1.5 \times S_{M1}]$

2. Structures on Site Class E sites with values of S_s greater than or equal to 1.0, or values of S_1 greater than or equal to 0.2.

Exception: ASCE 7-16 does not require a site-specific ground motion hazard analysis when:

1. The Structural Engineer uses the equivalent lateral force design procedure and the value of C_s is determined by Eq. 12.8-2 for all values of T , or
2. Where (i) the value of S_{ai} is determined by Eq. 15.7-7 for all values of T_i , and (ii) the value of the parameter S_{D1} is replaced with $1.5 \times S_{D1}$ in Eq. 15.7-10 and 15.7-11.

We classified this site as Site Class E. Because the S_s value is greater than 1.0 as shown in Table 1 above, a ground motion hazard analysis is required unless the Structural Engineer elects to increase the S_{M1} value by 50 percent (which results in increasing the S_{D1} value by 50 percent). **If the Structural Engineer elects not to utilize the 50 percent increase on S_{M1} and S_{D1} , then EEI should be retained to perform a site-specific ground motion hazard analysis in accordance with Section 21.2 of ASCE 7-16.**

2.6 Soil Liquefaction

Liquefaction occurs when a saturated sand or silt soil starts to behave like a liquid. Liquefaction occurs because of the increased pore pressure and reduced effective stress between solid particles generated by the presence of liquid. It is often caused by severe ground shaking, especially that associated with earthquakes. For the purpose of our hazard evaluation, we consider only the saturated soils within the upper 50 feet of the ground surface to be potentially liquefiable. The liquefaction potential was evaluated based on the SPT N_{60} -values.

Based on this criteria, and assuming a groundwater level as high as 3 feet below existing grade, we consider potentially liquefiable soils to be present between a depth of 3 feet and 50 feet below existing grade.

We performed a detailed liquefaction analysis using Liquefy Pro, version 5.8n software distributed by CivilTech Software. The following input parameters were used:

- A Peak Ground Acceleration (PGA_M) of 0.730g.
- A moment magnitude earthquake of 8.9.
- Groundwater was assumed to be 3 feet bgs at the time of the seismic event.
- C_e (SPT hammer energy correction) value of 1.
- C_b (borehole diameter correction) value of 1.05.
- C_s (sampler correction) value of 1.
- Ishihara/Yoshimine settlement calculation method.
- Modified Stark/Olson fines correction method.
- We assumed an acceptable Factor of Safety (FOS) of 1.3 for liquefaction triggering.

As indicated above, a safety factor of 1.3 was used when evaluating whether a soil would liquefy or not (i.e. soil layers below a safety factor of 1.3 are considered potentially liquefiable). **Based on the above parameters as well as the subsurface information from B-1 and B-2, we calculated that approximately 16-inches of potential total dynamic settlement due to liquefaction could occur during a design level event.** We estimate differential dynamic settlement due to liquefaction could be on the order of 50 to 75 percent of the total dynamic settlement; meaning anywhere from approximately 8- to 12-inches of differential settlement due to liquefaction could occur across the building footprint. A summary presentation of our LiquefyPro analysis is attached in Appendix G.

3.0 EVALUATION AND FOUNDATION RECOMMENDATIONS

3.1 Geotechnical Discussion

Based on our site reconnaissance, it is our professional opinion that the primary factors impacting the proposed development include the following:

1. **Presence of weak, compressible soils** – As discussed above, we encountered compressible soils to a depth of 40 feet bgs. The upper portion of the weak soils was very loose to medium dense sand with an N_{60} average of 10 (i.e. generally loose). Underlying the sandy soils, we encountered very soft to very stiff silt with an N_{60} average of 2 (i.e. generally very soft). It is our professional opinion that these compressible soils are not sufficient for shallow foundation support. As such, we recommend all foundations penetrate through these variable soils to bear on the stiff to hard silt. See Section 3.5 below for detailed deep foundation recommendations (i.e. pin piles *or helical piers*).
2. **Presence of potentially liquefiable soils** – As stated above, there are potentially liquefiable soils located at the project site. Based on our analysis, approximately 16-inches of total dynamic settlement due to liquefaction could occur with potential differential settlements up to about 8-inches across the proposed building's footprint. This much settlement precludes the use of shallow foundations. As stated above, we are recommending deep foundations for the proposed development that will mitigate risk of settlement in an earthquake level event.
3. **Presence of organics** – As stated above, we encountered heavy organics (i.e. wood debris) in both of our explorations. The presence of organics extended to depths of 40 feet bgs. It is our professional opinion that this material is not sufficient to provide shallow foundation support without risking excess total and differential settlements. As such, we are providing deep foundation recommendations that penetrate through these organic soils to bear on the very stiff to hard soils encountered at a depth of approximately 40 feet bgs. In addition, this material is unsuitable for structural fill.
4. **Presence of potentially expansive soils** – Based on our Atterberg limits lab test results, we encountered potentially moderately expansive silt soils at a depth of approximately 10 feet bgs. Expansive soils are extremely moisture sensitive and cause a higher risk of differential movement. Since we encountered these moderately expansive silt soils 10 feet below the existing ground surface, they are not expected to experience changes in their moisture contents over time. As such, the at-grade elements will not be affected by the potentially expansive soils. However, if site grading includes any major cuts within the building footprint (i.e. cuts greater than 10 feet below the existing ground surface), we should be notified so that we can modify our recommendations to include mitigating the risk of expansive soils that could negatively impact the proposed development.

5. **Shallow groundwater** – As previously mentioned, we anticipate shallow groundwater across the subject property. Although we could not characterize the depth to groundwater due to the drilling method used (i.e. mud rotary), we observed standing water in the drainage ditch along the eastern property line. In addition, nearby well logs indicate that a static water level is as shallow as 3 feet bgs. If any excavations are greater than 3-feet, the contractor should anticipate the need to dewater. The need to dewater can be lessened if the construction occurs in the dry summer and early fall months. Detailed dewatering design is typically left up to the contractor's means and methods, and is not part of our current scope of services.
6. **Lack of detailed design drawings** – Given this project is in its preliminary stages, we have not been provided with a detailed design drawing set for the proposed construction. Once the drawings for the project are complete, we should review those drawings to determine if the design complies with our recommendations or if our recommendations need to be modified.

In summary, this site appears to be developable provided our geotechnical engineering recommendations are followed.

3.2 Site Preparation

Minimal site preparation will be required to install the piles. Any utilities present beneath the proposed construction will need to be located and rerouted as necessary and any abandoned pipes or utility conduits should be removed to inhibit the potential for subsurface erosion. Utility trench excavations should be backfilled with properly compacted structural fill as discussed in Section 3.3 below.

3.3 Structural Fill

Any structural fill placed should be granular, free of organic or other deleterious materials, have a maximum particle size less than 3 inches, be relatively well graded, and have a liquid limit less than 45 and plasticity index less than 25. In our professional opinion, on-site soils are **not** appropriate for use as fill due to the presence of organics. As such, we recommend importing granular, well graded, crushed rock structural fill. Typically, we recommend fill be moisture conditioned to within 3 percentage points below and 2 percentage points above optimum moisture as determined by ASTM D1557 (Modified Proctor). If water must be added, it should be uniformly applied and thoroughly mixed into the soil by diskings or scarifying.

Fill should be placed in a relatively uniform horizontal lift on the prepared subgrade. Each loose lift should be about 1 foot. The type of compaction equipment used will ultimately determine the maximum lift thickness. Structural fill should be compacted to at least 95 percent of the Modified Proctor maximum dry density as determined by ASTM D1557.

Each lift of compacted engineered fill should be tested by a representative of the Geotechnical Engineer prior to placement of subsequent lifts. The fill should extend horizontally outward beyond the exterior perimeter of the building and pavements at least 5 feet, prior to sloping.

3.4 Foundation Recommendations

3.4.1 Pin Pile Recommendations

Once the site has been prepared, we recommend the proposed building be supported by 6-inch diameter, schedule 80 steel pipe piles driven to practical refusal using a hydraulic 2,000-pound hammer or equivalent. We also recommend the pin piles all be connected by an integrated, gridded system of rigid grade beams. Refusal for a 6-inch diameter pipe pile using a hammer of this size should be defined as less than 1-inch of penetration in 10 seconds or more. When practical, this refusal criteria should be met for the last 60 seconds of pile driving.

Assuming the piles are driven to refusal using these criteria, the allowable axial capacity for a pile installed vertically would be 30 kips in compression. This allowable axial capacity assumes a factor of safety of 2.0. We recommend a maximum lateral load resistance of 1.0 kip for each vertical pile as long as they are spaced a distance of at least 6D (measured from center to center) where D represents the diameter of the pile. If additional lateral load resistance is needed, we can provide battered pile recommendations.

Based on the known subsurface conditions we anticipate that properly constructed pin pile foundations driven to refusal will experience static settlements on the order of 1-inch and 1/2-inch of total and differential settlement, respectively. We estimate that the average pile driving refusal depth will be encountered at approximately 40 to 50 feet bgs.

3.4.2 Helical Pier Recommendations

As requested, we are providing helical pier recommendations for the subject site to minimize noise disturbance. It should be noted that helical piers can hit shallow refusal due to subsurface obstructions (i.e. rocks and/or debris). We encountered wood debris in our explorations, which slowed down the drilling. As such, the contractor should anticipate the need to put in additional effort to get through the debris.

We recommend galvanized round shaft helical piers with 10- and 12-inch diameter double helices. The helical piers should be installed so that the helix is embedded into the stiff to hard silt encountered at a depth of 40 feet bgs in both of our explorations. In order to achieve the design loads outlined below, the helix needs to be embedded at least 1 foot. For preliminary budgeting purposes, we recommend the helical piers be planned for lengths of 45 to 50 feet.

We have calculated that the recommended stiff to hard silt stratum encountered at about 40 feet in our explorations can achieve a maximum ultimate load of 126 kips. Applying a FOS of 2 results in a maximum allowable compressive capacity of 63 kips. We anticipate that a shaft diameter of 5.5 inches would be necessary to utilize 63 kips.

Given, 2-7/8 inch diameter round shaft helical piers are more common, we are also providing the following recommendations. The 2-7/8-inch diameter helical piers are typically manufactured to have a maximum axial compressive load capacity of 80 kips. Applying a FOS of 2, the piers can be designed for an allowable load capacity of 40 kips. If greater load capacity is needed, a larger shaft diameter should be selected. In order to use a FOS of 2, at least one helical pier should be load tested.

Any helical piles installed vertically (i.e. not battered) may be designed for an allowable lateral load of 1 kip. If additional lateral loads are required the piles should be battered to achieve the necessary loads.

To utilize the fully recommended capacity, the helical piers should be laterally spaced no closer than 3 pier diameters, measured center to center (i.e. 3 feet for a piers with a 12-inch lead helical).

EEL should be scheduled to be on site when each helical pier is installed to inspect the installation and verify our recommendations are met.

3.5 Floor Slab Recommendations

For the purposes of this report, we have assumed that maximum floor slab loads will not exceed 150 psf. Based on the existing soil conditions, the design of the floor slab can be based on a subgrade modulus (k) of 100 pci. This subgrade modulus value represents an anticipated value which would be obtained in a standard in-situ plate test with a 1-foot square plate. Use of this subgrade modulus for design or other on-grade structural elements should include appropriate modification based on dimensions as necessary.

In order to fully mitigate the risk of settlement, the concrete floor slab would need to be tied into the grade beams and supported on the **deep foundation elements** recommended above (i.e. designed as a structural floor slab). However, if a conventional, less expensive floor slab-on-grade is preferred, to at least partially mitigate the risk of potential settlement, the floor slab should be supported on at least 12-inches of properly compacted crushed rock gravel structural fill overlying the existing soils. The structural fill recommendations are outlined in Section 4.3 above. The floor slabs should have an adequate number of joints to reduce cracking resulting from any differential movement and shrinkage.

Prior to placing the structural fill, the exposed subgrade surface should be prepared as discussed in Section 3.2. In addition, we recommend a proof-roll utilizing a fully loaded, dual axle dump truck

or water truck in order to identify any unstable areas that should be removed prior to structural fill placement. The proofroll should be observed by a representative of the Geotechnical Engineer. If the subgrade cannot be accessed with a dump truck, then the subgrade will need to be visually evaluated by a representative of the Geotechnical Engineer by soil probing. If fill is required, the structural fill should be placed on the prepared subgrade after it has been approved by the Geotechnical Engineer.

The 12-inch thick crushed rock structural fill should provide a capillary break to limit migration of moisture through the slab. If additional protection against moisture vapor is desired, a moisture vapor retarding membrane may also be incorporated into the design. Factors such as cost, special considerations for construction, and the floor coverings suggest that decisions on the use of vapor retarding membranes be made by the project design team, the contractor and the owner.

3.6 Retaining Wall Recommendations

As stated above, the project is currently in its preliminary stages. As such, we have not been made aware of any proposed retaining walls. Once more detailed plans are known about retaining walls (if any), we should be provided the drawings so that we can update our recommendations as necessary. For the purposes of this report, we have assumed that no walls will be greater than 10 feet tall.

Retaining wall footings should be designed in general accordance with the recommendations contained in Section 4.4 above (i.e. pin piles *or helical piers*). For insignificant landscape retaining walls not greater than 4 feet tall, where excessive wall movement due to ground movement is acceptable and not a risk to life-safety, they may be supported on conventional shallow foundations designed for an allowable soil bearing capacity of up to 1,500 pounds per square foot.

Lateral earth pressures on walls, which are not restrained at the top, may be calculated on the basis of an “active” equivalent fluid pressure of 35 pcf for level backfill, and 60 pcf for sloping backfill with a maximum 2H:1V slope. Lateral earth pressures on walls that are restrained from yielding at the top (i.e. stem walls) may be calculated on the basis of an “at-rest” equivalent fluid pressure of 55 pcf for level backfill, and 90 pcf for sloping backfill with a maximum 2H:1V slope. The stated equivalent fluid pressures do not include surcharge loads, such as foundation, vehicle, equipment, etc., adjacent to walls, hydrostatic pressure buildup, or earthquake loading. Surcharge loads on walls should be calculated based on the attached calculations/formulas shown in Appendix H.

We recommend that retaining walls be designed for an earth pressure determined using the Mononobe-Okabe method to mitigate future seismic forces. Our calculations were based on one-half of the Design Peak Ground Acceleration (PGA) value of 0.421g, which was obtained from Table 1 above. We have assumed that the retained soil/rock will have a minimum friction angle of 29 degrees and a total unit weight of about 115 pounds per cubic foot. For seismic loading on retaining

walls with level backfill, new research indicates that the seismic load is to be applied at $1/3 H$ of the wall instead of $2/3 H$, where H is the height of the wall³. We recommend that a Mononobe-Okabe earthquake thrust per linear foot of $14.3 \text{ psf} \cdot H^2$ be applied at $1/3 H$, where H is the height of the wall measured in feet. Note that the recommended earthquake thrust value is appropriate for slopes behind the retaining wall of up to 10 degrees.

Any minor amount of backfill for retaining walls should be select granular material, such as sand or crushed rock with a maximum particle size between $3/4$ and $1 \frac{1}{2}$ inches, having less than 5 percent material passing the No. 200 sieve. As stated above, the onsite soils do not meet the requirement for structural fill, and it will be necessary to import material to the project for structure backfill. Silty soils can be used for the last 18 to 24 inches of backfill, thus acting as a seal to the granular backfill.

All backfill behind retaining walls should be moisture conditioned to within ± 2 percent of optimum moisture content, and compacted to a minimum of 92 percent of the material's maximum dry density as determined in accordance with ASTM D1557. Fill materials should be placed in layers that, when compacted, do not exceed about 8 inches. Care in the placement and compaction of fill behind retaining walls must be taken in order to ensure that undue lateral loads are not placed on the walls.

4.7 Pavement Recommendations

After the site has been stripped and prepared as described above, the pavement subgrade should be heavily recompact with a large roller and proofrolled with a fully loaded dual axle dump truck and then covered with gravel structural fill the same day. Areas found to be soft or yielding under the weight of a dump truck should be overexcavated as recommended by the Geotechnical Engineer's representative and replaced with additional crushed rock gravel fill.

The pavement section thickness recommendations presented in Tables 2 and 3 below are considered typical and minimum for the assumed parameters. In order to achieve the assumed 20-year design life, pavement does need regular maintenance to protect the underlying subgrade from being damaged. The primary concern is subgrade water saturation which can cause it to weaken. Proper site drainage should be maintained to protect pavement areas. In addition, cracks that develop in the pavement should be sealed on a regular basis.

Using the AASHTO method of flexible pavement design, the following design parameters have been assumed:

- An assumed California Bearing Ratio (CBR) value of 10 for the recompact sandy soil that underlies the proposed driveway pavement areas.
- A pavement life of 30 years.

³ Lew, M., et al (2010). "Seismic Earth Pressures on Depp Building Basements," SEAOC 2010 Convention Proceedings, Indian Wells, CA.

- A terminal serviceability (Pt) of 2 (i.e. poor condition).
- A regional factor (R) of 3.0.
- Assumed total vehicle trips of:
 - No more than 20 cars per day for car parking (which equates to about (5) 18,000 pound daily equivalent single axle loads, ESALs)
 - No more than 100 cars per day for drive lanes (which equates to about (22) 18,000 pound daily equivalent single axle loads, ESALs)
- An assumed average weight of 4,000 pounds per vehicle was used in our calculations.

The project Civil Engineer should review our assumptions to confirm they are appropriate for the anticipated traffic loading. See Tables 2 and 3 below for recommended pavement section thicknesses based on the above assumptions.

Table 2: Asphaltic Concrete - Recommended Minimum Thicknesses (inches)

Pavement Materials	Car Parking	Drive Lanes
Asphaltic Concrete	2	2
Crushed Aggregate Base Course (less than 5% fines)	6	10

Table 3: Portland Cement Concrete - Recommended Minimum Thicknesses (inches)

Pavement Materials	Car Parking	Drive Lanes
Portland Cement Concrete	6	6
Crushed Aggregate Base Course (less than 5% fines)	4	4

Asphaltic concrete materials should be compacted to at least 91 percent of the material's theoretical maximum density as determined in general accordance with ASTM D 2041 (Rice Specific Gravity). The crushed aggregate base course should consist of well-graded crushed stone with a maximum particle size no greater than 2 inches. Aggregate base course materials should be free of organics or other deleterious materials, be relatively clean (i.e. less than 5 percent soil passing the U.S. #200 sieve), well graded, and have a liquid limit less than 45 and plasticity index less than 25. The base course should be moisture conditioned to within 2 percent of optimum and compacted to a minimum of 95 percent of a modified Proctor as outlined in Section 3.3 of this report. When placed, the lift base course thickness should generally not exceed 12 inches prior to compacting. The type of compaction equipment used will ultimately determine the maximum lift thickness. In addition, we recommend that the structural fill be placed within +/- 2 percent of the optimum moisture for that material.

4.0 CONSTRUCTION CONSIDERATIONS

EEl should be retained to provide observation and testing of construction activities involved in the foundation, earthwork, and related activities of this project. EEl cannot accept any responsibility for any conditions that deviate from those described in this report, nor for the performance of the foundations if not engaged to also provide construction observation for this project.

4.1 Moisture Sensitive Soils/Weather Related Concerns

The upper soils encountered at this site are expected to be sensitive to disturbances caused by construction traffic and to changes in moisture content. During wet weather periods, increases in the moisture content of the soil can cause significant reduction in the soil strength and support capabilities. In addition, soils that become wet may be slow to dry and thus significantly retard the progress of grading and compaction activities. While not required, it will be advantageous to perform earthwork and foundation construction activities during dry weather.

4.2 Drainage and Groundwater Considerations

Water should not be allowed to collect in the foundation excavations or on prepared subgrades for the floor slab during construction. Positive site drainage should be maintained throughout construction activities. Undercut or excavated areas should be sloped toward one corner to facilitate removal of any collected rainwater, groundwater, or surface runoff.

The site grading plan should be developed to provide rapid drainage of surface water away from the building areas and to inhibit infiltration of surface water around the perimeter of the building and beneath the floor slab. The grades should be sloped away from the building area. Stormwater should be piped (tightlined) to either an existing city storm sewer or to the drainage ditch along the eastern property line if allowed.

4.3 Excavations

In Federal Register, Volume 54, No. 209 (October 1989), the United States Department of Labor, Occupational Safety and Health Administration (OSHA) amended its "Construction Standards for Excavations, 29 CFR, part 1926, Subpart P". This document and subsequent updates were issued to better insure the safety of workmen entering trenches or excavations. It is mandated by this federal regulation that excavations, whether they be utility trenches, basement excavations or footing excavations, be constructed in accordance with the new OSHA guidelines. It is our understanding that these regulations are being strictly enforced and if they are not closely followed, the owner and the contractor could be liable for substantial penalties.

The contractor is solely responsible for designing and constructing stable, temporary excavations and should shore, slope, or bench the sides of the excavations as required to maintain stability of both the excavation sides and bottom. The contractor's "responsible person", as defined in 29 CFR Part 1926, should evaluate the soil exposed in the excavations as part of the contractor's safety procedures. In no case should slope height, slope inclination, or excavation depth, including utility trench excavation depth, exceed those specified in local, state, and federal safety regulations.

We are providing this information solely as a service to our client. EEI does not assume responsibility for construction site safety or the contractor's compliance with local, state, and federal safety or other regulations.

5.0 REPORT LIMITATIONS

As is standard practice in the geotechnical industry, the conclusions contained in our report are considered preliminary because they are based on assumptions made about the soil, rock, and groundwater conditions exposed at the site during our subsurface investigation. A more complete extent of the actual subsurface conditions can only be identified when they are exposed during construction. Therefore, EEI should be retained as your consultant during construction to observe the actual conditions and to provide our final conclusions. If a different geotechnical consultant is retained to perform geotechnical inspection during construction, then they should be relied upon to provide final design conclusions and recommendations, and should assume the role of geotechnical engineer of record, as is the typical procedure required by the governing jurisdiction.

The geotechnical recommendations presented in this report are based on the available project information, and the subsurface materials described in this report. If any of the noted information is incorrect, please inform EEI in writing so that we may amend the recommendations presented in this report, if appropriate, and if desired by the client. EEI will not be responsible for the implementation of its recommendations when it is not notified of changes in the project.

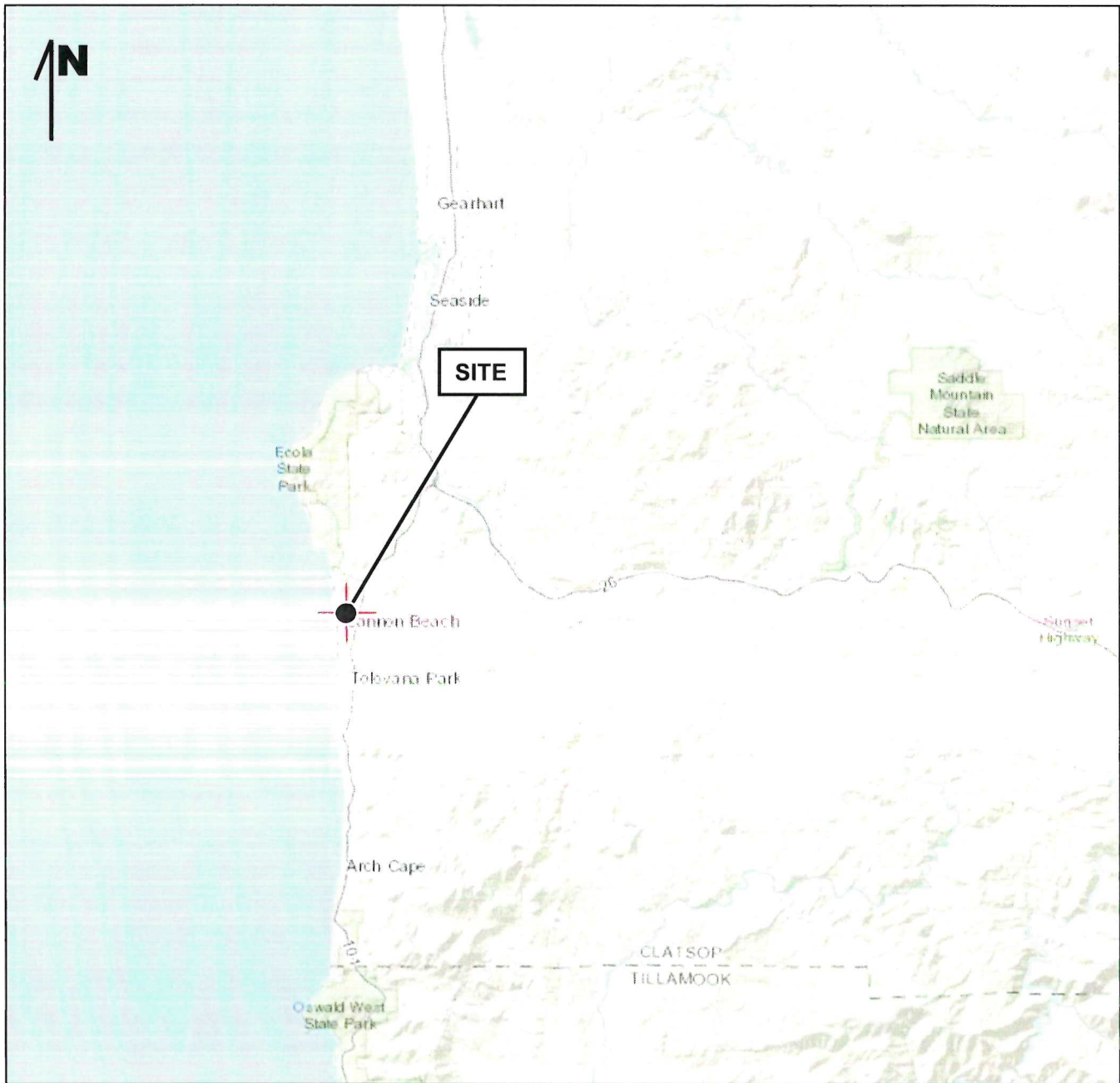
Once construction plans are finalized and a grading plan has been prepared, EEI should be retained to review those plans, and modify our existing recommendations related to the proposed construction, if determined to be necessary.

The Geotechnical Engineer warrants that the findings, recommendations, specifications, or professional advice contained herein have been made in accordance with generally accepted professional geotechnical engineering practices in the local area. No other warranties are implied or expressed.

This report has been prepared for the exclusive use of Red Crow, LLC for the specific application to the proposed Ecola Square Development located on Clatsop County Tax Lot No. 51030AA04402 in Cannon Beach, Clatsop County, Oregon. EEI does not authorize the use of the advice herein nor the reliance upon the report by third parties without prior written authorization by EEI.

APPENDICES

APPENDIX A – SITE LOCATION PLAN



Base Map Source: <https://livingatlas.arcgis.com/topoexplorer/>



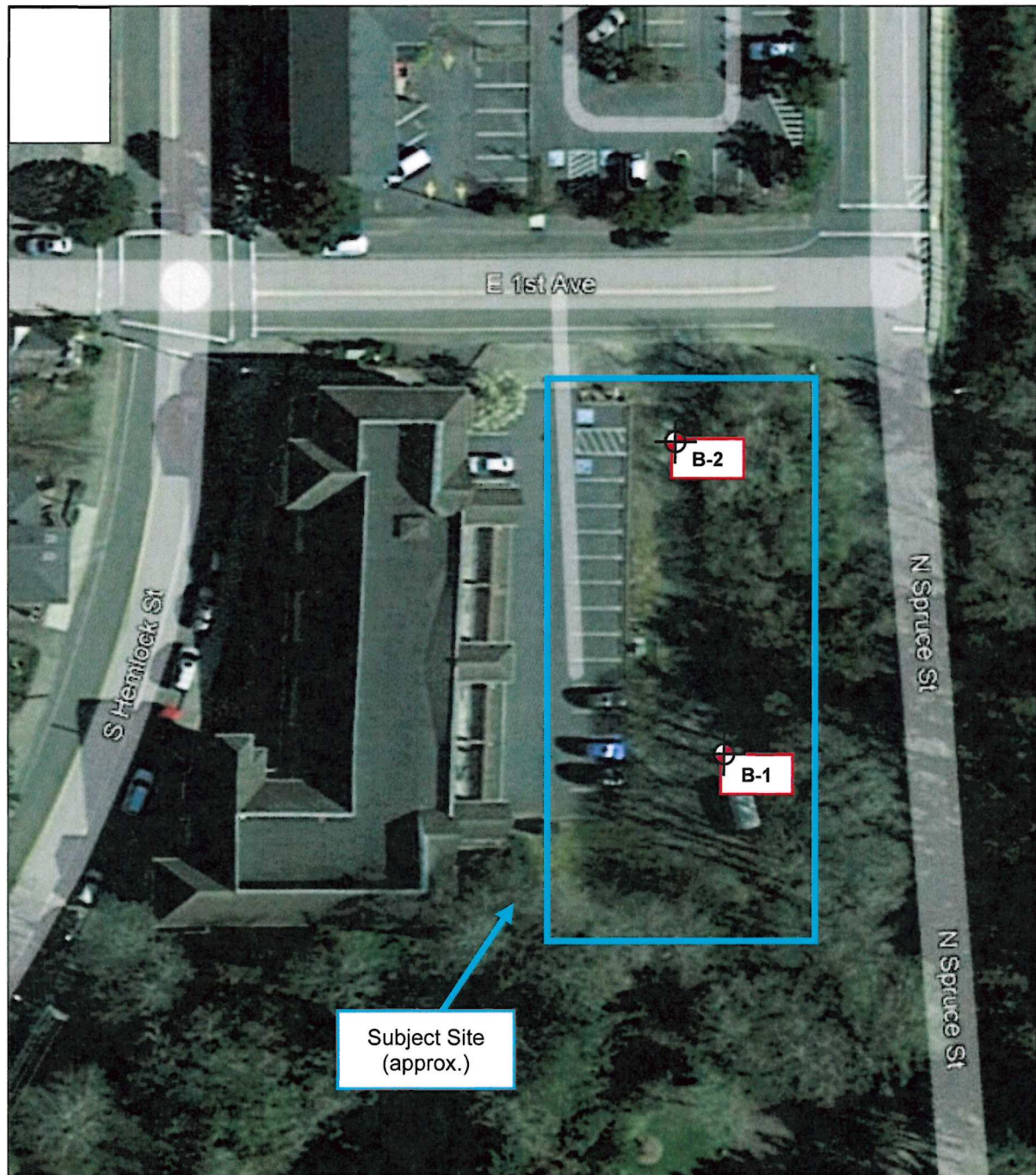
**Earth
Engineers,
Inc.**

**Proposed Ecola Square Development
Southwest Corner of First Street and
Spruce Street
Tax Lot #51030AA04402
Cannon Beach, Clatsop County, Oregon**

**Report No.
22-039-1-R1**

**March 31, 2022
(revised April 18, 2022)**

APPENDIX B – EXPLORATION LOCATION PLAN



⊕ = Approximate Boring Location

Base image source: "Google Earth."



Proposed Ecola Square Development
Southwest Corner of First Street and
Spruce Street
Tax Lot #51030AA04402
Cannon Beach, Clatsop County, Oregon

Report No.
22-039-1-R1

March 31, 2022
(revised April 18, 2022)



**Earth
Engineers,
Inc.**

Appendix C: Boring B-1

Sheet 1 of 2

Client: Red Crow, LLC
Project: Proposed Ecola Square Development
Site Address: Southwest Corner of First Street and
Spruce Street, Cannon Beach, Clatsop County, OR
Location of Exploration: See Appendix B
Logged By: Jacqui Boyer

Report Number: 22-039-1
Drilling Contractor: PLI Systems
Drilling Method: Mud Rotary w/ SPT Hammer
Drilling Equipment: B-58 Truck Rig
Approximate Ground Surface Elevation (ft msl): 13
Date of Exploration: 2/28/2022

Depth (ft)	Water Level	Lithology		Sampling Data								Remarks
		Lithologic Symbol	Geologic Description of Soil and Rock Strata	Sample Number	Blows per 6 Inches	N-value	Moisture Content (%)	% Passing #200 Sieve	Liquid Limit	Plastic Limit	Pocket Pen (tsf)	
0			Fill - brown gravel fill with little silt, rootlets, dry to moist, medium dense	SPT-1	5	12	9	10				
2												
4			Sand (SP) - brown to gray sand with trace silt, heavy organics (wood debris), loose to medium dense	SPT-2	4	14	22					
6				SPT-3	1	4	29	1				
8				SPT-4	1	7	208					
10			Silt (MH) - gray to brown high plasticity silt with little sand, roots, rootlets and woodchips, moist to wet, very loose to loose	SPT-5	0	0	73	94	66	39		
12				SPT-6	0	0	111					
14				SPT-7	0	0	176	99	170	108		
16												
18												
20			vein of gray to blue-gray silty sand with heavy organics encountered	SPT-8	0	0	96	43				
22												
24												
26				SPT-9	0	4	252					
28												
30												

Notes : Boring terminated at a depth of approximately 51.5 feet below ground surface (bgs). Grounwater level not able to be determined due to drilling method (i.e. mud rotary). Boring backfilled with bentonite chips on 2/28/22. N60 values reported are based on a SPT hammer energy correction factor of 1.377 (i.e. 82.6/60), reference "Report of SPT Hammer Energies" prepared by NV5 dated 1/17/22. Approximate elevation from Google Earth.



**Earth
Engineers,
Inc.**

Appendix C: Boring B-1

Sheet 2 of 2

Client: Red Crow, LLC
Project: Proposed Ecola Square Development
Site Address: Southwest Corner of First Street and
Spruce Street, Cannon Beach, Clatsop County, OR
Location of Exploration: See Appendix B
Logged By: Jacqui Boyer

Report Number: 22-039-1
Drilling Contractor: PLI Systems
Drilling Method: Mud Rotary w/ SPT Hammer
Drilling Equipment: B-58 Truck Rig
Approximate Ground Surface Elevation (ft msl): 13
Date of Exploration: 2/28/2022

Depth (ft)	Water Level	Lithology		Sampling Data								
		Lithologic Symbol	Geologic Description of Soil and Rock Strata	Sample Number	Blows per 6 Inches	N-value	Moisture Content (%)	% Passing #200 Sieve	Liquid Limit	Plastic Limit	Pocket Pen (tsf)	Remarks
30				SPT-10	0	0	63	85				
32												
34												
36				SPT-11	0 1 2	4	149	94	57	34		
38												
40			Silt (MH) - gray to blue-gray to brown high plasticity silt with sand and gravel, moist to wet, stiff to hard no more organics encountered	SPT-12	0 3 5	11	39					
42												
44												
46				SPT-13	9 14 17	43	9					
48												
50				SPT-14	8 9 15	33	29					
52												
54												
56												
58												
60												

drilling difficulty increased (drill rattling on gravel)

Notes : Boring terminated at a depth of approximately 51.5 feet below ground surface (bgs). Grounwater level not able to be determined due to drilling method (i.e. mud rotary). Boring backfilled with bentonite chips on 2/28/22. N60 values reported are based on a SPT hammer energy correction factor of 1.377 (i.e. 82.6/60), reference "Report of SPT Hammer Energies" prepared by NV5 dated 1/17/22. Approximate elevation from Google Earth.



**Earth
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Inc.**

Appendix C: Boring B-2

Sheet 1 of 2

Client: Red Crow, LLC
Project: Proposed Ecola Square Development
Site Address: Southwest Corner of First Street and
Spruce Street, Cannon Beach, Clatsop County, OR
Location of Exploration: See Appendix B
Logged By: Jacqui Boyer

Report Number: 22-039-1
Drilling Contractor: PLi Systems
Drilling Method: Mud Rotary w/ SPT Hammer
Drilling Equipment: B-58 Truck Rig
Approximate Ground Surface Elevation (ft msl): 12
Date of Exploration: 2/28/2022

Depth (ft)	Water Level	Lithologic Symbol	Lithology Geologic Description of Soil and Rock Strata	Sampling Data								Remarks
				Sample Number	Blows per 6 Inches	N-value	Moisture Content (%)	% Passing #200 Sieve	Liquid Limit	Plastic Limit	Pocket Pen (tsf)	
0			Fill - brown gravel fill with little silt, rootlets, dry to moist, medium dense	SPT-1	18	15	31					
2			Sand (SM) - brown to gray silty sand with heavy organics (wood debris), very loose to medium dense	SPT-2	11	23						no sample retained in split spoon
4				SPT-3	5	7	351					
6				SPT-4	0	1						no sample retained in split spoon
8				SPT-5	0	0	104					
10			Silt (MH) - gray to brown high plasticity silt with little sand, roots, rootlets and woodchips, moist to wet, very loose to medium dense	SPT-6	0	0	206					
12				SPT-7	37	19	189					
14			vein of wood debris encountered (no soil in split spoon)	SPT-8	0	3	103					
16				SPT-9	0	0	111					
18												
20			vein of gray to blue-gray coarse-grained sand with heavy organics encountered									
22												
24												
26												
28												
30												

Notes : Boring terminated at a depth of approximately 51.5 feet below ground surface (bgs). Grounwater level not able to be determined due to drilling method (i.e. mud rotary). Boring backfilled with bentonite chips on 2/28/22. N60 values reported are based on a SPT hammer energy correction factor of 1.377 (i.e. 82.6/60), reference "Report of SPT Hammer Energies" prepared by NV5 dated 1/17/22. Approximate elevation from Google Earth.



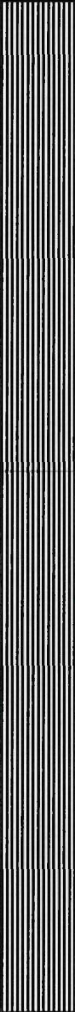
Earth
Engineers,
Inc.

Appendix C: Boring B-2

Sheet 2 of 2

Client: Red Crow, LLC
Project: Proposed Ecola Square Development
Site Address: Southwest Corner of First Street and
Spruce Street, Cannon Beach, Clatsop County, OR
Location of Exploration: See Appendix B
Logged By: Jacqui Boyer

Report Number: 22-039-1
Drilling Contractor: PLI Systems
Drilling Method: Mud Rotary w/ SPT Hammer
Drilling Equipment: B-58 Truck Rig
Approximate Ground Surface Elevation (ft msl): 12
Date of Exploration: 2/28/2022

Depth (ft)	Water Level	Lithology		Sampling Data								Remarks	
		Lithologic Symbol	Geologic Description of Soil and Rock Strata	Sample Number	Blows per 6 Inches	N-value	Moisture Content (%)	% Passing #200 Sieve	Liquid Limit	Plastic Limit	Pocket Pen (tsf)		
30				SPT-10	1 0 0	0	34						
32													
34													
36													
38													
40				Silt (MH) - gray to blue-gray to brown high plasticity silt with sand and gravel, moist to wet, hard	SPT-11	15 17 16	45	31					
42				no more organics encountered									
44													
46													
48													
50					SPT-12	20 33 26	81	16					
52													
54													
56													
58													
60													

Notes : Boring terminated at a depth of approximately 51.5 feet below ground surface (bgs). Grounwater level not able to be determined due to drilling method (i.e. mud rotary). Boring backfilled with bentonite chips on 2/28/22. N60 values reported are based on a SPT hammer energy correction factor of 1.377 (i.e. 82.6/60), reference "Report of SPT Hammer Energies" prepared by NV5 dated 1/17/22. Approximate elevation from Google Earth.

APPENDIX D: SOIL CLASSIFICATION LEGEND

APPARENT CONSISTENCY OF COHESIVE SOILS (PECK, HANSON & THORNBURN 1974, AASHTO 1988)				
Descriptor	SPT N ₆₀ (blows/foot)*	Pocket Penetrometer, Q _p (tsf)	Torvane (tsf)	Field Approximation
Very Soft	< 2	< 0.25	< 0.12	Easily penetrated several inches by fist
Soft	2 – 4	0.25 – 0.50	0.12 – 0.25	Easily penetrated several inches by thumb
Medium Stiff	5 – 8	0.50 – 1.0	0.25 – 0.50	Penetrated several inches by thumb w/moderate effort
Stiff	9 – 15	1.0 – 2.0	0.50 – 1.0	Readily indented by thumbnail
Very Stiff	16 – 30	2.0 – 4.0	1.0 – 2.0	Indented by thumb but penetrated only with great effort
Hard	> 30	> 4.0	> 2.0	Indented by thumbnail with difficulty

* Using SPT N₆₀ is considered a crude approximation for cohesive soils.

APPARENT DENSITY OF COHESIONLESS SOILS (AASHTO 1988)	
Descriptor	SPT N ₆₀ Value (blows/foot)
Very Loose	0 – 4
Loose	5 – 10
Medium Dense	11 – 30
Dense	31 – 50
Very Dense	> 50

MOISTURE (ASTM D2488-06)	
Descriptor	Criteria
Dry	Absence of moisture, dusty, dry to the touch, well below optimum moisture content (per ASTM D698 or D1557)
Moist	Damp but no visible water
Wet	Visible free water, usually soil is below water table, well above optimum moisture content (per ASTM D698 or D1557)

PERCENT OR PROPORTION OF SOILS (ASTM D2488-06)	
Descriptor	Criteria
Trace	Particles are present but estimated < 5%
Few	5 – 10%
Little	15 – 25%
Some	30 – 45%
Mostly	50 – 100%
Percentages are estimated to nearest 5% in the field. Use "about" unless percentages are based on laboratory testing.	

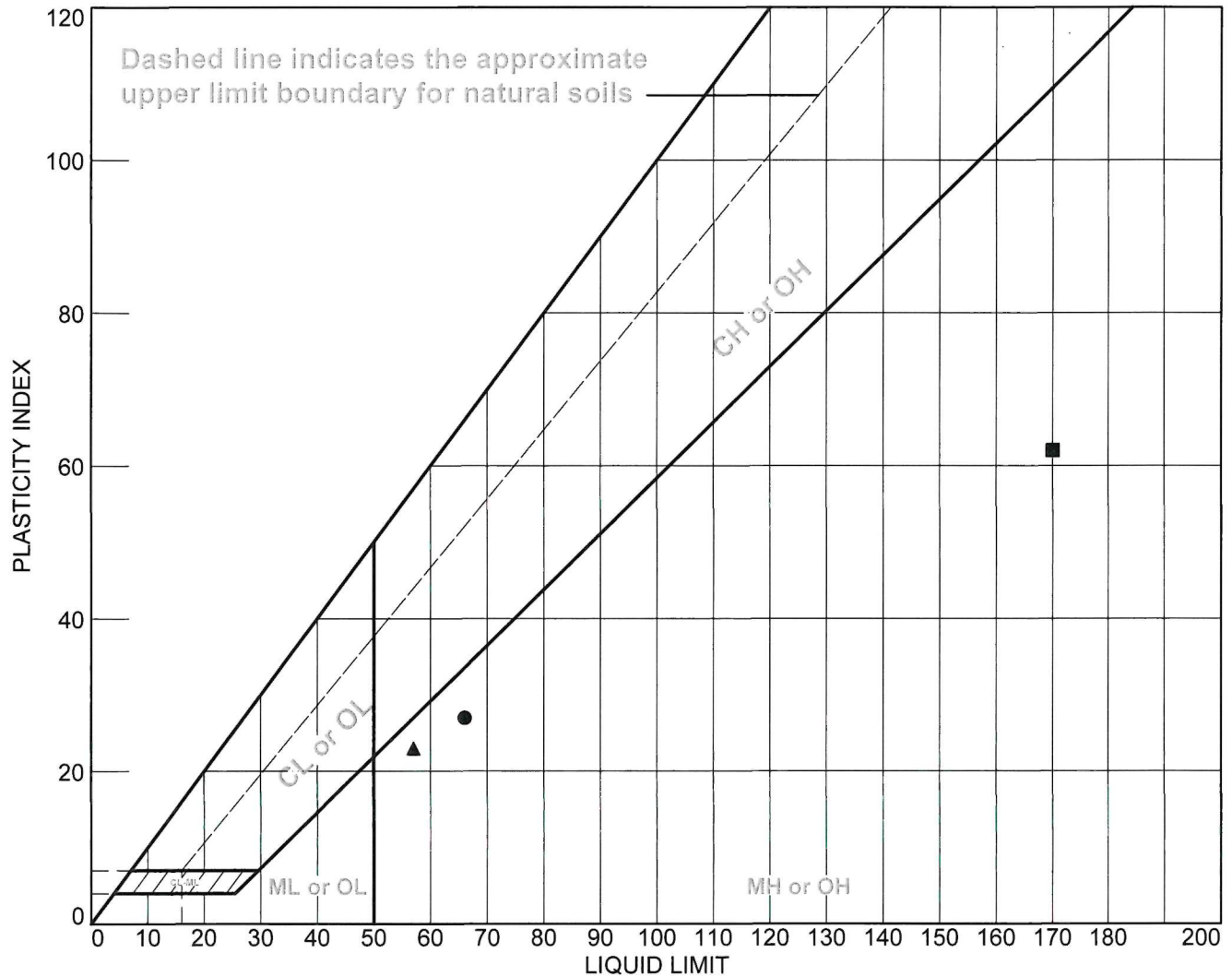
SOIL PARTICLE SIZE (ASTM D2488-06)	
Descriptor	Size
Boulder	> 12 inches
Cobble	3 to 12 inches
Gravel - Coarse Fine	¾ inch to 3 inches No. 4 sieve to ¾ inch
Sand - Coarse Medium Fine	No. 10 to No. 4 sieve (4.75mm) No. 40 to No. 10 sieve (2mm) No. 200 to No. 40 sieve (.425mm)
Silt and Clay ("fines")	Passing No. 200 sieve (0.075mm)

UNIFIED SOIL CLASSIFICATION SYSTEM (ASTM D2488)				
Major Division			Group Symbol	Description
Coarse Grained Soils (more than 50% retained on #200 sieve)	Gravel (50% or more retained on No. 4 sieve)	Clean Gravel	GW	Well-graded gravels and gravel-sand mixtures, little or no fines
			GP	Poorly graded gravels and gravel-sand mixtures, little or no fines
		Gravel with fines	GM	Silty gravels and gravel-sand-silt mixtures
			GC	Clayey gravels and gravel-sand-clay mixtures
	Sand (> 50% passing No. 4 sieve)	Clean sand	SW	Well-graded sands and gravelly sands, little or no fines
			SP	Poorly-graded sands and gravelly sands, little or no fines
		Sand with fines	SM	Silty sands and sand-silt mixtures
			SC	Clayey sands and sand-clay mixtures
Fine Grained Soils (50% or more passing #200 sieve)	Silt and Clay (liquid limit < 50)		ML	Inorganic silts, rock flour and clayey silts
			CL	Inorganic clays of low-medium plasticity, gravelly, sandy & lean clays
			OL	Organic silts and organic silty clays of low plasticity
	Silt and Clay (liquid limit > 50)		MH	Inorganic silts and clayey silts
			CH	Inorganic clays or high plasticity, fat clays
			OH	Organic clays of medium to high plasticity
Highly Organic Soils			PT	Peat, muck and other highly organic soils



GRAPHIC SYMBOL LEGEND		
GRAB		Grab sample
SPT		Standard Penetration Test (2" OD), ASTM D1586
ST		Shelby Tube, ASTM D1587 (pushed)
DM		Dames and Moore ring sampler (3.25" OD and 140-pound hammer)
CORE		Rock coring

APPENDIX E - LIQUID AND PLASTIC LIMITS TEST REPORT



SOIL DATA								
SYMBOL	SOURCE	SAMPLE NO.	DEPTH	NATURAL WATER CONTENT (%)	PLASTIC LIMIT (%)	LIQUID LIMIT (%)	PLASTICITY INDEX (%)	USCS
●	Boring 1	1	10	72.6	39	66	27	MH
■	Boring 1	2	15	176.0	108	170	62	MH
▲	Boring 1	3	35	149.1	34	57	23	MH



Earth
Engineers,
Inc.

Client: Red Crow, LLC

Project: Propsed Ecola Square Development

Project No.: 22-039

Figure

APPENDIX F

NEARBY HISTORIC WELL LOGS

Hole Number HA - 7

State OR Zip 97110

(2) TYPE OF WORK ☒ New ☐ Deepening ☐ Alteration (repair/recondition) ☐ Abandonment

☐ Rotary Air ☒ Hand Auger ☐ Hollow Stem Auger
☐ Rotary Mud ☐ Cable Tool ☐ Push Probe ☐ Other _____

☒ Uncased Temporary ☐ Cased Permanent
☐ Uncased Permanent ☐ Slope Stability ☐ Other _____

(5) **USE OF HOLE:** Collect soil samples

Special Construction approval ☐ Yes ☐ No Depth of Completed Hole 12 ft.

HOLE			SEAL			
Diameter	From	To	Material	From	To	Sacks or pounds
3"	0	12				

Backfill placed from _____ ft. to _____ ft. Material _____
Filter Pack placed from _____ ft. to _____ ft. Size of pack _____

Diameter				From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Screen:							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Slot size							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Pump ☐ Bailer *N/A* ☐ Air ☐ Flowing Artesian
 Permeability _____ Yield _____ GPM _____
 Conductivity _____ PH _____
 Temperature of water _____ °F Depth artesian flow found _____ ft.
 Was water analysis done? ☐ Yes ☐ No
 By whom? _____
 Depth of strata analyzed. From _____ ft. to _____ ft.
 Remarks: _____

County Clatsop Latitude _____ Longitude _____
Township 5 N Range 10 W WM
Section 30 NE 1/4 NE 1/4
Tax Lot _____ Lot _____ Block _____ Subdivision _____
Street Address of Well (or nearest address) 487 Ocean Av.
Cannon Beach OR 97110

Map with location indentified must be attached

(10) STATE WATER _____
3 ft. below land surface. Date 12/13/02
 Artesian pressure _____ lb. per square inch. Date _____

(II) SUBSURFACE LOG.

Ground Elevation Approximately 15 feet msl

[illegible]

Date Started 12/13/02

Date Completed 12/13/02

[illegible]

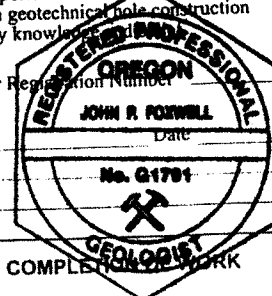
Date started 12/13/02 Date Completed 12/13/02

Professional Certification
(to be signed by a licensed water supply or monitoring well constructor, or registered geologist or civil engineer).

I accept responsibility for the construction, alteration, or abandonment work performed on during the construction dates reported above. All work performed during this time is in compliance with Oregon geotechnical hole construction standards. This report is true to the best of my knowledge.

Signed

Affiliation



THIS REPORT MUST BE SUBMITTED TO THE WATER RESOURCES DEPARTMENT WITHIN 30 DAYS OF COMPLETION OF WORK

ORIGINAL & FIRST COPY-WATER RESOURCES DEPARTMENT SECOND COPY-CONSTRUCTOR THIRD COPY-CUSTOMER

GeoEngineers Inc.				JOB NO	CLIENT	LOCATION
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><small>LOCATION OF BORING</small></p> <p>HOUSE</p> <p>DATUM</p> </div> <div style="width: 45%; text-align: right;"> <p><small>NORTH ARROW</small></p> <p>(↑)</p> </div> </div>				10361-GO1-10	Michael Thayer	Canon Beach, OR
				DRILLING METHOD:		HAND AUGER
				BORING NO		HA-7
				SAMPLING METHOD:		HAND AUGER
				SHEET		1 OF 1
				DRILLING		
				START TIME	FINISH TIME	
				DATE	DATE	
				CASING DEPTH		
				WATER LEVEL		
				TIME		
				DATE		
				CASING DEPTH		
				START TIME	13:00	14:00
				DATE	12/13	12/13/02

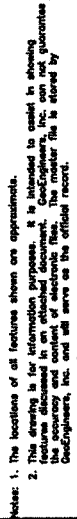
SAMPLER TYPE	INCHES DRIVEN INCHES RECOVERED	DEPTH OF CASING	SAMPLE NO. SAMPLE DEPTH	BLOWS/FT. SAMPLER	NUMBER OF RINGS	DEPTH IN FEET	SOIL GRAPH	SURFACE CONDITIONS:
						0		Sand
						1	MH	Elastic silt. Brown. Moist. No odor.
						2		
						3		
						4		Medium grey fat clay wet. Moderate petroleum odor.
						5	CH	
						6		
						7		
						8		
						9		
						10		Becomes yellowish orange at 10ft.
						11		
						12		Total Depth 12 feet.
						13		
						14		
						15		
						16		
						17		
						18		
						19		
						20		

BY _____
 DATE _____
 CHK'D BY _____

RECEIVED

 FEB 27 2003

 NATHAN HELLWEGER DEPT
 SALEM OREGON



APPENDIX G

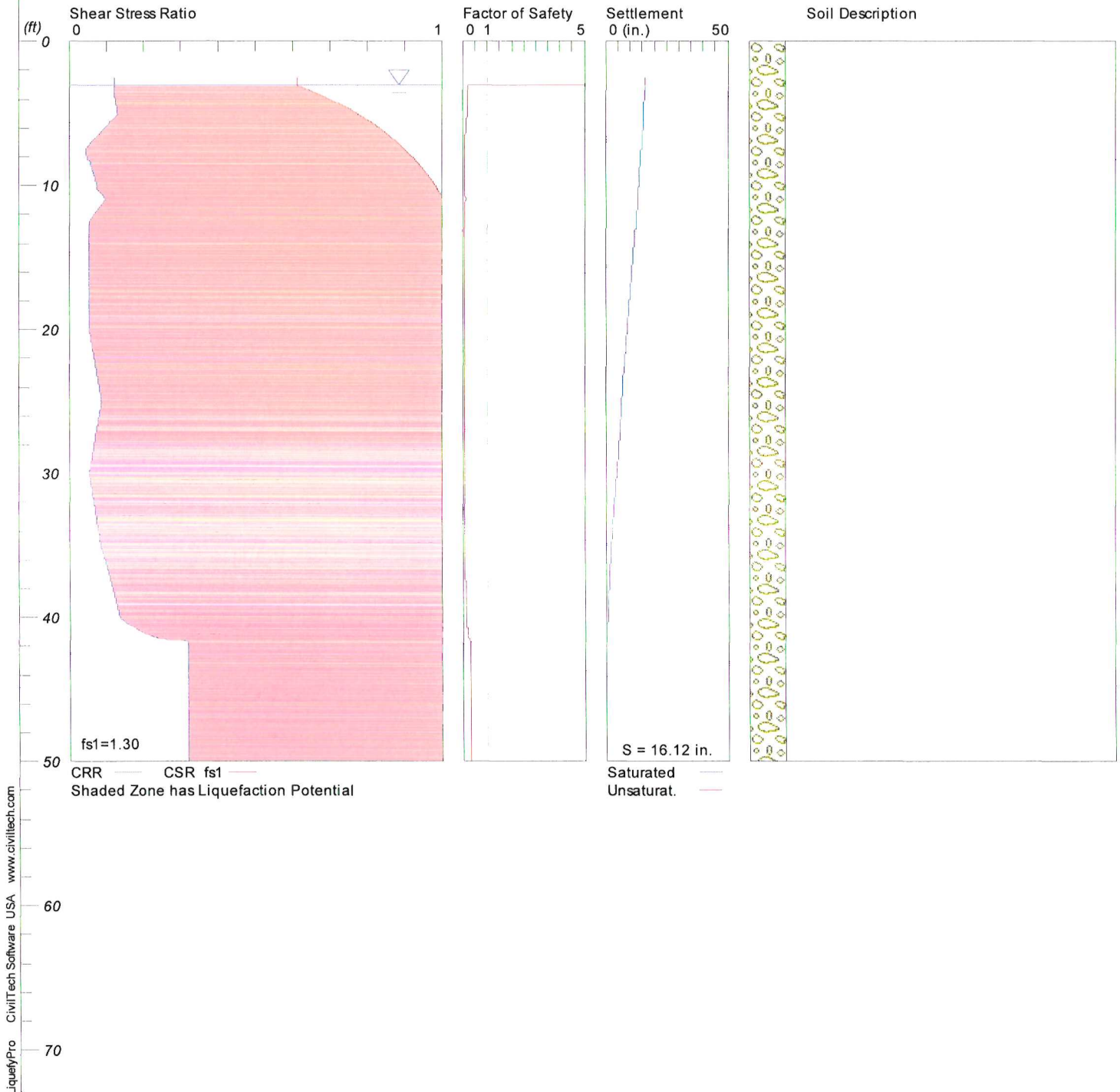
LIQUEFY PRO OUTPUT

LIQUEFACTION ANALYSIS

Proposed Ecola Development

Hole No.=B1 Water Depth=3 ft Surface Elev.=13

Magnitude=8.9
Acceleration=0.730g



APPENDIX H: SURCHARGE-INDUCED LATERAL EARTH PRESSURES FOR WALL DESIGN

LINE LOAD (applicable for retaining walls not exceeding 20 feet in height):

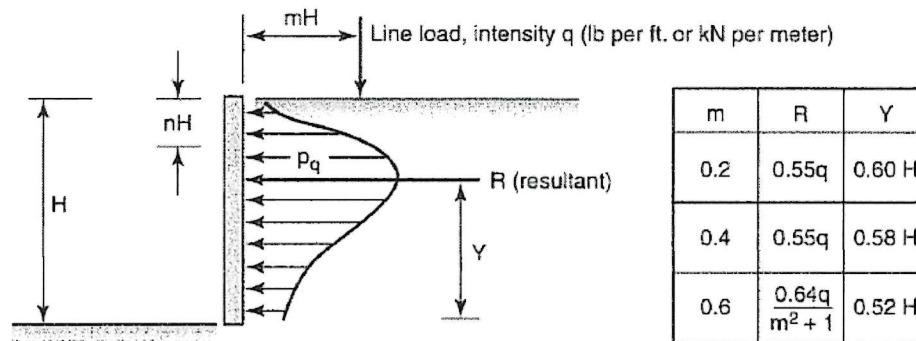


Figure 16-28 Pressure distribution against vertical wall resulting from line load of intensity q .

CONCENTRATED POINT LOAD (applicable for retaining walls not exceeding 20 feet in height):

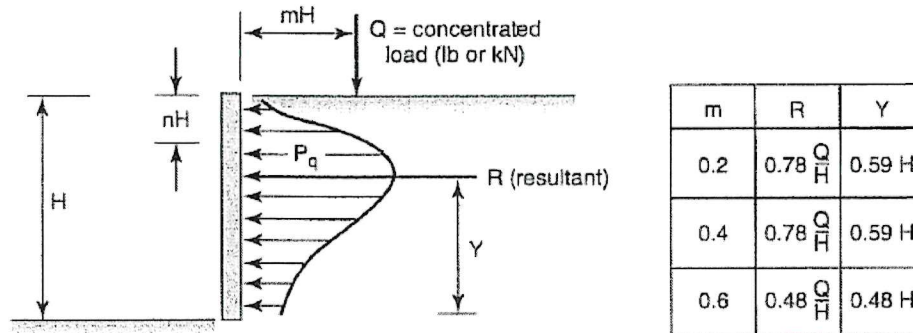


Figure 16-27 Pressure distribution against vertical wall resulting from point load, Q .

AREAL LOAD:

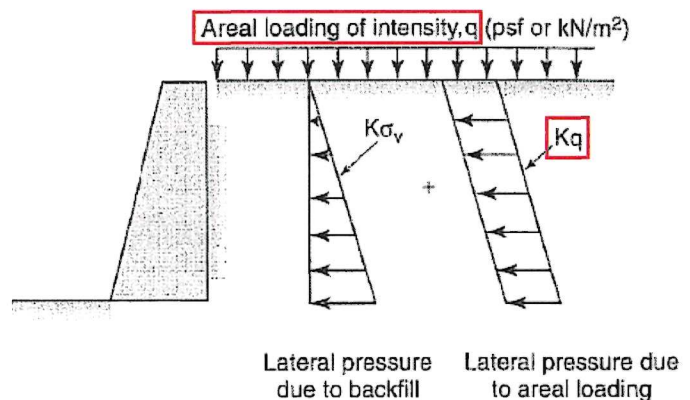
Figure 16-26 Influence of areal loading on wall pressures.

use $K=0.4$ for active condition
(i.e. top of wall allowed to
deflect laterally)

use $K=0.9$ for at-rest condition
(i.e. top of wall not allowed to
deflect laterally)

Resultant, $R = K * q * H$

Where H = wall height (feet)



Source of Figures: McCarthy, D.F., 1998, "Essentials of Soil Mechanics and foundations, Basic Geotechnics, Fifth Edition."



Earth
Engineers,
Inc.

Proposed Ecola Square Development
Southwest Corner of First Street and
Spruce Street
Tax Lot #51030AA04402
Cannon Beach, Clatsop County, Oregon

Report No.
22-039-1-R1

March 31, 2022
(revised April 18, 2022)



A-8



Todd Prager & Associates_{LLC}

MEMORANDUM

DATE: September 21, 2022
TO: Jamie Lerma (Red Crow, LLC)
FROM: Todd Prager, RCA #597, ISA Board Certified Master Arborist
RE: Tree Plan for First and Spruce Project

Summary

This report includes tree removal and protection recommendations based on the preliminary site plan for the First and Spruce project in Cannon Beach, Oregon.

Based on the preliminary site plan, 14 trees over 6-inch diameter (DBH) are proposed for removal and 23 trees will be retained. Of the 23 trees recommended for retention, 12 are within the site boundaries and 11 are within the adjacent right-of-way.

The trees to be retained will be protected by adhering to the recommendations in this report.

Background

The property at First and Spruce Street in Cannon Beach is currently zoned commercial. There is a pending conditional use application before the Planning Commission for four to five single family homes and four to seven attached units.

The property is currently vacant, 0.42 acres in size, and contains a narrow strip of wetland along the eastern property line. The wetland and adjacent area are populated with primarily willow species (*Salix sp.*) and red alder (*Alnus rubra*) trees.

Attachment 1 is the existing conditions map with existing tree locations. Attachment 2 is the preliminary site plan with existing tree locations.

At their August 25, 2022 hearing, the Planning Commission requested an arborist report for the project.

The assignment requested of our firm for this project was to:

- Assess and tag all trees over 6-inch DBH within and directly adjacent to the development site; and
- Provide a report with recommendations for the trees to be removed based on the proposed site plan along with protection recommendations for the trees to be retained.

Tree Assessment

On September 9, 2022 I completed the inventory of existing trees over 6-inch DBH at the project site.

The complete inventory data for each tree is provided in Attachment 3 and includes the tree number, common name, scientific name, DBH, approximate crown radius, health condition, structural condition, pertinent comments, and treatment recommendations (remove or retain).

The tree numbers in the inventory in Attachment 3 correspond to the tree numbers on the existing conditions map in Attachment 1 and proposed site plan in Attachment 2. The trees were also tagged with their corresponding numbers in the field.

Tree Removal and Retention

A typical minimum recommended root protection zone is to limit construction disturbances to no closer than a radius from a tree of 0.5 feet per inch of DBH if no more than 25 percent of the root protection zone area (estimated at one foot radius per inch of DBH) is impacted. Figure 1 illustrates this concept. This tree protection zone is widely accepted in western Oregon to provide adequate tree protection. This standard may need to be adjusted on a case-by-case basis due to tree health, species, root distribution, whether the tree will be impacted on multiple sides, and other factors.

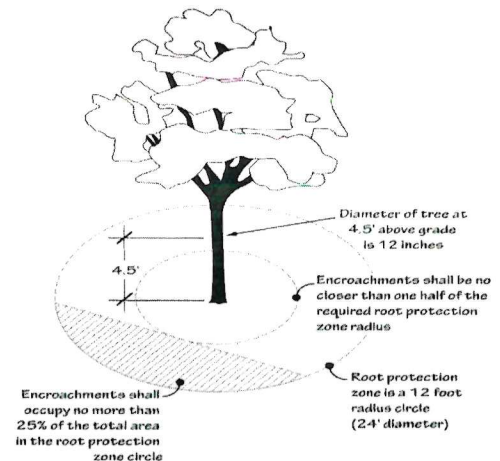


Figure 1: Typical minimum protection zone

Trees 20 and 27 are slightly closer to construction impacts than the typical minimum construction setback illustrated in Figure 1. These trees will be protected with project arborist oversight during construction as further described in the tree protection recommendations section of this report. They will be evaluated in the field during construction with a final recommendation for preservation or removal by the project arborist. If a tree is recommended for removal, coordination and approval from the City of Cannon Beach would be required.

Based on the preliminary site plan and typical minimum root protection illustrated in Attachment 1, 14 trees over 6-inch DBH are proposed for removal and 23 trees will be retained. Of the trees recommended for retention, 12 are within the site boundaries and 11 are within the adjacent right-of-way.

Tree protection recommendations for the trees to be retained are provided in the next section of this report.

Tree Protection Recommendations

As described in the previous section of this report, a typical minimum recommended root protection zone is to limit construction disturbances to no closer than a radius from a tree of 0.5 feet per inch of DBH if no more than 25 percent of the root protection zone area (estimated at one foot radius per inch of DBH) is impacted. Figure 1 illustrates this concept. This standard may need to be adjusted on a case-by-case basis due to tree health, species, root distribution, whether the tree will be impacted on multiple sides, and other factors.

The root protection zone radii of one foot per inch of DBH and typical minimum construction setback radii of 0.5 feet per inch of DBH are shown on the existing conditions map and proposed site plan in Attachments 1 and 2 for the trees to be retained adjacent to proposed construction. The trees to be retained can be protected by placing tree protection fencing at or beyond their typical minimum protection zones wherever possible as shown in Attachments 1 and 2. No grading, excavation, stockpiling, storage, disposal, or any other construction related activity shall occur in the tree protection zones unless specifically reviewed and approved by the project arborist.

The following additional tree protection measures shall apply to the trees to be retained:

- *Tree Protection Fencing:* Tree protection fencing shall be installed in the locations shown in Attachments 1 and 2 prior to construction. If work is required in the tree protection zones, the project arborist shall be consulted to oversee the work.
- *Directional Felling:* Fell the trees to be removed away from the trees to be retained so they do not contact or otherwise damage the trunks or branches of the trees to be retained. No vehicles or heavy equipment shall be permitted within the tree protection zones during tree removal operations.
- *Periodic Risk Assessments:* A new forest edge will be created at the site with the removal of existing trees for development. This will increase the windthrow risk of exposed trees along the new edges. I recommend that the project arborist conduct a tree risk assessment immediately following site clearing to identify trees that pose significant risks. For trees that pose significant risks, mitigation strategies for retaining them such as pruning or snag creation should be explored as recommended by the project arborist. Any recommended tree removal or snag creation will require the review and approval of the City of Cannon Beach. Risk assessments should be conducted periodically throughout construction to document whether trees are adapting to the new edge conditions and risks are mitigated appropriately with City approval.
- *Stump Removal:* Flush cut and retain stumps or carefully grind stumps of trees to be removed from within the tree protection zones. Do not pull stumps with a machine.

- *Utilities:* The utility alignments are not yet known as of the writing of this report. Utilities shall be routed outside the tree protection zones unless otherwise approved by the project arborist using techniques such as directional boring at appropriate depths or pneumatic excavation.
- *Grading:* The final grading plan is not yet known as of the writing of this report. No grading is permitted within the tree protection zones unless otherwise approved by the project arborist and the amount of grading is four inches or less. If additional grading is required within the tree protection zones, it shall be reviewed and approved with conditions by the project arborist to limit tree impacts. If significant impacts from grading will occur, additional tree removal may be required if permitted by the City of Cannon Beach.
- *Building Foundations Adjacent to Tree Protection Zones:* The project arborist shall be onsite to oversee excavation adjacent to trees 13, 19, 20, 24, 25, and 27. Any roots over 2-inches in diameter will need to be preserved or pruned with sharp pruning tools as directed by the project arborist. Trees 20 and 27 are slightly closer to construction impacts than the typical minimum construction setback illustrated in Figure 1. These trees will be evaluated in the field during construction with a final recommendation for preservation or removal by the project arborist. If a tree is recommended for removal, coordination and approval from the City of Cannon Beach would be required.
- *Compaction Management:* If needed for construction access, a 12-inch layer of wood chips over geotextile fabric shall be placed in the tree protection zones as shown in Attachments 1 and 2 to prevent excessive soil compaction from construction traffic. The project arborist will need to review and approve shifting of the fence locations and final placement of wood chips if required. The fabric and wood chips must be maintained daily to ensure the layer of protection is effective. The fabric and wood chips should be removed after construction is complete.
- *Crown Pruning Trees:* If the crowns of any trees need to be raised and/or reduced, it shall occur prior to construction. The pruning shall be conducted by an ISA certified arborist in accordance with ANSI A300 pruning standards in coordination with the project arborist. The pruning shall be the minimum necessary to achieve the required clearance for construction.
- *Erosion Control:* If erosion control is required within or directly adjacent to the tree protection fencing, straw wattles shall be used to avoid excavation.

Additional tree protection recommendations for the trees to be retained are provided in Attachment 4.

Conclusion

Based on the preliminary site plan, 14 trees over 6-inch diameter (DBH) are proposed for removal and 23 trees will be retained. Of the trees recommended for retention, 12 are within the site boundaries and 11 are within the adjacent right-of-way.

The trees to be retained will be protected by adhering to the recommendations in this report. Any change to the tree protection plan should be approved by the project arborist to ensure that the trees to be retained are adequately protected.

Please contact me if you have questions, concerns, or need any additional information.

Sincerely,



Todd Prager

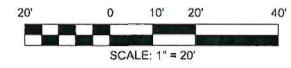
*ASCA Registered Consulting Arborist #597
ISA Board Certified Master Arborist, WE-6723B
ISA Qualified Tree Risk Assessor
AICP, American Planning Association*

Attachments: Attachment 1 - Existing Conditions Map with Trees
Attachment 2 - Site Plan with Trees
Attachment 3 - Tree Inventory
Attachment 4 - Tree Protection Recommendations
Attachment 5 - Assumptions and Limiting Conditions

Attachment 1

TOPOGRAPHIC SURVEY

FOR RED CROW LLC
TAXLOT 51030AA04402
LOCATED IN THE NE 1/4 OF SECTION 30
TOWNSHIP 5 NORTH, RANGE 10 WEST,
OF THE WILLAMETTE MERIDIAN,
CLATSOP COUNTY, OREGON

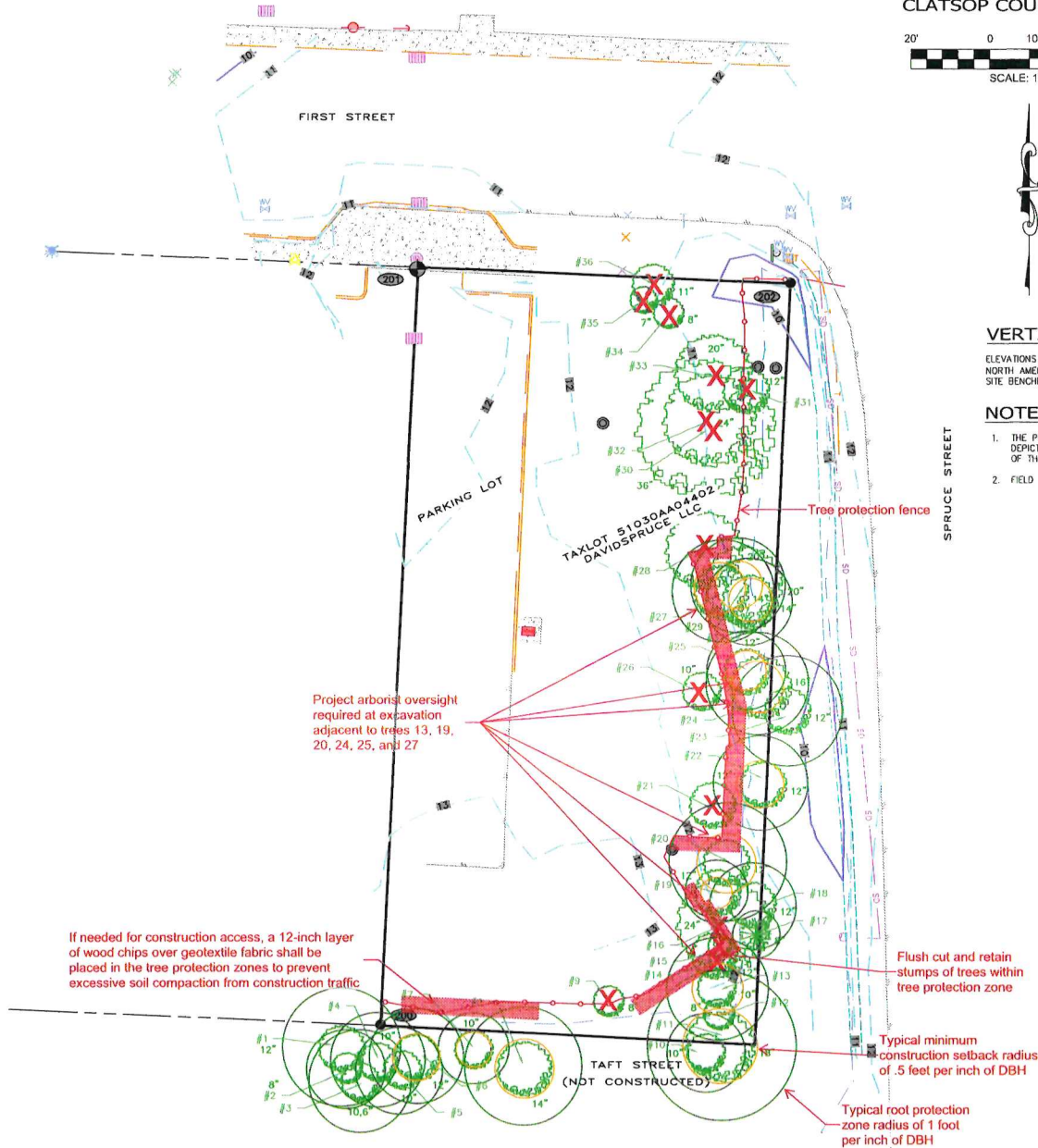


VERTICAL DATUM:

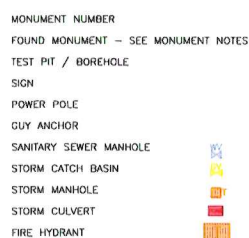
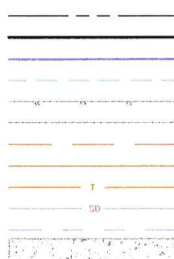
ELEVATIONS ARE BASED GPS OBSERVATIONS VIA ORON
NORTH AMERICAN VERTICAL DATUM 1988 (NAV88)
SITE BENCHMARKS AT MONUMENTS 201

NOTES:

1. THE PURPOSE OF THIS SURVEY IS TO GRAPHICALLY
DEPICT THE EXISTING CONDITIONS AND IMPROVEMENTS
OF THE SUBJECT PROPERTY
2. FIELD WORK WAS COMPLETED IN JUNE, 2022



LEGEND:



MONUMENT NOTES:

- 200 FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "H&B & ASSOC. INC." ±FLUSH WITH GROUND
- 201 FOUND TACK IN SIDEWALK ±FLUSH WITH SIDEWALK HELD AS SITE BENCHMARK WITH AN ELEVATION OF 11.94'
- 202 FOUND RUSTY 1/2" IRON PIPE IN DITCH
- WATER VALVE
- GAS VALVE
- TELEPHONE RISER
- POWER CABINET
- TELEPHONE CABINET
- TREE - DECIDUOUS
- TREE - CONIFER

S&F Land Services

PORTLAND, VANCOUVER, BEND, SEASIDE

1725 N ROOSEVELT DR.
STE B, SEASIDE, OR 97138
(503) 738-3425

WWW.SFLANDS.COM

EMAIL: INFO@SFLANDS.COM

DATE: JUNE 8, 2022 JOB NO.: 22051302 FIELD: JPW DRAWN: JET CHECKED: JPW

22051302-TREE.dwg

SURVEY FOR:

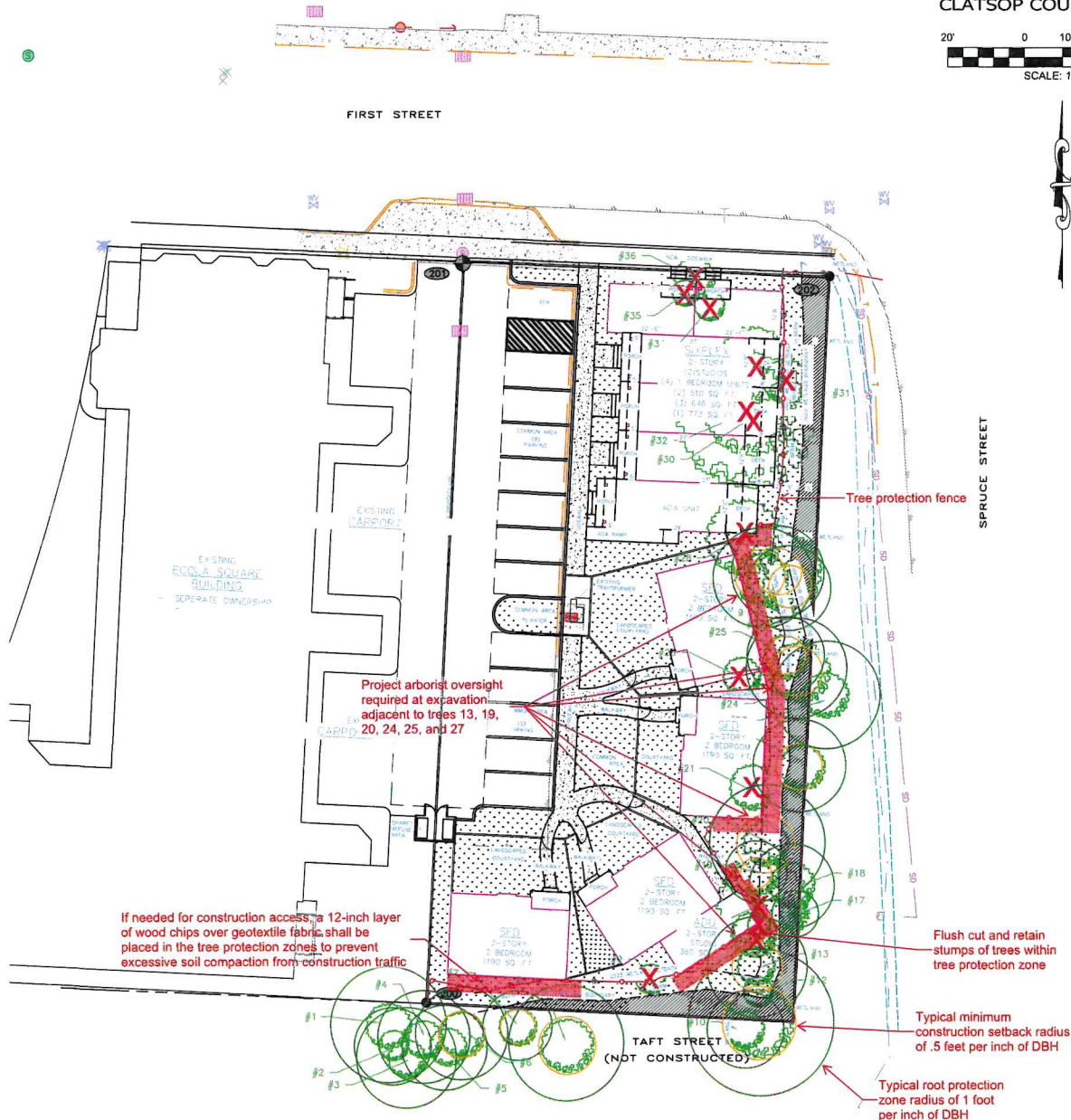
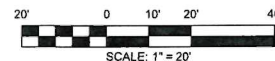
RED CROW LLC

TAXLOT
51030AA04402
NE 1/4 OF SEC 30
T5N, R10W, W.M.
CLATSOP COUNTY

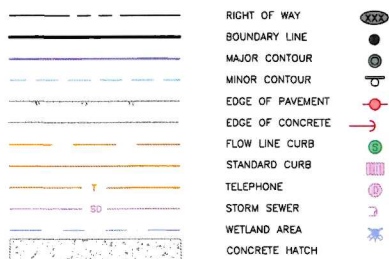
Attachment 2

SITE MAP EXHIBIT

FOR RED CROW LLC
TAXLOT 51030AA04402
LOCATED IN THE NE 1/4 OF SECTION 30
TOWNSHIP 5 NORTH, RANGE 10 WEST,
OF THE WILLAMETTE MERIDIAN,
CLATSOP COUNTY, OREGON



LEGEND:



MONUMENT NUMBER
FOUND MONUMENT - SEE MONUMENT NOTES
TEST PIT / BOREHOLE
SIGN
POWER POLE
GUY ANCHOR
SANITARY SEWER MANHOLE
STORM CATCH BASIN
STORM MANHOLE
STORM CULVERT
FIRE HYDRANT

MONUMENT NOTES:

- FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "HLB & ASSOC. INC." ±FLUSH WITH GROUND
- FOUND TACK IN SIDEWALK ±FLUSH WITH SIDEWALK HELD AS SITE BENCHMARK WITH AN ELEVATION OF 11.94'
- FOUND RUSTY 1/2" IRON PIPE IN DITCH

WATER VALVE
GAS VALVE
TELEPHONE RISER
POWER CABINET
TELEPHONE CABINET
TREE - DECIDUOUS
TREE - CONIFER

S&F Land Services

PORTLAND, VANCOUVER, BEND, SEASIDE

1725 N ROOSEVELT DR,
STE B, SEASIDE, OR 97138
(503) 738-3425

WWW.SFLANDS.COM

EMAIL: INFO@SFLANDS.COM

DATE	JOB NO.	FIELD	DRAWN	CHECKED
JUNE 8, 2022	22051302	JPW	JET	JPW

SURVEY FOR:

RED CROW LLC

TAXLOT
51030AA04402
NE 1/4 OF SEC 30
T5N, R10W, W.M.
CLATSOP COUNTY

22051302 SITE.dwg



Attachment 3

Attachment 3 - Tree Inventory

Tree No.	Common Name	Scientific Name	DBH ¹	Single DBH ²	C-Rad ³	Condition ⁴	Structure	Comments	Treatment
1	red alder	<i>Alnus rubra</i>	15	15	20	good	fair	one sided	retain
2	red alder	<i>Alnus rubra</i>	10	10	10	fair	poor	poor trunk taper, 10% live crown ratio, one sided	retain
3	red alder	<i>Alnus rubra</i>	11,7	13	15	fair	fair	codominant at ground level, leans south	retain
4	red alder	<i>Alnus rubra</i>	12	12	20	good	fair	one sided	retain
5	red alder	<i>Alnus rubra</i>	11	11	10	good	fair	one sided, leans south	retain
6	red alder	<i>Alnus rubra</i>	12	12	20	good	fair	one sided	retain
7	red alder	<i>Alnus rubra</i>	9	9	12	good	fair	east-west crown extension suppressed by adjacent trees	retain
8	red alder	<i>Alnus rubra</i>	15	15	20	good	good		retain
9	Hookers willow	<i>Salix hookeriana</i>	7,6	9	19	good	fair	codominant at ground level, extreme lean northwest	remove
10	red alder	<i>Alnus rubra</i>	10	10	15	good	fair	one sided	retain
11	red alder	<i>Alnus rubra</i>	19	19	20	good	fair	codominant at 10'	retain
12	red alder	<i>Alnus rubra</i>	9,7	11	10	good	fair	codominant at 2'	retain
13	red alder	<i>Alnus rubra</i>	11,9	13	15	good	fair	codominant at 1' with included bark	retain
14	red alder	<i>Alnus rubra</i>	12,12	16	25	good	fair	codominant at 1'	remove
15	red alder	<i>Alnus rubra</i>	6	6	0	very poor	very poor	dead	remove
16	Scoulers willow	<i>Salix scouleriana</i>	20,17,12	28	30	poor	poor	three stems at 1', 20" stem failed, extensive decay	remove
17	Sitka spruce	<i>Picea sitchensis</i>	6	6	10	good	good		retain
18	red alder	<i>Alnus rubra</i>	10,5	11	15	fair	fair	one sided, leans toward street, codominant at 1'	retain
19	red alder	<i>Alnus rubra</i>	8	8	5	fair	poor	poor trunk taper, 10% live crown ratio	retain
20	red alder	<i>Alnus rubra</i>	11,11	15	15	fair	fair	codominant at ground level, south trunk with decay seam and lean toward street	retain
21	red alder	<i>Alnus rubra</i>	12,12,12,9	22	25	good	fair	multiple leaders at ground level, ivy along trunk	remove
22	red alder	<i>Alnus rubra</i>	10,6,3	12	12	good	fair	multiple leaders at ground level, leans toward street	retain
23	Scoulers willow	<i>Salix scouleriana</i>	9,9,5,4	14	20	fair	poor	partially failed into wetland, multiple leaders at lower trunk	retain
24	Hookers willow	<i>Salix hookeriana</i>	13	13	20	fair	fair	failed into wetland	retain
25	red alder	<i>Alnus rubra</i>	10	10	10	good	fair	significant lean west	remove



Attachment 3

Attachment 3 - Tree Inventory

Tree No.	Common Name	Scientific Name	DBH ¹	Single DBH ²	C-Rad ³	Condition ⁴	Structure	Comments	Treatment
26	Hookers willow	<i>Salix scouleriana</i>	6	6	6	fair	poor	fallen over	retain
27	Pacific willow	<i>Salix lucida</i>	11,6,5	13	15	fair	poor	fallen over	retain
28	Scoulers willow	<i>Salix scouleriana</i>	6	6	7	poor	poor	fallen over, covered with ivy	remove
29	Scoulers willow	<i>Salix scouleriana</i>	8,7,5,4	12	12	poor	poor	fallen over	retain
30	Hookers willow	<i>Salix hookeriana</i>	9,7,4	12	15	poor	poor	fallen over	remove
31	Hookers willow	<i>Salix hookeriana</i>	7,6	9	8	poor	poor	partially failed, top dieback	remove
32	Hookers willow	<i>Salix hookeriana</i>	10,10,7	15	12	poor	poor	fallen over, extensive ivy	remove
33	Hookers willow	<i>Salix hookeriana</i>	7	7	7	poor	poor	fallen over	remove
34	Hookers willow	<i>Salix hookeriana</i>	6,3	6,3	12	fair	fair	extreme lean towards site	remove
35	red alder	<i>Alnus rubra</i>	6	6	6	good	good		remove
36	red alder	<i>Alnus rubra</i>	10	10	12	good	fair	codominant at 5' with included bark	remove
37	Pacific willow	<i>Salix lucida</i>	11	11	10	good	fair	one sided, significant epicormic growth	retain
¹ DBH is the trunk diameter in inches measured per International Society of Arboriculture (ISA) standards.									
² Single DBH is the trunk diameter of a multi-stem tree converted to a single number according to the following formula: square root of the sum of the squared diameter of each trunk at 4 1/2 feet above mean ground level.									
³ C-Rad is the approximate crown radius in feet.									
⁴ Condition and Structure ratings range from very poor, poor, fair, to good.									

Attachment 4

Additional Tree Protection Recommendations

The following recommendations are consistent with City of Cannon Beach Code requirements:

Before Construction Begins

1. Notify all contractors of tree protection procedures. For successful tree protection on a construction site, all contractors must know and understand the goals of tree protection.
 - a. Hold a tree protection meeting with all contractors to explain the goals of tree protection.
 - b. Have all contractors sign memoranda of understanding regarding the goals of tree protection. The memoranda should include a penalty for violating the tree protection plan. The penalty should equal the resulting fines issued by the local jurisdiction plus the appraised value of the tree(s) within the violated tree protection zone per the current Trunk Formula Method as outlined in the current edition of the ***Guide for Plant Appraisal*** by the Council of Tree & Landscape Appraisers. The penalty should be paid to the owner of the property.
2. Fencing
 - a. Trees to remain on site will be protected by installation of tree protection fencing as shown in Attachment 1.
 - b. Unless otherwise noted, the fencing should be put in place before the ground is cleared to protect the trees and the soil around the trees from disturbances.
 - c. Fencing should be established by the project arborist based on the needs of the trees to be protected and to facilitate construction.
 - d. Fencing should consist of 6-foot-high steel fencing on concrete blocks or 6-foot metal fencing secured to the ground with 8-foot metal posts to prevent it from being moved by contractors, sagging, or falling down.
 - e. Fencing should remain in the position that is established by the project arborist and not be moved without approval from the project arborist.
3. Signage
 - a. All tree protection fencing should have signage as follows so that all contractors understand the purpose of the fencing:

TREE PROTECTION ZONE

DO NOT REMOVE OR ADJUST THE LOCATION OF THIS
TREE PROTECTION FENCING
UNAUTHORIZED ENCROACHMENT MAY RESULT IN FINES

Please contact the project arborist if alterations to the location of the tree protection fencing are necessary.

Todd Prager, Project Arborist, Todd Prager & Associates, 971-295-4835

- b. Signage should be placed every 75-feet or less.

During Construction

1. Protection Guidelines Within the Tree Protection Zones:
 - a. No new buildings; grade change or cut and fill, during or after construction; new impervious surfaces; or utility or drainage field placement should be allowed within the tree protection zones.
 - b. No traffic should be allowed within the tree protection zones. This includes but is not limited to vehicle, heavy equipment, or even repeated foot traffic.
 - c. No storage of materials including but not limiting to soil, construction material, or waste from the site should be permitted within the tree protection zones. Waste includes but is not limited to concrete wash out, gasoline, diesel, paint, cleaner, thinners, etc.
 - d. Construction trailers should not to be parked/placed within the tree protection zones.
 - e. No vehicles should be allowed to park within the tree protection zones.
 - f. No other activities should be allowed that will cause soil compaction within the tree protection zones.
2. The trees should be protected from any cutting, skinning or breaking of branches, trunks or woody roots.
3. The project arborist should be notified prior to the cutting of woody roots from trees that are to be retained to evaluate and oversee the proper cutting of roots with sharp cutting tools. Cut roots should be immediately covered with soil or mulch to prevent them from drying out.
4. Trees that have woody roots cut should be provided supplemental water during the summer months.
5. Any necessary passage of utilities through the tree protection zones should be by means of tunneling under woody roots by hand digging or boring with oversight by the project arborist.
6. Any deviation from the recommendations in this section should receive prior approval from the project arborist.

After Construction

1. Carefully landscape the areas within the tree protection zones. Do not allow trenching for irrigation or other utilities within the tree protection zones.
2. Carefully plant new plants within the tree protection zones. Avoid cutting the woody roots of trees that are retained.
3. Do not install permanent irrigation within the tree protection zones unless it is drip irrigation to support a specific planting or the irrigation is approved by the project arborist.
4. Provide adequate drainage within the tree protection zones and do not alter soil hydrology significantly from existing conditions for the trees to be retained.
5. Provide for the ongoing inspection and treatment of insect and disease populations that can damage the retained trees and plants.
6. The retained trees may need to be fertilized if recommended by the project arborist.
7. Any deviation from the recommendations in this section should receive prior approval from the project arborist.

Attachment 5

Assumptions and Limiting Conditions

1. Any legal description provided to the consultant is assumed to be correct. The site plans and other information provided by Red Crow, LLC and their consultants was the basis of the information provided in this report.
2. It is assumed that this property is not in violation of any codes, statutes, ordinances, or other governmental regulations.
3. The consultant is not responsible for information gathered from others involved in various activities pertaining to this project. Care has been taken to obtain information from reliable sources.
4. Loss or alteration of any part of this delivered report invalidates the entire report.
5. Drawings and information contained in this report may not be to scale and are intended to be used as display points of reference only.
6. The consultant's role is only to make recommendations. Inaction on the part of those receiving the report is not the responsibility of the consultant.
7. The purpose of this report is to:
 - Provide an assessment and tag all trees over 6-inch DBH within and directly adjacent to the development site; and
 - Provide recommendations for the trees to be removed based on the proposed site plan along with protection recommendations for the trees to be retained.



C-3

After recording, return to:
City of Cannon Beach
Attn: City Manager
P.O. Box 368
Cannon Beach, Oregon 97110

Until a change is requested,
All Tax Statements will be sent to:

No Change Requested

COMMUNITY HOUSING DEVELOPMENT AGREEMENT

This Community Housing Development Agreement ("Development Agreement" or "Agreement") is made and is effective as of the date hereof ("Effective Date") by and between _____ ("Developer") and the City of Cannon Beach, an Oregon municipal corporation ("City").

RECITALS

A. Developer is the owner of the certain real property located at _____, within the City of Cannon Beach, Clatsop County (the "Development") and described on attached Exhibit A. Developer intends to develop the property as an _____ unit multi-family development. In an effort to encourage affordable housing in the City, the Developer has agreed to enter into this Development Agreement with City and to develop the Development for Community Housing pursuant to this Agreement. "Community Housing" is defined as long term rental units that do not exceed the Community Rental Rates listed in this Agreement.

B. In order to assure compliance by Developer with the provisions of this Agreement, the Developer and City intend that the City shall have the right to approve any changes in the plans and specifications for the Development prepared by _____ and dated _____ ("Plans and Specifications"), and to inspect the Development for compliance with this Agreement and the Plans and Specifications.

NOW, THEREFORE, for consideration, the adequacy and sufficiency of which is hereby acknowledged, Developer and City agree as follows:

1. Incorporation of Recitals.

The Recitals are incorporated herein as part of this Development Agreement.

2. Term and Termination

- A. This Development Agreement shall be in effect from the date of execution until the end of the **thirty-year term**, ending on _____, 2053, unless terminated earlier by either party, by giving written notice of termination to the other party. In the event this Agreement is terminated, either party shall, upon request of the other party, promptly execute and deliver to

the requesting party a document evidencing the termination of this Agreement, which the requesting party may cause to be recorded in the Records of Clatsop County, Oregon.

- B. If the Developer terminates the Agreement prior to expiration, the pro-rated value of the permits fees and system development charges listed in Table 2 below plus interest assessed at a rate of nine percent (9%) per annum will immediately become due and payable to the City. For example, if the Developer terminates this Agreement with 80 percent of the term of this Agreement remaining, then eighty percent (80%) of the permits fees and system development charges listed in Table 2, plus interest thereon at the rate of nine percent (9%) per annum would immediately become due and payable to the City.

3. Inspection and Retention of Records

Developer agrees that City, or any agent designated by City, may at its discretion, inspect or perform an annual audit of the Community Rental Rates schedule and payments.

Developer shall retain all financial records and supporting documents pertaining to the Community Units (defined below) for a minimum of three years after this Agreement terminates.

4. Community Housing; Plans and Specifications.

The Developer agrees that all _____ units in the Development will be Community Housing. The Development shall be built in accordance with the Plans and Specifications. Any modifications to the Plans and Specifications (including, but not limited to, interior fixtures and finishes) or the Development are subject to the approval of the City, which approval shall not be delayed or withheld unreasonably. Specifically, Developer agrees to the following:

- A. The Developer will build __ one-bedroom units, and __ studio units ("Community Units") at the rent levels provided in Table 1 below and adjusted annually provided in (B) ("Community Rental Rates").

Table 1: Preliminary Monthly Rent Levels

Unit		Monthly rent
101	One-bedroom	\$1,198
102	One-bedroom	\$1,198
103	Studio	\$1,118
104	One-bedroom	\$1,198
201	One-bedroom	\$1,198
202	One-bedroom	\$1,198
203	Studio	\$1,118
204	One-bedroom	\$1,198

- B. The Community Rental Rate levels in Table 1 are for the 2023 calendar year and will provide the baseline for subsequent rent levels, which will increase proportionally to the US Department of Housing and Urban Development's Area Median Income (AMI) levels for Clatsop County, which will be updated each year by HUD and applied each calendar year in January to provide the Community Rental Rate.

- C. The Community Rental Rates do not include utilities, such as water and sewer, electrical, phone, cable or any other service provided.
- D. In exchange for the above promises, the City will waive or refund the following permit fees and system development charges, shown below in Table 2.

Table 2: Building Permit Fees & Systems Development Charges

Base building permit fee	\$TBD	Building Official Fund
Local planning fee	\$TBD	Building Official Fund
Structural plan review fee	\$TBD	Building Official Fund
Fire/Life/Safety plan review fee	\$TBD	Building Official Fund
State surcharge	\$TBD	Oregon Building Codes Division
Affordable housing surcharge (commercial)	\$TBD	Affordable Housing Fund
Subtotal	\$TBD	
Water systems development charge	\$TBD	Water Fund
Additional 2-inch water line	\$TBD	Water Fund
Sewer systems development charge	\$TBD	Wastewater Fund
Stormwater systems development charge	\$TBD	Storm Drain Fund
Subtotal	\$TBD	
Total	\$TBD	

- E. Other permits and fees required by the City but not listed above are not covered by this Agreement and are not waived. These permits include, but may not be limited to, plumbing permit, mechanical permit, fire alarm permit, fire sprinkler permit, and electrical permit.
- F. The Community Units will be held to these conditions through thirty-year term of the agreement, whereby the terms of the Agreement will be met and the Developer will be free to rent the units as they wish.
- G. The Community Units will remain as long-term rental units (rented for periods of thirty (30) days or longer) for the life of this Agreement. The Community Units will not be utilized as a Short-Term Rental or condominium or any other form of tenancy, other than long-term rental for the life of this Agreement.
- H. If at any time prior to the thirty-year term of the agreement the Developer offers the Community Units for rent at rates higher than the Community Rental Rates or allows the Community Units to be used as other than long term rentals, the pro-rated value of the permit fees and system development charges listed in Table 2, plus interest assessed at a rate of nine percent (9%) per annum will immediately become due and payable to the City.

5. Building Permit.

The City shall have the right to review the building permit application and all applications for amendment to the building permit for compliance with this Development Agreement.

6. Right of Inspection; Compliance.

- A. The City shall have the right to inspect the Development on a monthly basis during construction.
- B. In the event that the City determines that the Development is not being built as required by the Plans and Specification and this Agreement, the City shall promptly notify the Developer. Promptly upon receipt of notice from the City, Developer shall take such actions as may be necessary to put the Development back into compliance or seek waiver from City for the nonconforming elements. If the noncompliance is not corrected or approved within thirty (30) days after the City notice to Developer, then the City may withhold issuance of any certificates of occupancy on any portion of the Development.

7. Completion; Certificate of Occupancy.

The Developer agrees that written evidence of the City's final approval of all of the foregoing elements of this Agreement must be provided as a condition to receipt of a certificate of occupancy for the Development.

8. Default and Dispute Resolution.

- A. In the event any party bound or affected by this Development Agreement initiates or defends any legal action or proceeding in any way connected with this Development Agreement, the prevailing party in any such action or proceeding, including any appeal, (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.
- B. Prior to the commencement of any legal action, the dissatisfied party shall first seek to resolve the dispute by negotiation. If negotiation is unsuccessful, the parties shall seek to mediate the dispute by using the services of a professional mediator with subject matter expertise and mutually acceptable to the parties. Costs of mediation shall be shared equally by the parties unless otherwise determined during the mediation.

9. Notices.

All notices given pursuant to this Development Agreement shall be in writing and shall be given by personal service, by United States certified mail or by United States express mail or other established commercial express delivery service with signature confirmation required, postage or delivery charge prepaid, addressed to the appropriate party at the address set forth below. If a notice is delivered to Developer by personal service or by United States express mail or other established express delivery service such notice may be delivered to the Property. If a notice must be given to a person other than one designated below or otherwise sent to Developer, such notice shall be sent to the person and address shown on the then current real property tax rolls of City of Cannon Beach, Clatsop County, OR. All notices given to the appropriate party shall be sent to the address set forth below:

To Developer: (the Developer)

To City: City Manager
City Hall, City of Cannon Beach
P.O. Box 368
Cannon Beach, OR 97110

The person and address to which notices are to be given may be changed at any time by such party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt. For the purposes of this Section 9, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document if hand delivered to the address specified pursuant to Section 9.1 as shown on the delivery document, (ii) three (3) days following deposit with the United States mail, or (iii) one (1) day following deposit with an established commercial express delivery service (such as FedEx).

10. Agreement Runs with the Land; Recorded with Clatsop County

- A. Parties intend for this Agreement to run with the land. If at any point during the life of this Agreement, Developer sells, transfers, assigns or otherwise disposes of its interest in the Development, this Agreement will become binding on any successor(s) in interest.
- B. Within ten (10) days of execution of this Agreement, Developer will record this Agreement with Clatsop County.

11. General Provisions.

- A. **Savings Clause.** Whenever possible, each provision of this Development Agreement and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Development Agreement or related document.
- B. **Governing Law.** The laws of Oregon, without giving effect to its choice of law principles, govern all matters with respect to this Development Agreement, including all tort claims.
- C. **Amendments.** This Development Agreement may only be amended by a written agreement that identifies itself as an amendment to this Development Agreement, is approved by and is signed by the Developer and the City.
- D. **Headings.** Paragraph or section headings within this Development Agreement are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
- E. **Other Documents.** The parties to this Development Agreement agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Development Agreement or any agreement or document relating hereto or entered into in connection herewith. Such further documents include, but are not limited to,

affidavits and certifications required by the City to establish Developer's ongoing compliance with this Development Agreement.

- F. **Non-wavier.** The failure of the City to insist upon strict performance of any terms, covenants or conditions of this Development Agreement shall not be deemed a waiver of any rights or remedies City may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any terms, covenants or conditions of this Development Agreement by the same or any other person or entity. A party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of _____, 22 ____, (the "Effective Date").

ATTEST:

City of Cannon Beach:

By: _____ Name: _____
Title: _____

Developer:

By: _____ Name: _____
Title: _____

City

STATE OF Oregon)

) ss.

County of Clatsop)

The foregoing instrument was acknowledged before me on _____, 202__ by _____ as _____ of the City of Cannon Beach, an Oregon municipal corporation.

Notary Public for _____
My Commission Expires: _____

STATE OF Oregon)

) ss.

County of Clatsop)

The foregoing instrument was acknowledged before me on _____, 202__ by _____ as _____ of _____.

Notary Public for

My Commission Expires:

Exhibit A
Property Legal Description



C-4

2022 -- Income Limits for LIHTC & Tax-Exempt Bonds

Clatsop County, Oregon

For more detailed MTSP income limit information, please visit HUD's website:

<http://www.huduser.org/portal/datasets/mtsp.html>



Actual 2022 Median ³	\$79,800	
2022 HERA Special Median	\$80,200	(applies to projects in existence before January 1, 2009)

Median Incomes calculated based on a 4-person household

What Income Limit Should You Use?

Is the location considered RURAL by USDA? (if yes, it is eligible to use the Ntnl Non-Metro Median for 9% projects)¹

YES Clatsop County is considered Rural. To verify current accuracy, please visit:

<http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=sfp&NavKey=property@12>

--The following income limits indicate the highest income limit allowable--

Did the project exist² in 2008?

Use: HERA Special 2022

If NO, did it exist²:

-- 4% Tax Credit Project

-- 9% Tax Credit Project

Between 1/1/09 -4/17/2022

Use: Actual Incomes 2022

Use: Actual Incomes 2022

On or After 4/18/2022

Use: Actual Incomes 2022

Use: Actual Incomes 2022

Actual Income Limits 2022								
% MFI	1 Pers	2 Pers	3 Pers	4 Pers	5 Pers	6 Pers	7 Pers	8 Pers
30%	\$16,770	\$19,170	\$21,570	\$23,940	\$25,860	\$27,780	\$29,700	\$31,620
35%	\$19,565	\$22,365	\$25,165	\$27,930	\$30,170	\$32,410	\$34,650	\$36,890
40%	\$22,360	\$25,560	\$28,760	\$31,920	\$34,480	\$37,040	\$39,600	\$42,160
45%	\$25,155	\$28,755	\$32,355	\$35,910	\$38,790	\$41,670	\$44,550	\$47,430
50%	\$27,950	\$31,950	\$35,950	\$39,900	\$43,100	\$46,300	\$49,500	\$52,700
55%	\$30,745	\$35,145	\$39,545	\$43,890	\$47,410	\$50,930	\$54,450	\$57,970
60%	\$33,540	\$38,340	\$43,140	\$47,880	\$51,720	\$55,560	\$59,400	\$63,240
80%	\$44,720	\$51,120	\$57,520	\$63,840	\$68,960	\$74,080	\$79,200	\$84,320

HERA Special Income Limits 2022								
% MFI	1 Pers	2 Pers	3 Pers	4 Pers	5 Pers	6 Pers	7 Pers	8 Pers
30%	\$16,860	\$19,260	\$21,660	\$24,060	\$26,010	\$27,930	\$29,850	\$31,770
35%	\$19,670	\$22,470	\$25,270	\$28,070	\$30,345	\$32,585	\$34,825	\$37,065
40%	\$22,480	\$25,680	\$28,880	\$32,080	\$34,680	\$37,240	\$39,800	\$42,360
45%	\$25,290	\$28,890	\$32,490	\$36,090	\$39,015	\$41,895	\$44,775	\$47,655
50%	\$28,100	\$32,100	\$36,100	\$40,100	\$43,350	\$46,550	\$49,750	\$52,950
55%	\$30,910	\$35,310	\$39,710	\$44,110	\$47,685	\$51,205	\$54,725	\$58,245
60%	\$33,720	\$38,520	\$43,320	\$48,120	\$52,020	\$55,860	\$59,700	\$63,540
80%	\$44,960	\$51,360	\$57,760	\$64,160	\$69,360	\$74,480	\$79,600	\$84,720

Notes:

1: Only projects in Rural Areas are able to use the Non-Metro Medians, otherwise use applicable 4% limits. Projects with previous "Rural" designations that are no longer considered to be located in rural areas (by the USDA) are permitted to use the previous year's National Non-Metro income limits should they be higher than the current year's income limits. The National Non-Metro income limits are online here:

<http://www.oregon.gov/ohcs/pages/research-income-rent-limits.aspx>

2: Exist - defined by OHCS as the project's placed-in-service (PIS) date. Projects consisting of multiple buildings, where each building is being treated as part of a multiple building project (see line 8b on IRS Form 8609), will be considered as being "in existence" provided at least one building was PIS during the affected year.

3: Actual Median Income Limit indicated here is based on income limits though it is not necessarily the HUD Area Median Income

The incomes limits listed above are based on the Multifamily Tax Subsidy Program (MTSP) income limits published by HUD on April 18, 2022. Per Revenue Ruling 94-57, owners will have until June 1, 2022 to implement these new MTSP income limits (45 days from their effective date). Please note that all definitions and explanations herein may be subject to change upon later IRS and/or HUD clarification.

2022 -- Rents for LIHTC & Tax-Exempt Bonds

Clatsop County, Oregon

For more detailed MTSP income limit information, please visit HUD's website:

<http://www.huduser.org/portal/datasets/mtsp.html>



Actual 2022 Median ³	\$79,800	
2022 HERA Special Median	\$80,200	(applies to projects in existence before January 1, 2009)

Median Incomes calculated based on a 4-person household

What Rents Should You Use?

Is the location considered RURAL by USDA? (if yes, it is eligible to use the Ntnl Non-Metro Median for 9% projects)¹

YES Clatsop County is considered Rural. To verify current accuracy, please visit:

<http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=sfp&NavKey=property@12>

--The following rent limits indicate the highest rents allowable--

Did the project exist² in 2008?

Use: HERA Special 2022

If NO, did it exist²:

-- 4% Tax Credit Project

-- 9% Tax Credit Project

Between 1/1/09 -4/17/2022

Use: Actual Incomes 2022

Use: Actual Incomes 2022

On or After 4/18/2022

Use: Actual Incomes 2022

Use: Actual Incomes 2022

Rents based on Actual Income Limits 2022							
% MFI	75% of 0 Bdrm	0 Bdrm	1 Bdrm	2 Bdrm	3 Bdrm	4 Bdrm	5 Bdrm
30%	\$314	\$419	\$449	\$539	\$622	\$694	\$766
35%	\$366	\$489	\$524	\$629	\$726	\$810	\$894
40%	\$419	\$559	\$599	\$719	\$830	\$926	\$1,022
45%	\$471	\$628	\$673	\$808	\$933	\$1,041	\$1,149
50%	\$523	\$698	\$748	\$898	\$1,037	\$1,157	\$1,277
55%	\$576	\$768	\$823	\$988	\$1,141	\$1,273	\$1,405
60%	\$628	\$838	\$898	\$1,078	\$1,245	\$1,389	\$1,533
80%	\$838	\$1,118	\$1,198	\$1,438	\$1,660	\$1,852	\$2,044

Rents based on HERA Special Income Limits 2022							
% MFI	75% of 0 Bdrm	0 Bdrm	1 Bdrm	2 Bdrm	3 Bdrm	4 Bdrm	5 Bdrm
30%	\$315	\$421	\$451	\$541	\$625	\$698	\$770
35%	\$368	\$491	\$526	\$631	\$730	\$814	\$898
40%	\$421	\$562	\$602	\$722	\$834	\$931	\$1,027
45%	\$474	\$632	\$677	\$812	\$938	\$1,047	\$1,155
50%	\$526	\$702	\$752	\$902	\$1,043	\$1,163	\$1,283
55%	\$579	\$772	\$827	\$992	\$1,147	\$1,280	\$1,412
60%	\$632	\$843	\$903	\$1,083	\$1,251	\$1,396	\$1,540
80%	\$843	\$1,124	\$1,204	\$1,444	\$1,669	\$1,862	\$2,054

Notes:

1: Only projects in Rural Areas are able to use the Non-Metro Medians, otherwise use applicable 4% limits. Projects with previous "Rural" designations that are no longer considered to be located in rural areas (by the USDA) are permitted to use the previous year's National Non-Metro income limits should they be higher than the current year's income limits. The National Non-Metro income limits are online here:

<http://www.oregon.gov/ohcs/pages/research-income-rent-limits.aspx>

2: Exist - defined by OHCS as the project's placed-in-service (PIS) date. Projects consisting of multiple buildings, where each building is being treated as part of a multiple building project (see line 8b on IRS Form 8609), will be considered as being "in existence" provided at least one building was PIS during the affected year.

3: Actual Median Income Limit indicated here is based on income limits though it is not necessarily the HUD Area Median Income

The rent limits listed above are based on the Multifamily Tax Subsidy Program (MTSP) income limits published by HUD on April 18, 2022. Per Revenue Ruling 94-57, owners will have until June 1, 2022 to implement these new MTSP rent limits (45 days from their effective date). If the gross rent floors (established at credit allocation or the project's PIS date; refer to Revenue Procedure 94-57) are higher than the current rent limits, the gross rent floors may be used. However, income limits are still based on the current applicable rate. Utility allowances must continue to be deducted from rents to achieve the maximum tenant rents allowed. Please note that all definitions and explanations herein may be subject to change upon later IRS and/or HUD clarification.



D-9



October 6, 2022

Cannon Beach Planning Commission,
Cannon Beach, OR

Re: CD # 22-01 and CU #22-03, application of David Pietka (Davidspruce LLC) for
development on First and Spruce Streets

Via email:

Jeff Adams: adams@ci.cannon-beach.or.us

Katie Hillenhagen: hillenhagen@ci.cannon-beach.or.us

Dear Chair Newton and Cannon Beach Planning Commission,

Oregon Coast Alliance is an Oregon nonprofit corporation with a mission of protecting coastal natural resources and working to increase community livability. We write you a second time with concerns for the application by David Pietka (Davidspruce LLC) for a development on First and Spruce Streets.

This is a complex application, and there continue to be unanswered questions. In this brief letter we reiterate some of the questions that need to be answered. Presentation of a Tree Report, and additional geotechnical information, to the decision-makers is very helpful in some, but not all, of the policy questions raised thus far.

1. Wetlands are not just wet places on the surface of the ground; they have extensive underground or surface water sources that feed the area and provide the water for the wetland to remain healthy. Does this proposal protect the water sources of the wetland, as well as the wetland itself?
2. The revised geotechnical report notes succinctly, “We anticipate shallow groundwater across the subject property.” (See p. 13). This is probably related to the fact that much of the area is a wetland – but there is no discussion of how to protect the wetland and its water sources, only instructions concerning dewatering of the construction site.

3. Conditional Use standard 17.80.110 (A) requires the planning commission to determine if a demand exists for the use **at the proposed location**. There does not seem to be any indication in the project materials that the proposed residential use at this site is appropriate for a commercial area, or would in any way consist of affordable/workforce housing. What guarantees does the planning commission have, or could it get, that if housing is an appropriate use on this site, it would be affordable, other than the developer's statement?
4. Conditional Use Standard 17.80.110 (F) requires the use to be compatible with the surrounding area. Proposing a largely residential development in a commercial area, on a site zoned for commercial uses, raises questions about compatibility of uses that the planning commission needs to visit in detail. Commercial uses in a concentrated commercial zone are important, and need to be protected from intrusive residential buildings, whose residents have very different needs for quiet, limited traffic and walkability from those that pertain to a commercially zoned area.

Thank you for the opportunity to testify again in this matter. Please place this testimony into the record for this application.

Sincerely,

/s/ Cameron La Follette

Cameron La Follette



D-10

October 6, 2022

To the Planning Commission:

Today, October 2, the day I write these words, is Mahatma Gandhi's birthday. Often quoted are his words "The greatness of a nation and its moral progress can be judged by the way its animals are treated." I believe this with all my heart. I also believe this principle can be applied to the way the land is treated. As Lacy M. Johnson says in her article entitled "Sanctuary" in Orion magazine, "A forest of trees is more than the place where they grow-it's a community of countless generations of thousands of species, each playing its essential part. A community has a value that no one should own." This too, I believe. Perhaps the bit of forest and wetland that we are concerned with here is small in comparison to an actual forest, nevertheless it is still a community of beings which deserve to live their lives as they have for generations. Not very scientific, I know, but I speak from my heart. I hope with all my being that you will consider these words in making your decision.

Every wetland is precious precisely because there are so few left in Cannon Beach. Yes, we need more places for people to live, work force housing and low income housing particularly. But our wetlands are already home to many equally precious lives. What confidence have we that the homes crammed onto this small piece of land will be used for such purposes?

In looking at the design plan, it appears more units have been added than were in the original design, for a total of 11 units. Based on the total number of bedrooms in the units, occupancy could range from approximately 17 residents to 29 residents, depending on how many people actually occupy the units. This is a rough estimation, since we don't know if the number of units will change in a subsequent plan. It concerns me to add this many more individuals to an area of "very poorly drained soil...within a severe earthquake hazard zone, a severe Cascadia subduction zone and a high liquefaction hazard zone." This from the Geotechnical Investigation Report, Earth Engineers, Inc., Jacqui Boyer Geotechnical Engineering Associate, revised April 18, 2022. Assuming the worst were to happen and Cannon Beach experiences the expected Cascadia subduction zone earthquake, I don't see how the resident of the ADA could possibly escape to higher ground, considering that even if the building survives the quake in some form, the infrastructure outside the building will not, making escape difficult, if not impossible. In actuality, in an event of this severity, it seems unlikely that any of the residents of these units could survive, considering the liquefaction and subsidence of the ground in this location, making escape impossible. Would you want this on your conscience?

If you should ignore this possibility and these units are built, I am also concerned by the geotechnical recommendation that the required fill be extended beyond the exterior perimeter of the building by at least five feet. "The site grading plan should be developed to provide rapid drainage of surface water away from the perimeter of the building and beneath the floor slab." The grades should be sloped away from the building area." I see on the plan a berm along the edge of the build line which to me means a built-up area, not a slope, presumably to protect the wetland. Protect it from what? Does this mean that after the units are built it is no longer a concern that drainage of surface water should be directed away from the foundation? Seems like the berm would prevent water from running off the property and would instead make it collect next to the foundation. I am confused by this apparent conflict.

There also seem to be a lot of "ifs" in the arborist report regarding tree removal, risk assessment, grading impacts, foundations and tree protection zones, root pruning, crown pruning, etc. The safety of the twenty-three trees which won't initially be removed seems very "iffy" indeed. Also, the removal of this many trees (14) means that many fewer root systems to take up water, increasing the risk of flooding at the site. Of the trees to be removed, six are judged to be in "good" condition, while nine of the retained trees are only in fair condition, and

one is in poor condition leaving only thirteen of the retained trees in good condition. This leads me to believe the lives of the ten trees in fair or poor condition may not be long at all. It seems a shame to remove six trees in good condition. No doubt that will greatly affect the condition of the remaining trees, since they rely heavily on each other for support and aid in times of sickness or insect attack, etc. They communicate with each other just as other species do, through the mycelium network in the soil.

I could go on, but think I will stop here. As Mayor Sam says in "Message from the Mayor", "staff provide the baseline and Residents present the emotional value." You have heard mine- I hope you can feel it in your own heart, too.

Susan Glarum

October 6, 2022

Dear Cannon Beach Planning Commissioners,

Regarding the CD # 22-01 & CU # 22-03 request for a Conditional Use Permit by David Vonsda (for 'Davidspruce LLC') to allow a cluster home development & apartment complex at the corner of 1st & Spruce Streets, we are concerned that the Planning Commission still has not been provided all of the information needed in order to make a sufficiently informed decision that's best for our community.

We still ask, where the following items are:

- 1) the review by our City Arborist of the applicant's tree report
- 2) the US Army Corps of Engineers' jurisdictional determination
- 3) the written development agreement or deed restriction with the City which would control the rental or sale of these proposed affordable or workforce properties
- 4) the written guarantee that no intrusions would be made into the wetland or buffer areas
- 5) the written guarantee that this development would really be used for what the applicant says
- 6) the written guarantee that no further partition or subdivision would be allowed

There still seem to be many unanswered questions regarding this application. As a community, it is both our privilege & responsibility to protect our wetlands. We ask you to do that to the best of your ability & to deny this application. Thank you.

Sincerely,

Jan Siebert - Wahmumund

&

Wes Wahmumund

P.O. Box 778, Cannon Beach, OR 97110*

* Please include this letter in the record for the '14.7.7' regarding this application. Thanks.



Cannon Beach Planning Commission

Staff Report:

PUBLIC HEARING AND CONSIDERATION OF **ZO 22-01**, WILL RASMUSSEN APPLICATION, ON BEHALF OF HAYSTACK ROCK LLC PROPERTY OWNERS, REQUESTING A TEXT AMENDMENT OF THE CANNON BEACH MUNICIPAL CODE TITLE 17 ZONING REGARDING NOTICE AND PROCEDURAL REQUIREMENTS FOR CITIZENS TO RECEIVE ELECTRONIC NOTIFICATION OF APPLICATIONS PROCESSED BY THE COMMUNITY DEVELOPMENT DEPARTMENT, ADMINISTRATIVE DECISIONS, AND EXPANDED PUBLIC NOTICE FOR PERMITS CONCERNING HAZARD AREAS, ENVIRONMENTALLY SENSITIVE LANDS, AND NEW ROADS. THE REQUEST WILL BE REVIEWED AGAINST THE CRITERIA OF THE MUNICIPAL CODE, SECTION 17.86, AMENDMENT CRITERIA.

Agenda Date: October 27, 2022

Prepared By: Robert St. Clair

GENERAL INFORMATION

NOTICE

Public notice for this October 27, 2022, Public Hearing is as follows:

- A. Notice was posted at area Post Offices on October 7, 2022;
- B. Notice was provided to the Oregon Department of Land Conservation and Development as required by ORS ;

DISCLOSURES

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on May 24, 2022 unless otherwise noted.

"A" Exhibits – Application Materials

- A-1** Application packet, including ZO 21-02, Received May 24, 2022;

"B" Exhibits – Agency Comments

None at the time of writing

"C" Exhibits – Cannon Beach Supplements

- C-1** Cannon Beach Planning Commission Work Session Staff Report, July 28, 2022;

"D" Exhibits – Public Comment

None at the time of writing

BACKGROUND

Will Rasmussen, on behalf of Haystack Rock LLC, property owners of 1981 Pacific Ave., is requesting an amendment of the notice requirements of the Cannon Beach Municipal Code. The applicant first approached the city in 2021 with an application seeking to extend surrounding property owner notice mainly with regards to development permits. The applicant worked with staff to offer text amendments that would limit the changes to only those access extensions of public rights-of-way in the oceanfront management zones, stream corridors and wetland overlay area, which was approved and adopted August 3, 2021.

This application proposes an email notification process for all requested properties for all permit applications and decisions concerning a lot, regardless of whether official notice is required. The proposed amendment would allow any property owner or anyone else who resides in the city to request notification for any property in the city, with a duration of 60 days.

APPLICABLE CRITERIA

Chapter 17.86 AMENDMENTS

17.86.030 Application

Property owners or local residents who are eligible to initiate an amendment, or their designated representatives, may begin a request for an amendment by filing an application with the city manager, using forms prescribed by the city.

Staff Comment:

The applicant, Will Rasmussen, is the designated representative of Haystack Rock LLC which is the owner of 1981 S. Pacific St. Meets criteria.

17.86.040 Investigation and Report

The city manager shall make or cause to be made an investigation to provide necessary information on the consistency of the proposal with the comprehensive plan and the criteria in Section 17.86.070. The report shall provide a recommendation to the planning commission on the proposed amendment.

17.86.070 Criteria.

A. Before an amendment to the text of the ordinance codified in this title is approved, findings will be made that the following criteria are satisfied:

1. The amendment is consistent with the comprehensive plan;

Staff Comment

The applicable Comprehensive Plan policy is Citizen Involvement Policy #1 which states:

Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts by the City, including collection of data and the development of policies.

The criteria for approval of a zoning ordinance amendment are rather brief. The Planning Commission must only find that the amendments are consistent with comprehensive plan and that they will not adversely affect the city's ability to satisfy land use needs.

At present, members of the public have the ability to obtain information about planning efforts by the City through the following means:

- Notices sent to property owners within 100 feet of properties on which Type 2 and 3 development permits have been administratively approved.
- Notices of public hearing sent to property owners within 100 feet of a property on which an application before the Planning Commission or Design Review Board has been submitted.
- Notices of public hearings are posted on community notification bulletin boards at the Downtown and Tolovana Park post offices.
- Notices of public hearings are posted on the City's website, with copies of all packet materials that have been provided to City Council, Planning Commission, or Design Review Board members.
- All tree permits, development permits, and actions before the Planning Commission and Design Review Board are available through E-Permitting.
- All tree permits, development permits, and actions before the Planning Commission and Design Review Board are available through the Public Notices page on the Community Development Department's section of the City of Cannon Beach's website.
- Information regarding short term rentals, including lists of current permit holders that are updated monthly, is available on the Community Development Department's section of the City of Cannon Beach's website.
- As per Zoning Ordinance ZO 21-01 which was adopted by City Council on August 3, 2021 and became effective on September 2, 2021, notice is provided for development and conditional use permitting when extending access and utilization of public rights-of-way located in Oceanfront Management, Stream Corridor, and Wetland Overlay areas.

The currently used system of public notice distribution provides ample opportunity for members of the public to easily access the information that this application touches upon. Adoption of the proposed text amendment would create significant redundancies, inefficiencies, and opportunities for unintentional error not present in the current system. In fact, an argument could be made that the current system should be evaluated and simplified, not made more cumbersome in a way that would likely expose the City to more legal jeopardy than currently exists. The eight means of information distribution detailed above does not include the approximately 70 Public Records Requests the City responds to each year.

The applicant's argument that additional public notice is necessary relies on the assertion that the City failed to notify under the requirements of ZO 21-01. This argument has the following two deficiencies:

1. ZO 21-01 applies to development and conditional use permitting when extending access and utilization of public rights-of-way. The development permit that triggered this application involved neither of these criteria. The scope of review for the authorization did not include improvements to Nenana Ave and was limited to residential improvements on a privately owned parcel of land. The City's review of proposed improvements to Nenana Ave is happening under a separate process and the development permit in question was conditioned on approval of access improvements.
2. ZO 21-01 became effective on September 2, 2021. The development permit application relevant to this proposed text amendment was submitted to the City on August 3, 2021 and was reviewed under the standards in place at the time of application. Even if the provisions of ZO 21-01 extended outside of the public right-of-way they would not have applied to the development permit in question.

Procedural Requirements

This application is not subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete, since it is a legislative application.

The Planning Commission's October 27th meeting will be the first evidentiary hearing on this revised request. ORS 197.763(6) allows any party to request a continuance. If such a request is made, it should be granted. The Planning Commission's next regularly scheduled hearing date is Tuesday November 22, 2022.

STAFF RECOMMENDATION

Staff recommends that this application be reviewed under the Code Audit process. This process will include a review of procedures currently in place and identify potential improvements that can be developed and adopted in an orderly and coordinated manner. Proposed procedural changes such as this should not be adopted without a thorough understanding of staff's roles and responsibilities, workloads, and the potential impacts that can result from additional workload that would be generated by the proposed requirements. Adoption of this amendment would require constant tracking of who is eligible to receive notice on any given day. For staff to be required to track and inform what may be a large body of citizens for an unlimited amount of requests for an unlimited number of properties across the City of Cannon Beach is not only impractical, but fails to recognize existing workload, a significant amount of which is already dedicated to meeting public notice requirements and responding to an average of 70 Public Records Requests per year.

Existing resources and assets that the City intends to adopt in the near future should be considered as those resources may address the perceived deficiencies regarding public notice. In Calendar Year 2022 staff began to utilize the State of Oregon's E-Permitting system and the Department is budgeted to adopt and train on the electronic plan review system that integrates with E-Permitting and is used by other jurisdictions in the state.

There is also the concerning potential for a disconnect between what the public may perceive this zoning amendment would provide and the actual implementation of it if adopted. There is an unaddressed question of what happens when notice stops after an individual's 60-day period expires. This may generate situations members of the public falsely accuse the City of failing to comply with the notice requirement when, in fact, they are simply no longer eligible to receive notice. These types of situations would be counterproductive for all parties involved, consume the limited time available to staff and managers responding to them, and consume time in public meetings at multiple levels.

The City of Cannon Beach and the staff of the Community Development Department are committed to transparency and fairness in the implementation of the city's land use development ordinances. We feel that the public will be best served by the notice requirements being reviewed through the Code Audit and the development of practical and effective public notice and engagement strategies that are efficient, minimize complexity and redundancy, and can be reasonably carried with the limited staff resources available to the Department.

PLANNING COMMISSION ACTION

MOTION: Having considered the evidence in the record, based on a motion from Commissioner NAME, seconded by Commissioner NAME, the Planning Commission moves to ***tentatively*** (approve/approve with conditions/or deny) the Rasmussen application, on behalf of Haystack Rock LLC, for text amendments to Title 17 Zoning, application **ZO#22-01**, as discussed (subject to the following conditions) and requests that staff draft findings for review and adoption, at the next meeting of the Planning Commission of the City of Cannon Beach, Tuesday at 6PM, November 22, 2022 at City Hall.



CITY OF CANNON BEACH

AMENDMENT TO THE ZONING ORDINANCE TEXT

Please fill out this form completely. Please type or print.

Applicant Name: Haystack Rock, LLC
Email Address: c/o Will Rasmussen, Miller Nash LLP
Mailing Address: 111 SW Fifth Ave, Ste 3400, Portland, OR 97204
503.224.5858

Telephone: _____
Property-Owner Name: _____
(if other than applicant)

Mailing Address: _____

Telephone: _____

Property Location: _____
(street address)

Map No.: _____ Tax Lot No.: _____

AMENDMENT TO THE ZONING ORDINANCE REQUEST:

1. Description of the proposal.

See attached.

2. Justification for the Zoning Ordinance amendment request. Explain how the request meets each of the following criteria for granting an amendment to the Zoning Ordinance.

See attached.

Note: Use extra sheets, if necessary, for answering the above questions.

Fee: \$1,500

Applicant Signature:  Date: 05.23.22

Property Owner Signature:  Date: 5-24-22

If the applicant is other than the owner, the owner hereby grants permission for the applicant to act on his/her behalf. Please attach the name, address, phone number, and signature of any additional property owners.

For Staff Use Only:

Received on: _____ By: _____ Fee

Paid: _____ Receipt No.: _____

(Last revised March 2021)

PO Box 368 Cannon Beach, Oregon 97110 • (503) 436-8042 • TTY (503) 436-8097 • FAX (503) 436-2050

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



William L. Rasmussen
william.rasmussen@millernash.com
503.205.2308 (direct)

May 24, 2022

VIA EMAIL
PLANNING@CI.CANNON-BEACH.OR.US

Cannon Beach Planning Commission
City of Cannon Beach
PO Box 368
163 E Gower St
Cannon Beach, OR 97110

Subject: Proposed Amendments to Cannon Beach Municipal Code (CBMC)

Dear Commissioners:

Enclosed is an application for amendments to the CBMC providing for (1) a limited process for citizens to request and receive electronic notification of applications and decisions, regardless of whether official notice is required, and (2) expanded public notice for permits concerning hazard areas, environmentally sensitive land, and new roads.

Although these proposed code amendments are of general application,¹ recent events have demonstrated the urgent need for their adoption. In short, the City's community development director (the "Director") conditionally approved the construction of a residence on the inaccessible vacant lot owned by Stanley and Rebecca Robert ("Applicants") that is 100 feet down the steep, unstable slope under the Hemlock Street S-curves (the "Property") without providing notice required under the City code or even making the decision publicly available until after the time for a local appeal had expired. Applicants' development permit was approved on March 21, 2022 (the "Decision"), but withheld from the public until it was arbitrarily placed in a City Council meeting packet on April 8, 2022.²

¹ The proposed amendments are thus legislative, governed by CBMC 17.86.060.

² The meeting agenda did not reference the Decision. It was associated with a discussion item titled "Roberts Driveway Access Easement," a separate proposal made by Applicants.

4854-5730-9471.4

This is particularly troubling for several reasons. First, there is intense public interest in the proposed development of the Property. The application submitted by Applicants on August 3, 2021 (the “2021 Application”) was the latest in a string of applications filed by Applicants,³ all of which have drawn extensive public participation and have been overwhelmingly opposed. This is because the development would, among other things, destroy oceanfront greenspace managed by the City, convert public right-of-way to private use, create a dangerous intersection on perhaps the most precarious stretch of road in the city, and increase landslide hazards for Hemlock Street and surrounding neighbors.

Given the public’s interest, the planning department set up a webpage last fall that is specifically dedicated to the 2021 Application.⁴ The planning department ostensibly placed all supporting materials and communications on the webpage during its review. There are currently 88 application documents and communications.⁵ Yet, the Decision approving the 2021 Application was not and still has not been posted or even referenced on the webpage. Thus, the only effect of the dedicated webpage was to lull the public into wrongly believing that a decision had not been made on the 2021 Application.

Next, our client, Haystack Rock, LLC (“Haystack”), asked the Director multiple times to notify them when a decision was made on the 2021 Application. Haystack’s principals would be particularly injured by the unsafe and unsightly development proposed by Applicants. For decades this family has owned, maintained, and even rebuilt the historic Oswald West Cabin that is adjacent to the Property on two sides, as well as the stretch of undeveloped right-of-way that Applicants are demanding be converted to a private driveway. Providing informal

³ This is the second proposal for the development. Applicants’ first application was submitted in the summer of 2020, which proposed a residence that violated the City’s oceanfront setback code. Accordingly, that application was denied by the planning commission in November 2020—a decision that has been upheld by City Council, the Land Use Board of Appeals (LUBA), and the Oregon Court of Appeals. Although Applicants still seek to reverse the planning commission’s decision by seeking review from the Oregon Supreme Court, they submitted the new 2021 Application as a “backup” to their preferred design.

⁴ <https://www.ci.cannon-beach.or.us/planning/page/alternative-building-permit-submission-behalf-stan-and-becky-roberts-taxlot>.

⁵ This includes the Director’s approval of the related stability beam application on September 21, 2021. The planning commission’s reversal of this decision on December 21, 2021, however, was not added to the webpage.

notification of decisions to this type of interested party is a common courtesy observed by planning staff across the state.⁶ Even in the absence of such courtesy, Haystack was entitled to official mailed notice under the City's zoning code.⁷ It received neither.

The public was also misled by the planning department's inconsistent and contradictory treatment of the 2021 Application. For example, the Director treated the application as a request for a discretionary Type 2 development permit by applying the 120-day deadline imposed by state law and deferring compliance with many criteria as conditions of approval, but then did not follow the notice and other procedural requirements for such a permit.

Finally, the failure to provide the required notice or even make the Decision publicly available is particularly problematic because the 2021 Application is clearly deficient and woefully incomplete. It proposes a new residence and road on an active landslide, as well as a new intersection in the middle of the Hemlock S-curves, but does not include a geotechnical report, traffic study, or grading plan for the development.⁸ The 2021 Application also does not address a clear fatal flaw with the development: the Property has no vehicular access or means of obtaining vehicular access that is safe or lawful.⁹

⁶ In statements to City Council, the Director appeared to take the position that it would be improper for the planning department to notify parties of decisions if official notice is not required. There is no basis, however, for such a contention. In fact, LUBA has advised just the opposite. See *Jebousek v. City of Newport*, 51 Or LUBA 93, 106 (2006) (advising petitioner, on remand, to request notice of future permit approvals, and telling the planning staff that providing "some kind of notice to petitioner and opportunity to comment would be prudent, even if the city is not legally required to do so.").

⁷ Haystack was entitled to notice because the Decision approved grading work, which is described in Applicants' grading permit application, the narrative for the 2021 Application, and other supporting materials. Clearly this extensive cutting and filling work should have triggered notice to Haystack under CBMC 17.88.010(A) which states, "Mailed notice shall be sent to property owners within the following distances * * * 6. Cutting and filling, pursuant to Chapter 17.62: abutting property owners." In Chapter 17.62, the term "fill" is defined broadly as "the deposit of earth material placed by artificial means." The terms "cut" and "fill" are also the only activities described in the code standards for grading work. CBMC 17.62.040.

⁸ Instead, Applicants submitted the 2020 reports and plans that are not for the improvements proposed in the 2021 Application, but for an entirely different road and residence footprint and design.

⁹ The on-grade, private driveway over public right-of-way proposed in the new application violates Oregon law, attempts to take Haystack's private property rights, and contravenes the expert reports submitted by Applicants in 2020 that explicitly state that a road should not be built on the face of the slope.

Because the Decision was withheld from the public until after the local appeal deadline, the planning commission was deprived of its opportunity to correct the Decision. As a result, Haystack was forced to file a petition with LUBA. The City will now be forced to expend staff time and significant public money on attorney fees to participate in an appeal that will ultimately be a waste of resources for all parties.

In order to avoid similar situations in the future, Haystack proposes the following code amendments, which will ensure that the public is informed of important actions by the planning department going forward.

A. New code process for requesting electronic notification of permit decisions.

The first code amendment proposed by Haystack is to create a limited process for interested parties to request and receive electronic notification of applications and decisions concerning the development of a particular property.

This is actually the second time Haystack has proposed a code amendment to address the Director's refusal to provide courtesy notice to concerned citizens. In March 2021, Haystack submitted an application to add a requirement that the planning department notify neighbors of permit decisions when requested, regardless of whether formal notice was required. The Director opposed this code amendment before the planning commission because he felt that it would create too much of an administrative burden. In the staff report and in testimony before the commission, the Director said that this new code provision was not required because the planning department was implementing a new system where applications would have a dedicated webpage on the City's website and "anyone in the community can subscribe to the page or visit the page for the latest postings."¹⁰

Based on this representation, Haystack agreed to drop its proposal and limit the amendments to code concerning new roads in the oceanfront management zones, stream corridors, and wetland overlay areas.

¹⁰ Staff Report for planning commission work session on April 22, 2021.

As stated above, the planning department has implemented a webpage system—but does not keep the application pages accurate and up to date. As demonstrated by the 2021 Application, the planning department does not upload all documents or even the ultimate decisions. Thus, the webpages do more harm than good because people rely on the inaccurate information provided. For example, the public was led to believe that a decision had not been made on the 2021 Application because the Decision was not (and still has not) been put on its dedicated webpage. Without code mandating the webpage process, the public will never be able to rely on the accuracy of the application webpages.

To ensure that Cannon Beach citizens are able to participate in the public process for review of development that could impact them, Haystack proposes the following new code section:

Chapter 17.88 PUBLIC DELIBERATIONS AND HEARINGS

17.88.005 Request for Electronic Notification of Permit Decisions

A. Persons who own property or reside in Cannon Beach may request electronic notification of permit applications and decisions by the city concerning a specific lot, including applications and decisions for development permits, building permits, tree removal permits, and right-of-way permits for driveways or access to the lot. Subject to the conditions below, the planning department shall provide electronic notification of all permit applications and decisions concerning the lot to persons who have made a request therefor, regardless of whether official notice is required.

B. Form of Request.

1. Persons shall request electronic notification of applications and decisions in the manner directed by the planning department. If the planning department has not created a process, the request for notification shall be made by email or mail to the planning director.

2. The person making the request must provide an email address for the notification of applications and decisions.

3. The planning director or designee shall inform the person within 3 working days of receipt of a request that requested electronic notification will be provided.

C. Notification Process.

1. The planning director or designated city employee shall provide electronic notification of applications and decisions concerning the lot to all persons who have requested notification by sending an email to the address provided by the requestor within 2 working days of the submission of the application or issuance of the decision.

2. Notifications of decisions shall include a copy of the written decision.

D. Duration of Request.

1. If an application has been submitted to the city concerning the lot, the request for electronic notification of applications and decisions shall remain valid until the development proposed in all applications concerning the lot is complete or, alternatively, 60 days after all applications have been denied or withdrawn.

2. For lots where an application has not been submitted, a request for electronic notification shall expire 60 days after it has been submitted if no application is subsequently received by the city within that time.

The new section satisfies the two criteria in CBMC 17.86.070(A). First, a process allowing informal notification of permit decisions to be requested by interested parties furthers the Citizen Involvement Policies in the comprehensive plan, especially policies 1 and 4.

1. Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies.

* * *

4. Citizens shall receive responses to their comments to decision-makers, either directly at meetings, in the minutes of the meetings, or by written correspondence.

Citizens cannot be meaningfully involved or learn the official response to earlier comments without knowing that decisions are being made and the substance thereof.

The new code will also “not adversely affect the ability of the city to satisfy land and water use needs.” CBMC 17.86.070(A)(2). This code creates a simple process for the planning department to provide notification of applications and decisions when specifically requested for a particular

property. To address the Director’s earlier fears of administrative burdens, the code requires only electronic notification, and the requests for notification are limited in duration.

In fact, the notification process may save time by curing notice violations in those few situations where the planning department fails to provide required notice. The Decision is a good example. If the planning department had provided Haystack with informal notification of the Decision—as it had repeatedly requested—the department’s failure to comply with the formal notice requirements would have been harmless. Haystack would have appealed the decision to the planning commission as though notice had been received, and the commission would have been able to fix the errant issuance of the permit. But because courtesy notification was not provided, Haystack did not learn of the Decision until after the 14-day appeal window.¹¹

As a result, the City will now be forced to waste time and resources responding to Haystack’s appeal to LUBA, which will certainly remand the Decision to the City with an order to provide notice and allow the local appeal—a wasteful and pointless exercise for all parties involved.

B. Code amendments to expand public notice for permits concerning hazard areas, environmentally sensitive land, and new roads.

To ensure that the public has an opportunity to participate in planning actions that have the highest potential to detrimentally impact the community, Haystack also proposes code amendments that would require the City to provide notice of permit decisions concerning work within hazard areas or environmentally sensitive lands, as well as permits approving the construction of new roads.

These changes are needed in part because of the planning department’s apparent confusion over the distinction between Type 1 and Type 2 development permits, which to a large extent determines when notice is necessary. This is illustrated by the planning department’s review of the 2021 Application. At times, the Director applies the procedure for a Type 1 development

¹¹ The City then denied Haystack’s requests to withdraw and reissue the decision or toll the appeal period, as allowed under Oregon law.

permit, and then in other respects treats the application as a request for a Type 2 permit. For example:

- The Decision states that it approves a Type 1 development permit, but it is issued by the Director, not the “building official” as required for a Type 1 decision.¹²
- The Decision also includes conditions of approval, which are only allowed in a Type 2 decision.¹³
- The Director approved the 2021 Application despite not complying with multiple applicable criteria, instead deferring a showing of compliance for a later time, which is not allowed for a Type 1 permit.¹⁴
- Yet, despite the above, the Director ignored all of the Type 2 requirements, including public notice and the right to a de novo appeal.

This confusion extended to the planning department’s application of related state law. Although the development permit was determined to be Type 1, reviewed under only objective criteria, the Director applied the state’s 120-day deadline and goalpost rule (i.e., allowing the application of outdated standards), which only apply to applications requesting discretionary

¹² CBMC 17.92.010(C)(1): “The building official shall issue a development permit * * *.”

¹³ CBMC 17.92.010(C)(2)(a) states that “[t]he [Type 2] development permit application shall be reviewed by planning department against the applicable standards contained in this title and the application shall either be approved, *approved with conditions*, or denied.” (Emphasis added.) There is no option for a conditional approval under CBMC 17.92.010(C)(1).

¹⁴ CBMC 17.92.010(C)(1): “The building official shall issue a development permit to the applicant if the building official finds that the work * * * conform[s] to the requirements of this title, and any conditions imposed by a reviewing authority.” There is no option for a deferral of compliance with the zoning code or conditions improved during an earlier application review.

permit approval.¹⁵ Then, in contradictory fashion, the planning department did not provide the notice and other procedures required for discretionary permits.¹⁶

To ensure that confusion over the type of permit at issue does not cause future violations of notice requirements for development that could have a significant, detrimental impacts on the community, Haystack proposes the following changes.

Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS

17.50.030 Procedure.

The requirements of this section shall be met prior to the issuance of a building or development permit. The city may require that the requirements of this section be met in conjunction with a request for the approval of a setback reduction, variance, conditional use, design review request, preliminary subdivision proposal, major partition request, minor partition request and preliminary planned development request. Notice of decisions approving applications subject to this chapter shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.

.....

Chapter 17.62 GRADING, EROSION AND SEDIMENTATION CONTROL

17.62.030 Grading and erosion control permit.

A. Development Permit Required.

1. Persons proposing to clear, grade, excavate or fill land (regulated activities) shall obtain a development permit as prescribed by this chapter unless exempted by Section 17.62.040. A development permit is required where:

¹⁵ The 120-day deadline in ORS 227.178(1) and goalpost rule in ORS 227.178(3) only apply to “permits” as defined in ORS 227.160(2): the “discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation.” (Emphasis added.)

¹⁶ ORS 227.175 provides that the local review of “permits” must observe certain quasi-judicial procedures, such as notice and opportunity for de novo hearings.

a. The proposed clearing, grading, filling, or excavation is located within one hundred feet of a stream, watercourse or wetland; or

b. The proposed clearing, grading, filling, or excavation is located more than one hundred feet from a stream or watercourse or wetland and the affected area exceeds two hundred fifty square feet; or

c. The proposed volume of excavation, fill or any combination of excavation and fill exceeds ten cubic yards in a calendar year.

2. A development permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(1). [However, notice of decisions approving the development permit shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.](#)

3. A development permit for regulated activities in conjunction with a subdivision or partition shall be reviewed in conjunction with construction drawings as required by Section 16.04.260.

4. A development permit for regulated activities not in conjunction with building permit, subdivision, or partition shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(2). ~~However, notice to adjacent property owners, as specified by Section 17.92.010(C)(2)(d), is not required.~~

B. Exceptions. The following are exempt from the requirements of Section 17.62.030(A):

* * *

3. The city may require that the sedimentation and erosion control plan be prepared by a registered civil engineer where the disturbed area is greater than one acre in size, or the disturbed area has an average slope of twenty percent or greater. (Ord. 98-5 § 1)

.....

Chapter 12.36 PUBLIC RIGHTS-OF-WAY

12.36.030 Issuance of permits.

A. A permit shall be obtained from the public works department before planting, removing or otherwise significantly altering any tree or shrub in the street right-of-way or placing or removing any improvement in the street right-of-way.

B. Procedure for new street improvements.

1. Notice of applications for a new road, alley, bridge, driveway, or other type of street improvement that has 30 feet or more of linear length in public right-of-way shall be mailed to property owners within three hundred feet of the development site within 14 days of the application and not less than 20 days before a decision is made on the application.

2. The notice shall include the information specified in sections 17.88.030(A), (C), (D), (E), (G), and (I). The notice shall also include a statement that persons are invited to submit information within 20 days relevant to the standards below, giving reasons why the application should or should not be approved or proposing modifications the person believes are necessary for approval according to the applicable standards.

3. Notice of a decision approving a right-of-way application subject to this subsection shall be provided to property owners within three hundred feet of the development site and other persons who commented on the proposed right-of-way permit in accordance with the provisions of Section 17.88.130.

4. For purposes of this subsection, a street improvement is new if vehicular access did not previously exist at the location, it was blocked for a period of one year, or an unimproved right-of-way would be improved to provide vehicular access. Paving, maintenance, and minor alterations of an existing street is not new access.

~~B.~~ C. The following criteria shall be considered as part of the process of reviewing an application for a permit:

* * *

~~F.~~ G. Nothing in the ordinance codified in this chapter shall be construed to supersede or replace the requirements of Section 17.70.020 of Chapter 17.70,

Tree Removal, which requires a permit from the city prior to any tree removal.
(Ord. 93-20 § 4)

These proposed changes meet both criteria in CBMC 17.86.070(A). The limited expansion of notice for work in geologic hazard zones, grading in sensitive areas, and construction of new street improvements advance several plan provisions. These include Citizen Involvement Policy 1,¹⁷ General Development policies related to geologic hazards (4, 5, 9, and 12), and all of the Geologic Hazards policies. The applicability and scope of these notice requirements are narrow and will “not adversely affect the ability of the city to satisfy land and water use needs.” CBMC 17.86.070(A)(2). Rather, providing notice and allowing participation by the public will ensure that this type of development will be regulated so that it does not negatively impact the existing and potential land and water in the surrounding areas.

C. Conclusion.

The Director’s failure to provide notice, place the Decision on the application webpage, or otherwise make it publicly available undermined significant public interests and prevented the planning commission from correcting the errant Decision. These circumstances evidence a clear and urgent need for the code amendments proposed above.

Very truly yours,



William L. Rasmussen

cc: Jeff Adams (via email)

¹⁷ “Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies.”

EXHIBIT 1 – PROPOSED CODE AMENDMENTS

Cannon Beach, Oregon Municipal Code Title 17 ZONING

Chapter 17.88 PUBLIC DELIBERATIONS AND HEARINGS

17.88.005 Request for Electronic Notification of Permit Decisions

A. Persons who own property or reside in Cannon Beach may request electronic notification of permit applications and decisions by the city concerning a specific lot, including applications and decisions for development permits, building permits, tree removal permits, and right-of-way permits for driveways or access to the lot. Subject to the conditions below, the planning department shall provide electronic notification of all permit applications and decisions concerning the lot to persons who have made a request therefor, regardless of whether official notice is required.

B. Form of Request.

1. Persons shall request electronic notification of applications and decisions in the manner directed by the planning department. If the planning department has not created a process, the request for notification shall be made by email or mail to the planning director.

2. The person making the request must provide an email address for the notification of applications and decisions.

3. The planning director or designee shall inform the person within 3 working days of receipt of a request that requested electronic notification will be provided.

C. Notification Process.

1. The planning director or designated city employee shall provide electronic notification of applications and decisions concerning the lot to all persons who have requested notification by sending an email to the address provided by the requestor within 2 working days of the submission of the application or issuance of the decision.

2. Notifications of decisions shall include a copy of the written decision.

D. Duration of Request.

1. If an application has been submitted to the city concerning the lot, the request for electronic notification of applications and decisions shall remain valid until the development proposed in all applications concerning the lot is complete or, alternatively, 60 days after all applications have been denied or withdrawn.

2. For lots where an application has not been submitted, a request for electronic notification shall expire 60 days after it has been submitted if no application is subsequently received by the city within that time.

Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS

17.50.010 Purpose.

The purpose of this chapter is to minimize building hazards and threats to life and property that may be created by landslides, coastal erosion, weak foundation soils and other hazards as identified and mapped by the city. This purpose is achieved by basing city decisions on accurate geologic and soils information prepared by a registered geologist and requiring the application of engineering principles in any construction that occurs where such studies indicate potential hazards.

17.50.020 Applicability.

The following are potential geologic hazard areas to which the standards of this section apply:

- A. In any area with an average slope of twenty percent or greater;
- B. In areas of potential landslide hazard, as identified in the city master hazards map and comprehensive plan;
- C. In areas abutting the oceanshore, or velocity zone flood hazard, as identified on the city's FIRM maps;
- D. In areas identified by the soil survey of Clatsop County, Oregon as containing weak foundation soils; or
- E. In open sand areas regardless of the type of dune or its present stability, and conditionally stable dunes not located in a velocity flood hazard zone, as identified on the city's FIRM maps, which in the view of the building official have the potential for wind erosion or other damage.

17.50.030 Procedure.

The requirements of this section shall be met prior to the issuance of a building [or development](#) permit. The city may require that the requirements of this section be met in conjunction with a request for the approval of a setback reduction, variance, conditional use, design review request, preliminary subdivision proposal, major partition request, minor partition request and preliminary planned development request. [Notice of decisions approving applications subject to this chapter shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.](#)

Chapter 17.62 GRADING, EROSION AND SEDIMENTATION CONTROL

17.62.030 Grading and erosion control permit.

A. Development Permit Required.

1. Persons proposing to clear, grade, excavate or fill land (regulated activities) shall obtain a development permit as prescribed by this chapter unless exempted by Section 17.62.040. A development permit is required where:

a. The proposed clearing, grading, filling, or excavation is located within one hundred feet of a stream, watercourse or wetland; or

b. The proposed clearing, grading, filling, or excavation is located more than one hundred feet from a stream or watercourse or wetland and the affected area exceeds two hundred fifty square feet; or

c. The proposed volume of excavation, fill or any combination of excavation and fill exceeds ten cubic yards in a calendar year.

2. A development permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(1). *However, notice of decisions approving the development permit shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.*

3. A development permit for regulated activities in conjunction with a subdivision or partition shall be reviewed in conjunction with construction drawings as required by Section 16.04.260.

4. A development permit for regulated activities not in conjunction with building permit, subdivision, or partition shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(2). ~~However, notice to adjacent property owners, as specified by Section 17.92.010(C)(2)(d), is not required.~~

B. Exceptions. The following are exempt from the requirements of Section 17.62.030(A):

1. Residential landscaping and gardening activities up to two thousand square feet in area;

2. Forest management undertaken pursuant to Section 17.80.170;

3. Construction which disturbs five acres or more. Such activities are regulated by the Oregon Department of Environmental Quality through its storm water program.

C. Information Required for a Development Permit.

1. An application for a development permit for regulated activities subject to the requirements of this chapter shall include the following:

a. A site plan, drawn to an appropriate scale with sufficient dimensions, showing the property line locations, roads, areas where clearing, grading, excavation or filling is to occur, the area where existing vegetative cover will be retained, the location of any streams or wetland areas on or immediately adjacent to the property, the general direction of slopes, the location of the proposed development, and the location of soil stock piles, if any;

b. The type and location of proposed erosion and sedimentation control measures.

2. The city may require a grading plan prepared by a registered civil engineer where the disturbed area has an average slope of twenty percent or greater, the disturbed area is located in a geologic hazard area, or is part of a subdivision or partition. Such a grading plan shall include the following additional information:

a. Existing and proposed contours of the property, at two-foot contour intervals;

b. Location of existing structures and buildings, including those within twenty-five feet of the development site on adjacent property;

c. Design details for proposed retaining walls;

d. The direction of drainage flow and detailed plans and locations of all surface and subsurface drainage devices to be constructed.

3. The city may require that the sedimentation and erosion control plan be prepared by a registered civil engineer where the disturbed area is greater than one acre in size, or the disturbed area has an average slope of twenty percent or greater. (Ord. 98-5 § 1)

Cannon Beach, Oregon Municipal Code Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.36 PUBLIC RIGHTS-OF-WAY

12.36.030 Issuance of permits.

A. A permit shall be obtained from the public works department before planting, removing or otherwise significantly altering any tree or shrub in the street right-of-way or placing or removing any improvement in the street right-of-way.

B. Procedure for new street improvements.

1. Notice of applications for a new road, alley, bridge, driveway, or other type of street improvement that has 30 feet or more of linear length in public right-of-way shall be mailed to property owners within three hundred feet of the development site within 14 days of the application and not less than 20 days before a decision is made on the application.

2. The notice shall include the information specified in sections 17.88.030(A), (C), (D), (E), (G), and (I). The notice shall also include a statement that persons are invited to submit information within 20 days relevant to the standards below giving reasons why the application should or should not be approved or proposing modifications the person believes are necessary for approval according to the applicable standards.

3. Notice of a decision approving a right-of-way application subject to this subsection shall be provided to property owners within three hundred feet of the development site and other persons who commented on the proposed right-of-way permit in accordance with the provisions of Section 17.88.130.

4. For purposes of this subsection, a street improvement is new if vehicular access did not previously exist at the location, it was blocked for a period of one year, or an unimproved right-of-way would be improved to provide vehicular access. Paving, maintenance, and minor alterations of an existing street is not new access.

~~B.~~ C. The following criteria shall be considered as part of the process of reviewing an application for a permit:

1. Maintains public safety;
2. Maintains adequate access for public use of the street right-of-way;
3. Maintains or improves the general appearance of the area;
4. Does not adversely affect the drainage or cause erosion of the adjacent property.

All of these criteria must be met in order for the public works department to issue a permit.

~~C~~. D. Upon issuance of a permit, property owners may plant trees or shrubs or place improvements in the public right-of-way abutting their property so long as the selection, location and planting of such trees or shrubs or the placing of an improvement is in accordance with the permit.

~~D~~. E. Nothing in the ordinance codified in this chapter shall be construed to prohibit a property owner from watering or fertilizing trees or shrubs or mowing other vegetation in the public right-of-way abutting his/her property.

~~E~~. F. Any tree, shrub or other object placed in the public right-of-way not in compliance with the provisions of the ordinance codified in this chapter shall be removed at the expense of the person who planted it or placed it there. The city shall direct the abutting property owner to do so under the provisions of Sections 8.04.170—8.04.230 of the Cannon Beach Municipal Code.

~~F~~. G. Nothing in the ordinance codified in this chapter shall be construed to supersede or replace the requirements of Section 17.70.020 of Chapter 17.70, Tree Removal, which requires a permit from the city prior to any tree removal. (Ord. 93-20 § 4)



Cannon Beach Planning Commission

Work Session

Staff Report:

HAYSTACK ROCK LLC PROPOSED ZONING ORDINANCE AMENDMENTS TO EXTEND PUBLIC NOTICE

Agenda Date: July 28, 2022

Prepared By: Jeffrey S. Adams, PhD

Background

Will Rasmussen, on behalf of Haystack Rock LLC, property owners of 1981 Pacific Ave., is requesting an amendment of the notice requirements of the Cannon Beach Municipal Code. The applicant first approached the city last year with an application seeking to extend surrounding property owner notice mainly with regards to development permits. The applicant worked with staff to offer text amendments that would limit the changes to only those access extensions of public rights-of-way in the oceanfront management zones, stream corridors and wetland overlay areas, which was approved and adopted August 3, 2021.

This application proposes an email notification process for all requested properties for all permit applications and decisions concerning a lot, regardless of whether official notice is required. The proposed amendment would allow any property owner or anyone who resides in the city to request notification for any property in the city, with a duration of 60 days.

Summary

Upon receipt of Mr. Rasmussen's request for amendments to public notice last year, the City of Cannon Beach worked with the applicant to update the notice requirements for any access extensions into protected areas, such as wetlands, stream corridors and oceanfront management areas. In the past four years the City of Cannon Beach has added electronic permitting, which allows any citizen to research building and planning permits for any property in the city through a property search, updated its public notice procedures and posts all publicly noticed land use actions to the City's website and provided scanned historic files of each property through its Geographic Information System.

The City has also initiated a comprehensive Code Audit process, which continues to meet to review the Cannon Beach Development Ordinances against the Cannon Beach Comprehensive Plan. The City has approved what has been called Track One changes, limiting lot combinations and repealing the Planned Development chapter and is drafting Track Two changes that deal with limiting building size in proportion to lots, as well as, other requested changes.

For Staff to be required to track and inform every citizen for an unlimited amount of requests for an unlimited number of properties across the City of Cannon Beach is not only impractical but would likely expose the City to even more legal jeopardy than what currently exists. This doesn't even mention the staffing burden that it would require. Currently the City of Cannon Beach is averaging over 70 Public Records Requests per year, which

already requires increasing amounts of staff time to process, for the City to pass more monitoring requirements on each property, without considering the staffing, resources and budgeting impacts, would be unwise.

The Cannon Beach Code Audit process will provide ample opportunity to review processing and public notice procedures and requirements as a comprehensive administrative system.

Recommendation

Staff recommends that this application be reviewed under the Code Audit process.

Attachments

A: Zoning Ordinance Text Amendment Application, with attached letter, from Will Rasmussen, of Miller, Nash, Graham & Dunn LLP, on behalf of Haystack Rock, LLC, dated May 24, received May 24, 2022;



Cannon Beach Planning Commission

Staff Report:

PUBLIC HEARING AND CONSIDERATION OF CU 22-04, MICHAEL MORGAN, APPLICANT, ON BEHALF OF MARILYN EPSTEIN, REQUESTS THE INSTALLATION OF A NON-STRUCTURAL SHORELINE STABILIZATION FOR THE PURPOSE OF EROSION CONTROL. THE PROPERTY IS LOCATED AT 4007 OCEAN AVE. (TAXLOT# 41006BC06300) AND IS IN THE RESIDENTIAL MODERATE DENSITY (R1) ZONING DISTRICT. IT IS ALSO IN THE OCEANFRONT MANAGEMENT OVERLAY (OM) ZONE. THE CONDITIONAL USE REQUEST WILL BE REVIEWED AGAINST THE CRITERIA OF CANNON BEACH MUNICIPAL CODE, SECTIONS SECTION 17.42.060, STANDARDS FOR SHORELINE STABILIZATION IN THE OCEANFRONT MANAGEMENT OVERLAY ZONE; AND 17.80, CONDITIONAL USES.

Agenda Date: October 27, 2022

Prepared By: Robert St. Clair

GENERAL INFORMATION

NOTICE

Public notice for this October 27, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on October 7, 2022;
- B. Notice was mailed on October 7, 2022 to surrounding landowners within 250' of the exterior boundaries of the property.

DISCLOSURES

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on September 28, 2022 unless otherwise noted.

"A" Exhibits – Application Materials

- A-1** Conditional use application #22-04, including proposed findings and photographs showing site conditions of the location of the proposed stabilization project, applicant submitted;
- A-2** Corrected geotechnical report, received October 17, 2022;

"B" Exhibits – Agency Comments

- B-1** November 16, 2021 email from Eric Crum of Oregon Parks and Recreation Department regarding state requirements for shoreline stabilization improvement projects at 116 N. Laurel St.

“C” Exhibits – Cannon Beach Supplements

C-1 October 10, 2022 staff site visit photos.

C-2 June 15, 2022 aerial photo of subject property.

“D” Exhibits – Public Comment

None received as of this writing;

SUMMARY & BACKGROUND

The applicant, Michael Morgan, on behalf of property owner Marilyn Epstein, requests a non-structural shoreline stabilization to prevent erosion from encroaching onto 4007 Ocean Ave., as shown on the project location map included with this report. The property is in the Residential Moderate Density (R1) zone as well as the Oceanfront Management (OM) overlay zone. The current request is evaluated against applicable standards in Cannon Beach Municipal Code (CBMC) Chapter 17.42.060.A.5, Specific Standards – Nonstructural Shoreline Stabilization Program; the conditional use permit criteria in Chapter 17.80; and applicable requirements of the Comprehensive Plan.

The application states that the property has experienced erosion over the previous two to three years resulting from king tides and seasonal storm surge events. A geotechnical report prepared by Horning Geosciences indicates that shoreline erosion on the property occurred in conjunction with a storm surge in January 2022. The proposal is to use a cobble berm with sand fill and vegetation similar to those approved at other properties in Cannon Beach using a method that has been suggested by Oregon Parks and Recreation Department. The berm would be approximately 50 linear feet along the property’s ocean-facing property line and consist of 4-to-8-inch round cobbles that would then be covered with sand and planted with beach grass and willows. This style of revetment is designed to absorb and dissipate incoming wave energy while maintaining a more natural appearance than rip-rap or a seawall.

Currently the proposed project location consists of an escarpment with woody vegetation with an area of low-lying cobbles at the base. There is no shoreline armoring in immediately adjacent to the subject property.

Installation of non-structural shoreline stabilizations in the Oceanfront Management overlay zone is permitted under CBMC 17.42.030.C.1 subject to the provisions of Section 17.80.230. Approval requirements are excerpted in this staff report.

Applicable Criteria

The Cannon Beach Municipal Code requires all non-structural shoreline stabilizations apply for a conditional use permit in the RL and Oceanfront Management zoning districts that make up the subject property.

Cannon Beach Municipal Code defines shoreline stabilizations structures as:

17.04.520 Shoreland stabilization.

“Shoreland stabilization” means the protection of the banks of tidal or inter-tidal streams, rivers, estuarine waters and the oceanfront by vegetative or structural means.

Oceanfront Management (OM) Zone Requirements

17.42.020.A.2.B Relationship to the Underlying Zone.

Uses and activities within the OM zone are subject to the provisions and standards of the underlying zone and this chapter. Where the provisions of this zone and the underlying zone conflict, the provisions of this zone shall apply.

Staff Comment: The underlying zone is Residential Moderate Density (R1) and shoreline stabilizations are a conditionally permitted use in Section 17.12.030.D.

17.42.030.C Uses Permitted in the OM Zone

C. *For lots or right-of-way that consist of the beach, active dunes, or other foredunes which are conditionally stable and that are subject to wave overtopping or ocean undercutting, or interdune areas that are subject to ocean flooding the following uses and activities are subject to the provision of Chapter 17.80, Conditional Uses:*

1. *Shoreline stabilization, subject to the provisions of Section 17.80.230;*
2. *Nonstructural shoreline stabilization program, subject to the provisions of Section 17.42.060(A)(5);*
3. *Preservation grading, subject to the provisions of Section 17.42.060(A)(3);*
4. *Remedial dune grading, subject to the provisions of Section 17.42.060(A)(4).*
5. *A new road, driveway approach, or other access that has fifty feet or more of linear length in OM Zone right-of-way, or in right-of-way within one hundred feet of a stream, watercourse or wetland. Access is new if vehicular access did not previously exist at the location, it was blocked for a period of one year, or an unimproved right-of-way would be improved to provide vehicular access. Alteration of an existing access is not new access.*

Staff Comment: Conditional approval of shoreline stabilization is permitted on lots that consist of beach, active dunes, or other foredunes that are conditionally stable and that are subject to wave overtopping or ocean undercutting; or interdune areas that are subject to ocean flooding. The applicant's corrected geotechnical review indicates that the property is impacted by high surf resulting from seasonal storm events and king tides. The toe of the dune is approximately 16 feet NGVD while the western yard is 32 feet NAVD, the base flood elevation is approximately 27 feet NAVD. The review indicates that unchecked erosion may eventually expose the dwelling to flood conditions.

During a site visit on October 10th, staff observed that a steep escarpment covered in woody vegetation with a low-lying cobble area at its toe, these photos can be seen in Exhibit C-1. Aerial imagery, in Exhibit C-2, from June 2022 shows an apparent reduction in the toe area of the beach facing slope, especially in relation to properties to the south. These photographic exhibits are included with this report.

The application provides a description of a non-structural shoreline stabilization project which would utilize up to 50 cubic yards of cobble, 10 cubic yards of sand, and vegetation for stability. State regulations allow for up to a total of 50 cubic yards of material to be placed without a permit, while projects that exceed that amount are required to obtain a shoreline alteration permit from Oregon Parks and Recreation Department. As per condition of approval #2 the proposal conditionally meets the criteria of items 1 and 2 detailed above.

17.42.060.A.5 Nonstructural Shoreline Stabilization

5. *Nonstructural Shoreline Stabilization Program.*

- a. *The program is prepared by a qualified individual approved by the city. The program shall be based on an analysis of the area subject to accretion and/or erosion. The area selected for management shall be found, based on the analysis, to be of sufficient size to successfully achieve the program objectives.*
- b. *The program shall include specifications on how identified activities are to be undertaken. The specifications should address such elements as: the proposed type of vegetation to be planted or removed; the distribution, required fertilization and maintenance of vegetation to be planted; the location of any sand fences; and the timing of the elements of the proposed program.*

- c. *Fire-resistant species are the preferred stabilizing vegetation within twenty-five feet of existing dwellings or structures. Fire-resistant vegetation should only be planted when the foreslope and crest of the dune are adequately stabilized to prevent significant accumulation of windblown sand.*
- d. *Where the placement of sand fences is proposed, evidence shall be provided that the planting of vegetation alone will not achieve the stated purpose. Fencing may be permitted on a temporary basis to protect vegetation that is being planted as part of the program, or to control the effects of pedestrian beach access on adjacent areas.*
- e. *The affected property owners shall establish a mechanism that provides for the on-going management of the proposed program.*
- f. *The impact of the program shall be monitored. For multiyear programs, an annual report detailing the effects of the program during the previous year shall be presented to the planning commission. The report shall include recommendations for program modification. For a one-year program, a final report detailing the effects of the program shall be presented to the planning commission.*
- g. *Areas that accrete as the result of a stabilization program will not form the basis for reestablishing the location of the building line specified by Section 17.42.050(B)(3).*

Staff Comment: According to Clatsop County Assessor's Records the house on the property was constructed in 1940 and may be eligible to eventually apply for rip-rap or other structural stabilizations, however any application for a structural stabilization must first demonstrate that other, lower impact methods of shoreline stabilization have been attempted and failed. Municipal records, site conditions, and the application materials do not indicate that structural stabilization has been attempted. The "qualified individual" as outlined by the criteria does not give suggested qualifications or criteria for such a determination, however the applicant has completed similar projects elsewhere in the city.

The project will utilize willows (*Salix hookerii*) and beach grass plantings that would be installed on the sand berm in January or February. No design schematic has been submitted with the application and 17.42.060.A.5.b does not require one. However, the volume and type of materials to be used have been specified as per this section. Exhibit C-2 is an aerial photo of the work site that has been marked to show the approximate location of where the cobble berm and willow plantings will be placed. Installation of the berm would be carried out by the use of an excavator and dump trucks that would access the beach at the Tolovana Wayside.

The site should be monitored yearly, for a period of five years, by the applicant and a report provided to the City as documentation should be a condition of approval. This monitoring may be used to monitor the performance and longevity of these types of stabilizations. The proposal conditionally meets the criteria detailed above.

Conditional Uses for Shoreline Stabilization

17.80.110 Conditional Use Approval Standards

Before a conditional use is approved, findings will be made that the use will comply with the following standards:

- A. *A demand exists for the use at the proposed location. Several factors which should be considered in determining whether or not this demand exists include: accessibility for users (such as customers and employees), availability of similar existing uses, availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitably zoned sites for the use.*
- B. *The use will not create excessive traffic congestion on nearby streets or overburden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.*

- C. *The site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities or other facilities which are required by city ordinances or desired by the applicant.*
- D. *The topography, soils and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils will be eliminated or reduced to the extent necessary for avoiding hazardous situations.*
- E. *An adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths or other transportation facilities required by city ordinances or desired by the applicant. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements.*
- F. *The site and building design ensure that the use will be compatible with the surrounding area.*

Staff Comment: The application indicates that the project is necessary to counter the rate of erosion being seen at the subject property as well as that being observed on a larger scale in the Tolovana area. A geotechnical review letter prepared by Tom Horning is included with the application materials which broadly addresses shoreline erosion in the North Coast area and the Tolovana neighborhood of Cannon Beach generally. Unlike an engineered stabilization structure such as rip-rap or a seawall, a detailed geotechnical analysis is not required by the Municipal Code for non-structural stabilizations. As per the Horning letter, the current topography consists of an exposed Marine Terrace formation and the placement of dynamic revetment such as the one proposed will establish a gentler slope gradient between the subject property and the beach and may provide a level of protection from seasonal erosion that the formation does not currently possess.

Access to the project site would be from Tolovana Wayside at Warren Way, no trucks or equipment would be on Ocean Ave. or Brailier St. at any time. The application states that a Drive on Beach permit from Oregon Parks and Recreation Department will be obtained prior commencing work, condition of approval #1 requires the applicant to obtain all required state permitting including a drive-on-beach permit prior to the start of work. The proposal meets the criteria detailed above.

17.80.230.C Shoreline Stabilization Standards

The city's review of beachfront protective structures, both landward and seaward of the Oregon Coordinate Line, shall be coordinated with the Oregon Parks and Recreation Department. The city's review of shoreline stabilization along Ecola Creek Estuary shall be coordinated with the U.S. Army Corps of Engineers and the Oregon Division of State Lands.

Staff Comment: Due to the project's location on the border of the state vegetation line, the project will require coordination with the Oregon Parks and Recreation Department. The application states that this permit will be obtained prior to commencement of work. State requirements, as found in Exhibit B-1, include the following:

1. Allowance to place up to 50 cubic yards of natural material on the ocean shore through a free drive on the beach permit. Natural materials are defined as driftwood, clean sand, and river cobbles four to eight inches in size. Any imported sand must be clean and free from any contaminant or seed. Cobble cannot be quarried or angular rock and must match, as closely as possible, naturally occurring cobble present at the work site location.
2. Any proposed dynamic revetment such jute matting or planting, using more than 50 cubic yards of sand, or building a cobble revetment project using more than 50 cubic yards of material requires the approval of a Shoreline Alteration Permit from Oregon Parks and Recreation Department.

The project describes the placement of up to 50 cubic yards of cobble and an additional 10 cubic yards of sand fill for the purpose of establishing vegetation. The application does not describe the source of material to be used as fill in the project, only that it would be from "upland sources."

Oregon Administrative Rules 736-020-0030(9)(b) states that the Oregon Parks and Recreation Department may waive permitting requirements for shoreline stabilization improvements if the project meets the following criteria:

- a) The alteration would have no identifiable construction value;
- b) The alteration involves the removal or fill of less than 50 cubic yards of material on the ocean shore;
- c) The alteration is an incident of an individual or group recreational activity; and
- d) The alteration utilizes materials naturally available on the ocean shore.
- e) The alteration consists of returning sand or other natural product to the ocean shore, when necessary to clear public access routes, protect buildings from sand or debris inundation, or protect other public or private infrastructure.

Assuming the project's total amount of material to be placed, including both cobble and sand, is no more than 50 cubic yards a Conditional Use Permit will be sufficient for this project. If the total volume of material to be placed exceeds 50 cubic yards it will be necessary for the applicant to obtain a shoreline alteration permit from Oregon Parks and Recreation Department in addition to a Conditional Use Permit as detailed in condition of approval #2

17.80.230.D.1 Shoreline stabilization priorities

1. The priorities for shoreline stabilization for erosion control are, from highest to lowest:

- a. Proper maintenance of existing riparian vegetation;*
- b. Planting of riparian vegetation;*
- c. Vegetated rip-rap;*
- d. Nonvegetated rip-rap;*
- e. Bulkhead or seawall.*

Staff Comment: The applicant's proposal is described as a cobble berm consisting of four-to-eight inch round cobbles with imported sand fill that would then be planted with willow stakes on 18 inch centers to provide vegetative stabilization. This type of dynamic revetment is preferred by Oregon Parks and Recreation Department. The proposal meets the criteria above.

17.80.230.E.1 Qualifications for Beachfront Protection

1. Structural shoreline stabilization methods for beachfront protection shall be permitted only if:

- a. There is a critical need to protect property that is threatened by erosion hazard;*
- b. Impacts on adjacent property are minimized;*
- c. Visual impacts are minimized;*
- d. Access to the beach is maintained;*
- e. Long-term or recurring costs to the public are avoided; and*
- f. Riparian vegetation is preserved as much as possible.*

Staff Comment: Although no statement from an engineer has been provided, application materials indicate that structures on the property may eventually be threatened in the future if the rate of erosion continues unchecked. The project would allow for the dune to be returned to a more natural state, visually consistent with surrounding properties. There are no anticipated impacts to beach access or recurring costs to the public, and the planting of willows should provide stability and reduce the rate of erosion. The proposal meets the criteria above.

17.80.230.I Minimum Level of Protection Limitation

The shoreline protection structure shall be the minimum necessary to provide the level of protection required.

Staff Comment: The project as described does not appear to exceed the original footprint of the beach facing yard and natural dune area. The proposal meets this criteria.

Staff Recommendation

Staff recommends approval of this Conditional Use Permit for nonstructural shoreline stabilization subject to the conditions outlined in the decision below.

Procedural Requirements

This application is subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete. It was submitted September 28, 2022; and determined to be complete on September 29, 2022. Based on this, the City must make a final decision before January 27, 2023.

The Planning Commission's October 27th meeting will be the first evidentiary hearing on this request. ORS 197.763(6) allows any party to request a continuance. If such a request is made, it should be granted. The Planning Commission's next regularly scheduled hearing date is Tuesday, November 22, 2022.

DECISION, CONDITIONS AND FINDINGS

Motion: Having considered the evidence in the record, based on a motion from Commissioner NAME, seconded by Commissioner NAME, the Planning Commission moves to (approve/approve with conditions/or deny) the Michael Morgan application, on behalf of Marilyn Epstein, the conditional use request for the placement of a non-structural shoreline stabilization, application **CU# 22-04**, as discussed at this public meeting (subject to the following conditions):

1. The applicant shall coordinate this project with Oregon Parks and Recreation Department and obtain all permits required for this work including beach access for vehicles.
2. The applicant shall obtain a shoreline alteration permit from Oregon Parks and Recreation Department if more than a total of 50 cubic yards of material is to be used.
3. Planning Commission provides preferred vegetation planting guidance as per Foredune Management Plan 2018 revision Vegetation Planting Specifications language (pg. 18).
4. Yearly monitoring of the area, by photographic documentation, for a period of five years, provided to the City by the applicant.

Site Location Map

Aerial Imagery Dated June 2022 – Source: City of Cannon Beach & CREST





CITY OF CANNON BEACH

A-1

City of Cannon Beach
Finance Department

SEP 28 2022

Received

CONDITIONAL USE APPLICATION

Please fill out this form completely. Please type or print.

Applicant Name: Mike Morgan
Email Address: hminc@pacifier.com
Mailing Address: PO Box 132 Cannon Beach, OR 97110

Telephone: 503 739 0102

Property-Owner Name: Marilyn Epstein
(if other than applicant)

Mailing Address: 2323 SW Park Av. #1001 Portland, Or 97205

Telephone: 503 860 6145

Property Location: 4007 Ocean Ave

Map No.: 4 10 6BC Tax Lot No.: 6300

CONDITIONAL USE REQUEST:

1. Description of the proposal.

See attached findings of fact
2. Justification of the conditional use request. Explain how the request meets each of the following criteria for granting a conditional use.
 - a. Explain how a demand exists for the use at the proposed location. Several factors which should be considered include: accessibility for users (such as customers and employees); availability of similar existing uses; availability of other appropriately zoned sites, particularly those not requiring conditional use approval; and the desirability of other suitably zoned sites for the use.
 - b. Explain in what way(s) the proposed use will not create traffic congestion on nearby streets or over-burden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.
 - c. Show that the site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities, or other facilities which are required by City Ordinances or desired by the applicant.

The erosion is causing significant loss of the front yard of the property threatening a very old Sitka Spruce tree.

- d. Show that the topography, soils, and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils must be shown to be eliminated or reduced to the extent necessary for avoiding hazardous situations.
- e. Explain in what way an adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths or other transportation facilities required by City ordinances or desired by the applicant. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements.
- f. Explain how the proposed site and building design will be compatible with the surrounding area.

Use extra sheets, if necessary, for answering the above questions. Attach a scale-drawing showing the dimensions of the property, adjacent street(s), dimensions of existing structure, and dimensions of proposed development. Application Fee: \$750.00 Applicant Signature: _____ Date: _____
Property Owner Signature: see attached _____ Date: _____
If the applicant is other than the owner, the owner hereby grants permission for the applicant to act on his/her behalf. Please attach the name, address, phone number, and signature of any additional property owners. For Staff Use Only: Date Received: By: Fee Paid: Receipt No.: (Last revised March 2021)

City of Cannon Beach
Finance Department

SEP 28 2022

PAID

Mike

From: Marilyn Epstein <mkepstein@comcast.net>
Sent: Sunday, August 21, 2022 3:53 PM
To: mikeattallwoods@gmail.com
Subject: Page 1 of 2



CITY OF CANNON BEACH

CONDITIONAL USE APPLICATION

Please fill out this form completely. Please type or print.

Applicant Name: MARILYN EPSTEIN
Email Address: MKEPSTEIN@COMCAST.NET
Mailing Address: 3323 S.W. PARK PL. #100
PORTLAND, OR 97205
Telephone: 503-366-6145
Property Owner Name: MARILYN EPSTEIN (same)
(if other than applicant) ↓
Mailing Address: _____
Telephone: _____
Property Location: 4107 OCEAN, CANNON BEACH, OR 97110
(street address)
Map No. 4106BC Tax Lot No. 6300 ←

CONDITIONAL USE REQUEST:

1. Description of the proposal.
2. Justification of the conditional use request. Explain how the request meets each of the following criteria for granting a conditional use:
 - a. Explain how a demand exists for the use at the proposed location. Several factors which should be considered include: accessibility for users (such as customers and employees); availability of similar existing uses; availability of other appropriately zoned sites, particularly those not requiring conditional use approval; and the desirability of other suitably zoned sites for the use.
 - b. Explain in what way(s) the proposed use will not create traffic congestion on nearby streets or over-burden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.

Mike

From: Marilyn Epstein <mkepstein@comcast.net>
Sent: Sunday, August 21, 2022 3:56 PM
To: mikeattallwoods@gmail.com
Subject: Page 2 of 2

Application Form

Page 2

1. Show that the site has an adequate amount of space for any yards, buildings, drives, parking, loading or unloading areas, storage facilities, setbacks, or other features which are required by the Ordinance or desired by the applicant.
2. Show that the site layout, views, and other physical characteristics of the site are appropriate for the use. Potential of glare and due to work for radiation soils must be shown. Show the site layout, to the extent necessary for avoiding hazardous situations.
3. Show that the site layout, views, and other physical characteristics of the site are appropriate for the use. Potential of glare and due to work for radiation soils must be shown. Show the site layout, to the extent necessary for avoiding hazardous situations.
4. Show that the site layout, views, and other physical characteristics of the site are appropriate for the use. Potential of glare and due to work for radiation soils must be shown. Show the site layout, to the extent necessary for avoiding hazardous situations.
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7. Show that the site layout, views, and other physical characteristics of the site are appropriate for the use. Potential of glare and due to work for radiation soils must be shown. Show the site layout, to the extent necessary for avoiding hazardous situations.
8. Show that the site layout, views, and other physical characteristics of the site are appropriate for the use. Potential of glare and due to work for radiation soils must be shown. Show the site layout, to the extent necessary for avoiding hazardous situations.
9. Show that the site layout, views, and other physical characteristics of the site are appropriate for the use. Potential of glare and due to work for radiation soils must be shown. Show the site layout, to the extent necessary for avoiding hazardous situations.
10. Show that the site layout, views, and other physical characteristics of the site are appropriate for the use. Potential of glare and due to work for radiation soils must be shown. Show the site layout, to the extent necessary for avoiding hazardous situations.

Use extra sheets, if necessary, for answering the above questions. Attach a scale drawing showing the dimensions of the property, adjacent street(s), dimensions of existing structure, and dimensions of proposed new structure.

Application Fee: \$750.00

Applicant Signature:  Date: Aug 21, 2022
Property Owner Signature:  Date: Aug 21, 2022

If the applicant is other than the owner, the owner hereby grants permission for the applicant to act on his/her behalf. Please attach the name, address, phone number, and signature of any additional property owner.

Date Received: Aug 21, 2022 By: Marilyn Epstein
Fee Paid: \$750.00 Receipt No: 2022-08-21-001
Resub: 2022-08-21-001

City of Cannon Beach, Oregon 97109 • (503) 436-8642 • FAX (503) 436-8697 • E-MAIL: info@cannon-beach.org
www.cityofcannonbeach.org • planning@cannonbeach.org

Findings of Fact for 4007 Ocean Lane – Epstein Property

CONDITIONAL USE REQUEST:

1. Description of the proposal.

The property has been eroding severely over the last two or three years due to king tides and storm surge events as shown on the attached photos in the report by Tom Horning, Engineering Geologist. There has never been a rip rap wall on the property. However, there are rip rap seawalls south of the lot, a public access staircase north of the lot and a historic concrete seawall north of the staircase. The Epstein property would be eligible for a rip rap wall since it was built in 1940, but Oregon State Parks representatives have suggested a more natural approach by placing a small cobble berm consisting of 4"-8" round cobbles at the base of the slope with imported sand fill above for approximately 50 lineal feet. Oregon State Parks requires that no more than 50 cubic yards of imported material such as cobbles or sand be placed west of the State Vegetation Line (aka the Oregon Coordinate Line). Once the cobbles and sand are in place, willow stakes would be planted in January or February, which is the traditional period for propagation. This method has been used successfully in other locations along the oceanfront in Cannon Beach and the Planning Commission has recently approved permits for the Gossard, Siegel, Amo and elsewhere. Other vegetation including European and American beachgrass may also be added to stabilize the sand. Eventually the willows and grasses will form a dense grove which will catch sand blowing from the south during winter storms and the dune will be restored.

2. Justification of the conditional use request. Explain how the request meets each of the following criteria for granting a conditional use.

- a. Explain how a demand exists for the use at the proposed location. Several factors which should be considered include: accessibility for users (such as customers and employees); availability of similar existing uses; availability of other appropriately zoned sites, particularly those not requiring conditional use approval; and the desirability of other suitably zoned sites for the use.

The erosion has become severe in the last several years, and is anticipated to increase as ocean levels rise due to climate change. The erosion is undermining the property throughout the Tolovana area as sand is blown or washed north to the President streets and across Ecola Creek. Moving the house to the east is not an option as it is built on the Ocean Ln right of way. The Horning report (attached) discusses the frequency and probability of storm surges.

- b. Explain in what way(s) the proposed use will not create traffic congestion on nearby streets or over-burden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.

There will be no impact on traffic congestion. All work would be carried out from the beach with an excavator and dump trucks. It will take less than one day to complete the project. There is no impact on any other public services.

- c. Show that the site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities, or other facilities which are required by City Ordinances or desired by the applicant.

The erosion is causing significant loss of the front yard of the property. It is estimated that several feet of the dune has been washed away in the last year.

- d. Show that the topography, soils, and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils must be shown to be eliminated or reduced to the extent necessary for avoiding hazardous situations.

Although the house as shown in the photograph is built on a Marine Terrace formation, the unprotected Marine Terrace formation has until recently protected the property from further erosion. While rip rap may be preferable, it has been determined that this approach would be a first step toward stabilization.

- e. Explain in what way an adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths or other transportation facilities required by City ordinances or desired by the applicant. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements.

Access to the project will be from the Tolovana ramp at Warren Way. No trucks or equipment will be on Brailier Street at any time. The project will be short term (less than one day) and will be done in November when there is very little use of this area of the beach. A permit from Oregon State Parks will be obtained prior to commencing work.

- f. Explain how the proposed site and building design will be compatible with the surrounding area.

There is no building involved. The attached photos show the site design.

Findings of Fact for 4007 Ocean Lane – Epstein Property

CONDITIONAL USE REQUEST:

1. Description of the proposal.

The property has been eroding severely over the last two or three years due to king tides and storm surge events as shown on the attached photos in the report by Tom Horning, Engineering Geologist. There has never been a rip rap wall on the property. However, there are rip rap seawalls south of the lot, a public access staircase north of the lot and a historic concrete seawall north of the staircase. The Epstein property would be eligible for a rip rap wall since it was built in 1940, but Oregon State Parks representatives have suggested a more natural approach by placing a small cobble berm consisting of 4"-8" round cobbles at the base of the slope with imported sand fill above for approximately 50 lineal feet. Oregon State Parks requires that no more than 50 cubic yards of imported material such as cobbles or sand be placed west of the State Vegetation Line (aka the Oregon Coordinate Line). Once the cobbles and sand are in place, willow stakes would be planted in January or February, which is the traditional period for propagation. This method has been used successfully in other locations along the oceanfront in Cannon Beach and the Planning Commission has recently approved permits for the Gossard, Siegel, Amo and elsewhere. Other vegetation including European and American beachgrass may also be added to stabilize the sand. Eventually the willows and grasses will form a dense grove which will catch sand blowing from the south during winter storms and the dune will be restored.

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- a. Explain how a demand exists for the use at the proposed location. Several factors which should be considered include: accessibility for users (such as customers and employees); availability of similar existing uses; availability of other appropriately zoned sites, particularly those not requiring conditional use approval; and the desirability of other suitably zoned sites for the use.

The erosion has become severe in the last several years, and is anticipated to increase as ocean levels rise due to climate change. The erosion is undermining the property throughout the Tolovana area as sand is blown or washed north to the President streets and across Ecola Creek. Moving the house to the east is not an option as it is built on the Ocean Ln right of way. The Horning report (attached) discusses the frequency and probability of storm surges.

- b. Explain in what way(s) the proposed use will not create traffic congestion on nearby streets or over-burden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.

There will be no impact on traffic congestion. All work would be carried out from the beach with an excavator and dump trucks. It will take less than one day to complete the project. There is no impact on any other public services.

- c. Show that the site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities, or other facilities which are required by City Ordinances or desired by the applicant.

The erosion is causing significant loss of the front yard of the property. It is estimated that several feet of the dune has been washed away in the last year.

- d. Show that the topography, soils, and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils must be shown to be eliminated or reduced to the extent necessary for avoiding hazardous situations.

Although the house as shown in the photograph is built on a Marine Terrace formation, the unprotected Marine Terrace formation has until recently protected the property from further erosion. While rip rap may be preferable, it has been determined that this approach would be a first step toward stabilization.

- e. Explain in what way an adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths or other transportation facilities required by City ordinances or desired by the applicant. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements.

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- f. Explain how the proposed site and building design will be compatible with the surrounding area.

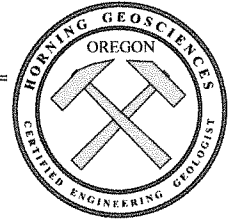
There is no building involved. The attached photos show the site design.

Horning Geosciences

808 26th Avenue, Seaside, OR 97138

Ph./FAX: (503)738-3738

Email: horning@pacifier.com



September 26, 2022

Marilyn Epstein
2323 SW Park Place #1001
Portland, OR 97205

RE: Shoreline Armoring; Map 4 10 6BC, Tax Lot 6300; 4007 Ocean Lane, Cannon Beach, Clatsop County, Oregon

Dear Marilyn:

I was invited by Mike Morgan, Planner, to witness the repair of recent ocean wave erosion of the west face of the protective berm associated with your above-referenced property on May 27, 2022. At the time, Mike McEwan of Bob McEwan Excavation was repairing the erosion by filling the open void with less than 50 cubic yards of basaltic cobbles that had been trucked in from off-site. The cobbles were then overlain with clean beach/dune sand, also trucked in, which will be planted with beach grasses and Hooker willow to help stabilize the barren ground.

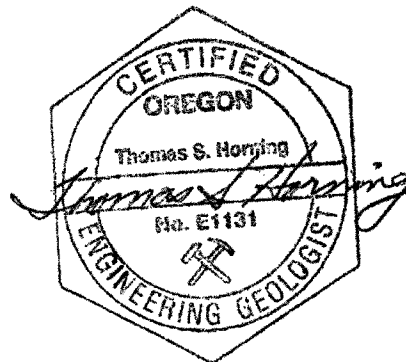
The erosion occurred during a storm surge on January 3, 2022. It was characterized by combined high surf (>20 ft) and high tides (+9.8 ft), and it resulted in pronounced flooding and erosion along the coast of Oregon and Washington. Adjacent eroded berm to the south is composed of intermixed round rock, dark organic silts (Brallier mucky peats), and minor windblown sand. The toe of the dune stands at approximately 16 ft NGVD, whereas the western yard stands at 32 ft NAVD. The V-Zone flood elevation for this part of the frontage is 27 ft NAVD. The top edge of erosion is estimated to be around 23 ft. The west end of the house is about 35 ft from the break-in-slope of the yard down to the beach. Erosion has reached to within 3 ft of the 100-yr V-Zone flood elevation.

The sand and rock fill reaches from 16 to 26 ft and runs for about 50 ft along the frontage. Allowing for existing fill and limited erosion in places, the amount of fill is calculated to be from 40 to 50 cubic yards. It is expected that existing willows will colonize the fill, contributing to stabilization by the planting of beach grass.

The storm surge of January 3 resulted in flooding that has been exceeded in the Seaside area perhaps only 5 times in the past 60 years. While similar erosion is expected to occur in the future, it is expected that it will be more frequent due to increasing storminess related to warming climate and attendant sea level increase. The next erosional event more likely than not will strike in the next 10 years, although there is considerable uncertainty in this estimate.

Please feel free to call or write if you have questions.

Thomas S. Horning, CEG E1131
Horning Geosciences



Expires: 7/1/23

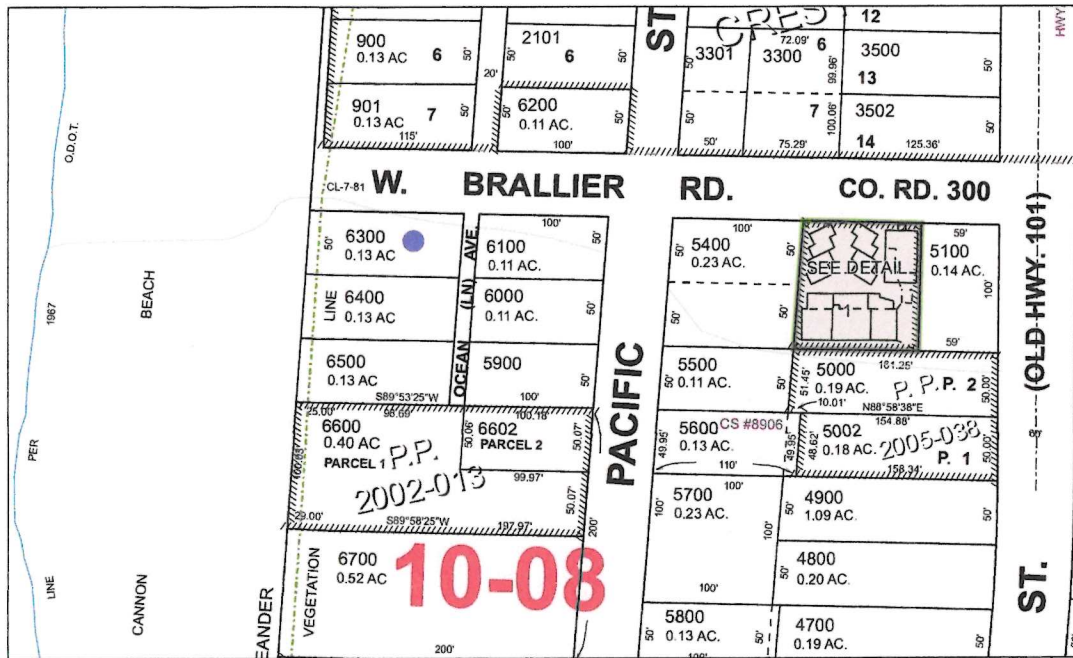


Figure 1A: Neighborhood assessor's plat showing Tax Lot 6300, marked by Blue Dot.



Figure 1B: Aerial view of TL 6300, yellow dots indicating the approximate extent of shoreline erosion; image courtesy of Google Earth.



Figure 2: Looking southwest toward Tax Lot 6300. The berm to the west is a manmade structure from around 1915.



Figure 3: Placing sand at the toe of the neighborhood steps and over obscured round rock, looking south. Mike McEwan provides scale.



Figure 4: Freshly placed sand over round rock basalt cobbles to repair gap in face of the frontage berm from the storm surge of January 3, 2022. Photo taken May 27, 2020. Mike Morgan provides scale.

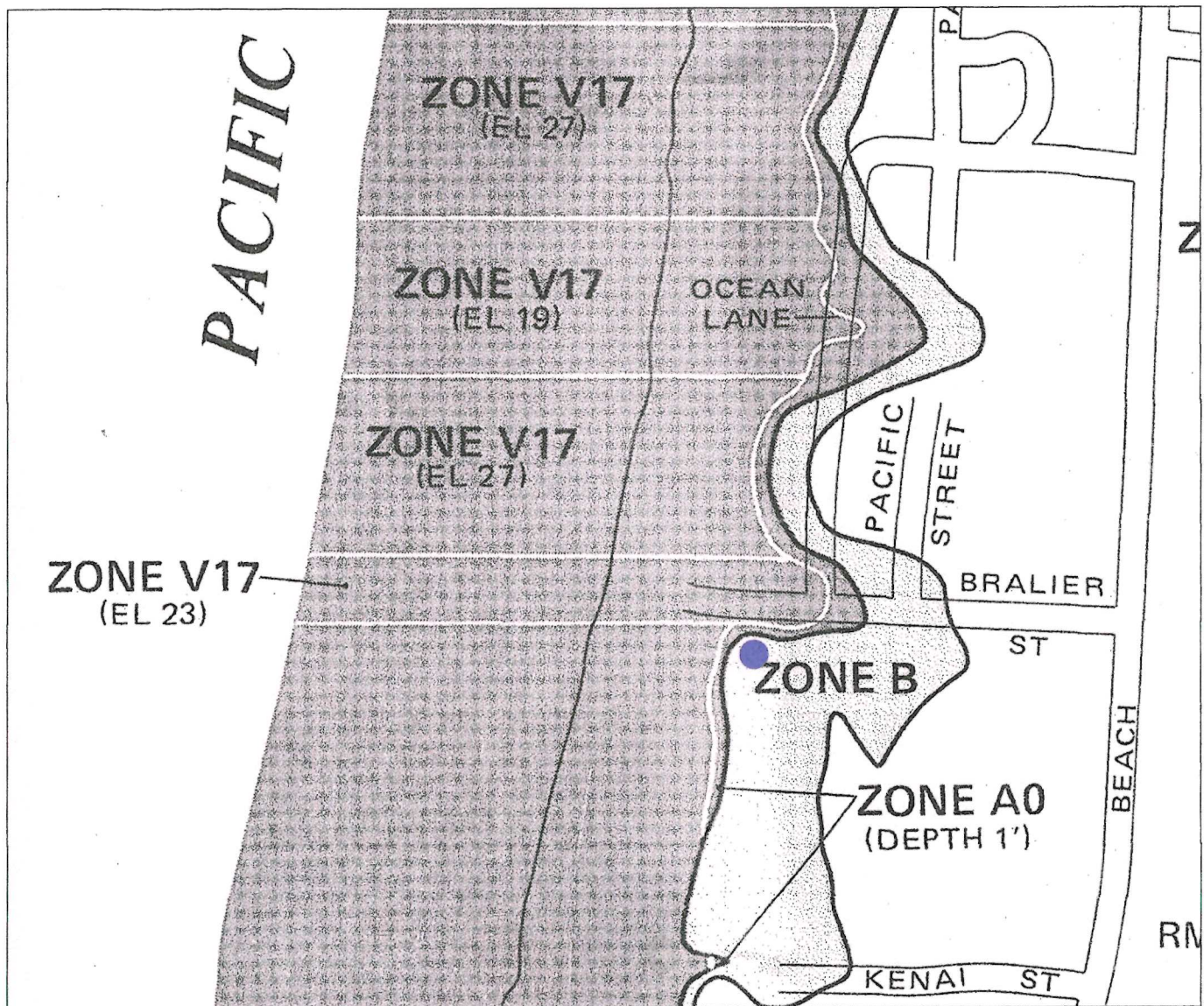


Figure 5 FEMA flood map for the south part of Cannon Beach. Blue Dot marks TL 6300.

Horning Geosciences

808 26th Avenue, Seaside, OR 97138

Ph./FAX: (503)738-3738

Email: horning@pacifier.com



September 26, 2022

Marilyn Epstein
2323 SW Park Place #1001
Portland, OR 97205

RE: Shoreline Armoring; Map 4 10 6BC, Tax Lot 6300; 4007 Ocean Lane, Cannon Beach, Clatsop County, Oregon

Dear Marilyn:

Recent shoreline erosion at the above-referenced property occurred during a storm surge on January 3, 2022. It was characterized by combined high surf (>20 ft) and high tides (+9.8 ft). Not surprisingly, it resulted in pronounced flooding and erosion along the coast of Oregon and Washington.

Adjacent eroded berm to the south of 4007 Ocean Lane is composed of intermixed round rock, dark organic silts (Brallier mucky peats), and minor windblown sand. In places, these materials have contained cultural debris, such as cast iron, indicating that the berm has been built up or repaired in the past.

The toe of the dune stands at approximately 16 ft NGVD, whereas the western yard stands at 32 ft NAVD. The V-Zone flood elevation for this part of the frontage is 27 ft NAVD. The top edge of erosion is estimated to be around 23 ft. The west end of the house is about 35 ft from the break-in-slope of the yard down to the beach. Erosion has reached to within 3 ft of the 100-yr V-Zone flood elevation. It is expected that existing willows will colonize new fill, and that stabilization can be enhanced by the planting of beach grasses.

The storm surge of January 3 resulted in flooding that has been exceeded in the Seaside area perhaps only 5 times in the past 60 years. Similar erosion is expected to occur in the future. It is expected that such erosional events will be more frequent due to increasing storminess related to warming climate and attendant sea level increase. The next erosional event likely may strike in the next 10 years, although there is considerable uncertainty in this estimate.

Please feel free to call or write if you have questions.

Thomas S. Horning, CEG E1131
Horning Geosciences



Expires: 7/1/23

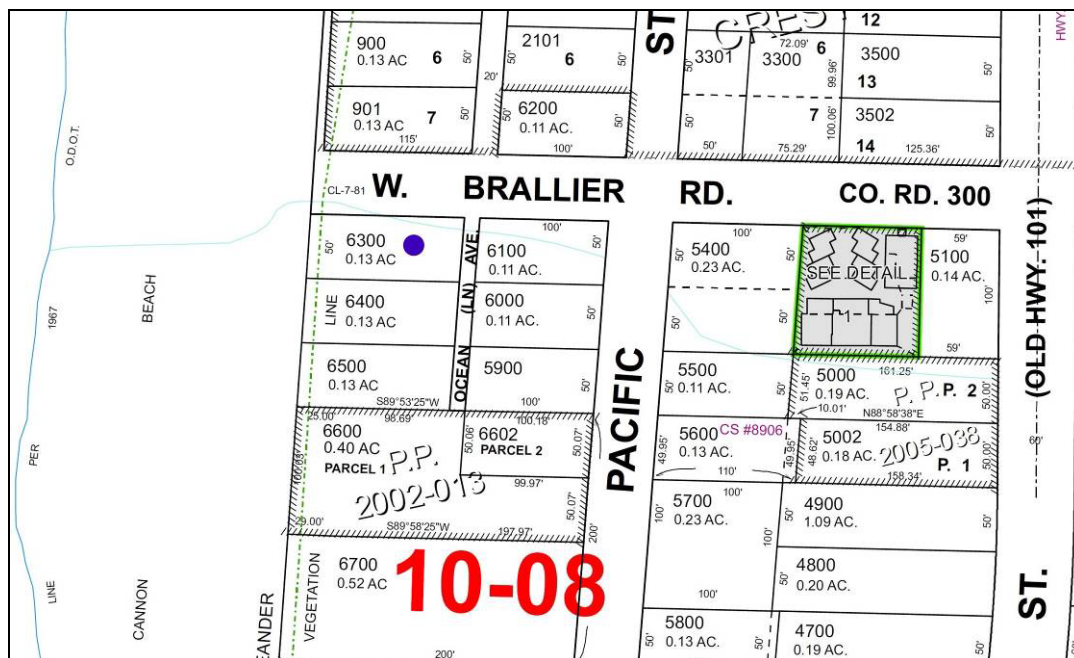


Figure 1A: Neighborhood assessor's plat showing Tax Lot 6300, marked by Blue Dot.



Figure 1B: Aerial view of TL 6300, yellow dots indicating the approximate extent of shoreline erosion; image courtesy of Google Earth.



Figure 2: Looking southwest toward Tax Lot 6300. The berm to the west is a manmade structure from around 1915.

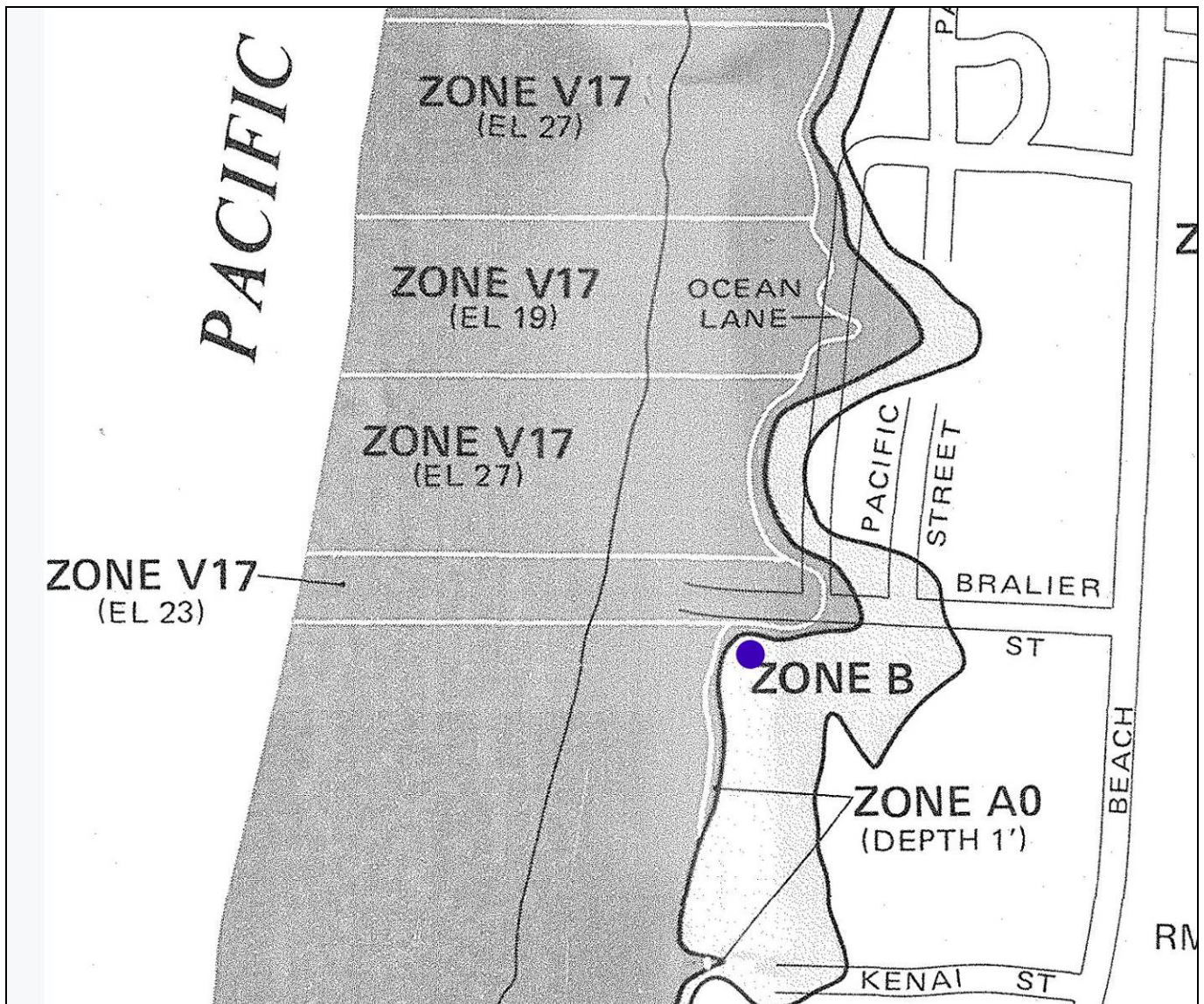


Figure 3: FEMA flood map for the south part of Cannon Beach. Blue Dot marks TL 6300.

Robert St. Clair

From: Jeffrey Adams
Sent: Monday, December 13, 2021 11:11 AM
To: Robert St. Clair
Subject: FW: 116 N Laurel Street, Cannon Beach
Attachments: BPFindings.pdf

Robert,

This is the email that outlines the State's permitting requirements for shoreline stabilization. You could use this in your staff report. I found this CUP from Breakers Point that you might have a look at.

Jeff



Jeff Adams

Community Development Director

City of Cannon Beach

p: 503.436.8040 | **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:** adams@ci.cannon-beach.or.us

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

From: CRUM Eric * OPRD <Eric.CRUM@opr.d.oregon.gov>
Sent: Tuesday, November 16, 2021 11:03 AM
To: Mike McEwan <mmcewan3569@gmail.com>; Karen La Bonte <labonte@ci.cannon-beach.or.us>; Trevor Mount <mount@ci.cannon-beach.or.us>; Bruce St. Denis <stdenis@ci.cannon-beach.or.us>
Cc: PARKER Ryan * OPRD <Ryan.PARKER@opr.d.oregon.gov>; Jeffrey Adams <adams@ci.cannon-beach.or.us>; TAYLOR Trevor * OPRD <Trevor.TAYLOR@opr.d.oregon.gov>
Subject: RE: 116 N Laurel Street, Cannon Beach

Mike, Karen, Trevor, and Bruce,

Thank you for taking the time to meet with us yesterday. I'm including a brief recap here on what we discussed for the 116 N Laurel St project. I will follow-up with a subsequent email concerning the city's outflow pipes and that permit process moving forward.

We discussed a few potential options for working on the ocean shore in this location:

1. You are allowed to place up to 50 cubic yards of natural material on the Ocean Shore through a free drive on beach permit. Natural materials are defined as driftwood, clean sand, and river cobbles 4"-8" in size. If using driftwood, it cannot be structurally engineered, but simply placed on the ocean shore. Any imported sand would have to be clean and free from any contaminant or seed. The river cobble cannot be quarried rock, nor can it be angular. The cobble must match, as closely as possible, the naturally occurring cobble currently present in the location. The free Drive on Beach permit application can be found here: <https://stateparks.oregon.gov/index.cfm?do=visit.dob-form>

2. Any proposed dynamic revetment (i.e., jute matting and planting), using more than 50 yards of sand, or building a larger cobble revetment project using more than 50 cubic yard of material would require a complete and approved Shoreline Alteration Permit. That permit application can be found here (<https://www.oregon.gov/oprd/prp/pages/per-ocean-shore.aspx>) and here: (https://www.oregon.gov/oprd/PRP/Documents/PRP_PER_OS_SPS_form.pdf). There is a cost associated with this, as well as a public-comment notification period. In section 1, they would choose "Other." Please note that if the project is more than 50 feet in length, it would require a geologic report from a registered professional geologist and a completed Analysis of Hazard Avoidance. Also note that this permit requires the attached City/County Planning Department Affidavit (pg.9) to be completed and signed off/approved by the local planning official, in this case it would be from the City of Cannon Beach.
3. A permanent riprap revetment or seawall would also be obtained through the same Shoreline Alteration Permit, including the same requirements as mentioned above in number 2. A brief check of the Coastal Atlas reference map (<https://www.coastalatlant.net/oceanshores/>), indicates that the property is potentially eligible for a beachfront protective structure. Again, this would have to be verified and approved by the City of Cannon Beach and Clatsop County.

As we observed at the site, there are at least 2 pipes currently exposed and draining onto the ocean shore from this property. Any drainage or water outflow that occurs west of the Statutory Vegetation Line, would also have to be addressed and included in the proposed project application for the Shoreline Alteration Permits.

If you have any further question regarding this project, and these options, please feel free to reach out. My contact information is provided below.

Best,

Eric



Eric Crum | WOC Ocean Shore Specialist / North Coast District Beach Ranger

Schedule: Mon. - Fri. (7am-3:30pm)
Nehalem Bay Management Unit
34600 Garey St. | Nehalem, OR 97131-8246
Office: (503) 812-0650 | Cell: (503) 801-3366
www.oregonstateparks.org

From: CRUM Eric * OPRD
Sent: Wednesday, November 10, 2021 10:06 AM
To: Jeffrey Adams <adams@ci.cannon-beach.or.us>
Cc: PARKER Ryan * OPRD <Ryan.Parker@oregon.gov>
Subject: RE: 116 S Laurel Street, Cannon Beach

Okay, great. Thanks Jeff. It is 116 **NORTH** Laurel St... not south. I think Mike has it down wrong.

See you on Monday.



Eric Crum | WOC Ocean Shore Specialist / North Coast District Beach Ranger

Schedule: Mon. - Fri. (7am-3:30pm)
Nehalem Bay Management Unit
34600 Garey St. | Nehalem, OR 97131-8246
Office: (503) 812-0650 | Cell: (503) 801-3366

From: Jeffrey Adams <adams@ci.cannon-beach.or.us>
Sent: Wednesday, November 10, 2021 9:59 AM
To: CRUM Eric * OPRD <Eric.CRUM@opr.oregon.gov>
Cc: PARKER Ryan * OPRD <Ryan.PARKER@opr.oregon.gov>
Subject: RE: 116 S Laurel Street, Cannon Beach

Eric,

Thanks, we'll try to make the meeting, as they'll need City approval.

Jeff



Jeff Adams

Community Development Director

City of Cannon Beach

p: 503.436.8040 | 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: adams@ci.cannon-beach.or.us

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From: CRUM Eric * OPRD <Eric.CRUM@opr.oregon.gov>
Sent: Wednesday, November 10, 2021 9:34 AM
To: Jeffrey Adams <adams@ci.cannon-beach.or.us>
Cc: PARKER Ryan * OPRD <Ryan.PARKER@opr.oregon.gov>
Subject: FW: 116 S Laurel Street, Cannon Beach

Good morning Jeff,

Just an FYI, we're meeting with Mike McEwan about a new project proposal this coming Monday at 116 S Laurel St. See attached. We are meeting at Noon.

I wanted to give you a heads up is all. Feel free to join if you would like. I'll keep you in the loop on anything moving forward from OPRD.

Eric



Eric Crum | WOC Ocean Shore Specialist / North Coast District Beach Ranger

Schedule: Mon. - Fri. (7am-3:30pm)

Nehalem Bay Management Unit

34600 Garey St. | Nehalem, OR 97131-8246

Office: (503) 812-0650 | Cell: (503) 801-3366

www.oregonstateparks.org

From: Mike McEwan <mmcewan3569@gmail.com>

Sent: Monday, November 8, 2021 11:40 AM

To: CRUM Eric * OPRD <Eric.CRUM@oregon.gov>

Subject: 116 S Laurel Street, Cannon Beach

Hello Eric,

Could we set up a time to review the attached project at 116 S Laurel Street, Cannon Beach?

Michael McEwan

President

Bob McEwan Construction, Inc. CCB 48302

503.440.0223 503.738.3569

mmcewan3569@gmail.com



Exhibit C-1: October 10, 2022 Staff Photo, 1 of 2



Exhibit C-1: October 10, 2022 Staff Photo, 2 of 2



Exhibit C-2: June 2022 Aerial Photo, Project Area Highlighted





CITY OF CANNON BEACH

October 7, 2022

CU 22-04, Mike Morgan, on behalf of Marilyn Epstien, request for a Conditional Use Permit to allow for the placement of a non-structural shoreline stabilization. The property is located at 4007 Ocean Ave. in a Residential Moderate Density (R1) and Oceanfront Management Overlay (OM) zone. The request will be reviewed under Cannon Beach Municipal Code 17.12.030 Conditional Uses Permitted, 17.42.060 Specific Standards, and 17.80.230 & 360 Shoreline Stabilization & Preservation Grading.

Dear Property Owner,

Cannon Beach Zoning Ordinance requires notification to property owners within 250 feet, measured from the exterior boundary, of any property which is the subject of the proposed applications. Your property is located within 250 feet of the above-referenced property or you are being notified as a party of record.

Please note that you may submit a statement either in writing or orally at the hearing, supporting or opposing the proposed action. Your statement should address the pertinent criteria, as stated in the hearing notice. Statements in writing must be received by the date of the hearing.

Enclosed are copies of the public hearing notice, a description of how public hearings are conducted and a map of the subject area. Should you need further information regarding the relevant Zoning Ordinance, Subdivision Ordinance or Comprehensive Plan criteria, please contact Cannon Beach City Hall at the address below, or call Jennifer Barrett at (503) 436-8052 or email barrett@ci.cannon-beach.or.us.

Sincerely,

Jennifer Barrett
City Recorder

Enclosures: Notice of Hearing
Conduct of Public Hearings
Map of Subject Area

NOTICE OF PUBLIC HEARING CANNON BEACH PLANNING COMMISSION

The Cannon Beach Planning Commission will hold a public hearing on **Thursday, October 27, 2022 at 6:00 p.m.** at City Hall, 163 E Gower Street, Cannon Beach, regarding the following:

CD 22-01 & CU 22-03, David Vonada, on behalf of David Pietka, request for a Conditional Use Permit to allow a cluster development consisting of four single-family dwellings and a six-plex apartment building. The property is located on the southwest corner of 1st and Spruce St. (Tax Lot 04402, Map 51030AA) in a Limited Commercial (C1) Zone. The request will be reviewed under Cannon Beach Municipal Code, Titles 16 Subdivisions and 17 Zoning, including Sections 16.04.130 Subdivision-Applicable Standards, 16.04.400 Variance-Cluster Development, 17.22.030 Conditional Uses Permitted, and 17.43.040-050 Conditional Uses and Activities Permitted in Wetland and Wetland Buffer Areas, Standards.

Due to the applicant's request to reopen the public record to allow new evidence for CD 22-01 & CU 22-03, the Planning Commission granted the request to reopen, re-notice and extend the 120-day timeline for a final decision for an extra sixty days, to January 1, 2023. The Planning Commission will accept new written testimony for the first fourteen days, from today, September 23rd, to 5:00 PM, October 7th, with rebuttals accepted until 5:00 PM, October 14th and final response by the applicant, 5:00 PM, October 21st.

CU 22-04, Mike Morgan, on behalf of Marilyn Epstien, request for a Conditional Use Permit to allow for the placement of a non-structural shoreline stabilization. The property is located at 4007 Ocean Ave. in a Residential Moderate Density (R1) and Oceanfront Management Overlay (OM) zone. The request will be reviewed under Cannon Beach Municipal Code 17.12.030 Conditional Uses Permitted, 17.42.060 Specific Standards, and 17.80.230 & 360 Shoreline Stabilization & Preservation Grading.

ZO 22-01, Will Rasmussen on behalf of Haystack Rock LLC, requesting a text amendment of the Cannon Beach Municipal Code Title 17 Zoning regarding notice and procedural requirements for citizens to receive electronic notification of applications processed by the Community Development Department, administrative decisions, and expanded public notice for permits concerning hazard areas, environmentally sensitive lands, and new roads. The request will be reviewed against the criteria of the Municipal Code, Section 17.86, Amendment Criteria.

All interested parties are invited to attend the hearings and express their views. Statements will be accepted in writing or orally at the hearing. Failure to raise an issue at the public hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

Correspondence should be mailed to the Cannon Beach Planning Commission, Attn. Community Development, PO Box 368, Cannon Beach, OR 97110 or via email at planning@ci.cannon-beach.or.us. Written testimony received one week prior to the hearing will be included in the Planning Commissioner's meeting materials and allow adequate time for review. Materials and relevant criteria are available for review at Cannon Beach City Hall, 163 East Gower Street, Cannon Beach, or may be obtained at a

NOTICE TO MORTGAGEE, LIEN-HOLDER, VENDOR OR SELLER:
PLEASE PROMPTLY FORWARD THIS NOTICE TO THE PURCHASER

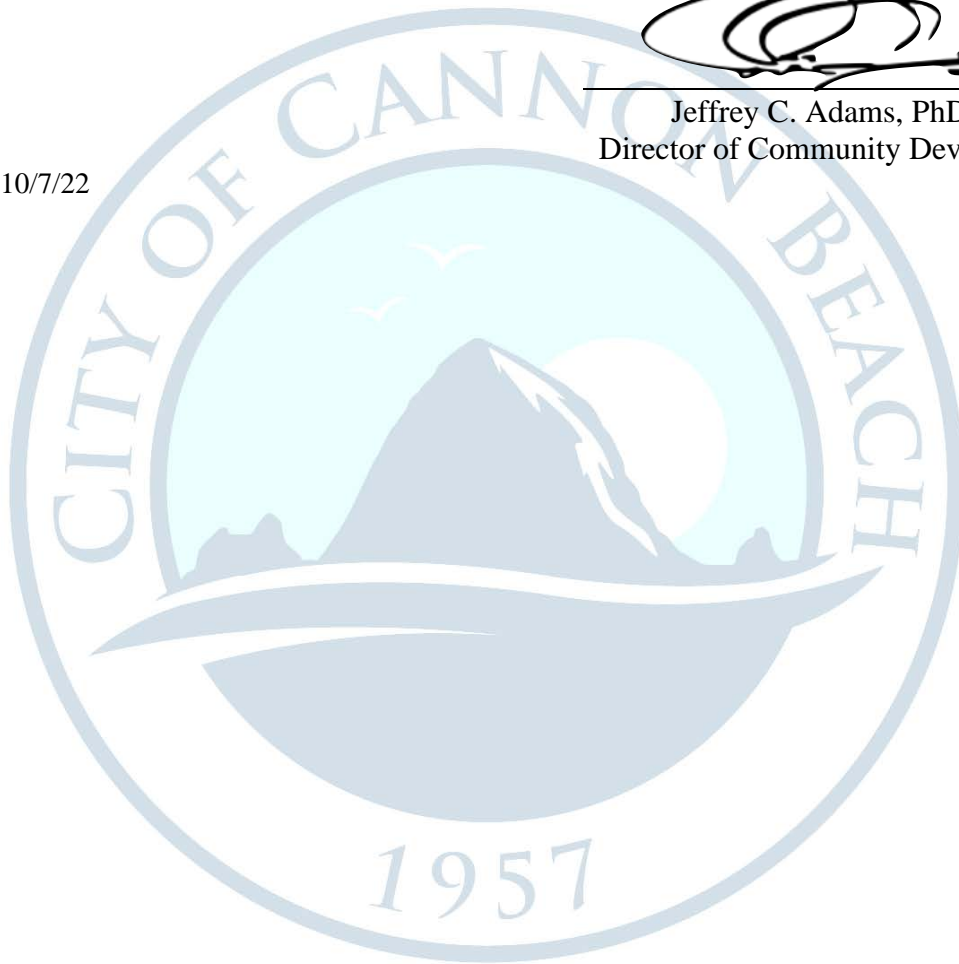
reasonable cost. Staff reports are available for inspection at no cost or may be obtained at a reasonable cost seven days prior to the hearing. Questions regarding the applications may be directed to Jeffrey Adams, 503-436-8040, or at adams@ci.cannon-beach.or.us.

The Planning Commission reserves the right to continue the hearing to another date and time. If the hearing is continued, no further public notice will be provided. The hearings are accessible to the disabled. Contact City Manager, the ADA Compliance Coordinator, at (503) 436-8050, if you need any special accommodations to attend or to participate in the meeting. TTY (503) 436-8097. Publications may be available in alternate formats and the meeting is accessible to the disabled.



Jeffrey C. Adams, PhD
Director of Community Development

Posted/Mailed: 10/7/22



**CONDUCT OF PUBLIC HEARINGS BEFORE
CANNON BEACH CITY COUNCIL and PLANNING COMMISSION**

- A. At the start of the public hearing, the Mayor or Planning Commission Chair will ask the following questions to ensure that the public hearing is held in an impartial manner:
1. Whether there is a challenge to the jurisdiction of the City Council or Planning Commission to hear the matter;
 2. Whether there are any conflicts of interest or personal biases to be declared by a Councilor or Planning Commissioner;
 3. Whether any member of the Council or Planning Commission has had any ex parte contacts.
- B. Next, the Mayor or Planning Commission Chair will make a statement which:
1. Indicates the criteria which apply to the action;
 2. Cautions those who wish to testify that their comments must be related to the applicable criteria or other criteria in the Comprehensive Plan or Municipal Code that the person testifying believes apply;
 3. States that failure to raise an issue in a hearing, or failure to provide statements or evidence sufficient to afford the decision makers an opportunity to respond to the issue precludes appeal based on that issue;
 4. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The City Council or Planning Commission shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony.
- C. The public participation portion of the hearing will then proceed as follows:
1. Staff will summarize the staff report to the extent necessary to enable those present to understand the issues before the Council or Planning Commission.
 2. The Councilors or Planning Commissioners may then ask questions of staff.
 3. The Mayor or Planning Commission Chair will ask the applicant or a representative for any presentation.
 4. The Mayor or Planning Commission Chair will ask for testimony from any other proponents of the proposal.
 5. The Mayor or Planning Commission Chair will ask for testimony from any opponents of the proposal.
 6. Staff will be given an opportunity to make concluding comments or respond to additional questions from Councilors or Planning Commissioners.
 7. The Mayor or Planning Commission Chair will give the applicant and other proponents an opportunity to rebut any testimony of the opponents.
 8. Unless continued, the hearing will be closed to all testimony. The Council or Planning Commission will discuss the issue among themselves. They will then either make a decision at that time or continue the public hearing until a specified time.

NOTE: Any person offering testimony must first state their name, residence, and **mailing address** for the record. If representing someone else, the speaker must state whom he represents.



ACCOUNT_ID	TAXLOTKEY	SITUS_ADDR	OWNER_LINE	STREET_ADD	CITY	STATE	ZIP_CODE
1994	41006BC00700	3963 Ocean Ave	Jasper Helene K	7905 SW 10th Ave	Portland	OR	97219-4509
1996	41006BC00800	3979 Ocean Ave	Yolland Janet K 1/2	7260 SW Willowmere Dr	Portland	OR	97225-1139
1998	41006BC00900		Yolland Janet K 1/2	7260 SW Willowmere Dr	Portland	OR	97225-1139
1999	41006BC00901	3995 Ocean Ave	Wilson Barbara L	2701 E Parkriver Dr	Boise	ID	83706-6084
2011	41006BC02000	3964 Ocean Ave	Reardon James E/Christine L	2814 Westwood Blvd	Los Angeles	CA	90064
2012	41006BC02100	3980 Ocean Ave	Leupold Norbert	18790 SW Alderwood Dr	Aloha	OR	97003
2013	41006BC02101	3988 Ocean Ave	Thayer Crystal J	2217 S Edgewood St	Seaside	OR	97138-5129
2030	41006BC03200	3979 Pacific Ave	Dahl John R/Lorna M	16745 SW King Richards Ct	Sherwood	OR	97140-8743
2031	41006BC03300	144 Braillier St	Lewis Muriel S	144 Braillier Rd	Tolovana Park	OR	97145
2032	41006BC03301		Lewis Muriel S	144 Braillier Rd	Tolovana Park	OR	97145
2058	41006BC05400	163 Braillier St	Parker Christopher S	163 Gardnerville Rd	New Hampton	NY	10958
2059	41006BC05500	4039 Pacific Ave	Lampe Calvin	570 Winding Way SE	Salem	OR	97302
2060	41006BC05600	4047 Pacific Ave	Wright Robert G/Patricia H Tr	17440 Holy Names Dr Unit #A407	Lake Oswego	OR	97034-5135
2061	41006BC05700	4063 Pacific Ave	Berney Kristina 1/2	3827 NW Astor St	Camas	WA	98607
2063	41006BC05900	4032 Ocean Ln	Kelly Andrea	PO Box 747	Tolovana Park	OR	97145
2064	41006BC06000	4024 Ocean Ave	Mcclure James W	PO Box 62	Tolovana Park	OR	97145-0062
2065	41006BC06100	225 Brallier Rd	225 Brallier LLC	14115 NE Charlton Rd	Portland	OR	97231
2066	41006BC06200	3996 Pacific Ave	Hoyt Karen J	PO Box 969	Cannon Beach	OR	97110-0969
2067	41006BC06300	4007 Ocean Ln	Epstein Marilyn	2323 SW Park Pl Unit #1001	Portland	OR	97205-1039
2069	41006BC06400	4015 Ocean Ln	Harris Martha S	PO Box 1452	Cannon Beach	OR	97110-1452
2071	41006BC06500	4031 Ocean Ln	Smeaton David S	3956 NE Couch St	Portland	OR	97232-3428
51969	41006BC06600	4064 Ocean Ln	Hutchison John P	6022 SW Riverpoint Ln	Portland	OR	97239-5906
51968	41006BC06602		McMillin Robert Y	PO Box 747	Tolovana Park	OR	97145
2075	41006BC06700	4080 Pacific Ave	Gilbert Michael L	8911 NE 19th St	Clyde Hill	WA	98004

The Planning Commission recently denied a request for a minor partition and conditional use permit by Patrick/Dave LLC (Developer) on Forest Lawn Road (P22-01 and CU 22-02). The reasons for the denial as it relates to the specific request can be found in the Findings Section of the Staff Report. During the process, materials in the public record raised an issue related to how the City of Cannon Beach applies its Wetland Overlay requirements to specific development proposals located in the Wetland Overlay Zone, and what role City staff should have regarding proposed developments. While the concerns discussed below were not within the purview of our decision or the associated findings, we believe the situation merits attention.

From information provided as a part of the public record for the above referenced public hearing, it appears the Developer in an effort to reduce stormwater flow into their newly purchased property, which is entirely subject to the Wetland Overlay Zone due to an identified wetland on the property, notified the City that the City and the neighbor adjoining their property were in violation of the City's municipal code (13.16.050). That section states that any person responsible for property shall maintain nonpublic storm drainage so as to prevent flooding or damage to another property. The Developer claimed the stormwater runoff was "illegal", was "point source stormwater" (which would need a conditional use permit), and that that the Developer had not authorized the owner of 1603 Forest Lawn Road to discharge stormwater onto their property. Notably, it appears that the runoff was approved by the City in 2000 as a condition to the creation of a buildable lot.

It appears from the documents provided in the record that the City worked hastily to address the Developer's concern and applied for a development permit to extend the City's stormwater sewer line (DP 21-23) which was granted on 11/05/22. Additionally, the City notified the

homeowner at 1603 Forest Lawn Road they were in violation of the City's code and needed to rectify the problem by connecting to the newly formed storm sewer line. Only after an appeal of the development permit was the project put on hold and ultimately canceled by the City.

The above actions are concerning based on the limited information we were provided. First, it does not appear the City considered the provisions of the Wetland Overlay Zone (17.43) when addressing the Developer's claim. The Wetland Overlay zone suggests that stormwater runoff should be directed toward the same drainage system that would have handled the runoff under natural conditions. To suggest that the City is violating its code by having stormwater runoff into the applicant's property is not a persuasive argument when the property has been identified as a known wetland since 1994 and was marketed for sale as containing wetlands. Moreover, it is reasonable to assume this experienced Developer should have known prior to the purchase of the property in 2021 that the property was subject to the Wetland Overlay Zone. The Planning Commission questions the Developer's application of the term "illegal" to stormwater runoff, given the municipal code's language around stormwater runoff for properties in a Wetland Overlay Zone.

The Developer's claim that the stormwater runoff is "point source" pollution is questionable as it applies to the City and neighbor's stormwater runoff. The EPA defines point source pollution as: *"any single identifiable source of pollution from which pollutants are discharged."* Stormwater can be classified as either point source or non-point source, but because the stormwater in question does not fall within the National Pollution Discharge Elimination System Stormwater permit requirements it is generally recognized as non-point source, which is not subject to a conditional use permit.

Finally, while the applicant states they have not authorized the owner of 1603 Forest Lawn Road to discharge stormwater on their property what they fail to mention is that the stormwater has been discharging on to their property, presumably since the house was built in 2004, with no objection from the previous owner of the wetland property. Importantly, the previous owner of the wetland was the developer who created the buildable lot at 1603 Forest Lawn Road in 2000 and then sold it as a developable lot – subject to the provisions of the Wetland Overlay Zone.

The Planning Commission does not believe it is the City's role to create a stormwater management plan for applicants or to be unreasonably moved to action by the motivations of a developer. Section 17.43.050 of the Wetland Overlay Zone states: "*A stormwater management plan shall be required of the applicant and reviewed and approved by the public works director.*" From the records presented to the Planning Commission, it does not appear the Developer submitted a stormwater management plan. Instead, City Staff applied for a development permit to extend the sewer line to accommodate the Developer's yet to be approved minor partition and conditional use request and then notified the owner of 1603 Forest Lawn Road they were not in compliance with the City's code.

It is our hope City Council and City Staff can have a constructive conversation around the matters of concern above, specifically the application of the Wetland Overlay Zone to City decisions, but also staff's role in working with developers. Planning Commission appreciates City staff and the balances it must make between the responsibility for navigating multi-layered municipal codes and the language of specialists when dealing with motivated developers and the concurrent responsibility to protect the rights of our citizens from undue costs and development that is not in-line with the City's code

and stated values. We have no doubt that any misunderstandings can be resolved to the benefit of a more robust process in the future.

City of Cannon Beach							
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Building Codes Division						
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Tree Permit Applications						
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September	2022							
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