



CITY OF CANNON BEACH

AGENDA

Meeting: Planning Commission
Date: **Thursday, August 25, 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 July 28 and August 11, 2022.**
If the Planning Commission wishes to approve the minutes, an appropriate motion is in order.

ACTION ITEMS

6:05 (3) **Continuation and Consideration of CP#22-01 Adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Comprehensive Plan.**

CP 22-01, Jeff Adams on behalf of the City of Cannon Beach, seeks the adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Cannon Beach Comprehensive Plan. The TSP is in accordance with Oregon Revised Statutes OAR 660 Division 12, Transportation Planning Rule, which implements Statewide Planning Goal 12. The request will be reviewed against the criteria of the Cannon Beach Comprehensive Plan and Municipal Code, Section 17.86.070.A, Amendments, Criteria.

6:25 (4) **Public Hearing and Consideration of V# 22-01, David Vonada request, on behalf of Cannon Beach BP LLC, for a Variance to allow residential use for 55% exceeding the 50% threshold for mixed use in the General Commercial Zone.**

V 22-01, David Vonada, on behalf of Cannon Beach BP LLC, request for a Variance to allow a residential use for approximately 55% of the building floor area vs. the 50% maximum allowed. The property is located at 368 Elk Creek Rd. (Tax Lot 00200, Map 51029CA) in a General Commercial (C2) Zone. The request will be reviewed under Cannon Beach Municipal Code, Sections 17.24.020, General Commercial Zone, Uses Permitted Outright and 17.84.030, Variances, Criteria for Granting.

6:45 (5) **Public Hearing and Consideration 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 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.

WORK SESSION ITEMS

- 7:05 (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.**
- 7:20 (6) **Work Session review of draft letter to be sent to City Council regarding stormwater discharge**

INFORMATIONAL ITEMS

- 7:30 (7) **Tree Report**
- (8) **Ongoing Planning Items:**
Living Wall Update
Code Audit Update
September Commission Training
- (9) **Good of the Order**
Kerr Article
Atiyeh Article
- 7:50 (10) **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: August 18, 2022

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**Minutes of the
CANNON BEACH PLANNING COMMISSION**
Thursday, July 28, 2022

Present: Chair Clay Newton, Commissioners Lisa Kerr, Barb Knop, & Mike Bates in person;
Charles Bennett, Aaron Matusick, and Anna Moritz via Zoom

Excused:

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

Other: Eddie Montejo, Transportation Planner for Parametrix; Michael Duncan from ODOT

CALL TO ORDER

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

ACTION ITEMS

(1) Approval of Agenda

Motion: Moritz moved to approve the agenda as presented; Bennett seconded the motion.

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

(2) Consideration of the Minutes for the Planning Commission Meeting of June 23, 2022

Motion: Knop moved to approve the minutes; Kerr seconded the motion.

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

(3) Consideration of the Minutes for the Planning Commission Meeting of July 6, 2022

Motion: Bates moved to approve the minutes; Kerr seconded the motion.

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

**(5) Continuation and Consideration of CP#22-01 Adoption of the Cannon Beach Transportation
System Plan (TSP), as supporting material to the Comprehensive Plan.**

Jeff Adams on behalf of the City of Cannon Beach, seeks the adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Cannon Beach Comprehensive Plan. The TSP is in accordance with Oregon Revised Statutes OAR 660 Division 12, Transportation Planning Rule, which implements Statewide Planning Goal 12. The request will be reviewed against the criteria of the Cannon Beach Comprehensive Plan and Municipal Code, Section 17.86.070.A, Amendments, Criteria.

Adams put the edits to the TSP up on the screen.

Chair Newton asked for public comments related to the TSP.

Lolly Champion, PO Box 416, Cannon Beach. Champion read her comments. She felt the TSP has become an overburdened wish list that is not in line with the village character. She suggested limiting traffic into Cannon Beach. She also expressed a wish to see more receptacles at beach entrances.

Randy Neal, PO Box 1092, Cannon Beach. Neal said that he is not a fan of the plan. He said that there was a lot of input, but he felt it led to standard suggestions that were not what the community asked for. He noted the suggested edits that he turned in as written comment.

Hannah Buschert, PO Box 97, Cannon Beach. Buschert said that she would like to see more to address large vehicles. She would like to see a plan to accommodate them.

Erik Ostrander, PO Box 97, Cannon Beach. Ostrander said that he was concerned about funding coming from raising gas and lodging taxes. The wording related this had been changed from *may* to *shall*. He also had a question about the funding for a multiuse trail. Three dollar signs had replaced a dollar amount and he was not sure what three dollar signs means.

Jan Siebert-Wahrmund, PO Box 778, Cannon Beach. Siebert-Wahrmund asked that if the tsunami evacuation tower is not taken out of the TSP that it not be used as a parking garage. Siebert-Wahrmund felt that the City didn't need more parking but rather less vehicles.

Chair Newton closed the public testimony and moved to discussion.

Bates had concerns about not having time to look at all the changes.

Kerr suggested several edits to the draft. It was agreed that Kerr would send the wording for the edits to Adams after the meeting. Proposed edits included:

1. Policy 5, page 33: add "and implementing policies that preserve our natural environment including wetlands, trees, and wildlife."
2. 5.4: add "In determining future transportation needs, primary considerate to preservation of nature resources and environmental protections."
3. 3.2.2, page 35: change "may minimize addition of new accesses to Hemlock, change "may" to "shall"
4. Page 85: first paragraph last line, take out "as much as possible" and change "would be done" to "will be done."

5. Address safety on S-curves and add language regarding possibility of lowering speed limit
6. In policy—add language about RVs

Adams suggested adding RV parking to the wayfinding section.

Kerr thought the speed on Hemlock should be lowered. She also thought new trash receptacles should be added if people are going to be encouraged to walk.

They discussed issues related to RVs.

Montejo thought they needed to look at a good place to site these RVs. He thought that was a whole process in itself. For that reason, he thought it should live in the policy section of the TSP.

They discussed how to incorporate changes suggested tonight.

Adams said that they can approve it with amendments that they want to see.

Montejo discussed how they could incorporate addressing issues related to RVs.

Bates thought it should be addressed as a project. The commission reached a consensus that it should be addressed in the project section.

Kerr asked how the speed limit on the S curves could be addressed.

Montejo suggested adding something to reevaluate the speed limits in the S curves.

Duncan said that typically they conduct a speed study when they want to address a speed issue. He said that it is important to add features that help encourage the desired driving behavior. Duncan added that the point of the study was not to show that a slower speed is safer, but to see how people drive in the area. He suggested partnering a lower speed limit with other measures to encourage slower speeds.

Montejo suggested that they add changing the speed limit on the S curves as a project.

St. Dennis said that the Planning Commission is an important board, and they can make a recommendation to City Council at any time related to something like the speed limit on the S curves.

They discussed the use of the word shall in the TSP, particularly in relation to the lodging tax. They thought there may have been some miscommunication about the use of shall and may. The Commission decided that the draft needed further review.

Motion: Kerr moved to have her suggested policies added; Bates seconded the motion.

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

The Commission decided to continue the TSP until the August PC meeting.

(7) Continuation and Consideration of P# 22-01 & CU# 22-02, Jamie Lerma request, on behalf of Patrick/Dave LLC, for a three-lot Conditional Use Permit three-lot Partition in the Wetland Overlay Zone.

Jamie Lerma, on behalf of Patrick/Dave LLC, request for a Partition and a Conditional Use Permit for a three-lot partition in the Wetland Overlay Zone. The property is located at the corner of Forest Lawn Rd. and S Hemlock St. (Tax Lot 04100, Map 51030DA) in a Residential Medium Density (R2) Zone. The request will be reviewed under Cannon Beach Municipal Code, Sections 17.43.040 Conditional Uses and Activities Permitted in Wetlands, 17.43.045 Conditional Uses and Activities Permitted in Wetland Buffer Areas, and 16.04.130 Subdivisions, Applicable 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 if the applicant wished to speak to the letter submitted concerning Commissioner Bates.

Stapleton said he would like to hear from Kabeiseman first.

Kabeiseman explained the concept of impartiality as it relates to Planning Commissioners. He did not think there was an issue based on Bates article in Hipfish. The court of appeals has said that the bar is high, and that there must be shown bias. Kabeiseman noted that the application that Bates was referencing in his articles was in relation to 8 lots and the current application is for 3 lots. He advised that if Bates thought he could be unbiased he should be allowed to participate.

Bates said that he could participate without bias.

Newton asked if anyone objected to Bates participating.

No one objected. The applicant's council said that they appreciated the issue being addressed.

Adams summarized his staff report. He noted that a lot of material had come in since the staff report was written. He discussed the size of the wetland and noted that the most recent mapping, in 2021, showed a 15% reduction of the wetland over the past thirty years. Adams noted that the City's 5-foot buffer stands as the required buffer. He also noted the updated tree submissions from the applicant and a new tree report from the City's Arborist. Adams said that the access issue, in regard to accessing the property of Hemlock, was up to the council to decide.

Bates asked if the applicant brought their arborist.

The applicant confirmed that they had their arborist and Geotech specialists available to answer questions.

Chair Newton called for public testimony.

Chair Newton stated that the pertinent criteria were listed in the staff report and criteria sheets next to the west door; testimony, arguments and evidence must be directed toward those criteria; failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony, arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; persons who testify shall first receive recognition from the Chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Newton asked if the applicant wished to make a presentation.

Reed Stapleton land use planner with DOWL and council for the applicant, shared his screen. Stapleton addressed the key issues raised at the last hearing: wetland preservation, tree preservation & protection, and geological hazards. Stapleton said that they want to preserve wetlands as well and noted they will be making a covenant to protect the wetland on the property. He pointed out that they have minimized the number of trees needed to be removed by updating the site plans. 11 trees were previously slotted for removal and that had been reduced to 7 trees. He noted that 80% of the trees on the site will be preserved.

Troy Hull from Earth Engineers spoke about the Geotech Report. Hull noted that he has been working on the coast in numerous projects over the last twenty plus years. He discussed geologic hazard mitigation. He shared maps showing that the subject property and most of Cannon Beach are located on land with a moderate landslide hazard rating. Hull said that most of Cannon Beach is covered by the same giant landslide. Hull concluded by stating that they had identified the hazards on the property and provided the necessary mitigation.

Chair Newton called for proponents of the request. There were none.

Chair Newton called for opponents of the request.

Lolly Champion submitted a petition signed by citizens who oppose the project. She had concerns about past projects done by the owners. She also voiced concerns about there being discrepancies between what they say they will do and what they will end up with.

Mark Gibson said that it is obvious that they need to protect wetlands.

Ronald Shapiro, PO Box 738, Cannon Beach. Shapiro admitted that he has bias, he walks by the subject property daily. He said that they can employ experts to say whatever they want them to say. He felt that they say they will only remove so many trees and then more will be impacted in ways that necessitate their removal.

Ulisse Pardini said that the wetlands have been an island in the City for decades and he would like to see it stay that way. He discussed how the elk population was impacted when the Pig N Pancake was put in and that there was remorse after the fact.

Hanna Buschurt said that she has done coursework related to biology and land use policy. She discussed the bird species on the wetland. She discussed the US history of wetlands and how the amount of land covered by wetlands has shrunk. Buschert said that it is essential to preserve them.

Susan Glarum, PO Box 108, Cannon Beach. Glarum read a quote by James Paino that she thought spoke to the issue. She felt it was important to be protective of the aesthetics and livability of the community. She said that we risk losing this if we let it be developed. Glarum noted that birds rely on snags and the bugs that live in snags. Glarum discussed the benefits of wetlands.

Jan Seibert-Wahrmund spoke on behalf of herself and Wes Wahrmund. She said that these decisions are crucial to the climate crisis we are facing. She asked for a continuance of the hearing so that the Commissioners can fully review the record.

Anita Dueber, PO Box 694, Cannon Beach. Deuber felt that this property was an icon on par with Haystack Rock. She urged them to deny the request.

Rosanne Dorsey, 1603 Forest Lawn Rd. Dorsey said that she owns the home closest to the wetlands. She discussed drainage and sewage issues on her own property. She noted that there is one entity that wants to develop the wetlands but many who oppose it. Dorsey said that she was denied Hemlock access when she built her house.

Chair Newton asked if the applicant wished to make additional statements.

Stapleton said that they would like their arborist to speak. He also said that they would be willing to post signs around the wetland that they are protected areas that people must keep out of. He noted that they are avoiding any tree removal within the wetland.

Todd Prager, Arborist for the applicant. Prager said that he has over 20 years of professional experience as an arborist. He said that he was asked to reassess this project and came up with a redesign to minimize the impacts on trees. He said that the main way to protect trees is to ensure appropriate setbacks for construction. He went over how they calculate the tree protection area. Prager noted encroachments into those zones on the earlier plan. He said that they made adjustments to adhere to those standards. He also said that he wanted to avoid paving within the root zones of trees to be protected. He suggested having gravel drives. He said that he would also recommend snag retention where they are not a danger to a building. He noted that precautions will be taken with stump removal to avoid damaging surrounding trees. Prager said that they also discussed pier foundations with the team to avoid damaging roots.

Bates said he would like to congratulate Prager and the applicant on their work related to tree preservation. He also asked if the applicant was in agreement with their recommendations for pier foundations and in general.

The applicant said that they were open to that.

Moritz had questions about adhering to conditions that are put on the application.

Stapleton said that there would be conditions on the plat that would become part of that review.

Adams agreed that using the plat was a good method.

Kerr had concerns about conditions being adhered to. She did not see how they could guarantee these things without building plans.

Stapleton said that they have looked at the maximum envelope and have accounted for that.

Bates asked if they would be willing to have a condition to replace or pay for any trees inadvertently damaged.

Stapleton said he would need to speak with his client about that.

Newton asked about runoff.

Stapleton clarified the language. He said that runoff from the property would be pumped to the city outfall pipes.

Bates had questions for the geologist.

Hull answered his questions. He discussed how they assess a site.

They discussed geological hazards on the site and in the city in general.

Bates asked the wetland specialist about what he thought the impact would be on the wetlands.

John Van Staveren, Senior Scientist for Pacific Habitat Services. Staveren said that wetlands are fragile but also resilient. He noted that the wetlands on Forest Lawn have had an indirect impact from when roads and surrounding houses were put in. He said that he did not think that the piers for a pier foundation would affect the wetland at all. He noted that they use helical piers in trail design because they are like a corkscrew that goes down into the soil. They use them when they want there to be no impact on the wetland.

Bates asked what suggestions he might have to mitigate the impact on the wetlands.

Van Staveren suggested providing education and keeping people out of the wetlands by posting signs.

They agreed that there would be some indirect impact on the wetland.

Bates had questions about the storm drain and whether or not it would be directed away and down Hemlock.

The applicant said that they are proposing discharging stormwater into the City's drainage system.

Bruce St. Dennis brought up a picture of the current storm drain infrastructure. It was noted that the water being caught in the storm drain is drained into the wetland.

Bates said that the resolution of the stormwater drain is critical to the decision. Newton agreed with his concerns.

They addressed the request for a continuance and discussed the possible timelines in relation to the 120-day rule.

Motion: Knop moved to not continue the hearing; Bates seconded the motion.

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

They discussed the issue of stormwater discharge and the neighbors storm water that drains onto the subject property.

Kabeiseman reminded the Commission that the application before them needs to be addressed. He said that wetlands and storm runoff are important but are not the issue tonight.

Kerr mentioned the deed restriction on the land that limits the access to the lots to Forest Lawn. She suggested that the application should be denied based on the proposed access from Hemlock.

Kabeiseman noted that they could deny the application based on the plat restriction related to access.

Kerr felt that they should have the purview to deny the application because it is a conditional use. She did not think that a demand for housing applied here because it is luxury housing and is not needed. She felt that they should deny the application for these reasons.

Moritz agreed and felt that the project would displace an option for future housing that they need. She said that if the applicant would be willing to make it middle- or low-income housing, they would then be talking about needed housing.

Newton brought up the geological hazards. He was very concerned about the geological hazards.

They continued to discuss geological hazards.

Bennett added that they should include the access issue from Hemlock in their denial.

Moritz suggested adding that their application does not show a demand for this use.

Motion: Kerr moved to tentatively deny the application based on the following conditions: there is a plat restriction that limits access to Forest Lawn.; 17.43.050 Standards have not been met; the project is not beneficial to the City pursuant 17.80.010; there is no evidence that a demand exists for housing at the proposed location. Knop seconded the motion.

Newton amended the motion adding that the application does not meet 17.50.010.

Kerr and Knop accepted the amendment.

Moritz amended to clarify that the application does not fill a demand for middle-income housing, so it does not meet 17.80.110.

The amendment was accepted.

Newton amended stating that the application does not the meet standards under 17.43.010 including 17.05.050.

The amendment was accepted.

Moritz suggested having commissioners review the Findings before the Findings Review Meeting.

Kabeiseman said that was fine as long as a quorum was not involved in that process.

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

Chair Newton stated the project is denied.

Newton had questions about how to address storm water drainage concerns.

Kabeiseman suggested they draft a letter addressing their concerns and send it to the City Manager or City Council.

It was agreed that Kerr, Newton and Moritz would assist in drafting the Findings. A Findings Review Meeting was set for Thursday, August 11th.

Kerr, Moritz and Newton also agreed to draft the letter related to storm water.

(8) 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.

John Neupert suggested postponing till the next session.

The Commissioners agreed.

INFORMATIONAL ITEMS

(10) Tree Report

Kerr had concerns about a tree on a property that was recently given a setback reduction. She thought they were not going to bother the tree, but some major limbs had been cut back. She remembered them promising that they would not damage the tree.

Adams said he would have to go back and check the record. He remembered that they might have said they would have to trim the tree.

(11) Ongoing Planning Items

Shoreline CUP Status Update – St. Clair said that three of the shoreline conditional use projects had been completed. Only one was not completed. He said that they appear to have been constructed in a way that was consistent with the application. He noted that they were able to use images from recent drone footage in the reporting.

Newton had questions about monitoring what was being brought on site.

St. Clair said he was able to see truck loads but was not able to be down there all day.

Newton asked about the living wall.

St. Clair said he would be drafting a report on that for the next meeting.

Kerr noted that she went by the property and Mr. Bouvet seemed to be making a good effort to improve the conditions of the living wall.

Adams noted that the next Joint Code Audit Session will be Sept. 7th.

(12) Good of the Order

They discussed the 7-7-7 rule and how it could help with materials coming in late.

ADJOURNMENT

The meeting adjourned at 10:10 pm.

Administrative Assistant, Katie Hillenhagen

July 28, 2022

Staff and members of the Planning Commission,

I'd like to read and quote something written by James Paino, Executive Director of the Cannon Beach Chamber of Commerce published in the latest Cannon Beach Gazette:

"Locals enjoy the natural beauty of our home every day, and it draws visitors worldwide. As the Executive Director of the Cannon Beach Chamber of Commerce, it's really important to me that we see our local, business and visitor communities benefit each other. A vibrant business community and vibrant local community go hand in hand. If we don't have both, then we solely become a tourist destination and no one wants that. The mission of the Cannon Beach Chamber of Commerce is to promote, enhance and maintain a healthy environment for business as a year round resort destination. This includes a desire that such an environment will be protective of the aesthetics and livability of the community."

This is exactly what is at risk if we, as a city, allow this wetland to be degraded and developed for the sake of enriching the pockets of people who have no concern, none whatsoever, for the aesthetics and livability of our community. And what about the lives of all the creatures which rely on the wetland as a source of water, food, shelter and social interactions? One third of all bird species use wetlands for these purposes. And half of all federally endangered or threatened bird species rely on wetlands. There are at least two dozen species of birds occupying this bit of wetland. They rely on the snags, the dead trees, on this property for the insects that live in the bark and for nesting cavities to raise their young. And what about all the invertebrates that live in this wetland? We have been told these snags will definitely be taken down as a potential danger to the new homeowners who will be completely ignorant of what has been destroyed in order to provide them with their million dollar homes. As they are, the snags pose no danger to anyone and are of great value to the resident wildlife. What makes us think our human wants, (not necessities, but wants) should take precedence over the actual needs of any other creatures? In my eyes, we are equal. The benefit of this wetland to us as residents and visitors, lies in its beauty as we drive or walk past on Hemlock, as well as its role in helping to mitigate flooding, clean polluted runoff from the roads, replenish the aquifer, and act as a carbon sink, not to mention the role of the canopy in mitigating increasing temperatures due to global warming. If a number of trees on this property are cut down to build houses here, these benefits go away. As do the homes and lives of the creatures which rely on wetlands and cannot live elsewhere. Do we want to add to the number of birds that may go extinct due to the loss of wetlands? I personally do not want to be in any way responsible for such an outcome.

If James Paino recognizes the importance of "the natural beauty of our home to locals and visitors" shouldn't it be the responsibility of you, the members of the planning commission, to "make sure we don't just become a tourist destination" by protecting "the aesthetics and livability of the community"? Three more very expensive homes will destroy the aesthetics of Cannon Beach while doing nothing to add to the livability. Please rule wisely to make sure this does not happen.

Sincerely,

Susan Glarum

TO SAY NO

TO THE SUBDIVISION AND CLUSTER HOMES DEVELOPMENT OF
THE FOREST LAWN RD. FORESTED WETLAND!

NAME

ADDRESS/P.O. BOX

Robert Necker

PO Box 279, Cannon Beach 97110

Marian Dorley Smith

PO Box 144 CB 97110

Jack J.

PO Box 1246 CB 97110

Mary Beth Gottle

PO Box 492 CB 97110

Kay W. W.

PO Box 6 CB 97110

Diego N.

PO Box 6 CB 97110

Susan Martin

PO Box 364 CB 97110

Jim Bergsten

PO Box 686 CB 97110

Teresa Ritscher

PO Box 686 CB 97110

Glenn C. Pandorf

PO Box 1176

Your name will be presented to City Hall City Manager, City Planner, City Public Works, the City Council, and members of the Planning Commission, Parks Department and Design Review Commission. Our voices must be considered in the decision making. Thank you for caring.

Thomas Lucker

107 W. Monroe

Patti MacGregor

PO Box 761, Cannon Beach
OR 97110

Molly Edison

given by Email (on beach)

97110

Burn Frame

PO Box 820 CB

Juan Plarum

PO BOX 108, CB 97110

Mark Gibson

420 Elk Creek Rd.

Laure Poolittle

403 Elk Creek Rd.

Maggie Poolittle Gibson

403 Elk Creek Rd.

Cynthia Stross

1840 Pacific, CB

Lydia

1840 Pacific, CB

Sophia Johnson

1840 Pacific CB

Larry Neal

179 W Delta CB

Your name will be presented to City Hall City Manager, City Planner, City Public Works, the City Council, and members of the Planning Commission, Parks Department and Design Review Commission. Our voices must be considered in the decision making. Thank you for caring.

TO SAY NO

TO THE SUBDIVISION AND CLUSTER HOMES DEVELOPMENT OF
THE FOREST LAWN RD. FORESTED WETLAND!

NAME ADDRESS/P.O. BOX

Barb Hinthorne

P.O. Box 135 CB

MARK HINTHORNE

PO BOX 135 CB

John Walker

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Laurie Jiroudek

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SUMMER PETERSON

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Elizabeth A. McCall

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HEIDI KLANOFF

PO BOX 902

Linda Mayer

PO BOX 1384

Steve Mayer

PO BOX 1384

Robert Klonoff

PO Box 902

Your name will be presented to City Hall City Manager, City Planner, City Public Works, the City Council, and members of the Planning Commission, Parks Department and Design Review Commission. Our voices must be considered in the decision making. Thank you for caring.

Holly Allera

P.O. Box 749

John Henry

P.O. Box 1208, B

Bonnie Neugebauer

PO Box 244

10

Roger Neugebauer

Katherine

PO Box 43

A. Steven Weigher

Pi Box 1051

Dance Dab

P.O. BOX 794

Kil Yung

P.O. Box 1248

San Siebert
Wahmunda

P.O.B. 778. CB

Amelia Jones

PO Box 363 CB.

Genet Bates

PO Box 1423 CB

Claire Landrum

P.O. Box 865 CB

Jamara Stecher

PO Box 47 CB

Your name will be presented to City Hall City Manager, City Planner, City Public Works, the City Council, and members of the Planning Commission, Parks Department and Design Review Commission. Our voices must be considered in the decision making. Thank you for caring.

TO SAY NO

TO THE SUBDIVISION AND CLUSTER HOMES DEVELOPMENT OF
THE FOREST LAWN RD. FORESTED WETLAND!

NAME

ADDRESS/P.O. BOX

Bobby Beaulieu

P.O. Box 961 CB

J. Montani

P.O. Box 1354 CB

Pamela Avila

P.O. Box 724 CB 97110

Nancy Shier

P.O. Box 518 Cannon Beach, OR 97110

Nancy Shier

Dale Hirtz

P.O. Box 712 C.B., OR 97110

Linda Hirtz

Quinn Hirtz

P.O. Box 712 C.B., Or. 97110

Rod Siebert

P.O. Box 971 CB, OR 97110

Betty Searen

P.O. Box 137 CB, OR 97110

Michael Searen

P.O. Box 137, CB, OR 97110

Anita Dueber

P.O. Box 694 CB, OR 97110

Your name will be presented to City Hall City Manager, City Planner, City Public Works, the City Council, and members of the Planning Commission, Parks Department and Design Review Commission. Our voices must be considered in the decision making. Thank you for caring.

Thiller Massebaw P.O. Box 603, C.B.

Kirsten Massebaw PO 603, C.B.

Amber Fowler

P.O. Box 657, CB OR 97110

Mary Siebert

P.O. Box 971 Cannon Beach

Clare Landrum Signed Tange
Clare Landrum

P.O. Box 865 CB 97110

Thomas Landrum

Thor

P.O. Box 865 CB 97110

Your name will be presented to City Hall City Manager, City Planner, City Public Works, the City Council, and members of the Planning Commission, Parks Department and Design Review Commission. Our voices must be considered in the decision making. Thank you for caring.

TO SAY NO

TO THE SUBDIVISION AND CLUSTER HOMES DEVELOPMENT OF
THE FOREST LAWN RD. FORESTED WETLAND!

NAME

ADDRESS/P.O. BOX

D. L. Coby

P.O. Box 108, Cannon Beach

Kathleen Coyne

147 E. Washington, Cannon Beach

Robert Coyne

147 E. Wash, Cannon Beach

Terrill Neal

179 W Delta, Cannon Beach

J. Austin Raglione

216 E. Gower CB 97110

Mylesia M (Awarner)

Unit 41 97135

Jakelly Bryant (Awarner)

Unit 4

Jenny Seedy (Awarner)

P.O. 223

Angela Whittaker (Awarner)

P.O. Box 952

Kara Hays

(Awarner)

P.O. Box 202

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Our voices must be considered in the decision making. Thank you for caring.

Kidney Swenson (Awarner) 350 Ross

DONOVAN Burns (Awarner) 402 Ross

Alyssa Thoma Awarner P.B. 146

Myra Wilson 802 Oak St.

~~Walter~~

Wes Wahrmond

Wanda F. Meyer-Rice

Wanda F. Meyer-Rice

P.O. Box 778 C.B.

607 N. Larch 97110

P.O. Box 676/647 N. Larch St.
Cannon Beach OR 97110

Nancy S. Johnson

P.B. Box 1374 C.B. 97110

Buzz Johnson

P.O. Box 1374, C.B. 97110

Lucile W. Hayes

P.O. Box 478

547 N. Hemlock 97110

Julief Hyans

1064 S. Hemlock 97110

Diana Byrne

P.O. Box 1298, Cannon Beach 97110

Patti MacGregor

P.O. Box 761, Cannon Beach 97110

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TO SAY NO

TO THE SUBDIVISION AND CLUSTER HOMES DEVELOPMENT OF THE FOREST LAWN RD. FORESTED WETLAND!

NAME	ADDRESS/P.O. BOX
Hanna Hofer Hanna Heh	616 N Larch St CB
Jim Hofer Jim Hofer	616 N Larch St Cannon Beach 97110
JOHN RIPPEY John Rippey	588 BEECH CANNON BEACH
Martha Schwab Harris Martha S. Harris	4015 S. Ocean CB 97110 P.O. Box 1452
Lolly Champion Lolly Champion	420 Elk Creek #602 PO BOX 614
Temyae Epchamx Tina Chapman TINA CHAPMAN	147 Jackson Street Cannon Beach 396 SUNSET BLVD PO 157
Tammy McKinney Tammy McKinney	376 Sunset Blvd. PO BOX 157
Patricia Lilly	PO BOX 55 CB 97110
Kathryn Leys	PO BOX 738 CB OR 97110
Rev SHAPIRO	PO BOX 738 CB OR 97110

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Annie Beaton

PO Box 758

Cannon Beach, OR 97110

Debra Ayeh

PO Box 1426

Cannon Beach, OR 97110

Your name will be presented to City Hall City Manager, City Planner, City Public Works, the City Council, and members of the Planning Commission, Parks Department and Design Review Commission. Our voices must be considered in the decision making. Thank you for caring.

**Minutes of the
CANNON BEACH PLANNING COMMISSION**
Thursday, August 11, 2022

Present: Vice Chair Barb Knop and Commissioner Mike Bates in person; Chair Clay Newton, Commissioners Charles Bennett, Aaron Matusick, Lisa Kerr and Anna Moritz via Zoom

Excused:

Staff: City Planner Robert St. Clair

CALL TO ORDER

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

ACTION ITEMS

(1) Approval of Agenda

Motion: Moritz moved to approve the agenda as presented; Bennett seconded the motion.

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

(2) Review of Findings for P# 22-01 & CU# 22-02, Jamie Lerma request, on behalf of Patrick/Dave LLC, for a three-lot Conditional Use Permit three-lot Partition in the Wetland Overlay Zone.

Vice Chair Knop introduced the item and asked if any Commissioners had amendments to the Findings.

Moritz had a couple of small grammatical edits.

Chair Newton thanked Adams and St. Clair for their work on the Findings and said that they were very well done.

Motion: Bates moved to approve the Findings; Bennett seconded the motion.

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

Authorization to Sign the Appropriate Orders

Motion: Moritz moved to authorize the Vice Chair to sign the appropriate orders; Bates seconded the motion.

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

INFORMATIONAL ITEMS

(3) Good of the Order

Moritz brought up the letter regarding storm water that is being drafted to go to Council.

Chair Newton gave an update on where they are in the process of writing the letter. He asked if anyone had anything they would like to see included in the letter.

Bates thought the issue might not be a City issue, but rather an issue between property owners.

They discussed the letter that went out to a resident regarding storm water discharge on their property.

It was noted that a draft of the letter will be available for all Commissioners to review and comment on before the next scheduled meeting.

ADJOURNMENT

The meeting adjourned at 6:15 pm.

Administrative Assistant, Katie Hillenhagen



CANNON BEACH COMMUNITY DEVELOPMENT

163 E. GOWER ST.

PO Box 368

CANNON BEACH, OR 97110

**Continuation and Consideration of CP 22-01 Adoption of the Cannon Beach
Transportation System Plan (TSP), as supporting material to the Comprehensive
Plan**

Please see the Packet from the July 28th Planning Commission Meeting for TSP materials



Cannon Beach Planning Commission

Staff Report:

PUBLIC HEARING AND CONSIDERATION OF V# 22-01, DAVID VONADA, ON BEHALF OF CANNON BEACH BUSINESS PARK LLC, REQUEST FOR A VARIANCE TO ALLOW A RESIDENTIAL USE FOR APPROXIMATELY 55% OF THE BUILDING FLOOR AREA VS. THE 50% MAXIMUM ALLOWED. THE PROPERTY IS LOCATED AT 368 ELK CREEK RD. (TAXLOT 00200, MAP 51029CA) IN A GENERAL COMMERCIAL (C2) ZONE. THE REQUEST WILL BE REVIEWED UNDER CANNON BEACH MUNICIPAL CODE, SECTIONS 17.24.020, GENERAL COMMERCIAL ZONE, USES PERMITTED OUTRIGHT, 17.78.030, OFF STREET PARKING, DESIGN STANDARDS, AND 17.84.030, VARIANCES, CRITERIA FOR GRANTING.

Agenda Date: August 25, 2022

Prepared By: Robert St. Clair

GENERAL INFORMATION

NOTICE

Public notice for this August 25, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on August 2, 2022;
- B. Notice was mailed on August 2nd 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 6, 2022 unless otherwise noted.

"A" Exhibits – Application Materials

- A-1 Variance Request Application V#22-01, submitted and stamped July 6, 2022;
- A-2 Preliminary site plan;

"B" Exhibits – Agency Comments

- B-1 Oregon Department of State Lands letter, dated March 29, 2022
- B-2 US Army Corps of Engineers Wetlands Determination Letter, Kristen Hafer, Chief, Policy and Compliance Section Regulatory Branch, with Enclosure, dated April 14, 2022;

“C” Exhibits – Cannon Beach Supplements

None received as of this writing;

“D” Exhibits – Public Comment

None received as of this writing;

SUMMARY & BACKGROUND

David Vonada, on behalf of the Cannon Beach Business Park, is requesting a variance to municipal code requirements pertaining to a proposed mixed-use development at 368 Elk Creek Rd. The requested variance is to exceed the 50% limitation on residential space in conjunction with commercial uses and remove the requirement to provide a buffer between parking spaces and the proposed structure. The subject property is zoned General Commercial (C2) and is currently occupied by multiple tenants including commercial operations, warehousing, and personal storage. The proposed development would be a two-story structure with seven storage units on the ground level and four apartments on the upper.

A two-story mixed-use structure like the one proposed currently exists in Building 4 at the southeastern corner of the Business Park. The lower level of this building consists of five storage units while the upper level is a mixture of professional spaces and apartments. The existing structure is shown in the photo below:



Although not pertinent to this application, it is noted that the subject property is a wetland lot of record, and the proposed development would be in an area adjacent to a delineated wetland. Due to its nature this project is subject to various types of review, and this application regarding building size and landscaping requirements is only one of them. Final designs have not yet been submitted to the City by the applicant.

APPLICABLE CRITERIA

General Commercial (C2) Zoning District

17.24.020 Uses Permitted Outright

In a C2 zone the following uses and their accessory uses are permitted outright:

- A. *Building materials supply sales;*
- B. *Plant nurseries;*
- C. *Government buildings and maintenance shops;*
- D. *Warehouses or storage establishments;*
- E. *Boat building, cabinet or carpentry shops, contractor's shops, machine shops, vehicle repair or storage;*
- F. *A manufactured dwelling or recreational vehicle not exceeding three hundred square feet in area used temporarily during the construction period of a permitted use for which a building permit has been issued but not to exceed one year;*
- G. *Business office or professional office, up to ten percent of the area of a mixed use development;*
- H. *A residential use in conjunction with a permitted use where the residential use does not exceed fifty percent of the building's floor area;*
- I. *Claims for Compensation Under ORS 197.352. A specific individual use or structures approved pursuant to a development agreement created as part of the city's final action modifying, removing or not applying the city's land use regulation(s) on a demand for compensation under ORS 197.352, where the standards of Section 17.90.180 are met.*

Staff Comment: The project meets criteria D and H with the exception that the residential use will exceed 50% of the building's floor area with the applicant's intent to use approximately 60% of the building's floor area for residential use.

Off Street Parking

17.78.030(A)(5,6) Design Standards

- A. *The following design requirements shall apply to an off-street parking area consisting of five or more parking spaces:*
 - 5. *At a minimum, ten percent of the area of the parking lot shall be landscaped. In determining the area of the parking lot and required landscaping the minimum area separation between the building and the parking lot described in subsection (A)(6) of this section shall not be included. The landscaped area of the parking lot shall contain at least one tree for every one hundred seventy-five square feet of landscaping provided. Areas that contain a tree shall have a minimum width of five feet. Any landscaped area shall have a minimum area of fifty square feet.*
 - 6. *An area with a minimum width of five feet shall separate the exterior wall of a building from the parking lot. The separation between the parking lot and the building can consist of landscaping material, a pedestrian walkway, or a combination of the two.*

Staff Comment: Currently there is no significant amount of landscaping on the interior portions the Business Park, landscaped areas are limited to the Elk Creek Rd. frontage. Additionally, the proposed development will necessitate the removal of trees from the building footprint. Section 17.70.020(G)(2), permit issuance criteria of the Tree Removal and Protection section of the Municipal Code, requires a landscaping plan for the area affected by construction. The site plan shows the placement of two new trees in the parking area, however this is not a landscaping plan. Without a variance the application does not meet the 10% minimum landscaping or one tree

for every 175 square feet of landscaping requirements above. If a variance is granted, a condition of approval should be the inclusion of a landscaping plan that maximizes landscaping and tree placement or replacement opportunities across the business park.

Due to the necessity of having unobstructed access to ground level storage units the requirement to have a landscaped separation area between them and the parking area is impractical. The site plan provided by the applicant shows a total of 18 off-street parking spaces that would serve the park with a 24-foot-wide aisle. The proposal does not seek to reduce the size of the access aisles and further review of any development proposal prior to issuance of a building permit would include the Cannon Beach Rural Fire Protection District.

The off-street parking requirements table in 17.78.020(D) provides the following guidance regarding the amount of parking required for residences:

Single-family dwelling, two-family dwelling and multiple family dwelling in condominium ownership: 2 per dwelling unit, except that 1 per dwelling unit is required for residences that are provided in conjunction with a commercial use where those residences constitute no more than 50% of the building area.

Based on this requirement, no fewer than four of the 18 parking spaces must be dedicated to the four proposed dwelling units. Additionally, any apartments in Building 4, shown in Figure 2 below, would each need no fewer than one of the remaining parking spaces. Figure 3 is a recent staff photo showing the area of the proposed development and its current use, in the photo multiple vehicles and trailers can be seen. The applicant provided no information regarding current demand for parking by non-residential tenants of the park, or if the aggregate amount of off-street parking will be sufficient to meet the anticipated total level of demand. The proposal cannot meet these criteria unless a variance exempts their application.

Variances

17.84.030 Criteria for Granting

- A. *Variances to a requirement of this title, with respect to lot area and dimensions, setbacks, yard area, lot coverage, height of structures, vision clearance, decks and walls, and other quantitative requirements, may be granted only if, on the basis of the application, investigation and evidence submitted by the applicant, all four expressly written findings are made:*
1. *That a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulty or unnecessary hardship and would be inconsistent with the objectives of the comprehensive plan; and*
 2. *That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties in the same zone; and*
 3. *That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the near vicinity; and*
 4. *That the granting of the variance would support policies contained within the comprehensive plan.*
- B. *Variances in accordance with this section should not ordinarily be granted if the special circumstances on which the applicant relies are a result of the actions of the applicant, or owner, or previous owners.*

Staff Comment: The application states that the Municipal Code does not address use specific attributes of business parks vs. general commercial uses and that the application of requirements regarding separation between parking spaces and the storage unit doors effectively interferes with the functioning of tenant areas by cutting off direct vehicle access. It further states that the proposed development will have a positive impact on

the economic health of the community by providing uses that support businesses and provide opportunities for needed housing at a price point that may be accessible to persons who work in the community.

The applicant provides no proposed deed restrictions or development agreements that would guarantee that the housing provided would be 'affordable' or dedicated to '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 6, 2022 and determined to be complete on July 8, 2022. Based on this, the City must complete its review of this proposal by November 7, 2022.

The Planning Commission's August 25th hearing will be the first evidentiary hearing on this request. ORS 197.763(6) allows any party to the hearing to request a continuance. The DRB should grant any request for a continuance of this hearing. The Planning Commission's next regularly scheduled hearing date is September 22, 2022.

RECOMMENDATION

Staff recommends approval, with the following conditions.

DECISION AND CONDITIONS

Motion: Having considered the evidence in the record and upon a motion by Commissioner (Name), seconded by Commissioner (Name), the Cannon Beach Planning Commission voted to (approve/approve with conditions/or deny) the David Vonada application for a variance, V22-01, as discussed at this public hearing (subject to the following conditions):

1. The applicant shall obtain a Conditional Use Permit from the Planning Commission for any construction or excavation taking place within the delineated wetland buffer area.
2. The applicant shall obtain Design Review Board approval for the proposed multi-family mixed use structure.
3. A landscaping plan shall be developed that maximizes opportunities for softscaping and the placement of trees across the subject property.
4. A building permit shall be obtained before starting construction.
5. Development agreement containing 'affordable' or 'workforce housing' requirements, approved by City Council and recorded with Clatsop County;

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)

Figure 1: Site Map & Zoning Information

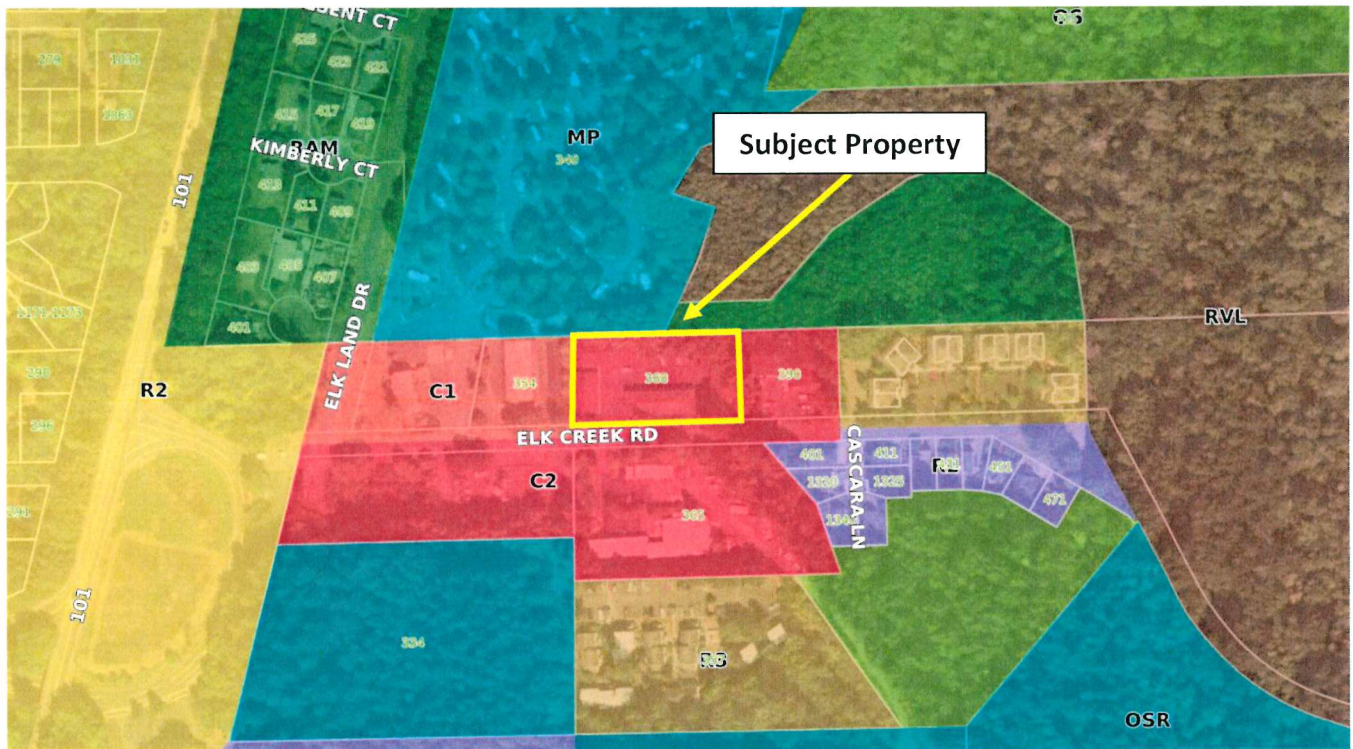


Figure 2: Cannon Beach Business Park and Approximate Project Area

Diagram taken from Clatsop County Assessor's online records

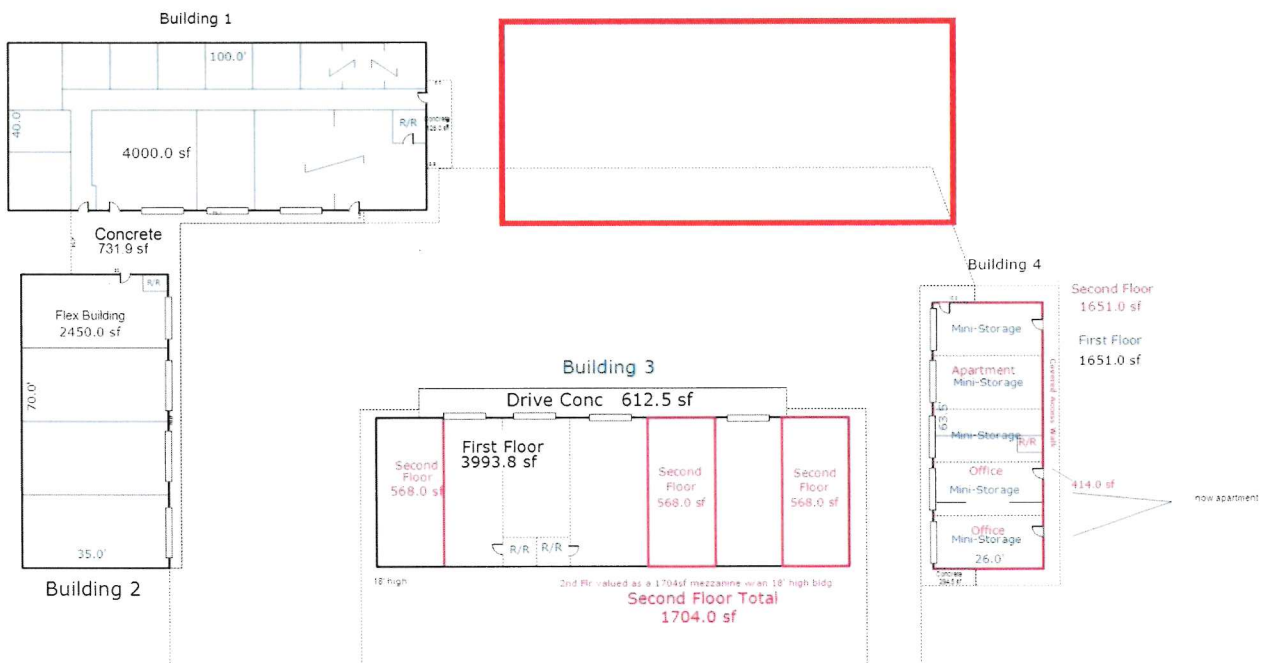


Figure 3: Project Area – Current Conditions





CITY OF CANNON BEACH

VARIANCE REQUEST APPLICATION

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

Applicant Name: DAVID VONADA
Email Address: david@tolovanaarchitects.com
Mailing Address: P.O. Box 648
Tolovana Park, Or. 97145
Telephone: 503.869.8688

Property-Owner Name: Cannon Beach BP, LLC
(if other than applicant)
Mailing Address: 540 S.W. Westgate Dr.
Portland, Or. 97221
Email Address: russell.campbell@crg-inc.net
Telephone: _____
Property Location: 968 Elk Creek Rd.
(street address)

Map No.: 5.10.29CA Tax Lot No.: 200

VARIANCE REQUEST:

1. Description of variance that is being sought (setback, height, access requirement, etc.)

- Elimination of 5 ft. landscape area between a building and parking lot, per 17.7B.030.A.C
- Increase the allowed residential use to 58% of the building floor area, per 17.24.020H.

2. Description of the proposed building plans pertinent to the variance request.

- As a functioning business park, it is desirable to maintain vehicle access to the individual tenant areas at the entire building frontage, therefore eliminating the landscape/pedestrian walkway.
- Second floor of the building will cantilever 24" beyond the footprint of the lower floor for better efficiency of the floor plan.

3. Justification of the variance request. Explain how the request meets each of the following criteria for granting a variance.

- How would a literal application of the Zoning Ordinance requirement impose a practical difficulty or an unnecessary hardship, and how would the application of the requirement be inconsistent with the objectives of the Comprehensive Plan?

The Zoning Ordinance does not address business parks specifically. A landscaped area between the building and parking would significantly reduce the required access to

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

the storage units.

This new facility will support the policy of mixed land uses that promote the livability of the town and support the goal of providing affordable housing.

- b. Explain any exceptional or extraordinary circumstances or conditions that are applicable to this property or to the intended use of the property which do not generally apply to other properties in the same zone.

This is one of the few properties in the C-2 zone. The building will adjoin a wetland onsite & meet the required setbacks per Army Corps of Engineers

- c. Explain why the granting of the variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the near vicinity.

This variance will promote the economic health of Cannon Beach by providing more support areas for business and affordable housing.

- d. Explain how this request, if granted, would support policies contained within the Comprehensive Plan.

This development is within the density limits of the comprehensive plan for commercial development and utilizes an available building site.

- e. Explain why this request is not a self-imposed hardship or difficulty.

This project utilizes a site that was "left over" from the original business park development.

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 structures, and dimensions of proposed development.

Fee: \$500.00

Applicant Signature: _____

Daniel Venable

Date: _____

6/29/22

Property Owner Signature: _____

[Signature]

Date: _____

7/6/2022

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 owners. As Property Owner, my signature or an authorized applicant's signature, allows any duly authorized employee of the City to enter upon all properties affected by this permit for the purpose of follow-up inspection, observation, or measurement.

For Staff Use Only:

Received on: _____

By: _____

City of Cannon Beach
Finance Department

Fee Paid: _____

Receipt No.: _____

JUL 6 2022

Fees:

803 - Planning \$500

(Last revised March 2021)

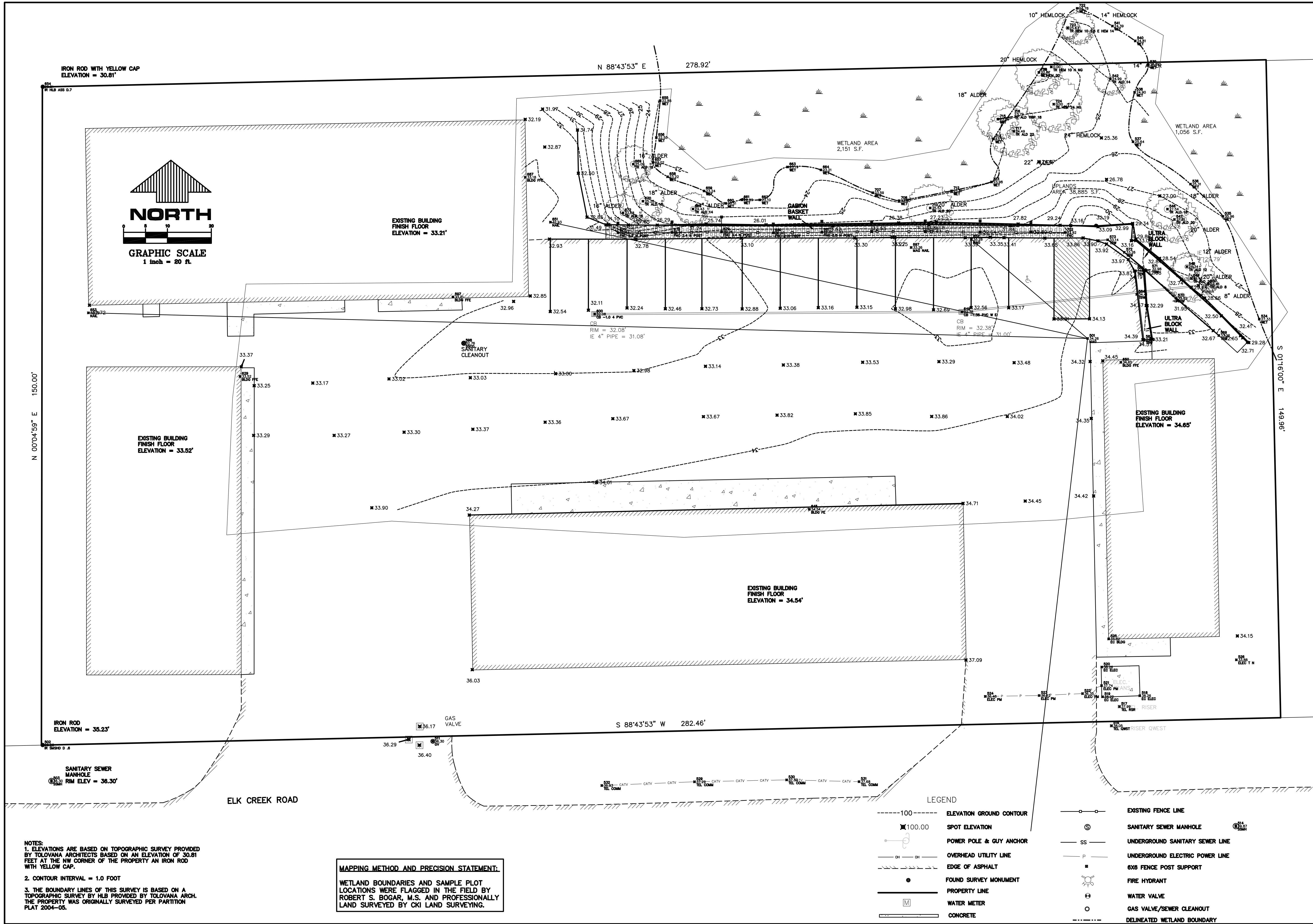
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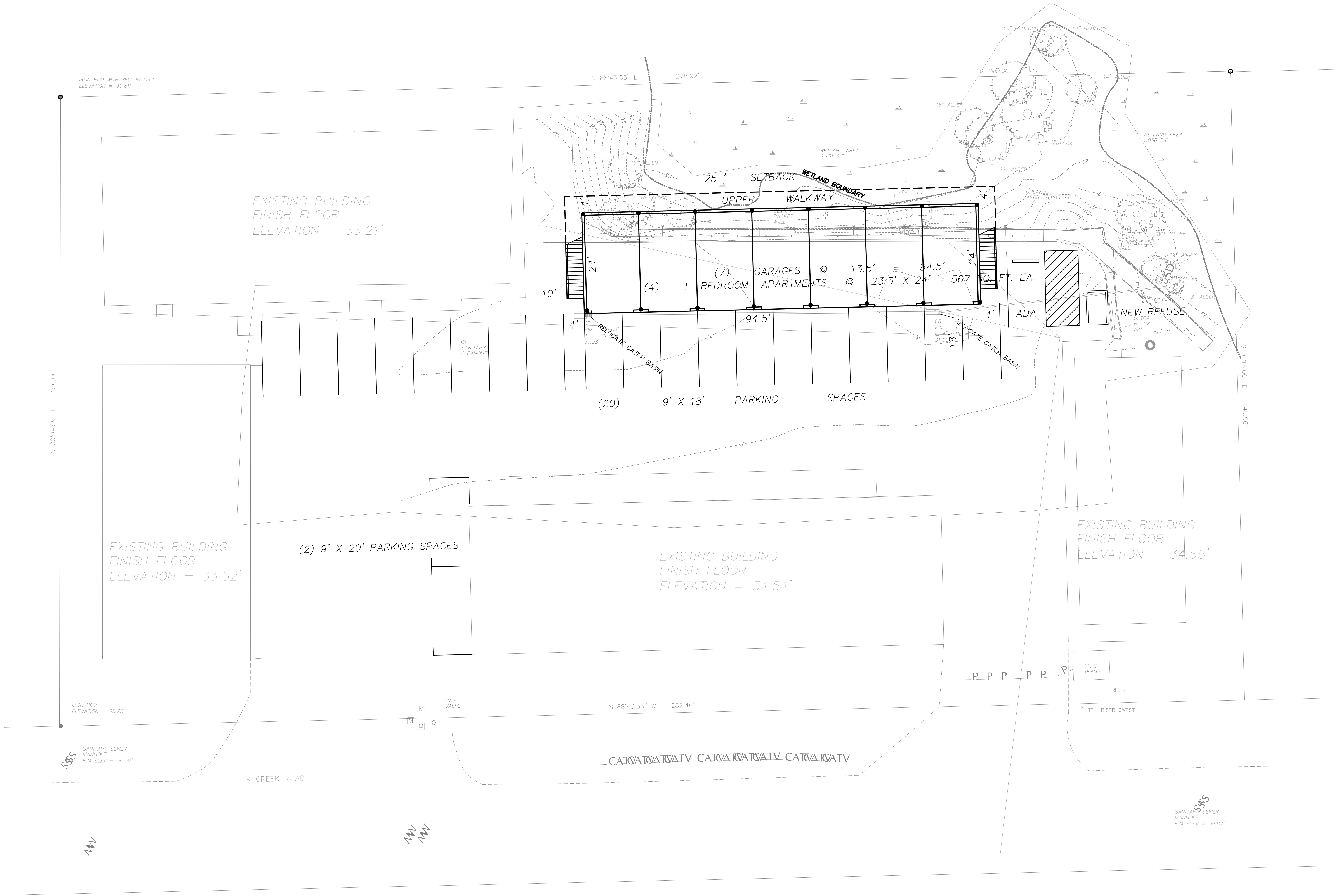
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Tolovana Architect LLC
368 Elk Creek Rd. Suite 408
Cannon Beach, Oregon 97110



Preliminary Site Plan
Cannon Beach Business Park
363 Elk Creek Rd.
Cannon Beach, Oregon

MARK	DATE	DESCRIPTION

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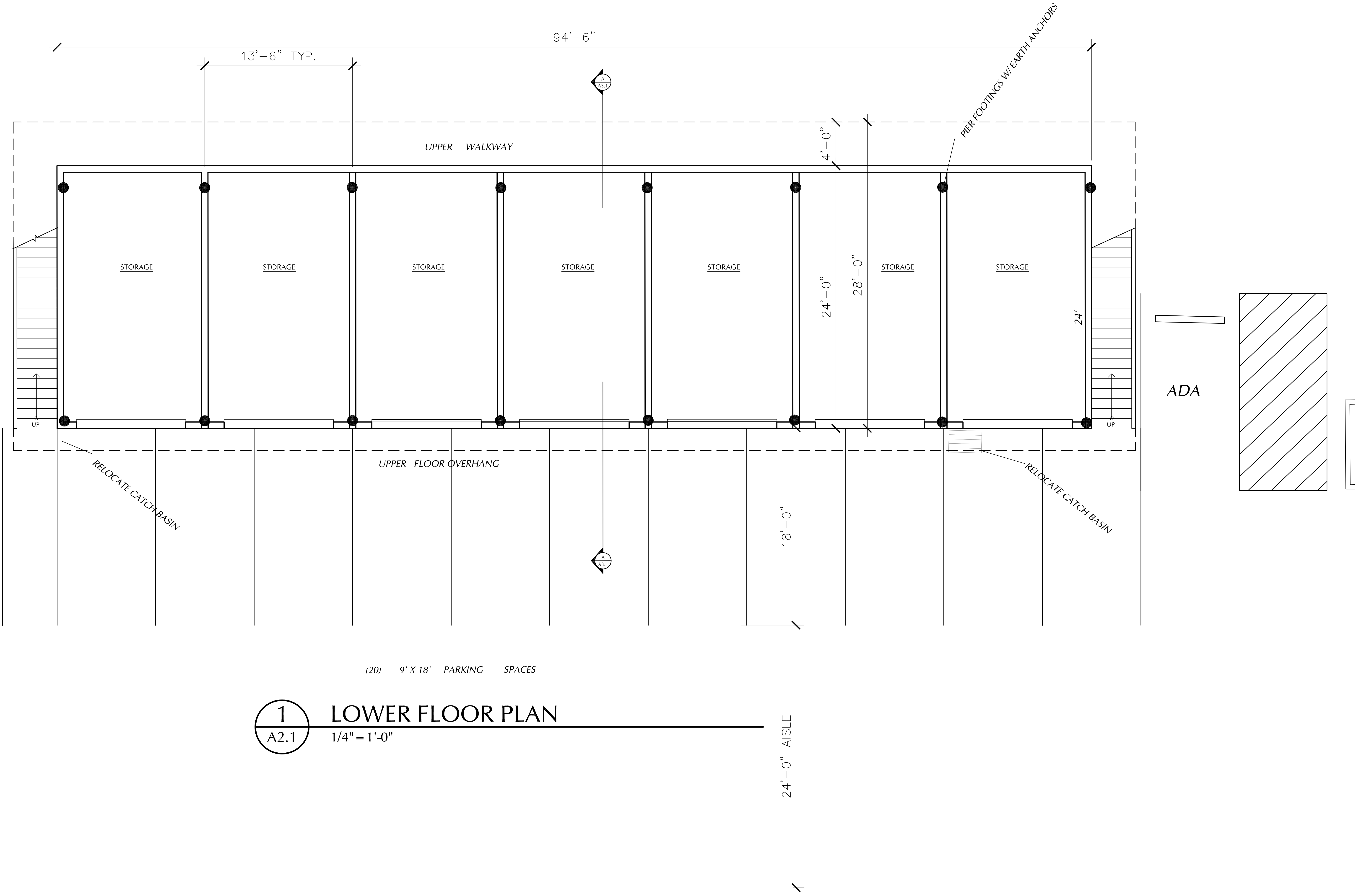
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SITE PLAN

AS1.0

2021-08-18 Preliminary

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Tolovana Architect LLC
368 Elk Creek Rd. Suite 408
Cannon Beach, Oregon 97110



A NEW BUILDING FOR:
Cannon Beach Business Park
363 Elk Creek Rd.
Cannon Beach, Oregon

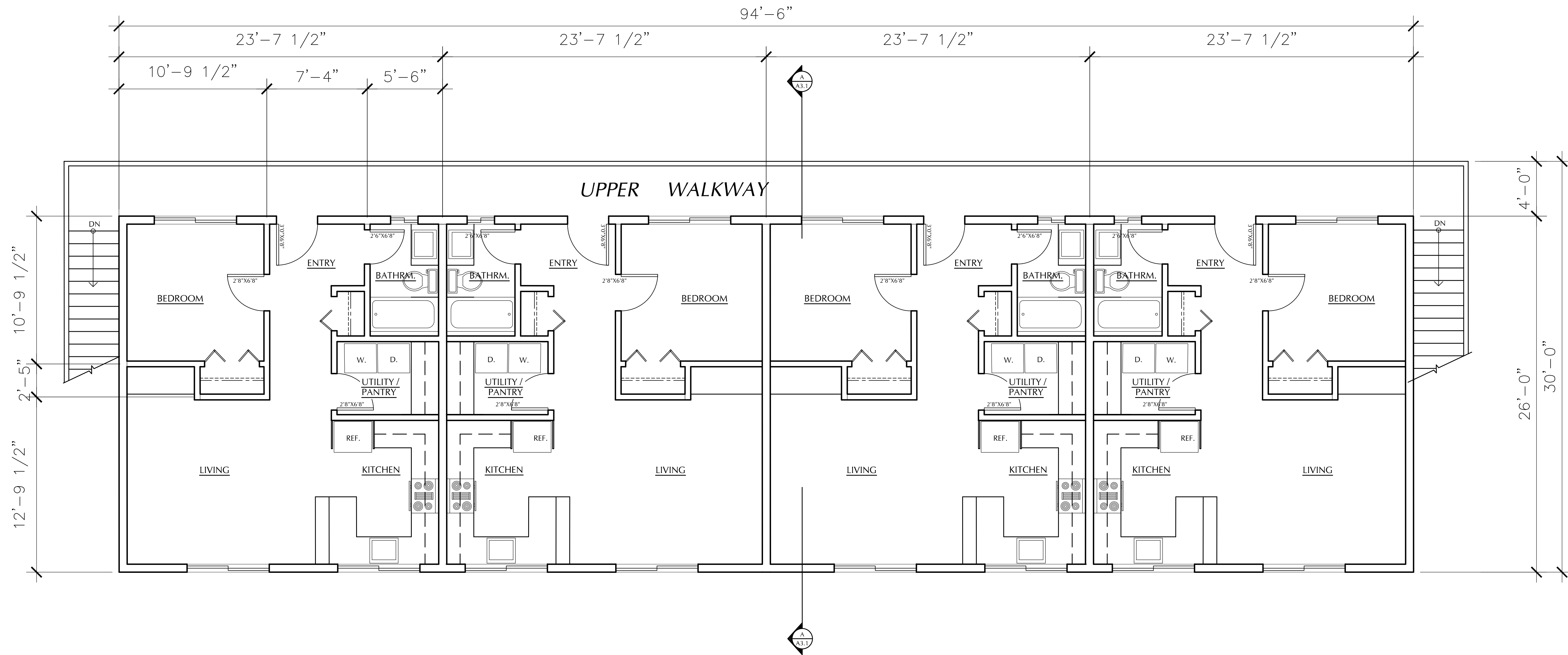
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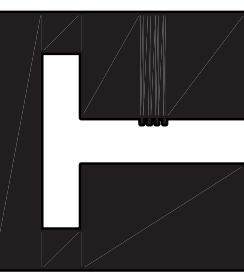


(4) 1 BEDROOM APARTMENTS @ 23.625' X 26' = 614.25 SQ. FT. EA.

1 UPPER FLOOR PLAN A2.2 1/4" = 1'-0"



Tolovana Architect LLC
368 Elk Creek Rd. Suite 408
Cannon Beach, Oregon 97110



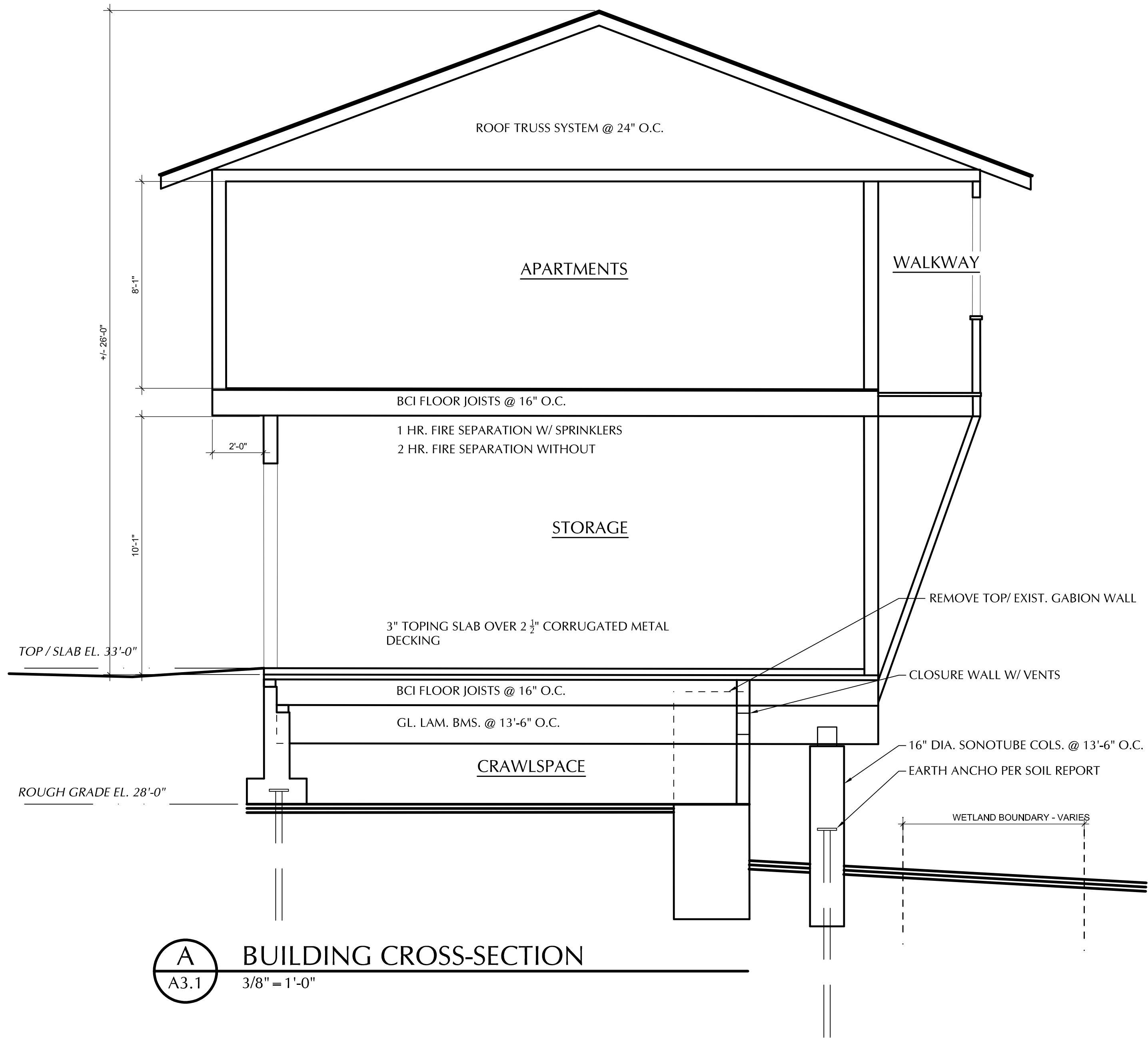
A NEW BUILDING FOR:
Cannon Beach Business Park
363 Elk Creek Rd.
Cannon Beach, Oregon

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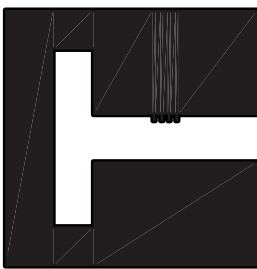
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2020

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Tolovana Architect LLC
368 Elk Creek Rd. Suite 408
Cannon Beach, Oregon 97110



A NEW BUILDING FOR:
Cannon Beach Business Park
363 Elk Creek Rd.
Cannon Beach, Oregon

MARK	DATE	DESCRIPTION

DATE: 3-01-2022
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Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

March 29, 2022

DEC600/63764

TOLOVANA ARCHITECT LLC

ATTN: DAVID VONADA

PO BOX 648

TOLOVANA PARK OR 97145

State Land Board

Kate Brown

Governor

Re: State Application Number 63764-NP
Elk Creek/Wetland, Cannon Beach Business Park

Shemia Fagan
Secretary of State

Dear David:

Tobias Read
State Treasurer

We have received your application to construct a storage unit with second floor residences overhanging wetlands adjacent to Elk Creek with no impacts to wetlands or Elk Creek, Township 5N, Range 10W, Section 29CA, Tax Lot 200, Clatsop County, Oregon. Under the Oregon Removal-Fill Law (ORS 196.800 - 196.990), removal, filling, or alteration of 50 cubic yards or more of material within the bed or banks of the waters of this state, or any amount within waters designated Essential Salmonid Habitat or State Scenic Waterway, requires a permit from the Department of State Lands. Waters of this state include the Pacific Ocean, rivers, lakes, most ponds and wetlands, and other natural water bodies.

Based on the information provided in your application, it appears that your project does not require a State removal-fill permit because it involves less than 50 cubic yards of removal and/or fill in waters of this state that are not designated as Essential Salmonid Habitat or a State Scenic Waterway.

Please be aware that your project, while exempt from the State Removal-Fill requirements, may be subject to U.S. Army Corps of Engineers regulatory program and/or local planning department permitting process.

if you have any questions, please call me at (503 986-5302).

Sincerely,

Dan Cary
Aquatic Resource Coordinator
Aquatic Resource Management
Oregon Department of State Lands

DEC:bh

cc: Brad Johnson, US Army Corps of Engineers, Portland Office
Cannon Beach Planning Dept.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OR 97208-2946

April 14, 2022

Regulatory Branch
Corps No. NWP-2022-148

Mr. David Vonada
Tolovana Architect, LLC
PO Box 648
Tolovana Park, Oregon 97145
david@tolovanaarchitects.com

Dear Mr. Vonada:

The U.S. Army Corps of Engineers (Corps) has received your application for a Department of the Army (DA) permit to construct a two-story storage and apartment building. The project is located at 368 Elk Creek Road Cannon Beach, Clatsop County, Oregon at Latitude/Longitude: 45.889192°, -123.953947°. Your application has been assigned Corps No.:NWP-2022-148. Please refer to this number in all correspondence. We have reviewed the application you provided to us pursuant to Section 404 of the Clean Water Act (CWA).

Under Section 404 of the CWA, a DA permit is generally required for the discharge of dredged or fill material into waters of the U.S. The proposed project does not involve a discharge of dredged or fill material regulated under Section 404, therefore a Section 404 DA permit is not required. Based on the submitted project figures (Enclosure) the project would support the building using earth anchors located outside of the wetland boundary and the decks on the second story would overhang the boundary.

Based upon information provided in your permit application, we have determined a DA permit is not required for your proposed project. Although a DA permit is not required, other local, state, or federal requirements may still apply.


Our determination regarding the proposed work is based on the project description and construction methods provided in your permit application. You are cautioned that any change in the location or plans of the work may result in activities that require a DA permit.

Please note, this letter is not an official jurisdictional determination or concurrence of the geographic limits of waters or wetlands at this site.

We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form at the following address: <https://regulatory.ops.usace.army.mil/customer-service-survey/>.

If you have any questions regarding our regulatory authority, please contact Mr. Brad Johnson by telephone at (503) 808-4383 or by email at brad.a.johnson2@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Hafer". The signature is fluid and cursive, with the first name "Kristen" and last name "Hafer" clearly distinguishable.

Kristen Hafer
Chief, Policy and Compliance Section
Regulatory Branch

Enclosure

cc:

Oregon Department of State Lands (Dan Cary, dan.cary@dsl.oregon.gov)

Oregon Department of Land Conservation and Development
(coast.permits@dlcd.oregon.gov)

Oregon Department of Environmental Quality (401applications@deq.oregon.gov)



CITY OF CANNON BEACH

April 2, 2022

V 22-01, David Vonada, on behalf of Cannon Beach BP LLC, request for a Variance to allow a residential use for approximately 55% of the building floor area vs. the 50% maximum allowed. The property is located at 368 Elk Creek Rd. (Tax Lot 00200, Map 51029CA) in a General Commercial (C2) Zone. The request will be reviewed under Cannon Beach Municipal Code, Sections 17.24.020, General Commercial Zone, Uses Permitted Outright and 17.84.030, Variances, Criteria for Granting.

Dear Property Owner,

Cannon Beach Zoning Ordinance requires notification to property owners within 100 feet, measured from the exterior boundary, of any property which is the subject of the proposed applications. Your property is located within 100 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 Katie Hillenhagen at (503) 436-8054 or email hillenhagen@ci.cannon-beach.or.us.

Sincerely,

Katie Hillenhagen
Administrative Assistant

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, August 25, 2022 at 6:00 p.m.** at City Hall, 163 E Gower Street, Cannon Beach, regarding the following:

V 22-01, David Vonada, on behalf of Cannon Beach BP LLC, request for a Variance to allow a residential use for approximately 55% of the building floor area vs. the 50% maximum allowed. The property is located at 368 Elk Creek Rd. (Tax Lot 00200, Map 51029CA) in a General Commercial (C2) Zone. The request will be reviewed under Cannon Beach Municipal Code, Sections 17.24.020, General Commercial Zone, Uses Permitted Outright and 17.84.030, Variances, Criteria for Granting.

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 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.

Continuation of **CP 22-01**, Jeff Adams on behalf of the City of Cannon Beach, seeks the adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Cannon Beach Comprehensive Plan. The TSP is in accordance with Oregon Revised Statutes OAR 660 Division 12, Transportation Planning Rule, which implements Statewide Planning Goal 12. The request will be reviewed against the criteria of the Cannon Beach Comprehensive Plan and Municipal Code, Section 17.86.070.A, Amendments, 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 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.

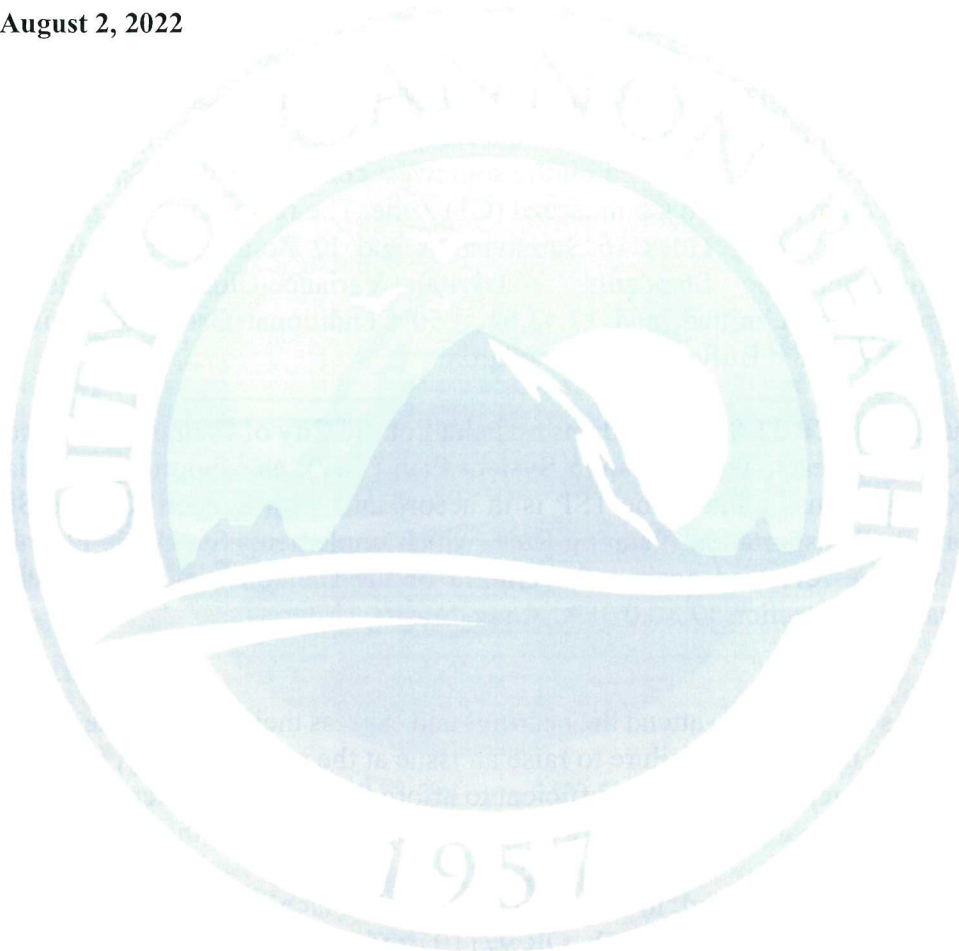
The Planning Commission reserves the right to continue the hearing to another date and time. If the hearing

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

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: **August 2, 2022**

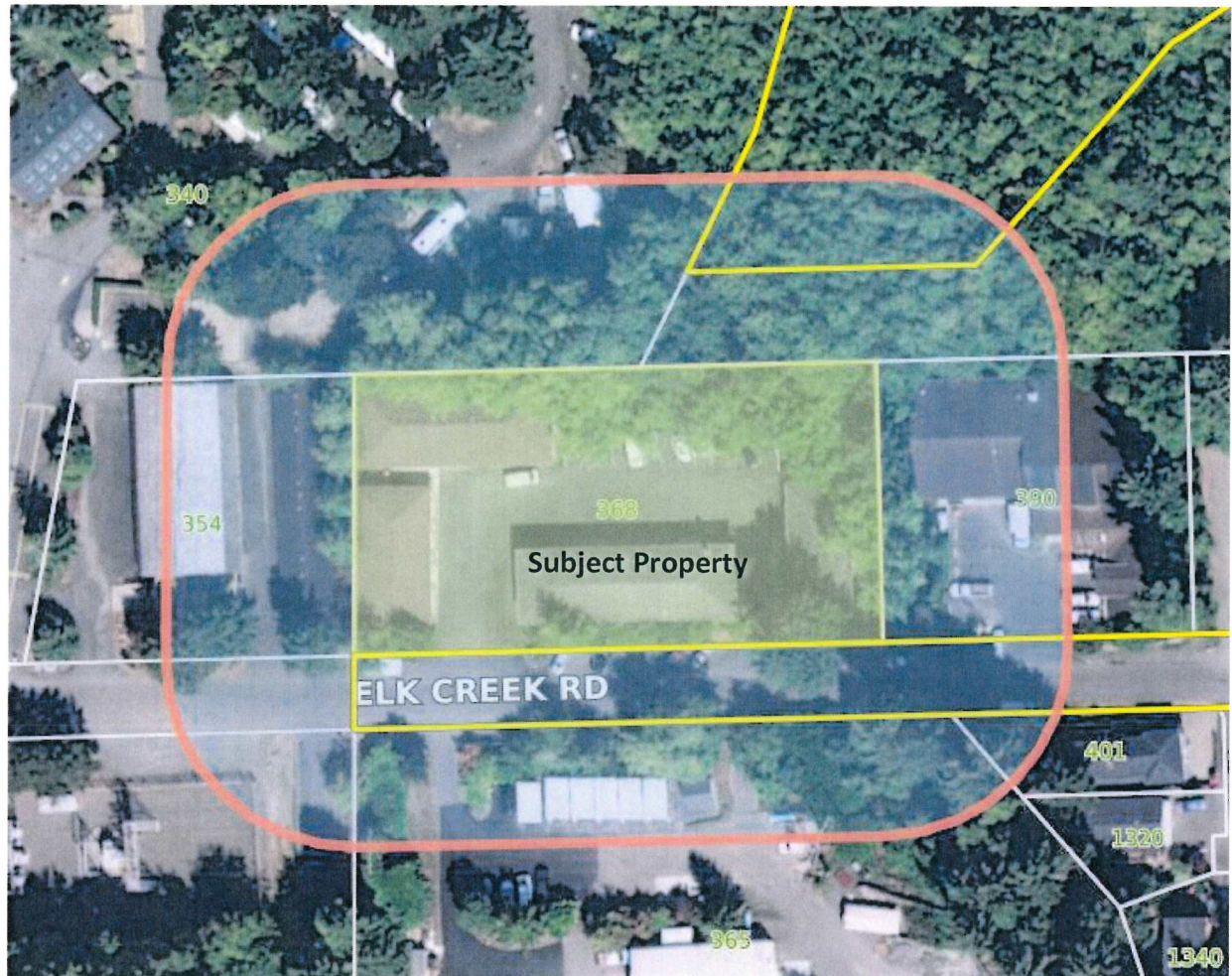


**CONDUCT OF PUBLIC HEARINGS BEFORE
CANNON BEACH CITY COUNCIL and PLANNING COMMISSION**

- 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.

CU 22-03, Cannon Beach BP, LLC
368 Elk Creek Rd.
TL 51029CA00200



V 22-01, 368 Elk Creek Rd.

Cannon Beach Business Park

TAXLOTKEY	SITUS_ADDR	OWNER_LINE	STREET_ADD	CITY	STATE	ZIP_CODE
51029BD00103	354 Elk Creek Rd	CB Mini Storage LLC	15570 May Rd	Dallas	OR	97338
51029CA00200	368 Elk Creek Rd	Cannon Beach BP LLC	540 SW Westgate Dr #370	Portland	OR	97221
51029CA00201	390 Elk Creek Rd	Nelson CB Family LLC	PO Box 122	Cannon Beach	OR	97110
51029CA00305	401 Elk Creek Rd	Villagomez Lynette Broderick Max	PO Box 423	Cannon Beach	OR	97110



Cannon Beach Planning Commission

Staff Report:

PUBLIC HEARING AND CONSIDERATION OF CU 22-03, DAVIDSPRUCE LLC, REQUESTING A CONDITIONAL USE PERMIT FOR A SUBDIVISION IN THE WETLAND OVERLAY ZONE. THE PROPERTY IS AN UNDEVELOPED PARCEL ON THE CORNER OF SPRUCE STREET AND FIRST STREET (TAXLOT 51030AA04402) IN THE LIMITED COMMERCIAL (C1) ZONING DISTRICT. THE REQUEST WILL BE REVIEWED PURSUANT TO MUNICIPAL CODE SECTIONS 16.04.130, SUBDIVISIONS AND 17.43, CONDITIONAL USES AND ACTIVITIES PERMITTED IN THE WETLAND OVERLAY ZONE, APPLICABLE STANDARDS.

Agenda Date: August 18, 2022

Prepared By: Jeffrey S. Adams, PhD

GENERAL INFORMATION

NOTICE

Public notice for this August 18, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on August 2, 2022;
- B. Notice was mailed on August 2, 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-1** Conditional Use Application for Cluster Development of Wetlands property, by David Vonada, on behalf of David Pietka, received July 5, 2022;
- A-2** Ecola East Development, Site Plan, First and Spruce Streets, A-1.1, Tolovona Architect, LLC, dated June 29, 2022;
- A-3** Ecola East Development, Preliminary Plat Plan, First and Spruce Streets, A-1.2, Tolovona Architect, LLC, dated Jul 22, 2022;

“B” Exhibits – Agency Comments

- B-1** Letter of Concurrence, WD# 2022-0212, Peter Ryan, SPWS, Aquatic Resource Specialist, Oregon Department of State Lands, dated July 19, 2022, with Critical Areas Consulting Wetlands Delineation attached, approved July 19, 2022;

“C” Exhibits – Cannon Beach Supplements

- C-1** Clark Wetland Determination and Delineation, dated February 11, 2004;

“D” Exhibits – Public Comment

- D-1** Hannah Lyons, Email correspondence, received August 13, 2022;

SUMMARY & BACKGROUND

Davidspruce LLC (applicant) is requesting tentative plan approval of a subdivision of tax lot 51030AA04402 (also referred to as the project site). The project site is generally located at the intersection of Spruce Street and 1st Street. As the project site contains wetlands mapped on the City’s local wetland inventory that are subject to Cannon Beach Municipal Code (CBMC) Chapter 17.43 (Wetlands Overlay Zone), where the applicant is requesting conditional use approval as required by CBMC 17.43.040-45 for partitions or subdivisions within wetlands and wetland buffer areas. As shown on the Preliminary Partition Plan (Exhibit A-3), the proposed partition would create seven lots intended for five lots for single-family residential dwellings, one lot for a multifamily fourplex, and a common lot for shared access and parking, for a total of nine dwelling units.

The 18,402 square-foot (SF) property, as described on the Ecola East development Site Plan, by Tolovona Architect’s, is zoned C1 Limited Commercial and includes a .03 acre delineated wetland, identified and delineated by Critical Areas Consulting, (Exhibit B-01). The application didn’t include the U.S. Army Corps of Engineers jurisdictional determination, yet the Oregon Department of State Lands issued a letter of concurrence, dated Jul 19, 2022 (Exhibits B-01). The City’s files hold an earlier wetlands delineation, by HLB Associates, dating back to 2004 (Exhibit C-01).

Surrounding property is zoned Limited Commercial C1 to the north, south and west, while property across Spruce St., to the east, is zoned Estuary and Open Space (OS). The neighboring property to the east, is the Ecola Square Condominium shopping mall, with their parking facilities and shared access and utility easement abutting the project site. Across 1st St., to the north, is the City’s public parking lot and across the unimproved Taft St. right-of-way to the south is the City’s Elk Run park.

APPLICABLE CRITERIA EXCERPTED FROM THE CANNON BEACH MUNICIPAL CODE

Chapter 16 – Subdivisions

16.04.130 Applicable Standards

In making its decision, the planning commission shall determine whether the proposed subdivision or partition complies with the applicable standards of this code and the policies of the comprehensive plan, in conformance with the requirements of Section 17.88.110. Where this chapter imposes a greater restriction upon the land than is imposed or required by existing provisions of law, ordinance, contract or deed, the provisions of this chapter shall control. Pursuant to ORS 197.195(1), the city has determined that the following comprehensive plan policies are applicable standards for a proposed subdivision or partition.

A. General Development Policies.

1. *General Development Policy 4. The city shall control excavation, grading, and filling in order to: avoid landslides and other geologic hazards; protect adjacent property and structures; provide for appropriate drainage improvements; minimize the extent of vegetation removal; minimize erosion and sedimentation; and protect the aesthetic character of the city.*
2. *General Development Policy 5. The density of residential development throughout the city shall be based on the capability of the land in terms of its slope, potential for geologic hazard and drainage characteristics. Density limits throughout the city shall generally be:*

Net Density Standards	
	Dwellings Per Acre
<i>High (R3), (RM)</i>	<i>15</i>
<i>Duplex or medium (R2), (RMa), (MP), (RAM)</i>	<i>11</i>
<i>Moderate single-family (R1)</i>	<i>8</i>
<i>Low (RL)</i>	<i>4</i>
<i>Very low (RVL)</i>	<i>1</i>

3. *General Development Policy 9. To control development in areas with slopes exceeding twenty percent and areas subject to potential geologic hazards so that potential adverse impacts can be minimized.*
4. *General Development Policy 10. When site investigations are required in areas of potential landslide hazard, a site specific investigation shall be prepared by a registered geologist. Based on the conclusions of this investigation, an engineered foundation design by a soils engineer may be required by the building official. When site investigations are required in areas of potential coastal erosion hazard, the site specific investigation shall be prepared by a registered geologist with expertise in shoreline processes. Based on the conclusions of this investigation, protective structures designed by a registered civil engineer may be required by the building official. Site investigation reports shall meet the city's criteria for the content and format for geologic hazard reports.*
5. *General Development Policy 11. Site investigations by a qualified soils engineer may be required for the construction or development of property identified by the Soil Conservation Service as containing weak foundation soils. Site reports shall include information on bearing capacity of the soil, adequacy and method of drainage facilities, and the length of fill settlement necessary prior to construction.*
6. *General Development Policy 12. Site investigations by a registered geologist shall be performed, prior to development, in any area with a slope exceeding twenty percent. Based on the conclusions of this investigation, an engineered foundation design by a soils engineer may be required by the building official.*
7. *General Development Policy 14. To ensure that development is designed to preserve significant site features such as trees, streams and wetlands.*
8. *General Development Policy 15. The city shall regulate the removal of trees in order to preserve the city's aesthetic character, as well as to control problems associated with soil erosion and landslide hazards.*
9. *General Development Policy 16. To provide flexibility in regulations governing site design so that developments can be adapted to specific site conditions.*

Staff Comment: The applicable criteria from the General Development Policies for this partition application include items 2, 7, and 9. The subdivision of the subject property into a seven-lot subdivision, with five single-

family residential dwelling lots, one multi-family residential dwelling lot and one reserved for common open space lot, is not considered in the residential density limitations of the general development policies, as commercial areas are not given density limitations under the Cannon Beach Municipal Code or Comprehensive Plan. The proposed site plan is laid out so that potential development is focused on the upland areas with the application showing no activity occurring in the delineated wetland or buffer areas.

16.04.400 Variance—Cluster development.

The planning commission may authorize a variance from these regulations in case of a plan for cluster development which, in the judgment of the planning commission, provides adequate public spaces and includes provisions for efficient circulation, light and air and other needs. In making its findings, as required in this chapter, the planning commission shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. No variance shall be granted unless the planning commission finds:

- A. The proposed project will constitute a desirable and stable community development and carry out the purposes of the comprehensive plan with regard to the preservation of natural features;*
- B. The proposed project will be in harmony with adjacent areas.*

Staff Comment: Off-street parking and shared access easement for Lot 1, of the common area of the Preliminary Plat Map, is requested to allow clustered development where strict adherence to the traditional zoning code, such as twenty-five feet of access per lot and lot dimensional requirements, prohibits flexibility to allow what the applicant states in the applications as “much-needed affordable housing in downtown.”

There is nothing in the application materials other than the dimensional limitations of the lots themselves that would qualify these as ‘affordable housing.’ The City has not received any drafts of development agreements or deed restrictions that would form the basis of agreements with the City to control the rental or sale of these properties.

Chapter 17 – Zoning

17.22.030 Conditional uses permitted.

In a C1 zone the following conditional uses and their accessory uses are permitted subject to the provisions of Chapter 17.80:

- A. Cabinet, sheet metal, plumbing, carpenter or similar craft or trade shop;*
- B. Gasoline service station;*
- C. Government structure or use other than a park, including public parking and public schools;*
- D. Building materials supply sales;*
- E. Plant nursery;*
- F. Church or community meeting hall;*
- G. Custom manufacturing of goods for retail sale on the premises;*
- H. Structural shoreline stabilization: riprap, bulkhead or seawall consistent with Section 17.80.230;*
- I. Single-family dwelling, modular housing and manufactured home meeting the standards of Section 17.68.020;*
- J. A two-family dwelling;*
- K. Multifamily dwelling;*

- L. *Residential home or residential facility;*
- M. *Limited manufacturing;*
- N. *Assisted living facility;*
- O. *Community garden, which satisfies the requirements of Section 17.80.155.*

Staff Comment: While a residential use is an outright permitted use in conjunction with a permitted use where the residential use does not exceed fifty percent of the building's floor area; per CBMC 17.22.020(K) the applicant requests a conditional use for single-family and multi-family dwellings in conjunction with a subdivision of a wetland lot of record. Subdivisions or partitions are a conditional use when proposed within wetland and wetland buffer areas per CBMC 17.43.040 and 45; therefore, conditional use approval is required for the subdivision of property. The applicable standards for conditional uses per CBMC 17.80.110, as well as the WO standards for land divisions per CBMC 17.43.050(M), are addressed for compliance within this narrative.

17.22.050 Standards.

In a C1 zone, the following standards shall apply except as they may be modified through the design review process pursuant to Chapter 17.44:

A. *Lot Size. None, except that the density of multifamily dwellings shall be five thousand square feet for the first unit of the multifamily dwelling plus two thousand five hundred square feet for each additional unit, except that there is no density standard for multifamily dwellings used for long-term rental purposes (thirty days or more) and where a deed restriction is recorded preventing the multifamily dwelling from conversion to condominium use, or similar individual ownership arrangement, or use as a short-term rental pursuant to Chapter 17.77; and the maximum density of assisted living facilities shall be one residential unit per one thousand square feet of site area.*

B. *Lot Dimension.*

1. *Lot Width and Depth. None.*
2. *Yards. None, except where a lot is adjacent to an R1, R2, R3, or MP zone, the same yard as in the abutting residential zone shall apply.*
3. *Yard Abutting the Ocean Shore. For all lots abutting the ocean shore any yard abutting the ocean shore shall conform to the requirements of Section 17.42.050(A)(6), Oceanfront setback.*

C. *Building Height. Maximum height of a structure is twenty-four feet, measured as the vertical distance from the average elevation of existing grade to the highest point of a roof surface of a flat roof, to the top of a mansard roof or to the mean height level between the eaves and the ridge for a pitched roof. The ridge height of a pitched roof shall not exceed twenty-eight feet. Pitched roofs are considered those with a 5-12 pitch or greater.*

D. *Signs. As allowed by Chapter 17.56.*

E. *Parking. As required by Section 17.78.020. The required off-street parking spaces can be provided anywhere within the downtown commercial district, as identified in Figure 1 (at the end of this chapter).*

F. *Design Review. Design review requirements of Chapter 17.44 shall be met.*

G. *Geologic or Soils Engineering Study. As required by Chapter 17.50.*

H. *Outdoor Merchandising. As allowed by Section 17.90.150.*

I. *A minimum landscaping border of three feet shall be provided between the sidewalk and the frontage of all buildings facing the street. The planning commission may grant exceptions to this standard for doors and entries to buildings or where a combination of seating and landscaping is provided. Such landscaping may be part of the required landscaping specified in Section 17.44.120.*

J. *Floor Area Ratio. The floor area ratio for buildings located in the downtown commercial district, as identified in Figure 1 (at the end of this chapter) shall not exceed .7, except that buildings existing as of June 1,*

1995, which exceed a floor area ratio of .7, may be replaced with a building(s) with a floor area ratio equivalent to that which existed on June 1, 1995.

K. **Vehicular Access.** *In the downtown commercial district, as identified in Figure 1 (at the end of this chapter), no new vehicular access onto Hemlock Street shall be permitted. Vehicular access which existed as of July 6, 1995 may continue to be utilized, including modifications thereto.*

L. **Claims for Compensation Under ORS 197.352.** *The standards of Sections 17.08.040(A) through (K), Standards, shall apply except as specifically modified pursuant to a development agreement created as part of the city's final action modifying, removing or not applying the city's land use regulation(s) on a demand for compensation under ORS 197.352.*

Staff Comment:

There are no minimum lot size requirements for the C1 Limited Commercial district, “except that the density of multifamily dwellings shall be five thousand square feet for the first unit of the multifamily dwelling plus two thousand five hundred square feet for each additional unit, except that there is no density standard for multifamily dwellings used for long-term rental purposes (thirty days or more) and where a deed restriction is recorded preventing the multifamily dwelling from conversion to condominium use, or similar individual ownership arrangement, or use as a short-term rental pursuant to Chapter 17.77...” The four units proposed would therefore require 12,500 square feet, where the lot consists of over 18,000 square feet, meeting this requirement.

Parking areas are identified under the Parking Summary as 10 spaces for the five single-family dwellings, 4 spaces for the four multi-family apartments, for fourteen total spaces, where the plat identifies 13 stalls, provided on the common space, Lot 1, while one would be under the variance request. As this is not a planned development but a traditional subdivision development, the cluster development variance would be required to specify a parking variance to allow off-street parking to be provided on the common open space lot, off-site, or waived and not on the individual lots. If these items are not sought as a variance of the Cluster Development Subdivision, such a request should be made as a condition of approval.

17.43 – Wetlands Overlay (WO) Zone

17.43.020 Mapping.

- A. *The maps delineating the WO zone boundaries shall be maintained and updated as necessary by the city. The Cannon Beach Local Wetland Inventory maps dated September 20, 1994, shall form the basis for the location of wetlands. The WO zone includes both wetland and wetland buffer areas which abut wetlands. The wetland buffer area has a width of five feet measured from the outer boundaries of the wetland.*
- B. *Site-specific wetland delineations or determinations are required to determine the exact location of the WO zone boundary. Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual along with any supporting technical or guidance documents issued by the Division of State Lands and applicable guidance issued by the U.S. Army Corps of Engineers for the area in which the wetlands are located.*
- C. *Where a wetland delineation or determination is prepared, the mapping it contains shall replace that of the Cannon Beach Local Wetland Inventory. Wetland delineations or determinations shall remain valid for a period of not more than five years from the date of their acceptance by the Division of State Lands.*

Staff Comment: The subject property contains a wetland that was originally mapped for the Cannon Beach Local Wetland Inventory of September 1994 (Exhibit C-01). A site-specific wetland delineation has been prepared by the applicant by Critical Areas Consulting, which was then reviewed and approved by the Department of State Lands on Jul 18, 2022 (Exhibit B-01). The U.S. Army Corps of Engineers and DSL would require any remove or fill permitting if the project were to impact the wetland area. Meets criteria.

17.43.025 Wetland lot-of-record.

A wetland lot-of-record is a lot or contiguous lots held in common ownership on August 4, 1993, that are subject to the provisions of this chapter. A wetland lot-of-record includes upland portions of the contiguous property that are not subject to the provisions of the wetlands overlay zone. "Contiguous" means lots that have a common boundary, and includes lots separated by public streets. A lot-of-record is subject to the provisions of this overlay zone if all or a portion of the lot is in the overlay zone. The objective of the wetland lot-of-record provision is to permit a property owner a minimum of one dwelling unit on a wetland lot-of-record. A dwelling can be constructed on the wetland portion of a wetland lot-of-record only where there are no upland portions of the wetland lot-of-record that can accommodate a dwelling. The following examples illustrate how the wetland lot-of-record provisions of Section 17.43.030A and Section 17.43.035A are to be applied.

Example 1. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots all of which are entirely of wetlands; one dwelling unit is permitted.

Example 2. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots, two of which are entirely wetlands and one of which contains two thousand five hundred square feet of uplands; one dwelling unit is permitted on the upland portion of the lot which contains two thousand five hundred square feet of uplands.

Example 3. A fifteen thousand square foot lot-of-record consisting of three platted five thousand square foot lots, one lot is entirely a wetland, the second lot contains two thousand five hundred square feet of upland and the third lot contains three thousand five hundred square feet of upland; two dwelling units are permitted, one on the upland portion of the lot which contains two thousand five hundred square feet of upland and one on the upland portion of the lot which contains three thousand five hundred square feet of uplands.

Staff Comment: The subject property is a wetland lot of record and any lots created by a subdivision of the property would be required to provide uplands in accordance to CBMC 17.43.050(M). The Preliminary Partition Plan shows proposed development only taking place in the upland portion of the subject property (Exhibit A-03). Meets criteria.

17.43.040 Conditional uses and activities permitted in wetlands.

The following uses and activities may be permitted subject to the provision of Chapter 17.80 in the wetland portion of the WO zone, subject to applicable standards, if permitted outright or conditionally in the base zone:

- I. *Subdivisions, replats, partitions and property line adjustments.*

Staff Comment: The underlying zone is C1 Limited Commercial. Subdivisions, replats, partitions, and property line adjustments are permitted in this zone. Meets criteria.

17.43.045 Conditional Uses and Activities Permitted in Wetland Buffer Areas.

The following uses and activities may be permitted subject to the provision of Chapter 17.80 in wetland buffer areas in the WO zone, subject to applicable standards, if permitted outright or conditionally in the base zone:

- I. *Subdivisions, partitions, lot line adjustments.*

Staff Comment: The underlying zone is C1 Limited Commercial. Subdivisions, replats, partitions, and property line adjustments are permitted in this zone. Meets criteria.

17.43.050 Standards.

The following standards are applicable to the uses and activities listed in Sections 17.43.030 through 17.43.045. The uses and activities are also subject to the standards of the base zone. The following standards are applicable in all areas under the wetlands overlay zone. "Protected wetlands" are those areas in the wetlands overlay zone that have been identified on the city's inventory or on a subsequent detailed wetland delineation as wetlands. "Wetland buffer areas" are nonwetland areas in the wetlands overlay zone surrounding the protected wetlands.

- A. *General Standards. Uses and activities in protected wetlands and in wetland buffer areas are subject to the following general standards. Development may also be subject to specific standards in subsequent subsections.*
1. *Uses and activities in protected wetlands or wetland buffer areas may be approved only after the following list of alternative actions, listed from highest to lowest priority, have been considered:*
 - a. *Avoiding the impact altogether by not taking a certain action or parts of an action (this would include, for example, having the use or activity occur entirely on uplands); and*
 - b. *Minimizing impacts by limiting the degree or magnitude of action and its implementation (this would include, for example, reducing the size of the structure or improvement so that protected wetlands or wetland buffer areas are not impacted).*

Staff Comment: The application does not propose any uses or activities in the protected wetlands or wetland buffer areas, as the subdivision would limit all development to upland areas, including access, utilities and residential development.

Sub-section (a.) of the general standards asks the applicant to prioritize their activities by avoiding the impact to the wetlands altogether, while (b.) asks that the applicant minimize such activities. These are the general criteria the application will be reviewed by and which evidence must support. Meets criteria.

- M. *Land Divisions. Subdivisions, replats, partitions, and property line adjustments in protected wetlands, wetland buffer areas, or a wetland lot-of-record are subject to the following standards:*
1. *Preliminary plat maps for proposed subdivisions, replats and partitions involving protected wetlands or wetland buffer areas must show the wetland-upland boundary, as determined by a wetland delineation prepared by a qualified individual.*

Staff Comment: The applicant has prepared a Tentative Partition Plan that is based on a Wetland Determination that was prepared by Critical Areas Consulting and accepted by Oregon Department of State Lands. Each lot is proposed to be over the 1,000 SF requirement for uplands and should be conditioned to contain an upland buildable area larger than 1,000 sq. ft. serviced by a shared driveway and utility connections that are outside of the delineated wetland and buffer areas.
 2. *Subdivisions, replats, partitions and property line adjustments for the purpose of creating building sites are permitted subject to the following standards:*
 - a. *Each lot created must have at least one thousand square feet of upland available for building coverage, required off-street parking and required access.*

Staff Comment: CBMC 17.43.050(M.2) specifies that each lot must contain 1,000 square-feet of upland areas and that such area shall be inclusive of the building coverage, required off-street parking and required access for each lot. Each of the seven lots satisfies this standard, as noted on the plat, where Lot 1, the common open area provides 5,770 SF, Lot 2, for the fourplex provides 1,2,438 SF and Lot 3 provides 2,044 SF, Lot 4 provides 2,143 SF, Lot 5 provides 1,767 SF, Lot 6 provides 2,472 SF and Lot 7 provides 1,757 SF of area. The wetlands area delineated is for 1,298 SF, or 7% of the subject property. A condition of approval would require the applicant to identify the calculations of uplands on each lot, exclusive of wetlands.

- b. *The building site described in subsection M2a shall not include protected wetlands or wetland buffer areas.*

Staff Comment: None of the proposed building sites incorporate protected wetland or wetland buffer areas.

- c. *Protected wetlands and wetland buffer areas may be counted towards meeting the base zone's minimum lot size for each lot, and may be included in front, side and rear yard setbacks as appropriate.*

Staff Comment: As stated above only the multi-family fourplex is required to provide 5,000 SF for the first unit and 2,500 SF for each additional unit, equating to a lot of 12,500. The cluster development variance allows the Planning Commission to grant a lot size dimensional reduction to allow for the proposed 2,438 SF multi-family Lot 2.

- d. *Utility lines, including but not limited to, water lines, sewer lines, and storm water lines shall not be located in protected wetlands or wetland buffer areas, unless there is no alternative to serve lots meeting the standard of subsection M2a.*

Staff Comment: Service for water, sewer and storm water are provided through the upland areas.

- e. *Streets shall not be located in protected wetland or wetland buffer areas.*

Staff Comment: There are no streets contemplated for this seven-lot subdivision, where the parking would be provided from a shared access point off of 1st Street. Access requirements under CBMC 17.90.020 require "Every lot shall abut a street, other than an alley, for at least twenty-five feet. Lots which were created prior to adoption of the zoning ordinance which do not meet this provision may be accessed via an irrevocable recorded easement of a minimum of ten feet in width."

Each lot could be considered to have well over 25' of lot frontage abutting a public street and yet the Cluster Development variance allows the Planning Commission to approve more flexible dimensional requirements than the traditional zoning restrictions. The Fire Chief and Public Works require that the access easement be of sufficient length, with a satisfactory turnaround area to handle fire-safety concerns. Public Works and Cannon Beach Rural Fire have approved the plans. Meets criteria.

3. *In planned unit developments or cluster subdivisions, all protected wetland or wetland buffer areas must be in open space tracts held in common ownership.*

Staff Comment: If approved the Cluster Development variance or a condition of approval should be required to provide for a second common space tract, placing the wetland and buffer areas in common ownership.

4. *For lots or parcels created subject to these provisions, the existence of protected wetland or wetland buffer areas shall not form the basis for a future setback reduction or variance request.*

Staff Comment: Not applicable.

Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS

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. (Ord. 92-11 § 60; Ord. 79-4 § 1 (4.110) (2))*

Staff Comment: The area is defined in the Cannon Beach Comprehensive Plan and Clatsop County Soil Survey as an area of Holocene estuarine delta deposits and fill. The applicant would be required to provide a soils and geo-hazard report due to the suspect soils as a condition of approval and before any construction can be approved.

Chapter 17.70 TREE REMOVAL AND PROTECTION

17.70.030 Additional requirements.

A. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(A) or (B) the application shall include a complete ISA Tree Hazard Evaluation Form prepared by a certified arborist with the tree removal application. An ISA Tree Hazard Evaluation Form prepared by a certified arborist is not required where a tree removal permit proposes the removal of a dead tree pursuant to subsection C of this section, or where a tree removal permit proposes the removal of a tree pursuant to subsection F. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(F), a certified arborist shall provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.

B. For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).

C. An application for the removal of a dead tree does not require an ISA Tree Hazard Evaluation Form prepared by a certified arborist.

D. The retention of trees shall be considered in the design of partitions, subdivisions or planned developments; placement of roads and utilities shall preserve trees wherever possible. The need to remove trees shall be considered in the review process for partitions, subdivisions or planned developments.

Staff Comment: The City has not received a tree removal application as part of the submittal. The tree plan requires a conditional approval, anticipating a tree removal application and subsequent review by the City Arborist.

17.80.110 Conditional Uses – Overall Use 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.

Staff Comment: The proposed subdivision would, in essence, create eight lots, of which six lots could be used for residential development. The City has been approached many times with ‘affordable housing’ projects, with only one, the SeaLark project, approved, which contained a ten-year deed restriction for the eight units built in 2018. The 2019 Clatsop Housing Strategies Report provides a Buildable Lands Study, identifying five ‘key findings,’ including focusing strategies on adding the right types of supply. The Study found that there was, at the time, sufficient supply, but not the right types of housing. The Study stated that “there is technically an ‘over-supply’ of housing in Clatsop County yet much of the County’s housing supply is not available to local residents.”

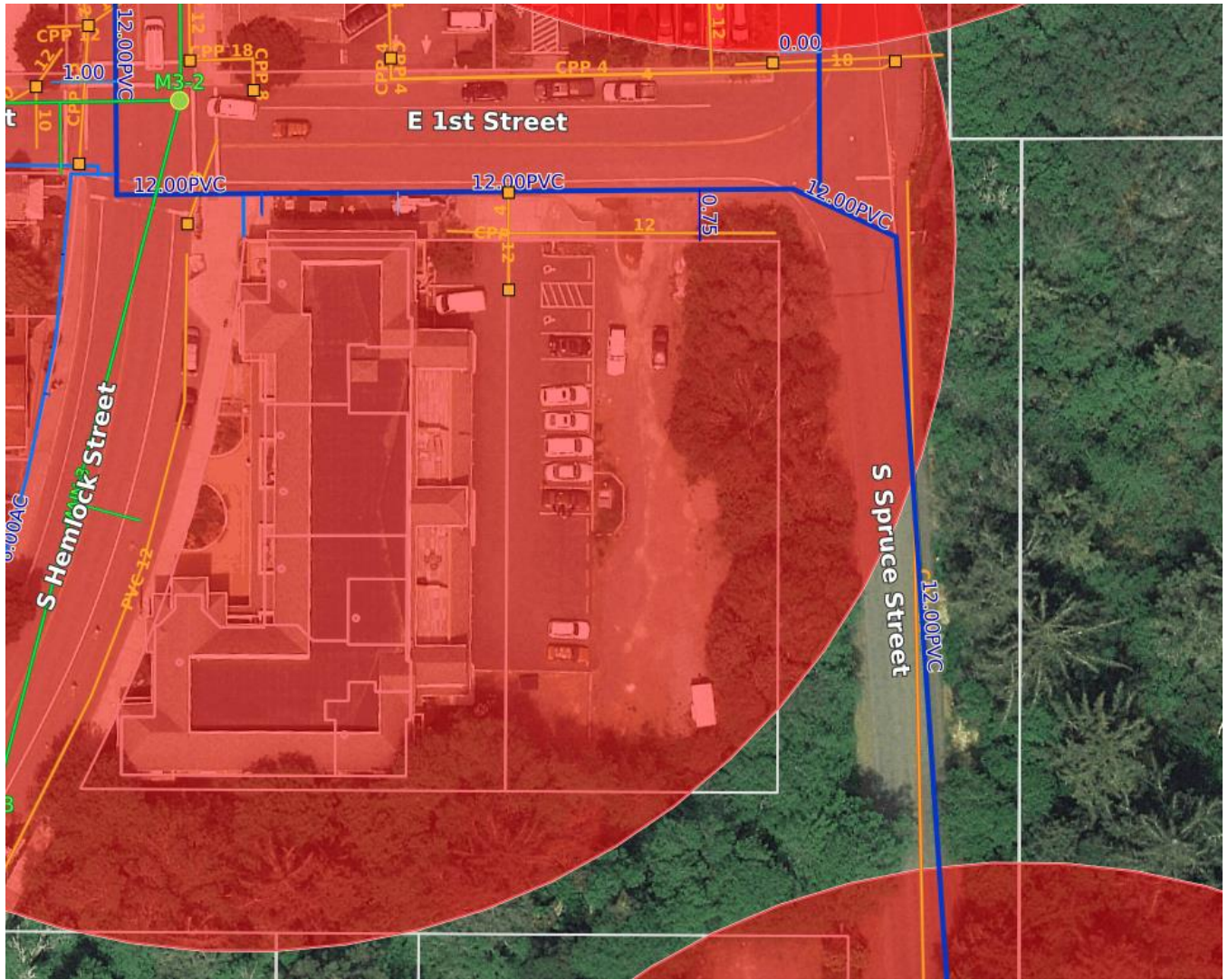
Goal 10 of the Oregon Statewide Planning Goals states,
“To provide for the housing needs of citizens of the state. Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.”

One could argue that Clatsop County’s, especially Cannon Beach’s, Goal 10 aspirations are three to four-times as challenging as anywhere else in the state due to the simple fact that we are not providing for the housing needs of strictly the citizens of the state, as stated in Goal 10, but the citizens of Washington, Idaho, California and all those other areas that own and rent the buildable lands and compete for the needed housing in Cannon Beach. Allowing for flexibility of housing location, type and density is thus, complicated by the limited supply of buildable lands due to both natural constraints and the compounding economic realities.

The demand is evident for ‘workforce’ and ‘affordable housing,’ but size limitations do not guarantee that the units will be ‘reserved’ for such. The only guarantee of such use is through the creation of a secondary market and that can only be accomplished through a lasting agreement. The Planning Commission is faced with making a finding that a demand exists for such housing and any conditions that might guarantee that it truly ‘needed housing.’

- 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.*

Staff Comment: The proposed lots would fall within the minimum 250 feet service radius of hydrants and the turnaround areas are sufficient for fire and emergency services. The other utilities, depicted below, including the City’s existing sanitary sewer and water systems have sufficient capacity to meet the project site’s proposed development demand and will be extended from 1st street facilities. Stormwater service lines will collect each future dwelling’s stormwater runoff, which will then be conveyed to the existing public system along 1st Street. Meets criteria.



- 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.*

Staff Comment: The application proposes five single-family lots, ranging in size from 1,757 SF to 2,472 SF and a 2,143 SF multi-family lot. Each single-family lot would provide private yard-space, while the common space provides semi-public areas for parking, access and garden space. As noted above, an eighth lot should be identified to preserve the wetlands and buffer areas as a condition of approval or described in the variance request. The application approval should also consider a condition limiting any intrusions into the wetland and buffer areas, prescribing fencing and signage for such areas. Conditionally meets criterion.

- 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.*

Staff Comment: The subject property has a parcel average slope of approximately 4.04%. The applicant is having a soils and geotechnical report prepared in order to identify and develop mitigation strategies for any unidentified hazards that may exist on the subject property. Before any construction, a soils and site specific geotechnical report will be required to meet conditional approval.

- 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.*

Staff Comment: Each lot has well over 25' of lot frontage abutting a public street, the Fire Chief and Public Works require that the access easement be of sufficient length, with satisfactory turnaround area to handle fire-safety concerns. Public Works and Cannon Beach Rural Fire have approved the plans.

The Tentative Plan makes use of existing infrastructure and access. The Plan provides internal sidewalks but does not show the extension of the public sidewalk along 1st Street. A continuation of the existing ten-foot sidewalk from phase one of Ecola Square should be extended as a condition of approval to the corner of Spruce Street, with appropriate ADA accessible features. Two ADA stalls are provided of the thirteen spaces depicted, with the ADA stalls nearest the multi-family units. An enclosed shared refuse area located on the southwest property line, mirroring the Ecola Square refuse collection, is provided.

When one considers the impacts of such a development, one must weigh the other alternatives: the lot is zoned commercial where typical off-street parking would equate to approximately one space per 400 SF of gross floor area. In other words, a commercial structure of approximately 6,000 SF would be required to provide 15 spaces or something equivalent to what is described. A commercial structure is permitted as an outright use in the C1 Limited Commercial district and it shouldn't go unnoticed that wetland lot of record or not, the property owner could propose a commercial structure or any of the other outright permitted uses of CBMC 17.22.020 with only Design Review Board and administrative approval, as long as the structure and improvements do not impact the wetland overlay zone.

- F. *The site and building design ensure that the use will be compatible with the surrounding area.*

Staff Comment: The site plan provides 1,806 SF of softscape landscaping (or approximately 16% of the total property) and 989 SF hardscape in conjunction with 4,039 SF of parking area. As five of the lots would be in private ownership and the common space under a Home-Ownership Association's agreement, these lots would not fall under the purview of this criterion. It should also be noted that the building design of the multi-family lot will be subject to approval by the Design Review Board.

With regards to surroundings, the proposed residential would be surrounded basically by parking, open space, backing on the downtown commercial core, where the majority of the City's employment center is located.

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. Based on this, the City must complete its review of this proposal by November 5, 2022.

The Planning Commission's August 25th hearing will be the first evidentiary hearing on this request. ORS 197.763(6) allows any party to the hearing to request a continuance. The Planning Commission should grant any request for a continuance of this hearing. The Planning Commission's next regularly scheduled hearing date is September 22, 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 an eight-lot Cluster Development Subdivision, CD#22-01, for five 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 one 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 reviewed by the City Arborist and approved by the City;
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





JUL - 5 2022

Received

CITY OF CANNON BEACH

CONDITIONAL USE APPLICATION

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

Applicant Name: David Venada
Email Address: David@tolovanaarchitects.com
Mailing Address: P.O. Box 1498
Tolovana Park, Or. 97145
Telephone: 503.869.8688
Property-Owner Name: David Pietka
(if other than applicant)
Mailing Address: _____
Telephone: _____
Property Location: FIRST & SPRUCE STREETS
(street address)
Map No.: _____ Tax Lot No.: _____

CONDITIONAL USE REQUEST:

1. Description of the proposal.
A cluster development consisting of 15 single family dwellings and a fourplex apartment in a C-1 Zone.
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.
This development will provide much-needed affordable housing in downtown by providing small single family dwellings and apartments.
 - 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.
This development is likely the least intense use for this property, therefore the minimum impact to all public facilities.

- 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.
This development utilizes existing parking, driveway, and refuse enclosure with Ecola Square.
- 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.
Both a wetlands delineation and soils report have been completed. The proposed development will be fully compliant with the recommendations of both.
- 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.
This development utilizes existing parking, driveway, and refuse collection previously created with the renovation of Ecola Square and shares an access easement. Impact will be minimal since transportation activities are existing.
- f. Explain how the proposed site and building design will be compatible with the surrounding area.
The site development retains the wetland on 2 sides, parking on the west, and street access on the north, as existing.

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: David Ubuera

Date: 6/29/22

Property Owner Signature: David Ubuera

Date: 6/29/22

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:

City of Cannon Beach
Finance Department

Date Received: _____

By: _____

JUL 5 2022

Fee Paid: _____

Receipt No.: _____

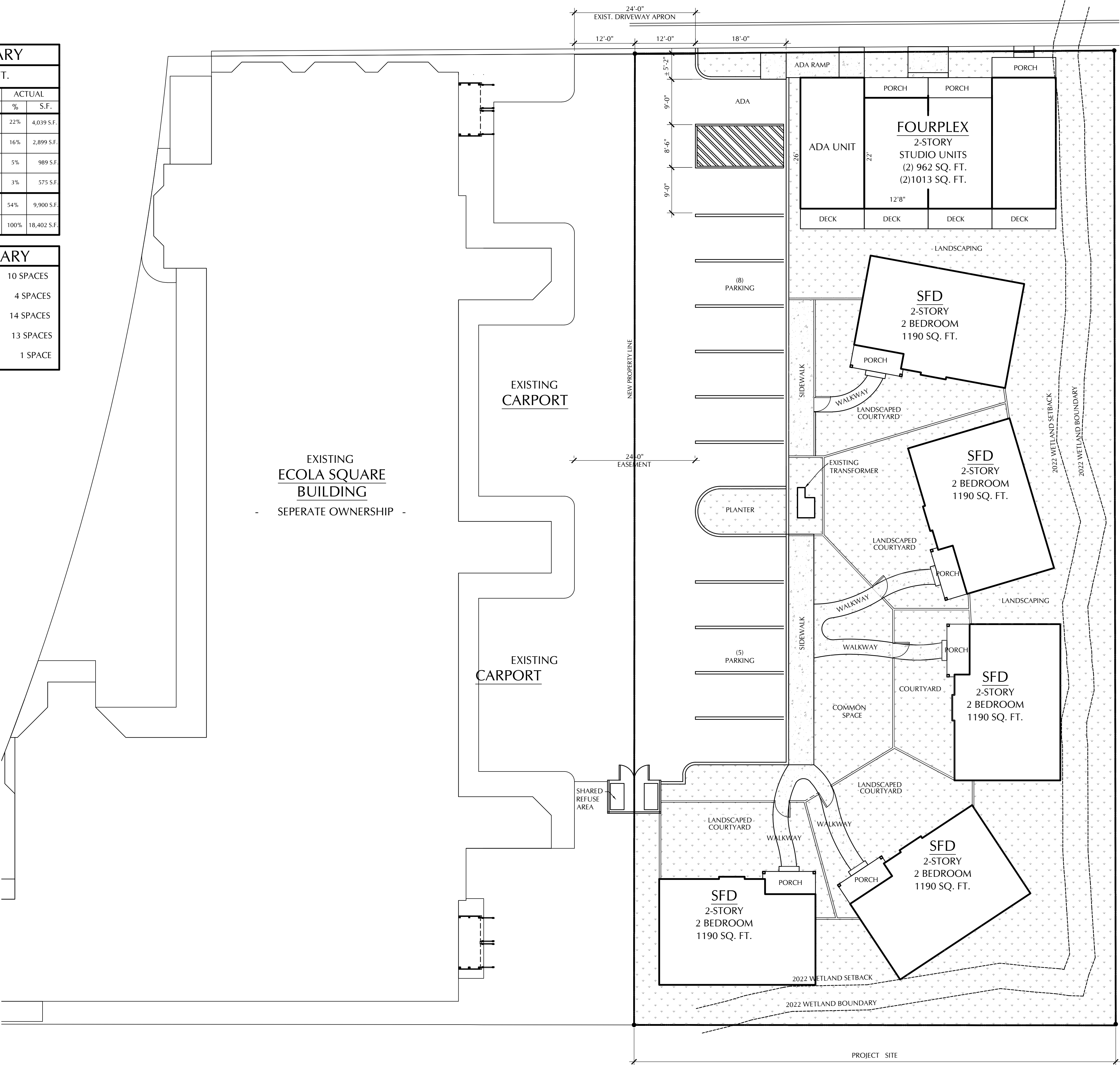
PAID

(Last revised March 2021)

Plotted on: Jun 30, 2022 - 7:39am
X:\Users\K24\OneDrive\Projects\ECOLA\ECOLA_Site_Plan.dwg
C:\Users\Work Station #3\Tolovana Architects Dropbox\Projects\Active\Pietka Ecola Housing\ACAD\Sheet Sets\

SITE AREA SUMMARY				
LOT AREA - 18,402 SQ. FT.				
	REQUIRED		ACTUAL	
	%	S.F.	%	S.F.
SITE PARKING AREA	—	—	22%	4,039 S.F.
SOFT LANDSCAPING	10% MIN.	1,840 S.F. COMB.	16%	2,899 S.F.
HARD SURFACE LANDSCAPING	20% TOTAL	1,840 S.F. COMB.	5%	989 S.F.
PORCHES AND DECKS			3%	575 S.F.
BUILDING AREAS			54%	9,900 S.F.
TOTAL LOT AREA			100%	18,402 S.F.

PARKING SUMMARY	
(5) SINGLE FAMILY DWELLINGS =	10 SPACES
(4) STUDION APARTMENT UNITS =	4 SPACES
TOTAL REQUIRED PARKING =	14 SPACES
TOTAL PARKING PROVIDED ON SITE =	13 SPACES
PARKING PROVIDED OFF SITE =	1 SPACE



1 SITE PLAN
1" = 10'-0"

Tolovana Architect LLC
368 Elk Creek Rd. Suite 408
Cannon Beach, Oregon 97110



ECOLA EAST DEVELOPMENT
FIRST & SPRUCE STREETS
CANNON BEACH, OREGON

MARK	DATE	DESCRIPTION

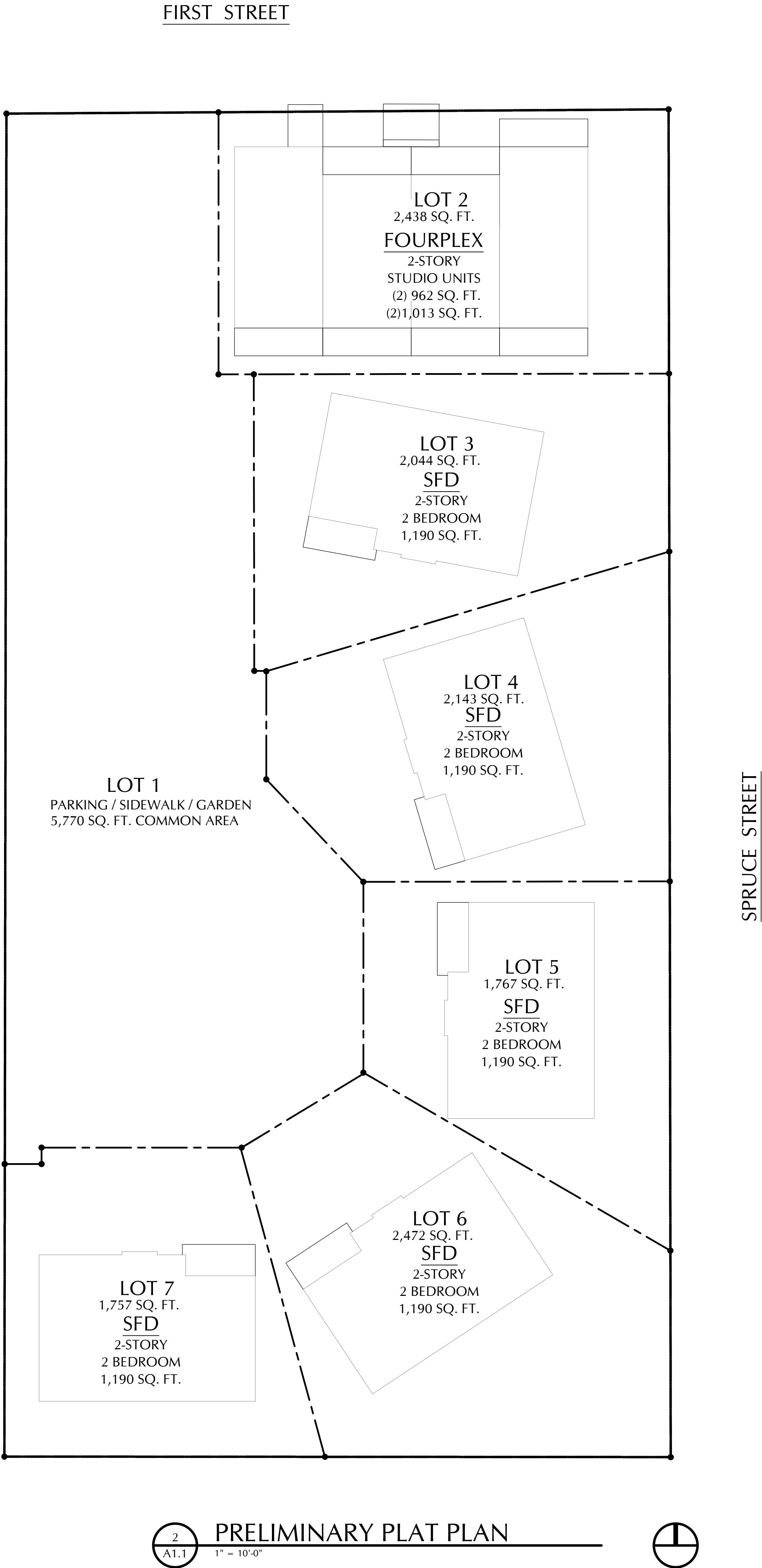
DATE: 6-29-22
JOB:
FILE:
DRAWN: DV
CHECKED:

COPYRIGHT
TOLOVANA ARCHITECTS, LLC
2020

SITE PLAN

A1.1

Plotted on: Aug 16, 2022, 3:35pm
File: C:\Users\Work Station\Projects\Projects\Active\Ecola Housing\A040\Sheet Sets\Pre: XR_24x36 Title Block_2020.rvt
User: Tolovana Architects



Tolovana Architect LLC

368 Elk Creek Rd. Suite 408

Cannon Beach, Oregon 97110

ECOLA EAST DEVELOPMENT

FIRST & SPRUCE STREETS

CANNON BEACH, OREGON

MARK	DATE	DESCRIPTION

DATE:

6-29-22

JOB:

FILE:

DRAWN:

DV

CHECKED:

COPYRIGHT

TOLOVANA ARCHITECTS, LLC

2020

PRELIMINARY

PLAT MAP

A1.2



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

July 19, 2022

Red Crow, LLC
Attn: Jamie Lerma
PO Box 825
Cannon Beach, OR 97110

Kate Brown
Governor

Shemia Fagan
Secretary of State

Re: WD # 2022-0212 **Approved**
Wetland Delineation Report for Ecola Square Condominium Project
Clatsop County; T5N R10W S30AA TL4402
Cannon Beach Local Wetlands Inventory, Wetland CB-11

Tobias Read
State Treasurer

Dear Jamie Lerma:

The Department of State Lands has reviewed the wetland delineation report prepared by Critical Areas Consulting for the site referenced above. Based upon the information presented in the report, we concur with the wetland boundaries as mapped in Figure 6 of the report. Please replace all copies of the preliminary wetland map with this final Department-approved map.

Within the study area, one wetland totaling approximately 0.03 acres was identified. The wetland is subject to the permit requirements of the state Removal-Fill Law. Under current regulations, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in wetlands or below the ordinary high-water line (OHWL) of the waterway (or the 2-year recurrence interval flood elevation if OHWL cannot be determined).

This concurrence is for purposes of the state Removal-Fill Law only. We recommend that you attach a copy of this concurrence letter to any subsequent state permit application to speed application review. Federal, other state agencies or local permit requirements may apply as well. The U.S. Army Corps of Engineers will determine jurisdiction under the Clean Water Act, which may require submittal of a complete Wetland Delineation Report.

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter unless new information necessitates a revision. Circumstances under which the Department may change a determination are found in OAR 141-090-0045 (available on our web site or upon request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity or complete permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

Thank you for having the site evaluated. If you have any questions, please contact Chris Stevenson, PWS, at (503) 986-5246.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Ryan", with a stylized, cursive script.

Peter Ryan, SPWS
Aquatic Resource Specialist

Enclosures

cc: Robert S. Bogar, Critical Areas Consulting
City of Cannon Beach Planning Department
Brad Johnson, Corps of Engineers
Dan Cary, SPWS, DSL
Oregon Coastal Management Program

Fully completed and signed report cover forms and applicable fees are required before report review timelines are initiated by the Department of State Lands. Make checks payable to the Oregon Department of State Lands. To pay fees by credit card, go online at: <https://apps.oregon.gov/DSL/EPS/program?key=4>.

Attach this completed and signed form to the front of an unbound report or include a hard copy with a digital version (single PDF file of the report cover form and report, minimum 300 dpi resolution) and submit to: **Oregon Department of State Lands, 775 Summer Street NE, Suite 100, Salem, OR 97301-1279**. A single PDF of the completed cover form and report may be e-mailed to: **Wetland_Delineation@dsl.state.or.us**. For submittal of PDF files larger than 10 MB, e-mail DSL instructions on how to access the file from your ftp or other file sharing website.

Contact and Authorization Information

☒ Applicant ☐ Owner Name, Firm and Address:

Jamie Lerma, Red Crow, LLC
PO Box 825
Cannon Beach, OR 97110

Business phone # 503-849-0258

Mobile phone # (optional)

E-mail: jamie@redcrowgc.com

☐ Authorized Legal Agent, Name and Address (if different):

Business phone #

Mobile phone # (optional)

E-mail:

I either own the property described below or I have legal authority to allow access to the property. I authorize the Department to access the property for the purpose of confirming the information in the report, after prior notification to the primary contact.

Typed/Printed Name: **Jamie B. Lerma**

Signature: 

Date: 4/15/2022

Special instructions regarding site access:

Project and Site Information

Project Name: Ecola Square Condominium Project

Latitude: 45.89626

Longitude: -123.96011

decimal degree - centroid of site or start & end points of linear project

Proposed Use:

Condominiums

Tax Map # 51030AA

Tax Lot(s) 4402

Tax Map #

Project Street Address (or other descriptive location):

Tax Lot(s)

SW corner of intersection of E 1st St. and S Spruce St

Township 5N

Range 10W

Section 30

QQ AA

Use separate sheet for additional tax and location information

City: Cannon Beach

County: Clatsop

Waterway: N/A

River Mile: N/A

Wetland Delineation Information

Wetland Consultant Name, Firm and Address:

Critical Areas Consulting
949 14th Street
Astoria, OR 97103

Phone # (360) 244-2630

Mobile phone # (if applicable)

E-mail: Rbogar@gmail.com

The information and conclusions on this form and in the attached report are true and correct to the best of my knowledge.

Consultant Signature: **Robert S. Bogar**

Date: 09/03/2021

Primary Contact for report review and site access is ☒ Consultant ☒ Applicant/Owner ☐ Authorized Agent

Wetland/Waters Present?

☒ Yes ☐ No

Study Area size: 0.42 acres

Total Wetland Acreage: 0.0300

Check Applicable Boxes Below

☐ R-F permit application submitted

☐ Fee payment submitted \$ _____

☐ Mitigation bank site

☐ Resubmittal of rejected report (\$100)

☐ EFSC/ODOE Proj. Mgr: _____

☐ Request for Reissuance. See eligibility criteria. (no fee)

☐ Wetland restoration/enhancement project (not mitigation)

DSL # _____ Expiration date _____

☐ Previous delineation/application on parcel
If known, previous DSL # _____

☒ LWI shows wetlands or waters on parcel

Wetland ID code 11

For Office Use Only

DSL Reviewer: **DE**

Fee Paid Date: ____ / ____ / ____

DSL WD # **2022-0212**

Date Delineation Received: **4 / 19 / 22**

Scanned: ☐

Electronic: ☒

DSL App.# _____

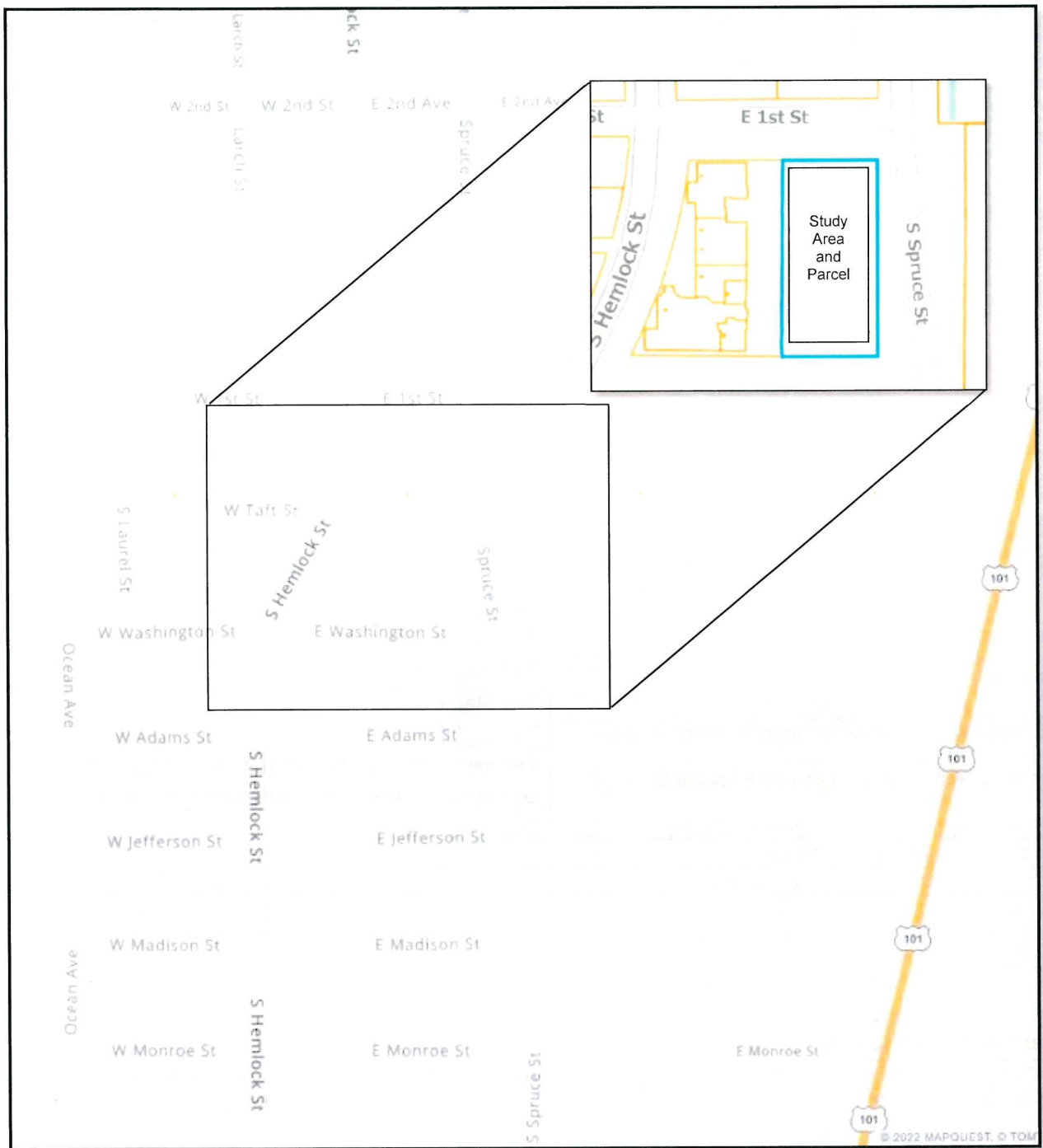


Figure 1
Site Vicinity Map

Wetland Delineation
Tax Map No. 51030AA04402
Cannon Beach, Oregon

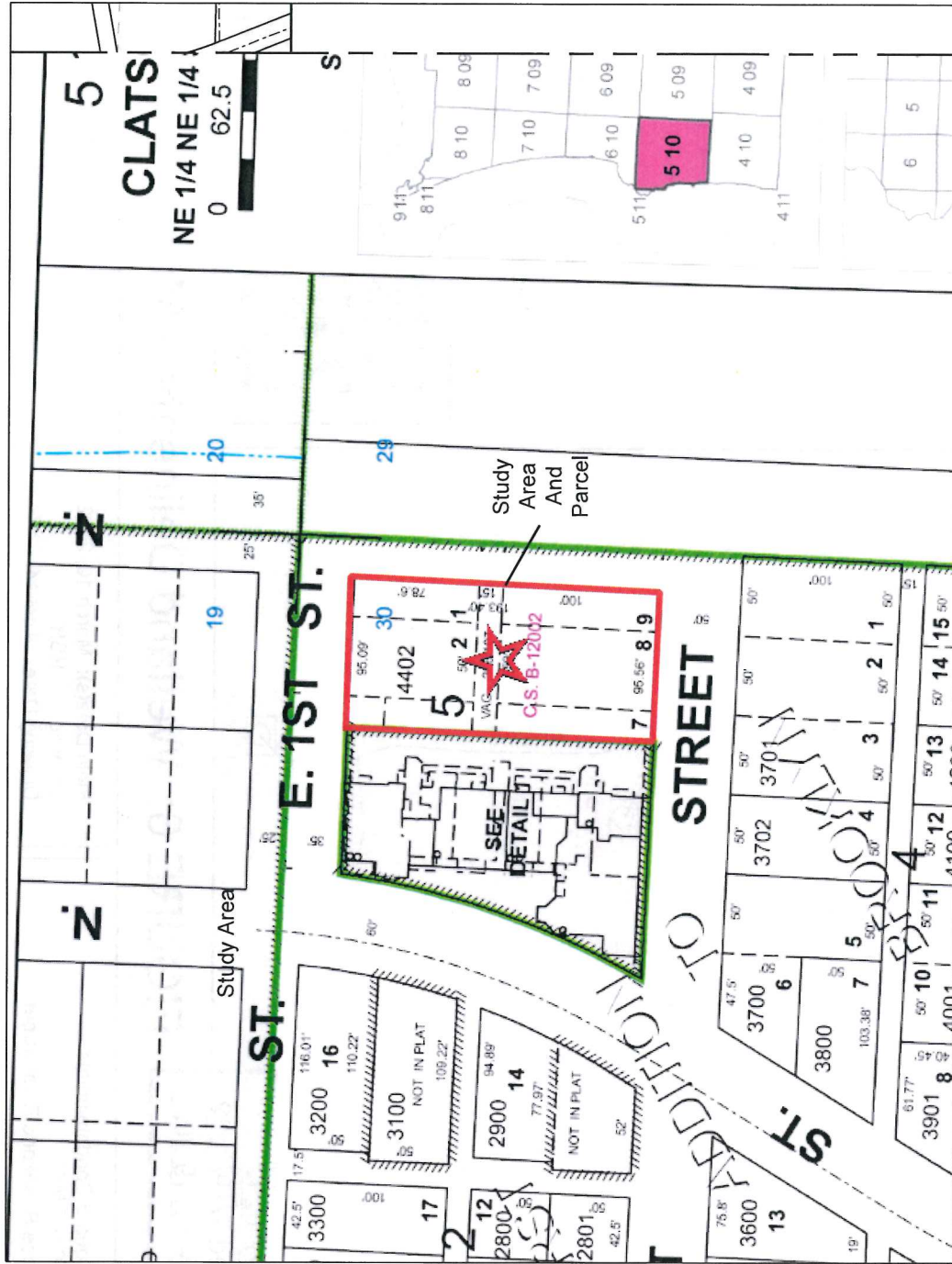


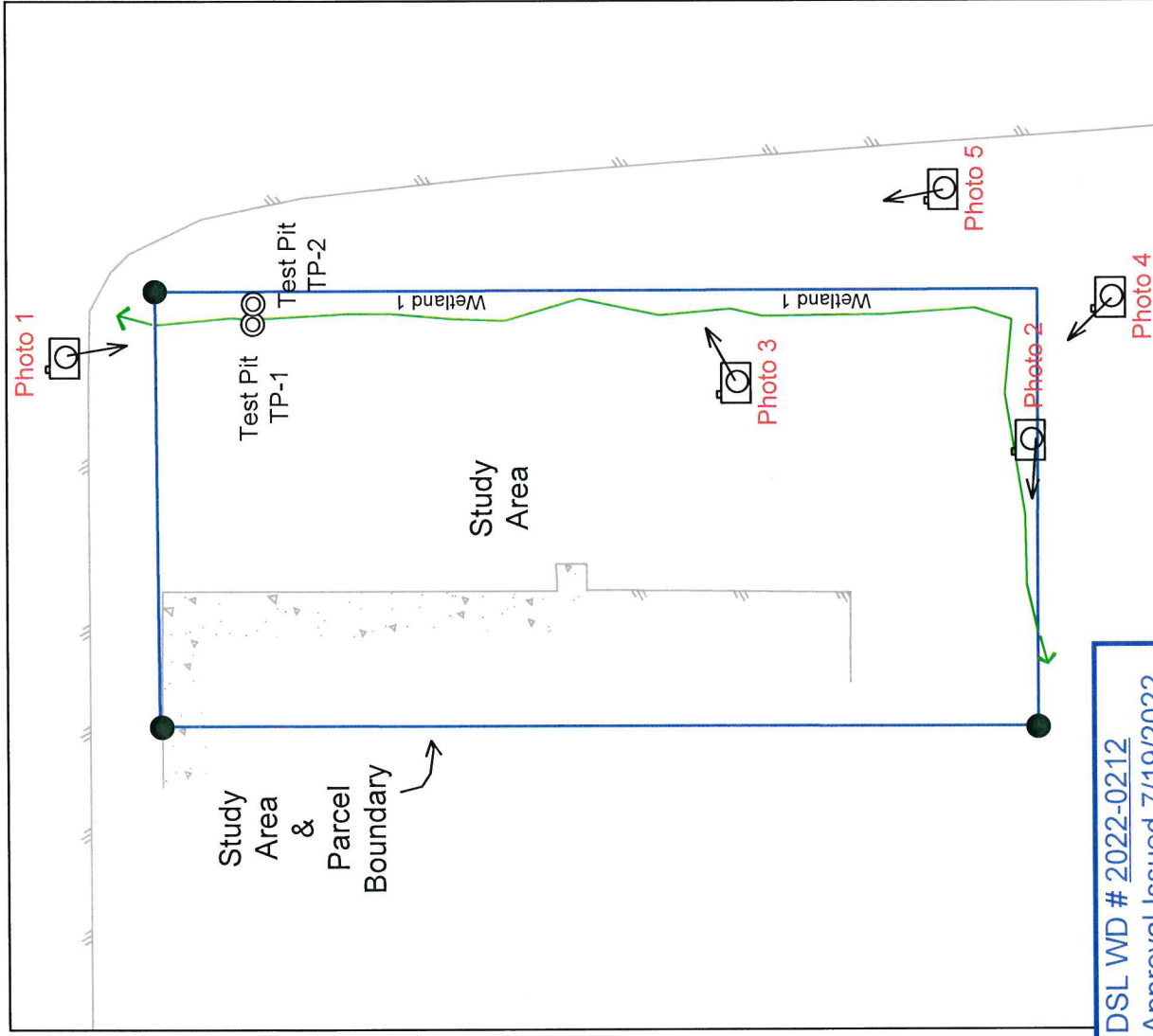
FIGURE 2: Tax Lot Map

Project: Ecola Square Condominiums
 Map Nos.: 51030AA04402
 Address: Not Assigned, E. 1st and Spruce Street
 County: Clatsop County

Field Date(s): March 10, 2022
 Drawing By: RSB
 Drawing Date: 3/16/22
 Report Title: Wetland Delineation

Critical
 Areas
 Consulting





DSL WD # 2022-0212
Approval Issued 7/19/2022
Approval Expires 7/19/2027

LEGEND

Wetland 1
Boundary

Photograph
(see text)
Arrow Indicates View
Direction

Test Pit

Study
Area

0 50 100

Approximate Scale (Above): 1 inch = 50 ft

Notes: Wetland boundary flagging and data plots (test pits), were located in the field by S & F Land Services accurate to about +0.1 ft. The study area was defined using parcel boundaries and is accurate to within about 0.1 feet. Wetlands in the Study Area cover 1,298 SF (0.030 acres) accounting for about 7.0% of the 0.42 acre study area and are considered depressional palustrine emergent wetlands. Delineated wetlands continue off site to the north, east, and south.

FIGURE 6: Wetland Delineation Map

Project: Ecola Square Condominiums
Map Nos.: 51030AA04402
Address: S Spruce Street and E 1st Street
Jurisdiction: Cannon Beach, OR

Field Date(s): March 10, 2022
Drawing By: RSB
Drawing Date: April 14, 2022
Report Title: Wetland Delineation

Critical
Areas
Consulting



WETLAND DETERMINATION AND DELINEATION REPORT

**FOR
PROPOSED FUTURE DEVELOPMENT**

Prepared for

Mike Clark

Ad-mark Promotional Products LLC

9770 Sunshine Ct.

Beaverton, OR 97005

Phone: 503.223.0208

Fax: 503.627.9158

Prepared by

HLB & ASSOCIATES, Inc.

Reid S. Garber

Wetland Specialist

P.O. Box 219, 160 Laneda Avenue

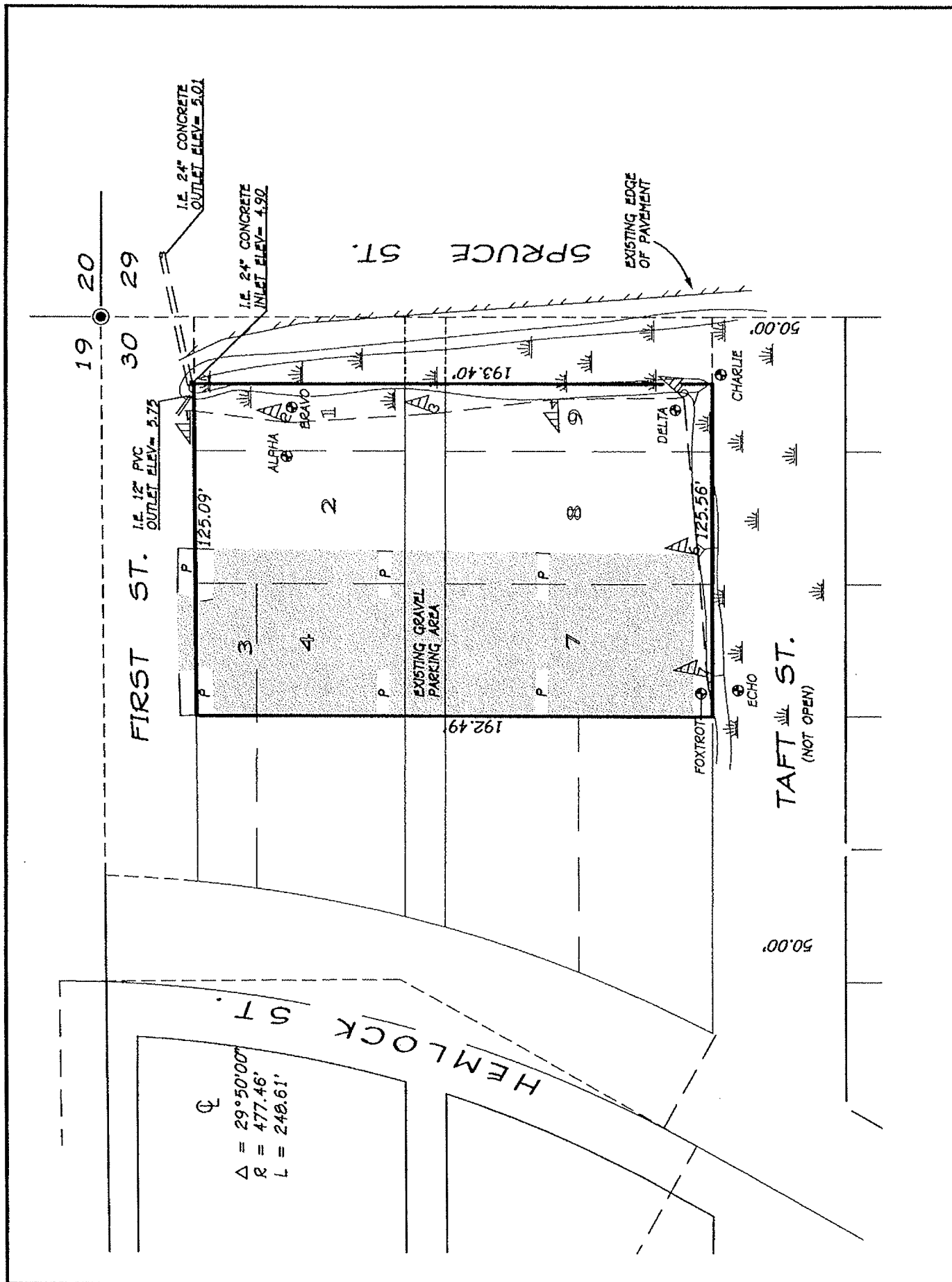
Manzanita, Oregon 97130

Phone: 503.368.5394

Fax: 503.368.5847

February 11, 2004

II



From: Hannah Lyons <lyonshannah918@gmail.com>
Sent: Saturday, August 13, 2022 2:04 PM
To: Planning Group
Subject: First and Spruce

My boyfriend and I are all for this project first and spruce..so many people in this community need housing especially young adults. It would really benefit the communitywe've been living with my boyfriends mom for 4 years..We really need are own place....we have been looking for affordable apartments for 2 years now and everything is top expensive...this would benefit the community because it would bring new blood and young families into the cannon beach community....



CITY OF CANNON BEACH

August 2, 2022

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 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.

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 Katie Hillenhagen at (503) 436-8054 or email hillenhagen@ci.cannon-beach.or.us.

Sincerely,

Kathryn Hillenhagen

Katie Hillenhagen
Administrative Assistant

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, August 25, 2022 at 6:00 p.m.** at City Hall, 163 E Gower Street, Cannon Beach, regarding the following:

V 22-01, David Vonada, on behalf of Cannon Beach BP LLC, request for a Variance to allow a residential use for approximately 55% of the building floor area vs. the 50% maximum allowed. The property is located at 368 Elk Creek Rd. (Tax Lot 00200, Map 51029CA) in a General Commercial (C2) Zone. The request will be reviewed under Cannon Beach Municipal Code, Sections 17.24.020, General Commercial Zone, Uses Permitted Outright and 17.84.030, Variances, Criteria for Granting.

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 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.

Continuation of **CP 22-01**, Jeff Adams on behalf of the City of Cannon Beach, seeks the adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Cannon Beach Comprehensive Plan. The TSP is in accordance with Oregon Revised Statutes OAR 660 Division 12, Transportation Planning Rule, which implements Statewide Planning Goal 12. The request will be reviewed against the criteria of the Cannon Beach Comprehensive Plan and Municipal Code, Section 17.86.070.A, Amendments, 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 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

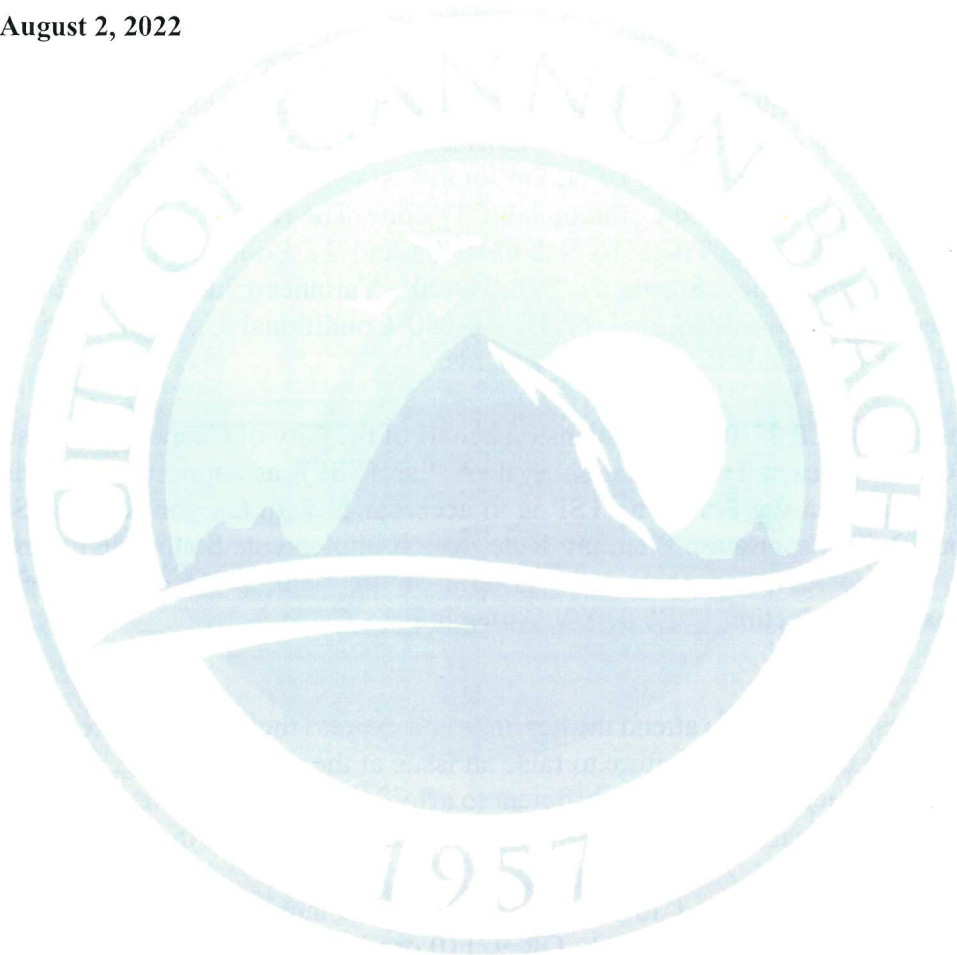
NOTICE TO MORTGAGEE, LIEN-HOLDER, VENDOR OR SELLER:
PLEASE PROMPTLY FORWARD THIS NOTICE TO THE PURCHASER

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: **August 2, 2022**

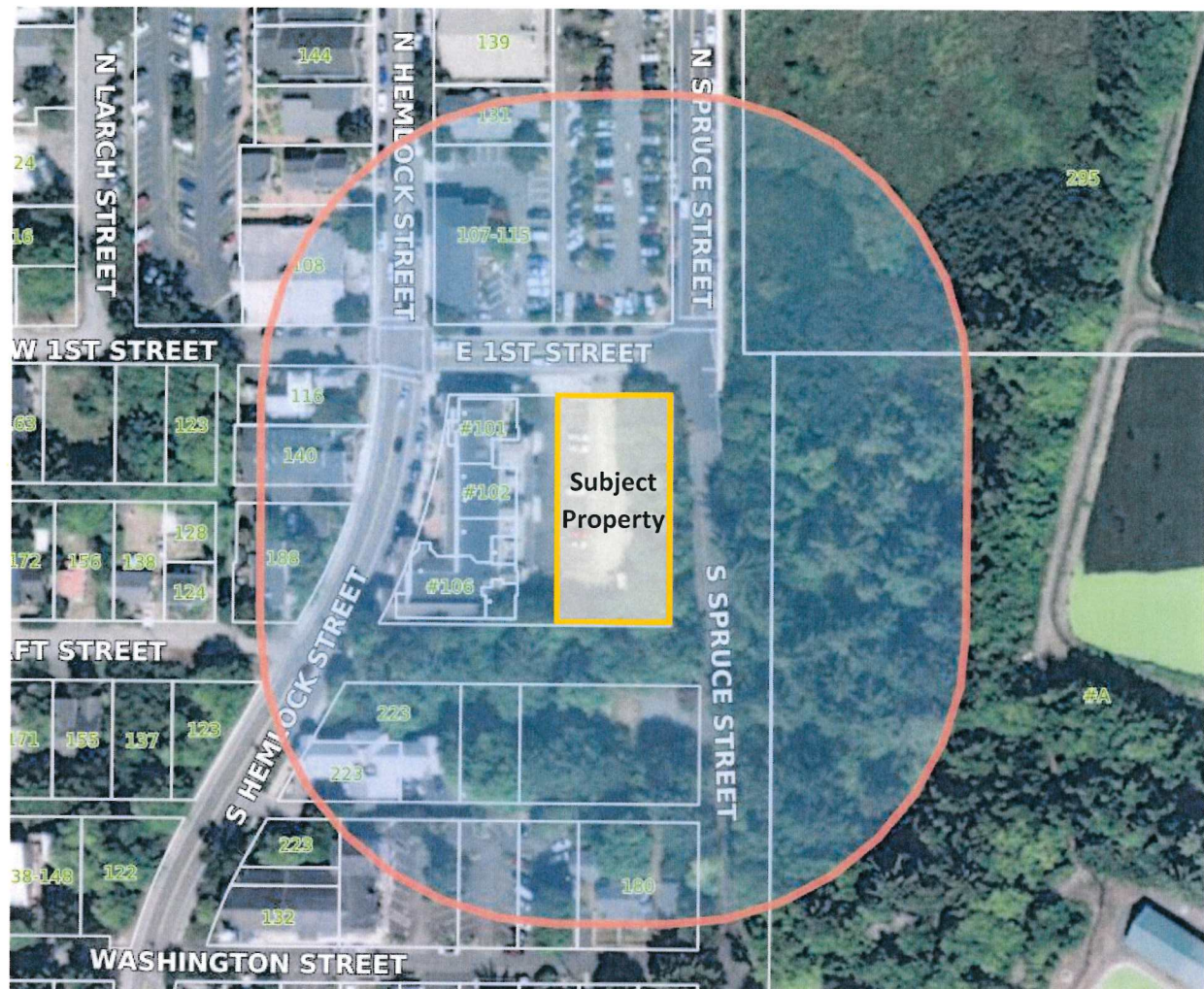


**CONDUCT OF PUBLIC HEARINGS BEFORE
CANNON BEACH CITY COUNCIL and PLANNING COMMISSION**

- 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.

Taxlot: 51030AA04402



CU 22-03, 1st Spruce
Cluster Development

TAXLOTKEY	SITUS_ADDR	OWNER_LINE	STREET_ADD	CITY	STATE	ZIP_CODE
51019DD06300	120-124-126 N Hemlock St N	Integra Properties LLC	PO Box 995	Cannon Beach	OR	97110
51019DD06400	108 N Hemlock St	Coaster Properties LLC	9770 SW Sunshine Ct	Beaverton	OR	97005-4100
51019DD07200	107-115 Hemlock St N	Davidspruce LLC	3514 NE US Grant Pl	Portland	OR	97212
51019DD07301	131 N Hemlock St	Cannon Beach Library/women Clb	PO Box 486	Cannon Beach	OR	97110-0486
51020CC00201	207 N Spruce St	Cannon Beach Chamber/Commerce	PO Box 64	Cannon Beach	OR	97110-0064
5.1029E+11	315 S Spruce St #A	Cannon Beach City Of	999 NW 51st St #100	Boca Raton	FL	33431
5.1029E+11	315 S Spruce St #B	Verizon Wireless	PO Box 2549	Addison	TX	75001
5.1029E+11	315 S Spruce St #A	New Cingular Wireless PCS LLC	754 Peachtree St NE #16th Floor	Atlanta	GA	30308
51030AA02900	188 S Hemlock St	Neroni Robert J	PO Box 1368	Cannon Beach	OR	97110-1368
51030AA03100	140 S Hemlock St	Hemlock Pacific LLC	1817 SW Hawthorne Ter	Portland	OR	97201
51030AA03200	116 S Hemlock St	Steidel William W/Sarah J	PO Box 501	Cannon Beach	OR	97110-0501
51030AA03700	223 S Hemlock St	Pig N Pancake Inc	PO Box 9	Seaside	OR	97138-0009
51030AA04001		Cannon Beach Community Church	PO Box 37	Cannon Beach	OR	97110
51030AA04300	180 E Washington St	Moynihan Kristin Ann	617 17th Ave W	Kirkland	WA	98033
51030AA04402		Coaster Properties LLC	9775 SW Barnes Rd	Portland	OR	97225
51030AA90101	123 S Hemlock St #101	Joy Investment LLC	13207 11th Pl NW	Seattle	WA	98177
51030AA90102	123 S Hemlock St #102	Harwichportwest LLC	20345 SW Pacific Hwy #202	Sherwood	OR	97140
51030AA90103	123 S Hemlock St #103	Bieze Property Investors LLC	1118 Northshore Rd	Lake Oswego	OR	97034
51030AA90105	123 S Hemlock St #105	Popkin Mark	496 10th St	Lake Oswego	OR	97034
51030AA90106	123 S Hemlock St #106	Coaster Properties LLC	9775 SW Barnes Rd	Portland	OR	97225
51030AA90201	123 S Hemlock St #201	Wagers G David TR	32047 NW Redhaven St	Hillsboro	OR	97124
51030AA90202	123 S Hemlock St #202	Paulson Lawrence Lee	8910 NW Lakeshore Ave	Vancouver	WA	98665
51030AA90204	123 S Hemlock St #204	Horns Roey	402 W Howe St	Seattle	WA	98119
51030AA90205	123 S Hemlock St #205	Grossman Karen G	4832 NW Promenade Ter #319	Portland	OR	97229
51030AA90203	123 S Hemlock St #203	Parnell Marvin R	0836 S Curry St #1300	Portland	OR	97239
51030AA90207	123 S Hemlock St #207	Matthies Rich	1016 141st Pl NE	Bellevue	WA	98007-4022
51030AA90206	123 S Hemlock St #206	Jodi & Charles Lietz	311 NW 12th Ave #702	Portland	OR	97209
		Phoenix Tower International	PO Box 460667	Houston	TX	77056



CANNON BEACH COMMUNITY DEVELOPMENT

163 E. GOWER ST.

PO Box 368

CANNON BEACH, OR 97110

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



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)



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 imposed 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,

A handwritten signature in blue ink, appearing to read 'William L. Rasmussen'.

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 COMMUNITY DEVELOPMENT

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Work Session review of draft letter to be sent to City Council regarding stormwater discharge

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.



MEMORANDUM

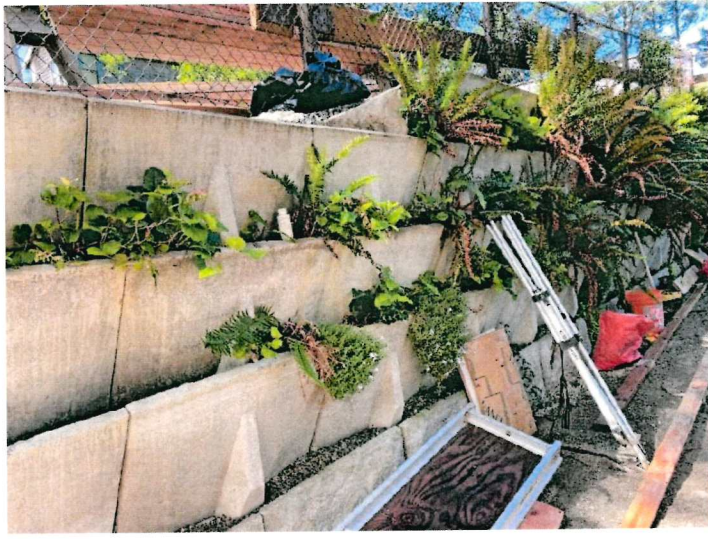
RE: Nicholson Planned Development Living Wall Monitoring Report
August 17, 2022

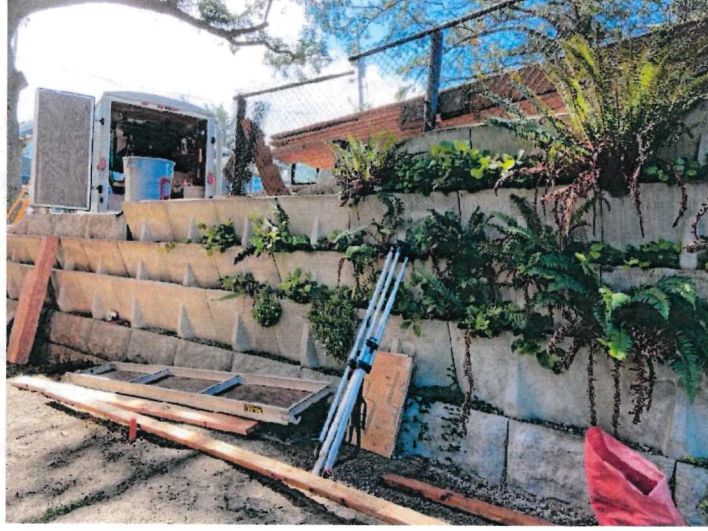
On July 22, 2022 Community Development staff documented the condition of the living wall that is required by condition of approval #2 of the Nicholson Planned Unit Development that states:

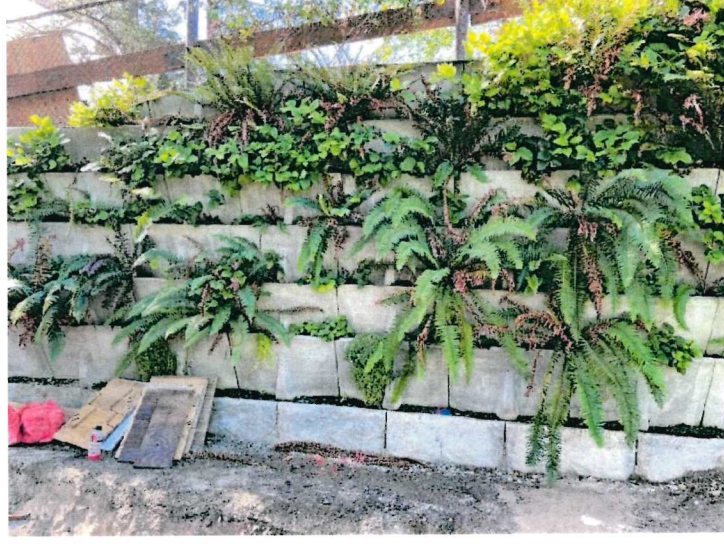
Applicant will prepare and record a shared access and maintenance easement for the shared drive serving the four lots contemporaneous with or within three months following recordation of the final plat for this development. The proposed retaining wall for the access drive will be a "living wall" design as shown in the documents submitted by the applicant. Maintenance of wall vegetation will be addressed as part of the shared access and maintenance agreement required by this condition. The agreement will identify the City as a benefitted party and allow for City enforcement of the maintenance requirements, including maintenance of the living wall.

The approved plans include 227 three-gallon planters and an irrigation system. Approved plantings include *Polystichum munitum* (Sword fern) and *Gaultheria shallon* (Salal). During the visit staff observed that the cells in the immediate vicinity of the active construction at 544 N. Laurel were vacant, particularly those underneath the elevated driveway area. It is unclear if the planters under the new elevated driveway will be replanted and what long term viability any plantings would have. The vegetation present appears to be comparable to that documented during previous years with increased coverage along the east facing portion of the wall. Condition of approval #17 states that a contract shall be maintained with a professional landscaper, during the visit no contract was provided.

The majority of planter boxes outside of the construction affected area have established sword fern or salal with approximately half of the concrete wall being screened by vegetation. Other ornamental plantings appear to have been introduced, however they comprise a small minority of the plants present. As can be seen in the photos provided, the level of vegetative cover has increased in comparison to 2019 and 2020 levels and should, with continued care, grow to fill in the remaining areas.















CANNON BEACH COMMUNITY DEVELOPMENT

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Good of the Order

THINK OUT LOUD

Vacation rentals are exacerbating the housing crisis on the Oregon Coast



By **Julie Sabatier** (OPB)

June 16, 2021 4:59 p.m. **Updated:** June 17, 2021 2:16 p.m.

Broadcast: Thursday, June 17



Astoria, Oregon.

bowers8554/Flickr



STREAMING NOW
Morning Edition

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There is a [shortage of affordable housing](#) on the Oregon Coast. This is not a new problem, and it only intensified with the COVID-19 pandemic, as coastal real estate became even more attractive to people who could afford to work remotely. A [2019 housing study](#) in Clatsop County on Oregon's north coast flagged vacation rentals as one of the contributing factors to the lack of affordable housing in the area. Some coastal communities have come up with their own short-term rental regulations, with varying levels of success. Clatsop County commissioners are [currently considering](#) a temporary moratorium on new short-term rental licenses in order to give themselves more time to craft a county-wide policy. We talk with Astorian reporter [Nicole Bales](#).

This transcript was created by a computer and edited by a volunteer.

Dave Miller: *From the Gert Boyle studio at OPB, this is Think Out Loud. I'm Dave Miller. There's no shortage of housing on Oregon's north coast. Not exactly. The problem according to a study commissioned two years ago by Clatsop County, is the way housing units are allocated. Because so many residences are second homes or short term rentals, there aren't enough homes for year round residents to buy or to rent. That's the broad context for a series of conflicts that have cropped up in Clatsop County in recent years. One such conflict is the fight over the regulation of short term rentals in unincorporated parts of the county. That fight led the county commission to say earlier this month that they could put in place a temporary moratorium on short term rental licenses. Nicole Bales has been covering this issue for the Astorian and she joins us now with more details. Nicole Bales, welcome to Think Out Loud.*



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Dave Miller: *Thanks for joining us. Why is the county commission supporting or seemingly going to support a temporary moratorium on new vacation rental licenses?*

Nicole Bales: Sure. So the county said it wants to take that time to review two ordinances that regulate vacation rentals in unincorporated parts of the county, so they have two and one is specific to Arch Cape, which is an incorporated beach community south of Cannon Beach, and the other one covers unincorporated areas in the rest of the county. And so they said that the goal is to strike a balance between quality of life concerns and the impacts vacation rentals can have on residential neighborhoods. Over the past year, a lot of questions and policy suggestions have come out of these quarterly virtual meetings that the county started last summer in Cove Beach and Arch Cape. Cove Beach is another unincorporated beach town south of Cannon Beach. And they also had some virtual meetings in the Clatsop Plains area, which is another unincorporated area north of Gearhart. And those discussions were really just to promote dialogue after a sort of ongoing strife over vacation rentals.

Dave Miller: *Just to be clear, the moratorium that could be put in place in September, that wouldn't affect, say, existing Airbnb listings, right? It just would put a pause on the possibility of future ones.*

Nicole Bales: Correct.

Dave Miller: *So what kinds of rules are county commissioners considering in these different areas?*

Nicole Bales: So right now they said they're looking at just kind of cleaning up those ordinances and potentially consolidating them. So right now the ordinance that's specific to Arch Cape is a little stricter on vacation rentals than the one that covers the rest of unincorporated Clatsop County. It requires a minimum seven nights stay and only one reservation is allowed during that seven day period and street parking is not allowed. The other ordinance that covers the rest of unincorporated Clatsop County doesn't have a limit or minimum state requirement and street parking is allowed. So those are some the biggest changes that the rest of unincorporated Clatsop County could see if they decide to merge it and keep the restrictions Arch Cape has. But then at the same time, I think there are people in Arch Cape who are afraid that maybe if there's a consolidation, they lose some of those heavier restrictions.



Nicole Bales: Sure. I would say that the interested parties are people in companies that own vacation rentals in these areas. And then people who own homes that live there full time or own second homes there and like to come regularly on vacation. But aside, I think that that's where a lot of the conflict is happening, but I would say, we may not hear from them as much, but there's workers in the area who are impacted, and particularly those that work in the service and hospitality industry, who can't afford to live in these areas where they work and so we don't hear as much from them and maybe their voices don't come up as much during the meetings. But those folks are also, I think, equally impacted just because obviously, as you had mentioned earlier, vacation rentals have sort of, according to the county, have driven up or at least contributed to higher cost of living in the area.

***Dave Miller:** So this gets to the bigger issues at play here. I mentioned that report two years ago, commissioned by the county to look into housing supply and trends. And I mentioned that one headline: that there's not exactly a housing shortage. The problem is the way the different units are allocated. What else did that report find?*

Nicole Bales: Sure. So the housing study that was conducted in 2019, found that the county does have a shortage of affordable housing. And some of the recommendations that came out of the study to address that said that the county should support more diverse housing and higher densities and then also control vacation rentals. It also found that a lot of these issues are really, really pronounced in the southern part of the county. It found that construction of second homes in the southern part of the county, which really, I think, starts at the Gearhart, Seaside area and then goes all the way down to Cannon Beach, Arch Cape, Cove Beach. They found the construction of second homes there were outpacing those of long term residents. And they also found that vacation rentals and second homes consume a very substantial share of the housing stock, which in turn, of course, affects the cost of rental housing and home buying. And all of that is most pronounced in the southern part of the county.

***Dave Miller:** So, I mean, this was two years ago though, that this report came out saying we have to do something to increase affordable housing. We have to do something to limit the proliferation of short term rentals. It's causing us serious problems. Businesses are having problems finding people who actually can afford to live there, to actually work for those businesses. But this was two years ago. What has the county actually done?*

~~**Nicole Bales:** Yeah. I mean, that study did suggest a lot of solutions again, like creating~~



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Clatsop County have adopted those kinds of policies, Clatsop County hasn't yet. They said that some of those, they call them 'big ticket policy items', would be something that they'd consider in the future, but as far as right now, they're really focusing on tightening up these ordinances and potentially consolidating them. They're also looking at ways to support the construction of affordable housing within the county. And maybe using some land that they might have, whether that be land that's been foreclosed on or land acquired right of ways, to use that for new affordable housing developments. But as far as adopting those recommendations that came out of the housing study, there hasn't been that much movement on that yet.

Dave Miller: *Nicole Bales. Thanks very much for joining us today.*

Nicole Bales: Thank you so much for having me.

Dave Miller: *Nicole Bales is a reporter for the Astorian newspaper. Coming up after the break, we're going to hear about a new album co-produced by a Portland artist. It has 25 tracks of family music by black musicians from around the country.*

COMPLETE

Audio:

<https://www.opb.org/article/2021/06/09/new-law-ensures-oregon-students-can-wear-tribal-regalia-at-graduation/>

Dave Miller: *In the past, indigenous students in Oregon could not wear eagle feathers on their graduation caps, mukluks on their feet or traditional stoles over their graduation gowns without the fear that they might be stopped or have these items confiscated by school administrators. A new law signed by Governor Kate Brown aims to change that. It says that public schools cannot prohibit students from wearing Native American items of cultural significance at school events like graduations.*

For more on what this will mean, I'm joined by Leilani Sabzalian, an assistant professor of Indigenous Studies in Education at the University of Oregon, where she is the co-director of the Sapsik'walá Education Program. Leya Descombes is with us as well- a senior at the NAYA Many Nations Academy, a Portland High School, who is going to Portland State University this coming fall. It's good to have both of you on the show.

Leilani Sabzalian: Thank you for having us.



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Venice

Venetians fear 'museum relic' status as population drops below 50,000

Campaigners say Italian city's remaining residents feel 'suffocated' by effects of tourism

Angela Giuffrida in Rome

Wed 10 Aug 2022 09.16 EDT



The remaining inhabitants of Venice's historic centre said they fear becoming like "relics in an open museum" now that the population is expected to drop below 50,000 for the first time.

Once the heart of a powerful maritime republic, Venice's main island has lost more than 120,000 residents since the early 1950s, driven away by myriad issues but mainly a focus on mass tourism that has caused

the population to be dwarfed by the thousands of visitors who crowd its squares, bridges and narrow walkways each day.

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Venessia.com, an activist group that for years has campaigned to preserve Venice's heritage, has kept track of the population decline and said the figure, now at 50,011, would fall below 50,000 by Friday.

"We don't have a precise number but, according to our calculations, and using data from the civil registry, it will go below 50,000," said Matteo Secchi, who leads Venessia.com. "We have been warning about this for years ... we don't want to give up, but no administration has managed to reverse the trend."

Secchi said that those who remain feel "suffocated" by an "economic machine" that has focused on tourism. He said it had left residents grappling with a high cost of living, a lack of affordable housing, and led to businesses that sell essential items being replaced by souvenir shops.

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“Tourism is a double-edged sword because you take money but at the same time you expel all the activities and space for [the residents],” said Secchi, who described Venice as “a cash machine”. “There are those who are not from here but own a home, rent it out and then spend the money elsewhere.”

Venice authorities this year announced a plan to attract remote workers to the city, but it appears to have made little impact. “This kind of thing is OK, but we need an epochal change and for the council to bring in significant measures, such as offering financial incentives to property owners who, say, only rent to Venetians,” said Secchi. “The danger is that we are becoming extinct, soon we will be like relics in an open museum.”

Venice council dismissed the population concerns, arguing that the number is boosted by foreign students and daily commuters from nearby Mestre, and that the civil registry does not include those who may dwell in the city for a significant part of the year but who are not registered as a resident.

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An electronic ticker displayed in the window of the Morelli chemist has recorded the population on Venice’s main island since 2008. “Today it’s at 50,011, down from 50,022 last week, and for sure it will go under the 50,000 threshold in the next few days,” said the chemist’s owner, Andrea Morelli. “The drop is very demoralising. I remember Venice as a child, when the local population presided. You would go for a stroll in St Mark’s Square and see people you knew. Not any more.”

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