CITY OF CANNON BEACH
NOTICE OF APPEAL - ADMINISTRATIVE DECISION

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1. PRECAUTIONARY "PERMIT" Appeal (CBMC 17.88.140) of Administrative Decision by Jeff Adams, regarding:

   IN THE MATTER OF A DEVELOPMENT PERMIT FOR TAXLOT# 51031AA00600 FOR CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE IN CONJUNCTION WITH A BUILDING PERMIT

   as stated in letter decision dated September 4, 2020.

2. Specific grounds relied upon for the appeal, including any Zoning Ordinance criteria or standards that you consider to be relevant:

   See attached.

Please attach additional pages, if needed, and any other relevant information.

FEE: $400.00

Appellant Signature: Stanley Roberts Date: 9/17/2020

For Staff Use Only:

Date Appeal Received: _____ By: _____
Appeal Fee Paid: _____ Receipt No.: _____

Fee:

803 - Planning $400

ATTACHMENT TO ADMINISTRATIVE APPEAL FORM
PRECAUTIONARY APPEAL OF "PERMIT" DECISION
Stan and Rebecca Roberts

RE: CBMC 17.88.140(A) "In the case of a permit, the notice of appeal * shall indicate the nature of the interpretation that is being appealed"[1]**

I. *Basic Information*

1. The Decision to be reviewed is the "Community Development Director" Decision, Findings and Conditions entitled "In The Matter Of A Development Permit For Tax Lot# 51031aa00600 For Construction Of A New Single-Family Residence In Conjunction With A Building Permit" "Findings of Fact, Conclusions, and Order DP# 20-04", dated September 4, 2020. We refer to this decision herein as the "Director's Decision" or "Decision."

2. This appeal is filed by the Applicants, who are also the owners of the subject property (Tax Lot# 51031aa00600), Stan and Rebecca Roberts.

3. Interpretation Challenged. This appeal respectfully challenges the Decision's implicit or express interpretations of CBMC 17.42.050(6); ORS 227.175(4); ORS 197.307(4); 227.173(2); ORS 197.831 and ORS 35.015, as well as the Oregon and federal constitutions. This challenge to the Decision is to the entire decision as explained below, regardless of whether the error is an interpretation or other error of law. To the extent the code purports to narrow the Applicants' rights in this appeal, it is contrary to state law and unenforceable. ORS 227.175(10); ORS 197.195(5).

4. This Appeal is Precautionary. It is unclear whether the "Decision to be Reviewed" is a "permit concerning a land use matter" or a "development permit" or "administrative action of the building official." The challenged Decision seems to blend these decision types together, but says that the Decision is a "Type I Development Permit." Yet, a "Type I Development Permit" is only issued by the building official. CBMC 17.92.010(1) ("The building official shall issue ***."). Here, the "Type I Development Permit" is by the Community Development Director, not the building official.

The Decision applies land use standards which the City code seems to say is the function of a "permit concerning land use standards" (CBMC 17.88), but also perhaps is a function of certain types of "development permits" per CBMC 17.92.010(2) and (3).

The "permit" reference in CBMC 17.88.140(A), relates to the term "permit" as defined in CBMC 17.04.435. Under CBMC 17.04.435, "Permit means a discretionary development of land under ORS 227.215." The only kind of "permit" we see that resembles that City definition referring to ORS 227.215, is in ORS 227.215(3)(b), which

[1] The Applicants request that the planning commission consolidate this appeal with the "development permit" appeal also filed this date.

governs the discretionary issuance of a permit under ORS 227.173. ORS 227.173 refers to a statutory "permit" as defined in ORS 227.160(2).

"Permit" appeals under the City code, may have a limited scope – limited to challenging "interpretations" under CBMC 17.88.140(A). If that is so, that restriction is unlawful under state law, which requires a de novo appeal hearing on all relevant topics. ORS 227.175(10). The caveat under the City code, is that it appears that a "Type 2" or "Type 3" "development permit" may also be a "permit" as the City code defines that term. "Development permits" – whether Type 1, or 2 or 3 – are appealed under CBMC 17.88.140 and 150(A). Development permit appeals do not appear to have the limited scope the code describes for "permits."

Because the process that applies is unclear, and because the stakes are high for the Applicants, the Roberts,' file appeals of the Director's Decision, as follows: (1) as a "development permit," (as the Decision directs).[2] (2) as if the Decision is properly characterized as a "permit" under CBMC 17.88.140; and (3) as if it is an "administrative action by the building official" per CBMC 15.04.150, as the Decision also seems to suggest could be the case. The difference between an "administrative action of the building official" reviewable under CBMC 15.04.150 and a "Type I development permit" reviewable under CBMC 17.88.140, per CBMC 17.92.010(C)(1), is not evident.

Please note that if the City dismisses the CBMC 15.04.150 appeal, on the basis that the Decision is not an "administrative action by the building official," the Applicants' will accept that outcome.

4. De novo review is unavoidable. CBMC 17.88.160 says "an appeal of a permit or development permit shall be heard as a de novo hearing."

5. Nature of the Decision. The Applicants applied for a dwelling, which triggers important state laws that are designed to make it easy and inexpensive to obtain approval for housing development on residentially zoned land. Those important state housing laws instruct the City to approve or deny an application like the Roberts' under standards that are clear and objective "on their face"; to only impose clear and objective conditions and processes; and that forbid the City from reducing the floor area below the maximum the City's code allows. The City carries the burden to prove it complies with these important housing laws. The Decision fails to address these issues, although they were raised before the Decision was issued.

The Roberts' application sought what state law calls a "limited land use decision." A limited land use decision is a decision category that pertains to property situated in the urban growth boundary (UGB), for a use that is permitted outright, and that is subject only to standards regulating the physical characteristics of the use. Per CBMC 17.10.020(A), the Roberts' dwelling is "permitted outright" and is therefore required to be subject only to standards regulating its physical characteristics. Thus, as a matter of

[2] There are apparently three levels of "development permit" some of which overlap with "permits", and the Decision could be characterized as any of them. CBMC 17.92.010.

state law, the City was required to treat the Roberts' application as a limited land use decision, and their Application should have been approved as submitted. It appears that a limited land use decision would result in a "Type II Development Permit." CBMC 17.92.010(2).

Instead, the Decision was possibly converted from the statutory limited land use decision that the Roberts' sought, to a statutory "Permit" decision, which state law (and the City code) defines to mean "a discretionary approval of a proposed development of land." ORS 227.160(2); CBMC 17.04.435. This is because Condition No 2 and the findings that support it, deny the Roberts' application for a building permit for the home they requested and conditions any building permit upon the application of the City's Oceanfront Setback Survey or "OSS," and then demands the Roberts' home be established only in conformity with the OSS or only if an OSS setback reduction is approved. As a result, the Decision not only denies the Roberts' application as submitted, but also denies any sort of reasonable dwelling on their lot – reduces the available floor area to less than 1,399 sq. ft. based upon the OSS alone. The City cannot deny a use (dwelling) that is permitted outright – which was sought in the Roberts' application for their home – a limited land use decision. Therefore, it appears that the challenged Director's Decision may have converted the Applicants' request for a "limited land use decision" into a statutory "permit." It appears that the City code contemplates that a "permit" will be appealed under CBMC 17.88.140(A), but also appears to be a "Type II" or perhaps "Type III Development Permit," reviewable per CBMC 17.92.010(3) and CBMC 17.88.140(A), with the information required by CBMC 17.88.150. The process disclarity requires the filing of a primary appeal, this precautionary appeal and one other precautionary appeal.

Regardless, the City followed none of the state law required procedures for either a limited land use decision or a statutory permit or "Type 2" or "Type 3" development permit. But this does not bear on the proper characterization of the Decision, as your attorney will tell you. *Richmond Neigh. v. City of Portland*, 67 Or LUBA 115, 119 (2013) (city error in the manner of processing an application locally, does not affect the character of the decision).

6. <u>The specific grounds for review</u> are listed below.

II. *Specific Grounds for Review (incorrect interpretations of state law and the City code):*

1. There are two fundamental errors in the challenged Decision.

First, the findings assert that the OSS in CBMC 17.42.050(A)(6), applies to the Roberts' application to develop housing on their property, in violation of state law and the City's own code and must be reversed. The challenged findings state:

> "Applicant has provided plans adhering to the base zoning setbacks, treating the property at the corner of unimproved Ocean Ave. and Nenana St*.,* as a lot not abutting an oceanshore. The applicant has submitted *arguments that the lot is not subject to the oceanfront setback, but the City concludes otherwise*. The applicant has stated that the Ocean Ave. platted right-of-way

> is a 'buildable' lot, when it has historically never been interpreted in that manner by the City of Cannon Beach. This is also supported by context elsewhere in Chapter 17.42 where it refers to 'lots or right-of-way' as distinct areas.
>
> "As discussed above, *this property is subject to the oceanfront setback*, but the application did not include a survey indicating the oceanfront setback line, as required by CBMC 17.42.050(A)(6). Nonetheless, it appears that it may be possible to comply with the oceanfront setback, or that the development may comply with the applicable setback through an approved setback reduction granted by the Planning Commission under CBMC 17.64." (Emphasis supplied.)

Second, Condition No 2 is unlawful as a matter of state law and must be removed. Condition No 2 requires the following:

> "Prior to the issuance of a building permit, the applicant *shall provide Oceanfront Setback Survey confirming that all proposed structures conform to Chapter 17.42.050(A)(6), or a Setback Reduction approval* from the Cannon Beach Planning Commission, under Chapter 17.64 authorizing a setback reduction for the structures on the site." (Emphasis supplied.)

The specific reasons demonstrating that the Decision's findings and Condition No 2 are unlawful under state law, follow.

A. Condition No. 2, Demanding the Application of the OSL, Impermissibly Reduces the Maximum Allowed Floor Area of the Roberts' Lot

ORS 227.175(4)(c) says that the City may not "condition an application" for a "housing development" on a "reduction in density" where the "density applied for" is "at or below the "authorized density level" in the City's Code. The Roberts' application is for a "housing development." ORS 227.175(4)(f), defines "authorized density" to include "the maximum floor area" that the City's code allows.

The Director's Decision, Condition No 2, requires the application of the OSS. Applying the OSS to the subject property vastly reduces the maximum floor area available on the Roberts' lot to well-below the maximum that the code allows – it requires the floor area be reduced by more than 50%. As such, Condition No 2 violates ORS 227.175(4)(c).

CBMC 17.10.040(D) says the maximum floor area allowed for lots between 5,000 and 6,000 sq. ft. in size, "shall not exceed 3,000 sq. ft." The Roberts' lot is a platted subdivision lot composed of 5,394 sq. ft. The floor area sought in the Roberts' application is 2,712 sq. ft. Accordingly, the floor area that the Roberts' housing development application seeks, is at or below the City's maximum floor area of 3,000 sq. ft. Condition No 2 requires the reduction of

the maximum floor area of the Roberts' lot to less than 1,399 sq. ft., which is well-below the maximum floor area allowed of 3,000 sq. ft. Exhibit 1. This the City is not permitted to do.

Therefore, the City may not impose Condition No 2, because it is a condition on housing development that reduces the "density" allowed by the code in violation of ORS 227.175(4)(c). The Planning Commission should order the removal of Condition No 2.

B. The Findings and Condition No. 2 Demanding Application of the OSL Impermissibly "Approves or Denies" Housing Based upon Conditions, Standards and Processes that are not Clear and Objective

The Decision's Findings and Condition No 2 demanding the application of the OSS before any building permit can be issued, violate ORS 227.175(4)(b)(A)[3]; ORS 197.307(4)[4]; and 227.173(2)[5]. *Warren v. Washington County*, 76 Or LUBA 375 (2018), *aff'd* 296 Or App 595; *rev den* 365 Or 502 (2019). There is no exception that applies to any of these statutes. The City carries the burden of establishing that the Decision's standards *and* conditions and indeed the processes, are "only" "capable of being imposed" in a clear and objective manner. ORS 197.831.[6] Despite the fact that these issues were raised before the Director issued his decision, the City made no effort to carry its burden. The City cannot establish compliance, as required.

LUBA has identified two circumstances where a standard fails the "clear and objective" test. One is where the standard requires "subjective, value-laden analyses that are designed to balance or mitigate impacts." *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 (1998), *aff'd* 158 Or App 1 (1999). The other is where a standard or condition is ambiguous such that "it can be interpreted to support either of two diametrically opposed conclusions". *Group B LLC v. City of Corvallis*, 72 Or LUBA 74, *aff'd* 275 Or App 577 (2015), rev den 359 Or 667 (2016); *and see Tirumali v. City of Portland*, 169 Or App 241 (2000) (ambiguous standard that is capable of more than one plausible interpretation is not "clear and objective" under ORS 197.015(10)(b)(B)).

Please note that while the Director's Decision is captioned an approval, it is not an approval of the Roberts' application. It is a denial of the Roberts' application as it was submitted and in fact denies *any* application anywhere close to that which the Roberts' submitted. Rather,

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[3] ORS 227.175(4)(b)(4)(b)(A), provides: "A city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including clear and objective design standards contained in the city comprehensive plan or land use regulations."

[4] ORS 197.307(4) provides: "a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures: *** May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

[5] ORS 227.173(2), provides: "When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance."

[6] ORS 197.831 provides: "In a proceeding before the Land Use Board of Appeals or an appellate court that involves an ordinance required to contain clear and objective approval standards, conditions and procedures for needed housing, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, conditions and procedures are capable of being imposed only in a clear and objective manner."

Condition No 2 requires that an OSS be submitted to the City, requires the Roberts' home to be redesigned to comply with the OSS, or they obtain a setback reduction approval, before any building permit may be issued.

Lest there be any doubt about whether the Director's Decision is really a denial, applying the OSS as the Director suggests, reduces the buildable area of the Roberts' residential lot by 71%. *See* Exhibit 2. It is impossible to develop their house or any house anywhere close to the one they applied for if the OSS is applied. Exhibit 3. In fact, there can be no dispute that the Roberts' home would have to be **completely redesigned and no reasonable home can be built at all** on the Roberts' lot, if Condition No 2 were allowed to stand.

(i) The City's OSS is not "Clear and Objective."

The OSS cannot be applied consistently with state law because it fails the "clear and objective" standards test. As demonstrated by the Decision, the key standards of the OSS can be applied in multiple ways and it is, therefore, ambiguous.

The OSS applies to a "lot abutting the oceanshore." It requires that homes on lots abutting the oceanshore be setback a distance that is the "average" of the setbacks of "structures" also on "lots abutting the oceanshore," that are north and south, a distance of up to 200'. The term "lot abutting the oceanshore" to which the oceanfront setback only applies, is defined to mean a lot that abuts the "Oregon Coordinate Line" or a "lot where there is no buildable lot between it and the Oregon Coordinate Line." All of these terms are ambiguous. A proper interpretation of those terms would result in approval of the Roberts' application as submitted. But the fact that the City and Applicants disagree on the meaning of the OSS standard demonstrates that the OSS is ambiguous, which means it is not clear and objective and so may not be applied to the Roberts' application, as a matter of state law.

The OSS Standard "Oregon Coordinate Line" is not "Clear and Objective."

The first thing that is "ambiguous" – *i.e*. not "clear and objective" in the OSS standard – is the term "Oregon Coordinate Line," which is not defined, does not show up in any dictionary and is not defined in any administrative rule. The term "Oregon Coordinate Line" is a part of the City definition for "lots abutting the *oceanshore*." State law is instructive because the standard refers to the "*Oregon* Coordinate Line" which must mean something specific in state law. State law in fact defines the term "ocean shore" to "mea[n] the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 *or the line of established upland shore vegetation, whichever is farther inland*." ORS 390.605(2) (Emphasis supplied.)

A surveyor can tell what and where the Statutory Vegetation Line is, but the "line of established upland vegetation" cannot be ascertained and devolves into a value laden judgment about what vegetation is established and what is not and where the "line" is and where it is not. It is an ambiguous term that has any number of plausible meanings. Accordingly, the term "Oregon Coordinate Line" is not "clear" as to what it describes and ascertaining its meaning cannot be objectively determined. It may mean either the statutory vegetation line or the "line of

established vegetation" or something else entirely. But, in any case, it is ambiguous and, if it means the line of established vegetation, where that is and where it is not, cannot be determined without applying significant factual and legal judgment.

"Buildable Lot" is not "Clear and Objective."

The second thing that is not "clear and objective" about the City's OSS, is the term "buildable lot." The Roberts' lot fronts on (abuts) Ocean Ave, a platted public street, dedicated to the public. That platted public street meets the City code definition of "lot."[7] Ocean Ave. separates the Roberts' lot from the ocean.[8] The Roberts' property is directly east of Ocean Ave. There can't be two lots "abutting the ocean shore" – rather there can only be one that actually does (Ocean Ave.), and one directly behind it to the east (Roberts' lot).

The challenged Director's Decision says the Ocean Ave. right of way is not a "lot" because CBMC 17.42 (probably 17.42.030(A)-(F), but the decision does not say), uses the terms "lots or right-of-way." However, this proves too much because CBMC 17.42.030(A)(3) says that on "lots or right-of-way," that "existing streets" may be maintained or repaired." This contemplates that "existing streets" can be on either "lots or right of way," which takes you back to the question – 'what is a lot?' – which question is answered by the City code definition that says it is a "parcel, plot or tract."

Regardless, the disagreement about whether Ocean Ave., is a "lot" illustrates that the term's meaning is ambiguous – not "clear," and its meaning and scope cannot be objectively ascertained. There are competing interpretations of what the term "lot" means and whether the Ocean Ave. right of way qualifies. On the one hand, you have a specific definition in the city's code of the term "lot" which includes "tracts" which Ocean Ave. undeniably is, and then you have another part of the city code that talks about "lots or right-of-way" as if they are different things, but the latter is informed by a standard subset, that lumps them together again. The Decision finds interpretive significance in the latter, driving home the point that the standard is not clear and objective, as required.

Next, the term "buildable" in the context in which it is used, is neither clear nor objective. First, the term "buildable" informs whether land is a "lot." If a platted tract can be built upon, as is the case with Ocean Ave., then necessarily, it is a "buildable lot."

Ocean Ave. is "buildable" as a matter of City and State law.

As to City law, the City has no definition of "buildable", but that term is defined in the Merriam-Webster dictionary as "suitable for building." In turn, the City code defines "building" as a "structure built for the support *** of persons, animals or property of any kind." CBMC 17.04.085. The code then defines the term "structure" as "an assemblage of materials extending above the surface of the ground and permanently affixed or attached ***". CBMC 17.04.540. The definition of structure excludes "minor incidental improvements." *Id*. Ocean Ave. is

[7] "'Lot' means a plot, parcel or tract of land." CBMC 17.04.315. At a minimum, Ocean Ave. is a "tract of land."
[8] Since we do not know what the "Oregon Coordinate Line" is, we assume for this exercise that we are talking about the ocean.

capable of being built with a structure (road surface, which is above the ground), that would support pedestrians and vehicles. A road is certainly not a "minor incidental improvement" to real property. While the City's apparent interpretation is a stretch, it is potentially a plausible interpretation and, regardless, the point is that the disagreement shows that the term is ambiguous.

State law also makes it "buildable". In this regard, Ocean Ave. is zoned residential (RL) and is undeniably "public property." As a result, state law in ORS 197.779(2) states that it is allowed to be developed with housing. ORS 197.779(2) **was specifically adopted to authorize the use of public property in 2019** for housing and says that "a local government may allow the development of housing on public property" so long as it is not "inventoried as a park or open space", is located within the UGB, and is "zoned for residential development." The undeveloped and platted Ocean Ave right of way is zoned RL and in fact meets all of these standards. *See also* ORS 197.522(2); 227.175(4)(b)(B). The legislative history makes clear that one of the possibilities that the legislature understood was that right of way could potentially serve as land for housing. Exhibit 4 (APA objecting to new law because it could authorize housing in undeveloped ODOT rights of way and similar objections that the legislature overrode).

The City has Acknowledged the Roberts' Lot is not Subject to the OSS Making the OSS at a Minimum, Ambiguous

Consistent with the fact that the Roberts' lot does not constitute a "lot abutting the oceanshore," the Director opined as much several months ago. Specifically, in a meeting with several other individuals in attendance, and before the Roberts' invested a half million dollars to design their home and perform the significant engineering for the improved road access to serve their home, the Director advised the Applicants' planning consultant, Ms. Pearson, that because the Roberts' property abutted Ocean Ave., it was not subject to the ocean setback.

Relevant to the clear and objective calculus is the fact that the City planning director has flip-flopped on the meaning, applicability, and scope of the OSS to the Roberts' property, establishing it is ambiguous and cannot be fairly characterized as "clear and objective." As such, Condition No. 2 and the findings supporting it that demand the Roberts' home be redesigned to comply with the OSS, may not be applied to the Roberts' application for their home, as a standard or condition, as a matter of state law.

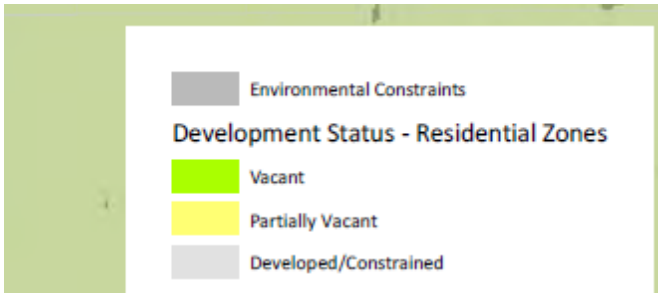
Qualifying "Buildings" Subject to the OSS Cannot be Ascertained and the OSS Standard is not a Clear and Objective Standard, as a Result

Identifying the "buildings" that must be counted in the OSS exercise – "residential or commercial structures", but not "accessory structures," that are situated either north or south of the Roberts' property within a distance of 200,' is not itself clear and objective and is not guided by clear and objective standards.

The only possible residential or commercial structure within 200' is a cabin to the north, ostensibly owned by the "Neupert Beach House Trust" (Cabin). However, the only "residential or commercial structures" that are counted in the OSS's ocean "averaging" exercise, are

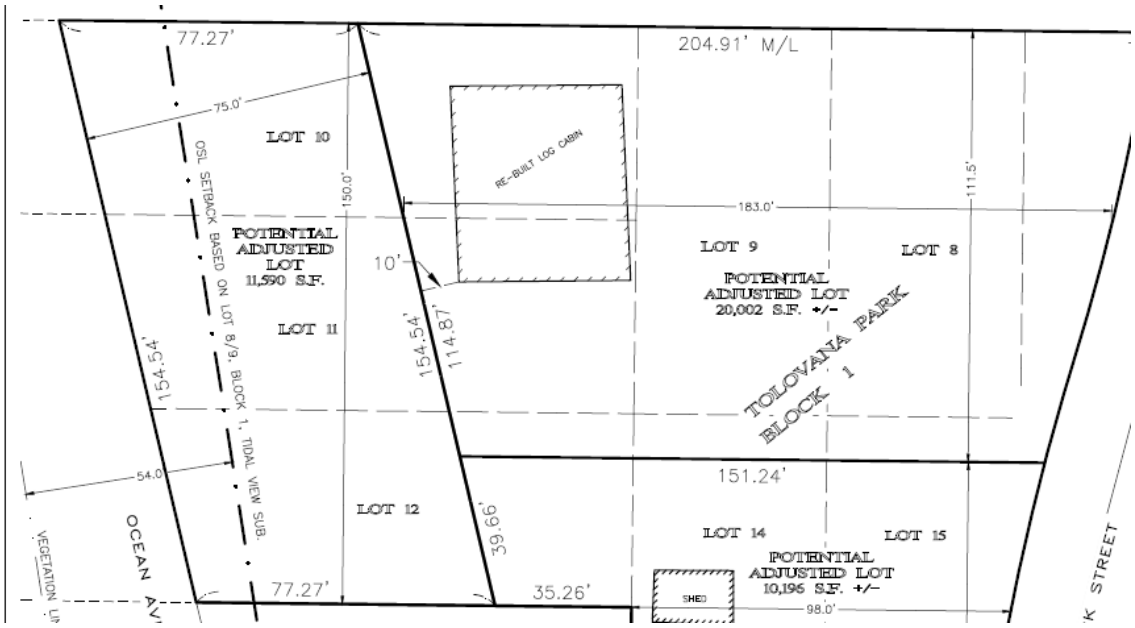
"buildings on lots abutting the oceanshore." CBMC 17.42.050(A)(6)(a). The issue then for the Cabin, is the same as for Roberts – there is a "lot" as defined (tract – Ocean Ave.), that separates the Cabin from the ocean. So, the Cabin is not a "lot abutting the oceanshore" and need not be considered under the OSS in any "oceanfront averaging."

Moreover, the property on which the Cabin sits, is separated from the ocean by a "plot" – a "lot" as defined in the City code. Specifically, the Cabin sits of property that is "oversized" and that the City's Buildable Lands Inventory (BLI)[9], characterizes as "partially vacant," presuming that it will deliver 4.4 houses per acre:



There is an 11,590 sq. ft. fully developable "plot" of land that separates the Cabin from the ocean:

[9] For the Roberts' property to be protected from standards, processes/procedures and conditions that are not clear and objective, their property need not be considered "needed housing". *Warren.* However, for the record, their property is in the UGB, is listed as vacant buildable residential land in the City's BLI as shown above, is zoned residential, and so is in fact "needed housing."



A "plot" is defined in the City code as a "lot". So, if there is a "plot" that separates the Cabin from the ocean, then the Cabin is not on a "lot abutting the oceanshore." The term "plot" itself is undefined by the City, but the term is clearly intended to be something different from a parcel, subdivision lot or tract of land. Black's Law Dictionary defines "plot" as "[a] measured piece of land." There is a "measured piece of land" that separates the Cabin from the ocean. Consistent with the fact that a "plot" separates the Cabin from the ocean, the City also uses the term "plot" in CBMC 17.040.020(D)(1) to describe an "*** area of land to be developed ***." The City's BLI clearly contemplates that this area of land will be developed.

It appears that the Cabin sits on portions of TLs 8900 and 4900, which are owned by Neupert Beach House Trust. The Cabin also sits on an area of land composed of .8 acres, owned by a separate entity "Haystack Rock LLC" (TL 500). Accordingly, TL 500 contains a "measured piece of land" that is wholly developable to the west of the Cabin, as depicted above. That means it is a plot. That means it is not a "lot abutting the oceanshore."

The City apparently disagrees, but why that is so is unstated. Regardless, because of the apparent disagreement, it is evident that the OSS is, here again, ambiguous because ascertaining the buildings to be counted in the "averaging" exercise, is not clear and objective and the threshold terms "lot" and "plot" are not clear and objective either.

(ii) Condition No 2 is not "Clear and Objective" by its Terms Because Directing a Housing Applicant to Obtain Approval for A Value Laden "Setback Reduction" is not "Clear and Objective."

We demonstrate above that the OSS is not clear and objective and the proper interpretation and application of state law requires that compliance with the OSS be removed from the Decision findings and as a condition of the Roberts' obtaining a building permit for their home. Condition No 2 also fails the state law clear and objective test because it demands that the Applicants either resubmit their application in conformity with the OSS or obtain

approval of a "setback reduction" under CBMC 17.64. Because their home cannot be established if the OSS is applied, the Decision says that their application for housing can only be approved if they obtain approval of a "setback reduction." That is no different than demanding that the Roberts' home may only be approved under the subjective standards that apply to a "Setback Reduction" which state law makes wholly unlawful to be applied here.

The standards that apply to a setback reduction are discretionary and ask the City to make value laden judgments about whether to approve or deny the requested setback reduction. For example, CBMC 17.64.010(2) requires a finding that "*significant* views of the ocean, mountains or similar features from nearby properties will not be obstructed any more than would occur if the proposed structure were located as required by the zoning district." CBMC 17.64.010(4) provides: "It is the purpose of setbacks to provide for a *reasonable amount of privacy*, drainage, light, air, noise reduction and fire safety between adjacent structures. Setback reduction permits *may be granted where the planning commission finds that the above purposes are maintained*." CBMC 17.64.010(4)(b) asks whether the setback reduction would protect "a neighboring *property's views of the ocean, mountains or similar natural* features. CBMC 17.64.010(7) requires that "Any encroachment into the setback will not *substantially reduce the amount of privacy* which is or would be *enjoyed by an abutting property*." State law makes clear that such standards may not be applied to the Roberts' request to build their home.

Therefore, Condition No 2 is not clear and objective and must be removed.

The Term Average" is not Clear and Objective; There is no "Average" with just one Reference Point

CBMC 17.42.050(A)(6)(C)(iii) requires the OSS be determined by calculating the "average of the setbacks of each of the buildings" on land that abuts the oceanshore. The term "average" is undefined. But it obviously contemplates that there be more than one data point to consider. The term "average" has a well-established mathematical meaning that is defined in Websters Dictionary: "a single value (such as a mean, mode, or median) that summarizes or represents the general significance of a **set** of unequal values." One value is not a "set." The City apparently determines the meaning of "average" differently. This means the term "average" is ambiguous at the least, and so is neither "clear" nor "objective" as required.

To the extent that the City interprets the term "average" to be ascertained with only one data point, such an interpretation is error. It does not even appear that an interpretation to the contrary is plausible.

(iii) Processes/Procedures are not Clear and Objective.

The processes / procedures in the City code and reflected in the Director's Decision are not clear and objective and certainly are not *only* capable of being applied in a clear and objective manner, contrary to ORS 227.175(4)(b)(A); ORS 197.307(4); ORS 227.173(2), and ORS 197.831. This is evident in the fact that three separate appeals are required to challenge the Director's Decision. The City cannot, and indeed has made no effort to, demonstrate compliance with these state law standards requiring the process/procedure applied to the Roberts' application be clear and objective, as is its burden.

The first issue is that it is impossible to ascertain under the City code, what process/procedure the City is *supposed* to apply or under the Decision what it *has applied* to this application or what sort of an appeal to file, exactly who the appeal review body is supposed to be, or the scope of review, once an appeal is filed.

The City code contains four different types of appeals, two of which appear to be the same thing and any one of which could apply here, ostensibly and impermissibly setting a process trap for a person merely trying to develop a home on land zoned RL: there are appeals from "permits" (CBMC 17.88.140(A) – appeal is to the planning commission – appears to be the same thing as a "*permit concerning a land use matter*"); appeals from "issuance of permits *concerning a land use matter*", which as noted above appears to be the same thing as a "permit" appeal); (*Id*., - appeal is to the planning commission), and appeals of an "administrative action" of the "building official" (CBMC 15.04.150(A), - appeal is to the city manager); appeals of "development permits" (CBMC 17.88.140(A) appeal to the planning commission). The challenged decision purports to be one by the "building official," but is signed by the community development director and applies land use standards, but claims it is a Type 1 decision that does not apply land use standards. It is unclear whether the Community Development Director purports to make the Decision exercising the authority of the "building official."

Making matters even more unclear, CBMC 17.92.010 creates three classes of "development permits."

First, there are development permits seeking a building permit to construct a single-family dwelling. The code says that these "are referred to as Type 1 development permits." CBMC 17.92.010(A)(1)(a).

Then, there are development permits seeking approval of a structure "listed in this title as requiring a development permit." Which, in turn characterizes those as "Type 2 or Type 3 development permits." Perplexingly, a single-family dwelling is listed as a structure requiring a development permit, and says that it is to be reviewed as a "Type I" development permit." But that creates disclarity on whether an application for a building permit for a single-family dwelling requires a Type 1 or Type 2 or Type 3 development permit, because it is "listed in this title as requiring a development permit."

Then, there is a third type of development permit – a Type 3 Development permit – the trigger for which is unspecified.

Adding to the confusion is that CBMC 17.92.010(1) provides that Type 1 development permits are issued by the *building official*, not planning:

> "Administrative Review of Type 1 Development Permits. The *building official* shall issue a development permit to the applicant if the *building official* finds that the work described in an application for a development permit and the plans, specifications, and other data filed with the application conform to the requirements of this title, *and any conditions imposed by a reviewing authority*. A decision of the *building official* may be appealed to the planning commission in accordance with Section 17.88.140." (Emphasis supplied.)

It cannot be overlooked here, that the Decision claims to be a "Type I Development Permit" but it is the *Community Development Director* who made the Decision, not the *building official*. Similarly, the above quoted CBMC provision makes plain that the *building official* does not have authority to impose conditions. Rather, he merely has authority to check on an application's conformity with conditions imposed by others. Yet, the challenged decision imposes six conditions.

Moreover, and equally confusing is the fact that the distinction between a "Type I" and "Type II" development permit in the code, seems to rest on whether the planning department is involved (but what exactly triggers their involvement is not specified). CBMC 17.92.010(2). Then, there is something called a "Type III" development permit, which appears to contemplate a "statutory permit." CBMC 17.92.010(3).

Relatedly, there is a distinction between a Type I "Development Permit" and other "Permits" apparently based upon whether the decision concerns a "land use matter" (CBMC 17.88.140(A)), and then a "development permit" and other "permit" are apparently subject to differing standards:

> "A decision on the issuance of a *permit concerning a land use matter*, or a development permit may be appealed to the planning commission by an affected party by filing an appeal with the city manager within fourteen consecutive calendar days of the date that written notice of the decision was mailed. *In the case of a permit, the notice of appeal that is filed with the city shall indicate the nature of the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the requirements of this chapter. In the case of a development permit, the notice of appeal filed with the city shall contain the information outlined in Section 17.88.150."* (Emphasis supplied.)

The challenged Decision claims to be a land use matter:

> "The Community Development Director considered the above entitled matter and approved, with conditions, the development permit on 09/04/2020 as consistent with the *City's land use regulations*." (Emphasis supplied.)

But the Director's Decision at p 6, directs the Applicant to seek review as if it were a decision by the building official, on a building permit. And contends that it is "approval of a type I development permit" under CBMC 17.92.010.

Moreover, under the City's code, there are "permits" which "shall indicate the nature of the interpretation being appealed" the scope of which is "a determination of the appropriateness of the interpretation of the requirements of this chapter." Then, there are "development permits" which require the information "outlined in [CBMC 17.88.150]." And then the outlier in CBMC Chapter 15 seems to apply here regarding appeals of administrative actions of the "building official" that go to the city manager.

Another confounding aspect of this matter is that the Director issued an "incompleteness letter" he said was pursuant to ORS 227.178 ("This letter will serve as the City's notification of an incomplete application *** pursuant to ORS 227.178), but ORS 227.178 only applies to land use decisions, limited land use decisions, statutory "permits" (the ones subject to ORS 227.175(10)), and zone changes. Yet, the Director denies the challenged decision is any of these.

Equally troubling is that the City has followed no required state law land use procedure to adopt the challenged decision. It has not followed the procedure for limited land use decisions expressed in ORS 197.195 and has not followed the procedures required by ORS 227.175(10) for statutory permits. It has not followed any part of ORS 197.763 that applies generally to other types of land use decisions. The City apparently is of the view that it need not apply any of these, but it is undeniable that one of these required state law processes, apply.

The process is an elaborate game of under which shell hides the pea. The processes/procedures applied to date are not clear and objective and in fact it is respectfully submitted that this situation illustrates the soul of a process/procedure that is not clear and objective. If you ask your city attorney, he will almost certainly tell you that the City processes/procedures are not clear and objective and cannot be applied here, as a matter of state law.

2. City has Unreasonably Added Significant Cost to the Roberts' Home and Caused Unreasonably Delayed its Construction

ORS 197.304(4)(b) forbids the City from imposing regulations, including procedures, that discourage "needed housing through unreasonable cost or delay." The Roberts' home is "needed housing" as defined in ORS 197.303 – it is zoned residential, it is in an UGB, and the City's BLI (see the image above), which includes their lot as "vacant" residentially zoned land in the calculus of developable lots needed to meet the City's need for housing.

The challenged decision improperly applies standards that violate ORS 197.304(4)(b). The City has "discouraged" the needed housing sought by the Roberts, by foreclosing it. The City has effectively denied the Roberts' request to establish a home on their property – the ultimate discouragement. Even if the planning commission reverses the challenged findings and Condition No 2, the Applicants have lost their building season.

The City has unreasonably increased the cost of the Roberts' home. The Roberts' have had to hire lawyers and consultants to prepare and pursue and file three appeals. They have had to pay three appeal fees. Condition No 2 requires the Roberts' to hire a surveyor and completely redesign their house – if any house can even be established on the subject property when the OSS is applied - and if not seek a "setback reduction" which is subject to highly discretionary value laden judgments. This is patently unreasonable given (1) their home is permitted outright on their land; (2) state law makes clear that the OSS cannot be applied because it reduces the allowed floor area well-below the maximum allowed in the City's code; (3) state law establishes that the OSS cannot be applied because it is not clear and objective but the Decision applies it anyway and does so even though this issue was raised before the Decision was rendered; and (4) the City's processes are unintelligible – they are anything but

clear and objective. In all, the process applied so far has not only discouraged the Roberts' from their needed housing but has also discouraged really anyone else from developing housing in Cannon Beach.

Finally, it is beyond dispute that all of the City's requirements – from its processes employed, to Condition No 2 and supporting findings, to its standards, have unreasonably delayed the Roberts' home – making it impossible for them to be able to construct it because they have now lost the building season.

The planning commission should order the Director to approve the Roberts' building plans as submitted and remove Condition No 2 and its supporting findings.

3. Properly Applying the OSS means that Neither Roberts' Property nor Cabin, are Lots Abutting the Oceanshore, and there is Nothing to "Average" in any Event

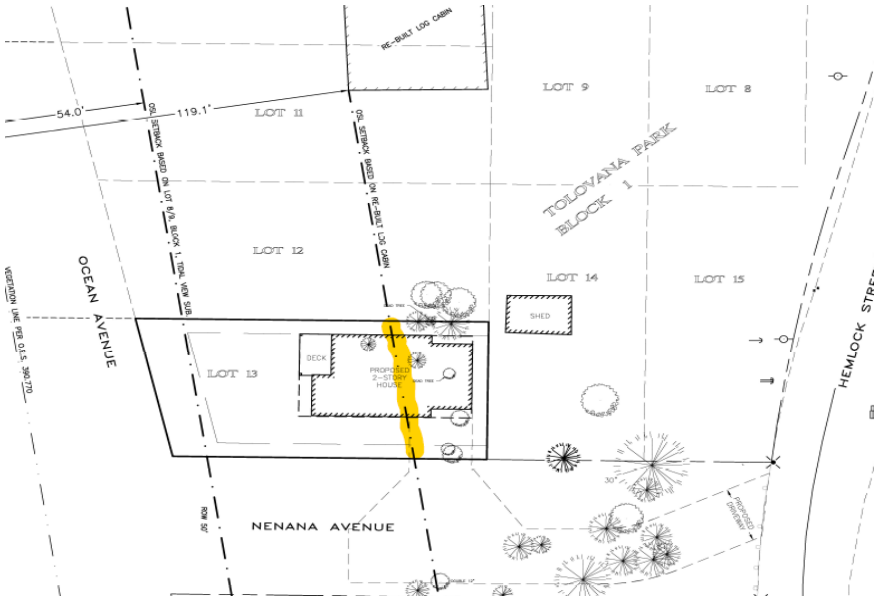
The Director's Decision improperly interprets the OSS.

For all the reasons explained above, even if the OSS could be applied to housing on the subject property, the OSS is met here: (1) neither the Roberts' lot nor the "Cabin" are a "lot abutting the oceanshore" under a rational reading of that standard; and (2) the presence of one structure (the Cabin) cannot result in an "average." There is no such thing as an "average" of a value and zero. The CBMC says where you can't do the "average" that the default setback is 15'. Accordingly, only the "default" 15' setback should be applied. The Director erred in concluding otherwise.

4. Condition No 2 is an Unconstitutional Condition that the City May not Apply[10]

Condition No 2 results in all but a total wipeout of the Roberts' property if the Cabin is used to "average" the OSS:

[10] The references here and elsewhere to where the OSS might end up is based upon conversations with staff identifying what they believe to be the relevant markers. In no way should that be taken as a concession that the OSS is clear and objective. With all due respect, it is not clear and objective for all the reasons explained.



Under Condition No 2 and its supporting findings, fully 71% of the Roberts' property is rendered undevelopable. What is left is not capable of supporting any reasonable dwelling. This fails constitutional tests that apply under the Fifth Amendment to the United States Constitution regarding taking private property, as well as parallel provisions of the Oregon Constitution in Article 1, Sec., 18. First, it is either a total wipeout leaving the property with no economically beneficial use or results in such a substantial interference with the owners distinct investment backed expectations, with large economic impact, for no good reason, so as to violate the principles established in either *Lucas v. So. Carolina Coastal Commission,* 505 U.S. 1003 (1992) or *Palazzolo v. Rhode Island,* 533 U.S. 606 (2001); *Penn Central v. City of New York,* 438 U.S. 104 (1978).

Second, Condition No 2 violates the principle of unconstitutional conditions. Here, there are no impacts from the proposed dwelling that justify Condition No 2 demanding their property be set aside for the benefit of a single neighbor. There is no essential nexus between the purpose of the OSS regulation and demanding 71% of the Roberts' lot be removed. The purpose of the regulation is to protect neighboring views of the ocean. The Roberts' dwelling has no impact on the Cabin's views of the ocean.

The purpose of the OSS is not to make a home invisible to its neighbors. It protects one thing and only one thing – neighbors' views of the ocean. The Roberts' dwelling harms that not a bit.

The City has made no effort to carry its burden to demonstrate that Condition No 2 meets constitutional tests including that it has made no effort to demonstrate its obligation to prove Condition No 2 is roughly proportional" to the impacts of the Roberts' housing development or that there is an "essential nexus" between the purpose of the OSS and the demand to apply it to the Roberts' as required. *Dolan v. City of Tigard,* 512 US 374 (1994); *Nollan v. California Coastal Comm'n*., 435 US 825 (1987).

The Oregon Court of Appeals has explained in *Hill v. City of Portland*, 293 Or App 283 (2018), that "the city cannot evade the requirement that it demonstrate that the impacts of a particular proposal substantially impede a legitimate governmental interest so as to permit the denial of a permit outright, simply by defining approval criteria that do not take into account a proposal's impacts." *Accord*, *Brown v. City of Medford* 251 Or App 42 (2012). The City is obliged to prove up under these constitutional standards and with all due respect, it cannot do so. Lest the City be tempted to just deny the Roberts' application on the basis of the OSS, such unquestionably would also violate the United States Supreme Court's decision in *Koontz v. St.*

Johns River Water Management District, 133 S. Ct. 2586 (2013), which also says that the *Dolan* and *Nollan* principles apply to any such denial.

5. Condition No 2 is Unlawful and Unconstitutional Because it Serves a Wholly Private Interest, not a Public One

We demonstrate above that Condition No 2's demand to apply the OSS violates the taking clause of the United States Constitution. It also violates ORS 35.015[11] because it, in essence, takes the Roberts' residential property that they wish to use as their residence, and sets it aside solely for the benefit of the owners of the Cabin. And regardless of whether that statute applies, the principle nevertheless does.

With all due respect, the City can advance no legitimate public interest in setting aside 71% of the Roberts' 5,300 sq. ft. lot solely so that the Cabin's owners are not offended by seeing another person's home, which is a use allowed outright on the Roberts' lot next door. Condition No 2 and the findings that support it are thus arbitrary and capricious and violates principles of substantive due process under the Fourteenth Amendment to the US Constitution.

Moreover, singularly and greatly benefitting the Cabin owners at the expense of the Roberts' violates the Roberts' rights under the Oregon Constitution, Article 1, Sec. 20 to enjoy equal privileges and immunities to their neighbors and also the equal protection clause of the US Constitution, Fourteenth Amendment.

6. Helpful Issues for the Planning Commission's Consideration

The Roberts Home Replaces the Dwelling that had Previously Been on the Property for 50 +/- years.

The Roberts' dwelling will be established in essentially the same location where a previous home stood for more than 50 years. Specifically, the Oswald family who first established the Cabin, gave the subject property to their builder to use to construct his own dwelling, which he did. His dwelling occupied the subject property for half a century, without bothering anyone's view.

If the Oswald's or current Cabin owners were worried about their views, they could have repurchased the subject property or, when the Cabin burned in the 1990s, established the Cabin closer to the ocean. They did neither of these things.

Their decisions, however, cannot translate into City decisions to foreclose the Roberts' use of the subject property they purchased, given that it is zoned for residential use and they have a property right to use as such.

[11] "[A] public body *** may not condemn private real property used as a residence *** if at the time of the condemnation the public body intends to convey fee title to all or a portion of the real property, or a lesser interest than fee title, to another private party."

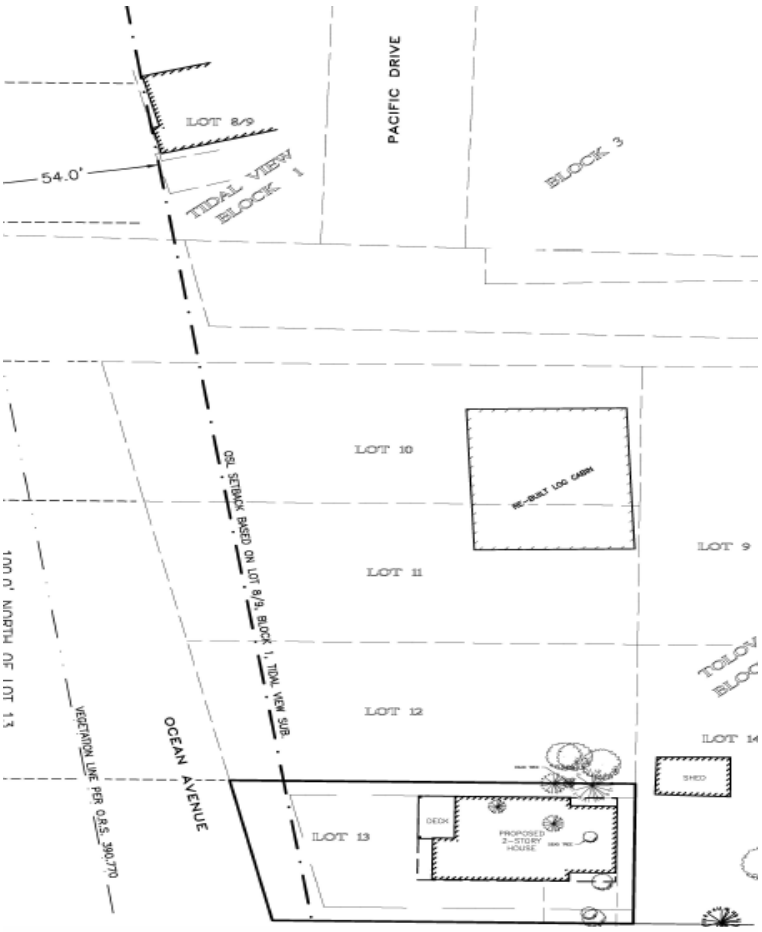
The Roberts' dwelling does not impair anyone's view of the ocean.

We explain above that the Roberts' home does not impair any ocean view of any neighbor. Exhibit 5 is a larger version of the image embedded above that illustrates this fact. To apply the OSS here, results then in establishing an untenable precedent that the City prefers protecting a neighbor so they do not have to suffer the view of a house on land zoned for residential use, over the City's obligation to approve housing on land where housing is a use permitted outright.

The Roberts Dwelling is proposed to be situated significantly eastward of the dwelling just over 200' to the north.

Without waiving the positions above that the OSS cannot be applied, we observe the following.

The OSS averaging exercise is intended to create a "set" of homes to enable the determination of a mathematical average setback from the oceanshore. In the situation here, that exercise fails because there is only one commercial or residential building either north or south of the Roberts' property. The next nearest house is less than 250' to the north. The Roberts' dwelling is setback further away from the ocean than that home is situated, as can be seen below:



If the objective is to find an "average," then the relevant distances would be extended to include the house slightly further to the north. After all, the 200' cut-off is wholly arbitrary. If the answer is that houses further than 200' feet away from property cannot reasonably be said to have views that are impacted by the establishment of a new dwelling, and that is why it is not included, then that proves why the OSS should also not apply here. Rather, just as a house 250' away does not impact views, it is undeniable under the unique circumstances here that the Roberts' dwelling also does not impact the Cabin's views of the ocean.

Thank you for your consideration.

Jay Raskin
Architect

Stan Roberts
925 Lake Street
Kirkland, Washington 98033

Re: Oceanfront Setback Maximum Floor Area

Dear Stan,

The condition requiring the application of the City's oceanfront setback to the Roberts' property, reduces the available maximum floor area to less than 1,399 sq. ft. This is significantly less than the 2,712 sq. ft. of the house submitted in the permit. Moreover, further reductions to the available floor area are anticipated to result from a number of factors:

- Constraints due to the irregular shape of the building envelope caused by the angle of the oceanfront setback line.

- Providing the two required parking spaces that, due to access constraints, come in on the second floor.

- City code requirements to incorporate in buildings at least two architectural features: dormers, more than two gables, recessed entries, covered porch/entry, bay window, building offset, a deck with railings or planters and benches, a garage, carport or other accessory structure.

Sincerely,

Jay Raskin, AIA

cc: Wendie Kellington
File

2418 SW Troy Street Portland, Oregon 97219 c: 503-440-0436 jay@jayraskinarchitect.com

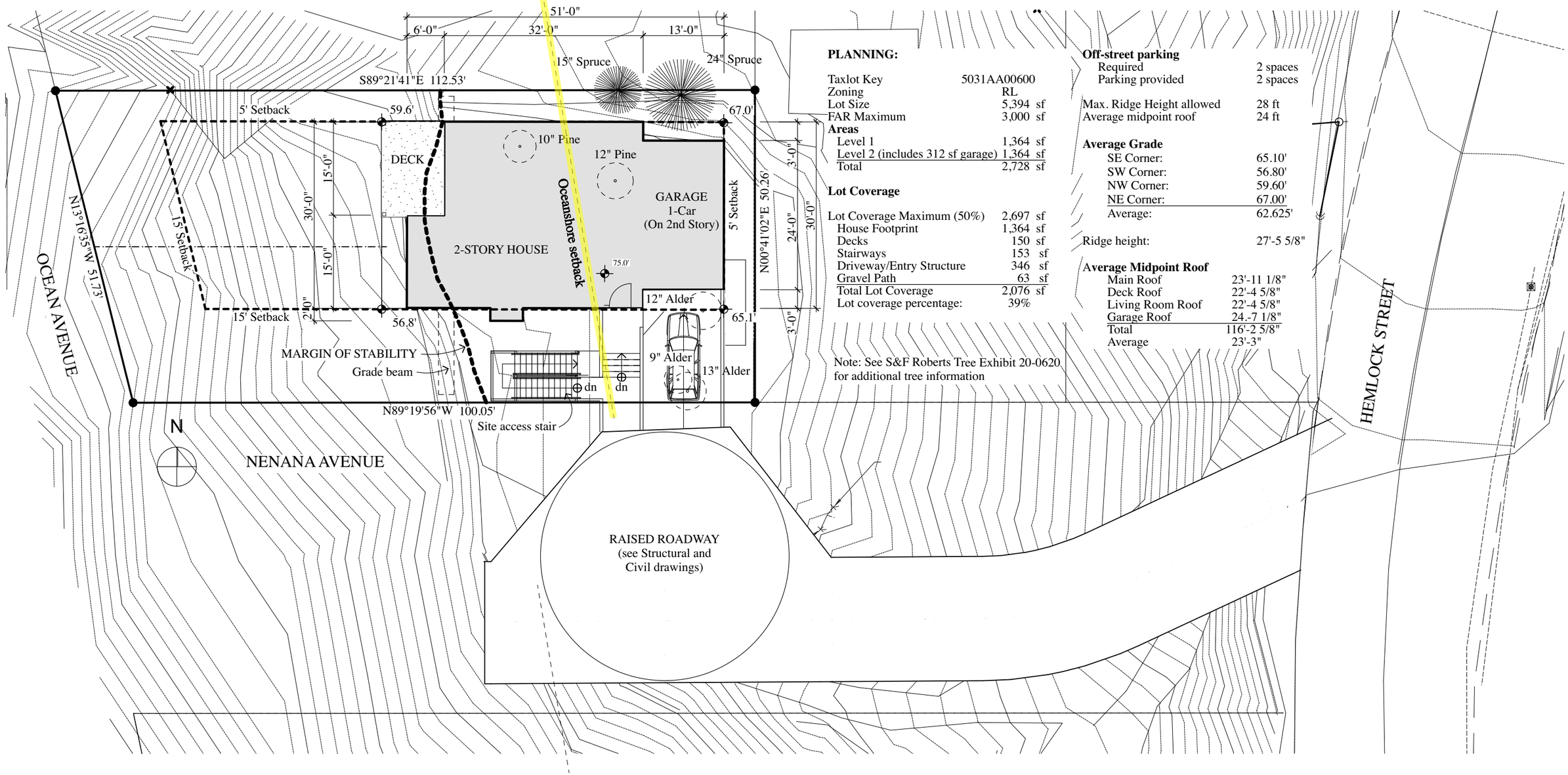
Exhibit 2

Jay Raskin
Architect

1 SETBACK DIAGRAM
Roberts Residence

9/10/20
1" = 30'

Jay Raskin
Architect



PLANNING:

Taxlot Key	5031AA00600	
Zoning	RL	
Lot Size	5,394	sf
FAR Maximum	3,000	sf
Areas		
Level 1	1,364	sf
Level 2 (includes 312 sf garage)	1,364	sf
Total	2,728	sf

Lot Coverage

Lot Coverage Maximum (50%)	2,697	sf
House Footprint	1,364	sf
Decks	150	sf
Stairways	153	sf
Driveway/Entry Structure	346	sf
Gravel Path	63	sf
Total Lot Coverage	2,076	sf
Lot coverage percentage:	39%	

Note: See S&F Roberts Tree Exhibit 20-0620 for additional tree information

Off-street parking

Required	2 spaces
Parking provided	2 spaces
Max. Ridge Height allowed	28 ft
Average midpoint roof	24 ft

Average Grade

SE Corner:	65.10'
SW Corner:	56.80'
NW Corner:	59.60'
NE Corner:	67.00'
Average:	62.625'
Ridge height:	27'-5 5/8"

Average Midpoint Roof

Main Roof	23'-11 1/8"
Deck Roof	22'-4 5/8"
Living Room Roof	22'-4 5/8"
Garage Roof	24.-7 1/8"
Total	116'-2 5/8"
Average	23'-3"

1 ROBERTS SITE PLAN 9-17-20

Roberts Residence

9/17/20

1/16" = 1'-0"

American Planning Association
Oregon Chapter

Making Great Communities Happen

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oapa@oregonapa.org • www.oregonapa.org

March 4, 2019

Representative Brian Clem, Chair
House Committee on Agriculture and Land Use
900 Court Street NE, Room 347
Salem, OR 97301
haglu.exhibits@oregonlegislature.gov

RE: Testimony from the Oregon Chapter of the American Planning Association on HB 2003

Dear Chair Clem and Members of the Committee:

This letter provides testimony from the Oregon Chapter of the American Planning Association (OAPA) on HB 2003. OAPA is an independent, statewide, not-for-profit membership organization of over 950 planners from across the state working for cities, counties, special districts, state agencies, community-based organizations, and private firms. OAPA provides leadership in the development of vital communities by advocating excellence in community planning, promoting education and resident empowerment, and by providing the tools and support necessary to meet the challenges of growth and change.

Our Legislative and Policy Affairs Committee (LPAC) has reviewed HB 2003 and urges caution in proceeding to adoption. OAPA supports the approach that HB 2003 proposes to improve how we plan for needed and affordable housing in Oregon. One of OAPA's legislative priorities for 2019 is to "Improve Housing Affordability and Availability." With this priority in mind, we offer the following testimony on HB 2003. Please consider these at a high level and focused on policy. OAPA also stands to work with and requests the opportunity to assist in the development of any amendments to this bill because our membership includes planners who will be tasked with implementing it.

1. Threshold of community size. HB 2003 requires that the proposed changes be applied to cities with a population of 10,000 or more. OAPA is concerned about this because even cities with a population of 10,000 may have a very small planning staff. Amendments to this bill need to consider scaling requirements to the size of the community. Please also consider timing requirements for compliance here as well.

2. Data from the State to support local planning for housing. We support the direction of HB 2003 to assist communities with data to plan for housing, including buildable lands inventories and housing needs analysis. We request clarification on how products such as regional housing needs analyses are intended to be used, and whether the intent is that these products would either inform or direct a local housing needs analysis. Additionally, we would encourage evaluation of different methodologies to determine regional housing need. Currently housing needs analysis use forecasted population growth as a primary data point, however this may be problematic as population projections are based on past land use decisions. California has required Regional Housing Needs Assessment (RHNA) since the passage of SB375 in 2008 and proposed changes to the RHNA Methodology and updates to SB735 are currently being discussed.

3. Consideration of affordable housing. HB 2003 proposes requiring housing needs analyses to consider the housing needs of very low, low, moderate, and high income households. OAPA supports the direction of HB 2003 to account for housing in these categories. This provides an opportunity for local government planners to better coordinate with affordable housing coordinators to ensure housing for these households are accounted for in housing needs analyses.

4. System Development Charges (SDCs). Sections 15 through 17 of the bill outline new reporting requirements to the Secretary of State's office regarding the methodology and changes to methodology for SDCs. OAPA is concerned that SDCs, which have proven to be a valuable tool for financing the construction of needed infrastructure, may be subject to political oversight at the state level when justification for why this change is necessary has not been established. State law already provides adequate avenues for public review of SDCs and their calculation, and the decision to adopt and when or if to increase SDCs should be left a local decision and out of HB 2003.

5. Attorney's Fees. HB 2003 includes language similar to that proposed in SB 8. OAPA also testified on SB 8 on February 22, 2019, and also recommends not including such language in HB 2003. OAPA supports the involvement of community members in local planning decisions, and sees the language in Section 18 as a potential barrier to local participation.

6. Urban Growth Boundaries (UGBs). HB 2003 incorporates changes that relate to how the land need for housing is met under ORS 197.296. Today, both this statute and state administrative rules require a local government to determine to what extent, if at all, a land need for housing can be reasonably accommodated within a UGB before making the case that an expansion of the UGB is needed for additional housing land. Please clarify whether HB 2003 is intended to modify this approach. OAPA would recommend against doing so. In 2013, the Legislature passed HB 2254 that created a more streamlined approach for amending UGBs. We recommend that HB 2003 focus on planning for needed housing and not stray into the area of amending UGBs.

7. Public Lands. HB 2003 proposes several changes that would require local government to allow housing to be developed on public property. OAPA supports the idea of looking at more opportunities for the development of housing, but recommends careful consideration as to what types of public property could be developed with housing. For example, surplus park land may be in a great location for additional housing; surplus ODOT right of way may in a poor location for the development of additional housing.

Thank you for your time and attention to our testimony.

Sincerely,

Kirsten Tilleman, AICP, President
Board of Directors

Damian Syrnyk, AICP, Chair
Legislative and Policy Affairs Committee

Committee on Agriculture and Land Use:

The Corvallis City Council Legislative Committee requested that our Community Development Director, Paul Bilotta, review HB 2003 before we considered taking a stance on the bill. Because he responded in a thoughtful and through manner, we wished to forward his responses to you for consideration. There are two: the first addresses the bill itself and the second addresses some ways to amend it to make it more co-operative.

Thank you for your time, consideration, and hard work.
Charlyn Ellis
Corvallis City Council, ward five
Member of the Council Legislative Committee

Part One:

HB 2003 has some good elements, such as ensuring that cities are aware of their housing need, but I think it really misses the mark on many fronts:

1. The general tone seems to assume that cities are hostile to providing needed housing and therefore the appropriate model is oversight and penalties by the state. In every other location I have worked/consulted, cities are viewed to be the key partners in providing needed housing. By operating from this model of state control and enforcement rather than partnership and support, it needlessly creates bureaucratic red tape and manufactured conflict where it does not currently exist.
2. The mechanism for determining housing need is more complex, frequent and expensive than it needs to be. Although an 8 year cycle may make sense from a legislative election cycle, typically planning is based on 10 year cycles so that it can be based on the wealth of information that comes out with the US Census. By creating off-Census cycle analysis, it adds additional cost and inconsistency since the gaps for information that would be provided in the Census will need to be interpolated via other means.
3. The other problem with a legislatively mandated time period for analysis updates is that it doesn't adapt well to the different circumstances of each community. An 8 year time period might be too long for a fast growing small suburb of Portland suddenly being overrun with an entire metro's growth forces, but might be incredibly short for a small city in eastern Oregon that has been losing population for 20 years. There is a very simple mechanism that is used to reduce all this bureaucratic waste and make the system self-calibrating. All you do is have the housing studies project out various unit types for the 20 year period in terms of units. Then every year, the city keeps track of its building permit activity and reports the number of units in each category that were constructed in that year as well as the running total from whenever the last projection was done (simple, one page form). Then you set a threshold standard for when you need to do another study. So, for instance, if Corvallis were projected to need 1500 apartment units in the next 20 years, we could easily track that data every year (and do) and perhaps the threshold for restudy is 50%. So when we got done issuing building permits for

750 apartment units, we'd have to go back out and do another housing study (and it could potentially just be limited to apartment units making it a very simple/inexpensive study).

4. The LWV's note about Ballot Measures 5 and 50 are on target. Affordable housing does not get built with punitive oversight. Affordable housing gets built with financial subsidies and this provides none. This year, BMs 5 and 50 will be costing the City of Corvallis $15 million. That kind of gap doesn't provide any room for a community to create expensive new local housing programs. All this complex reporting is just going to pull more resources and staff attention away from actually working on affordable housing.
5. Section 13 completely overruns local control and doesn't take into account that the public property was likely acquired for some purpose. It is also unclear what "shall allow the development of housing on public property" means. Since the requirements already indicate the property is zoned residential (thereby allowing residential development), is this saying that a third party can force a housing development onto publicly owned property? If so, is there compensation involved? I'd like to understand better what problem this is trying to solve. It seems targeted to some particular situation someone ran up against somewhere.
6. The discussion about System Development Charges (SDCs) is also very short sighted and again takes the punitive approach rather than understanding what the mechanism is being used for. SDCs are big numbers, but they are limited in their purpose – construction of infrastructure. They allow growth to pay for the additional infrastructure that is needed to accommodate growth. With most fees in a land supply constrained environment, when you cut them, it tends to just flow down to the underlying land seller, so the public infrastructure account ends up underfunded, the housing project pays more in land and less in SDCs and the property seller gets a higher rate of return on their land sale.

   Long term, going after SDCs is very short sighted. When SDCs are underfunded, cities can't pay to widen/extend streets, expand sewage treatment plants, etc. which are critical to prepare areas for additional growth. That will limit the developable land supply.

   Now, there is a valid philosophical argument around whether or not SDCs should be used at all. This philosophical argument is whether it is fair to make growth pay for all the costs of growth or whether all residents of a community should bear the burden of system expansion. This issue tends to come to a head most when it comes to parks. In states that don't allow SDCs, when a city wants to spend money to buy/develop a new park, it has to make the case to the voters and justify that expense against the other expenses a city has to bear. In states that allow SDCs, you can end up with distorted economic incentives where the existing taxpayers/voters decide to create more expansive park systems than they would be willing to pay for themselves because they will be "paid by development". Many states do not allow SDCs for these sorts of equity purposes, but they occur in states where there has been tax limitations imposed (BM 5/50, no sales tax, etc.) because they become the only funding mechanism available to construct needed infrastructure.

SDCs are not slush funds and they aren't used for frivolous purposes, but this legislation seems to imply that they do. If the legislature wants to look at reduction/elimination of SDCs, it should be in relation to property tax reform and a conscious decision to transfer burdens for infrastructure expansion away from growth and onto the general population as a whole.

7. This legislation appears to do nothing to deal with the issue of the great difficulty with UGB expansions.
8. In its present form, I can't support this bill. It adds a whole lot of unproductive red tape for minimal gain. Instead, I would suggest that the legislature look across the nation at best practices for how other states project needs for housing and work in partnership with cities to satisfy enough land to meet that need. They are making a relatively simple issue into a complex mess. There are dozens and dozens of better systems out there. They just need to look at them and pick the best one.

Part Two:

In my review of HB 2003, I referenced that I thought the assumptions underlying the bill were flawed since they took a punitive approach towards cities rather than a cooperative approach. It occurred to me that this may not have been as informative as it could be since I didn't explain what a cooperative approach might look like.

I will show you one that I know well having worked within it for a couple of decades – the metropolitan area of Minneapolis/St. Paul. Although it was a metro, not statewide area, the goals and techniques were very similar. For instance, in Oregon, we surround our cities with urban growth boundaries. In the MSP metro, they use a MUSA line (Metropolitan Urban Service Area) which serves a similar function. In Oregon, there are population projections from PSU. In the MSP metro, there are population projections that come from the metro. In Oregon, there are periodic legislative attempts to find solutions to land use problems and somewhat ad hoc/expensive local attempts at analysis. In the MSP metro, there are organized, analysis and engagement processes to find solutions to the same land use problems and then a cooperative path for moving these agreements to implementation at the local level. Oregon's state population is approximately 4.1 million people and the MSP metro is approximately 3.6 million people. With modern geographic information systems, physical geography doesn't present much of a barrier anymore, so managing/tracking approximately the same number of people over a large area or a smaller area is about the same amount of work. It is the population which tends to be the key driver of complexity, not land area.

The way they go about this monitoring, solving, controlling process (in a simplified manner) is explained in the following link, but goes something like this:

https://metrocouncil.org/About-Us/Facts/PlannningF/FACTS-Comprehensive-Planning.aspx

1. Census data becomes available and analysis of trends occurs, problems identified
2. Extensive, inclusive planning efforts occur to develop the high level guiding principles that will guide the area for the next decade. In Oregon, that would be a statewide planning effort. This effort pulls all of the special interests together, travels geographically and makes the big commitments, without getting too far into the weeds. You are deciding things like what is the priority of needs for the next 10 years? Are we trying to concentrate affordable housing around jobs, transit and services or are we trying to create scattered site affordable housing so that people have opportunities to live in any community with access to different educational opportunities, etc. This is where you fight all the policy fights, 1 time per decade, but whether you win or lose, we all are going to be rowing the same direction once the policy plan is approved. You don't fight them city by city, project by project, or year by year. As an example, here is the Housing Policy Plan. https://metrocouncil.org/Housing/Planning/Housing-Policy-Plan.aspxFor a statewide equivalent, you would probably have statewide policy plans on housing, transportation, climate, natural resources and economic development.
3. The state would then condense those larger, state policy documents, growth projections, housing needs, etc. into customized statements about what the community's requirements are to do its share to meet the state's goals. The state's goals also don't extend into micromanagement of local control. Here is an example of what that community system statement looks like https://metrocouncil.org/Communities/Planning/Local-Planning-Assistance/System-Statements/System-Statements/02395854_Shakopee_2015SS.aspx Community's do have an ability to negotiate issues (particularly population/affordable housing allocations) if they have local knowledge that shows the projections aren't realistic. This typically happens if, say, a city just opened up a new annexation area and expects to have more growth than projected or maybe has hit the end of its available land and is fully surrounded and therefore doesn't have much expansion capability beyond infill. However, once the community system statement is finalized, it is done and the city is committed. These system statements also greatly reduce cost/waste of hiring consultants to do large housing studies, etc. A larger city may choose to do one on their own to get additional insights, but that is optional and the baseline information is all there to make a basic plan for cities that are 2,000 population or even 200,000 population with very little cost.
4. Then cities compare their statewide requirements against their comp plans and if changes are necessary, they update the comp plan. If the comp plan still is adequate to meet the current goals, they just resubmit it for recertification. If it isn't, they make changes to come into compliance. The higher authority sets the rules, but the cities have lots of discretion about how they want to do it. The most extreme I had was a consulting client city that wanted to preserve its large amount of rural residential but still needed to meet obligations for minimum densities. It created a plan that preserved the rural residential areas but made very aggressive density plans in its core area. So on the one hand, they had places where you could buy a 2 acre homestead, but on the other, they created an urban core that was sufficiently

dense to justify putting in a commuter rail stop. It was unique, but it worked and provided for its obligations in a way that this local community would support. Most cities had more like Corvallis does, with a more gradual range of housing types/densities throughout the city.

5. Throughout the entire process, the state would provide technical guidance, tools, grants, consistent information, and monitoring tools so everyone is speaking from the same data and with the same language.
6. There are numerous feedback loops between the higher level authority and local communities at the politician, staff, community member and special interests level so that policy or regulatory changes are generally well thought out and not just introduced in the legislature as a surprise. Very little is introduced in the legislature that is not well vetted and expected.

Very similar goals, but the process is far more efficient, effective and collaborative. The basic understanding is we are all trying to solve the same problems, so let's work together and support each other at all levels of government.

Testimony in Support of House Bill 2003
House Committee on Agriculture and Land Use

Speaker of the House Tina Kotek
March 5, 2019

Chair Clem, members of the committee, thank you for the opportunity to testify in support of House Bill 2003.

The state's housing crisis has continued for far too long and demands a bold set of solutions from the Legislature this session. We just passed the first of its kind statewide tenant protections law last week to provide tenants with more predictability and stability. But our work is not done. We must increase emergency housing assistance. We must publicly finance more affordable housing across Oregon. We must create more housing choice in exclusively single-family neighborhoods. And we must smooth the way for more construction at the local level. This is the goal of House Bill 2003.

The Oregon Office of Economic Analysis has calculated that Oregon needs to build 30,000 new housing units per year on an ongoing basis to address the state's current housing deficit and to prepare for future population growth. To put this number in perspective, Oregon approved just over 20,000 housing permits in 2017. This was the height of permit approval since the Great Recession, and we fell almost 10,000 units short of what Oregon needs. What's worse? The number of housing permit approvals dropped in 2018.

As you all know very well, Oregon has a unique land use system that we consider part of our state's DNA. We have a statewide framework consisting of 19 statewide planning goals that we trust local jurisdictions to implement. Goal 10 is the Housing goal, and it requires local jurisdictions "to provide for the housing needs of citizens of the state." It also states that local 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."

In practical terms, the Department of Land Conservation and Development requires cities to analyze their housing needs, to meet their housing needs, to plan and zone their land within their Urban Growth Boundary (UGB), and, if necessary, to expand their UGB. They must also have a clear set of objective standards set forth in their housing permit application process.

Many cities have not updated their Housing Needs Analyses (HNAs) in more than a decade. For example, the City of Happy Valley last adopted a housing needs analysis in 1997. In 2018, I sponsored House Bill 4006, which provided $1.73 million in technical assistance for local

jurisdictions to update their HNAs or update their codes. Over 100 cities applied for these resources, and of the 56 cities served by the resources, 22 of them are using the resources to update their HNAs.

But we also need to ask cities to do more than just zone for needed housing. Cities must be fulfilling the intent of Goal 10. Cities should be regularly evaluating their local policies to determine which policies create regulatory barriers that impair housing development. These reviews would also confirm which policies are in fact encouraging housing development.

House Bill 2003 would provide the necessary steps toward helping our state reach its housing supply needs as envisioned by our land use system, while providing local jurisdictions the resources they need to accommodate future growth.

House Bill 2003, as introduced, would:

Enhance Local Accountability to Achieve Goal 10 Obligations

- Direct the Office of Economic Analysis to develop a Regional Housing Needs Analysis (RHNA) methodology to identify the total number of housing units (by housing type and level of affordability) needed to meet each city's and region's demand. The RHNA would also explore whether we could move toward a statewide assessment of our housing need in the future.

- Require each city and region to estimate their 20-year local housing need every eight years.

- Require cities to develop and adopt a housing strategy, i.e., a list of policy actions and measures that would demonstrably lead to greater residential development to meet local housing need.

- Direct Oregon Housing and Community Services (OHCS) and the Department of Land Conservation and Development (DLCD) to provide a list of potential policies to local governments that are shown to encourage housing development (e.g., density bonuses, system development charge waivers for affordable housing, etc.).

- Direct the Land Conservation and Development Commission to identify 10 priority housing cities each year that are experiencing difficulty implementing their housing strategy and either prioritize technical assistance resources for those communities or provide enhanced review and oversight of their housing strategy.

- Allow the DLCD, if a local jurisdiction still struggles to implement its housing strategy, to enter into agreements with local jurisdictions relating to their modification or implementation of their housing strategy, or petition to require the local jurisdiction to amend its comprehensive plan or land use regulations to comply with statewide land use planning goals, including Goal 10.

- Direct the DLCD to report to the Legislature each year on their enhanced support and oversight actions.

Address Miscellaneous Local Barriers to Housing Production

- Allow the Secretary of State to spot audit local jurisdictions regarding how system development charges (SDCs) are being spent.

- Direct the Building Codes Division to maintain a statewide list of interested parties related to changes in SDCs and require cities to notify the Building Codes Division of their proposed methodology change related to the assessment of SDCs on residential development.

- Provide attorney's fees for representatives of affordable housing projects at the Land Use Board of Appeals if the representative prevails.

- Require a local jurisdiction that makes reduction in density a condition of approval for a housing development prove that it is necessary for a health, safety, or habitability reason.

I appreciate all the great work being done at the local level to address the housing crisis, and yet we all need to step up and do more. I support more planning resources to local governments to help get this done. House Bill 2003 will facilitate this work as we continue finding creative ways to solve the supply side part of our housing crisis.

Thank you for your time. I hope you will join me in supporting House Bill 2003.

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Open Government Impact Statement

80th Oregon Legislative Assembly
2019 Regular Session

Measure: HB 2003

Only impacts on Original or Engrossed Versions are Considered Official

Prepared by: Cameron D. Miles
Date: 2/7/2019

SUMMARY

Requires Oregon Department of Administrative Services to develop methodology to conduct regional housing needs analysis and, for certain cities and Metro, to inventory existing housing stock and to establish housing shortage analysis. Requires department to implement analyses and inventory every four years. Requires department to report findings to interim committees of Legislative Assembly no later than January 1, 2021.

Requires Metro, and each city with population greater than 10,000 or within Metro, to develop estimate of its housing need no less than once every eight years and, within 12 months of determining estimated housing need, to adopt housing strategy to meet estimated housing need.

Requires Land Conservation and Development Commission to annually identify 10 priority cities that experience difficulties implementing housing strategy. Appropriates moneys from General Fund to Department of Land Conservation and Development to assist 10 priority cities with implementation of housing strategy.

Allows development or rezoning of public property in urban growth boundary for affordable housing if compatible with surrounding zoning.

Authorizes Secretary of State to audit system development charges and bring enforcement action to correct violations.

Requires Building Codes Division of Department of Consumer and Business Services to maintain list of local governments' system development charges and proposed modifications. Requires local governments to deliver copies of records to division. Appropriates moneys from General Fund to department for maintaining records, making records publicly available and reimbursing local governments for costs of compliance.

Awards attorney fees to prevailing intervening developers of affordable housing in Land Use Board of Appeals decisions.

Assigns local government burden of proving on appeal necessity of reduction in density or height in housing development application.

Allows nonresidential places of worship to develop multiple affordable dwellings on land where nonresidential place of worship is allowed use.

Becomes operative on January 1, 2020.

Takes effect on 91st day following adjournment sine die.

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NOTICE OF NO OPEN GOVERNMENT IMPACT

League of Oregon Cities

April 2, 2019

Chair Clem, Vice-Chairs McLain and Post, Members of the House Agriculture and Land Use Committee:

Re: HB 2003 and the proposed dash 4 amendment

As you know the League of Oregon Cities represents all 241 incorporated cities in the state. LOC remains concerns about the requirements and changes in law included in HB 2003, but appreciates the improvements reflected in the proposed dash 4 amendment. However, we still have concerns with amendments proposed in the dash 4 amendment and the remaining sections from the original bill.

Section 1: Regional Housing Analysis (Dash 4 Amendments)
First, LOC is supportive of the changes to the proposed regional housing analysis process and the limitation of its impact to local governments, in the near future. We are also supportive of the requirement that those performing the analysis will consult with local governments in finalizing the analysis. We also appreciate that there will be a review of the information and utility of these types of studies before there is a requirement that local governments use this data. LOC believes that performing this analysis once will help cities in starting local processes.

However, we are not certain that a year will be enough time to complete 11 regional studies that includes a 20 year need analysis, an inventory of current housing stock, an analysis of the shortage of housing, and report back to the legislature of the findings. This appears to put a significant burden on the Oregon Department of Administrative Services (DAS), Oregon Department of Land Conservation and Development (DLCD), and Oregon Housing and Community Services Department (OHCS) in a short period of time.

Sections 2-11: Housing Production Strategy (Dash 4 Amendments)
Cities across the state have been starting to use housing strategy documents as a way of setting out the local path to implementing the findings of their housing needs analysis. However, the new requirements in section 2-5 create a new requirement for cities to complete on a regular interval of every 6 years (for cities in the Metro region) or 8 years (for larger cities outside Metro). In addition, this work will also be required if periodic review is undertaken or another legislative review or comprehensive plan that addresses housing is undertaken. This is a new requirement on cities that will have fiscal impacts beyond the resources provided in section 24, as those dollars are only available for the next biennium. The amount of information that must be provided in the strategy pursuant to (3)(e) is complex and will take time and investment from cities.

Section 3(4) also appears to conflict with the requirements for plans in section 3(2). Section 3(4) states that proposed changes to a comprehensive plan or land use regulation cannot be included in the strategy. However, the strategy is required to include reductions of regulatory impediments and incentives and requires a schedule for adoption and implementation of each strategy. This level of specificity for changes to local regulation may call for including regulatory changes within the strategy. If the intention is to prohibit enactment without a land use process of these changes, that needs clarification. Otherwise, it is unclear what is intended by the prohibition within section 3(4).

LOC is also concerned that the criteria referenced in section 4(6) for evaluating a city's housing production strategy is the same as the criteria that DLCD is required to use to evaluate a city's success in achieving housing production under section 5(2). These two measurements and sets of criteria should be different. The strategy should be evaluated on a set of criteria that is related to the city's work to identify and plan to address current plans, incentives, and regulations. The review of if a city is meeting production and implementation of the strategy is inherently different. LOC recognizes that the rules will establish the criteria, but the legislation requires DLCD to use the same basic criteria for both evaluations.

Further, the criteria established in section 5(2) is not all based on the actions of the cities. The unmet housing need, development cycle and timing, and other suggested criteria may not be related to the city's regulatory structure but may be dependent on the availability and decisions of the private market to create development in their region. In LOC's conversations with cities across the state, many cities, including larger cities outside of certain areas of the state do not have the developers that are necessary to meet the needs of the housing shortage. This is not due to city action but the impacts of regional markets, the recession, and aging population of the workforce in the area. Section 5 of the proposed amendment would allow DLCD to provide increased oversight or even seek enforcement in cities for private market issues beyond their control.

Section 13: Public Property for Housing (Dash 4 Amendment)

LOC is concerned that section 13 is written too broadly and could significantly impact local government land use planning and preservation for vital public infrastructure. As drafted, the amendment requires a city to allow development of housing on public property that is "zoned for residential development or surrounded by parcels zoned for residential development" (emphasis added). It is the second category of land that is concerning.

Cities may preserve lands for important government functions besides parks or open space but will not be used by the residential development until sometime in the future. This is particularly true for lands that are expected to be used to serve residents of the area, such as schools or public facility infrastructure that will serve future capacity needs. Placement of these public amenities may need to be near where the services will be utilized. The mandate that cities use these properties for housing may prevent the future use that might be delayed for a variety of reasons, but often tied to the cycle of capital improvement financing.

LOC recommends that cities be permitted to amend the use of these lands for housing development with discretion to determine if it is the best use of the public property.

Section 18: Attorney fees (HB 2003 as introduced)
LOC has no position on the provision of attorney fees to intervening applicants. However, as it is drafted it is unclear if the permit for partition of subdivision must also be related to a project to construct publicly supported housing.

Section 20: Burden shifting (HB 2003 as introduced)
LOC opposes this shift in the burden of proof. Cities must create findings that support land use decisions, such as conditioning development. It is through those findings that we establish the basis of the decision, and those finding are provided deference in appeals. Not requiring an appellant to show the deficiency of the findings does not fit within the process for appealing a local government decision. Instead, cities will be left to assert their findings without requiring the appellant to show how those findings are deficient.

Conclusion
While we believe that the dash 4 amendment provides significant improvements from the original bill. We strongly support creating new data resources for cities to work with as we try to create local solutions to the housing shortage.

However, we remain concerned that the state in increasing the workload of cities without sufficient financial support. Periodic review was intended to provide the same consistent update to local plans, but the expectations of the process coupled with the disinvestment in resources to support the process have prevented its success as a policy. It is possible that a similar cycle will occur with the new requirement to continuously update housing strategic plans. In addition, cities view the increased enforcement and oversight by DLCD as likely to hold them accountable for decisions that are made by the private development market. When a city fails to abide by the goals and statutes, enforcement can be appropriate, but the criteria for assessing a city's

compliance should be based on the regulatory structure that a city provides to the development market to work in, not the results of those private decisions.

LOC has strongly advocated for increasing the partnership between the state and cities in trying to address housing shortages. However, instead of seeing investment in local processes and joint problem solving, HB 2003 and similar legislation appear to provide more work with limited funding to pay for it. Without knowledge that these programs will change outcomes, it does not make sense to create a new layer of land use planning work that is untested or unclear. Instead, investing in the processes that do exist, but cities have not been able to afford, would be more likely to move the needle on housing and help cities work on addressing this significant problem.

LOC appreciates your consideration of the impacts this bill will have on cities and is happy to work toward a solution on housing as a partner to the state.

Sincerely,

Erin Doyle
Intergovernmental Relations Associate
edoyle@orcities.org

Testimony in Support of House Bill 2003
(-4 and -5 Amendments)
House Committee on Agriculture and Land Use

Speaker of the House Tina Kotek
April 2, 2019

Chair Clem, members of the committee, thank you for the opportunity to testify in support of House Bill 2003 with the -4 and -5 amendments.

When I was here a few weeks ago, I let you know that I was working on a significant re-write of the housing production strategies portion of this bill. The -4 amendment replaces sections 1 through 11 of the bill, making those sections much easier to interpret than the original bill.

As a brief reminder, this bill is designed to improve our implementation of Goal 10, our statewide housing goal, so that we live up to its intent. Implementation of this goal requires that we "provide for the housing needs of citizens of the state," and "…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."

The bill is also designed to address barriers to development.

House Bill 2003 would help our state reach its housing supply needs as envisioned by our land use system, while providing local jurisdictions the resources they need to accommodate future growth.

House Bill 2003, with the -4 amendment, would:

Enhance Local Accountability to Achieve Goal 10 Obligations

- Direct the Office of Economic Analysis [in the bill as referenced to the Department of Administrative Services] to develop a Regional Housing Needs Analysis (RHNA) methodology to identify the total number of housing units (by housing type and level of affordability) needed to meet each city's and region's demand. The Department of Land Conservation and Development (DLCD) would explore whether we could move toward a statewide assessment of our housing need in the future and report to the Legislature.

- Require each city to estimate their 20-year local housing need every eight years and Metro to estimate their 20-year local housing need every six years on a schedule set by the Land Conservation and Development Commission (LCDC).

- Require cities to develop and adopt a housing strategy, i.e., a list of policy actions and measures that would demonstrably lead to greater residential development to meet local housing needs. LCDC would set the schedule to complete housing production strategies, 12 months after the scheduled completion of a housing needs analysis.

- Direct Oregon Housing and Community Services (OHCS) and DLCD to provide a list of potential policies to local governments that are shown to encourage housing development (e.g., density bonuses, system development charge waivers for affordable housing, etc.).

- Direct LCDC to develop criteria to identify cities that are experiencing difficulty implementing their housing strategy or achieving production of needed housing in their jurisdiction. DLCD may review cities under the criteria adopted by LCDC.

- Allow DLCD to prioritize technical assistance resources for those communities identified under the criteria adopted by LCDC or provide enhanced review and oversight of their housing strategy. DLCD may enter into agreements with local jurisdictions relating to their modification or implementation of their housing strategy.

- Expands LCDC's statutory authority to issue an order requiring a local jurisdiction to amend its comprehensive plan or land use regulations to comply with statewide land use planning goals, including Goal 10.

- Direct DLCD to report to the Legislature each year on their enhanced support and oversight actions.

Address Miscellaneous Local Barriers to Housing Production

- Remove the provisions related to system development charges (SDCs) that were in the original bill. I plan to support a work group on the topic of SDCs during the interim.

- Provide attorney fees for representatives of affordable housing projects at the Land Use Board of Appeals, if the representative prevails.

- Require a local jurisdiction that makes reduction in density a condition of approval for a housing development prove that the reduction is necessary for a health, safety, or habitability reason.

In addition to addressing local barriers to housing production that are unchanged from the bill as introduced, the -5 amendment would also address a barrier that is deterring much needed housing development. For the purpose of reducing development costs and expediting housing

development, the Building Codes Division of the Department of Consumer and Business Services (DCBS) has drafted model plans for housing that meets the statewide building codes.

However, DCBS architects working on these plans are individually liable, as opposed to DCBS being liable for the plans created on their behalf. This creates a barrier to producing and distributing these plans.

Model Housing Plans (-5 amendment)

- The -5 amendment would shift legal liability from a DCBS employee to DCBS itself, in the very narrow instance that an employee is developing a model plan authorized under ORS 455.062.

- Model plans are one tool to lower the cost of development and expedite development, and we should encourage innovation at the agency level by ensuring that employers, not individual employees, assume legal liability.

I appreciate all the great work being done at the local level to address the housing crisis, and yet we all need to step up and do more. I support more planning resources to local governments to help get this done and have added a $1.5 million appropriation to local governments to complete the housing production strategies required in this bill. House Bill 2003, with the -4 and -5 amendments, will facilitate this work as we continue finding creative ways to solve the supply side part of our housing crisis.

Thank you for your time. I hope you will join me in supporting House Bill 2003 with the -4 and -5 amendments.


1- View to Haystack Rock
From Oswald Cabin
Oswald Cabin
Proposed New
Residence
Proposed New
Road & Driveway
2- View South
From Oswald Cabin