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September 29, 2020

Via Electronic Mail Karen La Bonte Public Works Director City of Cannon Beach PO Box 368, Cannon Beach Or 97110

RE: Roberts' Improvements to Nenana Ave.

Dear Ms. La Bonte:

Thank you for your many courtesies extended to the Roberts family in their efforts to establish their home in Cannon Beach. We also appreciate the insights and suggestions of the City's consulting engineer, Windsor Engineering to make this project the best it can be. As you know, the Roberts' home requires improving Nenana Ave. To date, the city's request has been to bring Nenana to current city street standards, and they have cooperated with the city toward that end. The Roberts' have applied for a right of way permit to complete the necessary road improvements, which is pending your review and approval. Windsor requested clarification on a few items regarding the Nenana Ave., road improvement project, but otherwise found compliance. In addition, the city manager raised some basic questions about the project.

This letter and its attachments are designed to respond to Windsor's requested clarifications and the City manager's questions. Please let us know if any questions remain. It is always the Roberts' wish to cooperate with the city. The Roberts' are excited to join the Cannon Beach community and look forward to your approval of their permit which is an important step for them to be able to do so.

Right of Access

The city manager wondered whether the Roberts family has the right to expect access to Nenana Ave. We believe it is helpful to answer that question. The Roberts family has well-established, common law right of access to Nenana Ave: "Oregon case law has established that an owner of property abutting a public road has a common-law right of access to its premises by means of the abutting road. *See, e.g., Schrunk*, 242 Or at 69 (abutting proprietor's right to use public road as means of ingress and egress is a property right); *Burk*, 200 Or at 228 (same); *Sweet et al. v. Irrigation Canal Co.*, 198 Or 166, 190-91, 254 P2d 700, *reh'g den*, 198 Or 166, 256 P2d 252 (1953) (abutting property owner has right of access that "is as much property as the soil within the boundaries of his lot"); *Barrett*, 117 Or at 223 (it is "unquestioned" that abutting property owner has right of access to and from his property by way of public road); *Iron Works*

v. O. R. & N. Co., 26 Or 224, 228-29, 37 P 1016 (1894) (abutting property owner has right of access that may not be taken without just compensation.") *ODOT v. Alderwoods*, 358 Or 501, 511 (2015). A letter of well-known real estate expert, Alan Brickley, is attached confirming that the Roberts' have this important property right of access.

As you know, the city can improve the Nenana right of way for this right of access or the Roberts family can. Typically, in my experience, the Roberts' would be required to provide a half street improvement, but they have to date been asked by the city to do more and are willing to do so. At this point, only the Roberts' property is served by Nenana Ave., and so the Roberts' are willing to improve the road at their expense and maintain it, until such time as there are other users. But with the greatest of respect, the law is clear that the City may not deny the Roberts' access to Nenana.

The city manager also wondered whether the Roberts family has the right to bring Nenana Ave to street standards, with which it does not now comply. As you know, the city's code requires the road be improved to street standards to the extent reasonable, proportional, and practicable. CBMC 12.34.040(B) requires that roadways be constructed to the "minimum of paved roadway width and other structural elements necessary to provide proper functioning of the street as a transportation element." Nenana Ave., as well as the western slope of Hemlock and the slope above Hemlock are an active landslide. This means improving Nenana as the Roberts propose, using a bridge format with pilings embedded in bedrock, is wise. Improving Nenana with a fill-type of street is not possible due to the fact that the weight of fill dirt risks exacerbating the landslide. Accordingly, it is evident that the Roberts' proposal not only improves Nenana, but also provides additional stability to the public and private investments at risk from the landslide. The Nenana Ave right of way improvements that the Roberts' family proposes, will achieve compliance with the city code in the best and most practicable manner. I believe you agree.

City Standards Require Approval

The city manager suggested he was concerned that the proposed improvement to Nenana could be denied because it does not strictly meet all city standards. Respectfully, this is incorrect. The proposed road improvement either directly meets required city standards for a local residential street (which would be its appropriate classification) or meets city standards expressly authorizing exceptions for the situation presented here. The Roberts ask for nothing the code does not allow.

The proposed road improvement is composed of two vehicular travel lanes, that are 10feet. CBMC 12.34.050(A). There are no proposed gravel shoulders, but gravel shoulders are inappropriate for bridges and a bridge road improvement project is the only appropriate road improvement design available for Nenana. This is so regardless of whether it is developed to driveway or public street standards. My understanding is that you agree with this principle.

Per a speed study, there is adequate stopping sight distance, as documented by Mr. Clemow, a well-respected transportation engineer. Stopping sight distance (SSD) is the

AASHTO sight distance of special concern. The Roberts' professional traffic engineer has established the existence of adequate stopping sight distance in his report previously provided to your office. I understand that the city's consulting engineer, Windsor, agrees. Windsor did request supplemental analyses regarding intersection sight distance obstructions.

In his supplemental report attached Mr. Clemow responds to explain that there are no obstructions that interfere with intersection sight distance (ISD). ISD is now and will continue to be less than AASHTO recommends, but the city's code supports approval per CBMC 12.34.050(C), because Nenana is a hillside street; the applicants have made a reasonable attempt to comply with AASHTO standards and the deviation from ISD is minimized:

"On hillside streets, deviations from the horizontal and vertical AASHTO standards may be allowed at the discretion of the Director providing that:

- 1. A reasonable attempt has been made to conform with the standards.
- 2. Deviation from AASHTO standard is minimized."

The proposal appropriately seeks an adjustment to the City grade standards. The topography does not allow improving the Nenana right of way to be any less steep than is proposed, but the proposed grade is much improved over the existing Nenana grade. The current Nenana right of way varies from grades exceeding 100% and has an average grade of 35%. The proposed Nenana Ave improvement lessens that grade to a maximum of 24% and an average grade of 16%. The total distance of these steeper grades is 135' in length – which is obviously less than 200,' in complete compliance with CBMC 12.34.050(D).

CBMC 12.34.050(E) expressly authorizes the City to modify the street design standards when, as here, topography and things like the immutable configuration of Hemlock at this location, make strict compliance with the standards "impractical." The City's code contemplates modification here because it expressly lists the kind of "conditions that could create a need for modification" to be "steep slopes or other topographical or geologic conditions" as well as the "design of neighboring or adjacent street systems." The City code asks only that the modifications be minimized as practical, in order to address special conditions. This has been achieved here, and we do not understand Windsor or you to state otherwise. Like you and Windsor, the City's code is not strident, but fair and, has been applied elsewhere and should be applied here, to approve the requested street improvement project.

There can be no denying that the Nenana Ave improvement project proposed by the Roberts family leaves the street in much better condition than it is now and makes the critically important investment in the initial improvement infrastructure such that other property owners, including the city, can extend or add a connecting driveway, without having to make the substantial upfront investment in designing and reconstructing the initial 200' of Nenana.

Sidewalks and ADA Accessibility

Windsor Engineering requested that Roberts' address "ODOT Bridge design manual 1.16.2" regarding pedestrian access. We note at the outset that no city standard requires compliance with any ODOT standard. Therefore, ODOT standards would, of course, provide no basis for denial of the project. Regardless, the reconstructed Nenana Ave right of way bridge has largely been designed with ODOT standards in mind and the proposal is consistent with the referenced ODOT provision.

The referenced ODOT provision says: "For the purpose of this document, the sidewalk of a bridge is a facility that, *if provided*, must be accessible and usable by people with disabilities, regardless of whether the bridge is in an urban or rural setting." No sidewalk is provided and, therefore, there is no ADA accessibility issue.

Another important note is that there is no City standard that requires a sidewalk anyway. Therefore, not having a specific pedestrian sidewalk would not provide a basis for denial. I believe you agree with this principle, as does Windsor.

There are four reasons why no formal sidewalk is required. First and foremost, no city standard requires a pedestrian access. Second, there are no destinations for pedestrians (the only destination at present is the Roberts' home), and there is no way for pedestrians to get to Nenana from Hemlock in any event, because Hemlock has no pedestrian facilities. Third, the existing Nenana Ave access and the proposed improved access are too steep for pedestrians in wheelchairs and would meet the ADA exception for a design exception for technical infeasibility. Fourth, if the City wished at some point to create a pedestrian destination that does not now exist, there is nothing about the Roberts' proposal that would foreclose the city from doing so.

But since there are no code provisions requiring a sidewalk it would of course be inappropriate to require the Roberts to install one because there is no essential nexus to any applicable standard for such a requirement as well as no rough proportionality to the impacts of the Roberts' development. *Hill v. City of Portland*, 293 Or App 283 (2018) ("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.") and *Brown v. City of Medford* 251 Or App 42 (2012); *see also Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013).

Guardrail

Windsor requested additional plan detail for the end of the bridge and guardrails. Eric Watson has previously provided those to the city via a sharefile because of their large size. They can also be accessed through this link: <u>https://miller-se.sharefile.com/d-s731e6cebb264b49a</u>

I also provide additional detail from engineer Jason Morgan on documents attached to this letter.

Windsor also requested that the available intersection sight distance be demonstrated "showing the driver's eye location, the vehicle outside the travel lane, and the clear zone within the Clear Sight Triangle." The attached supplemental memorandum from Mr. Clemow addresses this issue. In sum, the guardrail of concern will not interfere with intersection sight distance.

On the south side of Nenana adjacent to Hemlock, a new bridge rail will be installed to replace the existing W-beam guardrail. The proposed design allows a driver to 'see through' the bridge rail and will not obstruct intersection sight distance.

Attached is a drawing showing the revised transition from bridge to guardrail.

Windsor also asked about easements to install guardrails on Hemlock. All existing public improvements, including the guardrail, are within the right-of-way. That means that they are either in the existing Hemlock right of way or the city has adversely possessed such land by virtue of the guardrails being there for decades. I suspect it is the former but regardless, the applicant's replacement of the existing W-beam guardrail with a bridge rail only requires a City permit to perform the work.

Storm Drain Maintenance

Windsor requested that the Roberts establish that the City will be able to get to its horizontal drain pipes and their terminus below that are below the end of the Nenana Ave right of way:

The proposal will provide the city access to its drains at the beach providing both convenient street access to get to them and the Roberts are willing to allow city employees to access the drains from their property stairs to the beach. Machinery, if needed, could be lifted over Nenana to the beach below. The proposal improves the city's access to its drains.

I hope you find this helpful. I understand that the Roberts' engineers have worked with Windsor to develop this response and the attachments. But if we missed anything please feel free to circle back and let us know. We appreciate you and your guidance.

Very truly yours, while f. Keelingt

Wendie L. Kellington

WLK:wlk CC: Stan and Rebecca Roberts



Real Property Legal Consulting Services

October 21, 2020

Wendie Kellington Kellington Law Group PC 1335 Chandler Road Lake Oswego, OR 97034

Re: Dedicated Street Nenana Avenue Cannon Beach, Oregon

Dear Wendie:

I have reviewed the map associated with Lot 13 of Tolovana Park owned by your client (Roberts"). I note that it abuts a dedicated street known as Nenana Avenue. It is my understanding from you and from review of aerial photographs that this street is undeveloped for public use, but it does retain its status a dedicated street.

In my experience as a real estate attorney for over 50 years, including my experience as counsel for various title companies, it is my opinion that this dedicated street provides a legal means of access to abutting properties, in this case your clients property. In that it is within the limits of a city, that city does have control over any upgrading of the access from its undeveloped status; however, absent a vacation proceeding, the city cannot limit the Roberts' access to the street area from their adjoining property as they have a property right of access.

If I can provide any additional information, please contact me.

Very truly yours

Alan K. Brickley Attorney at Law

1616 SW Harbor Way #401 Portland, OR 97201

503-928-1702 akbrickley@me.com

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October 21, 2020

City of Cannon Beach Attention: Karen LaBonte, Public Works Director 163 E Gower Street Cannon Beach, Oregon 97110

Re: Roberts Property – Nenana Avenue Sight Distance Analysis – Cannon Beach, Oregon Technical Letter #1 – Supplemental Sight Distance Analysis

C&A Project Number 20200803.00

Dear Ms. LaBonte,

This transportation analysis supplements the September 12, 2020 Roberts Property – Nenana Avenue Sight Distance Analysis (Sight Distance Analysis) prepared by Clemow & Associates and addresses the September 22, 2020 City of Cannon Beach Nenana Avenue Plan Review #3 Memorandum prepared by Windsor Engineers.

This analysis specifically addresses the following:

- 1. Intersection Sight Distance and Obstacle Evaluation
- 2. Proposed Sign Locations
- 3. Summary

1. INTERSECTION SIGHT DISTANCE AND OBSTACLE EVALUATION

City Comment 6.2 states, "Per the traffic study provided to Windsor on 9/14, the stopping sight distance (SSD) is adequate but the intersection sight distance (ISD) to the South is significantly less than the recommended distance. To further address sight distance, the Applicant shall:

- Demonstrate the available ISD at a minimum scale of 1'' = 20'' using a sight distance triangle in the study. (Showing the driver's eye location, the vehicle outside of the travel lane, and the clear zone within the Clear Sight Triangle.)

Excerpt from traffic study, per [American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets] AASHTO guidelines, ISD was measured from a driver's eye height of 3.5 feet and 14.5 feet from the edge of the nearest travel lane to an object height of 3.5 feet above the roadway surface."

Roberts Property – Nenana Avenue Sight Distance Analysis – Cannon Beach, Oregon C&A Project Number 20200803.00 October 21, 2020 Page 2

Applicant Response: Additional analysis has been performed and the attached Figures 5 and 6 – *Intersection Sight Distance – Left-Turn from Stop Plan and Profile* have been prepared measuring sight distance per AASHTO guidelines, with the following additional summary comments:

- At the proposed Nenana Avenue access location, a section of existing guardrail adjacent to Hemlock, within the Nenana right of way, will be removed.
- On the north side of Nenana, a new guardrail will be installed, connecting to the bridge rail and extending a short distance adjacent to Hemlock. This guardrail section is not within the driver's line of sight when considering intersection sight distance (ISD); therefore, it does not obstruct ISD.
- On the south side of Nenana, the bridge rail will extend approximately 15 feet to the south adjacent to Hemlock. This bridge rail section is within the driver's line of sight when considering ISD; however, as illustrated in the bridge rail standard detail (submitted separately), the design allows a driver to 'see through' the bridge rail. Therefore, the bridge rail does not obstruct ISD.
- On both the north and south sides of Nenana, the bridge and pedestrian rails are within the driver's line of sight when considering ISD; however, as illustrated in the bridge and pedestrian rail standard details (submitted separately), the design allows a driver to 'see through' the rails. Therefore, the bridge and pedestrian rails do not obstruct ISD.
- Consistent with findings contained in the Sight Distance Analysis, ISD is not met for an eastbound left-turning vehicle looking to the south (but it is not further obstructed by the bridge and pedestrian rails, or the guardrail). However, stopping sight distance (SSD) is met for a northbound vehicle on Hemlock and it is anticipated the turning movement will operate safely.

2. PROPOSED SIGN LOCATIONS

As identified in the attached Figure 6, the applicant is recommending several traffic control signs to be installed with the construction of Nenana. It is recommended the City consider the installation of these signs to alert motorists on Hemlock of the Nenana intersection, to prevent unsafe turning movements, and to prevent parking on Nenana. It is further recommended that all sign installations be consistent with existing City signing standards.

Sincerely,

Christopher M. Clemow, PE, PTOE Transportation Engineer



Attachments: Figures 5, 6, and 7 – Sight Distance and Signing Figures













V:\19-02-Pat\Dwg\ROBERTS-SITE-2.dwg, clearing, Wed Oct 21 17:53:25 20



:\19-02-Pat\Dwg\ROBERTS-SITE-2.dwg, vegetation, Wed Oct 21 17:53:40 20

<u>CLEARING</u> CLEAR TREES AND BRUSH IN AREA SHOWN.

REMOVE TREE STUMP AND ROOTS WHERE THEY WILL BE OBSTRUCTING CONSTRUCTION. DO NOT REMOVE TREE STUMPS, WHERE LABELED (3 LOCATIONS).

REMOVE TREE AND ROOTS

REMOVE TREE - LEAVE STUMP AND ROOTS

PROTECT TREE (WORK WITH ARBORIST TO PROTECT ROOTS, AS NEEDED)

PLANT TREE NEW BEACH PINE TREE TO BE ADDED.

TREE PROTECTION AREA USE AIR SPADE TO LOCATE TREE ROOTS PRIOR TO EXCAVATION.

ON-SITE TREES

CBMC SECTION 17.70 ASKS FOR FOUR (4) TREES TO BE MAINTAINED ON A SITE OF THIS SIZE, EITHER THROUGH RETENTION OR REPLACEMENT. THREE TREES ARE RETAINED ON THE SITE AS SHOWN ALONG THE NORTHERN PROPERTY BOUNDARY. ONE TREE, A BEACH PINE, IS TO BE PLANTED ON TOLOVANA PARK, BLOCK 1, LOT 13 ON THE LAND IN FRONT OF THE HOUSE. DON RONDEMA, PROJECT GEOTECHNICAL ENGINEER, GEOTECH SOLUTIONS, INC. PROVIDES A PLAN REVIEW WITH THE FINDING THAT A BEACH PINE TREE WILL NOT ADVERSELY AFFECT THE SITE OR SURROUNDING AREA.

SHEET	D PROPERTY LINE EXISTING ROADWAY EXISTING PATH PROPOSED ROADWAY CLEARING AREA CONSTRUCTION FENCING SILT FENCING STRAW WATTLE EXISTING CONTOUR FINAL/GRADING CONTOUR INAL/GRADING CONTOUR GAS LINE CATV/PHONE/POWER LINE EXISTING SUBSURFACE DRAINLINE HOUSE	STANLEY ROBERTS TAX LOT 600 - NENANA AVENUE VEGETATION REMOVAL PLAN	CANNON BEACH/MAP 5N 10W 31
		SHEET	











19-02-Pat/Dwg/ROBERTS-SITE-2.dwg, sewer-profile, Wed Oct 21

NENANA BENT SECTIONS SCALE: 1"=40' VERT: 1"=20'

MORGAN CIVIL ENGINEERING, INC. CIVIL ENGIR
 INSPECTION
 PLANNING PO BOX 358 NZANITA, OR 97. (503) 801-6016 JOB NO. #19-02 DATE OCT. 1 63055 RENEWAL DATE: DECEMBER 31, 2020 ١S NENANA AVENUE - ROADWAY SECTION ROBERTS STANLEY TAX LOT 600 - I DIVEWAY PROFILE -SHEET C10of 13

DRIVEWAY SECTIONS

