

William L. Rasmussen
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October 29, 2020

VIA E-MAIL
adams@ci.cannon-beach.or.us
planning@ci.cannon-beach.or.us

Cannon Beach Planning Commission and
Mr. Jeffrey Adams
City of Cannon Beach
Post Office Box 368
163 E. Gower Avenue
Cannon Beach, Oregon 97110

Subject: Additional Evidence and Argument Regarding Appeal¹ by Stanley and
Rebecca Roberts (the "Appeal") of Development Permit for Tax
Lot 51031AA00600 (the "Property")

Dear Commissioners and Mr. Adams:

Thank you for your time and attention last Thursday. As shown by the over 20 comments in opposition thus far, this proposed development is strongly opposed in the Cannon Beach community for numerous valid legal and public policy reasons. As noted by the public, the proposed development:

- fails to comply with the Oceanfront Setback;
- fails to comply with other criteria in the Oceanfront Management Overlay;
- relies on an unsafe new intersection in the Hemlock S-Curves;
- relies on a private road that is admittedly "ugly" and not permitted; and
- degrades the historic and natural setting of the Oswald West Cabin and Haystack Rock.

¹ While we refer to the Robertses' "Appeal" in this submittal, the Robertses actually filed three appeals (AA 20-02, AA 20-03, and AA 20-04). This comment is made for and shall be submitted into the record of each of these three appeals. Please include this letter in the record for these appeals.

I. No Takings Because Applicant Knowingly Bought an Unbuildable Lot.

At the October 22, 2020, hearing, applicant threatened the Planning Commission with a takings claim if the City fails to approve their luxury house in the Oceanfront Setback. For applicant's takings claim to prevail, applicant must show that the City deprived applicant of its reasonable investment-backed expectations. *Penn Cent. Transp. Co. v. City of New York*, 438 US 104, 98 S Ct 2646, 57 L Ed 2d 631 (1978).² For numerous reasons, there is no taking from the proposed denial. The most definitive reason is that applicant has no investment-backed expectations of residential development on the Property because applicant knowingly bought an unbuildable lot. It is not a taking to deny residential development on a lot that applicant bought knowing it did not qualify for such development.

The evidence uniformly shows that applicant knowingly bought an unbuildable lot, as reflected by (1) the price paid for the Property, (2) language on the face of the deeds to applicant, (3) applicant's testimony on October 22, 2020, (4) geotechnical consultant Don Rondema's testimony on October 22, 2020, and (5) City files for the Property from the 1990s reflecting buildability problems. The lot is unbuildable for both regulatory and public safety reasons, and the City is not liable for that.

\$185,546 Acquisition Price Reflects an Unbuildable Lot. Applicant bought this secluded Cannon Beach oceanfront Property with unobstructed 180-degree views and close, direct views of Haystack Rock for \$185,546. Applicant first bought an undivided half-interest in the Property in 2001 for \$150,000 (applicant's brother bought the other half). In 2016, applicant bought the other half-interest from applicant's brother's widow for \$35,546. Copies of the acquisition deeds are attached as Exhibit 1. If residential development was allowed the Property, it would have cost applicant four to ten times the \$185,546 paid. RMLS reports for four "comparable" sales of Cannon

² To the extent applicant contends a taking occurs under *Lucas v. So. Carolina Coastal Comm'n*, 505 US 1003, 112 S Ct 2886, 120 L Ed 2d 798 (1992), because the Oceanfront Setback deprives applicant of all reasonable use of the Property, that claim is neither ripe nor supported by evidence. The record does not reflect whether applicant intends to redesign a home that complies with the Oceanfront Setback and what the value of such a home would be. Nor does the record reflect whether applicant intends to seek a variance and what home would result if a variance is allowed or denied. Finally, applicant argued in various testimony that the Oceanfront Setback would only allow a 1,400 sq. ft., 1,200 sq. ft., or 900 sq. ft. house, causing a "wipeout" of value. There is no evidence to suggest that homes of these sizes lack all value. For similar reasons, any takings claim is premature. In short, applicant, who bears the burden to establish a claim, has not met its burden.

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Beach oceanfront lots (buildable lots without houses) from 2015 and 2016 reflecting prices from \$626,000 to \$1,750,000 are attached as Exhibit 2.³ All of these "comparable" transactions involve lots with inferior views and less privacy than applicant's Property.

Deed Language Warns of Unbuildable Value. Both acquisition deeds contain all-cap language warning that conveyance of the property does not allow violation of local land use laws. Specifically, the 2001 deed states:

"THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES * * *."

Likewise, the 2016 deed states:

"THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT * * *."

Both deeds include this statutorily required language to prevent buyers such as applicant from claiming ignorance of local land use laws. Applicant was put on notice of these local laws and is not excused from compliance with local laws by claims of ignorance or a taking.

³ Similarly, In *Coussens v. Clatsop County Assessor*, the court established a value of \$537,00 in 1998 for a buildable oceanfront lot of 0.11 acres that did not have an ocean view because of dunes. 2002 WL 976004 (2000). The property was Account No. 5895 which is located at 463 Ocean Av., Cannon Beach. Because the Roberts' property of 0.12 acres (per assessor's records –Account No. 6441) does have a view, it would have even a higher value.

Mr. Roberts Acknowledges He Bought an Unbuildable Lot. At the October 22, 2020, Planning Commission hearing,⁴ Mr. Roberts testified that the Property was not stable enough to pursue development until the City completed its dewatering project in 2008. Regarding the City's 2008 dewatering project, Mr. Roberts stated, "That stabilized our lot and gave us an opportunity to maybe find a way to build." (Emphasis in original testimony.) Applicant bought this property knowing that there were multiple reasons it was not buildable.

Engineer Don Rondema Confirms Applicant Bought an Unbuildable Lot. At the October 22, 2020, Planning Commission hearing, applicant's geotechnical consultant Mr. Rondema testified that the Property was not eligible for the geotechnical report needed to pursue a dwelling before the City dewatering project.⁵ Mr. Rondema stated that he probably spent 4,000 hours working on the dewatering project, and that in 2007-2008, he designed the dewatering system to "lower the groundwater during peak rainfall storms to slow the slide down" and "that has stabilized that portion of the slide." Mr. Rondema goes on to state, "that is what enabled this lot to be evaluated for foundation support." The Property's stability is dependent on the City's dewatering system.

City Files for the Property Documented Multiple Buildability Problems Before Applicant Bought the Property. Several public reports from the City from the 1990s are attached as Exhibit 3. These files document multiple buildability problems for the subject Property, including its geotechnical instability and potential lack of permissible access and public facilities, including water and sanitary sewer service. On one of the reports, Mr. David Roberts's phone numbers were written. The Robertses proceeded to buy the Property at nonbuildable value, knowing that multiple public safety constraints prevented building on the Property. The City does not need to bend and break its rules to accommodate applicant's proposed house.

To the extent applicant bases a takings claim on a reasonable expectations-backed investment, the fact that applicant acquired the Property with the Oceanfront Setback rules in place is relevant to whether a takings argument has any merit. The case applicant relies on, *Palazzolo v. Rhode Island*, 533 US 606, 121 S Ct 2448, 150 L Ed 2d 592 (2001), is not to the contrary. In the highly fractured opinion, the Court simply

⁴ <https://www.ci.cannon-beach.or.us/pc/page/planning-commission-meeting-76>, at 2:46:00. Mr. Roberts is incorrect in asserting that the dewatering project was "complete" in 2008. As Mr. Rondema testified, the project began about then.

⁵ <https://www.ci.cannon-beach.or.us/pc/page/planning-commission-meeting-76>, at 2:52:00.

concluded that an owner is not categorically denied a right to challenge law existing at the time of acquisition, and it specifically declined to address to what extent existing law impacts evaluation of reasonable investment-backed expectations: "We have no occasion to consider the precise circumstances when a legislative enactment can be deemed a background principle of state law or whether those circumstances are present here." 533 US at 629.

In its takings argument, applicant unduly relies on nonbinding concurrence language from Justice Scalia. But courts applying *Palazzolo* rely on Justice O'Connor's concurrence in that opinion to conclude that "the regulatory regime in place at the time the claimant acquires the property at issue helps to shape the reasonableness of those expectations." *Appollo Fuels, Inc. v. U.S.*, 381 F3d 1338, 139 (Ct Cl 2004).

Applicant has no reasonable investment-backed expectation here. Applicant's investment in the subject lot was made knowing it was not buildable as reflected in the purchase price, face of the deeds, testimony from Mr. Roberts, testimony from Mr. Rondema, and City records that pre-date applicant's acquisition.

The City has every right to enforce its code. Nothing requires the City to permit unsafe development. Applicant bought the Property knowing that it was unbuildable. The City should feel no intimidation from applicant's hollow takings bluster.

II. Applicant's Parcel is Temporarily and Conditionally Stable Because of the Dewatering Project, and Applicant Lacks Any Right or Ability to Preserve That System.

At the October 22, 2020, Planning Commission hearing, Mr. Roberts and Mr. Rondema testified that the Property was not stable until after the City dewatering project was installed in 2008 and lowered the groundwater level over the following decade.⁶ The City's geology mapping shows an active complex landslide over applicant's entire Property, per field mapping from T. Horning, 2009, as shown on Exhibit 4. Mr. Roberts and Mr. Rondema testified that the Property was stable because of the dewatering project.

The City's dewatering project relies on approximately 12 dewatering pipes that run under six proximate owners' properties, including the three pipes that run

⁶ <https://www.ci.cannon-beach.or.us/pc/page/planning-commission-meeting-76>, at 2:45:00 to 2:56:00.

under the Oswald West Cabin owned by this firm's client, Haystack Rock, LLC. The location of the dewatering pipes are show on the "Dewatering Pilot Project – As Built," attached as Exhibit 5. The City obtained temporary easements to install and maintain the dewatering pipes on these private properties. The City periodically seeks extensions of the temporary easements to continue use and operation of the dewatering pipes as documented in the letter from John Neupert, attached as Exhibit 6.

Haystack Rock, LLC's most recent temporary easement for dewatering pipes expired in 2018. A copy of the expired easement is attached as Exhibit 7.

Haystack Rock, LLC, could remove the dewatering pipes tomorrow. Other owners of the six impacted private properties strongly oppose the proposed development. Those owners could remove the dewatering pipes tomorrow or upon expiration of any existing temporary easement. If these pipes are removed or not maintained, the temporary and conditional stability provided by the dewatering project would go away as the groundwater rose to its natural level for this complex landslide. Applicant has provided no information explaining how it would stabilize its Property if the surrounding owners remove the dewatering pipes, resulting in an increased groundwater table. Applicant has no right to preserve or maintain the dewatering pipes.

It would be neither prudent nor safe for the City to permit residential development on applicant's Property when the Property is only conditionally stable and applicant lacks the right to maintain the dewatering system that stabilizes the Property.

This is a public safety issue for which the City cannot and should not compromise.

III. The Proposal Violates the Oceanfront Setback and Impairs the View To and From the Oswald West Cabin.

Applicant concedes that the proposal does not comport with the City's Oceanfront Setback rule in CBMC 17.42.050(6). This is shown by applicant's own surveys and testimony from October 22, 2020. Applicant seems to argue that the rule should not apply to applicant, and that the proposal does not really block views for the Oswald West Cabin. The letter from Kevin Neupert attached as Exhibit 8 plainly shows that this assertion is wrong. Kevin Neupert shows where the proposed structure would be sited in photos taken from the Oswald West Cabin looking south, and compares those photos to applicant's Exhibit 5, which is an aerial photo also showing that the view of the beach to the south is cut off for the Oswald West Cabin. This violates one of the

purposes of the Oceanfront Setback and would prevent beachgoers south of the Cabin from seeing this historic cabin as they have for over 100 years.

Further, applicant has not and cannot show compliance with the other provision of the Oceanfront Overlay Zone (the "OM Zone") and related criteria, including but not limited to CBMC 17.42.030(E), regarding design review for stormwater facilities and outfalls; CBMC 17.42.030(C), regarding conditional use approval for grading and shoreline stabilization; CBMC 17.42.030(F) and CBMC 17.80.230, regarding Shoreline Stabilization; CBMC 17.42.040(A), regarding prohibition on residential development; CBMC 17.42.040(C), regarding prohibition on removal of stabilizing vegetation; CBMC 17.42.060(A)(1) and CBMC 17.80.230, regarding Shoreline Stabilization; CBMC 17.42.060(A)(7), regarding groundwater protection; CBMC 17.10.40(G), CBMC 17.82.010, and 17.78.020 regarding off street parking accessible and usable by vehicles, and CBMC 17.42.060(A)(9), regarding structures in the Ocean Yard.

The City has an easy substantive decision to make on the subject application—denial for failure to comply with the OM Zone, including its Oceanfront Setback.

IV. The Decision Should Be Revoked to Protect Public Safety.

The proposed development should be denied because it is unsafe. The minimum density and clear and objective requirements of ORS 227.175(4), ORS 197.307(4), and ORS 227.173(2) relied on by applicant all have exceptions to enable cities to deny and condition permits to protect public health and safety. ORS 227.175(4)(e); ORS 197.307(7). As you would expect, no law requires a city to permit unsafe development, including residential development.

Applicant proposes residential development on a landslide that is conditionally stable, at best, when applicant has no means or right to maintain the dewatering system that stabilizes the Property. Applicant has no safe or lawful means to access the Property. Further, applicant does not comply with the OM Overlay, which exists, in part, to "reduce the hazards to property and human life" from development in these vulnerable areas. No responsible governing body would approve development in this context. The City should deny this dangerous proposal.

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V. Conclusion.

Despite the surrounding complexity, the primary issue in the Appeal is straightforward. The Oceanfront Setback is a simple code provision that applies to the Property because it abuts the ocean shore. Applicant has known all along that the Property was unbuildable. The City should apply its rules and not be intimidated by applicant's hollow takings bluster. No law requires the City to approve unsafe development.

Accordingly, we request that the planning commission deny applicant's challenge to the application of the Oceanfront Setback and deny applicant's proposal outright.

Very truly yours,



William L. Rasmussen

Enclosures:

- Exhibit 1—Roberts acquisition deeds (showing \$185,546 acquisition cost basis)
- Exhibit 2—RMLS reports of four buildable Cannon Beach comparables
- Exhibit 3—City files on property buildability problems
- Exhibit 4—City geology mapping of active slide
- Exhibit 5—City dewatering pipes as built
- Exhibit 6—John Neupert letter
- Exhibit 7—Expired dewatering easement
- Exhibit 8—Kevin Neupert letter

STATUTORY WARRANTY DEED

ROGER B. BERTMAN AND JULIE R. BERTMAN, Trustees of the Roger B. Bertman and Julie R. Bertman Revocable Trust dated September 25, 1992 Grantor, conveys and warrants to **DAVID E. ROBERTS AND VICKI J. ROBERTS, as husband and wife and STANLEY A. ROBERTS AND REBECCA M. ROBERTS, as husband and wife; as tenants in common** Grantee, the following described real property free of encumbrances except as specifically set forth herein situated in CLATSOP County, Oregon, to wit:

Lot 13, Block 1, TOLOVANA PARK, according to the duly recorded Plat thereof, in the City of Cannon Beach, County of Clatsop, State of Oregon.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.0930. The said property is free from encumbrances except see attached exceptions and by reference made a part hereof

The true consideration for this conveyance is \$300,000.00 (Here comply with the requirements of ORS 93.030)

Dated this 11 day of sept 2001

ROGER B. BERTMAN AND JULIE R. BERTMAN

[Signature of Roger B. Bertman]
 ROGER B. BERTMAN, TRUSTEE
[Signature of Julie R. Bertman]
 JULIE R. BERTMAN, TRUSTEE

State of Oregon, County of _____
 The foregoing instrument was acknowledged before me
 this _____ day of _____, 20____
 by _____

State of Oregon, County of _____
 The foregoing instrument was acknowledged before me
 this _____ day of _____, 20____
 by _____ President
 and _____ Secretary
 of _____
 a _____
 corporation, on behalf of the corporation.

Notary Public for Oregon
 My commission expires: _____

Notary Public for Oregon
 My commission expires: _____

WARRANTY DEED

This Space Reserved for Recorder's Use

GRANTOR: ROGER B. BERTMAN AND JULIE R. BERTMAN

GRANTEE: DAVID E. ROBERTS
 Until a change is requested, all tax statements shall be sent to the following address:
 DAVID E. ROBERTS
 C/O 20593 S. NURSERY LANE
 OREGON CITY, OR 97045



Recording Instrument #: 200109314
 Recorded By: Clatsop County Clerk
 # of Pages: 3 Fee: 36.00
 Transaction date: 9/14/01 11:09:14
 Deputy: kkelso

Escrow No. 4-88122 Title No. 4-88122

After recording return to:
 DAVID E. ROBERTS
 C/O 20593 S. NURSERY LANE
 OREGON CITY, OR 97045

RECORDED BY TICOR
 TITLE INS. CO. 4-88122

2087 S. HEMLOCK, CANNON BEACH, OR
(Tax Acct No. 1008 51031AA 600 ACCT ID# 6441)

1. 2001/02 taxes which are a lien due but not yet payable.
2. Rights of the public in and to that portion lying within Ocean Avenue and Nenana Avenue.
3. Rights of the public and governmental bodies in and to any portion of the premises herein described lying below high water mark of the Pacific Ocean, including any ownership rights which may be claimed by the State of Oregon below the high water mark.
4. Any adverse claim based upon the assertion that:

Said land or any part thereof is now or at any time has been below the ordinary high water mark of the Pacific Ocean.

Some portion of said land has been created by artificial means or has accreted to such portion so created.

Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Pacific Ocean or has been formed by an accretion to any such portion.

5. Rights of the public and of the State of Oregon in the ocean shore and dry sands area defined as lying between the mean high tide and visible line of vegetation or as defined in ORS 390.605-770.

6. Conditions and restrictions, as contained in Deed, including the terms and provisions thereof,

Grantor: M. S. Warren, et ux
Grantee: Lot P. Kerler, et ux
Recorded: July 23, 1920
Book: 102 Page: 293
Records of CLATSOP County, Oregon.

But omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

State of California

County of Santa Clara

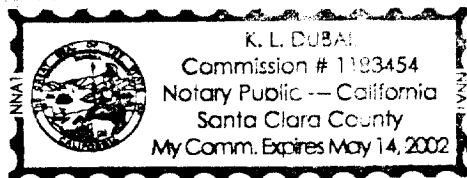
On Sept 11, 2001 before me, K. L. DUBAL, Notary Public
(DATE) (NAME/TITLE OF OFFICER-i.e. "JANE DOE, NOTARY PUBLIC")

personally appeared Roger B Beelman and Julie
(NAME(S) OF SIGNER(S))

R. Beelman

☐ personally known to me -OR- ☒

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

(SEAL)

(SIGNATURE OF NOTARY)

ATTENTION NOTARY

The information requested below and in the column to the right is **OPTIONAL**. Recording of this document is not required by law and is also optional. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document Statutory Warranty Deed
Number of Pages one Date of Document 09/11/2001
Signer(s) Other Than Named Above none

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)

☐ INDIVIDUAL(S)

☐ CORPORATE

OFFICER(S)

(TITLE)

☐ PARTNER(S) ☐ LIMITED

☐ GENERAL

☐ ATTORNEY IN FACT

☒ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER:

SIGNER IS REPRESENTING:

(Name of Person(s) or Entity(ies))

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)

☐ INDIVIDUAL(S)

☐ CORPORATE

OFFICER(S)

(TITLE)

☐ PARTNER(S) ☐ LIMITED

☐ GENERAL

☐ ATTORNEY IN FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER:

SIGNER IS REPRESENTING:

(Name of Person(s) or Entity(ies))



Recording Instrument #201601895
Recorded By: Clatsop County Clerk
of Pages: 4 Fee: 62.00
Transaction date: 03/15/2016 09:56:19
Deputy: Stethem-Norris

AFTER RECORDING RETURN TO:

Jan K. Kitchel
Cable Huston LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204

UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE
SENT TO THE FOLLOWING ADDRESS:

Stanley A. Roberts and Rebecca M. Roberts
925 Lake St. South, Unit 201
Kirkland, WA 98033

Tax Account # 6441 Map and Tax Lot # 5 10 31 AA 00600

STATUTORY BARGAIN AND SALE DEED

Vicki J. Roberts, surviving spouse of David E. Roberts, deceased, and Vicki J. Roberts (hereinafter "Grantor") conveys to Stanley A. Roberts and Rebecca M. Roberts, husband and wife (hereinafter "Grantee"), all of Grantor's right, title, and interest in and to the following described real property situated in Clatsop County, Oregon:

Lot 13, Block 1, TOLOVANA PARK, according to the duly recorded Plat thereof, in the City of Cannon Beach, County of Clatsop, State of Oregon.

The true consideration for this conveyance is \$35,546.

The vesting of David E. Roberts's undivided interest in the herein described real property upon his death in Vicki J. Roberts is established by his Death Certificate attached hereto as **Exhibit A**.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST

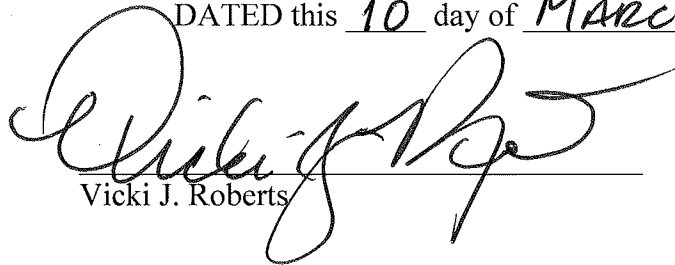
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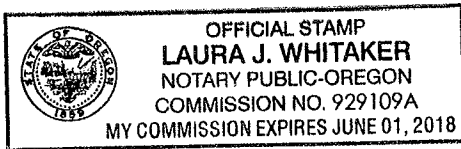
FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this 10 day of MARCH, 2016.


Vicki J. Roberts

STATE OF OREGON)
County of Clackamas) ss

This instrument was acknowledged before me on this 10th day of March, 2016 by Vicki J. Roberts.



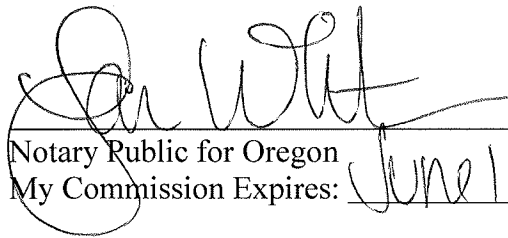

Notary Public for Oregon
My Commission Expires: June 1, 2018

EXHIBIT A

David E. Roberts's Death Certificate

Ted Wood Hasson Company

206-818-0378

tedwood@hasson.com



Client Full

Lots and Land

10/27/2020

4:50PM

\$626,000 3K-4,999SFStatus: **Sold**

Listed Date: 1/13/2016

DOM: 136 Acres: 0.11

ML#: 16289862

Year Built: /

271 Kenai ST Cannon Beach, OR 97110

Unit #:

Condo Loc:

XST/Dir: S on Hemlock to W on Kenai, access to lot on south side of Kenai

Opportunity knocks for the right buyer to develop this ocean front parcel. Existing structure is deemed of no value and the property is sold as is. Call listing Broker for details!

Schools:

Elementary: Seaside Hts

Middle: Broadway

High: Seaside

Improvements:

Utilities: Natural Gas Available, Electricity Available, Sewer Available, Water Available

Existing Structures: Y/No Value, Other

Property Details:

Property Type: Single

Family Residence

Additional Parcels: /

County: Clatsop

Subdivision:

Internet:

Seller Disclosure:

Open House:

Upcoming Open House:

Area: 189

Zoning: R-1

Tax ID: 2084,,

Manufactured House

Okay: N

CC&Rs: N

Legal: SYLVAN PARK S

1/2 LTS 1 & 2; W 4' LT 3

BLK 2

Lot Dimensions:

Availability: Sale

#Lots:

Road Surface: Gravel

Lot Desc: Bluff, Flag Lot,

Secluded, Trees

Land Desc: Gentle Sloping

View: Ocean,

Trees/Woods

Waterfront: Y/Ocean

Front

Body Water:

Perc Test: /

Road Frontage: N

Soil Type/Class:

Soil Cond: Native

Current Use: Other

Financial:

Property

Tax/Yr: \$6,051.86 /

HOA: N

Terms: CONV

Association Amenities:

Spcl Asmt Balance:

Dues:

Tax Deferral:

Other Dues:

Short Sale: N

Bank Owned/Real Estate

Owned: N

Comparable Information:

Pending Date: 5/28/2016

Sold Date: 8/3/2016

Original Price: \$695,000

List Price: \$695,000

Sold Price: \$626,000

Terms: Conventional

Ted Wood Hasson Company

206-818-0378

tedwood@hasson.com



Client Full

Lots and Land

10/27/2020

4:50PM

\$720,000 5K-6,999SFStatus: **Sold**

Listed Date: 11/30/2016

DOM: 67 Acres: 0.12

ML#: 16635093

Year Built: /

W Nebesna Cannon Beach, OR 97110

Unit #:

Condo Loc:

XST/Dir: Hemlock; West on Nebesna to Oceanfront

Property Details:

Property Type: Single**Lot Dimensions:** 50x107

Family Residence

Availability: Sale**Additional Parcels:** /**#Lots:** 1**County:** Clatsop**Road Surface:** Gravel**Subdivision:****Lot Desc:****Internet:****Land Desc:** Level**Seller Disclosure:** Exempt**View:** Ocean**Open House:****Waterfront:** Y/Ocean**Upcoming Open House:**

Front

Area: 189**Body Water:** Pacific**Zoning:** R1

Ocean

Tax ID: 6592,,**Perc Test:** /**Manufactured House****Road Frontage:** Y**Okay:****Soil Type/Class:****CC&Rs:** N**Soil Cond:****Legal:** TOLOVANA PARK**Current Use:** Raw Land

LT 6 BLK 10

Fantastic oceanfront lot, just north of the award winning Stephanie Inn, with easy beach access and level building site. Zoning allows for 3,000sf+ structure. This is a great location in town, central and just south of Haystack Rock. There are very few oceanfront lots that come available in Cannon Beach, especially at this price point!

Schools:

Elementary: Seaside Hts**Middle:** Broadway**High:** Seaside

Improvements:

Utilities: Natural Gas Available, Electricity Available, Sewer Available, Water Available

Existing Structures: N/None

Financial:

Property**Tax/Yr:** \$1,132.84 /**HOA:** N**Terms:** CASH**Association Amenities:****Spcl Asmt Balance:****Dues:****Tax Deferral:****Other Dues:****Short Sale:** N**Bank Owned/Real Estate****Owned:** N

Comparable Information:

Pending Date: 2/5/2017**Original Price:** \$779,000**Sold Price:** \$720,000**Sold Date:** 3/3/2017**Terms:** Cash**List Price:** \$779,000

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SQUARE FOOTAGE IS APPROXIMATE & MAY INCLUDE BOTH FINISHED & UNFINISHED AREAS - CONSULT BROKER FOR INFO.

SCHOOL AVAILABILITY SUBJECT TO CHANGE.

Exhibit 2
Page 2 of 4

Ted Wood Hasson Company

206-818-0378

tedwood@hasson.com



Client Full

Lots and Land

10/27/2020

4:50PM

\$735,000 3K-4,999SFStatus: **Sold**

Listed Date: 10/5/2015

DOM: 91 Acres: 0.1

ML#: 15592119

Year Built: /

S Pacific DR Cannon Beach, OR 97110

Unit #:

Condo Loc:

XST/Dir: Hemlock south to Tolovanna Area West on
either Surfcrest to Fernwood to Pacific lot on Ocean

Just one opportunity for ocean front property! Gorgeous views! Beach path - already in! Build your dream beach escape or retirement property. All utilities in the street. Level parcel.

Schools:

Elementary: Seaside Hts

Middle: Broadway

High: Seaside

Improvements:

Utilities: Natural Gas Available, Electricity Available,
Sewer Available, Water Available

Existing Structures: N/

Property Details:

Property Type: Single

Family Residence

Additional Parcels: /

County: Clatsop

Subdivision:

Internet:

Seller Disclosure:

Open House:

Upcoming Open House:

Area: 189

Zoning: R1

Tax ID: 6652,,

Manufactured House

Okay: N

CC&Rs: N

Legal: 51031DA 02002

Lot Dimensions:

Availability: Sale

#Lots: 1

Road Surface: Paved

Lot Desc: Cleared

Land Desc: Level

View: Ocean

Waterfront: Y/Ocean

Front

Body Water: Pacific

Ocean

Perc Test: N/None

Road Frontage: Y

Soil Type/Class:

Soil Cond: Native

Current Use: Raw Land

Financial:

Property

Tax/Yr: \$5,252.67 /

HOA: N

Terms: CONV

Association Amenities:

Spcl Asmt Balance:

Dues:

Tax Deferral:

Other Dues:

Short Sale: N

Bank Owned/Real Estate

Owned: N

Comparable Information:

Pending Date: 1/4/2016

Sold Date: 2/29/2016

Original Price: \$825,000

List Price: \$799,900

Sold Price: \$735,000

Terms: Conventional

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SCHOOL AVAILABILITY SUBJECT TO CHANGE.

Exhibit 2
Page 3 of 4

Ted Wood Hasson Company

206-818-0378

tedwood@hasson.com



Client Full

Lots and Land

10/27/2020

4:50PM

\$1,750,000 1-2.99ACStatus: **Sold**

Listed Date: 6/26/2015

DOM: 79

Acres: 1.17

ML#: 15411710

Year Built: /

Oak CT Cannon Beach, OR 97110

Unit #:

Condo Loc:

XST/Dir: West on 5th; (R) Larch; (L) 6th; (R) Laurel; (L)

7th; (R) Oak St; (L) Oak Ct.

Last remaining oceanfront building site on coveted Oak Court at Chapman Point, and first time on the market in over 15 years. Fantastic 1-acre elevated parcel, with 180 degree views stretching from Ecola Park to Haystack Rock. Enjoy quiet surroundings, direct beach access, a quiet, sandy cove, and a short stroll to downtown Cannon Beach. Rare blend of idyllic views & secluded peacefulness, with proximity to vintage beach town life.

Schools:

Elementary: Seaside Hts

Middle: Broadway

High: Seaside

Improvements:

Utilities: Cable Connected, Gas, Electricity
Connected, Sewer, Water

Existing Structures: /None

Financial:

Property

Tax/Yr: \$7,763.83/

HOA: Y

Terms: CASH

Association Amenities:

Spcl Asmt Balance:

Dues:

Tax Deferral:

Other Dues:

Short Sale: N

Bank Owned/Real Estate

Owned: N

Comparable Information:

Pending Date: 9/13/2015

Sold Date: 11/13/2015

Original Price: \$1,850,000

List Price: \$1,850,000

Sold Price: \$1,750,000

Terms: Cash

CITY OF CANNON BEACH

P.O. BOX 368
CANNON BEACH
OREGON 97110

PHONE (503) 436-1581
FAX (503) 436-2050
E-MAIL canbeach@orednet.org

September 23, 1999

Cliff Batchelder
PO Box 386
Cannon Beach, Oregon 97110

RE: Buildability Issues
Map 51031AA/600

Please consider this letter a response to the question of the information that the City would require to demonstrate the "buildability" of Tax Lot 600, Map 51031AA. Paul See, registered geologist, prepared a geologic site report for Mark Towle for this property on 10/25/93. Subsequently, a geologic report for the site was done by Geo Engineers on 12/7/95 and an area geologic study was done by AGI and Associates for the City of Cannon Beach on 7/8/99. Also, other geologic work and reports have been done for the surrounding properties.

An updated geologic hazard and site report should be prepared, considering the current conditions in this area and the information available in the above referenced reports.

A second set of issue concerns necessary public facility improvements to the lot. The Public Works Director will require the following:

1. Access. The Nenana Avenue right-of-way could be used for a driveway-walkway, probably as it had been before. The drive would be steep and the entrance onto Hemlock Street difficult. An engineered plan would have to be submitted to the city for consideration and approval. This plan should also have geotechnical consideration and a report.
2. Water service. Water service would be available from Hemlock Street with the installation of a service connection and meter.



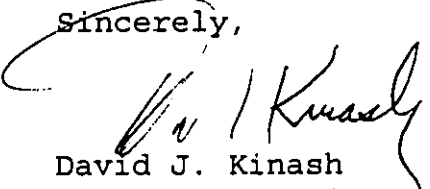
Cliff Batchelder
9/23/99
Page 2

3. Sanitary sewer service. Three difficult options are possible, but not necessarily desirable or approvable:

- a. A grinder pump and force main running east in the Nenana right-of-way and north on Hemlock to an existing manhole at Chena Street. This option is undesirable due to the effects of trenching in this sensitive area.
- b. A grinder pump and force main running northward through private property to an existing manhole at Pacific and Chena. This is the most desirable option.
- c. An on-site system approved by the Oregon DEQ.

If I can provide additional information, please call me.

Sincerely,


David J. Kinash
Public Works Director

DK:bm

David Robert

503 656 7227

503 780 6157
cell

Same lot
- set back
Lot 13 block 1
S10.31 AA

CITY OF CANNON BEACH

P. O. BOX 368
CANNON BEACH
OREGON 97110

PHONE# 436-1581
FAX# 436-2050

December 14, 1993

Mark Towle
PO Box 1651
Tacoma, Wa. 98401

Dear Mr. Towle:

Please consider this letter a response to your question regarding the information that the city would require to demonstrate the "buildability" of Tax Lot 600, Map 51031AA. On your behalf, Paul See, a registered geologist, prepared a geologic site report dated August 25, 1993. This report indicates that the property is located in an area of on-going active landsliding. Before the city can approve a building permit in such an area, a structural engineer will have to demonstrate that a proposed building design, and its attendant improvements, will be stable and that its construction will not adversely affect adjacent property. As Mr. See indicates in his report, necessary improvements may include "concrete retaining walls, deep pile foundations, and curtain drains." However, there is no assurance that such improvements will be sufficient to create a stable building site.

A second set of issue concerns necessary public facility improvements to the lot. The Public Works Director will require the following:

1. Access. The Nenana Avenue right-of-way could be used for a driveway-walkway, probably as it had been before. The drive would be steep and the entrance onto Hemlock Street difficult. An engineered plan would have to be submitted to the city for consideration and approval.
2. Water service. Water service would be available from Hemlock Street with the installation of a service connection and meter.
3. Sanitary sewer service. Three difficult options are possible, but not necessarily desirable or approvable:
 - a. A grinder pump and force main running east in the Nenana right-of-way and north on Hemlock to an existing manhole at Chena Street. This option is undesirable due to the effects of trenching in this sensitive

Mark Towle
December 14, 1993
Page 2

b. A grinder pump and force main running northward through private property to an existing manhole at Pacific and Chena. This is the most desirable option.

c. An on-site system approved by the Oregon DEQ.

If I can provide additional information, please call me.

Sincerely,

Rainmar Bartl
City Planner

cor\tow12-14.93

FAX TRANSMISSION

CITY OF CANNON BEACH

P.O. Box 368

CANNON BEACH, OR 97110

503-436-1581

FAX: 503-436-2050

To: Pete Mozena

Date: December 19, 1995

Fax #: 503-235-3939

Pages: 3, including this cover sheet.

From: Rainmar Bartl

Subject: Tax Lot 600

COMMENTS:

RB
from Tracy Gardner
PAUL D. SEE AND ASSOCIATES, INC.

300 SURF PINES ROAD
SEASIDE, OREGON 97138
738-5869



August 25, 1993

#16083

Mark Towle
P. O. Box 1651
Tacoma, WA 98401

RE: Geologic inspection, Lot 13, Blk 1, Tolovana Park. (T. L. 600, T5N, R10W
Sec 31AA, Cannon Beach)

Dear Mr. Towle:

At your request I inspected the above described property and vicinity on this date to assess potential geologic hazards. I understand you are the current owner, and that you have listed the lot for sale.

TOPOGRAPHY AND GEOLOGIC HISTORY OF THE AREA

The lot is confined to the southwest corner of the block adjacent to the ocean bluff and accessible from unimproved Nenana St. by a fairly steep grade. A concrete pad remains on the generally flat lot, about 44 feet above current beach level. The terrace frontage averages 70 percent slope, densely vegetated with salal, equisetum and other low perennials, with beach pea and American beach grass near the base. The irregular topography of this foreslope strongly suggests shallow sloughing which has periodically rafted the vegetative cover down slope. Minor near-vertical surf undercutting of the base to 3+ feet in height is now nearly obscured by vegetative growth.

The State-established coastal zone line lies some 40 feet west of the westerly lot line, separated by platted but undeveloped Ocean Avenue. A lack of detectable survey monuments renders the position of the concrete pad only approximate, but it appears to lie a minimum of 30 feet from the eastern lot line judging from the position of the wood storage shed on the adjacent upslope property.

This segment of the Cannon Beach/Tolovana frontage is somewhat unique in that it displays evidence of abrupt lateral change in sediment type, slow ground creep, reverse slopes from prehistoric sliding, and ongoing active landsliding along the 240 feet between Chena and Nazina Avenues. To the north, beyond the spring runoff gulley on adjacent lot 12, the subsoil sediments are relatively young and horizontally bedded Pleistocene clays. South of this gulley, the subsoil materials are older Tertiary sediments, distorted to unbedded, which have migrated to this point in the recent geologic past. The terrace level on the subject parcel is undoubtedly the benched surface of an ancient landslide body. South of Nenana Avenue, the slope displays abundant evidence of ongoing slide motion, with tilted trunks of dead conifers and extremely hummocky topography. On the adjacent parcels above the subject lot, the irregular surface again attests to ancient slide motion.

LOCAL HAZARD ASSESSMENT

A saturated zone exists on the terrace directly south of the pad, extending onto and perhaps beyond the Nenana St. right-of-way. While this area is now obscured by a dense cover of briars, it was essentially a sag pond or bog when personally inspected between eight and ten years ago. Such features commonly develop between a slide body and the parent slope. South of this point, the surface is thoroughly disturbed by the active landslide feature.

Construction on this lot will require careful dewatering and foundation placement as far east as allowed by ordinance, in this case five feet from the easterly property line. I would strongly recommend the services of a local structural engineer familiar with the idiosyncrasies of these relatively mobile bluffs. In all likelihood, concrete retaining walls, deep pile foundations, and curtain drains will be specified to assure a measure of stability.

The long-term trend for this shoreline is continued slow retreat from surf erosion. With the exception of unusual events such as the 1982-83 El Nino that caused severe undercutting along most of the Oregon coastal bluffs, the rate of retreat is imperceptible under normal circumstances. That particular El Nino is now recognized as one of the most severe since the year 1525-26, as determined by recent historical research. As a rule of thumb, a retreat rate of four inches per year is estimated, or 20 feet in 60 years along unprotected frontages.

Although almost all evidence of the 1983-84 El Nino impact has been obscured by normal processes, the low wave-cut embankment on this property suggests some limited post-El Nino erosion. Comparison of the 1967 Oregon Department of Transportation aerial photo (sheet 15 of 43) with present measurements reveals no discernable net retreat of the local bluff over the 26-year period, however. This may be slightly misleading due to the apparent sloughing noted above.

The subject frontage currently relies on the vegetative cover to inhibit erosion. Because it has become extremely difficult to obtain a shore protection structure (riprap) permit along the Oregon coast except in the case of imminent threat to a dwelling, it is critically important that this vegetation be maintained and nourished.

No other categories of site-specific geologic hazard are recognized.

REGIONAL HAZARD

Oregon coastal property owners are advised that there is now abundant evidence for a series of geologically recent and severe regional earthquakes. Discoveries since 1987 confirm a history of as many as thirteen major events originating in the local Cascadia subduction zone during the past 7700+/-

See/Towle
8/25/93

years. Based on the calculated intervals between such events, (approximately 600 years average, 340 years minimum), it follows that a major regional earthquake is indeed possible in the foreseeable future. The most recent event seems to have occurred about the year 1690. Newly revised projections estimate a 30 percent chance of a magnitude 8 or greater regional quake in the next 50 years. References for the above are available upon request.

Strong seismic acceleration is expected to generate widespread landsliding in western Oregon, and no unconsolidated sedimentary slope, however gentle, can be considered immune from failure in worst-case circumstances. Local engineers are now recommending optional measures for increased reinforcement of structures against vibratory damage, beyond current code requirements.

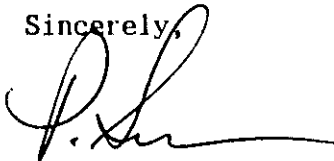
While the terraced area of this lot lies above the anticipated 6+ meter height of a future tsunami, such a wave series is capable of severe erosion along the unprotected bluff.

Risks associated with great Cascadia earthquakes must naturally be considered in light of the long and varied intervals between events. While our understanding of Northwest seismicity is expanding rapidly, the timing or magnitude of future events can only be broadly estimated. I am nevertheless professionally obliged to apprise clients of this newly recognized potential for earthquake damage, remote as it may be.

LIMITATIONS

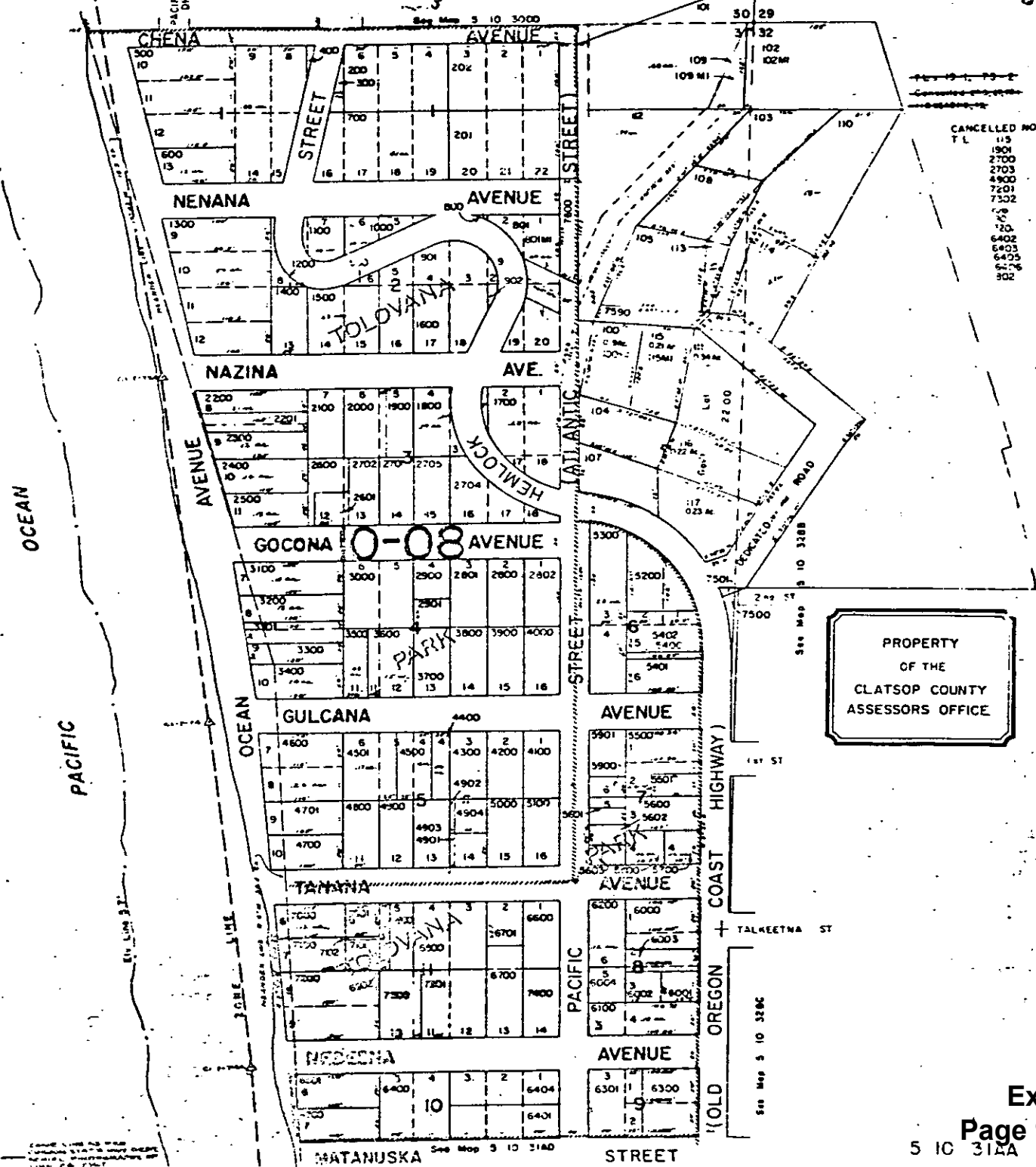
Observations and conclusions incorporated in this letter report are the result of personal site inspection, the works of other specialists, and generally accepted principles of geologic investigation for a report of this nature. No warranties are expressed or implied. This report has been prepared for the timely use of the above addressee and parties to any pending development of the subject property, and does not extend to the activities of unidentified future owners or occupants for which the writer bears no responsibility.

Sincerely,



Paul D. See





P 054 808 064
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

EACH

PS Form 3800, Feb. 1982
★ U.S.G.P.O. 1984-446-014

| | |
|--|---------|
| Sent to James & Helen Towle | |
| Street and No. 707 North D Street | |
| P.O., State and ZIP Code Tacoma, Wa. 98406 | |
| Postage | \$.22 |
| Certified Fee | .70 |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to whom and Date Delivered | .75 |
| Return receipt showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ 1.67 |
| Postmark or Date 11-22-85 | |

November 20, 1985

le

98406

Towle:

Mike Towle today and he informed me of
tion. The 60 days from September 27,
1985, not November 16, 1985, as I
stated in my November 15, 1985 letter.

Mike also told me he was coming to Cannon Beach on
November 21, 1985 to pick up a demolition permit. He
plans to demolish and remove the building on December 7,
1985.

I am sorry for any inconvenience my error may have
caused you.

Very truly yours,

Anthony Stoppiello
Building Official

AWS:ka
cc: Mike Towle

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

BEACH

| | |
|--|---------|
| Sent to Mike Towle | |
| Street and No. 1110 N. Anderson | |
| P.O., State and ZIP Code Tacoma, Wa. 98406 | |
| Postage | \$.22 |
| Certified Fee | .70 |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to whom and Date Delivered | .75 |
| Return receipt showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ 1.67 |
| Postmark or Date 11-15-85 | |

November 15, 1985

M. Towle

t
98406

Towle:

unable to reach Mike Towle by phone, and
 en't obtained a demolition permit, I can
 e not planning to remove the structure.
 obtaining a demolition permit will be
 6, 1985. I will be directing the Public
 o begin the process of demolition and this
 cost will be charged to you.

The Uniform Building Code for the Abatement of Dangerous
 Buildings, Section 905b, states that the cost can be charged
 as a personal obligation to you and the City Attorney shall
 use appropriate legal remedies in collecting this debt.

If you have any questions, please contact me Wednesday
 through Friday at (503)436-1581, in Cannon Beach.

Very truly yours,

Anthony W. Stoppiello
 Building Official

AWS:ka
 cc: Mike Towle

MEMORANDUM

To: Mark Lindberg & Don Howell
From: Anthony Stoppiello *aw*
Date: November 4, 1985
Re: TOWLE DEMOLITION

A letter was sent on September 27, 1985, stating they have 60 days to obtain a permit to demolish the building. On November 16, 1985, the 60 days are up. I feel we should set the wheels in motion for demolition as soon as possible thereafter.

De so. H/L

DO NOT ENTER

UNSAFE TO OCCUPY

IT IS A MISDEMEANOR TO OCCUPY THIS BUILDING,
OR TO REMOVE OR DEFACE THIS NOTICE.

Building Official
City of Cannon Beach
September 30, 1985

MEMORANDUM

To: Mark Lindberg & Don Howell
From: Anthony Stoppiello *AS*
Date: November 4, 1985
Re: TOWLE DEMOLITION

A letter was sent on September 27, 1985, stating they have 60 days to obtain a permit to demolish the building. On November 16, 1985, the 60 days are up. I feel we should set the wheels in motion for demolition as soon as possible thereafter.

ROBERT C. MOBERG
ASSOCIATE

STEVEN T. CAMPBELL
ATTORNEY AT LAW
842 BROADWAY
SEASIDE, OREGON 97138

P. O. Box 27
TELEPHONE 738-6388

March 8, 1976

Mr. James F. Towle
707 North D Street
Tacoma, Washington 98403

RE: Lot 13, Block 1, Tolovana Park


Dear Mr. Towle:

As you are undoubtedly aware by this time, I have a telephone conversation with your wife on Thursday advising her that it is going to be necessary for the City of Cannon Beach to proceed with condemnation of the property in Tolovana Park for failure to meet the codes of the City of Cannon Beach and the State of Oregon.

I advised your wife that we would forward an outline of the deficiencies on the property which will be forthcoming in the near future, but in the meantime, the basic shortage is in sanitary facilities including water to the property. The City has been exceedingly patient waiting several months for some response from you and I am advised by the Building Inspector that there were people using the property this last week-end. In view of these circumstances, some action will have to be taken by the City in the near future. Please respond and let us know your plans if you have any for bringing the property up to code so that condemnation will not be necessary.

Very truly yours,

CAMPBELL & MOBERG


Steven T. Campbell
Attorney at Law

STC/tb

CC: Building Inspector

CITY OF CANNON BEACH

P. O. BOX 368
CANNON BEACH
OREGON 97110

31AA/650

RF

PHONE# 436-1581
FAX# 436-2050

December 14, 1993

Mark Towle
PO Box 1651
Tacoma, Wa. 98401

Dear Mr. Towle:

Please consider this letter a response to your question regarding the information that the city would require to demonstrate the "buildability" of Tax Lot 600, Map 51031AA. On your behalf, Paul See, a registered geologist, prepared a geologic site report dated August 25, 1993. This report indicates that the property is located in an area of on-going active landsliding. Before the city can approve a building permit in such an area, a structural engineer will have to demonstrate that a proposed building design, and its attendant improvements, will be stable and that its construction will not adversely affect adjacent property. As Mr. See indicates in his report, necessary improvements may include "concrete retaining walls, deep pile foundations, and curtain drains." However, there is no assurance that such improvements will be sufficient to create a stable building site.

A second set of issue concerns necessary public facility improvements to the lot. The Public Works Director will require the following:

1. Access. The Nenana Avenue right-of-way could be used for a driveway-walkway, probably as it had been before. The drive would be steep and the entrance onto Hemlock Street difficult. An engineered plan would have to be submitted to the city for consideration and approval.
2. Water service. Water service would be available from Hemlock Street with the installation of a service connection and meter.
3. Sanitary sewer service. Three difficult options are possible, but not necessarily desirable or approvable:
 - a. A grinder pump and force main running east in the Nenana right-of-way and north on Hemlock to an existing manhole at Chena Street. This option is undesirable due to the effects of trenching in this sensitive


Mark Towle
December 14, 1993
Page 2

b. A grinder pump and force main running northward through private property to an existing manhole at Pacific and Chena. This is the most desirable option.

c. An on-site system approved by the Oregon DEQ.

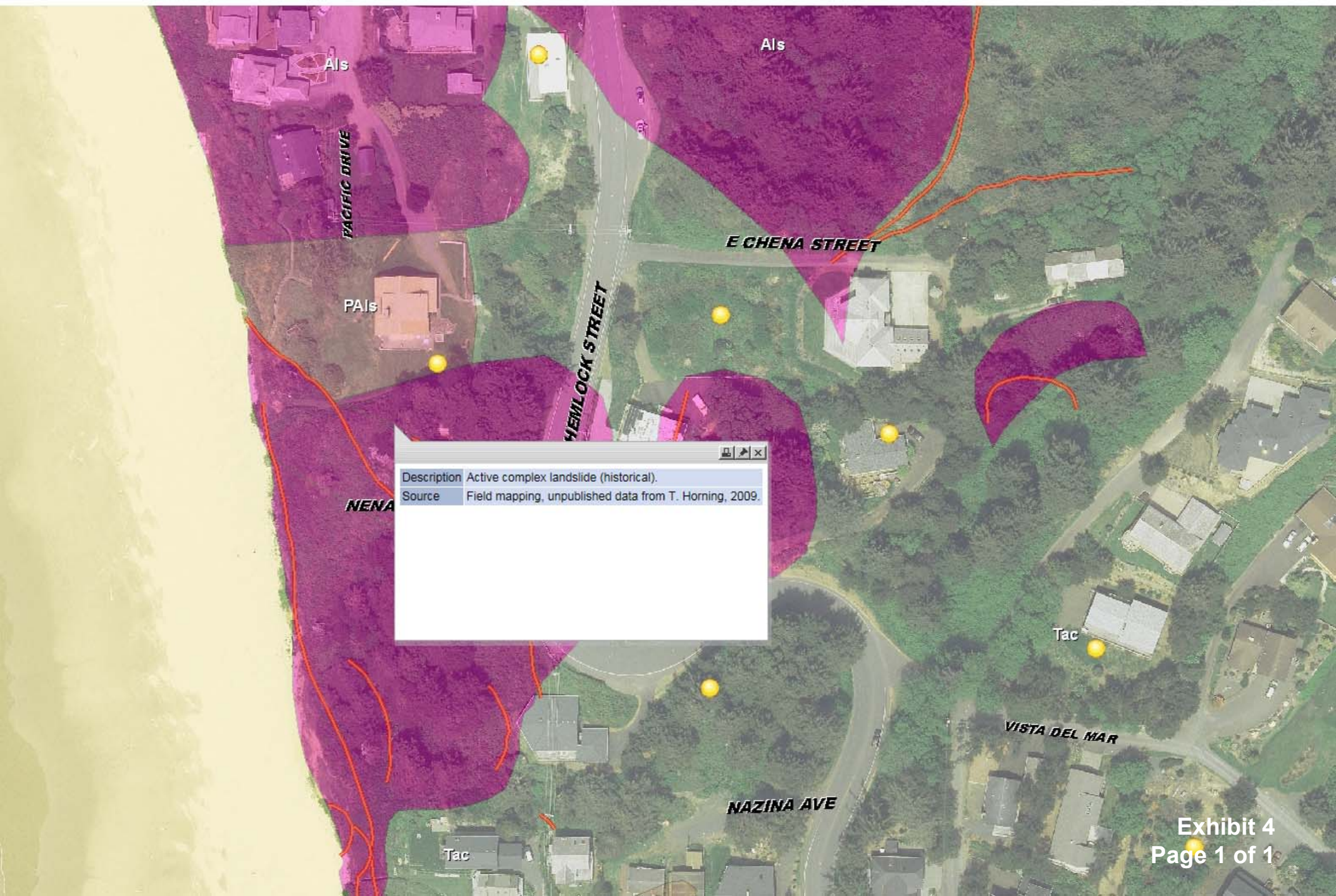
If I can provide additional information, please call me.

Sincerely,



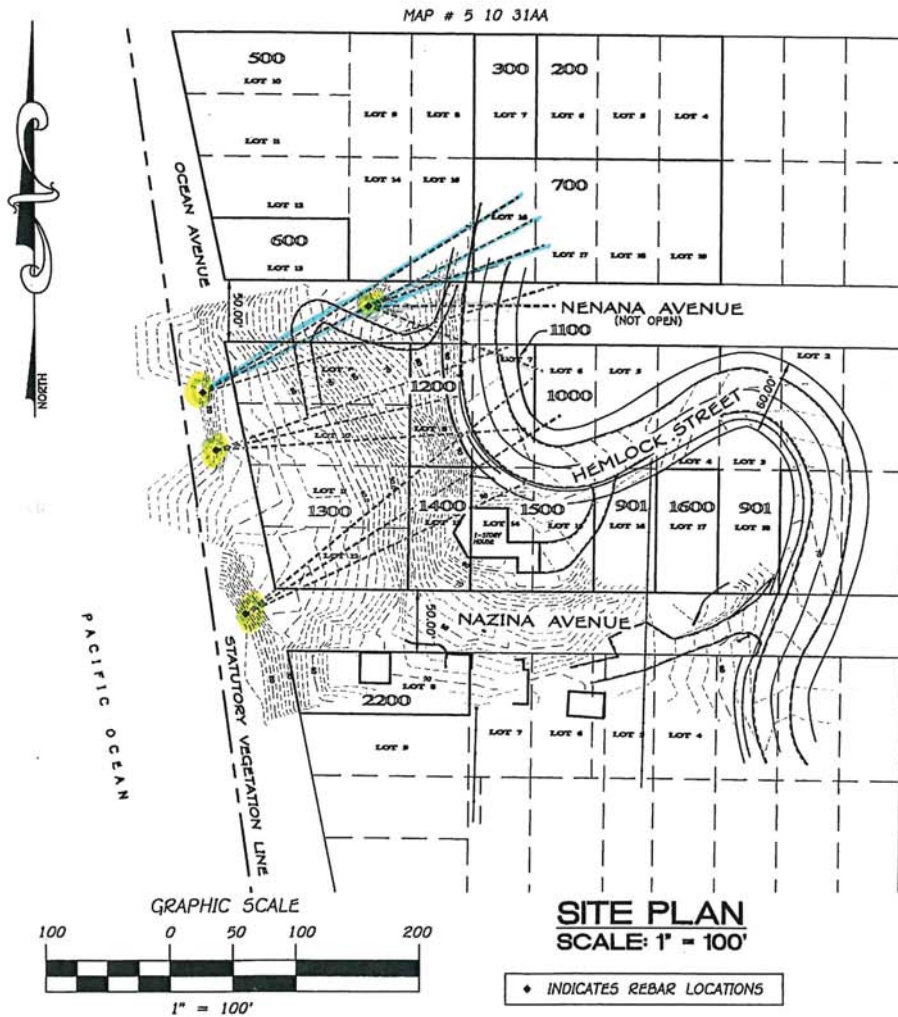
Rainmar Bartl
City Planner

cor\tow12-14:93

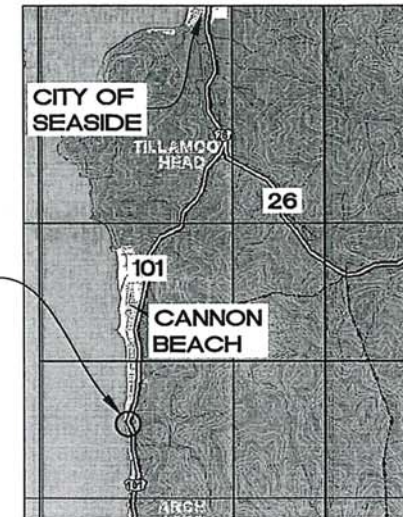


CITY OF CANNON BEACH

S-CURVES DEWATERING PILOT PROJECT -AS BUILTS



PROJECT LOCATION



VICINITY MAP
NOT TO SCALE

PROJECT TEAM

- **SURVEYOR/ENGINEER**
HLB OTAK, INC.
ATTN: JEFF HARRINGTON, P.E.
4253-A HWY 101 NORTH
SEASIDE, OR 97138
(503) 738-3425
(503) 738-7455 (FAX)
- **GEOTECHNICAL ENGINEER**
GEOTECH SOLUTIONS INC.
ATTN: DON RONDEMA, P.E.
1112 7TH STREET
OREGON CITY, OREGON 97045
(503) 657-3487
(503) 722-9946 (FAX)
- **CONTRACTOR**
JENSEN DRILLING COMPANY
ATTN: SHAWN BEAUMONT
1775 HENDERSON AVENUE
EUGENE, OR 97403
- **OWNER**
CITY OF CANNON BEACH
ATTN: MARK SEE, PUBLIC WORKS DIRECTOR
PO BOX 368
CANNON BEACH, OR 97110
(503) 436-1581
(503) 436-2050 (FAX)

SURVEY NOTE

THIS MAP DOES NOT CONSTITUTE A PROPERTY BOUNDARY SURVEY. ELEVATION DATUM IS BASED UPON AN ELEVATION OF 76.725 (77.15) FEET AT A PK NAIL LOCATED AT THE SOUTHEAST INTERSECTION OF HEMLOCK STREET AND PACIFIC STREET. TOPO SHOWN IS BASED ON A 1995 TOPO OF THE MCGILL PROPERTY (NOW OWNED BY THE CITY OF CANNON BEACH) AND IS SHOWN FOR REFERENCE ONLY. THE ACCURACY OF THE TOPO DATA IS LIMITED DUE TO THE EARTH MOVEMENT THAT HAS TAKEN PLACE SINCE THEN.

DESIGN NOTE

DESIGN IS BASED ON INFORMATION PROVIDED BY GEOTECH SOLUTIONS, INC. THIS DESIGN IS INTENDED TO SERVE AS A PILOT PROJECT USED TO DETERMINE FUTURE ADDITIONAL HORIZONTAL DRAINAGE NEEDS.



RENEWAL DATE: JUNE 30, 2007

| | | | |
|---|--------------|----------------|--------------------------------|
| CITY OF CANNON BEACH - AS BUILTS S-CURVES DEWATERING PILOT PROJECT COVER SHEET & GENERAL INFORMATION | | | |
| DESIGNED JAH | DRAWN NCC | CHECKED JAH | JOB NO. 426-0253 |
| | | | DATE JUNE 7, 2007 |
| | | | DWG NAME 426-0253-01-02.DWG |
| SHEET 1 OF 3 | | | |

John F. Neupert
111 S.W. Fifth Avenue, Suite 3400
Portland, Oregon 97204

October 29, 2020

VIA E-MAIL

adams@ci.cannon-beach.or.us
planning@ci.cannon-beach.or.us

Cannon Beach Planning Commission
Mr. Jeffrey Adams
City of Cannon Beach
Post Office Box 368
163 E. Gower Street
Cannon Beach, Oregon 97110

Subject: Appeal by Stanley and Rebecca Roberts (the "Appeal") of Development
Permit for Tax Lot 51031AA00600 (the "Property")

Dear Commissioners and Mr. Adams:

As I testified orally before you on October 22, 2020, I am a member of Haystack Rock, LLC, the owner of what is known as the Oswald West Cabin (the "Cabin") that adjoins the Property to the north.

I write to supplement my testimony and to make certain corrections in the assertions made by the Applicants, some of which I heard for the first time at the hearing.

History and Structure to the South

The Applicants' recitation of the history of the Cabin is incorrect. The Cabin was constructed by Governor West in 1913. See National Register of Historic Places Registration Form attached as Exhibit 1 to the October 20, 2020, letter from William Rasmussen at page 21 (the "Letter"). My grandfather and grandmother (the Bouvys) acquired the Cabin in or about 1936. See Letter at 22. It has remained in the family ever since.

In May 1991, the Cabin was destroyed in an arson fire. *See* Letter at 22. The family decided to reconstruct the Cabin instead of developing the property with as many as three separate houses. We did so because of the importance of the Cabin to my family and to the larger community. In order to have the reconstructed Cabin eligible for the National Register of Historic Places, it had to be faithfully reconstructed in the same place the original cabin stood.

In their PowerPoint presentation at the hearing (*see* Letter at 17), the Applicants assert that their proposed home "replaces a dwelling that had previously been on the property for 50+ years" and have a red arrow on a 1967 aerial photo pointing at the alleged structure. The arrow is actually pointing at the horse barn on the Cabin property—not a dwelling. The same is true of the slide at page 18 that says there "always was a house on property and a driveway." That slide has a blue arrow pointing at the horse barn. The reference to a "driveway" is the driveway we formerly used to access the Cabin from Hemlock. We stopped using that driveway because it was not safe.

As a child, I spent much of every summer at the Cabin. When I became an adult and an owner of the Cabin, I spent even more time there. In my 68 years, I have never seen a habitable or occupied dwelling on the Applicants' Property. To the best of my knowledge, the only structure ever located on the Property was a ramshackle A-frame that was in state of disrepair—no windows, no plumbing, no doors. City records reflect that in 1976 the structure was recommended for condemnation for several reasons, including "abandonment—has not been used for years." Finally, in 1985, the City posted it as a nuisance, and shortly thereafter it was demolished as ordered by the City. The structure never impaired views from the Cabin to the south.

Mr. Roberts testified that we had told one of his advisors that our views to the south would not be blocked by his proposed house. That is not true. In 2018, I did inform Kevin Patrick, one of Mr. Roberts's advisors, that we would have many concerns about proposed development on the Property, including impairing our views and impairing our privacy among other things, as we often use the south deck of the Cabin in the summer. At the time of our conversation, Mr. Patrick could not show me any plans because he said Mr. Roberts had not hired an architect. Thus, we did not know what was to be constructed or where on the Property a house would be located. We presumed that the City would require the Roberts to follow the code with any development proposal.

Cannon Beach Planning Commission
Mr. Jeffrey Adams
October 29, 2020
Page 3

City Dewatering Project

In or about 2007, the City sought a five-year easement from Haystack Rock, LLC, to enable a dewatering project intended to stabilize the S-curves on Hemlock. The easement granted the City the ability to locate drains under the Cabin property. At the end of 2011, the City, through its attorney, Tamara Herdener, sought a five-year extension of the easement because the dewatering project seemed to be successful. I told Ms. Herdener that we would be willing to extend the easement, even though we "might be shooting ourselves in the foot" if it stabilized the Applicants' Property. We extended the easement for another five years in 2012 and another two years in 2017. All we ask in return is that the City faithfully apply its rules and regulations in an open, fair, and public process that maximizes public participation in all facets of this proposed development.

Trees

In the hearing PowerPoint presentation at the slide on page 23, the Applicants accuse the Neuperts of "removing trees as they wish." First, the photographs of 2014 and 2016 do not show tree removal. But more to the point, the Neuperts have not removed any trees on the Cabin property. As everyone knows, mature trees on the oceanfront are hard to come by—they grow very slowly if they grow at all.

Conclusion

Absent compliance with the Oceanfront Setback requirements, the proposed house on the Property will substantially impair views to the south; views that we cherish. The Planning Commission should reject the Appeal and apply the Oceanfront Setback requirements of CBMC 17.42.050(6).

Very truly yours,

A handwritten signature in blue ink, appearing to read "John F. Neupert", with a stylized flourish at the end.

John F. Neupert

AFTER RECORDING RETURN TO:
CITY OF CANNON BEACH
PO BOX 368
CANNON BEACH, OREGON 97110

EASEMENT AGREEMENT

1. PARTIES: HAYSTACK ROCK LLC, hereinafter referred to as "Grantor". CITY OF CANNON BEACH, an Oregon Municipal Corporation, hereinafter referred to as "Grantee".

2. AFFECTED PROPERTY:

Grantor is currently the owner of the following described real property (property) located in the City of Cannon Beach, Clatsop County, Oregon: As shown on the attached legal description of property in EXHIBIT "A", incorporated herein.

3. GRANT OF EASEMENT:

FOR GOOD AND SUFFICIENT CONSIDERATION, Grantor does hereby conveys to the Grantee, its successors and assigns, a non-exclusive subterranean easement for two (2) years under the property described in EXHIBIT A. Such EXHIBIT A IS ATTACHED HERETO AND MADE A PART HEREOF.

4. TERMS OF THE EASEMENT ARE AS FOLLOWS:

1. Grantee, its agents, independent contractors, and invitees shall use the subterranean easement for underground water drainage system purposes and in conjunction with such use may construct and reconstruct, maintain, and repair drainage pipes installed therein. The installation of drainage pipes shall take place outside of the easement area and there shall be no disturbance to the Grantor's real property.

2. The Grantee does hereby agree to defend, hold harmless, and indemnify Grantor, its successors and assigns, from any claim of liability or any other claim arising in any manner out of the Grantee's use of the subterranean easement up to the maximum allowed by the Oregon Tort Claims Act.

3. This easement is granted subject to all prior easements or encumbrances of record.

5. BINDING EFFECT ON SUCCESSOR INTERESTS:

The terms, conditions and provisions of this agreement shall extend to, be binding upon and inure to the benefit of the heirs, personal representatives and assigns of the parties.

The City of Cannon Beach accepts this Easement and agrees to its terms.

DATED this 6TH day of DECEMBER 2016.

GRANTOR:

By: Karolyn Neupert Gordon
KAROLYN NEUPERT GORDON
Manager
HAYSTACK ROCK LLC

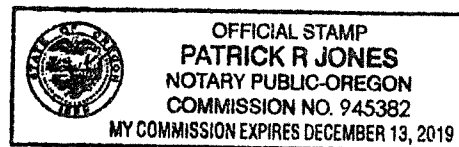
GRANTEE:

By: Brant Kucera
BRANT KUCERA
City Manager
CITY OF CANNON BEACH

STATE OF Oregon)
) ss.
County of WASHINGTON)

Personally appeared before me this 9th day of November of, 20 16,
Name KAROLYN Neupert Gordon, Title MANAGER
for HAYSTACK ROCK LLC and acknowledged the foregoing instrument to be his/her
and HAYSTACK ROCK LLC's voluntary act and deed.

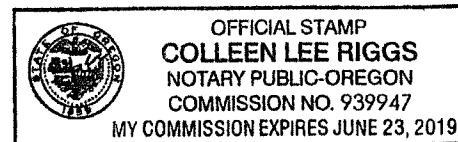
By: [Signature]
Notary Public for Oregon
My Commission expires: December 13, 2019



STATE OF OREGON)
) ss.
Clatsop County)

Personally appeared before me this 6th day of December of, 20 16,
Brant Kucera, City Manager for the CITY OF CANNON BEACH and
acknowledged the foregoing instrument to be his/her and the CITY OF CANNON BEACH's
voluntary act and deed, and accepted the easement on behalf of the CITY OF CITY OF
CANNON BEACH.

By: Colleen L Riggs
Notary Public for Oregon
My Commission Expires: June 23, 2019





4253-a highway 101 north • seaside, oregon 97138
(503) 738-3425 • fax (503) 738-7455
www.hlb-otak.com

Legal Description
for
City of Cannon Beach
of proposed subterranean storm drainage easement
under south 50' lots of 14 and 15, Block 1, Tolovana Park
owned by Neupert, Durfee et. al. (Portion of Tax Lot 500)

October 5, 2006

A non-exclusive easement for subterranean storm drainage purposes, under the following described tract:

South 50' of Lots 14 and 15, Block 1, Tolovana Park, Clatsop County Plat Records.

Situated in the Northwest quarter of Section 31, Township 05 North, Range 10 West, W.M., County of Clatsop, State of Oregon.



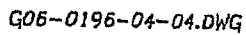
RENEWAL DATE: DEC. 31, 07

N:\Survey\Govt\Cannon Beach\S Curves Easement Revision-G060196\Legals\Neupert Legal Description.doc

creativity, integrity, and skill • strengthening our communities • performing exciting work • serving our clients

EXHIBIT A

NEUPERT, DURFEE EL. AL
1740 SW HAWTHORNE TERR
PORTLAND, OR 97201



OCTOBER 5, 2006

CITY OF CANNON BEACH
EASEMENT EXHIBIT MAP FOR
5 CURVES DEWATERING PILOT PROJECT
CANNON BEACH, OREGON

HLB & Associates
INCORPORATED

Surveying • Civil Engineering • Planning • Water Rights • Wetlands Consulting

CLATSOP COUNTY

4253A HWY 101 N.
GEARHART, OR 97138
(503) 738-3425
FAX: (503) 738-7453

PACIFIC COUNTY

1715B N. PACIFIC AVE.
LONG BEACH, WA 98531
(360) 642-4434
FAX: (360) 642-4034

TILLAMOOK COUNTY

150 LANEDA AVE
MANZANITA, OR 97130
(503) 350-5394
FAX: (503) 350-5847

WWW.HLBINC.COM

October 29, 2020

VIA E-MAIL

adams@ci.cannon-beach.or.us

planning@ci.cannon-beach.or.us

Cannon Beach Planning Commission
Mr. Jeffrey Adams
City of Cannon Beach
Post Office Box 368
163 E. Gower Street
Cannon Beach, Oregon 97110

Subject: Appeal by Stanley and Rebecca Roberts (the "Appeal") of Development Permit for Tax Lot 51031AA00600 (the "Property")

Dear Commissioners and Mr. Adams:

I submit this letter in opposition to the Appeal, and it supplements the oral testimony I provided at the hearing on October 22, 2020.

I am a member of the family that owns the Oswald West Cabin through Haystack Rock, LLC. I am very familiar with the Cabin property and the views it has.

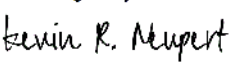
At page 17 of the Applicants' Appeal documents, there is an aerial photograph of our cabin and the beach with two arrows in red; one pointing northwest toward Haystack Rock and the other pointing southwest. A copy of the photograph is attached for convenience. From this photograph, the Applicants argue that the view from the Cabin is not obstructed by the proposed house on the Property.

The aerial photograph fails to show that we currently have an unimpeded view *to the south* as reflected in the attached photographs that I took. That unimpeded view to the south would be obstructed as shown in the blackened portions of the attached photographs. The blackened area is my best estimate of how the proposed house on the Property is situated. If one takes the red arrow pointing southwest in the

Applicants' aerial photograph and moves it to point south, the Applicants' own evidence shows that our view to the south would be blocked.

Absent compliance with the City's Oceanfront Setback rules, the proposed house would substantially interfere with our views to the south. The Appeal should be denied because it does not meet the Oceanfront Setback rules.

Very truly yours,

DocuSigned by:

989608CD0F5D4CF...
KEVIN R. NEUPERI

Enclosures

Applicant "Exhibit 5" showing angle of Cabin view obstruction to south:



Current view of beach and ocean to south from Oswald West Cabin:



Approximate location of proposed residential development in Oceanfront Setback:



View to south with estimated view obstruction from proposed residential development:

