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June 23, 2022

VIA EMAIL TO adams@ci.cannon-beach.or.us

Jeff Adams
City of Cannon Beach, Community Development Director
Community Development Department
163 E. Gower
Cannon Beach, OR 97110

**RE: Response to Tree Plan Review Letter
P 22-01; CU 22-02**

Dear Mr. Adams:

This office represents Patrick/Dave LLC, the applicant in the above referenced partition application. This letter is provided in response to a letter dated June 19, 2022 from Jeff Gerhardt of Treescapes Northwest directed to your attention regarding an initial tree plan review for the Forest Lawn partition. The recommendations and policy opinions offered in the closing paragraph of the Treescapes Northwest letter are inconsistent with the approval criteria applicable to the requested partition and are inconsistent with state law requirements for standards regulating housing, and therefore must be disregarded.

In the Treescapes Northwest letter Mr. Gerhardt addresses trees anticipated for removal as a result of the proposed Forest Lawn partition and suggests that additional tree removal may be needed. The letter further recommends prioritizing the retention of additional trees or reducing the number of lots. The letter finally opines that it is "just as important to favor tree canopy, as it is wetland areas." The applicant team will separately address the comments in the letter related to the amount of anticipated tree removal and has considered options for preserving additional trees. Therefore, the purpose of this letter is to address the legal flaws with the recommendations and opinions offered in the final paragraph.

The City's decision in this application must be based on applicable standards in the Cannon Beach Municipal Code (CBMC). Additionally, under Oregon Revised State (ORS) 197.307(4) the City may only apply clear and objective, non-discretionary standards to this partition application for residential lots. Approval standards are not clear and objective if they impose subjective, value laden analyses that are designed to balance or mitigate impacts of the development on the property to be developed or adjoining properties or community. *Rogue Valley Assoc. of Relators v. City of Ashland*, 35 Or LUBA 139, 158 (1998), *aff'd*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999).

The opinion and recommendations offered in the final paragraph of the Treescapes Northwest letter are not codified in the CBMC standards applicable to the requested partition. The subject property is located within the Wetlands Overlay (WO) Zone and the applicant has demonstrated that the requested partition complies with applicable WO Zone standards in CBMC 17.43. The CBMC also contains tree removal and preservation standards in CBMC Chapter 17.170. CBMC. 17.170.030.D states:

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

In this case, the applicant provided the necessary arborist report and considered both tree retention and necessary tree removal in the partition design. The requirement to “consider” the retention and removal of trees in the design of partitions, however, does not require a specific percentage of tree retention or prioritize tree retention over avoiding wetland impacts. Moreover, the standard itself is not clear and objective,¹ and to the extent it were to be interpreted to prioritize tree retention over avoidance of wetland impacts, it would clearly require a value laden analysis designed to balance impacts in violation of ORS 197.307(4). As a result, CBMC 17.170.030.D cannot serve as a basis for denial or reduction of the requested partition, and cannot be relied upon to impose specific tree retention conditions of approval.

For these reasons, we request that the City disregard the opinions and suggestions offered in the final paragraph of the Treescapes Northwest letter.

Best regards,

A handwritten signature in black ink, appearing to read 'Renee M. France', with a long horizontal line extending to the right.

Renee M. France

¹ While not directly relevant to the specific purpose of this letter, we note for the record that the Conditional Use standards at CBMC 17.80.110.A through .F are also not clear and objective standards. Therefore, while the applicant addressed each standard in the application and agrees with the findings in the staff report that the proposed partition satisfies the identified Conditional Use standards at CBMC 17.80.110, those standards should not be applied and cannot serve as the basis for denial of the requested partition pursuant to ORS 197.307(4).