



CITY OF CANNON BEACH

NOTICE OF APPEAL - ADMINISTRATIVE DECISION

Appellant's Name: Dana Cardwell
 Email Address: danacardwell@outlook.com
 Mailing Address: PO Box 1305
Cannon Beach, OR 97110
 Telephone: 303-941-9570

1. Appeal of Administrative Decision by Jeffrey S. Adams, regarding:
Findings of Fact, Conclusions, and Order DP21-23
In the Matter of a Development Permit for the Forest Lawn
Right-of-Way for Stormwater Pipe Extension Under Chapter 17.62
Grading, Erosion and Sedimentation Control.
 as stated in letter dated November 5, 2021

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

Please see attached pages

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

FEE: \$600.00

Appellant Signature: Dana Cardwell Date: Nov. 17, 2021

For Staff Use Only:

Date Appeal Received: 11/17/21 By: Laura Sawrey
 Appeal Fee Paid: \$ 600 Receipt No.: 8000056

Fee:

803 - Planning \$600

(Last revised March 2021)

PO Box 368 Cannon Beach, Oregon 97110 • (503) 436-8042 • TTY (503) 436-8097 • FAX (503) 436-2050
www.ci.cannon-beach.or.us • planning@ci.cannon-beach.or.us

Appellant hereby requests appeal of Cannon Beach Order DP21-23 granted on November 5, 2021. Appellant is an affected party who has an interest in the matter and proposed work as a property owner on Forest Lawn. Appellant's position is supported by numerous property owners on Forest Lawn.

Appellant is concerned with the approval of Order DP21-23 which allows extension of the storm water line approximately 130 feet north, along the Forest Lawn right-of-way, starting at taxlot 51030DA4300, crossing under Forest Lawn, and extending north along the Forest Lawn right-of-way to deposit water to the ditch along taxlot 51030DA4100 (taxlot 4100). Although not mentioned in Order DP21-21, taxlot 4100 is a recognized wetland and therefore subject to Wetland Overlay (WO) Zone requirements as set forth in Cannon Beach Municipal Code 17.43. The stated purpose of Municipal Code 17.43 Wetland Overlay Zone rule is to "protect wetland areas identified in the city's comprehensive plan from uses and activities inconsistent with the maintenance of the wetland functions and values identified for those sites".

Furthermore, taxlot 4100 is also identified as a wetland-lot-of-record as set forth in Municipal Code 17.43.024, meaning that although it contains both upland and wetlands the entire lot is subject to the provisions of the WO Zone rule. From the public record, it appears the current owner of taxlot 4100 is planning new development in taxlot 4100 and desires to subdivide the existing property into 8 lots. The requirements for development of a wetland lot-of-record are strict and set forth in Municipal Code 17.43. This information is noted here because the public record, which consists in part of correspondence between the City and the owner of taxlot 4100, commingles the various projects and permits anticipated by the owner of taxlot 4100. In this

regard, the public record is not only confusing but is also incomplete and inadequate. This appeal is being filed to clarify the public record, ensure proper procedure is followed, accurately define the scope of work being requested along the Forest Lawn right-of-way and in the wetland, and ensure consideration of relevant Municipal Codes including, but not limited to, those provision related to wetlands.

The grounds relied upon for this appeal are set forth below:

- 1) **Order DP21-23 was issued in error by the Planning Department.** Taxlot 4100 is a recognized wetland and therefore is subject to Wetland Overlay (WO) Zone requirements. Order DP21-23 and the Planning Department failed to address that the affected property is a recognized wetland and therefore subject to WO Zone requirements. Municipal Code section 17.43.040 makes it clear that in the WO Zone, point-source storm-water discharge and alternative storm-water management practices are conditional uses. Since the storm-water will discharge directly into the WO Zone, the Planning Department wrongfully approved this application administratively. Conditional uses like this require Planning Commission review and approval.
- 2) **The Findings of Fact, Conclusions and Conditions in Order DP21-23 are incomplete and inadequate.** The City should have identified taxlot 4100 as a recognized wetland when considering any permit to conduct work in the Forest Lawn right-of-way adjacent to and/or discharging onto taxlot 4100. Furthermore, the City should have applied the standards set forth in Municipal Code section 17.43 related to WO Zone rules when considering the requested permit. More specifically, the City should have considered the impact the proposed work would have on the wetland. Findings of facts, conclusions and conditions related to the necessity and impact of the proposed work on the wetland should have been identified. The work permitted in DP21-23, namely the extension of the storm-water line in the Forest Lawn right-of-way and diversion to a new discharge point in the northern portion of taxlot 4100 (thereby altering existing storm-water management practices), was not held to the standards set forth in Municipal Code section 17.43 related to WO Zone rules.

From the public record, it appears the owner of taxlot 4100 is hopeful the diversion of storm-water, via the proposed new line, to a new discharge point on taxlot 4100 will drain a portion of the wetland, thereby creating more upland area in taxlot 4100. This information should have been included in the findings of fact and considered when reviewing the permit application.

From the public record, it appears the owner of taxlot 4100 is hopeful the owner of abutting taxlot 4104 will redirect their storm water runoff away from the southern portion of the wetlands by connecting to the storm-water line permitted under Order DP21-23.

Such action may likely drain a portion of the wetlands, thereby creating more upland area in taxlot 4100. This information and the City's April 29, 2021 letter to the owner of taxlot 4104, requesting control and diversion of storm water runoff away from the wetlands, should have been included in the findings of fact and considered when reviewing the permit application. Also, particular attention should have been given to the applicability of Municipal Code 17.43.050(J) which states: *Storm water runoff should be directed toward the same drainage system that would have handled the runoff under natural conditions.* The issue of whether water should be diverted from a wetland, which is

From the public record, it also appears the owner of taxlot 4100 would like to move forward with perimeter and interior trenching activities within taxlot 4100. The scope of work considered under Order DP21-23 does not include any private perimeter or interior trenching within taxlot 4100 and this condition should be clarified and noted.

The findings of fact related to Order DP21-23 do not specify why the City, rather than the owner of taxlot 4100, is requesting a permit to extend the storm water line along the Forest Lawn right-of-way. This information should have been included in the findings of fact and considered when reviewing the permit application.

The findings of fact related to Order DP21-23 provide no explanation or findings of fact as to why the point of discharge into the wetland should be altered or whether other pertinent entities such as the U.S. Army Corps of Engineers and Department of State Lands have reviewed the request to relocate the discharge point into the wetland or alter existing storm-water management practices within or adjacent to the wetland. This information should have been included in the findings of fact and considered when reviewing the permit application.

- 3) **The work permitted in Order DP21-23 is in direct conflict with Municipal Code 17.43.** The stated purpose of Municipal Code 17.43 Wetland Overlay Zone rule is to "protect wetland areas from uses and activities inconsistent with the maintenance of the wetland function and values identified for those sites". More specifically and pursuant to Municipal Code Section 17.43.050, the City of Cannon Beach has not demonstrated how it plans to meet or has met the following required standards:

17.43.050 A. 1. Uses and activities in protected wetlands or wetland buffer areas may be approved only after the following list of alternative actions, listed from highest to lowest priority, have been considered:

a. Avoiding the impact altogether by not taking a certain action or parts of an action (this would include, for example, having the use or activity occur entirely on uplands); and

b. Minimizing impacts by limiting the degree or magnitude of action and its implementation (this would include, for example, reducing the size of the structure or improvement so that protected wetlands or wetland buffer areas are not impacted).

2. Where a use or activity can be located in either the protected wetland or the wetland buffer, preference shall be given to the location of the use or activity in the wetland buffer.

3. Valid permits from the US Army Corps of Engineers and from the Oregon Division of State Lands, or written proof of exemption from these permit programs, must be obtained before any of the following activities occur in protected wetlands:

a. Placement of fill (any amount);

c. Excavation (any amount);

F. 1. Underground utilities, including water, wastewater, electricity, cable television, telephone and natural gas service, may be routed through protected wetlands in trenches provided the following standards are met:

a. Material removed from the trench is either returned to the trench as back-fill within a reasonable period of time, or, if other material is to be used to back-fill the trench, excess material shall be immediately removed from the protected wetland area. Side-casting into a protected wetland for disposal of material is not permitted;

b. Topsoil and sod shall be conserved during trench construction or maintenance, and replaced on the top of the trench;

c. The ground elevation shall not be altered as a result of utility trench construction or maintenance. Finish elevation shall be the same as starting elevation; and

d. Routes for new utility trenches shall be selected to minimize hydraulic impacts on protected wetlands, and to minimize vegetation removal.

2. Above ground utilities, including electricity, cable television and telephone service, may be routed through wetland areas on poles subject to the following standards:

a. Routes for new utility corridors shall be selected to minimize adverse impacts on the wetland, and to minimize vegetation removal; and

b. Vegetation management for utility corridors in protected wetlands and in wetland buffer areas shall be conducted according to the best management practices to assure maintenance of water quality, and subject to the vegetation management standards herein.

3. Utility maintenance roads in protected wetlands and in wetland buffer areas must meet applicable standards for roads in wetlands.

4. Common trenches, to the extent allowed by the building code, are encouraged as a way to minimize ground disturbance when installing utilities.

J. 3. Stormwater runoff should be directed toward the same drainage system that would have handled the runoff under natural conditions.

5. Where the public works director determines that wastewater volumes are or will be significant, wastewater management systems must disperse wastewater rather than discharging at a single point.

K. Mitigation. All projects involving removal or fill in a protected wetland must meet the following standards. These standards are intended to help meet the city's goal of no net loss of wetland functions or values.

3. The US Army Corps of Engineers or the Division of State Lands often require compensatory mitigation (subsection (K)(1)(e), of this section) as part of their approval of a fill permit. The city may require compensatory mitigation before approving a fill in a protected wetland when the US Army Corps of Engineers and the Division of State Lands

do not require compensatory mitigation. Additional compensatory mitigation may be required by the city in those instances where it is also required as a condition of a state or federal fill permit.

L. Vegetation Management. Vegetation in protected wetlands and in wetland buffer areas may be managed (including planting, mowing, pruning and removal) subject to the certain standards.

- 4) **The commitment to perform the work approved in Order DP21-23 is a violation of Municipal Code 13.16.030 (B).** From the public record it is clear that the owner of taxlot 4100, which is adjacent to the storm-water line approved in Order DP21-23, is planning a new development. Pursuant to Municipal Code section 13.16.030 (B):

The improvement of both public and private storm drainage facilities through or adjacent to a new development shall be the responsibility of the developer. Said improvements shall comply with all applicable city ordinances, policies and standards.

Thus, the storm-water work approved under Order DP21-23 is the responsibility of the developer, not the City of Cannon Beach. Public resources should not be spent doing the developer's work for them. The owner of taxlot 4100 should pay all costs related to the improvement of the storm-water line through or adjacent to taxlot 4100.

In view of the foregoing, Appellant requests:

- 1) Reversal of the decision to approve Order DP21-23,
- 2) Consideration of this matter by the Planning Commission, and
- 3) Full public disclosure of all correspondence, reports, meeting transcripts, permits, maps, studies, wetland delineations, wetland studies, and development plans related to and providing the basis for considering work in the Forrest Lawn Right of Way and adjacent wetland. Disclosure is also requested of any permits, approved or denied to previous owners of taxlot 4100, requesting development or subdivision of taxlot 4100 and the wetland lot-of-record.
- 4) Waiver of the appeal fee is hereby requested. Appellant has paid the appeal fee but asks for reimbursement and waiver of the fee. Had proper procedure been followed, the permit

application would have been subject to a conditional use permit and decided by the Planning Commission. Appellant should not be expected to pay to correct the City's procedural error.