

## **CHAPTER 17.43 WETLANDS OVERLAY (WO) ZONE**

### **Draft Reorganization 8.20.23**

#### **17.43.010 Purpose**

The purpose of the wetlands overlay zone is to protect wetland areas identified in the city's Local Wetland Inventory from uses and activities that are inconsistent with the maintenance of the wetland functions and values identified for those sites, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; carbon sequestration; thermal refugia, and improving water quality through biofiltration, adsorption, retention, and transformation of sediments, nutrients, and toxicants. Wetland areas also serve significant community wellness purposes such as mental and emotional well-being and sense of community in nature. (Ord. 94-29 § 2). In addition to wetland protections covered by this chapter, the city also protects stream corridors (Chapter 17.71) and estuarine resources per the Ecola Creek Estuary Plan.

#### **17.43.015 Definitions**

"Best management practices" means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to protected wetlands.

"Buffer averaging" means reducing the standard buffer width (i.e., 50 feet) around a wetland in some locations and increasing it in other locations such that the total area within the buffer around a given delineated wetland after averaging remains at least equal to what was required by the standard buffer around that wetland.

"Contiguous" means lots that have a common boundary and includes lots separated by public streets.

"Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

"Footprint" refers to the total area under the exterior walls of all structures on a lot.

"Permeable" means surfaces that allow water to pass through whereas "impermeable" means blocking the flow of water through the surface.

"Protected wetlands" are those areas in the wetlands overlay zone that have been identified on the city's inventory or on a subsequent detailed wetland delineation as wetlands. Note that Federal and State protections also exist and applicant is responsible for addressing such regulations too (i.e. review by the City does not imply review by Federal or State agencies). Should discrepancies exist between federal and state wetland delineation jurisdiction, city protected wetlands shall match state regulated wetland boundaries. A "qualified wetland professional" is a person with experience and training in wetlands issues and with experience in performing delineations, analyzing wetland functions and values, analyzing wetland impacts, and recommending wetland mitigation and restoration. Qualifications include:

A Professional Wetland Scientist certification from the Society of Wetland Scientists; or

B.S. or B.A., or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife, agriculture or related field; two years of related work experience; and minimum of one-year experience delineating wetlands using the 1987 U.S. Army Corps of Engineers (Corps) Wetlands Delineation Manual and supporting guidance, and preparing wetland reports and mitigation plans; or

Four years of related work experience and training; minimum of two years' experience delineating wetlands using the 1987 Corps Manual and supporting guidance, and preparing wetland reports, and mitigation plans.

“Rainfall Collection Area” is the drainage system or catchment area upslope of the protected wetland that contributes either surface runoff or shallow subsurface seepage.

“Runoff” means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

“Sediment” means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

“Site” means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.

“Upland” as used in this title is the portion of a wetland lot-of-record that is neither protected wetland nor wetland buffer area.

“Vegetation” as used in this title shall include all living plant matter (e.g., all native and non-native vines, herbaceous, shrub, and tree species of any size or amount).

“Wetland” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (Ord. 94-29 § 1)

“Wetland buffer area” means a 50-foot-wide non-wetland area surrounding a protected wetlands within the wetlands overlay zone. (Ord. 94-29 § 1)

“Wetland delineation” means a site-specific determination of the boundary between uplands and wetlands for a given parcel of land based on field indicators of vegetation, soils and hydrology. The delineation is to be undertaken in accordance with a method acceptable to the US Army Corps of Engineers and the Oregon Division of State Lands. (Ord. 9429 § 1)

“Wetland lot-of-record” is a lot or contiguous lots held in common ownership on August 4, 1993, which are subject to the provisions of this chapter. A wetland lot-of-record includes upland portions of the contiguous property that are not subject to the provisions of the wetlands overlay zone.

“Wetland Overlay Zone” includes the delineated wetland and wetland buffer area.

## 17.43.020 Mapping

A. The maps delineating the wetland overlay (WO) zone boundaries shall be maintained and updated as necessary by the city. The Cannon Beach Local Wetland Inventory (LWI) maps dated September 20, 1994, as well as subsequent updates to the LWI, shall form the basis for the location of wetlands. The WO zone includes both wetland and wetland buffer areas which abut wetlands.

B. Site-specific wetland delineations or determinations are required to determine the exact location of the WO zone boundary. Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual along with any supporting technical or guidance documents issued by the Division of State Lands and applicable guidance issued by the U.S. Army Corps of Engineers for the area in which the wetlands are located.

C. When an expert report or opinion is submitted by an applicant, the permitting authority may seek an independent expert opinion when reviewing the report or opinion. A qualified wetland professional retained or hired by the city under this subsection is expected to render independent expert opinion, consistent with the Society of Wetland Scientists Code of Ethics.

~~C~~D. Where a wetland delineation or determination is prepared, and accepted by the City, the mapping it contains shall replace that of the Cannon Beach Local Wetland Inventory. Wetland delineations or determinations shall remain valid for a period of not more than five years from the date of their acceptance by the Division of State Lands. Any wetland delineation submitted to the City shall be accompanied by an electronic shapefile.

~~D~~E. The continued reliance on a wetland delineation or determination that is more than five years old requires the following additional new information:

1. An onsite re-inspection of the site by a qualified wetland professional to determine if there has been any change in circumstances;

2. If no change in circumstances is found, a short report shall be provided noting or including:

- a. A description of site conditions and any changes between the date of the original wetland determination or delineation and the date of the re-inspection,

- b. Any additional maps, aerial photographs or other documents consulted, and

- c. Conclusions regarding the accuracy of the original wetland delineation or determination;

3. If a change in circumstances is noted, the information in subsection (D)(2) of this section shall be provided along with:

- a. Additional field data, including wetland determination data in conformance with Division of State Lands standards needed to verify and document any change in the status of the wetland area that were or were not identified and mapped as part of the original delineation or determination,

- b. A revised wetland map,

c. Data, documentation, and other information as needed to establish the nature and timing of the activity or activities that resulted in the change in circumstances.

~~E~~. Protected wetlands that are legally filled under this chapter are no longer protected wetlands, but shall change to wetland buffer areas under this overlay zone. Wetland buffer areas that are legally filled under this chapter remain as wetland buffer areas. (Ord. 08-1 § 40; Ord. 94-29 § 2)

### 17.43.030 Applicability

The regulations of this chapter apply to the portions of all properties that contain wetlands or wetland buffer areas as shown on the city maps or as described in a wetland delineation or determination as described in Section 17.43.020.

### 17.43.040 Administration

Activities permitted outright according to Table 17.43-1 shall be reviewed as a Type I city manager decision as provided in Article II.

All other development or activities within the Wetlands Overlay Zone shall be reviewed as a Type III Planning Commission decision as provided in Article II.

### 17.43.050 Development and Activities Permitted

A. Uses and activities listed in Table 17.43-1 may be permitted in wetlands and wetland buffer areas, subject to the issuance of a development permit in accordance with the provisions of this title and the applicable standards in Section 17.43.070.

B. Uses and activities in wetland and wetland buffers are prohibited unless specifically permitted in Table 17.43-1. Specific prohibition of any activity in this Chapter is not intended as authorization to engage in activity not specifically prohibited. Conflicts between this Chapter and any other provision of the Cannon Beach municipal code shall be resolved in favor of this Chapter.

~~C~~ D. Uses and activities in existence approved by a permitting authority before the effective date this Chapter 17.43, [to be specified on the date of ratification] (hereinafter referred to for purposes of this Chapter as the Effective Date), and which may not conform with the permitted or conditional uses set forth herein may qualify as a “nonconforming use” as provided Chapter 17.82

**Table 17.43-1 Permitted Development and Activities within the WO Zone**

<b>Development or Activity</b>	<b>Wetland</b>	<b>Wetland Lot-of-Record</b>	<b>Wetland Buffer</b>
Vegetation management only to the extent necessary for hazard prevention	I	I	I
Structures	III	III (1 max)	III
Wetland enhancement	III	III	III
Compensatory <u>wetland</u> mitigation	III	III	III

Driveways	III	III	III
Pedestrian/bike pathways	III	III	III
Point source stormwater discharge	III	III	III
Alternative stormwater practices	III	III	III
Underground or above ground utilities	III	III	III

I – Permitted subject to Type I review and approval

III – Subject to Type III review and approval

### 17.43.060 Application Submittal Requirements

A. Information Requirements. Information provided on the ~~design review~~ development plan shall conform to the following:

1. Drawings depicting the proposal shall be presented on sheets not larger than twenty-four inches by thirty-six inches in the number of copies directed by the city;
2. Drawings shall be at a scale sufficiently large enough to enable all features of the design to be clearly discerned.

B. Site Analysis Diagram. This element of the design review plan, which may be in a freehand form to scale, shall indicate the following site characteristics:

1. A survey of the property by a licensed land surveyor clearly delineating property boundaries. The city may waive this requirement where there is a recent survey which can be used to establish the applicant's property boundaries;
2. Location of the wetland boundary and wetland buffer area;
3. Location and species of trees greater than six inches in diameter when measured four and one-half feet above the natural grade, and an indication of which trees are to be removed or potentially affected by construction activity on the subject property and abutting properties ;
4. On sites that contain steep slopes, potential geologic hazard or unique natural features that may affect the proposed development, the city may require contours mapped at two-foot intervals;
5. Natural drainageways and other significant natural features;
6. All buildings, roads, retaining walls, curb cuts and other manmade features on the subject property;
7. Developed and natural features, including trees, wetlands, structures, and impervious surfaces on adjoining property having a visual or other significant relationship with the site; and
8. The location and names of all existing streets within or on the boundary of the proposed development.

C. Site Photographs. Photographs depicting the site and its relationship to adjoining sites and natural features shall also be provided.

D. Site Development Plan. This element of the development plan shall indicate the following:

1. Boundary dimensions and area of the site.
2. Location of all existing structures, driveways, walkways, and landscaped areas proposed to be retained, including their site coverage and distances from the property line, and wetland and wetland buffer area boundaries;
3. Location of all new structures, driveways, walkways, and landscaped areas proposed to be retained, including their site coverage and distances from the property line, and wetland and wetland buffer area boundaries;
4. All external dimensions of existing and proposed buildings and structures;
5. Existing and proposed parking and vehicular and pedestrian circulation areas, including their dimensions;
6. Existing and proposed service areas for such uses as the loading and delivery of goods;
7. Locations, descriptions and dimensions of easements;
9. Grading and drainage plans, including spot elevations and contours
10. Location of areas to be landscaped or retained in their natural state;
11. Exterior lighting including the type, intensity, height above grade and area to be illuminated;
12. Other site elements which will assist in the evaluation of the application

E. Landscape Plan. Development proposals with a total project cost exceeding two hundred fifty thousand dollars shall have the landscape plan prepared by a licensed landscape architect or licensed landscape contractor. This element of the development plan shall indicate the following:

1. The size, species and locations of plant materials to be retained or placed on the site;
2. The layout of proposed irrigation facilities;
3. The location and design details of walkways, plazas, courtyards and similar seating areas, including related street furniture and permanent outdoor equipment including sculpture;
4. The location, type and intensity of lighting proposed to illuminate outdoor areas;
5. The location and design details of proposed fencing, retaining walls and trash collection areas; and

F. A stormwater management plan shall be required of the applicant and reviewed and approved by the public works director for the following types of developments where stormwater will move from the site into protected wetlands:

1. New building covering more than two hundred square feet; or
2. New addition covering more than two hundred square feet; or
3. New road or driveway; or
4. Road or driveway expansion; or
5. New parking lot or parking lot expansion; or
6. Point source stormwater discharge; or
7. Diversion of stormwater for any reason within the protected wetland or wetland buffer.

8. A **stormwater management plan must include all information necessary to demonstrate to the public works director** that the proposed stormwater management system will maintain pre-construction activity, or background, water quality and similar flow characteristics (e.g., volume, velocity, and duration) and be consistent with the standards of this Chapter. The stormwater management plan shall provide the following in addition to any information requested by the public works director:

- a. Property description
- b. Site map or maps, drawing or specifications detailing the design, route, and location of the stormwater management system.
- c. A map or model of drainage patterns and stormwater flow before and after the development or activity; impacts to water quality in the wetland, changes to water quantity and timing that may adversely affect wetland function (e.g., affects of rapidly fluctuating water levels on amphibian egg masses, scour impacts to vegetation) and potential for sediment deposition into the wetland or wetland buffer.
- d. Best management practices and methods of treatment that will maintain or improve background levels of water quality, which includes but is not limited to: dissolved oxygen levels; pH; temperature; total dissolved solids; and contaminants.

G. Narrative addressing the relevant standards in Section 17.43.070.

### **17.43.070 Development Standards**

The following standards are applicable to the uses and activities listed in Section 17.43.050. The uses and activities are also subject to the standards of the base zone. The following standards are applicable in all areas under the wetlands overlay zone.

**A. General Standards.** Uses and activities in protected wetlands and in wetland buffer areas are subject to the following general standards. Development may also be subject to specific standards in subsequent subsections.

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);

b. Construction of any pile-support structure;

c. Excavation (any amount);

d. Compensatory mitigation;

e. Wetland restoration;

f. Wetland enhancement.

4. Where a wetland is identified by the Cannon Beach wetland study as riverine, uses and activities are also subject to the requirements of Chapter 17.71, stream corridor protection. If the riverine mapping only encompasses the active channel (i.e., no wetlands are present), then only Chapter 17.71 applies.

5. **Pile-supported construction** may use wood piling (treated or untreated), steel piling, concrete piling, or other piling material meeting building code requirements. If treated wood piling or posts are used for structures in protected wetlands, the following standards are applicable:

a. Treated wood shall be completely dry;

b. Treated wood shall not have any wet wood preservative on the wood surface; and

c. The type of chemical treatment chosen shall be the type that minimize possible contamination of the wetland environment.

6. Except as permitted for enhancement and mitigation, **fill and removal** are prohibited in protected wetland or wetland buffer areas. In cases of enhancement and mitigation, removal and fill may be allowed if approved by application to the Planning Commission, subject to the following standards:

- a. All fill material shall be clean and free of contaminants;
- b. Filled area sides shall be finished to a stable slope;
- c. Measures shall be incorporated into the fill design to minimize erosion or sloughing of fill material into protected wetlands;
- d. Fills shall be designed in a manner that does not worsen flooding on adjacent or nearby flood-prone lands, and avoids restricting the flow of water to or through protected wetlands; and
- e. Fill side slopes shall be revegetated with native plant species to stabilize the slope.

7. **Draining, diverting water** from, or reconfiguring the dimensions of a wetland to create upland is prohibited.

B. **Residential Development.** Where and when allowed, a residential structure, modular housing, or manufactured home may be permitted in a protected wetland or wetland buffer area subject to the following standards:

1. New dwellings and accessory structures, when permitted, shall be placed on piling or on posts, and shall be cantilevered, in a manner that allows the free flow of water beneath the structure. No fill material may be used for the residence.

2. Building coverage will be minimized in accordance with Section 17.43.025.

3. Driveways, utilities, landscaping, garages, accessory structures and other uses and activities accessory to a residence shall comply with applicable standards.

4. **Driveways, off-street parking, and other surfaces** including but not limited to patios and walkways in the WO zone shall be constructed of permeable materials.

5. For the purposes of calculating floor area ratio, the size of the lot shall be considered the upland portion only, i.e., the area of the lot that is neither wetland nor wetland buffer area.

6. To avoid harm to wetlands and wetland buffers from excessive traffic and frequent visitors who are unaware of wetland protections, **short term rentals** are prohibited in structures within the wetland overlay zone where any portion of the building or surrounding developed area such as patios, driveways, and walkways are within the wetland overlay zone. This prohibition applies to the wetland overlay zone as defined prior to adjustments permitted under section 17.43.025.

C. **Commercial Development.** Where and when allowed by the base zone, a commercial building may be permitted in a protected wetland or wetland buffer area subject to the following standards:

1. New commercial buildings shall be placed on piling or on posts in a manner that allows the free flow of water beneath the structure. No fill material may be used for commercial buildings in wetland buffer areas.

2. Lot coverage will be minimized in accordance with Section 17.43.025. Commercial development in protected wetlands or in wetland buffer areas is subject to site design review pursuant to Chapter 17.44.

3. Driveways, parking, utilities, landscaping, accessory structures and other uses and activities accessory to a commercial development shall comply with applicable standards.

D. **Accessory Structure or Building.** Buildings and structures subordinate to the principal structure may be permitted in wetland buffer areas subject to these standards, and subject to the requirements of the base zone:

1. New accessory structures or buildings shall be placed on piling or on posts in a manner that allows the free flow of water beneath the structure. No fill material may be used for an accessory structure or building in a protected wetland or in a wetland buffer area.

E. **Driveways.** Driveways through protected wetlands or wetland buffer areas may be permitted subject to the following standards:

1. Driveways crossing protected wetlands or wetland buffer areas shall be no wider than twenty feet, regardless of the length of frontage facing the right-of-way.

2. Driveways in protected wetlands shall be placed on piling in a manner that allows the free flow of water beneath the driveway. Pile-supported construction is required instead of fill for driveways. Water circulation shall be facilitated through use of culverts or bridges.

3. Driveways and off-street parking in wetland buffer areas may be placed on piling or constructed of gravel, whichever is deemed least impactful by a qualified wetland professional.

F. **Utilities.** Electric power lines, telephone lines, cable television lines, water lines, wastewater collection lines and natural gas lines may be permitted in protected wetlands and in wetland buffer areas subject to these standards, and subject to the requirements of the base zone:

1. **Underground utilities**, including water, wastewater, electricity, cable television, telephone and natural gas service, may be routed through wetland buffer areas 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. **Aboveground 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.

5. Underground utilities shall be routed under disturbed areas such as driveways and off-street parking areas whenever feasible. When utilities are routed under driveways and off-street parking areas, the surface shall be gravel to facilitate location and repair in the event of damage to the utility lines.

G. **Footpaths and Bicycle Paths**. Development of new footpaths, and maintenance of existing footpaths may be permitted in protected wetlands and in wetland buffer areas subject to the use restrictions in the zone and the following standards. Development of new bicycle paths may be permitted in wetland buffer areas.

1. Footpaths across protected wetlands may only be developed or maintained without the use of fill material. Bridges shall be used to cross open water areas.

2. Footpaths in protected wetlands shall not restrict the movement of water.

3. Routes for new footpaths shall be chosen to avoid traversing protected wetlands. Footpaths around the perimeter of protected wetlands, and in wetland buffer areas, are preferred.

4. Routes for new **bicycle paths** shall not be located in protected wetlands but may be located in wetland buffer areas.

5. Footpaths and bicycle paths within protected wetlands and wetland buffers shall be constructed of permeable material.

H. **Wetland Enhancement.** Efforts to enhance wetland values include removal of nonnative vegetation from a wetland, planting native wetland plant species, excavation to deepen wetland areas, placement of bird nesting or roosting structures, fish habitat enhancements, hydraulic changes designed to improve wetland hydrology, removal of fill material, adding new culverts under existing fill, and similar acceptable activities. Wetland enhancement **may be permitted** in protected wetlands and in wetland buffer areas subject to the use restrictions in the applicable zone, and subject to these standards:

1. An enhancement plan must be prepared by a qualified wetland professional before an enhancement project can proceed. The plan must describe the proposal; identify the wetland functions or values to be enhanced; identify a goal or goals for the project; and describe evaluation techniques to be used to measure progress toward project goals. The project must follow the approved plan.

2. All components of the enhancement plan (planning, design, construction, cleanup, maintenance, monitoring, and remedial activity) must comply with applicable standards in this section.

I. **Excavation.** Excavation in protected wetlands and in wetland buffer areas for any purpose must meet the following standards:

1. Excavation for purposes of gravel, aggregate, sand or mineral extraction is not permitted.
2. Excavation for utility trenches in wetland buffer areas is subject to the following standards:
  - a. Material removed from the trench is either returned to the trench (back-fill), or removed from the wetland area. Side-casting into a protected wetland for disposal of material is not permitted;
  - b. Topsoil shall be conserved during trench construction or maintenance, and replaced on the top of the trench; and
  - 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.
3. Excavation for building footings in protected wetlands is subject to the following standards:
  - a. Material removed for approved footings is either returned to the trench (back-fill), or removed from the protected wetland or wetland buffer area. Side-casting for disposal of material is not permitted;
  - b. Disturbance of wetland vegetation and topsoil during footing construction shall be minimized; and
  - c. The ground elevation around a footing shall not be altered as a result of excavation for the footing, unless required to meet building code requirements for positive drainage. Finish elevation shall be generally the same as starting elevation.
4. Excavation for wetland enhancement is subject to the following standards:
  - a. No more material than necessary and specified in the enhancement plan shall be excavated; and

b. Side-casting for disposal of excavated material is not permitted; however, excavated material may be placed in a protected wetland or wetland buffer area for enhancement purposes as specified in the enhancement plan.

J. **Stormwater Management.** Management of stormwater flowing into protected wetlands or wetland buffer areas is subject to the following standards:

1. The City recognizes that stormwater is an important component of wetland hydrology, and it shall regulate flow of stormwater into or out of protected wetlands and wetland buffers to ensure no net loss of wetland functions and values. It is the policy of the City that all stormwater that would naturally flow into protected wetlands and wetland buffers shall continue to flow into protected wetlands and wetland buffers in accordance with this Chapter. Uses and activities intended to remove storm water away from or around protected wetlands and wetland buffers or to move storm water within a protected wetland or wetland buffer are prohibited unless undertaken as part of an approved wetland mitigation or enhancement plan.

2. A stormwater management plan shall be required of the applicant and reviewed and approved by the public works director for the following types of developments where stormwater will move from the site into protected wetlands:

- a. New building covering more than two hundred square feet; or
- b. New addition covering more than two hundred square feet; or
- c. New road or driveway; or
- d. Road or driveway expansion; or
- e. New parking lot or parking lot expansion; or
- f. Point source stormwater discharge; or
- g. Diversion of stormwater for any reason within the protected wetland or wetland buffer.

3. A **stormwater management plan must include all information necessary to demonstrate to the public works director** that the proposed stormwater management system will maintain pre-construction activity, or background, water quality and similar flow characteristics (e.g., volume, velocity, and duration) and be consistent with the standards of this Chapter. The stormwater management plan shall provide the following in addition to any information requested by the public works director:

- a. Property description
- b. Site map or maps, drawing or specifications detailing the design, route, and location of the stormwater management system.

c. A map or model of drainage patterns and stormwater flow before and after the development or activity; impacts to water quality in the wetland, changes to water quantity and timing that may adversely affect wetland function (e.g., affects of rapidly fluctuating water levels on amphibian egg masses, scour impacts to vegetation) and potential for sediment deposition into the wetland or wetland buffer.

d. Best management practices and methods of treatment that will maintain or improve background levels of water quality, which includes but is not limited to: dissolved oxygen levels; pH; temperature; total dissolved solids; and contaminants.

e. An agreement to be recorded on the title obligating any owner of the property to remove contaminants from stormwater flowing from anywhere on the wetland lot-of-record into the protected wetland or wetland buffer, including a description of the plans to maintain methods used by the applicant to remove contaminants per section 17.43.050(J)(4)..

#### 4. Standards

a. Stormwater runoff should be directed toward the same drainage system that would have handled the runoff under natural conditions. Where the public works director determines that stormwater volumes are or will be significant, stormwater management systems must disperse and potentially delay stormwater rather than discharging it at a single point.

b. Stormwater flowing onto protected wetlands and wetland buffers from any use or activity permitted under this Chapter 17.43 shall be treated to remove contaminants and sediment. There shall be a preference for passive methods of stormwater management, which may include but are not limited to: bioretention and rain gardens; vegetated swales, buffers and strips; roof leader disconnection; and impervious surface reduction and disconnection.

c. Where the use or activity involves point source water discharge, new or modification of an existing road or parking lot, one or more active methods shall be employed including but are not limited to: catch basins and catch basin inserts; hydrodynamic separators; media filters; and advanced water treatment.

**K. Mitigation.** All projects involving development, 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.

1. Construction management practices will be employed in protected wetlands, wetland buffer areas, and the upland portion of a wetland-lot-of-record that address impacts to wetland values and function. Impacts to be avoided or minimized include turbidity, erosion, sedimentation, contamination with construction waste or debris, unnecessary or excessive vegetation removal or damage. At a minimum, erosion fencing shall be installed around protected wetlands and wetland buffers. Construction equipment shall be kept out of protected wetlands and wetland buffers unless required for an approved use and signs posted at appropriate intervals intended to restrict entry by equipment or personnel. Construction debris shall be removed from the site and properly disposed of. Chemicals, paints, and solvents, including paint tools, masonry equipment, and drywall tools, shall be used, cleaned, and stored in a manner that does not degrade water quality. Any and all washdown of concrete

trucks shall occur offsite. The Planning Commission shall require preparation of a detailed management program indicating how these requirements are to be addressed.

2. Activities and development in protected wetlands or wetland buffer areas may be approved only after the following list of alternative and mitigating actions, listed from highest to lowest priority, have been considered and a mitigation plan has been approved:

a. Limiting the project to the upland portion of the wetland lot-of-record, exclusive of wetland buffer or protected wetland;

b. Limiting the project to the upland portion of the wetland lot-of-record and the wetland buffer;

c. Rectifying the impact by repairing, rehabilitating, or restoring the affected wetland and wetland buffer area (this would include removing wetland fills, rehabilitation of a resource use and/or extraction site when its economic life is terminated, etc.);

d. Reducing or eliminating the impact over time by preservation and maintenance operations.

3. If limiting the development or activity to the upland portion of the wetland lot-of-record per subsection 17.43.050.K.2(a) is not possible, the Planning Commission shall require a written mitigation plan prepared by a qualified wetland professional as a condition of approval. The mitigation plan shall address anticipated impacts of the proposed development on the wetland or wetland buffer and shall propose measures to mitigate the onsite impacts to the protected wetland and wetland buffer to the maximum extent possible, including but not be limited to, the restoration of native vegetation; restoration of hydric soil; restoration of the clay pan or other natural water barriers; restoration of natural slopes and contours; restoration of natural drainage or water flows; restoration of the wetland's nutrient cycle; and the restoration of wildlife habitat that may be impacted by the proposed develop or activity. The mitigation plan will remain in effect for a period of five years following completion of the development or project, unless extended for non-compliance, with an affirmative obligation on the part of the applicant to restore or repair mitigation efforts, as required by conditions through the end of the effective period.

a. Upon approval, the mitigation plan shall be integrated with the design package, and it shall be the responsibility of building officials to confirm compliance with the mitigation plan issuing a certificate of occupancy. In the event that mitigation efforts are not completed when occupancy is requested, the owner or the owner's agent may certify in writing that owner or its agent will complete the mitigation plan within a specified period. The certification shall represent the owner's or owner's agent's agreement in exchange for granting the certificate of occupancy that the mitigation plan will be completed in accordance with its terms.

b. If a landowner or responsible party fails to implement a mitigation plan, the City may undertake any action necessary to comply with mitigation plan and all associated costs and accrued interest thereon will become the immediate responsibility of the landowner or responsible party.

4. Any combination of the actions in subsection (K)(2) may be required to implement mitigation requirements.

5. The US Army Corps of Engineers or the Division of State Lands often require compensatory mitigation (subsection (K)(2)(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 following standards:

1. Tree removal in protected wetlands and in wetland buffer areas shall be consistent with the criteria and standards in Chapter 17.70, tree removal.

2. Tree removal and pruning prohibited unless:

a. Necessary for placement of a dwelling or driveway approved pursuant to this chapter including required vehicular and utility access, subject to the requirements in Section 17.70.030(B) and (Q);

b. Necessary for maintenance of an existing dwelling or driveway;

c. Necessary for correction or prevention of foreseeable danger to public safety, or a foreseeable danger of property damage to an existing structure; or

d. Part of an approved restoration, enhancement or compensatory mitigation plan.

3. The fact that a tree or part thereof is or may be dead or compromised (e.g., a snag) is not sufficient criteria for its removal or pruning unless the property owner demonstrates foreseeable danger to public safety, or a foreseeable danger of property damage to an existing structure. An application for the removal of a dead tree shall require an ISA Tree Hazard Evaluation Form prepared by a certified arborist at the property owner's sole expense.

4. Tree trunks, stumps, roots, and bows of trees removed or pruned on protected wetlands and wetland buffers pursuant to this chapter shall be left by the property owner in situ. When a tree is removed, it shall be topped at the highest point possible that avoid hazards while leaving as much stump as possible for wildlife habitat.

5. In all cases, removal or pruning of trees from protected wetlands and wetland buffers must follow best professional standards to ensure protected wetlands and wetland buffer areas are not compromised.

6. Any tree removed in accordance with this Chapter or damaged by activities authorized under this Chapter shall be replaced by the property owner with a tree on the wetland lot-of-record of the same species.

7. Removal of vegetation, except trees covered by Chapter 17.70, in protected wetlands and in wetland buffer areas is permitted only if:

- a. Necessary for placement of a structure for which a building permit has been issued (or for which a building permit is not needed); or
- b. Necessary for maintenance of an existing structure, road or pathway; or
- c. Necessary for correction or prevention of a hazardous situation; or
- d. Necessary for completion of a land survey; or
- e. Part of an approved restoration, enhancement or compensatory mitigation plan.

Vegetation removal permitted under subsections L2a through e in a protected wetland shall be the minimum necessary and in no case shall it substantially impair wetland functions and values. Vegetation removal permitted under subsections L2a through e in a wetland buffer area shall be the minimum necessary.

8. Pruning or mowing of vegetation in protected wetlands and in wetland buffer areas is **permitted** only if:

- a. Necessary for placement of a structure for which a building permit has been issued (or for which a building permit is not needed); or
- b. Necessary for maintenance of an existing structure, road or pathway; or
- c. Necessary for correction or prevention of a hazardous situation; or
- d. Necessary for completion of a land survey; or
- e. Part of an approved restoration, enhancement or compensatory mitigation plan; or
- f. Part of a landscape plan approved by the city in **conjunction** with a building permit that minimizes adverse impacts on protected wetlands.

Pruning or mowing permitted under subsections L3a through f in a protected wetland shall be the minimum necessary and in no case shall it substantially impair wetland functions and values. Pruning or mowing permitted under subsections L3a through f in a wetland buffer area shall be the minimum necessary.

9. **Planting new vegetation** in protected wetlands is permitted subject to the following standards:

- a. The planting is part of an approved restoration, enhancement or mitigation plan; or
- b. The planting is part of a landscape plan involving native wetland plant species, and the plan is approved by the city in conjunction with approval of a building permit; or
- c. The planting is intended to replace dead or damaged plants that were either part of a maintained landscape or part of the existing wetland plant community.

10. Planting new vegetation in wetland buffer areas is permitted as part of a managed garden or landscape.

11. Vegetation management practices will be employed in protected wetlands and in wetland buffer areas that minimize short-term and long-term adverse impacts on wetlands. Impacts to be avoided or minimized include turbidity, erosion, sedimentation, contamination with chemicals, unnecessary or excessive vegetation removal, or substantial alteration of native wetland plant communities. The following are not permitted as part of a vegetation management plan for protected wetlands or wetland buffer areas: alteration of wetland hydrology, use of herbicides, or application of soil amendments or fertilizer.

**M. Land Divisions.** Subdivisions, replats, partitions, and property line adjustments are prohibited in protected wetlands and wetland buffer areas. Subdivisions, replats, partitions, and property line adjustments of the upland portion of a wetland lot-of-record are subject to the following standards:

1. Preliminary plat maps for proposed subdivisions, replats and partitions involving a wetland lot-of-record must show the wetland-upland boundary, as determined by a wetland delineation prepared by a qualified wetland professional. The city may seek independent expert opinion when reviewing a wetland delineation. A qualified wetland professional retained or hired by the city under this subsection is expected to render independent expert opinion, consistent with the Society of Wetland Scientists Code of Ethics.

2. Subdivisions, replats, partitions and property line adjustments of upland portions of a wetland lot-of-record are permitted subject to the following standards:

a. Upland portions of a wetland lot-of-record that is subject to subdivision, replats, partitions or property line adjustments must meet the minimum parcel dimension requirements for the parcel's base zone.

b. There are two options for the size of the newly-created lot or parcel that contains wetlands and/or wetland buffer areas. If the newly-created lot or parcel is subject to a recorded conservation easement in perpetuity and transferred to the City at its discretion or an accredited land trust, there is no requirement for additional upland area. By contrast, if the newly-created lot or parcel will remain in the buildable lands inventory, the lot or parcel that contains wetlands and/or wetland buffer areas must also include a minimum of two thousand five hundred square feet of buildable upland area. .

c. Protected wetlands and wetland buffer areas may be counted towards meeting the base zone's minimum lot size for each lot, and may not be included in front, side and rear yard setbacks.

d. Utility lines, including but not limited to, water lines, sewer lines, and storm water lines shall not be located in protected wetlands or wetland buffer areas, unless there is no alternative to serve lots meeting the standards of this subsection.

e. Streets shall not be located in protected wetland or wetland buffer areas.

3. Once a site has been subdivided, replatted, partitioned or lot lines adjusted subject to this subsection, no further land division or adjustment shall be permitted on any of the resulting lots or parcels.

4. For lots or parcels created subject to these provisions, the existence of protected wetland or wetland buffer areas shall not form the basis for a future setback reduction or variance request. (Ord. 94-29 § 2)

**B. Reasonable use of a wetland lot-of-record** is defined as an upland portion of the wetland lot-of-record that can accommodate 1,000 square feet of lot coverage. This section defines the accommodations that can be made to allow reasonable use of a wetland lot-of record in the event uplands are not sufficient to allow such reasonable use.

1. **Buffer Averaging.** Where the upland portion of the lot-of-record cannot accommodate one thousand square feet of lot coverage, buffer averaging to allow reasonable use of a parcel may be permitted when all of the following are met:

a. No feasible alternatives to the site design to accommodate one thousand square feet of lot coverage could be accomplished without buffer averaging; and

b. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by an assessment from a qualified wetland professional; and

c. The total buffer area after averaging is equal to the area required without averaging; and

d. The buffer at its narrowest point is never less than 75 percent of the required width (i.e., 75% of 50 feet = 37.5 feet).

2. **Wetland Buffer Reduction (Up to 50 Percent for Undeveloped Properties).** Where reasonable use cannot be obtained through the combination of upland areas and buffer averaging, the wetland buffer may be reduced by application to the Planning Commission up to 50 percent where equal or better protection for identified resources will be ensured through restoration, enhancement, and similar measures. Specifically, the following criteria and conditions must be met to be eligible for a wetland buffer reduction. The applicant must demonstrate that:

a. The application of the wetland buffer to the lot or parcel precludes all reasonable use of the lot or parcel and renders it not buildable, after consideration of all applicable limitations and restrictions in this code; and

b. The lot or parcel is a wetland lot-of-record in existence prior to the Effective Date in 17.43.010(D) (i.e., buffer reduction is not available for land divisions); and

c. The lot or parcel must be combined for development purposes with contiguous lots or parcels in the same ownership on the effective date of the ordinance codified in this chapter; and

d. The proposed development shall minimize disturbance to the wetland buffer area by utilizing design options to minimize or reduce impacts of development: (i) multistory construction shall be used;

(ii) parking spaces shall be minimized to no more than that required as a minimum for the use; (iii) no accessory structures allowed; (iv) paving shall be pervious; (v) engineering solutions shall be used to minimize additional grading and/or fill; and

e. The proposed development or activity is designed to minimize intrusion into the wetland buffer area. Specifically, the use or activity is designed using up to a 50 percent adjustment to any dimensional standard (e.g., front yard, side yard or other setbacks) to permit development as far outside or upland of the wetland buffer area as is possible; and

f. The protection of the wetland can be assured through restoration, enhancement, and other similar measures in the wetland buffer area in accordance with subsection 17.43.050(K).

3. Siting for Development. Where combined uplands, buffer averaging, and buffer reduction do not permit reasonable use of a wetland lot-of-record, minimum development of the wetland overlay area necessary to avoid a taking claim shall be permitted subject to compliance with the following standards:

a. The lot or parcel must be combined for development purposes with contiguous lots or parcels in the same ownership on the Effective Date of the ordinance codified in this Chapter; and

b. The building footprint encroaching into the wetland overlay area shall be limited to that which is the minimum necessary to obtain reasonable use of the property; and

c. The application of the wetland overlay zone to the lot or parcel precludes all reasonable use of the parcel and renders it not buildable, after consideration of all applicable limitations and restrictions in this code; and

d. Preference in location of the building footprint shall be given to areas devoid of native vegetation; and

e. Application may be made to the Planning Commission to **adjust the underlying zone setback standards** to the extent necessary to reduce or minimize encroachment into the protected wetland or wetland buffer area. The Planning Commission may approve an application for up to a 50 percent adjustment to any dimensional standard (e.g., front yard, side yard or other setbacks) to permit development as far outside or upland of the protected wetland and wetland buffer area as possible; and

f. The proposed development shall minimize disturbance to the protected wetland and wetland buffer area by **utilizing design options to minimize or reduce impacts** of development including but not limited to multistory construction, minimizing parking, garage space, and paving and use of retaining walls or other engineering solutions to minimize filling and grading; and

g. In no case shall the **impermeable surface area** of the residential use (including building footprint, driveway, and parking areas and accessory structures) exceed 1,000 square feet within **wetland overlay areas**; and

h. All applicable general criteria in 17.43.050, including minimum restoration and enhancement requirements shall be met.