



# Cannon Beach Planning Commission

## Staff Report:

ZO 23-02, CITY OF CANNON BEACH REQUEST FOR AN ORDINANCE AMENDMENT TO CHAPTER 17.43 WETLANDS OVERLAY ZONE OF THE CANNON BEACH MUNICIPAL CODE, TITLE 17, ZONING. THE REQUEST WILL BE REVIEW AGAINST THE CRITERIA OF MUNICIPAL CODE 17.86.070 AMENDMENTS, THE STATEWIDE PLANNING GOALS, AND APPLICABLE OREGON ADMINISTRATIVE RULES.

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**Agenda Date:** March 7, 2024

**Prepared By:** Community Development Department

## General Information

### Notice

Public notice for this January 25, 2024 Public Hearing is as follows:

A. Notice was posted at area Post Offices.

### Disclosures

Any disclosures (i.e. conflicts of interest, site visits or ex parte communications)?

### Exhibits

The following Exhibits are attached hereto as referenced. All amendment documents for this ordinance amendment were available at the Cannon Beach Community Development office on February 15, 2024.

#### **“A” Exhibits – Ordinance Amendment Materials**

**A-1** Wetlands Overlay Zone Amendments.

**A-2** ESEE Analysis

**A-3** Staff response to DLCD comments

**A-4** Wetland Overlay Zone maps

#### **“B” Exhibits – Agency Comments**

**B-1** DLCD letter dated February 15, 2024.

**B-2** DLCD Email dated February 23, 2024

#### **“C” Exhibits – Public Comment**

**C-1** Letter and Wetland Overlay Zone comments from Mirth Walker

No other written comments received as of this writing.

## SUMMARY AND BACKGROUND

The city of Cannon Beach Planning Commission is holding its second evidentiary hearing regarding a proposed amendments to Chapter 17.43 Wetlands Overlay Zone. The amendments are summarized below. The amended ordinance is presented in Exhibit A-1, and Exhibit A-2 provides a summary of the amendments along with findings demonstrating compliance with the applicable Economic, Social, Environmental and Energy consequences (ESEE) and the Statewide Planning Goals. Exhibit A-3 provides a response to DLCD comments (Exhibit B-2), and Exhibit A-4 includes the wetland maps.

During this hearing, and possible future hearings on the matter, the Planning Commission will hear evidence regarding the proposal, conduct deliberations, and make a recommendation to the City Council regarding the proposed code reorganization. This is an opportunity for everyone who has an interest in the reorganization to have their voices heard. The City Council will then hold a public hearing where it will likewise hear evidence and conduct deliberations before making a decision on the proposed revisions. The date of the initial evidentiary hearing before the City Council is to be determined.

At the conclusion of the previous February 15, 2024 hearing, the Planning Commission directed amendments to be made to the draft Wetlands Overlay Zone. The desired changes are reflected in the revised draft, and they are summarized as follows:

- Generally accepted Mirth Walker’s (professional wetland biologist who submitted detailed written comments) suggested revisions because I believe they are beneficial amendments.
- Removed references to “reasonable use” upon Bill Kabeiseman’s recommendation.
- Removed the LIDA definition because the term is not used in the chapter.
- Moved Table 17.43-1 from 17.43.050 to 17.43.040 Administration per Bill’s recommendation. The Planning Commission reference was also included.
- Returned to the “averaging” terminology.
- Amended the site alternatives analysis language in 17.43.060 E. to coincide with the approval criteria in 17.43.070 C.
- Clarified that with buffer averaging, mitigation is required in cases where there is insufficient upland area to expand the buffer to compensate or “average” for the buffer area to be developed (17.43.070 C.2.f).
- Returned to “protected” wetlands terminology per Mirth Walker’s recommendation.

The Urbsworks team will provide an overview of the proposal and the amendments made in response to comments received from the public and Planning Commission. Then the Planning Commission will accept testimony during the hearing. The Planning Commission will deliberate and then decide what action will be taken such as continuing the hearing or making a formal recommendation to the City Council.

## APPLICABLE CRITERIA AND FINDINGS

### 17.86.070 Criteria

- A. Before an amendment to the text of the ordinance codified in this title is approved, findings will be made that the following criteria are satisfied:*

1. *The amendment is consistent with the comprehensive plan;*
2. *The amendment will not adversely affect the ability of the city to satisfy land and water use needs.*

**Staff comment:** The proposed amendments are consistent with the City of Cannon Beach Comprehensive Plan and will not adversely affect the ability of the City to satisfy land and water use needs based on the following:

- The proposed amendments feature several improvements in organization and clarification of requirements. The revisions are also intended to provide greater wetland protection while continuing to allow for reasonable development on properties that contain wetlands and wetland buffer areas.
- Citizen Involvement Policy 1. States “Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies.” Adequate notice and opportunity to comment have, and will continue to be given to the public. In addition, providing a reorganized Wetland Overlay Zone that is easier to read and understand will support this plan policy.

## CHAPTER 17.43 WETLANDS OVERLAY (WO) ZONE

### Comments

### DRAFT 3.5.24

#### 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.

In addition to protecting the wetland values described above, this chapter seeks to provide for reasonable development and use of properties that are within the Wetlands Overlay Zone.

#### 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.

"Building coverage" means the portion of the lot area that is covered by buildings. The area of the buildings shall be measured at their exterior perimeter. Buildings include dwellings, accessory structures, garages, and carports.

"Buffer ~~redistribution~~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 common ownership including 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.

"Invasive species: means non-native and noxious plants as identified by the Oregon Department of Agriculture (<https://www.oregon.gov/oda/programs/Weeds/OregonNoxiousWeeds/Pages/AboutOregonWeeds.aspx>).

## Exhibit A-1

"Lot coverage" as currently defined in 17.040.335.

"Low Impact Development Approaches" (LIDA) mitigate the impacts of increased runoff and stormwater pollution using a set of planning, design, construction techniques and stormwater management approaches that promote the use of natural systems for infiltration, evapotranspiration and reuse of rainwater. LIDA can ~~occur~~be applied at a wide range of landscape scales (i.e., regional, neighborhood and site) and include, but are not limited to, green roofs, porous pavement, and vegetated stormwater management ~~approaches~~facilities.

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

"Point source stormwater discharge" means water from precipitation, surface or subterranean water from any source, drainage and nonseptic wastewater that flows from any discernible, confined, discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, or vessel.

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 [Professional Certification Program](#); 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, [the Western Mountain, Valleys and Coast regional Supplement](#) and supporting guidance~~;~~ and preparing wetland reports [permits](#), and mitigation plans; or

Four years of related work experience and training; minimum of two years' experience delineating wetlands using the 1987 Corps Manual, [the Western Mountain, Valleys and Coast regional Supplement](#) and supporting guidance~~;~~ and preparing wetland reports, [permits](#), and mitigation plans.

"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~~previous 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.

## Exhibit A-1

“Upland” as used in this title is the portion of a wetland lot-of-record that is neither protected wetland or wetland buffer area.

“Utilities, underground or above ground” refers to City provided utilities as defined in Chapter 13.03.010 as well as private utilities such as but not limited to natural gas, electric, cable, and telecommunications infrastructure. Such utilities may occur below ground surface, at ground surface, or supported above ground surface.

“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).

~~(Ord. 94-29 § 1)~~

“Wetland buffer area” means a 50-foot-wide non-wetland area surrounding the delineated boundary of a protected wetlands within the Wetlands Overlay (WO) zone. (Ord. 94-29 § 1)

“Wetland creation” means to convert an upland or a wetland buffer that has never been a wetland to a wetland. The assumption that a creation site has never been a wetland is based on soils mapping, the interpretation of historical aerial photographs, and any other available information.

“Wetland, degraded” as defined by the Oregon Department of State Lands means a wetlands with diminished functions and values. Degradation must include hydrologic manipulation (such as diking, draining, or filling) that demonstrably interferes with the normal functioning of wetland processes.

“Wetland delineation” means a determination of the presence of wetlands and other waters that includes marking boundaries on the ground and on a detailed map prepared by professional land survey or similar accurate methods. The delineation is to be undertaken in accordance with a method acceptable to the US Army Corps of Engineers and the Oregon Department of State Lands. (Ord. 9429 § 1)

“Wetland delineation map” means a map included in a wetland delineation report or provided with a Jurisdictional Determination by the Oregon Department of State Lands that shows the tax lot(s) and study area(s) investigated and the location, size, and boundaries of all wetlands and other waters.

“Wetland determination” means a decision that a site may, does, is unlikely to, or does not contain waters of the state of Oregon. A determination does not include the exact location or boundaries of water of the state of Oregon.

“Wetland enhancement” means to improve the condition and increase the functions and values of an existing degraded wetland.

“Wetland functions and values” means those ecological characteristics or processes associated with wetlands, and the societal benefits derived from those characteristics. The ecological characteristics are “functions,” whereas the associated societal benefits are “values.” The Oregon Department of State Lands has approved methods to measure these functions and values in Oregon Administrative Rule 141-085.

## Exhibit A-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 mitigation, compensatory” means the creation, restoration, or enhancement of a wetland area to maintain the functional characteristics and processes of the wetland system, such as its natural biological productivity, habitats, aesthetic qualities, species diversity, open space, unique features, and water quality.

“Wetland Overlay Zone” includes [protected](#) wetlands and wetland buffer areas that are subject to the provisions of this chapter.

“Wetland, [protected](#)” is an area in the [Wetlands Overlay](#) zone that has been identified on the Cannon Beach Local Wetlands Inventory (LWI) or on a subsequent wetland delineation as [significant](#) wetlands. They are areas 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. Note that federal and state protections also exist, and the applicant is also responsible for addressing such regulations. Should discrepancies exist between federal and state wetland delineation jurisdiction, city-[protected](#) wetlands shall match state regulated wetland boundaries.

“Wetland restoration” means to reestablish a former wetland.

### 17.43.020 Mapping

- A. The maps identifying the Wetland Overlay (WO) zone boundaries shall be maintained and updated as necessary by the city. The Cannon Beach Local Wetlands 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 original 1994 LWI is based upon wetland determinations, and subsequent updates will generally be wetland delineations. The WO zone includes both [protected](#) wetlands and wetland buffer areas.
- B. Site-specific wetland delineations are required to determine the exact location of the WO zone boundary prior to development proposed within a [protected](#) wetland or wetland buffer identified in the Cannon Beach LWI. For properties that only include wetland buffer areas, the applicant may choose to rely upon the buffer area shown in the Cannon Beach LWI maps or provide a wetland delineation ~~or determination~~ to establish the wetland buffer boundary [when permission to access the off-site wetland boundary is received from the off-site property owner. If permission to access is denied or not attainable, then the applicant may conduct a wetland determination to estimate and map the location of the off-site wetland boundaries and on-site wetland buffers. These wetland determinations are to be based on review of off-site vegetation conditions, topography, soil mapping, aerial photographs, and any other available information without physically accessing the off-site property.](#)
- C. When a report or opinion from a qualified wetland professional is submitted by an applicant, the approval authority may seek an independent expert opinion when reviewing the report or opinion

## Exhibit A-1

[or rely on the Oregon Department of State Lands approval of a wetland determination or delineation report](#). 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.

- D. Where a wetland delineation [report](#) is approved by DSL, it shall be accepted by the City, and the mapping it contains shall replace that of the Cannon Beach LWI. A map refinement based on a delineation shall remain valid for the purpose of locating the WO [zone](#) boundary unless a subsequent delineation of the wetland boundary is approved by DSL. Any wetland delineation submitted to the City shall be accompanied by an electronic shapefile.
- E. [Portions of protected w](#)Wetlands that are legally filled under this chapter are no longer wetlands but shall change to wetland buffer areas under this overlay zone. Wetland buffer areas that are legally [filled-impacted](#) under this chapter ~~remain as~~ [are no longer](#) wetland buffer areas. (Ord. 08-1 § 40; Ord. 94-29 § 2). When the wetland boundary from a delineation or determination is updated as described in this section, the corresponding wetland buffer shall be determined based upon the updated wetland boundary.

### 17.43.030 Applicability

The regulations of this chapter apply to the portions of all properties that contain [protected](#) wetlands or wetland buffer areas as shown on the city LWI maps or as described in a wetland delineation or determination as ~~described-provided~~ in Section 17.43.020.

### 17.43.040 Administration

- A. Activities permitted outright according to Table 17.43-1 shall be reviewed as a Type 2 Administrative review as provided in Section 17.92.010 C. 2.
- B. All other development or activities within the Wetlands Overlay Zone shall be reviewed [according to Table 17.43-1](#) as a Planning Commission decision as provided in Chapter 17.88.

**[Table 17.43-1 Review Procedure for Development and Activities within the WO Zone](#)**

<a href="#">Development or Activity</a>	<a href="#">Review Process</a>
<a href="#">Vegetation management only to the extent necessary for hazard prevention</a>	<a href="#">Type 2 Administrative review</a>
<a href="#">Wetland Lot-of-Record Development</a>	<a href="#">Planning Commission review</a>
<a href="#">Streets</a>	
<a href="#">Sidewalks, Pathways, and Trails</a>	
<a href="#">Utilities</a>	
<a href="#">Land Divisions and Lot Line Adjustments</a>	
<a href="#">Stormwater Management</a>	
<a href="#">Wetland Mitigation and Wetland Enhancement</a>	

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<u>Development or Activity</u>	<u>Review Process</u>
<u>Vegetation Management for removal of non-native vegetation and replacement with native vegetation of similar structure</u>	

### 17.43.050 Development and Activities Permitted

- A. Uses and activities listed in Table 17.43-1 may be permitted in protected wetlands and wetland buffer areas, when it is determined that ~~a reasonable~~ development and use of property, as described-provided in Section 17.43.070, is not possible without locating a portion or all of the development within wetland buffer or wetland areas. When a development permit is approved, it shall comply with the provisions of this title and the applicable standards in Section 17.43.070.
- B. Uses and activities that may be permitted in protected wetland and wetland buffers are shown in Table 17.43-1. When another provision of the Cannon Beach Municipal Code conflicts with this chapter or when the provisions of this chapter are in conflict, that provision which provides greater environmental protection to wetlands and/or wetland buffer areas shall apply, unless specifically provided otherwise in this chapter or such provision conflicts with federal or state laws or regulations.
- C. Uses and activities in existence approved by the approval 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 do not conform with the development standards for permitted ~~or conditional~~ uses set forth herein may qualify as a “nonconforming use” as provided Chapter 17.82.
- ~~D. The following development and activities may be permitted within wetlands and wetland buffer areas subject to the review procedures shown in Table 17.43-1.~~

**Table 17.43-1 Review Procedure for Development and Activities within the WO Zone**

<u>Development or Activity</u>	<u>Review Process</u>
<u>Vegetation management only to the extent necessary for hazard prevention</u>	<u>Type 2 Administrative review</u>
<u>Wetland Lot of Record</u>	
<u>Streets</u>	
<u>Sidewalks, Pathways, and Trails</u>	
<u>Utilities</u>	
<u>Land Divisions and Lot Line Adjustments</u>	
<u>Stormwater Management</u>	
<u>Mitigation and Wetland Enhancement</u>	
<u>Vegetation Management (beyond hazard prevention)</u>	

## 17.43.060 Application Submittal Requirements

- A. Information Requirements. Information provided on the development plan shall conform to the following:
1. Drawings, along with an electronic copy, depicting the proposal shall be presented on sheets not larger than 24 inches by 36 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~~development plan, drawn to scale, shall indicate the following site characteristics:
1. A survey of the property by a licensed land surveyor clearly delineating the current property boundaries;
  2. Location of the wetland boundary and wetland buffer area;
  3. Location and species of trees greater than 6 inches in diameter at breast height (DBH), and an indication of which trees are to be removed or potentially affected by construction activity including trees on 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 2-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.

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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;
  8. Grading and drainage plans, including spot elevations and contours;
  9. Location of areas to be landscaped or retained in their natural state;
  10. Exterior lighting including the type, intensity, height above grade and area to be illuminated; and
  11. Other site elements which will assist in the evaluation of the application.
- E. Site Alternatives Analysis. A site alternative analysis shall be provided. The purpose of the site alternative analysis is to evaluate development options that would avoid any encroachment into the protected wetland buffer or wetland buffer on the property in a manner that can demonstrate compliance with the relevant approval criteria in Section 17.43.070. When encroachment appears necessary, the site alternatives analysis shall be structured using the following sequential steps when it is determined that 1,000 square-foot building coverage and 400 square feet of additional lot coverage for access and parking are not available on the upland portion of the property:
1. Step 1 Setback Reduction. Determine whether the proposed development could be located exclusively on the upland portion of the property if adjustments in Section 17.43.070 C. 1. are utilized~~used~~.
  2. Step 2 Setback Reduction and Wetland Buffer Redistribution~~Averaging~~. When the proposed development cannot be located exclusively on the upland portion of the property as provided in Step 1 above, the applicant shall determine if a maximum 25 percent (12.5 feet) encroachment into the wetland buffer would accommodate the proposed development. The analysis shall provide an area calculation for the encroachment into the wetland buffer. To the extent upland area is available on the property, the analysis shall indicate where the wetland buffer will be expanded by an equivalent area to compensate for the wetland encroachment.
  3. Step 3 Setback Reduction and Wetland Buffer Reduction and Mitigation. When the proposed development cannot be located exclusively on the upland portion of the property and with a

## Exhibit A-1

~~minor~~ wetland buffer ~~encroachment averaging~~ as provided in Step 2 above, the applicant shall determine if further reduction of the wetland buffer, excluding wetland encroachment, would accommodate the proposed development. The analysis shall provide the wetland buffer encroachment area calculation and compensation as provided in Step 2 above. [A mitigation plan shall be developed as provided in Section 17.43.060 H.](#)

4. Step 4 Setback Reduction, Wetland Buffer and Wetland Encroachment and Mitigation. When the proposed development cannot be located exclusively on the upland portion of the property and with wetland buffer encroachment as provided in Step 3 above, the applicant shall determine if encroachment into the wetland buffer and the wetland would accommodate the proposed development. To the extent upland area is available on the property, the analysis shall indicate where the wetland buffer will be expanded by an equivalent area to compensate for the wetland encroachment. [A mitigation plan shall be developed as provided in Section 17.43.060 H.](#)
  5. For any type of ~~wetland buffer or protected~~ wetland [or wetland buffer](#) encroachment, the applicant shall provide an explanation of the alternatives considered and the reasons why the site development plan is proposed to [use](#)utilize portions of a wetland or buffer area.
- F. Landscape Plan. Applications that propose development within a [protected](#) wetland or wetland buffer shall include the following:
1. The size, species, and locations of plant materials to be retained or placed on the site, including eradication and replacement of invasive plant species;
  2. The layout of proposed irrigation facilities;
  3. The location and design details of walkways, decks, courtyards, patios, and similar areas;
  4. The location, type and intensity of lighting proposed to illuminate outdoor areas; and
  5. The location and design details of proposed fencing, retaining walls, and screening for service areas.
- G. Stormwater management plan.
1. 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 200 square feet; or
    - b. New addition covering more than 200 square feet; or
    - c. New road or driveway; or
    - d. Road or driveway expansion; or

## Exhibit A-1

- e. New parking lot or parking lot expansion; or
  - f. Point source stormwater discharge; or
  - g. Diversion of stormwater for any reason within the wetland or wetland buffer.
2. 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 Public Works Department standards and the requirements of this Chapter. The stormwater management plan shall provide the following in addition to any information requested by the public works director:
- a. Site map or maps, drawing or specifications detailing the design, route, and location of the stormwater management system.
  - b. 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., [effects](#) of rapidly fluctuating water levels on amphibian egg masses, scour impacts to vegetation) and potential for sediment deposition into the [protected](#) wetland or wetland buffer.
  - c. 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.
- H. When development is proposed within a [protected](#) wetland or wetland buffer as provided in Section 17.43.060 E. 3. or 4., a mitigation plan shall be provided including the following information prepared by a qualified wetland professional. In cases where a Department of State Lands and/or US Army Corps of Engineers permit is required, the mitigation plan approved by either agency shall satisfy this requirement
- 1. Plan Overview including a summary narrative.
  - 2. Proposed impact details:
    - a. Description of existing site conditions within the wetland and the wetland buffer including, but not limited to, hydrologic characteristics, plant communities, and/or ecological conditions.
    - b. Square footage of the proposed encroachment into the wetland buffer and/or wetland.
    - c. [Demonstration of](#) compliance with the applicable provisions in Section 17.43.070 J.
  - 3. Proposed mitigation details:
    - a. On-site mitigation shall first be considered.

## Exhibit A-1

- b. If on-site mitigation is not feasible, off-site mitigation may be proposed with the following supporting information:
  - i. Tax lot and ownership of proposed mitigation site.
  - ii. Justification for why on-site mitigation was not practicable and why the off-site location is appropriate.
- c. An on-site or off-site mitigation plan shall include the following information:
  - i. Existing conditions site plan for the mitigation site, showing [protected](#) wetlands, buffers, and plant communities and/or ecological conditions.
  - ii. Site plan showing proposed restoration or enhancement activities within the wetlands and/or buffer including but not limited to grading, hydrologic improvements, invasive plant removal, native plantings, and habitat structures.
  - iii. An explanation of the rationale for the mitigation area location, including any expansion of the wetland and/or buffer area.
  - iv. Planting plan describing location, species, size, and quantities of plants to be provided.
- d. A monitoring plan shall be provided, to include the following:
  - i. Monitoring schedule including a minimum of once per year during the required 5-year monitoring period.
  - ii. Methods to ensure success and plant replacement as needed.
  - iii. Proposed photo point locations to be used during the monitoring period.
- I. 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 following standards are applicable in all areas under the [W](#)wetlands [O](#)verlay zone.

- A. General Standards.** Uses and activities in [protected](#) wetlands and in wetland buffer areas are subject to the following general standards:
  - 1. The proposed uses and development comply with the applicable requirements in this title unless modified as provided in this chapter.
  - 2. Uses and activities in 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:

## Exhibit A-1

- a. Avoiding the wetland and wetland buffer areas entirely and locating uses and activities on upland portions of the property.
  - b. When development within a wetland and/or wetland buffer is proposed, the applicant shall demonstrate how the affected land area is minimized by utilizing design options to reduce building coverage, such as multistory construction, reducing impervious surface area, grading, and similar actions to the extent possible while properly accommodating the proposed use or activity.
  - c. Where a use or activity must be located in either the 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 Department of State Lands, or written proof of exemption from these permit programs, must be obtained before any of the following activities occur in wetlands:
- a. Placement of ~~and any~~ amount of fill;
  - b. Construction of any pile-support structure;
  - c. Excavation (any amount);
  - d. Compensatory mitigation;
  - e. Wetland restoration; and
  - f. Wetland enhancement.
4. Where a protected wetland is identified by the Cannon Beach LWI 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. Where wetlands occur below the Ordinary High Water Line (or Mark) of the stream, the buffer shall be determined according to the requirements of Chapter 17.71, stream corridor protection.

### B. Wetland Lot-of-Record.

1. Reasonable Permissible use of a wetland lot-of-record is defined as a maximum building coverage of 1,000 square feet and an additional maximum of 400 square feet of lot coverage, for a total lot coverage of 1,400 square feet, as provided in Section 17.43.070 C.
2. The uses and development subject to the reasonable-use provisions in Section B. 1. above include:

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- a. Non-residential structures include commercial, institutional, and other public buildings with a maximum building coverage of 1,000 square feet.
  - b. On-site improvements include driveways, walkways, decks, patios, and parking on the property being developed with a maximum lot coverage of 400 square feet.
3. When it is demonstrated that ~~reasonable~~ use of a wetland lot-of-record is not possible on the upland portion of the property and a hardship would result, the proposed development shall be reviewed in accordance with Section 17.43.070 C.

**C. Approval Criteria for Development Subject to Wetland Lot-of-Record Requirements.** To allow ~~reasonable~~ use of a wetland lot-of-record where sufficient upland area is not available to accommodate up to 1,000 square feet of building coverage and 400 square feet of lot coverage, the applicant shall be entitled to obtain approval for this amount of development by one or more of the four following options, which are presented in order of priority. For all options, upland area shall be utilized to the maximum extent deemed appropriate by the Planning Commission to minimize the amount of ~~wetland buffer or protected~~ wetland or wetland buffer encroachment.

1. Adjustment. An adjustment to the applicable dimensional standards to accommodate all or a portion of the proposed development on available upland portions of the property shall be considered. The Planning Commission may approve an application for up to a 50 percent adjustment to the following development and dimensional standards to accommodate development outside of wetland and wetland buffer areas:
  - a. Building setback requirements of the applicable base zone; and
  - b. Lot dimension requirements of the applicable base zone.
2. Wetland Buffer Redistribution Averaging. Where the upland portion of the lot-of-record cannot accommodate 1,000 square feet of building coverage and 400 square feet of other lot coverage, with an adjustment to the building setback and/or the lot dimension requirements, then minor wetland buffer encroachment shall next be considered to allow ~~reasonable~~ use of a parcel when all the following are met:
  - a. The site alternative analysis prepared by the applicant demonstrates there are no feasible alternatives to the site design to accommodate 1,000 square feet of building coverage and 400 square feet of other lot coverage without utilizing a portion of the wetland buffer; and
  - b. The proposed development or activity is designed to utilize the 50 percent adjustment to the dimensional standards listed in 17.43.070 C. 1. to develop within the available upland to the maximum extent practicable; and
  - c. The reduced buffer width will not result in degradation of the wetland's functions and values as demonstrated by an assessment from a qualified wetland professional; and
  - d. The lot coverage within the wetland buffer does not exceed 1,000 square feet for the building and 400 square feet for other lot coverage.

## Exhibit A-1

- e. The buffer at its narrowest point is never less than 75 percent of the required width or 37.5 feet.
  - f. To the extent upland area on the subject property is available, the wetland buffer area shall be expanded by an equivalent amount to the encroachment into the buffer. If sufficient upland area is not available on the subject property, the application shall satisfy the requirements of Section 17.43.070 C. 3.
  - g. Compliance with the applicable requirements in Sections 17.43.070 E. through M.
3. Wetland Buffer Reduction and Mitigation. Where the upland portion of the lot-of-record cannot accommodate 1,000 square feet of building coverage and/or 400 square feet of lot coverage, and a wetland buffer encroachment greater than 25% percent is necessary, the wetland buffer width may be reduced by the approval authority when all the following criteria are met:
- a. The site alternative analysis prepared by the applicant demonstrates there are no feasible alternatives to the site design to accommodate 1,000 square feet of building coverage and /or 400 square feet of lot coverage without utilizing-using a portion of the wetland buffer; and
  - b. The proposed development or activity is designed to utilize the 50 percent adjustment to the dimensional standards listed in 17.43.070 C. 1. to develop within the available upland to the maximum extent practicable; and
  - c. The reduced buffer width will not result in degradation of the wetland's functions and values as demonstrated by an assessment from a qualified wetland professional; and
  - d. The lot coverage within the wetland buffer does not exceed 1,000 square feet for the building and 400 square feet for other lot coverage; and
  - e. Mitigation for the proposed encroachment into the wetland buffer shall be provided in accordance with Section 17.43.070 J; and
  - f. Compliance with the applicable requirements in Sections 17.43.070 E. through M.
4. Wetland Buffer and Wetland Encroachment and Mitigation. Where the upland portion of the lot-of-record cannot accommodate 1,000 square feet of building coverage and 400 square feet of lot coverage, and the wetland buffer reduction cannot accommodate this amount of development, the approval authority shall allow development first within the wetland buffer and/or second within the protected wetland when all the following criteria are met:
- a. The site alternative analysis prepared by the applicant demonstrates there are no feasible alternatives to the site design to accommodate 1,000 square feet of building coverage and 400 square feet of other lot coverage without utilizing-using a portion of the wetland buffer and/or wetland; and

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- b. The proposed development or activity is designed to utilize the 50 percent adjustment to the dimensional standards listed in 17.43.070 A. 3. to develop within the available upland to the maximum extent practicable; and
- c. The development, with the mitigation required in Section 17.43.070 J., will not result in degradation of the wetland's functions and values as demonstrated by ~~an assessment~~the best professional judgement from a qualified wetland professional using a method accepted by the Oregon Department of State Lands; and
- d. The lot coverage within the wetland buffer and wetland does not exceed 1,000 square feet for building coverage and 400 square feet for other lot coverage; and
- e. Mitigation for the proposed encroachment into the wetland buffer and/or wetland shall be provided in accordance with Section 17.43.070 J; and
- f. Compliance with the applicable requirements in Sections 17.43.070 E. through M.

### D. Approval Criteria for Development Exempt from Wetland Lot-of-Record Requirements.

Development that is not specified in Section 17.43.070 B. shall be subject to relevant requirements in Sections 17.43.070 E. through M. The following improvements are exempt from the wetland lot-of-record requirements but shall comply with all applicable requirements in this chapter:

1. Streets;
2. Public sidewalks, pathways, and trails;
3. Utilities;
4. Land Divisions and Lot Line Adjustments;
5. Stormwater Management;
6. Wetland Mitigation and ~~Wetland~~ Enhancement; and
7. Vegetation Management.

### E. Streets shall comply with following applicable standards:

1. Streets in the WO zone shall be constructed of permeable materials.
2. Streets crossing protected wetlands or wetland buffer areas shall be no wider than 20 feet.
3. Streets in wetlands shall constructed in a manner that allows the free flow of water beneath the street.
4. Streets in wetland buffer areas may be placed on piling or fill, whichever is deemed least impactful by a qualified wetland professional.

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F. **Sidewalks, Pathways and Trails.** Development of new sidewalks, pathways and trails may be permitted in [protected](#) wetlands and in wetland buffer areas subject to the applicable requirements in this title and the following standards:

1. Sidewalks, pathways, and trails across ~~wetlands or~~ wetland buffer areas [or wetlands](#) may only be developed or maintained in a manner that does not restrict water movement. Bridges shall be used to cross open water areas.
2. Routes for new sidewalks, pathways, and trails shall be chosen to avoid traversing wetlands. Route alignments around the perimeter of wetlands, and in wetland buffer areas, are preferred.
3. Sidewalks, pathways, and trails within wetlands and wetland buffers shall be a maximum of 12 feet wide and constructed of permeable material [or on pilings](#).

G. **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 the following standards:

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 wetland area. Side-casting into a 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 by the utility trench construction or maintenance; and
  - d. Routes for new utility trenches shall be selected to minimize vegetation removal and hydraulic impacts on wetlands.
2. Aboveground utilities, including electricity, cable television, and telephone service, may be routed through protected wetlands and wetland buffer 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 wetlands and wetland buffer areas shall be conducted according to the standards in Section 17.43.070 K.

## Exhibit A-1

3. Utility maintenance roads in wetlands and in wetland buffer areas must meet applicable standards in Section 17.43.070 E.
  4. Common trenches, to the extent allowed by the building code, are encouraged to minimize ground disturbance when installing utilities.
  5. Underground utilities shall be routed under disturbed areas such as streets, driveways, and off-street parking areas whenever feasible.
- H. **Land Divisions and Lot Line Adjustments.** In addition to the applicable requirements in Title 16, subdivisions, replats, partitions, and property line adjustments of a wetland lot-of-record are subject to the following standards:
1. The applicable requirements in Title 16.
  2. Preliminary plat maps for proposed subdivisions, replats, partitions, and lot line adjustments involving a wetland lot-of-record must show the [protected](#) wetland and wetland buffer boundaries, as determined by a wetland delineation approved by DSL.
  3. Subdivisions, replats, partitions, and property line adjustments of upland portions of a wetland lot-of-record are permitted subject to the following standards:
    - a. Each proposed lot shall include an upland area that contains a minimum of 1,400 square feet.
    - b. The [protected](#) wetland and wetland buffer area on the subject property shall be retained on one lot.
  - c. Wetlands and wetland buffer areas may be counted towards meeting the dimensional requirements of the base zone.
- I. **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 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 wetlands and wetland buffers shall continue to flow into wetlands and wetland buffers in accordance with this Chapter. Uses and activities intended to remove stormwater away from or around wetlands and wetland buffers or to move stormwater within a wetland or wetland buffer are prohibited unless undertaken as part of an approved wetland mitigation or enhancement plan.
  2. A stormwater management plan, including the required information specified in Section 17.43.060 G. shall be submitted for approval by the public works director according to the following standards:

## Exhibit A-1

- 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.

J. **Wetland Mitigation and Wetland Enhancement.** Except for Wetland Buffer ~~Redistribution Averaging~~ in 17.43.070 C.2., all projects involving development, removal or fill in a protected wetland or wetland buffer must provide a wetland mitigation and/or wetland enhancement plan that meets the following standards to retain wetland functions and values.

1. The proposed activities and development in wetlands or wetland buffer areas satisfy the requirements of Section 17.43.070 B.
2. The wetland mitigation and/or wetland enhancement plan shall be prepared by a qualified wetland professional, and it shall address anticipated impacts of the proposed development on the wetland or wetland buffer along with proposed measures to mitigate the onsite wetland and wetland buffer ~~impacts~~encroachment. Mitigation actions shall include, 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 development or activity.
3. Mitigation ratios. When mitigation is required, the following requirements shall be satisfied:
  - a. When wetland impacts require mitigation per federal or state regulations, then federal or state wetland mitigation ratios will apply, so long as equal to or greater than the City minimum requirement.
  - b. If wetland impacts are below federal and state thresholds for a removal fill permit or are exempt from federal or state regulations, then:
    - i. Wetland mitigation that is provided within the wetland shall require a 1:1 mitigation area ratio within the wetland on the site.
    - ii. Wetland mitigation that is provided within the adjacent wetland buffer shall require a 2:1 mitigation area ratio.

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- c. Wetland buffer mitigation that is provided within the wetland buffer shall satisfy one of the following:
    - i. Wetland buffer mitigation can occur as expansion of buffer at a 1:1 area ratio; or
    - ii. Wetland buffer enhancement of marginal or degraded buffer conditions at a 1:1 area ratio.
  - d. Upon approval, the mitigation plan shall be integrated with the design package, and it shall be the responsibility of the building official to confirm compliance with the mitigation plan before issuing a certificate of occupancy. In the event that mitigation efforts are-have not been completed when occupancy is requested, the owner or the owner's agent may certify in writing that owner or their agent will complete the mitigation plan within a specified period. The certification shall represent the owner's or owner's agent's agreement that in exchange for granting the certificate of occupancy, ~~that~~ the mitigation plan will be completed in accordance with its terms.
  - e. If a landowner or responsible party fails to implement a mitigation plan, the City may undertake any action necessary to comply with the mitigation plan and all associated costs and accrued interest thereon will-shall become the immediate responsibility of the landowner or responsible party.
4. Monitoring results shall be provided to the City on an annual basis prior to the end of the calendar year. If results show a risk of not meeting the success criteria detailed in the monitoring-mitigation plan, then corrective actions to be implemented shall be described in the monitoring report. The mitigation plan will remain in effect for a period of 5 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 ~~condition~~ the approved mitigation plan through the end of the effective period.
- K. **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 wetlands and in wetland buffer areas shall be consistent with the criteria and standards in Chapter 17.70, tree removal.
  - 2. Tree pruning is 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); or
    - b. Necessary for maintenance of an existing dwelling or driveway; or
    - c. Necessary for correction or prevention of foreseeable danger to public safety, or a foreseeable danger of property damage to an existing structure; or

## Exhibit A-1

- 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 a sufficient ~~criteria~~ criterion 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 International Society of Arboriculture (ISA) Tree Hazard Evaluation Form prepared by a certified arborist at the property owner's sole expense.
4. Tree trunks, stumps, roots, and bows-boughs of trees removed or pruned ~~on~~ in 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 avoids s hazards while leaving as much stump or snags as possible for wildlife habitat.
5. In all cases, removal or pruning of trees from wetlands and wetland buffers must follow best professional standards to ensure that wetlands and wetland buffer areas functions and values are not compromised.
6. Any tree removed in accordance with this title or damaged by activities authorized under this title shall be replaced by the property owner with a tree on the wetland lot-of-record of comparable native species.
7. Vegetation removal in a wetland shall be the minimum necessary and in no case shall it substantially impair wetland functions and values. Removal of vegetation, except trees covered by Chapter 17.70, in 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 wetland or wetland buffer mitigation plan.
8. Pruning or mowing of vegetation in wetlands and in wetland buffer areas shall be the minimum necessary and in no case shall it substantially impair wetland functions and values. It is ~~shall be~~ 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

## Exhibit A-1

- 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 wetlands.

~~g. Pruning or mowing permitted under subsections J8a through f in a wetland shall be the minimum necessary and in no case shall it substantially impair wetland functions and values.~~

- 9. Planting new native vegetation in 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 native vegetation in wetland buffer areas is permitted as part of a managed garden or landscape.
- 11. Vegetation management practices will be employed in 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 and~~ substantial alteration of native wetland plant communities. The following are not permitted as part of a vegetation management plan for wetlands or wetland buffer areas: alteration of wetland hydrology, use of herbicides consistent with state and federal regulations, or application of ~~soil amendments or~~ fertilizer.

### L. Construction Standards

- 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, ~~and/or~~ damage to existing vegetation. At a minimum, temporary erosion fencing shall be installed between areas to be disturbed and adjacent wetlands and wetland buffer areas. Construction equipment shall be kept out of wetlands and wetland buffers unless required for an approved use, which will require that ~~and~~ signs are 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 result in discharge of wastewater to waters of the state or placement of pollutants such that

## Exhibit A-1

they could enter waters of the state. Any and all washdown of concrete trucks shall occur offsite. All construction activities shall be conducted as required by the city manager.

2. 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 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.
3. When removal and fill are is approved by the Department of State Lands and/or US Army Corps of Engineers, the requirements of those permits shall prevail. For development approved by the city approval authority, the following standards shall be satisfied:
  - 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 wetlands;
  - d. Fills shall be designed in a manner that complies with Chapter 17.38 Flood Hazard Overlay Zone; and
  - e. Fill side slopes shall be revegetated with native plant species, as recommended by a qualified wetland professional, to stabilize the slope.
5. To avoid harm to wetlands and wetland buffers from excessive traffic and frequent visitors who are unaware of wetland protections, short term rentals shall provide protection signage or education materials regarding wetland protection [on the site](#).
6. Excavation in wetlands and in wetland buffer areas for any purpose must meet the following standards:
  - a. Excavation for purposes of gravel, aggregate, sand, or mineral extraction is not permitted.
  - b. Excavation for utility trenches in wetland buffer areas is subject to the following standards:
    - i. Material removed from the trench is either returned to the trench (back-fill) or removed from the wetland area. Side-casting into a wetland for disposal of material is not permitted;

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- ii. Topsoil shall be conserved during trench construction or maintenance, and replaced on the top of the trench; and
    - iii. 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.
  - c. Excavation for building footings in wetlands is subject to the following standards:
    - i. Material removed for approved footings is either returned to the trench (back-fill), or removed from the wetland or wetland buffer area. Side-casting for disposal of material is not permitted;
    - ii. Disturbance of wetland vegetation and topsoil during footing construction shall be minimized; and
    - iii. 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.
  - d. Excavation for wetland enhancement is subject to the following standards:
    - i. No more material than necessary and specified in the enhancement plan shall be excavated; and
    - ii. Side-casting for disposal of excavated material is not permitted; however, excavated material may be placed in a wetland or wetland buffer area for enhancement purposes as specified in the enhancement plan.
- M. Mapping Delineated Wetlands and Wetland Buffers.** As a condition of approval, the applicant shall provide digital GIS mapping data of the accepted wetland delineation or resulting change in the boundary of a protected wetland and wetland buffer to the city manager for the purpose of updating the city's LWI map file.

## **Wetlands Overlay (WO) Zone Amendments - ESEE Analysis**

**2.15.24**

### **INTRODUCTION**

#### **Cannon Beach LWI and Wetlands Overlay Zone**

The city completed a Local Wetlands Inventory (LWI) in 1993, which covered the entire city. The study was conducted by Fishman Environmental Services, and additional planning assistance was provided by Mark Barnes, a planning consultant. The LWI was incorporated as part of the Cannon Beach Comprehensive Plan on October 5, 1994 (Ordinance 94-28). The current Wetlands Overlay (WO) Zone regulations were adopted as Chapter 17.43 of Title 17 Zoning at that time (Ordinance 94-29).

The current regulations apply to the wetlands that were identified and mapped by Fishman Environmental Services along with a 5-foot wetland buffer area surrounding them. Today, 321 lots are subject to the requirements of Chapter 17.43.

#### **Proposed Wetlands Overlay (WO) Zone Amendments**

The Cannon Beach Planning Commission has determined that the current regulation do not provide adequate wetland protection, and the proposed amendments to Chapter 17.43 include the following:

- Amended definitions to clarify terminology (17.43.015);
- Clarified review procedure (17.43.040 and 17.43.050);
- Expanding the wetland buffer area from 5 feet to 50 feet (17.43.015);
- Adding specific application submittal requirements (17.43.060);
- Reorganized development standards (17.43.070);
- Allowance for up to a 50% reduction to the required building setbacks and lot dimensional standards to provide additional flexibility to reduce the need to develop within wetlands or wetland buffer areas (17.43.070 C. 1.);
- Amended and clarified standards for development (17.43.070);
- Clear standards for development in a wetland lot-of-record for: 1) wetland buffer redistribution, 2) wetland buffer reduction and mitigation, and 3) wetland buffer encroachment and mitigation (17.43.070 C.);
- Amended and clarified standards for land divisions and lot line adjustments (17.43.070 H.);
- Mitigation for development approved within a wetland or wetland buffer that are clear and objective (17.43.070 J.); and
- Minor adjustments to standards for stormwater and vegetation management as well as construction (17.43.070 I., K., and L.).

The wetland regulations in Chapter 17.43 will continue to rely upon the 1993 wetland inventory noted above. The number of affected properties will increase with the proposed expansion of the wetland buffer from 5 feet to 50 feet. A comparison of the land areas subject to the existing code provisions and the land areas subject to the proposed code requirements was conducted. The maps in Exhibit A-3 provide a comparison between the properties affected by the current regulations and the 5-foot wetland buffer and the properties that fall within the proposed 50-foot wetland buffer. Currently, 321 lots are

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subject to the wetland requirements of Chapter 17.43, and the expansion of the buffer area to 50 feet will add 90 lots for a total of 411 lots of which 111 are vacant. Note that the maps also show stream corridors, which were identified in the 1993 Fishman report, but are not regulated by Chapter 17.43.

### ESEE ANALYSIS

The existing and proposed WO District provisions do not completely align with the safe harbor requirements in OAR 660-23-0100(b) because they: 1) allow limited development within a wetland where justification is provided; and 2) a wetland-specific variance process is not provided for hardships. Although a variance request per Chapter 17.84 is available to an applicant, the WO District does not rely on a variance process to address hardship cases. The city concludes that in lieu of a variance process, the proposed application process and approval criteria will do a better job addressing hardships by allowing limited development in a wetland buffer or wetland when sufficient upland area is not available. Because the safe harbor requirements will not be fully adhered to, the requirements of OAR 660-23-0040 and 660-23-0050 must be met.

An ESEE analysis of the Economic, Social, Environmental and Energy consequences of the proposed code amendments is required by OAR 660-023 and described in OAR 660-023-0040 and 0050. This analysis consists of four parts:

1. Identification of conflicting uses (OAR 660-023-0040 (a))
2. Determine the impact area (OAR 660-023-0040 (b))
3. Analysis of ESEE consequences (OAR 660-023-0040 (c))
4. Develop a program to achieve Goal 5 (OAR 660-023-0040 (d))

### Identification of Conflicting Uses

Of the 16 base zoning districts in the city, all of them, except for the IR District, have properties that are, or will be, affected by the WO District requirements as summarized in Table 1. The properties affected are predominantly residential.

**Table 1 – Comparison of Lots Affected by the Existing and Proposed WO District**

ZONE	PARCELS IN WO	LOTS AFFECTED	
		Existing	Additional
RVL – Residential Very Low Density	Yes	6	0
RL – Residential Low Density	Yes	63	12
R1 – Residential Moderate Density	Yes	50	16
R2 – Residential Medium Density	Yes	137	40
R3 – Residential High Density	Yes	25	8
RAM – Residential Alt. - Manufactured Dwelling	Yes	2	9
MP – Manufactured Dwelling - RV Park	Yes	3	0
RM – Residential Motel	Yes	2	1
C1 – Limited Commercial	Yes	15	3
C2 – General Commercial	Yes	2	0
IN – Institutional	Yes	7	1
IR – Institutional Reserve	No	0	0

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ZONE	PARCELS IN WO	LOTS AFFECTED	
		Existing	Additional
PK – Park Management	Yes	4	0
E – Estuary	Yes	2	0
OS – Open Space	Yes	2	0
OSR – Open Space Recreational	Yes	1	0
Total		321	90
<b>Total Lots within WO Zone</b>		<b>321</b>	<b>411</b>

The nature and potential for conflicts are generally related to the zoning designations for properties containing wetlands or wetland buffer areas. Generally, they can be summarized as follows:

- Residential Zones (RVL, RL, R1, R2, R3, MP, and RM). Potential conflicts are related to residential development including the dwelling units and supporting facilities such as driveways, surface parking, and native vegetation removal.
- Commercial and Institutional Zones (C1 and IN). Potential conflicts are related to creation of impervious surfaces including buildings, driveways, and parking areas. In addition, site grading and vegetation removal are often associated with development allowed in these two districts.
- Open Space and Recreational Zones (PK, E, and OS). Potential conflicts are the least likely in these three districts because recreational and resource protection purpose of these districts. In particular, the Estuary (E) Zone allows minimal development activity and discourages improvements that would have a detrimental environmental impact. In addition, much of the E Zone is also within the 100-year floodplain, and development is limited accordingly.
- Streets, Pathways, and Utilities. This infrastructure is allowed in all zoning districts, and the applicable regulations are only proposed for minor amendments.

### Determine the Impact Area

As noted above, the wetlands identified for protection will remain the same, and the extent of the impact area will be expanded by the implementation of the 50-foot wetland buffer that will replace the current 5-foot buffer. This change to the buffer area will enlarge the regulated areas surrounding wetlands. A series of maps provide a before and after illustration of how the 45-foot wetland buffer expansion will affect properties in the city (Attachment 1).

### Analysis of ESEE Consequences

The LWI and adoption of the current wetland regulations in 1993 and 1994 included an ESEE analysis for the protection provided for the wetlands and the 5-foot buffer areas surrounding them. This ESEE analysis accepts the continued validity of this analysis and focuses on the two major changes to Chapter 17.43, which are:

- The expansion of the buffer area from 5 feet to 50 feet; and
- The proposed revised development requirements in Section 17.43.070. The Chapter 17.43 amendments are summarized in Table 2, with particular attention to the amendments to the development requirements in the new Section 17.43.070.

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**Table 2 – Existing and Proposed Code Summary Comparison**

<b>Existing Section and Provisions</b>	<b>Proposed Section and Provisions</b>	<b>Comment</b>
<b>17.43.010 Purpose.</b> Brief purpose statement	<b>17.43.010 Purpose.</b> An expanded purpose statement is provided.	No regulatory change.
No corresponding section. Some definitions currently found in 17.04.	<b>17.43.015 Definitions.</b> New section with terms used in this chapter. With the proposed code reorganization, they will be moved to 17.04 Definitions.	Provides additional clarity and reader convenience by having all relevant definitions in one place. When moved to 17.04, these definitions will be placed as a group as wetland related definitions. No regulatory change.
<b>17.43.020 Mapping.</b>	<b>17.43.020. Mapping.</b> Updated text.	No regulatory change.
<b>17.43.025 Wetland Lot-of-Record.</b> Considers contiguous lots in common ownership on August 4, 1993 as one lot. Allows 1 dwelling without specifying maximum lot coverage (2,500 sq. ft. maximum is specified in 17.43.050 B. 2.).	<b>17.43.015 Definitions.</b> The definition portion of this section was moved to this section. <b>17.43.070 F.</b> retains the wetland lot-of-record regulatory provisions, but now specifies a reduced maximum lot coverage in a wetland and/or wetland buffer from 2,500 to 1,400 sq. ft.	No change to the wetland lot-of-record definition. Regulatory change by reducing the maximum lot coverage from 2,500 sf to 1,400 sf.
No corresponding section.	<b>17.43.030 Applicability.</b> New section to describe when the provisions of this chapter apply.	Clarification about when this chapter applies to new development. No regulatory change.
No corresponding section.	<b>17.43.040 Administration.</b> New section to confirm the application review process in combination with 17.43.050.	Clarification about how different development applications will be reviewed. Eliminates any application of 17.43.080 Conditional Use because it creates a confusing situation to apply CU criteria to uses that are typically permitted in the applicable zone.
<b>17.43.030 Uses and activities permitted outright in wetlands.</b>	<b>17.43.050 Development and activities permitted.</b> Combined with current 17.43.035-045	This amendment more efficiently summarizes the uses and review process into a table and reduced narrative. Other than omitting the reference to conditional use criteria, there is no regulatory or review process change.
<b>17.43.035 Uses and activities permitted outright in wetland buffer areas.</b>	<b>17.43.050 Development and activities permitted.</b> Combined with current 17.43.030, 17.43.040 and 17.43.045	Affected by the expansion of the wetland buffer area from 5 to 50 feet. No other regulatory change.
<b>17.43.040 Conditional uses and activities permitted in wetlands.</b>	<b>17.43.050 Development and activities permitted.</b> Combined with current 17.43.030, 17.43.035 and 17.43.045	No regulatory change.

## Exhibit A -2

Existing Section and Provisions	Proposed Section and Provisions	Comment
<b>17.43.045 Conditional uses and activities permitted in wetland buffer areas.</b>	<b>17.43.050 Development and activities permitted.</b> Combined with current 17.43.030-040	Affected by the expansion of the wetland buffer area from 5 to 50 feet. No other regulatory change.
No corresponding section.	<b>17.43.060 Application submittal requirements.</b> New section describing what information an application must contain.	Regulatory improvement because the submittal requirements are only implied by the standards in the current 17.43.050.
<b>17.43.050 Standards.</b>	<b>17.43.070 Development standards.</b> This section is based upon current 17.43.050. It more clearly describes the standards for different types of development. Many of the standards were retained, and several were amended as described below.	Overall, this change was aimed at clarity and no regulatory changes except as noted below. This revised section complements the clear and objective criteria in 17.43.070 by providing clear guidance to the applicant regarding the contents of an application.
<b>A. General standards.</b>	<b>A. General standards.</b> Construction management standards moved to subsection K. Addition of 50% adjustment to building setbacks and lot dimension standards to minimize need to encroach into wetland buffer or wetland (17.43.070 A.3.). 17.43.070 A. 5. Requires valid permits from the US Army Corps of Engineers and DSL or written proof of exemption, satisfying OAR 660-23-0110 (7).	Regulatory change to allow more flexibility to enable development that minimizes or eliminates wetland impacts.
<b>B. Residential development.</b>	<b>B. Residential and commercial buildings and structures.</b> All structures covered in subsections B, C, and D are combined into this subsection. The prohibition of using fill for a structure is removed, but fill must still be justified as provided in new subsection K.3.	Simplification of text and treating any structure the same.
<b>C. Commercial development.</b>	<b>B. Residential and commercial buildings and structures.</b> See above.	See above.
<b>D. Accessory structure or building.</b>	<b>B. Residential and commercial buildings and structures.</b> See above.	See above.
<b>E. Roads and driveways.</b>	<b>C. Streets, driveways and off-street parking.</b> Standards remain essentially the same, and off-street parking is included.	No regulatory change.
<b>F. Utilities.</b>	<b>E. Utilities.</b> Minor edits to existing language.	No regulatory change.

## Exhibit A -2

Existing Section and Provisions	Proposed Section and Provisions	Comment
<b>G. Footpaths and bicycle paths.</b>	<b>D. Sidewalks, pathways and other non-vehicular improvements.</b> Removes regulatory distinction between footpaths and bike paths. Includes other pedestrian/bike improvements into this category.	No meaningful regulatory change.
<b>17.43.025 Wetland Lot-of-Record.</b>	<b>F. Wetland lot-of-record.</b> As noted above, the regulatory portion of current 17.43.025 was moved here. In addition, the maximum lot coverage limit is reduced from 2,500 sf to 1,400 sf, and three types of encroachment into wetland buffer areas and wetlands are provided.	Regulatory changes include: 1) the decrease in the maximum lot coverage from 2,500 sf to 1,400 sf; 2) the allowance of a 50% reduction in setback and lot dimension standards; and 3) a three-tiered approach to apply standards based on the degree of encroachment. The additional flexibility is intended to offset the reduce lot coverage allowance. If the related analysis demonstrates hardship if limited only to upland portions of the property, development may occur first in buffer areas and as a last resort, in a wetland.
<b>H. Wetland enhancement</b>	<b>I. Mitigation and wetland enhancement.</b> The provisions of current 17.43.050 H. are retained with the addition of mitigation requirements for development approved under new 17.43.070.	No meaningful regulatory change except to provide more specific standards including mitigation ratios for areas disturbed in wetland buffers and wetlands.
<b>I. Excavation</b>	<b>K. Construction standards.</b> Excavation standards were move to subsection 6.	No regulatory change.
<b>J. Stormwater management</b>	<b>H. Stormwater management.</b>	
<b>K. Mitigation</b>	<b>I. Mitigation and wetland enhancement</b>	No meaningful regulatory change as described above.
<b>L. Vegetation management</b>	<b>J. Vegetation management.</b> Minor modification to the types of vegetation removal allowed.	No meaningful regulatory change.
<b>M. Land divisions</b>	<b>G. Land divisions and lot line adjustments.</b> Increased the upland area for each lot created from 1,000 sf to 1,400 sf, wetland buffer and wetland areas must remain on one lot, and lot sizes may be averaged to comply with minimum lot size requirements.	There are regulatory changes proposed that have mitigating provisions to continue to allow land divisions, but with greater protection for wetlands.

## Exhibit A -2

### Scope of the ESEE Analysis

OAR 660-023-0040(5) requires local government to evaluate the potential impacts of allowing, limiting, or prohibiting identified conflicting uses for significant resource sites. Consistent with the approach used in the current WO Zone, the city will continue with a balanced approach of allowing conflicting uses with limitations. For each of the following four ESEE categories of consequences, the limited development approach is addressed followed by additional commentary regarding the effect of fully allowing or prohibiting conflicting uses.

### Economic Consequences

#### *Limited Development of Conflicting Uses*

As shown in Table 1, the properties affected by the current and proposed WO District are predominantly zoned residential. Only five additional non-residential lots will be affected by the proposed buffer area expansion (Table 1). The proposed amendments have potential negative economic impacts by: 1) expanding the wetland buffer area from 5 feet to 50 feet thereby making 90 additional lots subject to this chapter; and 2) reducing the maximum lot coverage from 2,500 square feet to 1,400 square feet. However, the 1,400 square-foot limit was developed to allow a residence or other structure of reasonable size as the code does currently. This standard will allow for a 2-story home with an approximate 1,000 square-foot footprint and a total floor area potential of around 2,000 square feet. The remaining lot coverage area would be available for circulation, driveways, parking, and similar improvements. It is important to recognize that most residential lots in the city are a maximum of 5,000 square feet, and current code requirements allow a maximum lot coverage of 2,500 square feet and FAR of 0.6 or 3,000 square feet. The total development potential is reduced, but the ability to construct a suitable residence is preserved. In addition, the adjustment provisions will enable property owners to avoid wetland and wetland buffer areas more easily by fully utilizing the upland portions of their property.

The commercial properties affected by the current and proposed WO District tend to be similar in size to residential properties. The commercial zones currently allow more development flexibility with no minimum setback requirements except when adjacent to residential districts or the ocean shore where an oceanfront setback is required.

Economic hardship is addressed by the three-tier evaluation structure in new Section 17.43.060 E. that requires the applicant to provide a site alternatives analysis to demonstrate the need to encroach into wetland buffer or wetland areas. The review of the application and this analysis as provided in new Section 17.43.070, and 17.43.070 F. in particular, allows for encroachment when reasonable upland alternatives are not available and hardship relief is necessary.

Infrastructure including streets, driveways, pathways, sidewalks, and utilities will continue to be allowed subject to design and construction standards based on current practice. Therefore, the cost-effective provision of infrastructure will not be inhibited by the proposed WO amendments.

The economic benefit of retaining healthy wetlands should also be recognized including flood hazard reduction, enhanced water quality, and wildlife habitat. Retaining the integrity of the city's natural amenities enhances the overall beauty and desirability of the community.

## Exhibit A -2

### *Full Allowance of Conflicting Uses*

Residential and non-residential property owners would benefit economically because they would be able to develop according to the requirements of the base zone. The amount of development possible on individual properties would generally tend to increase. However, the chosen limited approach continues to allow a defined amount of development for which the property owner is entitled, thereby reducing the potential economic loss compared to full allowance of conflicting uses. Also, full development of a property with a wetland must continue to comply with applicable state and federal requirements and limitations.

This individual economic benefit will be offset by compromising the economic value of wetland quality, environmental health, wildlife habitat, and flood hazard reduction. In addition, unlimited development of wetlands and surrounding buffer areas will reduce the overall natural character of the city, which is considerable economic value given its tourist-based economy.

### *Full Prohibition of Conflicting Uses*

A complete prohibition of development, especially in the proposed 50-foot buffer area would cause significant economic harm to property owners by removing their current ability to develop portions of their property outside of the identified wetlands. The city finds that imposing such a significant burden is not justified.

### Social Consequences

#### *Limited Development of Conflicting Uses*

Wetlands provide aesthetic and functional benefits for all residents and visitors in the community. The benefit of the natural beauty of Cannon Beach is evident everywhere and is a major reason why people choose to reside here or visit. Retaining the city's wetlands provide social and educational values by connecting city dwellers and students with wetland habitats nearby.

Housing affordability is an issue for Cannon Beach. Because the proposed wetland amendments will continue to allow residential development on lots containing a wetland and/or wetland buffer, housing availability and cost will not be adversely impacted by the proposed revisions.

#### *Full Allowance of Conflicting Uses*

As indicated for the limited development option, full development would severely diminish the current wetland benefits that are available to all city residents and visitors. Housing prices could be marginally reduced, but that potential benefit is speculative at best.

#### *Full Prohibition of Conflicting Uses*

Full prohibition could have a negative impact on housing availability, but the social impact is difficult to assess without conducting a full housing analysis. The city concludes that such a heavy-handed approach is unnecessary, and the limited approach offers the best path.

## Exhibit A -2

### Environmental Consequences

#### *Limited Development of Conflicting Uses*

Intact wetland areas provide a wide array of environmental benefits including:

- Water quality by holding surface runoff and capturing sediment.
- Flood reduction by storing and absorbing water.
- Fish and wildlife habitat.

The WO revisions were initiated to produce improved environmental outcomes with new development. The wetland attributes noted above will be protected by the amended regulations, which include specific standards regarding the amount of allowable encroachment into wetlands and wetland buffers along with the definitive mitigation requirements to retain and improve wetland integrity. The wetland buffer expansion from 5 feet to 50 feet was determined to be necessary to adequately protect wetland integrity and ecological functions. The proposed 50-foot buffer is consistent with scientifically supported wetland protection ordinances used in the Pacific Northwest by local governments.

#### *Full Allowance of Conflicting Uses*

Allowing full development in the expanded wetland buffer and wetlands would erase much of the environmental benefits they provide. Relying only on state and federal protections in wetlands will not provide adequate overall protection of the environmental benefits provided by healthy wetlands.

#### *Full Prohibition of Conflicting Uses*

As noted above, the city has determined that full prohibition is not necessary to adequately protect the environmental values of identified wetlands in the city. The proposed WO Zone provisions require mitigation in return for development in a wetland buffer or wetland. This mitigation is designed to enhance the quality and overall environmental value of these resource areas. Full prohibition would keep development from encroaching entirely, but wetlands compromised by past activities or invasive species would not be enhanced in conjunction with development.

### Energy Consequences

#### *Limited Development of Conflicting Uses*

The city has a fully developed transportation system, and major transportation improvements across wetlands or wetland buffers are not planned or anticipated. Efficient provision of utilities will continue to be allowed as provided by the current WO requirements. The current and proposed code requirements have no discernable energy consequences.

#### *Full Allowance of Conflicting Uses*

The potential consequences of this option would not be different from the limited option because streets and utilities are allowed in either case. Mitigation requirements for this option might be reduced and perhaps reduce cost of providing energy-related transportation infrastructure and utilities.

## **Exhibit A -2**

### *Full Prohibition of Conflicting Uses*

This approach is expected to marginally hinder efficient provision of transportation connections and utilities. More circuitous transportation links could result, but in the city context, this would not be particularly significant. As with the other ESEE elements, a full prohibition is deemed unnecessary to adequately protect wetland resources.

## **DEVELOP A PROGRAM TO ACHIEVE GOAL 5**

### **Balancing Resource Protection and Conflicting Uses**

The current and proposed WO regulations seek a balance between wetland protection and development activities. The primary differences are described in Table 1 above. A 5-foot buffer has been found to be inadequate for protecting wetland resources. Expanding the wetland buffer to 50 feet was determined to be necessary to protect wetland resources, and a buffer of this kind is commonly used by other local jurisdictions.

A balance for residential development is proposed to be adjusted by reducing the total lot coverage within wetlands and wetland buffers from 2,500 square feet to 1,400 square feet. While this reduces the maximum amount of development, it will continue to allow for a reasonable residential or non-residential structure and area for surface parking and walkways. In addition, the new adjustment provisions for building setbacks and dimensional requirements for lots allows additional flexibility to successfully accommodate new development while protecting wetland resources. The regulations for other improvements such as utilities and streets remain subject to similar between the current and proposed code.

Clear and objective criteria per OAR 660-23-0050 are incorporated into the proposed WO including numerical standards, such as the maximum total lot coverage (1,400 sf), setback and lot dimension adjustments (50% reduction), and mitigation area ratios (1:1 or 2:1 depending on circumstances). Nondiscretionary requirements are used throughout 17.43.070 especially regarding construction techniques. Most of these types of standards are found in the current Chapter 17.43 and have simply been reorganized. Performance standards are also used, such as requiring structures being constructed in a manner that allows the free flow of water without specifying the technique necessary to accomplish this outcome. The proposed Chapter 17.43 amendments focused on retaining and improving the clarity and predictability of the code requirements. In addition to the approval criteria in 17.43.070 the new application submittal requirements in 17.43.060 were developed to guide the applicant to provide the information and site analysis necessary to receive a favorable decision. Currently, the required application materials are only implied by the approval criteria, leaving the applicant without clear direction about what to submit.

### **Consistency with the Cannon Beach Comprehensive Plan**

The Cannon Beach Comprehensive Plan contains several policies that are relevant to the proposed WO amendments.

## Exhibit A -2

### General Development Policy 4

The City shall control excavation, grading, and filling in order to: avoid landslides and other geologic hazards; protect adjacent property and structures; provide for appropriate drainage improvements; minimize the extent of vegetation removal; minimize erosion and sedimentation; and protect the aesthetic character of the City.

***Response:** The proposed WO amendments were developed to enhance wetland protection by requiring more thoughtful and selective development of wetlands and wetland buffer areas. The requirements are intended to reach a balance between property owner rights to develop according to the applicable zoning district and the sustainable protection of wetland areas and the environmental and habitat values they provide. This policy is satisfied.*

### General Development Policy 14

To ensure that development is designed to preserve significant site features such as trees, streams and wetlands.

***Response:** As noted above, the proposed WO amendments are specifically aimed toward improved wetland protection while providing for development that will have minimal impact on long-term viability of the wetland resources in the city. In particular, the amendments call for reduced lot coverage, vegetation removal, and landform alteration in and adjacent to wetlands. Mitigation for development within wetlands and/or wetland buffer areas is required to further protect these resource areas. This policy is satisfied.*

### General Development Policy 16

To provide flexibility in regulations governing site design so that developments can be adapted to specific site conditions.

### Housing Policy 11

The city will provide flexibility in regulations governing site design so that developments can be adapted to specific site conditions.

***Response:** The WO amendments provide a flexible approach by allowing for adjustments to building setback and lot dimension standards to help alleviate the need to develop within wetlands or wetland buffers. The regulations also provide a graduated approach to mitigation requirements based upon the amount and location (wetland v. buffer) of development. Proposed Section 17.43.070 F. feature a 3-tiered approach based upon the degree of wetland buffer or wetland encroachment, with graduated requirements that become more significant as the amount of wetland buffer or wetland development increase. This policy is satisfied.*

### Consistency with the Statewide Planning Goals

The Statewide Planning Goals are satisfied as indicated below:

**Goal 1 - Citizen Involvement:** To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

***Response:** The plan amendment was created with citizen input. The development of the WO amendments relied on participation by residents, property and business owners, partner agencies,*

## Exhibit A -2

*Planning Commission, and City Council. The city conducted significant public outreach including public notice and Measure 56 notices. This goal is satisfied.*

**Goal 2 - Land Use Planning:** To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

***Response:** The city has adopted the Cannon Beach Comprehensive Plan and Title 17 Zoning in accordance this goal, and as noted above, citizens participated in that process as well as being involved in the creation of the amendments to Chapter 17.43. This goal is satisfied.*

**Goal 3 - Agricultural Lands and Goal 4 - Forest Lands**

***Response:** These goals are not relevant because the properties involved are designated for urban rather than resource use.*

**Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources:** To protect natural resources and conserve scenic and historic areas and open spaces.

***Response:** The city's wetlands are a natural resource worthy of protection. The proposed amendments are designed to enhance the protection currently provided with an emphasis on balancing development and environmental stewardship. The expansion of the wetland buffer area from 5 feet to 50 feet will enhance and protect wetland integrity and function. This goal is satisfied.*

**Goal 6 - Air, Water and Land Resources Quality:** To maintain and improve the quality of the air, water, and land resources of the state.

***Response:** Wetlands are a key ecosystem component for improving water quality by holding and filtering water runoff. As described herein, the proposed WO amendments will further enhance wetland function in the city. This goal is satisfied.*

**Goal 7 – Areas Subject to Natural Disasters and Hazards:** To protect people and property from natural hazards.

***Response:** This goal is supported by the proposed WO amendments by providing improved protection for wetlands, which provide a moderating effect on flooding due to their ability to retain and release water runoff more gradually than a natural or manmade water course. This wetland protection complements the city's natural hazard protection regulations. This goal is satisfied.*

**Goal 8 - Recreational Needs:** To satisfy the recreation needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

***Response:** This goal is not relevant because the regulations do not pertain to provision of recreational facilities.*

**Goal 9 – Economic Development:** To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

## Exhibit A -2

**Response:** An important focus of the Cannon Beach Comprehensive Plan and Title 17 is to ensure that land development may occur in a way that's balanced with natural hazards and environmentally sensitive areas. The proposed WO amendments are geared toward environmental protection while allowing for responsible development adjacent to and within wetlands. They provide some flexibility to development standards along with a graduated set of wetland protection standards that are based upon the degree of encroachment into wetlands and/or wetland buffer areas. This goal is satisfied.

**Goal 10 - Housing:** To provide for the housing needs of citizens of the state.

**Response:** The proposed WO amendments will limit the amount of lot coverage for residences, but as discussed above, there will be sufficient allowance to accommodate a residence. This change may reduce the size of a home, but not the residence. This goal is satisfied.

**Goal 11 - Public Facilities and Services:** To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

**Response:** Urban services and facilities will continue to be allowed in wetlands or wetland buffer areas. The main difference is the expanded wetland buffer will require WO review for a greater number of utility improvement projects in the city. This goal is satisfied.

**Goal 12 - Transportation:** To provide and encourage a safe, convenient and economic transportation system.

**Response:** The proposed code amendments are not anticipated to affect the city's transportation system because it is fully developed and major transportation improvements across wetlands or wetland buffer areas are not planned or anticipated. This goal is satisfied.

**Goal 13 - Energy Conservation:** To conserve energy.

**Response:** The proposed WO amendments do not have any relevance to energy conservation.

**Goal 14 - Urbanization:** To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

**Response:** As mentioned above, the proposed WO amendments may reduce the size but not the number of housing units on properties containing wetlands or wetland buffer areas.

**Goal 15 – Willamette River Greenway**

**Response:** This goal is not relevant.

**Goal 16: Estuarine Resources:** To recognize and protect the unique environmental, economic and social values of each estuary and associated wetland; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

## Exhibit A -2

**Response:** *The WO amendments will improve wetland protection citywide, including those wetlands within or near the Ecola Creek Estuary. The estuary is protected by provisions of 17.30 Estuary (E) Zone, and the WO amendments that apply to wetlands within and adjacent to the estuary will further support the protection of its environmental values.*

### **Goal 17 – Coastal Shorelands; Goal 18 - Beaches and Dunes; and Goal 19 – Ocean Resources**

**Response:** *These goals are not relevant because the scope of the WO amendments does not apply to coastal shorelands, beaches, dunes, or ocean resources.*



## CANNON BEACH COMMUNITY DEVELOPMENT

163 E. GOWER ST.

PO Box 368

CANNON BEACH, OR 97110

### Exhibit A-3

## MEMORANDUM

### RE: Application of Wetland Overlay Zone to Significant vs. Non-Significant Inventoried Wetland Sites

March 5, 2024

This memo has been prepared in response to a February 23, 2024 email from Amanda Punton of Oregon Department of Land Conservation and Development regarding the application of the proposed revision of the Wetland Overlay zone to stream corridors and non-significant wetland sites. The proposed draft ordinance has been revised in response to this comment and this memo details the effects of those revisions.

The proposed Chapter 17.43.030, Applicability, states that the regulations of this chapter apply to all properties that contain protected wetlands or wetland buffer areas and shown on the City's local wetland inventory or as described in a wetland delineation or determination as provided in Section 17.43.020 which provides the regulatory framework for mapping of wetland sites. Protected wetlands are defined as those determined to be significant in the Fishman Environmental Services wetland inventory that was prepared in 1993 and approved by the Oregon Department of State Lands on May 1, 1994. This inventory classifies six wetland sites as non-significant, these are:

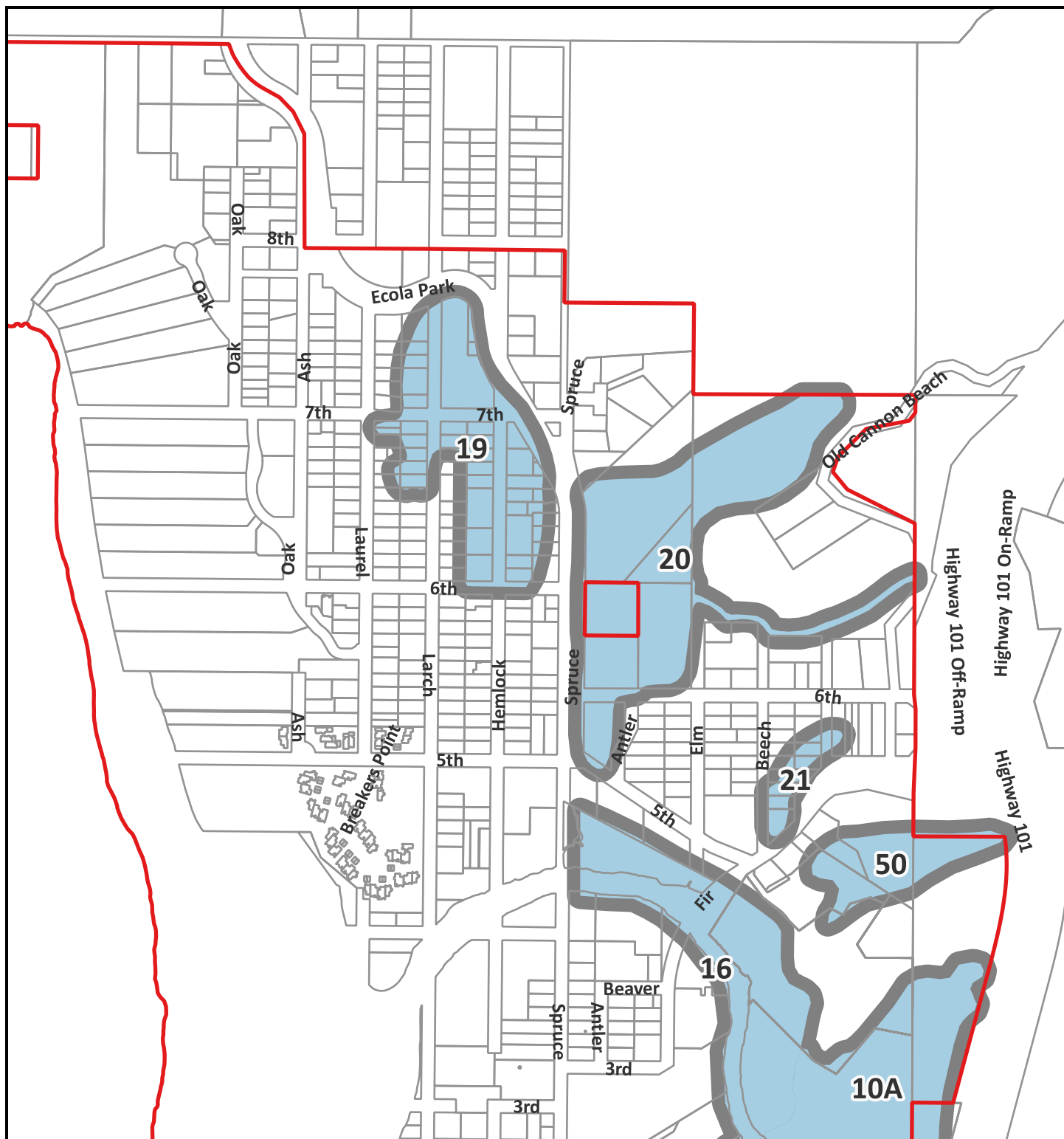
- Site 8, Pacific/Midway
- Site 36, Tyee
- Site 38, Elkland Rd.
- Site 43, Elliott/Sunset
- Site 48, Tolovana/Hemlock
- Site 51, Kenai/Pacific

These sites are shown on the maps that accompany this memo. As non-significant sites they do not meet the definition of a protected wetland and they are not shown with the proposed 50 foot buffer area. Some of these sites may overlap with inventoried riparian areas.

The City regulates streams and other riparian areas separately from wetlands through CBMC 17.71, Stream Corridor protection. Riparian corridors have been removed from the map set included with this memo in order to clarify this distinction.

Exhibit A-4

City of Cannon Beach Proposed Wetland Ordinance Revision  
Significant vs. Non-Significant Inventoried Wetland Sites  
North End Neighborhood



0 500 1,000 ft



Taxlots

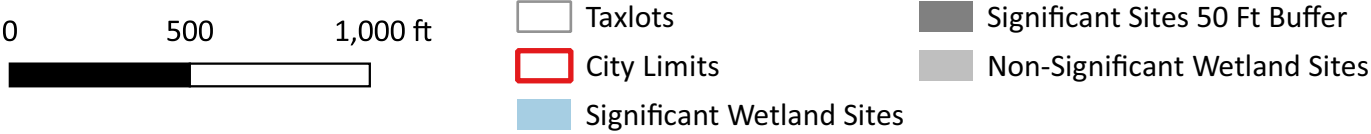
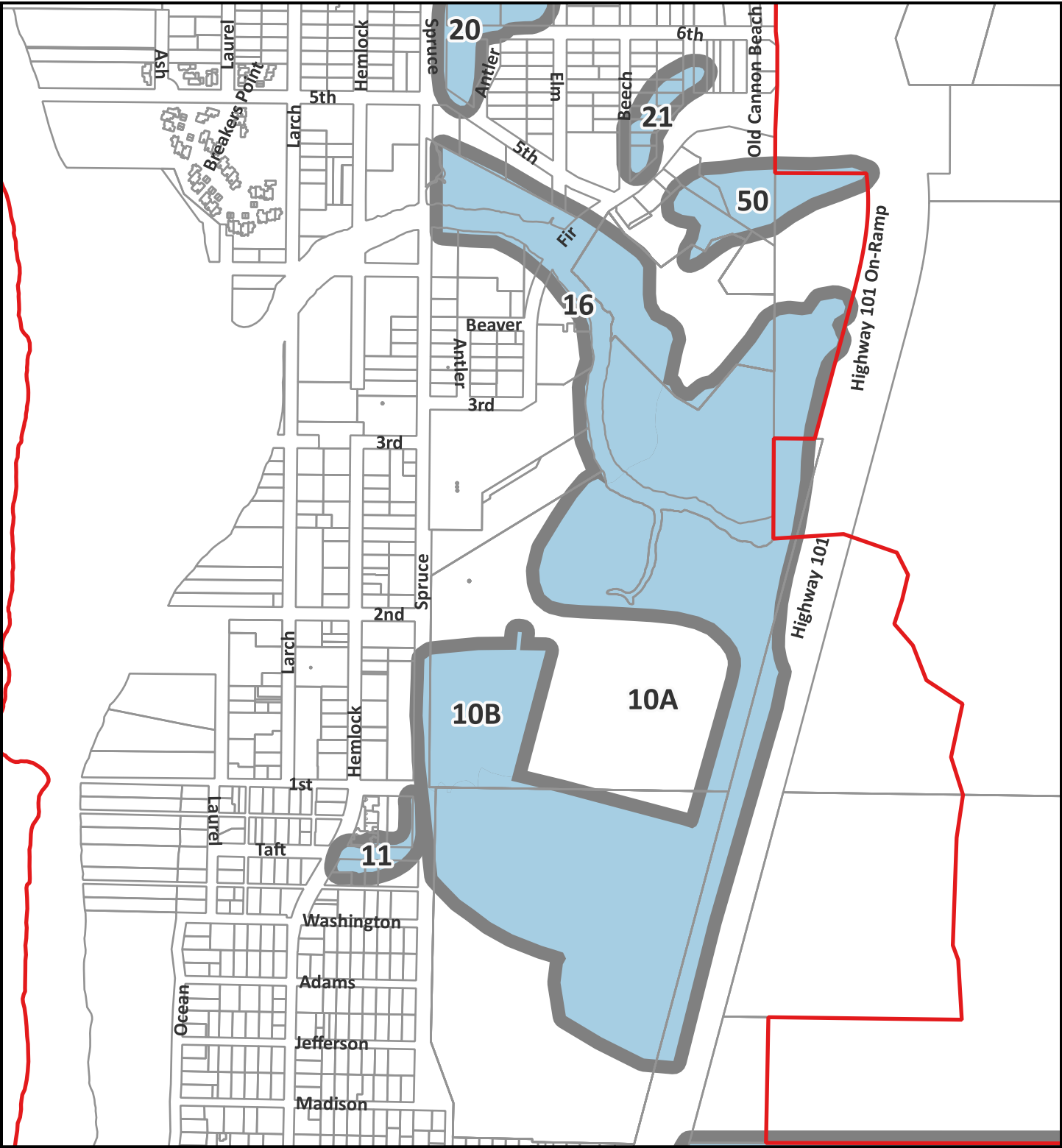
City Limits

Significant Wetland Sites

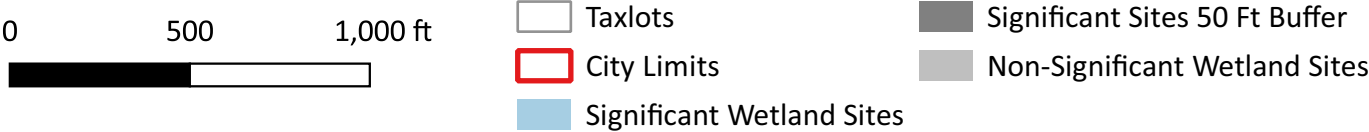
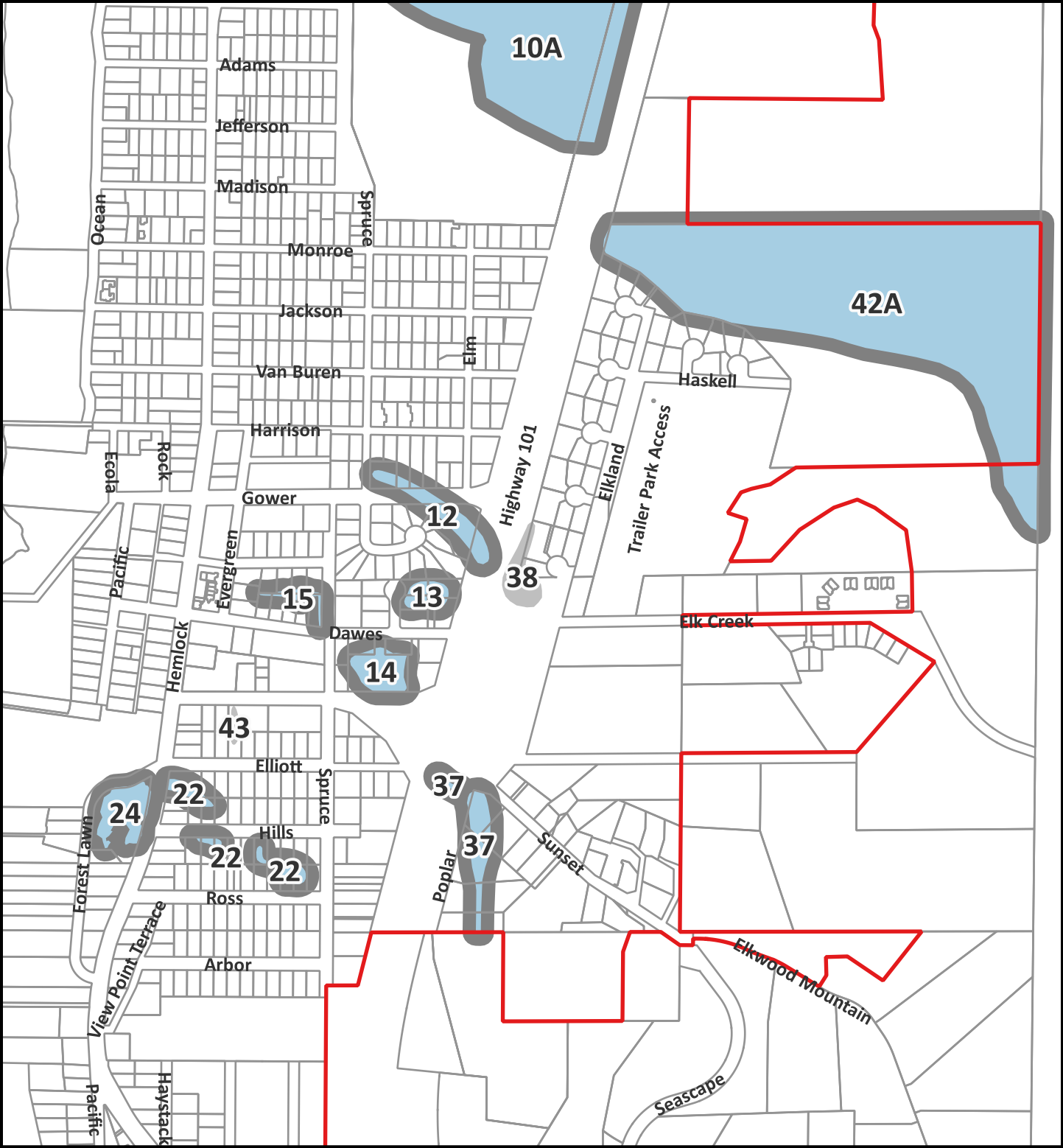
Significant Sites 50 Ft Buffer

Non-Significant Wetland Sites

# City of Cannon Beach Proposed Wetland Ordinance Revision Significant vs. Non-Significant Inventoried Wetland Sites Downtown and North Presidentials



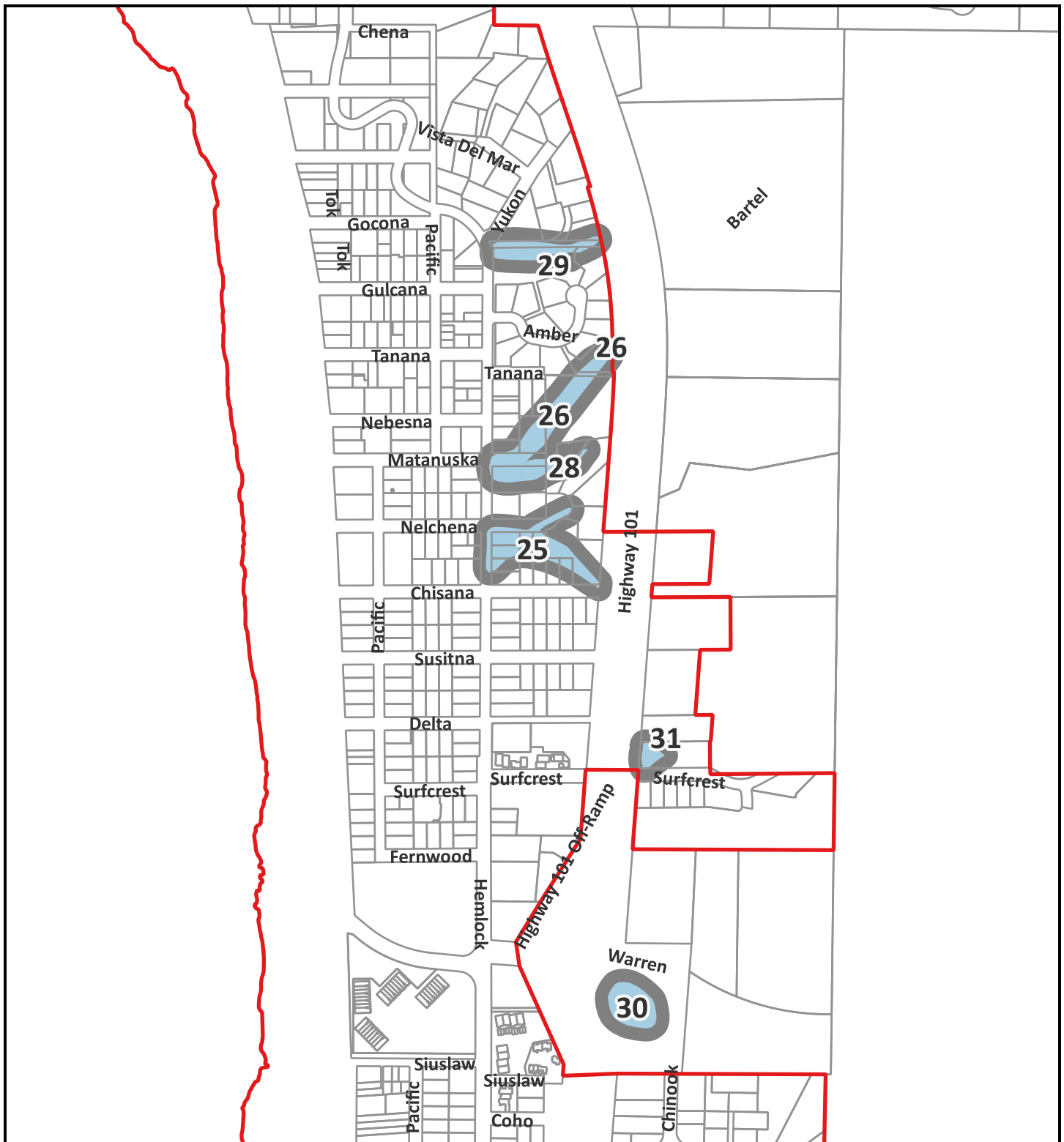
# City of Cannon Beach Proposed Wetland Ordinance Revision Significant vs. Non-Significant Inventoried Wetland Sites Presidentials & Midtown Neighborhoods



# City of Cannon Beach Proposed Wetland Ordinance Revision

## Significant vs. Non-Significant Inventoried Wetland Sites

### Tolovana North Neighborhood



0 500 1,000 ft

Taxlots

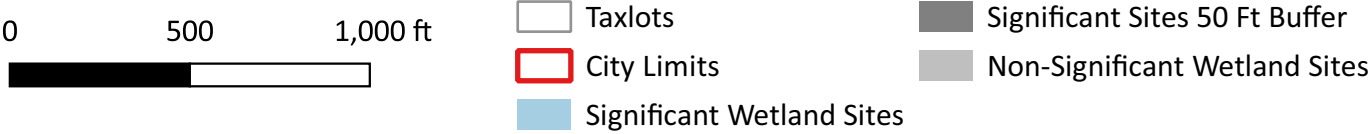
City Limits

Significant Wetland Sites

Significant Sites 50 Ft Buffer

Non-Significant Wetland Sites

**City of Cannon Beach Proposed Wetland Ordinance Revision**  
**Significant vs. Non-Significant Inventoried Wetland Sites**  
**Tolovana South Neighborhood**





# Oregon

Tina Kotek, Governor

## Department of Land Conservation and Development

Oregon Coastal Management Program

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)

February 15, 2024

City of Cannon Beach Planning Commission  
Attention: Steve Sokolowski, Director  
163 E Gower Avenue  
Cannon Beach, OR 97110  
SENT VIA EMAIL



RE: PAPA Amendment 002-23 (Cannon Beach Casefile ZO 23-02)

Planning Commissioners,

Thank you for the opportunity to review and comment on the zoning text amendment to Municipal Code Chapter 14.43 regarding the Wetlands Overlay Zone (Cannon Beach Casefile ZO 23-02). Natural Resource Specialist Amanda Punton and I have been working with the Cannon Beach staff and consultant team over the past few months on this text amendment proposal and wish to provide comments for inclusion in the record.

The city's approach to protect locally significant wetlands by limiting development in these wetlands, and within a 50' wetland buffer, is consistent with ecological principles for maintaining wetland functions. DLCD staff support this effort. The city is correctly using the Standard Goal 5 process to craft a protection program specific to Cannon Beach. Oregon Administrative Rule (OAR) 660-023-0040 and 0050 describe the steps required to: identify an impact area for Goal 5 significant resource sites; and consider the consequences of a decision to allow, limit, or prohibit uses otherwise allowed in the underlying zone. These steps comprise an "ESEE analysis", an analysis of the economic, social, environmental, and energy consequences of allow, limit, and prohibit decisions regarding categories of conflicting uses. An ESEE analysis is required whenever a city chooses not to apply the "safe harbor" protection measures in OAR 660-023-0100(4)(b).

One recommendation we've made to the team crafting the code amendments is to leverage state and federal mitigation requirements when an Oregon Department of State Lands or Army Corps of Engineers permit is required for wetland impacts authorized by the city. When impacts to the wetland or wetland buffer do not meet a threshold for a state or federal permit, local mitigation requirements are a good approach to preserving wetland functions.

Additionally, the city will want to adopt a code that has a clear and objective pathway for compliance. This is a requirement of OAR 660-023-0050(2) for all uses, and ORS 197A.400 for residential uses. Both the rule and the statute allow a city to provide an alternate subjective path. The clear and objective path does not have to guarantee

approval of a development proposal (*Dryer and Dryer vs. City of Eugene, LUBA No. 2018-074*). Cannon Beach, like many jurisdictions across the state, is working to replace subjective standards with clear and objective pathways. You may wish to confer with your legal counsel regarding this matter if there are questions.

The Department of Land Conservation and Development appreciates the opportunity to review and comment on this text amendment and looks forward to a continued positive working relationship.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Brett Estes", is written over a light blue rectangular background.

R. Brett Estes, North Coast Regional Representative

CC: Amanda Punton, DLCD Natural Resource Specialist

## Significant and non-significant wetlands

Exhibit B-2



PUNTON Amanda \* DLCD <Amanda.PUNTON@dlcd.oregon.gov>

Friday, February 23, 2024 at 11:27 AM

To: Robert St. Clair; keith.liden@gmail.com; Cc: Elizabeth Nelson; Steve Sokolowski; +3 more ✓

Hi Steve and Kieth,

I asked Jevera Brown at DSL for information on the status of Cannon Beach's wetlands shown on the LWI. She sent this link to the city's 1993 LWI report, [Report and Maps \(state.or.us\)](#).

A description of the significance criteria and threshold starts on Page 6 of the PDF. A table of the "degree of significance" for all identified wetlands is on page 9 of the PDF. In the study, streams were included as "wetlands". Many wetlands are identified as having "low degree of significance".

When reviewing the draft code, I flagged the application of the code to **all** wetlands on the LWI and asked if all wetlands are significant. I think this is something the city still need to answer. If all the non-significant wetlands and those with a low degree of significance are actually streams, and presuming your code does not apply to streams, the areas to which the code applies should be better clarified.

Amanda



### Amanda Puntun

Natural Resource Specialist | Community Services Division  
Oregon Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540  
Cell: 971-718-3245 | Main: 503-373-0050  
[amanda.puntun@dlcd.oregon.gov](mailto:amanda.puntun@dlcd.oregon.gov) | [www.oregon.gov/LCD](http://www.oregon.gov/LCD)

## Exhibit C-1

To: Cannon Beach Planning Commission  
Attn. Community Development  
PO Box 368  
Cannon Beach, OR 97110  
via email at [planning@ci.cannon-beach.or.us](mailto:planning@ci.cannon-beach.or.us)

Copy: Keith Liden, Contract City Planner  
Bob Lundy, Interested Party  
Bradley Coffey, Spouse

Date: February 19, 2024

From: C. Mirth Walker

Re: Public hearing on Thursday, February 22, 2024, at 6:00 p.m. regarding  
**ZO#23-02**, City of Cannon Beach request for Zoning Ordinance text amendments to  
Chapter 17.43 Wetlands Overlay Zone

Dear Planning Commissioners, Planning Department, and Interested Parties:

Thank you for the opportunity to provide public comment on this subject. I have compiled my review of the Draft Wetlands Overlay Zone Amendments and have attached it to the email message, along with a copy of this letter.

My responses and suggestions are weighted on several factors:

- I am a semi-retired Professional Wetland Scientist (#415) from SWCA Environmental Consultants, who purchased Fishman Environmental Services in 2006. I started my employment with Fishman in 1994, just after the Local Wetlands Inventory was completed for the City of Cannon Beach. I have over 34 years of experience conducting wetland determinations and delineations; wetland-related permitting at the local, state, and federal levels; preparing wetland and other waters (streams, ponds, etc.) mitigation plans consisting of restoration, enhancement, creation, and preservation; preparing natural resource site assessments, assessing the *good*, *marginal*, and *degraded* buffers associated with wetlands and streams, and preparing enhancement and mitigation plans for unavoidable buffer encroachments for Clean Water Services in Washington County, Oregon. I have also assessed both wetlands and other waters with all of the available functions and values assessment methods in Oregon and Washington.
- I am a long-term visitor to Cannon Beach and in 2013, I purchased from my mother's estate the cabin property in the north end that she had owned since 1969. The property to the north has a tributary to Logan Creek and adjacent wetlands present. These wetlands were delineated in 2007 for the Langs Landing Subdivision that was never built. The mapping of the stream-wetland complex to the north of our site is not mapped correctly on the City's digital LWI mapping, but that is an issue for another day and is not the primary reason for me submitting comments.
- I have worked with many municipal codes, and have greatly enjoyed working with Keith Liden in the City of King City and in other jurisdictions. I want this wetland buffer code to be the best that it can be, and have happily spent my time looking this over.

Please excuse my attention to detail, I provided quality control review of many wetland reports prepared by other staff over the years in my former position of Senior Wetland Scientist. I apologize for the delay in my response to the original draft code dated October 19, 2023. I had just completed my review of that code over this past weekend of Valentine's Day and spousal birthday, when I checked the published packet to find the updated version dated February 14, 2023, so I have updated that version for your review.

I hope to be able to attend the hearing on Thursday evening via Zoom, but will have to contend with hotel WiFi in Astoria for this coming Fisher Poets weekend. Please accept this written testimony for that hearing. I understand that there may not be sufficient time to review my comments prior to the hearing.

I look forward to working with you on this very important matter. I am very glad that the City is proposing to increase the wetland buffer to 50 feet. That is truly the minimum needed to protect our wetlands.

Sincerely,



C. Mirth Walker, PWS #415, Emerita  
cmirth@gmail.com  
503-860-1708

611 Beech Street  
Cannon Beach, OR 97110

Primary Residence (mailing address):  
4910 SW Richardson Drive  
Portland, OR 97239

**CHAPTER 17.43 WETLANDS OVERLAY (WO) ZONE**  
**Amendments from October 10.19.23 Version – Including Responses to DLCD**  
**Comments**  
**DRAFT 2.14.24**

C. Mirth Walker 2.19.24 suggestions to improve code clarity and consistency. Includes some technical editing changes provided by Bob Lundy 11.16.23.

**17.43.010 Purpose**

The purpose of the wetlands overlay zone is to protect wetland areas identified in the cityCity's Local Wetlands 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 cityCity also protects stream corridors (Chapter 17.71) and estuarine resources per the Ecola Creek Estuary Plan.

In addition to protecting the wetland values described above, this chapter seeks to provide for reasonable development and use of properties that are within the Wetlands Overlay Zone.

**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 being carried in runoff to protected wetlands.

"Building coverage" means the portion of the lot area that is covered by buildings. The area of the buildings shall be measured at their exterior perimeter. Buildings include dwellings, accessory structures, garages, and carports.

"Buffer redistribution 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 lots" means lots that have a common boundary and common ownership including 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.

"Lot coverage" as currently defined in 17.040.335.

Commented [CW1]: This is the more common term used.

Commented [CW2]: You could move this to inside the definition of Wetland Lot-of-Record.

## Exhibit C-1

“Low Impact Development Approaches” (LIDA) mitigate the impacts of increased runoff and stormwater pollution using a set of planning, design, construction techniques and stormwater management approaches that promote the use of natural systems for infiltration, evapotranspiration and reuse of rainwater. LIDA can ~~occur~~ be applied at a wide range of landscape scales (i.e., regional, neighborhood and site) and include, but are not limited to, green roofs, porous pavement, and vegetated stormwater management ~~approaches~~ facilities.

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

“Point source stormwater discharge” means water from precipitation, surface or subterranean water from any source, drainage and nonseptic wastewater that flows from any discernible, confined, discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, or vessel.

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 Professional Certification Program; 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, the Western Mountain, Valleys and Coast Regional Supplement and supporting guidance; and preparing wetland reports, permits, and mitigation plans; or

Four years of related work experience and training; minimum of two years’ experience delineating wetlands using the 1987 Corps Manual, the Western Mountain, Valleys and Coast Regional Supplement and supporting guidance; and preparing wetland reports, permits, and mitigation plans.

“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~~ previous 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 ~~or~~ nor wetland buffer area.

“Utilities, underground or above ground” refers to City-provided utilities as defined in Chapter 13.03.010 as well as private utilities such as but not limited to natural gas, electric, cable, and telecommunications infrastructure. Such utilities may occur below ground surface, at ground surface, or supported above ground surface.

Commented [CW3]: This is a separate organization from SWS.

## Exhibit C-1

"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).

~~(Ord. 94-29 § 1)~~

"Wetland buffer area" means a 50-foot-wide non-wetland area surrounding the delineated boundary of a protected wetlands within the Wetlands Overlay (WO) zone. (Ord. 94-29 § 1)

"Wetland buffer, degraded or marginal condition" means those definitions in the current Clean Water Services Design and Construction Standards Chapter 3  
(<https://cleanwaterservices.org/development/dnc/view-the-standards/>).

"Wetland creation" means to convert an upland ~~or a~~ wetland buffer that has never been a wetland to a wetland. The assumption that a creation site has never been a wetland is based on soils mapping, the interpretation of historical aerial photographs, and any other available information.

"Wetland, degraded" as defined by the Oregon Department of State Lands means a wetlands with diminished functions and values. Degradation must include hydrologic manipulation (such as diking, draining, or filling) that demonstrably interferes with the normal functioning of wetland processes.

"Wetland delineation" means a determination of the presence of wetlands and other waters that includes marking boundaries on the ground and on a detailed map prepared by professional land survey or similar accurate methods. The delineation is to be undertaken in accordance with a method acceptable to the US Army Corps of Engineers and the Oregon Department of State Lands. (Ord. 9429 § 1)

"Wetland delineation map" means a map included in a wetland delineation report or provided with a Jurisdictional Determination by the Oregon Department of State Lands that shows the tax lot(s) and study area(s) investigated and the location, size, and boundaries of all wetlands and other waters.

"Wetland determination" means a decision that a site may, does, is unlikely to, or does not contain waters of the state of Oregon. A determination does not include the exact location or boundaries of waters of the state of Oregon.

"Wetland enhancement" means to improve the condition and increase the functions and values of an existing degraded wetland.

"Wetland functions and values" means those ecological characteristics or processes associated with wetlands, and the societal benefits derived from those characteristics. The ecological characteristics are "functions," whereas the associated societal benefits are "values." The Oregon Department of State Lands has approved methods to measure these functions and values in Oregon Administrative Rule 141-085.

"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~~ Wetlands Overlay zone.

"Wetland mitigation, compensatory" means the creation, restoration, or enhancement of a wetland

Commented [CW4]: Assuming this was a typo.

Commented [CW5]: I note that "protected" has been removed from several definitions etc. I have highlighted each case where I re-inserted. I question this redaction strongly because the WO Zone should only apply to Protected Wetlands and not every wetland. Each newly discovered wetland must be determined to be a Locally Significant Wetland (LSW) under DSL guidelines (in the Local Wetlands Inventory code) prior to applying protections and buffers. The current method specified in the DSL OARs is the Oregon Freshwater Wetland Assessment Method (OFWAM), which obviously is not used in tidal wetlands or estuaries. Or, the more expensive and less straight-forward alternative is to conduct an ESEE analysis on whether conflicting uses in the new wetland should be partially allowed, etc. Other wetlands that are not LSWs are still regulated by DSL and sometimes by the USACE.

Commented [CW6]: I reinserted "upland" to allow grading outside of a wetland buffer (in upland) to create wetland (as long as there is a reliable source of hydrology, such as a connected freshwater floodplain).

Commented [CW7]: This method is the Oregon Rapid Wetland Assessment Method (ORWAP) used in removal-fill permits to assess function and values on all wetlands (including tidal) and the proposed mitigation site(s) to show a net lift. It cannot be used to determine Locally Significant Wetlands.

### Exhibit C-1

area to maintain the functional characteristics and processes of the wetland system, such as its natural biological productivity, habitats, aesthetic qualities, species diversity, open space, unique features and water quality.

“Wetlands Overlay Zone” includes **protected** wetlands and wetland buffer areas that are subject to the provisions of this chapter.

“Wetland, **protected**” is an area in the ~~wetlands~~ Wetlands overlay-Overlay zone that has been identified on the Cannon Beach Local ~~Wetlands~~ Inventory (LWI) or on a subsequent wetland delineation as wetlands. They are areas 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. Note that federal and state protections also exist, and the applicant is also responsible for addressing such regulations. Should discrepancies exist between federal and state wetland delineation jurisdiction, ~~city~~ City-protected wetlands shall match state regulated wetland boundaries.

**Commented [CW8]:** DSL prefers that all LWIs are referred to as plural wetlands, even though this might not match the City’s LWI title from 1993-1994.

**Commented [CW9]:** As above, does this mean any new wetland discovered in the City automatically becomes a Locally Significant Wetland (LSW) without any evaluation of size, water source, function, or value? It seems to me that any new wetland would have to be assessed using the Oregon Freshwater Wetland Assessment Method (OFWAM) to be determined to be protected as a LSW, consistent with current DSL regulations.

## Exhibit C-1

"Wetland restoration" means to reestablish a former wetland.

### 17.43.020 Mapping

- A. The maps identifying the Wetlands Overlay (WO) zone boundaries shall be maintained and updated as necessary by the cityCity. The Cannon Beach Local Wetlands 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 original 1994 LWI is based upon wetland determinations, and subsequent updates will generally be wetland delineations. The WO zone includes both wetland and wetland buffer areas.
- B. Site-specific wetland delineations are required to determine the exact location of the WO zone boundary prior to development proposed within a wetland or wetland buffer identified in the Cannon Beach LWI. For properties that only include wetland buffer areas, the applicant may choose to rely upon the buffer area shown in the Cannon Beach LWI maps, or provide a wetland delineation ~~or determination~~ to establish the wetland buffer boundary if permission to access the off-site wetland boundary is received from the off-site property owner. If permission to access is denied or not attainable, then the applicant may conduct a wetland determination to estimate and map the location of the off-site wetland boundaries and on-site wetland buffers. These wetland determinations are to be based on review of off-site vegetation conditions, topography, soil mapping, aerial photographs, and any other available information without physically accessing the off-site property.
- C. When a report or opinion from a qualified wetland professional is submitted by an applicant, the approval authority may seek an independent expert opinion when reviewing the report or opinion, or rely on the Department of State Lands approval of a wetland determination or delineation report. A qualified wetland professional retained or hired by the cityCity under this subsection is expected to render independent expert opinion, consistent with the Society of Wetland Scientists Code of Ethics.
- D. Where a wetland delineation report is approved by DSL, it shall be accepted by the City, and the mapping it contains shall replace that of the Cannon Beach LWI. A map refinement based on a delineation shall remain valid for the purpose of locating the WO zone boundary unless a subsequent delineation of the wetland boundary is approved by DSL. Any wetland delineation submitted to the City shall be accompanied by an electronic shapefile.
- E. Wetlands that are legally filled under this chapter are no longer wetlands but shall change to wetland buffer areas under this overlay zone. Wetland buffer areas that are legally filled-impacted under this chapter remain as are no longer wetland buffer areas. (Ord. 08-1 § 40; Ord. 94-29 § 2). When the wetland boundary from a delineation or determination is updated as described in this section, the corresponding wetland buffer shall be determined based upon the updated wetland boundary.

### 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 cityCity LWI maps or as described in a wetland delineation or determination as described-provided in Section 17.43.020.

**Commented [CW10]:** This states the obvious that under this zone, no one can fill the entire wetland and make its buffer go away. But what if an isolated wetland on a site is less than the allowed 1,400 SF of wetland impact? Then the buffer goes away if the entire wetland is filled. Perhaps we don't have any isolated wetlands in CB?

**Commented [CW11]:** Correct? Not sure how impacting a buffer keeps it as buffer as it will be buffer-averaged somewhere else. The buffer can be impacted by vegetation removal without filling it.

**Exhibit C-1**

**17.43.040 Administration**

- A. Activities permitted outright according to Table 17.43-1 shall be reviewed as a Type 2 Administrative review as provided in Section 17.92.010 C. 2.
- B. All other development or activities within the Wetlands Overlay Zone shall be reviewed as a Planning Commission decision as provided in Chapter 17.88.

Exhibit C-1

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, when it is determined that a reasonable development and use of property, as described in Section 17.43.070, is not possible without locating a portion or all of the development within wetland buffer or wetland areas. When a development permit is approved, it shall comply with the provisions of this title and the applicable standards in Section 17.43.070.
- B. Uses and activities that may be permitted in wetland and wetland buffers are shown in Table 17.43-1. When another provision of the Cannon Beach Municipal Code conflicts with this chapter or when the provisions of this chapter are in conflict, that provision which provides greater environmental protection to wetlands and/or wetland buffer areas shall apply, unless specifically provided otherwise in this chapter or such provision conflicts with federal or state laws or regulations.
- C. Uses and activities in existence approved by the approval 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 do~~ not conform with the permitted or conditional uses set forth herein may qualify as a “nonconforming use” as provided Chapter 17.82.
- D. The following development and activities may be permitted within wetlands and wetland buffer areas subject to the review procedures shown in Table 17.43-1.

Table 17.43-1 Review Procedure for Development and Activities within the WO Zone

Development or Activity	Review Process
Vegetation management only to the extent necessary for hazard prevention	Type 2 Administrative review
Wetland Lot-of-Record	Planning Commission review
Streets	
Sidewalks, Pathways, and Trails	
Utilities	
Land Divisions and Lot Line Adjustments	
Stormwater Management	
Wetland Mitigation and Wetland Enhancement	
Vegetation Management (beyond hazard prevention), e.g., for removal of non-native vegetation and replacement with native vegetation of a similar structure	

Commented [CW12]: What about Structures and Driveways? Probably already included in the existing WO Zone code.

Commented [CW13]: To enable removal of Himalayan Blackberry, Scotch Broom, and Holly species to be replaced with native shrubs, and removal of English Ivy to be replaced with native groundcovers. I think this could be under Type 2 Admin review... or else move this to first row in this table under PC review.

17.43.060 Application Submittal Requirements

- A. Information Requirements. Information provided on the development plan shall conform to the following:

**Exhibit C-1**

1. Drawings, along with an electronic copy, depicting the proposal shall be presented on sheets not larger than 24 inches by 36 inches in the number of copies directed by the ~~city~~City;

## Exhibit C-1

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-development plan, drawn 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 when there is a recent survey that 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 6 inches in diameter at breast height (DBH), and an indication of which trees are to be removed or potentially affected by construction activity including trees on abutting properties;
  4. On sites that contain steep slopes, potential geologic hazard or unique natural features that may affect the proposed development, the cityCity may require contours mapped at 2-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;

**Commented [CW14]:** This was also struck from the previous version. I would strongly recommend keeping this in (as edited: changed where to when and which to that).

**Commented [CW15]:** This conflicts with Section 16.04.180 L. (Subdivisions Tentative Plan - Map Contents, and others)  
1. Two-foot contour intervals for ground slopes twenty percent or less.  
2. Five-foot contours intervals for ground slopes over twenty percent.

But is consistent with Section 17.62.030 Grading and Erosion Control Permit. And Section 17.44.050 Design review plan-Submittal Requirements

Just checking for consistency.

## Exhibit C-1

6. Existing and proposed service areas for such uses as the loading and delivery of goods;
  7. Locations, descriptions and dimensions of easements;
  8. Grading and drainage plans, including spot elevations and contours;
  9. Location of areas to be landscaped or retained in their natural state;
  10. Exterior lighting including the type, intensity, height above grade and area to be illuminated; and
  11. Other site elements which will assist in the evaluation of the application.
- E. Site Alternatives Analysis. A site alternative analysis shall be provided. The purpose of the site alternative analysis is to evaluate development options that would avoid any encroachment into the wetland ~~buffer~~ or wetland buffer on the property. When encroachment appears necessary, the site alternatives analysis shall be structured using the following sequential steps when it is determined that 1,000 square-foot building coverage and 400 square feet of additional lot coverage for access and parking are not available on the upland portion of the property:
1. Step 1 Setback Reduction. Determine whether the proposed development could be located exclusively on the upland portion of the property if adjustments in Section 17.43.070 C. 1. are ~~utilized~~used.
  2. Step 2 Setback Reduction and Wetland Buffer ~~Redistribution~~Averaging. When the proposed development cannot be located exclusively on the upland portion of the property as provided in Step 1 above, the applicant shall determine if a maximum 25 percent (12.5 feet) encroachment into the wetland buffer would accommodate the proposed development. The analysis shall provide an area calculation for the encroachment into the wetland buffer. To the extent upland area is available on the property, the analysis shall indicate where the wetland buffer will be expanded by an equivalent area to compensate for the wetland encroachment.
  3. Step 3 Setback Reduction and Wetland Buffer Reduction and Mitigation. When the proposed development cannot be located exclusively on the upland portion of the property and with a minor wetland buffer encroachment as provided in Step 2 above, the applicant shall determine if further reduction of the wetland buffer, excluding wetland encroachment, would accommodate the proposed development. The analysis shall provide the wetland buffer encroachment area calculation and compensation as provided in Step 2 above.
  4. Step 4 Setback Reduction, Wetland Buffer and Wetland Encroachment and Mitigation. When the proposed development cannot be located exclusively on the upland portion of the property and with wetland buffer encroachment as provided in Step 3 above, the applicant shall determine if encroachment into the wetland buffer and the wetland would accommodate the proposed development. To the extent upland area is available on the property, the analysis shall indicate where the wetland buffer will be expanded by an equivalent area to compensate for the wetland encroachment.

## Exhibit C-1

5. For any type of wetland buffer or wetland encroachment, the applicant shall provide an explanation of the alternatives considered and the reasons why the site development plan is proposed to ~~utilize~~use portions of ~~the~~ wetland or buffer area.
- F. Landscape Plan. Applications that propose development within a wetland or wetland buffer shall include the following:
1. The size, species, and locations of plant materials to be retained or placed on the site, including eradication and replacement of invasive plant species;
  2. The layout of proposed irrigation facilities;
  3. The location and design details of walkways, decks, courtyards, patios, and similar areas;
  4. The location, type and intensity of lighting proposed to illuminate outdoor areas; and
  5. The location and design details of proposed fencing, retaining walls, and screening for service areas.
- G. Stormwater management plan.
1. 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 wetlands:
    - a. New building covering more than 200 square feet; or
    - b. New addition covering more than 200 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 wetland or wetland buffer.
  2. 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 Public Works Department standards and the requirements of this Chapter. The stormwater management plan shall provide the following in addition to any information requested by the public works director:

**Commented [CW16]:** Need to define invasive plant species.  
A good but somewhat cumbersome list of noxious species in Oregon is at the ODA:  
<https://www.oregon.gov/oda/programs/Weeds/OregonNoxiousWeeds/Pages/AboutOregonWeeds.aspx>  
It captures all the common baddies in CB.

## Exhibit C-1

- a. Site map or maps, drawing or specifications detailing the design, route, and location of the stormwater management system.
  - b. 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., ~~affect~~effects of rapidly fluctuating water levels on amphibian egg masses, scour impacts to vegetation) and potential for sediment deposition into the wetland or wetland buffer.
  - c. 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.
- H. When development is proposed within a wetland or wetland buffer as provided in Section 17.43.060 E. 3. or 4., a mitigation plan shall be provided including the following information prepared by a qualified wetland professional. In cases where a Department of State Lands and/or US Army Corps of Engineers permit is required, the mitigation plan approved by either agency shall satisfy this requirement.
1. Plan Overview including a summary narrative.
  2. Proposed impact details:
    - a. Description of existing site conditions within the wetland and the wetland buffer including, but not limited to, hydrologic characteristics, plant communities, and/or ecological conditions.
    - b. Square footage of the proposed encroachment into the wetland ~~buffer~~ and/or wetland ~~buffer~~.
    - c. Demonstrate ion of compliance with the applicable provisions in Section 17.43.070 J.
  3. Proposed mitigation details:
    - a. On-site mitigation shall first be considered.
    - b. If on-site mitigation is not feasible, off-site mitigation may be proposed with the following supporting information:
      - i. Tax lot and ownership of proposed mitigation site.
      - ii. Justification for why on-site mitigation ~~was-is~~ not practicable and why the off-site location is appropriate.
    - c. An on-site or off-site mitigation plan shall include the following information:
      - i. Existing conditions site plan for the mitigation site, showing wetlands, buffers, and plant communities and/or ecological conditions.

## Exhibit C-1

- ii. Site plan showing proposed restoration or enhancement activities within the wetlands and/or buffer including but not limited to grading, hydrologic improvements, invasive plant removal, native plantings, and habitat structures.
  - ~~iii~~ An explanation of the rationale for the mitigation area location, including any expansion of the wetland and/or buffer area.
  - iv. Planting ~~p~~Plan describing location, species, size, and quantities of plants to be provided.
- d. A monitoring plan shall be provided, to include the following:
- ii. ~~2~~ Monitoring schedule including a minimum of once per year during the required 5-year monitoring period.
  - ~~iii~~ Methods to ensure success and plant replacement as needed.
  - ~~iv~~ Proposed photo point locations to be used during the monitoring period.

Commented [CW17]: This should be I (one)

I. 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 following standards are applicable in all areas under the ~~wetlands~~ Wetlands overlay Overlay zone.

**A. General Standards.** Uses and activities in wetlands and in wetland buffer areas are subject to the following general standards:

1. The proposed uses and development comply with the applicable requirements in this title unless modified as provided in this chapter.
2. Uses and activities in 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 wetland and wetland buffer areas entirely and locating uses and activities on upland portions of the property.
  - b. When development within a wetland and/or wetland buffer is proposed, the applicant shall demonstrate how the affected land area is minimized by ~~utilizing~~ using design options to reduce building coverage, ~~such as~~ multistory construction, ~~reducing~~ impervious surface area, grading, and similar actions to the extent possible while properly accommodating the proposed use or activity.
  - c. Where a use or activity must be located in either the wetland or the wetland buffer, preference shall be given to the location of the use or activity in the wetland buffer.

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3. Valid permits from the US Army Corps of Engineers and from the Oregon Department of State Lands, or written proof of exemption from these permit programs, must be obtained before any of the following activities occur in wetlands:
  - a. Placement of ~~and any~~ amount of fill;
  - b. Construction of any pile-support structures;
  - c. Excavation (any amount);
  - d. Compensatory mitigation;
  - e. Wetland restoration; and
  - f. Wetland enhancement.
4. Where a **protected** wetland is identified by the Cannon Beach LWI 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. Where wetlands occur below the Ordinary High Water Line (or Mark) of the stream, the buffer shall be that of the requirements of Chapter 17.71, stream corridor protection.

**Commented [CW18]:** Meaning that streams with wetlands below OHW will only have a 10 foot buffer.

### B. Wetland Lot-of-Record.

1. Reasonable use of a wetland lot-of-record is defined as a maximum building coverage of 1,000 square feet and an additional maximum of 400 square feet of lot coverage, for a total lot coverage of 1,400 square feet, as provided in Section 17.43.050 C. below.
2. The uses and development subject to the reasonable use provisions in Section B. 1. above include:
  - a. Non-residential structures include commercial, institutional, and other public buildings with a maximum building coverage of 1,000 square feet.
  - b. On-site improvements include driveways, walkways, decks, patios, and parking on the property being developed with have a maximum lot coverage of 400 square feet.
3. When it is demonstrated that reasonable use of a wetland lot-of-record is not possible on the upland portion of the property, and a hardship would result, the proposed development shall be reviewed in accordance with Section 17.43.070 C.

**Commented [CW19]:** In the wetland or buffer, or on upland?  
I see now that it is described below.

**C. Approval Criteria for Development Subject to Wetland Lot-of-Record Requirements.** To allow reasonable use of a wetland lot-of-record where sufficient upland area is not available to accommodate up to 1,000 square feet of building coverage and 400 square feet of lot coverage, the applicant shall be entitled to obtain approval for this amount of development by one or more of the four following options, which are presented in order of priority. For all options, upland area shall be utilized to the maximum extent deemed appropriate by the Planning Commission to minimize the

**Exhibit C-1**

amount of ~~wetland buffer or wetland~~ impact encroachment or wetland buffer encroachment.

## Exhibit C-1

1. Adjustment. An adjustment to the applicable dimensional standards to accommodate all or a portion of the proposed development on available upland portions of the property shall be considered. The Planning Commission may approve an application for up to a 50 percent adjustment to the following development and dimensional standards to accommodate development outside of wetland and wetland buffer areas:
  - a. Building setback requirements of the applicable base zone; and
  - b. Lot dimension requirements of the applicable base zone.
2. Wetland Buffer ~~Redistribution-Averaging~~. Where the upland portion of the lot-of-record cannot accommodate 1,000 square feet of building coverage and 400 square feet of other lot coverage, with an adjustment to the building setback and/or the lot dimension requirements, ~~then~~ minor wetland buffer encroachment shall next be considered to allow reasonable use of a parcel when all the following are met:
  - a. The site alternative analysis prepared by the applicant demonstrates that there are no feasible alternatives to the site design to accommodate 1,000 square feet of building coverage and 400 square feet of other lot coverage without utilizing a portion of the wetland buffer; and
  - b. The proposed development or activity is designed to utilize the 50 percent adjustment to the dimensional standards listed in 17.43.070 C. 1. to develop within the available upland to the maximum extent practicable; and
  - c. The reduced buffer width will not result in degradation of the wetland's functions and values as demonstrated by an assessment from a qualified wetland professional; and
  - d. The lot coverage within the wetland buffer does not exceed 1,000 square feet for the building and 400 square feet for other lot coverage.
  - e. The buffer at its narrowest point is never less than 75 percent of the required width or 37.5 feet.
  - f. To the extent upland area on the subject property is available, the wetland buffer area shall be expanded by an equivalent amount to the encroachment into the buffer.
  - g. Compliance with the applicable requirements in Sections 17.43.070 E. through M.
3. Wetland Buffer Reduction and Mitigation. Where the upland portion of the lot-of-record cannot accommodate 1,000 square feet of building coverage and/or 400 square feet of lot coverage, and a wetland buffer encroachment greater than 25 ~~%percent~~ is necessary, the wetland buffer width may be reduced by the ~~approval authority~~ City when all the following criteria are met:
  - a. The site alternative analysis prepared by the applicant demonstrates that there are no feasible alternatives to the site design to accommodate 1,000 square feet of building coverage and or 400 square feet of lot coverage without ~~utilizing~~ using a portion of the wetland buffer; and

## Exhibit C-1

- b. The proposed development or activity is designed to ~~utilize~~use the 50 percent adjustment to the dimensional standards listed in 17.43.070 C. 1. to develop within the available upland to the maximum extent practicable; and
  - c. The reduced buffer width will not result in degradation of the wetland's functions and values as demonstrated by an assessment from a qualified wetland professional; and
  - d. The lot coverage within the wetland buffer does not exceed 1,000 square feet for the building and 400 square feet for other lot coverage; and
  - e. Mitigation for the proposed encroachment into the wetland buffer shall be provided in accordance with Section 17.43.070 J.; and
  - f. Compliance with the applicable requirements in Sections 17.43.070 E. through M.
4. Wetland Buffer ~~and Wetland~~ Encroachment, Wetland Impact, and Buffer Enhancement, Buffer Mitigation, and Wetland Mitigation. Where the upland portion of the lot-of-record cannot accommodate 1,000 square feet of building coverage and 400 square feet of lot coverage, and the wetland buffer reduction cannot accommodate this amount of development, the approval authority shall allow development within the wetland buffer first and/or wetland second when all the following criteria are met:
- a. The site alternative analysis prepared by the applicant demonstrates there are no feasible alternatives to the site design to accommodate 1,000 square feet of building coverage and 400 square feet of other lot coverage without ~~utilizing~~using a portion of the wetland buffer and/or wetland; and
  - b. The proposed development or activity is designed to ~~utilize~~use the 50 percent adjustment to the dimensional standards listed in 17.43.070 A. 3. to develop within the available upland area to the maximum extent practicable; and
  - c. The development, with the mitigation required in Section 17.43.070 J., will not result in degradation of the wetland's functions and values as demonstrated ~~by an assessment from~~ a qualified wetland professional; and
  - d. The lot coverage within the wetland buffer and wetland does not exceed 1,000 square feet for building coverage and 400 square feet for other lot coverage; and
  - e. Mitigation for the proposed ~~impact to encroachment into~~ the wetland or proposed encroachment into wetland buffer ~~shall~~shall be provided in accordance with Section 17.43.070 J.; and
  - f. Compliance with the applicable requirements in Sections 17.43.070 E. through M.

### D. Approval Criteria for Development Exempt from Wetland Lot-of-Record Requirements.

Development that is not specified in Section 17.43.070 B. shall be subject to relevant requirements in Sections 17.43.070 E. through M. The following improvements are exempt from the wetland lot-of-record requirements but shall comply with all applicable requirements in this chapter:

**Commented [CW20]:** Need to define how this assessment is measured. Either OFWAM or the Oregon Rapid Wetland Assessment Protocol (ORWAP), the latter of which is much more cumbersome and not useful for determining LSWs. One out is to say that "Best Professional Judgement" is acceptable (all wetland professionals typically use BPJ in any assessment method). Professional, via a method accepted by the DSL; and would be one way to handle this,

## Exhibit C-1

1. Streets;
2. Public sidewalks, pathways, and trails;
3. Utilities;
4. Land Divisions and Lot Line Adjustments;
5. Stormwater Management;
6. Wetland Mitigation and ~~Wetland~~ Enhancement; and
7. Vegetation Management.

E. **Streets** shall comply with following applicable standards:

1. Streets in the WO zone shall be constructed of permeable materials.
2. Streets crossing wetlands or wetland buffer areas shall be no wider than 20 feet.
3. Streets in wetlands shall be constructed in a manner that allows the free flow of water beneath the street.
4. Streets in wetland buffer areas may be placed on piling or fill, whichever is deemed least impactful by a qualified wetland professional.

**Commented [CW21]:** In my opinion, piling will always be least impactful to wetlands compared to placing fill.

F. **Sidewalks, Pathways and Trails.** Development of new sidewalks, pathways and trails may be permitted in wetland buffer areas and in wetlands buffer areas subject to the applicable requirements in this title and the following standards:

1. Sidewalks, pathways, and trails across ~~wetlands or~~ wetland buffer areas or wetlands may only be developed or maintained in a manner that does not restrict water movement. Bridges shall be used to cross open water areas.
2. Routes for new sidewalks, pathways, and trails shall be chosen to avoid traversing wetlands. Route alignments around the perimeter of wetlands, and in wetland buffer areas, are preferred.
3. Sidewalks, pathways, and trails within wetlands and wetland buffers shall be a maximum of 12 feet wide and constructed of permeable material or on pilings.

**Commented [CW22]:** Do you want to define Open Water as a stream, pond, river etc. that has a stream bed and bank channel? Or are you thinking about shallowly ponded wetland areas? Maybe not relevant to wetlands as it should be covered in the Stream Protection Code. Do Bridges include open-bottomed Arch Culverts and buried natural bottom concrete box culverts? Bridge over Ecola and Logan Creeks, certainly.

G. **Utilities.** Electric power lines, telephone lines, cable television lines, water lines, wastewater collection lines, and natural gas lines may be permitted in wetlands and in wetland buffer areas subject to the following standards:

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:

## Exhibit C-1

- 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 wetland area. Side-casting into a 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 by the utility trench construction or maintenance; and
  - d. Routes for new utility trenches shall be selected to minimize vegetation removal and hydraulic impacts on wetlands.
2. Aboveground utilities, including electricity, cable television, and telephone service, may be routed through protected wetlands and wetland buffer 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 wetlands and wetland buffer areas shall be conducted according to the standards in Section 17.43.070 K.
  3. Utility maintenance roads in wetlands and in wetland buffer areas must meet applicable standards in Section 17.43.070 E.
  4. Common trenches, to the extent allowed by the building code, are encouraged to minimize ground disturbance when installing utilities.
  5. Underground utilities shall be routed under disturbed areas such as streets, driveways, and off-street parking areas whenever feasible.
- H. **Land Divisions and Lot Line Adjustments.** In addition to the applicable requirements in Title 16, subdivisions, replats, partitions, and property line adjustments of a wetland lot-of-record are subject to the following standards:
1. The applicable requirements in Title 16.
  2. Preliminary plat maps for proposed subdivisions, replats, partitions, and lot line adjustments involving a wetland lot-of-record must show the wetland and wetland buffer boundaries, as determined by a wetland delineation approved by DSL.
  3. Subdivisions, replats, partitions, and property line adjustments of upland portions of a wetland lot-of-record are permitted subject to the following standards:

## Exhibit C-1

- a. Each proposed lot shall include an upland area that contains a minimum of 1,400 square feet.
- b. The wetland and wetland buffer area on the subject property shall be retained on one lot.
- c. Wetlands and wetland buffer areas may be counted towards meeting the dimensional requirements of the base zone.

I. **Stormwater Management.** Management of stormwater flowing into 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 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 wetlands and wetland buffers shall continue to flow into wetlands and wetland buffers in accordance with this Chapter. Uses and activities intended to remove stormwater away from or around wetlands and wetland buffers or to move stormwater within a wetland or wetland buffer are prohibited unless undertaken as part of an approved wetland mitigation or enhancement plan.
2. A stormwater management plan, including the required information specified in Section 17.43.060 G. shall be submitted for approval by the public works director according to the following 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.

I. ~~J.~~ **Wetland Mitigation and Wetland Enhancement.** Except for Wetland Buffer ~~Redistribution-Averaging~~ in 17.43.070 C.2., all projects involving development, removal or fill in a wetland or wetland buffer must provide a wetland mitigation and/or a wetland enhancement plan that meets the following standards to retain wetland functions and values.

1. The proposed activities and development in wetlands or wetland buffer areas satisfy the requirements of Section 17.43.070 B.

**Commented [CW23]:** This is not practicable in all cases. The wetland and buffer area could be placed in a separate Tract, with or without use restrictions, but to create a legal Lot is problematic. For example, a fifteen thousand square foot wetland lot-of-record that has not been platted into three five thousand square foot lots, none of which contain wetlands but all of which contain a small area of wetland buffers. After platting, three dwelling units could be permitted while avoiding the wetland buffer entirely. The problem is that there is not enough square feet of the buffer within the lot to create a legal Lot of the minimum lot size for the overlying residential density zone. I am sure there may be other "what if" examples out there, but maybe this is more about platting than making a legal Lot of the wetland and wetland buffer. I guess I don't understand why this is being proposed as an amendment to the WO Zone. Making a wetland and wetland buffer "Lot" offers no protection to its contents.

**Commented [CW24]:** I could not remove this hard return

## Exhibit C-1

2. The wetland mitigation and /or wetland enhancement plan shall be prepared by a qualified wetland professional, and it shall address anticipated impacts of the proposed development on the wetland or wetland buffer along with proposed measures to mitigate the onsite wetland impacts and wetland buffer impacts/encroachments. Mitigation actions shall include 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 development or activity.
3. Mitigation ratios. When mitigation is required, the following requirements shall be satisfied:
  - a. When wetland impacts require mitigation per federal or state regulations, then federal or state wetland mitigation ratios will apply, so long as equal to or greater than the City's minimum requirement.
  - b. If wetland impacts are below federal and state thresholds for a removal fill permit or are exempt from federal or state regulations, then:
    - i. Wetland mitigation that is provided within the wetland shall require a 1:1 mitigation area ratio within the wetland on the site.
    - ii. Wetland mitigation that is provided within the adjacent wetland buffer shall ~~required~~ a 2:1 mitigation area ratio.
  - c. Wetland buffer mitigation that is provided within the wetland buffer shall satisfy one of the following:
    - i. Wetland buffer mitigation can occur as expansion of buffer at a 1:1 area ratio; or
    - ii. Wetland buffer enhancement of marginal or degraded buffer conditions at a 1:1 area ratio.
  - d. Upon approval, the mitigation plan shall be integrated with the design package, and it shall be the responsibility of the building official to confirm compliance with the mitigation plan before issuing a certificate of occupancy. In the event that mitigation efforts are ~~have~~ not been completed when occupancy is requested, the owner or the owner's agent may certify in writing that owner or their agent will complete the mitigation plan within a specified period. The certification shall represent the owner's or owner's agent's agreement that, in exchange for the granting the certificate of occupancy, ~~that~~ the mitigation plan will be completed in accordance with its terms.
  - e. If a landowner or responsible party fails to implement ~~a~~ the mitigation plan, the City may undertake any action necessary to comply with the mitigation plan and all associated costs and accrued interest thereon ~~will~~ shall become the immediate responsibility of the landowner or responsible party.

## Exhibit C-1

4. Monitoring results shall be provided to the City on an annual basis prior to the end of the calendar year. If results show a risk of not meeting the success criteria detailed in the ~~monitoring-mitigation~~ plan, then corrective actions to be implemented shall be described in the monitoring report. The mitigation plan will remain in effect for a period of 5 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 the implementation of the mitigation-effortsplan, as required by conditions through the end of the effective period.

~~4.5.~~ The proposed mitigation plan may be modified to implement adaptive management strategies to ensure the success of the proposed mitigation plan, upon approval by the City. One example is changing the proposed plant species to be installed to reflect actual hydrologic and/or soil conditions.

K. **Vegetation Management.** Vegetation in wetlands and in wetland buffer areas may be managed (including planting, mowing, pruning and removal) subject to the following standards:

1. Tree removal in wetlands and in wetland buffer areas shall be consistent with the criteria and standards in Chapter 17.70, tree removal.
2. Tree pruning is 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); or
  - b. Necessary for maintenance of an existing dwelling or driveway; or
  - 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 a sufficient ~~criteria-criterion~~ 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 International Society of Arboriculture (ISA) Tree Hazard Evaluation Form prepared by a certified arborist at the property owner's sole expense.
4. Tree trunks, stumps, roots, and ~~bows-boughs~~ of trees removed or pruned ~~on~~ in 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-~~ avoids hazards while leaving as much stump as possible for wildlife habitat (i.e., snags).
5. In all cases, removal or pruning of trees from wetlands and wetland buffers must follow best professional standards to ensure that wetlands and wetland buffer areas functions and values ~~are not compromised~~.
6. Any tree removed in accordance with this title or damaged by activities authorized under this

**Commented [CW25]:** Or provide your definition of what "are not compromised" means, like: substantially impair from 7. f. below, moved to 7.

#### Exhibit C-1

title shall be replaced by the property owner with a tree on the wetland lot-of-record of comparable native species approved by the City. For example, Red Alder trees could be replaced with longer lived deciduous trees or coniferous trees.

7. Vegetation removal in a wetland shall be the minimum necessary and in no case shall it substantially impair wetland functions and values. Removal of vegetation, except trees covered by Chapter 17.70, in wetlands and in wetland buffer areas is permitted only if:

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- 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 wetland or wetland buffer mitigation plan.
- ~~f. Vegetation removal in a wetland shall be the minimum necessary and in no case shall it substantially impair wetland functions and values.~~
- 8. Pruning or mowing permitted under subsections J. 8. A. through f. in a wetland shall be the minimum necessary and in no case shall it substantially impair wetland functions and values.  
Pruning or mowing of vegetation in 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/City in conjunction with a building permit that minimizes adverse impacts on wetlands.
- ~~g. Pruning or mowing permitted under subsections J8a through f in a wetland shall be the minimum necessary and in no case shall it substantially impair wetland functions and values.~~
- 9. Planting new vegetation in 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/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 native vegetation in wetland buffer areas is permitted as part of a managed garden or landscape.

Commented [CW26]: Moved g. here.

## Exhibit C-1

11. Vegetation management practices ~~will shall~~ be employed in 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 and~~ substantial alteration of native wetland plant communities. The following are not permitted as part of a vegetation management plan for wetlands or wetland buffer areas: alteration of wetland hydrology, use of herbicides consistent with state and federal regulations, or application of ~~soil amendments or~~ fertilizer.

Commented [CW27]: I deleted this because biochar may be very beneficial to plantings in any landscape, and I think it is considered a soil amendment.

### L. Construction Standards

1. Construction management practices ~~will to~~ be employed in wetlands, wetland buffer areas, and the upland portion of a wetland-lot-of-record that ~~will~~ 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 and~~ damage to existing vegetation. At a minimum, erosion fencing shall be installed between areas to be disturbed and adjacent ~~wetlands and their wetland buffer areas~~. Construction equipment shall be kept out of wetlands and wetland buffers unless required for an approved use, ~~and which will require that~~ signs ~~are~~ 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 result in discharge of wastewater to waters of the state or placement of pollutants such that they could enter waters of the state. Any and all washdown of concrete trucks shall occur off-site. All construction activities shall be conducted as required by the ~~cityCity managerManager~~.
2. 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 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 minimizes possible contamination of the wetland environment.
3. When removal and fill are ~~is~~ approved by the Department of State Lands and/or US Army Corps of Engineers, the requirements of those permits shall prevail. For development approved by the ~~cityCity~~ approval authority, the following standards shall be satisfied:
  - a. All fill material shall be clean and free of contaminants; ~~and~~
  - b. Filled area sides shall be finished to a stable slope; ~~and~~
  - c. Measures shall be incorporated into the fill design to minimize erosion or sloughing of fill material into wetlands; ~~and~~

Commented [CW28]: We don't want to fence the buffer off from the wetland.

## Exhibit C-1

- d. Fills shall be designed in a manner that complies with Chapter 17.38 Flood Hazard Overlay Zone; and
  - e. Fill side slopes shall be revegetated with native plant species, as recommended by a qualified wetland professional, to stabilize the slope.
5. To avoid harm to wetlands and wetland buffers from excessive traffic and frequent visitors who are unaware of wetland protections, short term rentals shall provide protection signage or education materials regarding wetland protection [on the site](#).
6. Excavation in wetlands and in wetland buffer areas for any purpose must meet the following standards:
- a. Excavation for purposes of gravel, aggregate, sand, or mineral extraction is not permitted.
  - b. Excavation for utility trenches in wetland buffer areas is subject to the following standards:
    - i. Material removed from the trench is either returned to the trench (back-fill) or removed from the wetland area. Side-casting into a wetland for disposal of material is not permitted;
    - ii. Topsoil shall be conserved during trench construction or maintenance, and replaced on the top of the trench; and
    - iii. 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.
  - c. Excavation for building footings in wetlands is subject to the following standards:
    - i. Material removed for approved footings is either returned to the trench (back-fill), or removed from the wetland or wetland buffer area. Side-casting for disposal of material is not permitted; [and](#)
    - ii. Disturbance of wetland vegetation and topsoil during footing construction shall be minimized; and
    - iii. 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.
  - d. Excavation for wetland enhancement is subject to the following standards:
    - i. No more material than necessary and specified in the enhancement plan shall be excavated; and

## Exhibit C-1

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

**M. Mapping Delineated Wetlands and Wetland Buffers.** As a condition of approval, the applicant shall provide digital GIS mapping data of the accepted wetland delineation or resulting change in the boundary of a protected wetland and wetland buffer to the ~~city~~City manager-Manager for the purpose of updating the ~~city~~City's LWI map file.

**Commented [CW29]:** Is there any way to have the City, County, or DSL digitize old paper copy wetland delineation maps that have been concurred with by DSL? These would be very useful in making the City's digital LWI maps more accurate, to be paired with an analysis of aerial photographic imagery, slope files, and tree canopy cover to ensure that nothing has changed since the date of the delineation map. Just a thought, I don't know if there are internship positions available for student GIS wizards out there.

Please delete this page from the next draft, thank you.