



CITY OF CANNON BEACH

AGENDA

Meeting: City Council
Date: Tuesday, September 6, 2022
Time: 6:00 p.m.
Location: Council Chambers, City Hall

CALL TO ORDER AND APPROVAL OF AGENDA

CONSENT AGENDA

- (1) **Consideration of the Minutes of the**
August 2 Regular Meeting
August 9 Work Session

PUBLIC COMMENT

The Presiding Officer will call for statements from citizens regarding issues relating to the City. The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.

RESOLUTION

- (2) **Resolution No. 22-23 Resolution 22-23 for the Purpose of Approving Increases and Decreases to the FY 2022-2023 Budget by Making an Intrafund Transfer of Appropriation for Public Works**
If Council wishes to adopt Resolution 22-23 an appropriate motion is in order
- (3) **Resolution No. 22-24 for the Purpose of approving changes to the FY 2022-2023 budget by increasing appropriations in the general fund to allow for a specific purpose donation from the Friends of Haystack Rock**
If Council wishes to adopt Resolution 22-24 an appropriate motion is in order
- (4) **Resolution No. 22-25 for the Purpose of approving changes to the FY 2022-2023 budget by increasing appropriations in the general fund to allow for a capital outlay for the purchase of a UTV**
If Council wishes to adopt Resolution 22-25 an appropriate motion is in order

PROCLAMATION

- (5) **Proclamation No. 22-10, Declaring September 15 – October 15 as National Hispanic Heritage Month in Cannon Beach**
If Council wishes to adopt Proclamation 22-10 an appropriate motion is in order

ACTION ITEMS AND DISCUSSIONS

- (6) **Forest Lawn Scope of Review**
- (7) **Outdoor Dining**
- (8) **Food Pantry Repair Funding**
- (9) **LOC Voting Delegate for Annual Membership Meeting**

INFORMATIONAL/OTHER DISCUSSION ITEMS

- (10) **Monthly Status Report**
- (11) **Mayor Communications**
- (12) **Councilor Communications**
- (13) **Good of the Order**

ADJOURNMENT

To join from your computer, tablet or smartphone

Join Zoom Meeting

<https://zoom.us/j/99261084699?pwd=TkpjbGcxS0pCOGIMOCtSbSsxVWFMZz09>

Meeting ID: 992 6108 4699

Password: 365593

To join from your phone:

Phone: 1.669.900.6833

Meeting ID: 992 6108 4699

Password: 365593

View Our Live Stream: View our [Live Stream](#) on YouTube!

Public Comment: If you wish to provide public comment via Zoom for this meeting, you may submit it by noon, the day of the meeting, to cityhall@ci.cannon-beach.or.us, or raise your hand using the Zoom feature. Except for a public hearing agenda item, all Public to be Heard comments will be taken at the beginning of the meeting for both Agenda and Non-Agenda items. If you are requesting to speak during a public hearing agenda item, please indicate the specific agenda item number as your comments will be considered during the public hearing portion of the meeting when the public hearing item is considered by the Council. All written comments received by the deadline will be distributed to the City Council and the appropriate staff prior to the start of the meeting. These written comments will be included in the record copy of the meeting.

Please note that agenda items may not be considered in the exact order listed. For questions about the agenda, please contact the City of Cannon Beach at (503) 436.8052. The meeting is accessible to the disabled. If you need special accommodations to attend or participate in the meeting per the Americans with Disabilities Act (ADA), please contact the City Manager at (503) 436.8050. TTY (503) 436-8097. This information can be made in alternative format as needed for persons with disabilities.

Posted: 2022.08.31

Minutes of the
CANNON BEACH CITY COUNCIL
Tuesday, August 2, 2022
Council Chambers

Present: Mayor Sam Steidel, Council President Mike Benefield, Nancy McCarthy and Brandon Ogilvie in person. Robin Risley via Zoom.

Excused:

Staff: City Manager Bruce St. Denis, IT Director Rusty Barrett, City Recorder Jennifer Barrett, Public Works Director Karen La Bonte, Community Development Director Jeff Adams and Chief of Police Jason Schermerhorn in person. Rick Hudson via Zoom

Other: City Attorney Ashley Driscoll in person and Legal Counsel Emily Matasar via Zoom

CALL TO ORDER AND APPROVAL OF AGENDA

Mayor Steidel called the meeting to order at 6:00 p.m.

Motion: Ogilvie moved to approve the agenda; Benefield seconded.

Vote: Benefield, McCarthy, Ogilvie, Risley and Steidel voted AYE: the vote was 5:0 and the motion passed unanimously.

PUBLIC COMMENT

- Deanna Hammond PO Box 942, Cannon Beach, spoke about her concerns with Ordinance 22-04 in regards to bicycles.
- Deb Atiyeh PO Box 1426, Cannon Beach, spoke about the concerns with the Corgi event held last weekend. Spoke of her concerns about the letters being circulated about the City Manager.
- Jan Siebert-Wahrmund and Wes Wahrmund PO Box 778, Cannon Beach, spoke about COVID in Cannon Beach. Spoke about concerns with timing of the Corgi event held last weekend. Spoke about the City Manager retention bonus.
- Jim Paino commented that the Chamber is not a part of the Corgi event.

CONSENT AGENDA

- (1) Consideration of the Minutes of the
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|----------------|---------------------------------|
| June 29 | Code Audit Joint Meeting |
| July 5 | Regular Meeting |
| July 7 | Special Work Session |
| July 12 | Work Session |

Steidel asked for a motion regarding the minutes.

Motion: Ogilvie moved to approve the minutes for June 29, July 5th, 7th, and 12th; Benefield seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

ORDINANCE

(2) Ordinance No. 22-04 for the Purpose of Repealing The Municipal Code, Chapter Amending Chapter 8, Traffic and Parking and Title 10 Vehicles and Traffic Emerging Mobility Devices Ordinance

Adams summarized the staff report, giving an overview of the research and revisions made after the work session. Adams added we are not doing anything regarding bicycles, there is a language that speaks about parking bikes, but we have no amendments in that area except for the duty section which says operate a bicycle on a sidewalk, multi-use pass or trail unless specifically posted for such purposes.

Benefield said several years back there was a discussion about the lack of bike racks. It was determined with the narrow sidewalks you couldn't put them without obstructing traffic and could only be on private property if the owner was interested. We did get a few installed on public property. Steidel added we can discuss bike lanes during the TSP, adding it doesn't address the ADA component. McCarthy asked are any of the mobility devices street legal, Adams replied I believe so, that would fall under the police department purview. Steidel noted they are just like bikes. Risley asked regarding the fines were these in existence before, Adams replied yes, I haven't changed anything to do with violations and fines. Risley replied \$25 doesn't sound like very much. Violations and fines with cars and being impounded, \$360 plus \$25 impound, I bet it's a lot higher these days for this sort of thing. Adams said that is something we can review in the code audit. Most up to date codes reference a yearly fee schedule and you don't list the fees in the ordinance.

Motion: Benefield moved to approve the first reading of Ordinance No. 22-04; Ogilvie seconded.

Steidel read by title only.

Ordinance 22-04 For the Purpose of Repealing the Municipal Code, Chapter Amending Chapter 8, Traffic and Parking And Title 10 Vehicles And Traffic

Council discussed the amendment to the ordinance correcting the title.

Motion: Benefield moved to amend the title of ORD 22-04 to include chapter 16 Moped Rentals of Title 5 Business Taxes, Licenses and Regulations; Ogilvie seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

Steidel asked for roll call for the vote on the first reading

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously

Motion: Benefield moved to approve the second reading and adopt Ordinance No. 22-04; Ogilvie seconded.

Steidel read by title only.

Ordinance 22-04 For the Purpose of Repealing The Municipal Code, Chapter 16 Moped Rentals Of Title 5 Business Taxes, Licenses And Regulations, Amending Chapter 8, Traffic And Parking And Title 10 Vehicles And Traffic

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously

Steidel stated Ordinance No. 22-04 has been adopted and will become effective 30 days from adoption

(3) Ordinance No. 22-05 an Ordinance Amending the Municipal Code Chapters 12.20 Camping Prohibited and 12.42 Park Code

Matasar summarized the edits made to the code based on the discussion during the work session last month. Risley commented regarding park hours, I am concerned that the soccer games go over dusk, wondering if there was a way we could open it up for that situation. We have Coffee with Councilors on the 15th will have spoken people from Latinx group to talk with us and soccer would be a topic. Schermerhorn replied it says unless you get a special permit which we could allow. Risley asked what about lighting, St. Denis replied we looked at lighting in great deal and had issues with the poles and would require installation where the field would be so the greenspace would not be a wide as it is now. Risley added I do want to honor the night sky but hope for safety features the soccer teams would have lights and I understand they bring their lights at this time and perhaps that will be in the agreement. Matasar added exhibit B relates to all activity in the park, section 12.42.035 and it is not specific to camping it is closing the parks from dusk till dawn unless authorized by permit. Schermerhorn noted currently there is no time limit on use. In response to Risley's question how late does soccer last, Schermerhorn replied I think until 10 or so, it depends on how the game is going. We have discussed lights similar to what we use for accidents, and with lights they may go later, but also could create more noise for the conference center. Risley added I hope we can explain what our intent is and to me it's a little muddy right now. Schermerhorn noted you can get a special permit for soccer, there is not a reason to be in the park in the dark in the middle of the night.

McCarthy asked where can people camp for people who need shelter and can't find it in town? And do we have any shelter for people who need it? Schermerhorn replied we do in the county but not in Cannon Beach, and we have given people rides to the areas that have resources. McCarthy asked do we have any place for them to camp, Schermerhorn replied there are areas but as we talked about at the last meeting we don't have a list of places you can camp. It's better to list the restrictions as that is something you can enforce. Matasar added on sidewalks if met the code, any outdoor public property that is not specifically restricted would be allowed. In response to McCarthy's question if someone doesn't have shelter what are they to do, Schermerhorn replied it's a fine line on what you want to be advertising. In response to McCarthy's question does this meet the court rules requirements, Matasar replied it is required that there are places to camp. I don't recommend you designate an area, we can talk about where it would be allowed, we are not keeping it a secret. I believe there are areas where camping is permitted outdoors in Cannon Beach under this code section. Publicly owned parking lots.

Motion: Benefield moved to approve the first reading of Ordinance No. 22-05; Ogilvie seconded.

Steidel read by title only

Ordinance 22-05; An Ordinance Amending the Municipal Code Chapters 12.20 Camping Prohibited And 12.42 Park Code

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously

Motion: Benefield moved to approve the second reading and adopt Ordinance No. 22-05; Ogilvie seconded.

Steidel read by title only

Ordinance 22-05; An Ordinance Amending the Municipal Code Chapters 12.20 Camping Prohibited And 12.42 Park Code

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously

Steidel stated Ordinance No. 22-05 has been adopted and will become effective 30 days from adoption

RESOLUTION

(4) Resolution No. 22-22 for the purpose of adopting an updated utility leak adjustment policy

La Bonte read the staff report. In response to Benefield's question I believe no changes from draft from previous meeting, La Bonte replied correct.

Motion: Ogilvie moved to adopt Resolution 22-22 for the purpose of adopting an updated utility leak adjustment policy; Benfield seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

ACTION ITEMS AND DISCUSSIONS

(5) Consideration of Parks and Community Services Committee Community Grant Award Recommendations for FY 2022-23

St. Denis read the staff report. Risley added I am happy to see the celebration of the program coming back. Benefield added it helps to hear about the program.

Motion: Ogilvie moved to adopt the FY 2022-2023 Community Grant awards as presented; Risley seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

Steidel thanked the Committee for their hard work.

(6) Consideration of Adopting the Tourism and Arts Fund Award Recommendations for FY 2022-23

St. Denis read the staff report.

Motion: Ogilvie moved to adopt the FY 2022-23 Tourism & Arts Fund grant awards as presented; Risley seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

Steidel thanked the Commission for their hard work.

(7) ORWARN Mutual Aid Agreement

Hudson read the staff report. St. Denis added this is a common type of agreement between public works agencies and there is no commitment with this. Benefield added it allows the party providing the help to recover expense

Motion: Ogilvie moved to approve the ORWARN Mutual Aid Agreement; Benefield seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

(8) Ballot Measure 109 (Psilocybin) Referral

Driscoll presented a PowerPoint presentation. A copy is included in the record. Driscoll noted this is very similar to what occurred with the marijuana issues in 2015. Driscoll reviewed an OHA information page. A copy is included in the record. Driscoll noted there are a lot of unknowns. OHA has not completed their rulemaking. If you do a ban it would require a referral to voters in November. Driscoll reviewed each option noting the process needed. If prohibition were to be an option, it would have to be during a general election, so if we do not do it this year, you would have to wait two years for the next election. In response to Steidel's question if goes to vote and passes could we put time place and manner restrictions, Driscoll replied yes. Benefield noted service centers are restricted from residential zones, but it doesn't say that for manufacturing. Driscoll replied will need to check with Adams, but they are still regulated by our code. In response to McCarthy's question if we are not sending to a vote now does that mean they would be allowed, Driscoll replied yes. Councilors noted their preferences and discussed the voter number in Cannon Beach when this was on the ballot.

Driscoll added through conversations I heard it takes a while for psilocybin to go through your system. A lot of the services centers may want to have property to allow outdoor space and allow people to walk around their center. Sounds like it may want to be in a larger parcel, but no guarantee.

In response to McCarthy's question will you go over the not doing anything, Driscoll gave an overview. There are some limited spaces in commercial zones with a conditional use permit and couldn't violate state law so can't be in residential or near school.

In response to McCarthy's question can we ban manufacture but allow the center, Driscoll replied yes but needs to go to a vote.

Benfield added I am in favor for this. We don't have any facts on why it should be banned. Seems like a personal preference. State law already has restrictions in place. You have a valid point on the service center, it's not going to be a back office then turn someone lose. As we go through the code audit there may be an opportunity to clarify. With the workload and burden to get the ballot out seems hardly worth the fight.

St. Denis added my concern if you do nothing, not sure if the voters, when voted it in, thought we'd have 5 marijuana shops. If council has an idea of how they want it to go it may be worth it to say this is how we want it to look instead of going with default.

Steidel added my initial thought was temp ban so state, county, health dept were able to get all ducks in the row and give us two years to figure out. But I also agree that staying ahead of the game and doing a little extra work as possible makes sense to a point. Problem with not doing anything at this time we are taking a gamble if someone is going to throw up a shop in the middle of downtown. I don't believe this has the same energy that marijuana had. This is more of a clinical thing. Think if we jump into time place and manner we can tweak the state restrictions upon ours from what we learned from marijuana. I agree with St. Denis, working on time place manner and get it sorted out before January makes sense.

Risley added I don't know what it smells like and I do know that its wonderful to walk by a bakery or restaurant to have that smell. If it's a bad smell, I don't think that will compliment. It might not be able to compliment the environment we have downtown. McCarthy replied that would be manufacturing not service center. Risley added I would want the service center but not manufacturing. Driscoll replied you can do that but will need to refer to voters.

Driscoll added if going to a vote, it will require another meeting. It won't take long to produce the documents. It will require an additional meeting. St. Denis added I don't think council would be taking a position, so there is no work in putting out the ballot question.

Benfield said do something for time place manner, maybe tweak our current zoning to address it, but don't think we need to go ballot measure to do that. We can clarify there are no objectionable odors. We can do without wasting time going to ballot, to only have it defeated and have to do this anyway. We are asking for a two-year delay and see what everyone else does and going to ballot maybe it will pass maybe not. If we start working on it we will be prepared. In response to Benfield's question do you get complaints about pot shops, Schermerhorn replied not anymore. Benfield added this is not recreation. A big part of this is to help our veterans who have PTSD. I'd like to have our ordinance in place saying this is where it can be and this is where it can't be done. Ogilvie added that is very well stated.

Steidel said so you are good with time place and manner. Benfield replied yes, addressing our current zoning. Risley replied I'd prefer the other way. McCarthy replied I am ok with time place manner, Ogilvie replied yes. Steidel said we are going with time place and manner. The January date is when it gets started, but we don't have to be done. Driscoll replied the issue would be if someone applies on the first of the year. Adams replied we are going through the code audit and I can offer a couple quick scenarios to take care of the concerns.

(9) St. Denis Retention Bonus

Driscoll summarized the staff report. Driscoll noted all the cities in Clatsop County are recruiting a city manager. The proposal being proposed is different than what St. Denis originally asked. Driscoll reviewed the details of the bonus.

Ogilvie added because this is a different agreement than initially proposed it is more of an upside of the city. The cost savings with not using a project manager is a savings for the city. On a personal note I want to express my support for what he has been doing and am in support for this bonus.

McCarthy said in the initial conversation it came up because St. Denis hasn't been able to take vacation – what makes him take vacation? Driscoll replied the agreement doesn't include vacation time. By increasing the hours of vacation it disincentivizes someone to take vacation. People who are already disinclined to take vacation and have the cash out option typically takes the cash. In response to McCarthy's question how to make him take vacation, St. Denis replied I will prioritize the work and take time off.

Benefield added during the review process and the salary adjustment, with all the negativity from a small handful of citizens I worry that you will get tired and say I am tired of it and walk out. This revision is to incentivize you. You can only take so much of this crap before you can say it's not worth it. I was to make it worth it for you to stay until it is completed, at least. There is a lot of competition for city managers, there have been three since I've been on council. I am very pleased with your performance, motivation and creativity. You've brought these projects to the forefront without increasing property taxes. This is a recognition of the hard work and reward for completing something that goes well beyond the normal duties of the city manager. Being a major project manager while continueing to serve the community and support your staff.

Steidel noted St. Denis and directors are not under the city union process. They don't get the same benefit process we go with for the unions. They have to negotiate with us themselves. Luckily, we have Driscoll in between who does the management of that. When we try to compare St. Denis's job and how he is reimbursed with how the rest of the city staff works. I think with St. Denis's leadership has been very positive for the city personal on both unions. We have not raised property taxes; all we are now paying for is the forest reserve. It's well worth having consistent leadership/management process.

McCarthy added it's really our fault. When we hired him we said we want you to get these projects done and you did and without raising property taxes. St. Denis replied you said you wanted them done before you left office. McCarthy added I did, and I leave in two years. Steidel added I would like to thank Ogilvie for stepping in and the negotiation you worked out. St. Denis added thank you for your comments.

Risley added I want to make sure St. Denis will have an evaluation every year. Having new council coming on and feel elevation is top priority. I don't like the name retention and would like to suggest another word for it. A new council evaluates the work every year and don't want it included by this word. Driscoll replied I get your concern, and want to draw your attention to section 3 – this is different than those and council will have opportunity during the evaluation and council make decision on merit at that time. Section 5 – your concern word of retention implies promise of employment however section 5 speaks to that. Council can consider a

different name for it. It's a bonus, reward for hard work when the projects are complete. Steidel suggested a commitment bonus. Driscoll replied it would be an easy fix. Benefield added it doesn't change the function of the agreement. Risley replied it does to me and I wouldn't be in favor of it if the word retention is there. Benfield said replace retention with project completion bonus.

Motion: McCarthy moved to authorize Mayor Steidel to enter into the memorandum of agreement with the amendments as discussed between the City of Cannon Beach and City Manager Bruce St. Denis; Ogilvie seconded.

Vote: Councilors Benefield, Ogilvie, McCarthy, Risley and Mayor Steidel voted AYE; the vote was 5:0 in favor and the motion passed unanimously.

Ogilvie said thank you St, Denis. St. Denis replied thank you all.

INFORMATIONAL/OTHER DISCUSSION ITEMS

(10) Monthly Status Report

(11) Mayor Communications

(12) Councilor Communications

(13) Good of the Order

McCarthy asked who is in charge of corgis? I got an email asking if I had the number for the person in charge of the corgis and I didn't. A lot of people enjoyed themselves, but a lot of people did not. In response to Benfield's question did they get a permit, St. Denis replied no, just through state parks. A discussion ensued regarding the dates of summer events. St. Denis added I will contact the people running the corgi event and after that work with state parks. We may want to consider a joint permit. There are things that we can work together. La Bonte added we have a contact from Corgis' since they need a right-of-way permit, in the past they mentioned potentially changing the date, a discussion ensued.

St. Denis noted we started the process of interviewing architects for the City Hall/Police Station. We did two interviews today, and three more on Thursday. We've had really good interviews and will be doing interview checks on Friday and Monday then start negotiations. It doesn't come back to you until we have an agreement. Will discuss next week with you about the schedule for CBE.

Steidel noted J Barrett set up with next code audit meeting on September 7th. The consultant will be presenting information. Then after that would like to put a hurry up on the code audit. We are getting way to many issues that our code doesn't quite cover. Also, we need to have discussion about the management process for the CBE for once it gets running. St. Denis added noted we have a firm with a team member who did their thesis on Cannon Beach tsunamis. They had the wave tank with model of City Hall and Surfsand.

La Bonte said thank you for recognizing St. Denis as our City Manager and entire team. I was on distribution of the letters that went out today. One mentioned staff morale. I hope that you guys will be

comfortable enough to talk to St. Denis's team before taking this information second or third hand. La Bonte gave a list of things St. Denis has done for staff. If anything effects morale, that is what destroys it. What you said tonight went miles and I thank you for that. St. Denis it is very harmful to the relationship and even with the committee that are critical. When it becomes personal it's hard to maintain the desire to do the best. When you get slapped around a couple times you are more defensive than proactive.

ADJORNMENT

The meeting was adjourned at 8:05 p.m.

ATTEST:

Jennifer Barrett, City Recorder

Sam Steidel, Mayor

DRAFT

Minutes of the
CANNON BEACH CITY COUNCIL WORK SESSION
Tuesday, August 9, 2022
Council Chambers

Present: Mayor Sam Steidel, Council President Mike Benefield and Nancy McCarthy in person
Robin Risley and Brandon Ogilvie via Zoom

Excused:

Staff: City Manager Bruce St. Denis, IT Director Rusty Barrett, City Recorder Jennifer Barrett,
Chief Jason Schermerhorn, Community Development Director Jeff Adams in person.
HRAP Director Kelli Ennis via Zoom

Other:

CALL TO ORDER AND APPROVAL OF AGENDA

Mayor Steidel called the meeting to order at 6:00 p.m.

Steidel asked for a motion to approve the agenda.

Motion: Benefield moved to approve the agenda as presented; Risley seconded.

Vote: Benefield, McCarthy, Ogilvie, Risley and Steidel voted AYE: the vote was 5:0 and the
motion passed unanimously.

PUBLIC COMMENT

- Erik Ostrander PO Box 97, Cannon Beach, congratulated the parking aids for doing a fantastic job this year.

DISCUSSIONS

(1) Cannon Beach Elementary School Rejuvenation Project – Schematic Design Schedule

St. Denis introduced the topic, noting that parking and food pantry are issues on the site. Then looking at the schedule with when presenting to council it became clear that we need to have parking resolved as well as food pantry in order to make progress. The food pantry discussion had been started. We will be presenting on September 13th costs for alternative sites.

St. Denis gave the options for the food pantry.

1. Move to another location.
 - Relocation costs and zoning considerations are scheduled for the September 13th work session.
 - If relocation is the direction chosen by council staff will find a way to make it work.
 - The actual relocation probably would not occur until the beginning of FY 23-24 due to budget considerations.
2. Leave the existing structure on site and do repairs.

- Staff will preform a more thorough analysis of the costs, present to council and make recommendations for funding.
 - CIDA will assume that a food bank structure will remain in the current location in short-term design considerations.
3. Food Bank stays on the current site but not necessarily in the current location.
 - From everything we know the current structure is not movable.
 - The lowest cost (but maybe not the best option for the site) is to purchase portables rather than do new construction.
 - With portables or new construction, CIDA can be flexible in their location which opens up some site design options.
 4. Do nothing.
 - Possible in the short term but if the city continues to want to house the foodbank, significant repairs or facility replacement will eventually be required.
 - Doing absolutely nothing is not really feasible because some repairs are necessary to make the structure more watertight and slightly more presentable.

Council discussed the site options and pros and cons.

St. Denis added for funding, we may need to tie additional funding on to City Hall bond. I don't know if we can tie the portable or the repair of portables to this financing. I don't know if there is grants for something like this. I don't see a situation when we are not using general funds. Risley added I am worried about sticking to the budget we have and work with it. St. Denis added the budget for this project is untouched. The budget for doing work outside of the project which would be the moving or improving the food pantry is not in any budget yet.

St. Denis added the potential lowest cost to the city is to keep in current location and do the repairs. If doing that, we would keep it here for a while. Don't look at the options, have CIDA do their thing and possibly have CIDA modify scope to bring it in. That way the decision is made and at this point the additional would come from general fund. This buys some certainty for the food pantry and the tribe wanted it to stay there. Benefield added making a decision to keep it there is the only way to plan and move ahead as then the decision is made, adding the cost to move or replace is more than repairing it. St. Denis added with the options we were looking at bringing back on the 13th it is starting at least \$300k. this is the most conservative move we can make then move on. Council consensus is to keep the food pantry where it.

Riley added I was looking at the dates and think there are conflicts with dates for DRB/PC. St. Denis replied that is correct, and depending on where we end up we may be adjusting dates. I wanted you to see a schedule of the process, giving and overview of the COE process. Would you be ready to make decisions or should we put another meeting in the middle to have two chances to look at it before making a decision. Steidel added it's better to have too many meetings then can cancel one.

Parking

St Denis said we need a decision on the minimum of what to pursue. Some options require Planning Commission or City Council. tot sure if there are other options, most are not very palatable.

St. Denis gave the options.

1. Stop all work on the CBE project until a plan can be made for the project to meet all parking code requirements.
 - Most likely not feasible and could stop or significantly diminish the project.
2. Council takes action to completely waive all parking requirements for the project.
 - May have legal and political obstacles.
 - Will most certainly require council to go through an extended public process.
 - Minimize the impact to the neighborhood and city by scheduling events having significant parking requirements during low tourist times.
3. Maximize the number of spaces that can be created on and near the site but nothing more. Waive the difference in required parking in a process like that discussed in Parking option #2.
 - Minimize the impact to the neighborhood and city by scheduling events having significant parking requirements during low tourist times.
4. If feasible, make arrangements for a shuttle during larger events and suggest parking in other locations in the city including Tolovana Park.
 - Would take folks a while to see how this could work.
 - We would want the trolley to make this popular.

Council discussed the options. St. Denis noted the consensus was 3&4, the food pantry stays where it is, and ask CIDA when doing other work on building facades they take a look at how to make that blend in.

Risley added as a manager for events you can control how many people are able to use this site. It shouldn't be that hard. Then for parking, it should be accommodating those numbers. We shouldn't have a crowded space. St. Denis added I've never seen this as a revenue source. I see this as a way to fill hotel rooms. We can put our own limit on it, then the number it could be, wont be as we wont be doing more than that. Steidel added that's why we need to be having the management conversation.

McCarthy noted keeping the food pantry on the site, are you going to have staff look at tother locations, St. Denis replied not at this time. We can possibly do a thumb nail thing with working with management of food pantry.

(2) HRAP Budget Review

Ennis summarized the staff report adding we didn't have to apply for the grant for this amendment as Friends of HRAP is giving a donation for new optics. Ennis added we have a UTV for capital outlay that was approved. We put down a deposit, but the dealership hasn't received the UTV yet so it will be moving to this fiscal year. St. Denis added we thought it was going to be paid for last year, but since it didn't come in, we are reallocating it. In Response to Risley's question how many employees do you have for HRAP, Ennis replied me and 2 year round and we have 17 seasonal staff. St. Denis added if acceptable will bring this to meeting in September.

(3) E-Permit and History by Location

Adams walked through various sections of the website. Adams walked through the steps of searing building permits on the state website, and GIS on the city's website and reviewed the public notice page.

(4) Good of the Order

St. Denis said I have a call into the Corgi folks. We haven't connected yet, but others have contacted them regarding changing the date of the event. They are not terribly warm to that yet, but we'll continue talking to them.

St. Denis said in talking with Adams and Steidel, the question was is there a way to move the code audit quicker. St. Denis gave an overview of the steps needed to make a zoning change. We will have work done by current board members and council and anything that happens after November 1st potentially goes to the next council. While there has been a great effort to identify issues, that was the first part. Now we identified the areas, it is what changes do we want to make. We will have a crossover between councils. In response to McCarthy's question for new councilors/mayor, what kind of educational process will they have to go, St. Denis replied there are a couple ways we can go, especially with land use case history. Probably need to ask people to spend a certain amount of time with us to get up to speed. It would be good to spend time with staff and Steidel made a recommendation that maybe this council does the retreat before January 5th, then you can be talking about what we started and here are our concerns. That is a good hand off and in reality, probably need to have the new council's retreat in February. Will have the usual training like ethics and Adams can do more training like he just did, a discussion ensued.

McCarthy said intalking to municipal judge the other day and he said he's been dealing with at court 70-80 contested parking tickets and that's just a fraction of parking tickets being given out. Schermerhorn replied the past two weekends alone they've given out more than that. The new judge is doing great and we enjoy having him. He's still learning and wants to learn. We had a meeting last week with parking aides and me and he did a ride along with the parking aides to see things from their point of view. In response to McCarthy's question how does that compare when we had the lower fee, Schermerhorn replied we were up there. The contesting part is coming from a lot of the van conversions where they are making their vans in the motor home and they are trying to park in different areas and RVv spots. We are working on the signs as it used to say no van conversations, but we are now allowing it.

McCarthy said Coffee with the Councilors is Monday the 15th from 10-11am. Risley added at 11-11:30 we going to have the Hispanic community come and share their thoughts on what they hope we can help them with. We are very excited about it, this was Jeannie Mclaughlin's idea.

Steidel added I am going to the mayor conference next weekend in Newport.

ADJORNMENT

The meeting was adjourned at 8:22 p.m.

ATTEST:

Jennifer Barrett, City Recorder

Sam Steidel, Mayor



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF RESOLUTION 22-23; FOR THE PURPOSE OF APPROVING INCREASES AND DECREASES TO THE FY 2022-2023 BUDGET BY MAKING AN INTRAFUND TRANSFER OF APPROPRIATIONS

Agenda Date: September 6, 2022

Prepared by: Karen La Bonte, Public Works Director

BACKGROUND

The 2021-22 adopted budget provided for the \$70,000 purchase of a dump truck, to be split between each Public Works department. Widespread supply chain difficulties meant that the City did not receive the truck until August 2022 (during the 2022-23 fiscal year).

ANALYSIS/INFORMATION

No money from this fund was spent during the prior fiscal year. However, an oversight meant that these line items were not carried over into the 2022-23 budget, necessitating this budget amendment. As this fund was untouched in 2021-22, the City only requires the authorization of the Council to transfer this spending authority to the current fiscal year to use for its originally approved purpose.

RECOMMENDATION

Staff recommends adopting Resolution 22-23 authorizing the intrafund transfer.

Suggested motion:

“I move to adopt the Resolution 22-23 for the Purpose of Approving Increases and Decreases to the FY 2022-2023 Budget by Making an Intrafund Transfer of Appropriations.”

List of Attachments:

A Resolution 22-23

BEFORE THE CITY OF CANNON BEACH

FOR THE PURPOSE OF APPROVING INCREASES) RESOLUTION NO. 22-23
 AND DECREASES TO THE FY 2022-2023 BUDGET)
 BY MAKING AN INTRAFUND TRANSFER OF AP-)
 PROPRIATIONS)

WHEREAS, the city budgeted for the purchase of a dump truck in the fiscal year ending June 30, 2022 budget; and

WHEREAS, the dump truck was ordered in fiscal year ending June 30, 2022; and

WHEREAS, generally accepted accounting principles provide for expensing goods and services when they are received; and

WHEREAS, the dump truck did not arrive until August 2022 which is the next fiscal year and this was not budgeted in the new fiscal year; and

WHEREAS, contingency will be used to amend the General Fund, Road Fund, Wastewater Fund, Water Fund, and Storm Drain Fund budgets as they have the benefiting asset. This will increase expenditures throughout those funds in the amount of \$68,130; and

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Cannon Beach hereby adopts the following FY 2022-2023 budget changes to the following funds.

<u>General Fund</u>	<u>Adopted Budget</u>	<u>Changes</u>	<u>Amended Budget</u>
Executive	\$ 1,668,063		\$ 1,668,063
Community Development	658,647		658,647
Public Works	1,021,135	6,813	1,027,948
Public Safety	2,094,003		2,094,003
Emergency Management	754,879		754,879
Non Departmental - Materials and Services	772,885		772,885
Non Departmental -Transfers Out	1,445,665		1,445,665
Non Departmental - Contingency	695,361	(6,813)	688,548
Total Expenditures	\$ 9,110,638	0	\$ 9,110,638

<u>Roads Fund</u>	<u>Adopted Budget</u>	<u>Changes</u>	<u>Amended Budget</u>
Roads Program	\$ 1,061,260	27,252	\$ 1,088,512
Contingency	212,252	(27,252)	185,000
Total Expenditures	\$ 1,273,512	0	\$ 1,273,512

<u>Wastewater Fund</u>	<u>Adopted Budget</u>	<u>Changes</u>	<u>Amended Budget</u>
Wastewater Program	\$ 1,567,101	6,813	\$ 1,573,914
Debt Service	11,540		11,540
Transfers Out	490,000		490,000
Contingency	315,728	(6,813)	308,915
Total Expenditures	\$ 2,384,369	0	\$ 2,384,369

Water Fund	Adopted Budget	Changes	Amended Budget
Wastewater Program	\$ 1,415,213	6,813	\$ 1,422,026
Debt Service	41,000		41,000
Transfers Out	4,217,800		4,217,800
Contingency	291,243	(6,813)	284,430
Total Expenditures	\$ 5,965,256	0	\$ 5,965,256

Storm Drain Fund	Adopted Budget	Changes	Amended Budget
Storm Drain Program	\$ 295,987	20,439	\$ 316,426
Transfers Out	156,437		156,437
Contingency	59,197	(20,439)	38,758
Total Expenditures	\$ 511,621	0	\$ 511,621

Passed by the Common Council of the City of Cannon Beach this 6th day of September 2022, by the following roll call vote:

YEAS:
NAYS:
EXCUSED:

Sam Steidel, Mayor

Attest:

Bruce St. Denis, City Manager



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF RESOLUTION 22-24 FOR THE PURPOSE OF APPROVING CHANGES TO THE FY 2022-2023 BUDGET BY INCREASING APPROPRIATIONS IN THE GENERAL FUND TO ALLOW FOR A SPECIFIC PURPOSE DONATION FROM THE FRIENDS OF HAYSTACK ROCK

Agenda Date: September 6, 2022

Prepared by: Kelli Ennis, HRAP Director

BACKGROUND

During the June 2022 Board Meeting the Friends of Haystack Rock Awareness Program (FOHR) voted to provide HRAP with \$8000 to use for new optics equipment.

ANALYSIS/INFORMATION

In June 2022 HRAP was donated \$8,000 from FOHR with an MOU specifying specific use of funds for replacement optics. This donation was not anticipated prior to creating the budget; therefore, we are requesting a budget adjustment to include the donation into our operating budget for optics purchases.

RECOMMENDATION

Adopt resolution 22-24. Suggested motion:

“I move to adopt Resolution 22-24 for the Purpose of approving changes to the FY 2022-2023 budget by increasing appropriations in the general fund to allow for a specific purpose donation from the Friends of Haystack Rock.”

List of Attachments

A Resolution 22-24: HRAP Budget Adjustment FOHR Optics

BEFORE THE CITY OF CANNON BEACH

FOR THE PURPOSE OF ADOPTING INCREASES) RESOLUTION NO. 22-24
 TO THE FYE 2022-2023 BUDGET BY INCREASING)
 APPROPRIATIONS FOR UNANTICIPATED REVE-)
 NUES)

WHEREAS, the HRAP department of the General Fund received a donation in the amount of \$8,000 on August 2, 2022 from Friends of Haystack Rock Awareness Program; and

WHEREAS, this is a donation that was unanticipated at the time of budget for fiscal year 2022-2023; and

WHEREAS, this is a donation made to the City for the specific purpose of funding new optics equipment; and

WHEREAS, donation revenue will increase in the amount of \$8,000; and

NOW, THEREFORE, BE IT RESOLVED that the City Commission of the City of Cannon Beach hereby adopts the following 2022-2023 budget changes for unanticipated revenues and expenses.

<u>General Fund</u>	<u>Adopted Budget</u>	<u>Changes</u>	<u>Amended Budget</u>
Total Resources	\$ 9,835,443	8,000	\$ 9,843,443
Executive	\$ 1,668,063	8,000	\$ 1,676,063
Community Development	658,647		658,647
Public Works	1,021,135		1,021,135
Public Safety	2,094,003		2,094,003
Emergency Management	754,879		754,879
Non Departmental - Materials and Services	772,885		772,885
Non Departmental -Transfers Out	1,445,665		1,445,665
Non Departmental - Contingency	695,361		695,361
Total Expenditures	\$ 9,110,638	8,000	\$ 9,118,638
Ending Fund Balance	\$ 724,805		\$ 724,805
Total Requirements	\$ 9,835,443	8,000	\$ 9,843,443

Passed by the Common Council of the City of Cannon Beach this 6th day of September, 2022, by the following roll call vote:

YEAS:
 NAYS:
 EXCUSED:

 Sam Steidel, Mayor

Attest:

 Bruce St. Denis, City Manager



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF RESOLUTION 22-25 FOR THE PURPOSE OF APPROVING CHANGES TO THE FY 2022-2023 BUDGET BY INCREASING APPROPRIATIONS IN THE GENERAL FUND TO ALLOW FOR THE PURCHASE OF A UTV NOT MADE IN FY 2021-2022

Agenda Date: September 6, 2022

Prepared by: Kelli Ennis, HRAP Director

BACKGROUND

A UTV was intended to be purchased in FY2021-2022, but due to manufacturer delays payment has not been made during the FY2021-2022 as anticipated and full payment will instead need to be made in the FY2022-2023 budget.

ANALYSIS/INFORMATION

A Polaris UTV purchase was initiated with an anticipated purchase date of May 2022, due to manufacturer delays this UTV was not ready to ship before the 2021-2022 fiscal year ended. The capital outlay balance for this purchase was not spent in 2021-2022; therefore, we are also requesting this budget adjustment include capital outlay of \$13,000 to complete the purchase of this UTV.

RECOMMENDATION

Adopt resolution 22-25. Suggested motion:

“I move to adopt Resolution 22-25 for the Purpose of approving changes to the FY 2022-2023 budget by increasing appropriations in the general fund to allow for a capital outlay for the purchase of a UTV”

List of Attachments

A Resolution 22-25: HRAP Budget Adjustment UTV

BEFORE THE CITY OF CANNON BEACH

FOR THE PURPOSE OF APPROVING INCREASES) RESOLUTION NO. 22-25
 AND DECREASES TO THE FY 2022-2023 BUDGET)
 BY MAKING AN INTRAFUND TRANSFER OF AP-)
 PROPRIATIONS)

WHEREAS, the city budgeted for the purchase of a UTV in the fiscal year ending June 30, 2022 budget; and

WHEREAS, the UTV was ordered in fiscal year ending June 30, 2022; and

WHEREAS, generally accepted accounting principles provide for expensing goods and services when they are received; and

WHEREAS, the UTV has not yet arrived but is expected to be delivered in early October which is in the new fiscal year and was not budgeted; and

WHEREAS, contingency will be used to amend the General Fund HRAP budget as they have the benefiting asset. This will increase expenditures in the General Fund in the amount of \$13,000; and

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Cannon Beach hereby adopts the following FY 2022-2023 budget changes to the following fund.

<u>General Fund</u>	<u>Adopted Budget</u>	<u>Changes</u>	<u>Amended Budget</u>
Total Resources	\$ 9,835,443	13,000	\$ 9,848,443
Executive	\$ 1,668,063	13,000	\$ 1,681,063
Community Development	658,647		658,647
Public Works	1,021,135		1,021,135
Public Safety	2,094,003		2,094,003
Emergency Management	754,879		754,879
Non Departmental - Materials and Services	772,885		772,885
Non Departmental -Transfers Out	1,445,665		1,445,665
Non Departmental - Contingency	695,361		695,361
Total Expenditures	<u>\$ 9,110,638</u>	<u>13,000</u>	<u>\$ 9,123,638</u>
Ending Fund Balance	<u>\$ 724,805</u>		<u>\$ 724,805</u>
Total Requirements	<u>\$ 9,835,443</u>	<u>13,000</u>	<u>\$ 9,848,443</u>

Passed by the Common Council of the City of Cannon Beach this 6th day of September, 2022, by the following roll call vote:

YEAS:
 NAYS:
 EXCUSED:

 Sam Steidel, Mayor

Attest:

 Bruce St. Denis, City Manager



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONSIDERATION OF PROCLAMATION 22-10, NATIONAL HISPANIC HERITAGE MONTH

Agenda Date: September 6, 2022

Prepared by: Jason Schermerhorn, Chief of Police

BACKGROUND

Before Council tonight is a proclamation regarding the celebration of National Hispanic Heritage Month.

Every year National Hispanic Heritage Month (HHM) is observed by Americans across the United States. The celebration began in 1968, under President Lyndon B. Johnson, and was made a month-long celebration in 1988 by the U.S. Congress.

From September 15 to October 15 each year, Americans observe National Hispanic Heritage Month, a time to celebrate the achievements, histories, traditions and cultural diversity of Hispanic/Latino/Latinx Americans whose heritage is rooted in 20 Latin American countries and territories: Spain, Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, Ecuador, Peru, Bolivia, Paraguay, Chile, Argentina, Uruguay, Cuba, Puerto Rico, and the Dominican Republic. The 2022 Hispanic Heritage Month Observance Theme: "Unidos: Inclusivity for a Stronger Nation." The theme encourages us to ensure that all voices are represented and welcomed to help build stronger communities and a stronger nation.

RECOMMENDATION

Suggested motion is

"I move to Adopt Proclamation 22-10, Declaring September 15 – October 15 as National Hispanic Heritage Month in Cannon Beach"

List of Attachments

A Proclamation 22-10 National Hispanic Heritage Month

BEFORE THE CITY OF CANNON BEACH

FOR THE PURPOSE OF DESIGNATING)	PROCLAMATION NO. 22-10
SEPTEMBER 15 THROUGH OCTOBER 15,)	
2022, AS NATIONAL HISPANIC HERITAGE)	
MONTH IN CANNON BEACH)	

WHEREAS, the period from September 15 through October 15 is has been set aside throughout the United States as National Hispanic Heritage Month; and

WHEREAS, the term Hispanic or Latino refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin who can be of any race, any ancestry or any ethnicity; and

WHEREAS, the United States has always drawn its strength from the contributions of a diverse people; and

WHEREAS, National Hispanic Heritage Month is a time to recognize the contributions made and the important presence of Hispanic and Latino Americans to the United States; and

WHEREAS, Hispanic Americans have played a prominent and important role in our national heritage and our Hispanic American residents lift up our communities and our economy as entrepreneurs, executives, and small business owners, and

WHEREAS, A significant segment of the more than 40,000 people living in Clatsop county are Hispanic; and

WHEREAS, we honor the rich heritage of our Hispanic community.

BE IT RESOLVED, that I, Sam Steidel by virtue of the authority vested in me as Mayor of the City of Cannon Beach in the State of Oregon do hereby proclaim the month of September 15 through October 15 as

NATIONAL HISPANIC HERITAGE MONTH

in Cannon Beach and call upon public officials, educators, and all residents to observe this month with appropriate ceremonies, activities, and programs as they to share in this special annual tribute by learning and celebrating the generations of Hispanic and Latino Americans who have positively influenced and enriched our nation and society.

PASSED by the Common Council of the City of Cannon Beach this 6th day of September 2022, by the following roll call vote:

- YEAS:
- NAYS:
- EXCUSED:

Attest:

Bruce St. Denis, City Manager

Sam Steidel, City Mayor



CANNON BEACH CITY COUNCIL

STAFF REPORT

SCOPE OF REVIEW DETERMINATION FOR PATRIC/DAVE LLC APPEAL OF A PLANNING COMMISSION DECISION TO DENY A CONDITIONAL USE PARTITION

Agenda Date: September 6, 2022

Prepared by: Jeff Adams
Community Development Director

BACKGROUND

On July 28, 2022, the City of Cannon Beach Planning Commission (PC) denied a Conditional Use request for a Partition in the Wetland Overlay Zone. The property at issue is located at the corner of Forest Lawn Road and S. Hemlock Street, Tax Lot 04100, Map 51030DA. The PC's Findings are attached as Exhibit 2.

That decision has now been appealed by the applicant, Jamie Lerma, on behalf of the owner, Patrick/Dave LLC. The appeal was received August 25, 2022, within the 14 consecutive calendars appeal period, from the date the final order was signed and the Council is scheduled to hear that appeal at a special meeting scheduled for September 19, 2022, meeting.

This evening, the City Council must decide the Scope of Review for that appeal and discuss, as a non-public hearing item, the terms under which it wishes to review the matter, according to Section 17.88.160 of the Cannon Beach Municipal Code. The Appellant has requested that new evidence be allowed, but limited to only one specific issue:

“the Planning Commission’s that the applicant’s proposed stormwater management method ‘will, in effect, drain the wetland.’”

The City Council should review the appeal and request for review and, under the guidance of 17.88.140 & 150 decide whether to (1) restrict the review to the record before the Planning Commission, (2) allow the submission of new evidence, but limited to the issue identified by the Appellant, (3) hold a ‘de novo’ hearing, allowing unlimited evidence, or (4) remand the matter to the Planning Commission for additional consideration.

List of Attachments

A: Notice of Appeal of Planning Commission Application, Jamie Lerma, on behalf of Patrick/Dave LLC, dated August 22, 2022 and received, August 25, 2022;

B: City of Cannon Beach Planning Commission Findings for **P22-01 & CU22-02**, Request by Jamie Lerma, on behalf of Patrick/Dave LLC, for a Conditional Use for a Partition, Tax Lot 04100, Map 51030DA.

Chapter 17.88 PUBLIC DELIBERATIONS AND HEARINGS

{...}

17.88.140 Request for review of decision.

An appeal of a development permit, design review board or planning commission decision shall contain the following:

{...}

D. For a review of a decision by the design review board or planning commission, if a de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.88.180.

17.88.150 Requirements of a request for appeal of a development permit, design review board or planning commission decision.

An appeal of a development permit, design review board or planning commission decision shall contain the following:

- A. An identification of the decision sought to be reviewed, including the date of the decision;
- B. A statement of the interest of the person seeking the review. For a review of a decision by the design review board or planning commission, a statement that he/she was a party to the initial proceedings;
- C. The specific grounds relied upon for review. For a review of a decision by the design review board or planning commission, a statement that the criteria against which review is being requested was addressed at the design review board or planning commission hearing;
- D. For a review of a decision by the design review board or planning commission, if a de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.88.180.

17.88.160 Scope of review.

- A. An appeal of a permit or development permit shall be heard as a de novo hearing.
- B. In an appeal of a design review board or planning commission decision, the reviewing body may determine, as a nonpublic hearing item, that the scope of review, on appeal will be one of the following:
 - 1. Restricted to the record made on the decision being appealed;
 - 2. Limited to the admission of additional evidence on such issues as the reviewing body determines necessary for a proper resolution of the matter;
 - 3. Remand the matter to the hearing body for additional consideration;
 - 4. A de novo hearing on the merits.

17.88.170 Review on the record.

- A. Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include the following:
 - 1. A factual report prepared by the city manager;
 - 2. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review;
 - 3. The final order and findings of fact adopted in support of the decision being appealed;

4. The request for an appeal filed by the appellant;
5. The minutes of the public hearing. The reviewing body may request that a transcript of the hearing be prepared.
 - B. All parties to the initial hearing shall receive a notice of the proposed review of the record. The notice shall indicate the date, time and place of the review and the issue(s) that are the subject of the review.
 - C. The reviewing body shall make its decision based upon the record after first granting the right of argument, but not the introduction of additional evidence, to parties to the hearing.
 - D. In considering the appeal, the reviewing body need only consider those matters specifically raised by the appellant. The reviewing body may consider other matters if it so desires.
 - E. The appellant shall bear the burden of proof. (Ord. 89-3 § 1; Ord. 79-4 § 1 (10.083))

17.88.180 Review consisting of additional evidence or de novo review.

- A. The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing. The reviewing body shall grant a request for a new hearing only where it finds that:
 1. The additional testimony or other evidence could not reasonably have been presented at the prior hearing; or
 2. A hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action; and
 3. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.
- B. Hearings on appeal, either de novo or limited to additional evidence on specific issue(s), shall be conducted in accordance with the requirements of Sections 17.88.010 through 17.88.100.
- C. All testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.



August 25, 2022

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

**Subject: Forest Lawn Partition (P22-01 & CU22-02)
Notice of Appeal**

Dear Mr. Adams:

On behalf of the applicant, Patrick/Dave LLC, DOWL is providing this letter as an appeal of the Planning Commission's August 11, 2022 decision to deny the applicant's partition and conditional use permit requests (P22-01 & CU22-02). A notice of appeal, signed by the applicant, is attached to this letter as Exhibit A. The appropriate fee will be filed by the applicant upon receipt of this notice of appeal.

In accordance with Cannon Beach Municipal Code (CBMC) Chapter 17.88.140(C), a Planning Commission decision on the issuance of a permit concerning a land use matter may be appealed to the City Council by a party to the hearing within fourteen consecutive calendar days of the date the final order is signed. The final order, attached to this letter as Exhibit B, was signed and dated August 11, 2022. DOWL, as the applicant's representative, is submitting this appeal on behalf of Patrick/Dave LLC, the applicant and a party of record, within fourteen consecutive calendar days of August 11, 2022.

In accordance with CBMC 17.88.150(C), the specific grounds relied upon for review are set forth below, including the City's adopted findings, which were addressed at the first evidentiary hearing (June 23, 2022), which was continued to July 28, 2022.

Additionally, in accordance with CBMC 17.88.180, the applicant is requesting a new hearing in order to present new evidence on one specific issue:

- Planning Commission's finding to CBMC 17.43.050(A)(1) that the applicant's proposed stormwater management method "will, in effect, drain the wetland".

As required by CBMC 17.88.180(A), reasoning is provided for why new evidence should be admitted for this single issue within this letter.

* * *

The applicable review criteria, as identified in the adopted findings for P22-01 & CU22-02, are set forth below in ***bold italics***. The City of Cannon Beach's (referred to hereafter as "the City") adopted findings are set forth beneath each applicable review criterion in *italics*. A statement from the applicant is set forth beneath the City's adopted findings in standard text and identifies the specific grounds relied upon for the basis of the applicant's appeal.

All approval criteria addressed by the Planning Commission that provide the basis for the appeal are addressed below. However, we note that the applicant submitted written testimony, a letter from Renee France of Radler, White Parks & Alexander dated July 20, 2022 (referred to hereafter as the "RWPA Letter"), addressing the statutory requirements and limitations on the Planning Commission created by Oregon Revised Statute (ORS) 197.307(4). Specifically, the letter explained that the requested land division is housing development subject to the requirements of ORS 197.307(4) and, consequently the City can only apply "clear and objective standards, conditions and procedures" to the application. The Planning Commission decision does not expressly address the letter or the statutory requirements of ORS 197.307(4). To the extent that the reference in the findings under 17.43.025 to one dwelling being permitted on the existing parcel through clear and objective standards was an attempt to find that ORS 197.307(4) requirements are satisfied for purposes of this land division application, we disagree and appeal that conclusion. The approval criterion that were applied by the Planning Commission that are not clear and/or object were identified in an exhibit to the RWPA Letter and are identified below.

Chapter 16 – Subdivisions

16.04.130 Applicable Standards.

In making its decision, the planning commission shall determine whether the proposed subdivision or partition complies with the applicable standards of this code and the policies of the comprehensive plan, in conformance with the requirements of Section 17.88.110. Where this chapter imposes a greater restriction upon the land than is imposed or required by existing provisions of law, ordinance, contract or deed, the provisions of this chapter shall control. Pursuant to ORS 197.195(1), the city has determined that the following comprehensive plan policies are applicable standards for a proposed subdivision or partition.

A. General Development Policies.

- 1. 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.***
- 2. General Development Policy 5. The density of residential development throughout the city shall be based on the capability of the land in terms of its slope, potential for geologic hazard and drainage characteristics. Density limits throughout the city shall generally be:***
- 3. General Development Policy 9. To control development in areas with slopes exceeding twenty percent and areas subject to potential geologic hazards so that potential adverse impacts can be minimized.***
- 4. General Development Policy 10. When site investigations are required in areas of potential landslide hazard, a site specific investigation shall be prepared by a registered geologist. Based on the conclusions of this investigation, an engineered foundation design by a soils engineer may be required by the building official. When site investigations are required in areas of potential coastal erosion hazard, the site specific investigation shall be prepared by a registered geologist with expertise in shoreline processes.***

Based on the conclusions of this investigation, protective structures designed by a registered civil engineer may be required by the building official. Site investigation reports shall meet the city's criteria for the content and format for geologic hazard reports.

- 5. General Development Policy 11. Site investigations by a qualified soils engineer may be required for the construction or development of property identified by the Soil Conservation Service as containing weak foundation soils. Site reports shall include information on bearing capacity of the soil, adequacy and method of drainage facilities, and the length of fill settlement necessary prior to construction.**
- 6. General Development Policy 12. Site investigations by a registered geologist shall be performed, prior to development, in any area with a slope exceeding twenty percent. Based on the conclusions of this investigation, an engineered foundation design by a soils engineer may be required by the building official.**
- 7. General Development Policy 14. To ensure that development is designed to preserve significant site features such as trees, streams and wetlands.**
- 8. General Development Policy 15. The city shall regulate the removal of trees in order to preserve the city's aesthetic character, as well as to control problems associated with soil erosion and landslide hazards.**
- 9. General Development Policy 16. To provide flexibility in regulations governing site design so that developments can be adapted to specific site conditions.**

CB FINDINGS:

The applicable criteria from the General Development Policies for this partition application include items 1, 2, 4, 7, 8, and 9. The partitioning of the subject property into three separate parcels would not increase the overall net density such that it exceeds the 11 dwellings per acre standard. While the Tentative Partition Plan is laid out so that potential development is focused on the upland areas with the application showing no activity occurring in the delineated wetland area, the Planning Commission has concerns about these standards being applied given that the parcel is one wetland lot of record and located in the Wetlands Overlay zone.

The Planning Commission finds that the 2000 Partition Plat that created this property holds a plat note restriction, stating, "access to parcels 1, 2 & 3 is restricted to Forest Lawn Road only, until such future time that said restriction is modified by the City of Cannon Beach" (Exhibit C-05). If one traces this restriction back from the 2000 partition decision, to the 1987 minor partition decision that is referenced in the minutes of the 2000 Planning Commission decision, it is evident that the restriction to access future access from utilizing Hemlock is based on the "a desire to minimize driveways onto the city's main arterial, Hemlock Street," which is referred to in 1987 as a "limited access highway," while "retaining an uninterrupted area of vegetation and trees along the west side of Hemlock Street" (see Exhibit C-21, C-22 & C-13).

The Planning Commission finds no evidence in the record that would justify reversing the initial plat restriction from 1987 and re-affirmed in 2000 restricting access to Hemlock. Thus, the Planning Commission must deny any requested partition in violation of this plat restriction.

APPLICANT:

The 2000 plat restriction expressly states that it applies until such time as the restriction is modified by the City. The applicant intends to request that the restriction be modified through a separate proceeding. Consistent with the staff recommendation, the applicant requests a condition of approval that would preclude final plat approval for this partition until the access restriction in the 2000 Partition Plat is either removed or modified in a way that allows the single access point onto Hemlock that is proposed in this partition.

While the Planning Commission findings related to the general development policies focus almost exclusively on the plat restriction as the basis for denial, the applicant also generally objects to the conclusion that specific policies identified in the findings are applicable criteria. As established in the RWPA Letter (see exhibit A-21) these policies are neither clear nor objective approval standards. The applicant is challenging the Planning Commission's findings and conclusions under the General Development policies throughout this appeal.

Chapter 17 – Zoning

17.14.030 Conditional Uses Permitted.

In an R2 zone, the following standards shall apply except as they may be modified through the design review process pursuant to Chapter 17.44:

A. Lot Size. Lot area shall be at least five thousand square feet, except that construction on lots of less than five thousand square feet is permitted subject to Section 17.82.020. The minimum lot size for a single-family dwelling shall be five thousand square feet. The minimum lot size for all uses, including single-family dwellings, shall be adjusted for average slope using the standards in Section 16.04.310(A).

B. Lot Dimensions.

- 1. Lot Width. Lot width shall be at least forty feet.***
- 2. Lot Depth. Lot depth shall be at least eighty feet.***
- 3. Front Yard. A front yard shall be at least fifteen feet.***
- 4. Side Yard. A side yard shall be at least five feet, except on a corner or through lot the minimum side yard from the street shall be fifteen feet.***
- 5. Rear Yard. A rear yard shall be at least fifteen feet, except on a corner or through lot it shall be a minimum of five feet, except where a rear lot line abuts a street, it shall be a minimum of fifteen feet.***

- 6. Yard Abutting the Ocean Shore. For all lots abutting the ocean shore, any yard abutting the ocean shore shall conform to the requirements of Section 17.42.050(A)(6), Oceanfront setback.**
- C. Lot Coverage. The lot coverage for a permitted or conditional use shall not exceed fifty percent.**
- D. Floor Area Ratio. The floor area ratio for a permitted or conditional use shall not exceed 0.6.**
- E. Building Height. Maximum height of a structure is twenty-four feet, measured as the vertical distance from the average elevation of existing grade to the highest point of a roof surface of a flat roof, to the top of a mansard roof or to the mean height level between the eaves and the ridge for a pitched roof. The ridge height of a pitched roof shall not exceed twenty-eight feet. Pitched roofs are considered those with a 5-12 pitch or greater.**
- F. Signs. As allowed by Chapter 17.56.**
- G. Parking. As required by Section 17.78.020.**
- H. Design Review. All uses except single-family dwellings and their accessory structures are subject to design review of Chapter 17.44.**
- I. Geologic or Soils Engineering Study. As required by Chapter 17.50.**
- J. Claims for Compensation Under ORS 197.352. The standards of Section 17.08.040(A) through (K) (Standards), shall apply except as specifically modified pursuant to a development agreement created as part of the city's final action modifying, removing or not applying the city's land use regulation(s) on a demand for compensation under ORS 197.352.**
- K. Site Plan. Except for interior renovation of existing structures and exterior renovations such as siding replacement where there will be no ground disturbance, no new construction shall be approved unless a site plan meeting the requirements of Section 17.90.190 has been submitted and approved.**

CB FINDINGS:

The Planning Commission finds that while single-family dwellings are an outright permitted use per CBMC 17.14.020(A), partitions are a conditional use when proposed within wetland and wetland buffer areas per CBMC 17.43.040 and 45; therefore, conditional use approval is required for the Tentative Partition Plan. The applicable standards for conditional uses per CBMC 17.80.110, as well as the Wetlands Overlay standards for land divisions per CBMC 17.43.050(M), are addressed for compliance within this narrative.

The minimum lot size requirements of 5,000 SF for single-family lots are met, as well as the other dimensional standards. Parking areas are to be included in the identified building sites, while access is proposed via Forest Lawn for Lot 2 and a shared access easement off of Hemlock for Lots 1 & 3.

APPLICANT: The applicant concurs with the City's findings that the proposed tentative partition plan meets the applicable development standards per CBMC 17.14.040, including minimum lot size and dimensions. However, as discussed below, the applicant objects to the conclusion that certain conditional use standards and Wetlands Overlay standards can be applied because they are not clear and/or objective.

17.43 – Wetlands Overlay (WO) Zone

17.43.020 Mapping.

- A. The maps delineating the WO zone boundaries shall be maintained and updated as necessary by the city. The Cannon Beach Local Wetland Inventory maps dated September 20, 1994, shall form the basis for the location of wetlands. The WO zone includes both wetland and wetland buffer areas which abut wetlands. The wetland buffer area has a width of five feet measured from the outer boundaries of the wetland.***
- B. Site-specific wetland delineations or determinations are required to determine the exact location of the WO zone boundary. Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual along with any supporting technical or guidance documents issued by the Division of State Lands and applicable guidance issued by the U.S. Army Corps of Engineers for the area in which the wetlands are located.***
- C. Where a wetland delineation or determination is prepared, the mapping it contains shall replace that of the Cannon Beach Local Wetland Inventory. Wetland delineations or determinations shall remain valid for a period of not more than five years from the date of their acceptance by the Division of State Lands.***

CB FINDINGS: *The Planning Commission finds that the subject property is in the City's Wetland Overlay Zone and contains a wetland that was originally mapped for the Cannon Beach Local Wetland Inventory of September 1994 (Exhibit C-12). A site-specific wetland delineation has been prepared for the applicant by Pacific Habitat Services (Exhibit A-07), which was then reviewed and approved by the Department of State Lands on June 8, 2021 (Exhibit A-08). The U.S. Army Corps of Engineers issued an Approved Jurisdictional Determination on April 15, 2021 indicating that the wetland is not subject to that agency's review requirements (Exhibit A-09).*

APPLICANT: The applicant concurs with the Planning Commission's findings that the subject property is in the WO zone and contains a wetland originally mapped for the Cannon Beach Local Wetland Inventory of September 1994. As identified, the applicant provided a site-specific wetland delineation that was reviewed and approved by the Oregon Department of State Lands (DSL), and the U.S. Army Corps of Engineers issued an Approved Jurisdictional Determination on April 15, 2021 indicating that the wetland is not considered a water of the U.S that is subject to their review requirements.

17.43.025 Wetland lot-of-record.

A wetland lot-of-record is a lot or contiguous lots held in common ownership on August 4, 1993, that 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. "Contiguous" means lots that have a common boundary, and includes lots separated by public streets. A lot-of-record is subject to the provisions of this overlay zone if all or a portion of the lot is in the overlay zone. The objective of the wetland lot-of-record provision is to permit a property owner a minimum of one dwelling unit on a wetland lot-of-record. A dwelling can be constructed on the wetland portion of a wetland lot-of-record only where there are no upland portions of the wetland lot-of-record that can accommodate a dwelling. The following examples illustrate how the wetland lot-of-record provisions of Section 17.43.030A and Section 17.43.035A are to be applied.

Example 1. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots all of which are entirely of wetlands; one dwelling unit is permitted.

Example 2. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots, two of which are entirely wetlands and one of which contains two thousand five hundred square feet of uplands; one dwelling unit is permitted on the upland portion of the lot which contains two thousand five hundred square feet of uplands.

Example 3. A fifteen thousand square foot lot-of-record consisting of three platted five thousand square foot lots, one lot is entirely a wetland, the second lot contains two thousand five hundred square feet of upland and the third lot contains three thousand five hundred square feet of upland; two dwelling units are permitted, one on the upland portion of the lot which contains two thousand five hundred square feet of upland and one on the upland portion of the lot which contains three thousand five hundred square feet of uplands.

CB FINDINGS:

The Planning Commission recognizes subject property is a wetland lot of record and any parcels created by a partition of the subject would be wetland lots of record. The wetland lot of record ordinance specifically states through clear and objective standards that one single-family dwelling is permitted per parcel and any further applications for additional housing must be done through the conditional use provisions of 17.43.040 for further subdivision. The Planning Commission further recognizes the subject property was previously a part of larger wetland lot of record that was granted a partition in 2000 creating three separate lots of record such that this partition is further degradation of the wetland. Upon review of the conditional use criteria of 17.80, below, the Planning Commission cannot find compliance to this standard.

APPLICANT:

The Planning Commission asserts through this finding that CBMC 17.43.025 provides "clear and objective standards that one single-family dwelling is permitted per parcel and any further applications for additional housing must be done through the conditional use provisions of 17.43.040 for further subdivision".

It is the applicant's understanding that the Planning Commission is stating that, because CBMC 17.43.025 permits a minimum of one dwelling per wetland lot of record outright, a proposed partition (to allow for more than one dwelling unit within a wetland lot of record) can be subject to non-clear and objective standards and approval criteria. This is incorrect. ORS 197.307(4) clearly states that "a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing". CBMC 17.43.040 and 17.43.045 identify that partitions are conditional uses within wetlands and wetland buffer areas. However, the approval criteria applied through the conditional use process must be clear and objective per ORS 197.307(4) as these standards and criteria are regulating the development of housing. Because the applicant is not proposing just a single dwelling unit within the subject property, the clear and objective standards and criteria for a single dwelling per CBMC 17.43.025 are irrelevant to the applicant's proposed three lot partition.

The applicant has submitted ample evidence (see RWPA Letter at exhibit A-21) into the record identifying that:

1. The proposed partition of the subject property is considered a housing application to which ORS 197.307(4) applies;
2. The sole exception to ORS 197.307(6) does not apply to the proposed partition application; and
3. The conditional use approval criteria per CBMC 17.80 are neither clear, objective, or both, and cannot be applied to the project's approval.

The applicant provided substantial evidence demonstrating that the proposed partition satisfies all of the CBMC 17.80 approval criteria applied by the Planning Commission. The Planning Commission disagreed in its findings, but failed to identify a factual basis in the record for discounting the applicant's evidence. Furthermore, as provided under each criterion below, the subjective and discretionary criteria in CBMC 17.80 cannot serve as the basis for a denial pursuant to ORS 197.307(4) because those criteria are not clear and/or objective. For this reason, the applicant is challenging the Planning Commission's findings and conclusions related to this code provision through this appeal.

17.43.040 Conditional uses and activities permitted in wetlands.

The following uses and activities may be permitted subject to the provision of Chapter 17.80 in the wetland portion of the WO zone, subject to applicable standards, if permitted outright or conditionally in the base zone:

I. Subdivisions, replats, partitions and property line adjustments

17.43.045 Conditional uses and activities permitted in wetland buffer areas.

The following uses and activities may be permitted subject to the provisions of Chapter 17.80 in wetland buffer areas in the WO zone, subject to applicable standards, if permitted outright or conditionally in the base zone:

I. Subdivisions, partitions, lot line adjustments.

17.43.050 Standards.

The following standards are applicable to the uses and activities listed in Sections 17.43.030 through 17.43.045. The uses and activities are also subject to the standards of the base zone. The following standards are applicable in all areas under the wetlands overlay zone. "Protected wetlands" are those areas in the wetlands overlay zone that have been identified on the city's inventory or on a subsequent detailed wetland delineation as wetlands. "Wetland buffer areas" are nonwetland areas in the wetlands overlay zone surrounding the protected wetlands.

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

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

- a. Avoiding the impact altogether by not taking a certain action or parts of an action (this would include, for example, having the use or activity occur entirely on uplands); and**
- b. Minimizing impacts by limiting the degree or magnitude of action and its implementation (this would include, for example, reducing the size of the structure or improvement so that protected wetlands or wetland buffer areas are not impacted).**

CB FINDINGS:

As shown on the Existing Conditions Plan (Exhibit A-05), there are no stream drainageways within the project site. As identified in the applicant's original narrative and shown on the Preliminary Utility Plan (Exhibit A-10), stormwater service lines, anticipated to be four inches in diameter, will collect each future dwelling's stormwater runoff, which will then be conveyed to the existing public system within Forest Lawn Road and South Hemlock Street, which ensures stormwater will be channeled to public storm sewers as required and will not flow onto adjacent properties. What wasn't taken into account in the applicant's presentation, but which the Commission finds compelling, is that the cumulative removal of storm water from these uplands, proposed by the utility plan, will continue to degrade the historic adjacent wetland. The storm water removal plan presented by the applicant will, in effect, drain the wetland. The Planning Commission recognized the fact that evidence has made it clear the wetlands are essential to the health and viability of our community.

APPLICANT:

The Planning Commission seems to be asserting through this finding that the applicant's proposal to connect roof runoff from future homes to

stormwater lines in the adjacent public roads (see exhibit A-10), will “degrade” the subject property’s wetland by draining it.

The applicant has provided extensive evidence demonstrating the proposed partition will completely avoid impacts to the subject property’s wetland and wetland buffer areas that could result in its degradation, as concurred by the City’s planning staff through the initial staff recommendation to the Planning Commission (see exhibits A-2, A-4, A-7, A-26, and original staff report dated June 23, 2022, first addendum dated July 21, 2022, and second addendum dated July 28, 2022). The Planning Commission, on the other hand, failed to identify any evidence in the record to support its conclusion that the proposed stormwater system would drain the wetland. Therefore, its finding is not based on substantial evidence that is in the record and it cannot be used as a basis for denying the applicant’s proposed partition. Therefore, the applicant is challenging the Planning Commission’s findings and conclusions related to this standard through this appeal.

While the applicant believes that the Planning Commission’s decision is not supported by evidence in the existing record, the applicant is requesting a new hearing in order to submit new evidence into the record to adequately address this specific issue pursuant to CBMC 17.88.180(A)(1) and (2). The alleged impacts of the proposed stormwater system on the wetland was identified by the Planning Commission as a significant issue relevant to the proposed development action and the applicant should be permitted to provide an evidentiary response to fully and properly evaluate the issue. Furthermore, the applicant did not have an opportunity to provide evidence on this specific issue because no member of the public, or other affected party, testified or provided substantial evidence during the public hearing that the applicant’s proposed stormwater management system would have the effect of draining the wetland. Therefore, there was no evidence presented on the record that the applicant could have refuted. As a result, additional, responsive evidence on this issue could not have been provided at the Planning Commission hearing. For these reasons, the applicant should be allowed to present new evidence to address this concern from the Planning Commission.

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

- 1. Preliminary plat maps for proposed subdivisions, replats and partitions involving protected wetlands or wetland buffer areas must show the wetland-upland boundary, as determined by a wetland delineation prepared by a qualified individual.***
- 2. Subdivisions, replats, partitions and property line adjustments for the purpose of creating building sites are permitted subject to the following standards:***

- a. ***Each lot created must have at least one thousand square feet of upland available for building coverage, required off-street parking and required access.***
 - b. ***The building site described in subsection M2a shall not include protected wetlands or wetland buffer areas.***
 - c. ***Protected wetlands and wetland buffer areas may be counted towards meeting the base zone's minimum lot size for each lot, and may be included in front, side and rear yard setbacks as appropriate.***
 - d. ***Utility lines, including but not limited to, water lines, sewer lines, and storm water lines shall not be located in protected wetlands or wetland buffer areas, unless there is no alternative to serve lots meeting the standard of subsection M2a.***
 - e. ***Streets shall not be located in protected wetland or wetland buffer areas.***
3. ***In planned unit developments or cluster subdivisions, all protected wetland or wetland buffer areas must be in open space tracts held in common ownership.***
 4. ***For lots or parcels created subject to these provisions, the existence of protected wetland or wetland buffer areas shall not form the basis for a future setback reduction or variance request.***

CB FINDINGS: *Rendered moot due to the lack of evidence to allow access. The Planning Commission cannot find compliance.*

APPLICANT: The applicant challenges the conclusion that these land division standards are rendered moot. Only CBMC 17.43.050(M)(1) and (2) are directly applicable to the applicant's proposed partition because neither a planned unit development nor cluster subdivision are proposed. Consistent with the applicant's narrative findings (see exhibit A-2), the project does not propose using wetland or wetland buffer areas as the basis for a future setback reduction in compliance with CBMC 17.43.050(M)(4).

The applicant provided substantial evidence that the standards provided by CBMC 17.43.050(M)(1) and (2) are met (see exhibits A-2 and A-26). The City's planning staff also found that these standards were met within their staff report and recommendation to the Planning Commission, dated June 23, 2022, and the subsequent addendums, dated July 21, 2022 and July 28, 2022. Planning Commission has not provided findings to the contrary. In the event the City Council finds the Planning Commission erred in their decision to deny the applicant's application, City Council should find that these standards are met given the evidence in the record.

To the extent that the Planning Commission's conclusion is based on the 2000 plat restriction on access, as discussed above, consistent with the

staff's recommendation, the applicant is requesting a condition of approval that final plat approval cannot be issued until the access restriction is removed or modified to allow the single access point onto Hemlock proposed through this land division application.

Chapter 17.50 Development Requirements for Potential Geologic Hazard Areas.

17.50.020 Applicability.

The following are potential geologic hazard areas to which the standards of this section apply:

- A. In any area with an average slope of twenty percent or greater;**
- B. In areas of potential landslide hazard, as identified in the city master hazards map and comprehensive plan;**
- C. In areas abutting the oceanshore, or velocity zone flood hazard, as identified on the city's FIRM maps;**
- D. In areas identified by the soil survey of Clatsop County, Oregon as containing weak foundation soils; or**
- E. In open sand areas regardless of the type of dune or its present stability, and conditionally stable dunes not located in a velocity flood hazard zone, as identified on the city's FIRM maps, which in the view of the building official have the potential for wind erosion or other damage.**

CB FINDINGS:

The Planning Commission reviewed the Earth Engineers Report (see Exhibits A-12 & A-13) and finds the project site soils are derived from sedimentary rock; therefore, a site investigation and geologic hazard study is required. As previously mentioned, a geologic hazard report is included as section 3.0 of the Earth Engineers Report. Findings are provided for CBMC 17.50 (Development Requirements for Potential Geologic Hazard Areas) within this letter, which are supported by the Earth Engineers Report, including a literature review which indicates the project site is adjacent to an active landslide area. The Commission did not find the evidence presented to be persuasive in mitigating the evidence provided on landslide and liquefaction risk. Contrary to the geotechnical testimony presented, the Commission cannot find that the "majority" of the City is in a slide zone and that when the proposed development removes the proposed trees and puts houses on these vulnerable soils, there won't be detrimental effects. The Commission finds that other neighborhood development is not relevant to the geological risks outlined in the present application because prior development was not subject the same site conditions.

As identified within the Earth Engineers Report, compressible, organic soils were encountered within the project site at a depth of approximately 30 to 40 feet beneath the ground surface. As previously identified, the project site's potential geologic hazards, including its soils, can be mitigated through granulated, well graded, crushed rock structural fill as necessary,

as well as pin pile or helical pier foundation systems for the future residential dwellings.

Engineering and construction methods are specified within sections 4.0 and 5.0 the Earth Engineers Report. As discussed previously, the report found that the project site's potential geologic hazards can be mitigated through granulated, well graded, crushed rock structural fill as necessary, as well as pin pile or helical pier foundation systems for the future residential dwellings. The Commission voiced concerns over the depth to groundwater and the need for imported fill to combat wet soils, prone to liquefaction and which can only be mitigated by helical pier systems. Upon the resort to such measures and the possible detrimental impact these may have on the historic wetland and neighboring structures, the Commission cannot find compliance.

APPLICANT:

The Planning Commission findings that the requested land division does not comply with this standard is not based on evidence in the record. The applicant's geotechnical investigation and geologic hazard report (referred to hereafter as the "Earth Engineers Report") addressed the requirements identified by CBMC 17.50.040 (see exhibit A-15) and no expert testimony was offered in opposition to the report.

As required under the CBMC, the Earth Engineers Report was prepared by a registered geologist (RG), and a certified engineering geologist (CEG) and professional engineer (PE). The geologists and engineers who prepared the report have extensive experience assessing geologic conditions and mitigating potential geologic hazards along the Oregon coast, and the report prepared constitutes substantial evidence that the subject property is developable and, with implementation of mitigation measures, would not exacerbate any existing hazards on adjacent properties.

As further described within the supplemental letter provided by Earth Engineers (see exhibit A-26), the purpose of CBMC 17.50 is not to disallow development of areas with potential geologic hazards, but to ensure that potential geologic hazards are adequately mitigated through the development's design. Additionally, CBMC 17.50.040(A)(3)(b) states that the geologic site investigation report and engineering report must specify engineering and construction methods which eliminate the hazard, *or will minimize the hazard to an acceptable level*. To reiterate, complete elimination of the potential geologic hazard is not required by CBMC 17.50; rather, construction and design methods must be recommended that can mitigate potential geologic hazards. The Earth Engineers report did just that by recommending specific foundation systems, retaining wall systems, and specifications for structural fill. Based on Earth Engineer's assessment, and the recommendations provided, the subject property is developable. The Planning Commission acknowledged in its findings that mitigation

measures identified in the Earth Engineers Report would mitigate the subject property's potential geologic hazards:

“As identified within the Earth Engineers Report, compressible, organic soils were encountered within the project site at a depth of approximately 30 to 40 feet beneath the ground surface. As previously identified, the project site's potential geologic hazards, including its soils, can be mitigated through granulated, well graded, crushed rock structural fill as necessary, as well as pin pile or helical pier foundation systems for the future residential dwellings.”

The Planning Commission's determination that they cannot find compliance with CBMC 17.50 is in direct conflict with their prior statements identifying that the site's potential geologic hazards can be mitigated. Further, Troy Hull with Earth Engineers testified during the hearing and adequately addressed each Commissioner's concerns based on his knowledge as a professional geotechnical engineer. As described by Troy Hull during the public hearing, groundwater depth is irrelevant to the subject property's developability if the foundation systems recommended in the Earth Engineers Report are utilized, where pier systems extend through soft soils to the bedrock. Further, Mr. Hull reiterated that these foundation systems within the subject property will have no impact on the subject property's wetland or adjacent properties, let alone a “detrimental” impact. There was no expert testimony or other reliable evidence in the record that contradicted Mr. Hull's testimony on the potential for impacts to the wetlands or surrounding structures. Therefore, the Planning Commission's conclusions related to those potential impacts is not based on substantial evidence in the record.

The applicant provided substantial evidence demonstrating the subject property's potential geologic hazards can be mitigated and minimized as required by CBMC 17.50.040(A)(b), and the Planning Commission neither received nor presented any evidence from a qualified source to substantiate their basis for denial. Furthermore, the benchmark of an “acceptable level” found in CBMC 17.50.040(A)(b) is not clear and objective (see RWPA Letter at exhibit A-21) and therefore cannot be the basis for a denial pursuant to ORS 197.307(4). For these collective reasons, the applicant challenges the Planning Commission's findings and conclusion for this standard.

Chapter 17.70 Tree Removal and Protection.

17.70.030 Additional requirements.

- A. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(A) or (B) the application shall include a complete ISA Tree Hazard Evaluation Form prepared by a certified arborist with the tree removal application. An ISA Tree Hazard Evaluation Form prepared by a certified arborist is not required where a tree removal permit proposes the removal of a dead tree pursuant to**

subsection C of this section, or where a tree removal permit proposes the removal of a tree pursuant to subsection F. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(F), a certified arborist shall provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.

- B. For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).***
- C. An application for the removal of a dead tree does not require an ISA Tree Hazard Evaluation Form prepared by a certified arborist.***
- D. The retention of trees shall be considered in the design of partitions, subdivisions or planned developments; placement of roads and utilities shall preserve trees wherever possible. The need to remove trees shall be considered in the review process for partitions, subdivisions or planned developments.***

CB FINDINGS:

The Planning Commission finds that the applicant's reduction from initial tree plan for the removal of 11 trees to just 7, upon the updated Prager Report, is an improvement, but does not alleviate the concerns that a majority of the upland trees are jeopardized by the proposed development. The Commission was not convinced by the evidence presented that the removal of so many trees would not have negative impact to neighboring properties and the stability of the surrounding soils and foundations. The Planning Commission cannot find compliance.

APPLICANT:

CBMC 17.70.030(D) is directly applicable to the applicant's proposed partition, whereas the other provisions contained with CBMC 17.70, including CBMC 17.70.020, are only applicable when requesting a tree removal permit, which the applicant is not requesting at this time.

Under a plain reading, CBMC 17.70.030(D) does not require the applicant to consider neighboring properties, including soils and foundations, when considering tree removal and preservation. The code states that the retention of trees shall be "considered" in the design of a partition; the applicant has clearly considered tree preservation, which is evident in the augmented arborist report the applicant submitted (see exhibit A-22), which reduced the number of trees anticipated for removal from 11 to seven, only preliminarily identifying trees for removal based on the future location of utilities, driveways, and dwellings. In response to the applicant's augmented arborist report, the City's consulting arborist, Jeff Gerhardt, a certified arborist, found that the report "satisfies my request in retaining additional mature trees on this property" (see exhibit C-26). Planning Commission does not and cannot find that the applicant failed to consider tree preservation in the partition design. The record clearly supports a conclusion that tree removal was not only carefully considered, but also minimized, and the City's own consulting arborist found the applicant's augmented tree preservation plan satisfactory. The applicant has met the

burden required by CBMC 17.70.030(D) to consider tree preservation. The Planning Commission erred in finding otherwise.

Furthermore, the Planning Commission indicated that it was not convinced that the proposed tree removal would not have a negative impact to neighboring properties or the stability of surrounding soils or foundations. However, there is not substantial evidence in the record to indicate that the removal of 7 trees would negatively impact neighboring properties or soil or foundation stability. Furthermore, in spite of the fact that no negative off-site impacts are expected, the standard does not require a finding that the tree removal will have no negative impacts.

While the applicant has clearly demonstrated compliance with CBMC 17.70.030(D), as demonstrated by the RWPA Letter, CBMC 17.70.030(D) is neither clear nor objective (see RWPA Letter at exhibit A-2). Therefore, it cannot serve as a basis for denial of the proposed partition.

For these reasons the applicant is challenging the Planning Commission's findings and conclusions under the tree removal standards through this appeal.

17.80.110 Conditional Uses – Overall Use Standards.

Before a conditional use is approved, findings will be made that the use will comply with the following standards.

APPLICANT:

For the reasons previously described by the applicant contained within the record (see RWPA Letter at exhibit A-21), and reiterated through this appeal statement, the conditional use approval criteria per CBMC 17.80.110 are not clear and/or objective and cannot be applied to regulate the development of housing per ORS 197.307(4). While the standards cannot be applied to this partition request, the applicant provided substantial evidence demonstrating the approval criteria per CBMC 17.80 are satisfied.

- A. A demand exists for the use at the proposed location. Several factors which should be considered in determining whether or not this demand exists include: accessibility for users (such as customers and employees), availability of similar existing uses, availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitably zoned sites for the use.***

CB FINDINGS:

The Planning Commission lacks compelling evidence that there is adequate access to the site as the plat restriction placed on the plat in 2000 Partition Plat states that "access to parcels 1, 2 & 3 is restricted to Forest Lawn Road only, until such future time that said restriction is modified by the City of Cannon Beach" (Exhibit C-05). Further, there is no evidence that a demand exists for this 'type' of housing at this location, which is the litmus test for 'availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitably

zoned sites for the use.’ The Planning Commission finds it disingenuous to consider all housing types as ‘needed housing,’ as defined in State statute, when what is proposed does not meet the housing mix and type needs identified in the City’s own housing report, “City of Cannon Beach Affordable Housing Task Force Report on Findings and Deliberation Affordable Housing Needs Assessment and Implementation Plan,” dated October 2016 (“Cannon Beach Affordable Housing Report”). With the growing shortage of land in the City of Cannon Beach and the geographical constraints on available surrounding lands, every home that doesn’t meet the ‘middle- housing’ needs, such as smaller homes, apartments, multiplexes, duplex homes, etc., displaces homes that could meet such needs.

The Planning Commission feels it is contrary to the legislative intent of promoting ‘needed housing’ to allow newly subdivided properties to be utilized towards luxury homes as well as more potential second-homes and short-term rentals, when a very real need exists for middle housing and affordable, workforce housing. As noted in the Cannon Beach Affordable Housing Report, there are over 1700 units available in the city to serve approximately 720 households. Yet, most of these are unavailable to the missing middle because they are too large (3-plus bedrooms), held as second homes or short-term rentals, and priced well beyond what those earning an average income for this area can afford.

The Commission acknowledges that the Cannon Beach Affordable Housing Report is the City’s official measure of housing demand. Furthermore, it is a more reliable measure of demand than the necessarily general algorithms of the Regional Housing Needs Assessment (“RNHA”), which was referenced by the applicant. In particular, the RNHA acknowledges that its algorithms have difficulty predicting housing needs in cities such as Cannon Beach that include a large number of vacation homes.

APPLICANT:

This approval criterion does not require the applicant to provide evidence demonstrating the appropriateness of a proposed access location. Rather, it requires a demonstration that a demand exists for the proposed use at the proposed location.

Evidence has been submitted into the record, both through the applicant’s narrative (see exhibit A-2) and the City planning staff’s staff report and recommendation to Planning Commission (see staff report addendum, dated July 21, 2022) that demonstrates this criterion is met. First, a demand for housing exists in Cannon Beach based on the *Regional Housing Needs Analysis Methodology in Oregon*, prepared by the Oregon Housing and Community Services Department (see exhibit A-2), which assessed Cannon Beach’s current and planned housing needs and determined a *current* need of seven total dwelling units, and a *projected need* of 264 dwelling units within the 2020 to 2040 planning period (which we’re

currently in). Second, the subject property is suitable for housing based on the *Clatsop County Housing Strategy*, which identified the subject property as part of the residential lands inventory, and thus, included it as “potentially buildable acres”.

This approval criterion requires the applicant to provide evidence that a demand exists at the site, which the applicant has provided. The Planning Commission’s preference that certain types of housing be located on the subject property rather than others is irrelevant to the approval criterion. Further, the Planning Commission’s assertion that the subject property will be utilized for “luxury homes” or “second-homes” is irrelevant to the approval standard and is based purely on speculation. ORS 197.303 broadly defines “needed housing” to be any type of housing, and does not differentiate between housing types; per ORS 197.303(1)(a), detached single-family housing is considered needed housing. While the applicant understands the Planning Commission’s preference for housing types that help to meet the City’s affordable housing needs, the CBMC does not require affordable housing to be constructed on the subject property, and the need for affordable housing cannot be weighed and prioritized against the need for any other type of housing; this approval criterion requires, simply, that a need is demonstrated, not that the subject property be utilized for the “greatest need”. The applicant has met the burden required by this criterion, and the Planning Commission failed to identify substantial evidence on the record, relevant to the approval criterion, demonstrating there isn’t a need for housing, or that the subject property isn’t appropriate for such a use.

Finally, while the applicant has clearly demonstrated compliance with CBMC 17.80.110(A), CBMC 17.80.110(A) is not objective (see RWPA Letter at exhibit A-21). Therefore, this provision cannot be applied to the project’s decision, and was incorrectly applied by the Planning Commission as a reason to deny the applicant’s proposed partition.

For these reasons, the applicant challenges the Planning Commission’s findings and conclusion under this approval criterion through this appeal.

B. The use will not create excessive traffic congestion on nearby streets or overburden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.

CB FINDINGS:

The applicant states that “the 2022 Draft Cannon Beach Transportation System Plan’s analysis of the City’s existing transportation system demonstrates compliance with identified Oregon Department of Transportation (ODOT) mobility targets. As a result, the adjacent transportation system can accommodate the proposed lot’s future single-family dwellings and will not result in excessive traffic congestion on nearby streets,” however, there is no compelling evidence provided to move

access from the secondary surface street of Forest Lawn to the more travelled Hemlock arterial.

APPLICANT:

This approval criterion does not require the applicant to provide evidence demonstrating the appropriateness of a proposed access location. Rather, it requires a demonstration that the proposed use (a tentative partition plan to ultimately allow for three single family residential dwellings) will not create excessive traffic congestion on nearby streets, regardless of where access to the subject property is proposed. The applicant provided evidence through the submitted narrative (see exhibit A-2) that the City's draft TSP demonstrates the City's existing transportation system complies with identified mobility targets and is not overburdened, and that impacts to the transportation system as a result of the three future residential dwellings are not anticipated. The Planning Commission did not identify evidence in the record contradicting the applicant's evidence and has not provided a factual basis to find the standard has not been satisfied. Rather, the Planning Commission acknowledged through its finding to CBMC 17.80.110(E) that the introduction of trips from single-family residences "was not likely to add a significant portion to the 'background traffic' already using Hemlock".

While the applicant has clearly demonstrated compliance with CBMC 17.80.110(B), CBMC 17.80.110(B) is neither clear nor objective (see RWPA Letter at exhibit A-21). Therefore, this provision cannot be applied to the project's decision, and was incorrectly applied by the Planning Commission as a reason to deny the project.

For these reasons, the applicant challenges the Planning Commission's findings and conclusion under this approval criterion through this appeal.

C. The site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities or other facilities which are required by city ordinances or desired by the applicant.

CB FINDINGS:

CBMC 17.43.050(M.2) specifies that each lot must contain 1,000 square-feet of upland areas and that such area shall be inclusive of the building coverage, required off-street parking and required access for each lot. Each of the three lots satisfies this standard, as noted on the plat, where Lot 1 provides 1,484 SF, Lot 2 provides 1,076 SF and Lot 3 provides 1,079 SF of upland area (Exhibit A-02). The application approval should consider a condition limiting any accessory structures to the building envelopes, as identified on the plans, including fencing.

APPLICANT:

The applicant concurs with the Planning Commission's findings that the proposed tentative partition plan meets this criterion, and that each proposed lot provides an adequate amount of space for the items identified by CBMC 17.80.110(C), as applicable. Further, the applicant would accept

a condition of approval limiting any accessory structures or fencing to the building envelope shown on the tentative partition plan (see exhibit A-26).

While the applicant concurs with the Planning Commission's findings that CBMC 17.80.110(C) is met, and is amenable to the condition of approval proposed by Planning Commission through the City's findings, CBMC 17.80.110(C) is not objective (see RWPA Letter at exhibit A-21). As a result, it could not be applied to the City's decision or be the basis for denial.

As noted above, the applicant agrees that this criterion is satisfied and would accept the condition of approval recommended by the Planning Commission.

D. The topography, soils and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils will be eliminated or reduced to the extent necessary for avoiding hazardous situations.

CB FINDINGS:

Although the Planning Commission finds the subject property has a parcel average slope of approximately 6.5%, and that steep slopes are not an issue on the property, the geotechnical analysis identified the property as subject to the geohazard risks of landslide and liquefaction. As stated above, the PC finds the applicant fails to meet the criterion.

APPLICANT:

As detailed earlier in this appeal statement, the applicant has provided substantial evidence into the public record demonstrating the subject property's potential geologic hazards, including, per the above criterion, "potential problems due to weak foundation soils", can be mitigated, reduced, and minimized to an acceptable level, where hazardous situations will be avoided. The Planning Commission has failed to identify reliable evidence in the record to refute the applicant's substantial evidence, and has instead based its finding on unsubstantiated concerns. The Planning Commission has not provided a factual basis for their concerns from any source, let alone a source qualified to refute the materials and evidence presented by the applicant's geotechnical engineer.

While the applicant has clearly demonstrated compliance with CBMC 17.80.110(D), CBMC 17.80.110(D) is neither clear nor objective (see RWPA Letter at exhibit A-21). Therefore, this provision cannot be applied to the project's decision, and was incorrectly applied by the Planning Commission as a reason to deny the applicant's proposed partition.

For these reasons, the applicant challenges the Planning Commission's findings and conclusion under this approval criterion through this appeal.

E. An adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike

paths or other transportation facilities required by city ordinances or desired by the applicant. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements.

CB FINDINGS:

The Planning Commission cannot make a finding that the proposed access locations are 'suitable.' The State relinquished the Highway 101 portion of Hemlock Street to the City in 1994, as a portion of the City Street System, and no longer functions as a limited access highway. The current local and federal functional classifications for Hemlock are Minor Arterial (Cannon Beach Comprehensive Plan) and Major Collector (Federal/State of Oregon Classification). Minor Arterials interconnect residential, shopping, employment and recreational activities at the community level and do not require limited access. The proposed approach on Hemlock would fall approximately 285' south of the Forest Lawn intersection and 185' from the next northern driveway access of 1688 Hemlock, while on the east side of Hemlock, over the same stretch, there are four access approaches onto Hemlock.

The Cannon Beach Comprehensive Plan states, "Access to Hemlock Street and U.S. 101 shall be limited. Wherever possible, traffic from development shall enter these roads from shared access points or streets, rather than individual driveways." The application proposes a single driveway access point off Forest Lawn serving Lot 2, while Lots 1 & 3 would share an access point off of Hemlock. Although the introduction of two more single-family dwellings on Hemlock would not likely add a significant portion (estimated to be 20 vehicle trips per day according to Federal Highways) to the 'background' traffic already using Hemlock, which according to the recent TSP shows daily vehicle counts during the summer season around 4000 vehicle trips per day, the Planning Commission does not abide the rationale to increase access points onto Hemlock when not warranted and thus, the application fails to meet the criterion.

APPLICANT:

As explained above, the applicant intends to request that the identified 2000 plat access restriction be modified through a separate proceeding. Consistent with the staff recommendation, the applicant requests a condition of approval that would preclude final plat approval for this partition until the access restriction in the 2000 Partition Plat is either removed or modified in a way that allows the single access point onto Hemlock that is proposed in this partition.

Further, CBMC 17.80.110(E) is not clear and objective (see RWPA Letter at exhibit A-21). Therefore, this provision cannot be applied to the City's decision and this standard cannot serve as a basis for denial.

For these reasons, the applicant challenges the Planning Commission's findings and conclusion under this approval criterion through this appeal.

F. The site and building design ensure that the use will be compatible with the surrounding area.

CB FINDINGS: *This criteria does not apply as building designs have not been submitted in conjunction with the partition application.*

APPLICANT: The applicant concurs with the Planning Commission that this criterion is not applicable.

For the reasons set forth in this appeal statement, the applicant respectfully requests that City Council reverse the Planning Commission's denial of the proposed partition and apply the conditions of approval recommended by the City staff in the preliminary staff report.

If you have any questions regarding any of the details included within this letter, please do not hesitate to contact me at 971-229-8318 or mrobinson@dowl.com.

Sincerely,

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

Matthew Robinson
Associate Planner

Attachment(s):

1. Exhibit A – Signed Notice of Appeal
2. Exhibit B – P22-01 & CU22-02 Signed Order, Adopted Findings, and Notice of Final Action

EXHIBIT A: SIGNED NOTICE OF APPEAL



CITY OF CANNON BEACH

NOTICE OF APPEAL OF PLANNING COMMISSION DECISION

Appellant's Name: Patrick/Dave LLC, attn: Jamie Lerma
 Email Address: jamie@redcrowgc.com
 Mailing Address: 3514 NE US Grant Place
Portland, OR 97212
 Telephone: 503-849-0258

1. Appeal of Planning Commission decision of P22-01 & CU22-02, regarding:

Three lot tentative partition request within the WO zone.

2. Interest/Involvement in initial proceedings:

Applicant

3. Specific grounds relied upon for review and criteria addressed at Planning Commission hearing against which review is being requested:

See applicant's statement prepared by DOWL

4. Type of Review/Appeal Requested:

- On the Record _____
 Hearing on Specific Issue or Issues _____
 De Novo Hearing _____

If you are requesting a hearing on a specific issue or issues, or a de novo hearing, please state the reason(s) for requesting such a hearing (refer to page one of General Information Sheet and note a specific reason from Section 17.88.180 of the Municipal Code):

See applicant's statement prepared by DOWL

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

FEE: \$1,000

Appellant Signature:  Date: 8/22/2022

For Staff Use Only:

Date Appeal Received: _____ By: _____

Appeal Fee Paid On: _____ Receipt No.: _____

(Last revised March 2021)

**EXHIBIT B – P22-01 & CU22-02 SIGNED ORDER, ADOPTED FINDINGS,
AND NOTICE OF FINAL ACTION**



CITY OF CANNON BEACH

BEFORE THE PLANNING COMMISSION OF THE CITY OF CANNON BEACH

IN THE MATTER OF A PARTITION AND A CONDITIONAL
USE FOR THE FOLLOWING PROPERTY:
TAX LOT 04100, MAP 51030DA

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER NO. P 22-01
& CU 22-02

IN ZONE: R2

Applicant: Patrick/Dave, LLC
PO Box 697
Seaside, OR 97138

Jamie Lerma, on behalf of Patrick/Dave LLC, applied to allow for a Partition and a Conditional Use Permit for a three-lot partition in the Wetland Overlay Zone. The property is located at the corner of Forest Lawn Rd. and S Hemlock St. (Tax Lot 04100, Map 51030DA) in a Residential Medium Density (R2) Zone. The request will be reviewed under Cannon Beach Municipal Code, Sections 17.43.040 Conditional Uses and Activities Permitted in Wetlands, 17.43.045 Conditional Uses and Activities Permitted in Wetland Buffer Areas, and 16.04.130 Subdivisions, Applicable Standards.

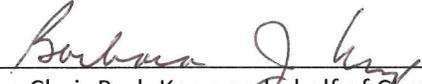
The public hearing on the above-entitled matter was opened before the Planning Commission on 6/23/2022; the Planning Commission closed the public hearing at the 7/28/2022 meeting and a final decision was made at the 8/11/2022 meeting.

THE PLANNING COMMISSION ORDERS that the request for a partition and conditional use is DENIED and adopts the findings of fact, conclusions and conditions contained in Exhibit "A." The effective date of this ORDER is 14 days following the signing of this order, subject to conditions contained in Exhibit "A."

This decision may be appealed to the City Council by an affected party by filing an appeal with the City Manager within 14 days of the date this order is signed.

CANNON BEACH PLANNING COMMISSION

DATED: 8/11/2022


Vice Chair Barb Knop on behalf of Chair Clay Newton



CITY OF CANNON BEACH

August 12, 2022

MEMORANDUM

To: Applicant and Parties of Record* – P 22-01 & CU 22-02, Jamie Lerma, on behalf of Patrick/Dave LLC, for a Partition and a Conditional Use Permit

From: Katie Hillenhagen, Administrative Assistant

Re: Planning Commission's Final Action – P 22-01 & CU 22-02

State law requires that all parties of record (those who testified at a public hearing orally or by correspondence) be notified of final decisions regarding land use actions.

At its August 11, 2022 meeting, the Cannon Beach Planning Commission voted to deny P 22-01 & CU 22-02, DENYING application number **P 22-01 & CU 22-02**, for a Partition and a Conditional Use Permit.

The public hearing was held on June 23, 2022 and July 28, 2022 and the Commission made a decision to deny the application. The final findings of fact were adopted, and the order was signed on August 11th, 2022.

The complete record of file **P 22-01 & CU 22-02** is available for review or purchase at Cannon Beach City Hall, 163 East Gower Street, Cannon Beach.

The applicant or parties of record may appeal the Planning Commission's decision, based on criteria that were addressed at the public hearing, to the Cannon Beach City Council within 14 days of the date the Order is signed (8/11/22). Authorization of an administrative appeal shall be void after one year or such lesser time as the authorization may specify unless substantial construction has taken place.

*Applicant: Jamie Lerma
Patrick/Dave LLC

Parties of Record:

Danna Caldwell	William Collins
Jeanne Marks & Dori Schnitzer	Andrew Morrow
Oregon Coast Alliance	Bob & Heidi Klonoff
Austin & Gabriella Raglione & Tim Roush	Mark Gibson
Linda & Steven Mayer	Wes Wahrmond & JSW
Bonnie Neugebauer	Kathy Coyne
Roger Neugebauer	Susan Glarum
Rosanne Dorsey	Robert Coyne

William Reiersgaard
Lolly Champion
Marty Schwab Harris
Ron Shapiro
Ulisse Pardini
Hanna Buschert

Deb Atiyeh
Anita Dueber
Monica Gorman
Barb Hinthorne
Renee M. France
Les Sinclair



Cannon Beach Planning Commission

Findings of Fact and Conclusions of Law

PUBLIC HEARING AND CONSIDERATION OF P 22-01 AND CU 22-02, PATRICK/DAVE LLC, REQUESTING A THREE LOT PARTITION AND A CONDITIONAL USE PERMIT FOR A PARTITION IN THE WETLAND OVERLAY ZONE. THE PROPERTY IS AN UNDEVELOPED PARCEL ON FOREST LAWN RD (TAXLOT 51030DA04100) IN THE RESIDENTIAL MEDIUM DENSITY (R2) ZONING DISTRICT. THE REQUEST WILL BE REVIEWED PURSUANT TO MUNICIPAL CODE SECTIONS 16.04.130, SUBDIVISIONS AND 17.43, CONDITIONAL USES AND ACTIVITIES PERMITTED IN THE WETLAND OVERLAY ZONE, APPLICABLE STANDARDS.

Agenda Date: June 23, 2022

GENERAL INFORMATION

NOTICE

Public notice for this June 23, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on June 2, 2022;
- B. Notice was mailed on June 2, 2022 to surrounding landowners within 100' of the exterior boundaries of the property.

DISCLOSURES

Commissioner Bates disclosed that he wrote an article regarding this project that was published in the February 2022 edition of Hipfish Monthly.

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on May 27, 2022 unless otherwise noted.

"A" Exhibits – Application Materials

- A-1 Application of P# 22-01 & CU#22-02, by Jamie Lerma on behalf of Patrick/Dave LLC;
- A-2 Application Narrative;
- A-3 Exhibit A – Application Forms;
- A-4 Exhibit B – Tentative Partition Plan;
- A-5 Exhibit C – Existing Conditions Plan;
- A-6 Exhibit D – Vicinity & Zoning Map;
- A-7 Exhibit E – Wetland Delineation;
- A-8 Exhibit F – Department of State Lands Wetland Delineation Concurrence;
- A-9 Exhibit G – U.S. Army Corps of Engineers Jurisdictional Determination;
- A-10 Exhibit H – Preliminary Utility Plan;
- A-11 Exhibit I – Arborist Report;

- A-12** Geotechnical Investigation and Geologic Hazard Report Proposed Forest Lawn Subdivision, Lots 1-3, Clatsop County Tax Lot No. 51030DA04100, by Earth Engineers, Inc., dated June 3, 2022;
- A-13** Forest Lawn Partition, Supplemental Geotechnical Findings, by DOWL, dated June 10, 2022;
- A-14** Forest Lawn Partition (P 22-01/CU 22-02) Response to Public Comments, dated June 17, 2022;
- A-15** Geotechnical Investigation and Geologic Hazard Report Proposed Forest Lawn Subdivision, Lots 1-3, Clatsop County Tax Lot No. 51030DA04100, by Earth Engineers, Inc., dated June 3, 2022, revised June 10, received June 13, 2022;
- A-16** Forest Lawn Partition, Supplemental Geotechnical Findings, by DOWL, dated June 10, 2022, received June 13, 2022;
- A-17** Response to Tree Plan Review Letter, by Renee M. France, Radler, White, Parks & Alexander, LLP, received June 23, 2022;
- A-18** Applicant Response to Public Comment, Email Correspondence, Matt Robinson, DOWL, June 23, 2022;
- A-19** Applicant Response to Public Comment, Email Correspondence, Matt Robinson, DOWL, June 23, 2022;
- A-20** Applicant Response Regarding Off-Site Sources of Stormwater Discharge, July 18, 2022;
- A-21** Applicant Response Regarding Clear and Objective Standards - ORS 197.307(4);
- A-22** Exhibit I - Arborist Report, Revised, July 22, 2022;
- A-23** Forest Lawn Partition Tree Protection Plan;
- A-24** Applicant Email correspondence regarding new materials, received July 22, 2022;
- A-25** Letter regarding Commissioner Bates Article - P 22-01/CU 22-02, Renee M. France, dated July 27, 2022;
- A-26** Supplemental Findings Letter, including Tentative Partition Plan (updated Exhibit B), Simplified Tentative Partition Plan, Arborist Plan (updated Exhibit I), Supplemental Earth Engineers Letter, dated July 28, 2022;

“B” Exhibits – Agency Comments

None received as of this writing;

“C” Exhibits – Cannon Beach Supplements

- C-1** Haystack Views pre-application meeting response letter, dated December 10, 2021
- C-2** Haystack Views follow-up letter, dated March 1, 2022;
- C-3** Completeness determination letter, dated June 3, 2022;
- C-4** Pre-Application Cover Letter, Matthew Robinson, DOWL, dated November 12, 2021;
- C-5** Pre-Application Exhibit A - Partition Plat 2000-037;
- C-6** Pre-Application Exhibit B - PHS Stormwater Influence Letter, dated September 1, 2021;
- C-7** Pre-Application Exhibit C - Stormwater Runoff Calculation;
- C-8** Pre-Application Exhibit D - Existing Conditions Survey;
- C-9** Pre-Application Exhibit E - DSL Wetland Delineation Concurrence Letter;
- C-10** Pre-Application Exhibit F - USACE Jurisdictional Determination Letter;
- C-11** Pre-Application Exhibit G - Preliminary Subdivision Plan;
- C-12** Shapiro and Associates, Wetlands Delineation, with supplemental materials, dated December 10, 1992;
- C-13** City of Cannon Beach Minor Partition Order, with supplemental materials, dated January 27, 2000;
- C-14** Arnsberg Family Limited Partnership Property Donation request, before City Council, with supplemental materials, dated September 2, 2003;
- C-15** Karen La Bonte, Letter on behalf of the City of Cannon Beach to Quail Cove, LLC, dated April 29, 2021;
- C-16** City of Cannon Beach application for Development Permit DP# 21-23, dated November 5, 2021;
- C-17** City of Cannon Beach Order and Findings for Development Permit DP# 21-23, dated November 5, 2021;
- C-18** Cardwell Appeal of Administrative Decision for Development Permit DP# 21=23, dated November 17, 2021;
- C-19** City of Cannon Beach Notice of Decision to withdraw, dated January 11, 2022;

- C-20** City of Cannon Beach correspondence over the Forest Lawn stormwater concerns, various dates;
- C-21** City of Cannon Beach Planning Commission Meeting Minutes, October 22, 1987;
- C-22** City of Cannon Beach Planning Commission Meeting Minutes, January 27, 2000;
- C-23** City Arborist Letter, June 20, 2022;
- C-24** City of Cannon Beach Planning Commission Meeting Packet, October 22, 1987;
- C-25** City of Cannon Beach Planning Commission Meeting Packet, January 27, 2000;
- C-26** Jeff Gerhardt, City of Cannon Beach Arborist Letter, Initial Tree Plan Review 2, Forest Lawn Partition, dated July 27, 2022;

“D” Exhibits – Public Comment

- D-1** Dana Cardwell, Email Correspondence, June 1 2022;
- D-2** Lolly Champion, Email Correspondence, June 7, 2022;
- D-3** Steve Mayer, Email Correspondence, June 12, 2022;
- D-4** Dana Cardwell, Letter via Email Correspondence, June 13, 2022;
- D-5** Dana Cardwell, Summary of Appeal, Email Correspondence, June 13, 2022;
- D-6** Bonnie Neugebauer, Letter via Email Correspondence, June 13, 2022;
- D-7** Roger Neugebauer, Letter via Email Correspondence, June 13, 2022;
- D-8** Rosanne Dorsey, Email Correspondence, June 14, 2022
- D-9** William Reiersgaard, Email Correspondence, June 15, 2022;
- D-10** Lolly Champion, Email Correspondence, June 15, 2022;
- D-11** Marty Schwab Harris, Letter via Email Correspondence, June 15, 2022;
- D-12** Lolly Champion, Petition, June 17, 2022;
- D-13** Jeanne Marks & Dori Schnitzer Letter, received via email, June 22, 2022;
- D-14** Austin Raglione, Gabriella Raglione and Tim Roush Letter via Email Correspondence, June 23, 2022;
- D-15** Cameron La Follette, on behalf of Oregon Coast Alliance, Letter via Email Correspondence, June 23, 2022;
- D-16** Dana Cardwell, Letter via Email Correspondence, July 13, 2022;
- D-17** Dana Cardwell, Letter via Email Correspondence, July 20, 2022;
- D-18** William Collins, Email Correspondence, July 20, 2022;
- D-19** Andrew Morrow, Letter via Email Correspondence, July 20, 2022;
- D-20** Rosey Dorsey, Email Correspondence, July 21, 2022;
- D-21** Monica Gorman, Email Correspondence, July 21, 2022;
- D-22** Barb Hinthorne, Email Correspondence, July 26, 2022;

SUMMARY & BACKGROUND

Patrick/Dave LLC (applicant) is requesting City of Cannon Beach (City) tentative plan approval of a three lot partition of tax lot 51030DA04100 (also referred to as the project site). The project site is one wetland lot of record and generally located south of the intersection of Forest Lawn Road and South Hemlock Street. As the project site contains wetlands mapped on the City’s local wetland inventory that are subject to Cannon Beach Municipal Code (CBMC) Chapter 17.43 (Wetlands Overlay Zone), the applicant is also requesting conditional use approval as required by CBMC 17.43.040-45 for partitions within wetlands and wetland buffer areas. As shown on the Tentative Partition Plan (Exhibit B), the proposed partition will create three lots intended for single-family residential dwellings.

ORS 92.010(6) defines “parcel” as a single unit of land that is created by a partition of land, and ORS 92.010(9) defines “partitioning land” as the means of dividing land to create not more than three parcels of land within a calendar year; therefore, for the purposes of state law, this proposed tentative plan is considered a partition as it will result in the creation of only three units of land (Lots 1, 2, and 3).

The 1.1 acre property is zoned R2 Residential Medium Density and includes a 29,618 square-foot (SF) delineated wetland, identified and delineated by Pacific Habitat Services, Inc, (Exhibit A-07). The U.S. Army Corps of Engineers issued a jurisdictional determination on April 15, 2021 and the Oregon Department of State Lands

issued a letter of concurrence, dated June 8th, 2021 (Exhibits A-08 & A-09). The City’s files hold an earlier wetlands delineation, by Shapiro and Associates, dating back to 1992 (Exhibit C-12). On January 27, 2000, the City of Cannon Beach granted a minor partition of the subject property into three parcels (Exhibit C-13). There is evidence in the historic record for the property indicating that at one time the owners had contemplated donating the wetlands area to the City (Exhibit C-14). As evidenced by the pre-application correspondence, the applicants initially contemplated a seven-lot subdivision, but ultimately applied for only a three-lot partition. Those exhibits also indicated that a (Exhibits C-01 & C-02), donation was contemplated under the initial seven-lot subdivision, along with consideration concerning cluster development and clarification of ‘frontages.’

The access to the initially contemplated seven-lot subdivision’s access would have crossed a wetland. Due to a plat restriction, which was placed on the property by an earlier decision (and explained in detail below), should a partition be granted, access to the majority of the parcel’s upland area would necessitate a Forest Lawn approach that would cross delineated wetlands. Staff expressed concern over the proposed access and what appears to be conflicting language surrounding CBMC 16.04.310 Design Standards – Lots, (B) Location, that “All lots shall have a twenty-five-foot frontage on a publicly dedicated street. Not only was it debatable whether all lots had frontage on a publicly dedicated street, CBMC 17.43.050(M)(2)(e) states that “streets shall not be located in protected wetland or wetland buffer areas.”

APPLICABLE CRITERIA EXCERPTED FROM THE CANNON BEACH MUNICIPAL CODE

Chapter 16 – Subdivisions

16.04.130 Applicable Standards

In making its decision, the planning commission shall determine whether the proposed subdivision or partition complies with the applicable standards of this code and the policies of the comprehensive plan, in conformance with the requirements of Section 17.88.110. Where this chapter imposes a greater restriction upon the land than is imposed or required by existing provisions of law, ordinance, contract or deed, the provisions of this chapter shall control. Pursuant to ORS 197.195(1), the city has determined that the following comprehensive plan policies are applicable standards for a proposed subdivision or partition.

A. General Development Policies.

1. *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.*
2. *General Development Policy 5. The density of residential development throughout the city shall be based on the capability of the land in terms of its slope, potential for geologic hazard and drainage characteristics. Density limits throughout the city shall generally be:*

Net Density Standards	
	Dwellings Per Acre
<i>High (R3), (RM)</i>	<i>15</i>
<i>Duplex or medium (R2), (RMa), (MP), (RAM)</i>	<i>11</i>
<i>Moderate single-family (R1)</i>	<i>8</i>
<i>Low (RL)</i>	<i>4</i>
<i>Very low (RVL)</i>	<i>1</i>

3. *General Development Policy 9. To control development in areas with slopes exceeding twenty percent and areas subject to potential geologic hazards so that potential adverse impacts can be minimized.*
4. *General Development Policy 10. When site investigations are required in areas of potential landslide hazard, a site specific investigation shall be prepared by a registered geologist. Based on the conclusions of this investigation, an engineered foundation design by a soils engineer may be required by the building official. When site investigations are required in areas of potential coastal erosion hazard, the site specific investigation shall be prepared by a registered geologist with expertise in shoreline processes. Based on the conclusions of this investigation, protective structures designed by a registered civil engineer may be required by the building official. Site investigation reports shall meet the city's criteria for the content and format for geologic hazard reports.*
5. *General Development Policy 11. Site investigations by a qualified soils engineer may be required for the construction or development of property identified by the Soil Conservation Service as containing weak foundation soils. Site reports shall include information on bearing capacity of the soil, adequacy and method of drainage facilities, and the length of fill settlement necessary prior to construction.*
6. *General Development Policy 12. Site investigations by a registered geologist shall be performed, prior to development, in any area with a slope exceeding twenty percent. Based on the conclusions of this investigation, an engineered foundation design by a soils engineer may be required by the building official.*
7. *General Development Policy 14. To ensure that development is designed to preserve significant site features such as trees, streams and wetlands.*
8. *General Development Policy 15. The city shall regulate the removal of trees in order to preserve the city's aesthetic character, as well as to control problems associated with soil erosion and landslide hazards.*
9. *General Development Policy 16. To provide flexibility in regulations governing site design so that developments can be adapted to specific site conditions.*

Findings: The applicable criteria from the General Development Policies for this partition application include items 1, 2, 4, 7, 8, and 9. The partitioning of the subject property into three separate parcels would not increase the overall net density such that it exceeds the 11 dwellings per acre standard. While the Tentative Partition Plan is laid out so that potential development is focused on the upland areas with the application showing no activity occurring in the delineated wetland area, the Planning Commission has concerns about these standards being applied given that the parcel is one wetland lot of record and located in the Wetlands Overlay zone.

The Planning Commission finds that the 2000 Partition Plat that created this property holds a plat note restriction, stating, "access to parcels 1, 2 & 3 is restricted to Forest Lawn Road only, until such future time that said restriction is modified by the City of Cannon Beach" (Exhibit C-05). If one traces this restriction back from the 2000 partition decision, to the 1987 minor partition decision that is referenced in the minutes of the 2000 Planning Commission decision, it is evident that the restriction to access future access from utilizing Hemlock is based on the "a desire to minimize driveways onto the city's main arterial, Hemlock Street," which is referred to in 1987 as a "limited access highway," while "retaining an uninterrupted area of vegetation and trees along the west side of Hemlock Street" (see Exhibit C-21, C-22 & C-13).

The Planning Commission finds no evidence in the record that would justify reversing the initial plat restriction from 1987 and re-affirmed in 2000 restricting access to Hemlock. Thus, the Planning Commission must deny any requested partition in violation of this plat restriction.

Chapter 17 – Zoning

17.14.030 Conditional Uses Permitted.

In an R2 zone, the following standards shall apply except as they may be modified through the design review process pursuant to Chapter 17.44:

A. Lot Size. Lot area shall be at least five thousand square feet, except that construction on lots of less than five thousand square feet is permitted subject to Section 17.82.020. The minimum lot size for a single-family dwelling shall be five thousand square feet. The minimum lot size for all uses, including single-family dwellings, shall be adjusted for average slope using the standards in Section 16.04.310(A).

B. Lot Dimensions.

1. Lot Width. Lot width shall be at least forty feet.

2. Lot Depth. Lot depth shall be at least eighty feet.

3. Front Yard. A front yard shall be at least fifteen feet.

4. Side Yard. A side yard shall be at least five feet, except on a corner or through lot the minimum side yard from the street shall be fifteen feet.

5. Rear Yard. A rear yard shall be at least fifteen feet, except on a corner or through lot it shall be a minimum of five feet, except where a rear lot line abuts a street, it shall be a minimum of fifteen feet.

6. Yard Abutting the Ocean Shore. For all lots abutting the ocean shore, any yard abutting the ocean shore shall conform to the requirements of Section 17.42.050(A)(6), Oceanfront setback.

C. Lot Coverage. The lot coverage for a permitted or conditional use shall not exceed fifty percent.

D. Floor Area Ratio. The floor area ratio for a permitted or conditional use shall not exceed 0.6.

E. Building Height. Maximum height of a structure is twenty-four feet, measured as the vertical distance from the average elevation of existing grade to the highest point of a roof surface of a flat roof, to the top of a mansard roof or to the mean height level between the eaves and the ridge for a pitched roof. The ridge height of a pitched roof shall not exceed twenty-eight feet. Pitched roofs are considered those with a 5-12 pitch or greater.

F. Signs. As allowed by Chapter 17.56.

G. Parking. As required by Section 17.78.020.

H. Design Review. All uses except single-family dwellings and their accessory structures are subject to design review of Chapter 17.44.

I. Geologic or Soils Engineering Study. As required by Chapter 17.50.

J. Claims for Compensation Under ORS 197.352. The standards of Section 17.08.040(A) through (K) (Standards), shall apply except as specifically modified pursuant to a development agreement created as part of the city's final action modifying, removing or not applying the city's land use regulation(s) on a demand for compensation under ORS 197.352.

K. Site Plan. Except for interior renovation of existing structures and exterior renovations such as siding replacement where there will be no ground disturbance, no new construction shall be approved unless a site plan meeting the requirements of Section 17.90.190 has been submitted and approved.

Findings: The Planning Commission finds that while single-family dwellings are an outright permitted use per CBMC 17.14.020(A), partitions are a conditional use when proposed within wetland and wetland buffer areas per CBMC 17.43.040 and 45; therefore, conditional use approval is required for the Tentative Partition Plan. The applicable standards for conditional uses per CBMC 17.80.110, as well as the Wetlands Overlay standards for land divisions per CBMC 17.43.050(M), are addressed for compliance within this narrative.

The minimum lot size requirements of 5,000 SF for single-family lots are met, as well as the other dimensional standards. Parking areas are to be included in the identified building sites, while access is proposed via Forest Lawn for Lot 2 and a shared access easement off of Hemlock for Lots 1 & 3.

17.43 – Wetlands Overlay (WO) Zone

17.43.020 Mapping.

- A. *The maps delineating the WO zone boundaries shall be maintained and updated as necessary by the city. The Cannon Beach Local Wetland Inventory maps dated September 20, 1994, shall form the basis for the location of wetlands. The WO zone includes both wetland and wetland buffer areas which abut wetlands. The wetland buffer area has a width of five feet measured from the outer boundaries of the wetland.*
- B. *Site-specific wetland delineations or determinations are required to determine the exact location of the WO zone boundary. Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual along with any supporting technical or guidance documents issued by the Division of State Lands and applicable guidance issued by the U.S. Army Corps of Engineers for the area in which the wetlands are located.*
- C. *Where a wetland delineation or determination is prepared, the mapping it contains shall replace that of the Cannon Beach Local Wetland Inventory. Wetland delineations or determinations shall remain valid for a period of not more than five years from the date of their acceptance by the Division of State Lands.*

Findings: The Planning Commission finds that the subject property is in the City’s Wetland Overlay Zone and contains a wetland that was originally mapped for the Cannon Beach Local Wetland Inventory of September 1994 (Exhibit C-12). A site-specific wetland delineation has been prepared for the applicant by Pacific Habitat Services (Exhibit A-07), which was then reviewed and approved by the Department of State Lands on June 8, 2021 (Exhibit A-08). The U.S. Army Corps of Engineers issued an Approved Jurisdictional Determination on April 15, 2021 indicating that the wetland is not subject to that agency’s review requirements (Exhibit A-09).

17.43.025 Wetland lot-of-record.

A wetland lot-of-record is a lot or contiguous lots held in common ownership on August 4, 1993, that 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. “Contiguous” means lots that have a common boundary, and includes lots separated by public streets. A lot-of-record is subject to the provisions of this overlay zone if all or a portion of the lot is in the overlay zone. The objective of the wetland lot-of-record provision is to permit a property owner a minimum of one dwelling unit on a wetland lot-of-record. A dwelling can be constructed on the wetland portion of a wetland lot-of-record only where there are no upland portions of the wetland lot-of-record that can accommodate a dwelling. The following examples illustrate how the wetland lot-of-record provisions of Section 17.43.030A and Section 17.43.035A are to be applied.

Example 1. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots all of which are entirely of wetlands; one dwelling unit is permitted.

Example 2. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots, two of which are entirely wetlands and one of which contains two thousand five hundred square feet of uplands; one dwelling unit is permitted on the upland portion of the lot which contains two thousand five hundred square feet of uplands.

Example 3. A fifteen thousand square foot lot-of-record consisting of three platted five thousand square foot lots, one lot is entirely a wetland, the second lot contains two thousand five hundred square feet of upland and the third lot contains three thousand five hundred square feet of upland; two dwelling units are permitted, one on the upland portion of the lot which contains two thousand five hundred square feet of upland and one on the upland portion of the lot which contains three thousand five hundred square feet of uplands.

Findings: The Planning Commission recognizes subject property is a wetland lot of record and any parcels created by a partition of the subject would be wetland lots of record. The wetland lot of record ordinance specifically states through clear and objective standards that one single-family dwelling is permitted per parcel and any further applications for additional housing must be done through the conditional use provisions of 17.43.040 for further subdivision. The Planning Commission further recognizes the subject property was previously a part of larger wetland lot of record that was granted a partition in 2000 creating three separate lots of record such that this partition is further degradation of the wetland. Upon review of the conditional use criteria of 17.80, below, the Planning Commission cannot find compliance to this standard.

17.43.040 Conditional uses and activities permitted in wetlands.

The following uses and activities may be permitted subject to the provision of Chapter 17.80 in the wetland portion of the WO zone, subject to applicable standards, if permitted outright or conditionally in the base zone:

- I. *Subdivisions, replats, partitions and property line adjustments.*

17.43.045 Conditional Uses and Activities Permitted in Wetland Buffer Areas.

The following uses and activities may be permitted subject to the provision of Chapter 17.80 in wetland buffer areas in the WO zone, subject to applicable standards, if permitted outright or conditionally in the base zone:

- I. *Subdivisions, partitions, lot line adjustments.*

17.43.050 Standards.

The following standards are applicable to the uses and activities listed in Sections 17.43.030 through 17.43.045. The uses and activities are also subject to the standards of the base zone. The following standards are applicable in all areas under the wetlands overlay zone. "Protected wetlands" are those areas in the wetlands overlay zone that have been identified on the city's inventory or on a subsequent detailed wetland delineation as wetlands. "Wetland buffer areas" are nonwetland areas in the wetlands overlay zone surrounding the protected wetlands.

- A. *General Standards. Uses and activities in protected wetlands and in wetland buffer areas are subject to the following general standards. Development may also be subject to specific standards in subsequent subsections.*
 1. *Uses and activities in protected wetlands or wetland buffer areas may be approved only after the following list of alternative actions, listed from highest to lowest priority, have been considered:*
 - a. *Avoiding the impact altogether by not taking a certain action or parts of an action (this would include, for example, having the use or activity occur entirely on uplands); and*
 - b. *Minimizing impacts by limiting the degree or magnitude of action and its implementation (this would include, for example, reducing the size of the structure or improvement so that protected wetlands or wetland buffer areas are not impacted).*

Findings: As shown on the Existing Conditions Plan (Exhibit A-05), there are no stream drainageways within the project site. As identified in the applicant's original narrative and shown on the Preliminary Utility Plan (Exhibit A-10), stormwater service lines, anticipated to be four inches in diameter, will collect each future dwelling's stormwater runoff, which will then be conveyed to the existing public system within Forest Lawn Road and South Hemlock Street, which ensures stormwater will be channeled to public storm sewers as required and will not flow onto adjacent properties. What wasn't taken into account in the applicant's presentation, but which the Commission finds compelling, is that the cumulative removal of storm water from these uplands, proposed by the utility plan, will continue to degrade the historic adjacent wetland. The storm water removal plan presented by the applicant will, in effect, drain the wetland. The Planning Commission recognized the fact that evidence has made it clear the wetlands are essential to the health and viability of our community.

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

1. *Preliminary plat maps for proposed subdivisions, replats and partitions involving protected wetlands or wetland buffer areas must show the wetland-upland boundary, as determined by a wetland delineation prepared by a qualified individual.*
2. *Subdivisions, replats, partitions and property line adjustments for the purpose of creating building sites are permitted subject to the following standards:*
 - a. *Each lot created must have at least one thousand square feet of upland available for building coverage, required off-street parking and required access.*
 - b. *The building site described in subsection M2a shall not include protected wetlands or wetland buffer areas.*
 - c. *Protected wetlands and wetland buffer areas may be counted towards meeting the base zone's minimum lot size for each lot, and may be included in front, side and rear yard setbacks as appropriate.*
 - d. *Utility lines, including but not limited to, water lines, sewer lines, and storm water lines shall not be located in protected wetlands or wetland buffer areas, unless there is no alternative to serve lots meeting the standard of subsection M2a.*
 - e. *Streets shall not be located in protected wetland or wetland buffer areas.*
3. *In planned unit developments or cluster subdivisions, all protected wetland or wetland buffer areas must be in open space tracts held in common ownership.*
4. *For lots or parcels created subject to these provisions, the existence of protected wetland or wetland buffer areas shall not form the basis for a future setback reduction or variance request.*

Findings: Rendered moot due to the lack of evidence to allow access. The Planning Commission cannot find compliance.

Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS

17.50.020 Applicability.

The following are potential geologic hazard areas to which the standards of this section apply:

- A. *In any area with an average slope of twenty percent or greater;*
- B. *In areas of potential landslide hazard, as identified in the city master hazards map and comprehensive plan;*
- C. *In areas abutting the oceanshore, or velocity zone flood hazard, as identified on the city's FIRM maps;*

D. In areas identified by the soil survey of Clatsop County, Oregon as containing weak foundation soils; or

E. In open sand areas regardless of the type of dune or its present stability, and conditionally stable dunes not located in a velocity flood hazard zone, as identified on the city's FIRM maps, which in the view of the building official have the potential for wind erosion or other damage. (Ord. 92-11 § 60; Ord. 79-4 § 1 (4.110) (2))

Findings: The Planning Commission reviewed the Earth Engineers Report (see Exhibits A-12 & A-13) and finds the project site soils are derived from sedimentary rock; therefore, a site investigation and geologic hazard study is required. As previously mentioned, a geologic hazard report is included as section 3.0 of the Earth Engineers Report. Findings are provided for CBMC 17.50 (Development Requirements for Potential Geologic Hazard Areas) within this letter, which are supported by the Earth Engineers Report, including a literature review which indicates the project site is adjacent to an active landslide area. The Commission did not find the evidence presented to be persuasive in mitigating the evidence provided on landslide and liquefaction risk. Contrary to the geotechnical testimony presented, the Commission cannot find that the "majority" of the City is in a slide zone and that when the proposed development removes the proposed trees and puts houses on these vulnerable soils, there won't be detrimental effects. The Commission finds that other neighborhood development is not relevant to the geological risks outlined in the present application because prior development was not subject the same site conditions.

As identified within the Earth Engineers Report, compressible, organic soils were encountered within the project site at a depth of approximately 30 to 40 feet beneath the ground surface. As previously identified, the project site's potential geologic hazards, including its soils, can be mitigated through granulated, well graded, crushed rock structural fill as necessary, as well as pin pile or helical pier foundation systems for the future residential dwellings.

Engineering and construction methods are specified within sections 4.0 and 5.0 the Earth Engineers Report. As discussed previously, the report found that the project site's potential geologic hazards can be mitigated through granulated, well graded, crushed rock structural fill as necessary, as well as pin pile or helical pier foundation systems for the future residential dwellings. The Commission voiced concerns over the depth to groundwater and the need for imported fill to combat wet soils, prone to liquefaction and which can only be mitigated by helical pier systems. Upon the resort to such measures and the possible detrimental impact these may have on the historic wetland and neighboring structures, the Commission cannot find compliance.

Chapter 17.70 TREE REMOVAL AND PROTECTION

17.70.030 Additional requirements.

A. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(A) or (B) the application shall include a complete ISA Tree Hazard Evaluation Form prepared by a certified arborist with the tree removal application. An ISA Tree Hazard Evaluation Form prepared by a certified arborist is not required where a tree removal permit proposes the removal of a dead tree pursuant to subsection C of this section, or where a tree removal permit proposes the removal of a tree pursuant to subsection F. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(F), a certified arborist shall provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.

B. For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).

C. An application for the removal of a dead tree does not require an ISA Tree Hazard Evaluation Form prepared by a certified arborist.

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

Findings: The Planning Commission finds that the applicant’s reduction from initial tree plan for the removal of 11 trees to just 7, upon the updated Prager Report, is an improvement, but does not alleviate the concerns that a majority of the upland trees are jeopardized by the proposed development. The Commission was not convinced by the evidence presented that the removal of so many trees would not have negative impact to neighboring properties and the stability of the surrounding soils and foundations. The Planning Commission cannot find compliance.

17.80.110 Conditional Uses – Overall Use Standards

Before a conditional use is approved, findings will be made that the use will comply with the following standards:

- A. *A demand exists for the use at the proposed location. Several factors which should be considered in determining whether or not this demand exists include: accessibility for users (such as customers and employees), availability of similar existing uses, availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitably zoned sites for the use.*

Findings: The Planning Commission lacks compelling evidence that there is adequate access to the site as the plat restriction placed on the plat in 2000 Partition Plat states that “access to parcels 1, 2 & 3 is restricted to Forest Lawn Road only, until such future time that said restriction is modified by the City of Cannon Beach” (Exhibit C-05). Further, there is no evidence that a demand exists for this ‘type’ of housing at this location, which is the litmus test for ‘availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitably zoned sites for the use.’ The Planning Commission finds it disingenuous to consider all housing types as ‘needed housing,’ as defined in State statute, when what is proposed does not meet the housing mix and type needs identified in the City’s own housing report, “City of Cannon Beach Affordable Housing Task Force Report on Findings and Deliberation Affordable Housing Needs Assessment and Implementation Plan,” dated October 2016 (“Cannon Beach Affordable Housing Report”). With the growing shortage of land in the City of Cannon Beach and the geographical constraints on available surrounding lands, every home that doesn’t meet the ‘middle-housing’ needs, such as smaller homes, apartments, multiplexes, duplex homes, etc., displaces homes that could meet such needs.

The Planning Commission feels it is contrary to the legislative intent of promoting ‘needed housing’ to allow newly subdivided properties to be utilized towards luxury homes as well as more potential second-homes and short-term rentals, when a very real need exists for middle housing and affordable, workforce housing. As noted in the Cannon Beach Affordable Housing Report, there are over 1700 units available in the city to serve approximately 720 households. Yet, most of these are unavailable to the missing middle because they are too large (3-plus bedrooms), held as second homes or short-term rentals, and priced well beyond what those earning an average income for this area can afford.

The Commission acknowledges that the Cannon Beach Affordable Housing Report is the City’s official measure of housing demand. Furthermore, it is a more reliable measure of demand than the necessarily general algorithms of the Regional Housing Needs Assessment (“RNHA”), which was referenced by the applicant. In particular, the RNHA acknowledges that its algorithms have difficulty predicting housing needs in cities such as Cannon Beach that include a large number of vacation homes.

- B. *The use will not create excessive traffic congestion on nearby streets or overburden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.*

Findings: The applicant states that “the 2022 Draft Cannon Beach Transportation System Plan’s analysis of the City’s existing transportation system demonstrates compliance with identified Oregon Department of

Transportation (ODOT) mobility targets. As a result, the adjacent transportation system can accommodate the proposed lot's future single-family dwellings and will not result in excessive traffic congestion on nearby streets," however, there is no compelling evidence provided to move access from the secondary surface street of Forest Lawn to the more travelled Hemlock arterial.

- C. *The site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities or other facilities which are required by city ordinances or desired by the applicant.*

Findings: CBMC 17.43.050(M.2) specifies that each lot must contain 1,000 square-feet of upland areas and that such area shall be inclusive of the building coverage, required off-street parking and required access for each lot. Each of the three lots satisfies this standard, as noted on the plat, where Lot 1 provides 1,484 SF, Lot 2 provides 1,076 SF and Lot 3 provides 1,079 SF of upland area (Exhibit A-02). The application approval should consider a condition limiting any accessory structures to the building envelopes, as identified on the plans, including fencing.

- D. *The topography, soils and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils will be eliminated or reduced to the extent necessary for avoiding hazardous situations.*

Findings: Although the Planning Commission finds the subject property has a parcel average slope of approximately 6.5%, and that steep slopes are not an issue on the property, the geotechnical analysis identified the property as subject to the geohazard risks of landslide and liquefaction. As stated above, the PC finds the applicant fails to meet the criterion.

- E. *An adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths or other transportation facilities required by city ordinances or desired by the applicant. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements.*

Findings: The Planning Commission cannot make a finding that the proposed access locations are 'suitable.' The State relinquished the Highway 101 portion of Hemlock Street to the City in 1994, as a portion of the City Street System, and no longer functions as a limited access highway. The current local and federal functional classifications for Hemlock are Minor Arterial (Cannon Beach Comprehensive Plan) and Major Collector (Federal/State of Oregon Classification). Minor Arterials interconnect residential, shopping, employment and recreational activities at the community level and do not require limited access. The proposed approach on Hemlock would fall approximately 285' south of the Forest Lawn intersection and 185' from the next northern driveway access of 1688 Hemlock, while on the east side of Hemlock, over the same stretch, there are four access approaches onto Hemlock.

The Cannon Beach Comprehensive Plan states, "Access to Hemlock Street and U.S. 101 shall be limited. Wherever possible, traffic from development shall enter these roads from shared access points or streets, rather than individual driveways." The application proposes a single driveway access point off Forest Lawn serving Lot 2, while Lots 1 & 3 would share an access point off of Hemlock. Although the introduction of two more single-family dwellings on Hemlock would not likely add a significant portion (estimated to be 20 vehicle trips per day according to Federal Highways) to the 'background' traffic already using Hemlock, which according to the recent TSP shows daily vehicle counts during the summer season around 4000 vehicle trips per day, the Planning Commission does not abide the rationale to increase access points onto Hemlock when not warranted and thus, the application fails to meet the criterion.

F. *The site and building design ensure that the use will be compatible with the surrounding area.*

Findings: This criteria does not apply as building designs have not been submitted in conjunction with the partition application.

PROCEDURAL REQUIREMENTS

This application is subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete. The application was submitted on May 25, 2022 and determined to be complete on June 3, 2022. Based on this, the City must complete its review of this proposal by October 1, 2022.

The Planning Commission's June 23rd hearing was the first evidentiary hearing on this request, the meeting was continued to July 28, 2022.

DECISION AND CONDITIONS

Motion: Having considered the evidence in the record, based on a motion by Commissioner Kerr and seconded by Commissioner Knop, the Cannon Beach Planning Commission moves to deny the Patrick/Dave LLC application for a three-parcel partition through a conditional use permit for partition in the wetland overlay zone, P22-01 and CU22-02, as discussed at this public hearing.



Cannon Beach Planning Commission

Findings of Fact and Conclusions of Law

PUBLIC HEARING AND CONSIDERATION OF P 22-01 AND CU 22-02, PATRICK/DAVE LLC, REQUESTING A THREE LOT PARTITION AND A CONDITIONAL USE PERMIT FOR A PARTITION IN THE WETLAND OVERLAY ZONE. THE PROPERTY IS AN UNDEVELOPED PARCEL ON FOREST LAWN RD (TAXLOT 51030DA04100) IN THE RESIDENTIAL MEDIUM DENSITY (R2) ZONING DISTRICT. THE REQUEST WILL BE REVIEWED PURSUANT TO MUNICIPAL CODE SECTIONS 16.04.130, SUBDIVISIONS AND 17.43, CONDITIONAL USES AND ACTIVITIES PERMITTED IN THE WETLAND OVERLAY ZONE, APPLICABLE STANDARDS.

Agenda Date: June 23, 2022

GENERAL INFORMATION

NOTICE

Public notice for this June 23, 2022 Public Hearing is as follows:

- A. Notice was posted at area Post Offices on June 2, 2022;
- B. Notice was mailed on June 2, 2022 to surrounding landowners within 100' of the exterior boundaries of the property.

DISCLOSURES

Commissioner Bates disclosed that he wrote an article regarding this project that was published in the February 2022 edition of Hipfish Monthly.

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on May 27, 2022 unless otherwise noted.

"A" Exhibits – Application Materials

- A-1 Application of P# 22-01 & CU#22-02, by Jamie Lerma on behalf of Patrick/Dave LLC;
- A-2 Application Narrative;
- A-3 Exhibit A – Application Forms;
- A-4 Exhibit B – Tentative Partition Plan;
- A-5 Exhibit C – Existing Conditions Plan;
- A-6 Exhibit D – Vicinity & Zoning Map;
- A-7 Exhibit E – Wetland Delineation;
- A-8 Exhibit F – Department of State Lands Wetland Delineation Concurrence;
- A-9 Exhibit G – U.S. Army Corps of Engineers Jurisdictional Determination;
- A-10 Exhibit H – Preliminary Utility Plan;
- A-11 Exhibit I – Arborist Report;

- A-12** Geotechnical Investigation and Geologic Hazard Report Proposed Forest Lawn Subdivision, Lots 1-3, Clatsop County Tax Lot No. 51030DA04100, by Earth Engineers, Inc., dated June 3, 2022;
- A-13** Forest Lawn Partition, Supplemental Geotechnical Findings, by DOWL, dated June 10, 2022;
- A-14** Forest Lawn Partition (P 22-01/CU 22-02) Response to Public Comments, dated June 17, 2022;
- A-15** Geotechnical Investigation and Geologic Hazard Report Proposed Forest Lawn Subdivision, Lots 1-3, Clatsop County Tax Lot No. 51030DA04100, by Earth Engineers, Inc., dated June 3, 2022, revised June 10, received June 13, 2022;
- A-16** Forest Lawn Partition, Supplemental Geotechnical Findings, by DOWL, dated June 10, 2022, received June 13, 2022;
- A-17** Response to Tree Plan Review Letter, by Renee M. France, Radler, White, Parks & Alexander, LLP, received June 23, 2022;
- A-18** Applicant Response to Public Comment, Email Correspondence, Matt Robinson, DOWL, June 23, 2022;
- A-19** Applicant Response to Public Comment, Email Correspondence, Matt Robinson, DOWL, June 23, 2022;
- A-20** Applicant Response Regarding Off-Site Sources of Stormwater Discharge, July 18, 2022;
- A-21** Applicant Response Regarding Clear and Objective Standards - ORS 197.307(4);
- A-22** Exhibit I - Arborist Report, Revised, July 22, 2022;
- A-23** Forest Lawn Partition Tree Protection Plan;
- A-24** Applicant Email correspondence regarding new materials, received July 22, 2022;
- A-25** Letter regarding Commissioner Bates Article - P 22-01/CU 22-02, Renee M. France, dated July 27, 2022;
- A-26** Supplemental Findings Letter, including Tentative Partition Plan (updated Exhibit B), Simplified Tentative Partition Plan, Arborist Plan (updated Exhibit I), Supplemental Earth Engineers Letter, dated July 28, 2022;

“B” Exhibits – Agency Comments

None received as of this writing;

“C” Exhibits – Cannon Beach Supplements

- C-1** Haystack Views pre-application meeting response letter, dated December 10, 2021
- C-2** Haystack Views follow-up letter, dated March 1, 2022;
- C-3** Completeness determination letter, dated June 3, 2022;
- C-4** Pre-Application Cover Letter, Matthew Robinson, DOWL, dated November 12, 2021;
- C-5** Pre-Application Exhibit A - Partition Plat 2000-037;
- C-6** Pre-Application Exhibit B - PHS Stormwater Influence Letter, dated September 1, 2021;
- C-7** Pre-Application Exhibit C - Stormwater Runoff Calculation;
- C-8** Pre-Application Exhibit D - Existing Conditions Survey;
- C-9** Pre-Application Exhibit E - DSL Wetland Delineation Concurrence Letter;
- C-10** Pre-Application Exhibit F - USACE Jurisdictional Determination Letter;
- C-11** Pre-Application Exhibit G - Preliminary Subdivision Plan;
- C-12** Shapiro and Associates, Wetlands Delineation, with supplemental materials, dated December 10, 1992;
- C-13** City of Cannon Beach Minor Partition Order, with supplemental materials, dated January 27, 2000;
- C-14** Arnsberg Family Limited Partnership Property Donation request, before City Council, with supplemental materials, dated September 2, 2003;
- C-15** Karen La Bonte, Letter on behalf of the City of Cannon Beach to Quail Cove, LLC, dated April 29, 2021;
- C-16** City of Cannon Beach application for Development Permit DP# 21-23, dated November 5, 2021;
- C-17** City of Cannon Beach Order and Findings for Development Permit DP# 21-23, dated November 5, 2021;
- C-18** Cardwell Appeal of Administrative Decision for Development Permit DP# 21=23, dated November 17, 2021;
- C-19** City of Cannon Beach Notice of Decision to withdraw, dated January 11, 2022;

- C-20** City of Cannon Beach correspondence over the Forest Lawn stormwater concerns, various dates;
- C-21** City of Cannon Beach Planning Commission Meeting Minutes, October 22, 1987;
- C-22** City of Cannon Beach Planning Commission Meeting Minutes, January 27, 2000;
- C-23** City Arborist Letter, June 20, 2022;
- C-24** City of Cannon Beach Planning Commission Meeting Packet, October 22, 1987;
- C-25** City of Cannon Beach Planning Commission Meeting Packet, January 27, 2000;
- C-26** Jeff Gerhardt, City of Cannon Beach Arborist Letter, Initial Tree Plan Review 2, Forest Lawn Partition, dated July 27, 2022;

“D” Exhibits – Public Comment

- D-1** Dana Cardwell, Email Correspondence, June 1 2022;
- D-2** Lolly Champion, Email Correspondence, June 7, 2022;
- D-3** Steve Mayer, Email Correspondence, June 12, 2022;
- D-4** Dana Cardwell, Letter via Email Correspondence, June 13, 2022;
- D-5** Dana Cardwell, Summary of Appeal, Email Correspondence, June 13, 2022;
- D-6** Bonnie Neugebauer, Letter via Email Correspondence, June 13, 2022;
- D-7** Roger Neugebauer, Letter via Email Correspondence, June 13, 2022;
- D-8** Rosanne Dorsey, Email Correspondence, June 14, 2022
- D-9** William Reiersgaard, Email Correspondence, June 15, 2022;
- D-10** Lolly Champion, Email Correspondence, June 15, 2022;
- D-11** Marty Schwab Harris, Letter via Email Correspondence, June 15, 2022;
- D-12** Lolly Champion, Petition, June 17, 2022;
- D-13** Jeanne Marks & Dori Schnitzer Letter, received via email, June 22, 2022;
- D-14** Austin Raglione, Gabriella Raglione and Tim Roush Letter via Email Correspondence, June 23, 2022;
- D-15** Cameron La Follette, on behalf of Oregon Coast Alliance, Letter via Email Correspondence, June 23, 2022;
- D-16** Dana Cardwell, Letter via Email Correspondence, July 13, 2022;
- D-17** Dana Cardwell, Letter via Email Correspondence, July 20, 2022;
- D-18** William Collins, Email Correspondence, July 20, 2022;
- D-19** Andrew Morrow, Letter via Email Correspondence, July 20, 2022;
- D-20** Rosey Dorsey, Email Correspondence, July 21, 2022;
- D-21** Monica Gorman, Email Correspondence, July 21, 2022;
- D-22** Barb Hinthorne, Email Correspondence, July 26, 2022;

SUMMARY & BACKGROUND

Patrick/Dave LLC (applicant) is requesting City of Cannon Beach (City) tentative plan approval of a three lot partition of tax lot 51030DA04100 (also referred to as the project site). The project site is one wetland lot of record and generally located south of the intersection of Forest Lawn Road and South Hemlock Street. As the project site contains wetlands mapped on the City’s local wetland inventory that are subject to Cannon Beach Municipal Code (CBMC) Chapter 17.43 (Wetlands Overlay Zone), the applicant is also requesting conditional use approval as required by CBMC 17.43.040-45 for partitions within wetlands and wetland buffer areas. As shown on the Tentative Partition Plan (Exhibit B), the proposed partition will create three lots intended for single-family residential dwellings.

ORS 92.010(6) defines “parcel” as a single unit of land that is created by a partition of land, and ORS 92.010(9) defines “partitioning land” as the means of dividing land to create not more than three parcels of land within a calendar year; therefore, for the purposes of state law, this proposed tentative plan is considered a partition as it will result in the creation of only three units of land (Lots 1, 2, and 3).

The 1.1 acre property is zoned R2 Residential Medium Density and includes a 29,618 square-foot (SF) delineated wetland, identified and delineated by Pacific Habitat Services, Inc, (Exhibit A-07). The U.S. Army Corps of Engineers issued a jurisdictional determination on April 15, 2021 and the Oregon Department of State Lands

issued a letter of concurrence, dated June 8th, 2021 (Exhibits A-08 & A-09). The City’s files hold an earlier wetlands delineation, by Shapiro and Associates, dating back to 1992 (Exhibit C-12). On January 27, 2000, the City of Cannon Beach granted a minor partition of the subject property into three parcels (Exhibit C-13). There is evidence in the historic record for the property indicating that at one time the owners had contemplated donating the wetlands area to the City (Exhibit C-14). As evidenced by the pre-application correspondence, the applicants initially contemplated a seven-lot subdivision, but ultimately applied for only a three-lot partition. Those exhibits also indicated that a (Exhibits C-01 & C-02), donation was contemplated under the initial seven-lot subdivision, along with consideration concerning cluster development and clarification of ‘frontages.’

The access to the initially contemplated seven-lot subdivision’s access would have crossed a wetland. Due to a plat restriction, which was placed on the property by an earlier decision (and explained in detail below), should a partition be granted, access to the majority of the parcel’s upland area would necessitate a Forest Lawn approach that would cross delineated wetlands. Staff expressed concern over the proposed access and what appears to be conflicting language surrounding CBMC 16.04.310 Design Standards – Lots, (B) Location, that “All lots shall have a twenty-five-foot frontage on a publicly dedicated street. Not only was it debatable whether all lots had frontage on a publicly dedicated street, CBMC 17.43.050(M)(2)(e) states that “streets shall not be located in protected wetland or wetland buffer areas.”

APPLICABLE CRITERIA EXCERPTED FROM THE CANNON BEACH MUNICIPAL CODE

Chapter 16 – Subdivisions

16.04.130 Applicable Standards

In making its decision, the planning commission shall determine whether the proposed subdivision or partition complies with the applicable standards of this code and the policies of the comprehensive plan, in conformance with the requirements of Section 17.88.110. Where this chapter imposes a greater restriction upon the land than is imposed or required by existing provisions of law, ordinance, contract or deed, the provisions of this chapter shall control. Pursuant to ORS 197.195(1), the city has determined that the following comprehensive plan policies are applicable standards for a proposed subdivision or partition.

A. General Development Policies.

1. *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.*
2. *General Development Policy 5. The density of residential development throughout the city shall be based on the capability of the land in terms of its slope, potential for geologic hazard and drainage characteristics. Density limits throughout the city shall generally be:*

Net Density Standards	
	Dwellings Per Acre
<i>High (R3), (RM)</i>	<i>15</i>
<i>Duplex or medium (R2), (RMa), (MP), (RAM)</i>	<i>11</i>
<i>Moderate single-family (R1)</i>	<i>8</i>
<i>Low (RL)</i>	<i>4</i>
<i>Very low (RVL)</i>	<i>1</i>

3. *General Development Policy 9. To control development in areas with slopes exceeding twenty percent and areas subject to potential geologic hazards so that potential adverse impacts can be minimized.*
4. *General Development Policy 10. When site investigations are required in areas of potential landslide hazard, a site specific investigation shall be prepared by a registered geologist. Based on the conclusions of this investigation, an engineered foundation design by a soils engineer may be required by the building official. When site investigations are required in areas of potential coastal erosion hazard, the site specific investigation shall be prepared by a registered geologist with expertise in shoreline processes. Based on the conclusions of this investigation, protective structures designed by a registered civil engineer may be required by the building official. Site investigation reports shall meet the city's criteria for the content and format for geologic hazard reports.*
5. *General Development Policy 11. Site investigations by a qualified soils engineer may be required for the construction or development of property identified by the Soil Conservation Service as containing weak foundation soils. Site reports shall include information on bearing capacity of the soil, adequacy and method of drainage facilities, and the length of fill settlement necessary prior to construction.*
6. *General Development Policy 12. Site investigations by a registered geologist shall be performed, prior to development, in any area with a slope exceeding twenty percent. Based on the conclusions of this investigation, an engineered foundation design by a soils engineer may be required by the building official.*
7. *General Development Policy 14. To ensure that development is designed to preserve significant site features such as trees, streams and wetlands.*
8. *General Development Policy 15. The city shall regulate the removal of trees in order to preserve the city's aesthetic character, as well as to control problems associated with soil erosion and landslide hazards.*
9. *General Development Policy 16. To provide flexibility in regulations governing site design so that developments can be adapted to specific site conditions.*

Findings: The applicable criteria from the General Development Policies for this partition application include items 1, 2, 4, 7, 8, and 9. The partitioning of the subject property into three separate parcels would not increase the overall net density such that it exceeds the 11 dwellings per acre standard. While the Tentative Partition Plan is laid out so that potential development is focused on the upland areas with the application showing no activity occurring in the delineated wetland area, the Planning Commission has concerns about these standards being applied given that the parcel is one wetland lot of record and located in the Wetlands Overlay zone.

The Planning Commission finds that the 2000 Partition Plat that created this property holds a plat note restriction, stating, "access to parcels 1, 2 & 3 is restricted to Forest Lawn Road only, until such future time that said restriction is modified by the City of Cannon Beach" (Exhibit C-05). If one traces this restriction back from the 2000 partition decision, to the 1987 minor partition decision that is referenced in the minutes of the 2000 Planning Commission decision, it is evident that the restriction to access future access from utilizing Hemlock is based on the "a desire to minimize driveways onto the city's main arterial, Hemlock Street," which is referred to in 1987 as a "limited access highway," while "retaining an uninterrupted area of vegetation and trees along the west side of Hemlock Street" (see Exhibit C-21, C-22 & C-13).

The Planning Commission finds no evidence in the record that would justify reversing the initial plat restriction from 1987 and re-affirmed in 2000 restricting access to Hemlock. Thus, the Planning Commission must deny any requested partition in violation of this plat restriction.

Chapter 17 – Zoning

17.14.030 Conditional Uses Permitted.

In an R2 zone, the following standards shall apply except as they may be modified through the design review process pursuant to Chapter 17.44:

A. Lot Size. Lot area shall be at least five thousand square feet, except that construction on lots of less than five thousand square feet is permitted subject to Section 17.82.020. The minimum lot size for a single-family dwelling shall be five thousand square feet. The minimum lot size for all uses, including single-family dwellings, shall be adjusted for average slope using the standards in Section 16.04.310(A).

B. Lot Dimensions.

1. Lot Width. Lot width shall be at least forty feet.

2. Lot Depth. Lot depth shall be at least eighty feet.

3. Front Yard. A front yard shall be at least fifteen feet.

4. Side Yard. A side yard shall be at least five feet, except on a corner or through lot the minimum side yard from the street shall be fifteen feet.

5. Rear Yard. A rear yard shall be at least fifteen feet, except on a corner or through lot it shall be a minimum of five feet, except where a rear lot line abuts a street, it shall be a minimum of fifteen feet.

6. Yard Abutting the Ocean Shore. For all lots abutting the ocean shore, any yard abutting the ocean shore shall conform to the requirements of Section 17.42.050(A)(6), Oceanfront setback.

C. Lot Coverage. The lot coverage for a permitted or conditional use shall not exceed fifty percent.

D. Floor Area Ratio. The floor area ratio for a permitted or conditional use shall not exceed 0.6.

E. Building Height. Maximum height of a structure is twenty-four feet, measured as the vertical distance from the average elevation of existing grade to the highest point of a roof surface of a flat roof, to the top of a mansard roof or to the mean height level between the eaves and the ridge for a pitched roof. The ridge height of a pitched roof shall not exceed twenty-eight feet. Pitched roofs are considered those with a 5-12 pitch or greater.

F. Signs. As allowed by Chapter 17.56.

G. Parking. As required by Section 17.78.020.

H. Design Review. All uses except single-family dwellings and their accessory structures are subject to design review of Chapter 17.44.

I. Geologic or Soils Engineering Study. As required by Chapter 17.50.

J. Claims for Compensation Under ORS 197.352. The standards of Section 17.08.040(A) through (K) (Standards), shall apply except as specifically modified pursuant to a development agreement created as part of the city's final action modifying, removing or not applying the city's land use regulation(s) on a demand for compensation under ORS 197.352.

K. Site Plan. Except for interior renovation of existing structures and exterior renovations such as siding replacement where there will be no ground disturbance, no new construction shall be approved unless a site plan meeting the requirements of Section 17.90.190 has been submitted and approved.

Findings: The Planning Commission finds that while single-family dwellings are an outright permitted use per CBMC 17.14.020(A), partitions are a conditional use when proposed within wetland and wetland buffer areas per CBMC 17.43.040 and 45; therefore, conditional use approval is required for the Tentative Partition Plan. The applicable standards for conditional uses per CBMC 17.80.110, as well as the Wetlands Overlay standards for land divisions per CBMC 17.43.050(M), are addressed for compliance within this narrative.

The minimum lot size requirements of 5,000 SF for single-family lots are met, as well as the other dimensional standards. Parking areas are to be included in the identified building sites, while access is proposed via Forest Lawn for Lot 2 and a shared access easement off of Hemlock for Lots 1 & 3.

17.43 – Wetlands Overlay (WO) Zone

17.43.020 Mapping.

- A. *The maps delineating the WO zone boundaries shall be maintained and updated as necessary by the city. The Cannon Beach Local Wetland Inventory maps dated September 20, 1994, shall form the basis for the location of wetlands. The WO zone includes both wetland and wetland buffer areas which abut wetlands. The wetland buffer area has a width of five feet measured from the outer boundaries of the wetland.*
- B. *Site-specific wetland delineations or determinations are required to determine the exact location of the WO zone boundary. Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual along with any supporting technical or guidance documents issued by the Division of State Lands and applicable guidance issued by the U.S. Army Corps of Engineers for the area in which the wetlands are located.*
- C. *Where a wetland delineation or determination is prepared, the mapping it contains shall replace that of the Cannon Beach Local Wetland Inventory. Wetland delineations or determinations shall remain valid for a period of not more than five years from the date of their acceptance by the Division of State Lands.*

Findings: The Planning Commission finds that the subject property is in the City’s Wetland Overlay Zone and contains a wetland that was originally mapped for the Cannon Beach Local Wetland Inventory of September 1994 (Exhibit C-12). A site-specific wetland delineation has been prepared for the applicant by Pacific Habitat Services (Exhibit A-07), which was then reviewed and approved by the Department of State Lands on June 8, 2021 (Exhibit A-08). The U.S. Army Corps of Engineers issued an Approved Jurisdictional Determination on April 15, 2021 indicating that the wetland is not subject to that agency’s review requirements (Exhibit A-09).

17.43.025 Wetland lot-of-record.

A wetland lot-of-record is a lot or contiguous lots held in common ownership on August 4, 1993, that 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. “Contiguous” means lots that have a common boundary, and includes lots separated by public streets. A lot-of-record is subject to the provisions of this overlay zone if all or a portion of the lot is in the overlay zone. The objective of the wetland lot-of-record provision is to permit a property owner a minimum of one dwelling unit on a wetland lot-of-record. A dwelling can be constructed on the wetland portion of a wetland lot-of-record only where there are no upland portions of the wetland lot-of-record that can accommodate a dwelling. The following examples illustrate how the wetland lot-of-record provisions of Section 17.43.030A and Section 17.43.035A are to be applied.

Example 1. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots all of which are entirely of wetlands; one dwelling unit is permitted.

Example 2. A fifteen thousand square foot wetland lot-of-record consisting of three platted five thousand square foot lots, two of which are entirely wetlands and one of which contains two thousand five hundred square feet of uplands; one dwelling unit is permitted on the upland portion of the lot which contains two thousand five hundred square feet of uplands.

Example 3. A fifteen thousand square foot lot-of-record consisting of three platted five thousand square foot lots, one lot is entirely a wetland, the second lot contains two thousand five hundred square feet of upland and the third lot contains three thousand five hundred square feet of upland; two dwelling units are permitted, one on the upland portion of the lot which contains two thousand five hundred square feet of upland and one on the upland portion of the lot which contains three thousand five hundred square feet of uplands.

Findings: The Planning Commission recognizes subject property is a wetland lot of record and any parcels created by a partition of the subject would be wetland lots of record. The wetland lot of record ordinance specifically states through clear and objective standards that one single-family dwelling is permitted per parcel and any further applications for additional housing must be done through the conditional use provisions of 17.43.040 for further subdivision. The Planning Commission further recognizes the subject property was previously a part of larger wetland lot of record that was granted a partition in 2000 creating three separate lots of record such that this partition is further degradation of the wetland. Upon review of the conditional use criteria of 17.80, below, the Planning Commission cannot find compliance to this standard.

17.43.040 Conditional uses and activities permitted in wetlands.

The following uses and activities may be permitted subject to the provision of Chapter 17.80 in the wetland portion of the WO zone, subject to applicable standards, if permitted outright or conditionally in the base zone:

- I. *Subdivisions, replats, partitions and property line adjustments.*

17.43.045 Conditional Uses and Activities Permitted in Wetland Buffer Areas.

The following uses and activities may be permitted subject to the provision of Chapter 17.80 in wetland buffer areas in the WO zone, subject to applicable standards, if permitted outright or conditionally in the base zone:

- I. *Subdivisions, partitions, lot line adjustments.*

17.43.050 Standards.

The following standards are applicable to the uses and activities listed in Sections 17.43.030 through 17.43.045. The uses and activities are also subject to the standards of the base zone. The following standards are applicable in all areas under the wetlands overlay zone. "Protected wetlands" are those areas in the wetlands overlay zone that have been identified on the city's inventory or on a subsequent detailed wetland delineation as wetlands. "Wetland buffer areas" are nonwetland areas in the wetlands overlay zone surrounding the protected wetlands.

- A. *General Standards. Uses and activities in protected wetlands and in wetland buffer areas are subject to the following general standards. Development may also be subject to specific standards in subsequent subsections.*
 1. *Uses and activities in protected wetlands or wetland buffer areas may be approved only after the following list of alternative actions, listed from highest to lowest priority, have been considered:*
 - a. *Avoiding the impact altogether by not taking a certain action or parts of an action (this would include, for example, having the use or activity occur entirely on uplands); and*
 - b. *Minimizing impacts by limiting the degree or magnitude of action and its implementation (this would include, for example, reducing the size of the structure or improvement so that protected wetlands or wetland buffer areas are not impacted).*

Findings: As shown on the Existing Conditions Plan (Exhibit A-05), there are no stream drainageways within the project site. As identified in the applicant's original narrative and shown on the Preliminary Utility Plan (Exhibit A-10), stormwater service lines, anticipated to be four inches in diameter, will collect each future dwelling's stormwater runoff, which will then be conveyed to the existing public system within Forest Lawn Road and South Hemlock Street, which ensures stormwater will be channeled to public storm sewers as required and will not flow onto adjacent properties. What wasn't taken into account in the applicant's presentation, but which the Commission finds compelling, is that the cumulative removal of storm water from these uplands, proposed by the utility plan, will continue to degrade the historic adjacent wetland. The storm water removal plan presented by the applicant will, in effect, drain the wetland. The Planning Commission recognized the fact that evidence has made it clear the wetlands are essential to the health and viability of our community.

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

1. *Preliminary plat maps for proposed subdivisions, replats and partitions involving protected wetlands or wetland buffer areas must show the wetland-upland boundary, as determined by a wetland delineation prepared by a qualified individual.*
2. *Subdivisions, replats, partitions and property line adjustments for the purpose of creating building sites are permitted subject to the following standards:*
 - a. *Each lot created must have at least one thousand square feet of upland available for building coverage, required off-street parking and required access.*
 - b. *The building site described in subsection M2a shall not include protected wetlands or wetland buffer areas.*
 - c. *Protected wetlands and wetland buffer areas may be counted towards meeting the base zone's minimum lot size for each lot, and may be included in front, side and rear yard setbacks as appropriate.*
 - d. *Utility lines, including but not limited to, water lines, sewer lines, and storm water lines shall not be located in protected wetlands or wetland buffer areas, unless there is no alternative to serve lots meeting the standard of subsection M2a.*
 - e. *Streets shall not be located in protected wetland or wetland buffer areas.*
3. *In planned unit developments or cluster subdivisions, all protected wetland or wetland buffer areas must be in open space tracts held in common ownership.*
4. *For lots or parcels created subject to these provisions, the existence of protected wetland or wetland buffer areas shall not form the basis for a future setback reduction or variance request.*

Findings: Rendered moot due to the lack of evidence to allow access. The Planning Commission cannot find compliance.

Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS

17.50.020 Applicability.

The following are potential geologic hazard areas to which the standards of this section apply:

- A. *In any area with an average slope of twenty percent or greater;*
- B. *In areas of potential landslide hazard, as identified in the city master hazards map and comprehensive plan;*
- C. *In areas abutting the oceanshore, or velocity zone flood hazard, as identified on the city's FIRM maps;*

D. In areas identified by the soil survey of Clatsop County, Oregon as containing weak foundation soils; or

E. In open sand areas regardless of the type of dune or its present stability, and conditionally stable dunes not located in a velocity flood hazard zone, as identified on the city's FIRM maps, which in the view of the building official have the potential for wind erosion or other damage. (Ord. 92-11 § 60; Ord. 79-4 § 1 (4.110) (2))

Findings: The Planning Commission reviewed the Earth Engineers Report (see Exhibits A-12 & A-13) and finds the project site soils are derived from sedimentary rock; therefore, a site investigation and geologic hazard study is required. As previously mentioned, a geologic hazard report is included as section 3.0 of the Earth Engineers Report. Findings are provided for CBMC 17.50 (Development Requirements for Potential Geologic Hazard Areas) within this letter, which are supported by the Earth Engineers Report, including a literature review which indicates the project site is adjacent to an active landslide area. The Commission did not find the evidence presented to be persuasive in mitigating the evidence provided on landslide and liquefaction risk. Contrary to the geotechnical testimony presented, the Commission cannot find that the "majority" of the City is in a slide zone and that when the proposed development removes the proposed trees and puts houses on these vulnerable soils, there won't be detrimental effects. The Commission finds that other neighborhood development is not relevant to the geological risks outlined in the present application because prior development was not subject the same site conditions.

As identified within the Earth Engineers Report, compressible, organic soils were encountered within the project site at a depth of approximately 30 to 40 feet beneath the ground surface. As previously identified, the project site's potential geologic hazards, including its soils, can be mitigated through granulated, well graded, crushed rock structural fill as necessary, as well as pin pile or helical pier foundation systems for the future residential dwellings.

Engineering and construction methods are specified within sections 4.0 and 5.0 the Earth Engineers Report. As discussed previously, the report found that the project site's potential geologic hazards can be mitigated through granulated, well graded, crushed rock structural fill as necessary, as well as pin pile or helical pier foundation systems for the future residential dwellings. The Commission voiced concerns over the depth to groundwater and the need for imported fill to combat wet soils, prone to liquefaction and which can only be mitigated by helical pier systems. Upon the resort to such measures and the possible detrimental impact these may have on the historic wetland and neighboring structures, the Commission cannot find compliance.

Chapter 17.70 TREE REMOVAL AND PROTECTION

17.70.030 Additional requirements.

A. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(A) or (B) the application shall include a complete ISA Tree Hazard Evaluation Form prepared by a certified arborist with the tree removal application. An ISA Tree Hazard Evaluation Form prepared by a certified arborist is not required where a tree removal permit proposes the removal of a dead tree pursuant to subsection C of this section, or where a tree removal permit proposes the removal of a tree pursuant to subsection F. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(F), a certified arborist shall provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.

B. For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).

C. An application for the removal of a dead tree does not require an ISA Tree Hazard Evaluation Form prepared by a certified arborist.

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

Findings: The Planning Commission finds that the applicant's reduction from initial tree plan for the removal of 11 trees to just 7, upon the updated Prager Report, is an improvement, but does not alleviate the concerns that a majority of the upland trees are jeopardized by the proposed development. The Commission was not convinced by the evidence presented that the removal of so many trees would not have negative impact to neighboring properties and the stability of the surrounding soils and foundations. The Planning Commission cannot find compliance.

17.80.110 Conditional Uses – Overall Use Standards

Before a conditional use is approved, findings will be made that the use will comply with the following standards:

- A. *A demand exists for the use at the proposed location. Several factors which should be considered in determining whether or not this demand exists include: accessibility for users (such as customers and employees), availability of similar existing uses, availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitably zoned sites for the use.*

Findings: The Planning Commission lacks compelling evidence that there is adequate access to the site as the plat restriction placed on the plat in 2000 Partition Plat states that "access to parcels 1, 2 & 3 is restricted to Forest Lawn Road only, until such future time that said restriction is modified by the City of Cannon Beach" (Exhibit C-05). Further, there is no evidence that a demand exists for this 'type' of housing at this location, which is the litmus test for 'availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitably zoned sites for the use.' The Planning Commission finds it disingenuous to consider all housing types as 'needed housing,' as defined in State statute, when what is proposed does not meet the housing mix and type needs identified in the City's own housing report, "City of Cannon Beach Affordable Housing Task Force Report on Findings and Deliberation Affordable Housing Needs Assessment and Implementation Plan," dated October 2016 ("Cannon Beach Affordable Housing Report"). With the growing shortage of land in the City of Cannon Beach and the geographical constraints on available surrounding lands, every home that doesn't meet the 'middle-housing' needs, such as smaller homes, apartments, multiplexes, duplex homes, etc., displaces homes that could meet such needs.

The Planning Commission feels it is contrary to the legislative intent of promoting 'needed housing' to allow newly subdivided properties to be utilized towards luxury homes as well as more potential second-homes and short-term rentals, when a very real need exists for middle housing and affordable, workforce housing. As noted in the Cannon Beach Affordable Housing Report, there are over 1700 units available in the city to serve approximately 720 households. Yet, most of these are unavailable to the missing middle because they are too large (3-plus bedrooms), held as second homes or short-term rentals, and priced well beyond what those earning an average income for this area can afford.

The Commission acknowledges that the Cannon Beach Affordable Housing Report is the City's official measure of housing demand. Furthermore, it is a more reliable measure of demand than the necessarily general algorithms of the Regional Housing Needs Assessment ("RNHA"), which was referenced by the applicant. In particular, the RNHA acknowledges that its algorithms have difficulty predicting housing needs in cities such as Cannon Beach that include a large number of vacation homes.

- B. *The use will not create excessive traffic congestion on nearby streets or overburden the following public facilities and services: water, sewer, storm drainage, electrical service, fire protection and schools.*

Findings: The applicant states that "the 2022 Draft Cannon Beach Transportation System Plan's analysis of the City's existing transportation system demonstrates compliance with identified Oregon Department of

Transportation (ODOT) mobility targets. As a result, the adjacent transportation system can accommodate the proposed lot's future single-family dwellings and will not result in excessive traffic congestion on nearby streets," however, there is no compelling evidence provided to move access from the secondary surface street of Forest Lawn to the more travelled Hemlock arterial.

- C. *The site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities or other facilities which are required by city ordinances or desired by the applicant.*

Findings: CBMC 17.43.050(M.2) specifies that each lot must contain 1,000 square-feet of upland areas and that such area shall be inclusive of the building coverage, required off-street parking and required access for each lot. Each of the three lots satisfies this standard, as noted on the plat, where Lot 1 provides 1,484 SF, Lot 2 provides 1,076 SF and Lot 3 provides 1,079 SF of upland area (Exhibit A-02). The application approval should consider a condition limiting any accessory structures to the building envelopes, as identified on the plans, including fencing.

- D. *The topography, soils and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils will be eliminated or reduced to the extent necessary for avoiding hazardous situations.*

Findings: Although the Planning Commission finds the subject property has a parcel average slope of approximately 6.5%, and that steep slopes are not an issue on the property, the geotechnical analysis identified the property as subject to the geohazard risks of landslide and liquefaction. As stated above, the PC finds the applicant fails to meet the criterion.

- E. *An adequate site layout will be used for transportation activities. Consideration should be given to the suitability of any access points, on-site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks, bike paths or other transportation facilities required by city ordinances or desired by the applicant. Suitability, in part, should be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements.*

Findings: The Planning Commission cannot make a finding that the proposed access locations are 'suitable.' The State relinquished the Highway 101 portion of Hemlock Street to the City in 1994, as a portion of the City Street System, and no longer functions as a limited access highway. The current local and federal functional classifications for Hemlock are Minor Arterial (Cannon Beach Comprehensive Plan) and Major Collector (Federal/State of Oregon Classification). Minor Arterials interconnect residential, shopping, employment and recreational activities at the community level and do not require limited access. The proposed approach on Hemlock would fall approximately 285' south of the Forest Lawn intersection and 185' from the next northern driveway access of 1688 Hemlock, while on the east side of Hemlock, over the same stretch, there are four access approaches onto Hemlock.

The Cannon Beach Comprehensive Plan states, "Access to Hemlock Street and U.S. 101 shall be limited. Wherever possible, traffic from development shall enter these roads from shared access points or streets, rather than individual driveways." The application proposes a single driveway access point off Forest Lawn serving Lot 2, while Lots 1 & 3 would share an access point off of Hemlock. Although the introduction of two more single-family dwellings on Hemlock would not likely add a significant portion (estimated to be 20 vehicle trips per day according to Federal Highways) to the 'background' traffic already using Hemlock, which according to the recent TSP shows daily vehicle counts during the summer season around 4000 vehicle trips per day, the Planning Commission does not abide the rationale to increase access points onto Hemlock when not warranted and thus, the application fails to meet the criterion.

F. *The site and building design ensure that the use will be compatible with the surrounding area.*

Findings: This criteria does not apply as building designs have not been submitted in conjunction with the partition application.

PROCEDURAL REQUIREMENTS

This application is subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete. The application was submitted on May 25, 2022 and determined to be complete on June 3, 2022. Based on this, the City must complete its review of this proposal by October 1, 2022.

The Planning Commission's June 23rd hearing was the first evidentiary hearing on this request, the meeting was continued to July 28, 2022.

DECISION AND CONDITIONS

Motion: Having considered the evidence in the record, based on a motion by Commissioner Kerr and seconded by Commissioner Knop, the Cannon Beach Planning Commission moves to deny the Patrick/Dave LLC application for a three-parcel partition through a conditional use permit for partition in the wetland overlay zone, P22-01 and CU22-02, as discussed at this public hearing.



STAFF REPORT

OUTDOOR DINING

Agenda Date: September 6, 2022

Prepared by: Jeff Adams, PhD
Community Development Director

BACKGROUND

On May 3, 2022, Council adopted Resolution 22-15, a limited COVID declaration which continued the extension of overflow dining allowance granted for restaurants with existing emergency plans until September 5, 2022. A request has been made to extend these parameters past the established deadline.

ANALYSIS/INFORMATION

Currently, the City has three restaurants still operating under the emergency operation plans, expanding their service areas outdoors, utilizing areas which aren't normally sanctioned for service. The City will have an ample opportunity to review the outdoor dining, commercial parking and landscaping requirements under its Code Review process over the next year. The City will hold workshops with area businesses and citizens to discuss various aspects of outdoor operations, including signage, parking and dining services, as part of the Code Audit process over this coming off-season.

The attachments contain the request and history of outdoor dining.

RECOMMENDATION

If Council would like to extend the declaration, provide direction to staff.

ATTACHMENTS

A: Request to Extend Outdoor Dining

B: Memo: Continuation of Emergency Zoning Parameters

C: Resolution 22-15

Dear Councilors,

Thank you for the opportunity to raise our concerns.

We are writing to ask that you allow the continuation of outdoor dining, indefinitely.

Covid is still prevalent through-out our community, our region, and the world; and the need for additional outdoor dining persists. Many of our guests remain concerned about eating indoors and it is in our best interest, and theirs, to accommodate their needs as much as possible. We hope travel to our community remains robust despite the changing circumstances of the pandemic, and we anticipate being very busy through autumn and beyond.

While it is our sincere hope to continue accommodating the needs of our guests as safely, sensitively, and efficiently as possible, allowing outdoor dining will also maximize tax revenue for the city, as the more seating we are able to offer, the more tax the city receives. Optimizing this opportunity not only increases revenue for the city, but it will also provide additional stability for local businesses like ours that are coping with inflation and managing increasing labor costs.

Allowing the continuation of additional seating is good for our guests (both locals and visitors alike,) the health of our community, beneficial for our city, and supportive for our restaurants and other businesses who benefit from our hospitality.

We appreciate your time and consideration and hope you will allow outdoor dining to continue indefinitely.

Sincerely,

Jordan Maier,
General Manager
Driftwood Restaurant and Lounge
179 N. Hemlock
Cannon Beach, Or 97110
(503)-436-2439

August 30, 2022

Dear Mayor Steidel, Councilor Benefield, Councilor McCarthy, Councilor Ogilvie, Councilor Risley, Bruce St. Denis, and Jeff Adams:

One of the positive aspects that came out of the pandemic is the understanding that our customers desire to have outdoor dining, not only to continue to socially distance but also to enjoy the beautiful ocean air we have in Cannon Beach.

Having the use of our parking area for outdoor dining has had a significant positive impact on our customers experience. In fact, it was the main reason we built our outdoor dining deck. Having the seating outside has allowed us to continue to operate a profitable business especially during the peak Spring, Summer, and Fall seasons.

I would like to ask the City Council to consider supporting the continuation of this healthy and successful ordinance. Many customers have commented on their appreciation of the city to help create a fun and safe environment for Cannon Beach visitors!

Additionally, the impact of the loss of the very few parking spaces we are giving up, is insignificant compared to the revenue the outdoor seats in the parking lot bring in. With the Prepared Food Tax this will also greatly benefit not just our business but the City and Fire Department as well.

Would you be willing to support a change in the parking ordinance? Thank you in advance for considering supporting this change.

Sincerely,

Cindy Beckman and the staff at Ecola Seafood Restaurant and Market
503-440-0380



CANNON BEACH COMMUNITY DEVELOPMENT

163 E. GOWER ST.

PO Box 368

CANNON BEACH, OR 97110

Memo

RE: Continuation of Emergency Zoning Parameters

August 25, 2022

History

In response to the spread of the initial outbreak of COVID-19, the City of Cannon Beach issued an Emergency Declaration on March 16th and began enacting and authorizing emergency measures throughout the City to respond to the emerging health and economic crisis. The City of Cannon Beach Community Development Department responded to the growing need from businesses to provide expansion of indoor dining services to temporary outdoor locations to mitigate the mandatory social distancing restrictions.

The Community Development Department (CDD) issued its first Emergency Memorandum on May 21, 2020, offering expanded outdoor service areas and lifting parking requirements, along with a relaxation of temporary signage. The CDD asked for each business requiring emergency provisions, to contact the CDD offices and arrange for an on-site meeting to discuss emergency operation plans. The CDD met with many local businesses and signed-off on a dozen emergency operation plans, along with a few projects that went beyond the temporary measures, to develop more permanent plans for Design Review Board consideration.

The CDD updated the Emergency Memorandum on June 12, 2020, to allow for ten-by-ten tents and as continued to allow businesses to operate under the emergency measures throughout the COVID-19 crisis. As mask mandates are revoked across Oregon and the peak season is before us, the City has received concerned calls from businesses on whether outdoor dining and other measures will be withdrawn in the coming weeks.

The current emergency operations provisions follow:

Outdoor Service & Parking

Chapter 17.78 CBMC regulates off-street parking in Cannon Beach. The City recognizes that the social distancing requirements may force some businesses to provide seating and waiting areas outside to accommodate foot-traffic and diners. In hopes to alleviate these new conditions the City will allow of adjacent off-street parking areas, ADA accessible pedestrian courtyard areas, provided by a business, and any other area site approved by the Community Development Director, to be converted to service or seating areas in proportion to that business' approved seating capacity. Off-street parking restrictions, lot coverage and landscaping restrictions will be waived for the length of the Emergency Declaration, and the Emergency Outdoor Service & Parking plan shall be submitted to the Community Development Department for administrative approval, to last until these emergency conditions, under Emergency Declaration, are lifted.

[Example: if the restaurant during normal operations has 20 indoor tables, and the COVID pandemic social distancing requirements force the restaurant to eliminate 8 of those indoor tables, they will be permitted to have up to 8 socially-distanced tables in their exterior courtyard, parking area, or other approved space, as long as they abide by ADA, fire-safety requirements and allow for 42" passage for all pedestrian throughfares.]

Please note that restaurants will also be allowed to use table umbrellas and canopy up to 10' x 10' in their outdoor seating and service areas. Outdoor umbrellas and canopies should not have any advertising as part of their canopy or construction.

Temporary Signage

Section 17.56 CBMC regulates signage in Cannon Beach and currently allows temporary signs, including banners to be included in the Total Square Footage Permitted for each business. Under the Emergency declaration the City will allow up to 25 Square Feet (SF) of additional temporary signage, such as COVID related banners, changed operations information or window signage, with one additional sandwich board sign (no larger than (3' x 4' =12SF) x 2-sides =25 SF, which is not included in the Total SF) under an Emergency Temporary Signage permit, which shall be submitted to the Community Development Department for administrative approval, at no cost, to last until these emergency conditions, under the Emergency Declaration, are lifted. Please note that incidental directional signs or social-distancing placement markers, such as floor or sidewalk decals are also not included in Total SF)

Recommendation

The City of Cannon Beach has rolled-back masking requirements and re-opened City Hall to normal operations. The City has also initiated its first Code Audit, a thorough investigation of its development ordinances in comparison to the vision of the Comprehensive Plan. The Code Audit process should allow ample opportunity to weigh the benefits and drawbacks of expanded and relaxed outdoor operations, parking and signage in Cannon Beach.

The Code Audit process provides the City an opportunity to extend the emergency declaration so that a proper discussion of zoning requirements in its commercial districts, post-COVID, can take place. Such an extension would provide those operating under emergency operation plans some assurance in how long the emergency provisions will be extended.

On May 3, 2022, Council adopted Resolution 22-15, a limited COVID declaration which continued the extension of overflow dining allowance granted for restaurants with existing emergency plans until September 5, 2022. A request has been made to extend these parameters which will be discussed at the Council meeting on September 6, 2022. Due to this request, no enforcement of the end date to the Resolution will occur until after the Council meeting on the 6th, pending Council decision.

BEFORE THE CITY OF CANNON BEACH

FOR THE PURPOSE OF APPROVING A CANNON) RESOLUTION NO. 22-15
BEACH LIMITED EMERGENCY DECLARATION TO)
EXTEND OVERFLOW DINING ALLOWANCES FOR)
RESTAURANTS DURING THE COVID-19 RECOVERY
PERIOD

WHEREAS, Governor Kate Brown, on March 8, 2020, declared a state of emergency in Oregon due to the COVID-19 virus, finding that COVID-19 has created a threat to public health and safety, and constitutes a statewide emergency under ORS 401.025(1); and

WHEREAS, the World Health Organization, on March 11, 2020, declared COVID-19 to be a pandemic that causes respiratory distress with the potential to cause serious illness and loss of life; and

WHEREAS, the City of Cannon Beach on March 16th, 2020, declared a local state of emergency for Cannon Beach, pursuant to ORS 401.309(1); and

WHEREAS, the City of Cannon Beach, under the direction of the State of Oregon, restricted restaurants and other indoor service providers, to abide by “social distancing,” masking and other public health related requirements throughout the emergency, to secure public health; and

WHEREAS, the City of Cannon Beach, on May 21, 2020, issued Emergency Zoning Parameters, allowing a relaxation of Off-Street Parking, Signage and Outdoor Merchandizing Zoning Ordinance requirements to respond to social distancing requirements to provide indoor service providers the opportunity to expand into parking areas, common areas and other approved outdoor areas under an approved Emergency Outdoor Service & Parking Plan; and

WHEREAS, the City of Cannon Beach Community Development Department received a dozen such Emergency Outdoor Service and Parking Plans to allow for COVID-related expansion into outdoor areas, including parking areas, with increased signage to redirect and warn customers of emergency measures; and

WHEREAS, those Cannon Beach businesses providing overflow outdoor services, which were placed in an economically vulnerable position during the emergency, limiting their normal operations by as much as fifty percent, while making emergency expenditures to provide outdoor services, including tables, seating, tenting, perimeter barricades, etc., must make provisions to return to normal operations; and

WHEREAS, Emergency Management, under FEMA guidance requires four phases, mitigation, preparedness, response, and recovery, although the COVID-19 social distancing requirements have been lifted, the recovery period for restaurants and other indoor service providers will require more time to transition back to normal operations; further these same

businesses will experience significant hardship if required to transition back to emergency operations in the future; and

WHEREAS, FEMA explains, “during the recovery period, restoration efforts occur concurrently with regular operations and activities. The recovery period from a disaster can be prolonged,” and

WHEREAS, recovery, according to FEMA, includes “preventing or reducing stress-related illnesses and excessive financial burdens, while reducing vulnerability to future disasters,” in which case indoor service providers will remain vulnerable to economic stress as long as COVID-variants are spreading; and

WHEREAS, as of April 20, 2022, many states across the country, including Oregon, Washington and California have continued to see a recent rise in COVID-cases related to emergent variants; and

WHEREAS, as of April 20, 2022, the Oregon Health Authority stated that the average reported case numbers have risen to more than 600 per week and may be 5 to 10 times greater, due to unreported cases, which they will continue to monitor; and

WHEREAS, on May 3, 2022 the City of Cannon Beach rescinded its general COVID-19 Pandemic Emergency Declaration, while recognizing the threat of variants and that many businesses still remain in recovery; and

WHEREAS, as of May 3, 2022, the City of Cannon Beach extends the recovery period to September 5th, 2022, at which time the Extension of Emergency Outdoor Service and Parking Plans will be required to come into conformance with Cannon Beach Municipal Code, unless extending by the Common Council of the City of Cannon Beach; and

NOW, THEREFORE, BASED ON THE FOREGOING FINDINGS, THE COMMON COUNCIL OF THE CITY OF CANNON BEACH DECLARES AN EXTENSION OF OVERFLOW DINING ALLOWANCES WILL BE GRANTED FOR RESTAURANTS WITH EXISTING EMERGENCY PLANS, AS FOLLOWS:

Section 1: Pursuant to the City of Cannon Beach’s authority in CBMC 2.42 and ORS 401.309(1), the Council declares a state of emergency. Pursuant to CBMC 2.42(C), the Council declares the following:

- (a) The nature of the emergency is the continuing threat of COVID-19 variants and the recovery of restaurants and similar businesses where the expense of transitioning between emergency conditions and normal operations is significant;
- (b) The designated geographical area is the city boundaries;
- (c) The estimated number of individuals at risk is all residents and visitors;
- (d) COVID-19 can cause respiratory disease, with the potential to cause serious illness or loss of life and spreads from person to person through coughing and sneezing, close personal contact and touching surfaces with the virus on it and then touching the mouth, nose or eyes thereby creating the potential to cause serious illness or loss of life to a broad segment of the City’s population;
- (e) The estimated length of the emergency declaration is through September 5, 2022;

- (f) The type of emergency assistance necessary is the extension of overflow dining allowance granted for restaurants with existing emergency plans.

Section 2: This Resolution is effective immediately and will automatically sunset unless extended on September 5, 2022.

PASSED by the Common Council of the City of Cannon Beach this 3rd day of May 2022, by the following vote:

YEAS: Councilors Benefield, McCarthy, Ogilvie, Risley and Mayor Steidel
NAYS: None
EXCUSED: None



Sam Steidel, Mayor

ATTEST:



Bruce St. Denis, City Manager



CANNON BEACH CITY COUNCIL

STAFF REPORT

FOOD PANTRY REPAIR FUNDING - AMERICAN RESCUE PLAN FUNDING

Agenda Date: September 6, 2022

Prepared By: Bruce St. Denis, City Manager

BACKGROUND

In the spring of 2021, the city was notified they would be receiving \$360,378 from the American Rescue Plan (ARP) passed by congress. Half of these funds (approx. \$180,000) were expected to be received that May. There was a short list of criteria for which the ARP funds may be used including water, sewer, and broadband infrastructure. On April 27, 2021, staff requested Council consensus to use these funds for the 2nd leg of the Pacific/Gogona water line replacement project. Council reached a consensus to proceed.

The ARP funds were not received as planned, however there was enough room in the budget to cover the second leg of the portion using existing funds.

The City received \$196,350 in 2021. At the receipt of these funds, it was noted that they could now be used as discretionary funds. The funds were deposited and to date, have not been used. On August 23rd, the City received the second half of these funds.

ANALYSIS/INFORMATION

The food pantry is in need of new siding, a new roof and replacing the 5 bad windows. The cost for these repairs from a March 2022 quote was \$98,500. Staff has requested an updated quote. Staff recommends using the ARP funds to make the necessary repairs.

RECOMMENDATION

Reach a consensus for the use of these funds for food pantry repairs. If a consensus is reached, a budget amendment Resolution will be brought to Council for a vote.

List of Attachments

None



CANNON BEACH CITY COUNCIL

STAFF REPORT

LOC VOTING DELEGATE FOR ANNUAL MEMBER MEETING

Agenda Date: September 6, 2022

Prepared by: Bruce St. Denis, City Manager

ANALYSIS/INFORMATION

The LOC's Annual Membership Meeting is scheduled for October 5-7 in Bend. Each member city is entitled to cast one vote at the membership meeting. Last year Mayor Steidel was the voting delegate.

RECOMMENDATION

Council to reach a consensus for the voting delegate, and alternative, for the October Annual Membership meeting.

**City of Cannon Beach
Monthly Status Report**

To: Mayor and City Council

From: City Manager Bruce St. Denis

Date: September 6, 2022

Planning Commission: The Planning Commission met on August 25, to consider the following items:

- Continuation and Consideration of CP#22-01 Adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Comprehensive Plan.
- Public Hearing and Consideration of V# 22-01, David Vonada request, on behalf of Cannon Beach BP LLC, for a Variance to allow residential use for 55% exceeding the 50% threshold for mixed use in the General Commercial Zone.
- Public Hearing and Consideration of CD# 22-01 & CU# 22-03, David Vonada request, on behalf of Davidspruce LLC, for a seven-lot Conditional Use Permit Cluster Development Subdivision in the Wetland Overlay Zone.
- Work Session review of a Zoning Ordinance Amendment request by Will Rasmussen on behalf of Haystack Rock LLC, for a text amendment regarding notice requirements for applications and decisions.
- Work Session review of draft letter to be sent to City Council regarding stormwater discharge.

Design Review Board: The Design Review Board met on August 18, to consider the following items:

- Public Hearing and Consideration of DRB 22-12, Jackie Ryser application for a new Accessory Dwelling Unit at 3732 W. Chinook Ave.
- Public Hearing and Consideration of DRB 22-13, Ryan Snyder application for changes to paint and other exterior alterations at the Stephanie Inn at 2740 S. Pacific St.

The Chair of the DRB, approved minor modifications for the following addresses:

Short-term Rentals: Staff continued to process short-term rental permits in July:

Program	Number of permits
14-day permit	138
Lifetime Unlimited permit	45
5-year Unlimited permit	19
Total permits	202
New short-term rentals this month	4
Pending short-term rentals	1

Building Permits: Staff processed a total of 9 building, 13 mechanical and 7 plumbing permits in July:

Permit Type	# of permits	Permit Fees	Value	Affordable Housing Surcharge, Current Month	Affordable Housing Surcharge, Fiscal Year to date	Affordable Housing Surcharge, Total to Date
Building	9	\$6,306.01	\$ 289,132.00	\$ 2,891.32.00	\$ 2,359.32	\$ 246,747.69
Mechanical	13	\$2,081.28				
Plumbing	7	\$1,638.00				
Monthly Total	15	\$2,917.10				

Other Planning/Building Matters:

- The CD Department worked with the City Recorder to complete four Public Records Requests, accounting for over 2 hours of staff time;
- The CD Department worked with the Code Audit PMT to host the first Code Audit Advisory Committee of Cannon Beach staff, on July 27th;
- The CD Director attended the Oregon DLCD’s Housing Capacity Working Group meeting, via Zoom, on July 26th;
- The City Planner attended the Tillamook Housing Commission monthly meeting, via Zoom, on August 4th;
- The CD Staff continues to support PMT meetings of the Code Audit;
- The CD Director and Planner worked with CREST and regional planning partners to host the Second meeting of the Clatsop Regional Housing Task Force;
- The CD Director served on the CB City Hall/Police Department selection committee;
- The CD Director, served as Cannon Beach representative at the quarterly meeting of the CREST board, July 28th;
- The CD Director attended the Seaside Housing Taskforce meeting, August 1st;
- The CD Building Official, CB Land Use Attorney and Community Development Department defended the Stop Work order issued and appealed, August 16th;
- The CD Director and CREST Director met with new Northwest Housing Authority Director, to discussing workforce and affordable housing;
- The CD Director and City Planner continued to work with the TSP PMT towards TSP adoption;
- The CD Director drafted a Lot Combination Memo and Draft Track Two Changes for Code Audit PMT consideration;
- The CD Administrative Assistant drafted three ‘How To’ Informational Brochures for building permitting for posting;
- The CD Director met with County Officials to discuss Affordable Housing Surplus Lands, Affordable Housing Dashboard and Regional Housing Task Force, on August 18th;

Tree Report – July

Date	Name	Location	Total removed	Hazard	Dead	Const.	Health other	Solar	Replant Req.
547 Antler	Moore	547 Antler	1				1		1
368 Sunset	Earley	368 Sunset	1	1					1
550 Vine Maple	Shepard	550 Vine Maple	1			1			1
334 Reservoir Rd	Pacific Power	334 Reservoir Rd	45*	45					
472 N Hemlock	Sparks	472 N Hemlock	1	1					1
415 Fir	Sea Ranch, Swigart	415 Fir	12	5	7				0
Number of Native Trees Planted by City Staff: 0 Number of Native Trees Planted by City Staff same time last year: 0 Replanting of Trees occurs during the appropriate tree planting season *Replanting will depend on space -									

Public Works Department Report – August

Water Department Monthly Report

- Monthly spring samples to Alexin Labs.
- More mowing and cleanup at Slow Sand Filter plant area.
- Remote trail cam inspection at south reservoir and install surveillance sign.
- Installed SCADA upgrade (MyDro) controller at Ash Street Water Tower.
- Leaks repaired at 232 S Laurel, 3663 E Chinook, 1741 Forest Lawn, 1658 Forest Lawn, 148 E Madison, 587 N Elm, 3863 Ocean, 3231 S Pacific, and 405 Glenwood Ct.
- Educated customers on Eye on Water (Total: 680 signed up).
- Conducted monthly meter reads.
- Serviced water tank at Coaster Properties Building (designated Red Cross emergency resource).
- Completed weekly locates and work orders.
- Notified multiple users of water leaks and high use.
- Weather data collected and posted.

Parks Department

- Focusing on landscaping and maintenance during high-use season
- Completed minor repairs at Tolovana playground
- Minor repairs at the basketball court
- Repaired bench at Delta beach access
- Nasturtiums hanging on despite elk/Jo is replanting at Whale Park
- Concert series is going well
- Soccer league and pickleball players have been utilizing facilities
- Purple Martin house is full of babies
- Mowing around wastewater lagoons completed

Wastewater Department

- Startup of new Matanuska generator.
- Repair of private sewer service tap in city ROW.
- Install double check valve on water line coming into the new Matanuska Pump Station.
- Install Magnesium Hydroxide mixing tank and dosing pump inside Matanuska Pump Station for H2S reduction in collection system.
- Meet with architect at Midway & Siuslaw Pump Stations to start design ideas to house new generators.
- Review video inspections for possible repairs needed to be completed prior to 2022/23 proposed paving.
- Complete construction of barge for basin/lagoon maintenance.
- Remove vegetation and debris from the pipe ends of the effluent discharge manifold in the wetlands in preparation for the "Outfall Inspection Report".
- Research repair alternatives for I & I problems in collection system.

Roads Department

- Utility patching all Cache sites, Stephanie Inn, Center St.
- New signage installed on Pacific St.
- Misc. signage replaced, (ongoing)
- Mowing completed in Watershed and all access roads, spoil site and TANGO.
- Trail maintenance
- Pothole sweep

Emergency Management – August

- Wayfinding Wednesday –August 3rd
- North Tank Radio shelter building – **Completed**
 - Back up Battery and Generator progress, **Completed**
 - Adding Spectrum to the site for security cameras and improved site resources – **Completed**
 - Security Camera added along with firewall/internet, need to add cellular booster
 - Adding shelving – Propane Tanks – Propane generator
- Inventory community barrels in all cache sites
 - Reworking Barrel process for increased accountability, **Completed**
 - Work with finance to improve process for future use, improved accountability, **Completed**
 - Projecting Barrel program into next phase
- Move forward with improving the Tsunami Evacuation maps
 - Ordered new Tsunami evacuation signs for the city – Order Arrived, **Completed**
 - New "You Are Here" (YAH) maps, arrived and have started to distribute to community
 - New "Beat The Wave" (BTW) maps, arrived and have started to distribute to community
- New Tsunami Evacuation Signs
 - Signs were ordered and have arrived – **Completed**
 - Planning new schedule for sign swap out of existing signs – Large project

- Awarded a large grant from the State/Fed for Cache Site development- Planning development for grant
 - Scheduled to begin groundbreaking Later May - **Completed**
 - Measured progress with TANGO cache site at 90% complete
 - Measured progress with OSCAR cache site at 90% completed
 - Started process with the ECHO cache site at 70% completed
 - Cache site development at water treatment plant in the planning phase, goals are to store water filtration and water deliver trailers at site. Trailers still in the research phase.
- Established physical address for all emergency building locations in Cannon Beach, **Completed**
- Background research and future development of Tsunami -Costal Sirens
 - Plan development for moving forward with July/Aug repairs, delayed
 - Scheduling updated on calendars, delayed
 - Water damage to siren controller in Fire Station water leak, need to be replaced
 - Siren fell off ORFORD site location
 - **COWS system taken offline** due to maintenance issues and water damage at Fire Station
 - Web site and FB updated
- Safety group meeting for city employees
 - Work actions at Public Works Yard – Progress completed outside 90%
 - Actionable items moved forward – Need electrical completed at PW yard
 - Significant improvement to the P/W yard for safety and storage
- PIO- emergency messaging training for city staff, Police, Fire members
 - Updated on NIXLE platform completed and signed new agreement, **Complete**
 - Coordinated with Police/Fire/EM to improve PIO messaging, completed-need training
 - Training next month for PIO members, scheduling in October
- Meeting with VERIZON reps for improved cellular and emergency options
 - New equipment to be delivered to City Hall to improve cellular service bubble, 70%complete
 - Meetings delayed due to Verizon employee’s illness. Poor performance still a concern
- Completed grant process for a SPIRE grant – Submitted to the State
 - Emergency Communications, Water trailer, Fuel trailer – Completed 100%, waiting for award
- Scheduled city-wide tours for State Human services in September
- Communications Systems have been improved with consolidating radio frequencies to improve consistency and simplicity. Satellite-Cellular-Radio-Data
 - Systems built out – City Hall EOC 95% - Public Work EOC 50% (Priority to improve PW EOC)
 - Expected completion with communication plan Fall/Winter 2022
- Communication Plan review for 2022
 - Plan has been evolved from initial development and simplified, **Completed**
- Restructure CERT leadership team
 - Training schedule published on the city EM training calendar
 - Team moving forward, and a new direction is being drafted- More formal structure
- Assist with MRC / DART grant process
- Clatsop County new Emergency Management Director visit with city tour
 - Development of new county Incident Management Team concept discussed

- Assist with HRAP radio enhancement for volunteer/employee communications
 - Goals are to improve safety, coordination, **Completed**
- Deploy employee readiness go bags to new employees, **Completed**
 - Training to increase in September/October
- City wide Emergency Management Plan (EMP) in DRAFT stage
 - Priority to complete EMP in early 2023
 - Review current plans and Emergency Operation Guidelines (EOG's) following EMP
- Coaster Contraction specialty shelter review 2022,
 - Update plan and begin to add actionable items to shelter. This could be completed in 2022
 - Need for all shelters to schedule biannual inspections

Haystack Rock Awareness Program (HRAP) – August

- Puffin nesting season has ended, young have fledged and birds have returned back to sea, official counts for the season anticipated in November.
- Three Clatsopworks interns have completed their internship, two Astoria high school Juniors starting their senior year and one Warrenton high school graduate who will be studying Ornithology at Oregon State University
- OSU Sea Grant Scholar Lauren Rice, a senior in Marine Studies has completed her fellowship and submitted a draft of a new Online Education Center. Center is anticipated to be named and go live over this winter.
- Hosted four free field trips serving 60 students from the Oregon Migrant Education program
- Received a donation from Friends of Haystack Rock in the amount of \$8000 for the purchase of new optics equipment
- Rescued 12 common murre jumplinga and one pelagic cormorant

Public Safety Report – June 2022

Staffing:	Authorized	Assigned
Sworn	8	8
Code Enforcement	1	1
Admin/Support	2	2
Parking/Information	6	6
Lifeguards	10	10

<u>Station Activity:</u>	July 2022	July 2021
CBPD Walk-in	308	169
CBPD Incoming Phone	595	445
SPD Dispatched Calls	249	134
Overnight Camping Warnings	142	99

Local Security Checks	3240	2780
Parking Citations	536	N/A
Traffic Warnings	333	150
Traffic Citations	83	18
DUI Arrests	3	1
Alarm Responses	7	15
AOA, Including FD	57	29
Citizen Assists	25	14
Transient Contacts	15	7
Total Case File Reports	741	386

Cases of Significance:

Criminal Trespass II:	1 Case	DUI (.20%, Blood Drawn, .21%)	3 Cases
Criminal Mischief II:	7 Cases	Theft III:	2 Cases
Theft II:	1 Case	Theft of Services:	3 Cases
Criminal Mischief III:	4 Cases	Suspicious Circumstances	14 Cases
Hit & Run:	4 Cases	Fireworks/Lantern:	13 Cases
Warrant/Fugitive Arrest:	1 Cases	Missing Persons:	8 Cases
Overnight Camping Citation:	1 Case	Domestic Disturbance:	3 Cases
Harassment:	1 Case	MIP Alcohol:	1 Case
Offensive Littering:	3 Cases	Warrant Arrest:	3 Cases

Traffic Citations:

Driving with Suspended License:	2 Citations	Use Mobile Elect. Device While Driving:	26 Citations
Fail to Use a Seatbelt:	1 Citation	Expired Registration:	3 Citations
Failure to Install IID:	1 Citations	No Ops:	4 Citations
No Proof of Insurance:	5 Citations	Reckless Driving:	3 Citations
Reckless Endangering:	3 Citations	Parked in a Fire Lane:	1 Citation
No Helmet:	1 Citation	Fail to Maintain Lane	2 Citation
Fail to Register a Vehicle:	1 Citations	Fail to Yield to a Pedestrian:	1 Citation
Violation of Basic Rule/Speeding:	26 Citations		

(35/20, 40/20, 70/55 HWZ, 71/55 HWZ, 40/20, 69/55 HWZ, 48/30, 37/20, 38/20, 44/20, 71/55 HWZ, 82/55 HWZ, 74/55 HWZ, 70/55 HWZ, 34/20, 35/20, 73/55 HWZ, 70/55, 40/30, 75/55, 68/45, 71/55, 84/55, 65/55, 75/55, 73/55)

Code Enforcement Activities: During this period, **40** municipal code violations were addressed and resolved or pending resolution.