



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 finds 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.