



CITY OF CANNON BEACH

AGENDA

Meeting: Planning Commission
Date: **Thursday, July 28, 2022**
Time: **6:00 p.m.**
Location: Council Chambers, City Hall

6:00 CALL TO ORDER

6:01 (1) **Approval of Agenda**

6:02 (2) **Consideration of the Minutes for the Planning Commission Meeting of June 23 and July 6, 2022.**
If the Planning Commission wishes to approve the minutes, an appropriate motion is in order.

ACTION ITEMS

6:05 (3) **Continuation and Consideration of CP#22-01 Adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Comprehensive Plan.**

CP 22-01, Jeff Adams on behalf of the City of Cannon Beach, seeks the adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Cannon Beach Comprehensive Plan. The TSP is in accordance with Oregon Revised Statutes OAR 660 Division 12, Transportation Planning Rule, which implements Statewide Planning Goal 12. The request will be reviewed against the criteria of the Cannon Beach Comprehensive Plan and Municipal Code, Section 17.86.070.A, Amendments, Criteria.

6:20 (4) **Continuation and Consideration of P# 22-01 & CU# 22-02, Jamie Lerma request, on behalf of Patrick/Dave LLC, for a three-lot Conditional Use Permit three-lot Partition in the Wetland Overlay Zone.**

P 22-01 & CU 22-02, Jamie Lerma, on behalf of Patrick/Dave LLC, request 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.

WORK SESSION ITEMS

6:50 (5) **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.**

INFORMATIONAL ITEMS

7:20 (6) **Tree Report**

PO Box 368 Cannon Beach, Oregon 97110 • (503) 436-1581 • TTY (503) 436-8097 • FAX (503) 436-2050
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- (7) **Ongoing Planning Items:**
 Code Audit Update
 Shoreline CUP Status Update

- (8) **Good of the Order**

- 7:30 (9) **ADJOURNMENT**

Please note that agenda items may not be considered in the exact order listed, and all times shown are tentative and approximate. Documents for the record may be submitted prior to the meeting by email, fax, mail, or in person. For questions about the agenda, contact Administrative Assistant, Katie Hillenhagen at Hillenhagen@ci.cannon-beach.or.us or (503) 436-8054. 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: July 21, 2022

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**Minutes of the
CANNON BEACH PLANNING COMMISSION**
Thursday, June 23, 2022

Present: Chair Clay Newton, Commissioners Barb Knop, Mike Bates and Lisa Kerr in person; Charles Bennett and Anna Moritz via Zoom

Excused: Aaron Matusick

Staff: Director of Community Development Jeff Adams, Land Use Attorney Bill Kabeiseman, City Planner Robert St. Clair, and City Recorder Jennifer Barrett

Other Attendees:

CALL TO ORDER

Chair Newton called the meeting to order at 6:03 p.m.

ACTION ITEMS

(1) Approval of Agenda

Motion: Kerr moved to approve the agenda as presented; Bates seconded the motion.

In response to Newton's question, we have the combination of P22-01 and CU22-02 together, are we making one ruling, how do we rule, Adams replied it is two applications a condition use permit and partition.

Vote: Kerr, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed unanimously.

(2) Consideration of the Minutes for the Planning Commission Meeting of May 26, 2022

Motion: Knop moved to approve the minutes; Bennett seconded the motion.

Vote: Kerr, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed unanimously.

(3) Public Hearing and Consideration of SR# 22-02, Aric Barnes request, on behalf of Cadwallader & Kramer Family Trust, for a Setback Reduction to add a gabled-roof to an existing flat-roofed garage.

SR 22-02, Aric Barnes, on behalf of Cadwallader & Kramer Family Trust, application to allow a setback reduction to reduce the side yard setback from the required 5'0" to 3'9" to add a gable roof to an existing flat roof garage, according to chapter 17.14 Residential Medium Density Zone of the

Municipal Code. The proposed work will not increase the footprint of the preexisting structure. The property is located at 208 E Jackson St. (Tax Lot 03300, Map 51029BC), and in a Residential Medium Density (R2) Zone. The request will be reviewed against the Municipal Code, Section 17.64.010, Setback Reduction, Provisions Established.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Newton asked if any Commissioner had any conflict of interest. There were none. Chair Newton asked if any Commissioner had personal bias to declare. There were none. Chair Newton asked if any commissioner had any ex parte contacts to declare. There were none. The commissioners declared their site visits.

Chair Newton called for the staff report.

St. Clair summarized the staff report. In response to Newton's question so it's a gable, St. Clair replied correct.

Chair Newton called for additional correspondence?

St. Clair replied there was a comment from neighbors that were included in the packet, but nothing since June 15.

Chair Newton stated

The pertinent criteria to be considered are noted in the staff reports and listed on the criteria sheets on the meeting page of the City's website; Testimony, arguments and evidence must be directed toward those criteria or other criteria in the Comprehensive Plan or Municipal Code which the person testifying believes to apply to the decision; Failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony, arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; Persons who testify shall first receive recognition from the chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Newton asked is there a presentation by the applicant?

Aric Barnes on behalf of the application Cadwallader & Kramer, I am the builder, PO Box 697 Seaside. Melissa Cadwallader asked me to improve the property by redoing the siding, the garage was leaking, they've had flat roofs on it and asked what can they do. We said you can do a gable roof which would match the front and back of the house, noting the setback issues. Do not want to add any footprint, but put a roof on that will not leak.

In response to Newton's question in terms of gable coming down, there is a fence on the eastern property line, how close does the fence come to the gable, Barnes replied it is probably 4 feet, giving an overview.

Chair Newton asked are there presentations by proponents?
There were none

Chair Newton asked are there presentations by opponents?
There were none

Chair Newton asked is there a staff response?

St. Clair replied staff recommends approval with the condition that a building permit be obtained prior to start of construction and an application for a building permit has been made. Adams added by approving it, its' not for this ownership, but for the life of the property. If it is closer to that setback if you do want to limit a future second story and keep it at the gable roof you can add a condition to the existing height as shown on the plans, if you wanted to add the condition.

Chair Newton asked does the applicant or proponents wish to make additional statements?

Barns replied they just want a gabled roof over the top and are not asking for an apartment or studio.

Chair Newton closed the public hearing and move to consideration

Chair Newton asked there a motion to approve/approve with conditions/deny the application?

Motion: Bates moved to approve for staff recommendation with the condition added; Moritz seconded the motion.

Vote: Kerr, Knop, Bates, Moritz, Bennett and Chair Newton voted AYE; the motion passed unanimously.

(4) Public Hearing and Consideration of P# 22-01 & CU# 22-02, Jamie Lerma request, on behalf of Patrick/Dave LLC, for a three-lot Conditional Use Permit three-lot Partition in the Wetland Overlay Zone.

P 22-01 & CU 22-02, Jamie Lerma, on behalf of Patrick/Dave LLC, request 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.

No one objected to the jurisdiction of the Planning Commission to hear this matter at this time. Chair Newton asked if any Commissioner had any conflict of interest. Chair Newton asked if any Commissioner had personal bias to declare. Bates replied I do not have personal bias but did write an article in Hipfish letting the public know it was coming up and if they were interested, they should get involved. Chair Newton asked if any commissioner had any ex parte contacts to declare. There were none. The commissioners declared their site visits.

Chair Newton called for the staff report.

Adams noted for large projects we are have a webpage with the application materials and post items as they come in, then post to the meeting page as addendums when materials come in after the packet has been posted. Adams read the summary & background and staff comments from the staff report.

Adams added the City Arborists is on Zoom, I didn't not have his report at the time of the staff report.

Jeff Geahardt, City Arborist. I made a site visit on the 13th to visually inspect the trees on the site, noting the constraints of the site. Gerhardt noted when overlaying with the three houses there will be extensive damages for residents' driveways and utilities that will be required to access the lots and because of this several trees will be deemed hazardous. I approximate there will be at least 15 trees that will change Forest Lawn to just lawn. Under the subdivision ordinance applicable standards 7 & 8, reading the text, there has been a big emphasis on protecting the wetlands but I don't feel much has been said to protect trees. My recommendation is to retain more trees on the property and consider limiting to only 2 buildable lots or only one to lessen the impacts. O would also like to see TPZ in place before conditional approval is granted. The city does this during new construction. My last concern with the project is the applicants arborist deemed several trees as hazardous, but where they stand now there is no target so depending on where we place these homes they may not be a hazard. There may be more opportunities to preserve more trees on this property.

Adams continued reading the staff comments from the staff report. Adams asked any questions, bates replied I have a lot of questions, not sure when it would be appropriate. Jeff this is just re: the SR. bates who sets the buffer area, Adams replied it's in the code.

Newton asked we should decide as a group do we want to ask questions before we do testimony, Bates and Moritz replied testimony first.

Chair Newton stated

The pertinent criteria to be considered are noted in the staff reports and listed on the criteria sheets on the meeting page of the City's website; Testimony, arguments and evidence must be directed toward those criteria or other criteria in the Comprehensive Plan or Municipal Code which the person testifying believes to apply to the decision; Failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal based on that issue; Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional testimony, arguments or evidence regarding the application. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written testimony, arguments or evidence; Persons who testify shall first receive recognition from the chair, state their full name and mailing address, and if appearing in a representative capacity, identify whom they represent.

Chair Newton asked is there a presentation by the applicant?

Jamie Lerma, PO Box 825, Cannon Beach. I am the applicant representing Dave and Pat LLC. We have our land use planners on Zoom. Lerma Introduced himself and owners of property, giving an overview of their history in Cannon Beach. Lerma added we expect to be held to the highest standard to the application and hope to be collaborative in this project. From the inception we discussed preserving the wetland and trees on the site. We discussed donating to the city the north 60% of the property to North Coast Land Conservancy and they refused it. We wanted to do it with \$25,000 of seed money but they were not interested due to the size, it being too small. The thought has been low density, high quality homes would best fit the character of the neighborhood. If we are successful, I would be the homebuilder I live her locally, and I've got 25 years experience building homes, given an overview of experience.

Matt Robinson, DOWL 720 SW Washington St. Portland. Land Use Planner at DOWL Robinson shared his screen and presented a PowerPoint which gives an overview of the site and proposal, a copy is included in the record. I am happy to answer any questions.

Kerr asked I am curious, you said that you originally proposed giving part of the land to NCLC but they rejected it since it was too small. What would you think of donating all the wetlands where you are not building for conservancy, why isn't that a consideration, what do you think about it? Robinson replied

so the code allows you to use wetland and wetland buffers to meet setback standards and minimum lot dimensions. Our three proposed lots are meeting those R2 zone dimensional standards by having the wetlands and wetland buffer areas within them. We had in the past looked at donating but recording a conservation easement over the wetlands will essentially accomplish the same thing. Lerma added if the city were to accept the donation that we would be willing to make it, we discussed that earlier in the process but it may not have made it to staff. We pursued the donation to NCLC with seed money. Robinson added if the wetland was donated they would need its own lot, noting the reasons why.

Bennett added there can be many reasons why an organization doesn't want to accept a donation of property, I think that is a separate decisions. Adman added the same for the city, we would have to take on the maintenance and obligation. It was brought up early in the discussing there are two options, go to council or conservancy to see if they want. A conservation easement that says no further development puts the onus on them to upkeep.

Newton added is there anything in this packet we were given that talks about conservation, Adams it is not in the packet. Robinson added we submitted a letter last Friday that identifies our intent. Moritz added it is in our packet.

In response to Bates question isn't a wetland under delineation considered a water of the state, Kabeiseman replied yes. Bates added and that requires a 50-foot setback. How would you get away with that? Kabeiseman replied I am not sure about that, noting our code requirements. Moritz noted there is a state letter that indicates that they are not considering this a water of the state. Newton added can we get back to that so we can back to testimony.

Moritz added there has been several references to the fact that it helps the housing issues, we don't need expensive homes we need affordable housing. Adams replied there is nothing in there that has any restriction to housing. Robinson noted that is correct, a discussion ensued regarding affordable workforce housing needs and the report statistics in the packet.

Renee France Land Use Counsel for the applicant, 111 SW Columbia St., Portland, OR 97211
I'd like to provide a bit of background on letter that was submitted into record in response to the letter from the city's arborist. It is important to understand that this is an application for resident lots and under state law, whether the applicant has matched the clear and objective standards of the Cannon Beach code. Neither 17.70 tree retention or subdivision standards stated by the arborist are clear and objective standards, summarizing the letter. We agree with the setback that those standards have been met and if Planning Commission cannot use those standards of a basis of denial of the application. Bates replied we have no obligation to partition this right? I mean that's the clear standard for you, yet it is a partition application for a residential lot and therefore we believe that the statutory provision requiring the application of clear and objective standards to this decision applies, we can go through every one of your points and we'll point out we can point out whether where you don't apply. So, let's get to the um let's get to the citizens and then get to the meat of this

John Van Staveren Pacific Habitat 9450 SW Commerce Circle, Suite 180, Wilsonville

I first delineated the wetlands in 1990 and recently had both delineations approved by DSL and the most recently by ACOE. Water of the state does not require a 50ft buffer, and Department of State Land and Army Corp of Engineers do not require a 50ft buffer.

Chair Newton asked are there presentations by proponents?

There were none.

Chair Newton asked are there presentations by opponents?

Lolly Champion 428 Elk Creek Road, #602

In listening to their presentation, they would need to if dedicated to the city it would need maintenance and reading the report not sure what maintenance it would need. I am speaking for a number of people; we've been looking at city ordinances and would like to read a statement. The statement has been included in the record. We are opposed to this request for extensive removal of trees to development lots. This has been identified in the city's own report, giving an overview of root systems in a wetland. The public benefit of the trees should be preserved. We are opposed to adding development potential in or adjacent to the wetland overlay zone. The applications should be allowed to build what is currently allowed in code but not be allowed to further erode our trees in sensitive environmental areas and wetlands to have the added benefit of increased profit the building lots would give them. we request more clarity and zoning in the code to protect trees. We request the PC supportive in robust evaluation to the extent possible to require compliance with criteria to future construction instead of defraying construction in time with bp. We haven't seen the plans so we don't know the what we are dealing with. We request PC open leave the hearing open to allow for submission of additional evidence arguments and testimony regarding this case file for at least seven days following Thursday today June 23rd public hearing. Please notify of any further decisions reports or notices issued as public hearings in this related manner we request asking the applicant for more detailed site plans a more detailed site plan allowing the exact location of the proposed structures driveways and associated components to the relation of the wetland that would ensure that both the planning commission and the public could fully understand the address the potential adverse impacts of the wetlands and ensure compliance with the code. I am leaving numerous names on a petition. I would like to stand with Mr. Neal on the TSP to hold before passing it on to council.

Roger Neugebauer PO Box 244 Cannon Beach

For 40 years I've been coming to Cannon Beach, the last nine we've been owners. 4 years full time residents. We are here because of the incredible beauty natural beauty, love the ocean, beaches, hills and trees. Now we hear the city leaders think we are not good enough and think we need to upgrade to compete with cities up and down the coast. It's clear you will never get rid of the ocean, the beaches are safe but the trees in Cannon Beach are increasingly vulnerable. The wetlands in question have from 11-20 wonderful trees. These trees have been reaching their fruition growing in some cases over 100 years but in a single vote they can be doomed to extinction. Hope we as a city can continue to embrace our natural beauty and not compete with city's along the coast.

Mark Gibson 420 Elk Creek Road Cannon Beach

We are relatively new residents, been here since 2017. We are teachers and have a little girl and love coming to Cannon Beach. We've seen quite a bit of change with the number of trees taken down in that short time and its heartbreaking and you feel powerless. Can't we somehow figure a way to build around them. Save our trees.

Wes Wahrmond and Jan Siebert Wahrmond on behalf of Friends of the Tress. PO Box 778

Dear Planning Commission, we object to proposed subdivision on Forest Lawn Road. It's our understanding that the three building envelopes would be on the southern portion of the property where there is a little bit of upland. A large significant wetland on the rest of the property to the north. It appears that the developer applicant is proposing to cut down 11 trees in order to build homes on the current proposed Lots. The City arborist in his initial tree plant review of Forest Lawn partition written on June 19th 2022, it's likely that even more than 11 trees would be cut in the excavation construction process. In his assessment he found that many of the trees are mature evergreens and that their removal would mean the loss of most of the mature evergreens on the property. The forested canopy of the Forest Lawn neighborhood would thus be greatly impacted we urge you to deny the subdivision of this property and to limit the developer applicant to one house for the sake of the neighborhood the integrity of the forested wetlands. We request this public hearing be continued leaving the record open for a submission that more evidence arguments and testimony have to do with this case for at least one week from June 23 2022. We also asked to be notified of any future reports notices or decisions and any public hearing regarding that pursue ORS 197.7636.

Kathy Coyne 147 E Washington

In the presentation from the developer I heard that it's just a vacant lot. But a wetland is not just a vacant lot. Its home to a plethora of plants and animals. Taking down 11-30% of trees, I heard there will be no impact but taking down 30% is an impact. Wetland is a fragile ecosystem and request the Planning Commission to further review the situation. I would like the development be denied and thank you for your time.

Susan Glarum PO Box 108

I've been here my whole life, have an investment in this place. I respectfully request that the PC recommend the CC deny the 3 lot partition. I also ask the council to deny the condition use permit. I have question regarding this application, ORS 92.010(9) defines not more than 3 partition land within a calendar year. Does this mean in another year another 3 could be parceled? Under Cannon Beach code only numbers 2, 7, 9 were determined by staff to be applicable. Why wasn't number 5 included? I am not a soil engineer but wonder how possible for wetlands to no have weak foundation soils. Also, number 8 policy 15. Any building on this property will require the removal of trees thereby altering the aesthetic of the city's characters. My heart burst at the thought of losing the trees and Cannon Beach has already removed too many trees. It's a travesty at how many trees have been removed in last year. This application is lengthy and unclear. Is Cannon Beach in such desperate of three more no doubt expensive single-family homes that it would allow this wetland be ruined forever. Once spoiled, a wetland will never be made whole again, comparable to coral reef and rain forest, noting the benefits of wetlands. Every wetland should be protected as an invaluable treasure. Please save this beautiful piece of property to be ruined for the sake of corporate greed.

Robert Coyne 147 E Washington

We came to Cannon Beach as teachers, administrators and professors to get away from it all. Giving an overview of his background. One of the things we did in class was look at environmental impact statement process, decide where the thresholds are, giving an overview of the process. Wetlands always made it to the EIS phase. I talked to city leader about the EIS process, and he said we go by what's in the zoning, and next week will be looking at changing some of the zoning rules with Council. If you apply before the change is made you go with the old one. Within a wetland area you need to do an environmental impact statement. Wetlands are a threshold. Oregon is losing 20 acres of wetlands a day. Guide said you can put a wetland somewhere else so if you take away one you make a new one, that's the way developers are doing this. What I would put in an EIS is

- Access to Hemlock

- Boring, did either side but not in the middle yet
- Trees, who cares if it is leaning, you don't take it down because its leaning
- Shorebirds – peregrine falcons, where will they go for water, they may have gone to that wetland to get their water, could be other birds too. Suggest they hire someone to do a study of all the birds in the area to ensure we don't lose any
- Water drainage
- Building a new wetland seems absurd but do it
- City person I talked to, whatever is designated as wetland is where you need to study.
- Housing needs giving past numbers and how they increased
- Cost of the land, reason so little because people know it was a wetland

People came in and are using our zoning laws against us. If you have 5 speakers with the development company they are getting a lot of money and houses will be mega priced high end. So, the city makes a little more in tax. I was pleased with the Japanese tsunami when the Cannon Beach warning system was on the news all the time and so pleased when the city bought land to protect the watershed. Please help us protect the land.

Bonnie Neugebauer PO Box 244

Thinking about how complicated this is and how hard a decision you will have to make. Going to connect to all the disasters that are happening. I know there will be an impact on the health of our planet. My request is to take all the time you need and get all the opinions and expertise and make your decision carefully and wisely.

Jan Siebert-Wahrmund and Wes Wahrmund PO Box 778

We ask you to deny the applicant's request for a three lot partition and conditional use permit for a partition in the wetland overlay zone. Rather than allowing three houses to be built on the property we ask you to allow just one house to be constructed. We also ask that you make sure the applicant comply with all standards which have to do with lessening the harmful effects of construction now rather than waiting until the time of obtaining a permit or building. Please consider requesting the applicant to provide a specific site plan indicating the precise possession of the intended house driveway and other veteran elements regarding the large wetlands. This would help the planning commission and the community to better comprehend and protect the wetland from possible negative effects. We ask you to make sure that Cannon Beach municipal code and comprehensive plan policies are carefully followed as well. We also ask that you require the applicant show how he will comply with the standards that apply within these codes in the present public conditional use process rather than during the later building permit process. Doing this in public rather than only by administrative review gives the planning commission and the community more ability to oversee the protection of this important wetland thank you.

Robert and Heidi Klonoff PO Box 902, Cannon Beach

I am a Professor at Lewis and Clark law school which is known for its environment program so this is a particularly sensitive uh issue for us. We are talking about a wetland area, one of the last remaining ones in Cannon Beach. We are talking about the destruction of 11-15 trees. The arborist put is well, that Forest Lawn will lose the Forest and just be lawn. I worry this will change the character of Cannon Beach, a city that historically has been environmentally sensitive. When this project was first proposed we understood it was to provide housing for workers. Conflicted when we understood that this generous objective was behind it and now it's removed and now gone from housing workers to a bullet point of helps with housing needs. This is not meeting housing needs, its pure profit by a sophisticated developer. I encourage the Planning Commission to deny or slow down to carefully consider what I consider an enormously

environment impact. If approved should put the worker housing back in so if we are going to impact the wetland its for a salutary reason.

Took a 5 minute break at 7:59 p.m. Reconvened at 8:05

Deb Atiyeh PO Box 1426 Cannon Beach

I agree with everything with what's being said. I oppose development on the property. I don't agree with any development on it. think the city is not against, someone said the city wants to make strip malls and that's not true. I believe the people who made the property must be made hold. I propose the city buys the property to preserve it and keep it in its natural state.

Anita Dueber PO 694 CB

Listening to all opposition wanted to say I support and thank them for the time to come before the Planning Commission to voice their opinions and concerns and I believe you will take all their words into consideration. Forest Lawn is near and dear to the family and possibly one of the places as iconic as Haystack Rock. To see it developed into single family homes would create a character change to Cannon Beach. I hope this development will be slowed or stopped in the form it is being presented. In response to Newton's question was your family home close to the site, Dueber replied the Dueber family had a home for many years on Forest Lawn but sold it decades ago. There was a treehouse in the forested part.

Rosie Dorsey 1603 FR 4955 NW 162nd Terrace Portland

I have the property closest to this development. Listening to what everyone said tonight was powerful for me. We bought property in 2004, mom diagnosed with cancer and I ended up with it. I've tried to hold the whole Forest Lawn energy for her. For 17 years I have heard at least 15-20 offers to that property we knew something might appear. But I didn't think a large development or something that would impact the wetlands. Past people who made bids said they weren't able to access Hemlock, there are so many complicated factors on the wetland. We were not able to access our lots from Hemlock. Trying to figure out how our lots were denied access from Hemlock but others may be able to have access. Is my lot or my neighbors accessible to hemlock? There was interest on what my home was going to look like when we purchased and not sure what this development would look like and would like to see more info on what it will look like. I am concerned how my property is protected. I've seen so many reports that said the wetland shouldn't be developed and how will that impact my property if it is. Thank you for your time and we need more time to take this apart and go issue by issue to see if it would work. Newton asked were you aware of the potential of the stormwater extension before you received the notice that yours was illegally draining into the lot? Dorsey replied I will need to look at my papers to be sure. Newton replied we have been asked to leave the record open and I would be curious to know the timing of the notifications to you.

Chair Newton asked is there a staff response?

Adams my recommendation is to continue. I would ask that you guys ask questions that either the applicants or we could answer. I would like more clarification from arborist and applicant that the applicant provide the trees in the plat map that would be removed by the project and the ones that would be saved. Then ask the arborist to give a report showing which ones he might differ. I would like further clarification for all of us. Conditions Tree removal application has to be done by City arborist, which will further clarify for people. I heard it said several times that driveway and building envelopes were not on the plat, but they are. I put as a condition that no further development, no accessory structures as well as fencing in wetland and buffer. Would ask applicant to provide draft conservation easement. These are items I would like to see is leaving open. Adams noted options regarding keeping the record open.

Kerr noted I took a look at state law and city ordinance and couldn't find anything that made it incumbent of the Planning Commission to grant a partition just because it's asked for. It would be difficult to say you couldn't build one home, but as far as granting a partition, if Planning Commission believes it's not in the best interest, I don't see something that says we can't. Kabeiseman replied an application comes in and code says what's allowed and what's not. If the application meets criteria of code there is an obligation to approved. We can't deny it without a reason based on our criteria. Where they do not meet a criterion or criteria so you know they if the presumption is the property can be used to meet the terms of the code. Kerr asked so anyone asks for a partition and if it meets the code we have to grant? Kabeiseman replied let me think about it but that's the underpinning.

Moritz added under 17.48.1-10 Conditional uses, the overall standards we would have to find a demand existing and if we don't find one exists, we haven't met the criteria. Kabeiseman said there is a housing issue, workforce housing, what does the city need. The way the state law defines needed housing is any housing is needed – it doesn't define the type. If it's housing and it is needed you are obligated to only apply clear and objective standards. When you have conditional use standards it's difficult to treat as clear and objective.

Chair Newton asked does the applicant or proponents wish to make additional statements?

Reed Stapleton with DOWL

To speak to what Kabeiseman said we have met the criteria and standards. We put together a thorough application and considered resources for the property and partition. I heard multiple people speak about preserving wetlands. All wetlands are being preserved, there are no wetland impacts. The partition has been carefully designed to ensure that. The comments about Geotech, the Geotech took a look at property and made recommendations. The comments about general policy 15 regarding regulating trees, the city regulated through code 17.70. there is a provision in 17.70.30 saying the retention of trees should be considered, then speak about roads and utilities should be considered. You need road and utility access and standards like that are there because the jurisdiction wants to make sure roads and utilities if divide you are not plowing through the infrastructure. State statutes require clear and objective standards of how to review. On the endangered species comment, there are none. John Van Staveren did a thorough review and there is no federal nexus that would require an environmental impact statement. Robinson added Adams said there could be a covenant regarding further subdividing. We are having no issue with that, there is no intent to do that. Criteria standards have been met, there is no impact, there can be confusion with a wetland overlay zone but there are no impacts to the wetland. 70% of trees will be retained and will seek to retain more once we have more specific site design.

Renee France with DOWL

In terms of where we are procedurally, I heard several requests to leave record open. I didn't hear request for continuation. I agree to leave record open, would request the 7 days new evidence, 7 day rebuttal and request opportunity for final closing argument. Would be in favor of 7,7,7 in lieu of continuation. Adams added I ask also for the further overlay of the plat with the trees you want to keep or remove. Can that be done in the 7-day time period? Robinson replied I think we can take a more cohesive composite of the site, a broader plan of the site.

Newton stated we have a request to leave record open. Kabeiseman added the state law about 197763a, someone can request opportunity to present additional evidence arguments or testimony and then it gives give Planning Commission option to leave the record open or continue the hearing. Both people requested to leave the record open. In response to Newton's question what's the different, Kabeiseman replied do

you come back and hear oral again or limit to written material. Kerr noted I heard people wanted a continuance not just a 7,7,7, whether they said it correctly or not.

Motion: Kerr moved to continuance;

Bennett suggested but do a limit on the time for presentation to 5 minutes and new materials.

Kabeiseman proposed amendment to motion maker can make it or accept.

Kerr stated I amended the motion; Bennett seconded.

Kabeiseman noted when limiting new evidence, it is an administrative burden to determine what is considered new and what is not new.

Kerr amended the motion

Motion: Kerr moved to continuance, with a limits of 3 minutes per speaker; Bennett Seconded the motion.

Vote: Kerr, Newton, Knop, Bates, Moritz and Bennett voted AYE; the motion passed unanimously.

Kabeiseman stated the continuance will be to next Planning Commission meeting on July 28th.

Newton asked I am curious about your process on stormwater how do you decide we need to do this. If the burden is on the applicant to show how they are going to handle stormwater. Adams replied we have meetings with them. There is runoff from Forest Lawn and a property in Forest Lawn that drains to an outlet from Forest Lawn and onto their property. Karen La Bonte our Public Works Director is here and can assist. Newton added the process behind how the city decided it was on the city to take action on the storm water vs the applicant. My reading of the wetland overlay it's the applicants to provide the plan, it appears the city took initiative to put the handling of the stormwater on them and what that cost would have been. Adams replied that's for their property. It's their obligation to deal with the stormwater on their property. Stormwater from our right-of-way was infiltrating onto the property. The neighbors is draining as well. Newton asked did the developer approached with the two problems of the site? La Bonte replied I was contacted by the developer that said there are two people depositing the runoff onto private property and asked us to address that. I would notify the homeowner and follow up with a letter. In this case the city was one of the people. Bates replied first off you know that storm water drain is a conditional use which I'm sure was permitted at the time. I believe it's actually required and secondly the requirement is only the code is only imposed on private individuals, not the city. There is no obligation on the city to correct the situation. If the developer wants to do it, it sounds to me their intention is to drain the wetland instead of moving the stormwater connection. La Bonte stated I am not trying to debate the issue I am answering the questions. Bates replied I want to understand why the city is involved into trying to drain the wetland. Karen replied the first contact was the evaluation that was made. As far as how it was to be addressed, as far as cost, like anything else the private party private addresses what's on their private property and city on the right-of-way. We had to camera the drains to see where it was depositing to because walking out there just visually looking at it didn't really tell me for sure if it was or wasn't. Then next once we identified whether it was then it got with Adams to discuss the regulations for wetlands. That is what got that ball started. Then it was a matter of determining how to address. We sent tthe neighbor a letter with the muni code and discuss the options. In response to Moritz 's question how many times a year do you send a letter to a home owner, is this common to speak to a private party or is it abnormal, La Bonte replied it's pretty common. We get more calls in the winter than summer. It peaks in the wet season. We have to issue letters

or make contact to address. Bates asked what's the city's obligation to the code. Adams replied we do what's best for the city and my opinion we were draining into wetland, and it was adding to their wetland area so I decided we can move it further north if possible. If we have a natural system that normally drained into infiltration then we would not be obligated to do that, but we had a storm drain that was feeding that, we had footage and records of that and so we wanted to deal with that the best we could at the time when it was brought to me. The suggestion was moving it north because we were in that discussion with them about possibly turning that over to the North Coast Land Conservancy as a wetland area. And during that approved the development permit because that was it was not a it was not in a wetland buffer and so we just moved it approximately 130 feet north, but then it was appealed during that process.

Newton added one of the big picture problems the issues I have here is if you if it's 100 feet back that roughly represents where the two lots that were also part of this larger parcel are today located. So what's happened is we've had these partitions 1987, 2000 another in 2003 slowly bringing that lot smaller and smaller and smaller to the last partition 2003. Where the house that is draining its storm water they want to have a lot. It's in the record we want to partition this so we can get a lot they're draining their stormwater into a wetland water into wetland we grant the lot. The assumption is that's the wetland and here we are. It's an inch that becomes a mile. We push the wetland further and further from being a wetland. When we mess with things we already messed with. We give a little the next group forgets what we did and we do more then we lose a wetland. We have to look at what's happened in the past and that's my frustration. I didn't see anything that looks like a drainage plan in the application. I need some clarity. I don't see how the water is coming off, where is it going? Adams replied from the development or neighboring development, from Forest Lawn that we were trying to resolve. Newton added anything that has to do with storm drain. Adams replied I need clarification I don't believe its their obligation. Kabeiseman noted we are not prepared to discuss tonight and did not look at it. When the city comes in and handles stormwater it changes things. I would ask that you provide us questions and we will get back to you as we can't give you a comprehensive answer right now.

Bates stated I want to discuss the 50 ft buffer; I don't think the 5 ft is enough. Kerr said that's what the ordinance says. Bates replied it conflicts with state and county law. I want to focus on the geology report, noting concerns about the wetland. There is a lot missing in this report before we could get anywhere close to it. Moritz noted the construction impacts will be huge. We also have to think carefully to what the criteria would be to approve or deny.

Kabeiseman added it's clear that is says if you need housing all housing is housing. Kerr noted has it been litigated, Kabeiseman replied yes they don't differentiate between 2nd homes, income levels, etc. Newton noted we have a code that has room for improvement. I would appreciate the geologist to be here to explain items in the report, giving a list of items. A discussion ensued regarding landslides and geologic hazards. Newton added we need to address the landslide before we can approve this. Knop added regarding the the conservation easement, I would like some clarification. Moritz replied I agree there is a lot of unanswered questions. Bates added I want to know what the removal of willows and potential flooding. Kerr added the drainage issues needs to be addressed.

Renee France asked I have a procedural question/clarification on status of the record. You requested a great deal of information, and will it remain open for written submittals, Newton replied yes that's what we said.

9:07 pm took break reconvened at 9:14 pm

- (5) **Continuation and Consideration of CP#22-01 Adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Comprehensive Plan.**

THIS IS A LEGISLATIVE MATTER REGARDING:

CP 22-01, Jeff Adams on behalf of the City of Cannon Beach, seeks the adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Cannon Beach Comprehensive Plan. The TSP is in accordance with Oregon Revised Statutes OAR 660 Division 12, Transportation Planning Rule, which implements Statewide Planning Goal 12. The request will be reviewed against the criteria of the Cannon Beach Comprehensive Plan and Municipal Code, Section 17.86.070.A, Amendments, Criteria.

Newton said we had a number of people say they want us to consider to slow down. We heard it quite a bit and they want to comment. Do we want to open it to public comment or just deliberate? Moritz replied in favor of deliberate, they will be a chance to speak at Council and there are more opportunities to speak. Kerr replied I don't feel that way, this is very important and uncomfortable limiting public comment. Bates I am with Kerr, Bennett agreed.

Motion: Kerr moved that we leave this meeting open to public comment with 3 minutes; Bates seconded the motion.

Vote: Kerr, Newton, Knop, Bates, Moritz and Bennett voted AYE; the motion passed unanimously.

Newton said to those here tonight and on zoom we will open our conversation to your comments on the TSP.

Randy Neal via Zoom, PO Box 1092

Neal asked for five mins instead of three. Knop replied 'd like 3 mins as you have given us a lot of information in writing. Bennett agreed Neal said this seems like this is getting pushed forward so the city can check a box to get grant money. it's not a strategic plan. There's a lot of stuff in TSP and doesn't mirror what the community has asked for. Then things that were asked for doesn't have the detail. Neal gave an overview of the input he submitted; a copy is in the record.

Deb Atiyeh

I want to look at from the city perspective. I don't know if I agree with what Neal said. The city hired a 5-star rated company to do the plan. They put a plan into motion. The issue is funding, there is funding available, and I say jump on it go through, they won't move forward on anything without further approval.

Anita Dueber

I agree with all the effort randy put into presentation and speak to the fact that the TSP. I heard Cannon Beach was one of the last cities to implement that's because Cannon Beach doesn't want to urbanize. The committee and council wanted cannon beach to be preserved and protected from what seems to be an urbanization plan. This needs to be thought about before it goes forward. To be told you can't keep living in the past, I've seen the changes. We are stewards and protectors of that beauty and not developers to fundamentally change the character of Cannon Beach.

Newton closed public comment section. We talked last time about having a list of things we didn't want to see and have been approached by people regarding this. I've been thinking about Neal's comment about it being a plan and what does a plan mean. I thought about a letter from Atiyeh about tying parking fees to

affordability. That got me thinking at a higher level how are these pieces marrying together. The TSP marginalized communities who need help from an affordability standpoint. How does that relate to transportation? We don't address that, but maybe we could. If we took a step back and looked at it for more than just a menu item. Is there any reason we need to rush this though; is there a grant or project we need to push this through for? Moritz added it seems to me we would be asking for too much for housing and transportation plan at this plan. This TSP gives us pieces we can talk about and tie them other pieces. Adams is working on the housing plans, we can't solve all the problems with one plan. The way I envision the plan is all its doing is setting out a way for us to continue the conversation. This is to create a framework to take the pieces one by one. It has enough pieces that work. Let's get a plan for a plan in place and drill down on the important pieces and how to tie that into other city's needs. Newton replied I want to do that. The challenge for me in coming to a discussion on any one point. I want to have an idea on where we collectively agree on the theme that we are trying to accomplish. If we had that is would help shape the individual items. If I don't know what I am trying to protect I won't know what I am voting on. A discussion ensued regarding how the TPS connects the comprehensive plan. Bates added give the city something they are excited about, and I haven't heard anyone that is excited about this. We talked about putting language in here about what it is, a plan for a plan, I don't see that language. Adams added if you refer to page 30 it has the goals and objectives. I am thinking what I heard is that you guys may want to make that more visionary, your goals and objectives are the vision. Bates added I looked at the state's parking plan and it was getting cars off the street. Adams replied that is what we are trying to do with a bike/trail plan. The items you say you want to do are in this. Do we want to have a plan in place? We never had one in place, and I keep hearing I see how things have changed and it's not better. But that's because we don't have a plan in place. The first step is to put a plan in place, then we will work on it. Nothing says you can't amend the plan. Kerr added I don't think putting in bike paths will resolve the parking issues. Adams replied no one said that, we have elements within here that are to solve that parking problem. In response to Kerrs question like what, Adams replied striping, parking apps, paid they are listed as separate items and they are steps to take toward it. Each one of part of the continuum but you have to start somewhere. Bates added people don't agree with your proposals. Bennett replied people will never agree with the proposal, a discussion ensued.

A discussion ensued regarding how to move forward with this process. Adams added I and the staff try to do what's best for the city. Kerr replied no one is criticizing staff, we are criticizing you. Newton added part of the process is the conversation we are having tonight. It's a process that feels like we have given it our best shot. Moritz said then I suggest we work through the plan and see what's the sticking point. We are having so much conversation and let's get concrete here. If we start thinking about the language in the plan, we will start seeing where our issues are. Bennett added one thing particularly important I heard over and over is the committee didn't hear us. In my opinion the consultants did a pretty comprehensive outreach. You can't make people answer a questionnaire. What else do we need to know in specifics and what are the alternatives. A discussion ensued reading recommendations discussed last week. Newton said to Moritz's point let's start with the disclaimer language. In response to Knop's question is this what Kabeiseman revised, Adams replied yes. Knop added I think we should add the Parks and Community Services Committee, in both paragraphs. A discussion ensued regarding page 30. Michael Duncan from ODOT provided input.

Motion: Kerr moved to suggest to the Council that they remove the roundabout option from the TSP menu; Moritz seconded the motion.

Vote: Kerr, Newton, Knop, Bates and Moritz voted AYE; Bennett voted NAY. The motion passed.

Motion: Bates moved to incorporate the amended disclaimer language to the TSP; Kerr seconded the motion.

Vote: Kerr, Newton, Knop, Bates, Moritz and Bennett voted AYE; the motion passed unanimously.

Kerr asked why can't we removed scooters, Adams replied the TSP suggests the city adopts scooter and other legislation for these types of things. I don't see harm in keeping it in as it's talking about making the language. I've drafted language that will be presented to council in July, a discussion ensued.

Bates noted I heard someone talk about the sewer trail. People were unhappy with that. Knop replied at the beginning, but they love it now. Kerr added the new trail that is proposed, we could put language in that suggestion to preserve as many trees as possible. Moritz added and make it natural surfaces. A discussion ensued regarding the trail suggestion.

A discussion ensued regarding the couplet /pedestrian plaza. Knop added all of these things will go through the approval process and we won't accept a proposal that we are not in agreement with. Kerr replied but do not know who will be approving the project.

Motion: Kerr moved to amend the bike path section to say that any bike path and trail would give high priority to the protection and preservation of trees in the path right-of-way; Knop seconded the motion.

Vote: Kerr, Newton, Knop, Bates, Moritz and Bennett voted AYE; the motion passed unanimously.

Newton asked what do we want to achieve at our next meeting. We said we wanted to take things off and add and we did that. We are starting to shape a larger idea. Kerr at our next meeting will we have another big packet, Adams replied more than likely. We have the continuation from tonight and possibly two more applications. Kerr noted the TSP is getting the short end with being at the end of the meeting. Adams added would you be up to a work session for just the TSP? Kerr replied that is a great idea. A discussion ensued regarding the date of work session. The Commission selected Wednesday, July 6th at 6pm and discussed the process for the work session. They will start with page 1 and work through.

Authorization to Sign the Appropriate Orders

Motion: Bennett moved to authorize the Chair to sign the appropriate orders; Knop seconded the motion.

Vote: Kerr, Newton, Knop, Bates, Moritz and Bennett voted AYE; the motion passed unanimously.

INFORMATIONAL ITEMS

(7) Tree Report

Mike another positive month.

(8) Ongoing Planning Items

(9) Good of the Order

Kerr reported it has come to my attention by neighbors and constituents with the 600 sq ft house which was subject to Harrison appeal. Planning Commission denied appeal. It appears from the drawings what's happening is different. I want to make sure that we are not chumps in this whole thing. I wrote to Jeff Harrison about it. I am not sure if anyone has gone to look at it. My impression is its not the same. Adams replied they will call for inspections and the building official will come out and inspect. My understanding is they put in a change of plans and if it meets the floor area ration and meets the conditions. Kerr added this was a specific appeal based on plans we all got to look at. They do a change of plans and do something different and if it's not kosher no one sees it until its build. Adams replied the planning zoning and development agreement it meets all those conditions of standards. Kerr added it's like that so called garage with a living loft. Adams added if it meets the building code, we have no control of it. Bates noted there is something we can learn from that. How did we get from the point he proposed a settlement we rejected the appeal, and he changes him mind? We should have put that drawing in the order. Knop asked would that prevent it, Adams replied I would have to defer to Kabeiseman. I've never seen someone not be able to put in change orders. Kabeiseman gave an overview of the building code in this situation, a discussion ensued regarding the plans.

Newton asked what's going on with the living wall, Adams replied we will get a report on it next month.

Newton asked when will we hear back, you visited the shoreline stabilization project, St. Clair replied we should hear back possibly next month, giving an overview.

Newton said I don't think we shouldn't go this late again. Do you want to talk about a we will not go beyond? Commission selected 10:00 pm. Knop added there are times when will have to have work sessions.

ADJOURNMENT

The meeting adjourned at 10:57 pm.

City Recorder, Jennifer Barrett

**Minutes of the
CANNON BEACH PLANNING COMMISSION
Wednesday, July 6, 2022**

Present: Chair Clay Newton, Commissioners Barb Knop, Mike Bates, and Anna Moritz in person; Lisa Kerr, Aaron Matusick, and Charles Bennett via Zoom

Excused:

Staff: Director of Community Development Jeff Adams, City Planner Robert St. Clair, and Administrative Assistant Katie Hillenhagen

Michael Duncan & Eddie Montejo

CALL TO ORDER

Chair Newton called the meeting to order at 6:01 p.m.

ACTION ITEMS

(1) Approval of Agenda

Motion: Knop moved to approve the agenda as presented; Bates seconded the motion.

Vote: Kerr, Knop, Bates, Moritz, Bennett, Matusick and Chair Newton voted AYE; the motion passed unanimously.

The commissioners discussed how to organize the meeting. Newton suggested they start working on the TSP right away and then take comment after that. They all agreed on this approach.

(2) Transportation System Plan Discussion

CP 22-01, Jeff Adams on behalf of the City of Cannon Beach, seeks the adoption of the Cannon Beach Transportation System Plan (TSP), as supporting material to the Cannon Beach Comprehensive Plan. The TSP is in accordance with Oregon Revised Statutes OAR 660 Division 12, Transportation Planning Rule, which implements Statewide Planning Goal 12. The request will be reviewed against the criteria of the Cannon Beach Comprehensive Plan and Municipal Code, Section 17.86.070.A, Amendments, Criteria.

Bennett asked about the process and what will happen after they approve the Draft TSP.

Adams went over the next steps. The Commissioner's recommendations will go to Council and Parametrix will be on board through that process. Then it is upon City Council to prioritize what they would like to see happen and move forward on those projects.

Bennett asked if individual proposals would come before the PC, such as the one-way streets downtown.

Adams said that such a project would likely go before the DRB and not the PC.

Knop reminded everyone that this plan is a framework for possible projects. They will all go through a due process.

Adams noted that they would also need to have the budget behind them and go through the public budgeting process.

Bates said that was something they wanted addressed in the recommendation given to Kabeiseman for refinement.

The Commission started going over the plan and discussing changes.

They decided to put Bates suggested changes in section 1.3 Policy Context

Kerr suggested they use a of the City of Cannon Beach on the front. The current picture is of Ecola State Park.

There was a suggestion to streamline the Environmental Justice and Communities of Concern language.

Newton felt that the goals focused on traffic coming through the City rather than the local population. He said he would like to see a greater focus on the local community.

Montejo said that tourism is focused on because that is what impacts the community most.

Bates suggested they put that language in the plan. They all agreed that was a good idea.

They began to look at Section 2. Existing and Future Transportation Needs

Bates had concerns about the projected traffic volumes being significantly high.

On section 2.2.6, page 21, they suggested tying in affordability concerns. It was suggested that paid parking could fund communities of concern or environmental justice. Perhaps it could go to things such as bus service or parking permits for residents.

Duncan discussed how they collected traffic data.

Newton said that it would be interesting to see how other similar communities handle public transportation.

Newton suggested brainstorming with local business owners on ways to provide transportation for employees.

Adams said that the Sunset Empire Transportation System tries to do that with things like van pooling.

Bates recommended adding more about coordinating with local transit authorities. There was consensus that this was a good recommendation.

They moved on to Section 3 Goals and Objectives

Bates thought they should go big on goal 4 and references the language he provided.

Moritz brought up environmental concerns.

Montejo voiced concerns about changing the goals, given the process they went through to write them.

They discussed the role of goals in organizing and informing the rest of the TSP.

They decided to make environmental concerns a separate goal.

Bates suggested using language from the Oregon TSP Update related to climate change and traffic congestion.

In section 3.2.2 Bates had concerns about using the term policies rather than something like options.

Montejo said that they are meant to be flexible guidelines.

Moritz reminded everyone that a lot of community feedback has been used to make this document and they should be a little humble and honor that.

St. Denis noted that the City Manager cannot choose a project and just go with it. That is not allowed under the City's charter. He noted that if it is not in the approved budget, it cannot be done.

They discussed an unrelated issue that gave Bates concern about the process that is needed to complete a project.

They reached consensus to take roundabouts out of the plan.

Bates asked about Ocean Ave. He was interested in possibly make it a walking trail.

They discussed motorized vehicles such as scooters.

It was noted that the City Council will soon be voting on a related ordinance.

Kerr suggested adding a provision to minimizing any new access to Hemlock.

They asked for suggestions from Parametrix on 3.3 Evaluation Criteria.

They moved on to Section 4.

Kerr noted that they should take out all roundabout references.

They discussed the cost estimates and agreed that they should check if the cost estimate information is on the TSP website.

Bates suggested putting an asterisk that says costs included are just budgetary estimates and actual costs will vary.

They continued to discuss cost estimates.

Newton suggested not having specific numbers.

Montejo said that was possible by using something like dollar signs to indicate cost.

Kerr asked about the crossing by Cannon Beach Academy. It was noted that this is a school crossing and suggested that this detail be added to the plan.

Moritz suggested adding asterisks to maps stating that they are for illustrative purposes only.

For section 4.2 Roadway System Plan there were no suggested changes

They decided that section 4.3 Parking Management Plan, was a good place to add comments about revenues taken from parking being used to support communities of concern or similar efforts.

Newton suggested adding wayfinding to the bicycle and pedestrian system.

Montejo said he would look at that.

Kerr brought up concerns about cutting trees to make bike paths.

Adams said he would incorporate that language.

Montejo suggested revising the map with the bike exit on Yukon so that it is clearer that the path is not set.

They agreed to add the wayfinding language to 4.4.3 Bicycle Network.

Kerr had concerns about figures 43, 44, and 46. She thought they did not fit Cannon Beach. They agreed they should add the disclaimer that they are for illustrative purposes only.

In section 4.5 Transit Plan, they agreed to suggest having van share and transportation pool options for workers.

In section 5. Implementation and Funding Strategy they suggested making the funding language more vague.

Newton said he would like stronger language around the SDCs. Kerr agreed.

Adams noted that that is being addressed as part of the code audit.

Newton opened the floor for public comment.

Randy Neal, PO Box 1092, Cannon Beach. Neal noted that he submitted his comments in writing as well and discussed his key points from that submission. He felt that a lot of this needs to be strategic but that the

discussion today was not strategic. He also had concerns about off-street parking. He said that we have a summer shuttle that does not get the support and use that it should.

Deb Atiyeh said she had concerns about scooters.

Adams noted that this topic will be discussed during the City Council Meeting. Adams noted that Boulder Colorado has a very successful plaza that the City could use as an example.

Jan Siebert-Wahrmund was concerned that master plans in practice seem to be more of a to do list than a menu. She asked the Commissioners to please keep thinking how they can limit the number of people coming here during the peak season. She asked them to consider water usage and asked them to not feel pressured to move along or be a rubber stamp.

INFORMATIONAL ITEMS

(3) Ongoing Planning Items

Code Audit – Adams said that they were give the directive from Council to come back with track 2 changes that will come before the PC.

Bates asked about an ORS provision related to clear and objective standards that was brought up in the last meeting. He thought they needed expert council from the City's attorney.

Adams said he would have Kabeiseman speak about it in the next meeting.

Moritz suggested that they ask Kabeiseman to bring information about case law around clear and objective standards.

Adams suggested having an executive session before the next meeting.

(9) Good of the Order

ADJOURNMENT

The meeting adjourned at 8:36 pm.

Administrative Assistant, Katie Hillenhagen

MEMORANDUM

DATE: July 14, 2022
 TO: Cannon Beach Planning Commission
 FROM: Eddie Montejo, Ryan Farncomb & Jeff Adams
 SUBJECT: Responses to TSP questions
 PROJECT NAME: Cannon Beach TSP

This memorandum summarizes comments and questions received from the Planning Commission and the public on July 6, 2022 with respect to the Draft Cannon Beach Transportation System Plan (TSP). This memo is intended to address comments and questions heard regarding potential modifications to the Draft TSP. This memo focuses on the suggested changes to specific sections in the Draft TSP.

GENERAL COMMENTS AND QUESTIONS

Comment or Question	Response
Concerns that the TSP policies direct the City to implement specific projects or initiatives.	<p>TSP policies <u>do not</u> direct or require the City to implement specific projects or initiatives. However, TSP policies <u>do</u> provide written guidance on the desired future transportation system and enable the City to pursue a “menu” of transportation improvements and initiatives.</p> <p>Furthermore, the TSP policies <u>do not</u> reduce, minimize, or override existing City protocols related to the approval of the City’s Capital Improvement Program (CIP), the City’s standing development process and public works program, or the City’s project development process. Multiple layers of municipal “checks” and protocols would remain in full effect regardless of the TSP policies before any TSP project can move forward:</p> <ul style="list-style-type: none"> • Initiate refined traffic analysis to confirm best project design and treatment. Review with Public Works Committee. • Formally adopt and program the project in the City’s CIP which is reviewed and approved by the City Council. Adoption of the City’s CIP is an open City process with ample opportunities for public input. • Seek funds, either locally or from a grant source, to develop the engineering design. This typically takes 6-12 months. The public will have an opportunity to provide input on the engineering designs before they are finalized. • Seek funds, either locally or from a grant source, to construct the project.

Comment or Question	Response
	<ul style="list-style-type: none"> Construct the project (up to 3-6 months, or longer depending on the investment). The public is kept up to date and notified throughout the construction process. <p><i>Refer to the summary memorandum for the Planning Commission meeting that took place on June 14, 2022 for addition context and response to this question.</i></p>
Concerns that the TSP is not strategic.	<p>The TSP Goals and Objectives (page 30) describe the vision of what the City aims to achieve with its transportation system. These goals and objectives are derived from the Comprehensive Plan and public and stakeholder input. The results project and program recommendations were evaluated based on these goals and objectives that are specific to Cannon Beach.</p> <p>The key strategic elements of the TSP are as follows:</p> <ul style="list-style-type: none"> Improving intersection safety and mobility along Hemlock Street as a principal way of addressing tourist traffic impacts on local residents Creation of an interconnected walking and biking network that provides north-south connectivity through town, and connects to City evacuation assembly areas Encouraging alternative means of transportation through recommended bike and pedestrian elements to achieve a reduction in carbon emissions, provide safer alternatives and a more sustainable system Implementation of a phased parking management strategy to make better use of existing on- and off-street parking on the City's arterial and collector streets Transportation demand management strategies to support getting more cars off the road Solutions that are appropriate for the Village context (sidepaths vs sidewalks, alternative illumination options vs. HAWK crossings, etc.)
Concerns about why tsunami infrastructure is mentioned in the TSP.	<p>Given the City's location on the Oregon Coast, a core function of the transportation system is emergency response. In Cannon Beach, this includes the use and function of the transportation system during an earthquake and tsunami event. It is best practice to identify opportunities where the transportation system may be enhanced to facilitate evacuation, or where a planned facility in the TSP could serve multiple functions including tsunami evacuation. The TSP seeks to maximize opportunities for leveraging transportation investments to serve multiple needs in the community.</p>

Comment or Question	Response
What are the city's commitments for ongoing services for implementation of the TSP to Parametrix?	There are no commitments for ongoing services to Parametrix for implementation of the TSP.
Concerns about cost estimates, inflation, and overall cost of TSP projects and programs.	The TSP is a high-level master plan and the team's engineers developed planning-level cost estimates based on established engineering best practices. These include substantial contingencies (40% and higher) to reflect the very limited design detail available at this stage. Costs are based on real-world unit prices and the costs of similar such projects implemented in other places.

TSP REVISION SUGGESTIONS

Topic or TSP Reference	Suggestion	Response
All mentions of scooters	Remove	Will be removed per the Planning Commission's recommendation
TSP Cover and Page 1 Images	Replace with images of Cannon Beach	Will be replaced with different images per the Planning Commission's recommendation
"Disclaimer" language	Add to front-end of TSP – Sections 1.1 and 1.2	Will be added
Addition of new Goal #5	Retain original goals per public process and add new environmental considerations to new Goal #5 on Conservation and Preservation of the Environment	Goal #5 will be added, with objectives specific to reducing carbon emissions and preserving and conserving our natural systems
Balancing needs of different transportation users incorporates all of Cannon Beach	Strike ...in downtown and midtown in Goal 2	Will be removed
Environmental Justice references	Streamline the use of "environmental justice" and "communities of concern" throughout TSP	Will be streamlined
Address residential needs	Clarify why tourism is being focused on – not to serve tourists, but to improve quality of life for year-round residents	Will be added to three sections: Purpose, Alternatives, and Implementation Strategy

Topic or TSP Reference	Suggestion	Response
	that must grapple with heavy tourism impacts	
Regional development	Mention the impact of regional development on local transportation impacts	Will be added as appropriate
Section 2.2.6 – Affordability?	Incorporate language to suggest that paid parking revenues (if implemented) should benefit future transportation funding, and specifically, EJ populations	Will be added as appropriate
Section 3.2.4	Add mention of shuttle concept	Will be added as appropriate
Goal 4	Add bullet on transit and greenhouse gases	Will be incorporated as part of Goal 5 – Goal 4 will be left as is
Section 3.2.2 – Policy 2	Delete all mentions of roundabouts	Will be deleted throughout the entire document.
Section 3.2.4 – Policy 4	Delete “private micro-transit services” and change to “alternative means of transportation”	Will be changed per suggestion
Section 3.2.2 – Automobile Policies	Add language minimizing new accesses to Hemlock	Will be added per suggestion
Projects R-4 and R-5b (roundabouts)	Delete all mentions of roundabouts, including these projects	Will be deleted per suggestion
Funding Gap	Add language to clarify that costs are very high level – obscure \$ precision	Will be clarified per suggestion
Cost Estimates	Remove hard costs	Will be simplified using \$\$\$ per suggestion – actual cost estimates will be retained as appendix item
Project C-9	Add “school crossing” to project title	Will be added per suggestion
All Maps	Add disclaimer on all maps, that they are for illustrative purposes only	Will be added per suggestion
Projects ET-1 and ET-2	Remove mention of scooters	Will be deleted per suggestion
Page 59 – Roundabouts	Delete roundabouts	Will be deleted per suggestion

Topic or TSP Reference	Suggestion	Response
Project R5-b	Delete	Will be deleted per suggestion
Section 4.3	Revenues should benefit transportation and EJ communities	Will be added per suggestion
Biking as alternative transportation	In general, the plan should highlight ways of increasing visitor access to bicycles to reduce congestion on the road	Will be added as appropriate
Section 4.4.1	Add language regarding the conservation of trees in trail improvements	Will be added to pages 76 through 78
Section 4.4.3	Add a section describing an overall wayfinding system	Will be added per suggestion
Project PB-3	Remove specific call-out of Yukon	Will be made more general in the maps and description
Page 87 (TSP, not PDF)	Add disclaimer that not all enhanced crossings will be illuminated, only some are identified for illumination as an option, not a requirement	Will add disclaimer per suggestion
Project TS-3	Broaden project to include vanpooling	Will be revised per suggestion
Section 5.2.1	Change to “shall” to make the language stronger and emphasize that this is for transportation projects	Will be changed per suggestion



Cannon Beach Planning Commission

Staff Report (July 21, 2022):

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
Continued to July 28, 2022

Prepared By: Jeffrey S. Adams, PhD
Robert St. Clair

GENERAL INFORMATION

NEW MATERIALS

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-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)**

"B" Exhibits – Agency Comments

None received as of this writing;

"C" Exhibits – Cannon Beach Supplements

No new materials

"D" Exhibits – Public Comment

- 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;**

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 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 holds 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 the recently created wetlands finger that the applicant's specialist suggests is, in part, due to the infiltration of stormwater runoff from the City's Forest Lawn right-of-way and neighboring storm-drain outfalls (Exhibits C-06 & C-07). Due to the recent growth of the wetlands area on the southern-end (Exhibits C-05 & A-07) and a plat restriction, which was placed on the property by earlier decision (and explained in detail below) access to the majority of the parcel's upland area would be restricted to a Forest Lawn approach that crossed the delineated wetland. 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."

Surrounding property is zoned R2 Medium Density Residential to the east, south and west, while property across Forest Lawn, to the north, is zoned Residential Motel. The neighboring property owner, at 1603 Forest Lawn, was notified on April 29, 2021, that their stormwater outfall would need to be re-routed to comply with the City's stormwater ordinance (CBMC 8.04.140, see Exhibit C-15), with the City offering to allow for connection at the time of the City's extension of the stormwater infrastructure. The City applied and was approved for a

development permit (DP# 21-23, see Exhibit C-16 & C-17) to extend the Forest Lawn stormwater outlet one-hundred and thirty feet to the north along the City's right-of-way on November 5, 2021. The City of Cannon Beach received an appeal of the decision on November 17, 2021 (Exhibit C-18), within the two-week appeal period, placing it on the December agenda for a public hearing before the Planning Commission, only to withdraw it prior to the rescheduled January hearing (Exhibit C-19).

At the same time, the City began investigating other stormwater solutions that might lessen the stormwater runoff impacts to private property along Forest Lawn. The City has continued to work with both property owners to resolve the stormwater concerns (Exhibit C-20).

The Planning Commission met on June 23, 2022, taking public testimony and asking the applicant to respond to questions raised concerning the geological hazards, particularly with regards to landslide susceptibility and liquification, the historic wetlands and the city's responsibilities in stormwater management along Forest Lawn, along with the city's requirement to abide by 'clear & objective' standards in relation to 'needed housing.'

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.

Staff Comments:

The Commission has requested more information about the requirement for "clear and objective standards." That requirement is found in ORS 197.307(4), which provides as follows " a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing."

The extent of that provision was litigated in *Warren v. Washington County*, 78 Or LUBA 375 (2018), *aff'd* 296 Or App 595, 439 P3d 581 (2019), which involved an application for a six-lot subdivision in an ecologically sensitive area of Washington County. Some neighbors pointed out that the applications needed to comply with CDC Section 422, that dealt with sensitive lands, including wetlands. The county Hearings Officer refused to do so, saying that the provisions were not "clear and objective" and ORS 197.307(4) prohibited him from applying any standard that was not clear and objective.

The neighbors appealed that decision to LUBA, arguing that the County was required to apply its provisions that protected sensitive lands. LUBA disagreed and affirmed the hearings officer's decision, holding that, prior to SB 1051 (2017), the clear and objective standards applied only to lands on a "buildable lands" inventory, but that changed in 2017 with the adoption of SB 1051. LUBA went through a lengthy analysis of what SB 1051 did and concluded as follows:

"The legislative purpose behind SB 1051 was 'to increase housing supply by removing barriers to development at the local level.' Record 138. That choice may have inadvertently or purposefully

resulted in local governments being prohibited from applying subjective standards to proposals for development of housing, including subjective standards that were adopted to protect Goal 5 resources. However, that is a choice that the legislature is free to make.

"* * * * *

"In conclusion, we construe ORS 197.307(4) as prohibiting the county from applying any standards, conditions and procedures that are not clear and objective to intervenor's application to develop a six-lot residential subdivision . . ."

The case was appealed to the Court of Appeals, which affirmed LUBA, stating as follows:

"ORS 197.307(4) plainly states that the 'clear and objective' requirement applies broadly to local governments' application of standards, conditions, and procedures 'regulating the development of housing' generally, including 'needed housing.'"

In other words, both LUBA and the Court of Appeals have confirmed that, to the extent an application involves housing, local governments are prohibited from applying any standards that are not clear and objective.

Here's a link to the LUBA case:

<https://www.oregon.gov/luba/Docs/Opinions/2018/11-18/18089.pdf>

And here's the link to the Court of Appeals decision:

<https://law.justia.com/cases/oregon/court-of-appeals/2019/a169547.html>

{...}

16.04.280 Design standards – Streets.

Staff Comment: No streets are proposed. Meets criterion upon conditional approval of removal of access restriction plat from existing recorded partition plat.

16.04.290 Design standards – Easements.

Staff Comment: The fifteen-foot proposed access and utility easement is indicated on the proposed partition plan. Meets criterion.

16.04.300 Design standards – Blocks.

Staff Comment: No blocks are proposed. Meets criterion.

16.04.310 Design standards – Lots.

Staff Comment: Lots are all over the required 5,000 square feet, with all building envelope sites indicated outside of wetland and wetland buffer areas, on 1,000 square feet of upland area. Meets criterion.

16.04.320 Design standards – Public sites and open spaces.

Staff Comment: No public areas are proposed and the wetlands area is proposed as a conservation easement area. Meets criterion upon conditional approval of a recorded conservation easement.

16.04.330 Design standards – Trees.

Staff Comment: The City Arborist, Jeff Gearhardt's, initial response of June 19, 2022, states, "after reviewing preliminary site plans, I anticipate more trees will realistically need be removed due to excavation and construction impacts." Mr. Gearhardt concluded by stating, "I recommend the retention of more large trees on the property be prioritized," and as a result, staff has requested that the applicant combine the tentative plan, with a full tree survey, identifying all trees proposed for removal through the partitioning process for access and utilities, and all those anticipated by the applicant's arborist to be impacted by construction in the residential development process. This will provide the City Arborist a more comprehensive survey of the upland areas to be impacted by the proposed development.

16.04.340 Design standards – Utilities.

Staff Comment: Utilities shall be placed underground per CBMC. Meets criterion.

17.43 – Wetlands Overlay (WO) Zone

{...}

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:

- A. Commercial structures;*
- B. Excavation;*
- C. Wetland enhancement;*
- D. Compensatory mitigation;*
- E. Roads or driveways, including an expansion of an existing right-of-way;*
- F. Footpaths;*
- G. Point-source stormwater discharge;*
- H. Alternative stormwater management practices;*
- I. Subdivisions, replats, partitions and property 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).*

Staff Comment: The application does not propose any uses or activities in the protected wetlands or wetland buffer areas, as the partition, utilities only delineated upland areas for residential development. If the private driveway access easement is approved as proposed, the application will not be crossing any wetlands or buffer areas with streets, utilities or any other uses or activities.

Sub-section (a.) of the general standards asks the applicant to prioritize their activities by avoiding the impact to the wetlands altogether, while (b.) would ask that the applicant minimize such activities. These are the general criteria the application will be reviewed by and which evidence must support. The applicant has altered their earlier Pre-Application seven-lot subdivision proposal Exhibits C-11 & A-04), to a point of entry off of Hemlock rather than Forest Lawn to avoid impacting the wetland areas, keeping all access, utilities and building envelopes to the upland areas of the partition.

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).

Since the CBMC doesn’t offer clear procedures for ‘plat amendments,’ the PC has several avenues for processing the application considering the noted plat restriction. One option would be to condition any decision upon removal of the access restriction through a public hearing before the City Council, clarifying that all notice requirements are to meet subdivision requirement standards. Another option would be to deny any requested partition in violation of this plat restriction until the Council has taken action to remove the restriction.

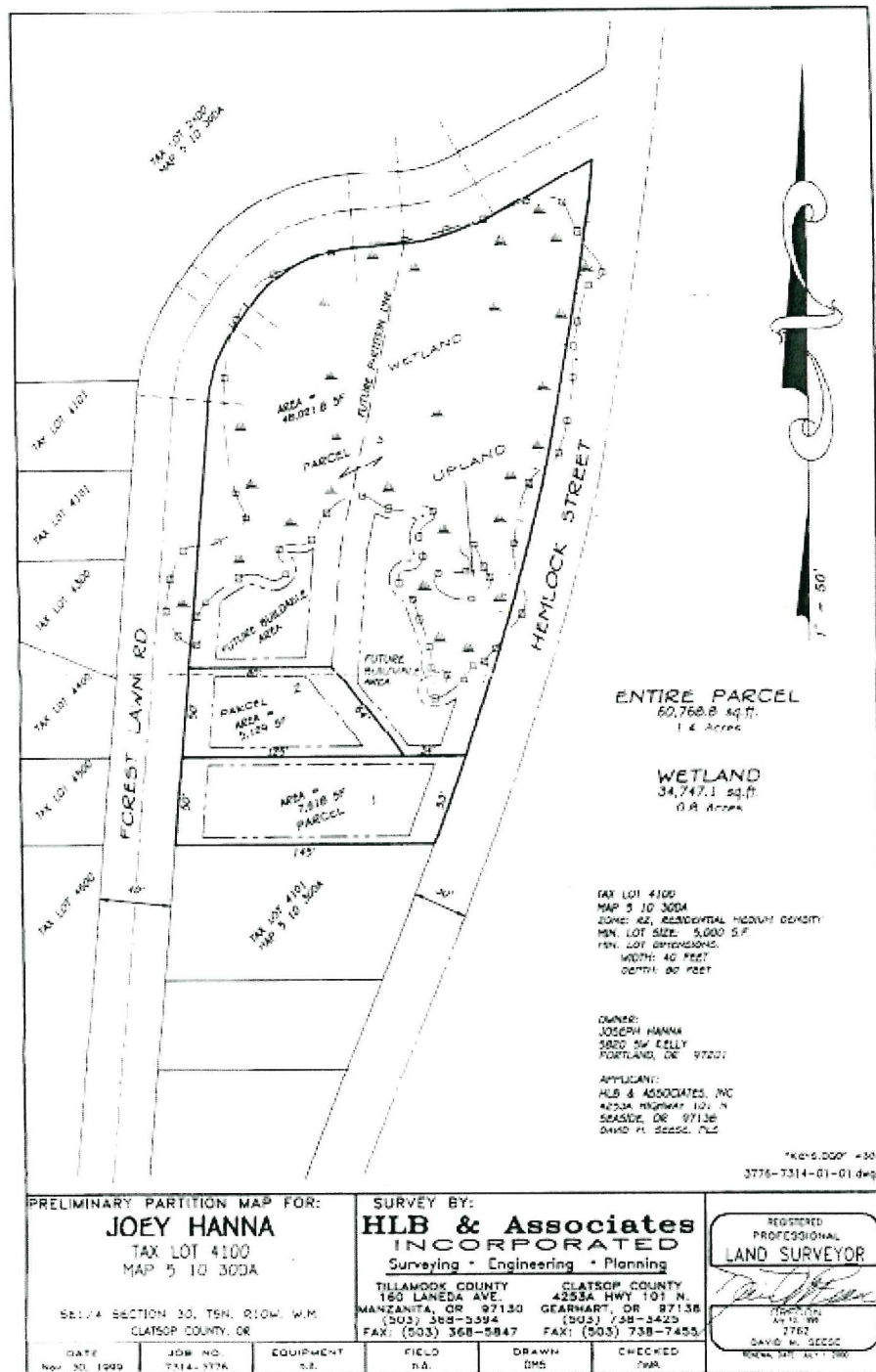
The Planning Commission voiced concern over the ‘loss’ or ‘draining of’ wetlands. There are a couple of components to this concern. The first, is that the historic wetlands area on the Forest Lawn property, as mapped in 1992, identified a delineated area encompassing 34,747 square feet, while the most recent mapping, in 2021, showed a 15% reduction of the wetland over the past thirty years, showing an area of 29,618 SF.

The Planning Commission stated that the State and Clatsop County require a 50-foot wetlands buffer and asserted that the State buffer took precedent over the local wetland buffer. Staff asked Department of State Lands to respond:

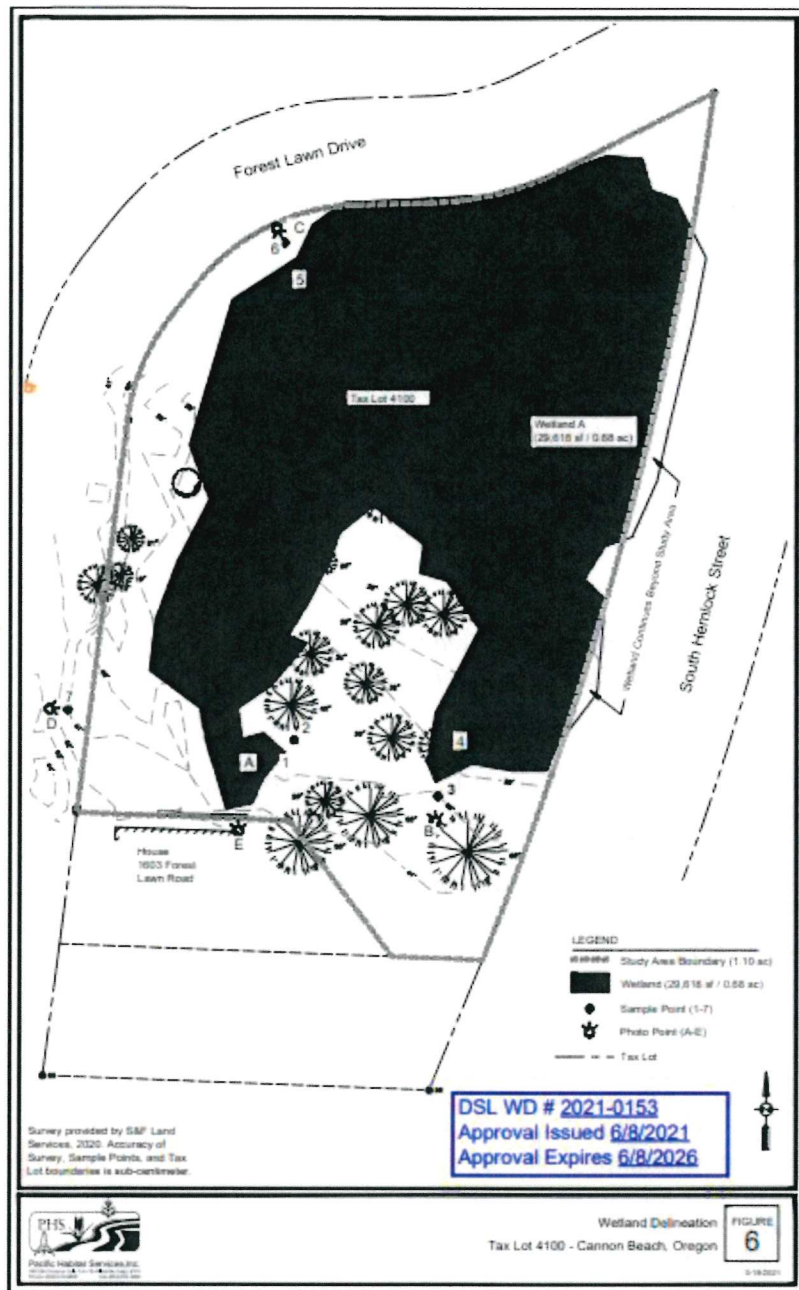
“DSL does not regulate these (except in rare cases on compensatory mitigation sites). Some local governments do, others do not. If your protection program was done under “safe harbor” there are no wetland “buffers,” except in all cases when a locally significant wetland falls within the riparian area buffer, then the riparian buffer extends around the upland edge of the wetland. Once the applicant has the approved delineation the delineation boundaries are required to have sub-meter accuracy, so you know that if the design stays one meter from the wetland or water boundary the project surely will not fill or excavate delineated wetlands. But they don’t have to stay a meter away, any buffer/setback would be based on local ordinance. They can go right up to the DSL approved wetland or water boundary – not that this would be a “good” plan either ecologically or structurally – but DSL only has jurisdiction within the approved delineation boundaries.”

CBMC 13.16.050(C) stormwater states that “Any person responsible shall maintain nonpublic storm drainage facilities on his or her property so as to prevent flooding or damage to other property not owned or controlled by the person responsible and to prevent injury to any person on property not owned or controlled by the person responsible.” The city was notified that stormwater from the neighboring property was flowing onto the subject property and documented these concerns, while providing the neighboring property owner the option of connecting to the city’s stormwater infrastructure to alleviate the matter.

The city’s contribution and responsibilities for conveying storm water from the Forest Lawn catchment area should be seen as a sperate consideration with respect to the partition request. Although CBMC 13.16.030 states that “the improvement of both public and private storm drainage facilities through or adjacent to a new development shall be the responsibility of the developer,” all stormwater impacts of the proposed partition are to be resolved through connecting to the city’s infrastructure and would not apply to this standard. The extension proposed and withdrawn in DP#21-, related to the city’s responsibility to deal with the historic conveyance of stormwater from the Forest Lawn catchment area. Historically, the homes along the southern portions of Forest Lawn have been conveyed from their property at the southern end of the proposed partition. The city has continued to work with the applicant to resolve this matter, which led initially to the development application, but when the applicant withdrew consideration of conveyance of the wetlands portion to the city or third-party conservancy, alternative solutions were investigated. Although the city may not legally be obligated to resolve the matter, the city has continued to work in good faith with the applicant towards a solution to move the collected water from the surrounding properties through the city stormwater system, rather than towards the subject property.



Hanna Partition Survey Map (1999), HLB & Associates, Fig. 8.



Wetlands Delineation Map (2021), PHS, Inc., Fig. 9.

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.*

Staff Comment: The applicant has prepared a Tentative Partition Plan that is based on a Wetland Determination that was prepared by Pacific Habitat Services, Inc. and accepted by Oregon Department of State Lands. Each lot contains an upland buildable area larger than 1,000 sq. ft. serviced by driveways and utility connections that are outside of the delineated wetland and buffer areas.

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.*

Staff Comment: 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.

- b. *The building site described in subsection M2a shall not include protected wetlands or wetland buffer areas.*

Staff Comment: None of the proposed building sites incorporate protected wetland 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.*

Staff Comment: Lot 1 is 5,140 SF, Lot 2 is 20,500 SF and Lot 3 is 22,400, all over the 5,000 SF requirement for the R2 Residential Medium Density district per CBMC 17.14.040.

- 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.*

Staff Comment: Service for water, sewer and storm water are provided through the upland areas.

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

Staff Comment: There are no streets contemplated for this three-lot partition, where Lot 2 is to be served from a private drive access off of Forest Lawn, while Lots 1 & 3 are served by a 15' shared private driveway access easement saddling the adjoining property line. Access requirements under CBMC 17.90.020 require "Every lot shall abut a street, other than an alley, for at least twenty-five feet. Lots which were created prior to adoption of the zoning ordinance which do not meet this provision may be accessed via an irrevocable recorded easement of a minimum of ten feet in width."

Each lot has well over 25' of lot frontage abutting a public street, the Fire Chief and Public Works require that the access easement be of sufficient length, with satisfactory turnaround area to handle fire-safety concerns. Public Works and Cannon Beach Rural Fire have approved the plans. Meets criteria.

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.*

Staff Comment: Not applicable.

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.*

Staff Comment: Not applicable.

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))*

Staff Comment: As identified in the Earth Engineers Report (see Exhibits A-12 & A-13), 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 indicates the project site is adjacent to an active landslide area. However, during on-site investigations, Earth Engineers did not observe any signs of recent or active landslides.

Future on-site grading plans within the proposed lots will be designed to preserve natural slopes and contours to the extent practicable. As noted on the Existing Conditions Plan (Exhibit A-05)) and also within the Earth Engineers Report, the project site is relatively flat, with an elevation difference of only seven feet across the site. For this reason, substantial cut and fill and is not anticipated in order to construct each proposed lot's future residential dwellings and associated site improvements.

As identified in response to CBMC 16.04.310 in the applicant's original narrative, the project site's average slope is 6.48 percent, and as previously described within this letter, there is only a seven-foot elevation difference across the site. As a result, future development will not occur on steep slopes. 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.

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.

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. These foundation systems will penetrate through the organic soils to bear on the medium dense to

very dense sandstone. While the need for retaining walls has not been identified at this point, the Earth Engineers Report also includes recommendations for retaining wall systems that are compatible with the project site's possible geologic hazards. The recommendations for structural fill, foundation systems, and retaining wall systems ensure that the project site can mitigate possible geologic hazards, including mitigating the risks of potential slides and earthquake shaking, and the project site's compressible and organic soils. As concluded and stated on page 23 of the Earth Engineers Report, the site should be considered developable provided the geotechnical engineering recommendations are followed.

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. While the need for retaining walls has not been identified at this point, the Earth Engineers Report also includes recommendations for retaining wall systems that are compatible with the project site's possible geologic hazards. The recommendations for structural fill, foundation systems, and retaining wall systems ensure that the project site can mitigate possible geologic hazards, including mitigating the risks of potential slides and earthquake shaking. As concluded and stated on page 23 of the Earth Engineers Report, the site should be considered developable provided the geotechnical engineering recommendations are followed.

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.

Staff Comment: The applicant states, "As identified previously within Table 4, the removal of 11 trees is anticipated to allow for future development within the proposed lots. As noted in the Arborist Report (Exhibit A-11), the removal of five (5) trees with poor health, which are also structurally unsound, is anticipated due to the hazards they pose to future development within the proposed lots. The removal of an additional six (6) trees is also anticipated due to their location within the proposed lots, where they conflict with the location of future dwellings, driveways, parking/vehicle turnaround areas, and utilities. Preliminary findings for CBMC 17.70.030(B) and (Q) are included within this narrative, and additional documentation on these trees will be provided upon the applicant's anticipated submittal of a tree removal permit to allow for their removal."

The City has not received a tree removal application as part of the submittal, but the Arborist report included (Exhibit A-11) identifies five trees for removal as part of the subdivision, numbered as #12, #17, #20, #35 & #37b. It appears that of these five, only #12 and #17, would be required to be removed pursuant to the partitioning improvements. #12 which is damaging existing City infrastructure and #17 which falls in the travel

path of the proposed shared access easement for Lots 1 & 3. The remaining trees, #20 & #35 would be reviewed at the time of building permit for the individual lots, as would #37b, if indeed it is hazardous to Lot 3.

The tree plan requires a conditional approval, anticipating a tree removal application and subsequent review by the City Arborist.

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.*

Staff Comment: The proposed partition would create three parcels that could be used for residential development. At present there is a limited amount of property available for potential development that is not restricted by slopes or wetlands. As per the tentative partition plan the proposed residences would be in the upland areas and be of a character similar to the surrounding neighborhood. The applicant makes an argument that the development will help meet the Regional Housing Needs Analysis demand for the ‘project need’ and ‘underproduction’ for Cannon Beach, towards the North Coast current and projected need. Indeed it could be argued that any housing is ‘needed housing’ under this current crisis, however, whether it is ‘suitable’ when weighed against ‘those not requiring conditional use approval, and the desirability of other suitably zoned sites for the use’ might be more of the burden to consider. In other words, is there a ‘demand’ for residential at this location is the criterion under consideration.



Clatsop County Housing Strategy, Cannon Beach – Residential Buildable Lands Inventory, January 23, 2019, Fig. 10.

The Hanna partition survey from November 30, 1999 shows a 'future partition line,' with 'future buildable areas,' that remained on the subsequent partition plat of June 24, 2000, which is reflected in the Clatsop County Housing Strategy, conducted in 2019, as potential developmental density. The county-wide study of housing provided a Buildable Lands Inventory for Cannon Beach and the surrounding jurisdictions, dated January 23, 2019. That report, shown above, identifies the Forest Lawn subject property as 'vacant' with 'environmental constraints,' as part of the residential lands inventory, and thus, included in the 'potentially buildable acres' and 'housing unit capacity' counts which totaled 86 vacant acres, providing a potential 329 units for Cannon Beach. Meets criterion.

- 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.*

Staff Comment: 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." The proposed lots would fall within the minimum 250 feet service radius of hydrants and the turnaround areas are sufficient for fire and emergency services. The other utilities, including the City's existing sanitary sewer and water systems have sufficient capacity to meet the project site's proposed development and demand. 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. Downstream deficiencies in the City's stormwater conveyance system are not known to exist. It is not anticipated that the proposed level of development would create excessive traffic or demand on utilities or other municipal infrastructure. Meets criterion.

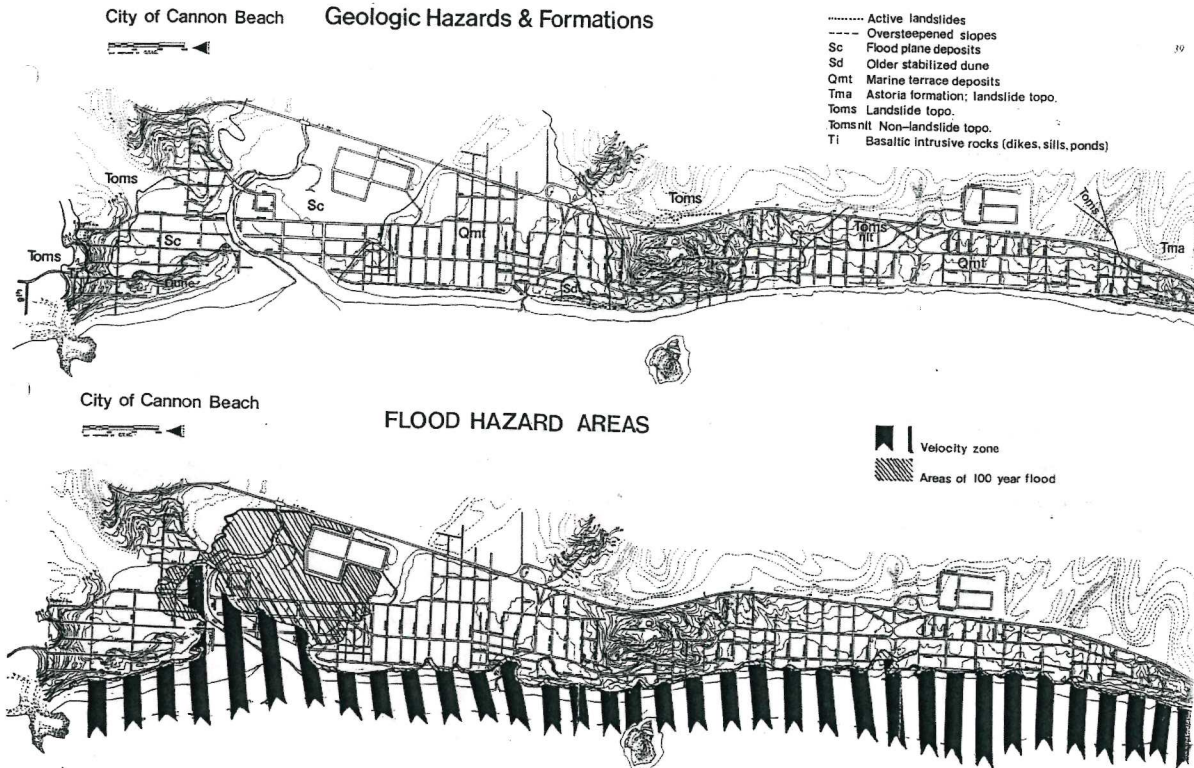
- C. *The site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities or other facilities which are required by city ordinances or desired by the applicant.*

Staff Comment: 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. Meets criterion.

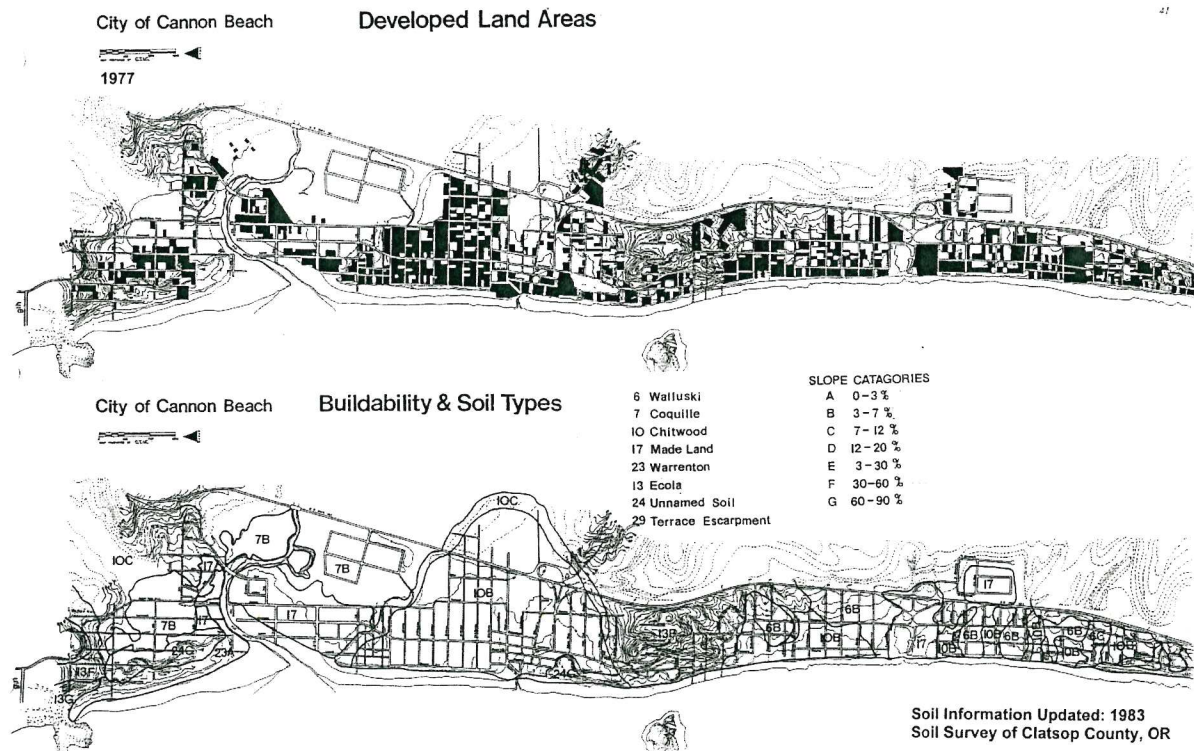
- D. *The topography, soils and other physical characteristics of the site are appropriate for the use. Potential problems due to weak foundation soils will be eliminated or reduced to the extent necessary for avoiding hazardous situations.*

Staff Comment: The subject property has a parcel average slope of approximately 6.5%, geotechnical analysis is not required for properties with average slopes under 20%. The applicant is having a geotechnical report prepared in order to identify and develop mitigation strategies for any unidentified hazards that may exist on the subject property (see the discussion under CBMC 17.50 above and Exhibits A-12 & 13).

The Cannon Beach Comprehensive Plan has adopted maps, copied below, which show no active landslide areas in the Forest Lawn area. The Statewide Landslide Information Layer for Oregon (SLIDO) data is the more recent compilation of geologic hazards mapped across the state and shows no indication from the historic landslide deposit data that the area is more vulnerable to landslides than any other location in Cannon Beach. In fact, as one would suspect, it is the nearby S-Curves area and shoreline that show historic deposit, fan and at higher risks of future landslides. Geohazard reporting are structured to identify all risks of the subject property in context to regional susceptibility to geologic risk. If one were to examine the geologic hazards and formations map, along with the soils mapping, one can see that a large number of homes in Cannon Beach are at risk of landslides and liquification.



Cannon Beach Comprehensive Plan Maps, Geologic Hazards & Formations and Flood Hazard Areas, Figure 1.



Cannon Beach Comprehensive Plan Maps, Developed Land Areas and Buildability & Soil Types, Fig. 2



Statewide Landslide Information Layer for Oregon (SLIDO) web-mapping application, showing Landslide Susceptibility data, (subject property identified by red circle), Fig. 3.



SLIDO web-mapping application, showing Landslide Inventory data, (subject property identified by red circle), Fig. 4.



SLIDO web-mapping application, showing Landslide Susceptibility data for Forest Lawn area, (subject property identified by red circle), Fig. 5.



SLIDO web-mapping application, showing Landslide Inventory data for Forest Lawn area, (subject property identified by red circle), Fig. 6.

The following applicable sections of the EEI Geo-Hazard Report, Exhibit A-15, were identified in the Planning Commission's June 23rd meeting:

Section 3.3.2 – Liquefaction (Pg. 16)

Based on our investigation, we consider the soils encountered in our exploration to be liquefiable. Liquefaction occurs when a saturated sand or silt soil starts to behave like a liquid. Liquefaction occurs because of the increased pore pressure and reduced effective stress between solid particles generated by the presence of liquid. **It is often caused by severe ground shaking, especially that associated with earthquakes.** For the purpose of our hazard evaluation, we consider only the saturated soils within the upper 50 feet of the ground surface to be potentially liquefiable. The liquefaction potential was evaluated based on the SPT N60-values. **Assuming 2 to 3 percent vertical strain, we estimate that total dynamic settlement caused by an earthquake could be on the order of 9 to 13 inches.** This assumes the potentially liquefiable layer is 36 feet thick (i.e. reference boring B-2 where it is potentially liquefiable from 4 to 40 feet). We estimate differential dynamic settlement due to liquefaction could be on the order of 50 to 75 percent of the total dynamic settlement; meaning anywhere from approximately 4.5- to 10-inches of differential dynamic settlement due to liquefaction could occur across the building footprints.

Figure 7 – HazVu Map Showing the Liquefaction (Soft Soil) Hazard Area (Pg. 18)

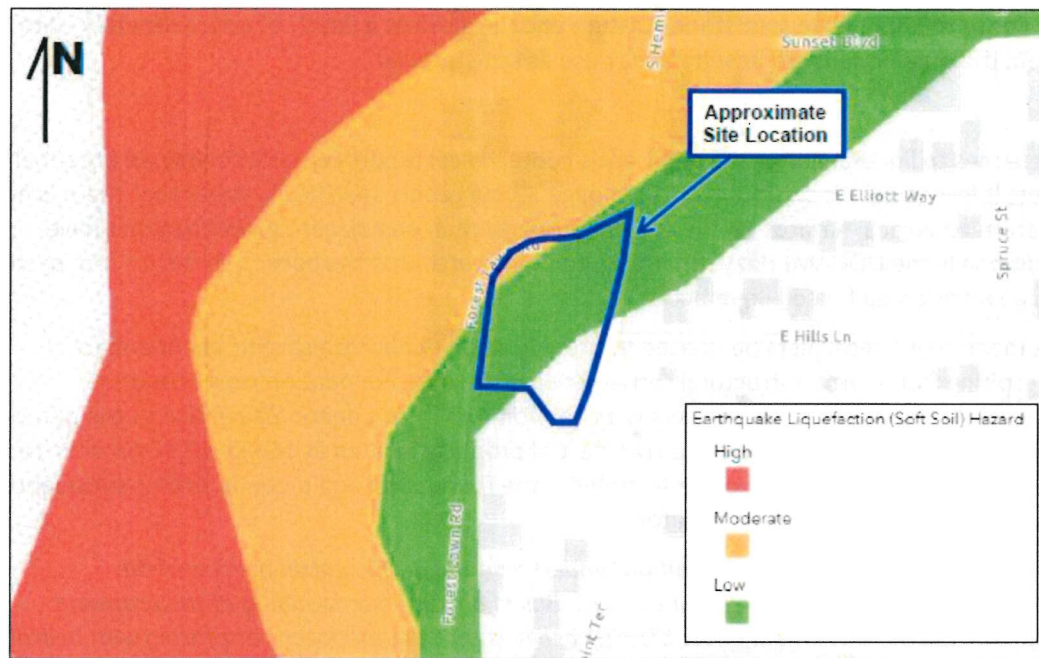


Figure 7: HazVu map showing the liquefaction (soft soil) hazard area.

Section 3.4 – Geologic Hazards (Pg. 20)

It is very normal/typical for the shallow, compressible soils to slide after wet winter weather or a seismic event. **We do not believe this property is at any greater risk from this hazard than the other numerous existing developed lots in the neighborhood.** That being said, we recommend that at a minimum, any house foundations be designed to protect life-safety (i.e. the house is allowed to be damaged by landsliding but the structure stays intact long enough for the occupants to evacuate).

Section 4.1 – Presence of Potentially Liquefiable Soils (Pg. 22)

As stated above, there are potentially liquefiable soils located at the project site. Based on our analysis, approximately 9- to 13- inches of total dynamic settlement due to liquefaction could occur with potential differential settlements up to approximately 4.5- to 10-inches across the proposed buildings' footprints. **This much settlement precludes the use of shallow foundations. As stated above, we are recommending deep foundations for the proposed development that will mitigate risk of settlement in a design level earthquake event.**

Section 4.1 – Presence of Organics (Pg. 22)

As stated above, we encountered heavy organics (i.e. wood chips and rootlets) in all of our explorations. The presence of organics extended to depths of 25 to 30 feet bgs. **It is our professional opinion that this material is not sufficient to provide shallow foundation support without risking excess total and differential settlements. As such, we are providing deep foundation recommendations that penetrate through these organic soils to**

bear on the medium dense to very dense sandstone stratum encountered at a depth of approximately 30 to 40 feet bgs. In addition, the organic soils are unsuitable for use as structural fill.

Staff Comment: References to liquefaction in the applicant's geotechnical report center primarily on potential hazards that would result from a severe seismic event. On page 20 the report specifically states that there is no greater risk resulting from geological hazards on the subject property than on adjacent properties that have been developed. Additionally the DOGAMI HazVu map (Figure 7) indicates that the portion of the lot proposed for development is in a low risk area for soil liquefaction.

A recommendation is made that helical piers be utilized to provide stability during a seismic event and to prevent subsidence resulting from normal structural settlement in soft soils. Foundation repairs and the utilization of underpinning devices such as helical piers is a common activity in Cannon Beach due to the nature of the soils in the community. One such example is a commercial property located at 164 Kenai St. for which a building permit was issued in February 2022 in order to stabilize the foundation and prevent further subsidence. The geotechnical report prepared for that project states:

"Our investigation confirms that the subsurface conditions underlining the north central portion of the foundation consist of areas of shallow, soft, fine-grained soils. Based on our understanding of the proposed helical pier placement to arrest the settlement issue, STRATA believes that the proposed retrofitting with helical piers placed along the existing foundation will serve to distribute vertical loads to depths below the problem compressible soil stratum."

A second report prepared for this project states:

"The pipe shafts for the helical piers will be supported for their full length against buckling. They will be installed in sandy soil, typical in the Cannon Beach area, which has no acidic conditions that would deteriorate the steel piers. We anticipate that a hard bearing layer is probably present about 25 to 30 feet below the footings based on driving piers in other nearby areas in Cannon Beach."

Based on the statement made in the Presence of Organics paragraph in Section 4.1, *"It is our professional opinion that this material is not sufficient to provide shallow foundation support without risking excess total and differential settlements. As such, we are providing deep foundation recommendations that penetrate through these organic soils to bear on the medium dense to very dense sandstone stratum encountered at a depth of approximately 30 to 40 feet bgs,"* the primary reason why underpinning is recommended appears to be the penetration of soft soil not well suited for bearing structural loads in order to prevent future subsidence and reduce the potential need for costly repairs at a future time with a secondary reason of providing additional stability to resist events such as landslides or earthquakes.

Section 3.4 – Geologic Hazards (Pg. 20)

It is very normal/typical for the shallow, compressible soils to slide after wet winter weather or a seismic event. We do not believe this property is at any greater risk from this hazard than the other numerous existing developed lots in the neighborhood. **That being said, we recommend that at a minimum, any house foundations be designed to protect life-safety (i.e. the house is allowed to be damaged by landsliding but the structure stays intact long enough for the occupants to evacuate).**

Staff Comment: A particular concern was raised regarding the nature of the above text from Section 3.4 on page 20, essentially it was implied that site characteristics potentially imperil the occupants of any houses developed on the subject property. However, the entirety of the text of Section 3.4 does not appear to indicate that there is any greater risk regarding factors that could induce structural collapse than that which is being shared by adjacent properties.

The purpose of a geotechnical analysis is to use standardized, scientific procedures to assess the character of a site, its subsurface conditions including soil types and groundwater, identify potential hazards, and provide recommendations regarding possible development. These recommendations range from relatively simple

matters such as site drainage or the use of fill to more complex matters such as hazards posed by construction on steep slopes. The analysis is used to inform architects and engineers of the nature of hazards and allow for the development of mitigation measures during the project design phase. Meets 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.*

Staff Comment: Each lot has well over 25' of lot frontage abutting a public street, the Fire Chief and Public Works require that the access easement be of sufficient length, with satisfactory turnaround area to handle fire-safety concerns. Public Works and Cannon Beach Rural Fire have approved the plans. The applicant indicates:

"As the Tentative Partition Plan is intended to provide one single-family residential dwelling per lot, for a total of only three dwellings within the project site, measurable impacts to adjacent transportation facilities, including South Hemlock Street and Forest Lawn Road, are not anticipated. The 2022 Draft Cannon Beach Transportation System Plan¹⁰, which is expected to be adopted during Summer 2022, analyzed the City's existing transportation system conditions, with its findings included as Technical Memorandum #311. As identified in Technical Memorandum #3, traffic operations at 15 different intersections within the City were analyzed, none of which were found to exceed identified ODOT mobility targets. In addition, none of the studied intersections in the vicinity of the project site, including the intersection of South Hemlock Street & Sunset Boulevard located approximately 300 feet north of the project site, were found to be operating at an inadequate level of service (LOS), with all mainline operations along Hemlock Street within the City operating at a LOS of either "A" or "B", where "F" is considered worst conditions. As a result, the adjacent transportation system can accommodate the proposed lot's future single-family dwellings.

"Therefore, the Tentative Partition Plan provides the proposed lots with adequate connections to the adjacent transportation system that can be used for the transportation activities identified by this criterion. Further, the Tentative Partition Plan is not anticipated to have measurable impacts on adjacent public facilities, and the existing transportation system is capable of accommodating the proposed development.

The Planning Commission must 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 of Forest Lawn serving Lot 2, while Lots 1 & 3 would share an access point off of Hemlock. As 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 evidence that supports access should be conditionally approved awaiting a public hearing and decision by City Council, striking the plat note restriction, before Final Plat.

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

Staff Comment: This criterion 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.

Please note that the prior Staff Reports and letter of completeness issued on June 3, 2022, stated an incorrect 120 day limit, as October 25, 2022. That date is corrected above.

The Planning Commission's June 23rd hearing will be the first evidentiary hearing on this request. ORS 197.763(6) allows any party to the hearing to request a continuance. The Planning Commission's next regularly scheduled hearing date is July 28, 2022, where a decision should be reached.

RECOMMENDATION

As stated in the pre-application correspondence, subdivisions are a conditional use permitted in wetlands and wetland buffer areas, according to CBMC 17.43.040(H) & 045(H), where the General Standards of wetland areas under CBMC.43.050(A):

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

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

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

It is up to the applicant to provide evidence that they are minimizing impacts to protect the wetlands. Upon the evidence provided, that the plat note restriction for access off of Hemlock should be eliminated, staff recommends conditional approval, with the suggested conditions that follow.

DECISION AND CONDITIONS

Motion: Having considered the evidence in the record, based on a motion by Commissioner (Name) seconded by Commissioner (Name), the Cannon Beach Planning Commission moves to (approve/approve with conditions/or deny) the Patrick/Dave LLC application for a three parcel partition and a conditional use permit for a partition in the wetland overlay zone, P22-01 and CU22-02, as discussed at this public hearing (subject to the following conditions):

1. City Council approval of plat restriction removal, before a publicly notice hearing, per CBMC, prior to Final Plat;
2. Fifteen-foot shared access easement for Lots 1 & 3 recorded with Clatsop County prior to Recordation;
3. Tree removal application reviewed by the City Arborist and approved by the City;
4. No accessory structures, including fencing is allowed within the delineated wetland area and buffer areas, as described in the recorded conservation easement;
5. No future partition or subdivision shall be incorporated into the conservation easement recorded with the County;

Notice of Approval

17.44.140 Final approval expiration.

The final approval of a design review plan shall be void after one year of the date of approval unless a building permit has been obtained. (Ord. 90-3 § 15)



Site Map



A-18

From: Matthew Robinson <mrobinson@dowl.com>
Sent: Thursday, June 23, 2022 1:24 PM
To: Jeffrey Adams
Cc: Renee France; Gemma, Patrick; dave pietka; Jamie Lerma; Read Stapleton
Subject: RE: [EXT] FW: New Materials for PC Packet

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks, Jeff. I've been checking regularly as well. Regarding the most recent letter regarding proposed conditions of approval regarding any future construction:

1. During construction on any lot, trucks and construction vehicles may not use Forest Lawn for access to any of the lots.
2. No vehicular parking on Forest Lawn shall be allowed during construction.
3. If there is any damage to Forest Lawn from construction by trucks or construction related vehicles, the developer must be required at its expense to pay for the cost of fixing the damage.

I'd like to comment that this isn't feasible. While the applicant is certainly willing to explore options that minimize activity on Forest Lawn Road during any future construction, some amount of activity will be required. Due to the location of the wetland, it is impossible to cross the project site during construction without going through the wetland. For these reasons, trucks will need to access Forest Lawn at certain points in order to avoid the wetland. This is all very preliminary of course, but I wanted to mention this now

Thanks,

Matt

Matthew Robinson
Associate Planner

DOWL

(971) 280-8641 | office
(971) 229-8318 | direct

dowl.com

From: Jeffrey Adams <adams@ci.cannon-beach.or.us>
Sent: Thursday, June 23, 2022 1:16 PM
To: Matthew Robinson <mrobinson@dowl.com>
Cc: Renee France <rfrance@radlerwhite.com>; Gemma, Patrick <pgemma@prologis.com>; dave pietka <dpietka@msn.com>; Jamie Lerma <jamie@redcrowgc.com>; Read Stapleton <rstapleton@dowl.com>
Subject: [EXT] FW: New Materials for PC Packet

WARNING: External Sender - use caution when clicking links and opening attachments.

Matt,

Please find the link to the new materials below and please keep checking the application [page](#) until the meeting, as we will continue to post materials as we receive them.

Thanks,
Jeff



Jeff Adams

Community Development Director

City of Cannon Beach

p: 503.436.8040 | tty: 503.436.8097 | f: 503.436.2050

a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110

w: www.ci.cannon-beach.or.us | e: adams@ci.cannon-beach.or.us

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From: Jennifer Barrett <barrett@ci.cannon-beach.or.us>

Sent: Thursday, June 23, 2022 1:00 PM

To: Planning Commission <PlanningCommission@ci.cannon-beach.or.us>

Subject: New Materials for PC Packet

Good afternoon,

New materials received since the posting of the Commission packet have been posted on the website. For a quick link, please click [here](#).

Thanks!
Jen



Jennifer Barrett

City Recorder / Assistant to the City Manager

City of Cannon Beach

p: 503.436.8052 | tty: 503.436.8097 | f: 503.436.2050

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A-19

From: Matthew Robinson <mrobinson@dowl.com>
Sent: Thursday, June 23, 2022 2:08 PM
To: Jeffrey Adams
Cc: Renee France; Gemma, Patrick; dave pietka; Jamie Lerma; Read Stapleton
Subject: RE: [EXT] FW: New Materials for PC Packet

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Jeff,

Following on my below email, I'd like to add a few more comments regarding the letter from Jeanne Marks and Dori Schnitzer and the proposed conditions of approval:

1. Forest Lawn Road is public right-of-way with two points of access on Hemlock Street
2. Any future truck traffic utilizing Forest Lawn Road for purposes of development will be limited to construction vehicles accessing proposed Lot 2 due to the location of the wetland which prevents access to this lot from Hemlock Street.
3. Any parking along Hemlock Street and Forest Lawn Road is subject to applicable street parking regulations, if any, and the applicant will adhere to these.
4. The requested conditions do not appear to be tied to any of the applicable approval standards and the letter cites none. Therefore, there is no legal basis for the City to impose these requested conditions.

As I mentioned in my earlier email, the applicant is willing to work with the neighboring property owners and City staff, and is willing to consider options to minimize vehicle activity along Forest Lawn Road during any future construction work.

Thanks,

Matt

Matthew Robinson
Associate Planner

DOWL

(971) 280-8641 | office
(971) 229-8318 | direct

dowl.com

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Sent: Thursday, June 23, 2022 1:24 PM
To: Jeffrey Adams <adams@ci.cannon-beach.or.us>
Cc: Renee France <rfrance@radlerwhite.com>; Gemma, Patrick <pgemma@prologis.com>; dave pietka <dpietka@msn.com>; Jamie Lerma <jamie@redcrowgc.com>; Read Stapleton <rstapleton@dowl.com>
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Cc: Renee France <rfrance@radlerwhite.com>; Gemma, Patrick <pgemma@prologis.com>; dave pietka <dpietka@msn.com>; Jamie Lerma <jamie@redcrowgc.com>; Read Stapleton <rstapleton@dowl.com>

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Jeff Adams

Community Development Director

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From: Jennifer Barrett <barrett@ci.cannon-beach.or.us>

Sent: Thursday, June 23, 2022 1:00 PM

To: Planning Commission <PlanningCommission@ci.cannon-beach.or.us>

Subject: New Materials for PC Packet

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Thanks!

Jen



Jennifer Barrett

City Recorder / Assistant to the City Manager

City of Cannon Beach

p: 503.436.8052 | **tty:** 503.436.8097 | **f:** 503.436.2050

a: 163 E. Gower St. | PO Box 368 | Cannon Beach, OR 97110

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A-20

July 18, 2022

Planning Commission
City of Cannon Beach
163 East Gower Street
Cannon Beach, OR 97110

Subject: Forest Lawn Partition (P 22-01/CU 22-02)
Off-site Sources of Stormwater Discharge

Dear Planning Commission:

This letter is provided on behalf of Patrick/Dave LLC (applicant) as a response to comments made during the first evidentiary hearing held on June 23, 2022 for the above referenced project regarding off-site stormwater flows that are being impermissibly discharged onto the applicant's property. This issue is not directly relevant to the applicable approval criteria for either application currently under review. However, the applicant wanted to correct inaccurate statements and assumptions and provide clarification on this issue for the purpose of a complete and thorough public record.

As discussed during the hearing on June 23, 2022, there are two sources of stormwater discharge that are being conveyed to the applicant's property located at the corner of Forest Lawn Road and South Hemlock Street (tax lot 51030DA04100):

- Surface runoff from public rights-of-way (Forest Lawn Road); and
- Private runoff from a roof drain within tax lot 51030DA4104 to the south (1603 Forest Lawn Road)

These two sources of discharge are identified on Exhibit A. Photos of each source of discharge are also shown on Figures 1, 2, and 3 within Exhibit B. The applicant's consulting civil engineer, Morgan Civil Engineering, has calculated the volumes of stormwater runoff being impermissibly discharged to the applicant's property, which are included as Exhibit C.

Both sources of stormwater discharge violate the Cannon Beach Municipal Code (CBMC) and are not consistent with legal limitations on the alteration of the natural flow and discharge of stormwater. First, the stormwater discharge from 1603 Forest Lawn Road onto the applicant's property is not permitted per CBMC 13.16.050, which requires every private property owner within Cannon Beach control stormwater runoff within their own property. The owner of 1603 Forest Lawn Road was notified by the Cannon Beach Public Works Department of this violation on April 29, 2021 (see Exhibit D). In addition, the Cannon Beach Public Works Department's approval of the house constructed on this property required that stormwater be retained on-site by the property owner (see Exhibit E). This is not currently happening, and this property is also currently in violation of its approved building permits. Further, the applicant has not authorized the owner of 1603 Forest Lawn Road to discharge stormwater onto their property via an easement or other instrument. Lastly, per CBMC 17.43.040 and 045, point-source stormwater discharge to wetland and wetland buffer areas requires a conditional use permit (CUP). The owner of 1603 Forest Lawn Road does not have an active CUP for stormwater discharge to the wetlands within the applicant's property.

Second, the stormwater discharge from public rights-of-way is not permitted per CBMC 13.16.040. This chapter of the CBMC requires that public stormwater drainage facilities be located on city-owned property, city rights-of-way, and/or easements in favor of the City of Cannon Beach. While the stormwater management facilities shown on Exhibit A are within public rights-of-way, the existing outfall pipe (see Exhibit A and Figures 2 and 3 within Exhibit B) is directing stormwater discharge from public rights-of-way directly onto the applicant's property. Further, the City of Cannon Beach is not authorized to discharge stormwater onto the applicant's property via an easement or other instrument. Lastly, and as with the stormwater discharge from 1603 Forest Lawn Road, CBMC sections 17.43.040 and 045 require a CUP for point-source stormwater discharge to wetland and wetland buffer areas. The City of Cannon Beach does not have an active CUP for stormwater discharge to the wetlands within the applicant's property. Cannon Beach Public Works has acknowledged this problem and has stated their intent to solve this issue through alternative means of conveying public stormwater flows around the applicant's property, or by obtaining necessary permits and easements to legally convey the stormwater to the applicant's property.

The applicant is eager and willing to work with both the City of Cannon Beach and the owner of 1603 Forest Lawn Road on alternative means of stormwater conveyance that does not result in impermissible discharge to the applicant's property.

If you have any questions regarding any of the details included within or attached to 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.

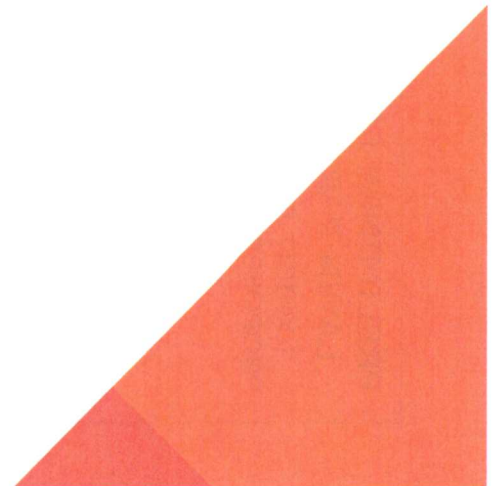
Matthew Robinson
Associate Planner

Attachment(s):

1. Exhibit A – Stormwater Discharge Source Map
2. Exhibit B – Photo Log
3. Exhibit C – Stormwater Runoff Calculations
4. Exhibit D – Letter from Cannon Beach Public Works to 1603 Forest Lawn Road
5. Exhibit E – 1603 Forest Lawn Road Public Works Development Plan Review Form

Exhibit A:

Stormwater Discharge Source Map













WETLAND
BUFFER

LAWN PARTITION
EXHIBIT SKETCH OF
PROPOSED LOTS 1 AND



1 INCH = 30 FEET

- | | | | | | |
|---|---|---|--------------------------|---|-------------------|
|  | PROPOSED ACCESS
AND UTILITY EASEMENT | ___ - - - | RIGHT OF WAY | | |
|  | AREA OF WETLAND | ___ - - - | LOT/PARCEL LINE | | |
|  | AREA OF PROPOSED
DRIVEWAY | ___ COMM ___ | WETLAND DELINEATION LINE | | |
| | | ___ SD ___ | COMMUNICATION | | |
| | | | STORM SEWER | | |
| | |  | POWER POLE |  | WATER METER |
| | TREE - CONIFER |  | POWER JUNCTION BOX |  | STORM CATCH BASIN |
|  | |  | STORM CULVERT | | |
| | |  | FOUND MONUMENT OF RECORD | | |
- L=66.68'
Δ=002°4'

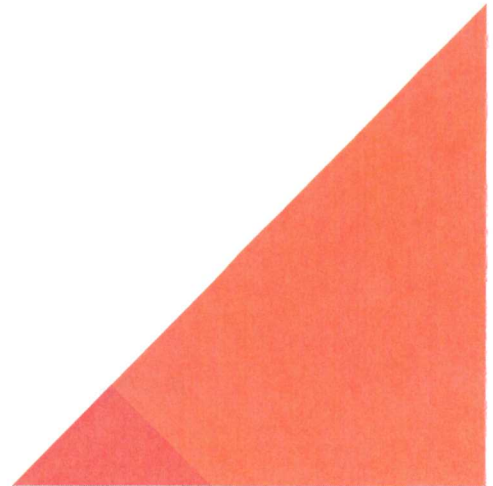
CURVE DATA:

C8	C9
R=1402.02'	R=1402.02'
L=66.68'	L=79.29'
A=002°43'30"	A=003°14'25"

S&F Land Services

Date: 7/11/2022
 Proj No: 20G30501

Exhibit B: Photo Log



PROJECT NAME Forest Lawn Partition

PROJECT NUMBER DOWL #14830-01
CB #P22-01 & #CU22-02

REPORTING N/A

DATE 7/12/2022

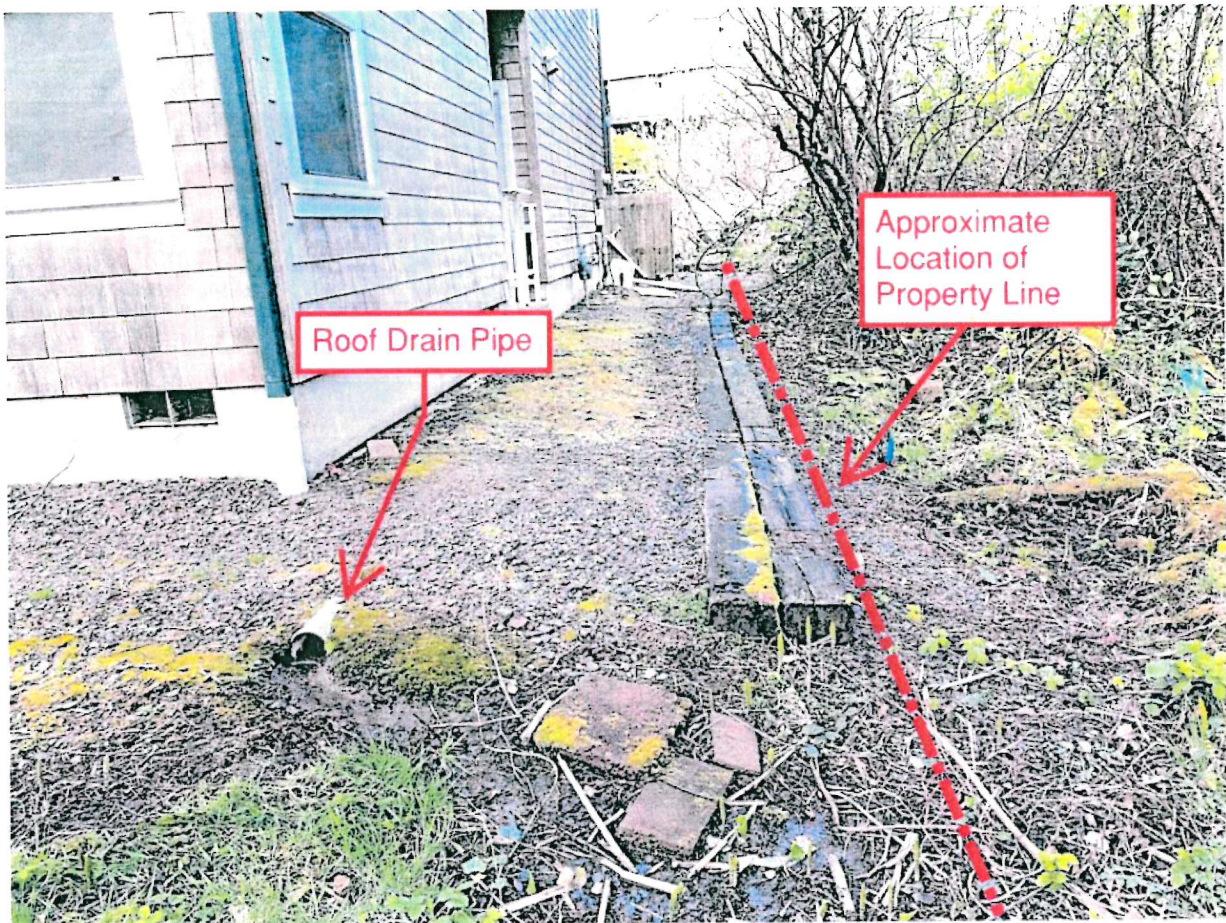
Figure 1: 1603 Forest Lawn Road Roof Drain Pipe

Figure 2: Public Stormwater Catch Basin (west side of Forest Lawn Road, looking east)

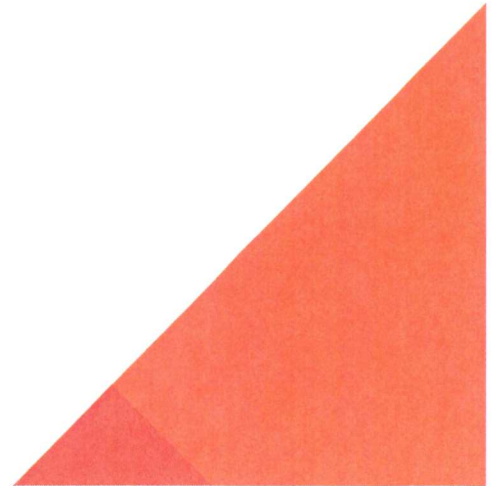


Figure 3: Public Stormwater Outfall Pipe (east side of Forest Lawn Road)



Exhibit C:

Stormwater Runoff Calculations





MORGAN CIVIL ENGINEERING, INC.

PO Box 358, Manzanita, OR 97130

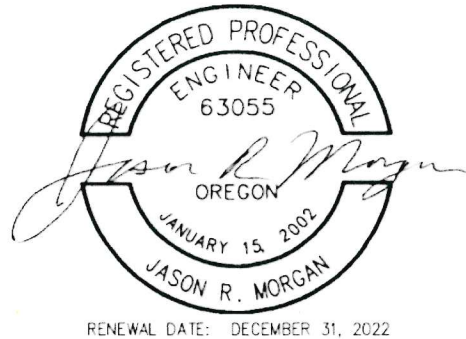
ph: 503-801-6016

www.morgancivil.com

Drainage Calculations for

Patrick Gemma Property
Parcel 3 of Partition Plat 2000-37
Tax Lot 4100, Map 5N 10W 30DA
City of Cannon Beach, Clatsop County, Oregon
#21-01-Gem

August 26, 2021



RENEWAL DATE: DECEMBER 31, 2022

Table of Contents

Sheet No.	Description
1-2	Cover Sheet, Table of Contents and Design Criteria
3	Narrative of Engineering Analysis and Limitations
4	Calculations – Run-Off

Drawing No.	Description
C1	Drainage Layout & Details

Design Criteria

Drainage Run-off

Location

Property coordinates

45°53'12.7"N 45.88685

123°57'47.3"W -123.963

Rainfall Depth

NOAA Atlas 2 – Precipitation-Frequency Atlas of the Western United States

24-hour duration

2-year interval = 4.5 inches

25-year interval = 6.3 inches

100-year interval = 7.5 interval

Narrative of Engineering Analysis

These calculations have been prepared to address the stormwater run-off currently running onto the subject property from adjacent areas.

Water from the adjacent property, 1603 Forest Lawn Road, is directed onto the property. Water from virtually all of Forest Lawn Drive is directed onto the property, either through a storm drainage system, or as direct run-off. Also, the water from the adjacent portion of Hemlock Street flows into the property.

The drainage system on Forest Lawn Drive collects water from the south end of the road and discharges it into near the southwestern corner.

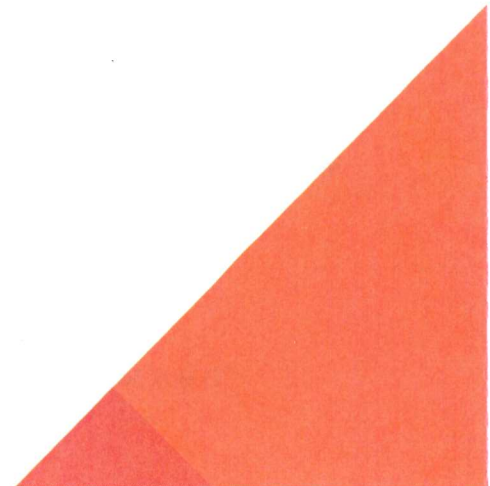
Water from the roof of 1603 Forest Lawn Road is piped to the rear of the house, where it enters the subject property.

The attached calculations show the amount of water calculated as run-off for each contributing area.

The volumes are determined for a 24-hour interval, with 25- and 100-year storm recurrence.

Patrick Gemma					
Tax Lot 4100, Map 5S 10W 30DA					
Forest Lawn Drive, Cannon Beach, Oregon					
#21-01-Gem					
Water run-off from adjacent roadways and houses					
Southern Area	Northern Area				
Forest Lawn Road	Forest Lawn Road		Roadway	Roof Run-off	
Drainage System	Road Run-off		Hemlock St	1603 Forest Lawn Road	TOTAL
29,400	7,300	square feet	9,000	1,600	47,300
0.67	0.17	acres	0.21	0.04	1.09
Property coordinates					
45°53'12.7"N	45.886854				
123°57'47.3"W	-123.963131				
NOAA Atlas 2 - Precipitation-Frequency Atlas of the Western United States					
Southern Area	Northern Area				
Forest Lawn Road	Forest Lawn Road				
Drainage System	Road Run-off		Hemlock St	1603 Forest Lawn Road	TOTAL
2-year storm	24 hr precipitation				
4.5	4.5	inches	4.5	4.5	TOTAL
11,025	2,738	cf/day	3,375	600	17,738
82,688	20,531	gal/day	25,313	4,500	133,032
25-year storm	24 hr precipitation				
6.3	6.3	inches	6.3	6.3	TOTAL
15,435	3,833	cf/day	4,725	840	24,833
115,763	28,744	gal/day	35,438	6,300	186,245
100-year storm	24 hr precipitation				
7.5	7.5	inches	7.5	7.5	TOTAL
18,375	4,563	cf/day	5,625	1,000	29,563
137,813	34,219	gal/day	42,188	7,500	221,720

Exhibit D:
Letter from Cannon Beach Public
Works to 1603 Forest Lawn Road





CITY OF CANNON BEACH

April 29, 2021

Quail Cove, LLC
c/o Rosanne Dorsey
4344 SW Hillside Drive
Portland, OR 97221

Dear Rosanne,

Per Municipal Code 13.16.050 of the City of Cannon Beach, every property owner within City limits is required to control any storm water runoff.

Any person responsible shall maintain nonpublic storm drainage facilities on his or her property so as to prevent flooding or damage to other property not owned or controlled by the person responsible and to prevent injury to any person on property not owned or controlled by the person responsible.

Your property at 1603 Forest Lawn Road appears to have open pipes disposing runoff water onto the neighboring vacant lot to the north. See the enclosed photos for reference. Based on the aforementioned municipal code, you are required to rectify this problem. Please resolve this issue by Thursday, June 3, 2021. Failure to comply with this request may result in a fine.

You have the option to hook up to the City's stormwater system to direct your runoff water away from your property as well as the neighboring properties.

If you have any questions, please feel free to contact me at (503) 436-8068.

Sincerely,

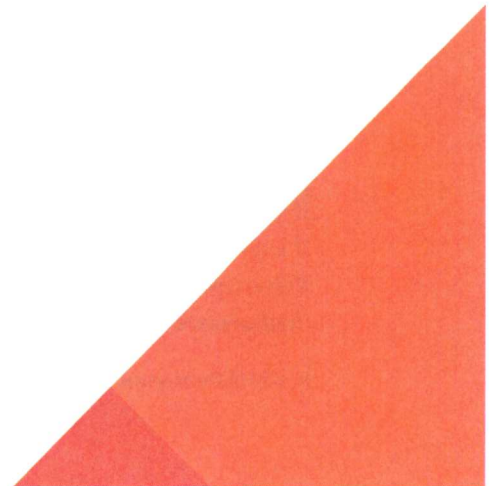
Karen La Bonte
Public Works Director
City of Cannon Beach

enclosure





Exhibit E:
1603 Forest Lawn Road Public Works
Development Plan Review Form





DEPARTMENT OF PUBLIC WORKS

163 E. Gower Street, Cannon Beach, OR 97110

Phone (503) 436-2045, Fax (503) 436-2050

Development Plan Review

BP 04-130

Site Plan Attributes:

New Construction ☐ Remodel ☐

Site Address: 1603 Forest Lawn

Map/tax lot 51030DA - 4104

Subdivision _____

Block _____ Lot _____

Owner or owner's Rep: Comfort

Phone: _____

Address: _____

Fax: _____

Scale: ☐ 1" = 10' ☐ 1" = 20' ☒ 1/8" = 1' ☐ Other _____

North Arrow: ☒ Locate Note: ☐ Legend: ☐ Lot Dimensions ☒

Shows all existing and proposed ROWs and Easements? ☒ Yes ☐ No

General Requirements:

Under 12.36.030 of the City Code, a Right-of-Way Use Permit is required for placement or removal of any improvement within the street right-of-way. Please see attached form. Work in ROW will not occur on Saturdays, Sundays and after 12:01 p.m. on Fridays without P.W. Director's approval. Traffic control is to comply with the signing requirements of the "Manual on Uniform Traffic Control Devices." All work shall be done in accordance with all applicable provisions of federal, state and local law, ordinance and administrative rules. All work in public right-of-way and all work which is connected, directly or indirectly, to the City of Cannon Beach's water, sanitary sewer, or storm sewer lines shall be constructed in accordance with applicable current APWA Oregon Chapter Standards. Is a pre-construction meeting required? ☐ Yes ☒ No

Road Construction:

Street surface type: ☐ Asphalt ☒ Gravel ☒ Pre-existing ☐ New ☐ Dead End Street? ☐ Yes ☒ No

Do slopes exceed 12%? ☐ Yes ☒ No Do slopes exceed 15% (see 12.34.050.D)? ☐ Yes ☒ No

In general, utility trenching through existing pavement across the road alignment is discouraged. In cuts parallel to the road alignment, the open cut shall be a neat-line cut made by saw cutting a continuous line. All pavement cuts must be temporarily paved with cold mix asphalt within 7 days and permanently paved with hot mix within six months. The minimum aggregate section, unless otherwise approved by the Director, shall be 6-inch base course of 1 1/2 - 0 inch crushed rock. The wearing surface of asphalt concrete (A.C.) streets shall be Level 3. Minimum total thickness of asphalt concrete shall be three inches in two lifts. Asphalt Street Cutting? ☐ Yes ☒ No

Conformance with road design standards? ☐ Yes ☐ No ☐ Incomplete Submittal ☒ NA

Driveway Entrance:

If lot frontage is 50 ft. or less, maximum allowable width of driveway at property line is 20 feet. If lot frontage is greater than 50 feet the maximum allowable width is to be determined.

Lot Frontage: 50.2 ft. Maximum allowable driveway width: 20 ft.

Do plans show where the driveway will be connecting to existing roadway and surface type? ☐ Yes ☐ No

Drainage Improvements required: ☐ 10" culvert or adequate bridge ☐ To be determined ☒ None required

All driveways must be located the maximum distance which is practical from a street intersection and in no instance shall the distance from an intersection be closer than 40 feet on an arterial street and 10 feet on a local street as measured from the nearest curb return radius. Distance of driveway from street intersection: >200 ft.

Drainage: See note next page

All development applications must include a plan for disposal of storm water runoff. Unless the site is served by existing City-maintained storm sewer, the plan must address the capacity of the storm sewer system.

Does parcel drain to an adjacent surface water feature? ☐ Yes ☒ No

Name/Type of water feature: _____

Is there an existing drainage system near site? ☐ Yes ☒ No

If yes, attach map of existing system. Is there adequate drainage capacity? ☐ Yes ☐ Improvements Required

If improvements are required, will it be incorporated into the public system? ☐ Yes ☐ No ☐ TBD ☒ NA

Video tape inspection of storm drain extension required? ☐ Yes ☒ No ☒ NA

Conformance with storm drain design standards? ☐ Yes ☐ No ☐ Incomplete Submittal ☒ NA

Sanitary Sewer:

Service existing? ☐ Yes ☒ No Location: _____
 Install new sewer lateral? ☒ Yes ☐ No If yes, installation of the service to the property line is done by City personnel. Owner is to indicate preferred lateral location at property line and advise public works.
 Conformance with sanitary sewer system design standards. ☐ Yes ☐ No ☐ Incomplete Submittal ☒ NA
 Video tape inspection of sewer extension or lateral required? ☐ Yes ☒ No
 Grease Trap Required ☐ Yes ☒ No

Water:

Service existing? ☐ Yes ☒ No Location: _____
 Install new service branch? ☒ Yes ☐ No If yes, installation of the service to the property line is done by City personnel. Owner is to indicate preferred meter location at property line and advise public works.
 Meter upgrade required? ☐ Yes ☒ No Main Extension required? ☐ Yes ☒ No
 Location of closest fire hydrant: Ross & Hemlock Distance to property: 150 ft.
 Conformance with water system design standards? ☐ Yes ☐ No ☐ Incomplete Submittal ☒ NA
 Approved Backflow Assy Required ☐ Yes ☐ No TBD

Other Utilities:

The City requires all wire utilities to be run underground. Contractor is to secure separate Right-of-Way Use Permit prior to work and submit utility schematics. Natural gas is to be coordinated with NWNG.

Misc:


Other issues that will need to be addressed:

1. Drainage – there is no storm drain available. Owner must retain storm water on site.

2. _____

 3. _____

 4. _____

Plans Reviewed / Approved By: Cruz Flores 	Date: 12/16/04
--	----------------

Public Works Final Approval: (Checked items require inspection)

	Date of Approval
Road Structure	
Drainage Structures	
Driveway	
Utilities	
Wastewater Connection	
Water Connection	
Misc.	
Final Approval	



A-21

July 20, 2022

Planning Commission
City of Cannon Beach
163 E Gower
Canon Beach, OR 97110

**RE: Clear and Objective Standards – ORS 197.307(4)
P 22-01; CU 22-02**

Dear Planning Commission,

This office represents Patrick/Dave LLC, the applicant in the above-referenced partition application. The applicant has requested a 3-lot partition on a 1.1-acre parcel located west of Hemlock Street (the “Project”). During the initial evidentiary hearing before the Planning Commission there was confusion related to the statutory requirements of ORS 197.307(4) and the implications of that state law for this application. The purpose of this letter is to clarify the requirements of ORS 197.304(4) and related statutes and to clearly identify the limited set of clear and objective standards applicable to the application for this Project.

We note at the outset that the applicant provided a narrative that addressed each approval criterion identified by staff as applicable and demonstrated that the Project satisfies the identified criteria. Staff agreed that the Project satisfies each criterion addressed in the application narrative and recommended approval of the Project. However, many of the identified criteria are not clear and/or are not objective. Those standards cannot be applied by the City to this application under the currently applicable state law. Therefore, while we continue to believe that the Project satisfies all standards addressed in the application, through this submittal we object to the application of the criteria identified in Exhibit A, Section II to the Project.¹

I. The Project is Housing to Which ORS 197.307(4) Applies

The subject property is zoned Residential Medium Density (R2), and the Project is a partition to create lots for housing consistent with the zoning designation. The “clear and objective” requirement of ORS 197.307(4), as amended in 2017, provides:

¹ See *Recovery House IV v. City of Eugene*, 150 Or App 382, 384, 946 P2d 342 (1997); *aff’d* 156 Or App 509, 965 P2d 488 (1998) (applicant has the right to submit an application under one set of standards while at the same time challenging whether those standards even apply to the proposed development).

(4) Except as provided in subsection (6) of this section, a local government may adopt and *apply only clear and objective standards*, conditions and procedures *regulating the development of housing, including needed housing*. (emphasis added).

Before it was amended in 2017, the statute only applied to “needed housing” on “buildable land.” However, the statute is no longer limited to needed housing on buildable lands, but instead, by its plain terms, applies to all “development of housing, including needed housing.” The legislature would not have clarified that the term “housing” included “needed housing” if the statute were intended to only apply to needed housing. The Oregon Court of Appeals and the Land Use Board of Appeals have consistently applied the statute to all housing following the legislative amendments. The 2017 amendments also removed the reference to “buildable lands,” and therefore, it applies to all lands.²

Finally, the Court of Appeals and the Land Use Board of Appeals have confirmed on multiple occasions that the statute applies to proposed land divisions of residential land for purposes of housing.³ Therefore, ORS 197.307(4) requires the City to “apply only clear and objective standards, conditions and procedures” to this application for a partition in a residential zone.

II. The sole exception to ORS 197.307(6) does not apply to this partition

There is only one exception⁴ to the clear and objective requirement, found in ORS 197.307(6) and that exception does not apply here. That subsection provides:

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply *an alternative approval process* for applications and permits *for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics* that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the *alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section*.

ORS 197.307(6) (emphasis added).

² See, *Warren v. Washington County*, 296 Or. App 595, 439 P3d 581, *rev den*, 365 Or 502, 451 P.3d 988 (2019) (confirming that ORS 197.307(4) no longer refers to “buildable land,” and concluding that “by its terms provides that local government can only regulate the development of housing only through clear and objective standards, conditions, and procedures.”)

³ See e.g., *Warren v. Washington County*; *Nieto v. City of Talent*, __Or LUBA__, (LUBA No 2020-100, Mar 10, 2021); *Knoell v. City of Bend*, __Or LUBA __ (LUBA No. 2021-037, Aug 20, 2021).

⁴ See *Group B LLC v. City of Corvallis*, 72 Or LUBA 74 (2015) (slip op at 5), *aff'd* 275 Or App 577 (2015), *rev den* 359 Or 667 (2016) (noting that subsection (6) is the “sole exception” to the requirement of subsection (4)).

First, the alternative under subsection (6) must be “[i]n addition to,” meaning the applicant must have the “option of proceeding under” an approval process based on clear and objective standards under subsection (4). Second, in this case, there are no alternative land division or development processes that are 1) based in whole or in part on appearance or aesthetics, or 2) authorize density at or above the density level authorized under the requested partition process. For example, allowing just a single dwelling on the existing 1.1-acre lot is not an alternative process based on approval criteria that regulates appearance or aesthetics. Additionally, under the clear and objective land use standards identified in Exhibit A, Section I, the applicant has proposed 3 lots on the existing 1.1-acre lot and each lot satisfies each of the clear and objective land division standards. Therefore, identifying development of a single house as an alternative fails to authorize density at or above the density allowed on the lot through clear and objective land divisions standards. For these reasons, the exemption, by its express terms, does not apply here and cannot be used to avoid the City’s obligation to apply only clear and objective standards, conditions and procedures to the requested residential land division.

III. Clear and Objective Standards Applicable to the Project

The Oregon courts have articulated the requirements for “clear and objective” standards, and recently the Court of Appeals explained that fundamentally the requirement has two parts: (1) the standard, condition, or procedure must be objective, and (2) the standard must be clear.⁵ In other words, in order to apply, a standard must be both clear and objective.

For purposes of the first part of the test, LUBA has explained that “objective” means existing “independent of mind.”⁶ Standards are not objective “if they impose subjective, value-laden analyses that are designed to balance or mitigate impacts of the development on (1) the property to be developed or (2) the adjoining properties or community.”⁷ To be “clear” under the second part of the test, a standard must be “clear enough for an applicant to know what he must show during the application process,” it must be “easily understood and without obscurity or ambiguity,” and it must not be capable of multiple constructions that support diametrically opposed conclusions.⁸

It is the City’s burden to “demonstrate that the approval standards, conditions and procedures are *capable of being imposed only* in a clear and objective manner.” ORS 197.831 (emphasis added). Furthermore, the standards, conditions, and procedures “must be clear and objective *on the face of the ordinance*.” ORS 227.173(2) (emphasis added).

Exhibit A includes all of the standards identified in the Staff Report as applicable to this land division decision. While the City ultimately bears the burden of demonstrating the standards it imposes on this Project are clear and objective, we have included the limited list of staff report standards that are both clear and objective in Section I of the exhibit. The applicant has clearly demonstrated that each of the Section I standards have or will be satisfied by the proposed partition. We have also identified those

⁵ *Roberts v. City of Cannon Beach*, 316 Ore. App. 305, 311, 504 P.3d 1249 (2021).

⁶ *Nieto v. City of Talent*, __Or LUBA__, __ (LUBA No 2020-100, Mar 10, 2021) (slip op at 9 n 6).

⁷ *Id.*

⁸ *West Main Townhomes v. City of Medford*, 233 Or App 41, 48, 225, P3d 56 (2009), adh'd to as modified on recons, 234 Or App 343, 228 P3d 607 (2010); *Roberts v. City of Cannon Beach*, __Or LUBA__, __ (LUBA No 2020-116, July 23, 2021) (slip op at 19), aff'd, 316 Or App 305, 312, 475 P3d 121 (2021) (quoting Nieto); *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74, 83, aff'd, 275 Or App 557, 36 P3d 847 (2015), rev den, 359 Or 667 (2016).

standards that are not objective and/or clear, followed by a brief explanation of why they fail one or both of the required tests for standards that can be applied to the Project. In other words, the standards identified in Exhibit A, Section II -fail on their face to meet the requirements of clear and objective standards and the City cannot meet its burden to demonstrate otherwise.

IV. Request

We ask that you determine that the Project is housing development subject to the requirements of ORS 197.307(4) and, as required by state law, only apply “clear and objective standards, conditions and procedures” to the application. The clear and objective standards applicable in this case are identified in Exhibit A, Section I.

We appreciate your time and attention to this matter.

Best regards,

Renee M. France

cc via email: William Kabeiseman

Exhibit A

I. Clear and Objective Standards Applicable to the Project

The following standards are both clear and objective, and therefore can be applied to this partition application.

16.04.310 Design Standards – Lots

A. Size and Dimensions. The size of parcels or lots to be created by a partition or subdivision shall be determined by the zone in which the property is located and the average slope of the property from which the parcels or lots are to be created. The minimum lot size for parcels and lots created shall be as follows:

Percent of Average Slope	Minimum Lot Size per Dwelling Unit (square feet)
0—14.99	Set by zoning district
15—19.99	10,000
20—29.99	15,000
30—34.99	20,000
35—	40,000

To determine the average slope of a property proposed for subdivision the following formula shall be applied:

$$S = \frac{0.0023 \times L \times L}{A}$$

A

The dimensions of lots shall not be less than required by the zoning ordinance.

These lot size and dimension standards are clear and objective. The record shows that the average slope for the Property is 6.48% and therefore the R2 minimum lot size of 5,000 square feet applies.

B. Location. All lots shall have a twenty-five-foot frontage on a publicly dedicated street.

This standard is clear and objective as applied to the proposed partition configuration. The Tentative Partition Plan demonstrates that this standard is satisfied.

16.04.330 Design Standards – Trees

No trees shall be removed in the development of the subdivision or partition except those within the designated public rights-of-way and easements for public utilities. All trees on individual building lots shall be retained until such time as plans are submitted for a building permit and approved as to specific locations of building pads, driveways and other aspects of land disturbance. An exception to this standard can be made by the planning commission as part of the subdivision or partition tentative plan, specifying which trees are to be removed and for what purpose.

This subdivision standard is clear and objective as it relates to the timing of tree removal. As required, all trees on individual lots will be retained until tree removal permits and building permits are approved.

16.04.340 Design Standards – Utilities

All utilities shall be placed underground and meet the standards specified by the public works director.

This is a clear and objective standard and the applicant will comply with the utility standards.

17.14.040 Residential Medium Density Standards

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).

This numerical lot size requirement is clear and objective, and each of the proposed lots are at least 5,000 square feet.

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.

These lot dimension standards are clear and objective, and the applicant has demonstrated how residential development on each lot can comply with standards 1 through 5. The lot is separated from the ocean shore by Forest Lawn Road and multiple private lots under separate ownership. Because none of the proposed lots abut the ocean shore, standard B.6 is not applicable to this partition or subsequent development on the parcels created.

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

The lot coverage standard is clear and objective. The standards will be directly applied at the time of development, but the applicant has demonstrated through Table 3 in the application that they will be met based upon lot area in comparison to lot coverage area taking into consideration the building site area and the paved areas.

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.

The FAR and building height standards are clear and objective and compliance will be confirmed at the time of development on each lot.

G. Parking. As required by Section 17.78.020.

The requirement for two off-street parking spaces for single-family dwellings at 17.78.020 is clear and objective and compliance will be evaluated at the time of development on each lot. Additionally, the applicant has demonstrated that two off-street parking spaces can be provided on each lot in compliance with this standard.

17.43.050 Wetlands Overlay Zone - Standards

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).

As written, this standard is not clear and objective because it requires consideration of actions with no clear standard. However, in this case, the applicant is proposing lots that each have a building envelope, driveway access, and utilities that will avoid impact to wetland and wetland buffer areas altogether, the highest priority action under the standard. Therefore, while the standard itself is not clear and objective, in this case it can only be applied in a way that concludes that the proposed partition and resulting buildable area on each lot satisfies the highest priority action, and therefore the application satisfies the standard.

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.

This is a clear and objective standard and the applicant has provided the required plat map identifying the wetland boundary.

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.

These are clear and objective standards. The Tentative Partition Plan and Table 1 of the application narrative demonstrate that each proposed lot will have at least 1,000 square feet of upland for the identified purposes that does not include the wetland or the wetland buffer.

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.

These standards are clear and objective. The applicant has demonstrated that they are satisfied with the proposed partition.

II Standards Not Clear and/or Not Objective that are Not Applicable to the Project

The following standards are either not clear or not objective or neither clear nor objective.¹ Each italicized standard is followed by a brief explanation of why it is not applicable to the Project.

16.04.130 Applicable Standards

A. General Development Policies

The following general development policies have been extracted from the Canon Beach Comprehensive Plan, which in turn guides the subdivision standards of the Oregon Municipal Code. By their very nature these general policies are neither clear nor objective. The specific reason that each policy is not clear and/or objective is also provided below. Note that the Staff Report indicated that only policies 2, 7, and 9 apply to this partition. However, the City's arborist identified Policy 15 to support his belief that the application should be denied and other policies were mentioned during the hearing. Therefore, all of the policies are evaluated below.

¹ This list and the list provided under Section I of this Exhibit, generally identify the approval standards addressed in the staff report. However, there are other municipal code provisions identified in the staff report and narrative that are not applicable to the request or are not approval standards, and are therefore not identified in this exhibit. However, if any additional code provisions are identified as applicable approval standards by the public or by the City through this petition process, the applicant reserves the right to provide evidence and arguments related to whether those provisions satisfy the statutory requirement to be clear and objective in order to apply to this decision.

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.

This general policy directs the City to control excavation, grading and filling, and the City controls those elements of development through development standards and building code requirements. The broad purposes for that control, however, are neither clear nor objective. The goal of avoiding landslides and other geologic hazards does not provide clear direction to what an applicant must demonstrate in the context of a land division. The same is true for protecting adjacent property and structures. What constitutes an “appropriate” drainage improvement is neither clear nor objective. What is appropriate requires a subjective judgement. Similarly, the goal of minimizing vegetation removal and erosion is neither clear nor objective. Whether erosion of vegetation removal has been adequately minimized requires subjective judgement. Finally, the goal of protecting the “aesthetic character” is neither clear nor objective because it requires a subjective analysis to determine what the aesthetic character is and another judgement to determine whether it has been adequately protected.

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>	15
<i>Duplex or medium (R2), (RMa), (MP), (RAM)</i>	11
<i>Moderate single-family (R1)</i>	8
<i>Low (RL)</i>	4
<i>Very low (RVL)</i>	1

The land capability requirements of general policy 5 are neither clear nor objective. The policy does not clearly define what percentage of slope, what level or type of geologic hazard, nor what type of drainage characteristics affect the capability of the land. Furthermore, the policy does not clearly establish what, if any, reduction in density would be appropriate based upon those factors.

The net density standards themselves are clear and objective. The Property in this case is 1.1 acres and is zoned Medium Density – R2. Therefore, 12 dwellings are permitted on the Property under the net density standards. The applicant is requesting a 3-lot partition that would accommodate 3 dwellings, which is well within the maximum allowed under the net density standard. It is important to note that the number of lots was reduced in this case to just 3 lots in order to satisfy the clear and objective standards related to wetland impacts and buildable lot area identified above. Therefore, the overall policy objectives in this case have been implemented through clear and objective standards. That, however, does not make the broad policy itself clear and objective.

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.

The policy includes two parts. The first only applies to areas with slopes exceeding 20%. The slopes on the subject Property do not exceed 20%. Even if they did, what is necessary to “control” development for purposes of this policy is neither clear nor objective. Under the second part, determining what constitutes a “potential” geologic hazard, a “potential” adverse impact, and determining what level of minimization is needed, is neither clear nor objective.

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.

This policy appears to in part identify what needs to be submitted with an application, and in part dictate structural engineering requirements at the time of development. While it is not clear that the subject Property is in an area of potential landslide hazard, a registered geologist conducted a site-specific investigation and the report for that investigation was submitted with the application. Whether an engineered foundation would be required at the time of building development under this policy alone is neither clear nor objective. Moreover, any future determination that an engineered foundation is needed is a determination for the building official and cannot provide a basis for denial of the requested partition under the plain text of this policy.

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.

This policy is not objective because it states that a site report may be needed, and therefore the determination of whether it is needed for a particular development is subjective. The applicant in this case did submit a geotechnical report prepared by a registered engineer. Even if this policy could be applied, nothing more than preparation and submittal of the report is required by the policy.

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.

The subject Property does not contain any area with slopes exceeding 20%. Therefore, while the trigger for site investigations is clear and objective under this policy, the policy is not applicable to this Property.

7. General Development Policy 14. To ensure that development is designed to preserve significant site features such as trees, streams and wetlands.

This policy is neither clear nor objective. The level of preservation contemplated by the policy is ambiguous and thus not clear. Furthermore, whether a specific feature is significant requires a value-laden analysis and is therefore not objective. This policy is implemented in part through the objective wetland impact standards identified above that are satisfied by this application.

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.

This policy is neither clear nor objective. The policy itself does not clearly set forth the method of regulation. Furthermore, what is needed to preserve the city's aesthetic character is both ambiguous and subjective. Finally, it is not clear what is needed to control soil erosion and landslide hazard problems or where that control would be needed in relation to tree removal.

9. General Development Policy 16. To provide flexibility in regulations governing site design so that developments can be adapted to specific site conditions.

The flexibility called for in this policy is by its very nature vague and subjective.

16.04.310 Design Standards – Lots

C. Lines. Side lot lines shall be substantially at right angles to straight street lines or radius to curved street lines.

The Tentative Partition Plan depicts side lot lines that are either at or very close to right angles or radius to the streets, we note for the record that this standard is not clear as the term “substantially” is ambiguous.

E. Building Envelopes.

1. The planning commission shall have the authority to require the designation of building envelopes on lots or parcels of land where it finds that the designation of building envelopes is necessary for the protection of significant natural resources, such as wetlands, stream corridors or trees. Building envelopes may also be designated to avoid construction in identified geologic hazard areas. The size and shape of the building envelope shall be that which the planning commission determines necessary to protect the identified resource.

2. Where a building envelope is designated, the building envelope shall identify and limit the location of principal and accessory structures, parking areas, and associated site development, excluding roads and driveways, to the building envelope. All the elements of principal structures and accessory structures shall be located within the designated envelope, including building elements such as roof overhangs, bay windows, chimneys, unroofed landings and decks attached to the building.

The applicant has identified building envelopes that comply with the clear and objective standards identified above, and development within those building envelopes would comply with the clear and objective provisions of E.2. However, the building envelope standard at E.1 is neither clear nor objective.

First, what qualifies as a “significant natural resource” is neither quantified nor mapped and therefore, what resources are significant is neither clear nor objective. Furthermore, whether a specific building envelope configuration is “necessary” for the protection of a resource is a discretionary, value-laden decision, and therefore is not objective.

17.14.040 Residential Medium Density Standards

I. Geologic of Soils Engineering Study. As required by 17.50.

The applicant prepared a geotechnical report at the request of the City. The report concluded that any potential geologic hazards can be mitigated during development, and the applicant has met the burden of proof to show construction feasibility. However, the acceptable level to which a hazard must be minimized is not identified by 17.50.040 and these provisions are not clear and objective. Therefore, the City cannot apply the 17.50.040 provisions to deny the requested partition.

17.43.050 Wetlands Overlay Zone - Standards

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:

2. Subdivisions, replats, partitions and property line adjustments for the purpose of creating building sites are permitted subject to the following standards:

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.

The basic provisions of this standard are clear and objective. However, whether including the wetland for minimum lot size and setback area is “appropriate” is subjective. Therefore, this standard cannot be applied to conclude that the minimum lot size and setback standards have not been satisfied.

17.70.030 Tree Removal and Protection – Additional Requirements

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.

As noted in an earlier submission into the record, this requirement only provides that the retention of trees be considered in the design of partitions. The record shows that the applicants considered tree retention as part of partition design. However, this requirement is neither clear nor objective. The provision further requires that the removal of trees be considered in the review process for partitions. The requirement for the decision makers to consider the removal of trees as part of the review process is neither a clear nor an objective standard. First, it is not clear how that consideration relates to the decision. More importantly, if the requirement were applied to deny or condition the partition it would require a subjective, value-laden decision related to tree removal. Finally, the applicant is not proposing to remove trees for the placement of roads or utilities. However, that element of the provision is not objective because determining whether retention is possible requires subjective analysis.

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.

This standard requires a consideration and balancing of factors that by its very nature requires a subjective, value-laden analysis and weighing of those factors. This is not an objective standard.

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.

The applicant has provided evidence into the record demonstrating that the three single-family homes that would be allowed following the requested partition would not create traffic congestion or overburden the identified systems. However, whether the partition would create “excessive” traffic or “overburden” the identified systems requires a subjective analysis, and therefore, it is not an objective standard.

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.

Whether a site has an “adequate” amount of space for the identified elements of a future development requires a subjective, value-laden analysis. Therefore, this standard is not objective.

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.

This first element of the standard is neither clear nor objective. The term “other physical characteristics” is ambiguous. Furthermore, whether the topography, soil and other characteristics are “appropriate” for the use requires a subjective, value-laden analysis. The second element of the standard is also not clear or objective. The level of reduction needed is not clear. Furthermore, the “extent necessary” requires a subjective analysis and is therefore not an objective standard.

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.

Whether the site layout is “adequate” is subjective. Furthermore, how the considerations are weighed or evaluated requires a subjective analysis. Finally, the use of the term “in part” creates uncertainty and

ambiguity around the requirements for an adequate or suitable site layout. For these reasons, the standard is neither clear nor objective.

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

The determination of compatibility of the site design with the surrounding area requires a subjective, value-laden analysis related to impacts on the community. Therefore, the standard is not objective. Furthermore, the terms “compatible” and “surrounding area” are ambiguous. Therefore, the standard is not clear.



D-14

June 23, 2022

D-14

To: Cannon Beach Planning Commission
Cannon Beach City Council

From: Austin Raglione
Gabriella Raglione
Tim Roush
216 E. Gower Street

Re: P# 22-01 and CU# 22-02

We are unable to attend the hearing this evening due to family matters, but we are writing to express our strong opposition to the proposed three-lot Conditional Use application and partition in the Wetland Overlay Zone adjacent to Forest Lawn Road.

We are opposed to this request because of the extensive removal of existing trees that would be required to develop these lots. This extensive tree removal has been identified in the City's own report, and many of them are older and significant trees and have large root systems. Because of the public benefit these trees provide, steps should be taken to preserve them, not remove them.

Additionally we are opposed to adding development potential in or adjacent to the Wetland Overlay Zone. That designation is there for a reason and it is incumbent upon us to respect that and protect what we can. The applicant should be allowed to build what is currently allowed in the code. They should not be allowed to further erode our trees and sensitive environmental areas and wetland to have the added benefit of increased profit the additional building lots would give them.

Often times the City's hands are tied when it comes to preserving large trees or protecting sensitive environmental areas. This is a situation where the City absolutely can make the decision to preserve existing trees and protect the environment by denying the Conditional Use application. We urge the Planning Commission and City Council to exercise its authority to protect the trees and the wetlands and deny the application.

Additionally we believe it would be in the community's best interest to provide more clarity in the zoning code to protect trees and sensitive environmental areas where appropriate and while development occurs. We would be happy to serve on any volunteer committee formed to review current code and make recommendations to the City Council. We are not anti-development but believe environmental considerations should be part of the development review process, particularly in light of our decreasing tree canopy and dwindling wetlands, and think clearer standards would benefit everyone.

Thank you very much for your consideration.



D-15



June 23, 2022

Cannon Beach Planning Commission
c/o/ Cannon Beach Community Development Department
Cannon Beach, OR

Re: P 22-01 and CU 22-02, Request for a Partition and a Conditional Use Permit for a three-lot partition in the Wetland Overlay Zone

Via Email: planning@ci.cannon-beach.or.us

Dear Chair Newton and members of the Planning Commission,

Oregon Coast Alliance (ORCA) is an Oregon nonprofit corporation whose mission is to protect coastal natural resources and work with coastal communities to increase livability. We write this letter today out of concern for the Forest Lawn partition proposed in the wetland overlay zone.

This has been a controversial project because of the presence of a .68-acre palustrine, seasonal wetland on the site, identified in the city's wetland inventory. Nevertheless, the site is zoned R-2, with a designation of Residential. Portions of the site lie within the city's Wetland Overlay zone (17.43.050).

According to the application, all three proposed lots now meet the lot area, width and depth requirements, as well as the minimum upland area requirement for lots in the Wetland Overlay zone.

The city's determination of whether to allow this project, modify it or find it does not meet ordinance requirements will hinge in good measure whether the three lots are proposed for the *upland* portion of each lot, and whether the integrity of the wetland would be thereby maintained. As the application itself notes, (p. 7), the site is generally flat "with minimal topographic variation," which will require of the planning commission a close scrutiny to

determine if there is adequate upland for the houses proposed. This is especially important as buffer areas for "Wetland A" encroach onto each proposed lot, and the partition could not have apparently been done without including both the wetland and the buffer areas.

ORCA would caution the planning commission likewise on the grounds of geological hazard. The hazard report prepared by Earth Engineers for this property makes it clear there are large ancient landslide deposits, and the parcel is within a landslide hazard area. A report by geological professionals which states, ". . . it is our professional opinion that the site is likely at risk from shallow and deep global landslides" (p. 13) is an opinion Cannon Beach decision-makers need to take seriously. All the more is this the case when the report concludes with "Ultimately, owning a home in this area means there is an acceptance of risk that the property is located among very large ancient landslide deposits and within a landslide hazard area ..."

Given these two serious issues on this property, the planning commission needs to look at alternatives, such as fewer houses, or finding the property unbuildable given its ecological and geological constraints.

Please place this testimony into the record for this matter.

Sincerely,

/s/ Cameron La Follette

Cameron La Follette



D-16

I'm responding with further comments following the initial hearing regarding the Forest Lawn wetland. I filed the appeal opposing the City's permit allowing relocation of the stormwater discharge along Forest Lawn. My past efforts are documented in my two (2) previous submissions to the City and Planning Commission. My primary goal in filing the earlier appeal and participating in this process is to ensure that future permits and applications take into account the wetland status of taxlot 4100 and adhere to the requirements set forth in the Cannon Beach Municipal Code related to wetlands.

To date, the Planning Commission has held one meeting regarding the Partition and Conditional Use application filed by the owner of taxlot 4100. Several community members spoke as did the Applicant/Builder. It struck me that some of Applicant's assertions were potentially skewed, misleading or in need of further inquiry. Of most concern is the assertion by Applicant's attorney that the City is obligated to partition the wetland in order to favor infill housing. I question this assertion and would ask for legal precedent supporting the value of housing over that of a wetland. By my read, the Cannon Beach Municipal Code very clearly disputes this premise and speaks directly to the issue at hand. Please see below (emphasis added):

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. (Ord. 94-29 § 2)

Taxlot 4100 is in a Wetland Overlay (WO) Zone and is also a Wetland Lot-of-Record. The lot is currently owned by a single owner. The City's Code speaks directly to this situation and clearly states that only one dwelling is allowed in the upland portion of the lot. There is no mention of an obligation to partition a Wetland Lot-of-Record or WO Zone. In fact, the City's code appears to value wetlands and sets forth measures to preserve wetlands by limiting development. A clear standard has been set by the City's code and Applicant is asking us to ignore this standard. The City's code also sets forth examples of how the law should be applied. I ask that the Planning Commission review these examples and apply the City's code and examples to taxlot 4100. To sum up, the City code sets forth a clear standard for this situation and that code should be followed.

Should the Planning Commission choose to grant Applicant's permit to partition the wetland (despite the arguments set forth above) a more reasonable partition would limit the division and build-out of the upland area at two (2) lots, with a single dwelling on each lot. Partitioning the wetland into three (3) lots, each with a dwelling, access road and parking overcrowds the area and all but destroys the integrity of the wetland. Limiting the partition to two (2) lots, with a single dwelling on each lot is more in line with the City's code.

Please note:

17.043.050(M)(2)(a) – Each lot created must have at least 1,000 sqft of upland available for building coverage, required off-street parking and required access.

17.043.050(M)(2)(b) - The building site described in subsection M2a shall not include protected wetlands or wetland buffer areas.

Applicant has squeezed three (3) lots, three (3) dwellings, off-street parking and access roads to both S. Hemlock and Forest Lawn into its proposed partition plan. Applicant's partition plan also appears to include wetland buffer area in its minimum 1,000 sqft which is in direct conflict with 17.043.050(M)(2)(b) (noted above) which states the building site cannot include protected wetland buffer areas. This further demonstrates that the area is not well suited for 3 lots, each with a dwelling, access road and parking. Again, Applicant is asking the Planning Committee to ignore existing City code and grant the Partition Application in direct conflict to City code.

Additionally, Applicant has not complied with the provision of 17.43, and specifically 17.43.050. Please see below:

17.43 Wetland Overlay (WO) Zone - The purpose of the WO Zone rule is to "protect wetland areas from uses and activities inconsistent with the maintenance of the wetland function and values identified for those sites".

17.43.050 Standards – 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:

- 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
- 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)...

The list of alternative actions that should be considered to protect wetland areas continues in 17.43.050 but is not included here for brevity's sake. Applicant has not specifically addressed the provisions of 17.43.050. Instead, Applicant simply states that it's building only on upland areas of the lot and that should be enough to satisfy the obligations of 17.43.050. This is not an accurate interpretation of the City's code and Applicant should be required to provide evidence as mandated by 17.43.050. The burden to comply with 17.43.050 falls on Applicant and to date Applicant has provided scarce evidence to demonstrate its consideration and compliance with 17.43.050. I ask that the Planning Commission hold Applicant to this requirement and thoroughly consider whether Applicant's development is 1) consistent with the maintenance of the wetlands and 2) has taken into account alternative actions to protect the wetlands. Holding Applicant to a single dwelling on the current Wetland Lot-of-Record or limiting partition of the lot to two (2) lots with a single dwelling on each lot seems most appropriate.

There was discussion at the hearing (and confusion in the public record) regarding further partitioning of the lot and Wetland Lot-of-Record in order to donate the lowland/non-buildable portions of the wetland to the City. If the City opts to partition the lot, this seems an issue worth considering if it helps protect the integrity of the remaining wetland. If this is simply a maneuver by Applicant to obtain a tax benefit or rid itself of wetland restrictions it seems suspect. I'd also like to suggest the City consider placing conditions on the project/build if partition is to be considered.

When considering this matter, please take into account that Applicant purchased taxlot 4100 well aware of it's Wetland Overlay (WO) Zone and Wetland Lot-of-Record designations. Applicant was also very likely aware of the City's one dwelling limit. Wetlands are much cheaper to buy than upland areas because they're meant to take stormwater discharge and development is limited by City code to protect the wetland areas. Applicant purchased this wetland knowing it's limitations. It also appears Applicant persuaded City officials and/or City officials misled Applicant to believe draining, partitioning and developing the wetland was acceptable. The public record shows ongoing discussion and coordination between Applicant and City officials regarding this project from it's inception as an eight (8) lot development to the current three (3) lot development.

This is most apparent in the discussions regarding the relocation of the stormwater discharge point along Forest Lawn. Originally, the City approved a permit to relocate the stormwater discharge point to a more northern part of the wetlands. This permit was granted administratively (and in error) by the City and was the basis of my earlier appeal. Because of the wetland status of taxlot 4100, a Conditional-Use-Permit (reviewed by the Planning Commission) is required to alter the storm water discharge. Ultimately, the City withdrew the original permit and the Conditional-Use-Permit is now before the Planning Commission. These efforts were (and still are) an attempt to drain the wetlands. In correspondence between a City official and Applicant at the beginning of this project, a City employee wrote "[o]bviously, the benefit of doing it [moving of the storm drains from one part of the wetland to another] now is we could tell if the work helps dry out the lot the way you had hoped..." This correspondence is in the public record as are several other email exchanges showing an overly familiar relationship between city employees and Applicant.

Relocation of the stormwater discharge point was not contemplated by the city until the wetland lot was purchased by Applicant and plans for development started taking shape. It appears Applicant hoped to have the city install the new storm-water line, force the adjacent neighbor to hook up to the new line, and extend the discharge point of the new line to the northern-most point of the wetland, thereby draining the southern-most part of the wetland and acquiring more upland area to build on. This is likely

still the plan. Movement of the stormwater discharge point will likely divert stormwater out of the wetlands, the very place they are meant to be discharged. Transferring the stormwater to the northern most part of the wetland will dry up the southern part of the wetland and likely create more upland area that can be developed at a later date. Likewise, transferring the stormwater completely out of the wetland and all the way to S. Hemlock will remove all stormwater from the wetlands and dry up the wetlands. This action would eventually eliminate the wetland. A wetland can be re-delineated every 5 years so this lot (or portions of it if partitioned) would be up for re-delineation in 2026 should the owner(s) choose. With time and the movement of the stormwater out of the wetlands, the entirety of tax lot 4100 could be developed. Moving the stormwater to the northern most part of the wetland has a less drastic effect but still likely results in the creation of more upland area and additional development in the future. This issue seems to get very little attention but is of great importance.

The City has an ordinance saying storm water stays in the natural drainage. See below:

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

Why then is the City considering redirecting stormwater runoff away from the wetland? Why are the taxpayers paying for this?

The City also has an ordinance saying the developer must pay for any stormwater projects. See below:

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

Clearly the City should not be paying for the relocation of the stormwater discharge point. I further dispute the City and Applicant's claim that stormwater runoff from an adjacent neighbor's lot and the existing discharge point is damaging the wetlands. How can you damage an area that's naturally designed to accept and filter water? Please see my earlier submitted comments for a more in-depth discussion on this topic.

I encourage the Planning Commission to deny Applicant's Conditional-Use-Permit. There is no compelling reason to move the discharge point and the City should definitely not pay for this work. Should Applicant show legitimate reasoning for moving the discharge point (and pay for the work), the Planning Commission should require the relocation to remain in the wetland. Allowing Applicant to relocate the discharge point to S. Hemlock will dry and destroy the wetland.

Wetlands hold and clean stormwater of pesticides, oils and street toxins before it gets to the beach. Wetlands provide bird habitat, tree canopy and aesthetic value to our community. Please consider maintaining the integrity of the Forest Lawn wetlands.

For the reasons set forth, please 1) deny the Conditional-Use-Permit request to relocate the stormwater discharge point and 2) deny completely or limit the partition request to no more than 2 dwellings. Thank you for your consideration and time spent on this issue.

Dana Cardwell
1696 S. Hemlock St.



D-17

I would like to submit the following to directly address Applicant's assertion that the law demands approval of Applicant's request because it's related to housing and housing is a priority of the state. I'm providing the comments below to refute and clarify the argument. These comments were provided by an attorney and expert, both well versed in wetland law and land use. I hope they are helpful in the Planning Commission's review of the matter.

As a refresher, Applicant stated in it's oral testimony that because this is an application for residential lots, the sole question is whether city code has been met. Applicant stated that because it has met all of the "unambiguous" portions of the city code the application must be approved. Applicant feels the sections of the city code related to trees are ambiguous and therefore can't be a basis for denial. (This discussion was on the heels of testimony from the city arborist advising of significant damage if the application is approved) When asked about the application of the wetland provisions Applicant stated that conditional use applications are subjective and therefore can't be the basis of denial. This assertion was confusing to me, and I assume others, so I reached out to those more knowledgeable for clarification.

A portion of my written correspondence with the experts is provided below. When reading keep in mind that the Applicant has submitted both a Conditional Use and a Partition request.

Expert 1: I listened to the video clip. It is clear that Applicant wants to try and ensure that no discretionary standards are applied. Discretionary decision-making is the heart of the land use system; the very definition of a "land use action" in state law is one that requires discretionary judgment. Thus, a building permit is not a land use decision, because it is just a box check-off exercise.

If this is a conditional use application, which it is, the conditional use standards of Cannon Beach codes apply, and the Applicant cannot escape that. But clearly they are trying.

Expert 2: I agree, however, I think we need to look at ORS 197.307(4) closely.

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

(8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

Expert 1: Yes, but note that subsection (4) ALSO allows the city to have an alternative, discretionary process if it meets several criteria, see section (6). I am not sure what Cannon Beach has done with these criteria in their ordinances, but clearly they are relevant to the testimony that was delivered in that video clip.



D-18

From: William Collins <wcollins@hevanet.com>
Sent: Wednesday, July 20, 2022 10:19 PM
To: Jeffrey Adams
Subject: Forest Lawn Rd Wetland

Dear Mr. Adams,

I am very concerned about the potential development of the wetland on Forest Lawn Rd. In Cannon Beach there are very few places left close to the ocean for safe haven of birds in bad weather, let alone daily survival of mammals, reptiles and amphibians. Almost all wetland and riparian areas have been covered or otherwise developed and channeled in a manner that doesn't support wildlife. The remaining places, especially the Forest Lawn wetland, need to remain undeveloped if Cannon Beach is going to be a place that people come to enjoy nature. The scenery without the wildlife is not what people come for. Please do not allow development of this precious remaining wetland.

Thank you,

Yours sincerely,
Willie Collins

Sent from my iPad



D-19

Statement in Opposition
To
P# 22-01 & CU# 22-02
Application for Three Lot Partition and Conditional Use Permit
(Tax Lot 04100, Map 51030DA)

My name is Andrew Morrow. My address is 1221 SW 10th Avenue, Unit 811, Portland, Oregon 97205. I oppose the proposed application.

Prior to the pandemic, for ten years I was a regular visitor to Cannon Beach and, having walked in the area many times, I am familiar with the subject property, including the value of the wetlands on the property to the neighborhood and the City; values that have been discussed in testimony by a number of opponents to this application. Land use, development and construction are not my areas of expertise, but I submit these observations being familiar with property, having reviewed the video of the June 23 hearing and having reviewed portions of the extensive document file in the record.

I would urge the Commission, the City Planning staff, and, during the course of development of this project, other elements of City government, to carefully monitor the Applicant's compliance with all City requirements. There are aspects of this development not at issue before the Commission at this time, but on which the Commission and staff may have input including the issue of removal of the Plat restriction prohibiting access to the property from Hemlock Street (an issue which also affects access by the owners of other properties subject to the Plat restriction, not just the Applicant) and construction issues to be addressed in the building permit process.

The Applicant asserts that the wetlands on the subject property have been delineated by their consultant; that no construction will occur on the wetlands and therefore that the project will have no impact on the wetlands. In my opinion, I do not find credible the Applicant's assertion that the partition and development of the three proposed lots will have no impact on the wetlands given the complexity of the construction that will be required as described in the Applicant's own geotechnical report.

The Applicant states its desire to cooperate, but when the City refers to the standards applicable to its wetlands and the protection of trees on the site, the Applicant appears to shift to the assertion that any requirements it might find inconvenient are not "clear and objective" and therefore trumped by the State preference for development of "housing," irrespective of whether the housing in question is what is needed by the City's residents and workforce.

I challenge the Commission and staff to evaluate the Applicants compliance carefully to protect the integrity of the standards included in the City's zoning ordinances and other elements of its Code. Otherwise, the concept of a "Wetlands Overlay Zone" and requirements for a Conditional Use Permit seem irrelevant to protecting the limited wetlands within the City.

Thank you.



D-20

From: rosanne dorsey <Rosanne_Dorsey@beaverton.k12.or.us>
Sent: Thursday, July 21, 2022 2:59 PM
To: Katie Hillenhagen
Subject: Revised Liquification

Thank you so much. Here is the corrected version. Although I am sure everyone would know what I meant. I feel like I am typing terms I honestly barely understand but feel like I need to.

Dear Chair Newton and the Planning Commission,

I am the owner of the home adjacent to the wetlands, Rosey Dorsey, 1603 Forest Lawn Road. After the last meeting in June, I am sufficiently distressed about the security of my home's foundation as well as preserving the wetland. As I type this letter I am reminded of the passion and variety of opposition that appeared in the June meeting to this proposed development.

I adamantly oppose the development of the wetlands.

After our meeting in June there are some standout moments for many of us who are overwhelmed by the technicalities and devastation of the development. For example, I know many people were stunned to tears when they heard the comment that the canopy will all but disappear and we might as well just be "Lawn Road". It is a jarring image.

After the geological report, I am definitely concerned about my own foundation and security. Once the arborist revealed the shallow root system, the problems with the removal of the willows, the deep drilling etc., I began to question if I need to have you help and guide me to confirm that my own foundation will be ok? I believe my pilings are only 20 feet or less but I am not sure and wondering who I should ask to be sure my own home will be safe? I have spent a lot of time this past month learning about terms I had never heard in reference to the area my home is in: landslide, liquification, construction impact, compressible land, destruction of the canopy, semi endangered species, bioswales, 50 foot bedrock drilling,...oh my!

Perhaps this is a tiny personal issue as we were denied Hemlock access when we built our homes in 2005. That would have made a substantial difference in my view and the layout of our homes. There are 3 lots still that may also desire Hemlock access as well. In 2004, Ryan Snyder was going to grant me right of way and share a driveway, but we were turned down. I do know the real estate agent for the previous buyers in 2020 (who backed out of the sale as all of the previous offers have backed out in the past 15 years because building even a single home was impossible) and his understanding and the buyers understanding was absolutely no access from Hemlock. As others have been told. I guess I want to know what is different now? And why the setbacks are different now? Those same people now built a different home in Cannon Beach but they could have built a lovely single dwelling on the wetland with these same accommodations the current developer is requiring of the city.

In addition, the developer David Pletka, has contacted me directly with an ultimatum to fix the trickle from my property immediately and I am doubly worried. I want the Planning Commission to know that I have received just one letter from the city about connecting to the **first** proposed project that was ultimately rejected in January. I agreed to hire McEwen to connect at the time! Forgive me but I thought my water issue was also

deferred in January until the city made it's final assessment of the project. Unfortunately, if any other critical correspondence was sent it is possible I didn't receive it because Ms. La Bonte sent the original correspondence dated April 29, 2021 to an old address of mine, 4344 SW Hillside Drive. I know that Ms. LaBonte said that it is very common to repair these drainage issues and many letters are sent out every year to do this and I gather these relationships are pretty amicable and casual. I guess this may be true as there is a fair amount of correspondence between the builder and the city in 2021 working together to get the storm drain just right and get my connection as fast as possible to dry out the land. As the developer of the wetland, I would want that too!

For example, on September 14, 2021, there is an email from the city that states, "Obviously the benefit of doing it now is **we** could tell if the work helps dry out the lot the way you had hoped, and **we** could give the neighbor a specific time that she needed to be ready to have her work done (with McEwen I believe) so she could hook up to our storm system." I am still confused how my home was finally approved with this current drainage in the first place? Why didn't we just hook up to the city at the time my home was being built? I believe, and have been told, it may be because it is such a small amount of water? And perhaps the city originally felt it was acceptable due to the fact it was draining into a wetland and wetlands remain wet and it was draining into an area that should never be developed anyways? It seems that is what my paperwork possibly indicates as some boxes are checked and some are not? I am guessing you can see why I am now sufficiently confused! I do have some very very preliminary research on options for the trickle of water and will continue to search for the best solution but am worried about the ultimatum and time constraints by the developer and after teaching a full session of summer school for vulnerable teenagers, I will be unavailable most of August. What do you suggest, from your stance, is the best solution? Is there a city line to hook up to? As a teacher, I want to explore all options, including the most economical ones.

Thank you for your time and commitment to protecting not only the wetlands but an important piece of Cannon Beach history. Please protect these wetlands so the owners of homes on Forest Lawn Road will not have to petition to have our road's name changed to just LAWN ROAD.

Best,
Rosey Dorsey
1603 Forest Lawn Road
Cannon Beach, Oregon

I have attached a photo of the Elk that live in the wetlands to help bring us back to the cause.



Follow us!



The District prohibits discrimination and harassment based on any basis protected by law, including but not limited to, an individual's actual or perceived race, color, religion, sex, sexual orientation, gender identity, gender expression, national or ethnic origin, marital status, age, mental or physical disability, pregnancy, familial status, economic status, veteran status or because of a perceived or actual association with any other persons within these protected classes.

The contents of this email and any attachments are confidential. They are intended for the named recipient(s) only. If you've received this communication in error, please immediately notify us by phone at 503-356-4500 and destroy the original message. Thank you.



D-21

From: Monica Gorman <mogorman@hevanet.com>
Sent: Wednesday, July 20, 2022 10:42 PM
To: Jeffrey Adams
Subject: Forest Lawn Rd. Wetland

Dear Mr. Adams

I would like you to know of my concern about the proposed development of the wetland at the beginning of Forest Lawn Rd.

Cannon Beach is in need of small places like this to protect important habitat for plants and animals. Taking away one of the few remaining wetlands in Cannon Beach doesn't make this city better. Please leave the wetland alone.

Thanks.

Monica Gorman

Sent from my iPhone



Cannon Beach Planning Commission

Work Session

Staff Report:

HAYSTACK ROCK LLC PROPOSED ZONING ORDINANCE AMENDMENTS TO EXTEND PUBLIC NOTICE

Agenda Date: July 28, 2022

Prepared By: Jeffrey S. Adams, PhD

Background

Will Rasmussen, on behalf of Haystack Rock LLC, property owners of 1981 Pacific Ave., is requesting an amendment of the notice requirements of the Cannon Beach Municipal Code. The applicant first approached the city last year with an application seeking to extend surrounding property owner notice mainly with regards to development permits. The applicant worked with staff to offer text amendments that would limit the changes to only those access extensions of public rights-of-way in the oceanfront management zones, stream corridors and wetland overlay areas, which was approved and adopted August 3, 2021.

This application proposes an email notification process for all requested properties for all permit applications and decisions concerning a lot, regardless of whether official notice is required. The proposed amendment would allow any property owner or anyone who resides in the city to request notification for any property in the city, with a duration of 60 days.

Summary

Upon receipt of Mr. Rasmussen's request for amendments to public notice last year, the City of Cannon Beach worked with the applicant to update the notice requirements for any access extensions into protected areas, such as wetlands, stream corridors and oceanfront management areas. In the past four years the City of Cannon Beach has added electronic permitting, which allows any citizen to research building and planning permits for any property in the city through a property search, updated its public notice procedures and posts all publicly noticed land use actions to the City's website and provided scanned historic files of each property through its Geographic Information System.

The City has also initiated a comprehensive Code Audit process, which continues to meet to review the Cannon Beach Development Ordinances against the Cannon Beach Comprehensive Plan. The City has approved what has been called Track One changes, limiting lot combinations and repealing the Planned Development chapter and is drafting Track Two changes that deal with limiting building size in proportion to lots, as well as, other requested changes.

For Staff to be required to track and inform every citizen for an unlimited amount of requests for an unlimited number of properties across the City of Cannon Beach is not only impractical but would likely expose the City to even more legal jeopardy than what currently exists. This doesn't even mention the staffing burden that it would require. Currently the City of Cannon Beach is averaging over 70 Public Records Requests per year, which

already requires increasing amounts of staff time to process, for the City to pass more monitoring requirements on each property, without considering the staffing, resources and budgeting impacts, would be unwise.

The Cannon Beach Code Audit process will provide ample opportunity to review processing and public notice procedures and requirements as a comprehensive administrative system.

Recommendation

Staff recommends that this application be reviewed under the Code Audit process.

Attachments

A: Zoning Ordinance Text Amendment Application, with attached letter, from Will Rasmussen, of Miller, Nash, Graham & Dunn LLP, on behalf of Haystack Rock, LLC, dated May 24, received May 24, 2022;



CITY OF CANNON BEACH

AMENDMENT TO THE ZONING ORDINANCE TEXT

Please fill out this form completely. Please type or print.

Applicant Name: Haystack Rock, LLC
Email Address: c/o Will Rasmussen, Miller Nash LLP
Mailing Address: 111 SW Fifth Ave, Ste 3400, Portland, OR 97204
503.224.5858
Telephone: _____
Property-Owner Name: _____
(if other than applicant)
Mailing Address: _____
Telephone: _____
Property Location: _____
(street address)
Map No.: _____ Tax Lot No.: _____

AMENDMENT TO THE ZONING ORDINANCE REQUEST:

1. Description of the proposal.


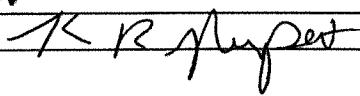
See attached.

2. Justification for the Zoning Ordinance amendment request. Explain how the request meets each of the following criteria for granting an amendment to the Zoning Ordinance.

See attached.

Note: Use extra sheets, if necessary, for answering the above questions.

Fee: \$1,500

Applicant Signature:  Date: 05.23.22
Property Owner Signature:  Date: 5-24-22

If the applicant is other than the owner, the owner hereby grants permission for the applicant to act on his/her behalf. Please attach the name, address, phone number, and signature of any additional property owners.

For Staff Use Only:

Received on: _____ By: _____ Fee

Paid: _____ Receipt No.: _____

(Last revised March 2021)

PO Box 368 Cannon Beach, Oregon 97110 • (503) 436-8042 • TTY (503) 436-8097 • FAX (503) 436-2050

www.ci.cannon-beach.or.us • planning@ci.cannon-beach.or.us



William L. Rasmussen
william.rasmussen@millernash.com
503.205.2308 (direct)

May 24, 2022

VIA EMAIL

PLANNING@CI.CANNON-BEACH.OR.US

Cannon Beach Planning Commission
City of Cannon Beach
PO Box 368
163 E Gower St
Cannon Beach, OR 97110

Subject: Proposed Amendments to Cannon Beach Municipal Code (CBMC)

Dear Commissioners:

Enclosed is an application for amendments to the CBMC providing for (1) a limited process for citizens to request and receive electronic notification of applications and decisions, regardless of whether official notice is required, and (2) expanded public notice for permits concerning hazard areas, environmentally sensitive land, and new roads.

Although these proposed code amendments are of general application,¹ recent events have demonstrated the urgent need for their adoption. In short, the City's community development director (the "Director") conditionally approved the construction of a residence on the inaccessible vacant lot owned by Stanley and Rebecca Robert ("Applicants") that is 100 feet down the steep, unstable slope under the Hemlock Street S-curves (the "Property") without providing notice required under the City code or even making the decision publicly available until after the time for a local appeal had expired. Applicants' development permit was approved on March 21, 2022 (the "Decision"), but withheld from the public until it was arbitrarily placed in a City Council meeting packet on April 8, 2022.²

¹ The proposed amendments are thus legislative, governed by CBMC 17.86.060.

² The meeting agenda did not reference the Decision. It was associated with a discussion item titled "Roberts Driveway Access Easement," a separate proposal made by Applicants.

4854-5730-9471.4

This is particularly troubling for several reasons. First, there is intense public interest in the proposed development of the Property. The application submitted by Applicants on August 3, 2021 (the “2021 Application”) was the latest in a string of applications filed by Applicants,³ all of which have drawn extensive public participation and have been overwhelmingly opposed. This is because the development would, among other things, destroy oceanfront greenspace managed by the City, convert public right-of-way to private use, create a dangerous intersection on perhaps the most precarious stretch of road in the city, and increase landslide hazards for Hemlock Street and surrounding neighbors.

Given the public’s interest, the planning department set up a webpage last fall that is specifically dedicated to the 2021 Application.⁴ The planning department ostensibly placed all supporting materials and communications on the webpage during its review. There are currently 88 application documents and communications.⁵ Yet, the Decision approving the 2021 Application was not and still has not been posted or even referenced on the webpage. Thus, the only effect of the dedicated webpage was to lull the public into wrongly believing that a decision had not been made on the 2021 Application.

Next, our client, Haystack Rock, LLC (“Haystack”), asked the Director multiple times to notify them when a decision was made on the 2021 Application. Haystack’s principals would be particularly injured by the unsafe and unsightly development proposed by Applicants. For decades this family has owned, maintained, and even rebuilt the historic Oswald West Cabin that is adjacent to the Property on two sides, as well as the stretch of undeveloped right-of-way that Applicants are demanding be converted to a private driveway. Providing informal

³ This is the second proposal for the development. Applicants’ first application was submitted in the summer of 2020, which proposed a residence that violated the City’s oceanfront setback code. Accordingly, that application was denied by the planning commission in November 2020—a decision that has been upheld by City Council, the Land Use Board of Appeals (LUBA), and the Oregon Court of Appeals. Although Applicants still seek to reverse the planning commission’s decision by seeking review from the Oregon Supreme Court, they submitted the new 2021 Application as a “backup” to their preferred design.

⁴ <https://www.ci.cannon-beach.or.us/planning/page/alternative-building-permit-submission-behalf-stan-and-becky-roberts-taxlot>.

⁵ This includes the Director’s approval of the related stability beam application on September 21, 2021. The planning commission’s reversal of this decision on December 21, 2021, however, was not added to the webpage.

notification of decisions to this type of interested party is a common courtesy observed by planning staff across the state.⁶ Even in the absence of such courtesy, Haystack was entitled to official mailed notice under the City's zoning code.⁷ It received neither.

The public was also misled by the planning department's inconsistent and contradictory treatment of the 2021 Application. For example, the Director treated the application as a request for a discretionary Type 2 development permit by applying the 120-day deadline imposed by state law and deferring compliance with many criteria as conditions of approval, but then did not follow the notice and other procedural requirements for such a permit.

Finally, the failure to provide the required notice or even make the Decision publicly available is particularly problematic because the 2021 Application is clearly deficient and woefully incomplete. It proposes a new residence and road on an active landslide, as well as a new intersection in the middle of the Hemlock S-curves, but does not include a geotechnical report, traffic study, or grading plan for the development.⁸ The 2021 Application also does not address a clear fatal flaw with the development: the Property has no vehicular access or means of obtaining vehicular access that is safe or lawful.⁹

⁶ In statements to City Council, the Director appeared to take the position that it would be improper for the planning department to notify parties of decisions if official notice is not required. There is no basis, however, for such a contention. In fact, LUBA has advised just the opposite. *See Jebousek v. City of Newport*, 51 Or LUBA 93, 106 (2006) (advising petitioner, on remand, to request notice of future permit approvals, and telling the planning staff that providing "some kind of notice to petitioner and opportunity to comment would be prudent, even if the city is not legally required to do so.").

⁷ Haystack was entitled to notice because the Decision approved grading work, which is described in Applicants' grading permit application, the narrative for the 2021 Application, and other supporting materials. Clearly this extensive cutting and filling work should have triggered notice to Haystack under CBMC 17.88.010(A) which states, "Mailed notice shall be sent to property owners within the following distances * * * 6. Cutting and filling, pursuant to Chapter 17.62: abutting property owners." In Chapter 17.62, the term "fill" is defined broadly as "the deposit of earth material placed by artificial means." The terms "cut" and "fill" are also the only activities described in the code standards for grading work. CBMC 17.62.040.

⁸ Instead, Applicants submitted the 2020 reports and plans that are not for the improvements proposed in the 2021 Application, but for an entirely different road and residence footprint and design.

⁹ The on-grade, private driveway over public right-of-way proposed in the new application violates Oregon law, attempts to take Haystack's private property rights, and contravenes the expert reports submitted by Applicants in 2020 that explicitly state that a road should not be built on the face of the slope.

Because the Decision was withheld from the public until after the local appeal deadline, the planning commission was deprived of its opportunity to correct the Decision. As a result, Haystack was forced to file a petition with LUBA. The City will now be forced to expend staff time and significant public money on attorney fees to participate in an appeal that will ultimately be a waste of resources for all parties.

In order to avoid similar situations in the future, Haystack proposes the following code amendments, which will ensure that the public is informed of important actions by the planning department going forward.

A. New code process for requesting electronic notification of permit decisions.

The first code amendment proposed by Haystack is to create a limited process for interested parties to request and receive electronic notification of applications and decisions concerning the development of a particular property.

This is actually the second time Haystack has proposed a code amendment to address the Director's refusal to provide courtesy notice to concerned citizens. In March 2021, Haystack submitted an application to add a requirement that the planning department notify neighbors of permit decisions when requested, regardless of whether formal notice was required. The Director opposed this code amendment before the planning commission because he felt that it would create too much of an administrative burden. In the staff report and in testimony before the commission, the Director said that this new code provision was not required because the planning department was implementing a new system where applications would have a dedicated webpage on the City's website and "anyone in the community can subscribe to the page or visit the page for the latest postings."¹⁰

Based on this representation, Haystack agreed to drop its proposal and limit the amendments to code concerning new roads in the oceanfront management zones, stream corridors, and wetland overlay areas.

¹⁰ Staff Report for planning commission work session on April 22, 2021.

As stated above, the planning department has implemented a webpage system—but does not keep the application pages accurate and up to date. As demonstrated by the 2021 Application, the planning department does not upload all documents or even the ultimate decisions. Thus, the webpages do more harm than good because people rely on the inaccurate information provided. For example, the public was led to believe that a decision had not been made on the 2021 Application because the Decision was not (and still has not) been put on its dedicated webpage. Without code mandating the webpage process, the public will never be able to rely on the accuracy of the application webpages.

To ensure that Cannon Beach citizens are able to participate in the public process for review of development that could impact them, Haystack proposes the following new code section:

Chapter 17.88 PUBLIC DELIBERATIONS AND HEARINGS

17.88.005 Request for Electronic Notification of Permit Decisions

A. Persons who own property or reside in Cannon Beach may request electronic notification of permit applications and decisions by the city concerning a specific lot, including applications and decisions for development permits, building permits, tree removal permits, and right-of-way permits for driveways or access to the lot. Subject to the conditions below, the planning department shall provide electronic notification of all permit applications and decisions concerning the lot to persons who have made a request therefor, regardless of whether official notice is required.

B. Form of Request.

1. Persons shall request electronic notification of applications and decisions in the manner directed by the planning department. If the planning department has not created a process, the request for notification shall be made by email or mail to the planning director.

2. The person making the request must provide an email address for the notification of applications and decisions.

3. The planning director or designee shall inform the person within 3 working days of receipt of a request that requested electronic notification will be provided.

C. Notification Process.

1. The planning director or designated city employee shall provide electronic notification of applications and decisions concerning the lot to all persons who have requested notification by sending an email to the address provided by the requestor within 2 working days of the submission of the application or issuance of the decision.

2. Notifications of decisions shall include a copy of the written decision.

D. Duration of Request.

1. If an application has been submitted to the city concerning the lot, the request for electronic notification of applications and decisions shall remain valid until the development proposed in all applications concerning the lot is complete or, alternatively, 60 days after all applications have been denied or withdrawn.

2. For lots where an application has not been submitted, a request for electronic notification shall expire 60 days after it has been submitted if no application is subsequently received by the city within that time.

The new section satisfies the two criteria in CBMC 17.86.070(A). First, a process allowing informal notification of permit decisions to be requested by interested parties furthers the Citizen Involvement Policies in the comprehensive plan, especially policies 1 and 4.

1. Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies.

* * *

4. Citizens shall receive responses to their comments to decision-makers, either directly at meetings, in the minutes of the meetings, or by written correspondence.

Citizens cannot be meaningfully involved or learn the official response to earlier comments without knowing that decisions are being made and the substance thereof.

The new code will also “not adversely affect the ability of the city to satisfy land and water use needs.” CBMC 17.86.070(A)(2). This code creates a simple process for the planning department to provide notification of applications and decisions when specifically requested for a particular

property. To address the Director's earlier fears of administrative burdens, the code requires only electronic notification, and the requests for notification are limited in duration.

In fact, the notification process may save time by curing notice violations in those few situations where the planning department fails to provide required notice. The Decision is a good example. If the planning department had provided Haystack with informal notification of the Decision—as it had repeatedly requested—the department's failure to comply with the formal notice requirements would have been harmless. Haystack would have appealed the decision to the planning commission as though notice had been received, and the commission would have been able to fix the errant issuance of the permit. But because courtesy notification was not provided, Haystack did not learn of the Decision until after the 14-day appeal window.¹¹

As a result, the City will now be forced to waste time and resources responding to Haystack's appeal to LUBA, which will certainly remand the Decision to the City with an order to provide notice and allow the local appeal—a wasteful and pointless exercise for all parties involved.

B. Code amendments to expand public notice for permits concerning hazard areas, environmentally sensitive land, and new roads.

To ensure that the public has an opportunity to participate in planning actions that have the highest potential to detrimentally impact the community, Haystack also proposes code amendments that would require the City to provide notice of permit decisions concerning work within hazard areas or environmentally sensitive lands, as well as permits approving the construction of new roads.

These changes are needed in part because of the planning department's apparent confusion over the distinction between Type 1 and Type 2 development permits, which to a large extent determines when notice is necessary. This is illustrated by the planning department's review of the 2021 Application. At times, the Director applies the procedure for a Type 1 development

¹¹ The City then denied Haystack's requests to withdraw and reissue the decision or toll the appeal period, as allowed under Oregon law.

permit, and then in other respects treats the application as a request for a Type 2 permit. For example:

- The Decision states that it approves a Type 1 development permit, but it is issued by the Director, not the “building official” as required for a Type 1 decision.¹²
- The Decision also includes conditions of approval, which are only allowed in a Type 2 decision.¹³
- The Director approved the 2021 Application despite not complying with multiple applicable criteria, instead deferring a showing of compliance for a later time, which is not allowed for a Type 1 permit.¹⁴
- Yet, despite the above, the Director ignored all of the Type 2 requirements, including public notice and the right to a de novo appeal.

This confusion extended to the planning department’s application of related state law. Although the development permit was determined to be Type 1, reviewed under only objective criteria, the Director applied the state’s 120-day deadline and goalpost rule (i.e., allowing the application of outdated standards), which only apply to applications requesting discretionary

¹² CBMC 17.92.010(C)(1): “The building official shall issue a development permit * * *.”

¹³ CBMC 17.92.010(C)(2)(a) states that “[t]he [Type 2] development permit application shall be reviewed by planning department against the applicable standards contained in this title and the application shall either be approved, *approved with conditions*, or denied.” (Emphasis added.) There is no option for a conditional approval under CBMC 17.92.010(C)(1).

¹⁴ CBMC 17.92.010(C)(1): “The building official shall issue a development permit to the applicant if the building official finds that the work * * * conform[s] to the requirements of this title, and any conditions imposed by a reviewing authority.” There is no option for a deferral of compliance with the zoning code or conditions imposed during an earlier application review.

permit approval.¹⁵ Then, in contradictory fashion, the planning department did not provide the notice and other procedures required for discretionary permits.¹⁶

To ensure that confusion over the type of permit at issue does not cause future violations of notice requirements for development that could have a significant, detrimental impacts on the community, Haystack proposes the following changes.

Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS

17.50.030 Procedure.

The requirements of this section shall be met prior to the issuance of a building or development permit. The city may require that the requirements of this section be met in conjunction with a request for the approval of a setback reduction, variance, conditional use, design review request, preliminary subdivision proposal, major partition request, minor partition request and preliminary planned development request. Notice of decisions approving applications subject to this chapter shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.

.....

Chapter 17.62 GRADING, EROSION AND SEDIMENTATION CONTROL

17.62.030 Grading and erosion control permit.

A. Development Permit Required.

1. Persons proposing to clear, grade, excavate or fill land (regulated activities) shall obtain a development permit as prescribed by this chapter unless exempted by Section 17.62.040. A development permit is required where:

¹⁵ The 120-day deadline in ORS 227.178(1) and goalpost rule in ORS 227.178(3) only apply to “permits” as defined in ORS 227.160(2): the “discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation.” (Emphasis added.)

¹⁶ ORS 227.175 provides that the local review of “permits” must observe certain quasi-judicial procedures, such as notice and opportunity for de novo hearings.

- a. The proposed clearing, grading, filling, or excavation is located within one hundred feet of a stream, watercourse or wetland; or
 - b. The proposed clearing, grading, filling, or excavation is located more than one hundred feet from a stream or watercourse or wetland and the affected area exceeds two hundred fifty square feet; or
 - c. The proposed volume of excavation, fill or any combination of excavation and fill exceeds ten cubic yards in a calendar year.
2. A development permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(1). *However, notice of decisions approving the development permit shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.*
3. A development permit for regulated activities in conjunction with a subdivision or partition shall be reviewed in conjunction with construction drawings as required by Section 16.04.260.
4. A development permit for regulated activities not in conjunction with building permit, subdivision, or partition shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(2). ~~However, notice to adjacent property owners, as specified by Section 17.92.010(C)(2)(d), is not required.~~

B. Exceptions. The following are exempt from the requirements of Section 17.62.030(A):

* * *

3. The city may require that the sedimentation and erosion control plan be prepared by a registered civil engineer where the disturbed area is greater than one acre in size, or the disturbed area has an average slope of twenty percent or greater. (Ord. 98-5 § 1)

.....

Chapter 12.36 PUBLIC RIGHTS-OF-WAY

12.36.030 Issuance of permits.

A. A permit shall be obtained from the public works department before planting, removing or otherwise significantly altering any tree or shrub in the street right-of-way or placing or removing any improvement in the street right-of-way.

B. Procedure for new street improvements.

1. Notice of applications for a new road, alley, bridge, driveway, or other type of street improvement that has 30 feet or more of linear length in public right-of-way shall be mailed to property owners within three hundred feet of the development site within 14 days of the application and not less than 20 days before a decision is made on the application.

2. The notice shall include the information specified in sections 17.88.030(A), (C), (D), (E), (G), and (I). The notice shall also include a statement that persons are invited to submit information within 20 days relevant to the standards below, giving reasons why the application should or should not be approved or proposing modifications the person believes are necessary for approval according to the applicable standards.

3. Notice of a decision approving a right-of-way application subject to this subsection shall be provided to property owners within three hundred feet of the development site and other persons who commented on the proposed right-of-way permit in accordance with the provisions of Section 17.88.130.

4. For purposes of this subsection, a street improvement is new if vehicular access did not previously exist at the location, it was blocked for a period of one year, or an unimproved right-of-way would be improved to provide vehicular access. Paving, maintenance, and minor alterations of an existing street is not new access.

~~B.~~ C. The following criteria shall be considered as part of the process of reviewing an application for a permit:

* * *

~~F.~~ G. Nothing in the ordinance codified in this chapter shall be construed to supersede or replace the requirements of Section 17.70.020 of Chapter 17.70,

Tree Removal, which requires a permit from the city prior to any tree removal.
(Ord. 93-20 § 4)

These proposed changes meet both criteria in CBMC 17.86.070(A). The limited expansion of notice for work in geologic hazard zones, grading in sensitive areas, and construction of new street improvements advance several plan provisions. These include Citizen Involvement Policy 1,¹⁷ General Development policies related to geologic hazards (4, 5, 9, and 12), and all of the Geologic Hazards policies. The applicability and scope of these notice requirements are narrow and will “not adversely affect the ability of the city to satisfy land and water use needs.” CBMC 17.86.070(A)(2). Rather, providing notice and allowing participation by the public will ensure that this type of development will be regulated so that it does not negatively impact the existing and potential land and water in the surrounding areas.

C. Conclusion.

The Director’s failure to provide notice, place the Decision on the application webpage, or otherwise make it publicly available undermined significant public interests and prevented the planning commission from correcting the errant Decision. These circumstances evidence a clear and urgent need for the code amendments proposed above.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'William L. Rasmussen'.

William L. Rasmussen

cc: Jeff Adams (via email)

¹⁷ “Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies.”

EXHIBIT 1 – PROPOSED CODE AMENDMENTS

Cannon Beach, Oregon Municipal Code Title 17 ZONING

Chapter 17.88 PUBLIC DELIBERATIONS AND HEARINGS

17.88.005 Request for Electronic Notification of Permit Decisions

A. Persons who own property or reside in Cannon Beach may request electronic notification of permit applications and decisions by the city concerning a specific lot, including applications and decisions for development permits, building permits, tree removal permits, and right-of-way permits for driveways or access to the lot. Subject to the conditions below, the planning department shall provide electronic notification of all permit applications and decisions concerning the lot to persons who have made a request therefor, regardless of whether official notice is required.

B. Form of Request.

1. Persons shall request electronic notification of applications and decisions in the manner directed by the planning department. If the planning department has not created a process, the request for notification shall be made by email or mail to the planning director.

2. The person making the request must provide an email address for the notification of applications and decisions.

3. The planning director or designee shall inform the person within 3 working days of receipt of a request that requested electronic notification will be provided.

C. Notification Process.

1. The planning director or designated city employee shall provide electronic notification of applications and decisions concerning the lot to all persons who have requested notification by sending an email to the address provided by the requestor within 2 working days of the submission of the application or issuance of the decision.

2. Notifications of decisions shall include a copy of the written decision.

D. Duration of Request.

1. If an application has been submitted to the city concerning the lot, the request for electronic notification of applications and decisions shall remain valid until the development proposed in all applications concerning the lot is complete or, alternatively, 60 days after all applications have been denied or withdrawn.

2. For lots where an application has not been submitted, a request for electronic notification shall expire 60 days after it has been submitted if no application is subsequently received by the city within that time.

Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS

17.50.010 Purpose.

The purpose of this chapter is to minimize building hazards and threats to life and property that may be created by landslides, coastal erosion, weak foundation soils and other hazards as identified and mapped by the city. This purpose is achieved by basing city decisions on accurate geologic and soils information prepared by a registered geologist and requiring the application of engineering principles in any construction that occurs where such studies indicate potential hazards.

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.

17.50.030 Procedure.

The requirements of this section shall be met prior to the issuance of a building or development permit. The city may require that the requirements of this section be met in conjunction with a request for the approval of a setback reduction, variance, conditional use, design review request, preliminary subdivision proposal, major partition request, minor partition request and preliminary planned development request. Notice of decisions approving applications subject to this chapter shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.

Chapter 17.62 GRADING, EROSION AND SEDIMENTATION CONTROL

17.62.030 Grading and erosion control permit.

A. Development Permit Required.

1. Persons proposing to clear, grade, excavate or fill land (regulated activities) shall obtain a development permit as prescribed by this chapter unless exempted by Section 17.62.040. A development permit is required where:

a. The proposed clearing, grading, filling, or excavation is located within one hundred feet of a stream, watercourse or wetland; or

b. The proposed clearing, grading, filling, or excavation is located more than one hundred feet from a stream or watercourse or wetland and the affected area exceeds two hundred fifty square feet; or

c. The proposed volume of excavation, fill or any combination of excavation and fill exceeds ten cubic yards in a calendar year.

2. A development permit for regulated activities in conjunction with a structure requiring a building permit shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(1). *However, notice of decisions approving the development permit shall be mailed to property owners within one hundred feet of the exterior boundary of the subject property, within 3 working days of the date on which the final order was signed.*

3. A development permit for regulated activities in conjunction with a subdivision or partition shall be reviewed in conjunction with construction drawings as required by Section 16.04.260.

4. A development permit for regulated activities not in conjunction with building permit, subdivision, or partition shall be reviewed pursuant to Section 17.92.010(A), (B) and (C)(2). ~~However, notice to adjacent property owners, as specified by Section 17.92.010(C)(2)(d), is not required.~~

B. Exceptions. The following are exempt from the requirements of Section 17.62.030(A):

1. Residential landscaping and gardening activities up to two thousand square feet in area;

2. Forest management undertaken pursuant to Section 17.80.170;

3. Construction which disturbs five acres or more. Such activities are regulated by the Oregon Department of Environmental Quality through its storm water program.

C. Information Required for a Development Permit.

1. An application for a development permit for regulated activities subject to the requirements of this chapter shall include the following:

a. A site plan, drawn to an appropriate scale with sufficient dimensions, showing the property line locations, roads, areas where clearing, grading, excavation or filling is to occur, the area where existing vegetative cover will be retained, the location of any streams or wetland areas on or immediately adjacent to the property, the general direction of slopes, the location of the proposed development, and the location of soil stock piles, if any;

b. The type and location of proposed erosion and sedimentation control measures.

2. The city may require a grading plan prepared by a registered civil engineer where the disturbed area has an average slope of twenty percent or greater, the disturbed area is located in a geologic hazard area, or is part of a subdivision or partition. Such a grading plan shall include the following additional information:

a. Existing and proposed contours of the property, at two-foot contour intervals;

b. Location of existing structures and buildings, including those within twenty-five feet of the development site on adjacent property;

c. Design details for proposed retaining walls;

d. The direction of drainage flow and detailed plans and locations of all surface and subsurface drainage devices to be constructed.

3. The city may require that the sedimentation and erosion control plan be prepared by a registered civil engineer where the disturbed area is greater than one acre in size, or the disturbed area has an average slope of twenty percent or greater. (Ord. 98-5 § 1)

Cannon Beach, Oregon Municipal Code Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.36 PUBLIC RIGHTS-OF-WAY

12.36.030 Issuance of permits.

A. A permit shall be obtained from the public works department before planting, removing or otherwise significantly altering any tree or shrub in the street right-of-way or placing or removing any improvement in the street right-of-way.

B. Procedure for new street improvements.

1. Notice of applications for a new road, alley, bridge, driveway, or other type of street improvement that has 30 feet or more of linear length in public right-of-way shall be mailed to property owners within three hundred feet of the development site within 14 days of the application and not less than 20 days before a decision is made on the application.

2. The notice shall include the information specified in sections 17.88.030(A), (C), (D), (E), (G), and (I). The notice shall also include a statement that persons are invited to submit information within 20 days relevant to the standards below giving reasons why the application should or should not be approved or proposing modifications the person believes are necessary for approval according to the applicable standards.

3. Notice of a decision approving a right-of-way application subject to this subsection shall be provided to property owners within three hundred feet of the development site and other persons who commented on the proposed right-of-way permit in accordance with the provisions of Section 17.88.130.

4. For purposes of this subsection, a street improvement is new if vehicular access did not previously exist at the location, it was blocked for a period of one year, or an unimproved right-of-way would be improved to provide vehicular access. Paving, maintenance, and minor alterations of an existing street is not new access.

~~B.~~ C. The following criteria shall be considered as part of the process of reviewing an application for a permit:

1. Maintains public safety;
2. Maintains adequate access for public use of the street right-of-way;
3. Maintains or improves the general appearance of the area;
4. Does not adversely affect the drainage or cause erosion of the adjacent property.

All of these criteria must be met in order for the public works department to issue a permit.

~~C~~. D. Upon issuance of a permit, property owners may plant trees or shrubs or place improvements in the public right-of-way abutting their property so long as the selection, location and planting of such trees or shrubs or the placing of an improvement is in accordance with the permit.

~~D~~. E. Nothing in the ordinance codified in this chapter shall be construed to prohibit a property owner from watering or fertilizing trees or shrubs or mowing other vegetation in the public right-of-way abutting his/her property.

~~E~~. F. Any tree, shrub or other object placed in the public right-of-way not in compliance with the provisions of the ordinance codified in this chapter shall be removed at the expense of the person who planted it or placed it there. The city shall direct the abutting property owner to do so under the provisions of Sections 8.04.170—8.04.230 of the Cannon Beach Municipal Code.

~~F~~. G. Nothing in the ordinance codified in this chapter shall be construed to supersede or replace the requirements of Section 17.70.020 of Chapter 17.70, Tree Removal, which requires a permit from the city prior to any tree removal. (Ord. 93-20 § 4)



MEMORANDUM

RE: Status of Non-Structural Shoreline Stabilization Conditional Use Permits

July 15, 2022

Dear Planning Commission:

The purpose of this memorandum is to provide an update to the Planning Commission regarding the status of the following conditionally approved non-structural shoreline stabilizations.

- **CUP 21-03, 116 N. Laurel St.**

This project has not been started.

- **CUP 21-04, 4664 Logan Ln.**

The cobble and sand berm was installed by the applicant on May 31st. Due to scheduling conflicts a member of staff was not able to be present during the installation, however the site was visited and documented on June 1st in order to ensure compliance with condition #4. Placement of vegetation was verified on July 15th.

- **CUP 21-05, 3915 Ocean Ave.**

The cobble and sand berm was installed by the applicant on May 27th. Staff visited the site on May 27th and June 1st to observe and document as per condition of approval #4. Placement of vegetation was verified on July 15th.

- **CUP 22-01, 3863 Ocean Ave.**

The cobble and sand berm was installed by the applicant on May 27th. Staff visited the site on May 27th and June 1st to observe and document. Placement of vegetation was verified on July 15th.

All projects were coordinated with Oregon Parks and Recreation Department as per conditions of approval.

This status update includes imagery from Unmanned Aerial Vehicle flights that were carried out in partnership with the Columbia River Estuary Study Taskforce to develop up to date orthomosaic maps of the Cannon Beach shoreline that can be used to monitor erosion, stabilization projects resulting from the impacts of erosion, and the effectiveness and longevity of those shoreline stabilizations.

Sincerely,

Robert St. Clair
Planner

CUP 21-03, 116 N. Laurel St.

Aerial Image – June 14, 2022



Site Visit Photo – July 15, 2022



CUP 21-04, 4664 Logan Ln.

Aerial Image – June 15, 2022



Site Visit Photo – July 15, 2022



CUP 21-05, 3915 Ocean Ave.

Aerial Image – June 15, 2022



Site Visit Photo – July 15, 2022



CUP 22-01, 3863 Ocean Ave.

Aerial Image – June 15, 2022



Site Visit Photo – July 15, 2022

