



**BEFORE THE CITY OF CANNON BEACH**

<b>IN THE MATTER OF A DEVELOPMENT PERMIT</b>	)	
<b>FOR THE CLEARING OF VEGETATION, GRADING,</b>	)	<b>FINDINGS OF FACT,</b>
<b>AND EXCAVATION IN CONJUNCTION WITH</b>	)	<b>CONCLUSIONS, AND</b>
<b>PROPOSED RESIDENTIAL DEVELOPMENT DENYING</b>	)	<b>ORDER DP#23-28</b>
<b>THE REQUEST AND ADOPTING FINDINGS</b>	)	

ZONE: Residential Medium Density (R2)  
Wetlands Overlay (WO)


APPLICANT: Red Crow, LLC/Jamie Lerma  
P.O. Box 825  
Cannon Beach, OR 97110

The above-named applicant applied to the City for review and approval of a development permit for vegetation clearance, grading, and excavation in conjunction with proposed residential development on Taxlot 51030DA04100 on Forest Lawn Road. The project area is mostly located within 100 feet, but outside of, a delineated wetland and its buffer area, however a portion of the project area crosses a delineated wetland buffer. Any grading, excavation, or the placement of fill within a delineated wetland or its buffer requires the issuance of a Conditional Use Permit and cannot be permitted under a Type 2 Development Permit. The City of Cannon Beach orders that the request for a development permit for the clearing of vegetation, grading, and excavation is denied and adopts the following findings of fact and conclusions contained in Exhibit A.

The E-Permitting record for this application can be reviewed here: [164-23-000098-PLNG](https://www.cannonbeach.gov/164-23-000098-PLNG)

This decision may be appealed to the Planning Commission by an affected party by filing an appeal with the City within fourteen days of this date.

**DATED: August 9, 2023**




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Robert St. Clair  
Planner

**EXHIBIT "A"**

**FINDINGS OF FACT**

**TL 51030DA04100 CLEARING, GRADING, AND EXCAVATION FOR PROPOSED RESIDENTIAL DEVELOPMENT – DP#23-28**

**PROPERTY DESCRIPTION:** Taxlot# 51030DA04100  
**PROPERTY LOCATION:** Undeveloped parcel on Forest Lawn Rd.  
**APPLICANT:** Red Crow LLC/Jamie Lerma  
**PROPERTY OWNERS:** Patrick/Dave LLC  
**ACTION:** Denied

**BACKGROUND**

The proposed project is the clearance of vegetation, grading, and excavation on Taxlot# 51030DA04100 on Forest Lawn Rd. in conjunction with planned residential development. The subject property is zoned R2 Residential Medium Density and contains the majority of Site 24 of the Cannon Beach Local Wetland Inventory.

The proposed residential development consists of a two-family dwelling with two detached units and a detached garage with storage. All structural proposed structural development on the upland portions of the subject property.

The detached garage and its driveway are accessed from Forest Lawn Rd. and connected to the dwelling units by a three-foot-wide pedestrian access that traverses the 5-foot buffer area of Site 24. Based on the site plan the construction equipment would access the project area from S. Hemlock St.

**APPLICABLE CRITERIA**

The following sections of the Cannon Beach Municipal Code are applicable to this application:

- 17.14.020 – Uses Permitted Outright, R2 Residential Medium Density Zone
- 17.62.030 – Grading and Erosion Control Permit
- 17.43.045 – Conditional Uses and Activities Permitted in Wetland Buffer Areas
- 17.43.050(B) – Standards, Residential Development, Wetland Overlay Zone
- 17.43.050(L) – Standards, Vegetation Management, Wetland Overlay Zone

**(1) 17.14.040 – Uses Permitted Outright, R2 Residential Medium Density Zone**

*In an R2 zone the following uses and their accessories are permitted outright:*

*B. Two Family Dwelling*

Findings:

Duplex or two-family dwellings are defined as a building or buildings containing two dwelling units with or without a common wall or ceiling and where there are not direct interior connecting doorways. The proposed development is a permitted use in the R2 zone.

**(2) 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;*

Findings:

Clearing, grading, filling, or excavation located within 100 feet of a stream, watercourse, or wetland may be permitted through a Type 2 development permit so long as the proposed work is outside of a delineated wetland buffer area. The site plan shows the two dwelling units separated from the off-street parking area by the western portion of LWI Site 24 with a 3-foot-wide pedestrian access traversing the buffer zone through what the plan shows as a “vegetation management area.” The utility plan also shows the water line serving the northern dwelling unit traversing the wetland buffer area.

Construction vehicle access appears to be from S. Hemlock St., however a plat note on Partition Plat 2000-037 indicates that access to the subject property is restricted to Forest Lawn Rd., the application does not include any information indicating that the applicant is authorized to access the site from S. Hemlock St.

The applicant’s description of the 3-foot-wide pedestrian access as vegetation management is inconsistent with the definitions found in 17.43.050(L). This area is described on the site plan of the June 22, 2023 Todd Prager & Associates tree plan as:

*“Private access adjacent to trees 16 and 18 shall be constructed under arborist supervision without excavation below existing grade. At least four inches of base rock over geotextile fabric shall be placed over exposed surface roots to protect them from damage.”*

The placement of fill would be required to establish a pedestrian access between the off-street parking area and dwelling units as the natural terrain is unsuitable as a walkway in its current condition. Section 17.04.277 defines grading as “any excavation or filling or a combination thereof.” As a portion of the pedestrian access and area to be excavated for underground utilities are located within a delineated wetland buffer area, the provisions of the Wetland Overlay zone are applicable to this application. Activities such as excavation or the development of access improvements are subject to the standards of that code and conditional use review.

**(3) 17.43.045 – Conditional Uses and Activities Permitted in Wetland Buffer Areas**

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

- 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. Bicycle paths;*
- G. Footpaths;*

- H. *Point-source stormwater discharge;*
- I. *Subdivisions, partitions, lot line adjustments.*

Findings:

The provisions of this code indicate that access improvements such as roads, driveways, and footpaths within a wetland buffer area are subject to conditional use review. Application materials contain a letter prepared by Chenoweth Law Group which asserts that private access improvements are exempt from conditional use review as they are not intended for public use. The City finds that this assertion is inconsistent with the standards for residential development in the Wetland Overlay zone which requires conditional use review for both public and private access improvements in wetlands and buffer areas.

Underground or above ground utilities are permitted in wetland buffer areas as per 17.43.035, however the excavation needed to install them is a conditional use listed in this section.

**(4) 17.43.050(B) – Standards, Residential Development, Wetland Overlay Zone**

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

- 1. New dwellings, when permitted, may be placed on piling or on posts, or may be cantilevered, in a manner that allows the free flow of water beneath the structure. No fill material may be used for the residence.*
- 2. Building coverage will be minimized, and in no case shall it exceed two thousand five hundred square feet.*
- 3. Driveways, utilities, landscaping, garages, accessory structures and other uses and activities accessory to a residence shall comply with applicable standards.*

Findings:

The residential development standards of the Wetland Overlay zone state that “uses and activities accessory to a residence shall comply with applicable standards.” While the proposed dwellings themselves are located in the upland portion of the subject property, the access pathway needed to contact the dwellings to the off-street parking area on Forest Lawn Rd. traverses a delineated buffer area. Access improvements and excavation are activities accessory to a residence that are subject to conditional use review.

**(5) 17.43.050(L) – Standards, Vegetation Management, Wetland Overlay Zone**

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

- 1. Tree removal in protected wetlands and in wetland buffer areas shall be consistent with the criteria and standards in Chapter 17.70, tree removal.*
- 2. Removal of vegetation, except trees covered by Chapter 17.70, in protected wetlands and in wetland buffer areas is permitted only if:*

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

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

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

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

- 4. *Planting new vegetation in protected wetlands is permitted subject to the following standards:*
  - a. *The planting is part of an approved restoration, enhancement or mitigation plan; or*
  - b. *The planting is part of a landscape plan involving native wetland plant species, and the plan is approved by the city in conjunction with approval of a building permit; or*
  - c. *The planting is intended to replace dead or damaged plants that were either part of a maintained landscape or part of the existing wetland plant community.*

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

#### Findings:

The removal or pruning of vegetation from a wetland buffer area is meets the definition of vegetation management if it meets one or more of the following conditions:

1. Necessary for the placement of a structure for which a building permit has been issued.
2. Necessary for the maintenance of an existing structure, road, or pathway.
3. Necessary for the correction or prevention of a hazardous situation.
4. Necessary for the completion of a land survey.
5. Part of an approved restoration, enhancement, or compensatory mitigation plan.
6. Part of a landscape plan approved by the City in conjunction with a building permit that minimizes adverse impacts on protected wetlands.

The establishment of a new road or pathway is not included in the definition of vegetation management. After a site visit, City staff has determined that a pathway does not exist within the “vegetation management area” described on the application’s plat map. No building permits have been issued at the subject property any provisions of the code regarding City approvals are not applicable to this application.

#### **CONCLUSIONS**

After evaluating conditions on the subject property, and reviewing the pertinent criteria, the City finds the following:

- The subject property has a plat restriction requiring access to be from Forest Lawn Rd., the applicant has not provided any documentation indicating that construction vehicles are authorized to access the property from S. Hemlock St.
- Grading and or fill would be required to install a pedestrian access through the wetland buffer area. This activity is subject to conditional use review.
- Excavation through the buffer area would be required to install the water line serving the northern dwelling unit. This activity is subject to conditional use review.
- Private access improvements such as driveways and footpaths are subject to conditional use review.
- The language of the Wetland Overlay code makes no distinction between public vs. private footpaths, walkways, or other means of describing pedestrian access.
- The installation of a new walkway is not vegetation management as defined by Municipal Code 17.43.050(L).

Based on these findings the City has determined that the application is not eligible for a Type 2 development permit.

**DECISION**

The development permit application for vegetation clearance, grading, and excavation in conjunction with proposed residential development is denied.

This decision may be appealed to the Planning Commission by an affected party by filing an appeal with the City within fourteen days of the date of decision.

# Project Location Map, Development Permit #23-28

Taxlot# 51030DA04100, Forest Lawn Rd.

