

Date 05 September 2023
Subject Cannon Beach Community Development Ordinance (CDO) Rewrite Project
To Steve Sokolowski, Community Development Director, and Code Audit Joint Commission (City Council, Planning Commission, and Design Review Board)
From Urbsworks Team: Keith Liden, AICP, and Marcy McInelly AIA
Copy Bruce St. Denis, City Manager, Robert St. Clair, Planner, City of Cannon Beach; Elizabeth Nelson, MPP (Urbsworks), Ethan Rosenthal, DEA

WETLAND OVERLAY AMENDMENTS (CODE REWRITE PROJECT)

Agenda

City Council Work Session with Planning Commission and Design Review Board (Code Rewrite Joint Commission)

Wednesday, 13 September, 2023 | 6:00 PM | Council Chambers, City Hall

1. Code rewrite task update – Status and schedule (Marcy)
2. Proposed Wetland Overlay amendments (Marcy and team)
 - Overview
 - Discussion of Development Standards

OVERVIEW OF WETLAND OVERLAY AMENDMENTS

Introduction

The city recognizes the environmental value of wetlands, and the Cannon Beach Municipal Code contains wetland regulations in Chapter 17.43 Wetlands Overlay (WO) Zone to protect them. The city formed a citizen committee to review the existing regulations and determine how to improve the existing WO Zone. The committee created a draft, and the Urbsworks team was asked to review the document and make recommendations as to how it might be further improved.

Process

Step 1 - Reorganization

As a first step, the Urbsworks team recommended a reorganization of the WO Zone draft to enhance readability and clarity. A revised outline was reviewed by the committee and city staff and found to be appropriate. The draft text was then reorganized accordingly into the new WO sections without adding or deleting any text.

Step 2 – Preliminary Editing

Following the reorganization, the text was edited primarily to eliminate duplicative language and to identify potential definitions and narrative additions to strengthen the WO chapter. The deletions and additions are shown in the attached discussion draft.

DISCUSSION DRAFT

The discussion draft shows the proposed reorganization, with notes (highlighted) regarding where the text originated in the committee draft or from other portions of the code. New and deleted text are also shown. The resulting reorganization and preliminary editing are summarized below with explanatory notes .?

17.43.010 Purpose

The purpose statement in Section 17.43.010 of the committee draft was retained, and the regulatory portions were relocated elsewhere. The definitions were moved to a new Section 17.43.015.

17.43.015 Definitions

This is a new section.

- Recommend definitions ultimately going to 17.04 as a group of wetland definitions and being eliminating this subsection.
- Definitions for wetland, wetland buffer area, and wetland delineation in the Title 17 definitions section were added here.
- New definitions proposed as noted to clarify permitted activities in 17.43.050.
- May need to modify the wetland definition per Department of State Lands.

17.43.020 Mapping

This section is relatively unchanged, but the following amendments are recommended:

- Clarify relationship between city's LWI and subsequent delineations/determinations. We think that a delineation should modify the city's LWI because it's more current and site-specific. The wording proposed by the committee (and we believe in the current CDO) isn't very clear about what happens to the official city map once better information is available.
- Clarify what's meant in Subsection E. re: protected wetlands.

17.43.030 Applicability

This is a new proposed section to clarify when these regulations apply.

17.43.040 Administration

This is a new section to clarify how WO applications will be administered and reviewed. It assumes that Article II will be revised to include a consolidated description of the four basic review procedures currently used. A recommendation from the Code Audit calls for consolidating all procedural requirements in a new Article II and Type I-IV procedural categories that correspond to the city's current review procedures. For example, a Planning Commission review would be a Type III process.

17.43.050 Development and Activities Permitted

A table is proposed to simplify the narrative in Sections 17.43.030 – 17.43.045. This removes the reference to conditional use and showing most activities as requiring a Type III Planning Commission review. The following should be considered:

- Definitions for the terms highlighted.
- Determine if we have all development/activities covered and if some need to be added.
- Identify any additional types of development or activities that would be appropriate in buffer areas with a Type I or III review. In particular, minor activities in the buffer area, which will be expanded from 5 to 50 feet, may be appropriate for a Type I staff review.

17.43.060 Application Submittal Requirements

This new section is based on the site design review submittal requirements (17.44.050), and it is modified to coincide with a WO application. The stormwater submittal requirements found in subsection J. of the committee draft was moved here. The submittal requirements should be reviewed and modified as appropriate.

17.43.070 Development Standards

This section is from Section 17.43.050 of the committee draft. The list of standards is quite long, and not all standards apply to any one proposal. The Urbsworks team recommends that the standards in this section be reorganized to coincide more closely the location of a development proposal to help focus on the standards that pertain to a specific application. Such a reorganization could include:

- General standards that would apply in all or most cases regardless of location or magnitude.
- Standards for wetland lot-of-record applications.
- Standards for development and activities within wetlands.
- Standards for development and activities within wetland buffer areas only.
- Mitigation requirements.

DISCUSSION: DEVELOPMENT STANDARDS (17.43.070)

<p>While the draft wetland amendments will be submitted for DLCD consideration by the time of the meeting next week, the technical expert team is testing and refining development standards. The timing of the Joint Commission work session provides an opportunity to discuss several key issues, see below.</p>	
<p>Organization of standards</p>	<p>The proposed organization is:</p> <ul style="list-style-type: none"> · General Standards · Residential/Commercial development and accessory structures · Specific standards · Mitigation
<p>General Standards – Considerations</p>	<p>Consider a general standards section similar to that proposed by the committee, which would apply to development in wetlands, wetland lots-of-record, and buffer areas. Criteria could include demonstrating the applicant has first utilized land outside of the wetland and buffer to the extent practicable, and provision of evidence of any necessary state and/or federal permits, etc.</p>
<p>Residential/Commercial development and accessory structures – Considerations</p>	<p>Distinguish between lot coverage for the entire property versus wetland/buffer because coverage in the latter matters most.</p> <p>Include numerical standards instead of terms like “minimize.”</p> <p>Current code amendments consider gravel to be an impervious surface, yet compacted gravel is regarded by civil engineers as impervious.</p> <p>Are piles always a better solution than fill?</p> <p>Combine sections (B. - D.) based on impact.</p> <p>Note: The stormwater management portion (subsection J.) mixes submittal requirements and standards, and the proposed draft moves the submittal provisions to 17.43.060.</p>

<p>Specific standards – Consider standards and organization based on impact</p>	<p>In the draft code provided in this packet, wetlands and the 50’ buffer are restricted the same way. Consider that, while the buffers logically need to have restrictions to protect the adjoining wetland, restrictions for the buffer area might be more relaxed compared to those for the wetlands.</p> <p>Consider allowances for the different development activities by wetland, wetland lot-of-record, and buffer area with the wetland requirements being the most stringent, lot-of-record allowing only a house (for example), and buffer being more permissive. As a result the development standards chapter would be organized based on a hierarchy of standards based on impact.</p>
<p>Mitigation – Considerations</p>	<p>Consider standards that provide for mitigation as a way to handle development.</p> <p>Consider LIDA techniques (Low Impact Development Approaches).</p>

CHAPTER 17.43 WETLANDS OVERLAY (WO) ZONE Draft Reorganization 8.20.23

17.43.010 Purpose

The purpose of the wetlands overlay zone is to protect wetland areas identified in the city's comprehensive plan from uses and activities that are inconsistent with the maintenance of the wetland functions and values identified for those sites, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; carbon sequestration; thermal refugia, and improving water quality through biofiltration, adsorption, retention, and transformation of sediments, nutrients, and toxicants. Wetland areas also serve significant community wellness purposes such as mental and emotional well-being and sense of community in nature. (Ord. 94-29 § 2)

17.43.015 Definitions [from 17.43.010]

Note: It is recommended that all definitions ultimately reside in a common definitions chapter in the CDO (currently proposed as Chapter 17.04 Definitions).

Alternative stormwater practices

"Best management practices" means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to protected wetlands.

"Buffer averaging" means reducing the standard buffer width (i.e., 50 feet) around a wetland in some locations and increasing it in other locations such that the total area within the buffer around a given delineated wetland after averaging remains at least equal to what was required by the standard buffer around that wetland.

Compensatory wetland mitigation

"Contiguous" means lots that have a common boundary and includes lots separated by public streets. [from 17.43.025]

"Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

"Footprint" refers to the total area under the exterior walls of all structures on a lot.

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

Point source stormwater discharge

Commented [ER1]: I didn't see any mapping of wetlands in the comp plan maps. The only geographically specific wetland references in the comp plan text were to:

- Ecola Creek Management Plan
- area north of Elk Creek Rd on east side of US Hwy 101 (south of Ecola Creek Wetlands)

Comp plan does not reference City's Local Wetland Inventory. Perhaps this code should reference the LWI instead of the comp plan?

LWI available here:
<https://docs.dsl.state.or.us/PublicReview/0/doc/862663/Electronic.aspx>

Commented [ER2]: same comment as previous. It is the LWI that ID'd specific wetlands and assessed functions.

Note functions assessed in LWI (1993) are similar to those listed here but not worded exactly the same as those listed in the code.

Commented [ER3]: Recommend noting that stream corridor protections are covered under Chapter 17.71. This reference is made on pg 9, but would be helpful upfront as well. If estuarine wetlands are covered by separate code chapter, a reference here would be helpful as well, including how this all relates to the Ecola Creek Estuary Plan.

Commented [KL4]: Consider adding this to the definitions, especially if the term is used elsewhere in the CDO. This term could be difficult to apply across streets when the lots are offset/corner to corner.

“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.

Commented [ER5]: Is this term just focused on City protections? Perhaps note that Federal and State protections also exist and applicant is responsible for addressing such regulations too (i.e. review by the City does not imply review by Federal or State agencies).

A “qualified wetland professional” is a person with experience and training in wetlands issues and with experience in performing delineations, analyzing wetland functions and values, analyzing wetland impacts, and recommending wetland mitigation and restoration. Qualifications include:

Commented [ER6]: Qualifications listed seem reasonable/fair.

A Professional Wetland Scientist certification from the Society of Wetland Scientists; or

B.S. or B.A., or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife, agriculture or related field; two years of related work experience; and minimum of one-year experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans; or

Commented [ER7]: I had not heard of this reference before, and a Google search didn’t turn up anything with this exact title. I would recommend replacing with the 1987 Manual and supporting guidance, similar to provided in Section 17.43.020.B.

Four years of related work experience and training; minimum of two years’ experience delineating wetlands using the Unified Federal Manual and preparing wetland reports, and mitigation plans.

Commented [ER8]: See previous comment

“Rainfall Collection Area” is the drainage system or catchment area upslope of the protected wetland that contributes either surface runoff or shallow subsurface seepage.

“Runoff” means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

“Sediment” means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

“Site” means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.

“Upland” as used in this Chapter is the portion of a wetland lot-of-record that is neither protected wetland nor wetland buffer area.

Utilities, underground or above ground

“Vegetation” as used in this title Chapter shall include all plant and woody matter, including native willows and small diameter trees.

Commented [ER9]: Is it necessary to specify “..., including native willows and small diameter trees”? It begs the question of are large trees not “vegetation”? What about grasses or non-native vegetation? If this is intended to be a catch all, perhaps define it as “..., all plant matter (e.g., all native and non-native herbaceous, shrub, and tree species of any size or amount).”

“Wetland” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (Ord. 94-29 § 1) [from 17.04.566]

“Wetland buffer area” means a 50-foot-wide non-wetland area in the wetlands overlay zone surrounding the a protected wetlands within the wetlands overlay zone. (Ord. 94-29 § 1) [from 17.04.567].

“Wetland delineation” means a site-specific determination of the boundary between uplands and wetlands for a given parcel of land based on field indicators of vegetation, soils and hydrology. The

delineation is to be undertaken in accordance with a method acceptable to the US Army Corps of Engineers and the Oregon Division of State Lands. (Ord. 9429 § 1) [from 17.04.568]

Wetland enhancement

“Wetland lot-of-record” is a lot or contiguous lots held in common ownership on August 4, 1993, which are subject to the provisions of this chapter. A wetland lot-of-record includes upland portions of the contiguous property that are not subject to the provisions of the wetlands overlay zone. [from 17.43.025]

“Wetland Overlay Zone” [...]

17.43.020 Mapping [from 17.43.020]

A. The maps delineating the wetland overlay (WO) zone boundaries shall be maintained and updated as necessary by the city. The Cannon Beach Local Wetland Inventory (LWI) maps dated September 20, 1994, as well as subsequent updates to the LWI, shall form the basis for the location of wetlands. The WO zone includes both wetland and wetland buffer areas which abut wetlands. ~~The wetland buffer area has a width of fifty feet measured perpendicular to the outer boundaries of the wetland.~~

B. Site-specific wetland delineations or determinations are required to determine the exact location of the WO zone boundary. Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual along with any supporting technical or guidance documents issued by the Division of State Lands and applicable guidance issued by the U.S. Army Corps of Engineers for the area in which the wetlands are located.

C. When an expert report or opinion is submitted by an applicant, the permitting authority may seek an independent expert opinion when reviewing the report or opinion. A qualified wetland professional retained or hired by the city under this subsection is expected to render independent expert opinion, consistent with the Society of Wetland Scientists Code of Ethics. [from 17.43.010]

CD. Where a wetland delineation or determination is prepared, and accepted by the City, the mapping it contains shall replace that of the Cannon Beach Local Wetland Inventory. Wetland delineations or determinations shall remain valid for a period of not more than five years from the date of their acceptance by the Division of State Lands. Any wetland delineation submitted to the City shall be accompanied by an electronic shapefile.

DE. The continued reliance on a wetland delineation or determination that is more than five years old requires the following additional new information:

1. An onsite re-inspection of the site by a qualified wetland professional to determine if there has been any change in circumstances;
2. If no change in circumstances is found, a short report shall be provided noting or including:
 - a. A description of site conditions and any changes between the date of the original wetland determination or delineation and the date of the re-inspection,

Commented [ER10]: Add definition and note that it includes both the “wetland” and the “wetland buffer.” I realize this is noted in the next section, but seeing it in a brief definition with the other terms would be helpful for someone new to the code (like me 😊)

Commented [ER11]: At federal level, jurisdiction over some types of wetlands has fluctuated over the years due to either Supreme Court rulings and/or Presidential Administration interpretations/Executive Orders. The Corps has not regulated “isolated” wetlands for quite some time. Recent Supreme Court ruling may drastically reduce federal authority over many wetland types. DSL at state level tends to be quite consistent over the years, regulates isolated wetlands.

The references to the 1987 manual and other guidance is still appropriate. But it may be worth tying the City’s definition of a jurisdictional “wetland” to DSL’s.

Commented [KL12]: Permitting authority presumably refers to the city. Not using consistent terminology when referring to the city and the approval authority s currently an issue in the CDO.

Commented [KL13]: What does “accepted by the city” mean? The party responsible should be defined. I would recommend that it’s the community development director. Otherwise I could see where the Planning Commission or Design Review Committee would decide they have the authority to pass judgement on a technical document.

Commented [ER14]: Will the City require applicants to submit all delineations for DSL review and concurrence? I didn’t notice this requirement. This is typically not required unless wetland impacts are proposed as opposed to just wetland buffer impacts.

Commented [ER15]: Should specify the file format, coordinate system, datum, units and any attributes the City will require and to assure the mapping can seamlessly be pulled into the City’s GIS system:

For example (City GIS should provide guidance):
File format: ESRI GIS shapefile
Features: Wetland boundary, buffer boundary, stream (ordinary high water) boundary, as polygon features. Narrow features, less than 6ft wide can be provided as line features similar to DSL requirements). Wetland areas converted to buffer via approved permit.
Coordinate/datum: State Plane, Oregon North, NAD83
Units: International feet

Commented [ER16]: Will the applicant be required to submit this to DSL for concurrence renewal? Similar to previous comment, what if only buffer impacts are proposed?

- b. Any additional maps, aerial photographs or other documents consulted, and
 - c. Conclusions regarding the accuracy of the original wetland delineation or determination;
3. If a change in circumstances is noted, the information in subsection (D)(2) of this section shall be provided along with:

Commented [ER17]: Same as previous comments about need to submit to DSL for approval or not.

- a. Additional field data, including wetland determination data in conformance with Division of State Lands standards needed to verify and document any change in the status of the wetland area that were or were not identified and mapped as part of the original delineation or determination,
- b. A revised wetland map,
- c. Data, documentation, and other information as needed to establish the nature and timing of the activity or activities that resulted in the change in circumstances.

FF. Protected wetlands that are legally filled under this chapter are no longer protected wetlands, but remain as wetland buffer areas under this overlay zone. Wetland buffer areas that are legally filled under this chapter remain as wetland buffer areas. (Ord. 08-1 § 40; Ord. 94-29 § 2)

Commented [ER18]: Curious what the consequences of this might be. Would an applicant need to submit for review any activity on a permitted developed area?

Commented [KL19R18]: I'm puzzled about this as well. Not sure what's intended.

Commented [ER20]: Should this be changed to "...but change to wetland buffer areas..."

17.43.030 Applicability

The regulations of this chapter apply to the portions of all properties that contain wetlands or wetland buffer areas as shown on the city maps or as described in a wetland delineation or determination as described in Section 17.43.020.

17.43.040 Administration

Activities permitted outright according to Table 17.43-1 shall be reviewed as a Type I city manager decision as provided in Article II.

All other development or activities within the Wetlands Overlay Zone shall be reviewed as a Type III Planning Commission decision as provided in Article II.

17.43.050 Development and Activities Permitted

A. Uses and activities listed in Table 17.43-1 may be permitted in wetlands and wetland buffer areas, subject to the issuance of a development permit in accordance with the provisions of this title and the applicable standards in Section 17.43.070.

B. Uses and activities in wetland and wetland buffers are prohibited unless specifically permitted in Table 17.43-1. Specific prohibition of any activity in this Chapter is not intended as authorization to engage in activity not specifically prohibited. Conflicts between this Chapter and any other provision of the Cannon Beach municipal code shall be resolved in favor of this Chapter. [from 17.43.010]

Commented [ER21]: How closely has this statement been vetted? Just concerned it could have unintended consequences. For example, should wetland rules override public safety issues such as provision of effective tsunami evacuation routes or fire service access, City water supply planning, etc.

C. ~~D.~~ Uses and activities in existence approved by a permitting authority before the effective date this Chapter 17.43, [to be specified on the date of ratification] (hereinafter referred to for purposes of this

Chapter as the Effective Date), and which may not conform with the permitted or conditional uses set forth herein may qualify as a “nonconforming use” as provided defined in Chapter 17.82 if they meet the requirements of Chapter 17.82 as of the Effective Date. [from 17.43.010]

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. [from 17.43.025 – propose deleting]

Commented [ER22]: Should this say “wetland lot-of-record”?

Table 17.43-1 Permitted Development and Activities within the WO Zone

Development or Activity	Wetland	Wetland Lot-of-Record	Wetland Buffer
Vegetation management only to the extent necessary for hazard prevention	I	I	I
Structures	III	III (1 max)	III
Wetland enhancement	III	III	III
Compensatory wetland mitigation	III	III	III
Driveways	III	III	III
Pedestrian/bike pathways	III	III	III
Point source stormwater discharge	III	III	III
Alternative stormwater practices	III	III	III
Underground or above ground utilities	III	III	III

I – Permitted subject to Type I review and approval
 III – Subject to Type III review and approval

17.43.060 Development and Activities Permitted in Wetlands

—The following development and activities may be permitted in the wetlands portion of the WO zone, subject to the issuance of a development permit in accordance with Section 17.92.010, and subject to applicable standards, and if permitted outright in the base zone;

—A. Vegetation management only to the extent necessary for hazard prevention. (Ord. 21-05 § 2; Ord. 94-29 § 2) (from 17.43.030 permitted in wetlands) —

~~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. Subject to the requirements of 17.43.025, a commercial structure, residential structure, modular housing, or manufactured home meeting the standards of Section 17.68.020, limited to one structure on a wetland lot of record;

Commented [KL23]: This doesn't seem to be a good way to limit development. I would recommend some other measure that gets at all types of development, such as total building footprint, impervious surface, etc. Depending on the circumstances two smaller buildings may be a better fit than one larger one.

- ~~—B. Wetland enhancement;~~
- ~~—C. Compensatory mitigation;~~
- ~~—D. Driveways;~~
- ~~—E. Footpaths;~~
- ~~—F. Point source stormwater discharge;~~
- ~~—G. Alternative stormwater management practices;~~
- ~~—H. Underground or above-ground utilities. (from 17.43.040 CU permitted in wetlands)~~

Commented [KL24]: What does this mean? Should be defined above.

17.43.070 Development and Activities Permitted in Wetland Buffer Areas

~~The following uses and activities may be permitted in wetland buffer areas of the WO zone, subject to the issuance of a development permit in accordance with Section 17.92.010, and subject to applicable standards, and if permitted outright in the base zone:~~

- ~~—A. Vegetation management only to the extent necessary for hazard prevention. (Ord. 21-05 § 2; Ord. 94-29 § 2)~~

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. Subject to the requirements of 17.43.025, a commercial structure, residential structure, modular housing, or manufactured home meeting the standards of Section 17.68.020, limited to one structure on a wetland lot of record;~~
- ~~—B. Accessory structure or building as provided for by Section 17.54.030;~~
- ~~—C. Wetland enhancement;~~
- ~~—D. Compensatory mitigation;s~~
- ~~—E. Driveways;~~
- ~~—F. Bicycle paths;~~
- ~~—G. Footpaths;~~

- H. ~~Point source stormwater discharge;~~
- I. ~~Alternative stormwater practices;~~
- J. ~~Underground or above ground utilities. [from 17.43.045 CU permitted in buffers]~~

17.43.060 Application Submittal Requirements

Note: this is based on 17.44.050 Design Review Plan submittal requirements with irrelevant requirements deleted).

A. Information Requirements. Information provided on the ~~design review~~ development plan shall conform to the following:

1. Drawings depicting the proposal shall be presented on sheets not larger than twenty-four inches by thirty-six inches in the number of copies directed by the city;
2. Drawings shall be at a scale sufficiently large enough to enable all features of the design to be clearly discerned.

B. Site Analysis Diagram. This element of the design review plan, which may be in a freehand form to scale, shall indicate the following site characteristics:

1. A survey of the property by a licensed land surveyor clearly delineating property boundaries. The city may waive this requirement where there is a recent survey which can be used to establish the applicant's property boundaries;
2. Location of the wetland boundary and wetland buffer area;
3. Location and species of trees greater than six inches in diameter when measured four and one-half feet above the natural grade, and an indication of which trees are to be removed or potentially affected by construction activity on the subject property and abutting properties ;
4. On sites that contain steep slopes, potential geologic hazard or unique natural features that may affect the proposed development, the city may require contours mapped at two-foot intervals;
5. Natural drainageways and other significant natural features;
6. All buildings, roads, retaining walls, curb cuts and other manmade features on the subject property;
7. Developed and natural features, including trees, wetlands, structures, and impervious surfaces on adjoining property having a visual or other significant relationship with the site; and
8. The location and names of all existing streets within or on the boundary of the proposed development.

C. Site Photographs. Photographs depicting the site and its relationship to adjoining sites and natural features shall also be provided.

D. Site Development Plan. This element of the ~~design review~~ development plan shall indicate the following:

- ~~1. Legal description of the lot;~~
1. Boundary dimensions and area of the site.
2. Location of all ~~new structures, and~~ existing structures, driveways, walkways, and landscaped areas proposed to be retained, including their site coverage and distances from the property line, and wetland and wetland buffer area boundaries;
3. Location of all new structures, ~~and existing structures,~~ driveways, walkways, and landscaped areas proposed to be retained, including their site coverage and distances from the property line, and wetland and wetland buffer area boundaries;
4. All external dimensions of existing and proposed buildings and structures;
- ~~6. The location of a building's windows, doors, entrances and exits;~~
5. Existing and proposed parking and vehicular and pedestrian circulation areas, including their dimensions;
6. Existing and proposed service areas for such uses as the loading and delivery of goods;
7. Locations, descriptions and dimensions of easements;
9. Grading and drainage plans, including spot elevations and contours ~~at close enough intervals to easily convey their meaning;~~
10. Location of areas to be landscaped or retained in their natural state;
- ~~12. Private and shared outdoor recreation areas;~~
- ~~13. Pedestrian circulation;~~
- ~~14. The location of mechanical equipment, garbage disposal areas, utility appurtenances and similar structures;~~
11. Exterior lighting including the type, intensity, height above grade and area to be illuminated;
12. Other site elements which will assist in the evaluation of the application site development;

~~—19. The location and names of all existing streets within or on the boundary of the proposed development;~~

~~—13. A written summary showing the following:~~

~~—a. For commercial and nonresidential development:~~

~~—I. The square footage contained in the area proposed to be developed,~~

~~—II. The percentage of the lot covered by structures,~~

~~—III. The percentage of the lot covered by parking areas and the total number of parking spaces,~~

~~—IV. The total square footage of all landscaped areas including the percentage consisting of natural materials and the percentage consisting of hard surfaced areas such as courtyards,~~

E. Landscape Plan. Development proposals with a total project cost exceeding two hundred fifty thousand dollars shall have the landscape plan prepared by a licensed landscape architect or licensed landscape contractor. This element of the ~~design review~~ development plan ~~should~~ shall indicate the following:

1. The size, species and locations of plant materials to be retained or placed on the site;
2. The layout of proposed irrigation facilities;
3. The location and design details of walkways, plazas, courtyards and similar seating areas, including related street furniture and permanent outdoor equipment including sculpture;
4. The location, type and intensity of lighting proposed to illuminate outdoor areas;
5. The location and design details of proposed fencing, retaining walls and trash collection areas; and

F. A stormwater management plan shall be required of the applicant and reviewed and approved by the public works director for the following types of developments where stormwater will move from the site into protected wetlands:

1. New building covering more than two hundred square feet; or
2. New addition covering more than two hundred square feet; or
3. New road or driveway; or
4. Road or driveway expansion; or
5. New parking lot or parking lot expansion; or
6. Point source stormwater discharge; or

7. Diversion of stormwater for any reason within the protected wetland or wetland buffer.

8. A stormwater management plan must include all information necessary to demonstrate to the public works director that the proposed stormwater management system will maintain pre-construction activity, or background, water quality and similar flow characteristics (e.g., volume, velocity, and duration) and be consistent with the standards of this Chapter. The stormwater management plan shall provide the following in addition to any information requested by the public works director:

Commented [ER25]: "All information necessary" is very open ended. I think most applicants and their consultants would generally prefer something a little more specific. For example, if stormwater modeling is required, what model and what criteria should be used?

We can have a follow on this with a DEA Water Resource Engineer. We could point the team to the CWS stormwater manual or similar.

a. Property description

b. Site map or maps, drawing or specifications detailing the design, route, and location of the stormwater management system.

c. A map or model of drainage patterns and stormwater flow before and after the development or activity; impacts to water quality in the wetland, changes to water quantity and timing that may adversely affect wetland function (e.g., affects of rapidly fluctuating water levels on amphibian egg masses, scour impacts to vegetation) and potential for sediment deposition into the wetland or wetland buffer.

d. Best management practices and methods of treatment that will maintain or improve background levels of water quality, which includes but is not limited to: dissolved oxygen levels; pH; temperature; total dissolved solids; and contaminants. [from 17.43.050 J. Standards]

G. Narrative addressing the relevant standards in Section 17.43.070.

1. Property Survey:

1. A survey of the property by a licensed land surveyor clearly delineating property boundaries. The city may waive this requirement where there is a recent survey which can be used to establish the applicant's property boundaries;

2. Prior to the design review board meeting, the applicant will have clearly marked the corners of proposed buildings and other significant features proposed for the site. (Ord. 19-3 § 1; Ord. 14-6 § 2; Ord. 97-28 §

17.43.070 Development Standards [all from 17.43.050 stds. with lot of record standards at the end]

The following standards are applicable to the uses and activities listed in Section 17.43.050. 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.

Commented [KL26]: List this as one of the criteria below instead of being embedded in this introductory statement.

Need to include remainder of wetland lot-of-record requirements here.

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).

2. Where a use or activity can be located in either the protected wetland or the wetland buffer, preference shall be given to the location of the use or activity in the wetland buffer.

3. Valid permits from the US Army Corps of Engineers and from the Oregon Division of State Lands, or written proof of exemption from these permit programs, must be obtained before any of the following activities occur in protected wetlands:

Commented [ER27]: This section may address my previous comments, but may still be worth reviewing them.

- a. Placement of fill (any amount);
- b. Construction of any pile-support structure;
- c. Excavation (any amount);
- d. Compensatory mitigation;
- e. Wetland restoration;
- f. Wetland enhancement.

4. Where a wetland was (is) identified by the Cannon Beach wetland study as riverine, uses and activities are also subject to the requirements of Chapter 17.71, stream corridor protection.

Commented [ER28]: Riverine mapped wetlands are often just referring to streams. They can also include wetlands that receive flood water from the stream, but often times it is literally just the mapping of a stream channel. Would the 50 ft wetland buffer apply to all stream channels or just if there is a delineated wetland?

5. **Pile-supported construction** may use wood piling (treated or untreated), steel piling, concrete piling, or other piling material meeting building code requirements. If treated wood piling or posts are used for structures in protected wetlands, the following standards are applicable:

- a. Treated wood shall be completely dry;
- b. Treated wood shall not have any wet wood preservative on the wood surface; and
- c. The type of chemical treatment chosen shall be the type that minimize possible contamination of the wetland environment.

6. Except as permitted for enhancement and mitigation, **fill and removal** are prohibited in protected wetland or wetland buffer areas. In cases of enhancement and mitigation, removal and fill may be allowed if approved by application to the Planning Commission, subject to the following standards:

- a. All fill material shall be clean and free of contaminants;
- b. Filled area sides shall be finished to a stable slope;
- c. Measures shall be incorporated into the fill design to minimize erosion or sloughing of fill material into protected wetlands;
- d. Fills shall be designed in a manner that does not worsen flooding on adjacent or nearby flood-prone lands, and avoids restricting the flow of water to or through protected wetlands; and
- e. Fill side slopes shall be **revegetated with native plant species** to stabilize the slope.

7. **Draining, diverting water** from, or reconfiguring the dimensions of a wetland to create upland is prohibited.

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

1. New dwellings and accessory structures, when permitted, shall be placed on piling or on posts, and shall 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 in accordance with Section 17.43.025.

3. Driveways, utilities, landscaping, garages, accessory structures and other uses and activities accessory to a residence shall comply with applicable standards.

4. **Driveways, off-street parking, and other surfaces** including but not limited to patios and walkways in the WO zone shall be constructed of permeable materials.

5. For the purposes of calculating floor area ratio, the size of the lot shall be considered the upland portion only, i.e., the area of the lot that is neither wetland nor wetland buffer area.

6. **To avoid harm to wetlands and wetland buffers from excessive traffic and frequent visitors who are unaware of wetland protections, short term rentals** are prohibited in structures within the wetland overlay zone where any portion of the building or surrounding developed area such as patios, driveways, and walkways are within the wetland overlay zone. This prohibition applies to the wetland overlay zone as defined prior to adjustments permitted under section 17.43.025.

C. **Commercial Development.** Where and when allowed by the base zone, a commercial building may be permitted in a protected wetland or wetland buffer area subject to the following standards:

Commented [ER29]: As written here, native species could simply mean a native erosion control seed mix. Is there a desire to create a forested or other more natural habitat condition? If yes, then should specify.

Commented [ER30]: Not my area of expertise, but this sounds problematic and is very specific. Are there similar restrictions on hotels, or are those considered short term rental too?

Perhaps reword to require short term rentals to provide protection signage and/or educational materials about wetland protection.

Commented [KL31R30]:
Agree

1. New commercial buildings shall be placed on piling or on posts in a manner that allows the free flow of water beneath the structure. No fill material may be used for commercial buildings in wetland buffer areas.

2. Lot coverage will be minimized in accordance with Section 17.43.025. Commercial development in protected wetlands or in wetland buffer areas is subject to site design review pursuant to Chapter 17.44.

3. Driveways, parking, utilities, landscaping, accessory structures and other uses and activities accessory to a commercial development shall comply with applicable standards.

D. **Accessory Structure or Building.** Buildings and structures subordinate to the principal structure may be permitted in wetland buffer areas subject to these standards, and subject to the requirements of the base zone:

Commented [KL32]: This appears to conflict with 17.43.040 and 045 which says only one building allowed (that I don't agree with).

1. New accessory structures or buildings shall be placed on piling or on posts in a manner that allows the free flow of water beneath the structure. No fill material may be used for an accessory structure or building in a protected wetland or in a wetland buffer area.

E. **Driveways.** Driveways through protected wetlands or wetland buffer areas may be permitted subject to the following standards:

1. Driveways crossing protected wetlands or wetland buffer areas shall be no wider than twenty feet, regardless of the length of frontage facing the right-of-way.

Commented [KL33]: With all the concern about wetland protection, this seems pretty wide. Perhaps this could be added to the section allowing reduction of other standards including building setbacks.

2. Driveways in protected wetlands shall be placed on piling in a manner that allows the free flow of water beneath the driveway. Pile-supported construction is required instead of fill for driveways. Water circulation shall be facilitated through use of culverts or bridges.

Commented [ER34]: Is zero fill allowed in the wetland or buffer, or is some fill allowed in conjunction with a culvert or bridge to manage overall costs while still providing water circulation?

3. Driveways and off-street parking in wetland buffer areas may be placed on piling or constructed of gravel, whichever is deemed least impactful by a qualified wetland professional.

Commented [ER35]: Least impactful to just the wetland, the buffer, or both?

F. **Utilities.** Electric power lines, telephone lines, cable television lines, water lines, wastewater collection lines and natural gas lines may be permitted in protected wetlands and in wetland buffer areas subject to these standards, and subject to the requirements of the base zone:

1. **Underground utilities,** including water, wastewater, electricity, cable television, telephone and natural gas service, may be routed through wetland buffer areas in trenches provided the following standards are met:

a. Material removed from the trench is either returned to the trench as back-fill within a reasonable period of time, or, if other material is to be used to back-fill the trench, excess material shall be immediately removed from the protected wetland area. Side-casting into a protected wetland for disposal of material is not permitted;

b. Topsoil and sod shall be conserved during trench construction or maintenance, and replaced on the top of the trench;

Commented [ER36]: Recommend specifying a minimum depth of top soil to be applied. I think 2 feet may be typical. Might also want to recommend that top soil dominated by non-native invasive vegetation (per ODA Noxious Weed List) be replaced with clean top soil. All areas of disturbed ground shall be replanted with a native plant community that minimizes conflicts with the associated utility (e.g., shallow rooted vegetation above gas lines, no tall trees below powerlines).

c. The ground elevation shall not be altered as a result of utility trench construction or maintenance. Finish elevation shall be the same as starting elevation; and

d. Routes for new utility trenches shall be selected to minimize hydraulic impacts on protected wetlands, and to minimize vegetation removal.

2. **Aboveground utilities**, including electricity, cable television and telephone service, may be routed through wetland areas on poles subject to the following standards:

a. Routes for new utility corridors shall be selected to minimize adverse impacts on the wetland, and to minimize vegetation removal; and

b. Vegetation management for utility corridors in protected wetlands and in wetland buffer areas shall be conducted according to the best management practices to assure maintenance of water quality, and subject to the vegetation management standards herein.

3. **Utility maintenance roads** in protected wetlands and in wetland buffer areas must meet applicable standards for roads in wetlands.

4. **Common trenches**, to the extent allowed by the building code, are encouraged as a way to minimize ground disturbance when installing utilities.

5. Underground utilities shall be routed under disturbed areas such as driveways and off-street parking areas whenever feasible. When utilities are routed under driveways and off-street parking areas, the surface shall be gravel to facilitate location and repair in the event of damage to the utility lines.

G. **Footpaths and Bicycle Paths**. Development of new footpaths, and maintenance of existing footpaths may be permitted in protected wetlands and in wetland buffer areas subject to the use restrictions in the zone and the following standards. Development of new bicycle paths may be permitted in wetland buffer areas.

1. Footpaths across protected wetlands may only be developed or maintained without the use of fill material. Bridges shall be used to cross open water areas.

2. Footpaths in protected wetlands shall not restrict the movement of water.

3. Routes for new footpaths shall be chosen to avoid traversing protected wetlands. Footpaths around the perimeter of protected wetlands, and in wetland buffer areas, are preferred.

4. Routes for new **bicycle paths** shall not be located in protected wetlands but may be located in wetland buffer areas.

5. Footpaths and bicycle paths within protected wetlands and wetland buffers shall be constructed of permeable material.

H. **Wetland Enhancement**. Efforts to enhance wetland values include removal of nonnative vegetation from a wetland, planting native wetland plant species, excavation to deepen wetland areas,

Commented [KL37]: Section reference?

Commented [ER38]: Veering beyond my area of expertise, but this seems like it could cause more harm than good. Gravel will be frequently run over by vehicles, be displaced, broken down and lead to fine sediments that could then wash into the wetland or stream. It will need to be replaced from time to time too, resulting in more maintenance cost to the property owner or utility. Also seems like the edge of the adjacent pavement could begin to deteriorate quicker. The frequency of repairs by the utility company on the other hand seems like it would be fairly minimal.

Commented [KL39]: Just curious. Why would bicycle paths be singled out and driveways allowed under more circumstances?

Commented [ER40]: It might be helpful to define "footpath". Is this any informal path or one that would typically require development review of some sort? Would the path typically have to meet ADA requirements and if so, then ADA considerations should be incorporated into the allowances below.

Commented [ER41]: "... wetlands, unless it is shown to be less impactful to the wetland (area and functions) than alternate routes or would conflict with ADA requirements."

Commented [ER42]: I don't know that this is always the case, and some jurisdictions specify a perpendicular crossing of the wetland and buffer since it will be the shortest distance (smallest footprint). But perhaps my addition above provides appropriate flexibility if needed.

Some jurisdictions do note that if the trail cannot avoid the buffer then placing it in the outer edge of the buffer is preferable, with allowance for a spur trail to a viewing area.

placement of bird nesting or roosting structures, fish habitat enhancements, hydraulic changes designed to improve wetland hydrology, removal of fill material, adding new culverts under existing fill, and similar acceptable activities. Wetland enhancement **may be permitted** in protected wetlands and in wetland buffer areas subject to the use restrictions in the applicable zone, and subject to these standards:

1. An enhancement plan must be prepared by a qualified wetland professional before an enhancement project can proceed. The plan must describe the proposal; identify the wetland value or values to be enhanced; identify a goal or goals for the project; and describe evaluation techniques to be used to measure progress toward project goals. The project must follow the approved plan.
2. All components of the enhancement plan (planning, design, construction, cleanup, maintenance, monitoring, and remedial activity) must comply with applicable standards in this section.

1. **Excavation.** Excavation in protected wetlands and in wetland buffer areas for any purpose must meet the following standards:

1. Excavation for purposes of gravel, aggregate, sand or mineral extraction is not permitted.
2. Excavation for utility trenches in wetland buffer areas is subject to the following standards:
 - a. Material removed from the trench is either returned to the trench (back-fill), or removed from the wetland area. Side-casting into a protected wetland for disposal of material is not permitted;
 - b. Topsoil shall be conserved during trench construction or maintenance, and replaced on the top of the trench; and
 - c. The ground elevation shall not be altered as a result of utility trench construction or maintenance. Finish elevation shall be the same as starting elevation.
3. Excavation for building footings in protected wetlands is subject to the following standards:
 - a. Material removed for approved footings is either returned to the trench (back-fill), or removed from the protected wetland or wetland buffer area. Side-casting for disposal of material is not permitted;
 - b. Disturbance of wetland vegetation and topsoil during footing construction shall be minimized; and
 - c. The ground elevation around a footing shall not be altered as a result of excavation for the footing, unless required to meet building code requirements for positive drainage. Finish elevation shall be generally the same as starting elevation.
4. Excavation for wetland enhancement is subject to the following standards:
 - a. No more material than necessary and specified in the enhancement plan shall be excavated; and

Commented [ER43]: Would this apply to a property owner that just wants to plant some native plants in the buffer in their backyard? It seems excessive for them to have to hire someone for that and provide a lot of paperwork to the City. A voluntary program, perhaps with the local watershed council, would likely yield greater participation for such simple activities.

Commented [KL44R43]: Agree

Commented [ER45]: These don't seem like they belong in the Wetland Enhancement section. Seems like they belong under the allowed uses section and in the case of utilities I think this was already included.

This section should instead provide the details of what must be complied with as referred to in 2. above (yellow highlighted)

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

J. **Stormwater Management.** Management of stormwater flowing into protected wetlands or wetland buffer areas is subject to the following standards:

1. The City recognizes that stormwater is an important component of wetland hydrology, and it shall regulate flow of stormwater into or out of protected wetlands and wetland buffers to ensure no net loss of wetland functions and values. It is the policy of the City that all stormwater that would naturally flow into protected wetlands and wetland buffers shall continue to flow into protected wetlands and wetland buffers in accordance with this Chapter. Uses and activities intended to remove storm water away from or around protected wetlands and wetland buffers or to move storm water within a protected wetland or wetland buffer are prohibited unless undertaken as part of an approved wetland mitigation or enhancement plan.

2. A stormwater management plan shall be required of the applicant and reviewed and approved by the public works director for the following types of developments where stormwater will move from the site into protected wetlands:

- a. New building covering more than two hundred square feet; or
- b. New addition covering more than two hundred square feet; or
- c. New road or driveway; or
- d. Road or driveway expansion; or
- e. New parking lot or parking lot expansion; or
- f. Point source stormwater discharge; or
- g. Diversion of stormwater for any reason within the protected wetland or wetland buffer.

3. A stormwater management plan must include all information necessary to demonstrate to the public works director that the proposed stormwater management system will maintain pre-construction activity, or background, water quality and similar flow characteristics (e.g., volume, velocity, and duration) and be consistent with the standards of this Chapter. The stormwater management plan shall provide the following in addition to any information requested by the public works director:

- a. Property description
- b. Site map or maps, drawing or specifications detailing the design, route, and location of the stormwater management system.

Commented [ER46]: "All information necessary" is very open ended. I think most applicants and their consultants would generally prefer something a little more specific. For example, if stormwater modeling is required, what model and what criteria should be used?

We can have a follow on this with a DEA Water Resource Engineer. We could point the team to the CWS stormwater manual or similar.

c. A map or model of drainage patterns and stormwater flow before and after the development or activity; impacts to water quality in the wetland, changes to water quantity and timing that may adversely affect wetland function (e.g., affects of rapidly fluctuating water levels on amphibian egg masses, scour impacts to vegetation) and potential for sediment deposition into the wetland or wetland buffer.

d. Best management practices and methods of treatment that will maintain or improve background levels of water quality, which includes but is not limited to: dissolved oxygen levels; pH; temperature; total dissolved solids; and contaminants.

e. An agreement to be recorded on the title obligating any owner of the property to remove contaminants from stormwater flowing from anywhere on the wetland lot-of-record into the protected wetland or wetland buffer, including a description of the plans to maintain methods used by the applicant to remove contaminants per section 17.43.050(J)(4)..

Commented [ER47]: Far from my area of expertise, but seems like this should have review by another attorney and/or real estate expert.

4. Standards

a. Stormwater runoff should be directed toward the same drainage system that would have handled the runoff under natural conditions. Where the public works director determines that stormwater volumes are or will be significant, stormwater management systems must disperse and potentially delay stormwater rather than discharging it at a single point.

b. Stormwater flowing onto protected wetlands and wetland buffers from any use or activity permitted under this Chapter 17.43 shall be treated to remove contaminants and sediment. There shall be a preference for passive methods of stormwater management, which may include but are not limited to: bioretention and rain gardens; vegetated swales, buffers and strips; roof leader disconnection; and impervious surface reduction and disconnection.

c. Where the use or activity involves point source water discharge, new or modification of an existing road or parking lot, one or more active methods shall be employed including but are not limited to: catch basins and catch basin inserts; hydrodynamic separators; media filters; and advanced water treatment.

K. Mitigation. All projects involving development, removal or fill in a protected wetland must meet the following standards. These standards are intended to help meet the city's goal of no net loss of wetland functions or values.

Commented [ER48]: Mitigation as used in this section is somewhat different than as used by DSL and Corps. Perhaps refer to this as Impact Avoidance and Minimization Measures and save Mitigation specifically for offsetting permanent impacts.

1. Construction management practices will be employed in protected wetlands, wetland buffer areas, and the upland portion of a wetland-lot-of-record that address impacts to wetland values and function. Impacts to be avoided or minimized include turbidity, erosion, sedimentation, contamination with construction waste or debris, unnecessary or excessive vegetation removal or damage. At a minimum, erosion fencing shall be installed around protected wetlands and wetland buffers. Construction equipment shall be kept out of protected wetlands and wetland buffers unless required for an approved use and signs posted at appropriate intervals intended to restrict entry by equipment or personnel. Construction debris shall be removed from the site and properly disposed of. Chemicals, paints, and solvents, including paint tools, masonry equipment, and drywall tools, shall be used, cleaned, and stored in a manner that does not degrade water quality. Any and all washdown of concrete

trucks shall occur offsite. The Planning Commission shall require preparation of a detailed management program indicating how these requirements are to be addressed. **(when? With application or condition?)**

2. Activities and development in protected wetlands or wetland buffer areas may be approved only after the following list of alternative and mitigating actions, listed from highest to lowest priority, have been considered and a mitigation plan has been approved:

- a. Limiting the project to the upland portion of the wetland lot-of-record, exclusive of wetland buffer or protected wetland;
- b. Limiting the project to the upland portion of the wetland lot-of-record and the wetland buffer;
- c. Rectifying the impact by repairing, rehabilitating, or restoring the affected wetland and wetland buffer area (this would include removing wetland fills, rehabilitation of a resource use and/or extraction site when its economic life is terminated, etc.);
- d. Reducing or eliminating the impact over time by preservation and maintenance operations.

3. If limiting the development or activity to the upland portion of the wetland lot-of-record per subsection 17.43.050.K.2(a) is not possible, the Planning Commission shall require a written mitigation plan prepared by a qualified wetland professional as a condition of approval. The mitigation plan shall address anticipated impacts of the proposed development on the wetland or wetland buffer and shall propose measures to mitigate the onsite impacts to the protected wetland and wetland buffer to the maximum extent possible, including but not be limited to, the restoration of native vegetation; restoration of hydric soil; restoration of the clay pan or other natural water barriers; restoration of natural slopes and contours; restoration of natural drainage or water flows; restoration of the wetland's nutrient cycle; and the restoration of wildlife habitat that may be impacted by the proposed develop or activity. The mitigation plan will remain in effect for a period of five years following completion of the development or project, unless extended, with an affirmative obligation on the part of the applicant to restore or repair mitigation efforts, as required by conditions through the end of the effective period.

a. Upon approval, the mitigation plan shall be integrated with the design package, and it shall be the responsibility of building officials to confirm compliance with the mitigation plan issuing a certificate of occupancy. In the event that mitigation efforts are not completed when occupancy is requested, the owner or the owner's agent may certify in writing that owner or its agent will complete the mitigation plan within a specified period. The certification shall represent the owner's or owner's agent's agreement in exchange for granting the certificate of occupancy that the mitigation plan will be completed in accordance with its terms.

b. If a landowner or responsible party fails to implement a mitigation plan, the City may undertake any action necessary to comply with mitigation plan and all associated costs and accrued interest thereon will become the immediate responsibility of the landowner or responsible party.

4. Any combination of the actions in subsection (K)(2) may be required to implement mitigation requirements.

Commented [ER49]: The plan should include measurable success/performance criteria that can be monitored to determine if all requirements have been met. For example, 80% cover by native vegetation at the end of 5 years or 80% survival planted trees and shrubs at the end of 5 years. No more than 20% cover by nonnative species.

Will the City require an annual monitoring report or just documentation at the end of 5 years?

Commented [ER50]: "...,unless extended for non-compliance,..."

Commented [ER51]: Any need to include a statement that the City will notice the landowner to attempt to resolve issues prior to going out and doing any work?

5. The US Army Corps of Engineers or the Division of State Lands often require compensatory mitigation (subsection (K)(2)(e), of this section) as part of their approval of a fill permit. The city may require compensatory mitigation before approving a fill in a protected wetland when the US Army Corps of Engineers and the Division of State Lands do not require compensatory mitigation. Additional compensatory mitigation may be required by the city in those instances where it is also required as a condition of a state or federal fill permit.

Commented [ER52]: I couldn't find this subsection.

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:

Commented [KL53]: Are vegetation management plans something that must be approved by the PC as a CU? That seems a bit extreme and should, along with other minor actions/development be something the staff could review/approve.

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. Tree removal and pruning prohibited unless:

a. Necessary for placement of a dwelling or driveway approved pursuant to this chapter including required vehicular and utility access, subject to the requirements in Section 17.70.030(B) and (Q);

b. Necessary for maintenance of an existing dwelling or driveway;

c. Necessary for correction or prevention of foreseeable danger to public safety, or a foreseeable danger of property damage to an existing structure; or

d. Part of an approved restoration, enhancement or compensatory mitigation plan.

3. The fact that a tree or part thereof is or may be dead or compromised (e.g., a snag) is not sufficient criteria for its removal or pruning unless the property owner demonstrates foreseeable danger to public safety, or a foreseeable danger of property damage to an existing structure. An application for the removal of a dead tree shall require an ISA Tree Hazard Evaluation Form prepared by a certified arborist at the property owner's sole expense.

4. Tree trunks, stumps, roots, and bows of trees removed or pruned on protected wetlands and wetland buffers pursuant to this chapter shall be left by the property owner in situ. When a tree is removed, it shall be topped at the highest point possible that avoid hazards while leaving as much stump as possible for wildlife habitat.

5. In all cases, removal or pruning of trees from protected wetlands and wetland buffers must follow best professional standards to ensure protected wetlands and wetland buffer areas are not compromised.

6. Any tree removed in accordance with this Chapter or damaged by activities authorized under this Chapter shall be replaced by the property owner with a tree on the wetland lot-of-record of the same species.

7. 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.

8. Pruning or mowing of vegetation in protected wetlands and in wetland buffer areas is **permitted** only if: (application review necessary?)

- 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. (why only with building permit?)

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.

9. **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.

Commented [ER54]: Would this include veg management under powerlines or should that be called out separately?

10. Planting new vegetation in wetland buffer areas is permitted as part of a managed garden or landscape.

Commented [ER55]: This appears to have addressed my earlier comments. However, is there a desire for a native plant community or are any species desired by the property owner okay?

11. 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.

Commented [ER56]: Does this exclude the use of mulch, which can sometimes aid plant establishment and weed suppression?

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

Commented [KL57]: This doesn't make sense because a property in its entirety must be part of a plat and can't be excluded. Later this is contradicted in 2.b. It appears the intent is that you can't create a lot without sufficient developable area outside of the wetland. Having the wetland in a dedicated tract, as is common practice, would also be fine.

1. Preliminary plat maps for proposed subdivisions, replats and partitions involving a wetland lot-of-record must show the wetland-upland boundary, as determined by a wetland delineation prepared by a qualified wetland professional. The city may seek independent expert opinion when reviewing a wetland delineation. A qualified wetland professional retained or hired by the city under this subsection is expected to render independent expert opinion, consistent with the Society of Wetland Scientists Code of Ethics.

Commented [KL58]: This same statement is made in 17.43.010 C, but with a reference to "permitting authority" instead of "city" used this time. This should be consolidated in one section and not repeated.

2. Subdivisions, replats, partitions and property line adjustments of upland portions of a wetland lot-of-record are permitted subject to the following standards:

a. Upland portions of a wetland lot-of-record that is subject to subdivision, replats, partitions or property line adjustments must meet the minimum parcel dimension requirements for the parcel's base zone.

b. There are two options for the size of the newly-created lot or parcel that contains wetlands and/or wetland buffer areas. If the newly-created lot or parcel is subject to a recorded conservation easement in perpetuity and transferred to the City at its discretion or an accredited land trust, there is no requirement for additional upland area. By contrast, if the newly-created lot or parcel will remain in the buildable lands inventory, the lot or parcel that contains wetlands and/or wetland buffer areas must also include a minimum of two thousand five hundred square feet of buildable upland area. .

c. Protected wetlands and wetland buffer areas may be counted towards meeting the base zone's minimum lot size for each lot, and may not be included in front, side and rear yard setbacks.

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 standards of this subsection.

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

3. Once a site has been subdivided, replatted, partitioned or lot lines adjusted subject to this subsection, no further land division or adjustment shall be permitted on any of the resulting lots or parcels.

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. (Ord. 94-29 § 2)

B. **Reasonable use of a wetland lot-of-record** is defined as an upland portion of the wetland lot-of-record that can accommodate one thousand square feet of lot coverage. This section defines the accommodations that can be made to allow reasonable use of a wetland lot-of-record in the event uplands are not sufficient to allow such reasonable use. [from 17.43.025 Wetland Lot of record to B.3.h]

Commented [KL59]: Pet peeve of mine to not use numbers. Makes scanning the code much more difficult.

1. **Buffer Averaging.** Where the upland portion of the lot-of-record cannot accommodate one thousand square feet of lot coverage, buffer averaging to allow reasonable use of a parcel may be permitted when all of the following are met:

a. No feasible alternatives to the site design to accommodate one thousand square feet of lot coverage could be accomplished without buffer averaging; and

Commented [ER60]: Not sure if it matters, but DSL OAR's tend to use the term "practicable" instead of "feasible" in this context and define it as

b. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a critical area report from a qualified wetland professional; and

"Practicable means capable of being accomplished after taking into consideration cost, existing technology and logistics with respect to the overall project purpose." <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=350>

c. The total buffer area after averaging is equal to the area required without averaging; and

d. The buffer at its narrowest point is never less than 75 percent of the required width.

Commented [ER61]: This term is not used elsewhere. It should be defined/described re: what info should be included. Recommend stating "Wetland functions for pre- and post-project conditions shall be assessed using a method currently approved for use by DSL, including the use of best professional judgement for wetland impacts <0.2 acres."

2. **Wetland Buffer Reduction (Up to 50 Percent for Undeveloped Properties).** Where reasonable use cannot be obtained through the combination of upland areas and buffer averaging, the wetland buffer may be reduced by application to the Planning Commission up to 50 percent where equal or better protection for identified resources will be ensured through restoration, enhancement, and similar measures. Specifically, the following criteria and conditions must be met to be eligible for a wetland buffer reduction. The applicant must demonstrate that:

Commented [ER62]: Since the required width is a known 50 feet, perhaps just state that the narrowest point is never less than 37.5 ft (i.e., 50 x 0.75)

a. The application of the wetland buffer to the lot or parcel precludes all reasonable use of the lot or parcel and renders it not buildable, after consideration of all applicable limitations and restrictions in this code; and

Commented [ER63]: Is this referring to width or total area?

b. The lot or parcel is a wetland lot-of-record in existence prior to the Effective Date in 17.43.010(D) (i.e., buffer reduction is not available for land divisions); and

c. The lot or parcel must be combined for development purposes with contiguous lots or parcels in the same ownership on the effective date of the ordinance codified in this chapter; and

Commented [KL64]: What is the intended purpose for requiring this? I would think it will unnecessarily complicate things without any environmental benefit.

d. The proposed development shall minimize disturbance to the wetland buffer area by utilizing design options to minimize or reduce impacts of development: (i) multistory construction shall be used; (ii) parking spaces shall be minimized to no more than that required as a minimum for the use; (iii) no

accessory structures allowed; (iv) paving shall be pervious; (v) engineering solutions shall be used to minimize additional grading and/or fill; and

e. The proposed development or activity is designed to minimize intrusion into the wetland buffer area. Specifically, the use or activity is designed using up to a 50 percent adjustment to any dimensional standard (e.g., front yard, side yard or other setbacks) to permit development as far outside or upland of the wetland buffer area as is possible; and

f. The protection of the wetland can be assured through restoration, enhancement, and other similar measures in the wetland buffer area in accordance with subsection 17.43.050(K).

3. Siting for Development. Where combined uplands, buffer averaging, and buffer reduction do not permit reasonable use of a wetland lot-of-record, minimum development of the wetland overlay area necessary to avoid a taking claim shall be permitted subject to compliance with the following standards:

a. The lot or parcel must be combined for development purposes with contiguous lots or parcels in the same ownership on the Effective Date of the ordinance codified in this Chapter; and

Commented [KL65]: Again, the rationale isn't clear to me.

b. The building footprint encroaching into the wetland overlay area shall be limited to that which is the minimum necessary to obtain reasonable use of the property; and

Commented [KL66]: This is loaded with interpretation. Recommend review/comment from city attorney.

c. The application of the wetland overlay zone to the lot or parcel precludes all reasonable use of the parcel and renders it not buildable, after consideration of all applicable limitations and restrictions in this code; and

d. Preference in location of the building footprint shall be given to areas devoid of native vegetation; and

e. Application may be made to the Planning Commission to adjust the underlying zone setback standards to the extent necessary to reduce or minimize encroachment into the protected wetland or wetland buffer area. The Planning Commission may approve an application for up to a 50 percent adjustment to any dimensional standard (e.g., front yard, side yard or other setbacks) to permit development as far outside or upland of the protected wetland and wetland buffer area as possible; and

Commented [KL67]: Will these always go to the PC? Depending on what happens with the rest of the CDO rewrite, this may be categorized as a Type III process.

f. The proposed development shall minimize disturbance to the protected wetland and wetland buffer area by utilizing design options to minimize or reduce impacts of development including but not limited to multistory construction, minimizing parking, garage space, and paving and use of retaining walls or other engineering solutions to minimize filling and grading; and

Commented [KL68]: This may mean going over the maximum building height of the base zone. Same for parking requirements. Consider adding this to the adjustment provisions above.

g. In no case shall the impermeable surface area of the residential use (including building footprint, driveway, and parking areas and accessory structures) exceed 1,000 square feet within wetland overlay areas; and

h. All applicable general criteria in 17.43.050, including minimum restoration and enhancement requirements shall be met.