



# Cannon Beach Planning Commission

## Findings of Fact and Conclusions of Law

PUBLIC HEARING AND CONSIDERATION OF CU 23-04, RED CROW LLC/JAMIE LERMA, APPLICANT, ON BEHALF OF PATRICK/DAVE LLC, REQUEST FOR AN ELEVATED PEDESTRIAN ACCESS IN A DELINEATED WETLAND AND ITS BUFFER AREA IN ORDER TO PROVIDE ACCESS TO PLANNED RESIDENTIAL DEVELOPMENT. THE PROPERTY IS AN UNDEVELOPED PARCEL ON THE NORTHERN PART OF FOREST LAWN DR. (TAXLOT 04100, MAP 51030DA) IN A RESIDENTIAL MODERATE DENSITY (R2) ZONING DISTRICT AND THE WETLANDS OVERLAY (WO) ZONE. THE CONDITIONAL USE REQUEST WILL BE REVIEWED AGAINST THE CRITERIA OF CANNON BEACH MUNICIPAL CODE, SECTION 17.43.045, CONDITIONAL USES AND ACTIVITIES PERMITTED IN WETLAND BUFFER AREAS; AND 17.80, CONDITIONAL USES.

---

**Agenda Date:** December 19, 2023  
Rescheduled to January 17, 2024  
Continued to January 25, 2024

### Exhibits

The following Exhibits are attached hereto as referenced.

#### **“A” Exhibits – Application Materials**

- A-1** CU#23-04 Application
- A-2** Proposed boardwalk schematics
- A-3** Site plan
- A-4** Pacific Habitat Services letter, dated November 28, 2023
- A-5** Type 2 Development Permit Application
- A-6** Revised tree plan, dated November 27, 2023
- A-7** K. LaBonte email regarding construction access, dated October 13, 2023
- A-8** Utility plan, dated August 22, 2023
- A-9** Geotechnical Investigation and Geotechnical Report, dated June 3, 2023
- A-10** Supplemental Commentary on Landslide and Liquefaction Hazards, dated July 27, 2023
- A-11** Wetland Delineation and DSL Concurrence Letter, dated June 8, 2021
- A-12** Chenoweth Law Group letter, received January 16, 2024
- A-13** Enlarged Forest Lawn Site Plan, Received January 16, 2024
- A-14** Chenoweth Law Group letter, received January 25, 2024

## **“C” Exhibits – Cannon Beach Supplements**

- C-1** CU#23-04 Completeness determination, November 29, 2023
- C-2** CU#23-02 Planning Commission Findings of Fact, October 26, 2023
- C-3** Commissioner M. Bates email, December 14, 2023
- C-4** Commissioner M. Bates email, January 22, 2024

## **“D” Exhibits – Public Comment**

- D-1** W. Reiersgaard email, received December 4, 2023
- D-2** A. Morrow email, received January 16, 2024
- D-3** R. Dorsey email, received January 17, 2024
- D-4** R. Dorsey email, received January 17, 2024
- D-5** D. Cardwell email, received January 19, 2024

## **Summary & Background**

The applicant, Jamie Lerma of Red Crow LLC, on behalf of property owner Patrick/Dave LLC, requests the installation of a private use footpath/boardwalk that will span a portion of the subject property’s wetland and its buffer area for the purpose of providing access to planned residential development on that property.

The Planning Commission held its initial public hearing on this application on January 17, 2024. The Commission was unable to hear this item on its originally scheduled date as an insufficient number of Commissioners were available for a quorum to be present. During the initial hearing, the Commission moved to continue the hearing to January 25, 2024.

## **Applicable Criteria**

Approval criteria are in the Wetlands Overlay Zone (17.43) and the Conditional Use (17.80) sections of the Municipal Code.

### **Section 17.43 Wetlands Overlay Zone**

#### **17.43.045(G) Footpaths – Conditional Uses and Activities Permitted in Wetland Buffer Areas**

**Finding:** This provision of the Municipal Code indicates that access improvements such as roads, driveways, and footpaths within a wetland and its buffer area are subject to conditional use review. The City made this finding during its administrative review of development permit DP#23-28 and the Planning Commission made a similar finding during its review of CU#23-02, the two access improvement applications that precede this application.

#### **17.43.050(A) General Standards**

*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.*

**Finding:** The planned residential development supported by the elevated walkway proposed in this application is a permitted use in the underlying R2 Residential Moderate Density zoning classification. 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. Due to a plat restriction, the applicant is unable to establish access to the upland portion of the site from S. Hemlock Street and must access the property from Forest Lawn Drive

The proposed pedestrian access walkway avoids the placement of fill or other material in the wetland or its buffer area by providing an elevated walkway that would span the wetland affected area. Use of a pedestrian walkway versus a vehicle bridge limits the size of the area being impacted by the proposed improvement and largely avoids the potential for the improvement to need to span the delineated wetland area.

#### **17.43.050(G) Footpaths and Bicycle Paths**

*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.*

**Finding:** The proposed elevated pedestrian access will avoid the use of fill material and be constructed in the buffer area in order to avoid traversing the delineated wetland site.

### **Section 17.80 Conditional Uses**

#### **17.80.110 Overall Use Standards**

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

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

**Finding:** The pedestrian access walkway would provide a legal means of access to the upland portion of the subject property and allow for planned residential development of the property to take place. At present there is no means of access to the upland portion of the property as a plat restriction requires access to come from Forest Lawn Road. The proposed elevated walkway would provide access for residents, guests, emergency services, and other parties who may need access to the property.

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

**Finding:** The proposed use pedestrian access walkway does not appear to have any apparent impacts on traffic, public facilities, or fire protection. Residential development that would be supported by the proposed walkway will be reviewed by City Community Development, Public Works and the Cannon Beach Rural Fire Protection District in order to ensure that such development does not have significant negative impacts or create an overburden to the items detailed in this criterion.

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

**Finding:** The pedestrian access walkway appears to satisfy this criterion by allowing the planned residential development to be arranged in a way that places structures, parking, on the upland portions of the subject property. Off-street parking would be provided in two areas on upland portions of the subject property adjacent to Forest Lawn Road, one of these parking areas includes a detached garage.

This proposal responds to the findings of the Planning Commission from its review of CU#23-02 which found the walkway to be an accessory structure subject to setback requirements. This proposal has shifted the location of the walkway 5.5 feet to the north in order to comply with side yard setbacks and provide a buffer to the adjacent property to the south.

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

**Finding:** The proposed walkway will address this criterion by placing the footings in the upland portions on either side of the buffer area it will span, no portion of the structure will penetrate soils in the wetland or its buffer area.

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

**Finding:** The proposed walkway will provide appropriate access to the proposed dwellings with little impact on the transportation facilities.

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

**Finding:** The uses surrounding the subject property are detached single-family dwellings on lots larger than 5,000 square feet. The planned residential development that would be supported by this proposal is consistent with that level of development.

The proposed elevated walkway is proposed to be 26 feet long and 4.5 feet wide. The walkway would be located 5.5 feet from the adjacent property line abutting 1603 Forest Lawn Road. The walkway meets the zoning ordinance definition of an “accessory structure” and a “footpath.”

The minimum setbacks for properties in the R2 Residential Medium Density zone are 15 feet for front and back yards and 5 feet for side yards. Due to the proposed walkway's location being 5.5 feet from the adjacent property line, it will comply with these requirements.

## Decision

**Motion:** Having considered the evidence in the record, based on a motion from Commissioner Moritz, seconded by Commissioner Ostrander, the Cannon Beach Planning Commission moved to approve with conditions the Red Crow LLC/Jamie Lerma application, on behalf of Patrick/Dave LLC, request for a Conditional Use Permit for an elevated pedestrian access walkway/footpath in a delineated wetland and its buffer area, application CU#23-04, as discussed at this public hearing subject to the following conditions:

1. The maximum size of the footbridge (accessory structure) shall be 120sf.
2. The owner shall obtain temporary access to/from S. Hemlock Street through the Public Works Department prior to building permit issuance.
3. Temporary access to S. Hemlock Street is for construction purposes only and shall not be used as permanent access for the use of the dwellings. Permanent access to the dwellings shall be from Forest Lawn Road only.
4. The owner shall submit plans to the Community Development, Public Works and/or Fire Departments specifically detailing how the temporary access to S. Hemlock Street shall be closed. If a temporary occupancy is requested and granted, the applicant shall permanently close the temporary access 30 days after a temporary occupancy permit has been issued. In no case shall a final occupancy permit be granted until the temporary access to S. Hemlock Street is permanently closed. The temporary access will be permanently closed by revegetating and returning it to its natural state.
5. The garage/storage accessory structure shall not be used as an accessory dwelling unit (ADU) or other habitation as per section 17.54.100 of the Cannon Beach Zoning Ordinance.
6. The applicant shall meet all required storm drainage policies of the City. The stormwater collected from the dwellings is to be retained on-site by directing the storm water to the property's wetlands instead of being piped to the City's storm water system. To meet this requirement, the applicant shall work with the Public Works Department and submit the plans for a stormwater collection system that is recommended by a qualified wetlands specialist to ensure least impact to the wetlands examples include bioswale, drywell, etc.
7. Owner shall provide a draft copy of the homeowner's association agreement for the management of all common areas including, but not limited to, the protection/functionality of the wetlands, the footpath/boardwalk, the garage, etc. prior to building permit issuance. Prior to the issuance of a certificate of occupancy, the owner shall provide a recorded copy of the homeowner's association agreement from Clatsop County to the Community Development Department. The builder/developer is responsible for and shall fulfill all the obligations of the homeowner's association until such times as the homeowner's association is assigned to the new buyer(s)/property owner(s).
8. The builder/developer shall complete all required conditions of approval prior to issuance of the final occupancy permit.

The vote was 5 to 1 with Chair Newton, Vice Chair Moritz, Commissioner Matusick, Commissioner Ostrander and Commissioner Sinclair voting to conditionally approve the conditional use permit and Commissioner Farrow voting to deny the conditional use permit.

Commissioner Bates recused himself from the hearing and abstained from the vote.

