



# Cannon Beach Planning Commission

## Staff Report (July 21, 2022):

PUBLIC HEARING AND CONSIDERATION OF P 22-01 AND CU 22-02, PATRICK/DAVE LLC, REQUESTING A THREE LOT PARTITION AND A CONDITIONAL USE PERMIT FOR A PARTITION IN THE WETLAND OVERLAY ZONE. THE PROPERTY IS AN UNDEVELOPED PARCEL ON FOREST LAWN RD (TAXLOT 51030DA04100) IN THE RESIDENTIAL MEDIUM DENSITY (R2) ZONING DISTRICT. THE REQUEST WILL BE REVIEWED PURSUANT TO MUNICIPAL CODE SECTIONS 16.04.130, SUBDIVISIONS AND 17.43, CONDITIONAL USES AND ACTIVITIES PERMITTED IN THE WETLAND OVERLAY ZONE, APPLICABLE STANDARDS.

**Agenda Date:** June 23, 2022  
Continued to July 28, 2022

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

### GENERAL INFORMATION

#### NEW MATERIALS

#### EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on May 27, 2022 unless otherwise noted.

#### “A” Exhibits – Application Materials

- A-18 Applicant Response to Public Comment, Email Correspondence, Matt Robinson, DOWL, June 23, 2022;**
- A-19 Applicant Response to Public Comment, Email Correspondence, Matt Robinson, DOWL, June 23, 2022;**
- A-20 Applicant Response Regarding Off-Site Sources of Stormwater Discharge, July 18, 2022;**
- A-21 Applicant Response Regarding Clear and Objective Standards - ORS 197.307(4)**

#### “B” Exhibits – Agency Comments

None received as of this writing;

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

No new materials

#### “D” Exhibits – Public Comment

- D-14 Austin Raglione, Gabriella Raglione and Tim Roush Letter via Email Correspondence, June 23, 2022;**
- D-15 Cameron La Follette, on behalf of Oregon Coast Alliance, Letter via Email Correspondence, June 23, 2022;**

- D-16 Dana Cardwell, Letter via Email Correspondence, July 13, 2022;**
- D-17 Dana Cardwell, Letter via Email Correspondence, July 20, 2022;**
- D-18 William Collins, Email Correspondence, July 20, 2022;**
- D-19 Andrew Morrow, Letter via Email Correspondence, July 20, 2022;**
- D-20 Rosey Dorsey, Email Correspondence, July 21, 2022;**
- D-21 Monica Gorman, Email Correspondence, July 21, 2022;**

## **SUMMARY & BACKGROUND**

Patrick/Dave LLC (applicant) is requesting City of Cannon Beach (City) tentative plan approval of a three lot partition of tax lot 51030DA04100 (also referred to as the project site). The project site is generally located south of the intersection of Forest Lawn Road and South Hemlock Street. As the project site contains wetlands mapped on the City's local wetland inventory that are subject to Cannon Beach Municipal Code (CBMC) Chapter 17.43 (Wetlands Overlay Zone), the applicant is also requesting conditional use approval as required by CBMC 17.43.040-45 for partitions within wetlands and wetland buffer areas. As shown on the Tentative Partition Plan (Exhibit B), the proposed partition will create three lots intended for single-family residential dwellings.

ORS 92.010(6) defines "parcel" as a single unit of land that is created by a partition of land, and ORS 92.010(9) defines "partitioning land" as the means of dividing land to create not more than three parcels of land within a calendar year; therefore, for the purposes of state law, this proposed tentative plan is considered a partition as it will result in the creation of only three units of land (Lots 1, 2, and 3).

The 1.1 acre property is zoned R2 Residential Medium Density and includes a 29,618 square-foot (SF) delineated wetland, identified and delineated by Pacific Habitat Services, Inc, (Exhibit A-07). The U.S. Army Corps of Engineers issued a jurisdictional determination on April 15, 2021 and the Oregon Department of State Lands issued a letter of concurrence, dated June 8<sup>th</sup>, 2021 (Exhibits A-08 & A-09). The City's files holds an earlier wetlands delineation, by Shapiro and Associates, dating back to 1992 (Exhibit C-12). On January 27, 2000, the City of Cannon Beach granted a minor partition of the subject property into three parcels (Exhibit C-13). There is evidence in the historic record for the property indicating that at one time the owners had contemplated donating the wetlands area to the City (Exhibit C-14). As evidenced by the pre-application correspondence, the applicants initially contemplated a seven-lot subdivision, but ultimately applied for only a three-lot partition. Those exhibits also indicated that a (Exhibits C-01 & C-02), donation was contemplated under the initial seven-lot subdivision, along with consideration concerning cluster development and clarification of 'frontages.'

The access to the initially contemplated seven-lot subdivision's access would have crossed the recently created wetlands finger that the applicant's specialist suggests is, in part, due to the infiltration of stormwater runoff from the City's Forest Lawn right-of-way and neighboring storm-drain outfalls (Exhibits C-06 & C-07). Due to the recent growth of the wetlands area on the southern-end (Exhibits C-05 & A-07) and a plat restriction, which was placed on the property by earlier decision (and explained in detail below) access to the majority of the parcel's upland area would be restricted to a Forest Lawn approach that crossed the delineated wetland. Staff expressed concern over the proposed access and what appears to be conflicting language surrounding CBMC 16.04.310 Design Standards – Lots, (B) Location, that "All lots shall have a twenty-five-foot frontage on a publicly dedicated street. Not only was it debatable whether all lots had frontage on a publicly dedicated street, CBMC 17.43.050(M)(2)(e) states that "streets shall not be located in protected wetland or wetland buffer areas."

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

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

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

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

## **APPLICABLE CRITERIA EXCERPTED FROM THE CANNON BEACH MUNICIPAL CODE**

### **Chapter 16 – Subdivisions**

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#### **16.04.130 Applicable Standards**

*In making its decision, the planning commission shall determine whether the proposed subdivision or partition complies with the applicable standards of this code and the policies of the comprehensive plan, in conformance with the requirements of Section 17.88.110. Where this chapter imposes a greater restriction upon the land than is imposed or required by existing provisions of law, ordinance, contract or deed, the provisions of this chapter shall control. Pursuant to ORS 197.195(1), the city has determined that the following comprehensive plan policies are applicable standards for a proposed subdivision or partition.*

#### **Staff Comments:**

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

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

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

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

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

"\* \* \* \* \*

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

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

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

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

Here's a link to the LUBA case:

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

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

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

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#### **16.04.280 Design standards – Streets.**

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

#### **16.04.290 Design standards – Easements.**

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

#### **16.04.300 Design standards – Blocks.**

**Staff Comment:** No blocks are proposed. Meets criterion.

#### **16.04.310 Design standards – Lots.**

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

#### **16.04.320 Design standards – Public sites and open spaces.**

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

#### **16.04.330 Design standards – Trees.**

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

#### **16.04.340 Design standards – Utilities.**

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

### **17.43 – Wetlands Overlay (WO) Zone**

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#### **17.43.040 Conditional uses and activities permitted in wetlands.**

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

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

#### **17.43.050 Standards.**

*The following standards are applicable to the uses and activities listed in Sections 17.43.030 through 17.43.045. The uses and activities are also subject to the standards of the base zone. The following standards are applicable in all areas under the wetlands overlay zone. "Protected wetlands" are those areas in the wetlands overlay zone that have been identified on the city's inventory or on a subsequent detailed wetland delineation as wetlands. "Wetland buffer areas" are nonwetland areas in the wetlands overlay zone surrounding the protected wetlands.*

- A. General Standards. Uses and activities in protected wetlands and in wetland buffer areas are subject to the following general standards. Development may also be subject to specific standards in subsequent subsections.*
  - 1. Uses and activities in protected wetlands or wetland buffer areas may be approved only after the following list of alternative actions, listed from highest to lowest priority, have been considered:*
    - a. Avoiding the impact altogether by not taking a certain action or parts of an action (this would include, for example, having the use or activity occur entirely on uplands); and*

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

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

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

The 2000 Partition Plat that created this property holds a plat note restriction, stating, “access to parcels 1, 2 & 3 is restricted to Forest Lawn Road only, until such future time that said restriction is modified by the City of Cannon Beach (Exhibit C-05). If one traces this restriction back from the 2000 partition decision, to the 1987 minor partition decision that is referenced in the minutes of the 2000 Planning Commission decision, it is evident that the restriction to access future access from utilizing Hemlock is based on the “a desire to minimize driveways onto the city’s main arterial, Hemlock Street,” which is referred to in 1987 as a “limited access highway,” while “retaining an uninterrupted area of vegetation and trees along the west side of Hemlock Street” (see Exhibit C-21, C-22 & C-13).

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

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

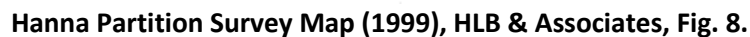
The Planning Commission stated that the State and Clatsop County require a 50-foot wetlands buffer and asserted that the State buffer took precedent over the local wetland buffer. Staff asked Department of State Lands to respond:

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

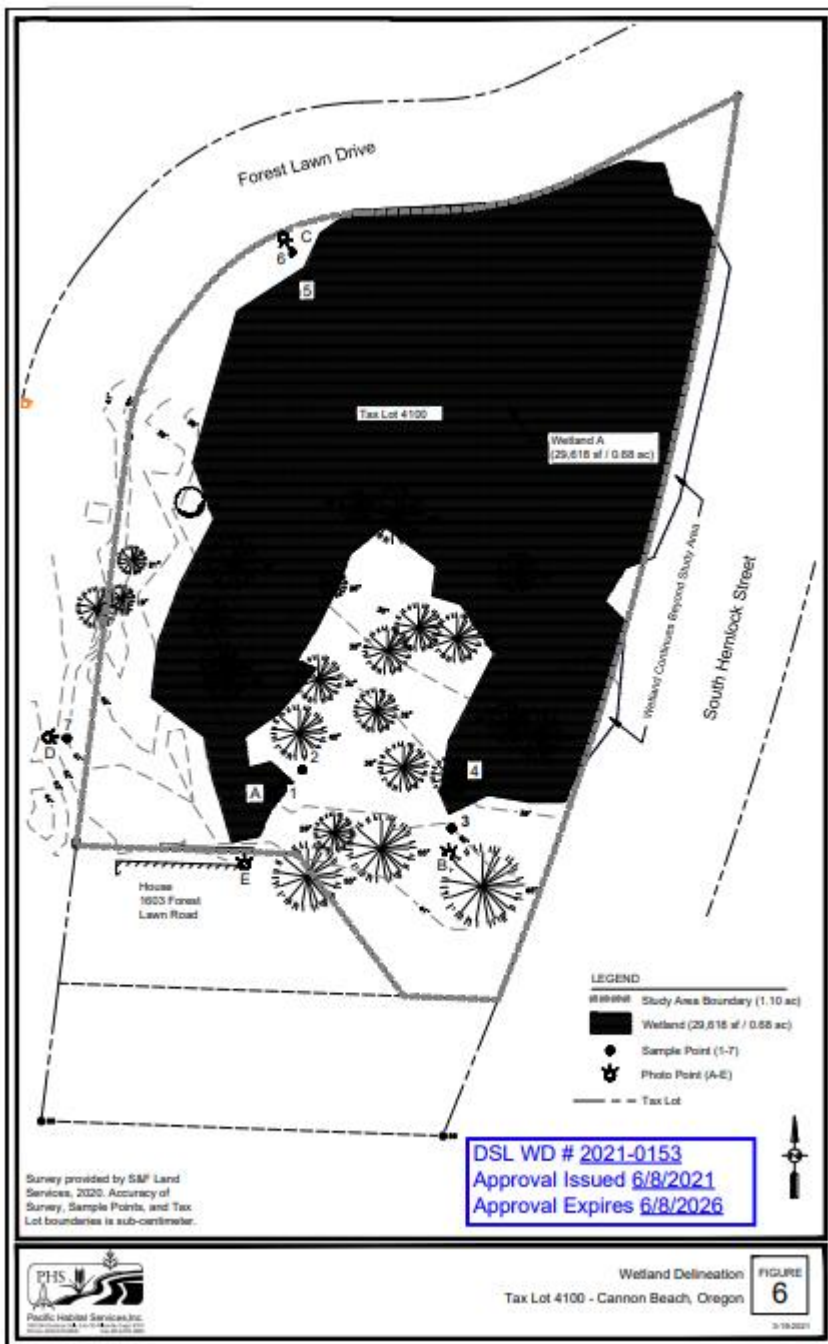
CBMC 13.16.050(C) stormwater states that “Any person responsible shall maintain nonpublic storm drainage facilities on his or her property so as to prevent flooding or damage to other property not owned or controlled by the person responsible and to prevent injury to any person on property not owned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

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









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

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

1. *Preliminary plat maps for proposed subdivisions, replats and partitions involving protected wetlands or wetland buffer areas must show the wetland-upland boundary, as determined by a wetland delineation prepared by a qualified individual.*

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

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

- a. *Each lot created must have at least one thousand square feet of upland available for building coverage, required off-street parking and required access.*

**Staff Comment:** CBMC 17.43.050(M.2) specifies that each lot must contain 1,000 square-feet of upland areas and that such area shall be inclusive of the building coverage, required off-street parking and required access for each lot. Each of the three lots satisfies this standard, as noted on the plat, where Lot 1 provides 1,484 SF, Lot 2 provides 1,076 SF and Lot 3 provides 1,079 SF of upland area.

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

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

- c. *Protected wetlands and wetland buffer areas may be counted towards meeting the base zone's minimum lot size for each lot, and may be included in front, side and rear yard setbacks as appropriate.*

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

- d. *Utility lines, including but not limited to, water lines, sewer lines, and storm water lines shall not be located in protected wetlands or wetland buffer areas, unless there is no alternative to serve lots meeting the standard of subsection M2a.*

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

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

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

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

3. *In planned unit developments or cluster subdivisions, all protected wetland or wetland buffer areas must be in open space tracts held in common ownership.*

**Staff Comment:** Not applicable.

4. *For lots or parcels created subject to these provisions, the existence of protected wetland or wetland buffer areas shall not form the basis for a future setback reduction or variance request.*

**Staff Comment:** Not applicable.

## **Chapter 17.50 DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS**

### **17.50.020 Applicability.**

*The following are potential geologic hazard areas to which the standards of this section apply:*

- A. In any area with an average slope of twenty percent or greater;*
- B. In areas of potential landslide hazard, as identified in the city master hazards map and comprehensive plan;*
- C. In areas abutting the oceanshore, or velocity zone flood hazard, as identified on the city's FIRM maps;*
- D. In areas identified by the soil survey of Clatsop County, Oregon as containing weak foundation soils; or*
- E. In open sand areas regardless of the type of dune or its present stability, and conditionally stable dunes not located in a velocity flood hazard zone, as identified on the city's FIRM maps, which in the view of the building official have the potential for wind erosion or other damage. (Ord. 92-11 § 60; Ord. 79-4 § 1 (4.110) (2))*

**Staff Comment:** As identified in the Earth Engineers Report (see Exhibits A-12 & A-13), the project site soils are derived from sedimentary rock; therefore, a site investigation and geologic hazard study is required. As previously mentioned, a geologic hazard report is included as section 3.0 of the Earth Engineers Report. Findings are provided for CBMC 17.50 (Development Requirements for Potential Geologic Hazard Areas) within this letter, which are supported by the Earth Engineers Report, including a literature review indicates the project site is adjacent to an active landslide area. However, during on-site investigations, Earth Engineers did not observe any signs of recent or active landslides.

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

As identified in response to CBMC 16.04.310 in the applicant's original narrative, the project site's average slope is 6.48 percent, and as previously described within this letter, there is only a seven-foot elevation difference across the site. As a result, future development will not occur on steep slopes. As identified in the applicant's original narrative and shown on the Preliminary Utility Plan (Exhibit A-10), stormwater service lines, anticipated to be four inches in diameter, will collect each future dwelling's stormwater runoff, which will then be conveyed to the existing public system within Forest Lawn Road and South Hemlock Street, which ensures stormwater will be channeled to public storm sewers as required.

As shown on the Existing Conditions Plan (Exhibit A-05), there are no stream drainageways within the project site. As identified in the applicant's original narrative and shown on the Preliminary Utility Plan (Exhibit A-10), stormwater service lines, anticipated to be four inches in diameter, will collect each future dwelling's stormwater runoff, which will then be conveyed to the existing public system within Forest Lawn Road and South Hemlock Street, which ensures stormwater will be channeled to public storm sewers as required and will not flow onto adjacent properties.

As identified within the Earth Engineers Report, compressible, organic soils were encountered within the project site at a depth of approximately 30 to 40 feet beneath the ground surface. As previously identified, the project site's potential geologic hazards, including its soils, can be mitigated through granulated, well graded, crushed rock structural fill as necessary, as well as pin pile or helical pier foundation systems for the future residential dwellings. These foundation systems will penetrate through the organic soils to bear on the medium dense to

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

Engineering and construction methods are specified within sections 4.0 and 5.0 the Earth Engineers Report. As discussed previously, the report found that the project site's potential geologic hazards can be mitigated through granulated, well graded, crushed rock structural fill as necessary, as well as pin pile or helical pier foundation systems for the future residential dwellings. While the need for retaining walls has not been identified at this point, the Earth Engineers Report also includes recommendations for retaining wall systems that are compatible with the project site's possible geologic hazards. The recommendations for structural fill, foundation systems, and retaining wall systems ensure that the project site can mitigate possible geologic hazards, including mitigating the risks of potential slides and earthquake shaking. As concluded and stated on page 23 of the Earth Engineers Report, the site should be considered developable provided the geotechnical engineering recommendations are followed.

## **Chapter 17.70 TREE REMOVAL AND PROTECTION**

### **17.70.030 Additional requirements.**

*A. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(A) or (B) the application shall include a complete ISA Tree Hazard Evaluation Form prepared by a certified arborist with the tree removal application. An ISA Tree Hazard Evaluation Form prepared by a certified arborist is not required where a tree removal permit proposes the removal of a dead tree pursuant to subsection C of this section, or where a tree removal permit proposes the removal of a tree pursuant to subsection F. Where an applicant identifies the necessity to remove a tree pursuant to Section 17.70.020(F), a certified arborist shall provide a report certifying the need to remove the tree for the health and vigor of surrounding trees.*

*B. For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).*

*C. An application for the removal of a dead tree does not require an ISA Tree Hazard Evaluation Form prepared by a certified arborist.*

*D. The retention of trees shall be considered in the design of partitions, subdivisions or planned developments; placement of roads and utilities shall preserve trees wherever possible. The need to remove trees shall be considered in the review process for partitions, subdivisions or planned developments.*

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

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

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

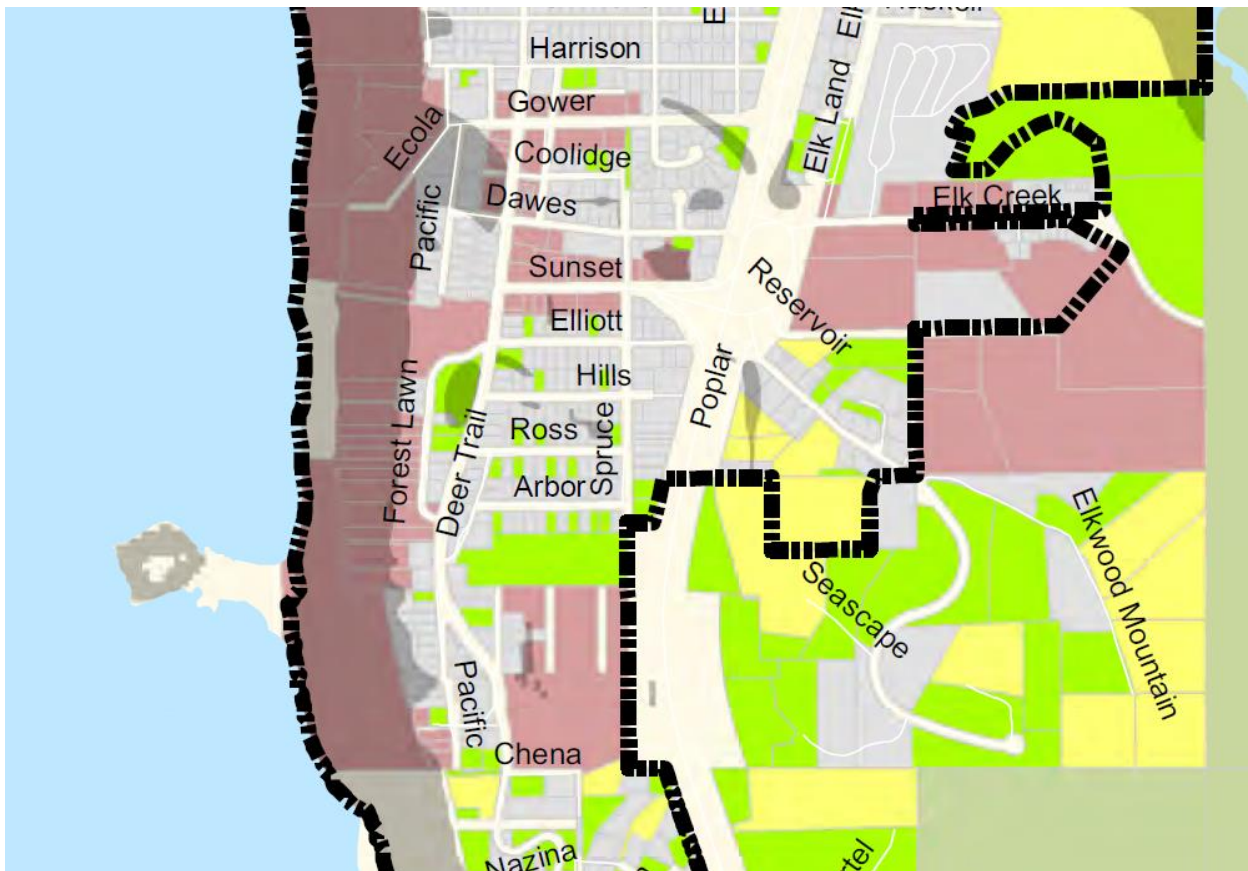
The tree plan requires a conditional approval, anticipating a tree removal application and subsequent review by the City Arborist.

#### 17.80.110 Conditional Uses – Overall Use Standards

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

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

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





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

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

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

**Staff Comment:** The applicant states that “the 2022 Draft Cannon Beach Transportation System Plan’s analysis of the City’s existing transportation system demonstrates compliance with identified Oregon Department of Transportation (ODOT) mobility targets. As a result, the adjacent transportation system can accommodate the proposed lot’s future single-family dwellings and will not result in excessive traffic congestion on nearby streets.” The proposed lots would fall within the minimum 250 feet service radius of hydrants and the turnaround areas are sufficient for fire and emergency services. The other utilities, including the City’s existing sanitary sewer and water systems have sufficient capacity to meet the project site’s proposed development and demand. Stormwater service lines, anticipated to be four inches in diameter, will collect each future dwelling’s stormwater runoff, which will then be conveyed to the existing public system within Forest Lawn Road and South Hemlock Street. Downstream deficiencies in the City’s stormwater conveyance system are not known to exist. It is not anticipated that the proposed level of development would create excessive traffic or demand on utilities or other municipal infrastructure. Meets criterion.

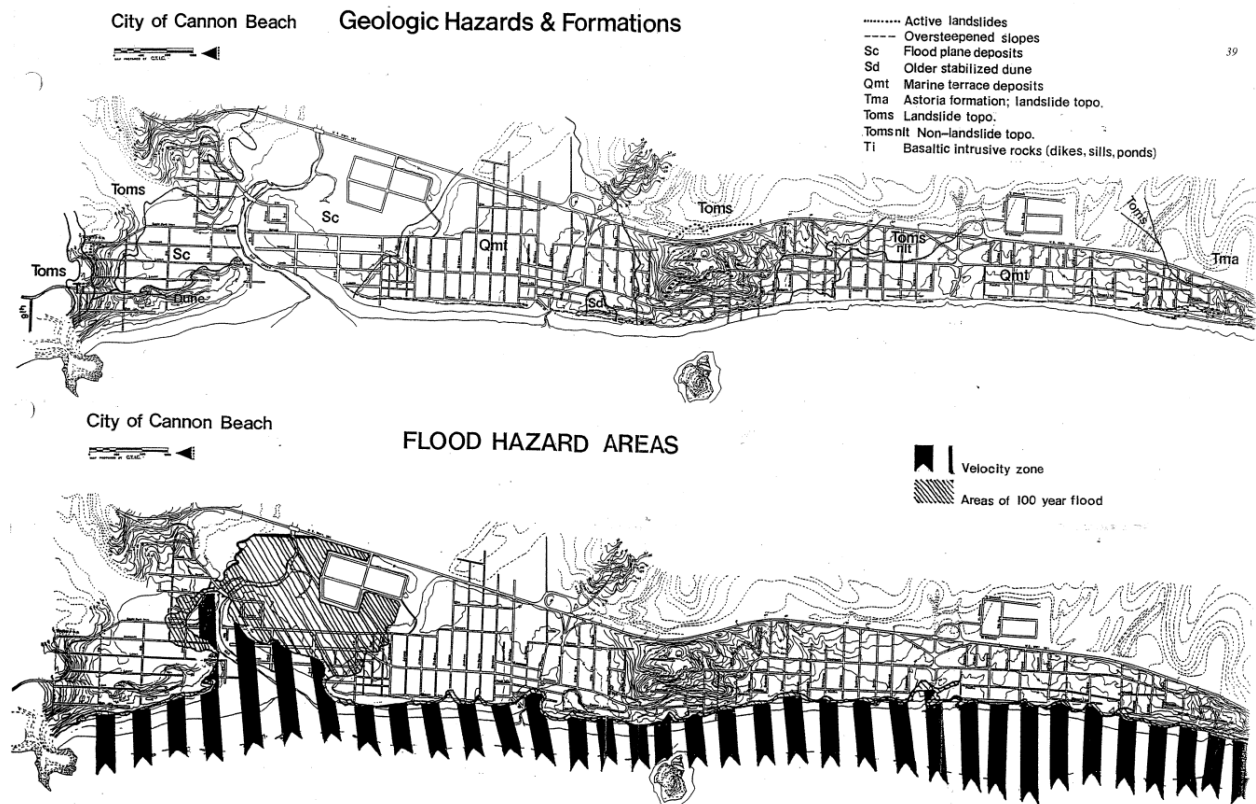
- C. *The site has an adequate amount of space for any yards, buildings, drives, parking, loading and unloading areas, storage facilities, utilities or other facilities which are required by city ordinances or desired by the applicant.*

**Staff Comment:** CBMC 17.43.050(M.2) specifies that each lot must contain 1,000 square-feet of upland areas and that such area shall be inclusive of the building coverage, required off-street parking and required access for each lot. Each of the three lots satisfies this standard, as noted on the plat, where Lot 1 provides 1,484 SF, Lot 2 provides 1,076 SF and Lot 3 provides 1,079 SF of upland area (Exhibit A-02). The application approval should consider a condition limiting any accessory structures to the building envelopes, as identified on the plans, including fencing. Meets criterion.

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

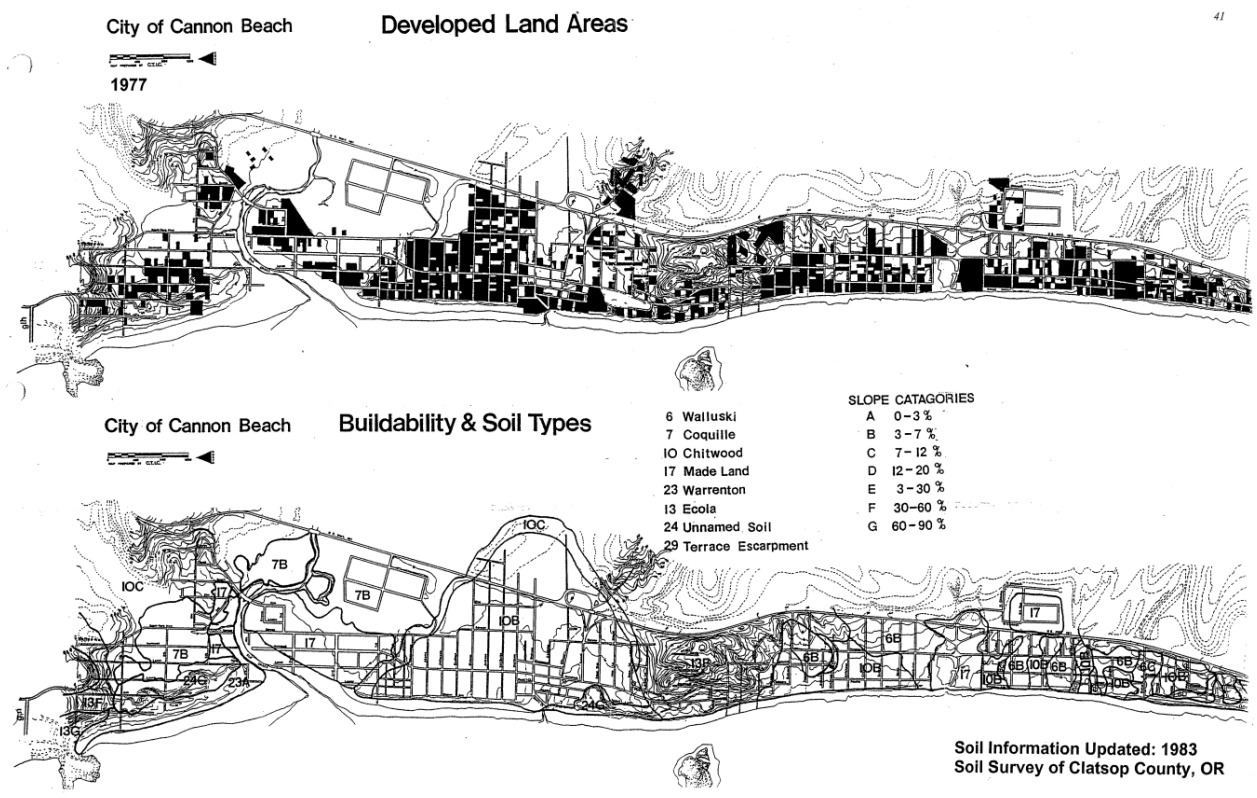
**Staff Comment:** The subject property has a parcel average slope of approximately 6.5%, geotechnical analysis is not required for properties with average slopes under 20%. The applicant is having a geotechnical report prepared in order to identify and develop mitigation strategies for any unidentified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

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

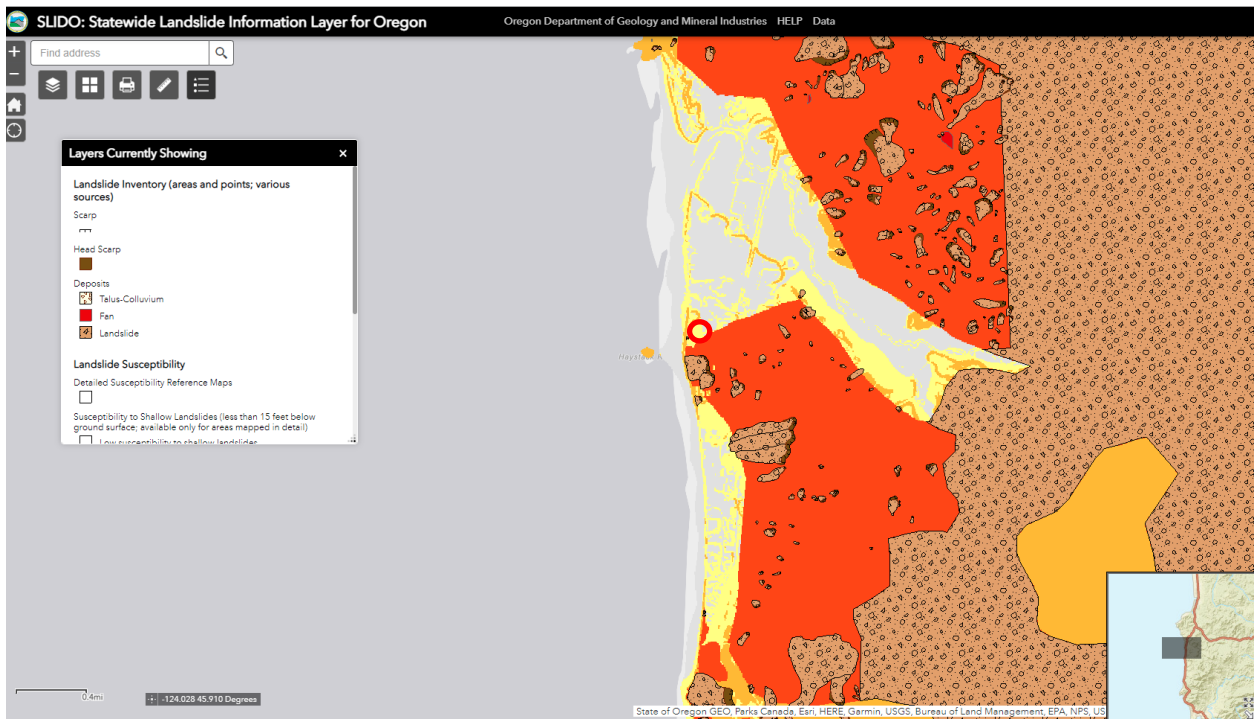


Cannon Beach Comprehensive Plan Maps, Geologic Hazards & Formations and Flood Hazard Areas, Figure 1.

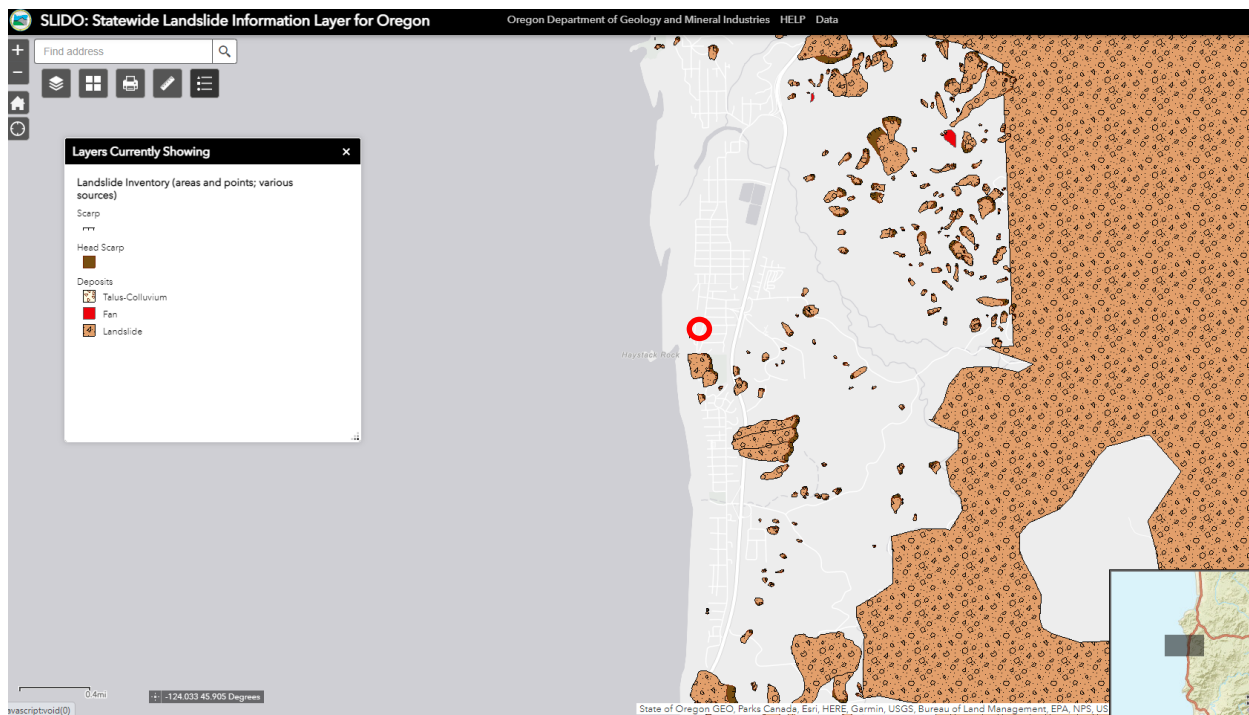




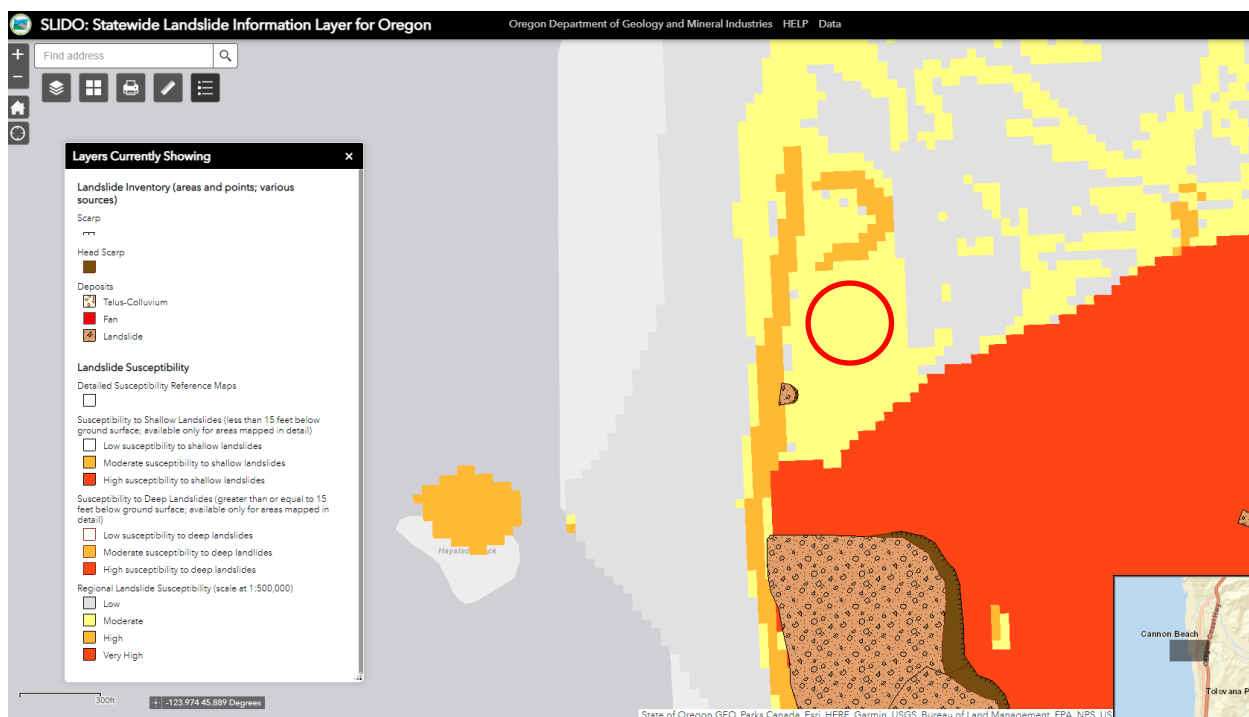
Cannon Beach Comprehensive Plan Maps, Developed Land Areas and Buildability & Soil Types, Fig. 2



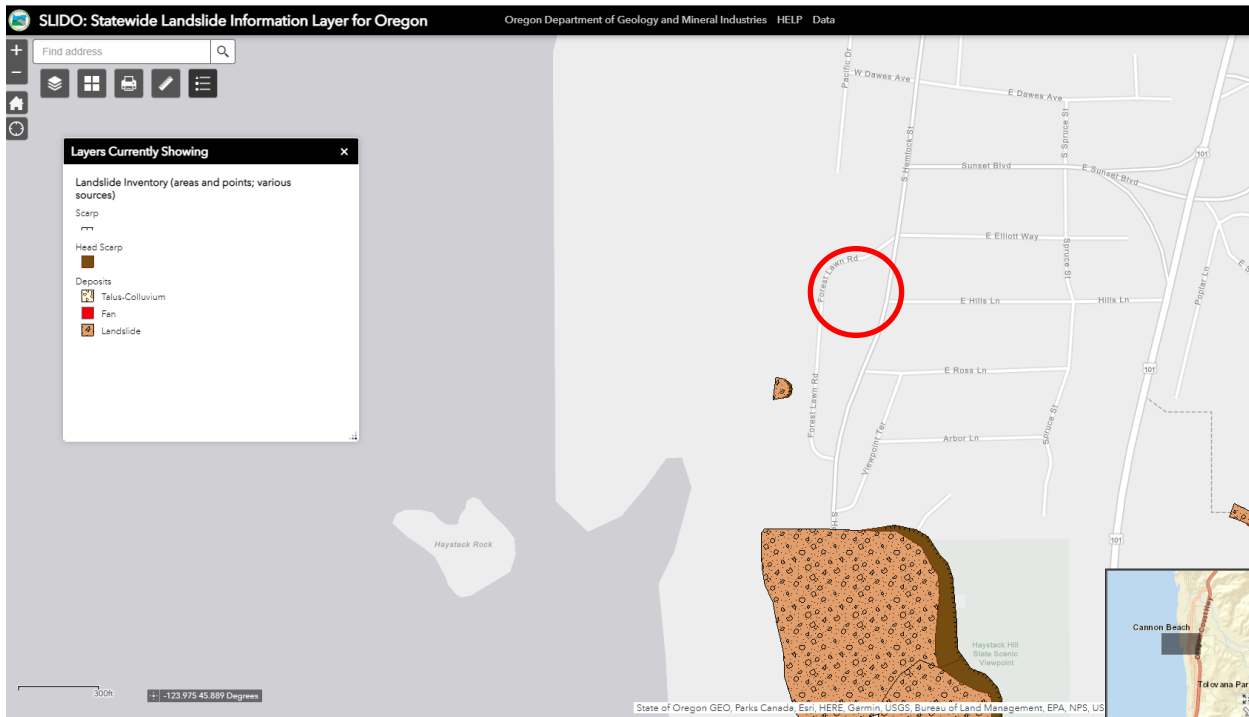
Statewide Landslide Information Layer for Oregon (SLIDO) web-mapping application, showing Landslide Susceptibility data, (subject property identified by red circle), Fig. 3.



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



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



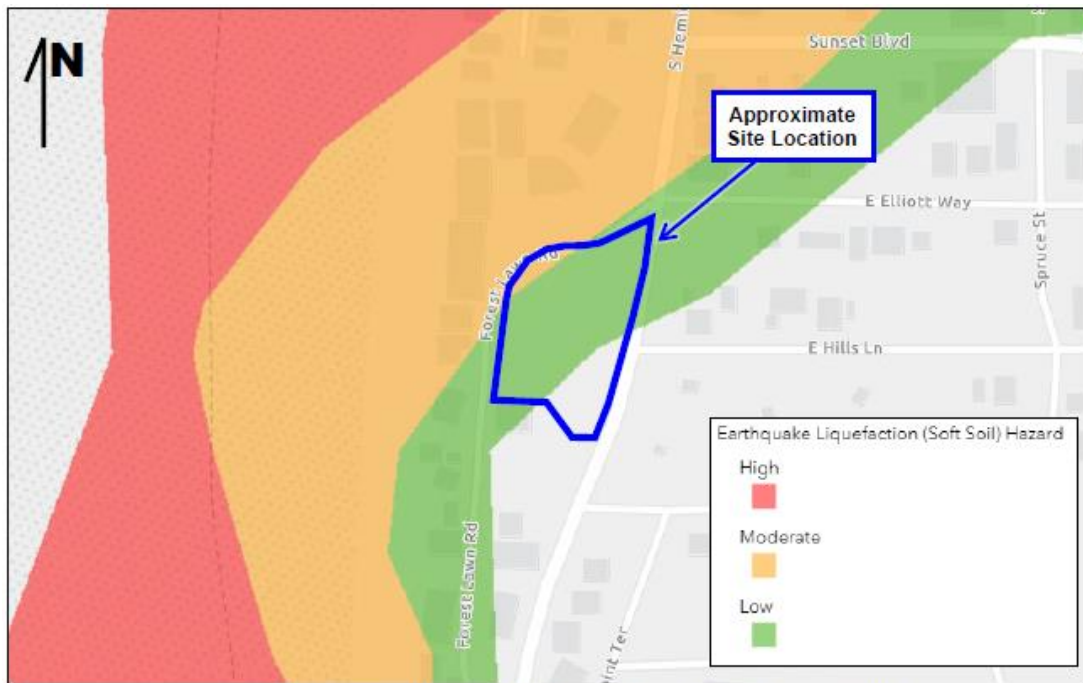
SLIDO web-mapping application, showing Landslide Inventory data for Forest Lawn area, (subject property identified by red circle), Fig. 6.

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

Section 3.3.2 – Liquefaction (Pg. 16)

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

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



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

#### Section 3.4 – Geologic Hazards (Pg. 20)

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

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

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

#### Section 4.1 – Presence of Organics (Pg. 22)

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

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

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

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

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

A second report prepared for this project states:

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

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

#### Section 3.4 – Geologic Hazards (Pg. 20)

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

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

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



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

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

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

"As the Tentative Partition Plan is intended to provide one single-family residential dwelling per lot, for a total of only three dwellings within the project site, measurable impacts to adjacent transportation facilities, including South Hemlock Street and Forest Lawn Road, are not anticipated. The 2022 Draft Cannon Beach Transportation System Plan<sup>10</sup>, which is expected to be adopted during Summer 2022, analyzed the City's existing transportation system conditions, with its findings included as Technical Memorandum #311. As identified in Technical Memorandum #3, traffic operations at 15 different intersections within the City were analyzed, none of which were found to exceed identified ODOT mobility targets. In addition, none of the studied intersections in the vicinity of the project site, including the intersection of South Hemlock Street & Sunset Boulevard located approximately 300 feet north of the project site, were found to be operating at an inadequate level of service (LOS), with all mainline operations along Hemlock Street within the City operating at a LOS of either "A" or "B", where "F" is considered worst conditions. As a result, the adjacent transportation system can accommodate the proposed lot's future single-family dwellings.

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

The Planning Commission must make a finding that the proposed access locations are 'suitable.' The State relinquished the Highway 101 portion of Hemlock Street to the City in 1994, as a portion of the City Street System, and no longer functions as a limited access highway. The current local and federal functional classifications for Hemlock are Minor Arterial (Cannon Beach Comprehensive Plan) and Major Collector (Federal/State of Oregon Classification). Minor Arterials interconnect residential, shopping, employment and recreational activities at the community level and do not require limited access. The proposed approach on Hemlock would fall approximately 285' south of the Forest Lawn intersection and 185' from the next northern driveway access of 1688 Hemlock, while on the east side of Hemlock, over the same stretch, there are four access approaches onto Hemlock.

The Cannon Beach Comprehensive Plan states, "Access to Hemlock Street and U.S. 101 shall be limited. Wherever possible, traffic from development shall enter these roads from shared access points or streets, rather than individual driveways." The application proposes a single driveway access point off of Forest Lawn serving Lot 2, while Lots 1 & 3 would share an access point off of Hemlock. As the introduction of two

more single-family dwellings on Hemlock would not likely add a significant portion (estimated to be 20 vehicle trips per day according to Federal Highways) to the 'background' traffic already using Hemlock, which according to the recent TSP shows daily vehicle counts during the summer season around 4000 vehicle trips per day, the evidence that supports access should be conditionally approved awaiting a public hearing and decision by City Council, striking the plat note restriction, before Final Plat.

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

**Staff Comment:** This criterion does not apply as building designs have not been submitted in conjunction with the partition application.

## PROCEDURAL REQUIREMENTS

This application is subject to ORS 227.178, requiring the City to take final action within 120 days after the application is deemed complete. The application was submitted on May 25, 2022 and determined to be complete on June 3, 2022. Based on this, the City must complete its review of this proposal by October 1, 2022.

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

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

## RECOMMENDATION

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

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

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

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

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

## DECISION AND CONDITIONS

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



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

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## Notice of Approval

### **17.44.140 Final approval expiration.**

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



Site Map