



CANNON BEACH COMMUNITY DEVELOPMENT

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RE: Haystack Views Pre-Application Meeting Response

December 10, 2021

Matthew Robinson & Team:

This letter is to document the city's response to the questions posed in your pre-application materials, dated November 12, 2021, and at the pre-application meeting of November 30, 2021. This letter is based on city staff's best understanding of the code and the factual situation as it has been represented to us. It is not intended to guarantee any particular interpretation or outcome and any applicant is required to review the city code and consult with appropriate professionals. We thank you for your time in meeting with us and we hope these responses clarify the process for moving forward.

The application for a seven-lot subdivision of tax lot 510330DA04100, in the Cannon Beach R2 Residential Medium Density zoning district, in the WO Wetlands Overlay area. The application suggests that three lots will be for single-family residential dwellings, while the remaining four lots are proposed to be donated to the City:

"As a part of the pre-application conference, the applicant would like to discuss the possibility of donating Lots 3, 4, 5, 7 and Tract A to the City for stormwater conveyance purposes and preservation of the site's existing wetland. The use of these lots for stormwater conveyance purposes also provides a solution to the existing non-permitted discharge of surface runoff onto the site from Forest Lawn Road and Hemlock Street."

Exhibit G, the preliminary subdivision plan, proposes two points of access, with a driveway off Forest Lawn Drive serving Lot 2 and another private drive access off Forest Lawn to serve Lots 2 & 6. The pre-application packet provides the Pacific Habitat Services wetlands delineation, State and Federal responses and Morgan Civil's drainage calculations.

The points raised in our discussion of the project are provided below, along with the criteria for review. Since the pre-application tentative plan meeting has been satisfied under Cannon Beach Municipal Code (CBMC) 16.04.070, the next step for a subdivision under CBMC would be for the applicant to submit an application along with thirteen copies of a tentative plan, as described in CBMC 16.04.180 & 190 and the further application materials discussed below. Once the application is received and deemed 'complete', the City will schedule a Tentative Plan meeting before the City of Cannon Beach Planning Commission (PC). Our PC meeting schedule and application deadline schedule can be found on the Cannon Beach City website (<https://www.ci.cannon-beach.or.us/>). The Subdivision will be considered under CBMC 16.04.130 Applicable standards, CBMC 17.14 R2 Residential Medium Density and CBMC 17.43 WO Wetlands Overlay, other relevant standards mentioned below or as requested by the PC, under CBMC 16.04190(A7).

The Planning Commission's Tentative Plan decision is binding under CBMC 16.04.140 and provides an appeal period under CBMC 16.04.125. The Tentative Plan approval is valid for eighteen months under CBMC 16.04.145, where extensions may be requested, in preparation of the Submittal of Final Plat under CBMC 16.04.150.

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. The obvious question before the Planning Commission will be why the applicant requires seven lots, of which, five are land-locked within a delineated wetland with no point of access identified and two lots that will require a road or driveway crossing of a portion of the wetland area. Although the applicant states their intent is to donate four of the inaccessible wetland lots to the City, there is no documentation provided in the submission materials to that effect and no indication that the City would be amenable to such a donation. Such evidence would likely be a condition of approval and without such evidence it would be difficult for the Planning Commission to make such a determination.

Sub-section (a.) of the general standards asks the applicant to prioritize their activities by avoid 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.

Further, if the applicant proves that they have met the general standards threshold, they are then held to the more specific Subdivision standards of CBMC 17.43/050(M):

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.*
2. *Subdivisions, replats, partitions and property line adjustments for the purpose of creating building sites are permitted subject to the following standards:*
 - a. *Each lot created must have at least one thousand square feet of upland available for building coverage, required off-street parking and required access.*
 - b. *The building site described in subsection M2a shall not include protected wetlands or wetland buffer areas.*
 - 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.*
 - d. *Utility lines, including but not limited to, water lines, sewer lines, and storm water lines shall not be located in protected wetlands or wetland buffer areas, unless there is no alternative to serve lots meeting the standard of subsection M2a.*
 - e. *Streets shall not be located in protected wetland or wetland buffer areas.*
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.*
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)*

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. Only Lot 2 satisfies this standard, as Lots 1 and 6, would require a crossing of a wetlands area, and the remaining lots do not identify a 1,000 square-feet of accessible uplands. This is not to say that 1,000 square feet of upland don't exist on these lots, it just isn't indicated on the materials that have been presented. The city would require that either a variance of CBMC 17.43.050(M.2(2)) or some condition of approval that mitigates such a standard be sought to satisfy these ends.

The application would also be held to the Subdivision ordinance, Chapter 16.04 of the Cannon Beach Municipal Code, which requires that under CBMC 16.04.310 Design Standards – Lots, (B) Location, that “All lots shall have a twenty-five-foot frontage on a publicly dedicated street. As the applicants explain in their submittal, the earlier Partition Plat 2000-037 of the property stipulates that, ‘access to the parcel is restricted to Forest Lawn Road only,’ which in effect, land-locks Lots 1, 6 & 7 as shown on the preliminary plan. The proposed “15’ Proposed Access Easement,” which crosses the delineated wetland to reach the Lot 1 and 6 building envelopes would not meet such a requirement unless the Planning Commission finds that the ‘twenty-five-foot frontage is satisfied by the rear-yard frontages along S. Hemlock.

Frontage is defined in Chapter 12.08 Property Entrances, as ‘that boundary of private property abutting the city street line’ and in CBMC 17.04.270 as ‘property abutting on a street.’ The City of Cannon Beach has historically viewed the ‘frontage’ requirements of CBMC 16.04.310(B), to mean that all newly subdivided lots are required to provide ‘frontage’ with regards to property entrances, gaining vehicular access, from a publicly dedicated street and not just bordering a publicly dedicated road that is inaccessible to vehicular access. The most recent subdivisions, of Chapman Point, Lang’s Landing, Stroufe’s and Seaview Estates, for instance, all provide twenty-five feet of ‘frontage’ and vehicular access along a publicly dedicated road.

As the Plat Note of Partition Plat 2000-037 limits access to Forest Lawn, all seven lots may technically have ‘frontage’ along a publicly dedicated road, yet the application proposes that only one lot will access their property from this publicly dedicated frontage. Similarly, the four-lot Cannon Beach Preservation Subdivision development of PD# 15-01, also known as the Nicholson Planned Development, has only one directly accessible lot off the publicly dedicated Larch St. And though planned developments are intended to “...provide a degree of flexibility in the application of certain regulations which cannot be obtained through traditional lot-by-lot subdivision, (CBMC 17.40.010(A))” it doesn’t seem that direct access onto a publicly dedicated street was ever contemplated for the PD.

If the Planning Commission cannot find that the private driveway access and S. Hemlock rear-lot lines satisfy this standard, then the City would require a variance or conditional approval to allow access. It should be noted that CBMC 16.04.390 provides the Planning Commission the ability to allow such variances through a combined review process.

The applicant would also seek a Setback Reduction of ten feet to allow for a front-yard setback of five feet from Forest Lawn for Lot 2, rather than the required 15-feet. Presumably this is to allow for a larger building footprint, as the code allows for the driveway access area to be included in the 1,00 square-foot requirement to meet CBMC M(2a).

We have attached the recent Moon application appeal Findings and the rest of the record can be found [here](#), at the City’s website. I’ve also enclosed the City’s Forest Lawn Storm-drain extension project Development Permit (DP# 21-23), along with the Administrative Appeal Application, which will be before the Planning Commission on December 21st. You also requested information on the attached Planning Commission’s roster, which shows that

Joe Bernt and Janet Patrick's tenures on the PC will expire over the next two months and our Chair, Daryl Johnson's will expire in March of 2022.

The applicant has also enquired about the combining of conditional use permit fees for the proposed wetlands subdivision, fill and drainage projects under one application. We have traditionally allowed the combination of permits under one application and since these permits would only be completed under the subdividing of the land, the City will allow for one conditional use permit incorporating the items required to build-out the improvements for subdivision of the property.

As the applicant referenced in the pre-application letter, the City, under CBMC 16.04.350 requires that no trees shall be removed in the development of a subdivision except for those required to be removed in the public right-of-way and easements for utilities. An arborist should be consulted on any trees that may be impacted and the PC has the discretion to place exceptions for removal purposes.

We hope this clarifies the points raised by the pre-application materials and meeting. Please let us know if you have any further questions and we look forward to hearing from you with regards to next steps for the project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey S. Adams', with a stylized flourish at the end.

Jeffrey S. Adams, PhD

Referenced Criteria

Chapter 12.08 PROPERTY ENTRANCES

12.08.010 Definitions.

For purposes of this chapter, the following terms shall mean:

“Driveway” means an area on private property where automobiles and other vehicles are operated or allowed to stand.

“Driveway approach” means an area, construction or improvement between the roadway of a public street and private property intended to provide access for vehicles from the roadway of a public street to a definite area of the private property intended and used for the ingress and egress of vehicles.

“Entrance” means walkways, driveways, pathways and any other improved approach from private property to such city streets and public ways.

“Frontage” means that boundary of private property abutting the city street line. (Ord. 01-7 § 1)

12.08.020 Filing a construction plan.

Prior to the construction or improvement, replacement or repair of any such entrance, the property owner shall file with the city a plan showing the proposed alteration, construction, improvement or repair of such an entrance at least ten days prior to the initiation of the work thereon. (Ord. 01-7 § 1)

12.08.030 Compliance of plan with requirements.

It is the duty of the public works director to examine the plan and the site of the improvement and to determine the substantial compliance thereof with this chapter. In the event that the plan is not in compliance with this chapter, the public works director shall notify the property owner, who is required to suspend work thereon until such time as a plan in accordance with this chapter is approved by the public works director. (Ord. 01-7 § 1)

12.08.040 Manner of construction.

Driveway approaches shall be constructed in accordance with the submitted plans for driveways and meet the following standards:

A. Width. The width of driveway approach shall be measured along the property line and shall not exceed twenty feet for single ownership.

Where a driveway curb cut or curb cuts in excess of twenty feet are requested for a single ownership, the maximum widths that the public works director may approve are as follows:

The paving between the property line and the street pavement may be wider than the driveway approach at the property line in order to provide for safe deceleration of vehicles turning into the applicant’s premises.

Frontage	Total Width of Driveway
50 feet or less	20 feet
>50 feet and <100 feet	20 feet plus 50% of frontage over 50 feet

B. Surface. If the driveway is improved, the applicant shall pave the driveway approaches or other areas within the right-of-way with asphaltic concrete or other material approved by the public works director so that it merges with the street pavement; the paving shall be adequate and suitable for the traffic to be carried as determined by the public works director.

C. Drainage. The extended paving between the property line and the street pavement shall be to the established grade or other slope fixed by the public works director to provide for proper runoff. The public works director may require that entrances at the property line bordering the city street or way be constructed in such a fashion to provide for a minimum ten-inch diameter culvert drain capacity either by the installation of a minimum size ten-inch culvert, and/or by the construction of an adequate bridge. (Ord. 01-7 § 1)

12.08.050 Prohibited locations.

All driveways must be located the maximum distance which is practical from a street intersection and in no instance shall the distance from an intersection be closer than forty feet on an arterial street and ten feet on a local street as measured from the nearest curb return radius. Where streets of different functional classification intersect, the distance required is forty feet. (Ord. 01-7 § 1)

12.08.060 Owner's responsibility to maintain.

The owner of land abutting a driveway approach shall maintain the approach in good repair and safe condition. The owner shall be liable for injury, damage or loss to person or property caused by the owner's negligent failure to maintain the approach in good repair and safe condition. The city shall not be liable for injury, damage or loss to any person or property caused in whole or in part by the defective or dangerous condition of any driveway approach.

The public works director may serve notice on the owner to reconstruct or repair the driveway approach as conditions may require. Neither the duty of the owner to maintain the driveway approach in good repair and safe condition, nor liability for owner's failure to do so is dependent upon the notice from the city to reconstruct or repair. The owner shall defend and hold harmless the city from all claims for loss or damage arising from the owner's failure to comply with subsection. (Ord. 01-7 § 1)

12.08.070 Repair and reconstruction—Notice.

If the public works director determines that a driveway approach is to be repaired or reconstructed, a notice shall be sent to the owner of the property by first-class mail at the owner's address as known to the public works director, or if not so known, as indicated on current records of the county assessor. The notice shall state the repair or reconstruction required, the time limit for such repairs, and state that the cost shall be borne by the owner of the driveway.

If the necessary repair or reconstruction is not completed within the given time limit, the public works director may cause the repair or reconstruction to be performed either with city forces or by private contract. The city shall keep an accurate account of the costs of the labor and materials used in making the repairs in front of each lot or parcel of land. The costs of such repairs plus ten percent for administrative fees shall be filed as a lien on said property with the county if payment is not received within thirty days from the date of billing. (Ord. 01-7 § 1)

12.08.080 Violation—Penalty.

The violation of this chapter upon conviction thereof is punishable by a fine of not more than five hundred dollars. (Ord. 01-7 § 1)

Applicable Subdivision

16.04.310 Design standards—Lots.

The following design standards are required for lots:

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

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

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

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

Where:

S =	Average % slope of the property
I =	The contour interval, in feet (2 feet or 5 feet)
L =	Summation of the length of the contours, in feet
A =	Area, in acres, of the property being considered

For partitions, as an alternative to the above method, the city may permit the determination of the average slope of a property by the following method:

$$\frac{\text{Vertical distance between contours}}{\text{Horizontal distance between contours}} = \frac{V}{H} = \text{\% slope}$$

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

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

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

D. Lot Remnants. All remnants of lots below minimum size left over after subdividing a larger tract shall be added to adjacent lots or dedicated for public use rather than allowed to remain as unusable parcels.

E. Building Envelopes.

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

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

3. The planning commission may approve the modification of an approved building envelope where: (a) it finds that the intent of the original building envelope designation is maintained by the proposed modification; and (b) new facts, which were not available at the time of the original designation of the building envelope, about the characteristics of the site form the basis for the modification.

4. The planning commission shall hold a public hearing on the request for a modification to a designated building envelope pursuant to the requirements Sections 16.04.080—16.04.125. (Ord. 08-02 § 2; Ord. 95-20 § 1)

16.04.330 Design standards—Trees.

No trees shall be removed in the development of the subdivision or partition except those within the designated public rights-of-way and easements for public utilities. All trees on individual building lots shall be retained until such time as plans are submitted for a building permit and approved as to specific locations of building pads, driveways and other aspects of land disturbance. An exception to this standard can be made by the planning commission as part of the subdivision or partition tentative plan, specifying which trees are to be removed and for what purpose. (Ord. 95-20 § 1)

16.04.380 Variance—Applications required.

Applications are required for variances in the following circumstances:

A. General. Application for a general variance shall be submitted in writing by the subdivider or partitioner when the tentative plan is submitted for consideration. The application shall state fully the grounds for the request and all the facts relied upon by the applicant in making such a request.

B. Cluster Development. Application for such variance shall be made in writing by the subdivider when the tentative plan is submitted for consideration. All facts relied upon by the petitioner shall be fully stated and supplemented with maps, plans or other additional data which may aid the commission in the analysis of the proposed project. The plans for such development shall include such covenants, restrictions or other legal provisions necessary to guarantee the full achievement of the plan. (Ord. 95-20 § 1)

16.04.390 Variance—Action of the planning commission.

The planning commission shall consider the application for a variance at the same meeting at which it considers the tentative plan. The variance may be approved or approved subject to conditions provided the planning commission finds that the following standards are met:

- A. That there are special circumstances or conditions affecting such property;
- B. That the exception is necessary for the proper design and/or function of the subdivision; and
- C. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated. Examples of what may be deemed injurious to other property are (but are not limited to): increased risk of geologic hazard, reduction of privacy, impact upon a significant view and additional traffic generation. (Ord. 95-20 § 1)

APPLICABLE CODE:

Chapter 17.14 RESIDENTIAL MEDIUM DENSITY (R2) ZONE

17.14.040 Standards.

In an R2 zone, the following standards shall apply except as they may be modified through the design review process pursuant to Chapter 17.44:

- A. Lot Size. Lot area shall be at least five thousand square feet, except that construction on lots of less than five thousand square feet is permitted subject to Section 17.82.020. The minimum lot size for a single-family dwelling shall be five thousand square feet. The minimum lot size for all uses, including single-family dwellings, shall be adjusted for average slope using the standards in Section 16.04.310(A).
- B. Lot Dimensions.
 - 1. Lot Width. Lot width shall be at least forty feet.
 - 2. Lot Depth. Lot depth shall be at least eighty feet.
 - 3. Front Yard. A front yard shall be at least fifteen feet.
 - 4. Side Yard. A side yard shall be at least five feet, except on a corner or through lot the minimum side yard from the street shall be fifteen feet.
 - 5. Rear Yard. A rear yard shall be at least fifteen feet, except on a corner or through lot it shall be a minimum of five feet, except where a rear lot line abuts a street, it shall be a minimum of fifteen feet.
 - 6. Yard Abutting the Ocean Shore. For all lots abutting the ocean shore, any yard abutting the ocean shore shall conform to the requirements of Section 17.42.050(A)(6), Oceanfront setback.
- C. Lot Coverage. The lot coverage for a permitted or conditional use shall not exceed fifty percent.
- D. Floor Area Ratio. The floor area ratio for a permitted or conditional use shall not exceed 0.6.
- E. Building Height. Maximum height of a structure is twenty-four feet, measured as the vertical distance from the average elevation of existing grade to the highest point of a roof surface of a flat roof, to the top of a mansard roof or to the mean height level between the eaves and the ridge for a pitched roof. The ridge height of a pitched roof shall not exceed twenty-eight feet. Pitched roofs are considered those with a 5-12 pitch or greater.
- F. Signs. As allowed by Chapter 17.56.
- G. Parking. As required by Section 17.78.020.
- H. Design Review. All uses except single-family dwellings and their accessory structures are subject to design review of Chapter 17.44.
- I. Geologic or Soils Engineering Study. As required by Chapter 17.50.
- J. Claims for Compensation Under ORS 197.352. The standards of Section 17.08.040(A) through (K) (Standards), shall apply except as specifically modified pursuant to a development agreement created as part of the city's final action modifying, removing or not applying the city's land use regulation(s) on a demand for compensation under ORS 197.352.
- K. Site Plan. Except for interior renovation of existing structures and exterior renovations such as siding replacement where there will be no ground disturbance, no new construction shall be approved unless a site plan meeting the requirements of Section 17.90.190 has been submitted and approved.