

Hi Leslie and Happy New Year to all,

The City of Cannon Beach has scheduled a hearing for January 27 at 6pm to discuss the development of the lot on the corner of Forest Lawn and S. Hemlock. I'd like to encourage all neighbors to PLEASE submit written comments and/or speak at the hearing.

The hearing will be held via zoom and is open to the public. Both Katie Hillenhagen, Administrative Assistant City Cannon Beach (503-436-8054 or hillenhagen@ci.cannon-beach.or.us) and our neighbor Leslie France can provide more information about the process.

I know it's been a while, so here's a summary to help refresh everyone's memory. The lot on the corner of Forest Lawn and S. Hemlock was purchased recently by a developer. This lot is identified as taxlot 51030DA4100 (taxlot 4100) and is a designated wetland according to the City of Cannon Beach. The developer purchased this property with knowledge of the lot's wetland status. The developer would like to subdivide the lot and build 8 homes on the lot. The public record related to this matter is confusing. It consists of numerous emails between the City and the developer and commingles the various projects and permits anticipated by the developer. There are also proposed subdivision plans and wetland studies included in the various emails. The public record is most definitely confusing and incomplete. It is a haphazard collection of emails, ideas, discussion notes and proposals. Thank you to Leslie for gathering all of this information and keeping the neighborhood in the loop.

After sorting through the public record, the following course of events appears to have unfolded.

In a letter dated April 29, 2021, the City asked Rosanne Dorsey, owner of the property next to taxlot 4100, to divert her storm water runoff away from taxlot 4100. It is unclear what prompted this request from the City but emails in the public record would indicate that the developer/owner of taxlot 4100 may have been involved in the request. Around the same time, the City filed a permit to extend the storm-water line in the Forest Lawn right-of-way and divert the line to a new discharge point in the northern portion of taxlot 4100. The public record is unclear as to why this work and permit were deemed necessary by the City. The permit was approved administratively by Jeff Adams, Community Development Director for the City. In anticipation of this storm-water work, private contractor McEwan was asked to bid and complete the work. From the public record it appears both the City and the developer were in contact with McEwan regarding the work and hopeful to complete the work by the end of November 2021. McEwan also sent Rosanne a bid to connect her property to the new storm-water line. Rosanne had several discussions with the City regarding this project. On November 7, 2021, I filed an appeal asking for reversal of the permit allowing the storm-water work. Because of the appeal no work has been done to extend the storm-water line in the Forrest Lawn right-of-way. The upcoming hearing will be before the Planning Commission and they will decide whether the permit was properly approved or not.

Below is a nutshell summary of the main points at issue. Please feel free to use these points when drafting your comments and please participate in the hearing if possible.

- 1) The work contemplated under the permit should be paid for by the developer not the City. Public resources should not be spent on this project. The developer should pay all costs related to the improvement of the storm-water line through or adjacent to taxlot 4100 in accordance with City code.

2) The City failed to consider the wetland status of taxlot 4100 when granting the permit. Wetlands have unique laws that apply to them and development is highly regulated. According to City code, a permit for work in or near a wetland cannot be granted administratively and must be considered by the Planning Commission as a “conditional use” permit. Thus, the administrative approval of the permit was in error because it was not put before the Planning Commission for consideration.

3) When reviewing the permit, the City should apply those municipal code sections that apply to Wetland Overlay Zones. Findings of facts, conclusions and conditions related to the necessity and impact of the proposed work on or near the wetland should be and should have been identified. To date, this has not been done.

From the public record, it appears the developer is hopeful the new storm-water line, in addition to a relocated discharge point, trenching of taxlot 4100, and redirection of Rosanne’s storm-water will divert water away from the wetland, thereby creating more land for development. While trenching within taxlot 4100 was not noted or approved in the permit, it was consistently included in the project scope set forth by the developer. This issue definitely warrants clarification during the hearing. Trenching within a wetland requires additional review and permitting and is not within the scope of this permit.

To date, it does not appear that the developer has requested any further permits or filed any applications to subdivide or develop taxlot 4100. A primary goal with this appeal is to ensure that future permits and applications take into account the wetland status of taxlot 4100 and adhere to the requirements set forth in the municipal code related to wetlands.

For those of you wanting to take a deeper dive into this matter please read on. For the rest of you, PLEASE submit your written comments and ask the City to reverse it’s approval of the permit. Thank you!

If you’re still reading, I’m including a communication string between myself and a wetlands expert I asked for input on the matter. All advice was given by the expert as an interested person dedicated to the preservation of wetlands. This individual was not retained or paid for their comments. The following can be read as an FAQ. Some of these issues may come up in the hearing.

Dana: Do I have standing to appeal? The order states that an “affected party” may appeal. The city sent notice of the order to those neighbors that live within 100’ of the proposed work. I don’t live within 100’ of project but live on the the street. Should someone within the 100’ zone sign the appeal? Given the tight time frame this may be difficult.

Expert: You have standing. Arguably, everyone has standing to protect wetlands. Wetlands protect public health and safety by performing a variety of functions including groundwater recharge, flood flow attenuation and water quality protection. Wetlands have proven to lessen the damage from flooding by slowing the water velocity, enabling water to soak into the ground, and by providing temporary storage of overbank flood flows. Wetlands reduce damage from coastal storm surges and tsunamis. Wetlands also provide unique habitat for wildlife species, many of which are either endangered or threatened, and provide opportunities for education, scientific study, and recreation. Land development in and surrounding wetlands increases the flow of water and pollutants to wetlands, overwhelming their ability to provide these functions and threatening their sustainability. Attention to these wetland functions is essential to governance of the community’s land uses, public health, safety and welfare. These functions cannot be sustained without care for the uplands adjacent to wetlands. Wetlands cannot continue to

provide these functions unless protected from the effects of fluctuations in storm water flow, urban pollutants, disposal of fill or dredged materials, and other impacts of land use change. Prohibiting fill of our significant wetlands and buffering wetlands by protecting the uplands surrounding the wetland to the greatest extent practicable will help insure these functions.

Dana: [Our neighbor] Rosey owns Taxlot '4104 that abuts the wetland. Rosey has been told she can no longer let her storm water to drain into the wetland and that she needs to hook up to the new storm-water line. She has also been told that having the city (via private contractor Bob McEwan Construction, Inc.) complete this work is the most cost effective way to do this (\$1,639.50). [D]oes Rosey have to hook up to the new city line?

Expert: Good question. I see nothing in the code saying Rosey has to hook up. It appears a neighbor has a duty to keep increased storm water off the neighbor's property. If Rosey can find some clever way to use or keep the water on her property she would not have to hook up. In fact 13.16.050(C) states she can maintain a private storm drainage facility (Bio-swales for example) to prevent flooding of neighbor's property. Interestingly, there is no mention of keeping all storm water of the neighbor's property. It says cannot "flood or damage." Pretty hard to flood or damage a wetland with water!

Dana: Does she have to divert away from the wetland even though her drainage was approved by the city when she built her house in 2006?

Expert: Arguably no. Pursuant to 17.43.050(J), it appears the water is required to be directed to the wetland (not away).

Dana: What grounds do the city or the developer have to ask her to divert her drainage away from the wetlands and into the new line?

Expert: Great question. If Rosey can set up a bioswale and slowly release the water into the wetland, I don't think the City can make her tie in. The more I read these ordinances, the less I see requiring anyone to tie in. Check out 13.16.020 C, which says private property owners have an obligation to "minimize or eliminate detrimental impacts" on other property. If a property owner "alters the property in a way that increases the flow of surface water from the property, the user must control the flow." Even if this wasn't a wetland (designed to receive water) a property owner must simply control the flow. Add the wetland component, and I see few to no detrimental impacts of adding water to the property.

Dana: It appears from emails between the developer and the city and comparing the old wetland delineation against the new delineation that Rosey's drainage has decreased the upland areas of the wetland. I added language to paragraph 2 of the appeal to try to address Rosey's situation. Should I keep it?

Expert: In my opinion, yes. The Planning Commission needs to know that this project is related to a greater proposed development.

Dana: I'm circling around the idea that the city cannot divert water from its natural drainage when wetlands are involved and can't force Rosey to divert. Perhaps this is an issue for a later time. Relatedly, I've heard stated that the owner of the wetlands does not have to allow the city to discharge into the wetlands. Is this correct?

Expert: I am not sure a wetland owner has the same power to deny storm water as an upland owner. This discussion is worth the appeal in itself. The owner bought wetlands. The City has an ordinance saying storm water stays in the natural drainage. Wetlands are much cheaper to buy than uplands, one reason is this is where the storm water goes! Is the storm water all supposed to end up on the beach and in the ocean full of pesticides from lawns and oil and toxins from the streets? No. The Wetlands hold and clean the water before it gets to the beach

Dana: The email correspondence from the developer to the City continues to muddy the scope of what they seem to think is approved with this order. They continue to reference completing their interior trenching at the same time the new line is installed and Rosey is hooked up, with all work being completed by McEwan. Should I ask for clarification or a new condition restricting any private interior ditch trenching?

Expert: YES! This is not a permit to do interior trenching. The Army Corps and Department of State Lands (DSL) would certainly have to weigh in on that application. The city seems to have a standing permit with DSL to do pipes and maintenance in wetlands (I would also challenge this assumption). DSL has certainly not weighed in on the dumping of more water into the wetland, especially at a different location than presumably approved in the past.

Dana: [H]ave I asked for the appropriate remedies?

Expert: You have asked for reversal so yes. But you could add clarification that this approved application does not permit the wetland owner to trench or perform any work on his property.

Dana: [T]he correspondence between the city and developer appears overly familiar and almost colluding. In one email, the city wrote “[o]bviously, the benefit of doing it [moving of the storm drains from one part of the wetland to another] now is we could tell if the work helps dry out the lot the way you had hoped...” Should we address this now?

Expert: To keep things relatively amicable at this point, I would advise keeping this in your back pocket for now. By all means use it if the City starts denying the connectivity between the two projects.

Dana: It would seem none of this work was actually contemplated by the city until the wetland was purchased by a developer this year and plans for development/subdivision started taking shape. I’m guessing what they hoped to accomplish was to have the city install the new storm-water line, force Rosey to hook up to the new line, and extend the discharge point of the new line to the northern-most point of the wetland, thereby draining the southern-most part of the wetland and acquiring more upland area. The additional interior trenching they continue to push for would seem to further drain the wetland. Thoughts?

Expert: I concur.