



**PLANNING COMMISSION WORK SESSION AGENDA**  
**Monday, May 13, 2024 - 6:00 PM**  
**Council Chambers, 169 SW Coast Hwy, Newport, Oregon 97365**

---

All public meetings of the City of Newport will be held in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway, Newport. The meeting location is accessible to persons with disabilities. A request for an interpreter, or for other accommodations, should be made at least 48 hours in advance of the meeting to Erik Glover, City Recorder at 541.574.0613, or [e.glover@newportoregon.gov](mailto:e.glover@newportoregon.gov).

All meetings are live-streamed at <https://newportoregon.gov>, and broadcast on Charter Channel 190. Anyone wishing to provide written public comment should send the comment to [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). Public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written comment must be submitted by 5:00 P.M. the previous day. To provide virtual public comment during a city meeting, a request must be made to the meeting staff at least 24 hours prior to the start of the meeting. This provision applies only to public comment and presenters outside the area and/or unable to physically attend an in person meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

---

**1. CALL TO ORDER**

*Bill Branigan, Bob Berman, Jim Hanselman, Gary East, Braulio Escobar, John Updike, Dustin Capri, and Greg Sutton.*

**2. NEW BUSINESS**

**2.A Initial Review of Draft Zoning Amendments to Implement the Updated Yaquina Bay Estuary Management Plan.**

[Memorandum](#)

[Draft Yaquina Estuary Zoning Ordinance Amendments 5.9.24](#)

[Existing Estuary Related Zoning Standards](#)

[Proposed Estuary Zoning Map](#)

[Estuary Zoning Comparison \(Existing - Proposed\)](#)

[Annie Merrill Public Comments 05-13-2024](#)

**2.B Implementation of Adjustment Provisions of Governor's Housing Bill.**

[Memorandum](#)

[Carrie Connelly email 4.18.24](#)

[Ordinance No. 2222 - final draft](#)

[Ord. 2222 - SB 1537 comparison](#)

[SB 1537 Enrolled](#)

[Ocean Shorelands Maps](#)

**3. UNFINISHED BUSINESS**

**3.A Next Steps with the City Center Revitalization Planning Process.**


[Memorandum](#)

[Executed Scope of Work](#)

**4. ADJOURNMENT**



# Memorandum

To: Planning Commission/Commission Advisory Committee  
From: Derrick Tokos, Community Development Director   
Date: May 9, 2024  
Re: Initial Review of Draft Zoning Amendments to Implement the Updated Yaquina Bay Estuary Management Plan

---

Enclosed is a draft set of zoning ordinance amendments. It is very rough and will need improvement, however, it is a start and will give you a sense of how we are folding standards from the updated Yaquina Bay Estuary Management Plan into the City's Municipal Code. Also attached, for comparison, is a copy of the existing code provisions.

A second component will be an updated set of zoning maps. Attached is a map showing the new estuary zone boundaries. A second map compares the new boundaries to the existing estuarine management unit designations. These will eventually need to be worked into a map amendment ordinance that would be paired with the zoning code updates.

For this meeting, I would like to walk through the elements of the zone code changes, why they are structured the way they are, and how they differ from the existing code structure. I also plan to spend a little bit of time on the maps. Coming out of the work session, I plan to vet the draft with interested parties with an eye towards bringing a more refined set of amendments back to the Commission at an upcoming work session.

#### Attachments

Draft Yaquina Estuary Zoning Ordinance Amendments\_5.9.24  
Existing Estuary Related Zoning Standards  
Proposed Estuary Zoning Map  
Estuary Zoning Comparison (Existing - Proposed)

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with ~~strike through~~. Staff comments, in *italics*, are for context and are not a part of the revisions.)

## CHAPTER 14.01 PURPOSE, APPLICABILITY, AND DEFINITIONS\*\*

\*\*\*

### 14.01.020 Definitions

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

\*\*\*

**Aquaculture.** the raising, feeding, planting, and harvesting of fish, shellfish, or marine plants, including facilities necessary to engage in the use.

**Breakwater.** An offshore barrier, sometimes connected to the shore at one or both ends to break the force of the waves. Used to protect harbors and marinas, breakwaters may be constructed of rock, concrete, or piling, or may be floating structures.

**Bridge Crossing.** A portion of a bridge spanning a waterway. Bridge crossings do not include support structures or fill located in the waterway or adjacent wetlands.

**Bridge Crossing Support Structures.** Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

**Climate Change.** The increasing changes in the measures of climate over a long period of time including precipitation, temperature, and wind patterns.

**Cobble Dynamic Revetment.** The use of naturally rounded pebbles or cobbles placed in front of property to be protected and designed to move under force of wave, currents, and tides. A cobble dynamic revetment represents a transitional strategy between a conventional riprap revetment of large interlocking stones and a beach nourishment project.

**Dike.** An earthen embankment or ridge constructed to restrain high waters.

**Docks.** A fixed or floating decked structure against which a boat may be berthed temporarily or indefinitely.

**Dredging (estuary).** The removal of sediment or other material from the estuary for the purpose of deepening a channel, mooring basin, or other navigation area. (This does not apply to dredging for clams.)

**Dredged Material Disposal (estuary).** The deposition of dredged material in estuarine areas or shorelands.

**Dolphin.** A group of piles driven together and tied together so that the group is capable of withstanding lateral forces from vessels or other floating objects.

**Estuarine Enhancement.** An action which results in a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

**Excavation (estuary).** The process of digging out shorelands to create new estuarine surface area directly connected to other estuarine waters.

**Fill (estuary).** The placement of material in the estuary to create new shoreland area or raise the elevation of land.

**Groin.** A shore protection structure (usually perpendicular to the shoreline) constructed to reap littoral drift or retard erosion of the shoreline. Generally made of rock or other solid material.

**Jetty.** An artificial barrier used to change littoral drift to protect inlet entrances from excessive sedimentation or direct and confine the stream of tidal flow. Jetties are usually constructed at the mouth of a river or estuary to help deepen and stabilize a channel.

**Marina.** A small harbor, boat basin, or moorage facility providing dockage for recreational craft.

**Minor Navigational Improvements.** Alteration necessary to provide water access to existing or permitted uses in conservation management units, including dredging for

access channels and for maintaining existing navigation but excluding fill and in water navigational structures other than floating breakwaters or similar permeable wave barriers.

**Mitigation (estuary).** The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, species diversity, unique features, and water quality.

**Pier.** A structure extending into the water from solid land generally to afford passage for persons or goods to and from vessels, but sometimes to provide recreational access to the estuary.

**Pile Dike.** Flow control structures analogous to groins but constructed from closely spaced pilings connected by timbers.

**Piling.** A long, slender stake or structural element of steel, concrete, or timber which is driven, jetted, or otherwise embedded into the bed of the estuary for the purpose of supporting a load.

**Port Facilities.** Facilities which accommodate and support commercial fishery and navigation activities, including terminal and boat basins and moorage for commercial vessels, barges, and ocean-going ships.

**Restoration (estuary).** Revitalizing, returning, or replacing original attributes and amenities such as natural biological productivity or cultural and aesthetic resources that have been diminished or lost by past alterations, activities, or catastrophic events. Estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alteration, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began.

*Active restoration* involves the use of specific remedial actions such as removing fills or dikes, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas, etc.

Passive restoration is the use of natural processes, sequences, or timing to bring about restoration after the removal or reduction of adverse stresses.

Shoreline stabilization. The stabilization or protection from erosion of the banks of the estuary by vegetative or structural (riprap or bulkhead) means.

Submerged Crossings. Power, telephone, water, sewer, gas, or other transmission lines that are constructed beneath the estuary, usually by embedding into the bottom of the estuary.

Temporary Alteration (estuary). Dredging, filling, or other estuarine alteration occurring over a specified short period of time (not to exceed three years) that is needed to facilitate a use allowed by the applicable Estuary Zoning District. The provision for temporary alterations is intended to allow alterations to areas and resources that would otherwise be required to be preserved or conserved.

Wharf. A structure built alongside a waterway for the purpose of receipt, discharge, and storage of goods and merchandise from vessels.

*Staff: The above definitions will be added to NMC Chapter 14.01 in alphabetical order. The terms provide context for regulatory changes in NMC Chapter 14.04.*

\*\*\*

## CHAPTER 14.02 ESTABLISHMENT OF ZONES

### 14.02.010 Establishment of Zones

In order to carry out the purpose and provisions of this Code, the following zones are hereby established:

Abbreviated  
Zone Designation

<u>Estuary Conservation Zone</u>	<u>(E-C)</u>
<u>Estuary Development Zone</u>	<u>(E-D)</u>
<u>Estuary Natural Zone</u>	<u>(E-N)</u>
Low Density Residential	(R-1)

Low Density Residential	(R-2)
High Density Residential	(R-3)
High Density Residential	(R-4)
Retail Commercial	(C-1)
Tourist Commercial	(C-2)
Highway Commercial	(C-3)
Light Industrial	(I-1)
Medium Industrial	(I-2)
<del>Heavy Industrial</del>	<del>(I-3)</del>
Water Dependent	(W-1)
Water Related	(W-2)
<del>Management Unit 1</del>	<del>(Mu-1)</del>
<del>Management Unit 2</del>	<del>(Mu-2)</del>
<del>Management Unit 3</del>	<del>(Mu-3)</del>
<del>Management Unit 4</del>	<del>(Mu-4)</del>
<del>Management Unit 5</del>	<del>(Mu-5)</del>
<del>Management Unit 6</del>	<del>(Mu-6)</del>
<del>Management Unit 7</del>	<del>(Mu-7)</del>
<del>Management Unit 8</del>	<del>(Mu-8)</del>
<del>Management Unit 9</del>	<del>(Mu-9)</del>
<del>Management Unit 10</del>	<del>(Mu-10)</del>
Public Buildings and Structures	(P-1)
Public Recreation	(P-2)
Public Open Space	(P-3)
<del>Mobile Homes</del>	<del>(M-H)</del>

*Staff: The Management Units have been categorized under three new zoning classifications, “Estuary Conservation Zone,” “Estuary Development Zone,” and “Estuary Natural Zone” and will no longer be independent zoning districts. These revisions reflect that change. The City eliminated its M-H zoning overlay decades ago, so that deletion is a housekeeping clean-up item. The same is true with respect to the addition of the I-3 zone district, which was inadvertently left off of the table.*

\*\*\*

## CHAPTER 14.03 ZONING DISTRICTS

### 14.03.010 Purpose.

It is the intent and purpose of this section to establish zoning districts for the City of Newport and delineate uses for each district. Each zoning district is intended to service a general land use category that has common location, development, and use characteristics. The quantity and availability of lands within each zoning district shall be based on the community's need as determined by the Comprehensive Plan. Establishing the zoning districts also implements the General Land Use Plan Map as set forth in the Comprehensive Plan.

14.03.020 Establishment of Zoning Districts.

This section separates the City of Newport into ~~four~~ five (45) basic classifications and ~~thirteen~~ eighteen (18) use districts as follows:

- A. Districts zoned for residential use(s).
  - 1. R-1 Low Density Single-Family Residential.
  - 2. R-2 Medium Density Single-Family Residential.
  - 3. R-3 Medium Density Multi-Family Residential.
  - 4. R-4 High Density Multi-Family Residential.
- B. Districts zoned for commercial use(s).
  - 1. C-1 Retail and Service Commercial.
  - 2. C-2 Tourist Commercial.
  - 3. C-3 Heavy Commercial.
- C. Districts zoned for industrial use(s).
  - 1. I-1 Light Industrial.
  - 2. I-2 Medium Industrial.
  - 3. I-3 Heavy Industrial.
  - 4. W-1 Water Dependent.
  - 5. W-2 Water Related.
- D. Districts zoned for public use(s).

1. P-1 Public Structures.
2. P-2 Public Parks.
3. P-3 Public Open Space.

E. Districts zoned for estuary use(s).

1. E-C Estuary Conservation
2. E-D Estuary Development
3. E-N Estuary Natural

*Staff: The above changes add the three estuary zones to the list of zone districts within the City of Newport.*

\*\*\*

14.03.040 Intent of Zoning Districts.

Each zoning district is intended to serve a general land use category that has common locations, development, and service characteristics. The following sections specify the intent of each zoning district:

E-C/“Estuary Conservation.” The intent of the E-C district is to conserve, protect, and where appropriate enhance renewable estuarine resources for long term uses and to manage for uses that do not substantially degrade the natural or recreational resources or require major alterations to the estuary.

E-D/“Estuary Development.” The intent of the E-D district is to provide for water dependent and water related development. Permissible uses in areas managed for water -dependent activities shall be navigation and water-dependent commercial and industrial uses.

E-N/“Estuary Natural.” The intent of the E-N district is to preserve, protect and where appropriate enhance these areas for the resource and support the values and functions they provide.

*Staff: This section of the Newport Municipal Code includes “intent statements” for each of the City’s zoning districts. The*



*intent language for these three new zone districts aligns with the Management objectives for each of them, as outlined in the updated Yaquina Bay Estuary Management Plan.*

\*\*\*

14.03.120 Estuary Uses

The following list sets forth the uses allowed within the estuary land use classification. Management units are a subclassification of the listed zones. Uses not identified herein are not allowed.

“P” = Permitted Uses.

“C” = Conditional uses subject to the approval of a conditional use permit.

“X” = Not Allowed.

		<u>E-C</u>	<u>E-D</u>	<u>E-N</u>
	<u>Management Units</u>	<u>3, 6, and 8</u>	<u>1, 2, 4, 5, and 7,</u>	<u>1a, 9, 10, and 12</u>
<u>1.</u>	<u>Active restoration of fish and wildlife habitat, water quality, or estuarine productivity.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C<sup>1</sup></u>
<u>2.</u>	<u>Aquaculture requiring dredge, fill or other alteration of estuarine aquatic area.</u>	<u>C<sup>1</sup></u>	<u>P<sup>3</sup></u>	<u>X</u>
<u>3.</u>	<u>Aquaculture that does not involve dredge or fill or other estuarine aquatic area alteration except that incidental dredging for harvest of benthic species or the use of removable structures such as stakes or racks may be permitted.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C<sup>1</sup></u>
<u>4.</u>	<u>Boat ramps for public use not requiring dredge or fill.</u>	<u>C</u>	<u>P<sup>4</sup></u>	<u>C<sup>1</sup></u>
<u>5.</u>	<u>Bridge crossing support structures and dredging necessary for their installation.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C<sup>1</sup></u>
<u>6.</u>	<u>Bridge crossing spans that do not require the placement of support structures within an E-C or E-N zone.</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>7.</u>	<u>Commercial boat basins and similar moorage facilities.</u>	<u>X</u>	<u>C</u>	<u>X</u>
<u>8.</u>	<u>Communication facilities.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C<sup>1</sup></u>
<u>9.</u>	<u>High intensity water dependent recreation, including, but not limited to, boat ramps and marinas, and including new and maintenance dredging for such uses.</u>	<u>C<sup>1</sup></u>	<u>C</u>	<u>X</u>
<u>10.</u>	<u>Installation of tide gates in existing functional dikes.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C<sup>1</sup></u>

May 9, 2024 Revisions to NMC Chapter 14 Implementing Relevant Provisions of the Updated Yaquina Bay Estuary Plan

<u>11.</u>	<u>In-water disposal of dredged material.</u>	<u>X</u>	<u>C</u>	<u>X</u>
<u>12.</u>	<u>Marine terminals.</u>	<u>X</u>	<u>C</u>	<u>X</u>
<u>13.</u>	<u>Mining and mineral extraction, including dredging necessary for such extraction.</u>	<u>C<sup>1</sup></u>	<u>P<sup>3</sup></u>	<u>X</u>
<u>14.</u>	<u>Minor navigational improvements.</u>	<u>C<sup>1</sup></u>	<u>P<sup>3</sup></u>	<u>X</u>
<u>15.</u>	<u>Navigation activities and improvements.</u>	<u>X</u>	<u>C</u>	<u>X</u>
<u>16.</u>	<u>Navigation aids such as beacons and buoys.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C</u>
<u>17.</u>	<u>On-site maintenance of existing functional tide gates and associated drainage channels, including, as necessary, dredging and bridge crossing support structures.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C</u>
<u>18.</u>	<u>Other water dependent uses requiring the occupation of estuarine surface area by means other than fill</u>	<u>C<sup>1</sup></u>	<u>P<sup>3</sup></u>	<u>X</u>
<u>19.</u>	<u>Passive restoration activities.</u>	<u>P<sup>2</sup></u>	<u>P<sup>3</sup></u>	<u>P<sup>2</sup></u>
<u>20.</u>	<u>Pipelines, cables and utility crossings including incidental dredging necessary for their installation.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C<sup>1</sup></u>
<u>21.</u>	<u>Projects for the protection of habitat, nutrient, fish, wildlife, and aesthetic resources.</u>	<u>P<sup>2</sup></u>	<u>P<sup>3</sup></u>	<u>P<sup>2</sup></u>
<u>22.</u>	<u>Research and educational observations.</u>	<u>P<sup>2</sup></u>	<u>P<sup>3</sup></u>	<u>P<sup>2</sup></u>
<u>23.</u>	<u>Riprap for the protection of uses existing as of October 7, 1977.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C</u>
<u>24.</u>	<u>Riprap for the protection of unique resources, historical and archeological values, and public facilities.</u>	<u>C</u>	<u>P<sup>3</sup></u>	<u>C</u>
<u>25.</u>	<u>Temporary alterations.</u>	<u>C<sup>1</sup></u>	<u>P<sup>3</sup></u>	<u>C<sup>1</sup></u>
<u>26.</u>	<u>Undeveloped low intensity recreation.</u>	<u>P<sup>2</sup></u>	<u>P<sup>3</sup></u>	<u>P<sup>2</sup></u>
<u>27.</u>	<u>Water dependent commercial uses.</u>	<u>X</u>	<u>P<sup>4</sup></u>	<u>X</u>
<u>28.</u>	<u>Water dependent industrial uses.</u>	<u>X</u>	<u>P<sup>4</sup></u>	<u>X</u>
<u>29.</u>	<u>Water storage of products used in industry, commerce, or recreation.</u>	<u>X</u>	<u>C</u>	<u>X</u>

1. Conditional use is subject to a resource capability test.

2. Projects that require aquatic area alteration may be permitted as conditional uses.

3. Projects may, or may not, include aquatic area alteration and are subject to staff level review using a Type 1 decision making process.

4. Projects are subject to staff level review using a Type 1 decision making process unless they involve dredging or the placement of fill, in which case they are subject to conditional use review.

*Staff: The above table is formatted to match those used for other zone classifications within the City. The footnotes inform the level of review required, with detailed standards being included in the NMC Chapter 14.04*

\*\*\*

## CHAPTER 14.04 ESTUARINE USE STANDARDS

### 14.04.010 Purpose

The purpose of this section to establish standards for new development and redevelopment within estuarine aquatic areas in a manner consistent with Statewide Planning Goal 16. As used in this section, “estuarine aquatic area” means estuarine waters, submerged lands, tidelands, and tidal marshes up to Mean Higher High Water or the line of non-aquatic vegetation, whichever is further landward.

### 14.04.020 Exempt Uses

The following uses and their accessory uses are permitted outright and are not subject to the standards contained in this chapter

- A. Undeveloped low intensity recreation requiring no aquatic area alteration.
- B. Research and educational observations requiring no aquatic area alteration.
- C. Projects for the protection of habitat, nutrient, fish, wildlife, and aesthetic resources requiring no aquatic area alteration.
- D. Passive restoration that requires no aquatic area alteration.
- E. Bridge crossing spans that do not require the placement of support structures within the E-N zone.

### 14.04.030 General Standards

The following standards will be applied to all new uses, expansion of existing structures, and activities within Yaquina Bay. In addition to the standards set forth in this ordinance and the Comprehensive Plan, all uses and activities must further comply with all applicable state and federal regulations governing water quality, resource protection, and public health and safety.

A. Structures: Structures include all constructed facilities that extend into the estuary, whether fixed or floating. Not included are log rafts or new land created from submerged or submersible lands. All structures proposed within an estuary zoning district must adhere to the following:

1. The siting and design of all structures shall be chosen to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, and patterns of erosion and accretion.
2. Materials to be used for structures shall be clean and durable so as to allow long-term stability and minimize maintenance. Materials which could create water quality problems or which rapidly deteriorate are not permitted.
3. The development of structures shall be evaluated to determine potential conflicts with established water uses (e.g., navigation, recreation, aquaculture, etc.). Such conflicts shall be minimized.
4. Occupation of estuarine surface areas by structures shall be limited to the minimum area practical to accomplish the proposed purpose.
5. Where feasible, breakwaters of the floating type shall be preferred over those of solid construction.
6. Floating structures shall not be permitted in areas where they would regularly contact the bottom at low water (i.e., shall be located waterward of mean lower low water). Exceptions may be granted for structures of limited areas that are necessary as part of an overall approved project where grounding would not have significant adverse impacts.
7. Individual single-purpose docks and piers for recreational and residential uses shall be permitted only when it has been demonstrated that there are no practical alternatives (e.g., mooring buoys, dry land storage, etc.). Community facilities or other structures common to several uses are encouraged at appropriate locations.
8. The size, shape, and orientation of a dock or pier shall be limited to that required for the intended uses.
9. For structures associated with marinas or port facilities:

- a. Open moorage shall be preferred over covered or enclosed moorage except for repair or construction facilities;
    - b. Multi-purpose and cooperative use of moorage parking, cargo handling, and storage facilities shall be encouraged;
    - c. In the development of new port or marina facilities, maximum feasible public access shall be encouraged, consistent with security and safety requirements.
  - 10. Shoreline stabilization structures shall be confined to those areas where:
    - a. Active erosion is occurring that threatens existing uses or structures; or
    - b. New development or redevelopment, or water-dependent or water-related uses requires protection for maintaining the integrity of upland structures or facilities;
  - 11. Structural shoreline stabilization methods shall be permitted only where the shoreline protection proposal demonstrates that a higher priority method is unreasonable. The following, in order, are the preferred methods of shoreline stabilization:
    - a. Vegetative or other nonstructural technique;
    - b. Cobble dynamic revetment;
    - c. Vegetated riprap;
    - d. Unvegetated riprap;
    - e. Bulkheads (except that the use of bulkheads shall be limited to ED and EC management units only).
  - 12. Minor modifications of the shoreline profile may be permitted on a case-by-case basis. These alterations shall be for the purpose of stabilizing the shoreline, not for the purpose of gaining additional upland area.
- B. Dikes: New diking is the placement of dikes on an area that has never been previously diked; or has previously been diked but all or a substantial part of the area is presently subject to tidal inundation and tidal marsh has been established.
- 1. Existing functional dikes and tide gates may be maintained and repaired as necessary to fulfill their purpose as flood control structures.
  - 2. New dikes in estuarine areas shall be allowed only:

- a. As part of an approved fill project, subject to the standards for fill in the applicable Estuary Zoning District; and
- b. If appropriate mitigation is undertaken in accordance with all relevant state and federal standards.
3. Dikes constructed to retain fill materials shall be considered fill and subject to standards for fill in the applicable Estuary Zoning District.
4. The outside face of new dikes shall be protected by approved shoreline stabilization procedures.

C. Submerged Crossings:

1. Trenching or other bottom disturbance undertaken in conjunction with installation of a submerged crossing shall conform to the standards for dredging as set forth in the applicable Estuary Zoning District.
2. Submerged crossings shall be designed and located so as to eliminate interference with present or future navigational activities.
3. Submerged crossings shall be designed and located so as to ensure sufficient burial or water depth to avoid damage to the crossing.

D. Excavation:

1. Creation of new estuarine surface area shall be allowed only for navigation, other water-dependent use, or restoration.
2. All excavation projects shall be designed and located so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.
3. Excavation of as much as is practical of the new water body shall be completed before it is connected to the estuary.
4. In the design of excavation projects, provision of public access to the estuary shall be encouraged to the extent compatible with the proposed use.

14.04.040 Resource Capability Test

- A. Dredging, filling, or other alterations of the estuary shall be subject to a Resource Capability Test that satisfies the following:

1. The activity will occur in conjunction with a use authorized in accordance with a use listed in NMC 14.03.120;
2. A substantial public benefit is demonstrated;
3. The use or alteration does not substantially interfere with public trust rights;
4. No feasible alternative upland locations exists; and
5. Adverse impacts are minimized. Adverse impacts include:
  - a. Short-term effects such as pollutant release, dissolved oxygen depletion, and disturbance of important biological communities.
  - b. Long-term effects such as loss of fishing habitat and tidelands, loss of flushing capacity, destabilization of bottom sediments, and biologically harmful changes in circulation patterns.
  - c. Removal of material in wetlands and productive shallow submerged lands.

#### 14.04.050 Impact Assessments

A. All decisions authorizing uses that involve alterations of the estuary that could affect the estuary's physical processes or biological resources shall include a written impact assessment. The impact assessment need not be lengthy or complex. The level of detail and analysis should be commensurate with the scale of expected impacts. For example, for proposed alterations with minimal estuarine disturbance, a correspondingly simple assessment is sufficient. For alterations with the potential for greater impact, the assessment should be more comprehensive. In all cases it shall provide a summary of the impacts to be expected. It should be submitted in writing to the local jurisdiction. It shall include:

1. The type and extent of alterations to be authorized;
2. The type of resources affected;
3. The expected extent of impacts on water quality and other physical characteristics of the estuary, biological resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;
4. The expected extent of impacts of the proposed alteration should reference relevant Climate Vulnerabilities as

described in applicable sub-area(s) and management unit (applicants are encouraged to document the use of any applicable data and maps included in the inventory such as sea level rise and landward migration zones) when considering future:

- a. continued use of the proposed alteration given projected climate change impacts
  - b. water quality and other physical characteristics of the estuary.
  - c. living resources.
  - d. recreation and aesthetic use.
  - e. navigation, and
  - f. other existing and potential uses of the estuary; and
5. Methods to be employed to avoid or minimize adverse impacts.

In the process of gathering necessary factual information for the preparation of the impact assessment, the Community Development Department may consult with any agency or individual able to provide relevant technical expertise. Federal impact statements or assessments may be utilized to comply with this requirement if such statements are available.

#### 14.04.060 Conditional Use Standards

Conditional uses in an estuary zone district shall comply with the following standards:

- A. The use is consistent with the management objective of the individual management unit; and
- B. The use complies with any applicable Special Policies of the individual Management Unit.
- C. The use, if subject to a Resource Capability Test satisfies the following requirements:
  1. The use shall be consistent with the purposes of the Conservation Management Unit classification;
  2. The use shall be consistent with the resource capabilities of the area. A use is consistent with the resource capabilities of the area when:
    - a. The negative impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant; or
    - b. The resources of the area are able to assimilate the use and its effects and continue to function in a manner which conserves long-term renewable



resources, natural biological productivity, recreational and aesthetic values and aquaculture. In this context, "conserve" means to manage in a manner which avoids wasteful or destructive uses and provides for future availability.

3. Information from the Impact Assessment shall be used to determine if a use is consistent with the resource capability of the area.

#### 14.04.070 Dredged Material Disposal Standards

- A. Disposal of dredged materials should occur on the smallest possible land area to minimize the quantity of land that is disturbed. Clearing of land should occur in stages on an "as needed" basis.
- B. Dikes surrounding disposal sites shall be well constructed and large enough to encourage proper "ponding" and to prevent the return of suspended sediments into the estuary.
- C. The timing of disposal activities shall be coordinated with the Department of Environmental Quality and the Department of Fish and Wildlife to ensure adequate protection of biologically important elements such as fish runs, spawning activity, etc. In general, disposal should occur during periods of adequate river flow to aid flushing of suspended sediments.
- D. Disposal sites that will receive materials with toxic characteristics shall be designed to include secondary cells in order to achieve good quality effluent. Discharge from the sites should be monitored to ensure that adequate cell structures have been constructed and are functioning properly.
- E. Revegetation of disposal sites shall occur as soon as is practical in order to stabilize the site and retard wind erosion.
- F. Outfalls from dredged material disposal sites shall be located and designed so as to minimize adverse impacts on aquatic life and habitats and water quality.
- G. Priorities for the placement of dredged material disposal sites shall be (in order of preference):
  1. Upland or approved fill project sites.
  2. Approved offshore ocean disposal sites.

3. Aquatic areas.

H. Where flow lane disposal of dredged material is allowed, monitoring of the disposal is required to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.

*Staff: NMC Chapter 14.04 is being rewritten in its entirety to include the approval criteria from the updated Yaquina Bay Estuary Management Plan.*

CHAPTER 14.05 MANAGEMENT UNIT SPECIAL POLICIES

(Chapter to be rewritten and relevant policies will be incorporated into Chapter 14.04)

\*\*\*

CHAPTER 14.34 CONDITIONAL USES

\*\*\*

14.34.060 Supplemental Estuary Conditional Use Standards

Uses permitted conditionally within estuary zone districts, pursuant to NMC 14.03.120 shall be subject to the standards listed in NMC Chapter 14.04.

*Staff: This section is being added to the end of the Conditional Use chapter to put individuals on notice that additional standards apply to conditional uses proposed within the estuary.*

\*\*\*

CHAPTER 14.52 PROCEDURAL REQUIREMENTS

\*\*\*

14.52.060 Notice

\*\*\*

G. Written Notice for Land Use Decision in Estuary Zone Districts. The City of Newport shall notify state and federal agencies with interest or jurisdiction in estuaries of estuary use applications which may require their review. This notice will include a description of the use applied for, references to applicable policies and standards, and notification of comment and appeal period.

*Staff: This section is being added to the land use procedural chapter to identify notice requirements for City land use decisions within estuary zones.*

DRAFT

## CHAPTER 14.04 MANAGEMENT UNIT DISTRICTS

### 14.04.010 Purpose.

The purpose of the Management Unit Districts is to provide estuary area development guidance, to identify development, conservation, and natural management units, and to describe appropriate uses, activities, and structures.

### 14.04.020 Definitions\*\*

**Estuarine Enhancement.** An action which results in a long term improvement of existing estuarine functional characteristics of processes that is not the result of a creation of restoration action.

**Mitigation.** The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, species diversity, unique features, and water quality.

### 14.04.030 Uses Permitted\*\*\*

Consistent with the requirements of State Planning Goal 16, within each management unit certain uses and activities are permitted with standards, other are permitted conditionally, and some uses are not allowed. All uses which involve dredging, fill, structures, shoreline stabilization (except vegetative) or other alteration waterward of Mean Higher High Water (MHHW) or the line of non-aquatic vegetation are also subject to regulations at either the state level (State Removal/Fill Law, ORS 196.800-196.990), federal level (Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act), or both. Certain other uses such as energy facility siting, aquaculture, and exploration for oil, gas, or geothermal energy are further regulated by additional state and federal agencies. Uses and activities are categorized as follows:

**Permitted With Standards (P).**\*\*\*\* Permitted only after a case-by-case review of the proposed use and issuance of an estuarine use permit in accordance with 14.04.060 of this section and a Type I Land Use Action decision process consistent with [Section 14.52](#), Procedural



Requirements. A use which is permitted with standards shall require the following findings:

- A. It complies with the applicable estuarine use standards of [Sections 14.04.080](#) through [14.04.230](#).
- B. It complies with all policies specific to the individual management unit set forth in the Comprehensive Plan and [Section 14.05](#).
- C. It is consistent with the resource capabilities of the area as defined by [Section 14.04.090](#).

*(\* Entire section largely amended by Ordinance No. 1344 (11-7-83); Amended to correct scrivener's errors by Ordinance No. 1790 (7-6-98).*

*\*\* Added by Ordinance No. 1622 (10-7-91).*

*\*\*\* Amended by Ordinance No. 1622 (10-7-91).*

*\*\*\*\* Amended by Ordinance No. 1989 (1-1-10).*

**Newport Zoning Ordinance (No. 1308, as amended) Conditional (C).**\* Permitted only after a case-by-case review of the proposed use and issuance of a conditional use permit in accordance with the provisions of [Section 14.33](#), Conditional Uses, and a Type III Land Use Action decision process consistent with [Section 14.52](#), Procedural Requirements. A conditional use shall require the following findings:

- A. It is compatible with the management objective and policies of the management classification.
- B. It complies with the applicable estuarine use standards of [Sections 14.04.080](#) through [14.04.230](#).
- C. It complies with all policies specific to the individual management unit set forth in the Comprehensive Plan and [Section 14.5](#).
- D. It complies with any other special condition which may be attached during the review process.
- E. It is consistent with the resource capabilities of the area as defined by [Section 14.04.090](#).
- F. The cumulative impacts of the proposed use have been considered.



**Not Allowed (N).** Not permitted. Activity or uses can only be allowed upon adoption of a plan amendment by the governing body.

#### 14.04.040 Application of Standards \*\*

The Estuarine Use Standards of [Section 14.04.080](#) through [14.04.230](#) are to be applied to developments on a case-by-case basis through the Estuarine Use Review Procedure specified in [Section 14.04.060](#). In all cases the specific nature and circumstances of the proposal will be reviewed against each applicable standard or criterion. Findings of fact will be developed relative to compliance with each applicable standard or criterion, based on an analysis of the proposal. An impact assessment shall be prepared for activities which could affect the estuary's physical processes or biological resources such as dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, and flow-lane disposal of dredged material. The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. The assessment shall include information on:

(\* Amended by Ordinance No. 1989 (1-1-10).

\*\* Amended by Ordinance No. 1622 (10-7-91).)

- A. The type and extent of alterations expected;
- B. The type of resource(s) affected;
- C. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation, and other existing and potential uses of the estuary; and Newport Zoning Ordinance (No. 1308, as amended).
- D. The methods which could be employed to avoid or minimize adverse impacts.

In the process of gathering necessary factual information for the application of standards and the preparation of the impact assessment, the Planning Department may consult with any agency or individual able to provide relevant technical expertise. Federal impact statements



or assessments may be utilized to comply with this requirement if such statements are available.

**14.04.050 Application Information \***

The Planning Department may require an applicant to provide such information and technical analysis as may be needed to determine compliance with any and all applicable standards, including but not limited to the following:

- A. Effects on physical characteristics such as: flushing and circulation; erosion and accretion patterns; and salinity, temperature, and dissolved oxygen characteristics.
- B. Effects on biological characteristics such as: benthic habitats and communities; anadromous fish migration routes; fish and shellfish spawning and rearing areas; primary productivity; resting; feeding and nesting areas for migrating and residence shorebirds; wading birds and other wildfowl; riparian vegetation; and wildlife habitat.
- C. Effects on other established uses in the area.
- D. Alternative project designs and/or locations which have been considered.
- E. Steps which have been taken to minimize or avoid adverse impacts.

**14.04.060 Review Notice \*\***

The City of Newport shall notify the following agencies of use applications which may require their review: Oregon Department of Fish and Wildlife; Oregon Division of State Lands; Oregon Department of Land Conservation and Development; U.S. Fish and Wildlife Service; National Marine Fisheries Service; Environmental Protection Agency; and the U.S. Army Corps of Engineers. This notice will include a description of the use applied for, references to applicable policies and standards, and notification of comment and appeal period.



#### 14.04.070 Estuarine Use Review Procedure \*\*\*

The subsequent review procedure shall be followed for uses permitted with standards and conditional uses:

- A. Upon receipt of an application or a public notice from a state or federal agency for a regulated activity, the Community Development Director shall review the proposed use or activity for consistency with applicable Estuarine Use Standards set forth in this Section and apply the appropriate Land Use decision process consistent with [Section 14.52](#), Procedural Requirements. In cases where all applicable Estuarine Use Standards of [Sections 14.04.080](#) through [14.04.230](#) have been met for a proposed.

Permitted (P) activity, a Type I Land Use Action decision process shall be applied. In cases of a proposed Conditional (C) activity, a Type III Land Use Action decision process will apply in addition to the requirements for Conditional Uses provided by [Section 14.33](#).

- B. If the Planning Department or Commission finds that the proposed use or activity is consistent with all applicable Estuarine Use Standards, the Department shall notify the Division of State Lands to that effect prior to expiration of the public notice.

As a part of this review process, the Planning Department shall impose any conditions or restrictions necessary to insure compliance with applicable Estuarine Use Standards.

- C. If the Planning Department or Commission finds that the proposed use or activity is inconsistent with any applicable Estuarine Use Standard, the Department shall notify both the Division of State Lands and the applicant prior to the expiration date of the public notice. This notification shall cite the standard(s) which has not been met and state with particularity the reasons for the inconsistency.

- D. If the information contained in the public notice is not sufficient for the city to reach a decision on the consistency of the proposed use or activity, the department shall notify the applicant to that effect



prior to the expiration date of the public notice. This notification shall cite the standard(s) needing to be addressed and state with particularity the information needed to arrive at a decision.

- E. Any finding of consistency made through this review process may be subject to revocation by the city if it is ascertained that the application included any false information or if any conditions of approval have not been complied with or are not being maintained.
- F. Any decision by the Planning Department or Planning Commission through this review process may be appealed in accordance with the provisions of [Section 14.52](#) of the Zoning Ordinance of the City of Newport.

(\* Amended by Ordinance No. 1622 (10-7-91).

\*\* Amended by Ordinance No. 1622 (10-7-91).

\*\*\* Amended by Ordinance No. 1622 (10-7-91); Amended by Ordinance No. 1989 (1-1-10).)

#### 14.04.080 Estuarine Use Standards \*

The following standards will be applied to all new uses, expansion of existing uses, and activities within Yaquina Bay. In addition to the standards set forth in this ordinance and the Comprehensive Plan, all uses and activities must further comply with all applicable state and federal regulations governing water quality, resource protection, and public health and safety.

#### 14.04.090 Resource Capability Determinations \*\*

Within the Natural and Conservation Management Units certain uses are allowed only if they are found to be consistent with the resource capabilities of the area and the purposes of the management unit. Those uses requiring a resource capability determination are so identified in the Permitted Use Matrix.

(\*\* Amended by Ordinance No. 1622 (10-7-91).

\*\*\* Amended by Ordinance No. 1622 (10-7-91).)

**Natural Management Units:** Within Natural Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or the



resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education. In this context, "protect" means to save or shield from loss, destruction, or injury or for future intended use.

**Conservation Management Units:** Within Conservation Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biologic productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long-term renewable resources, natural biologic productivity, recreational and aesthetic values, and aquaculture. In this context, "conserve" means to manage in a manner which avoids wasteful or destructive uses and provides for future availability.

#### 14.04.100 Structures.\*

By definition, "structures" include all constructed, manmade facilities that extend into the estuary, whether fixed or floating. Not included are log rafts or new land created from submerged or submersible lands (see "fill"). Structural types include:

**Breakwater:** An offshore barrier, sometimes connected to the shore at one or both ends to break the force of the waves. Used to protect harbors and marinas, breakwaters may be constructed of rock, concrete, or piling, or may be floating structures.

**Bridge Crossing:** A portion of a bridge spanning a waterway. Bridge crossings do not include support structures or fill located in the waterway or adjacent wetlands.

**Bridge Crossing Support Structures:** Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

**Docks:** A fixed or floating decked structure against which a boat may be berthed temporarily or indefinitely.

Dolphin: A group of piles driven together and tied together so that the group is capable of withstanding lateral forces from vessels or other floating objects.

Groin: A shore protection structure (usually perpendicular to the shoreline) constructed to reap littoral drift or retard erosion of the shoreline. Generally made of rock or other solid material.

Jetty: An artificial barrier used to change littoral drift to protect inlet entrances from excessive sedimentation or direct and confine the stream of tidal flow. Jetties are usually constructed at the mouth of a river or estuary to help deepen and stabilize a channel.

Minor Navigational Improvements: Alteration necessary to provide water access to existing or permitted uses in conservation management units, including dredging for access channels and for maintaining existing navigation but excluding fill and in water navigational structures other than floating breakwaters or similar permeable wave barriers.

Pier: A structure extending into the water from solid land generally to afford passage for persons or goods to and from vessels, but sometimes to provide recreational access to the estuary.

Pile Dike: Flow control structures analogous to groins but constructed from closely spaced pilings connected by timbers.

Piling: A long, slender stake or structural element of steel, concrete, or timber which is driven, jetted, or otherwise embedded into the bed of the estuary for the purpose of supporting a load.

Wharf: A structure built alongside a waterway for the purpose of receipt, discharge, and storage of goods and merchandise from vessels.

A. It is recognized that development of structures may have some adverse impacts that are unavoidable; however, the siting and design of all structures shall be chosen to minimize these adverse impacts on aquatic life and habitats, flushing and circulation

characteristics, and patterns of erosion and accretion.

- B. Materials to be used for structures shall be clean and durable so as to allow long-term stability and minimize maintenance. Materials which could create water quality problems or which rapidly deteriorate are not permitted.
- C. The development of structures shall be evaluated to determine potential conflicts with established water uses (e.g., navigation, recreation, aquaculture, etc.). Such conflicts shall be minimized.
- D. Occupation of estuarine surface areas by structures shall be limited to the minimum area practical to accomplish the proposed purpose.
- E. Where feasible, breakwaters of the floating type shall be preferred over those of solid construction.
- F. Floating structures shall not be permitted in areas where they would regularly contact the bottom at low water (i.e., shall be located waterward of mean lower low water). Exceptions may be granted for structures of limited areas that are necessary as part of an overall approved project where grounding would not have significant adverse impacts.
- G. Individual single purpose docks and piers for recreational and residential uses shall be permitted only when it has been demonstrated that there are no practical alternatives (e.g., mooring buoys, dry land storage, etc.). Community facilities or other structures common to several uses are encouraged at appropriate locations.
- H. The size, shape, and orientation of a dock or pier shall be limited to that required for the intended uses.
- I. Structures associated with the docking of water craft must comply with Section 14.03.140/"Marina and Port Facilities."

(\* Amended by Ordinance No. 1622 (10-7-91).)







by state and federal agencies with regulatory authority over dredging projects.

(\* Amended by Ordinance No. 1622 (10-7-91).)

#### 14.04.120 Shoreline Stabilization\*

By definition, "shoreline stabilization" is the stabilization or protection from erosion of the banks of the estuary by vegetative or structural (riprap or bulkhead) means.

- A. Shoreline stabilization procedures shall be confined to those areas where:
  - 1. Active erosion is occurring that threatens existing uses or structures; or
  - 2. New development or redevelopment, or water-dependent or water-related uses requires protection for maintaining the integrity of upland structures or facilities.
- B. The following, in order, are the preferred methods of shoreline stabilization:
  - 1. Vegetative or other nonstructural.
  - 2. Vegetated riprap.
  - 3. Unvegetated riprap.
  - 4. Bulkheads (except that the use of bulkheads shall be limited to "development" and "conservation" management units).

Structural shoreline stabilization methods shall be permitted only where the shoreline protection proposal demonstrates that a higher priority method is unreasonable.

- C. Materials to be used must be cleaned and of a non-erosive quality that will allow long-term stability and minimize maintenance. Materials that could create water quality problems or which will rapidly deteriorate are not permitted.



- D. Minor modifications of the bankline profile may be permitted on a case-by-case basis. These alterations shall be for the purpose of stabilizing the shoreline, not for the purpose of gaining additional upland area.
- E. Shoreline stabilization structures shall be designed and located so as to minimize adverse impacts on aquatic life and habitat, circulation and flushing characteristics, and patterns of erosion and accretion.
- F. In addition to requirements identified in C-E above, cobble/pebble dynamic revetments permitted in Management Units 8 and 9-A may be permitted if:
  - 1. There is a demonstrated need to protect public facility uses; and
  - 2. Land use management practices and nonstructural solutions are inadequate; and
  - 3. The proposal is consistent with the applicable management unit as required by Goal 16.
- G.\*For the purposes of shoreline stabilization, a "cobble/pebble dynamic revetment" is defined as: "The use of naturally rounded pebbles or cobbles placed in front of property to be protected and designed to move under force of wave, currents, and tides. A cobble/pebble dynamic revetment represents a transitional strategy between conventional rip rap revetment of large stones and a beach nourishment project."

(\* Amended by Ordinance No. 1622 (10-7-91).

#### 14.04.130 Fill\*\*

By definition, "fill" is the placement of material in the estuary to create new shoreland area.

- A. Fill shall be permitted only if required for navigation, a water-dependent use, or for a public improvement project for which there is a demonstrated need and for which no practical alternatives (e.g., construction on piling, an upland location, etc.) exist, and if the fill



does not unreasonably interfere with public trust rights.

- B. As far as possible, all fill projects shall be designed and placed so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.
- C. Fill materials that would create water quality problems or that will rapidly deteriorate are not permitted.
- D. When available from an authorized dredgeline project, dredged materials shall be preferred over upland materials for approved fill projects.
- E. As an integral part of the fill process, new fills placed in the estuary shall be protected by approved methods of bank stabilization to prevent erosion.
- F. The effects of fill activities in intertidal or tidal marsh areas shall be mitigated by creation, restoration, or enhancement of another area to insure that the integrity of the estuarine ecosystem is maintained. Fill projects shall meet all requirements of ORS 196.800 through 196.990 (the State Removal Fill Law), Section 10 of the Rivers and Harbors Act of 1899, and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over fill projects.

*\*\* Amended by Ordinance No. 1622 (10-7-91).*

#### 14.04.140 Marina and Port Facilities<sup>\*\*\*</sup>

Definitions:

**Marina.** A small harbor, boat basin, or moorage facility providing dockage for recreational craft.

*\*\*\*Amended by Ordinance No. 1622 (10-7-91).*

**Port Facilities.** Facilities which accommodate and support commercial fishery and navigation activities, including terminal and boat basins and moorage for commercial vessels, barges, and ocean-going ships.



- A. All structures, fills, dredging, or shoreline stabilization measures undertaken in conjunction with marina or port facility development must comply with applicable standards set forth in this Ordinance. Structures shall comply with [Section 14.04.100](#); fills shall comply with [Section 14.04.130](#); dredging shall comply with [Section 14.04.110](#); and shoreline stabilization shall comply with [Section 14.04.120](#).
- B. Provisions must be made in the design of the marina or port facilities to insure adequate flushing for maintenance of water quality.
- C. Open moorage shall be preferred over covered or enclosed moorage except for repair or construction facilities.
- D. Multi-purpose and cooperative use of moorage parking, cargo handling, and storage facilities shall be encouraged.
- E. In the development of new port or marina facilities, maximum feasible public access shall be encouraged, consistent with security and safety requirements.

**14.04.150 Aquaculture\***

By definition, "aquaculture" is the raising, feeding, planting, and harvesting of fish, shellfish, or marine plants, including facilities necessary to engage in the use.

- A. All structures located in conjunction with aquaculture operations shall be subject to the standards set forth in this ordinance for structures. All dredge and fill, shoreline stabilization, or other activities in conjunction with aquaculture activities shall be subject to the respective standards for those activities.
- B. Water diversion structures or manmade spawning channels shall be constructed so as to maintain minimum required stream flows for aquatic life in the adjacent streams.



- C. The potential impacts of introducing a new fish or shellfish species (or a race within a species) shall be carefully evaluated in light of existing aquatic life and potential fish and shellfish production in the stream, estuary, and ocean.
- D. Aquaculture facilities shall be located far enough from any sanitary sewer outfalls to prevent any potential health hazard.

#### 14.04.160 Mineral and Aggregate Extraction\*\*

By definition, this extraction is the removal for economic use of minerals, petroleum resources, sand, gravel, or other materials from the estuary.

- A. All mineral and aggregate removal projects shall be conducted in such a manner so as to minimize:
  - 1. Adverse short-term effects such as pollutant release, dissolved oxygen depletion, excessive turbidity, and disturbance of important biological communities.
  - 2. Adverse long-term effects such as loss of fish habitat and tidelands, loss of flushing capacity, destabilization of bottom sediments, and biographically harmful changes in circulation patterns.
- B. Removal of aggregate materials from the estuary shall be allowed only after a clear demonstration that comparable materials are not available from local upland sources.
- C. Unless part of an approved fill project, spoils and stockpiles shall be placed beyond the reach of high water and in such a manner that sediment will not enter or return to the waterway.
- D. Riparian vegetation shall be retained to the optimum degree possible. Disturbed shoreline areas shall be revegetated.

(\*Amended by Ordinance No. 1622 (10-7-91).

\*\*Amended by Ordinance No. 1622 (10-7-91).)



14.04.170 Dikes\*

By definition, a "dike" is an earthen embankment or ridge constructed to restrain high water. New diking is the placement of dikes on an area that (1) has never been previously diked; or (2) has previously been diked but all of a substantial part of the area is presently subject to tidal inundation and tidal marsh has been established.

- A. Existing functional dikes and tide gates may be maintained and repaired as necessary to fulfill their purpose as flood control structures.
- B. New dikes in estuarine areas shall be allowed only:
  - 1. As part of an approved fill project, subject to the standards for fill; and
  - 2. If appropriate mitigation is undertaken in accordance with all relevant state and federal standards.
- C. Dikes constructed to retain fill materials shall be considered fill and subject to standards for fill.
- D. The outside face of new dikes shall be protected by approved shoreline stabilization procedures.

14.04.180 Outfalls\*\*

By definition, an "outfall" is an outlet through which materials are discharged into the estuary. Outfalls include sanitary (sewer) discharges, storm drainage facilities, waste seawater discharges, and industrial waste discharges.

- A. As applicable, the standards for dredging, shoreline stabilization, and placement of structures as set forth in this ordinance must be complied within the installation of outfalls.
- B. Sanitary outfalls shall not be allowed in poorly flushed areas of the estuary.

(\*Amended by Ordinance No. 1622 (10-7-91).

\*\*Amended by Ordinance No. 1564 (1-16-90); amended by Ordinance No. 1622 (10-7-91).)



#### 14.04.190 Submerged Crossings\*

By definition, "submerged crossings" are power, telephone, water, sewer, gas, or other transmission lines that are constructed across the estuary, usually by embedding into the bottom of the estuary.

- A. Trenching or other bottom disturbance undertaken in conjunction with installation of a submerged crossing shall conform to the standards for dredging as set forth in this ordinance.
- B. Submerged crossings shall be designed and located so as to eliminate interference with present or future navigational activities.
- C. Submerged crossings shall be designed and located so as to ensure sufficient burial or water depth to avoid damage to the crossing.

#### 14.04.200 Restoration\*\*

By definition, "restoration" is revitalizing, returning, or replacing original attributes and amenities such as natural biological productivity or cultural and aesthetic resources that have been diminished or lost by past alterations, activities, or catastrophic events. Estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alteration, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began. Active restoration involves the use of specific remedial actions such as removing dikes, installing water treatment facilities, etc. Passive restoration is the use of natural processes, sequences, or timing to bring about restoration after the removal or reduction of adverse stresses.

- A. Restoration in areas designated for development shall be undertaken only if it is likely that the project will not conflict with or be destroyed by existing or subsequent development.



- B. All restoration projects shall be designed so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.

14.04.210 Excavation\*\*\*

By definition as used here, "excavation" is the process of digging out shorelands to create new estuarine surface area directly connected to other estuarine waters.

- A. Creation of new estuarine surface area shall be allowed only for navigation, other water-dependent use, or restoration.
- B. All excavation projects shall be designed and located so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.
- C. Excavation of as much as is practical of the new water body shall be completed before it is connected to the estuary.
- D. In the design of excavation projects, provision of public access to the estuary shall be encouraged to the extent compatible with the proposed use.

(\*Amended by Ordinance No. 1622 (10-7-91).

\*\*Amended by Ordinance No. 1622 (10-7-91).

\*\*\*Amended by Ordinance No. 1622 (10-7-91).)

14.04.220 Dredged Material Disposal\*

By definition, "dredged material disposal" is the deposition of dredged material in estuarine areas or shorelands.

- A. Disposal of dredged materials should occur on the smallest possible land area in order to minimize the quantity of land that is disturbed. Clearing of land should occur in stages on an "as needed" basis.
- B. Dikes surrounding disposal sites shall be well constructed and large enough to encourage proper

"ponding" and to prevent the return of suspended sediments into the estuary.

- C. The timing of disposal activities shall be coordinated with the Department of Environmental Quality and the Department of Fish and Wildlife to insure adequate protection of biologically important elements such as fish runs, spawning activity, etc. In general, disposal should occur during periods of adequate river flow to aid flushing of suspended sediments.
- D. Disposal sites that will receive materials with toxic characteristics shall be designed to include secondary cells in order to achieve good quality effluent. Discharge from the sites should be monitored to insure that adequate cell structures have been constructed and are functioning properly.
- E. Revegetation of disposal sites shall occur as soon as is practical in order to stabilize the site and retard wind erosion.
- F. Outfalls from dredged material disposal sites shall be located and designed so as to minimize adverse impacts on aquatic life and habitats and water quality.
- G. General priorities for dredged material disposal sites shall be (in order of preference):
  - 1. Upland or approved fill project sites.
  - 2. Approved offshore disposal sites.
  - 3. Aquatic areas.

*(\*Amended by Ordinance No. 1622 (10-7-91).)*

- H. Where flow lane disposal of dredged material is allowed, monitoring of the disposal is required to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.

The Yaquina Bay section of the Newport Comprehensive Plan (as amended) and the Yaquina Bay Dredged Material Disposal Plan (as amended)



shall be referred to for specific disposal sites and policy requirements.

14.04.230 Water Handling of Logs\*

By definition, water handling of logs is the combined process of log dumping, storage, transportation, millside handling, and take-out as logs are placed into the water and moved to a final processing site.

- A. Water handling of logs shall be conducted in such a manner as to insure that violations of water quality standards do not result from such activities.
- B. New free fall log dumps shall not be permitted. All new log dumps and shipside unloading shall employ easy letdown devices.
- C. The inventory of logs in the estuary for any purpose shall be the lowest practical number for the shortest practical time considering log availability and market conditions.
- D. The inventory of logs in areas where grounding will occur shall be the lowest practical number for the shortest practical time considering log availability and market conditions.
- E. The best practical bark and wood debris control, collection, and disposal methods shall be employed at log dumps, ship side unloading areas, raft building areas, and millside handling and takeout areas.

14.04.240 Temporary Alteration\*\*

By definition, "temporary alteration" is dredging, filling, or another estuarine alteration occurring over a specified short period of time that is needed to facilitate a use allowed by the Comprehensive Plan and the Permitted Use Matrices. The provision for temporary alterations is intended to allow alterations to areas and resources that would otherwise be required to be preserved or conserved.

*(\*Amended by Ordinance No. 1622 (10-7-91).*

*\*\*Amended by Ordinance No. 1622 (10-7-91).)*

- A. Temporary alterations include:
1. Alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetting maintenance);
  2. Alterations to establish mitigation sites, alterations for bridge construction or repair, and for drilling or other exploratory operations; and
  3. Minor structures (such as blinds) necessary for research and educational observation.
- B. Temporary alterations may not be for more than three (3) years.
- C. Temporary alterations to require a resource capability determination to insure that:
1. The short-term damage to resources is consistent with resource capabilities of the area; and
  2. The area and affected resources can be restored to their original condition.



## CHAPTER 14.05 MANAGEMENT UNIT SPECIAL POLICIES

### 14.05.010 Management Unit No. 1

- A. Management Unit 1 shall be managed to conserve shellfish beds, fish spawning and nursery areas, and other natural resources.
- B. Improvements necessary for the maintenance and replacement of the Yaquina Bay Bridge shall be allowed.
- C. Navigation improvements necessary for the maintenance of the harbor entrance and channel, including jetty maintenance, shall be allowed.
- D. The algal bed within Management Unit 1 as defined by the Oregon Department of Fish and Wildlife Classification Map shall be preserved.

*(\* Section 14.01 amended by Ordinance No. 1379 (5-21-84); section amended by Ordinance No. 1566 (14.36.0010); entire section added and/or amended by Ordinance No. 1622 (10-7-91).)*

### 14.05.020 Management Unit No. 2

- A. Management Unit 2 shall be managed to conserve shellfish beds, algal beds, fish spawning and nursery areas, and other natural resources.
- B. Navigation improvements necessary for the maintenance of the harbor entrance and channel, including jetty maintenance, shall be allowed.

### 14.05.030 Management Unit No. 3

- A. Management Unit 3 shall be managed to conserve natural resources of importance.
- B. Improvements necessary for the maintenance and replacement of the Yaquina Bay Bridge shall be allowed.
- C. Navigation improvements necessary for the maintenance of the harbor entrance and channel, including jetty maintenance, shall be allowed.



- D. Major clam beds are located within Management Unit 3. These clam beds shall be protected.

#### 14.05.040 Management Unit No. 4

- A. Management Unit 4 shall be managed to protect and maintain the channel and turning basin for deep draft navigation.
- B. Adverse impacts of mining, mineral extraction, or other dredging operations within Management Unit 4 on existing commercial clam harvest shall be minimized.
- C.\* Medium and deep draft port facilities shall be allowed subject to approval by the US Army Corps of Engineers.

(\*Added by Ordinance No. 1995 (1/6/10))

#### 14.05.050 Management Unit No. 5

- A. Management Unit No. 5 shall be managed to provide for the development of port facilities and other water-dependent uses and water-related and non-water-related uses in keeping with the scenic, historic, and unique characteristics of the area. Water-related and non-related development shall be consistent with the purpose of this unit and with adjacent shoreland designated as especially suited for water-dependent uses or designated for waterfront development.
- B. Non-water-related uses may be conditionally permitted within the estuarine area adjacent to the old waterfront from Bay Street to John Moore Road, extending out to the pierhead line as established by the U.S. Army Corps of Engineers.
- C. Experimental shellfish beds were introduced in Management Unit 5 in the 1940s and 1950s. It is anticipated that these shellfish beds will be impacted by future development; however, adverse impacts on these beds shall be minimized as much as possible while meeting these development needs.
- D. Due to the limited water surface area available and the need for direct land to water access, alternatives



(such as mooring buoys or dry land storage) to docks and piers for commercial and industrial uses are not feasible in Unit 5. Multiple use facilities common to several users are encouraged where practical.

- E. Tourist-related activities will be encouraged to locate on the landward side of S.W. Bay Boulevard. The bay side of Bay Boulevard should accommodate water-dependent and water-related types of uses. Some tourist-related uses may locate on the water side, but only upon the issuance of a conditional use permit.

**14.05.060 Management Unit No. 6**

- A. Management Unit 6 shall be managed to conserve natural resources and to provide for uses like existing navigation and recreation activities.
- B. Management Unit 6 will need to be disturbed for the placement of the submerged sewer and water lines, bridge footings, and the relocation of the breakwater. Care should be taken to return the disturbed areas to a condition consistent with the conservation classification. The shellfish beds south of the port breakwater are considered a resource of major importance.

**14.05.070 Management Unit No. 7**

- A. Management Unit 7 shall be managed to provide for water-dependent development compatible with existing uses and consistent with the purpose of the area.
- B. Development of deep and medium draft port facilities shall be a permitted use only outside of the existing South Beach Marina boat basin.
- C. Adverse impacts of future development on eelgrass beds, shellfish beds, and fish spawning and nursery areas shall be minimized, consistent with allowed development.

**14.05.080 Management Unit No. 8**



- A. Management Unit 8 shall be managed to conserve natural resources such as eelgrass and shellfish beds.
- B. Navigational improvements found to be necessary for the maintenance of the deep water channel shall be provided.
- C. Temporary moorages of log rafts in Management Unit 8 shall conform to the following standards:
  - 1. Whenever feasible, individual logs shall be prohibited. Other activities may not be bundled, but they shall always be held in rafts.
  - 2. The number of log rafts moored at any time shall be the lowest practical number for the shortest practical time, considering log supply and tidal cycles.
  - 3. Water surface areas occupied by temporary moorage shall not at any time exceed seven (7) acres.
  - 4. Dolphins shall be sited and moorage conducted so that log rafts will not ground at low water.
  - 5. As much as practical, shipment and movements of logs shall be timed to minimize conflicts with recreational uses in the area.
- D.\* A cobble/pebble dynamic revetment for shoreline stabilization may be authorized in Management Unit 8 for protection of public facilities (such as the Hatfield Marine Science Center facilities).

#### 14.05.090 Management Unit No. 9-A

- A. Management Unit 9-A shall be managed to preserve and protect natural resources and values. In order to maintain resource values, alterations in this unit should be kept to a minimum. Minor alterations that result in temporary disturbances such as limited dredging for submerged crossings would be consistent with resource values in this area; other more permanent alterations should be reviewed



individually for consistency with the resource capabilities of the area.

- B. Active restoration activities are limited to fish and wildlife habitat and water quality and estuarine enhancement.
- C. Goal 16 exceptions have been taken for the waste seawater outfall for the Oregon Coast Aquarium and for increased storm water runoff through an existing drainage system.
- D. The Idaho Point Marina and the channel that serves it may be maintained as allowed under the existing Army Corps of Engineers permit.
- E. A cobble/pebble dynamic revetment for shoreline stabilization may be authorized in Management Unit 9-A for protection of public facilities (such as the Hatfield Marine Science Center facilities).\*\*

(\*Policy Added by Ordinance No. 1905 (1-16-07).  
\*\*Policy Added by Ordinance No. 1905 (1-16-07).)

14.05.100 Management Unit No. 10-A

- A. Management Unit 10-A shall be managed to preserve and protect natural resources and values. Permitted alterations should be limited to those that result in only temporary disturbances. More permanent alterations should be reviewed for consistency with the resource capabilities of the area.
- B. Active restoration activities are limited to fish and wildlife habitat and water quality and estuarine enhancement.

14.05.110 Permitted Use Matrices

Each management unit district has a permitted use matrix. The Comprehensive Plan contains a description, classification, resource capabilities, management objectives, and special policies for each of the management units found in the Newport Comprehensive Plan. These sections should be read in conjunction with the Permitted Use Matrices.



The Permitted Use Matrices correspond to those in the Lincoln County Estuary Management Plan, except for non-water-related commercial uses in Management Unit 5. The commercial use category includes recreational uses. Only the Special Policies that would apply to a specific use appear on the Permitted Use Matrices. Other Special Policies which apply more widely to the particular management unit can be found in [Section 14.05](#).

A use may be permitted with standards or conditionally permitted. In addition, a certain type of structure or alteration may or may not be permitted in conjunction with a permitted or conditional use. For example: In Management Unit No. 1 mining is permitted conditionally. In conjunction with mining, new dredging is permitted conditionally, and navigational aids are permitted with standards. Thus, new dredging activity would be reviewed by the Planning Commission for compliance with all standards. However, if navigational aids are found to be needed once mining activity has begun, those can be permitted with standards by staff without Planning Commission review.

The Board of Directors of the American Telephone and Telegraph Company, Inc. (AT&T) has approved the proposed acquisition of Western Union International, Inc. (WUI) by AT&T. The acquisition is being effected through the formation of a new subsidiary, Western Union International, Inc. (WUI), which will be owned and controlled by AT&T. The acquisition is being effected through the formation of a new subsidiary, Western Union International, Inc. (WUI), which will be owned and controlled by AT&T.

A copy of the proposed acquisition agreement between AT&T and WUI is being filed with the Federal Trade Commission (FTC) for its review. The acquisition is being effected through the formation of a new subsidiary, Western Union International, Inc. (WUI), which will be owned and controlled by AT&T. The acquisition is being effected through the formation of a new subsidiary, Western Union International, Inc. (WUI), which will be owned and controlled by AT&T.

**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION

Special Policy (Sec. 2-2-13.100)	Dolphins/Pilings	Docks	Piers	Wharves	Groins/Pile Dikes	Breakwaters	Navigation Aids (beacons, buoys, etc.)	Maintenance Dredging	New Dredging	Fill	Dikes (new)	Shoreline Stabilization (structural)	Temporary Alterations
----------------------------------	------------------	-------	-------	---------	-------------------	-------------	--	----------------------	--------------	------	-------------	--------------------------------------	-----------------------

USES

COMMERCIAL

	Water-Dependent												
	Water-Related												
	Nonwater-Related												
	Marina												
	Boat Launching												

INDUSTRIAL

	Flow-Lane Disposal of Dredge Material												
	Log Dumping												
	Log Storage												
\	Mining	○			○	○	○	○				○	○
\	Oil or Gas Extraction	○			○	○	○						○
	Industrial Outfalls												
	Marine Ways												
	Water-Dependent Industrial												
	Water-Related Industrial												
	Nonwater-Related Industrial												

PUBLIC

\	Communication Facilities	○						C					C
X	Research and Educational Observations	○											
X	Overhead Crossings	○											
\	Submerged Crossings	○	C			P	P	P					C
X	Bridge Crossings	○	P		C	P	P	P	C	C			P 1.2
\	Storm Water Outfall	○	C			C	C	P					C
	Sanitary Outfall												
X	Protection of Resources	○											

PORT FACILITIES

	Deep Draft (over 23')												
	Medium Draft (10'-22')												
	Shallow Draft (0-9')												
X	Navigational Improvement, Minor	○	○			○	○	○	○	○			○ 1.3
X	Aquaculture Facilities	○				○	○	○	○				○

RESTORATION

X	Active	○	○										
X	Passive												



**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION

Temporary Alterations	Shoreline Stabilization (structural)	Dikes (new)	Fill	New Dredging	Maintenance Dredging	Navigation Aids (beacons, buoys, etc.)	Breakwaters	Groins/Pile Dikes	Wharves	Piers	Docks	Dolphins/Pilings	Special Policy (Sec. 2-2-13.100)
-----------------------	--------------------------------------	-------------	------	--------------	----------------------	--	-------------	-------------------	---------	-------	-------	------------------	----------------------------------

USES

COMMERCIAL

	Water-Dependent													
	Water-Related													
	Nonwater-Related													
	Marina													
\	Boat Launching	P	P			P	P	P	C			P	P	P

INDUSTRIAL

	Flow-Lane Disposal of Dredge Material													
	Log Dumping													
	Log Storage													
\	Mining	C				P	P	P	C			C	C	C
\	Oil or Gas Extraction	C				P	P	P						C
	Industrial Outfalls													
	Marine Ways													
	Water-Dependent Industrial													
	Water-Related Industrial													
	Nonwater-Related Industrial													

PUBLIC

\	Communication Facilities	P						C					C
X	Research and Educational Observations												
	Overhead Crossings												
\	Submerged Crossings	P	C			P	P	P		C			C
	Bridge Crossings												
\	Storm Water Outfall	P	C			P	P	P		C			C
	Sanitary Outfall												
X	Protection of Resources		P										

PORT FACILITIES

	Deep Draft (over 23')													
	Medium Draft (10'-22')													
	Shallow Draft (0-9')													
X	Navigational Improvement, Minor	P	C			P	P	P	C	C			C	2.2
X	Aquaculture Facilities	P				P	P	P	C				C	

RESTORATION

X	Active	P	P										
X	Passive												

**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION

Special Policy (Sec. 2-2-13.100)	Dolphins/Pilings	Docks	Piers	Wharves	Groins/Pile Dikes	Breakwaters	Navigation Aids (beacons, buoys, etc.)	Maintenance Dredging	New Dredging	Fill	Dikes (new)	Shoreline Stabilization (structural)	Temporary Alterations
----------------------------------	------------------	-------	-------	---------	-------------------	-------------	--	----------------------	--------------	------	-------------	--------------------------------------	-----------------------

USES

COMMERCIAL

	Water-Dependent														
	Water-Related														
	Nonwater-Related														
	Marina														
\	Boat Launching	P	P				P	P	P	C			P	P	P

INDUSTRIAL

	Flow-Lane Disposal of Dredge Material															
	Log Dumping															
	Log Storage															
\	Mining	C					P	P	P	C				C	C	C
\	Oil or Gas Extraction	C					P	P	P							C
	Industrial Outfalls															
	Marine Ways															
	Water-Dependent Industrial															
	Water-Related Industrial															
	Nonwater-Related Industrial															

PUBLIC

X	Fishing Pier	P	P					P						P		P	
\	Communication Facilities	P						C								C	
X	Research and Educational Observations	P	C														
X	Overhead Crossings	P															
\	Submerged Crossings	P	C				P	P	P					C		C	
X	Bridge Crossings	P	P			C	P	P	P	C	C					P	3.2
\	Storm Water Outfall	P	C				P	P	P					C			C
	Sanitary Outfall																
X	Protection of Resources		P														

PORT FACILITIES

	Deep Draft (over 23')																
	Medium Draft (10'-22')																
	Shallow Draft (0-9')																
X	Navigational Improvement, Minor	P	C				P	P	P	C	C					C	3.3
\	Aquaculture Facilities	P					P	P	P	C						P	

RESTORATION

X	Active	P	P														
X	Passive																



**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION

Temporary Alterations	Shoreline Stabilization (structural)	Dikes (new)	Fill	New Dredging	Maintenance Dredging	Navigation Aids (beacons, buoys, etc.)	Breakwaters	Groins/Pile Dikes	Wharves	Piers	Docks	Dolphins/Pilings	Special Policy (Sec. 2-2-13.100)
-----------------------	--------------------------------------	-------------	------	--------------	----------------------	--	-------------	-------------------	---------	-------	-------	------------------	----------------------------------

USES

COMMERCIAL

	Water-Dependent													
	Water-Related													
	Nonwater-Related													
	Marina													
\	Boat Launching	P	P			P	P	P	C			P	P	P

INDUSTRIAL

	Flow-Lane Disposal of Dredge Material													
	Log Dumping													
	Log Storage													
\	Mining	C				P	P	P	C			C	C	C
\	Oil or Gas Extraction	C				P	P	P					C	
	Industrial Outfalls													
	Marine Ways													
	Water-Dependent Industrial													
	Water-Related Industrial													
	Nonwater-Related Industrial													

PUBLIC

X	Fishing Pier	P	P					P				P	P	
\	Communication Facilities	P						C					C	
X	Research and Educational Observations	P	C											
X	Overhead Crossings	P												
\	Submerged Crossings	P	C			P	P	P		C			C	
X	Bridge Crossings	P	P		C	P	P	P	C	C			P	3.2
\	Storm Water Outfall	P	C			P	P	P		C			C	
	Sanitary Outfall													
X	Protection of Resources		P											

PORT FACILITIES

	Deep Draft (over 23')													
	Medium Draft (10'-22')													
	Shallow Draft (0-9')													
X	Navigational Improvement, Minor	P	C			P	P	P	C	C			C	3.3
\	Aquaculture Facilities	P				P	P	P	C				P	

RESTORATION

X	Active	P	P										
X	Passive												

MANAGEMENT UNIT NO: 4  
 CLASSIFICATION: Development

**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION

Temporary Alterations	Shoreline Stabilization (structural)	Dikes (new)	Fill	New Dredging	Maintenance Dredging	Navigation Aids (beacons, buoys, etc.)	Breakwaters	Groins/Pile Dikes	Wharves	Piers	Docks	Dolphins/Pilings	Special Policy (Sec. 2-2-13.100)
-----------------------	--------------------------------------	-------------	------	--------------	----------------------	--	-------------	-------------------	---------	-------	-------	------------------	----------------------------------

USES

COMMERCIAL

	Water-Dependent												
	Water-Related												
	Nonwater-Related												
	Marina												
	Boat Launching												

INDUSTRIAL

	Flow-Lane Disposal of Dredge Material												
X	Log Dumping												
	Log Storage												
\	Mining			P	P	P						C	4.2
\	Oil or Gas Extraction			P	P	P						C	4.2
	Industrial Outfalls												
	Marine Ways												
	Water-Dependent Industrial												
	Water-Related Industrial												
	Nonwater-Related Industrial												

PUBLIC

	Communication Facilities												
	Research and Educational Observations												
\	Overhead Crossings					P						C	
\	Submerged Crossings				P	P	P						
\	Bridge Crossings						P					C	
\	Storm Water Outfall				P	P	P						
\	Sanitary Outfall												
X	Protection of Resources												

PORT FACILITIES

X	Deep Draft (over 23')	P		P	P	P	P	P	P	P	P	P	4.3
X	Medium Draft (10'-22')	P		P	P	P	P	P	P	P	P	P	4.3
	Shallow Draft (0-9')												
X	Navigational Improvement, Minor				P	P	P	C	C				C
\	Aquaculture Facilities				P	P	P						C

RESTORATION

	Active												
	Passive												

ESTIMATED COST DATA

MANAGEMENT UNIT NO. 1  
 PLANT LOCATION DEVELOPMENT

ITEM NO.	DESCRIPTION	ESTIMATED COST DATA		UNIT	QTY	UNIT PRICE	TOTAL COST	PERCENTAGE OF TOTAL COST
		ESTIMATED COST	PERCENTAGE OF TOTAL COST					
1	Site Preparation							
2	Excavation							
3	Foundation							
4	Structural Steel							
5	Roofing							
6	Interior Finishes							
7	Exterior Finishes							
8	MEPE (Mechanical, Electrical, Plumbing, and Equipment)							
9	Contingency							
10	Construction Management							
11	Professional Fees							
12	Permits							
13	Insurance							
14	Other							
<b>TOTAL ESTIMATED COST</b>								
<b>PERCENTAGE OF TOTAL COST</b>								



**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION													
Special Policy (Sec. 2-2-13.100)	Dolphins/Pilings	Docks	Piers	Wharves	Groins/Pile Dikes	Breakwaters	Navigation Aids (beacons, buoys, etc.)	Maintenance Dredging	New Dredging	Fill	Dikes (new)	Shoreline Stabilization (structural)	Temporary Alterations

USES

COMMERCIAL

X	Water-Dependent		P	C	P	C	P	P	C	C	P	P	P	P	5.5
\	Water-Related		(P)				(P)			(C)	(C)	(C)	(C)	(C)	5.1,5.5
\	Nonwater-Related		(C)				(C)			(C)	(C)	(C)	(C)	(C)	5.1,5.2,5.5
	Marina														
X	Boat Launching		P		P	C	P	P	C		P	P	P	P	

INDUSTRIAL

\	Flow-Lane Disposal of Dredge Material		P		P										
	Log Dumping														
	Log Storage														
\	Mining					P	P	P	C			C	C	C	
\	Oil or Gas Extraction					P	P	P	C			C	C	C	
X	Industrial Outfalls				P	P	P	P	C			C	C	C	
X	Marine Ways		P		P	P	P	P			P	P	P	P	
X	Water-Dependent Industrial		P	C	P	P	P	P	C	C	P	P	P	P	
\	Water-Related Industrial		P					P			C	C	C	C	
	Nonwater-Related Industrial														

PUBLIC

\	Communication Facilities		C		C			P							C
X	Research and Educational Observations		C		C							C	C	C	
X	Overhead Crossings														
X	Submerged Crossings		P			P	P	P			C				C
\	Bridge Crossings		P		P	P	P	P	C	C					P
X	Storm Water Outfall		P			P	P	P			C				P
	Sanitary Outfall														
X	Protection of Resources														

PORT FACILITIES

X	Deep Draft (over 23')		P	C	P	P	P	P	P	P	P	P	P	P	P
X	Medium Draft (10'-22')		P	C	P	P	P	P	P	P	P	P	P	P	P
X	Shallow Draft (0-9')		P	C	P	P	P	P	P	P	P	P	P	P	P
X	Navigational Improvement, Minor		P	C	P	P	P	P	P	P	P	P	P	P	P
\	Aquaculture Facilities		P			P	P	P							C

RESTORATION

X	Active		C												
X	Passive														

**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION

Temporary Alterations	Shoreline Stabilization (structural)	Dikes (new)	Fill	New Dredging	Maintenance Dredging	Navigation Aids (beacons, buoys, etc.)	Breakwaters	Groins/Pile Dikes	Wharves	Piers	Docks	Dolphins/Pilings	Special Policy (Sec. 2-2-13.100)
-----------------------	--------------------------------------	-------------	------	--------------	----------------------	--	-------------	-------------------	---------	-------	-------	------------------	----------------------------------

USES		TYPE OF STRUCTURE OR ALTERATION												
COMMERCIAL														
	Water-Dependent													
	Water-Related													
	Nonwater-Related													
	Marina													
	Boat Launching													

INDUSTRIAL														
	Flow-Lane Disposal of Dredge Material													
	Log Dumping													
	Log Storage													
\	Mining	C			P	P	P	C			C	C	C	
\	Oil or Gas Extraction	C			P	P	P						C	
	Industrial Outfalls													
	Marine Ways													
	Water-Dependent Industrial													
	Water-Related Industrial													
	Nonwater-Related Industrial													

PUBLIC														
\	Communication Facilities													
X	Research and Educational Observations													
X	Overhead Crossings	P												
X	Submerged Crossings	P			P	P	P					C	6.2	
X	Bridge Crossings	P		C	P	P	P	C					P	6.2
\	Storm Water Outfall	P			P	P	P		C				C	
	Sanitary Outfall													
X	Protection of Resources													

PORT FACILITIES														
	Deep Draft (over 23')													
	Medium Draft (10'-22')													
	Shallow Draft (0-9')													
X	Navigational Improvement, Minor	P			P	P	P	C	C				P	
\	Aquaculture Facilities	P			C	C	P						C	

RESTORATION														
X	Active													
X	Passive													

**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION

	Temporary Alterations	Shoreline Stabilization (structural)	Dikes (new)	Fill	New Dredging	Maintenance Dredging	Navigation Aids (beacons, buoys, etc.)	Breakwaters	Groins/Pile Dikes	Wharves	Piers	Docks	Dolphins/Pilings	Special Policy (Sec. 2-2-13.100)
--	-----------------------	--------------------------------------	-------------	------	--------------	----------------------	--	-------------	-------------------	---------	-------	-------	------------------	----------------------------------

USES

COMMERCIAL

X	Water-Dependent		P	C	P	P	P	P	C	C	P	P	P	P
\	Water-Related		P	C			P		C	C	C	C	C	
	Nonwater-Related													
\	Marina		P	C	P	P	P	P	P	P	P	P	P	7.2
X	Boat Launching		P		P	P	P	C				P	P	

INDUSTRIAL

\	Flow-Lane Disposal of Dredge Material		P		P									
	Log Dumping													
	Log Storage													
\	Mining					P	P	P	C			C	C	C
\	Oil or Gas Extraction					P	P	P						C
\	Industrial Outfalls		P			P	P	P						
X	Marine Ways		P			P	P	P	C		P	P	P	P
X	Water-Dependent Industrial		P	C	P	P	P	P	C	C	P	P	P	P
X	Water-Related Industrial		P					P	C		C	C	C	C
	Nonwater-Related Industrial													

PUBLIC

\	Communication Facilities							P						C
X	Research and Educational Observations		C		C	C					C	C	C	C
	Overhead Crossings													
X	Submerged Crossings		P			P	P	P		C				C
	Bridge Crossings													
X	Storm Water Outfall		P			P	P	P		C				C
	Sanitary Outfall													
X	Protection of Resources													

PORT FACILITIES

X	Deep Draft (over 23')		P	C	P	P	P	P	P	P	P	P	P	P	7.3
X	Medium Draft (10'-22')		P	C	P	P	P	P	P	P	P	P	P	P	7.3
X	Shallow Draft (0-9')		P	C	P	P	P	P	P	P	P	P	P	P	
X	Navigational Improvement, Minor		P	C	P	P	P	P	P	P	P	P	P	P	
\	Aquaculture Facilities		P			P	P	P						C	

RESTORATION

X	Active		C												
X	Passive														



**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION													
Temporary Alterations	Shoreline Stabilization (structural)	Dikes (new)	Fill	New Dredging	Maintenance Dredging	Navigation Aids (beacons, buoys, etc.)	Breakwaters	Groins/Pile Dikes	Wharves	Piers	Docks	Dolphins/Pilings	Special Policy (Sec. 2-2-13.100)

USES

COMMERCIAL

Water-Dependent													
Water-Related													
Nonwater-Related													
Marina													
Boat Launching													

INDUSTRIAL

X Temporary Anchorage						P						P	8.3
Flow-Lane Disposal of Dredge Material													
Log Dumping													
Log Storage													
\ Mining	C			C	C	P	C					C	
\ Oil or Gas Extraction	C			C	C	P							
Industrial Outfalls													
Marine Ways													
Water-Dependent Industrial													
Water-Related Industrial													
Nonwater-Related Industrial													

PUBLIC

\ Communication Facilities	P												
X Research and Educational Observations	P												
\ Overhead Crossings	P					P						C	
\ Submerged Crossings	P			P	P	P		C				C	
Bridge Crossings													
Storm Water Outfall													
Sanitary Outfall													
X Protection of Resources													
\ Public Facilities													8.4 - C

PORT FACILITIES

Deep Draft (over 23')													
Medium Draft (10'-22')													
Shallow Draft (0-9')													
X Navigational Improvement, Minor	P			C	P	P							
\ Aquaculture Facilities	P	P		C	C	P						C	

RESTORATION

X Active		P		C	C								
X Passive													

**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION												
Special Policy (Sec. 2-2-13.100)	Dolphins/Pilings	Docks	Piers	Wharves	Groins/Pile Dikes	Breakwaters	Navigation Aids (beacons, buoys, etc.)	Maintenance Dredging	New Dredging	Fill	Dikes (new)	
											Shoreline Stabilization (structural)	Temporary Alterations

USES

COMMERCIAL

	Water-Dependent											
	Water-Related											
	Nonwater-Related											
	Marina											
	Boat Launching											

INDUSTRIAL

	Flow-Lane Disposal of Dredge Material											
	Log Dumping											
	Log Storage											
	Mining											
	Oil or Gas Extraction											
	Industrial Outfalls											
	Marine Ways											
	Water-Dependent Industrial											
	Water-Related Industrial											
	Nonwater-Related Industrial											

PUBLIC

\	Waste Seawater Outfall	C	C			C	C					
\	Boat Ramps	C										
\	Communication Facilities	P										
X	Research and Educational Observations											
	Overhead Crossings											
X	Submerged Crossings	P				P	P					
	Bridge Crossings											
X	Storm Water Outfall											
	Sanitary Outfall											
X	Protection of Resources											
\	Public Facilities											9-A.5 - C

PORT FACILITIES

	Deep Draft (over 23')											
	Medium Draft (10'-22')											
	Shallow Draft (0-9')											
X	Navigational Improvement, Minor	P					P					
\	Aquaculture Facilities	C					P					C

RESTORATION

\	Active	C	C			C	C					9.2
X	Passive											

**PERMITTED USE MATRIX**

USES	
X	Permitted with Standards
\	Conditional
	Not Permitted
TYPE OF STRUCTURE OR ALTERATION	
P	Permitted with Standards
C	Conditional
○	Requires Resource Capability Determination
	Not Permitted

TYPE OF STRUCTURE OR ALTERATION

Special Policy (Sec. 2-2-13.100)	Dolphins/Pilings	Docks	Piers	Wharves	Groins/Pile Dikes	Breakwaters	Navigation Aids (beacons, buoys, etc.)	Maintenance Dredging	New Dredging	Fill	Dikes (new)	Shoreline Stabilization (structural)	Temporary Alterations
----------------------------------	------------------	-------	-------	---------	-------------------	-------------	--	----------------------	--------------	------	-------------	--------------------------------------	-----------------------

USES

COMMERCIAL

	Water-Dependent												
	Water-Related												
	Nonwater-Related												
	Marina												
	Boat Launching												

INDUSTRIAL

	Flow-Lane Disposal of Dredge Material												
	Log Dumping												
	Log Storage												
	Mining												
	Oil or Gas Extraction												
	Industrial Outfalls												
	Marine Ways												
	Water-Dependent Industrial												
	Water-Related Industrial												
	Nonwater-Related Industrial												

PUBLIC

\	Boat Ramps	○											
\	Communication Facilities	○											
X	Research and Educational Observations												
	Overhead Crossings												
X	Submerged Crossings	P			P	P							
	Bridge Crossings												
	Storm Water Outfall												
	Sanitary Outfall												
X	Protection of Resources												

PORT FACILITIES




















	Deep Draft (over 23')												
	Medium Draft (10'-22')												
	Shallow Draft (0-9')												
X	Navigational Improvement, Minor	P				P							
\	Aquaculture Facilities	C				P						C	

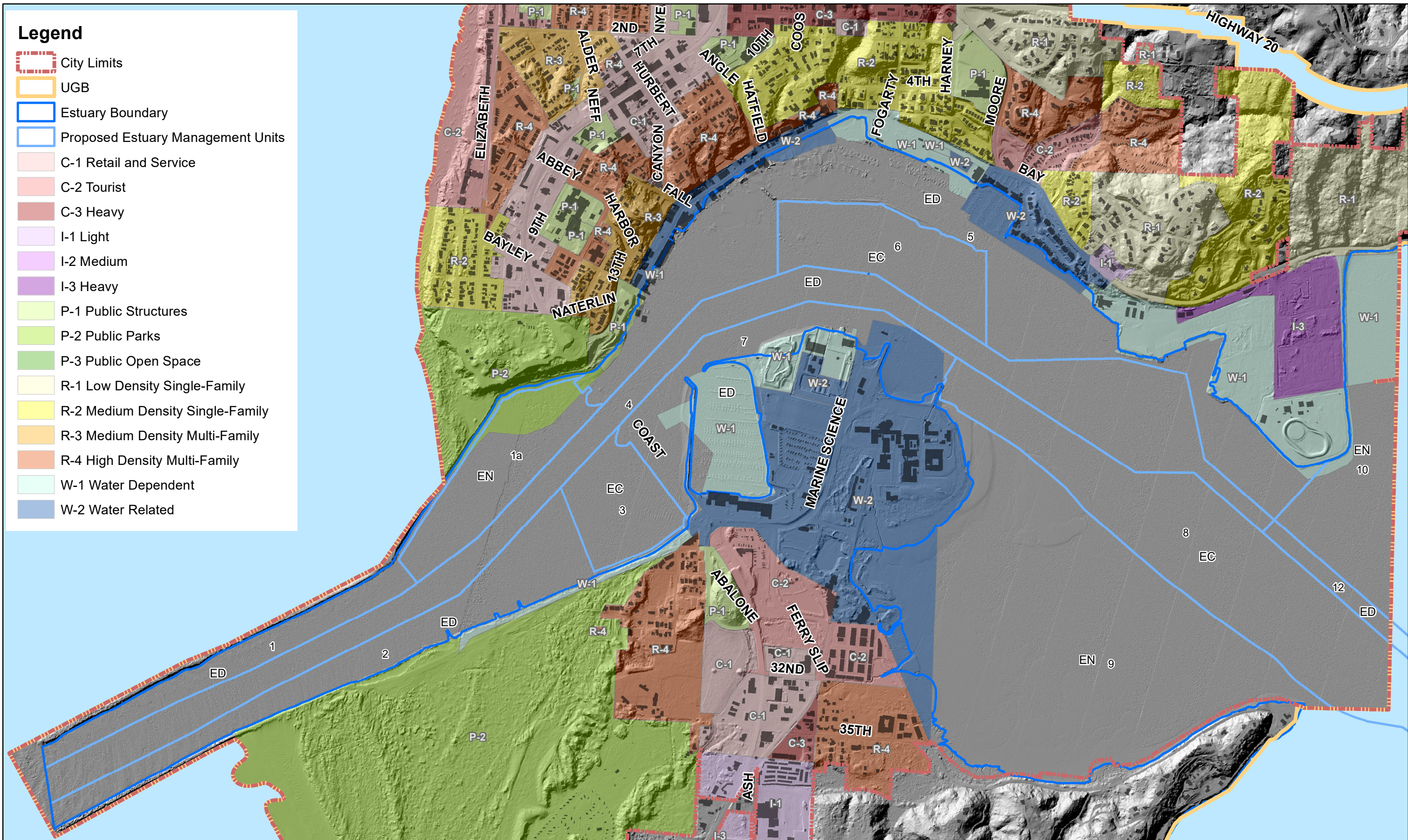
RESTORATION

\	Active	C	C			C	C						
X	Passive												10.2



**Legend**

-  City Limits
-  UGB
-  Estuary Boundary
-  Proposed Estuary Management Units
-  C-1 Retail and Service
-  C-2 Tourist
-  C-3 Heavy
-  I-1 Light
-  I-2 Medium
-  I-3 Heavy
-  P-1 Public Structures
-  P-2 Public Parks
-  P-3 Public Open Space
-  R-1 Low Density Single-Family
-  R-2 Medium Density Single-Family
-  R-3 Medium Density Multi-Family
-  R-4 High Density Multi-Family
-  W-1 Water Dependent
-  W-2 Water Related

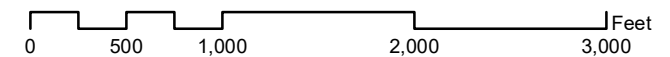


**NEWPORT** City of Newport  
 Community Development Department  
 169 SW Coast Highway Phone: 1.541.574.0629  
 Newport, OR 97365 Fax: 1.541.574.0644

This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.





















**City of Newport - Proposed Estuary Management Units**

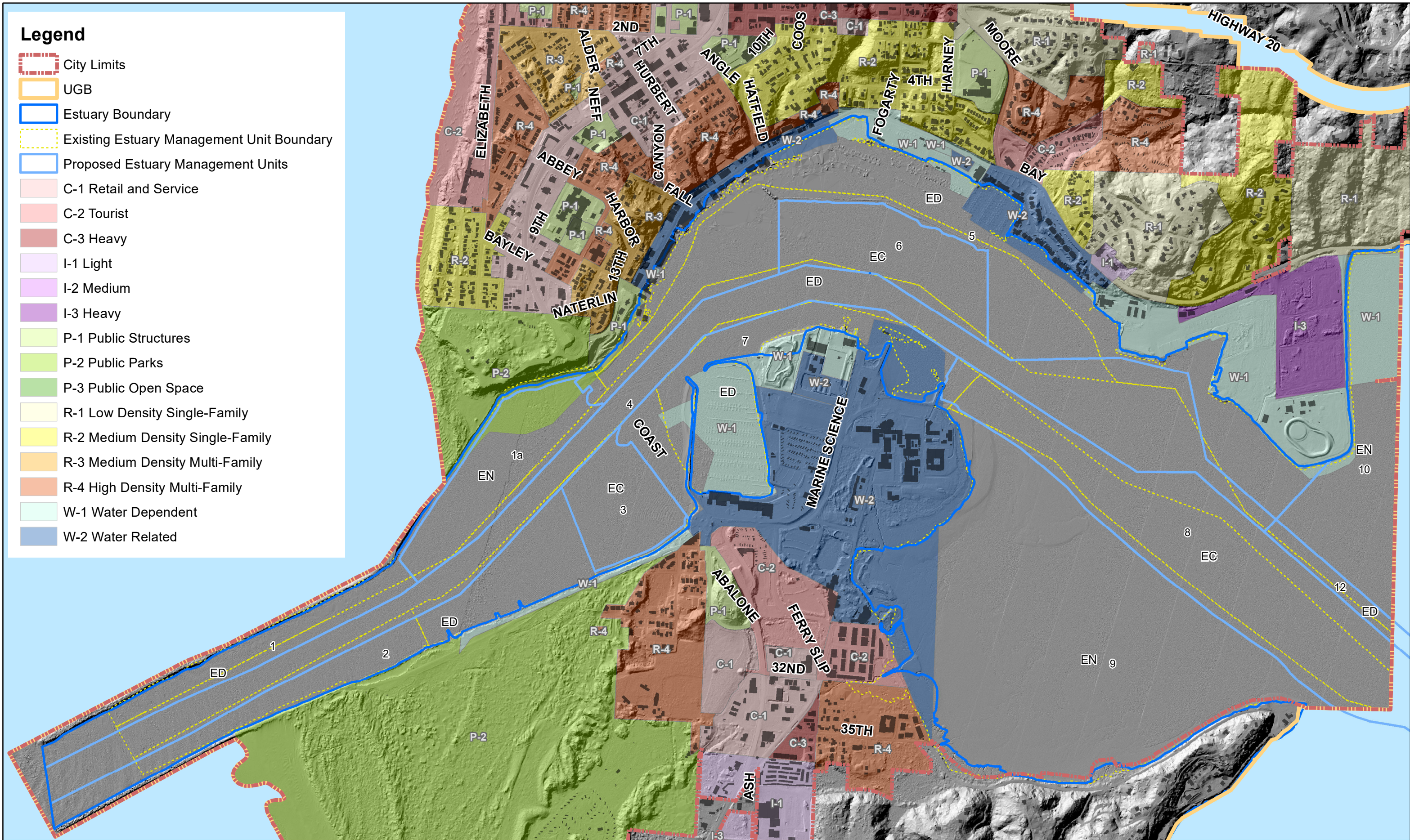
Image Taken July 2018  
 4-inch, 4-band Digital Orthophotos  
 Quantum Spatial, Inc. Corvallis, OR





**Legend**

-  City Limits
-  UGB
-  Estuary Boundary
-  Existing Estuary Management Unit Boundary
-  Proposed Estuary Management Units
-  C-1 Retail and Service
-  C-2 Tourist
-  C-3 Heavy
-  I-1 Light
-  I-2 Medium
-  I-3 Heavy
-  P-1 Public Structures
-  P-2 Public Parks
-  P-3 Public Open Space
-  R-1 Low Density Single-Family
-  R-2 Medium Density Single-Family
-  R-3 Medium Density Multi-Family
-  R-4 High Density Multi-Family
-  W-1 Water Dependent
-  W-2 Water Related



This map is for informational use only and has not been prepared for, nor is it suitable for, legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.



## Sherry Marineau

---

**From:** Derrick Tokos  
**Sent:** Monday, May 13, 2024 1:15 PM  
**To:** Sherry Marineau  
**Subject:** FW: public comments to planning commission  
**Attachments:** 5.13.24 comments to Newport Planning Commission.pdf

Please distribute this to the Commission members.

Thanks,

Derrick

---

**From:** Annie Merrill <annie@oregonshores.org>  
**Sent:** Monday, May 13, 2024 12:38 PM  
**To:** Public comment <publiccomment@newportoregon.gov>  
**Cc:** Derrick Tokos <D.Tokos@NewportOregon.gov>  
**Subject:** public comments to planning commission

**[WARNING]** This message comes from an external organization. Be careful of embedded links.

---

Hello,

Please see the attached public comments to the Newport Planning Commission, for tonight's work session on the Yaquina Bay Estuary Management Plan update.

Please indicate receipt at your earliest convenience.

Kind regards,  
Annie Merrill

--





May 13, 2024

To: Newport Planning Commission  
RE: Yaquina Bay Estuary Management Plan

Dear members of the Newport Planning Commission,

Oregon Shores Conservation Coalition is a non-profit organization whose mission is to engage, educate, and empower people to protect and increase the resilience of the coast's ecosystems, landscapes, and communities. Oregon Shores has been very engaged in the Yaquina Bay Estuary Management Plan (EMP) update since 2022, and our staff served on the Advisory Group guiding the plan update, and provided technical comments on draft components of the plan throughout.

We are very pleased to see this plan update occur and move toward adoption, as the update was badly needed to bring this 40-year old document into modern times. There are many strengths of the proposed plan, which we fully support. First, it is the first Estuary Management Plan in Oregon to incorporate language of climate threats to the estuary and include a climate vulnerability assessment. Second, the plan is now much more user-friendly and includes updated resource inventories and maps in digital format. Finally, restoration sites were expanded and newly restored regions were incorporated into the plan as natural management units.

Overall this process has been a tremendous collaborative effort, and we thank the Newport Community Development staff for their work on the plan update, including incorporating the plan into the City's zoning code and Comprehensive Plan. However, there are two key items that we respectfully request the Planning Commission consider in the present adoption process:

First, when the plan update occurred in 2023, Goal 17 (shorelands) was not considered and updated simultaneously with Goal 16. This was a missed opportunity for increasing climate resilience because it hindered the ability to plan for sea level rise impacts and upslope migration of habitat. The Newport Community Development Department can still begin this work by updating its Goal 17 provisions to incorporate the already mapped "landward migration zones" into the City's Comprehensive Plan. This will allow The Community Development Department to consider predicted sea-level rise impacts to both built and natural infrastructure and avoid inundation-vulnerable areas for development, and conserve these areas for wetland habitat in city revitalization planning efforts underway. **We recommend that goal 17 is updated in the Comprehensive plan revision at this stage, along with resource inventories relevant to shoreline management.**

Second, the Yaquina Bay EMP update was a pilot project or test-case of sorts. It was the first comprehensive EMP update with an aim to build climate resilience, and the planners did so without guidance on *how* to incorporate climate change. While the project made some important

strides by including a climate vulnerabilities assessment in the impact assessment conducted by an applicant, it is unclear what policies would be followed if the impact assessment negatively affects the estuary, reduces resilience, or exacerbates climate impacts. The Department of Land Conservation & Development is now building a Estuarine Resilience Action Plan for Lincoln County, which will include actionable projects to increase resilience to coastal hazards and climate impacts. DLCD also aims to develop model policies and guidance to help other governments update their EMPs. **We ask that the city adopt this new plan, but commit to re-visiting the EMP and Goal 16 (and Goal 17) provisions in their comprehensive plan in 5 years, when the state provides more resources, information, and guidance on building climate resilience in an estuary community.**

Thanks for the opportunity to provide public comment, and for considering these big-picture additions to the estuary planning process. We ultimately wish to see a robust plan that considers the impacts of climate change and meaningfully plans for changing future conditions, to the benefit of all users of Yaquina bay and the natural environment.

Sincerely,

Annie Merrill  
Ocean and Estuaries Manager  
Oregon Shores Conservation Coalition


***In Oregon, the beaches belong to the people.***

---

annie@oregonshores.org • PO Box 5626, Coos Bay, Oregon 97420 • oregonshores.org



# Memorandum

To: Planning Commission/Commission Advisory Committee  
From: Derrick Tokos, Community Development Director   
Date: May 9, 2024  
Re: Implementation of Adjustment Provisions of Governor's Housing Bill

---

This work session agenda item has been scheduled to provide the Planning Commission an update on the status of Ordinance No. 2222, a package of code changes the Commission recommended that are tailored to eliminate barriers to housing construction. This is a priority action item in the City's recently adopted Housing Production Strategy.

The draft ordinance includes an alternative set of "adjustments" to what is included in the Governor's Housing Bill (SB 1537). Now that the Governor's bill has been approved, the City Council would like to factor in its impact before adopting a final draft of Ordinance No. 2222. To help frame options for implementing SB 1537, the City retained outside legal counsel to answer a series of questions (see attached email). I expect to have a response prior to the work session. It will be an attorney-client communication, so I won't be able to distribute copies; however, I should be in a position to cover the topic areas at a high level, so that you have a sense of what the City's options are moving forward.

#### Attachments

Carrie Connelly email 4.18.24  
Ordinance No. 2222\_final draft  
Ord. 2222 - SB 1537 comparison  
SB 1537 Enrolled  
Ocean\_Shoreland\_Maps

## Derrick Tokos

---

**From:** Derrick Tokos  
**Sent:** Thursday, April 18, 2024 5:34 PM  
**To:** 'Carrie Connelly'  
**Cc:** David Allen  
**Subject:** Request for Legal Assistance Related to Implementation of SB 1537  
**Attachments:** Ordinance No. 2222\_final.pdf; Ord. 2222 - SB 1537 comparison.pdf; SB1537 Enrolled.pdf; Ocean\_Shorelands\_Maps.pdf

Hi Carrie,

The City of Newport has been working on a number of updates to its development codes to eliminate barriers to housing development. It is a priority action item in our Housing Production Strategy. We also took the time to put together an alternative set of “adjustments” to what is included in the Governor’s Housing Bill (SB 1537) in anticipation that the legislation was likely to pass. Now that the Governor’s bill has been approved, our policy-makers would like to factor in its impact before our code work to eliminate housing barriers is adopted.

Attached is a copy of draft Ordinance No. 2222 with changes the City Council is considering that would eliminate code barriers to housing development. It has been recommended favorably by the Planning Commission, but is on hold for now as we sort through SB 1537 issues. Specifically, we are looking for guidance on the following:

- The City is considering adopting a policy where development projects that pursue SB 1537 adjustments will be ineligible for City financial incentives such as access to affordable housing CET funding, multiple unit property tax exemption, the non-profit corporation low income housing tax exemption, or cost sharing on required infrastructure. Rationale: the City worked with the community to develop its land use standards and should not be obligated to subsidize housing projects that work around them. Do you foresee any legal issues with this approach?
- Our Council is also considering barring projects that take advantage of SB 1537 adjustments to eliminate off-street parking minimums from being allowed to use the narrow, shared street sections the City adopted into its Municipal Code in 2022. Rationale: SB 1537 assumes the availability of on-street parking. The City’s shared street sections were developed to reduce the cost of frontage improvements in areas that are terrain constrained or lack adequate right-of-way. To accomplish this, on-street parking was sacrificed so that the road section can be as narrow as 20-ft in width. Do you foresee any legal issues if the City elects to make this code change? The narrow street sections are in our Transportation System Plan and Zoning Ordinance, so this would be a land use amendment.
- The City could potentially use fees, and process, to influence whether or not a developer views an SB 1537 adjustment or options under Ordinance No. 2222 as being more attractive. The SB 1537 adjustment requires a limited land use decision, with notice, and risk of an adverse decision. Ordinance No. 2222 allowances are ministerial, which is quicker with less risk. Using fees to incentivize or disincentivize a process is trickier, as City’s are often limited to what they can charge to actual costs. Could you provide legal guidance as to the City’s options in this regard?
- What, if anything, can the City require of an applicant to substantiate statements that they are eligible for an SB 1537 adjustment per Section 38(2)(g)?
- How should the City structure its review process for deciding SB 1537 adjustments? On the one hand, Section 38(3) requires the City follow a limited land use decision making process, but then modifies it so that notice is only required to go to the applicant and the applicant is the only party that can file an appeal. Section 45(6) of the bill, for limited land use decisions, states that cities shall apply the procedures in this section, and only the procedures in this section, to limited land use decisions. Well, that “section” refers to notice to owners of property within 100-feet of the applicant’s property. Which provision governs?



- Section 38(1)(b)(B) of SB 1537 indicates that coastal shorelands are exempt from the SB 1537 adjustment allowances. Is that all land that is within the coastal shoreland boundaries (maps enclosed), just natural sites within the coastal shoreland areas, or zones like the W-1 and W-2 that tie directly to a shoreland Comprehensive Plan designation? This could help with Nye Beach if it can be construed broadly.
- Does the City need to officially designate Nye Beach and Bayfront as commercial corridors, as the term is used in SB 1537, to preserve ground floor areas for commercial uses?
- Our City Council is generally supportive of the options in draft Ordinance No. 2222, such as the 40 foot maximum building height for pitched roof multi-family development, but are concerned about the compounding effect it could have with the adjustment allowances contained in SB 1537. Is there language you could offer that we could add to the City's land use ordinance to make it clear that the provisions of SB 1537 are independent of, and cannot be paired with, adjustment allowances contained in the Newport Municipal Code?

Answers to these questions will help the City structure an additional round of revisions to Ordinance No. 2222, which might be the most effective approach to implementing SB 1537 given that the legislation will become effective on June 9, 2024.

Is this something your firm can assist with and, if so, what might we be looking at in terms of cost? We would be looking for the response to be in a memo format, and would need it the next 3 weeks. You can coordinate directly with me on this, but please copy our City Attorney, David Allen, on all correspondence.

Thank you,

*Derrick I. Tokos, AICP*  
Community Development Director  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365  
ph: 541.574.0626 fax: 541.574.0644  
[d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov)

CITY OF NEWPORT

ORDINANCE NO. 2222

AN ORDINANCE AMENDING CHAPTERS 14.01,  
14.03, 14.06, 14.11, 14.13, 14.14, 14.33 AND 14.52  
OF TITLE XIV OF THE NEWPORT MUNICIPAL CODE  
TO PROMOTE THE CONSTRUCTION OF NEEDED HOUSING

(Newport File No. 3-Z-23)

**Findings:**

1. On May 15, 2023 the Newport City Council approved Resolution No. 3978, adopting the 2023 Newport Housing Production Strategy (HPS). The strategy sets out 13 action items the City has committed to pursuing in order to promote the construction and/or availability of needed housing. One of the action items, Item "C", calls for the City to evaluate its development codes to reduce barriers to housing development.
2. At its June 12, 2023 work session, the Planning Commission considered topic areas outlined in the Housing Production Strategy (HPS) as potential barriers to the construction of needed housing. Following that discussion, the Commission expressed its interest in seeing a draft set of code amendments that respond to those concerns. Draft amendments were developed with the Commission's input at work sessions on December 11, 2023 and January 8, 2024.
3. During its regular meeting on January 8, 2024, the Planning Commission chose to initiate the process of amending Newport Zoning Ordinance, codified as Title XIV of the Newport Municipal Code consistent with the process set out in Newport Municipal Code (NMC) Chapter 14.36.
4. The Newport Planning Commission held a public hearing on February 26, 2024 to consider testimony and comment on the draft amendments and, at the conclusion of the hearing, passed a motion recommending the City Council adopt the changes. In making its recommendation, the Commission concluded that the amendments satisfy the City's requirement that legislative amendments be necessary and further the general welfare of the community because they ensure that the Municipal Code provisions that the City enforces align with new state law. The specific amendments forwarded by the Commission for the City Council's consideration are summarized as follows:
  - a. NMC 14.01.020, Definitions, is being revised to clarify the definition of "affordable housing." The new definition aligns with the definition of the same term in NMC Chapter 3.20, making it clear that a housing development with at least half of the units being available to own or rent to families at or below 60 percent of median income qualify as "affordable."



- b. NMC 14.03.060 and 070 are being amended to allow transitional housing as a "community service" use when operated by a public or non-profit entity as defined in ORS 197.746. Tenancy is limited to a period of time that is not to exceed 30 days. This amendment adds an additional housing option in commercial and industrial zoned areas and addresses a code barrier issue identified in the HPS.
- c. NMC 14.06.060, which sets out the requirements for constructing recreational vehicle parks, has been substantially re-written for clarity and ease of use. Relevant provisions of OAR Chapter 918, Division 650, which govern the construction of recreational vehicle parks, have been incorporated into the code. Some of the changes will help reduce construction costs and others address services needed to support long term occupancy, both of which were focus areas in the HPS. The amendments allow gravel roads, limit areas where perimeter fencing/screening is required, and reduce the size requirements for RV spaces. A prohibition on outdoor storage has also been removed. Requirements that spaces be fully served, and that washer/dryer facilities be provided, are being retained recognizing that tenants could be at the parks for extended periods of time.
- d. NMC 14.11.020, relating to required outdoor recreational areas, has been updated to note that the square footage requirements can be combined into a single, usable space. This is consistent with how the provision has been applied. The requirement that the recreational areas be enclosed is also being removed, as it is not value additive. This will also save on costs.
- e. NMC 14.11.030 clarifies the City's garage setback requirements. The new language establishes that, within rights-of-way, the boundary of the access street from which the setback is measured is the curb line or, where curbs are absent, the edge of the asphalt or other boundary of the travel surface. This will provide additional flexibility in siting dwellings.
- f. NMC 14.13.020 sets out the height limitations for buildings within the City. The existing maximum building height in the City's medium and high density multi-family zone districts is 35-feet. That limit is being increased to 40-feet for multi-family buildings that have a 4:12 or steeper roof pitch. This addresses a concern raised in the HPS that multi-family projects cannot achieve three full floors of units under the existing height limits.
- g. NMC 14.14.030 stipulates the amount of off-street parking required for new development projects. It is being revised to include a parking ratio for Single Room Occupancy (SRO) uses, which the City added as a new development type to comply with mandates from the 2023 Oregon legislative session. The parking ratio will also apply to boarding houses, a use type that has been in the City's land use code for a number of years. Boarding houses are a short-term tenancy equivalent of SROs.

- h. NMC 14.14.030 is further amended to include new on-street parking credit language. The HPS points out that a requirement that off-street parking be constructed with new residential development contributes to higher housing costs. Due to terrain and existing development patterns, Newport has a number of narrow roadways that cannot safely accommodate on-street parking; therefore, this amendment only allows developers relief from off-street parking in circumstances where there is capacity to accommodate parking demand on both sides of a public street.
  - i. NMC 14.33.020 includes language that describes the types of standards that the City allows to be modified through an adjustment or variance procedure. It is being amended to remove the prohibition on adjustments or variances that would increase densities in residential zones. This will give applicants the opportunity to pursue minimum lot size adjustments that would allow land divisions resulting in lots or parcels that fall short of minimum lot sizes. This will result in additional residential development opportunities, particularly in infill areas.
  - j. NMC 14.33.030 identifies who at the City has the authority to approve adjustments and variances. It is being amended to add a new process that allows the Community Development Director to approve a deviation less than or equal to 10% of a numerical standard if it will allow more dwelling units than would otherwise be achievable through strict adherence to the numerical standard. The granting of such deviation is to be a ministerial action, avoiding the time and uncertainty associated with a land use decision making process.
  - k. NMC 14.52.030 is a section of the City's land use procedural requirements that identifies who the approval authorities are for various application types. It is being amended to clarify that it is the Community Development Director, or designee, that is responsible for carrying out ministerial actions. Common types of ministerial actions are also listed.
5. The City Council held a work session on March 4, 2024 regarding the question of the proposed amendments and, after due deliberation, requested changes to clarify the scope of certain amendments, as follows:
- a. NMC 14.11.030 has been further revised to note that the garage must adhere to the standard building setbacks from property lines listed in NMC 14.13.020, Table A. This is how the code has been interpreted, and the change makes that interpretation explicitly clear.
  - b. NMC 14.33.030 has been further revised to note that the 10% ministerial adjustment to building height does not apply to building height limits at or above 40-feet in height. The amendment to NMC 14.13.020 allows multi-family developments to be increased to 40-feet in height to ensure projects can construct three floors of housing. Buildings above forty feet in height may require public review available through land use decision making processes given the potential impact to fire services and solar access on nearby properties.



6. Statewide Planning Goal 10, and its implementing statutes and administrative rules, are designed to ensure that there is (a) an opportunity within a city for the provision of adequate numbers of needed housing units, (b) the efficient use of buildable land within urban growth boundaries, and (c) to provide greater certainty in the development process so as to reduce housing costs. The amendments, summarized above, respond to the last point by allowing modest adjustments to land use requirements in a ministerial manner, eliminating the need for discretionary land use decision-making processes where there is uncertainty as to whether or not an applicant will be successful. Changes like the on-street parking credit might also help reduce costs. Accordingly, the proposed amendments are consistent with these stated objectives of Statewide Planning Goal 10.
7. The City Council held a public hearing on March 18, 2024 regarding the question of the proposed amendments, and, after considering the recommendation of the Planning Commission and evidence and argument in the record, adopted the ordinance, concluding that it is necessary and furthers the general welfare of the community.
8. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

**THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1.** Findings. The findings set forth above are hereby adopted in support of the amendments to Chapters 14.01, 14.03, 14.06, 14.11, 14.13, 14.14, 14.33 and 14.52 of Title XIV of the Newport Municipal Code adopted by Section 2 of this Ordinance.

**Section 2.** Municipal Code Amendment. Chapters 14.01, 14.03, 14.06, 14.11, 14.13, 14.14, 14.33 and 14.52 of Title XIV of the Newport Municipal Code are hereby amended as set forth in Exhibit "A".

**Section 3.** Effective Date. This ordinance shall take effect 30 days after adoption.

Date adopted and read by title only: \_\_\_\_\_

Signed by the Mayor on \_\_\_\_\_, 2024.

\_\_\_\_\_  
Jan Kaplan, Mayor

ATTEST:

\_\_\_\_\_  
Erik Glover, Asst. City Manager/City Recorder

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with ~~strikethrough~~. Highlighted revisions were added in response to Council feedback at the 3/4/24 work session. Staff comments, in *italics*, are for context and are not a part of the revisions.)

## CHAPTER 14.01 PURPOSE, APPLICABILITY, AND DEFINITIONS\*\*

\*\*\*

### 14.01.020 Definitions

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

**Affordable Housing.** Means residential property in which:

- A. Each unit on the property is made available to own or rent to families with incomes of 80 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development; or
- B. ~~The average of all~~At least half of the units on the property ~~is~~are made available to own or rent to families with incomes of 60 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development.

Affordability under either of the above metrics is enforceable, including as described in ORS 456.270 to 456.295, for a duration of no less than 30 years.

*Staff: This change is being made for clarity, and it aligns with a change the Planning Commission recommended at its November 13, 2023 meeting to the same definition contained in NMC Chapter 3.20, relating to the Affordable Housing Construction Excise Tax.*

\*\*\*

**Ministerial Action.** A decision that does not require interpretation or the exercise of policy or legal judgment in evaluating approval standards. The review of a ministerial action requires no notice to any party other than the applicant and agencies that the Community Development Director, or designee, determines may be affected by the decision. A

ministerial action does not result in a land use decision, as defined in ORS 197.015(10).

*Staff: No change. Definition for ministerial action is listed because it relates to proposed changes to NMC Chapter 14.52.*

---

## CHAPTER 14.03 ZONING DISTRICTS

\*\*\*

### 14.03.060 Commercial and Industrial Districts.

The uses allowed within each commercial and industrial zoning district are classified into use categories on the basis of common functional, product, or physical characteristics.

\*\*\*

#### **E. Institutional and Civic Use Categories**

\*\*\*

##### **3. Community Services**

- a. **Characteristics.** Public, non-profit or charitable organizations that provide local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. Services are ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join. Uses may include shelter or housing for periods of less than one month when operated by a public or non-profit agency, including transitional housing pursuant to ORS 197.746, or emergency shelters pursuant to ORS 197.782. Uses may also provide special counseling, education, or training of a public, nonprofit or charitable nature.
- b. **Examples.** Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, police stations, religious institutions/places of worship, fire and ambulance



stations, drug and alcohol centers, social service facilities, mass shelters or short term housing when operated by a public or non-profit agency, soup kitchens, and surplus food distribution centers.

- c. Exceptions.
  - i. Private lodges, clubs, and private commercial athletic or health clubs are classified as Entertainment and Recreation. Commercial museums (such as a wax museum) are in Retail Sales and Service.

*Staff: This change provides for transitional housing as a “community service” use when operated by a public or non-profit entity as defined in ORS 197.746. Tenancy is as currently listed, which is for a period of time that is less than one month. Attached is a copy of the statute. This amendment adds an additional housing option in commercial and industrial zoned areas and addresses a code barrier issue listed on page 34 of the Housing Production Strategy (HPS).*

\*\*\*

14.03.070 Commercial and Industrial Uses.

The following list sets forth the uses allowed within the commercial and industrial land use categories.

“P” = Permitted uses.

“C” = Conditional uses; allowed only after the issuance of a conditional use permit.

“X” = Not allowed.

		C-1	C-2 <sup>1</sup>	C-3	I-1	I-2	I-3
1.	Office	P	X	P	P	P	X
2.	Retails Sales and Service						
	a. Sales-oriented, general retail	P	P	P	P	P	C
	b. Sales-oriented, bulk retail	C	X	P	P	P	C
	c. Personal Services	P	C	P	P	C	X
	d. Entertainment	P	P <sup>2</sup>	P	P	C	X
	e. Repair-oriented	P	X	P	P	P	X
3.	Major Event Entertainment	C	C	P	P	C	X
4.	Vehicle Repair	C	X	P	P	P	X

5.	Self-Service Storage <sup>6</sup>	X	X	P	P	P	X
6.	Parking Facility	P	P	P	P	P	P
7.	Contractors and Industrial Service <sup>6</sup>	X	X	P	P	P	P
8.	Manufacturing and Production						
	a. Light Manufacturing	X	X	C	P	P	P
	b. Heavy Manufacturing	X	X	X	X	C	P
9.	Warehouse, Freight Movement, & Distribution	X	X	P	P	P	P
10.	Wholesale Sales	X	X	P	P	P	P
11.	Waste and Recycling Related	C	C	C	C	C	C
12.	Basic Utilities <sup>3</sup>	P	P	P	P	P	P
13.	Utility Corridors	C	C	C	C	C	C
14.	Community Service <sup>7,8</sup>	P	C	P	P	C	X
15.	Family Child Care Home	P	P	P	X	X	X
16.	Child Care Center	P	P	P	P	P	X
17.	Educational Institutions						
	a. Elementary & Secondary Schools	C	C	C	X	X	X
	b. College & Universities	P	X	P	X	X	X
	c. Trade/Vocational Schools/Other	P	X	P	P	P	P
18.	Hospitals	C	C	C	X	X	X
19.	Courts, Jails, and Detention Facilities	X	X	P	C	X	X
20.	Mining						
	a. Sand & Gravel	X	X	X	X	C	P
	b. Crushed Rock	X	X	X	X	X	P
	c. Non-Metallic Minerals	X	X	X	X	C	P
	d. All Others	X	X	X	X	X	X
21.	Communication Facilities <sup>4</sup>	P	X	P	P	P	P
22.	Residences on Floors Other than Street Grade	P	P	P	X	X	X
23.	Affordable Housing <sup>5</sup>	P	P	P	P	X	X
24.	Transportation Facilities	P	P	P	P	P	P

1. Any new or expanded outright permitted commercial use in the C-2 zone district that exceeds 2,000 square feet of gross floor area. New or expanded uses in excess of 2,000 square feet of gross floor area may be permitted in accordance with the provisions of Chapter 14.34, Conditional Uses. Residential uses within the C-2 zone are subject to special zoning standards as set forth in Section 14.30.100.

2. Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.

3. Small wireless facilities shall be subject to design standards as adopted by City Council resolution.

4. Communication facilities located on historic buildings or sites, as defined in Section 14.23, shall be subject to conditional use review for compliance with criteria outlined in Sections 14.23 and 14.34.
5. Permitted as outlined in Chapter 14.15 or, in the case of hotels/motels, the units may be converted to affordable housing provided they are outside of the Tsunami Hazard Overlay Zone defined in NMC Chapter 14.50.
6. Self-service storage use; salvage or wrecking of heavy machinery, metal and building materials; towing and vehicle storage; and auto and truck salvage and wrecking are prohibited within the South Beach Transportation Overlay Zone, as defined in Section 14.43.020.
7. Subject to the requirements of ORS 197.782. An emergency shelter proposed within a C-2 or I-2 zone district shall be subject to a public hearing before the Newport City Council.
8. Transitional housing as defined in ORS 197.746 must be operated by a public or non-profit entity, with residential tenancy limited to a period of time that is not more than 30 days.

*Staff: This is a companion change to the one above, pointing out that transitional housing is allowed, subject to limitations. Reference to "month" changed to not more than 30 days to be more precise (per public comment from Cheryl Connell, dated 2/22/24).*

---

## CHAPTER 14.06 MANUFACTURED DWELLINGS, PREFABRICATED STRUCTURES, SMALL HOMES AND RECREATIONAL VEHICLES

### 14.06.010 Purpose

The purpose of this section is to provide criteria for the placement of manufactured dwellings and recreational vehicles within the City of Newport. It is also the purpose of this section to provide for dwelling units other than site-built structures.

\*\*\*

### 14.06.060 Recreational Vehicle Parks



Recreational vehicle parks are allowed conditionally in an R-4 or I-2 zone district, and conditionally if publicly owned in the P-1 and P-2 zoning districts (excluding those P-1 properties within the Historic Nye Beach Design Review District), subject to subsections A through D below and in accordance with [Section 14.52](#), Procedural Requirements. Recreational vehicle parks are allowed outright in C-1, C-2, C-3, and I-1 zoning districts (excluding those C-2 properties within the Historic Nye Beach Design Review District), subject to the subsections A through D as follows:

- A. ~~A building permit(s) shall be obtained demonstrating that the recreational vehicle park~~ The park complies with the standards contained in ~~state statutes and~~ Chapter 918, Division 650 of the Oregon Administrative Rules.

*Staff: The existing language is vague. Staff confirmed with Richard Baumann, the Oregon Building Codes Division Recreational Parks and Camps Specialist, that provisions relevant to RV Park construction are all contained in OAR Chapter 918, Division 650. This division of the OARs is adopted by reference in the building codes chapter of the Newport Municipal Code (Chapter 11.05).*

- B. The developer of the park ~~obtains a permit from the state obtains verification from Lincoln County Environmental Health that the recreational vehicle park satisfies applicable Oregon Health Authority Rules.~~

*Staff: The existing language is no longer needed because review of recreational vehicle park projects for compliance with state laws has been delegated to local governments. The City of Newport, through its building services program, evaluates projects for compliance with construction standards listed in OAR Chapter 918, Division 650. The other local government that is involved is Lincoln County Environmental Health. They are responsible for ensuring the project complies with Oregon Health Authority Rules listed in OAR Chapter 333, Division 31. Those rules are focused on safety and sanitation, as opposed to construction. This provision of the City's Municipal Code is being amended to point out to a prospective park developer that they will need to coordinate with Lincoln County Environmental Health.*

- C. The developer provides a map plan of the proposed park ~~to the City Building Official~~ that contains the following.

1. A cover sheet that includes:
  - a. The name of the recreation park and a vicinity map identifying its location;
  - b. The name of the owner;
  - c. The name of the operator;
  - d. The name of the person who prepared or submitted the plans; and
  - e. A key identifying the symbols used on the plan.
2. The plot plan (on a separate sheet) that includes:
  - a. Proposed and existing construction; and
  - b. A scale drawing of the general layout of the entire recreation park showing property survey monuments in the area of work and distances from park boundaries to public utilities located outside the park (indicated by arrows without reference to scale).
  - c. For work that involves an addition to, or a remodeling of, an existing recreation park, the plot plan must show the facilities related to the addition and/or the facilities to be remodeled.
  - d. The following features must be clearly shown and identified on the plot plan:
    - i. The footprint of permanent buildings, including dwellings, mobile homes, washrooms, recreation buildings, and similar structures;
    - ii. Any fixed facilities that are to be constructed in each space, such as tables, fire pits, or patios;
    - iii. Property line boundaries and survey monuments in the area of work;
    - iv. The location and designation of each space by number, letter or name; and

- v. Plans for combination parks must also show the portions of the park that are dedicated to each activity (e.g. camp ground, organizational camp, mobile home park, picnic park, recreational vehicle park, etc.).
3. Park utility systems must be clearly shown and identified on a separate sheet that contains the following information:
- a. Location of space sewer connections, space water connections and service electrical outlets;
  - b. The location of the public water and wastewater lines from which service is to be obtained, including the location and size of the water meter;
  - c. The location, type and size of private water and wastewater lateral lines that are to be constructed internal to the park;
  - d. Street layout and connections to public street(s);
  - e. Disposal systems, such as septic tanks and drain fields, recreational vehicle dump stations, gray water waste disposal sumps, washdown facilities, sand filters, and sewer connections;
  - f. Fire protection facilities, such as fire hydrants, fire lines, tanks and reservoirs, hose boxes and apparatus storage structures;
  - g. The location of trash enclosures and receptacles; and
  - h. Placement of electrical transformers, electrical lines, gas lines, and Liquid Petroleum Gas (LPG) tank placement within the park.
4. Existing and finished grade topography for portions of the property where the park is to be located, if existing grades exceed five percent.

*Staff: The above list replicates plan requirements listed in OAR 918-650-0035. The language has been adjusted for clarity, and it has been streamlined somewhat since this chapter of the Municipal Code applies only to RV parks.*



D. The park complies with the following provisions (in case of overlap with a state requirement, the more restrictive of the two requirements shall apply):

1. The space provided for each recreational vehicle shall not be less than ~~600~~ 400 square feet, exclusive of any space used for common areas (such as roadways, general use structures, walkways, parking spaces for vehicles other than recreational vehicles, and landscaped areas). The number of recreational vehicles shall be limited to a maximum of 22 per gross acre.

*Staff: OAR Chapter 918, Division 650 provides some flexibility on sizing spaces as it covers camps in addition to recreational; vehicle parks. The definition for RV's limits them to a maximum of 400 sq. ft. gross floor area in setup mode. At its 1/8/24 work session, the Planning Commission elected to reduce the minimum area requirement for a recreational vehicle space to 400 sq. ft. The Commission reviewed the existing density limit, and confirmed that it is reasonable, being roughly equivalent to high density multi-family residential construction in the city (e.g. Wyndhaven Ridge).*

2. One-way roadways shall be a minimum of 12-feet in width and two-way Roadways roadways shall not be less than 30-20 feet in width. ~~if~~ If parking is permitted on the margin of the roadway, then the parking area must be a minimum of 10-feet in width. ~~or~~ less than 20 feet in width if parking is not permitted on the edge of the roadway, they shall be paved with asphalt, concrete, or similar impervious surface and designed to permit easy access to each recreation vehicle space. Roadways must be designed such that they are capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds, and they may be surfaced with asphalt, concrete, crushed rock, gravel or other similar materials.

*Staff: The above language has been revised to align with the one-way drive isle width limitation set out in NMC 14.46.030(P). As for the overall width of the roadway and parking areas, the code has been amended to comply with the OARs, which are stricter than the City's existing code. At its 1/8/24 work session, the Planning Commission expressed a willingness to allow gravel roads, so that option has been added. Engineering load requirements, draw from Appendix D to the 2019 Oregon Fire Code.*

3. A space provided for a recreational vehicle shall be covered with crushed gravel or paved with asphalt, concrete, or similar material and be designed to provide run-off of surface water. The part of the space which is not occupied by the recreational vehicle, not intended as an access way to the recreation vehicle or part of an outdoor patio, need not be paved or covered with gravel provided the area is landscaped or otherwise treated to prevent dust or mud.
4. A recreational vehicle space shall be provided with piped potable water and sewage disposal service. A recreational vehicle staying in the park shall be connected to the water and sewage service provided by the park if the vehicle has equipment needing such service.
5. A recreational vehicle space shall be provided with electrical service.
6. ~~Trash~~ Solid waste, recycling, and compostable receptacles shall adhere to the enclosure and access requirements set forth in NMC 14.11.060(B) and (C), unless an alternative approach is approved, in writing, by the solid waste and recycling service provider. ~~for the disposal of solid waste materials~~ Receptacles shall be provided in convenient locations for the use of guests of the park and located in such number and be of such capacity that there is no uncovered accumulation of trash at any time. must have tight-fitting lids, covers or closable tops, and be constructed out of durable, rust-resistant, water tight, rodent-proof and washable material. Receptacles are to be provided at a minimum rate of one 30-gallon container for each four recreational vehicle parking spaces and be located within 300 feet of each recreational vehicle parking space. If the solid waste and recycling service provider indicates, in writing, that larger receptacles and/or tighter spacing is needed, then their recommendation shall be followed.

*Staff: At its 1/8/24 meeting, the Commission asked if the code section could be amended to incorporate the solid waste and enclosure access requirements that the City added to NMC 14.11.060, and that change has been made. The City's discretionary language regarding the placement and sizing of receptacles has also been replaced with specific standards listed in the OARs. Language deferring to the solid waste and recycling provider in terms of the number and size of the*

*required receptacles was added, at the Commission's request, following the 2/26/24 hearing.*

7. The total number of off-street parking spaces in the park shall be provided in conformance with [Section 14.14.030](#). Parking spaces shall be covered with crushed gravel or paved with asphalt, concrete, or similar material.
8. The park shall provide toilets, lavatories, and showers for each sex in ~~the following ratios: For each 15 recreational vehicle spaces, or any fraction thereof, one toilet (up to 1/3 of the toilets may be urinals), one lavatory, and one shower for men; and one toilet, one lavatory, and one shower for women~~ accordance with Table 14.06.060-A. The toilets and showers shall afford privacy, and the showers shall be provided with private dressing rooms. Facilities for each sex shall be located in separate buildings, or, if in the same building, shall be separated by a soundproof wall.

Table 14.06.060-A

<u>Parking Spaces</u>	<u>Number of Toilets</u>		<u>Number of Sinks<sup>1</sup></u>	
	<u>Men's<sup>2</sup></u>	<u>Women's</u>	<u>Men's</u>	<u>Women's</u>
<u>1-15</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>16-30</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>2</u>
<u>31 – 60</u>	<u>2</u>	<u>3</u>	<u>2</u>	<u>3</u>
<u>61 - 100<sup>3</sup></u>	<u>3</u>	<u>4</u>	<u>3</u>	<u>4</u>

1. One additional sink must be provided for each two toilets when more than six toilets are required.

2. Urinals may be acceptable for not more than 1/3 of the required toilets.

3. Recreational parks with more than 100 parking spaces shall provide one additional toilet per sex for each additional 30 spaces or fraction thereof.

*Staff: At its 1/8/24 work session, the Planning Commission requested that Table 3-RV be incorporated into the code in lieu of the text explanation. That has been accomplished. The City Comprehensive Plan requires they connect to sewer service if it is within 250-feet of the site. This may be more expensive*



*then vault toilets or privies, but is more sanitary and less likely to create odor issues.*

9. The park shall provide one utility building or room containing one clothes washing machine, and one clothes drying machine for each ten recreational vehicle spaces, or any fraction thereof.
10. Building spaces required by Subsection ~~9-8~~ and ~~10-9~~ of this section shall be lighted, ~~at all times of the night and day, shall be ventilated,~~ and otherwise designed in accordance with the requirements of the Oregon Structural Specialty Code. ~~shall be provided with heating facilities which shall maintain a room temperature of at least 62°F, shall have floors of waterproof material, shall have sanitary ceilings, floor and wall surfaces, and shall be provided with adequate floor drains to permit easy cleaning.~~

*Staff: Per the Commission's request at its 1/8/24 meeting, this section has been amended to cross-reference to the building code.*

11. Except for the access roadway ~~into the park,~~ the a park that is located within or adjacent to a residentially zoned area shall be screened on all sides by a sight-obscuring hedge or fence not less than six feet in height unless modified through ~~either the~~ conditional use permit process as provided in NMC Chapter 14.34 (if a conditional use permit is required for the RV park) or ~~other applicable land use an adjustment or variance~~ procedure outlined in NMC Chapter 14.33. Reasons to modify the hedge or fence buffer required by this section may include, but are not limited to, the location of the RV park is such that adequate other screening or buffering is provided to adjacent properties (such as the presence of a grove or stand of trees), the location of the RV park within a larger park or development that does not require screening or has its own screening, or screening is not needed for portions not adjacent to other properties (such as when the RV park fronts a body of water). Any Modifications modifications to the hedge or fence requirement of this subsection ~~shall not act to modify the requirement for a solid wall or should factor in any applicable screening and setback requirements~~ fence that may otherwise be required under Section 14.18.020 (Adjacent Yard Buffer) for non-residentially zoned property abutting a residentially zoned property.

*Staff: At its 1/8/24 meeting, the Commission asked that the site obscuring hedge or fence requirement be limited to parks located within or adjacent to residential zoned areas. -The language has also been amended to clarify processes for adjusting the screening requirements.*

~~12. Except for vehicles, there shall be no outside storage of materials or equipment belonging to the park or to any guest in the park.~~

*Staff: At its 1/8/24 meeting, the Commission supported deleting this provision. The City's nuisance code requires that materials stored outside be organized in a neat and tidy manner or that they be screened from view from rights-of-way and adjacent properties.*

~~13. Evidence shall be provided that the park will be eligible for a certificate of sanitation as required by state law.~~

*Staff: This is legacy language that was relevant when the State of Oregon handled RV Park permitting. It is being deleted because it is no longer applicable. Adequacy of sanitation services is evaluated at plan review and confirmed through the building inspection process.*

12. Each space within a recreational vehicle park shall be provided a minimum of 50 square feet of outdoor area landscaped or improved for recreational purposes as provided in NMC 14.11.020.

*Staff: This cross-reference has been added for clarity and to ensure that the requirement is addressed as part of the review (since it is housed in a different part of the code).*

---

## CHAPTER 14.11 REQUIRED YARD, SETBACKS, AND SOLID WASTE/RECYCLABLE MATERIALS STORAGE AND ACCESS REQUIREMENTS

\*\*\*

### 14.11.020 Required Recreation Areas

All multi-family dwellings, hotels, motels, manufactured dwelling parks, trailer parks, and recreational vehicle parks shall provide for each unit/space a minimum of 50 square feet of ~~enclosed~~-outdoor area landscaped or improved for recreation purposes exclusive of required yards such as a patio, deck, or terrace. This landscaping requirement can be combined into a single active or passive recreational area accessible to all occupants of the property.

*Staff: This change eliminates the requirement that the area be enclosed, as that typically requires fencing which is expensive. Further, requiring the areas be enclosed is not value additive. The City has interpreted the existing language as allowing the recreational space to be combined for multi-family projects, and the added language memorializes that interpretation.*

#### 14.11.030 Garage Setback

The entrance to a garage or carport shall adhere to the required setbacks listed in NMC 14.13.020, Table A, and be set back at least 20 feet from the access street for all residential structures. Within rights-of-way, the boundary of the access street is the curb line or, where curbs are absent, the edge of the asphalt or other boundary of the travel surface.

*Staff: This change aligns with how the standard is applied, and provides flexibility for siting housing on small properties. The drawback is that driveways can be rendered substandard if the right-of-way is fully developed in the future. Changed “Within underdeveloped rights-of-way” to “Within rights-of-way” at the request of the Commission during its 12/11/23 work session. At a 3/4/24 work session, the Council asked for clarity on how the garage setback works with the building setbacks. Both apply, and that clarification has been made to the code.*

### CHAPTER 14.13 DENSITY LIMITATIONS

#### 14.13.010 Density Limitations

A residential building structure or portion thereof hereafter erected shall not exceed the maximum living unit density listed in Table A, as hereinafter set forth, for the zone indicated, except in the case of a lot having less than is required and of record prior to December 5, 1966, which may be occupied by a single-family dwelling unit, providing other requirements of this ordinance are complied with, except to the



extent that a higher density may specifically be allowed by any term or provision of this Ordinance.

(BY THIS REFERENCE, THERE IS INCLUDED HEREIN AND MADE A PART HEREOF, A TABLE OF DENSITY AND OTHER REQUIREMENTS, DESIGNATED "TABLE A".)

**NMC 14.13.020**

**Table "A"**

Zone District	Min. Lot Area (sf)	Min. Width	Required Setbacks <sup>3,7</sup>			Lot Coverage (%)	Max. Building Height	Density (Land Area Required Per Unit (sf))
			Front/2 <sup>nd</sup> Front <sup>1</sup>	Side	Rear			
R-1	7,500 sf	65-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft & 8-ft	15-ft	54 %	30-ft	SFD - 7,500 sf <sup>2</sup> Duplex - 3,750 sf <sup>2</sup>
R-2	5,000 sf <sup>3</sup>	50-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft	10-ft	57%	30-ft	SFD – 5,000 sf <sup>2</sup> Duplex - 2,500 sf <sup>2</sup> Townhouse - 2,500 sf <sup>3</sup>
R-3	5,000 sf <sup>3</sup>	50-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft	10-ft	60%	35-ft <u>or</u> 40-ft <sup>9</sup>	1,250 sf <sup>3</sup>
R-4 <sup>4</sup>	5,000 sf <sup>3</sup>	50-ft	15-ft / 15-ft or 20-ft / 10-ft	5-ft	10-ft	64%	35-ft <u>or</u> 40-ft <sup>9</sup>	1,250 sf <sup>3,5</sup>
C-1	5,000 sf	0	0 or 15-ft from US 101 <sup>8</sup>	0	0	85-90% <sup>6</sup>	50-ft <sup>6</sup>	n/a
C-2 <sup>4</sup>	5,000 sf	0	0 or 15-ft from US 101 <sup>8</sup>	0	0	85-90% <sup>6</sup>	50-ft <sup>6</sup>	n/a
C-3	5,000 sf	0	0 or 15-ft from US 101 <sup>8</sup>	0	0	85-90% <sup>6</sup>	50-ft <sup>6</sup>	n/a
I-1	5,000 sf	0	15-ft from US 101	0	0	85-90% <sup>6</sup>	50-ft <sup>6</sup>	n/a
I-2	20,000 sf	0	15-ft from US 101	0	0	85-90% <sup>6</sup>	50-ft <sup>6</sup>	n/a
I-3	5 acres	0	15-ft from US 101	0	0	85-90% <sup>6</sup>	50-ft <sup>6</sup>	n/a
W-1	0	0	0	0	0	85-90% <sup>6</sup>	40-ft <sup>6</sup>	n/a
W-2	0	0	0	0	0	85-90% <sup>6</sup>	35-ft <sup>6</sup>	n/a
MU-1 to MU-10 Mgmt. Units	0	0	0	0	0	100%	40-ft <sup>6</sup>	n/a

P-1	0	0	0	0	0	100%	50-ft	n/a
P-2	0	0	0	0	0	100%	35-ft	n/a
P-3	0	0	0	0	0	100%	30-ft	n/a

<sup>1</sup> Front and second front yards shall equal a combined total of 30-feet. Garages and carports shall be setback at least 20-feet from the access street for all residential structures.

<sup>2</sup> Density limitations apply where there is construction of more than one single-family dwelling (SFD) or duplex on a lot or parcel.

<sup>3</sup> Density limitations for townhouses and cottage clusters is the minimum area required per townhouse or cottage cluster unit; whereas, minimum lot area, minimum lot width, and setbacks, apply to the perimeter of the lot, parcel, or tract dedicated to the townhouse or cottage cluster project.

<sup>4</sup> Special Zoning Standards apply to R-4 and C-2 zoned property within the Historic Nye Beach design Review District as outlined in NMC 14.30.100.

<sup>5</sup> Density of hotels, motels, and non-residential units shall be one unit for every 750 sf of land area.

<sup>6</sup> Height limitations, setbacks, and lot coverage requirements for property adjacent to residential zones are subject to the height and yard buffer requirements of NMC Section 14.18.

<sup>7</sup> Front and 2<sup>nd</sup> front setbacks for a townhouse project or cottage cluster project shall be 10-feet except that garages and carports shall be setback a distance of 20-feet.

<sup>8</sup> The 15-foot setback from US 101 applies only to land situated south of the Yaquina Bay Bridge.

<sup>9</sup> The 40-ft height allowance is limited to multi-family uses with pitched roof construction, where the predominate roof pitch is 4:12 or steeper.

*Staff: This amendment addresses the concern outlined in the HPS that multi-family construction with pitched roofs cannot achieve three full floors of units with a 35-ft maximum building height. Wyndhaven Ridge Phase II is an example, where a 10% adjustment was needed in order for three-story apartment buildings to be constructed (File No. 1-ADJ-22). The roof pitch in that case was 5:12. Setting a roof pitch minimum is reasonable, since one of the purposes behind a building height limit is to ensure neighboring properties have reasonable solar access. Pitched roof construction has less of an impact in that regard as opposed to a building with a flat roof. Further, buildings with a lower roof pitch, or none at all, should be able to achieve three floors of dwelling units with a 35-foot building height limit. Revised roof pitch to 4:12 per the Commission's request at its 12/11/23 work session.*

---

## CHAPTER 14.14 PARKING AND LOADING REQUIREMENTS

### 14.14.010 Purpose

The purpose of this section is to establish off-street parking and loading requirements, access standards, development standards for off-street parking lots, and to formulate special parking areas for specific areas of the City of Newport. It is also the purpose of this section to implement the Comprehensive Plan, enhance property values, and preserve the health, safety, and welfare of citizens of the City of Newport.

\*\*\*

### 14.14.030 Number of Parking Spaces Required

A. Off-street parking shall be provided and maintained as set forth in this section. Such off-street parking spaces shall be provided prior to issuance of a final building inspection, certificate of occupancy for a building, or occupancy, whichever occurs first. For any expansion, reconstruction, or change of use, the entire development shall satisfy the requirements of [Section 14.14.050](#), Accessible Parking. Otherwise, for building expansions the additional required parking and access improvements shall be based on the expansion only and for reconstruction or change of type of use, credit shall be given to the old use so that the required parking shall be based on the increase of the new use. Any use requiring any fraction of a space shall provide the entire space. In the case of mixed uses such as a restaurant or gift shop in a hotel, the total requirement shall be the sum of the requirements for the uses computed separately. Required parking shall be available for the parking of operable automobiles of residents, customers, or employees, and shall not be used for the storage of vehicles or materials or for the sale of merchandise. A site plan, drawn to scale, shall accompany a request for a land use or building permit. Such plan shall demonstrate how the parking requirements required by this section are met.

Parking shall be required at the following rate. All calculations shall be based on gross floor area unless otherwise stated.

1.	General Office	1 space/600 sf
----	----------------	----------------



2.	Post Office	1 space/250 sf
3.	General Retail (e.g. shopping centers, apparel stores, discount stores, grocery stores, video arcade, etc.)	1 space/300 sf
4.	Bulk Retail (e.g. hardware, garden center, car sales, tire stores, wholesale market, furniture stores, etc.)	1 space/600 sf
5.	Building Materials and Lumber Store	1 space/1,000 sf
6.	Nursery – Wholesale Building	1 space/2,000 sf 1 space/1,000 sf
7.	Eating and Drinking Establishments	1 space/150 sf
8.	Service Station	1 space/pump
9.	Service Station with Convenience Store	1 space/pump + 1 space/ 200 sf of store space
10.	Car Wash	1 space/washing module + 2 spaces
11.	Bank	1 space/300 sf
12.	Watersport/Marine Terminal	20 spaces/berth
13.	General Aviation Airport	1 space/hangar + 1 space/300 sf of terminal
14.	Truck Terminal	1 space/berth
15.	Industrial	1.5 spaces/1000 sf
16.	Industrial Park	1.5 spaces/5,000 sf
17.	Warehouse	1 space/2,000 sf
18.	Mini-Warehouse	1 space/10 storage units
19.	Single-Family Detached Residence	2 spaces/dwelling
20.	Duplex	1 space/dwelling
21.	Apartment	1 space/unit for first four units + 1.5 spaces/unit for each Additional unit
22.	Condominium (Residential)	1.5 spaces/unit
23.	Townhouse	1.5 spaces/unit
24.	Cottage Cluster	1 space/unit
25.	Elderly Housing Project	0.8 space/unit if over 16 dwelling units
<u>26.</u>	<u>Boarding House/Single Room Occupancy</u>	<u>0.5 spaces/guest room or unit</u>
<u>2627.</u>	Congregate Care/Nursing Home	1 space/1,000 sq. ft.
<u>2728.</u>	Hotel/Motel	1 space/room + 1 space for the manager (if the hotel/motel contains other uses, the other uses

		Shall be calculated separately
<del>2829.</del>	Park	2 spaces/acre
<del>2930.</del>	Athletic Field	20 spaces/acre
<del>3031.</del>	Recreational Vehicle Park	1 space/RV space + 1 space/10 RV spaces
<del>3132.</del>	Marina	1 space/5 slips or berths
<del>3233.</del>	Golf Course	4 spaces/hole
<del>3334.</del>	Theater	1 space/4 seats
<del>3435.</del>	Bowling alley	4 spaces/alley
<del>3536.</del>	Elementary/Middle School	1.6 spaces/classroom
<del>3637.</del>	High School	4.5 spaces/classroom
<del>3738.</del>	Community College	10 spaces/classroom
<del>3839.</del>	Religious/Fraternal Organization	1 space/4 seats in the main auditorium
<del>3940.</del>	Day Care Facility	1 space/4 persons of license occupancy
<del>4041.</del>	Hospital	1 space/bed
<del>4142.</del>	Assembly Occupancy	1 space/8 occupants (based on 1 occupant/15 sf of exposition/meeting/assembly room conference use not elsewhere specified)

*Staff: With Ordinance No. 2216, the City implemented land use related mandates from the 2023 Oregon Legislative Session. This included adding Single Room Occupancy (SRO) uses in all residential zones. That set of amendments did not include a set of minimum parking requirements. This revision creates a minimum off-street parking requirement for SRO projects. It is in line with standards from other jurisdictions (see attached Eugene, Medford, and Salt Lake examples). The City allows Boarding Houses, which are effectively the short-term tenancy equivalent of SROs, but never established a minimum parking standard for them. Since the uses are so similar, this change will apply to them as well. This change was added by staff following the 1/8/24 Commission work session.*

B. On-Street Credit. A dwelling unit on property zoned for residential use, located outside of special parking areas as defined in NMC 14.14.100, shall be allowed an on-street parking credit that reduces the required number of off-street parking spaces by one off-street parking space for every one on-street parking space abutting the property subject to the following limitations:

1. On-street parking is available on both sides of the street adjacent to the property; and

2. The dwelling unit is not a short-term rental; and
3. Each on-street parking space is 22-ft long by 8-ft wide and parallel to the edge of the street, unless an alternate configuration has been approved and marked by the City of Newport; and
4. Each on-street parking space to be credited must be completely abutting, and on the same side of the street, as the subject property. Only whole spaces qualify for the on-street parking credit; and
5. On-street parking spaces will not obstruct a clear vision area required pursuant to Section 14.17; and
6. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street parking spaces are allowed except as authorized by the City of Newport.

*Staff: This is the final draft of on-street parking credit language that the Planning Commission considered in 2021, but elected not to implement at that time. It was part of a package of code amendments to address HB 2001 requirements. As noted in the HPS (pg. 34), the requirement that off-street parking be constructed with new residential development contributes to the higher housing costs. This would allow a credit only where there is capacity to accommodate parking demand along a public street. It would not be an option along narrow roads where parking areas do not exist or are limited to one side of the street.*

*The Oregon Legislature has taken up an amended version of HB 3414, which narrowly failed during the 2023 session. It is SB 1537, and the bill, if passed, would require city's set aside off-street parking requirements if requested by an applicant. The bill sponsors frame it as an "adjustment." The proposed amendment is an alternative to the SB 1537 approach, allowing the City to frame circumstances where relief from off-street parking standards is appropriate.*

*The location where parking can occur within the right-of-way was clarified in response to feedback from the Commission at the 12/11/23 work session. The above provisions align with Chapter 6.15, Parking in Rights-of-Way, which provides;*

*"6.15.005(A) Method of Parking. Parking is permitted only parallel with the edge of the street, headed in the direction of lawful traffic*



*movement, except where the street is marked or signed for angle parking. Where parking spaces are marked, vehicles shall be parked within the marked spaces. Parking in angled spaces shall be with the front head-in to the curb, except that vehicles delivering or picking up goods may be backed in. Where curbs exist the wheels of a parallel-parked vehicle shall be within 12 inches of the curb, and the front of an angle-parked car shall be within 6 inches of the curb.”*

---

## CHAPTER 14.33 ADJUSTMENTS AND VARIANCES

### 14.33.010 Purpose

The purpose of this section is to provide flexibility to numerical development standards in recognition of the wide variation in property size, configuration, and topography within the City of Newport and to allow reasonable and economically practical development of a property.

### 14.33.020 General Provisions

- A. Application for an Adjustment or Variance from a numerical standard including, but not limited to, size, height, or setback distance may be processed and authorized under a Type I or Type III decision-making procedure as provided by [Section 14.52](#), Procedural Requirements, in addition to the provisions of this section.
- B. No Adjustment or Variance from a numerical standard shall be allowed that would result in a use that is not allowed in the zoning district in which the property is located, ~~or to increase densities in any residential zone.~~
- C. In granting an Adjustment or Variance, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

*Staff: This amendment would open the door to minimum lot size adjustments that would allow land divisions resulting in lots or parcels that fall short of the minimum lot size. This could create additional residential development opportunities, particularly in infill areas.*

### 14.33.030 Approval Authority

Upon receipt of an application, the Community Development Director or designate shall determine if the request is to be processed as an

Adjustment or as a Variance based on the standards established in this subsection. There shall be no appeal of the Director's determination as to the type of application and decision-making process, but the issue may be raised in any appeal from the final decision on the application.

A. A deviation less than or equal to 10% of a numerical standard shall be granted if the Community Development Director determines that it will allow one or more dwelling units than would otherwise be achievable through strict adherence to the numerical standard. The granting of such deviation shall be a ministerial action. This subsection does not apply to building height limitations, where the maximum height allowance is set at or above 40-feet.

~~A-B~~ Other deviations ~~of~~ less than or equal to 10% of a numerical standard shall satisfy criteria for an Adjustment as determined by the Community Development Director using a Type I decision-making procedure.

~~BC~~. A deviation of greater than 10%, but less than or equal to 40%, of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision-making procedure.

~~CD~~. Deviations of greater than 40% from a numerical standard shall satisfy criteria for a Variance as determined by the Planning Commission using a Type III decision-making procedure.

*Staff: This change is an alternative way of addressing the challenge that three story multi-family projects have with a 35-foot height limit. It would allow staff to authorize adjustments to dimensional standards (up to 10%) in a ministerial fashion if the change results in additional dwelling units. The Wyndhaven Ridge Phase II example, where they needed 38.5 feet of building height, would have benefitted from this change.*

*Like the parking example, this code change would also get ahead of the new version of HB 3414, which is seeking to mandate that local governments provide small adjustments of this nature when requested by a housing developer.*

*The language was reworked, at the Planning Commission's request, to clarify that it is the Community Development Director that determines whether or not the change will allow additional dwelling units. That discussion occurred at the 12/11/23 work session. The Commission also inquired about options if the Director finds the change will not result in additional units. If that occurs, then the applicant would have the option of pursuing the deviation under*

*Subsection (B) which involves an appealable land use decision.*

*At a 3/4/24 work session, Council members expressed a concern about the potential aggregate impact of the 40-ft height allowance for multi-family and this 10 percent ministerial adjustment. The chance that a multi-family housing developer would seek up to a 10% adjustment to the 40-foot height limit to get an additional fourth floor is slim, but possible. It is a cost factor, as four floor apartments trigger the need for a Secondary access (OSSC Table 504.3) and the fire sprinkler system has to be upgraded, which is costly (OSSC Table 1006.34(1)). That said, , the highlighted language has been added to preclude approval of a second height adjustment as a ministerial act.*

---

## CHAPTER 14.52 PROCEDURAL REQUIREMENTS

\*\*\*

### 14.52.030 Approving Authorities

The approving authority for the various land use and ministerial actions shall be as follows:

\*\*\*

C. Community Development Director. Land use actions decided by the Director are identified below. A public hearing is not required prior to a decision being rendered. Items with an "\*" are subject to Director review as defined in the section of the ordinance containing the standards for that particular type of land use action. Decisions made by the Community Development Director may be appealed to the Planning Commission.

1. Conditional use permits\*.
2. Partitions, minor.
3. Replats, minor.
4. Estuarine review.
5. Adjustments\*.
6. Nonconforming use changes or expansions\*.



7. Design review\*.
8. Ocean shorelands review.
9. Any land use action defined as a Type I or Type II decision for which the Community Development Director is the initial approving authority.
10. Any land use action seeking to modify any action or conditions on actions above previously approved by the Community Development Director where no other modification process is identified.

11. Ministerial actions necessary to implement Title XIV of the Newport Municipal Code, including final plats, property line adjustment conveyance documents, public improvement agreements, temporary uses (unless an alternative process is provided), and confirmation that building permits satisfy clear and objective approval standards.

*Staff: This revision is needed to clarify that it is the Community Development Director, or designee, that is responsible for carrying out ministerial actions. Common types of ministerial actions are also listed.*

COMPARISON OF ADJUSTMENTS IN THE GOVERNOR’S HOUSING BILL (SB 1537) AND NEWPORT ORDINANCE NO. 2222, IMPLEMENTING THE CITY’S HOUSING PRODUCTION STRATEGY

	Governor’s Housing Bill (SB1537 Enrolled)	Draft Ordinance No. 2222
Scope	Net new housing units	All development types
Maximum Adjustments	10	No limit
Eligibility	Less costly, more timely housing, reduce sales/rental prices, affordable units, and accessibility. Density must be 6 units to the acre.	For housing, additional units
Decision Type	Limited land use (modified process)	Ministerial
Fee	TBD	N/A
Sunset	January 2, 2032	None
Type of Adjustments		
a. Setbacks	10% to side or rear	10% front, rear or side
b. Landscaping	25%	10% (no landscape requirement for single family detached/attached)
c. Parking Minimums	Total waiver	1:1 on-street credit option where parking existing on both sides of a street
d. Minimum lot size	10% size, width, depth	10% all dimensional provisions
e. Maximum lot size	10% size, width, depth	10% size
f. Building coverage	10%	10%
g. Bike parking stalls	Down to .5 spaces per unit	City standard is below threshold
h. Bike parking location	Must allow alternate location if lockable and covered	Not regulated
h. Building height	One-story or 20% of base zoning limit. Applies to manufactured dwelling parks, middle housing, multi-family, mixed-use. Excludes cottage clusters	Increases multi-family height limit to 40-ft (14% increase) if roof pitch is 4:12 or greater. All other buildings 10%.
i. Unit density maximums	Not more than amount necessary to account for other allowed adjustments. Applies to the same housing types	10%
j. Mixed-use prohibition ground floor residential	Must allow ground floor residential except one-face of the building that faces the street and is within 20-ft of the street	N/A
k. Mixed-use prohibition of ground floor non-residential	Must allow non-residential activities on ground floor that support residential uses, like day care, live-work space, offices, exercise facilities, etc. unless alternative uses specifically designated by government in a commercial corridor.	N/A
l. Design standards	Façade materials, color or pattern, façade articulation, roof forms and materials, entry and garage materials, garage door orientation (unless the building is adjacent to or across from a school or park), window materials (except bird-safe glazing), and window area (up to 30% provided at least 12% of the total façade is window area)	N/A
m. Building orientation requirements	Must allow for manufactured dwelling parks, middle housing, multi-family housing, and mixed use, unless they are transit street orientation requirements	N/A
n. Building height transition requirements	Not more than 50%. Same set of housing types	10%
o. Balconies and porches	Must allow adjustment. Same set of housing types	N/A
p. Recesses and off-sets	Must allow adjustment. Same set of housing types	10%

**Enrolled**  
**Senate Bill 1537**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Tina Kotek for Office of the Governor)

CHAPTER .....

AN ACT

Relating to housing; creating new provisions; amending ORS 183.471, 197.015, 197.195, 197.335, 197.843, 215.427, 227.178 and 455.770; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**HOUSING ACCOUNTABILITY AND PRODUCTION OFFICE**

**SECTION 1. Housing Accountability and Production Office.** (1) The Department of Land Conservation and Development and the Department of Consumer and Business Services shall enter into an interagency agreement to establish and administer the Housing Accountability and Production Office.

(2) The Housing Accountability and Production Office shall:

(a) Provide technical assistance, including assistance through grants, to local governments to:

- (A) Comply with housing laws;
- (B) Reduce permitting and land use barriers to housing production; and
- (C) Support reliable and effective implementation of local procedures and standards relating to the approval of residential development projects.

(b) Serve as a resource, which includes providing responses to requests for technical assistance with complying with housing laws, to:

- (A) Local governments, as defined in ORS 174.116; and
- (B) Applicants for land use and building permits for residential development who are experiencing permitting and land use barriers related to housing production.

(c) Investigate and respond to complaints of violations of housing laws under section 2 of this 2024 Act.

(d) Establish best practices related to model codes, typical drawings and specifications as described in ORS 455.062, procedures and practices by which local governments may comply with housing laws.

(e) Provide optional mediation of active disputes relating to housing laws between a local government and applicants for land use and building permits for residential development, including mediation under ORS 197.860.

(f) Coordinate agencies that are involved in the housing development process, including, but not limited to, the Department of Land Conservation and Development, Department of



Consumer and Business Services, Housing and Community Services Department and Oregon Business Development Department, to enable the agencies to support local governments and applicants for land use and building permits for residential development by identifying state agency technical and financial resources that can address identified housing development and feasibility barriers.

(g) Establish policy and funding priorities for state agency resources and programs for the purpose of addressing barriers to housing production, including, but not limited to, making recommendations for moneys needed for the purposes of section 35 of this 2024 Act.

(3) The Land Conservation and Development Commission and the Department of Consumer and Business Services shall coordinate in adopting, amending or repealing rules for:

(a) Carrying out the respective responsibilities of the departments and the office under sections 1 to 5 of this 2024 Act.

(b) Model codes, development plans, procedures and practices by which local governments may comply with housing laws.

(c) Establishing standards by which complaints are investigated and pursued.

(4) The office shall prioritize assisting local governments in voluntarily undertaking changes to come into compliance with housing laws.

(5) As used in sections 1 to 5 of this 2024 Act:

(a) "Housing law" means ORS chapter 197A and ORS 92.010 to 92.192, 92.830 to 92.845, 197.360 to 197.380, 197.475 to 197.493, 197.505 to 197.540, 197.660 to 197.670, 197.748, 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150, 455.152, 455.153, 455.156, 455.157, 455.165, 455.170, 455.175, 455.180, 455.185 to 455.198, 455.200, 455.202 to 455.208, 455.210, 455.220, 455.465 and 455.467 and administrative rules implementing those laws, to the extent that the law or rule imposes a mandatory duty on a local government or its officers, employees or agents and the application of the law or rule applies to residential development or pertains to a permit for a residential use or a division of land for residential purposes.

(b) "Residential" includes mixed-use residential development.

**SECTION 2. Office responses to violations of housing laws.** (1) The Housing Accountability and Production Office shall establish a form or format through which the office receives allegations of local governments' violations of housing laws that impact housing production. For complaints that relate to a specific development project, the office may receive complaints only from the project applicant. For complaints not related to a specific development project, the office may receive complaints from any person within the local government's jurisdiction or the Department of Land Conservation and Development or the Department of Consumer and Business Services.

(2)(a) Except as provided in paragraph (c) of this subsection, the office shall investigate suspected violations of housing laws or violations credibly alleged under subsection (1) of this section.

(b) The office shall develop consistent procedures to evaluate and determine the credibility of alleged violations of housing laws.

(c) If a complainant has filed a notice of appeal with the Land Use Board of Appeals or has initiated private litigation regarding any aspect of the application decision that was alleged to have been the subject of the housing law violation, the office may not further participate in the specific complaint or its appeal, except for:

(A) Providing agency briefs, including briefs under ORS 197.830 (8), to the board or the court;

(B) Providing technical assistance to the local government unrelated to the resolution of the specific complaint; or

(C) Mediation at the request of the local government and complainant, including mediation under ORS 197.860.

(3)(a) If the office has a reasonable basis to conclude that a violation was or is being committed, the office shall deliver written warning notice to the local government specifying

the violation and any authority under this section that the office intends to invoke if the violation continues or is not remedied. The notice must include an invitation to address or remedy the suspected violation through mediation, the execution of a compliance agreement to voluntarily remedy the situation, the adoption of suitable model codes developed by the office under section 1 (3)(b) of this 2024 Act or other remedies suitable to the specific violation.

(b) The office shall prioritize technical assistance funding to local governments that agree to comply with housing laws under this subsection.

(c) A determination by the office is not a legislative, judicial or quasi-judicial decision.

(4) No earlier than 60 days after a warning notice is delivered under subsection (3) of this section, the office may:

(a) Initiate a request for an enforcement order of the Land Conservation and Development Commission by delivering a notice of request under section 3 (3) of this 2024 Act.

(b) Seek a court order against a local government as described under ORS 455.160 (3) without being adversely affected or serving the demand as described in ORS 455.160 (2).

(c) Notwithstanding ORS 197.090 (2)(b) to (e), participate in and seek review of a matter under ORS 197.090 (2)(a) that pertains to housing laws without the notice or consent of the commission. No less than once every two years, the office shall report to the commission on the matters in which the office participated under this paragraph.

(d) Except regarding matters under the exclusive jurisdiction of the Land Use Board of Appeals, apply to a circuit court for an order compelling compliance with any housing law. If the court finds that the defendant is not complying with a housing law, the court may grant an injunction requiring compliance.

(5) The office may not, in the name of the office, exercise the authority of the Department of Land Conservation and Development under ORS 197A.130.

(6) The office shall send notice to each complainant under subsection (1) of this section at the time that the office:

(a) Takes any action under subsection (3) or (4) of this section; or

(b) Has determined that it will not take further actions or make further investigations.

(7) The actions authorized of the office under this section are in addition to and may be exercised in conjunction with any other investigative or enforcement authority that may be exercised by the Department of Land Conservation and Development, the Land Conservation and Development Commission or the Department of Consumer and Business Services.

(8) Nothing in this section:

(a) Amends the jurisdiction of the Land Use Board of Appeals or of a circuit court;

(b) Creates a new cause of action; or

(c) Tolls or extends:

(A) The statute of limitations for any claim; or

(B) The deadline for any appeal or other action.

**SECTION 3. Office enforcement orders.** (1) The Housing Accountability and Production Office may request an enforcement order under section 2 (4)(a) of this 2024 Act requiring that a local government take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions or actions into compliance with a housing law, except for a housing law that pertains to the state building code or the administration of the code.

(2) Except as otherwise provided in this section, a request for an enforcement order by the office is subject to the applicable provisions of ORS 197.335 and ORS chapter 183 and is not subject to ORS 197.319, 197.324 or 197.328.

(3) The office shall make a request for an enforcement order under this section by delivering a notice to the local government that states the grounds for initiation and summarizes the procedures for the enforcement order proceeding along with a copy of the notice

to the Land Conservation and Development Commission. A decision of the office to initiate an enforcement order is not subject to appeal.

(4) After receiving notice of an enforcement order request under subsection (3) of this section, the local government shall deliver a notice to an affected applicant, if any, in substantially the following form:

---

**NOTICE:** The Housing Accountability and Production Office has found good cause for an enforcement proceeding against \_\_\_\_\_ (name of local government). An enforcement order may be adopted that could limit, prohibit or require the application of specified criteria to any action authorized by this decision but not applied for until after the adoption of the enforcement order. Future applications for building permits or time extensions may be affected.

---

(5) Within 14 days after receipt by the commission of the notice under subsection (3) of this section, the Director of the Department of Land Conservation and Development shall assign the enforcement order proceedings to a hearings officer who is:

(a) An administrative law judge assigned under ORS 183.635; or

(b) A hearings officer randomly selected from a pool of officers appointed by the commission to review proceedings initiated under this section.

(6) The hearings officer shall schedule a contested case hearing within 60 days of the delivery of the notice to the commission under subsection (3) of this section.

(7)(a) The hearings officer shall prepare a proposed enforcement order or order of dismissal, including recommended findings and conclusions of law.

(b) A proposed enforcement order may require the local government to take any necessary action to comply with housing laws that is suitable to address the basis for the proposed enforcement order, including requiring the adoption or application of suitable models that have been developed by the office under section 1 (3)(b) of this 2024 Act.

(c) The hearings officer must issue and serve the proposed enforcement order on the office and all parties to the hearing within 30 days of the date the record closed.

(8)(a) The proposed enforcement order becomes a final order of the commission 14 days after service on the office and all parties to the hearing, unless the office or a party to the hearing appeals the proposed enforcement order to the commission prior to the proposed enforcement order becoming final.

(b) If the proposed enforcement order is appealed, the commission shall consider the matter at:

(A) Its next regularly scheduled meeting; or

(B) If the appeal is made 45 or fewer days prior to the next regularly scheduled meeting, at the following regularly scheduled meeting or a special meeting held earlier.

(9) The commission shall affirm, affirm with modifications or reverse the proposed enforcement order. The commission shall issue a final order no later than 30 days after the meeting at which it considered the matter.

(10) The commission may adopt rules administering this section, including rules related to standing, preserving issues for commission review or other provisions concerning the commission's scope and standard for review of proposed enforcement orders under this section.

**SECTION 4. Housing Accountability and Production Office Fund.** (1) The Housing Accountability and Production Office Fund is established in the State Treasury, separate and distinct from the General Fund.



(2) The Housing Accountability and Production Office Fund consists of moneys appropriated, allocated, deposited or transferred to the fund by the Legislative Assembly or otherwise.

(3) Interest earned by the fund shall be credited to the fund.

(4) Moneys in the fund are continuously appropriated to the Department of Land Conservation and Development to administer the fund, to operate the Housing Accountability and Production Office and to implement sections 1 to 5 of this 2024 Act.

**SECTION 5. Reporting.** On or before September 15, 2026, the Housing Accountability and Production Office shall:

(1) Contract with one or more organizations possessing relevant expertise to produce a report identifying improvements in the local building plan review approval, design review approval, land use, zoning and permitting processes, including but not limited to plan review approval timelines, process efficiency, local best practices and other ways to accelerate and improve the efficiency of the development process for construction, with a focus on increasing housing production.

(2) Produce a report based on a study by the office of state and local timelines and standards related to public works and building permit application review and develop recommendations for changes to reduce complexity, delay or costs that inhibit housing production, including an evaluation of their effect on the feasibility of varying housing types and affordability levels.

(3) Produce a report summarizing state agency plans, policies and programs related to reducing or eliminating regulatory barriers to the production of housing. The report must also include recommendations on how state agencies may prioritize resources and programs to increase housing production.

(4) Provide the reports under subsections (1) to (3) of this section to one or more appropriate interim committees of the Legislative Assembly in the manner provided in ORS 192.245.

**SECTION 6. Sunset.** Section 5 of this 2024 Act is repealed on January 2, 2027.

**SECTION 7. Operative and applicable dates.** (1) Sections 2 and 3 of this 2024 Act become operative on July 1, 2025.

(2) Sections 2 and 3 of this 2024 Act apply only to violations of housing laws occurring on or after July 1, 2025.

(3) The Department of Land Conservation and Development and Department of Consumer and Business Services may take any action before the operative date specified in subsection (1) of this section that is necessary for the departments or the Housing Accountability and Production Office to exercise, on and after the operative date, all of the duties, functions and powers conferred by sections 1 to 5, 35, 39 and 46 of this 2024 Act.

## OPTING IN TO AMENDED HOUSING REGULATIONS

**SECTION 8.** ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), (5) and (10) of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing

information. The application shall be deemed complete for the purpose of subsection (1) of this section and ORS 197A.470 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits additional information[, *as described in subsection (2) of this section,*] within 180 days of the date the application was first submitted [*and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251*], approval or denial of the application [*shall be based*] **must be based:**

(A) Upon the standards and criteria that were applicable at the time the application was first submitted[.]; or

**(B) For an application relating to development of housing, upon the request of the applicant, those standards and criteria that are operative at the time of the request.**

**(b) If an applicant requests review under different standards as provided in paragraph (a)(B) of this subsection:**

**(A) For the purposes of this section, any applicable timelines for completeness review and final decisions restart as if a new application were submitted on the date of the request;**

**(B) For the purposes of this section and ORS 197A.470 the application is not deemed complete until:**

**(i) The county determines that additional information is not required under subsection (2) of this section; or**

**(ii) The applicant makes a submission under subsection (2) of this section in response to a county's request;**

**(C) A county may deny a request under paragraph (a)(B) of this subsection if:**

**(i) The county has issued a public notice of the application; or**

**(ii) A request under paragraph (a)(B) of this subsection was previously made; and**

**(D) The county may not require that the applicant:**

**(i) Pay a fee, except to cover additional costs incurred by the county to accommodate the request;**

**(ii) Submit a new application or duplicative information, unless information resubmittal is required because the request affects or changes information in other locations in the application or additional narrative is required to understand the request in context; or**

**(iii) Repeat redundant processes or hearings that are inapplicable to the change in standards or criteria.**

*[(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.]*

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The period set in subsection (1) of this section or the 100-day period set in ORS 197A.470 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (10) of this section for mediation, may not exceed 215 days.

(6) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in subsection (10) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section and the 100-day period set in ORS 197A.470 do not apply to:

(a) A decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610; or

(b) A decision of a county involving an application for the development of residential structures within an urban growth boundary, where the county has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197A.470 or 215.429 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(10) The periods set forth in subsections (1) and (5) of this section and ORS 197A.470 may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.

**SECTION 9.** ORS 227.178 is amended to read:

227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section or ORS 197A.470 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted [*and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251*], approval or denial of the application [*shall*] **must** be based:

(A) Upon the standards and criteria that were applicable at the time the application was first submitted[.]; or

(B) **For an application relating to development of housing, upon the request of the applicant, those standards and criteria that are operative at the time of the request.**



**(b) If an applicant requests review under different standards as provided in paragraph (a)(B) of this subsection:**

**(A) For the purposes of this section, any applicable timelines for completeness review and final decisions restart as if a new application were submitted on the date of the request;**

**(B) For the purposes of this section and ORS 197A.470 the application is not deemed complete until:**

**(i) The city determines that additional information is not required under subsection (2) of this section; or**

**(ii) The applicant makes a submission under subsection (2) of this section in response to a city's request;**

**(C) A city may deny a request under paragraph (a)(B) of this subsection if:**

**(i) The city has issued a public notice of the application; or**

**(ii) A request under paragraph (a)(B) of this subsection was previously made; and**

**(D) The city may not require that the applicant:**

**(i) Pay a fee, except to cover additional costs incurred by the city to accommodate the request;**

**(ii) Submit a new application or duplicative information, unless information resubmittal is required because the request affects or changes information in other locations in the application or additional narrative is required to understand the request in context; or**

**(iii) Repeat redundant processes or hearings that are inapplicable to the change in standards or criteria.**

*[(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.]*

**(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:**

**(a) All of the missing information;**

**(b) Some of the missing information and written notice that no other information will be provided; or**

**(c) Written notice that none of the missing information will be provided.**

**(5) The 120-day period set in subsection (1) of this section or the 100-day period set in ORS 197A.470 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.**

**(6) The 120-day period set in subsection (1) of this section applies:**

**(a) Only to decisions wholly within the authority and control of the governing body of the city; and**

**(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).**

**(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section and the 100-day period set in ORS 197A.470 do not apply to:**

**(a) A decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610; or**

**(b) A decision of a city involving an application for the development of residential structures within an urban growth boundary, where the city has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.**

**(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit,**

limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197A.470 or 227.179 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The periods set forth in subsections (1) and (5) of this section and ORS 197A.470 may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

## ATTORNEY FEES FOR NEEDED HOUSING CHALLENGES

**SECTION 10.** ORS 197.843 is amended to read:

197.843. (1) The Land Use Board of Appeals shall award attorney fees to:

(a) An applicant whose application is only for the development of affordable housing[, *as defined in ORS 197A.445, or publicly supported housing, as defined in ORS 456.250*], if the board [*affirms a quasi-judicial land use decision approving the application or*] reverses a quasi-judicial land use decision denying the application[.];

**(b) An applicant whose application is only for the development of housing and was approved by the local government, if the board affirms the decision; and**

**(c) The local government that approved a quasi-judicial land use decision described in paragraph (b) of this subsection.**

**(2) For housing other than affordable housing, the attorney fees specified in subsection (1)(b) and (c) of this section apply only within urban growth boundaries.**

[(2)] (3) A party who was awarded attorney fees under this section or ORS 197.850 shall repay the fees plus any interest from the time of the judgment if the property upon which the fees are based is developed for a use other than [*affordable*] **the proposed** housing.

[(3)] (4) As used in this section:

[(a) "*Applicant*" includes:]

*[(A) An applicant with a funding reservation agreement with a public funder for the purpose of developing publicly supported housing;]*

*[(B) A housing authority, as defined in ORS 456.005;]*

*[(C) A qualified housing sponsor, as defined in ORS 456.548;]*

*[(D) A religious nonprofit corporation;]*

*[(E) A public benefit nonprofit corporation whose primary purpose is the development of affordable housing; and]*

*[(F) A local government that approved the application of an applicant described in this paragraph.]*

**(a) “Affordable housing” means affordable housing, as defined in ORS 197A.445, or publicly supported housing, as defined in ORS 456.250.**

**(b) “Attorney fees” includes prelitigation legal expenses, including preparing and processing the application and supporting the application in local land use hearings or proceedings.**

**SECTION 11. Operative and applicable dates. (1) The amendments to ORS 197.843 by section 10 of this 2024 Act become operative on January 1, 2025.**

**(2) The amendments to ORS 197.843 by section 10 of this 2024 Act apply to decisions for which a notice of intent to appeal under ORS 197.830 is filed on or after January 1, 2025.**

## **INFRASTRUCTURE SUPPORTING HOUSING PRODUCTION**

**SECTION 12. Sections 13 and 14 of this 2024 Act are added to and made a part of ORS chapter 285A.**

**SECTION 13. Capacity and support for infrastructure planning. The Oregon Business Development Department shall provide capacity and support for infrastructure planning to municipalities to enable them to plan and finance infrastructure for water, sewers and sanitation, stormwater and transportation consistent with opportunities to produce housing units at densities defined in section 55 (3)(a)(C) of this 2024 Act. “Capacity and support” includes assistance with local financing opportunities, state and federal grant navigation, writing, review and administration, resource sharing, regional collaboration support and technical support, including engineering and design assistance and other capacity or support as the department may designate by rule.**

**SECTION 14. Housing Infrastructure Support Fund. (1) The Housing Infrastructure Support Fund is established in the State Treasury, separate and distinct from the General Fund.**

**(2) The Housing Infrastructure Support Fund consists of moneys appropriated, allocated, deposited or transferred to the fund by the Legislative Assembly or otherwise.**

**(3) Interest earned by the fund shall be credited to the fund.**

**(4) Moneys in the fund are continuously appropriated to the Oregon Business Development Department to administer the fund and to implement section 13 of this 2024 Act.**

**SECTION 15. Sunset. (1) Sections 13 and 14 of this 2024 Act are repealed on January 2, 2030.**

**(2) Any unobligated moneys in the Housing Infrastructure Support Fund on January 2, 2030, must be transferred to the General Fund for general governmental purposes.**

**SECTION 16. Infrastructure recommendation and reporting. (1) On or before December 31, 2024, the Department of Land Conservation and Development, in consultation with the Housing and Community Services Department, the Oregon Business Development Department and other agencies that fund and support local infrastructure projects, shall submit a report to an appropriate interim committee of the Legislative Assembly in the manner provided in ORS 192.245 that includes a list of key considerations and metrics the Legislative Assembly could use to evaluate, screen and prioritize proposed local infrastructure projects that facilitate and support housing within an urban growth boundary.**



(2) The Department of Land Conservation and Development shall facilitate an engagement process with local governments, tribal nations, the development community, housing advocates, conservation groups, property owners, community partners and other interested parties to inform the list of key considerations and metrics.

**NOTE:** Sections 17 through 23 were deleted by amendment. Subsequent sections were not re-numbered.

## HOUSING PROJECT REVOLVING LOANS

### **SECTION 24.** As used in sections 24 to 35 of this 2024 Act:

(1) “Assessor,” “tax collector” and “treasurer” mean the individual filling that county office so named or any county officer performing the functions of the office under another name.

(2) “County tax officers” and “tax officers” mean the assessor, tax collector and treasurer of a county.

(3) “Eligible costs” means the following costs associated with an eligible housing project:

(a) Infrastructure costs, including, but not limited to, system development charges;

(b) Predevelopment costs;

(c) Construction costs; and

(d) Land write-downs.

(4) “Eligible housing project” means a project to construct housing, or to convert a building from a nonresidential use to housing, that is:

(a) Affordable to households with low income or moderate income as those terms are defined in ORS 458.610;

(b) If for-sale property, a single-family dwelling, middle housing as defined in ORS 197A.420 or a multifamily dwelling that is affordable as described in paragraph (a) of this subsection continuously from initial sale for a period, to be established by the Housing and Community Services Department and the sponsoring jurisdiction, of not less than the term of the loan related to the for-sale property; or

(c) If rental property:

(A)(i) Middle housing as defined in ORS 197A.420;

(ii) A multifamily dwelling;

(iii) An accessory dwelling unit as defined in ORS 215.501; or

(iv) Any other form of affordable housing or moderate income housing; and

(B) Rented at a monthly rate that is affordable to households with an annual income not greater than 120 percent of the area median income, such affordability to be maintained for a period, to be established by the department and the sponsoring jurisdiction, of not less than the term of the loan related to the rental property.

(5) “Eligible housing project property” means the taxable real and personal property constituting the improvements of an eligible housing project.

(6) “Fee payer” means, for any property tax year, the person responsible for paying ad valorem property taxes on eligible housing project property to which a grant awarded under section 29 of this 2024 Act relates.

(7) “Fire district taxes” means property taxes levied by fire districts within whose territory all or a portion of eligible housing project property is located.

(8) “Nonexempt property” means property other than eligible housing project property in the tax account that includes eligible housing project property.

(9) “Nonexempt taxes” means the ad valorem property taxes assessed on nonexempt property.

(10) “Sponsoring jurisdiction” means:

(a)(A) A city with respect to eligible housing projects located within the city boundaries;  
or

(B) A county with respect to eligible housing projects located in urban unincorporated areas of the county; or

(b) The governing body of a city or county described in paragraph (a) of this subsection.

**SECTION 25.** (1)(a) A sponsoring jurisdiction may adopt by ordinance or resolution a program under which the sponsoring jurisdiction awards grants to developers for eligible costs.

(b) Before adopting the program, the sponsoring jurisdiction shall consult with the governing body of any city or county with territory inside the boundaries of the sponsoring jurisdiction.

(2) The ordinance or resolution shall set forth:

(a) The kinds of eligible housing projects for which a developer may seek a grant under the program; and

(b) Any eligibility requirements to be imposed on projects and developers in addition to those required under sections 24 to 35 of this 2024 Act.

(3) A grant award:

(a) Shall be in the amount determined under section 26 (3) of this 2024 Act; and

(b) May include reimbursement for eligible costs incurred for up to 12 months preceding the date on which the eligible housing project received local site approval.

(4) Eligible housing project property for which a developer receives a grant for eligible costs may not be granted any exemption, partial exemption or special assessment of ad valorem property taxes other than the exemption granted under section 30 of this 2024 Act.

(5) A sponsoring jurisdiction may amend an ordinance or resolution adopted pursuant to this section at any time. The amendments shall apply only to applications submitted under section 26 of this 2024 Act on or after the effective date of the ordinance or resolution.

**SECTION 26.** (1)(a) A sponsoring jurisdiction that adopts a grant program pursuant to section 25 of this 2024 Act shall prescribe an application process, including forms and deadlines, by which a developer may apply for a grant with respect to an eligible housing project.

(b) An application for a grant must include, at a minimum:

(A) A description of the eligible housing project;

(B) A detailed explanation of the affordability of the eligible housing project;

(C) An itemized description of the eligible costs for which the grant is sought;

(D) The proposed schedule for completion of the eligible housing project;

(E) A project pro forma demonstrating that the project would not be economically feasible but for receipt of the grant moneys; and

(F) Any other information, documentation or attestation that the sponsoring jurisdiction considers necessary or convenient for the application review process.

(c)(A) The project pro forma under paragraph (b)(E) of this subsection shall be on a form provided to the sponsoring jurisdiction by the Housing and Community Services Department and made available to grant applicants.

(B) The department may enter into an agreement with a third party to develop the project pro forma template.

(2)(a) The review of an application under this section shall be completed within 90 days following the receipt of the application by the sponsoring jurisdiction.

(b) Notwithstanding paragraph (a) of this subsection:

(A) The sponsoring jurisdiction may in its sole discretion extend the review process beyond 90 days if the volume of applications would make timely completion of the review process unlikely.

(B) The sponsoring jurisdiction may consult with a developer about the developer's application, and the developer, after the consultation, may amend the application on or before a deadline set by the sponsoring jurisdiction.

(3) The sponsoring jurisdiction shall:

(a) Review each application;

(b) Request that the county tax officers provide to the sponsoring jurisdiction the amounts determined under section 27 of this 2024 Act;

(c) Set the term of the loan that will fund the grant award for a period not to exceed the greater of:

(A) Ten years following July 1 of the first property tax year for which the completed eligible housing project property is estimated to be taken into account; or

(B) If agreed upon by the sponsoring jurisdiction and the department, the period required for the loan principal and fees to be repaid in full;

(d) Set the amount of the grant that may be awarded to the developer under section 29 (2) of this 2024 Act by multiplying the increment determined under section 27 (1)(c) of this 2024 Act by the term of the loan; and

(e)(A) Provisionally approve the application as submitted;

(B) Provisionally approve the application on terms other than those requested in the application; or

(C) Reject the application.

(4)(a) The sponsoring jurisdiction shall forward provisionally approved applications to the Housing and Community Services Department.

(b) The department shall review the provisionally approved applications for completeness, including, but not limited to, the completeness of the project pro forma submitted with the application under subsection (1)(b)(E) of this section and the amounts computed under section 27 (1) of this 2024 Act and notify the sponsoring jurisdiction of its determination.

(5)(a) If the department has determined that a provisionally approved application is incomplete, the sponsoring jurisdiction may:

(A) Consult with the applicant developer and reconsider the provisionally approved application after the applicant revises it; or

(B) Reject the provisionally approved application.

(b) If the department has determined that a provisionally approved application is complete, the approval shall be final.

(c) The sponsoring jurisdiction shall notify each applicant and the department of the final approval or rejection of an application and the amount of the grant award.

(d) The rejection of an application and the amount of a grant award may not be appealed, but a developer may reapply for a grant at any time within the applicable deadlines of the grant program for the same or another eligible housing project.

(6) Upon request by a sponsoring jurisdiction, the department may assist the sponsoring jurisdiction with, or perform on behalf of the sponsoring jurisdiction, any duty required under this section.

**SECTION 27.** (1) Upon request of the sponsoring jurisdiction under section 26 (3)(b) of this 2024 Act, the assessor of the county in which is located the eligible housing project to which an application being reviewed under section 26 of this 2024 Act relates shall:

(a) Using the last certified assessment roll for the property tax year in which the application is received under section 26 of this 2024 Act:

(A) Determine the amount of property taxes assessed against all tax accounts that include the eligible housing project property; and

(B) Subtract the amount of operating taxes as defined in ORS 310.055 and local option taxes as defined in ORS 310.202 levied by fire districts from the amount determined under subparagraph (A) of this paragraph.

(b) For the first property tax year for which the completed eligible housing project property is estimated to be taken into account:

(A) Determine the estimated amount of property taxes that will be assessed against all tax accounts that include the eligible housing project property; and

(B) Subtract the estimated amount of operating taxes and local option taxes levied by fire districts from the amount determined under subparagraph (A) of this paragraph.



(c) Determine the amount of the increment that results from subtracting the amount determined under subsection (1)(a) of this section from the amount determined under subsection (1)(b) of this section.

(2) As soon as practicable after determining amounts under this section, the county tax officers shall provide written notice to the sponsoring jurisdiction of the amounts.

**SECTION 28.** (1)(a) The Housing and Community Services Department shall develop a program to make loans to sponsoring jurisdictions to fund grants awarded under the sponsoring jurisdiction's grant program adopted pursuant to section 25 of this 2024 Act.

(b) The loans shall be interest free for the term set by the sponsoring jurisdiction under section 26 (3)(c) of this 2024 Act.

(2) For each application approved under section 26 (5)(b) of this 2024 Act, the Housing and Community Services Department shall:

(a) Enter into a loan agreement with the sponsoring jurisdiction for a payment in an amount equal to the total of:

(A) Loan proceeds in an amount equal to the grant award for the application set under section 26 (3)(d) of this 2024 Act; and

(B) The administrative costs set forth in subsection (3) of this section; and

(b) Pay to the sponsoring jurisdiction the total amount set forth in paragraph (a) of this subsection out of the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

(3) The administrative costs referred to in subsection (2)(a)(B) of this section are:

(a) An amount not greater than five percent of the loan proceeds to reimburse the sponsoring jurisdiction for the costs of administering the grant program, other than the costs of tax administration; and

(b) An amount equal to one percent of the loan proceeds to be transferred to the county in which the sponsoring jurisdiction is situated to reimburse the county for the costs of the tax administration of the grant program by the county tax officers.

(4) The Housing and Community Services Department may assign any and all loan amounts made under this section to the Department of Revenue for collection as provided in ORS 293.250.

(5) The Housing and Community Services Department may:

(a) Consult with the Oregon Business Development Department about any of the powers and duties conferred on the Housing and Community Services Department by sections 24 to 35 of this 2024 Act; and

(b) Adopt any rule it considers necessary or convenient for the administration of sections 24 to 35 of this 2024 Act by the Housing and Community Services Department.

**SECTION 29.** (1) Upon entering into a loan agreement with the Housing and Community Services Department under section 28 of this 2024 Act, a sponsoring jurisdiction shall offer a grant agreement to each developer whose application was approved under section 26 (5)(b) of this 2024 Act.

(2) The grant agreement shall:

(a) Include a grant award in the amount set under section 26 (3)(d) of this 2024 Act; and

(b) Contain terms that:

(A) Are required under sections 24 to 35 of this 2024 Act or the ordinance or resolution adopted by the sponsoring jurisdiction pursuant to section 25 of this 2024 Act.

(B) Do not conflict with sections 24 to 35 of this 2024 Act or the ordinance or resolution adopted by the sponsoring jurisdiction pursuant to section 25 of this 2024 Act.

(3) Upon entering into a grant agreement with a developer, a sponsoring jurisdiction shall adopt an ordinance or resolution setting forth the details of the eligible housing project that is the subject of the agreement, including but not limited to:

(a) A description of the eligible housing project;

(b) An itemized description of the eligible costs;

- (c) The amount and terms of the grant award;
  - (d) Written notice that the eligible housing project property is exempt from property taxation in accordance with section 30 of this 2024 Act; and
  - (e) A statement declaring that the grant has been awarded in response to the housing needs of communities within the sponsoring jurisdiction.
- (4) Unless otherwise specified in the grant agreement, as soon as practicable after the ordinance or resolution required under subsection (3) of this section becomes effective, the sponsoring jurisdiction shall distribute the loan proceeds received from the department under section 28 (2)(a)(A) of this 2024 Act to the developer as the grant moneys awarded under this section.
- (5) The sponsoring jurisdiction shall forward to the tax officers of the county in which the eligible housing project is located a copy of the grant agreement, the ordinance or resolution and any other material the sponsoring jurisdiction considers necessary for the tax officers to perform their duties under sections 24 to 35 of this 2024 Act or the ordinance or resolution.
- (6) Upon request, the department may assist the sponsoring jurisdiction with, or perform on behalf of the sponsoring jurisdiction, any duty required under this section.

**SECTION 30.** (1) Upon receipt of the copy of a grant agreement and ordinance or resolution from the sponsoring jurisdiction under section 29 (5) of this 2024 Act, the assessor of the county in which eligible housing project property is located shall:

- (a) Exempt the eligible housing project property in accordance with this section;
  - (b) Assess and tax the nonexempt property in the tax account as other similar property is assessed and taxed; and
  - (c) Submit a written report to the sponsoring jurisdiction setting forth the assessor's estimate of the amount of:
    - (A) The real market value of the exempt eligible housing project property; and
    - (B) The property taxes on the exempt eligible housing project property that would have been collected if the property were not exempt.
- (2)(a) The exemption shall first apply to the first property tax year that begins after completion of the eligible housing project to which the grant relates.
- (b) The eligible housing project property shall be disqualified from the exemption on the earliest of:
    - (A) July 1 of the property tax year immediately succeeding the date on which the fee payment obligation under section 32 of this 2024 Act that relates to the eligible housing project is repaid in full;
    - (B) The date on which the annual fee imposed on the fee payer under section 32 of this 2024 Act becomes delinquent;
    - (C) The date on which foreclosure proceedings are commenced as provided by law for delinquent nonexempt taxes assessed with respect to the tax account that includes the eligible housing project; or
    - (D) The date on which a condition specified in section 33 (1) of this 2024 Act occurs.
  - (c) After the eligible housing project property has been disqualified from the exemption under this subsection, the property shall be assessed and taxed as other similar property is assessed and taxed.

(3) For each tax year that the eligible housing project property is exempt from taxation, the assessor shall enter a notation on the assessment roll stating:

- (a) That the property is exempt under this section; and
- (b) The presumptive number of property tax years for which the exemption is granted, which shall be the term of the loan agreement relating to the eligible housing project set under section 26 (3)(c) of this 2024 Act.

**SECTION 31.** (1) Repayment of loans made under section 28 of this 2024 Act shall begin, in accordance with section 32 of this 2024 Act, after completion of the eligible housing project funded by the grant to which the loan relates.

(2)(a) The sponsoring jurisdiction shall determine the date of completion of an eligible housing project.

(b)(A) If an eligible housing project is completed before July 1 of the assessment year, repayment shall begin with the property tax year that begins on July 1 of the assessment year.

(B) If an eligible housing project is completed on or after July 1 of the assessment year, repayment shall begin with the property tax year that begins on July 1 of the succeeding assessment year.

(c) After determining the date of completion under paragraph (a) of this subsection, the sponsoring jurisdiction shall notify the Housing and Community Services Department and the county tax officers of the determination.

(3) A loan shall remain outstanding until repaid in full.

**SECTION 32.** (1) The fee payer for eligible housing project property that has been granted exemption under section 30 of this 2024 Act shall pay an annual fee for the term that shall be the presumptive number of years for which the property is granted exemption under section 30 (3)(b) of this 2024 Act.

(2)(a) The amount of the fee for the first property tax year in which repayment of the loan is due under section 31 (1) of this 2024 Act shall equal the total of:

(A) The portion of the increment determined under section 27 (1)(c) of this 2024 Act that is attributable to the eligible housing project property to which the fee relates; and

(B) The administrative costs described in section 28 (3) of this 2024 Act divided by the term of the grant agreement entered into under section 29 of this 2024 Act.

(b) For each subsequent property tax year, the amount of the fee shall be 103 percent of the amount of the fee for the preceding property tax year.

(3)(a) Not later than July 15 of each property tax year during the term of the fee obligation, the sponsoring jurisdiction shall certify to the assessor each fee amount that became due under this section on or after July 16 of the previous property tax year from fee payers with respect to eligible housing projects located in the sponsoring jurisdiction.

(b) The assessor shall place each fee amount on the assessment and tax rolls of the county and notify:

(A) The sponsoring jurisdiction of each fee amount and the aggregate of all fee amounts imposed with respect to eligible housing project property located in the sponsoring jurisdiction.

(B) The Housing and Community Services Department of each fee amount and the aggregate of all fee amounts with respect to all eligible housing project property located in the county.

(4)(a) The assessor shall include on the tax statement of each tax account that includes exempt eligible housing project property the amount of the fee imposed on the fee payer with respect to the eligible housing project property.

(b) The fee shall be collected and enforced in the same manner as ad valorem property taxes, including nonexempt taxes, are collected and enforced.

(5)(a) For each property tax year in which a fee is payable under this section, the treasurer shall:

(A) Estimate the amount of operating taxes as defined in ORS 310.055 and local option taxes as defined in ORS 310.202 levied by fire districts that would have been collected on eligible housing project property if the property were not exempt;

(B) Distribute out of the fee moneys the amounts determined under subparagraph (A) of this paragraph to the respective fire districts when other ad valorem property taxes are distributed under ORS 311.395; and



(C) Transfer the net fee moneys to the Housing and Community Services Department for deposit in the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act in repayment of the loans to which the fees relate.

(b) Nonexempt taxes shall be distributed in the same manner as other ad valorem property taxes are distributed.

(6) Any person with an interest in the eligible housing project property on the date on which any fee amount becomes due shall be jointly and severally liable for payment of the fee amount.

(7) Any loan amounts that have not been repaid when the fee payer has discharged its obligations in full under this section remain the obligation of the sponsoring jurisdiction that obtained the loan from the department under section 28 of this 2024 Act.

(8) Any fee amounts collected in excess of the loan amount shall be distributed in the same manner as other ad valorem property taxes are distributed.

**SECTION 33.** (1)(a) A developer that received a grant award under section 29 of this 2024 Act shall become liable for immediate payment of any outstanding annual fee payments imposed under section 32 of this 2024 Act for the entire term of the fee if:

(A) The developer has not completed the eligible housing project within three years following the date on which the grant moneys were distributed to the developer;

(B) The eligible housing project changes substantially from the project for which the developer's application was approved such that the project would not have been eligible for the grant; or

(C) The developer has not complied with a requirement specified in the grant agreement.

(b) The sponsoring jurisdiction may, in its sole discretion, extend the date on which the eligible housing project must be completed.

(2) If the sponsoring jurisdiction discovers that a developer willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain a grant with respect to an eligible housing project, the sponsoring jurisdiction may impose on the developer a penalty not to exceed 20 percent of the amount of the grant so obtained, plus any applicable interest and fees associated with the costs of collection.

(3) Any amounts imposed under subsection (1) or (2) of this section shall be a lien on the eligible housing project property and the nonexempt property in the tax account.

(4) The sponsoring jurisdiction shall provide written notice of any amounts that become due under subsections (1) and (2) of this section to the county tax officers and the Housing and Community Services Department.

(5)(a) Any and all amounts required to be paid under this section shall be considered to be liquidated and delinquent, and the Housing and Community Services Department shall assign such amounts to the Department of Revenue for collection as provided in ORS 293.250.

(b) Amounts collected under this subsection shall be deposited, net of any collection charges, in the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

**SECTION 34.** (1) Not later than June 30 of each year in which a grant agreement entered into under section 29 of this 2024 Act is in effect, a developer that is party to the agreement shall submit a report to the sponsoring jurisdiction in which the eligible housing project is located that contains:

(a) The status of the construction or conversion of the eligible housing project property, including an estimate of the date of completion;

(b) An itemized description of the uses of the grant moneys; and

(c) Any information the sponsoring jurisdiction considers important for evaluating the eligible housing project and the developer's performance under the terms of the grant agreement.

(2) Not later than August 15 of each year, each sponsoring jurisdiction shall submit to the Housing and Community Services Department a report containing such information re-

lating to eligible housing projects within the sponsoring jurisdiction as the department requires.

(3)(a) Not later than November 15 of each year, the department shall submit, in the manner required under ORS 192.245, a report to the interim committees of the Legislative Assembly related to housing.

(b) The report shall set forth in detail:

(A) The information received from sponsoring jurisdictions under subsection (2) of this section;

(B) The status of the repayment of all outstanding loans made under section 28 of this 2024 Act and of the payment of all fees imposed under section 32 of this 2024 Act and all amounts imposed under section 33 of this 2024 Act; and

(C) The cumulative experience of the program developed and implemented under sections 24 to 35 of this 2024 Act.

(c) The report may include recommendations for legislation.

**SECTION 35.** (1) The Housing Project Revolving Loan Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Housing Project Revolving Loan Fund shall be credited to the fund.

(2) Moneys in the fund may be invested as provided by ORS 293.701 to 293.857, and the earnings from the investments shall be credited to the fund.

(3) Moneys in the Housing Project Revolving Loan Fund shall consist of:

(a) Amounts appropriated or otherwise transferred or credited to the fund by the Legislative Assembly;

(b) Net fee moneys transferred under section 32 of this 2024 Act;

(c) Amounts deposited in the fund under section 33 of this 2024 Act;

(d) Interest and other earnings received on moneys in the fund; and

(e) Other moneys or proceeds of property from any public or private source that are transferred, donated or otherwise credited to the fund.

(4) Moneys in the Housing Project Revolving Loan Fund are continuously appropriated to the Housing and Community Services Department for the purpose of paying amounts determined under section 28 of this 2024 Act.

(5) Moneys in the Housing Project Revolving Loan Fund at the end of a biennium shall be retained in the fund and used for the purposes set forth in subsection (4) of this section.

**SECTION 36.** (1) The Housing and Community Services Department shall have developed and begun operating the loan program that the department is required to develop under section 28 of this 2024 Act, including regional trainings and outreach for jurisdictional partners, no later than June 30, 2025.

(2) In the first two years in which the loan program is operating, the department may not expend an amount in excess of two-thirds of the moneys appropriated to the department for the purpose under section 62 of this 2024 Act.

## HOUSING LAND USE ADJUSTMENTS

**SECTION 37.** Sections 38 to 41 of this 2024 Act are added to and made a part of ORS chapter 197A.

**SECTION 38. Mandatory adjustment to housing development standards.** (1) As used in sections 38 to 41 of this 2024 Act:

(a) "Adjustment" means a deviation from an existing land use regulation.

(b) "Adjustment" does not include:

(A) A request to allow a use of property not otherwise permissible under applicable zoning requirements;

(B) Deviations from land use regulations or requirements related to accessibility, affordability, fire ingress or egress, safety, local tree codes, hazardous or contaminated site

clean-up, wildlife protection, or statewide land use planning goals relating to natural resources, natural hazards, the Willamette River Greenway, estuarine resources, coastal shorelands, beaches and dunes or ocean resources;

(C) A complete waiver of land use regulations or any changes beyond the explicitly requested and allowed adjustments; or

(D) Deviations to requirements related to the implementation of fire or building codes, federal or state air, water quality or surface, ground or stormwater requirements, or requirements of any federal, state or local law other than a land use regulation.

(2) Except as provided in section 39 of this 2024 Act, a local government shall grant a request for an adjustment in an application to develop housing as provided in this section. An application qualifies for an adjustment under this section only if the following conditions are met:

(a) The application is for a building permit or a quasi-judicial, limited or ministerial land use decision;

(b) The development is on lands zoned to allow for residential uses, including mixed-use residential;

(c) The residential development is for densities not less than those required under section 55 (3)(a)(C) of this 2024 Act;

(d) The development is within an urban growth boundary, not including lands that have not been annexed by a city;

(e) The development is of net new housing units in new construction projects, including:

(A) Single-family or multifamily;

(B) Mixed-use residential where at least 75 percent of the developed floor area will be used for residential uses;

(C) Manufactured dwelling parks;

(D) Accessory dwelling units; or

(E) Middle housing as defined in ORS 197A.420;

(f) The application requests not more than 10 distinct adjustments to development standards as provided in this section. A “distinct adjustment” means:

(A) An adjustment to one of the development standards listed in subsection (4) of this section where each discrete adjustment to a listed development standard that includes multiple component standards must be counted as an individual adjustment; or

(B) An adjustment to one of the development standards listed in subsection (5) of this section where each discrete adjustment to a listed development standard that includes multiple component standards must be counted as an individual adjustment; and

(g) The application states how at least one of the following criteria apply:

(A) The adjustments will enable development of housing that is not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations;

(B) The adjustments will enable development of housing that reduces the sale or rental prices per residential unit;

(C) The adjustments will increase the number of housing units within the application;

(D) All of the units in the application are subject to an affordable housing covenant as described in ORS 456.270 to 456.295, making them affordable to moderate income households as defined in ORS 456.270 for a minimum of 30 years;

(E) At least 20 percent of the units in the application are subject to an affordable housing covenant as described in ORS 456.270 to 456.295, making them affordable to low income households as defined in ORS 456.270 for a minimum of 60 years;

(F) The adjustments will enable the provision of accessibility or visitability features in housing units that are not otherwise feasible due to cost or delay resulting from the unadjusted land use regulations; or

(G) All of the units in the application are subject to a zero equity, limited equity, or shared equity ownership model including resident-owned cooperatives and community land

trusts making them affordable to moderate income households as described in ORS 456.270 to 456.295 for a period of 90 years.

(3) A decision on an application for an adjustment made under this section is a limited land use decision. Only the applicant may appeal the decision. No notice of the decision is required if the application is denied, other than notice to the applicant. In implementing this subsection, a local government may:

(a) Use an existing process, or develop and apply a new process, that complies with the requirements of this subsection; or

(b) Directly apply the process set forth in this subsection.

(4) A local government shall grant an adjustment to the following development standards:

(a) Side or rear setbacks, for an adjustment of not more than 10 percent.

(b) For an individual development project, the common area, open space or area that must be landscaped on the same lot or parcel as the proposed housing, for a reduction of not more than 25 percent.

(c) Parking minimums.

(d) Minimum lot sizes, not more than a 10 percent adjustment, and including not more than a 10 percent adjustment to lot widths or depths.

(e) Maximum lot sizes, not more than a 10 percent adjustment, including not more than a 10 percent adjustment to lot width or depths and only if the adjustment results in:

(A) More dwelling units than would be allowed without the adjustment; and

(B) No reduction in density below the minimum applicable density.

(f) Building lot coverage requirements for up to a 10 percent adjustment.

(g) For manufactured dwelling parks, middle housing as defined in ORS 197A.420, multi-family housing and mixed-use residential housing:

(A) Requirements for bicycle parking that establish:

(i) The minimum number of spaces for use by the residents of the project, provided the application includes at least one-half space per residential unit; or

(ii) The location of the spaces, provided that lockable, covered bicycle parking spaces are within or adjacent to the residential development;

(B) For uses other than cottage clusters, as defined in ORS 197A.420 (1)(c)(D), building height maximums that:

(i) Are in addition to existing applicable height bonuses, if any; and

(ii) Are not more than an increase of the greater of:

(I) One story; or

(II) A 20 percent increase to base zone height with rounding consistent with methodology outlined in city code, if any;

(C) Unit density maximums, not more than an amount necessary to account for other adjustments under this section; and

(D) Prohibitions, for the ground floor of a mixed-use building, against:

(i) Residential uses except for one face of the building that faces the street and is within 20 feet of the street; and

(ii) Nonresidential active uses that support the residential uses of the building, including lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity spaces or live-work spaces, except for active uses in specifically and clearly defined mixed use areas or commercial corridors designated by local governments.

(5) A local government shall grant an adjustment to design standards that regulate:

(a) Facade materials, color or pattern.

(b) Facade articulation.

(c) Roof forms and materials.

(d) Entry and garage door materials.

(e) Garage door orientation, unless the building is adjacent to or across from a school or public park.



- (f) Window materials, except for bird-safe glazing requirements.
- (g) Total window area, for up to a 30 percent adjustment, provided the application includes at least 12 percent of the total facade as window area.
- (h) For manufactured dwelling parks, middle housing as defined in ORS 197A.420, multi-family housing and mixed-use residential:
  - (A) Building orientation requirements, not including transit street orientation requirements.
  - (B) Building height transition requirements, not more than a 50 percent adjustment from the base zone.
  - (C) Requirements for balconies and porches.
  - (D) Requirements for recesses and offsets.

**SECTION 39. Mandatory adjustments exemption process.** (1) A local government may apply to the Housing Accountability and Production Office for an exemption to section 38 of this 2024 Act only as provided in this section. After the application is made, section 38 of this 2024 Act does not apply to the applicant until the office denies the application or revokes the exemption.

(2) To qualify for an exemption under this section, the local government must demonstrate that:

(a) The local government reviews requested design and development adjustments for all applications for the development of housing that are under the jurisdiction of that local government;

(b) All listed development and design adjustments under section 38 (4) and (5) of this 2024 Act are eligible for an adjustment under the local government's process; and

(c)(A) Within the previous 5 years the city has approved 90 percent of received adjustment requests; or

(B) The adjustment process is flexible and accommodates project needs as demonstrated by testimonials of housing developers who have utilized the adjustment process within the previous five years.

(3) Upon receipt of an application under this section, the office shall allow for public comment on the application for a period of no less than 45 days. The office shall enter a final order on the adjustment exemption within 120 days of receiving the application. The approval of an application may not be appealed.

(4) In approving an exemption, the office may establish conditions of approval requiring that the city demonstrate that it continues to meet the criteria under subsection (2) of this section.

(5) Local governments with an approved or pending exemption under this section shall clearly and consistently notify applicants, including prospective applicants seeking to request an adjustment, that are engaged in housing development:

(a) That the local government is employing a local process in lieu of section 38 of this 2024 Act;

(b) Of the development and design standards for which an applicant may request an adjustment in a housing development application; and

(c) Of the applicable criteria for the adjustment application.

(6) In response to a complaint and following an investigation, the office may issue an order revoking an exemption issued under this section if the office determines that the local government is:

(a) Not approving adjustments as required by the local process or the terms of the exemption;

(b) Engaging in a pattern or practice of violating housing-related statutes or implementing policies that create unreasonable cost or delays to housing production under ORS 197.320 (13)(a); or

(c) Failing to comply with conditions of approval adopted under subsection (4) of this section.

**SECTION 40. Temporary exemption authority.** Before January 1, 2025, notwithstanding section 39 of this 2024 Act:

(1) Cities may deliver applications for exemption under section 39 of this 2024 Act to the Department of Land Conservation and Development; and

(2) The Department of Land Conservation and Development may perform any action that the Housing Accountability and Production Office may take under section 39 of this 2024 Act. Decisions and actions of the department under this section are binding on the office.

**SECTION 41. Reporting.** (1) A city required to provide a report under ORS 197A.110 shall include as part of that report information reasonably requested from the Department of Land Conservation and Development on residential development produced through approvals of adjustments granted under section 38 of this 2024 Act. The department may not develop a separate process for collecting this data or otherwise place an undue burden on local governments.

(2) On or before September 15 of each even-numbered year, the department shall provide a report to an interim committee of the Legislative Assembly related to housing in the manner provided in ORS 192.245 on the data collected under subsection (1) of this section. The committee shall invite the League of Oregon Cities to provide feedback on the report and the efficacy of section 38 of this 2024 Act.

**SECTION 42. Operative date.** Sections 38 to 41 of this 2024 Act become operative on January 1, 2025.

**SECTION 43. Sunset.** Sections 38 to 41 of this 2024 Act are repealed on January 2, 2032.

#### **LIMITED LAND USE DECISIONS**

**SECTION 44.** ORS 197.015 is amended to read:

197.015. As used in ORS chapters 195, 196, 197 and 197A, unless the context requires otherwise:

(1) “Acknowledgment” means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the goals.

(2) “Board” means the Land Use Board of Appeals.

(3) “Carport” means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) “Commission” means the Land Conservation and Development Commission.

(5) “Comprehensive plan” means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. “Comprehensive” means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. “General nature” means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is “coordinated” when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. “Land” includes water, both surface and subsurface, and the air.

(6) “Department” means the Department of Land Conservation and Development.

(7) “Director” means the Director of the Department of Land Conservation and Development.

(8) “Goals” means the mandatory statewide land use planning standards adopted by the commission pursuant to ORS chapters 195, 196, 197 and 197A.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines are advisory and do not limit state agencies, cities, counties and special districts to a single approach.

(10) "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

(b) Does not include a decision of a local government:

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

(D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;

(E) That is an expedited land division as described in ORS 197.360;

(F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;

(G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; or

(H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:

(i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;

(ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or

(iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;

(c) Does not include a decision by a school district to close a school;

(d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283 (6)(c), authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or

(C) A state agency action subject to ORS 197.180 (1), if:

(i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action has already made a land use decision approving the use or activity; or

(ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12)(a) "Limited land use decision"[.:]

[*a*] means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).

(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

**(C) The approval or denial of an application for a replat.**

**(D) The approval or denial of an application for a property line adjustment.**

**(E) The approval or denial of an application for an extension, alteration or expansion of a nonconforming use.**

(b) "**Limited land use decision**" does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

(13) "Local government" means any city, county or Metro or an association of local governments performing land use planning functions under ORS 195.025.

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that Metro may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195, 197 and 197A.

(19) "Special district" means any unit of local government, other than a city, county, Metro or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Urban growth boundary" means an acknowledged urban growth boundary contained in a city or county comprehensive plan or adopted by Metro under ORS 268.390 (3).

(21) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.



(22) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

(23) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

**SECTION 45.** ORS 197.195 is amended to read:

197.195. (1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.

(2) A limited land use decision is not subject to the requirements of ORS 197.797.

(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

(b) For limited land use decisions, the local government shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) The notice and procedures used by local government shall:

(A) Provide a 14-day period for submission of written comments prior to the decision;

(B) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;

(C) List, by commonly used citation, the applicable criteria for the decision;

(D) Set forth the street address or other easily understood geographical reference to the subject property;

(E) State the place, date and time that comments are due;

(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

(G) Include the name and phone number of a local government contact person;

(H) Provide notice of the decision to the applicant and any person who submits comments under subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal rights; and

(I) Briefly summarize the local decision making process for the limited land use decision being made.

(4) Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(5) A local government may provide for a hearing before the local government on appeal of a limited land use decision under this section. The hearing may be limited to the record developed pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction

of additional testimony or evidence. A hearing on appeal that allows the introduction of additional testimony or evidence shall comply with the requirements of ORS 197.797. Written notice of the decision rendered on appeal shall be given to all parties who appeared, either orally or in writing, before the hearing. The notice of decision shall include an explanation of the rights of each party to appeal the decision.

(6) A city shall apply the procedures in this section, and only the procedures in this section, to a limited land use decision, even if the city has not incorporated limited land use decisions into land use regulations, as required by ORS 197.646 (3), except that a limited land use decision that is made under land use standards that do not require interpretation or the exercise of policy or legal judgment may be made by city staff using a ministerial process.

**SECTION 45a.** Section 46 of this 2024 Act is added to and made a part of ORS chapter 197.

**SECTION 46. Applicability of limited land use decision to housing development.** (1) The Housing Accountability and Production Office may approve a hardship exemption or time extension to ORS 197.195 (6), during which time ORS 197.195 (6) does not apply to decisions by a local government.

(2) The office may grant an exemption or time extension only if the local government demonstrates that a substantial hardship would result from the increased costs or staff capacity needed to implement procedures as required under ORS 197.195 (6).

(3) The office shall review exemption or time extension requests under the deadlines provided in section 39 (3) of this 2024 Act.

**SECTION 47. Sunset.** Section 46 of this 2024 Act is repealed on January 2, 2032.

**SECTION 47a. Operative date.** Section 46 of this 2024 Act and the amendments to ORS 197.015 and 197.195 by sections 44 and 45 of this 2024 Act become operative on January 1, 2025.

#### ONE-TIME SITE ADDITIONS TO URBAN GROWTH BOUNDARIES

**SECTION 48.** Sections 49 to 59 of this 2024 Act are added to and made a part of ORS chapter 197A.

**SECTION 49. Definitions.** As used in sections 49 to 59 of this 2024 Act:

(1) “Net residential acre” means an acre of residentially designated buildable land, not including rights of way for streets, roads or utilities or areas not designated for development due to natural resource protections or environmental constraints.

(2) “Site” means a lot or parcel or contiguous lots or parcels, or both, with or without common ownership.

**SECTION 50. City addition of sites outside of Metro.** (1) Notwithstanding any other provision of ORS chapter 197A, a city outside of Metro may add a site to the city’s urban growth boundary under sections 49 to 59 of this 2024 Act, if:

(a) The site is adjacent to the existing urban growth boundary of the city or is separated from the existing urban growth boundary by only a street or road;

(b) The site is:

(A) Designated as an urban reserve under ORS 197A.230 to 197A.250, including a site whose designation is adopted under ORS 197.652 to 197.658;

(B) Designated as nonresource land; or

(C) Subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland;

(c) The city has not previously adopted an urban growth boundary amendment or exchange under sections 49 to 59 of this 2024 Act;

(d) The city has demonstrated a need for the addition under section 52 of this 2024 Act;

(e) The city has requested and received an application as required under sections 53 and 54 of this 2024 Act;

(f) The total acreage of the site:

(A) For a city with a population of 25,000 or greater, does not exceed 100 net residential acres; or

(B) For a city with a population of less than 25,000, does not exceed 50 net residential acres; and

(g)(A) The city has adopted a binding conceptual plan for the site that satisfies the requirements of section 55 of this 2024 Act; or

(B) The added site does not exceed 15 net residential acres and satisfies the requirements of section 56 of this 2024 Act.

(2) A county shall approve an amendment to an urban growth boundary made under this section that complies with sections 49 to 59 of this 2024 Act and shall cooperate with a city to facilitate the coordination of functions under ORS 195.020 to facilitate the city's annexation and the development of the site. The county's decision is not a land use decision.

(3) Notwithstanding ORS 197.626, an action by a local government under sections 49 to 59 of this 2024 Act is not a land use decision as defined in ORS 197.015.

**SECTION 51. Petition for additions of sites to Metro urban growth boundary.** (1) A city within Metro may petition Metro to add a site within the Metro urban growth boundary if the site:

(a) Satisfies the requirements of section 50 (1) of this 2024 Act; and

(b) Is designated as an urban reserve.

(2)(a) Within 120 days of receiving a petition under this section, Metro shall determine whether the site would substantially comply with the applicable provisions of sections 49 to 59 of this 2024 Act.

(b) If Metro determines that a petition does not substantially comply, Metro shall:

(A) Notify the city of deficiencies in the petition, specifying sufficient detail to allow the city to remedy any deficiency in a subsequent resubmittal; and

(B) Allow the city to amend its conceptual plan and resubmit it as a petition to Metro under this section.

(c) If Metro determines that a petition does comply, notwithstanding any other provision of ORS chapter 197A, Metro shall adopt amendments to its urban growth boundary to include the site in the petition, unless the amendment would result in more than 300 total net residential acres added under this subsection.

(3) If the net residential acres included in petitions that Metro determines are in compliance on or before July 1, 2025, total less than 300 net residential acres, Metro shall adopt amendments to its urban growth boundary under subsection (2)(c) of this section:

(a) On or before November 1, 2025, for all petitions deemed compliant on or before July 1, 2025; or

(b) Within 120 days after a petition is deemed compliant after July 1, 2025, in the order in which the petitions are received.

(4) If the net residential acres included in petitions that Metro determines are in compliance on or before July 1, 2025, total 300 or more net residential acres, on or before January 1, 2027, Metro shall adopt amendments to its urban growth boundary under subsection (2)(c) of this section to include the sites in those petitions that Metro determines will:

(a) Best comply with the provisions of section 55 of this 2024 Act; and

(b) Maximize the development of needed housing.

(5) Metro may not conduct a hearing to review or select petitions or adopt amendments to its urban growth boundary under this section.

**SECTION 52. City demonstration of need.** A city may not add, or petition to add, a site under sections 49 to 59 of this 2024 Act, unless:

(1) The city has demonstrated a need for additional land based on the following factors:

(a)(A) In the previous 20 years there have been no urban growth boundary expansions for residential use adopted by a city or by Metro in a location adjacent to the city; and

(B) The city does not have within the existing urban growth boundary an undeveloped, contiguous tract that is zoned for residential use that is larger than 20 net residential acres; or

(b) Within urban growth boundary expansion areas for residential use adopted by the city over the previous 20 years, or by Metro in locations adjacent to the city, 75 percent of the lands either:

(A) Are developed; or

(B) Have an acknowledged comprehensive plan with land use designations in preparation for annexation and have a public facilities plan and associated financing plan.

(2) The city has demonstrated a need for affordable housing, based on:

(a) Having a greater percentage of severely cost-burdened households than the average for this state based on the Comprehensive Housing Affordability Strategy data from the United States Department of Housing and Urban Development; or

(b) At least 25 percent of the renter households in the city being severely rent burdened as indicated under the most recent housing equity indicator data under ORS 456.602 (2)(g).

**SECTION 53. City solicitation of site applications.** (1) Before a city may select a site for inclusion within the city's or Metro's urban growth boundary under sections 49 to 59 of this 2024 Act, a city must provide public notice that includes:

(a) The city's intention to select a site for inclusion within the city's urban growth boundary.

(b) Each basis under which the city has determined that it qualifies to include a site under section 52 of this section.

(c) A deadline for submission of applications under this section that is at least 45 days following the date of the notice.

(d) A description of the information, form and format required of an application, including the requirements of section 55 (2) of this 2024 Act.

(2) A copy of the notice of intent under this section must be provided to:

(a) Each county in which the city resides;

(b) Each special district providing urban services within the city's urban growth boundary;

(c) The Department of Land Conservation and Development; and

(d) Metro, if the city is within Metro.

**SECTION 54. City review of site applications.** (1) After the deadline for submission of applications established under section 55 of this 2024 Act, the city shall:

(a) Review applications filed for compliance with sections 49 to 59 of this 2024 Act.

(b) For each completed application that complies with sections 49 to 59 of this 2024 Act, provide notice to the residents of the proposed site area who were not signatories to the application.

(c) Provide opportunities for public participation in selecting a site, including, at least:

(A) One public comment period;

(B)(i) One meeting of the city's planning commission at which public testimony is considered;

(ii) One meeting of the city's council at which public testimony is considered; or

(iii) One public open house; and

(C) Notice on the city's website or published in a paper of record at least 14 days before:

(i) A meeting under subparagraph (B) of this paragraph; and

(ii) The beginning of a comment period under subparagraph (A) of this paragraph.

(d) Consult with, request necessary information from and provide the opportunity for written comment from:

(A) The owners of each lot or parcel within the site;

(B) If the city does not currently exercise land use jurisdiction over the entire site, the governing body of each county with land use jurisdiction over the site;



- (C) Any special district that provides urban services to the site; and
- (D) Any public or private utility that provides utilities to the site.
- (2) An application filed under this section must:
  - (a) Be completed for each property owner or group of property owners that are proposing an urban growth boundary amendment under sections 49 to 59 of this 2024 Act;
  - (b) Be in writing in a form and format as required by the city;
  - (c) Specify the lots or parcels that are the subject of the application;
  - (d) Be signed by all owners of lots or parcels included within the application; and
  - (e) Include each owner's signed consent to annexation of the properties if the site is added to the urban growth boundary.
- (3) If the city has received approval from all property owners of such lands, in writing in a form and format specified by the city, the governing body of the city may select an application and the city shall adopt a conceptual plan as described in section 55 of this 2024 Act for all or a portion of the lands contained within the application.

(4) A conceptual plan adopted under subsection (3) of this section must include findings identifying reasons for inclusion of lands within the conceptual plan and reasons why lands, if any, submitted as part of an application that was partially approved were not included within the conceptual plan.

**SECTION 55. Conceptual plan for added sites.** (1) As used in this section:

(a) "Affordable units" means residential units described in subsection (3)(f)(A) or (4) of this section.

(b) "Market rate units" means residential units other than affordable units.

(2) Before adopting an urban growth boundary amendment under section 50 of this 2024 Act or petitioning Metro under section 51 of this 2024 Act, for a site larger than 15 net residential acres, a city shall adopt a binding conceptual plan as an amendment to its comprehensive plan.

(3) The conceptual plan must:

(a) Establish the total net residential acres within the site and must require for those residential areas:

(A) A diversity of housing types and sizes, including middle housing, accessible housing and other needed housing;

(B) That the development will be on lands zoned for residential or mixed-use residential uses; and

(C) The development will be built at net residential densities not less than:

(i) Seventeen dwelling units per net residential acre if sited within the Metro urban growth boundary;

(ii) Ten units per net residential acre if sited in a city with a population of 30,000 or greater;

(iii) Six units per net residential acre if sited in a city with a population of 2,500 or greater and less than 30,000; or

(iv) Five units per net residential acre if sited in a city with a population less than 2,500;

(b) Designate within the site:

(A) Recreation and open space lands; and

(B) Lands for commercial uses, either separate or as a mixed use, that:

(i) Primarily serve the immediate surrounding housing;

(ii) Provide goods and services at a smaller scale than provided on typical lands zoned for commercial use; and

(iii) Are provided at the minimum amount necessary to support and integrate viable commercial and residential uses;

(c) If the city has a population of 5,000 or greater, include a transportation network for the site that provides diverse transportation options, including walking, bicycling and transit use if public transit services are available, as well as sufficient connectivity to existing and

planned transportation network facilities as shown in the local government's transportation system plan as defined in Land Conservation and Development Commission rules;

(d) Demonstrate that protective measures will be applied to the site consistent with the statewide land use planning goals for:

- (A) Open spaces, scenic and historic areas or natural resources;
- (B) Air, water and land resources quality;
- (C) Areas subject to natural hazards;
- (D) The Willamette River Greenway;
- (E) Estuarine resources;
- (F) Coast shorelands; or
- (G) Beaches and dunes;

(e) Include a binding agreement among the city, each owner within the site and any other necessary public or private utility provider, local government or district, as defined in ORS 195.060, or combination of local governments and districts that the site will be served with all necessary urban services as defined in ORS 195.065, or an equivalent assurance; and

(f) Include requirements that ensure that:

(A) At least 30 percent of the residential units are subject to affordability restrictions, including but not limited to affordable housing covenants, as described in ORS 456.270 to 456.295, that require for a period of not less than 60 years that the units be:

(i) Available for rent, with or without government assistance, by households with an income of 80 percent or less of the area median income as defined in ORS 456.270; or

(ii) Available for purchase, with or without government assistance, by households with an income of 130 percent or less of the area median income;

(B) The construction of all affordable units has commenced before the city issues certificates of occupancy to the last 15 percent of market rate units;

(C) All common areas and amenities are equally available to residents of affordable units and of market rate units and properties designated for affordable units are dispersed throughout the site; and

(D) The requirement for affordable housing units is recorded before the building permits are issued for any property within the site, and the requirements contain financial penalties for noncompliance.

(4) A city may require greater affordability requirements for residential units than are required under subsection (3)(f)(A) of this section, provided that the city significantly and proportionally offsets development costs related to:

- (a) Permits or fees;
- (b) System development charges;
- (c) Property taxes; or
- (d) Land acquisition and predevelopment costs.

**SECTION 56. Alternative for small additions.** (1) A city that intends to add 15 net residential acres or less is not required to adopt a conceptual plan under section 55 of this 2024 Act if the city has entered into:

(a) Enforceable and recordable agreements with each landowner of a property within the site to ensure that the site will comply with the affordability requirements described in section 55 (3)(f) of this 2024 Act; and

(b) A binding agreement with each owner within the site and any other necessary public or private utility provider, local government or district, as defined in ORS 195.060, or combination of local governments and districts to ensure that the site will be served with all necessary urban services as defined in ORS 195.065.

(2) This section does not apply to a city within Metro.

**SECTION 57. Department approval of site additions.** (1) Within 21 days after the adoption of an amendment to an urban growth boundary or the adoption or amendment of a conceptual plan under sections 49 to 59 of this 2024 Act, and the approval by a county if required

under section 50 (2) of this 2024 Act, the conceptual plan or amendment must be submitted to the Department of Land Conservation and Development for review. The submission must be made by:

- (a) The city, for an amendment under section 50 or 58 of this 2024 Act; or
- (b) Metro, for an amendment under section 51 or 58 of this 2024 Act.

(2) Within 60 days after receiving a submittal under subsection (1) of this section, the department shall:

(a) Review the submittal for compliance with the provisions of sections 49 to 59 of this 2024 Act.

(b)(A) If the submittal substantially complies with the provisions of sections 49 to 59 of this 2024 Act, issue an order approving the submittal; or

(B) If the submittal does not substantially comply with the provisions of sections 49 to 59 of this 2024 Act, issue an order remanding the submittal to the city or to Metro with a specific determination of deficiencies in the submittal and with sufficient detail to identify a specific remedy for any deficiency in a subsequent resubmittal.

(3) If a conceptual plan is remanded to Metro under subsection (2)(b) of this section:

(a) The department shall notify the city; and

(b) The city may amend its conceptual plan and resubmit a petition to Metro under section 51 of this 2024 Act.

(4) Judicial review of the department's order:

(a) Must be as a review of orders other than a contested case under ORS 183.484; and

(b) May be initiated only by the city or an owner of a proposed site.

(5) Following the approval of a submittal under this section, a local government must include the added lands in any future inventory of buildable lands or determination of housing capacity under ORS 197A.270, 197A.280, 197A.335 or 197A.350.

**SECTION 58. Alternative urban growth boundary land exchange.** (1) In lieu of amending its urban growth boundary under any other process provided by sections 49 to 59 of this 2024 Act, Metro or a city outside of Metro may amend its urban growth boundary to add one or more sites described in section 51 (1)(a) and (b) of this 2024 Act to the urban growth boundary and to remove one or more tracts of land from the urban growth boundary as provided in this section.

(2) The acreage of the added site and removed lands must be roughly equivalent.

(3) The removed lands must have been zoned for residential uses.

(4) The added site must be zoned for residential uses at the same or greater density than the removed lands.

(5)(a) Except as provided in paragraph (b) of this subsection, land may be removed from an urban growth boundary under this section without landowner consent.

(b) A landowner may not appeal the removal of the landowner's land from an urban growth boundary under this section unless the landowner agrees to enter into a recorded agreement with Metro or the city in which the landowner would consent to annexation and development of the land within 20 years if the land remains in the urban growth boundary.

(6) Review of an exchange of lands made under this section may only be made by:

(a) For cities outside of Metro, the county as provided in section 50 (2) of this 2024 Act and by the Department of Land Conservation and Development, subject to judicial review, as provided in section 57 of this 2024 Act; or

(b) For Metro, the Department of Land Conservation and Development, subject to judicial review, as provided in section 57 of this 2024 Act.

(7) Sections 50 (1)(d) to (g), 52, 53, 54, 55 and 56 of this 2024 Act do not apply to a site addition made under this section.

**SECTION 59. Reporting on added sites.** A city for which an amendment was made to an urban growth boundary and approved under sections 49 to 59 of this 2024 Act shall submit a

report describing the status of development within the included area to the Department of Land Conservation and Development every two years until:

- (1) January 2, 2033; or
- (2) The city determines that development consistent with the acknowledged conceptual plan is deemed complete.

**SECTION 60. Sunset.** Sections 49 to 59 of this 2024 Act are repealed on January 2, 2033.

## APPROPRIATIONS

**SECTION 61. Appropriation and expenditure limitation to Department of Land Conservation and Development.** (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium ending June 30, 2025, out of the General Fund, the amount of \$5,629,017, for deposit into the Housing Accountability and Production Office Fund, established under section 4 of this 2024 Act, to take any action to implement sections 1 to 5, 16, 38 to 41, 46 and 49 to 59 of this 2024 Act and the amendments to ORS 183.471, 197.015, 197.195, 197.335, 215.427 and 227.178 by sections 8, 9, 44, 45, 64 and 65 of this 2024 Act.

(2) In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium ending June 30, 2025, out of the General Fund, the amount of \$5,000,000, for deposit into the Housing Accountability and Production Office Fund, established under section 4 of this 2024 Act, for the Housing Accountability and Production Office, established under section 1 of this 2024 Act, to provide technical assistance, including grants, under section 1 (2) of this 2024 Act and to provide required studies under section 5 of this 2024 Act.

(3) Notwithstanding any other law limiting expenditures, the amount of \$10,629,017 is established for the biennium ending June 30, 2025, as the maximum amount for payment of expenses by the Department of Land Conservation and Development from the Housing Accountability and Production Office Fund established under section 4 of this 2024 Act.

**SECTION 62. Appropriation and expenditure limitation to Housing and Community Services Department.** (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Housing and Community Services Department, for the biennium ending June 30, 2025, out of the General Fund, the amount of \$75,000,000, for deposit into the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

(2) Notwithstanding any other provision of law, the General Fund appropriation made to the Housing and Community Services Department by section 1, chapter 390, Oregon Laws 2023, for the biennium ending June 30, 2025, is increased by \$878,071 for administrative expenses related to the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

(3) Notwithstanding any other law limiting expenditures, the amount of \$24,750,000 is established for the biennium ending June 30, 2025, as the maximum amount for payment of expenses by the Housing and Community Services Department from the Housing Project Revolving Loan Fund established under section 35 of this 2024 Act.

**SECTION 63. Appropriation and expenditure limitation to Oregon Business Development Department.** (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Business Development Department, for the biennium ending June 30, 2025, out of the General Fund, the amount of \$3,000,000, for deposit into the Housing Infrastructure Support Fund established under section 14 of this 2024 Act.

(2) Notwithstanding any other law limiting expenditures, the amount of \$3,000,000 is established for the biennium ending June 30, 2025, as the maximum amount for payment of expenses by the Oregon Business Development Department from the Housing Infrastructure Support Fund established under section 14 of this 2024 Act.



**SECTION 63a. Expenditure limitation to Department of Consumer and Business Services.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (6), chapter 354, Oregon Laws 2023, for the biennium ending June 30, 2025, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of Consumer and Business Services, for Building Codes Division, is increased by \$296,944, to support operations of the Housing Accountability and Production Office established under section 1 of this 2024 Act.

#### CONFORMING AMENDMENTS

**SECTION 64.** ORS 197.335, as amended by section 17, chapter 13, Oregon Laws 2023, is amended to read:

197.335. (1) [*An order issued under ORS 197.328 and the copy of the order mailed*] **The Land Conservation and Development Commission shall mail a copy of an enforcement order** to the local government, state agency or special district. **An order** must set forth:

(a) The nature of the noncompliance, including, but not limited to, the contents of the comprehensive plan or land use regulation, if any, of a local government that do not comply with the goals or the contents of a plan, program or regulation affecting land use adopted by a state agency or special district that do not comply with the goals. In the case of a pattern or practice of decision-making, the order must specify the decision-making that constitutes the pattern or practice, including specific provisions the [*Land Conservation and Development*] commission believes are being misapplied.

(b) The specific lands, if any, within a local government for which the existing plan or land use regulation, if any, does not comply with the goals.

(c) The corrective action decided upon by the commission, including the specific requirements, with which the local government, state agency or special district must comply. In the case of a pattern or practice of decision-making, the commission may require revisions to the comprehensive plan, land use regulations or local procedures which the commission believes are necessary to correct the pattern or practice. Notwithstanding the provisions of this section, except as provided in subsection (3)(c) of this section, an enforcement order does not affect:

(A) Land use applications filed with a local government prior to the date of adoption of the enforcement order unless specifically identified by the order;

(B) Land use approvals issued by a local government prior to the date of adoption of the enforcement order; or

(C) The time limit for exercising land use approvals issued by a local government prior to the date of adoption of the enforcement order.

(2) Judicial review of a final order of the commission is governed by the provisions of ORS chapter 183 applicable to contested cases except as otherwise stated in this section. The commission's final order must include a clear statement of findings which set forth the basis for the order. Where a petition to review the order has been filed in the Court of Appeals, the commission shall transmit to the court the entire administrative record of the proceeding under review. Notwithstanding ORS 183.482 (3) relating to a stay of enforcement of an agency order, an appellate court, before it may stay an order of the commission, shall give due consideration to the public interest in the continued enforcement of the commission's order and may consider testimony or affidavits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order. The court shall reverse, modify or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but an error in procedure is not cause for reversal, modification or remand unless the court finds that substantial rights of any party were prejudiced thereby;

(b) The order to be unconstitutional;

(c) The order is invalid because it exceeds the statutory authority of the agency; or

(d) The order is not supported by substantial evidence in the whole record.

(3)(a) If the commission finds that in the interim period during which a local government, state agency or special district would be bringing itself into compliance with the commission's order [under ORS 197.320 or subsection (2) of this section] it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of some or all categories of land use decisions or limited land use decisions, it shall, as part of its order, limit, prohibit or require the approval by the local government of applications for subdivisions, partitions, building permits, limited land use decisions or land use decisions until the plan, land use regulation or subsequent land use decisions and limited land use decisions are brought into compliance. The commission may issue an order that requires review of local decisions by a hearings officer or the Department of Land Conservation and Development before the local decision becomes final.

(b) Any requirement under this subsection may be imposed only if the commission finds that the activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and that the requirement is necessary to correct the violation.

(c) The limitations on enforcement orders under subsection (1)(c)(B) of this section do not affect the commission's authority to limit, prohibit or require application of specified criteria to subsequent land use decisions involving land use approvals issued by a local government prior to the date of adoption of the enforcement order.

(4) As part of its order [under ORS 197.320 or subsection (2) of this section], the commission may withhold grant funds from the local government to which the order is directed. As part of an order issued under this section, the commission may notify the officer responsible for disbursing state-shared revenues to withhold that portion of state-shared revenues to which the local government is entitled under ORS 221.770, 323.455, 366.762 and 366.800 and ORS chapter 471 which represents the amount of state planning grant moneys previously provided the local government by the commission. The officer responsible for disbursing state-shared revenues shall withhold state-shared revenues as outlined in this section and shall release funds to the local government or department when notified to so do by the commission or its designee. The commission may retain a portion of the withheld revenues to cover costs of providing services incurred under the order, including use of a hearings officer or staff resources to monitor land use decisions and limited land use decisions or conduct hearings. The remainder of the funds withheld under this provision shall be released to the local government upon completion of requirements of the [commission] **enforcement** order.

(5)(a) As part of its order under this section, the commission may notify the officer responsible for disbursing funds from any grant or loan made by a state agency to withhold such funds from a special district to which the order is directed. The officer responsible for disbursing funds shall withhold funds as outlined in this section and shall release funds to the special district or department when notified to do so by the commission.

(b) The commission may retain a portion of the funds withheld to cover costs of providing services incurred under the order, including use of a hearings officer or staff resources to monitor land use decisions and limited land use decisions or conduct hearings. The remainder of the funds withheld under this provision shall be released to the special district upon completion of the requirements of the commission order.

(6) As part of its order under this section, upon finding a city failed to comply with ORS 197.320 (13), the commission may, consistent with the principles in ORS 197A.130 (1), require the city to:

(a) Comply with the housing acceleration agreement under ORS 197A.130 (6).

(b) Take specific actions that are part of the city's housing production strategy under ORS 197A.100.

(c) Impose appropriate models that have been developed by department, including model ordinances, procedures, actions or anti-displacement measures.

(d) Reduce maximum timelines for review of needed housing or specific types of housing or affordability levels, [including] through ministerial approval or any other expedited existing approval process.

(e) Take specific actions to waive or amend local ordinances.

(f) Forfeit grant funds under subsection (4) of this section.

(7) The commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the [commission's] order is directed or within which all or a portion of the applicable city is located to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing [and] or order on an alleged violation.

**(8) As used in this section, “enforcement order” or “order” means an order issued under ORS 197.320 or section 3 of this 2024 Act as may be modified on appeal under subsection (2) of this section.**

**SECTION 65.** ORS 183.471 is amended to read:

183.471. (1) When an agency issues a final order in a contested case, the agency shall maintain the final order in a digital format that:

(a) Identifies the final order by the date it was issued;

(b) Is suitable for indexing and searching; and

(c) Preserves the textual attributes of the document, including the manner in which the document is paginated and any boldfaced, italicized or underlined writing in the document.

(2) The Oregon State Bar may request that an agency provide the Oregon State Bar, or its designee, with electronic copies of final orders issued by the agency in contested cases. The request must be in writing. No later than 30 days after receiving the request, the agency, subject to ORS 192.338, 192.345 and 192.355, shall provide the Oregon State Bar, or its designee, with an electronic copy of all final orders identified in the request.

(3) Notwithstanding ORS 192.324, an agency may not charge a fee for the first two requests submitted under this section in a calendar year. For any subsequent request, an agency may impose a fee in accordance with ORS 192.324 to reimburse the agency for the actual costs of complying with the request.

(4) For purposes of this section, a final order entered in a contested case by an administrative law judge under ORS 183.625 (3) is a final order issued by the agency that authorized the administrative law judge to conduct the hearing.

(5) This section does not apply to final orders by default issued under ORS 183.417 (3) or to final orders issued in contested cases by:

(a) The Department of Revenue;

(b) The State Board of Parole and Post-Prison Supervision;

(c) The Department of Corrections;

(d) The Employment Relations Board;

(e) The Public Utility Commission of Oregon;

(f) The Oregon Health Authority;

(g) The Land Conservation and Development Commission, **except for enforcement orders under section 3 of this 2024 Act;**

(h) The Land Use Board of Appeals;

(i) The Division of Child Support of the Department of Justice;

(j) The Department of Transportation, if the final order relates to the suspension, revocation or cancellation of identification cards, vehicle registrations, vehicle titles or driving privileges or to the assessment of taxes or stipulated settlements in the regulation of vehicle related businesses;

(k) The Employment Department or the Employment Appeals Board, if the final order relates to benefits as defined in ORS 657.010;

(L) The Employment Department, if the final order relates to an assessment of unemployment tax for which a hearing was not held;

(m) The Employment Department, if the final order relates to:

(A) Benefits, as defined in ORS 657B.010;

(B) Employer and employee contributions under ORS 657B.150 for which a hearing was not held;

(C) Employer-offered benefit plans approved under ORS 657B.210 or terminated under ORS 657B.220; or

(D) Employer assistance grants under ORS 657B.200; or

(n) The Department of Human Services, if the final order was not related to licensing or certification.

**SECTION 66.** ORS 455.770 is amended to read:

455.770. (1) In addition to any other authority and power granted to the Director of the Department of Consumer and Business Services under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 and 480.510 to 480.670 and this chapter and ORS chapters 447, 460 and 693 **and sections 1 to 5 of this 2024 Act**, with respect to municipalities, building officials and inspectors, if the director has reason to believe that there is a failure to enforce or a violation of any provision of the state building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693 or any rule adopted under those statutes, the director may:

(a) Examine building code activities of the municipality;

(b) Take sworn testimony; and

(c) With the authorization of the Office of the Attorney General, subpoena persons and records to obtain testimony on official actions that were taken or omitted or to obtain documents otherwise subject to public inspection under ORS 192.311 to 192.478.

(2) The investigative authority authorized in subsection (1) of this section covers the violation or omission by a municipality related to enforcement of codes or administrative rules, certification of inspectors or financial transactions dealing with permit fees and surcharges under any of the following circumstances when:

(a) The duties are clearly established by law, rule or agreement;

(b) The duty involves procedures for which the means and methods are clearly established by law, rule or agreement; or

(c) The duty is described by clear performance standards.

(3) Prior to starting an investigation under subsection (1) of this section, the director shall notify the municipality in writing setting forth the allegation and the rules or statutes pertaining to the allegation and give the municipality 30 days to respond to the allegation. If the municipality does not satisfy the director's concerns, the director may then commence an investigation.

(4) If the Department of Consumer and Business Services or the director directs corrective action[, *the following shall be done*]:

(a) The corrective action [*shall*] **must** be in writing and served on the building official and the chief executive officers of all municipalities affected;

(b) The corrective action [*shall*] **must** identify the facts and law relied upon for the required action; and

(c) A reasonable time [*shall*] **must** be provided to the municipality for compliance.

(5) The director may revoke any authority of the municipality to administer any part of the state building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693 or any rule adopted under those statutes if the director determines after a hearing conducted under ORS 183.413 to 183.497 that:

(a) All of the requirements of this section and ORS 455.775 and 455.895 were met; and

(b) The municipality did not comply with the corrective action required.

## CAPTIONS

**SECTION 67.** The unit and section captions used in this 2024 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2024 Act.



**EFFECTIVE DATE**

**SECTION 68.** This 2024 Act takes effect on the 91st day after the date on which the 2024 regular session of the Eighty-second Legislative Assembly adjourns sine die.

---

**Passed by Senate February 29, 2024**

.....  
Obadiah Rutledge, Secretary of Senate

.....  
Rob Wagner, President of Senate

**Passed by House March 4, 2024**

.....  
Dan Rayfield, Speaker of House

**Received by Governor:**

.....M.,....., 2024

**Approved:**

.....M.,....., 2024

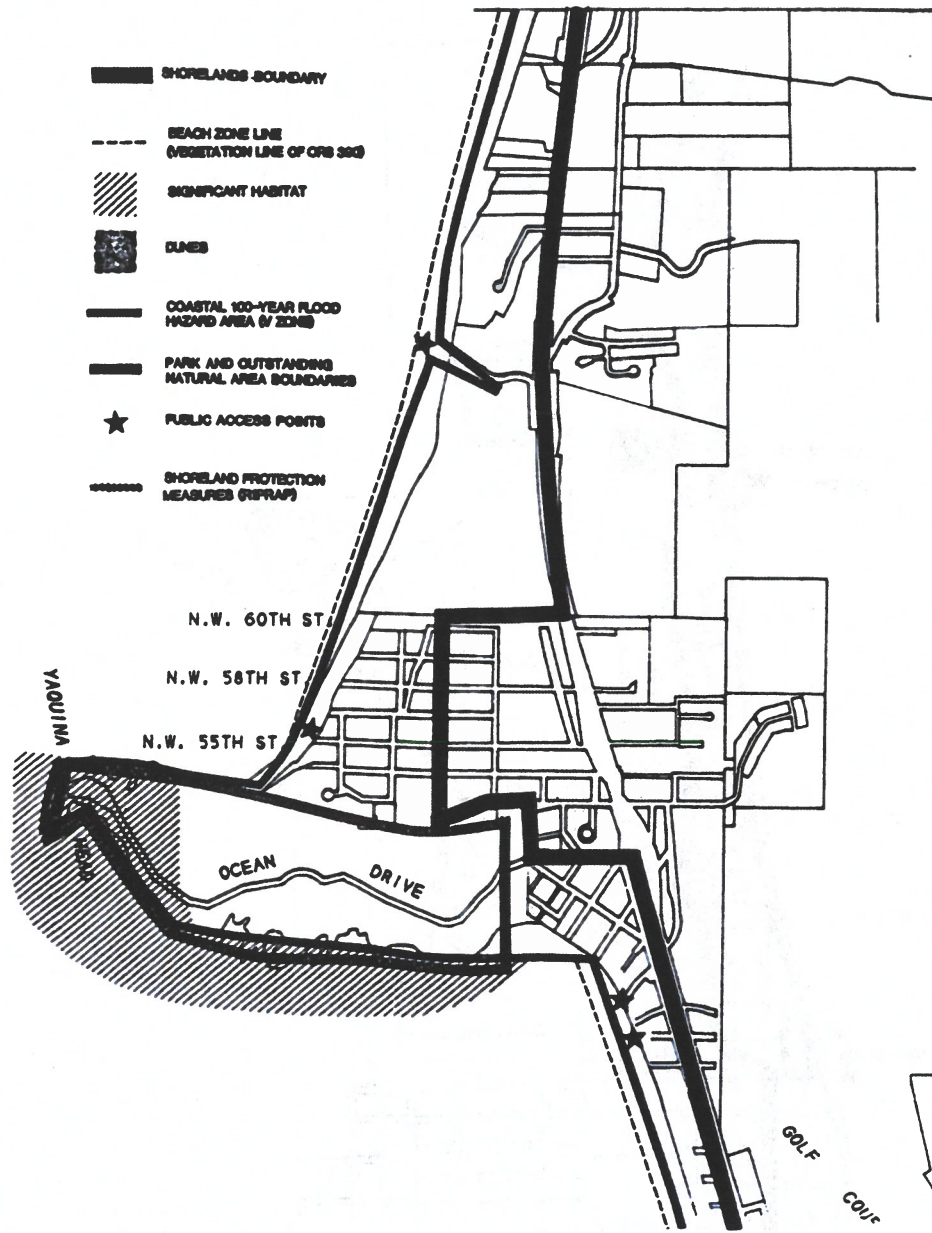
.....  
Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2024

.....  
LaVonne Griffin-Valade, Secretary of State

# OCEAN SHORELANDS

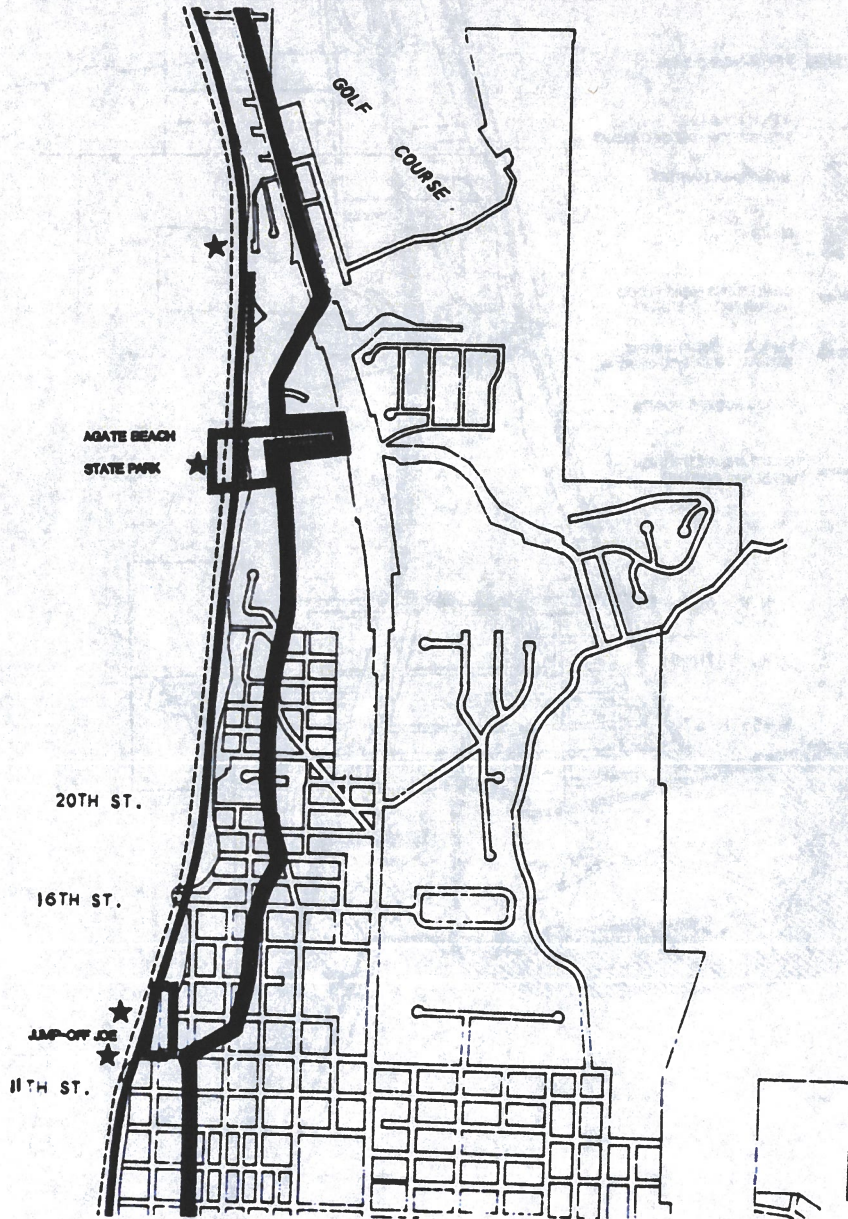


Page 50. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

Page 51. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.



# OCEAN SHORELANDS



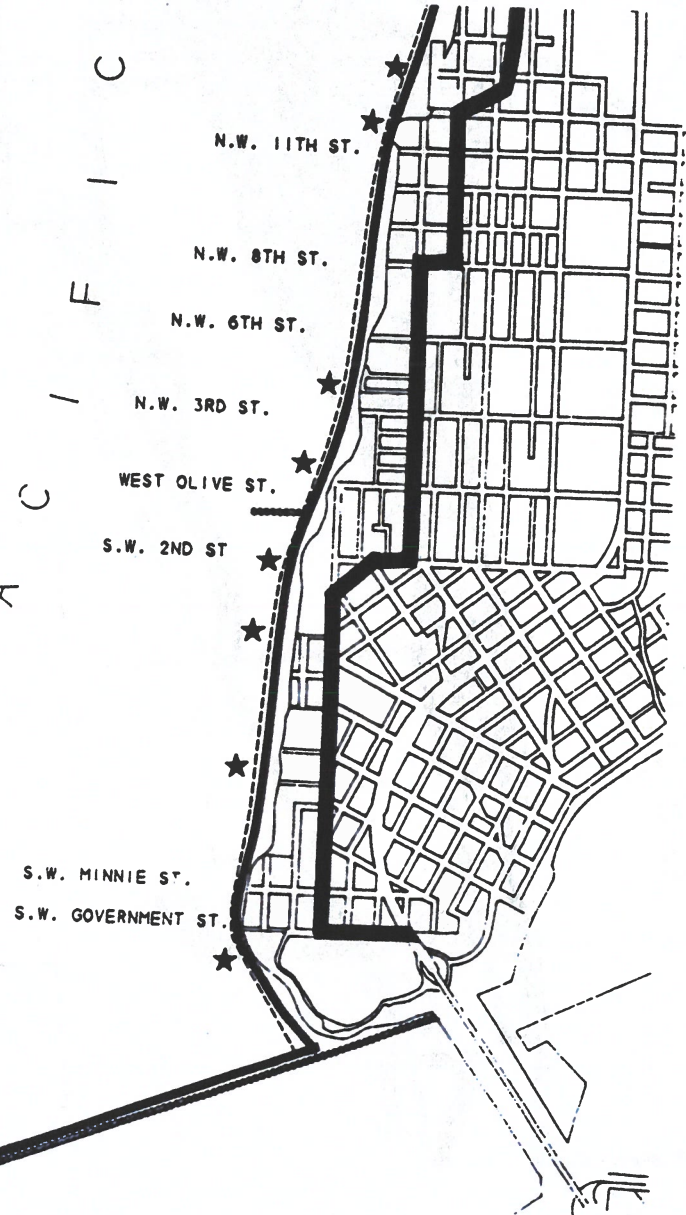
Page 51. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

Page 52. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.



# OCEAN SHORELANDS

P  
A  
C  
I  
F  
I  
C

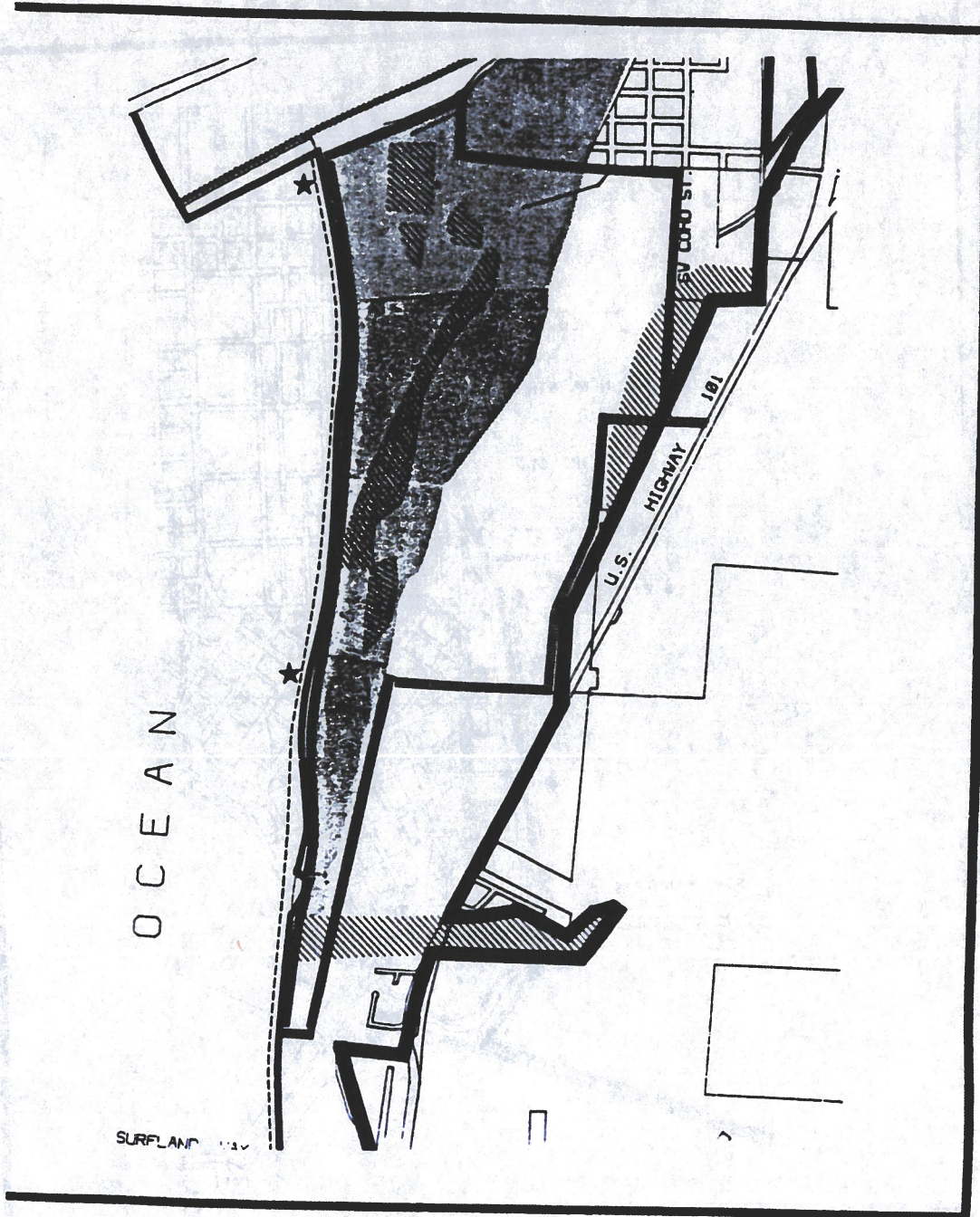


Page 52. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

Page 53. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

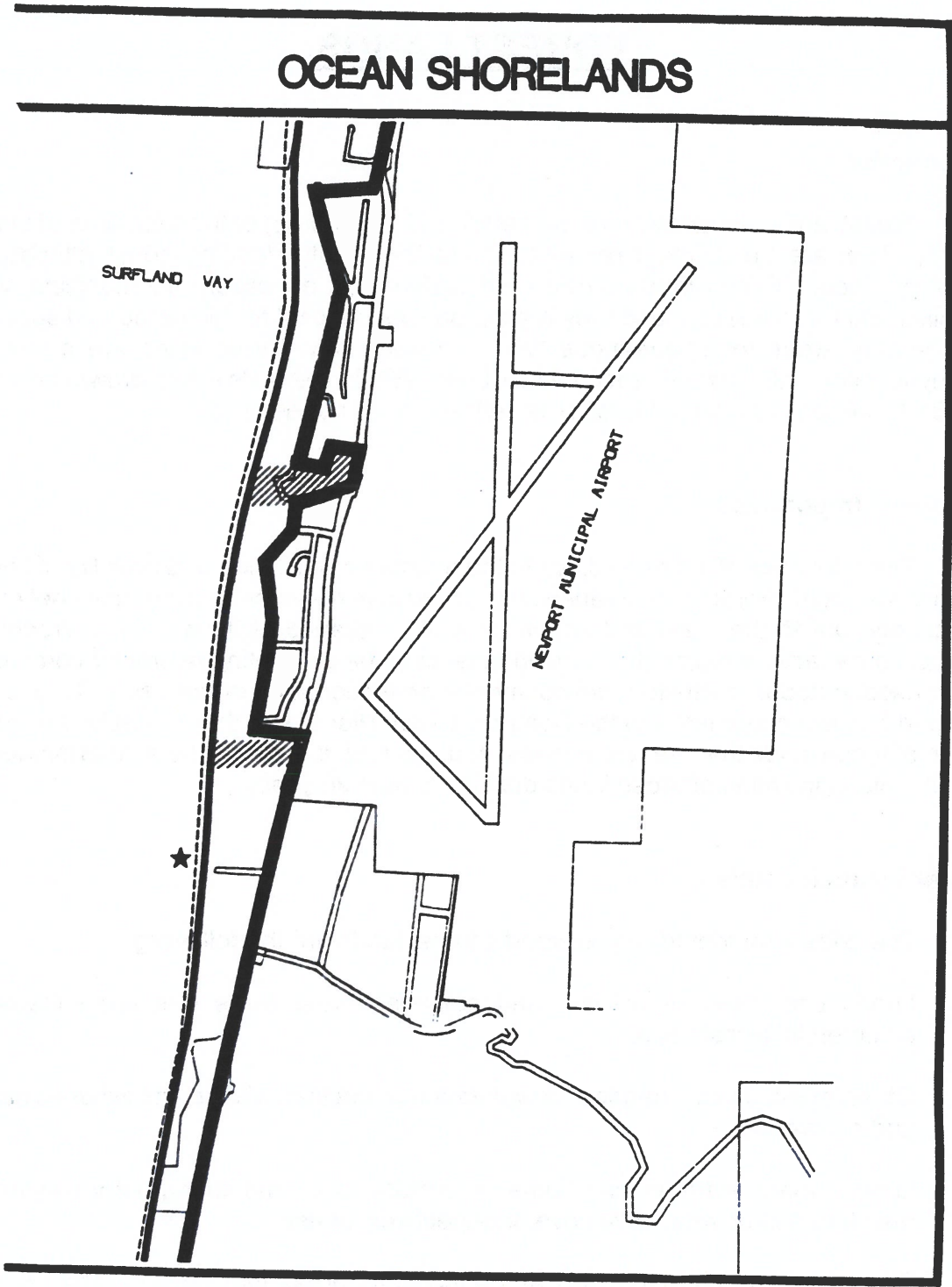


# OCEAN SHORELANDS



Page 53. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

Page 54. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.



Page 54. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

Page 55. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.



## **FOREST LANDS**

### **Introduction:**

Forest lands comprise more than 90% (572,000 acres) of the total area of Lincoln County. They are the source of raw materials for the county's leading industry: timber and forest products. Forest lands provide the watersheds necessary for municipal water supplies and for recreation, and they are the principal habitat for big game and spawning and nursery areas for anadromous fish. Consequently, forest lands are a valuable aesthetic, economic, and recreational resource. Within the city's urban growth boundary (UGB), however, commercial forestry is neither visible nor desired.

### **Economic Importance:**


The relevance of these holdings to the economic well being and livability of Lincoln County is evident. Forests are a renewable, productive resource of importance not only to the county, but to the state and nation as well. Because of its various interests, the Newport area faces a major challenge in balancing the competing needs for commercial forest uses, outdoor recreation, environmental protection, and urban uses. To this end, Newport has two major tasks in the Comprehensive Plan: First, there must be an identification of those lands that are forest lands; and, second, there must be a determination of the ultimate disposition of those lands during the next 20 years.

### **Forest Lands Identified:**

The criteria for identifying Newport's forest lands are the following:

- > Lands composed of existing and potential forest lands that are suitable for commercial forest uses.
- > Other forested lands needed for watershed protection, wildlife and fisheries habitat, and recreation.
- > Lands where extreme conditions of climate, soil, and topography require the maintenance of vegetative cover irrespectively of use.
- > Other forested lands in urban and agricultural areas that provide urban buffers, windbreaks, wildlife and fisheries

# Memorandum

To: Planning Commission/Commission Advisory Committee  
From: Derrick Tokos, Community Development Director   
Date: May 9, 2024  
Re: Next Steps with the City Center Revitalization Planning Process

---

The City now has a funding agreement in place and the project consultant received a formal notice to proceed from the Oregon Department of Transportation. We are looking at May 31, 2024 as a kick-off date, but may bump that a week or two if it looks like we are going to have difficulty pulling together interested parties. The kick-off will include a site visit by the consulting team and a meeting of the project advisory committee. We would like to line up small group meetings for the consultants as well. At this time, City staff is wrapping up sending the consultant the data they requested to begin to prepare for the project. We are also working on the upcoming meeting logistics. Attached is a copy of the approved scope of work, and I look forward to any questions that you may have about the project.

#### Attachments

Executed Scope of Work



**WORK ORDER CONTRACT #: 2 (ORBuys PO #: PO-73000-00005659:3)**

**PRICE AGREEMENT ("PA") #: B38913 (ORBuys #: PO-73000-00005659)**

**Project Name/Location: City of Newport – Newport City Center Revitalization Plan  
(TGM File Code: 2D-21)**

This Work Order Contract ("WOC") is entered into by and between the State of Oregon ("State"), by and through its Oregon Department of Transportation ("Agency" or "ODOT"), and **David Evans and Associates, Inc.** an Oregon corporation ("Consultant" or "Contractor").

**This WOC incorporates by this reference:**

- a. all of the Terms and Conditions contained in Part II of the above referenced PA;
- b. the provisions from the PA Exhibits with the exception of: E, E.1, K;
- c. the attached Statement of Work and Delivery Schedule ("SOW");
- d. Attachment A – Acronyms & Definitions;
- e. Attachment C – Disadvantaged Business Enterprise ("DBE") Provisions;
- f. Attachment C.1 – Committed DBE Breakdown and Certification Form(s)-AE;

Attachment B, the Breakdown of Costs for Services ("BOC") is kept in the WOC file and is not incorporated into the WOC.

**WOC EXPIRATION DATE:** 06/13/2025. The required schedule for performance under this WOC is specified in the SOW.

DBE - WOC includes federal funds? Yes		DBE Goal: 3%
Certified Small Business Aspirational Target (for State-only funded WOCs over \$100,000, including as amended; see PA Exhibit K): N/A		
Expenditure Account ("EA") # TG21LA15-000-P27	Fed Aid #: 0000(281)	ODOT Key # 20018
The Total Not-to-Exceed ("NTE") amount for this WOC. This total includes: all allowable costs, profit, and fixed-fee amount (if any), shown in Section H.4 of the SOW; and \$0 for contingency tasks, each of which must be separately authorized by Agency.		<b>\$ 364,800.00</b>

This WOC is effective on the date it has been signed by the Parties and all required State approvals have been obtained. No Payment shall be made for tasks and deliverables specified in the SOW of this WOC (collectively, the "Services") that are performed before: i) the WOC effective date and ii) a Notice to Proceed ("NTP") has been issued by Agency.

**CONSULTANT CERTIFICATION:**

**A. Any individual (the undersigned) signing on behalf of Consultant hereby certifies under penalty of perjury:**

- (1) Consultant has provided its correct taxpayer identification number to Agency for the above-referenced PA.
- (2) Consultant is not subject to backup withholding because (a) Consultant is exempt from backup withholding, (b) Consultant has not been notified by the IRS that Consultant is subject to backup

withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Consultant that Consultant is no longer subject to backup withholding.

- (3) The undersigned is authorized to act on behalf of Consultant, the undersigned has authority and knowledge regarding Consultant's payment of taxes, and to the best of the undersigned's knowledge, Consultant is not in violation of any Oregon tax laws. For purposes of this certification, "Oregon tax laws" means: (i) all tax laws of this State, including but not limited to Oregon Revised Statutes ("ORS") 305.380(4), ORS 305.620 and ORS chapters 316, 317, and 318; and (ii) any tax provisions imposed by a political subdivision of this State that apply to Consultant, to Consultant's property, operations, receipts, or income, or to Consultant's performance of or compensation for any work performed by Consultant; and (iii) any tax provisions imposed by a political subdivision of this State that apply to Consultant, or to goods, services, or property, whether tangible or intangible, provided by Consultant; and (iv) any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

**B. Any individual (the undersigned) signing on behalf of Consultant hereby certifies the undersigned is authorized to sign this WOC and that:**

- (1) Consultant has read, understands and agrees to comply with the requirements set forth in the PA and in all Exhibits and other documents incorporated by reference in the PA.
- (2) Consultant understands and agrees that any Exhibits or other documents not physically attached to the PA that are incorporated by reference have the same force and effect as if fully set forth herein.
- (3) Consultant has made all required Conflict of Interest ("COI") disclosures, if any.
- (a) Consultant understands and has provided to all Associates (as defined in the COI Guidelines) the ODOT COI Guidelines and COI Disclosure Form available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. Consultant and, to the best of the undersigned's information, knowledge and belief, Consultant's Associates, are in compliance with and have no disclosures required per the COI Guidelines (as may revised from time to time by Agency); or
- (b) If disclosures regarding this WOC or the related Project are required per the ODOT COI Guidelines, Consultant has made such disclosures to Agency on a properly prepared and submitted COI Disclosure Form and, if determined necessary by Agency, a mitigation plan has been approved by Agency.
- (4) (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this WOC, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," ([https://www.gsa.gov/cdnstatic/SFLLL\\_1\\_2\\_P-V1.2.pdf?forceDownload=1](https://www.gsa.gov/cdnstatic/SFLLL_1_2_P-V1.2.pdf?forceDownload=1)) in accordance with its instructions.
- (c) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person

who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- (d) Consultant shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.
- (5) Consultant has, and gives employees a written notice of, a policy and practice that meets the requirements described in ORS 279A.112. Such policy both prohibits, and prescribes disciplinary measures for, conduct that constitutes sexual harassment, sexual assault and discrimination against employees who are members of a protected class. Consultant agrees, as a material term of the WOC, to maintain the policy and practice in force during the entire WOC term (see additional information and sample policy template at <https://www.oregon.gov/DAS/Procurement/Pages/hb3060.aspx>).
- (6) Consultant has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.
- (7) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779 (<https://www.irs.gov/pub/irs-pdf/p1779.pdf>).
- (8) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this WOC constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this WOC.

#### **Electronic Signatures.**

The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the PA, WOC and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. Agency reserves the right at any time to require the submission of the hard copy originals of any documents.

**Accessibility:** The Oregon Department of Transportation is committed to complying with all statutory requirements to ensure that it is providing information that is more accessible to people with disabilities, as required by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and 36 C.F.R. 1194 Appendix A. To request reasonable accommodation for access, due to a disability, to information related to this document, please contact the Oregon Department of Transportation's Procurement Office at [OPOAdministration@odot.oregon.gov](mailto:OPOAdministration@odot.oregon.gov) or phone #503-986-2710.

**CONSULTANT:**

*Ed Chamberland*  
Ed Chamberland (Feb 28, 2024 11:24 PST)

Vice President

02/28/2024

Signature & Title

Date

*James Hencke*  
James Hencke (Feb 28, 2024 11:47 PST)

Senior Associate

02/28/2024

Signature & Title

Date

**DOJ LEGAL REVIEW for ODOT: Approved by AAG Heather Hamilton via email dated 02/27/2024.**

**ODOT (Procurement Authority)**

*Kelsey Maffei*  
Kelsey MAFFEI (Feb 28, 2024 12:56 PST)

Kelsey MAFFEI

02/28/2024

Signature

Print Name

Date



**STATEMENT of WORK and DELIVERY SCHEDULE**  
**for**  
**WOC # 2 under PA # B38913**  
**City of Newport**  
**Newport City Center Revitalization Plan**

<b>Name:</b> <b>Address:</b>  <b>Phone:</b> <b>Email:</b>	<b>Agency's Project Manager ("APM") for the WOC</b> David Helton ODOT Area 5 2080 Laura Street Springfield, OR 97477  (541) 726-2545 <a href="mailto:David.I.Helton@odot.state.or.us">David.I.Helton@odot.state.or.us</a>	<b>Name:</b> <b>Phone:</b> <b>Email:</b>	<b>Agency's Contract Administrator for the WOC</b>  Same as APM
<b>Name:</b> <b>Address:</b>  <b>Phone:</b> <b>Email:</b>	<b>Consultant's Project Manager ("PM") for the WOC</b> James Hencke David Evans and Consultants, Inc. 2100 S River Parkway Portland OR 97201  (503) 223-6663 <a href="mailto:jahe@deainc.com">jahe@deainc.com</a>	<b>Name:</b> <b>Phone:</b> <b>Email:</b>	<b>Alternate Contact for Consultant</b>  N/A
<b>Name:</b> <b>Address:</b>  <b>Phone:</b> <b>Email:</b>	<b>City's Project Manager ("CPM")</b> Derrick Tokos City of Newport 169 SW Coast Highway Newport, OR 97365  (541) 574-0626 <a href="mailto:d.tokos@newportoregon.gov">d.tokos@newportoregon.gov</a>	<b>Name:</b> <b>Phone:</b> <b>Email:</b>	<b>Alternate Contact for City</b>  N/A

Agency may change the APM designation, Agency's address for invoicing (Section H.5 of this SOW), or both by promptly sending written notice (email notice acceptable) to Consultant, with a copy to ODOT Procurement Office ("OPO"). Changes to Agency's Contract Administrator for the WOC must be done by amendment. Any changes to Consultant's Project Manager must be approved in writing (email acceptable) by Agency. Consultant shall provide written notice (email acceptable) to Agency of any changes to Consultant's other contacts for this WOC.

**A. PROJECT DESCRIPTION and OVERVIEW of SERVICES**

Agency is contracting with Consultant for Services in connection with the following planning project: the Newport City Center Revitalization Plan ("NCCRP" or the "Project").

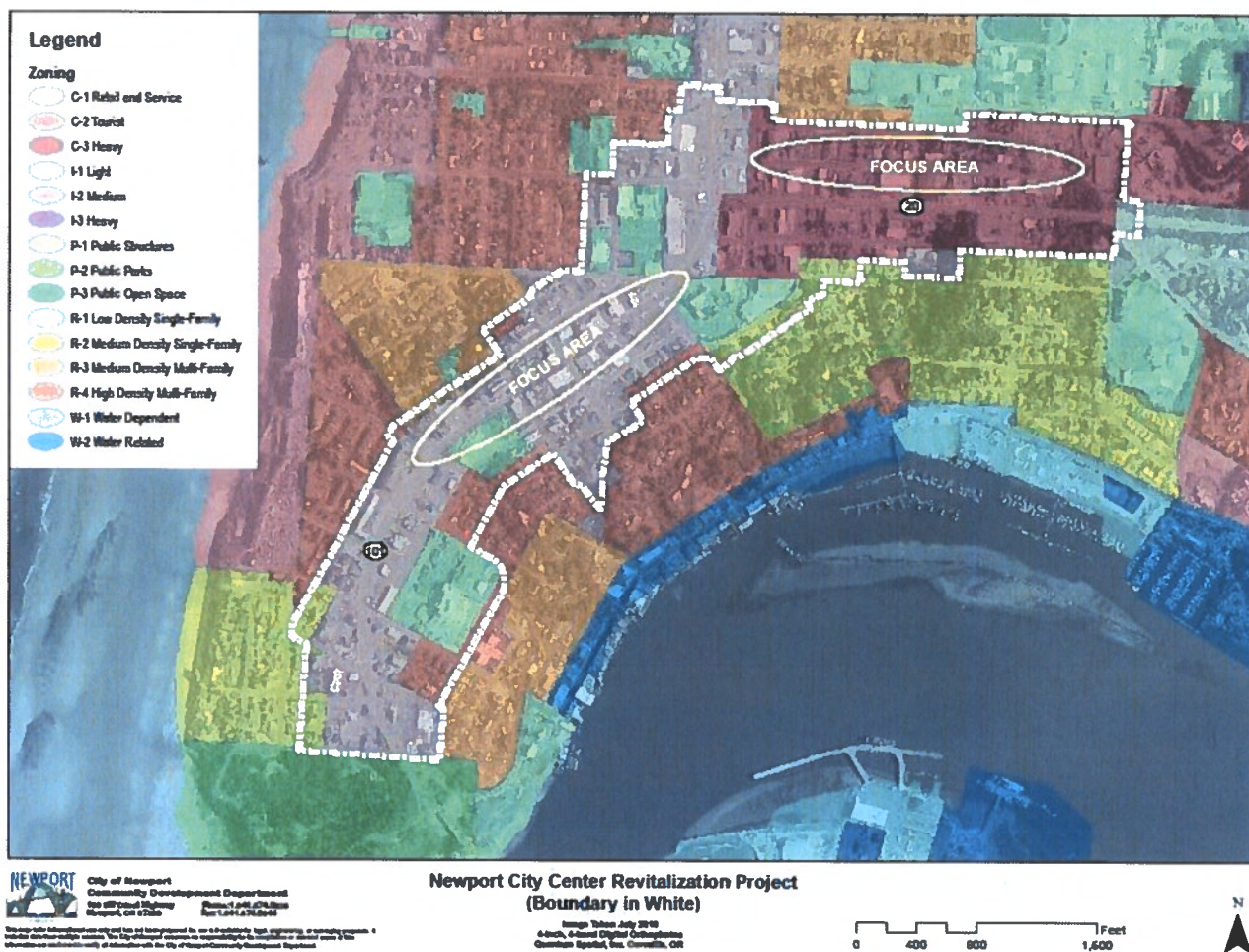
**Project Purpose/Transportation Relationship and Benefits**

The Project must develop a set of land use policies and regulations, with financial incentives, to support reinvestment in the City of Newport’s (“City”) city center, which is concentrated along the US 20/101 commercial corridors between the east entrance and the Yaquina Bay Bridge. The Project must identify transportation solutions that compliment proposed land use policies to promote mixed use development to create a live-work environment where residents have convenient access to employment and essential services.

**Project Area**

The Project Area is US Highway 101 and adjacent properties between the north end of the Yaquina Bay Bridge and US Highway 20, and US Highway 20 and adjacent properties between US Highway 101 and the eastern City Limits. The Project Area is shown in Figure 1. The Project Area may vary slightly in Project memoranda.

**Figure 1: Project Area**



**Background**

Many of the properties in Project Area are underutilized or in economic distress with vacant storefronts and aging, poorly maintained buildings. The City established an urban renewal district in 2015 to generate funding to revitalize the City Center area and has partnered with ODOT on a Transportation

System Plan (“TSP”) update (adopted August 2022) to identify how the transportation system can be redefined to catalyze economic development and provide infrastructure needed to support additional density. The 2022 Newport TSP identified 2 alternatives for improving transportation facilities within the Project Area along US 101. This Project must identify which of those alternatives, or variations of the alternatives, will best support Project objectives.

### **Project Objectives**

The NCCRP seeks to encourage development and redevelopment in the Project Area to create a vibrant urban center by:

- Refining the 2 TSP options for realigning US 101 through the City Center and identifying the option that best supports desired development patterns in the US 101 Focus Area shown in Figure 1.
- Developing amendments to the City’s Comprehensive Plan and Development Code to encourage desired development patterns in the US 101 and US 20 Focus Areas shown in Figure 1.
- Identifying public investments and incentives needed to encourage desired development and improve livability.

The objective is adoption of the NCCRP that meets all key objectives and expected outcomes identified within this SOW.

## **B. STANDARDS and GENERAL REQUIREMENTS**

### **1. Standards**

The standards, manuals, directives and other guidance applicable to Professional Services and Related Services are referenced below or available on Agency’s webpages linked below and are incorporated by this reference with the same force and effect as though fully set forth herein.

The standards, manuals, directives and other guidance listed below or available on Agency’s webpages are not exhaustive and may not include all applicable standards for a given Project. **Consultant shall be responsible for determining all applicable practices and standards to be used in performing Professional Services and Related Services. Consultant shall inform and demonstrate to Agency if standards, directives or practices required by Agency in performance of the Services are insufficient, in conflict with applicable standards, or otherwise create a problem for the design.** Should the requirements of any reference, standard, manual or policy referenced in the PA or WOC conflict with another, Consultant shall, in writing, request Agency to resolve the conflict.

Unless otherwise specified in a given task, the most current version of applicable standards, manuals, directives and other procedural guidance shall apply. Unless otherwise specified, the system of measurement and language used in all deliverables must be English.

#### **a. Planning, Survey, Preliminary Engineering and Design Manuals, Standards and Guidance:**

- **Technical Manuals - alphabetical list**  
(<https://www.oregon.gov/ODOT/Engineering/Pages/Manuals.aspx>)
- **Planning Guidance and Resources**  
(<https://www.oregon.gov/ODOT/Planning/Pages/Guidance.aspx>)
- **Planning Analysis** (<https://www.oregon.gov/ODOT/Planning/Pages/Technical-Tools.aspx>)



- **Geo-Environmental Guidance** (<https://www.oregon.gov/ODOT/GeoEnvironmental/Pages/Guidance.aspx>)
- **Geometrics Resources & Guidance** (<https://www.oregon.gov/ODOT/ETA/Pages/OCRS.aspx>)
- **Engineering Guidance** (<https://www.oregon.gov/ODOT/Engineering/Pages/Eng-Guidance.aspx>)
- **Standard Drawings and Details** (<https://www.oregon.gov/ODOT/Engineering/Pages/Standards.aspx>)
- **Surveying Manuals & Resources** (<https://www.oregon.gov/ODOT/ETA/Pages/Surveying.aspx>)
- **Technical Guidance** (<https://www.oregon.gov/ODOT/Engineering/Pages/Technical-Guidance.aspx>)
- **ODOT Forms Library** (<https://www.oregon.gov/ODOT/Forms/Pages/default.aspx>)
- **ADA Compliance – Assessment, Design, Inspection.** When the Services under this WOC include **assessment or design (or both)** for curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), Consultant shall:
  - a. Use ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended (collectively “ADA”), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards; and
  - b. Follow ODOT’s processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form.

When the Services under this WOC include inspection of curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), all such inspections shall include inspection for compliance with the standards and requirements in a. and b. above. Inspections must be performed by ODOT certified inspectors (which must include certified environmental inspectors when appropriate). In addition, at Project completion, Consultant shall complete the applicable ramp-specific ODOT Curb Ramp Inspection Form 734-5020(A-G) for each curb ramp constructed, modified, upgraded, or improved as part of the Project. Each completed form must be submitted electronically by clicking the “Submit by E-mail” button on the form (and cc the APM). The forms are documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT’s fillable Curb Ramp Inspection Forms and instructions are available at the following address: <https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

Above references to curb ramps, sidewalks or pedestrian-activated signals also include, when applicable, shared use paths, transit stops, park-and-rides and on-street parking.

#### **b. Website or Web Content Development and Maintenance Standards**

Consultant shall perform all required web-related Services in conformance with the **ODOT Web Standards** (available at: <https://www.oregon.gov/ODOT/Pages/Web-Toolkit.aspx>), which is incorporated into this PA with the same force and effect as though fully set forth herein. ODOT shall have ownership and control of Work Products developed by Consultant as set forth in the terms and conditions of the PA, Part II, Section 7 - Ownership of Work Product.



### c. ODOT Communications Standards

For any Consultant tasks that require communications functions on behalf of Agency, Consultant shall comply with the ODOT Communications Standards (available at: <https://www.oregon.gov/ODOT/Pages/Web-Toolkit.aspx>) which is incorporated into this WOC with the same force and effect as though fully set forth herein.

## 2. Software Requirements

In addition to the software requirements set forth in the PA, the following shall apply to this WOC:

- Reserved.

## 3. Professional Licenses, Registrations and Qualifications

- Registered Professional Engineer

## 4. General Requirements

The APM (or such other individual identified in specific tasks or as designated in writing to Consultant) is the primary contact on behalf of Agency for this Project.

To the extent possible, all transmittals from Consultant to Agency must include as applicable the Project name and the Project file code.

- a. **Endorsement of Data.** Consultant shall place their official Oregon Registered Engineer seal and signature on all engineering design drawings and specifications furnished to ODOT, as well as any other materials specified in ORS 671.025, 671.379, 672.020(2), 672.025(2), 672.028(2) and 672.605, as applicable, that require such seal and signature.
- b. **Electronic Documents, Digital Seal and Signature.** Consultant shall use ODOT's APM email for electronic submittal and receipt of files as necessary for the Project, unless otherwise agreed upon. All final documents identified in ORS 671.025, 671.379, 672.020(2), 672.025(2), 672.028(2) and 672.605, as applicable, must bear the digital seal and signature of the Oregon registered professional under whose supervision and control they were prepared. Documents must be submitted in the format specified in the WOC for each deliverable and must comply with Oregon Administrative Rule ("OAR") 804-030, OAR 806-010, OAR 809-050 and OAR 820-025 requirements, as applicable, for digital seal and signature capable of independent verification, final and draft documents, modifications to designs, and dual stamping of documents.
- c. **Personnel, Materials, and Equipment.** Consultant shall provide competent personnel and shall furnish all supplies, equipment, tools, and incidentals required to accomplish the work. All equipment and tools must be in good operating condition and shall be kept in proper adjustment throughout the duration of the WOC. All materials and supplies must be of good quality and suitable for the assigned work.
- d. **State-Owned Assets.** All State-owned assets, if any, in Consultant's possession must be promptly returned to Agency when the Services are complete, when the WOC is terminated, or when requested by Agency, whichever occurs first.
- e. **Legal Services and Fees.** If Consultant uses legal services to support the Consultant's performance of any Services under this WOC, that is a decision within the Consultant's

discretion; however, no charges for Consultant legal counsel or for legal services shall be charged to Agency as a subconsultant cost or other cost and any such costs or charges shall be paid for by the Consultant at the Consultant's sole expense and at no cost to the Agency.

**f. General Requirements for Project Management**

Consultant and City shall each provide a Project Manager throughout the Project and other adequate staff to complete the Project in accordance with the anticipated timeline. City shall maintain effective communication and coordination between Agency and Consultant throughout the Project.

APM, CPM and PM shall serve as the Project Management Team ("PMT") and may invite others to participate.

Consultant and City shall use Basecamp, a project management application administered by ODOT, to store Project-related files, facilitate Project-related communications, and coordinate review of Project deliverables.

**g. General Requirements for Written and Graphic Deliverables**

Project memoranda and meeting materials must be developed in a manner suitable for their eventual incorporation into the Final NCCRP. Project memoranda must document assumptions, data, and calculations used to reach conclusions in the memoranda.

Consultant shall write materials intended for the public, such as meeting presentations, at no higher than a high school grade level using the Flesch–Kincaid Grade Level Formula. Consultant shall translate online Public Events and other event materials into Spanish. Community Advisory Committee ("CAC") materials must not be translated.

Due Dates, PMT & City Review, and Consultant Edits

- Consultant shall provide all draft documents within 10 business days prior to public distribution (determined by the PMT), as required in the context of each task. Draft documents must be provided to the PMT and APM unless otherwise specified in the tasks.
- City shall and APM will provide 1 set of consolidated, non-conflicting written comments on draft materials within 5 business days from the date a deliverable is received, unless otherwise specified in the tasks. If multiple staff members are commenting, the comments must be reconciled by CPM, as applicable. If City cannot reconcile conflicting comments, APM will determine which comments will be kept.

**h. General Requirements for Revised and Final Deliverables**

Revised and final deliverables must not include names and logos of Consultant, Transportation and Growth Management ("TGM") Program, ODOT, or Oregon Department of Land Conservation and Development ("DLCD") or project codes. These items are only allowed on the acknowledgement page.

Based on comments received, Consultant shall incorporate minor revisions and corrections, and submit all revised and final documents within 5 business days of receipt of written comments on draft documents, unless another timeframe is approved in writing by APM or

otherwise specified in this WOC. Consultant is not required to make major or extensive revisions without an approved WOC amendment. This provision does not limit the right of the State to require correction of deliverables that do not meet the requirements of this WOC. APM will determine what constitutes a “minor” or “major” edit. Revised and final documents must be provided to PMT and APM unless otherwise specified in the tasks.

The following text must appear in the final version of the Final NCCRP:

“This Project is partially funded by a grant from the Transportation and Growth Management (“TGM”) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by Federal Highway Administration, local government, and State of Oregon funds.

The contents of this document do not necessarily reflect views or policies of the State of Oregon.”

**i. General Requirements for Meetings and Public Events**

“Arrange” meetings and Public Events includes but is not limited to: scheduling meeting dates and times with meeting participants, distribution of agendas and meeting materials in advance of the meeting, reserving a suitable meeting location, placing advertisements in local media, and posting notices in public locations (such as City buildings and libraries).

Unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency, City is responsible for meeting arrangements. City shall, in accordance with City standards regarding meetings, prepare and distribute all staff reports, agendas, relevant materials, necessary public notices, and notifications, and provide public outreach for community involvement. City shall arrange, schedule and pay for meeting room accommodations; coordinate and pay for meeting materials and refreshments, including printed materials and postcards that will be mailed to residents (postage also paid by City). Additionally, City shall coordinate, print and distribute advertising materials and information in City social media accounts, citywide utility bills and other City controlled medium, as appropriate.

“Conduct” meetings and Public Events includes but is not limited to: preparing agendas and meeting materials, making presentations, facilitating discussion of relevant issues, and preparing meeting summaries.

Unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency, Consultant is responsible for conducting meetings.

Consultant, when conducting meetings, shall submit materials (includes agendas and presentation materials) for all meetings at least 10 business days prior to the meeting, unless another timeframe is approved by APM or otherwise specified in this WOC. Consultant shall submit summary materials within 10 business days following each meeting. Materials must be provided to PMT unless otherwise specified in the tasks.

**j. General Requirements for Public Involvement**

When conducting the public involvement in this Project, the City and Consultant shall consider environmental justice, which is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Fair treatment means that no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, State, local, and tribal programs and policies.

Meaningful involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

The Public Involvement Plan must include specific steps to provide opportunities for participation by federal Title VI communities. City and Consultant shall use the ODOT Title VI (1964 Civil Rights Act) Plan guidance to identify Title VI populations, formulate public involvement strategies, and report outreach efforts to and participation by Title VI communities.

Consultant shall work with City to identify effective methods of engagement with Spanish-speaking and other Title VI communities in the Project Area. Consultant shall:

- provide a Spanish interpreter for Targeted Outreach and Public Event meetings as needed; and
- provide public involvement materials for Targeted Outreach and Public Events in English and Spanish.

Project meeting locations for in-person meetings must be accessible by people with disabilities. Notices for in-person meetings must include an offer to make accommodations for people with disabilities with sufficient advance notice, with contact information for such notification. City will pay for any incentives or thank you gifts for public participation including but not limited to gift cards, bus passes, meals, refreshments, etc.

Consultant shall compile email addresses and comments provided by visitors to the Project Website and provide these to City before each PMT meeting for inclusion in the Interested Parties List. Consultant shall post notices of Project Meetings and summaries of Project meetings to the Project Website.

**k. General Requirements for Traffic Analysis**

Project will rely heavily on traffic analysis conducted for the Newport TSP (2020). Any additional or new traffic analysis conducted for this Project must comply with the following requirements:

- Consultant, by and through an Oregon-registered Professional Engineer ("P.E."), shall perform or oversee all traffic analysis services. Final versions of the Contractor's



transportation analysis must be stamped by an Oregon registered P.E. with license being current and in good standing, with expertise in civil or traffic engineering.

- Traffic analysis software must follow Highway Capacity Manual 7th Edition procedures. Signalized intersection volume to capacity ratios must be manually calculated. Traffic analysis must comply with ODOT's Analysis Procedures Manual available at: <https://www.oregon.gov/odot/Planning/Pages/APM.aspx>
- Traffic analysis at non-State intersections must be compatible with ODOT procedures and must follow standard engineering procedures and practices.
- Project must use a planning horizon of 2040 for analysis of future conditions.
- Consultant shall coordinate all traffic analysis with the City, ODOT's Transportation Planning Analysis Unit, and Region 2 Traffic.
- Consultant shall provide all traffic analysis work in electronic format (such as Synchro, HCS+, or Micro Station files) to the City, PMT, and other pertinent agencies, as determined by APM.

### **C. REVIEW, COMMENT and SCHEDULE OVERVIEW**

Consultant shall coordinate with Agency staff as necessary and shall revise draft deliverables to incorporate Agency draft review comments. City approval is required before distribution of Project deliverables for public review and comment. Unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by APM, deliverables shall be provided and reviewed according to the following schedule:

- Consultant shall provide a draft of all written and graphic deliverables to the City and APM in electronic format at least 10 business days prior to public distribution. Consultant draft memoranda must be substantially complete, and any changes or revisions needed prior to public distribution to address comments are expected to be minor. City shall and Agency will provide a consolidated set of comments on draft deliverables from their reviewers to Consultant within 5 business days of receipt of the material. Consultant shall revise draft deliverables as directed by the CPM before public distribution. This provision does not limit the right of Agency to require correction of deliverables that do not meet the standards outlined in this SOW (see Section B, part 4, sections g. and h., of this SOW).
- Consultant shall return the revised and final deliverables to City and APM, with comments incorporated, within 5 business days of Consultant's receipt of City's and Agency's comments. City approval is required before distribution of Project memoranda for public review and comment, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency (see Section B, part 4, section h., of this SOW).
- Consultant shall provide a draft of presentation materials to the City and APM in electronic format at least 10 business days prior to the associated meeting. City and Agency shall provide a consolidated set of comments from their reviewers to Consultant within 5 business days of receipt of the material. Consultant shall revise materials as directed by the CPM for meeting use (see Section B, part 4, section i., of this SOW).
- Consultant shall post Public Draft Project Memoranda, Revised Project Memoranda, and Presentation Materials on the Project Website concurrent with their availability to the public.

#### **D. FORMAT REQUIREMENTS**

- Consultant shall submit draft deliverables in electronic format via email (and hard copy if requested by APM or CPM).
- Consultant shall submit all written (text) and graphic deliverables (draft and final) electronically in Microsoft Word (.doc) and final deliverables in Microsoft Word (.doc) and Portable Document Format (.pdf). Written deliverables must include the Project name, a title that refers to the contract deliverable and date of preparation. Any deliverables on the Project Web Site must be posted in .pdf format. Each draft and final spreadsheet-based deliverable must be provided in MS Excel file format and must be fully compatible with version used by Agency.
- Graphic deliverables submitted for review must be converted to .doc or .pdf for readability. All graphic deliverables must be well documented, with Project name, a title that corresponds to the contract deliverable, draft number, a legend, and the date of preparation.
- Electronic versions of base and plan maps must be in color, and in a color scheme that ensures readability in black and white and in a color-blind safe palette. Display-sized maps must be printed in color when important to public comprehension.
- Maps must be at scale legible in the final document and include details necessary to ensure usability, such as city limits, Urban Growth Boundaries, street names, relevant environmental and cultural features, legend, date, etc.
- Display-sized maps for Project meetings must be printed in color when important to public comprehension and must be mountable on foam core to allow display on an easel or wall.
- Consultant shall provide City and APM with any Geographic Information Systems (“GIS”) data sets or updated data sets developed for this Project.
- Additional format requirements may be listed with specific tasks/deliverables in the SOW or in the PA.

#### **E. TASKS, DELIVERABLES and SCHEDULE**

Unless the WOC is terminated or suspended, Consultant shall complete the Services included in this WOC and in accordance with the performance requirements and delivery schedules included in this WOC. For purposes of standardization, the task numbering in this SOW may be non-sequential.

Unless otherwise stated in a specific task or deliverable, “up to” in this SOW will be as determined or approved by APM if the quantity requires less than the specified maximum to meet the Project need.

Deliverables for each task include the deliverable item number, subtask name, related subtask number, tangible deliverables, and associated responsibilities. Consultant shall be responsible for both tangible deliverables and associated responsibilities, which are paid for under the level of effort for each deliverable item.

Consultant understands that the City has significant tasks related to, and involvement with, the Project. As such Agency has entered into a separate Intergovernmental Agreement (PO-73000-00028561) (“Project IGA”) with the City to provide services to the Project as described in this SOW that are not the responsibility of the Consultant. Information regarding the City deliverables and responsibilities is for informational purposes only.

For meeting requirements, including the defined meanings of “conduct” and “arrange”, refer to Section B, part 4, subsection i., of this SOW, under General Requirements for Meetings.

The General Project Delivery Schedule is consolidated in a table at the end of Section E.

## **TASK 1: PROJECT INITIATION AND OUTREACH**

### **1.1 PMT Meetings**

Consultant shall arrange and conduct 12 PMT meetings (approximately once a month), of 30 minutes each, and 3 PMT Meetings of 1-hour in duration, via phone or video conference. Meeting topics must include scope/schedule/budget; deliverables review; preparation for CAC meetings, Outreach Meetings, and Public Events; confirmation of decisions and direction; and other Project topics as they arise. PM must attend each PMT Meeting unless an alternative representative is approved by the CPM at least 1 day before the PMT Meeting. PMT members may invite other staff members from their respective agencies or Consultant team to participate in any PMT Meeting. Consultant shall prepare and distribute a bullet point summary of action items after each meeting.

### **1.2 Background Documents and Data**

City shall provide Consultant with background documents and data for use in preparing Project deliverables. Background data and materials must include, but is not limited to, the following items:

- Comprehensive Plan
- 2022 Newport TSP
- Development Code
- GIS data
- Any pedestrian, bicycle, and motor traffic counts for streets and paths
- Demographic data related to Title VI populations
- any available tourism related data
- a list of key property owners in the area
- commercial vacancy information

City shall coordinate with Consultant to confirm receipt of all documents and data relevant to the Project. Background Documents and Data are limited to material that is readily available to City and shall be provided in any format City deems suitable (such as paper copies, electronic files, or links to documents available on the internet). Subsequent analyses conducted by Consultant must consider information provided by City and any other information Consultant believes relevant to this Project. Consultant shall produce no new GIS data nor conduct any additional facility inventories.

Agency will provide Consultant with guidance on applicable plans and policies as needed during Project, including the following:

- Statewide Planning Goals
- Transportation Planning Rules
- Highway Design Manual
- Oregon Highway Plan
- Oregon Bicycle and Pedestrian Plan

Consultant shall also download the most recent 5 complete calendar years of crash data within the Project Area from the Agency website.

Consultant has no tangible deliverables for this task.

### **1.3 Project Initiation Meeting and Site Visit**

City shall arrange and conduct and Consultant shall participate in a Project Initiation Meeting with City, APM, and others invited by City. CPM shall present an overview of City's goals for the Project and provide a virtual tour of key sites in the Project Area. City shall coordinate virtual tour logistics. Consultant shall review the Project schedule (prepared in Subtask 1.6) and identify additional background data and materials needed for Project at the Project Initiation Meeting.

The meeting and tour must, in total, be up to 2 hours in duration. At least 2 Consultant staff shall attend the meeting in-person. Consultant shall provide bulleted summary to City and APM within 5 business days following the Project Initiation Meeting and Site Visit.

### **1.4 CAC and Interested Parties List**

City shall compile a list of potential partners and invite them to participate on a CAC for the Project. Partners invited to participate in the CAC must include topic area experts in the type of development City is seeking to attract, and representatives of public agencies, community organizations, and directly affected parties including but not limited to:

- City Council and Planning Commission
- Lincoln County
- Lincoln County School District
- Fire and Emergency Service Providers
- Local Business and Agency Representatives
- Faith Based Organizations
- Mixed-Use or Multi-Family Housing Developers
- Lending Institutions
- Architect or Engineering Design Professionals
- Centro De Ayuda
- Oregon DLCD
- Farmers Market Representatives
- Area Resident(s)

City may invite any other community members interested in Project-related issues and local organization(s) representing equity interests but should aim for a committee of no more than 18 members. CAC will meet to review Project deliverables and provide guidance on the development of Project deliverables.

City shall maintain an Interested Parties List that includes a roster of CAC members and other parties expressing interest in the Project for notification of Project progress, meetings, presentations, and outreach opportunities. City shall coordinate with Consultant on development of the CAC membership and to include people and organizations on the Interested Parties List.

Consultant has no tangible deliverables for this task.



### 1.5 Public Involvement Plan

Consultant shall develop a Public Involvement Plan that outlines all outreach methods, responsibilities and roles for all team members, and a schedule for successful completion of the outreach deliverables in this SOW. The Public Involvement Plan must identify outreach methods, roles and responsibilities for team members, and a schedule that is consistent with this Statement of Work. The Public Involvement Plan must identify the timing for Targeted Outreach Meetings and the Targeted Outreach Event relative to the production of Project deliverables. Consultant shall coordinate with City and APM to determine the outreach methods that result in the highest level of engagement, particularly from historically under-represented community members. Consultant shall use the *ODOT Equitable Community Engagement Guide* available at <https://www.oregon.gov/odot/equity/HB2985/Equitable%20Community%20Engagement%20Guide.pdf> for development of the Public Involvement Plan. Consultant shall provide City and Agency with a draft Public Involvement Plan for review. Consultant shall conduct 1 round of revisions to the Public Involvement Plan based on comments from the City and Agency.

### 1.6 Project Website Launch

Consultant shall develop a Project Website that is available to the public for the entire duration of the Project. Consultant shall coordinate with the City to determine the structure and format for the Project Website. Consultant shall host and obtain a stand-alone URL for the Project Website. City shall maintain a link from City's website to the Project Website.

Consultant shall prepare initial content for the Project Website that includes a Project description, a Project schedule showing major Project tasks and tentative dates for public outreach opportunities, and ways to provide comment and to be added to the Interested Parties List established in Task 1.4. The Project Website must include a Spanish-language landing page with initial content in Spanish.

Consultant shall provide draft initial materials for the Project Website to City and APM and incorporate revisions resulting from 1 consolidated round of City and APM review before the Project Website is made available to the public. The City's and APM's review shall consist of a single list of non-contradictory comments (and specific direction for each comment).

## DELIVERABLES – TASK 1: PROJECT INITIATION AND OUTREACH

### City Deliverables

- 1.a PMT Meetings (Subtask 1.1 – no tangible deliverables; responsibilities include: attendance)
- 1.b Background Documents and Data (Subtask 1.2 – no tangible deliverables; responsibilities include: providing documents and data to Consultant)
- 1.c Project Initiation Meeting and Site Visit arrangements (Subtask 1.3 – agenda and meeting materials; responsibilities include: meeting arrangements and attendance)
- 1.d CAC and Interested Parties List (Subtask 1.4 – CAC roster and Interested Parties List)
- 1.e City Responsibilities: Review and comment on Consultant deliverables in Task 1

### Consultant Deliverables

- 1.A PMT Meetings (Subtask 1.1 – agendas, meeting materials, meeting summaries)
- 1.B Background Documents and Data (Subtask 1.2 – no tangible deliverables; responsibilities include: coordination with City)

- 1.C Project Initiation Meeting and Site Visit (Subtask 1.3 – meeting summary; responsibilities include: attendance)
- 1.D CAC and Interested Parties List (Subtask 1.4 – no tangible deliverables; responsibilities include: coordination with City)
- 1.E Public Involvement Plan (Subtask 1.5 – draft and revised Public Involvement Plan)
- 1.F Project Website Launch (Subtask 1.6 – draft and revised Project Website)

## **TASK 2: OUTREACH**

### **2.1 CAC Meetings**

City shall arrange and Consultant shall conduct 6 CAC meetings to provide an overview of the Project and review of Project deliverables. CAC Meetings 1, 2, and 6 must be held online; CAC Meetings 3, 4, and 5 must be held in-person in Newport.

- Meeting #1 must provide an overview of the Project, adopt the committee charter, and review Draft Memorandum #1. Consultant shall facilitate a process at CAC Meeting #1 to refine goals, objectives, and Project evaluation criteria in Draft Memorandum #1 and to rank the relative importance of those goals and objectives. At least 1 technical Consultant staff and 1 engagement Consultant staff shall attend the meeting.
- Meeting #2 must review Draft Memoranda #2 and #3. At least 1 technical Consultant staff and 1 engagement Consultant staff shall attend the meeting.
- Meeting #3 must review the gap analysis in Draft Memorandum #4. Consultant shall solicit members' views on the gap between likely future development and the goals / vision as well as on strategies or packages of strategies the City could use to address that gap. CAC Meeting #3 must occur at least 1 week before Public Event #1 to allow the event materials to be modified based on CAC feedback. At least 2 technical Consultant staff and 1 engagement Consultant staff shall attend the meeting.
- Meeting #4 must review the results of input on Draft Memorandum #4 at Public Event #1, and Joint Planning Commission / City Council Work Session #1. Consultant shall seek CAC feedback on plan and code amendments, public investments, and incentives needed to address gaps identified in Draft Memorandum #4. At least 1 technical Consultant staff and 2 engagement Consultant staff shall attend the meeting.
- Meeting #5 (same day as Public Event #2) must review Comprehensive Plan and Development Code amendment concepts in Memorandum #5, proposed public investments in Draft Memorandum #6, and proposed incentives in Draft Memoranda #7. Consultant shall use the meeting to solicit input from CAC on the suitability of proposed measures in the Draft Memoranda, and issues related to development of Comprehensive Plan elements. At least 1 technical Consultant staff and 1 engagement Consultant staff shall attend the meeting.
- Meeting #6 must review the contents of Revised Memorandum #9 and the Draft NCCRP that will be considered for adoption. Consultant shall solicit input on the Draft NCCRP. At least 1 technical Consultant staff and 2 engagement Consultant staff shall attend the meeting.

CAC Meetings may be up to 2 hours in duration. For each CAC Meeting, Consultant shall prepare a draft agenda, hold a 30-minute review and preparation meeting online with City to review the agenda, make changes, and finalize meeting materials. City shall send agenda and meeting materials to CAC members at least 1 week prior to the meeting, and an email with the meeting summary following the meeting.

Consultant shall provide meeting summaries of roughly 2 pages that include high-level key issues discussed at meetings and any implications for Project schedule or deliverables, to City and APM within 5 business days following each CAC Meeting; detailed meeting minutes must be prepared by City for review and approval by the CAC at their following meeting.

## **2.2 Targeted Outreach Interviews**

Consultant shall arrange and conduct 10 Targeted Outreach Interviews of roughly 30 minutes each with individuals or small groups to identify key issues of concern to interview participants. Consultant shall conduct Targeted Outreach Interviews by telephone or by virtual meeting software. City shall provide a preliminary list of interview participants and contact information to Consultant for review and comment at the Project Initiation Meeting. Consultant shall coordinate with City to determine the participants and timing of the Targeted Outreach Interviews relative to the Project schedule. Targeted Outreach Interviews must include at least 1 representative of a Title VI population (low-income or minority). Consultant shall provide a draft of the Targeted Outreach Interview questions to the City for review and comment prior to Targeted Outreach Interviews. Consultant shall submit 1 written summary, no more than 3-pages, that aggregates all results of Targeted Outreach Interviews. If desired, and requested by APM, unedited notes may be included as an appendix.

## **2.3 Targeted Outreach Events**

City shall arrange and Consultant shall conduct 2 2-hour Targeted Outreach Events that target groups and individuals that would not normally attend a CAC Meeting or Public Event to gather input that must help inform development of the NCCRP. At least 1 technical Consultant staff and 2 engagement Consultant staff shall attend each Targeted Outreach Event. The Targeted Outreach Events must be held in-person in Newport. Consultant shall hold 1 Targeted Outreach Event in Spanish. The Targeted Outreach Events must be held the same day to reduce travel costs for the Consultant team.

## **2.4 Public Events**

City shall arrange and Consultant shall conduct 2 Public Events. Public Events must be in-person and must be engaging to facilitate interaction between participants and the Project team. At least 2 technical Consultant team members and 1 engagement Consultant team member must attend each Public Event.

- **Public Event 1: Partner Workshop**

Consultant shall present findings from Draft Memoranda #1, #2, #3 and #4, including:

- proposed goals and objectives for the NCCRP in Draft Memorandum #1,
- an overview of existing and future conditions in the Project Area in Draft Memorandum #2,
- results of the market analysis for development in the Project Area in Draft Memorandum #3,
- impediments to achieving the goals and objectives in Draft Memorandum #4, and
- potential policies and investments the City could use to achieve goals and objectives for the Project Area.

Consultant, supported by the City, shall facilitate an interactive scenario exercise to explore how transportation and development can be aligned. The exercise must be structured to help refine and consolidate ideas for a preferred scenario(s) based on feedback and feasibility considerations. Initial implementation ideas – such as necessary steps, timelines, responsible parties, and funding sources – must also be covered. To conclude the workshop, Consultant shall

prepare and provide to City and APM a presentation summarizing the findings, preferred scenario(s), and initial implementation ideas, to gather final feedback, and discuss next steps.

- **Public Event 2: Open House**

Consultant shall present a summary of proposed policies and investments for the City to use to achieve the goals and objectives in Revised Memorandum #1, including:

- Comprehensive Plan and Development Code amendments in Memorandum #5,
- public investments in Draft Memorandum #6, and
- public incentives for desired development in Draft Memorandum #7.

The following material must be provided for each Public Event:

1. **A postcard advertising the Public Event** – Consultant shall develop the postcards. City shall print and distribute Postcards for each Public Event and conduct other outreach for the Public Events including posts on City social media accounts, advertising in City utility bills, and other means.
2. **Presentation Materials** – Consultant shall utilize text and graphics from relevant Project memoranda to prepare at least 4, and up to 10, graphical displays (up to 24" by 36") and a 1-4-page informational handout on 8.5" by 11" paper. Presentation materials must seek to engage participants in attendance at the Public Event. City shall print graphical displays for viewing at the Public Event. Consultant shall publish presentation materials to the Project Website no later than the day of the Public Event. Presentation Materials for Public Event #2 must include illustrative "plan view" and three-dimensional renderings of proposed street alignment, streetscape enhancements, and development in the Project Area.
3. **Survey** – Consultant shall prepare a survey pertaining to issues relevant to the Project with up to 15 questions (not counting questions about demographics).
4. **Online Open House** – Consultant shall provide a means for visitors to access the Project Website to view presentation materials and surveys for each Public Event and provide comments and responses. Materials and ability to comment and respond must remain live on the Project Website for a minimum of 2 weeks following each Public Event.

For each Public Event, Consultant shall prepare a draft event plan and hold a 1-hour meeting online with City to review the event plan and presentation materials. Within 10 business days after each Public Event, Consultant shall provide City and APM with a memo under 10 pages that summarizes key issues raised at the Public Events and any implications for Project schedule or deliverables.

Consultant shall translate content of postcards and presentation materials into Spanish. Consultant shall post Spanish-language materials on Project Website at the same time as the corresponding material in English.

City shall provide to Consultant any public comments received separately by City 1 week after the comment period for Public Events close. Consultant shall maintain a compilation of public comments received through the Project Website, from City, and at Public Events.



## DELIVERABLES – TASK 2: OUTREACH

### City Deliverables

- 2.a CAC Meetings (Subtask 2.1 – meeting minutes; responsibilities include: meeting arrangements and attendance)
- 2.b Targeted Outreach Interviews (Subtask 2.2 – preliminary list and contact information; responsibilities include: coordination with Consultant over participation and timing)
- 2.c Targeted Outreach Events (Subtask 2.3 – no tangible deliverables; responsibilities include: event arrangements)
- 2.d Public Events (Subtask 2.4 – no tangible deliverables; responsibilities include: meeting arrangements and attendance, material printing and distribution, and compilation of public comments to Consultant)
- 2.e City Responsibilities: Review and comment on Consultant deliverables in Task 2

### Consultant Deliverables

- 2.A CAC Meetings (Subtask 2.1 – agendas, meeting materials, meeting summaries; responsibilities include: attendance and facilitation)
- 2.B Targeted Outreach Interviews (Subtask 2.2 – draft interview questions, written summary, unedited notes upon request; responsibilities include: schedule and conduct interviews)
- 2.C Targeted Outreach Events (Subtask 2.3 – agendas, meeting materials, meeting summaries)
- 2.D Public Events (Subtask 2.4 – agendas, presentation materials, postcards, surveys, meeting summary memos, draft event plans)

## TASK 3: DEVELOP POLICY BASIS FOR PLAN

### 3.1 Draft Memorandum #1: Plan Goals and Objectives

Consultant shall prepare and provide to City and APM Draft Memorandum #1 that identifies potential goals and objectives for NCCRP. Goals and objectives in Draft Memorandum #1 must focus on suggested edits and additions to the currently adopted City goals and policies related to conditions in the Project Area, as well as City priorities identified at the Task 1 Project Initiation Meeting.

Draft Memorandum #1 must also include Evaluation Criteria (e.g., equity, gap closure, safety) for evaluating deliverables, policy and code options, and prioritizing recommended projects, based on goals and objectives. Consultant shall coordinate with City and Agency Region 2 Traffic in the development of the Evaluation Criteria for the prioritization of projects. The 2022 Newport TSP identified 2 alternatives for improving transportation facilities within the Project Area along US 101. Draft Memorandum #1 must assess those alternatives to identify the alternative, or variations of the alternatives, which will best support Project objectives.

### 3.2 Draft Memorandum #2: Existing Conditions

Consultant shall prepare and provide to City and APM Draft Memorandum #2 in the form of a PowerPoint presentation that catalogs sources of existing physical and socio-economic conditions. Draft Memorandum #2 must identify a proposed boundary for the analysis of Existing Conditions in the Project Area. The boundary must generally coincide with Figure 1. Data sources documented in Draft Memorandum #2 must include the following:

- Comprehensive Plan designations and zoning
- Pattern and amount of existing land uses by type and location
- Ownership of parcels
- Estimates of population, demographic conditions, and employment by type and, as available, by location

Draft Memorandum #2 must include slides with maps and tables showing the following characteristics of the Project Area:

- Location of major employers and trip generators
- Summary of key operational characteristics of existing transportation facilities based on the 2022 Newport TSP
- Qualitative assessment of conditions for people walking, cycling, and using transit
- Location and type of public facilities, including schools, parks, and police/fire stations
- Planned public improvements, including any modifications to existing streets, sidewalks, and transit facilities
- Potential private developments that are known to the public

Draft Memorandum #2 must include slides with a general assessment of the capacity of utilities to serve growth in the Project Area, particularly water, stormwater, and wastewater, based on a review of existing assessments of these services and interviews with staff at utility agencies.

### 3.3 Draft Memorandum #3: Market Analysis

Consultant shall prepare and provide to City and APM Draft Memorandum #3 that provides an overview of real estate market conditions and trends and identifies assets, barriers, and opportunities.

Draft Memorandum #3 must include the following elements:

- **Overview of real estate market conditions and trends** (e.g., building stock, vacancies, rents, deliveries, and development pipeline) for up to 3 housing and select commercial use types in Newport and Lincoln County. Consultant shall incorporate information compiled from the Newport Housing Production Strategy (2023), the City of Newport 2022-2042 Housing Capacity Analysis (2022), and other analyses of market conditions in the Project Area.
- **Identification of assets, barriers, and opportunities for:**
  - Attracting a set of complementary, viable potential uses to the Focus Areas shown in Figure 1.
  - Potential changes to local regulations that could improve the environment for development in the Project Area (based on Targeted Outreach interview findings).
  - How development in the Project Area can help advance the City's overall economic development goals.
  - What role the Project Area could play as the City builds out over the next 20 years.

In preparing assessment of market conditions, Consultant shall conduct a field visit of the Project Area during the Project Initiation Meeting and Site Visit (Task 1.3) and conduct a series of phone or Zoom

interviews with at least 5 area contacts identified by the City. Consultant shall request area contacts from City when they begin preparations for Draft Memorandum #3.

### **3.4 Revised Memorandum #1**

Consultant shall revise Draft Memorandum #1 and provide to City and APM after Public Event #1 to incorporate comments by reviewers and from the public per direction by City and APM. Revised Memorandum #1 must identify a set of goals, vision statements, and policies specifically for the Project Area and the areas recommended for inclusion in the NCCRP. Revised Memorandum #1 must identify a preferred alternative for improvement of the US 101 corridor in the Project Area.

### **3.5 Revised Memorandum #2**

Consultant shall revise Draft Memorandum #2 and provide to City and APM after Public Event #1 to incorporate comments by reviewers and from the public per direction by City and APM.

### **3.6 Revised Memorandum #3**

Consultant shall revise Draft Memorandum #3 and provide to City and APM after Public Event #1 to incorporate comments by reviewers and from the public per direction by City and APM.

## **DELIVERABLES – TASK 3: DEVELOP POLICY BASIS FOR PLAN**

### **City Deliverables**

No tangible deliverables in Task 3

3.a City Responsibilities: Review and comment on Consultant deliverables in Task 3

### **Consultant Deliverables**

- 3.A Draft Memorandum #1: Plan Goals and Objectives (Subtask 3.1 – draft memorandum)
- 3.B Draft Memorandum #2: Existing Conditions (Subtask 3.2 – draft memorandum)
- 3.C Draft Memorandum #3: Market Analysis (Subtask 3.3 – draft memorandum)
- 3.D Revised Memorandum #1 (Subtask 3.4 – revised memorandum)
- 3.E Revised Memorandum #2 (Subtask 3.5 – revised memorandum)
- 3.F Revised Memorandum #3 (Subtask 3.6 – revised memorandum)

## **TASK 4: GAP ANALYSIS**

### **4.1 Draft Memorandum #4: Gap Analysis**

Consultant shall prepare Draft Memorandum #4 and provide to City and APM, documenting the analysis of the gap between the vision for future land use and transportation characteristics in Revised Memorandum #1 and the characteristics that are likely to result from development and redevelopment that is consistent with current adopted policies, standards, regulations, and existing and planned public facilities. To support the Consultant's efforts, the City shall provide an annotated list of Development Code and public works standards that could be affected by, and may need to be amended, due to NCCRP changes.

In preparing Draft Memorandum #4, Consultant shall:

#### **Identify a Baseline Future Condition:**

- Develop a Baseline Future by estimating the likely type and intensity of future land uses and transportation conditions in the Project Area, consistent with current adopted policies, standards, regulations, and existing and planned public facilities. The transportation baseline future must be based on the planning horizon used in the 2022 Newport TSP.
- Assess consistency of Baseline Future conditions with the goals and objectives in Revised Memorandum #1.
- Identify impediments to achieving the goals and objectives in Revised Memorandum #1. Impediments may include market conditions, public facility and service capacities, and policies and regulations found in City's adopted Comprehensive Plan, existing Refinement Plans, 2022 Newport TSP, and Development Code.

#### **Conduct an Alternatives Analysis:**

- Alternatives developed for Draft Memorandum #4 must include 2 alternatives for US 101 in the Project Area, 1 with the existing alignment and 1 with a couplet on US 101. Consultant shall work with the City and Agency to identify the alignment and extent of the proposed US 101 couplet. Consultant shall utilize analysis conducted for the 2022 Newport TSP for development of alternatives for US 101. All alternatives must assume US 20 remains in its current alignment.
- For each transportation alternative, Consultant shall develop at least 2 alternatives for land use development in the Project Area that show a range of development intensities and a mix of land uses consistent with plan goals and objectives in Revised Memorandum #1.

#### **Develop an Implementation Strategy:**

- Describe potential measures City could use to implement alternatives to achieve goals and objectives in Revised Memorandum #1. Potential measures may include plan policies, zoning districts, Development Code regulations, incentives, and public-private partnerships. Potential measures must include measures commonly used by municipalities in Oregon as well as less common and innovative measures such as form-based codes and design guidelines. Consultant shall consider Development Code concepts contained in the TGM Program publications available on the Code Assistance site at <http://www.oregon.gov/LCD/TGM/Pages/codeassistance.aspx>.
- Assess the suitability of potential implementation measures, including an assessment of the strategy's legality in Oregon, relative administrative cost, potential market reaction, degree of goal and vision implementation, likelihood of citizen acceptance, and implications for other City policies and practices.
- Identify investments in public facilities and services, in addition to or revising those that are already planned, that are likely needed to support a land use pattern consistent with goals and objectives in Revised Memorandum #1. Additional public investments may include improvements to the transportation system, parks and recreation facilities and services, public safety, and utilities.
- Identify steps needed to implement potential measures and additional public investments to support goals and objectives in Revised Memorandum #1.
- Recommend specific boundaries for application of proposed policies and investments, if applicable and consistent with boundaries established in Revised Memorandum #2.

#### **4.2 Joint Planning Commission / City Council Work Session #1**

City shall arrange and conduct a Joint Work Session for the Newport Planning Commission and City Council. Consultant shall attend the Joint Planning Commission / City Council Work Session in person to



present a summary of goals and objectives for the NCCRP from Revised Memorandum #1 and of findings from Draft Memoranda #4 including:

- impediments to achieving the goals and objectives in Revised Memorandum #1,
- potential implementation measures, and
- public investments needed to support desired development.

Consultant shall respond to questions from Commissioners and Councilors.

Consultant has no tangible deliverables for this task.

#### **4.3 Revised Memorandum #4**

Consultant shall revise Draft Memorandum #4 and provide to City and APM to incorporate comments by reviewers, Planning Commissioners, City Councilors, and the public as directed by City and APM.

Revision of Draft Memorandum #4 must occur after Joint Planning Commission / City Council Work Session #1, and Public Event #1. Revised Memorandum #4 must identify a preferred alternative for land use and transportation in the Study Area along with recommended implementation measures and public investments to support the preferred alternative.

### **DELIVERABLES – TASK 4: GAP ANALYSIS**

#### **City Deliverables**

- 4.a Draft Memorandum #4: Gap Analysis (Subtask 4.1 – no tangible deliverables; responsibilities include: providing annotated list of Development code and public works standards to Consultant, and coordination with Consultant)
- 4.b Joint Planning Commission / City Council Work Session #1 (Subtask 4.2 – agenda, meeting materials, meeting summary; responsibilities include: meeting arrangements)
- 4.c City Responsibilities: Review and comment on Consultant deliverables in Task 4

#### **Consultant Deliverables**

- 4.A Draft Memorandum #4: Gap Analysis (Subtask 4.1 – draft memorandum)
- 4.B Joint Planning Commission / City Council Work Session #1 (Subtask 4.2 – no tangible deliverables; responsibilities include: attendance, presentation of existing summary, and responding to questions)
- 4.C Revised Memorandum #4 (Subtask 4.3 – revised memorandum)

### **TASK 5: PLAN IMPLEMENTATION**

#### **5.1 Memorandum #5: Comprehensive Plan and Development Code Concepts**

Consultant shall prepare and provide to City and APM Memorandum #5, to include recommendations and proposed conceptual amendments to City's Comprehensive Plan and Development Code necessary to implement the preferred alternative for plan and code amendments identified in Revised Memorandum #4.

Memorandum #5 must include:

- A series of Area Plan Maps showing where the proposed Comprehensive Plan designations and zoning districts would be applied in the Project Area. Boundaries for application of plan designations and zoning must be composed of whole parcels with identifiable boundaries for individual parcels.
- A description of potential Comprehensive Plan designations and zoning districts, with a description of the types of allowed land uses and development requirements that will affect the type, density, and appearance of development in each designation and district. The Comprehensive Plan designations and zoning districts must be consistent with the preferred alternative identified in Revised Memorandum #4.
- A description of potential Development Code amendments to implement the preferred alternative in Revised Memorandum #4.

Consultant shall use applicable Development Code text contained in publications on the TGM Program's Code Assistance web page at <http://www.oregon.gov/LCD/TGM/Pages/codeassistance.aspx> to prepare Conceptual Development Code amendment recommendations to implement the plan designations and zoning districts. Conceptual Development Code amendment recommendations must address critical aspects of site and building design, including:

- Parking requirements
- Pedestrian circulation
- Building Mass / Floor-to-Area Ratio
- Building Orientation
- Lot Size
- Setbacks
- Landscaping
- Height

Consultant shall coordinate with Agency Region 2 Traffic on any changes to roadway standards that may affect the State highway system. Development of Memorandum # 5 must be coordinated with development of Draft Memoranda #6 and #7 to identify potential Comprehensive Plan and Development Code amendments that support implementation of Public Investments in Revised Memorandum #6 and Incentives and Public-Private Partnerships in Draft Memorandum #7.

## **5.2 Draft Memorandum #6: Public Investments**

Consultant shall prepare and provide to City and APM Draft Memorandum #6, which must include recommendations for public investments that are necessary and desired to support implementation of the preferred alternative for public investments in Draft Memorandum #4. Public investments must include improvements to the transportation system that may include but are not limited to the following elements:

- Sidewalk infill and improvement
- Creation and extension of multi-use paths
- Locations and facilities for transit stops
- Provision of bicycle facilities and parking on arterial and collector streets
- Pedestrian crossing locations and improvements
- Intersection improvements including traffic control measures
- Reconfiguration of existing rights-of-way and publicly owned property

Given the developed nature of the Project Area, expansion of existing right-of-way is not anticipated.

In addition to improvements to the transportation system, Draft Memorandum #6 must identify other public investments that are supportive or complementary to the vision in Revised Memorandum #1.

Other public investments may include but are not limited to:

- Landscaping
- Wayfinding signage
- Sidewalk furnishings and fixtures
- Public art and gateway features
- Public parks and recreation facilities
- Plazas or similar public spaces

Consultant shall coordinate with Agency Region 2 Traffic on any aspects of Draft Memorandum #6 that may affect the State highway system. Any proposed improvements to Agency facilities must meet applicable Agency guidance and standards.

Draft Memorandum #6 must include a summary assessment of the need for investments in public utilities serving the Project Area. The assessment of public utility needs must be based on proposed increases in population and employment density in the Project Area, existing assessments and plans for those utilities, and the information gathered through contacts with utility staff. Draft Memorandum #6 must not include a detailed assessment of the condition or capacity of public utilities beyond that identified in existing documents, by utility staff, or known by City.

### **5.3 Draft Memorandum #7: Incentives and Public-Private Partnerships**

Consultant shall prepare and provide to City and APM Draft Memorandum #7, which must identify potential incentives the City could provide to private businesses and public-private partnerships with private businesses to implement the preferred alternative in Revised Memorandum #4. Incentives and public-private partnerships in Draft Memorandum #7 must be described in more detail than in Revised Memorandum #4 and include an assessment of costs and potential funding and financial strategies for these costs over the planning period.

### **5.4 Draft Memorandum #8: Multimodal Mobility Impact Assessment**

Consultant shall prepare and provide to City and APM Draft Memorandum #8, which must assess the implication of achieving the preferred alternative in Revised Memorandum #4 on mobility for all modes. Draft Memorandum #8 must assess future conditions under the preferred alternative using the planned transportation system in the year 2040, including transportation investments included in Draft Memorandum #6. Draft Memorandum #8 shall use the future conditions forecast conducted for the 2022 Newport TSP as a baseline for assessment of future conditions with modifications to reflect transportation investments included in Draft Memorandum #6.

Draft Memorandum #8 must include an assessment of whether proposed improvements will affect operational conditions at the following intersections in the Project Area relative to the assessment of conditions conducted for the 2022 Newport TSP:

- US 20 at US 101
- US 101 at Second Street / Angle Street
- US 101 at Hurbert Street / Canyon Way

- US 101 at Abbey Street

If the preferred alternative in Revised Memorandum #4 includes a couplet on US 101, then the analysis of operational conditions at US 101 intersections in Draft Memorandum #8 must include the existing intersection and the newly added couplet intersection. Assessment of operational conditions in Draft Memorandum #8 must include assessment of conditions for all modes using applicable City and State targets and conditions related to Plan Goals and Objectives in Revised Memorandum #1. Assessment of conditions for pedestrians and cyclists in Draft Memorandum #4 must include consideration of the impact of the preferred alternative on Pedestrian and Bicycle Level of Traffic Stress relative to the assessment of those measures in the 2022 Newport TSP.

Consultant shall identify potential measures to address deficient or undesirable mobility conditions indicated by the analysis as well as to meet Plan Goal and Objectives in Revised Memorandum #1. Measures to address mobility conditions and meet Plan Goals and Objectives may include improvements to the transportation system in addition to those in the 2022 Newport TSP and Draft Memorandum #6, or changes in plan and code amendments proposed in Memorandum #5.

Prior to beginning analysis for development of Draft Memorandum #8, Consultant shall document the methodology and assumptions to be used for Draft Memorandum #8. The methods and assumptions for development of Draft Memorandum #8 must be reviewed and approved by the Agency Transportation Planning Analysis Unit and Agency Region 2 Traffic before completion of Draft Memorandum #8. The approved methods and assumptions must be included in Draft Memorandum #8.

#### **5.5 Joint Planning Commission / City Council Work Session #2**

City shall arrange and conduct a Joint Work Session for the Newport Planning Commission and City Council. Consultant shall attend the Joint Planning Commission / City Council Work Session in person to present a summary of Comprehensive Plan and Development Code amendment concepts from Memorandum #5, proposed public investments from Draft Memorandum #6, incentives and public-private partnerships from Draft Memorandum #7, and future transportation conditions described in Draft Memorandum #8. Consultant shall respond to questions from Commissioners and Councilors.

Consultant has no tangible deliverables for this task.

#### **5.6 Revised Memorandum #6**

Consultant shall revise Draft Memorandum #6 and provide to City and APM to incorporate comments by reviewers, Planning Commissioners, City Councilors, and the public as directed by City and APM. Revision of Draft Memorandum #6 must occur after Joint Planning Commission/ City Council Work Session #2, and Public Event #2. CPM shall provide Consultant with compiled comments on Draft Memorandum #6 and provide guidance to Consultant to resolve any potentially conflicting viewpoints. Revised Memorandum #6 must include a set of recommended Public Investments to support implementation of the preferred alternative in Revised Memorandum #4.

#### **5.7 Revised Memorandum #7**

Consultant shall revise Draft Memorandum #7 and provide to City and APM to incorporate comments by reviewers, Planning Commissioners, City Councilors, and the public as directed by City and APM. Revision of Draft Memorandum #7 must occur after Joint Planning Commission / City Council Work Session #2, and Public Event #2. CPM shall provide Consultant with compiled comments on Draft



Memorandum #7 and provide guidance to Consultant to resolve any potentially conflicting viewpoints. Revised Memorandum #7 must include a set of recommended incentives and public-private partnerships to support implementation of the preferred alternative in Revised Memorandum #4.

### **5.8 Revised Memorandum #8**

Consultant shall revise Draft Memorandum #8 and provide to City and APM to incorporate comments by reviewers, Planning Commissioners, City Councilors, and the public as directed by City and APM. Revision of Draft Memorandum #8 must occur after Joint Planning Commission / City Council Work Session #2, and Public Event #2. CPM shall provide Consultant with compiled comments on Draft Memorandum #8 and provide guidance to Consultant to resolve any potentially conflicting viewpoints.

## **DELIVERABLES – TASK 5: PLAN IMPLEMENTATION**

### **City Deliverables**

- 5.a Joint Planning Commission / City Council Work Session #2 (Subtask 5.5 – agenda, meeting materials, meeting summary; responsibilities include: meeting arrangements)
- 5.b City Responsibilities: Review and comment on Consultant deliverables in Task 5

### **Consultant Deliverables**

- 5.A Memorandum #5: Comprehensive Plan and Development Code Concepts (Subtask 5.1 – draft memorandum)
- 5.B Draft Memorandum #6: Public Investments (Subtask 5.2 – draft memorandum)
- 5.C Draft Memorandum #7: Incentives and Public-Private Partnerships (Subtask 5.3 – draft memorandum)
- 5.D Draft Memorandum #8: Multimodal Mobility Impact Assessment (Subtask 5.4 – draft memorandum)
- 5.E Joint Planning Commission / City Council Work Session #2 (Subtask 5.5 – no tangible deliverables; responsibilities include: attendance, presentation of existing summary, and responding to questions)
- 5.F Revised Memorandum #6 (Subtask 5.6 – revised memorandum)
- 5.G Revised Memorandum #7 (Subtask 5.7 – revised memorandum)
- 5.H Revised Memorandum #8 (Subtask 5.8 – revised memorandum)

## **TASK 6: COMPREHENSIVE PLAN AND DEVELOPMENT CODE AMENDMENTS**

### **6.1 Draft Memorandum #9: Comprehensive Plan and Development Code Amendments**

Consultant shall prepare and provide to City and APM Draft Memorandum #9 with Comprehensive Plan and Development Code amendments that implement the preferred alternative in Revised Memorandum #4, the public investments in Revised Memorandum #7, and the public-private partnerships in Revised Memorandum #8. Comprehensive Plan and Development Code amendments in Draft Memorandum #9 must reflect feedback on conceptual amendments in Memorandum #5 from Joint Planning Commission / City Council Work Session #2. Consultant shall coordinate with Agency Region 2 Traffic on any aspects of Draft Memorandum #9 that may affect the State highway system.

Comprehensive Plan and Development Code amendments in Draft Memorandum #9 must be indicated by underlined text for additions and strikeout text for deletions to City's existing Development Code and related documents.

### **6.2 Planning Commission Work Session #3**

City shall arrange and conduct a work session for the Planning Commission. Consultant shall attend the Planning Commission Work Session in person to present proposed Comprehensive Plan and Development Code amendment from Draft Memorandum #9. Consultant shall respond to questions from Commissioners.

Consultant has no tangible deliverables for this task.

### **6.3 City Council Work Session #3**

City shall arrange and conduct a work session for the City Council. Consultant shall attend the City Council Work Session in person to present proposed Comprehensive Plan and Development Code amendment from Draft Memorandum #9. Consultant shall respond to questions from Councilors.

Consultant has no tangible deliverables for this task.

### **6.4 Revised Memorandum #9**

Consultant shall revise Draft Memorandum #9 and provide to City and APM to incorporate comments by reviewers, Planning Commissioners, City Councilors, and the public as directed by City. Revision of Draft Memorandum #9 must occur after Planning Commission Work Session #3 and City Council Work Session #3. CPM shall provide Consultant with compiled comments on Draft Memorandum #9 and provide guidance to Consultant to resolve any potentially conflicting comments.

## **DELIVERABLES – TASK 6: COMPREHENSIVE PLAN AND DEVELOPMENT CODE AMENDMENTS**

### **City Deliverables**

- 6.a Planning Commission Work Session #3 (Subtask 6.2 – agenda, meeting materials, meeting summary; responsibilities include: meeting arrangements)
- 6.b City Council Work Session #3 (Subtask 6.3 – agenda, meeting materials, meeting summary; responsibilities include: meeting arrangements)
- 6.c City Responsibilities: Review and comment on Consultant deliverables in Task 6

### **Consultant Deliverables**

- 6.A Draft Memorandum #9: Comprehensive Plan and Development Code Amendments (Subtask 6.1 – draft memorandum)
- 6.B Planning Commission Work Session #3 (Subtask 6.2 – no tangible deliverables; responsibilities include: attendance, presentation of proposed amendment, and responding to questions)
- 6.C City Council Work Session #3 (Subtask 6.3 – no tangible deliverables; responsibilities include: attendance, presentation of proposed amendment, and responding to questions)
- 6.D Revised Memorandum #9 (Subtask 6.4 – revised memorandum)

## **TASK 7: PLAN ADOPTION**

### **7.1 Draft NCCRP**

Consultant shall prepare and provide to City and APM a Draft NCCRP to incorporate findings and recommendations from Revised Memoranda prepared for the Project. Consultant shall coordinate with City to determine content that must be included in the main body of the Draft NCCRP and content that must be provided in an appendix to preserve this information for future readers without requiring formal adoption of that material.

Prior to beginning work on the Draft NCCRP document, Consultant shall produce 1 annotated NCCRP outline, listing items and graphics to be included in the NCCRP document and solicit comments from City and APM.

### **7.2 Notice of Proposed Change to a Comprehensive Plan or Land Use Regulation**

City shall prepare and submit the required Notice to DLCD at least 35 days prior to the first scheduled Planning Commission Public Hearing for the Draft NCCRP.

Consultant has no tangible deliverables for this task.

### **7.3 Planning Commission Draft NCCRP**

Consultant shall prepare and provide to City and APM a Planning Commission Draft NCCRP to incorporate comments from the CAC and other reviewers as directed by City and APM.

### **7.4 Planning Commission Public Hearing**

City shall arrange and conduct Planning Commission Public Hearing to seek endorsement of the Planning Commission Draft NCCRP. City shall develop a PowerPoint presentation that summarizes key elements of the Planning Commission Draft NCCRP.

Consultant has no tangible deliverables for this task.

### **7.5 Adoption Draft NCCRP**

Consultant shall prepare and provide to City and APM an Adoption Draft NCCRP with revisions to the Planning Commission Draft NCCRP that reflect comments and concerns of the Planning Commission as directed by the City and APM.

### **7.6 City Council Public Hearing**

City shall arrange and conduct City Council Public Hearing to consider adoption of the Adoption Draft NCCRP.

Consultant has no tangible deliverables for this task.

### **7.7 Final NCCRP**

Consultant shall develop a Final NCCRP by revising the Adoption Draft NCCRP to make changes resulting from City Council actions during the Public Hearing.

Consultant shall provide copies of the Final NCCRP, to the City and APM, in **both** hard copy and electronic formats. Electronic format must be Microsoft Word, Adobe Acrobat, or a format agreed upon by City and APM. Two hard copies must be provided.

### **7.8 Notice of Adopted Change to a Comprehensive Plan or Land Use Regulation**

City shall prepare and submit the required Notice to DLCD regarding adoption of the NCCRP.

Consultant has no tangible deliverables for this task.

## **DELIVERABLES – TASK 7: PLAN ADOPTION**

### **City Deliverables**

- 7.a Draft NCCRP (Subtask 7.1 – no tangible deliverables; responsibilities include: coordination with Consultant)
- 7.b Notice of Proposed Change to a Comprehensive Plan or Land Use Regulation (Subtask 7.2 – notice)
- 7.c Planning Commission Public Hearing (Subtask 7.4 – agenda, hearing materials, hearing summary; responsibilities include: meeting arrangements)
- 7.d City Council Public Hearing (Subtask 7.6 – agenda, hearing materials, hearing summary; responsibilities include: hearing arrangements)
- 7.e Notice of Adopted Change to a Comprehensive Plan or Land Use Regulation (Subtask 7.8 – notice)
- 7.f City Responsibilities: Review and comment on Consultant deliverables in Task 7

### **Consultant Deliverables**

- 7.A Draft NCCRP (Subtask 7.1 – NCCRP outline and Draft NCCRP))
- 7.B Planning Commission Draft NCCRP (Subtask 7.3 – Planning Commission Draft NCCRP)
- 7.C Adoption Draft NCCRP (Subtask 7.5 – Adoption Draft NCCRP)
- 7.D Final NCCRP (Subtask 7.7 – Final NCCRP)

**TABLE 1: GENERAL PROJECT DELIVERY SCHEDULE**

<b>Task</b>	<b>Title</b>	<b>Schedule (Months following Agency's issuance of NTP)</b>
Task 1	Project Initiation	Months 1-3 (and ongoing)
Task 2	Outreach	Months 1-16
Task 3	Develop Policy Basis for Plan	Months 2-5
Task 4	Gap Analysis	Months 4-8
Task 5	Plan Implementation	Months 6-10
Task 6	Comprehensive Plan and Development Code Amendments	Months 10-13
Task 7	Plan Adoption	Months 14-15

All the Tasks and deliverables listed within this SOW must be completed within the corresponding month on the General Project Delivery Schedule shown in Table 1 above. Consultant shall sequence all tasks to meet the delivery timeframes detailed in this WOC.



If the Project schedule or any update changes due dates or timeframes for deliverables identified in Table 1, an amendment to this WOC will be required to make those changes.

**F. RESERVED**

**G. ADDITIONAL PROVISIONS FOR WOCs**

**1. Project Cooperation.**

All Project Cooperation provisions, as detailed in Attachment 1 to PA Exhibit F, shall apply to this WOC.

**2. Key Persons.**

All Key Persons provisions, as detailed in Attachment 1 to PA Exhibit F, shall apply to this WOC. Consultant acknowledges and agrees that Agency selected Consultant and is entering into the WOC because of the special qualifications of Consultant's key personnel. In particular, Agency, through the WOC is engaging the expertise, experience, judgment and personal attention of the following Key Persons:

Name	Role
James Hencke	Consultant Project Manager

In the event Consultant requests that Agency approve a re-assignment or transfer of a Key Person:

- Consultant shall provide a resume for the proposed substitute demonstrating that the proposed replacement has qualifications that are equal to or better than the qualifications of the person being replaced.
- Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person.
- Any substitute or replacement for a Key Person must be approved in writing (email acceptable) and shall be deemed to be a Key Person under the WOC.

Consultant agrees that the time/costs associated with the transfer of knowledge and information for a Key Person replacement is not a cost borne by Agency and shall not be billed to Agency. This includes labor hours spent reviewing Project and Services documentation, participation in meetings with personnel associated with the WOC/Project/Services, and participating in site visits to become familiar with the Project.

**3. Staffing Adjustments.**

During the term of the WOC, Consultant may make necessary staffing/classification adjustments (other than Key Personnel) to the proposed staff/classifications as shown in Consultant's BOC provided:

- the alternate staff/classifications are appropriately qualified to complete the assigned tasks,
- the billing rate for an alternate staff/classification does not exceed the classification billing rate maximum listed in the firm's approved Escalated Salary Rate ("ESR") or Negotiated Billing Rate ("NBR") on file with Agency (see limitations in PA Exhibit B, Part 1, Section J – Specific Limitations and Unallowable Charges), and

- the Services can be completed without exceeding WOC (or task, if applicable) NTE amount(s).

Agency reserves the right to require Consultant to provide notice to APM prior to implementing needed changes to staffing assignments.

#### 4. Liquidated and Delinquent Debt Owed to State.

In the event Consultant has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State, Agency may:

- i) Undertake collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after Consultant has been given notice if required by law;
- ii) Terminate the WOC, in whole or in part, immediately upon written notice to Consultant or at such later date as Agency may establish in such notice; or
- iii) Pursue any or all of the remedies available under the PA, at law, or in equity.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever, to the extent the remedies are not inconsistent.

#### 5. Pay Equity Compliance

- **Discriminatory Wage Rates.** As required by ORS 279C.520, Consultant must comply with ORS 652.220 and shall not unlawfully discriminate against any of Consultant's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, veteran status, disability, or age. Consultant's compliance with this section constitutes a material element of the WOC and a failure to comply constitutes a breach that entitles Agency to terminate the WOC and the PA for cause.
- **Employee Discussions Regarding Compensation.** As required by ORS 279C.520, Consultant may not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

## H. COMPENSATION

The method(s) of compensation and payment option(s) selected below (and as specified for any Contingency Tasks in the table in Section F) are incorporated from Exhibit B to the PA. For additional detail and requirements regarding compensation methods, payment options, or Agency's right to withhold retainage, see PA - Exhibit B, Compensation. No compensation is provided to Consultant for negotiations, preparing or revising cost estimate for Services, or negotiating contracts with subcontractors.

### H.1 Non-Contingency Tasks

The method(s) of compensation for non-contingency tasks in this WOC is:

Fixed Price Per Deliverable (includes all labor costs, overhead, profit, travel and other expenses)

**Consultant Fixed Price Per Deliverable Table**

Task #	Task / Deliverable	Deliverable Cost	Max Quantity	Total Amount
<b>1</b>	<b>PROJECT INITIATION AND OUTREACH</b>			<b>\$51,800</b>
1.A	Project Management Team Meetings	\$686.66	15	\$10,300
1.B	Background Documents and Data	\$5,400	1	\$5,400
1.C	Project Initiation Meeting and Site Visit	\$17,300	1	\$17,300
1.D	Community Advisory Committee and Interested Parties List	\$1,200	1	\$1,200
1.E	Public Involvement Plan	\$6,500	1	\$6,500
1.F	Project Website Launch	\$11,100	1	\$11,100
<b>2</b>	<b>OUTREACH</b>			<b>\$115,200</b>
2.A	CAC Meetings	\$4,616.66	6	\$27,700
2.B	Targeted Outreach Meetings	\$680	10	\$6,800
2.C	Targeted Outreach Events	\$10,850	2	\$21,700
2.D	Public Events	\$29,500	2	\$59,000
<b>3</b>	<b>DEVELOP POLICY BASIS FOR PLAN</b>			<b>\$53,000</b>
3.A	Draft Memorandum #1: Plan Goals and Objectives	\$8,000	1	\$8,000
3.B	Draft Memorandum #2: Existing Conditions	\$17,000	1	\$17,000
3.C	Draft Memorandum #3: Market Analysis	\$18,000	1	\$18,000
3.D	Revised Memorandum #1	\$3,600	1	\$3,600
3.E	Revised Memorandum #2	\$4,100	1	\$4,100
3.F	Revised Memorandum #3	\$2,300	1	\$2,300
<b>4</b>	<b>GAP ANALYSIS</b>			<b>\$30,800</b>
4.A	Draft Memorandum #4: Gap Analysis	\$19,500	1	\$19,500
4.B	Joint Planning Commission / City Council Work Session #1	\$4,100	1	\$4,100
4.C	Revised Memorandum #4	\$7,200	1	\$7,200
<b>5</b>	<b>PLAN IMPLEMENTATION</b>			<b>\$66,100</b>
5.A	Memorandum #5: Comprehensive Plan and Development Code Concepts	\$29,300	1	\$29,300
5.B	Draft Memorandum #6: Public Investments	\$4,800	1	\$4,800
5.C	Draft Memorandum #7: Incentives and Public/Private Partnerships	\$9,800	1	\$9,800
5.D	Draft Memorandum #8: Multimodal Mobility Impact Assessment	\$8,900	1	\$8,900
5.E	Joint Planning Commission / City Council Work Session #2	\$6,000	1	\$5,900
5.F	Revised Memorandum #6	\$2,300	1	\$2,300
5.G	Revised Memorandum #7	\$2,100	1	\$2,100
5.H	Revised Memorandum #8	\$3,000	1	\$3,000
<b>6</b>	<b>COMPREHENSIVE PLAN AND DEVELOPMENT CODE AMENDMENTS</b>			<b>\$27,600</b>
6.A	Draft Memorandum #9: Comprehensive Plan and Development Code Amendments	\$9,600	1	\$9,500
6.B	Planning Commission Work Session #3	\$6,300	1	\$6,300

Task #	Task / Deliverable	Deliverable Cost	Max Quantity	Total Amount
6.C	City Council Work Session #3	\$6,300	1	\$6,300
6.D	Revised Memo #9	\$5,500	1	\$5,500
<b>7</b>	<b>PLAN ADOPTION</b>			<b>\$20,300</b>
7.A	Draft NCCRP	\$13,300	1	\$13,300
7.B	Planning Commission Draft NCCRP	\$2,400	1	\$2,400
7.C	Adoption Draft NCCRP	\$2,300	1	\$2,300
7.D	Final NCCRP	\$2,300	1	\$2,300
	<b>TOTAL</b>			<b>\$364,800</b>

The dollar amount(s) for non-contingency tasks is entered in Section H.4 of this SOW, Compensation Summary Table.

## H.2 Payment Options.

The payment option for the Services in this SOW is:

Payment upon Deliverable completion.

## H.3 Reserved.

## H.4 Total WOC NTE Amount

	Compensation Summary Table	Amount
<b>1. CPFF NTE Amount (not including Fixed-Fee or contingencies)</b>	NTE Amount for allowable costs of non-contingency Services in this WOC.	N/A
<b>2. Fixed-Fee Amount</b>	Total of non-contingency Fixed-Fee amount(s) (for CPFF only). [Basis for Fixed-Fee calculation: CPFF NTE amount (line 1 above) minus ODCs, labor costs for firms using NBRs (these rates already include profit), FCCM and costs for contingency tasks, if any, multiplied by profit rate negotiated using Agency's Profit worksheet = Fixed-Fee Amount.]	N/A
<b>3. Fixed Price Amount</b>	Total of non-contingency Fixed Price amount(s)	\$364,800.00
<b>4. T&amp;M NTE Amount</b>	Total for any non-contingency Services	N/A
<b>5. Price Per Unit NTE Amount</b>	Total NTE for non-contingency Price Per Unit Costs	N/A
<b>6. Total Non-Contingency Amount</b>		\$364,800.00
<b>7. Total for Contingency Tasks (if any) per Section F above:</b>		\$0
<b>TOTAL NTE (line 6 plus line 7)</b>		<b>\$364,800.00</b>



This amount includes all direct and indirect costs, profit, Fixed Fee amount (if any) and contingency task costs (if any).	
--	--

#### H.5 Invoices

Invoices must be in conformance with the ODOT Invoice Requirements and any other PA requirements.

The Invoice Requirements is available on the Internet at:

<https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>

Consultant shall submit invoices electronically via email to:

[David.I.Helton@odot.state.or.us](mailto:David.I.Helton@odot.state.or.us) and [CIR2HQ@odot.oregon.gov](mailto:CIR2HQ@odot.oregon.gov).

#### H.6 Subcontractors "Paid Summary Report"

Consultant shall complete and submit to APM initial, interim and final **Paid Summary Reports** - form 734-2882 (<https://www.oregon.gov/ODOT/Forms/20DOT/2882.pdf>) per the instructions on the form. Consultant must report payment information for all subcontractors and suppliers used under the WOC throughout the period of performance. **This reporting is required for all projects that include subs, regardless of funding source or whether or not a DBE goal or Certified Small Business Aspirational Target is assigned.**

## WOC ATTACHMENTS

### ATTACHMENT A – ACRONYMS & DEFINITIONS

ADA	the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended
Agency	Oregon Department of Transportation
APM	Agency's Project Manager
BOC	Breakdown of Costs
CAC	Community Advisory Committee
CFR	Code of Federal Regulations
City	City of Newport
COI	Conflict of Interest
Consultant	David Evans and Associates, Inc.
CPM	City's Project Manager
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DLCD	Oregon Department of Land Conservation and Development
EA	Expenditure Account
ESR	Escalated Salary Rate
FP	Fixed Price
GIS	Geographic Information Systems
NBR	Negotiated Billing Rate
NCCRP	Newport City Center Revitalization Plan
NTE	Not to Exceed
NTP	Notice to Proceed
OAR	Oregon Administrative Rule
OCR	ODOT Office of Civil Rights
ODOT	Oregon Department of Transportation
OPO	ODOT Procurement Office
ORS	Oregon Revised Statute
PA	Price Agreement
P.E.	Oregon-registered Professional Engineer
PM	Consultant's Project Manager
PMT	Project Management Team
Project	Newport City Center Revitalization Plan
SAM	System for Award Management
SOW	Statement of Work
SSUR	Subcontractor Solicitation and Utilization Report
State	State of Oregon
TGM	Transportation and Growth Management
TSP	Transportation System Plan
WOC	Work Order Contract

## ATTACHMENT B - BREAKDOWN OF COSTS FOR SERVICES (“BOC”)

The BOC dated 01/18/2024 is kept in the WOC file but not incorporated into the WOC. A copy of the final BOC has been provided to Consultant prior to WOC execution.

## ATTACHMENT C - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROVISIONS

### A&E and Related Services (Goal)

[Revised July 2022]

For purposes of these DBE Provisions, “Contract” means any project-specific contract, Price Agreement (“PA”), Work Order Contract (“WOC”), Task Order, or any other contract entered into with ODOT (or local agency when applicable). “Consultant” and “Contractor” are hereinafter referred to as “Contractor”. **See sections d and i for specific documentation and reporting requirements of Contractor.**

- a. Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:

- ODOT DBE Policy Statement  
<https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>
- ODOT DBE Program Plan  
<https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>, and
- Requirements of Title 49, Code of Federal Regulations, Part 26  
<https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>) - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT’s DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. DBE Goals:** ODOT’s overall goal for DBE participation is 15.37% for FHWA funded contracting and 6% (proposed) for FTA funded contracting. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

- **A separate DBE Contract goal, as set forth on page 1 of the WOC or project-specific Contract (as applicable), has been assigned for this procurement.**

- c. Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which

may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).

- d. Documentation of Proposed Participation:** Contractor shall document sufficient DBE participation to meet an assigned Contract goal or, alternatively, document adequate good faith efforts to do so (see 49 CFR § 26.53). All work committed to a DBE firm toward meeting the assigned participation goal must be performed under a written subcontract. The subcontract must fully describe any work committed to be performed by the DBE and shall include all required flow-down provisions of the primary Contract. Contractor must complete and submit the following documentation, as applicable:
1. **Subcontractor Solicitation and Utilization Report (“SSUR”)** – submitted with proposal in response to formal and informal Requests for Proposals (RFPs).
  2. **Breakdown of Costs (“BOC”) or BOC-NBR-** submitted prior to negotiation and execution of the Contract and each amendment that changes the scope of work and costs under the Contract. The BOC forms and BOC Requirements are available from the Internet at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. The BOC must clearly list any tasks or subtasks to be performed by subcontractors (DBEs and non-DBEs), each subcontractor’s Federal Tax ID and identification of any required personnel. Include in the Expense Detail tab any required equipment and supplies furnished by the DBE, any of the prime contractor’s resources that will be provided for the DBE’s use, and identification of any second or lower tier subcontractors with the dollar amounts for each.
  3. **Committed DBE Breakdown and Certification Form(s)-AE.** Required for all Contracts with assigned goals and completed prior to Contract execution and any proposed substitution. See submittal instructions on the form.
  4. **Subcontractor Reporting:** Complete and submit an initial **Paid Summary Reports** - form 734-2882 (<https://www.oregon.gov/ODOT/Forms/2ODOT/2882.pdf>) per the instructions on the form.
- e. Good Faith Efforts:** Contractor shall make good faith efforts, as set forth in 49 CFR § 26.53, Appendix A to Part 26, and ODOT DBE Program Plan, to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the Contract goal. Good faith efforts are required during solicitation, upon Contract award, and continue throughout the performance of the Contract to maximize DBE participation. The Agency (or local agency when applicable) Project Manager (“APM”) may request Contractor to submit evidence of good faith efforts prior to Contract execution or at any time during the course of the Contract and Contractor shall promptly submit such evidence. Contractor shall use the specific DBEs listed in the Committed DBE Breakdown and Certification form(s) to perform the work and supply the materials for which each is listed unless Contractor obtains ODOT’s prior written consent to terminate and replace a DBE as provided in section j. below. Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBEs as required by this provision.
- f. Commercially Useful Function (“CUF”):** Contractor is responsible to ensure the DBE performs a commercially useful function on the Contract. A DBE performs a CUF when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in



49CFR § 26.55. The APM will review the proposed DBE participation and may provide written comments as to whether the activities and type of work identified for DBEs complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations. ODOT may perform a CUF review at any time during the performance of the Contract.

- g. **Changes in Work Committed to DBE:** ODOT will consider the impact on DBE participation in instances where the prime Contract is amended to reduce, or delete work committed to the DBE. In such instances, Contractor shall not be required to replace the work but is encouraged to do so to the maximum extent practicable.
- h. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from ODOT (or local agency when applicable) for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from ODOT (or local agency when applicable), Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.
- i. **Reporting Requirements:** Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. Contractor shall complete and submit initial, interim and final **Paid Summary Reports** - form 734-2882 (<https://www.oregon.gov/ODOT/Forms/2ODOT/2882.pdf>) per the instructions included on the form.
- j. **Termination of DBE Notification Requirement:** Contractor shall comply with all requirements set forth in 49 CFR § 26.53 regarding termination of DBEs including, without limitation, documentation of good cause, 5-day notice to the DBE subcontractor and ODOT, DBE responses, ODOT's prior written consent of DBE termination, and replacement of DBEs. ODOT will provide such written consent only if it agrees the prime contractor has good cause to terminate the DBE in accordance with 49 CFR 26.53(f)(3).
- k. **Remedies:** Contractor's failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management ("SAM") available at <https://sam.gov>, any other remedies provided under the Contract.
- l. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights ("OCR"). Questions related to the DBE Program may be sent via email to [ocrinforequest@odot.oregon.gov](mailto:ocrinforequest@odot.oregon.gov) or otherwise directed to: Oregon Department of Transportation Office of Civil Rights, ODOT Materials Laboratory Building, 800 Airport Road SE, Rm 61, Salem, OR 97301; Phone: 503-986-4350.
- m. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

#### Related Web Sites:

All forms, documents and CFR citations referenced or linked in these DBE Provisions are available online at:

- **Forms:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>
- **Documents:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>
- **49 CFR Part 26:** <https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>

#### **ATTACHMENT C.1 - COMMITTED DBE BREAKDOWN and CERTIFICATION FORM(s)-AE**

The signed Committed DBE Breakdown and Certification Form(s)-AE is not physically attached, but is incorporated into this WOC by this reference with the same force and effect as though fully set forth herein. Prior to WOC execution, Consultant shall email (per the submittal instructions on the form) a separate, signed Committed DBE Breakdown and Certification Form(s)-AE for each DBE subcontractor that will provide Services under the WOC.











# WOC #2 on PA #B38913 - City of Newport CCRP (TGM 2D-21)

Final Audit Report

2024-02-28


Created:	2024-02-28 (Pacific Standard Time)
By:	Kelsey MAFFEI (Kelsey.M.MAFFEI@odot.oregon.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAApeRtz90gODjimzwGWMYMHVvuAKIUrCx

## "WOC #2 on PA #B38913 - City of Newport CCRP (TGM 2D-21) " History

-  Document created by Kelsey MAFFEI (Kelsey.M.MAFFEI@odot.oregon.gov)  
2024-02-28 - 11:16:50 AM PST
-  Document emailed to ejc@deainc.com for signature  
2024-02-28 - 11:20:28 AM PST
-  Email viewed by ejc@deainc.com  
2024-02-28 - 11:22:25 AM PST
-  Signer ejc@deainc.com entered name at signing as Ed Chamberland  
2024-02-28 - 11:23:59 AM PST
-  Document e-signed by Ed Chamberland (ejc@deainc.com)  
Signature Date: 2024-02-28 - 11:24:01 AM PST - Time Source: server
-  Document emailed to jahe@deainc.com for signature  
2024-02-28 - 11:24:03 AM PST
-  Email viewed by jahe@deainc.com  
2024-02-28 - 11:40:08 AM PST
-  Signer jahe@deainc.com entered name at signing as James Hencke  
2024-02-28 - 11:47:36 AM PST
-  Document e-signed by James Hencke (jahe@deainc.com)  
Signature Date: 2024-02-28 - 11:47:38 AM PST - Time Source: server
-  Document emailed to Kelsey MAFFEI (Kelsey.M.MAFFEI@odot.oregon.gov) for signature  
2024-02-28 - 11:47:39 AM PST

 Email viewed by Kelsey MAFFEI (Kelsey.M.MAFFEI@odot.oregon.gov)  
2024-02-28 - 12:54:52 PM PST

 Document e-signed by Kelsey MAFFEI (Kelsey.M.MAFFEI@odot.oregon.gov)  
Signature Date: 2024-02-28 - 12:56:27 PM PST - Time Source: server

 Agreement completed.  
2024-02-28 - 12:56:27 PM PST