



AGENDA & Notice of Work Session, Urban Renewal & Regular City Council Meeting

The City Council of the City of Newport will hold a work session on Monday, June 3, 2013, at 12:00 P.M., followed by an Urban Renewal Agency meeting and regular City Council meeting at 6:00 P.M. The work session will be held in Conference Room A at City Hall, and the Urban Renewal Agency and City Council meetings will be held in the Council Chambers, City Hall, located at 169 S.W. Coast Highway, Newport, Oregon 97365. A copy of the agenda follows.

The meeting locations are accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder 541.574.0613.

CITY COUNCIL WORK SESSION **Monday, June 3, 2013 - 12:00 P.M.** **Conference Room A**

- I. Additional Work Session Items Not Listed on the Agenda (for this and future work sessions)
 - II. Meeting with Bob Gibson, Recruitment Consultant, to Obtain Input Regarding the City Manager Recruitment
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URBAN RENEWAL AGENCY MEETING AGENDA **Monday, June 3, 2013 -- 6:00 P.M.** **Council Chamber**

Anyone wishing to speak on an agenda item should complete a Public Comment Form and give it to the City Recorder. Public Comment Forms are located at the entrance to the City Council Chamber. Anyone commenting on a subject not on the agenda will be called upon during the Public Comment section of the agenda. Comments pertaining to specific agenda items will be taken at the time the matter is discussed by the City Council.

- I. Call to Order and Roll Call
- II. Public Comment

This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the Agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.

III. Consent Calendar

The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.

- A. Approval of minutes from the Urban Renewal Meeting of April 1, 2013 (Hawker)

IV. Discussion Items and Presentations

Items that do not require immediate Council action, such as presentations, discussion of potential future action items.

- A. Presentation by Oregon Coast Aquatic Park Representatives

V. Adjournment.

COUNCIL MEETING AGENDA **Monday, June 3, 2013**

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I. Pledge of Allegiance

II. Call to Order and Roll Call

III. Additions/Deletions and Approval of Agenda

IV. Public Comment

This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the Agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.

V. Proclamations, Recognitions & Special Presentations

- A. American Legion Week (Shirley Gilmore)

VI. Consent Calendar

The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.

- A. Approval of City Council Minutes from the Work Session and City Council Meeting of May 20, 2013
- B. OLCC - Walgreens(Miranda)
- C. OLCC - Aquarium (Miranda)

VII. Officer's Reports

- A. Mayor's Report
- B. City Manager's Report

VIII. Discussion Items and Presentations

Items that do not require immediate Council action, such as presentations, discussion of potential future action items.

- A. Briefing on Police Accreditation Process (10 minutes) (Miranda)

IX. Action Items

Citizens will be provided an opportunity to offer comments on action items after staff has given their report and if there is an applicant, after they have had the opportunity to speak. (Action items are expected to result in motions, resolutions, orders, or ordinances.)

- A. Decision to Hold an Evidentiary Hearing on the Teevin Brothers Proposal or to Uphold Planning Commission Decision (Tokos)
- B. Consideration of Resolution No. 3632 Regarding of the Lettenmaier Property from Newport City Limits (Tokos)
- C. Consideration and Possible Adoption of Ordinance No. 2054 Regarding Clear Vision Requirements(Tokos)
- D. Authorization to Proceed with Nye Beach Area Real Property Exchange (Tokos)
- E. Consideration of Award for the Tourism Marketing Grant for the Newport Symphony (Voetberg)
- F. Approval of Agreement with the Oregon Coast Council for the Arts (Voetberg)
- G. Appointment of Ted Smith to Lincom Executive Board (Voetberg)
- H. Consideration of Resolution No. 3628 to Increase Water Rates (Gross)
- I. Consideration of Resolution No. 3627 to Increase Wastewater Rates (Gross)
- J. Consideration of Resolution No. 3630 to Increase Infrastructure Rates (Gross)

- K. Consideration of Resolution No. 3629 to Increase Stormwater Rates (Gross)
- L. Appeal of Special Event Fee Wavier Denial for Celtic Festival (Hawker)

- X. **Council Reports and Comments**

- XI. **Public Comment** (Additional time for public comment - 5 minutes per speaker)

- XII. **Adjournment**

April 1, 2013
6:00 P.M.
Newport, Oregon

The Urban Renewal Agency of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, Beemer, Allen, Roumagoux, Sawyer, Saelens, and Busby were present. Swanson was excused.

Staff present was City Manager Voetberg, City Recorder Hawker, Public Works Director Gross, Parks and Recreation Director Protiva, Finance Director Marshall, and Police Chief Miranda.

DISCUSSION ITEMS AND PRESENTATIONS

Presentation of FY2011/2012 Audit Results. Marshall made a presentation regarding the FY2011/2012 Urban Renewal Agency audit. He noted that the auditors will be conducting field work on the FY2012/2013 audit in two weeks. He reported that audits are required to be submitted to the state and other agencies by December 31, and that it is late this year. He explained that the audit is an unqualified one meaning that it has not material weaknesses. He noted that the audit indicates continuing and new significant deficiencies primarily due to having a small Finance Department staff. Marshall reported that the total assets of the URA are \$16.7 million, and that the total liabilities decreased by approximately \$3.4 million. He added that the URA has approximately \$3.9 million in outstanding debt. He stated that he would draft a policy for the URA which will begin regular monitoring of the URA's financial reviews.

ADJOURNMENT

Having no further business, the meeting adjourned at 6:06 P.M.

Margaret M. Hawker, City Recorder

Richard Beemer, Chair



**PROCLAMATION - AMERICAN LEGION 2013 DEPARTMENT OF OREGON
CONVENTION WEEK
June 23-30, 2013**

WHEREAS, The American Legion Department of Oregon will be in Newport, Lincoln County, OR on June 26-29, 2013, for the Department of Oregon yearly Convention; and

WHEREAS, since its founding the American Legion and its nearly 3 million members have continually exhibited a deep sense of pride in community and ensured a strong America by serving veterans, their families and the children of our nation; and

WHEREAS, The American Legion was responsible for the creation of the original GI Bill which enabled millions of veterans to obtain assistance in education and home loans; and

WHEREAS, The American Legion was instrumental in the passage of legislation creating the Department of Veteran's Affairs and the American Legion continues to operate a Family Support Network for families of active duty military personnel and members of the National Guard and Reserves; and

WHEREAS, The more than 25,000 Legionnaires belonging to the 120 Posts across Oregon, along with 10,000 members of the Sons of the American Legion and American Legion Auxiliary state-wide, collectively volunteer thousands of hours to assist our veterans and their communities; and

WHEREAS, The Newport American Legion Post 116, for 80 years, has strongly supported veterans, their families and our community at large.

THEREFORE, I Sandra Roumagoux in recognition of this event do hereby proclaim the week of June 23-30, 2013, as **AMERICAN LEGION 2013 DEPARTMENT OF OREGON CONVENTION WEEK**, I encourage the community to observe this week with appropriate programs, ceremonies and activities.



Sandra Roumagoux
Sandra Roumagoux, Mayor

May 20, 2013
Noon
Newport, Oregon

CITY COUNCIL WORK SESSION

Councilors present: Beemer, Sawyer, Busby, Saelens, Allen, Swanson and Roumagoux.

Staff present: Voetberg, Marshall, Tokos, and Breves.

Others present: Jeff Pridgeon, Municipal Court Judge

Roumagoux called the meeting to order and the roll was taken.

MOTION was made by Beemer, seconded by Swanson, to enter executive session pursuant to ORS 192.660(2) (e) to discuss Real Property Transactions. The motion carried unanimously in a voice vote, and Council entered executive session at 12:06 P.M.

At the conclusion of the executive session, MOTION was made by Allen, seconded by Beemer, to return to the Council work session. The motion carried unanimously in a voice vote, and Council returned to its work session at 12:18 P.M.

- a. Jeff Pridgeon, Municipal Court Judge presented an update to the Council. He explained why he was updating in May instead of January. Pridgeon explained the cases that this court handles. Pridgeon explained the fine structure and revenue stream. He highlighted some of the fines in the report. The report was discussed. Council discussed if the new software system is helpful. Pridgeon stated the tracking of fines and unpaid fines is much better. Voetberg shared that unpaid fines are turned over to TCB for collections. There was a discussion regarding court audio tapes. There was a discussion regarding the fiscal report presented by Pridgeon. People will be able to pay by credit soon, finance is working on it.
- b. Roumagoux asked for additional work session items that are not listed on the agenda, for this or future work sessions.

Saelens asked about the parking ticket letter that was brought to the attention of Council and that a response had been given to Mr. Cochrane. It was discussed that Miranda had written a response to the letter. A discussion ensued regarding communication to citizens writing letters or emails and how they would receive responses.

Roumagoux discussed a clean-up day. NOAA is interested in working together on something. Voetberg suggested NOAA could get involved through the Adopt a Park program; Beach Park has not been adopted. Saelens and Allen will respond to NOAA with recycling projects and programs.

Roumagoux discussed the mayor being part of a crosswalk sting, similar to what the Mayor of Portland did.

Roumagoux brought up the Coast Guard Sign again and the council agreed that she should proceed but made it clear that we have no money to use towards the sign.

Swanson brought up using the timer consistently. Discussion ensued. It was decided that the timer would be used and that Swanson would notify the speaker that they had 30 seconds to conclude their statement.

- c. Allen updated the Council on the progress of the City Manager's Evaluation Sub-Committee. He reviewed a draft evaluation tool design by the committee. He asked that Council look over the tool and be prepared to edit and revise the document. Council was in consensus that they would revise and edit at the June 17th work session. Saelens shared that they wanted to have a self-evaluation component to the evaluation. The committee also felt it was important to have quarterly reviews not of the City Manager but similar to a State of the City, reflecting on the goals adopted by the Council. Swanson shared the importance of training on the new evaluation tool so that the council can be on the same page with regards to what exceeds expectation means etc. The committee felt it important that the release of the evaluation of City Manager and the State of the City be communicated as a unit and released after a discussion by Council on how to release and what will be stated. Discuss in executive council and report to public at city council meeting.

Having no further business, the meeting adjourned at 1:36 P.M.

May 20, 2013
6:00 P.M.
Newport, Oregon

The City Council of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, Beemer, Allen, Roumagoux, Sawyer, Saelens, Swanson and Busby were present.

Staff present was City Manager Voetberg, Executive Assistant Breves, Public Works Director Gross, Community Development Director Tokos, Library Director Smith, Finance Director Marshall, and Police Chief Miranda.

PLEDGE OF ALLEGIANCE

Council and the audience recited the Pledge of Allegiance.

ADDITIONS/DELETIONS AND APPROVAL OF AGENDA

OLCC Renewal Recommendations remove from the consent calendar and place as Discussion Item H.

PUBLIC COMMENT

No Public Comment at this time.

PROCLAMATIONS, RECOGNITIONS, AND SPECIAL PRESENTATIONS

Roumagoux proclaimed the week of May 19-25, 2013 as Emergency Medical Services Week in the City of Newport. Darcy Wilson representing Pacific West received the proclamation.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of City Council minutes from the work session, and regular meeting of May 6, 2013.
- B. Acknowledgment of Accounts Paid for the month of April.

MOTION was made by Beemer, seconded by Busby, to approve the consent calendar with the changes to the minutes as noted by Swanson, Allen. The motion carried unanimously in a voice vote.

OFFICER'S REPORTS

Mayor's Report. Roumagoux reported that on May 13 she and Beemer attended a lunch with Acting Under Secretary of Commerce for Oceans and Atmosphere and Acting NOAA

Administrator Dr. Kathryn Sullivan at NOAA. They toured NOAA facility and were given an update on the status of funding

Roumagoux reported being interviewed on May 14 for KB Art Radio about her current exhibit in Portland and being the Mayor of Newport.

Roumagoux reported that on May 15 she gave two welcoming speeches morning and night for the Chambers trade show and the Frontline Employee Seminar, both were well attended.

Roumagoux reported that she and Lorna Davis of the Chamber on May 16 were both invited to International Association of Workforce Professionals they tried out their first duo presentation.

Roumagoux report that on May 16 she attended the Arts Committee meeting. They are hard at work taking a city wide public art inventory and designing a template for endorsement of proposals for refining the percent of arts contribution.

Roumagoux reported that on May 18 she was invited to bring Bailey to the Annual Brewers Fest at Rogue to raise funds for animal nonprofits. Bailey and the Mayor led the parade.

Roumagoux reported that on May 18 she attended the Home and Garden Show.

City Manager's Report. Voetberg reported in the Council packet is the current Suggestion/Concern/Complaint update.

Voetberg reported in the Council packet are monthly reports prepared by each department head briefly listing various activities that have occurred in their departments over the past month.

Voetberg gave an update to Council on changes to the ordinance with regards to the Carpenter Case. The staff is suggesting that the changes that were already done to the ordinance be adopted now instead of waiting for the City Tree Plan. Allen asked if the new language in the ordinance would be clear and adequate for the court to determine that the City Manager has deemed a safety issue using staff recommendations. There was a discussion by Council as to whether or not the public works department should go cut the hedge that is in the right of way. The consensus by Council was to change language in the ordinance first. Sawyer disagreed with not cutting down the hedge that is in the right of way.

Swanson asked Miranda about his report on the accreditation that the Police Department received. Miranda gave a brief report to Council on the department's accreditation. Sawyer asked the Miranda about Mr. Cochrane and if he sent his response to Mr. Cochrane's letter. Miranda had not forwarded his response to Mr. Cochrane, it was decided that Breves would forward Miranda's response to Mr. Cochrane.

Rennie Ferris addressed the Council about the hedge that is in the right of way at the Carpenter residence. He planted the hedge himself and it is planted in the right of way. He maintained the hedge for years when he lived there. He handed out an eight point flyer to the Council on his option about the situation.

DISCUSSION ITEMS AND PRESENTATIONS

Work Force Housing Agreement with Community Services Consortium and Lincoln Community Trust. Bill Hall, Lincoln County Commissioner and Ben Baggett, representing the Lincoln Community Land Trust made a presentation to provide an overview of the work that the Trust is doing to provide affordable housing in Lincoln County. The idea is to provide quality low income public housing for individuals that are eligible under the income qualifications. Hall addressed the concern by Council regarding the 99 year lease. He explained that this provision is intended to assist with married couples where one spouse dies and the surviving spouse would not be forced to move out of the residence. He reviewed the benefits and need for the Land Trust housing here in Lincoln County. Home prices have double over the past years

much faster than salaries. Hall believes that this meets the Council goal of providing affordable housing. Baggett spoke about the last construction successes. He discussed the energy efficiency of the construction projects. Swanson clarified the amount of money that is being asked of the City, \$10,000 every year of the contract and the \$30,000 one time amount to jump start the project. Baggett would report back to the Council project by project or whatever schedule the city would like. Busby clarified what he believed the city would be giving to the trust and what this would cost the citizen of Newport. Busby has legal questions regarding Tokos being a member of the board of the Lincoln County Land Trust. Allen asked if someone passes away and the person that inherits the house is not a qualified buyer could the person still own the house. The simple answer is yes it is possible. Allen asked if the Land Trust has asked Lincoln City or other cities in Lincoln County for land or money. Hall shared that there has been discussions and presentations but they have not formally asked for land or money. Sawyer clarified that by getting people into the houses that are currently vacant we would add to the tax base right away. Saelens clarified the income qualifications; they seemed high for our area. Hall clarified the reasons for putting the income qualifications were they are and the data that was used to determine this.

PUBLIC COMMENT MISSED EARLIER

Linda Neigebauer and Fred Collazo spoke to the Council regarding the City Transit Loop currently not budgeted in FY14 proposed budget. Neigebauer provided a brief history of the City Transit Loop. Neigebauer explained the current transportation services provided by City Transit. City funding for the City Loop is now in jeopardy. Neigebauer listed City run programs funded from the Room Tax Fund. Saelens clarified how much the \$90,000 would cover of the City Transit Loop operating expenses. Neigebauer explained the \$90,000 would cover the cost of running the City Transit Loop for spring break, summer and weekends.

Ocean Observing Conference Update. John Lavrakas updated the Council on the recent conference and provided possible next steps for the YBOOI committee. The conference was on April 30 and May 1, 2013 organizations, companies, and individuals were invited to our region to learn about what Newport has to offer. Sessions were in four areas ocean observing, port and regional infrastructure, ocean technology collaborative and a final wrap up. 16 % of the participation in the conference was from outside of Oregon. Lavrakas reviewed comment from the attendees. He then reviewed future or next steps the attendees would like to see. He reported on the needs that attendees listed they would like from the Newport area. Lavrakas shared that a Canadian company announced they are forming a US corporation that will be based here in Newport to conduct ROV studies. Lavrakas reviewed the finances of the conference. Allen asked about the renewable energy presentation or discussions from the conference. Saelens asked about future conference plans. Lavrakas stated that YBOOI committee would not have specific next steps for a few months. They need time to plan.

PUBLIC COMMENT

John Lavrakas discussed the loss of Jim Voetberg as City Manager. He hates to see good people leave. He wants to encourage the Council to work hard at cooperating with all staff. He knows how difficult it is to find good people. Allen shared the Council progress toward working more cooperatively with the City Manager through a new evaluation tool that Voetberg is assisting in preparing.

Consideration of an Adjustment to Utility Rates. Tim Gross presented resolutions to adjust the billing rates for water and wastewater, and adjustments to the Utility Infrastructure and Stormwater Utility Fees for the Council to consider and discuss. Gross reviewed the proposed changes for Council. Gross had been asked about The Water Infrastructure and Conservation Act of 2013 by Council. He explained this act is for larger infrastructure projects, think of projects for cities like Los Angeles and Detroit. Gross created a excel spreadsheet to assistant Council and customers in understanding the effect of the rate increase on their bill. Council would like to see this spreadsheet on the website for customers to use to assist them in understanding the effect of the increases to their water bill. Gross is proposing an increase in water deposits required to start serve in order to have the deposit cover cost of two months of service. This will help to recover losses from delinquent water bills.

Robert Smith, Chairmen of the budget committee, wanted the people of this city to know how well students from this small city are doing. He used the Girl's Track team win as an example.

Alisha Kern is concerned that the increase in rates will be devastating to the senior community. She feels that the 15% increase is outrageous.

Marlette Noel spoke in support of the rate increase stating that we no longer have the federal government to bail us out anymore. She believes as a community we have to pay to fix our infrastructure. It will hurt but it has to be done.

Allen discussed the creation of a Task Force to review and recommend a combination of long-term options to for funding City infrastructure repairs.

OLCC Renewal Recommendations. Miranda reported that the issue before Council is shall the City Council recommend to Oregon Liquor Control Commission (OLCC) that stipulations be placed on licenses held by Apollo's Nightclub, Sandbar and Grill and Moby Dick's Seafood and Spirits. Every year the OLCC sends out a list of renewals, OLCC asked the City to give feedback on the approval of those licenses. Miranda reviewed the report given to the Council regarding each OLCC that are in question. Miranda explained how he developed his report. He is concerned about creating a save environment for the public and for the police officers. Miranda has made suggestion for stipulations on the licenses. OLCC can use these stipulation or they can do nothing or create their own stipulations. Miranda stated they are aware of the stipulations place by OLCC but they do not enforce the stipulations. Allen asked if these stipulations are similar to other stipulations the OLCC has used in the past. Sawyer asked if there has been communication between the owners and Miranda. Allen asked what prompted the Miranda to come up with recommended stipulations this renewal time. Timelines had some impact on his ability to bring the issue up in previous years.

Boonie Parashak represented the Sandbar & Grill, a family restaurant and sports bar. OLCC says they can serve alcohol until 2:30 am. Closing at midnight would greatly impact their business. The main people that come after 11:00 p.m. are local residents that are just getting off work not everyone works from 8 a.m. - 5 p.m. They should have a place to come to drink have a snack or just unwind. In the summertime it is visitors. They know they can come down have a nice evening because we are patrolled by the police. How would you like to go to a beach town and be told that you cannot have a drink after 12:00 a.m. You would you go to a place that you could get a drink? The City would be hurting the people working for the Sandbar. They already have a stipulation on them about the video monitoring system. They paid for the system; they were told that it was their system to use for their purposes. Not for the Police

Department to come in and take our rights away and look at the tapes for no reason. Having a security guard for every 25 people would be costly and put local people out of work. She thinks these are ridiculous things to ask of any business. This will not just effect me it will affect everyone.

Devin Murphy, employee of the Sandbar & Grill stated losing two hour of pay is a big chunk of your pay. A lot of these people have to use their words to get people out the door. Video angles can be misleading. Residence of Lincoln County should not have to suffer for visitors coming to town and acting badly. We need to put it back on the patrons.

Justin Briggs, works special events security for Apollo's and is a regular patron of the Sandbar. He stated that if you put stipulations on these three establishments you should do it citywide. If you put stipulations on these three establishments, the problems will just move to another establishment and then they will have the increase calls and problems. Sandbar is a self regulating bar. He feels that they recognize the issues and take care of the issues themselves.

Debbie Hayter, Apollo's owner, at no time did she think calling the Police was a problem. They have been told over and over again if they have a problem to call the police. Almost every night from 1-2 a.m. the Police are sitting across the street from the Apollo's. She is DPS certified. They take care of their own problems. What she sees as the problem is that the police come up on problems that her security is already handling without the Police and they do not need the Police's assistance. She reported the most of the calls on the report were problems with lack of cabs and the Police would come and take people home. They had a meeting with Miranda last year and he told us to call if we had any problems. Allen asked if they had some advance notice of the possible stipulations to the OLCC license. They received a letter but no other information or meetings in the last two years. Council thanked them for providing information in writing.

Terry Obteshk is concerned about the message that we are sending to future business/ restaurant owners. He has not personally seen any problems. These businesses could lose their licenses which could mean their lively hood.

Adam Parsell he has worked at the Sandbar for ten years and they do not have problems. A lot of the problems at the Sandbar happen outside the bar. People can't smoke in the bar anymore so they go outside. People come up off the beach and start problems.

Millah Howe believes that these stipulations set a precedent that is really anti-business. He believes this will hurt business which in turn hurts the community. He asked if we are going to be a business friendly Newport.

James Olsen has been going to the Sandbar for 41 years he has never had a problem at the Sandbar. It is a neighborhood bar. He tends bar there occasionally. He agrees with the other comments the people have made.

Swanson asked if Miranda and the establishments could work together to resolve the issues, Miranda agreed. Allen suggested that this group could possibly come-up with some licensing guidelines. He is not willing to put on any stipulations at this time. Discussion ensued about where to go from here.

MOTION was made by Allen, seconded by Beemer, to forward on the list of OLCC renewals with a natural statement of no action. The motion carried unanimously in a voice vote.

MOTION was made by Allen, seconded by Swanson, to have the three establishments represented tonight and any others who would like to participate to have a meeting with Miranda and create a plan to deal with the issues discussed tonight. The motion carried unanimously in a voice vote.

ACTION ITEMS

Continuation of Coffee House Appeal of System Development Charge Assessment.

Tokos reported that the issue before Council is to determine whether the City Manager's decision to assess system development charges to The Coffee House is in accordance with the city's system development charge ordinance and state law. SDCs are assessed when there is an increase use of a capital improvement. After the last Council meeting Tokos had the City Attorney prepare a memo using the materials from Bartoldus' appeal and the City's position. The City Attorney reiterates that the Council has limited options in deciding this appeal. Council can either grant a full wavier or a full assessment. To grant a waiver you have to find that enclosing the deck will not increase the square footage of the restaurant and you must also find that it will not increase use of public improvement system at all ever. The City Attorney does not believe that granting the appeal is warranted. Tokos pointed out a few changes that could be made to the assessed fees if the Council wanted to look at the credit system. Tokos discussed SDC credits and how they could be used with this appeal and how they have been used with past and current projects. He discussed both the positive and negative effects of these credits. Tokos stated the need to make adjustments to the SDC ordinance in order to have more equity in the program. Tokos reviewed the options that the council has with regards to changes to the SDC Program. Currently our SDC Program does not collect fees for improvements that do not require a permit. Council discussed possible changes to SDC credits.

Dennis Bartoldus appeared representing the owner of the Coffee House, Judy Lingham. He stated this is a hot item with the small businesses community. Bartoldus restated his client's position. There is no language in the ordnance that uses the roof as the trigger for SDC. Allen asked if the building permit is needed in this case. Bartoldus said he believed that yes a building permit is needed. Allen referred to SDC ordinance 12.15.050.A.1 which states if a building permit is required the SDC must be paid. The discussion then moved to exceptions to the SDC focusing on whether or not the deck area would increase square footage to the establishment and therefore increase use of water, wastewater etc. Bartoldus stated that no utilities would be used or added in this area; cold air will still be able to come through. The addition has the characteristic of an outdoor area. Councilors shared their thoughts on the issue of the addition. Bartoldus reviewed his position which was stated on his handout.

MOTION was made by Allen, seconded by Beemer, to reverse the City Manager's decision to assess system development charges in that enclosing a deck in the manner proposed will not increase the parcel or structures use of a public improvement system because the additional space is not served by heat, light and other features of a building. Therefore, the City Manager's decision was inconsistent with the City SDC Ordinance, which requires assessments only when there is an impact to the public improvement system. The motion carried unanimously in a voice vote.

Consideration of the Adoption of Resolution No. 3626 Regarding the City Manager's Authority to Settle. Allen reported that the issue before Council is consideration of the adoption of Resolution No. 3626 regarding the City Manager's authority to settle lawsuits.

MOTION was made by Sawyer, seconded by Allen, to adopt Resolution No. 3626 as amended regarding the City Manager's authority to settle lawsuits. Motion carried in voice vote six ayes, one nay.

Consideration of the Extension of the Tourism Promotion Services Contract with the Greater Newport Chamber of Commerce. Voetberg reported that the issue before Council is consideration of a one-year extension to the personal services contract the city has with the Greater Newport Chamber of Commerce for tourism promotion, fulfillment, and development services. Davis was present to answer any questions. Davis provided a packet for the council that reports what the Chamber has done from the inception of the contract until now. Sawyer commented on the job the Chamber is doing for tourism.

MOTION was made by Beemer, seconded by Sawyer, to approve a one-year extension to the personal services contract for the tourism promotion services with the Greater Newport Chamber of Commerce, which would extend the term of the contract until June 30, 2014. The motion carried unanimously in a voice vote.

Notice of Intent to Award :Big Creek Reservoir-Culvert Rehabilitation. Gross reported that the issue before Council is notice of the intent to award the Big Creek Reservoir-Culvert Rehabilitation Project 2012-012.

MOTION was made by Beemer, seconded by Saelens, for the City of Newport Public Works Department issue a Notice of Intent to Award the Big Creek Reservoir - Culvert Rehabilitation to Clackamas Construction in the amount of \$118,220.00 and contingent upon no protest, authorize award and direct the City Manager to execute the contract after 7 days on behalf of the City of Newport. The motion carried unanimously in a voice vote.

COUNCIL REPORTS AND COMMENTS

Beemer commented that the Newport Girl's track team won the meet. They are defending State Champions.

Busby attended the Airport Committee meeting was last week. The project for runway 246 is still on track but the risk is still there that the FAA may pull the money. He did ask the Airport Committee to review the airport budget and give him feedback.

Swanson on May 20 attended the Sixty Plus Center Committee meeting. They are contacting the safety committee with concerns about parking and ramp safety. The center has had two successful trips recently to Florence and Hood River. The van for Meals on Wheels was in the Loyalty Days parade and was very well received. June 15th is a picnic for the Meals on Wheels volunteers, council members are invited. Sixty Plus Center is looking for a second AED for the top floor. Signage for the Sixty Plus Center is a problem. They are working on line of sight issues with the placement of the new sign.

Saelens shared that the boy's baseball team is making another bid for State Champions starting next Wednesday.

Sawyer attended the Destination Newport meeting on May 9th. The ice rink project is on hold.

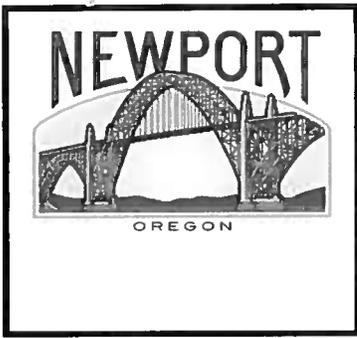
Sawyer attended the Home and Garden show over the weekend, it was very successful.

ADJOURNMENT

Having no further business, the meeting adjourned at 9:40 P.M.

Cynthia Breves, Executive Assistant

Sandra Roumagoux, Mayor



Agenda Item # _____
Meeting Date _____

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title OLCC Liquor License

Prepared By: Miranda Dept Head Approval: Chief Mark J. Miranda  City Mgr Approval: _____

Issue Before the Council:

Shall the City Council recommend approval of the liquor license application for Walgreens?

Staff Recommendation:

The Police Department recommends favorable action by the City Council.

Proposed Motion:

Consent Calendar item.

Key Facts and Information Summary:

Walgreens, 27 SW. Coast Hwy, has made application to the Oregon Liquor Control Commission for an "Off Premises Sales" license as a new outlet. Such a license allows for the applicant to sell factory sealed containers of wine, malt beverages and cider. Containers of malt beverages sold under the license may not hold more than two and one-quarter gallons.

A background check of the applicant revealed no disqualifying information. Walgreens, although not opened yet, is located on the south-east corner of SW. Coast Hwy and East Olive Street. There have been no police calls at this location as it is new construction.

ORS 471.166 requires an applicant to obtain a recommendation from the local governing body in the city where the business is located. The City Council may make a "Favorable Recommendation" or an "Unfavorable Recommendation" to OLCC. The Commission will then decide if granting a license is appropriate.

Other Alternatives Considered:

None applicable

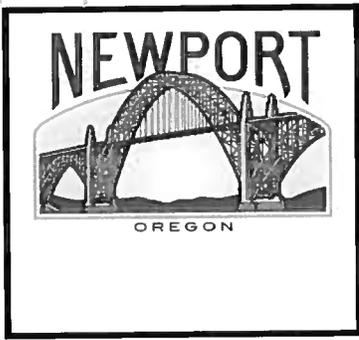
City Council Goals:

Public Safety

Attachment List:
OLCC Application

Fiscal Notes:
The City's license application fee covers the investigation and processing time expended by Staff.





Agenda Item # _____
Meeting Date _____

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title OLCC License Approval

Prepared By: Newport Police Dept. Head Approval: Chief Mark J. Miranda *[Signature]* City Mgr Approval: _____

Issue Before the Council:

Shall the City Council recommend approval of the liquor license application for the Oregon Coast Aquarium.

Staff Recommendation:

The Police Department recommends favorable action by the City Council

Proposed Motion:

Handled as a consent calendar item

Key Facts and Information Summary:

The Oregon Coast Aquarium, 2820 SE Ferry Slip Road, has made application to the Oregon Liquor Control Commission for a "Full On-Premises Sales" license as a new outlet. Such a license allows for the applicant to sell 'by the drink' wine, malt beverages, cider and distilled liquor. These beverages must be consumed on the premises. Partially consumed bottles of wine that had been served with a meal may also be taken from the premises.

A background check of the applicant revealed no disqualifying information. The Oregon Coast Aquarium is located in South Beach, on the east side of SE Ferry Slip Drive. There have been several police calls to the business within the last year, however none dealt with the licensed establishment. There have been several OLCC licensees over the years at the Aquarium, and they occupied the café area. At this time the Aquarium is only planning on serving alcohol at special events.

ORS 471.166 requires an applicant to obtain a recommendation from the local governing body in the city where the business is located. The City Council may make a "Favorable Recommendation" or an "Unfavorable Recommendation" to OLCC. The Commission will then decide if granting a license is appropriate.

Other Alternatives Considered:

Not applicable.

City Council Goals:
Public Safety related.

Attachment List:
License Application

Fiscal Notes:
There is no fiscal impact on the City other than time to process the application





OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Application is being made for:

LICENSE TYPES

- Full On-Premises Sales (\$402.60/yr)
 - Commercial Establishment
 - Caterer
 - Passenger Carrier
 - Other Public Location
 - Private Club
- Limited On-Premises Sales (\$202.60/yr)
- Off-Premises Sales (\$100/yr)
 - with Fuel Pumps
- Brewery Public House (\$252.60)
- Winery (\$250/yr)
- Other: _____

ACTIONS

- Change Ownership
- New Outlet
- Greater Privilege
- Additional Privilege
- Other _____

90-DAY AUTHORITY

Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

APPLYING AS:

- Limited Partnership
- Corporation
- Limited Liability Company
- Individuals

CITY AND COUNTY USE ONLY

Date application received: 5/13/13

The City Council or County Commission:

(name of city or county)

recommends that this license be:

- Granted
- Denied

By: _____
(signature) (date)

Name: _____

Title: _____

OLCC USE ONLY

Application Rec'd by: Jah

Date: 5-10-13

90-day authority: Yes No

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

① OREGON COAST AQUARIUM, INC ③ _____

② _____ ④ _____

2. Trade Name (dba): OREGON COAST AQUARIUM, INC

3. Business Location: 2820 SE FERRY SLIP RD, NEWPORT, LINCOLN, OR, 97365
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: 2820 SE FERRY SLIP RD NEWPORT OREGON 97365
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 541-867-3474 541-867-6846
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? Yes No

7. If yes to whom: _____ Type of License: _____

8. Former Business Name: N/A

9. Will you have a manager? Yes No Name: MIKE DOWNING
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? NEWPORT OREGON
(name of city or county)

11. Contact person for this application: JASON KING 541-867-3474 x 5819
(name) (phone number(s))
2820 SE FERRY SLIP ROAD 541-867-6846 JASON.KING@AQUARIUM.ORG
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① [Signature] Date 4-11-13 ③ _____ Date _____

② [Signature] Date 4.29.13 ④ _____ Date _____



Jim Voetberg
City Manager
CITY OF NEWPORT
169 S.W. Coast Hwy.
Newport, OR 97365
j.voetberg@thecityofnewport.net

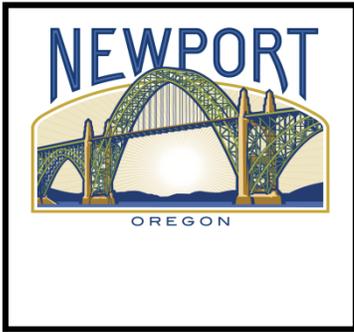
Manager's Report Meeting of June 3, 2013

Following is the Manager's Report for the City Council meeting of May 6, 2013:

Thanks to Staff and the Community: I wish to say thanks to staff and the community for being able to serve as City Manager these past four years. During my time here, the City has addressed head on several financial and organization issues, including negative fund balances totaling \$1.2 Million and a few Departments operating at less than what they were capable of. By making difficult decisions, raising expectations and building a culture of "can-do, get things done", I am proud of what the City has accomplished and the high level of professionalism that exists today. I wish to give credit and recognition to our employees and Department Heads who have made this happen. It is professionally gratifying to me knowing that I am leaving the City in a much better position than when I began.

On a personal note, both Kim and I have enjoyed being a part of the community and will always be Newport's biggest supporter of why Newport is the best place in Oregon to visit or live. From day one, Newport has made us feel welcomed and a part of the community. Kim and I can't thank the community enough for the support they have given us.

I wish the City the best in the future and I leave Knowing Newport has the best group of city employees in Oregon.



Agenda Item # IX.A.
Meeting Date June 3, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Appeal of Planning Commission’s Approval of the Teevin Bros. Traffic Impact Analysis

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: _____

ISSUE BEFORE THE COUNCIL: Determination of how the Council wants to proceed with an appeal of the Planning Commission’s decision to approve the Teevin Bros. Traffic Impact Analysis, filed by Oregon Coast Alliance (ORCA), Michael Peterson, and The Landing at Newport Condominium Association.

STAFF RECOMMENDATION: Staff recommends the Council forgo hearing the appeal and affirm the Commission’s decision as the City’s final decision.

PROPOSED MOTION:

MOTION TO ACCEPT COMMISSION’S DECISION: I move to adopt Order #2013-1 accepting the Planning Commission’s Final Order and Findings of Fact approving the Traffic Impact Analysis for the Teevin Bros. Log Yard (File #1-TIA-13) as the City’s final decision and that the appeal fee of \$792 be refunded to the appellant.

MOTION TO HEAR THE APPEAL: I move that the Council conduct an on the record hearing to consider the appeal of the Planning Commission’s decision to approve the Traffic Impact Analysis for the Teevin Bros. Log Yard (File #1-TIA-13). The hearing will be held at 7:00 pm, on Monday, June 17, 2013 in the Council Chambers at Newport City Hall.

KEY FACTS AND INFORMATION SUMMARY: On February 28, 2013 the City received a complete application from Teevin Bros. Land and Timber Co., LLC for a traffic impact analysis associated with a proposed log yard on 15 acres of property located at 1650 SE Bay Blvd. The purpose of the analysis is to establish that the transportation facilities, namely SE Moore Drive and SE Bay Blvd, can safely accommodate the proposed log truck traffic. The application was reviewed by the City Engineer and Community Development Director, and the Director issued findings of fact and a final order approving the analysis on March 11th. The Director’s decision was appealed to the Newport Planning Commission. On April 22nd, the Planning Commission held a *denovo* (i.e. full evidentiary) hearing to consider the application and on May 13th the Commission issued findings of fact and a final order approving the Teevin Bros. application. Written materials submitted to the Commission for its consideration and the attachments to the Commission’s findings are available for review on the Community Development Department page of the City of Newport website at: <http://thecityofnewport.net/dept/pln/>. The Commission’s decision was appealed to the Newport City Council on May 28, 2013.

Section 14.52.100 of the Newport Municipal Code describes the City’s process for reviewing appeals of land use decisions. The City Council has three options. It may elect to hold a *denovo* hearing on the appeal if it believes that a significant number of appeals have been filed and that the efficiency of the appeals process would be best served by holding such a hearing (NMC 14.52.100(B)(1)). The other grounds for holding a *denovo* hearing, that the appellant has documented significant procedural error that resulted in substantive harm to their ability to participate in the initial hearing before the Planning Commission, or that the appeal is related to other land use requests that require a hearing and therefore should be heard at the same time, are not applicable. A second option is for the City Council to conduct

an on-the-record appeal hearing. This approach necessitates preparation of a verbatim transcript of the Planning Commission meeting and compilation of the complete written record (NMC 14.52.100(D)(1)). That step has been completed so that the required 20-day notice could be mailed to all parties that have testified to date, indicating that if the Council elects to proceed in this manner that the hearing would be held at 7:00 pm on June 17th in the Council Chamber at City Hall. The third, and final option is for the Council to deny the appeal without hearing. If the Council elects to take this approach, it must adopt the Planning Commission's final order and findings of fact as the City's final decision (NMC 14.52.100(D)(3)).

The grounds for appeal listed by Sean Malone, Attorney, on behalf of the appellants, are the same as those raised in their prior appeal to the Planning Commission. The issues have been considered and addressed by the City's staff and Planning Commission and in the case of the Commission an evidentiary hearing was held where all interested parties were given an opportunity to testify. In the end, both staff and the Commission reached the same conclusions. For these reasons, it would be reasonable for the City Council to deny the appeal without a hearing.

State law requires that cities render final decisions on land use applications within 120-days of receiving a complete application (ORS 227.178). That includes responding to appeals. As of June 3rd, the application will be at day 95. Should the Council elect to conduct a hearing on June 17th (Day 109) then it will need to be prepared to issue a decision that same day, or by the following week at the latest in order to satisfy this requirement.

OTHER ALTERNATIVES CONSIDERED: None.

CITY COUNCIL GOALS: Issues raised in this appeal are not related to any adopted Council goals.

ATTACHMENT LIST:

- Appellants grounds for appeal
- Planning Commission final order and findings of fact w/o attachments
- Verbatim transcripts from April 22nd and May 13th Commission meetings
- NMC 14.52.100 (Appeals)
- Draft Order #2013-1

FISCAL NOTES: If the Council chooses to deny the appeal without a hearing then staff recommends the appeal fee be refunded, including the appellant's \$500 deposit for preparation of the verbatim transcript. This means that the City would end up covering the transcript cost, which came in at \$472. The Community Development Department has sufficient budgeted funds to cover the expense.

Sean T. Malone

Attorney at Law

259 E. Fifth Ave.,
Suite 200-G
Eugene, OR 97401

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

May 23, 2013

Via email and certified mail

Derrick I. Tokos, Director
Wanda Haney, Executive Assistant
Community Development & Planning Department
169 SW Coast Hwy
Newport OR 97365
d.tokos@newportoregon.gov
w.haney@newportoregon.gov

Re: Appellants' Notice of Appeal of File No. 1-TIA-13 to the Newport City Council

Dear Mr. Tokos

On behalf of Oregon Coast Alliance, Michael Peterson, and the Landing at Newport Condominium Association, please find enclosed a notice of appeal, appeal addendum, and a check in amount of \$792.00 for the filing fee and deposit for the transcript.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance
Michael Peterson, and
The Landing at Newport Condominium Association



City of Newport Land Use Application

PLEASE PRINT OR TYPE • COMPLETE ALL BOXES • USE ADDITIONAL PAPER IF NEEDED

Applicant Name(s): see attached addendum	Property Owner Name(s):
Applicant Mailing Address: see attached addendum	Property Owner Mailing Address:
Applicant Telephone No.: see attached addendum	Property Owner Telephone No.:
E-mail:	E-mail:
Authorized Representative(s): Sean T. Malone, Attorney at Law	
Authorized Representative Mailing Address: 259 E. 5th Ave, Ste 200-G, Eugene OR 97401	
Authorized Representative Telephone No.: 303-859-0403	E-Mail: seanmalone8@hotmail.com

Project Information

Property Location: 1650 Bay Blvd Newport OR 97365	
Tax Assessor's Map No.:	Tax Lot(s):
Zone Designation:	Legal Description:
Comp Plan Designation:	
Brief Description of Land Use Request(s): Appeal of final order of the planning commission approving Teevin Bros traffic impact analysis to the Newport City Council. (See attached addendum).	
Existing Structures:	
Topography and Vegetation:	

APPLICATION TYPE (please check all that apply)

<input type="checkbox"/> Annexation <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Comp Plan/Map Amendment <input type="checkbox"/> Conditional Use Permit <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Design Review <input type="checkbox"/> Geologic Permit	<input type="checkbox"/> Interpretation <input type="checkbox"/> Minor Replat <input type="checkbox"/> Partition <input type="checkbox"/> Planned Development <input type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Shoreland Impact <input type="checkbox"/> Subdivision <input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> UGB Amendment <input type="checkbox"/> Vacation <input type="checkbox"/> Variance/Adjustment <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Zone Ord/Map Amendment <input type="checkbox"/> Other _____
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FOR OFFICE USE ONLY

Date Received: <u>by mail 5/28/13</u>	File No. Assigned: <u>1-TIA-13-AA</u>	Date Accepted as Complete: _____
Received By: <u>wh</u>	Fee Amount: <u>\$292 - appeal</u> <u>\$500 - transfer</u>	Accepted By: _____
Receipt No.: _____		

(SEE REVERSE SIDE)

Community Development & Planning Department • 169 SW Coast Hwy, Newport, OR 97365 • Derrick I. Tolos, AICP, Director



I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

Applicant Signature(s)
Michael Peterson
Property Owner Signature(s)

Date Signed
5/22/13
Date Signed

Authorized Representative Signature(s)

Date Signed

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

_____ Applicant Signature(s)	_____ Date Signed
_____ Property Owner Signature(s)	_____ Date Signed
<i>Dennis Shannon (General Manager)</i> _____ Authorized Representative Signature(s) <i>THE LANDINGS AT NEWPORT</i>	<i>05/22/2013</i> _____ Date Signed

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

<u>Cameron LaPlante</u> Oregon Coast Alliance, Land Use Director Applicant Signature(s)	<u>5/23/2013</u> Date Signed
<u>Property Owner Signature(s)</u>	<u>Date Signed</u>
<u>Sean Malone</u> Authorized Representative Signature(s) Sean Malone, Authorized Representative for all Appellants	<u>5/23/13</u> Date Signed

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

Sean T. Malone

Attorney at Law

259 E. Fifth Ave.,
Suite 200-G
Eugene, OR 97401

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

May 23, 2013

Derrick I. Tokos, Director
Wanda Haney, Executive Assistant
Community Development & Planning Department
169 SW Coast Hwy
Newport OR 97365
d.tokos@newportoregon.gov
w.haney@newportoregon.gov

Re: Appellants' Notice of Appeal to Newport City Council

Appellants Names, Mailing Address, and Telephone Number

Oregon Coast Alliance (ORCA)
PO Box 857
Astoria, OR 97103
(503) 391-0210

Michael Peterson
PO Box 1985
Newport OR 97365
(541) 272-5050

The Landing at Newport Condominium Association
890 S.E. Bay Blvd.
Newport OR 97365
(541) 574-6777

Authorized Representative for ORCA, Michael Peterson, and the Landing at Newport Condominium Association:

Sean T. Malone
Attorney at Law
259 E. 5th Ave, Ste 200-G
Eugene OR 97401
Ph. (303) 859-0403
Fax (650) 471-7366
Seanmalone8@hotmail.com

Identification of the Decision Sought to Be Reviewed

Oregon Coast Alliance, Michael Peterson, and the Landing at Newport Condominium Association (Appellants) hereby appeal the City of Newport Planning Commission's final order approving a traffic impact analysis (1-TIA-13-A) pursuant to Newport Municipal Code Chapter 14.45 for Teevin Bros. proposed log yard located at 1650 SE Bay Blvd on May 13, 2013, to the City of Newport City Council.

Standing

Appellants have standing to appeal because appellants appeared before the Community Development Department in writing during the period allowed for written comments from the public, and Appellants also appeared before the Planning Commission in writing and/or in person at the hearing before the Planning Commission.

Grounds for Appeal

The grounds on which appellant relies as the basis for the appeal include but are not limited to the following:

- Inadequate traffic impact analysis, including but not limited to:
 - Failure to demonstrate that adequate transportation facilities exist to serve the proposed development, NMC 14.45.050(B);
 - Failure to demonstrate that the proposed development will not cause excessive queuing or delays at affected intersections, NMC 14.45.050(D);
 - Limited intersection sight distance without proposed mitigation;
 - Failure to sufficiently evaluate queuing;
 - Insufficient analysis of structural pavement conditions, NMC 14.45.020(F);
 - Failure to utilize industry standard for trip generation estimates, NMC 14.45.020;
 - Failure to satisfy Oregon Department of Transportation requirements, NMC 14.45.020.
- Failure to account for increase in traffic during crab/fishing season.
- Failure to obtain a geological hazard permit pursuant to the requirements
- Failure to demonstrate that the applicant will take erosion control measures, Newport Zoning Ordinance Section 2-4-7.045.

- The proposed development falls within the geologic hazards overlay zone, and, therefore, the Planning Commission should have required the applicant to comply with NMC Chapter 14.21. The Planning Commission failed to require the applicant to comply with NMC Chapter 14.21.
- Appellants incorporate by reference into this addendum all materials submitted by appellants and their consultants before the Development Director and the Planning Commission.
- Appellants have raised all issues in detail before the Development Director, the Planning Commission, and this addendum, including by incorporating by reference all documents submitted before the Development Director and the Planning Commission.

De Novo Appeal

Appellants request a *de novo* appeal before the City Council.

Appeal Fee

Please find attached a check in the amount of \$792.00, which includes \$292.00 for the appeal fee and \$500.00 for preparation of the transcript.

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance
Michael Peterson, and
The Landing at Newport Condominium Association,

cc: Oregon Coast Alliance
] Michael Peterson
The Landing at Newport Condominium Association

3. Prior to commencing truck operations, Teevin Bros. shall coordinate with Lincoln County to repair the section of the Yaquina Bay Road that is settling along the planned haul route.

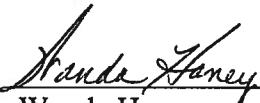
BASED UPON THE ABOVE, the Planning Commission determines that the request for a Traffic Impact Analysis as submitted in the application is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport with the attached conditions(s) of approval.

Accepted and approved this 13th day of May, 2013.



James Patrick, Chair
Newport Planning Commission

Attest:



Wanda Haney
Executive Assistant

EXHIBIT "A"

Case File No. 1-TIA-13-A

FINDINGS OF FACT

1. An application seeking City approval of a Traffic Impact Analysis (TIA), pursuant to Chapter 14.45 of the Newport Municipal Code (NMC), was submitted on January 9, 2013. A completed application form and filing fee was received by the City on January 14, 2013 and the TIA was supplemented with new information on February 12, 2013 and February 28, 2013.
2. The applicant is Teevin Bros. Land and Timber Co., LLC. Lincoln County Assessment records list the property owners as the Port of Newport and Rondys and Associates, Inc. Property owned by Rondys and Associates, Inc. is leased by the Port of Newport.
3. The TIA was prepared by Diego Arguea, P.E., Senior Engineer, and Dan Seeman, Principal Planner, with Kittelson & Associates, Inc., a Transportation Engineering and Planning firm out of Portland, Oregon. Supplemental analysis of the suitability of SE Moore Drive (a.k.a. John Moore Road) and SE Bay Boulevard was performed by Ralph Dunham, P.E., Project Engineer, with Stuntzner Engineering and Forestry, LLC out of Coos Bay, Oregon.
4. The applicant is proposing to establish a log yard at 1650 SE Bay Blvd. The operation will encompass approximately 15 acres. County Assessment records identify the property as Tax Lots 100 and 101, Section 9D, Township 11 South, R11 West, Willamette Meridian.
5. The property is zoned I-3/"Heavy Industrial" on the City of Newport's Zoning Maps. This zoning designation authorizes heavy manufacturing and warehouse, freight movement, and distribution as permitted uses, pursuant to NMC 14.03.070(8)(b) and 14.03.070(9). A log yard qualifies under both of these categories considering the manufacturing aspect (i.e. debarking and preparing logs for shipment) and the freight and distribution element of the operation (i.e. truck terminal).
6. The Newport Municipal Code (NMC) Section 14.34.010/"Applicability" requires a TIA to be submitted under any one or more of the following circumstances:
 - A. To determine whether a significant effect on the transportation system would result from a proposed amendment to the Newport Comprehensive Plan or to a land use regulation, as specified in OAR 660-012-0060.
 - B. ODOT requires a TIA in conjunction with a requested approach road permit, as specified in OAR 734-051-3030(4).
 - C. The proposal may generate 100 PM peak-hour trips or more onto city streets or county roads.
 - D. The proposal may increase use of any adjacent street by 10 vehicles or more per day that exceeds 26,000 pound gross vehicle weight.
 - E. The proposal includes a request to use Trip Reserve Fund trips to meet the requirements of NMC Chapter 14.43 (South Beach Transportation Overlay Zone).

7. NMC Section 14.45.020/“Traffic Impact Analysis Requirements” lists the following requirements for a Traffic Impact Analysis:
 - A. Pre-application conference. The applicant shall meet with the City Engineer prior to submitting an application that requires a TIA. This meeting will be coordinated with ODOT when an approach road to US-101 or US-20 serves the property so that the completed TIA meets both City and ODOT requirements.
 - B. Preparation. The submitted TIA shall be prepared by an Oregon Registered Professional Engineer that is qualified to perform traffic engineering analysis and will be paid for by the applicant.
 - C. Typical Average Daily Trips and Peak Hour Trips. The latest edition of the Trip Generation Manual, published by the Institute of Transportation Engineers (ITE) shall be used to gauge PM peak hour vehicle trips; unless a specific trip generation study that is approved by the City Engineer indicates an alternative trip generation rate is appropriate. An applicant may choose, but is not required, to use a trip generation study as a reference to determine trip generation for a specific land use which is not well represented in the ITE Trip Generation Manual and for which similar facilities are available to count.
 - D. Intersection-level analysis. Intersection-level analysis shall occur at every intersection where 50 or more peak hour vehicle trips can be expected as a result of the proposal.
 - E. Transportation Planning Rule compliance. The TIA shall comply with the requirements of OAR 660-012-000.
 - F. Structural conditions. The TIA shall address the condition of the impacted roadways and identify structural deficiencies or reduction in the useful life of existing facilities related to the proposed development.
 - G. Heavy vehicle routes. If the proposal includes an increase in 10 or more of the vehicles described in Section 14.45.010(D), the TIA shall address the provisions of Section 14.45.020(F) for the routes used to reach US-101 or US-20.
8. Pursuant to NMC Section 14.45.030/“Study Area,” the following facilities shall be included in the study area for all TIAs:
 - A. All site-access points and intersections (signalized and unsignalized) adjacent to the proposed site. If the proposed site fronts an arterial or collector street, the analysis shall address all intersections and driveways along the site frontage and within the access spacing distances extending out from the boundary of the site frontage.
 - B. Roads through and adjacent to the site.
 - C. All intersections needed for signal progression analysis.
 - D. In addition to these requirements, the City Engineer may require analysis of any additional intersections or roadway links that may be adversely affected as a result of the proposed development.

9. When a TIA is required, the applicable review process will be the same as that accorded to the underlying land use proposal. If a land use action is not otherwise required, as is the subject circumstance, then approval of the proposed development shall follow a Type II decision-making process. Pursuant to NMC 14.52.030(C), the Community Development Director is the initial approving authority for a Type II land use action.
10. Pursuant to NMC Section 14.45.050/ "Approval Criteria," when a TIA is required, a development proposal is subject to the following criteria, in addition to all criteria otherwise applicable to the underlying proposal:
 - A. The analysis complies with the requirements of NMC 14.45.020;
 - B. The TIA demonstrates that adequate transportation facilities exist to serve the proposed development or identifies mitigation measures that resolve the traffic safety problems in a manner that is satisfactory to the City Engineer and, when state highway facilities are affected, to ODOT; and
 - C. Where a proposed amendment to the Newport Comprehensive Plan or land use regulation would significantly affect an existing or planned transportation facility, the TIA must demonstrate that solutions have been developed that are consistent with the provisions of OAR 660-012-0060; and
 - D. For affected non-highway facilities, the TIA establishes that any Level of Service standards adopted by the City have been met, and development will not cause excessive queuing or delays at affected intersections, as determined in the City Engineer's sole discretion; and
 - E. Proposed public improvements are designed and will be constructed to the standards specified in NMC Chapter 14.44 (Transportation Standards) or Chapter 13.05 (Subdivision and Partition), as applicable.
11. On March 11, 2013, the Community Development Director issued a Final Order and Findings of Fact approving the TIA application. The decision was subject to a 15 day appeal period, as provided by NMC 14.52.100. The deadline for filing an appeal was March 26, 2013.
12. A timely appeal of the Director's decision was filed on March 22, 2013 by Sean Malone, attorney, on behalf of the Oregon Coast Alliance, Michael and Christy Peterson, and The Landing at Newport Condominium Association. The appeal documents list the grounds for appeal as follows:
 - A. Inadequate traffic impact analysis, including but not limited to:
 - i. Failure to demonstrate that adequate transportation facilities exist to serve the proposed development, NMC 14.45.050(B);
 - ii. Failure to demonstrate that the proposed development will not cause excessive queuing or delays at affected intersections, NMC 14.45.050(D);
 - iii. Limited intersection sight distance without proposed mitigation;

- iv. Failure to sufficiently evaluate queuing;
 - v. Insufficient analysis of structural pavement conditions, NMC 14.45.020(F);
 - vi. Failure to utilize industry standard for trip generation estimates, NMC 14.45.020;
 - vii. Failure to satisfy Oregon Department of Transportation requirements, NMC 14.45.020.
- B. Failure to account for increase in traffic during crab season.
 - C. Failure to address geologic hazards issues, NMC 13.05.070(A)(10).
 - D. Failure to prepare a geologic hazards report, NMC 13.05.070(A)(10).
 - E. Failure to demonstrate that the applicant will take erosion control measures, Newport Zoning Ordinance Section 2-4-7.045.
 - F. Failure to submit sufficient information regarding geologic hazards, NMC 13.050070(A)(10).
13. The appellants requested, and the Newport Municipal Code requires, that an appeal of a land use decision that was made without a public hearing be conducted as a *denovo* proceeding (NMC 14.52.100(B)(1)). The City of Newport Planning Commission is the approval authority for an appeal of the Community Development Director's decision (14.52.030(B)(13)).
 14. A hearing date for the appeal was scheduled for April 22, 2013. Direct mail notice of the hearing was provided to the applicant, appellant, adjoining property owners within 200 feet of the subject site, and all persons who provided written testimony prior to the Director's decision being rendered (NMC 14.52.100(C)). Notice of the hearing was also published in the Newport News-Times on April 12, 2013.
 15. A copy of the record was provided to the Newport Planning Commission and was available at the public hearing. At the hearing, the Commission read a prepared statement advising those in attendance of statutory requirements for the conduct of quasi-judicial hearings as outlined on ORS 197.763. The Commission received the staff report and took testimony from the applicant, appellants, and persons testifying in favor and in opposition to the application. The minutes of the April 22, 2013 hearing are hereby incorporated by reference. The Community Development Director's decision, which served as the staff report, is likewise incorporated by reference into the findings.
 16. At the end of the hearing, the Commission closed the record to oral testimony. It then granted a request that was made to leave the record open for submittal of additional written evidence, argument or testimony until April 29, 2013. All parties were given until May 6, 2013 to submit responses to new evidence. The applicant was given until May 13, 2013 to submit final written arguments.

CONCLUSIONS

1. Pursuant to Section 14.45.010/“Applicability,” a TIA is required for any project that may increase use of any adjacent street by 10 vehicles or more per day that exceed 26,000 pounds gross vehicle weight. The applicant indicates that the project will generate up to 50 truck trips per day where the vehicles exceed 26,000 pounds gross vehicle weight; therefore, a TIA is required.
2. Section 14.45.020/“Traffic Impact Analysis Requirements” outlines requirements for a Traffic Impact Analysis (TIA). This is intended to ensure that the City has sufficient information to establish whether or not the approval criteria listed under NMC Section 11.45.050 have been satisfied. The applicant has satisfied the requirements of Section 14.45.020 as follows:
 - A. A pre-application meeting was conducted between Matt Hughart with Kittleson and Associates, Inc. and Tim Gross, City Engineer, via conference call on November 30, 2012, as documented in an email dated December 10, 2012 (Attachment A). The property does not take access off of US 20 or US 101, so it was not necessary that the meeting be coordinated with the Oregon Department of Transportation (ODOT).
 - B. The submitted TIA, dated February 12, 2013, was prepared by Diego Arguea, P.E., an Oregon Registered Professional Engineer qualified to perform traffic engineering analysis (Attachment B). His firm, Kittleson and Associates, Inc., was founded in 1985 and specializes in transportation engineering and planning work. The report was prepared at the expense of the applicant, as is required.
 - C. Given the unique nature of a log yard facility, an independent trip generation profile was developed by Kittleson and Associates based upon the projected maximum operating capacity of the log yard facility. This specific “trip generation study” was discussed and approved by the City Engineer at the pre-application meeting. NMC Section 14.45.020(C) allows use of a “trip generation study,” as has been prepared by Kittleson and Associates, Inc., to serve as an alternative to an applicant using the 9th Edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual to gauge PM peak hour trips associated with a proposed use.

At the hearing, project opponents questioned why the ITE Manual was not used. Timothy Gross, City Engineer, explained that the ITE manual contains sample trip generation data for a wide range of uses that are general in nature. He further noted that the amount of sampling varies; that more limited data is typically available for less common uses such as a log yard; and that when specific information about a use is available, as was the case with this project, it is appropriate that the City require the analysis be based upon the more specific information. This is a reasonable premise for relying upon a specific “trip generation” study, which NMC 14.45.020(C) clearly authorizes where deemed appropriate by the City Engineer.
 - D. Intersection-level analysis was performed at US 20 and SE Moore Drive, SE Bay Boulevard and SE Moore Drive, and two site access driveways off of the Yaquina Bay Road, as documented in the TIA. These are the only intersections where 50 or more peak hour vehicle trips can be expected as a result of the proposal.

- E. Compliance with the Transportation Planning Rule (OAR 660-012-0060) is required in circumstances where a functional plan, acknowledged comprehensive plan or land use regulation must be amended in order for a project to proceed. In this case a log yard is a permitted use within the I-3 zoning district, and the route that the haul trucks will be using (SE Moore Drive, SE Bay Boulevard, and Yaquina Bay Road) is a minor arterial roadway intended to connect employment areas to the highway system. There are no plans or land use regulations that need to be amended.
- F. The structural conditions of the impacted roadways, specifically SE Moore Drive, SE Bay Boulevard, and the Yaquina Bay Road, has been assessed, as required, in the Kittleson & Associates, Inc. report as supplemented by a February 27, 2013 letter from Stuntzner Engineering and Forestry, LLC (Attachment C).

Appellants rely upon a letter from Greenlight Engineering, dated April 18, 2013 (Attachment D), to assert that the pavement analysis failed to identify structural deficiencies or reduction in the useful life of existing facilities related to the proposed development. The report by Kittleson & Associates, Inc. and letter from Stuntzner Engineering and Forestry, LLC contain ample evidence that the structural condition of the haul roads were evaluated. However, these documents do not address the impact of the project upon the useful life of these roadways. That question is addressed in a letter from Stuntzner Engineering and Forestry, LLC, dated April 29, 2013 (Attachment E)

- G. Section 14.45.020(G) clarifies that structural analysis for projects generating 10 or more vehicle trips that exceed 26,000 pounds gross vehicle weight must address the routes that will be used by the vehicles to reach US 101 or US 20. The TIA prepared by Kittleson & Associates, Inc. and supplemental letter from Stuntzner Engineering and Forestry, LLC address this requirement.
3. Section 14.45.030/ "Study Area" identifies the types of facilities that must be included as part of the study for all Traffic Impact Analysis (TIA) reports. This includes all site-access points and intersections (signalized and unsignalized) adjacent to the proposed log yard; roads through and adjacent to the site; all intersections needed for signal progression analysis, and any additional intersections or roadway links that the City Engineer believes may be adversely affected as a result of the proposed development. The City Engineer identified intersections and roadways requiring analysis in the pre-application meeting. The TIA prepared by Kittleson & Associates, Inc., and letter from Stuntzner Engineering and Forestry, LLC included these facilities in the scope of their analysis.

The April 18, 2013 letter from Greenlight Engineer notes that the TIA failed to analyze driveways and road intersections within 150 to 500 feet of the site frontage along Yaquina Bay Road, including the intersection of Yaquina Bay Boulevard and Running Springs Road. Kittleson & Associates, Inc. supplemented the TIA to address this issue in a letter, dated April 29, 2013 (Attachment F).

4. Pursuant to Section 14.45.040/ "Approval Process," if a land use action is not otherwise required, then approval of the proposed development shall follow a Type II decision- making process. No other land use action was required for the proposed Teevin Bros. log yard development as it is a permitted use on the subject property.

- A. Chapter 14.52/“Procedural Requirements,” outlines the requirements for a Type II decision-making process. Prior to rendering a decision, the City must provide record property owners within 200 feet of the subject property with written notice and opportunity to comment (NMC 14.52.060). Required notice was provided on January 17, 2013. A copy of the TIA was posted to the City’s website on January 10, 2013. A revised copy of the TIA was posted to the City’s website on February 12, 2013. The letter from Stuntzner Engineering and Forestry, LLC was posted on February 28, 2013. Interested parties were given until March 7, 2013 to provide comment on the applicant’s supplemental information. Further, following the hearing on the appeal, all parties were given an opportunity to review and respond to information submitted at the hearing or during the open record period.
 - B. Prior to the Community Development Director’s decision, the City received 89 letters or emails from members of the public in support or opposition to the TIA application. An additional 16 letters were submitted prior to, or at the appeal hearing and 20 letters were submitted during the open record period. Copies are included in the case record. Comments in support of the application cite economic benefits to the port and commercial shipping generally; additional tax revenues; positive environmental impacts attributed to the reduced trucking distance for nearby forestland owners; and new employment opportunities. Opponents express concerns about noise from trucks and the debarking operation; the amount of traffic associated with the project; that the area is more “residential” in character since a log yard last operated on the property; and potential air contaminants. They also indicate that the project will have an adverse impact on the quality of life of nearby residents and will be a drain on the economy with respect to potential negative impacts to tourism and the desirability of the community as a destination for retirees. While these types of comments clearly demonstrate that citizens have strong feelings about the log yard project, they are not related to the approval criteria for a TIA and; therefore, cannot be addressed further in this decision. Comments related to approval criteria are addressed below.
5. Section 14.45.050/ “Approval Criteria” sets out the criteria that a TIA must satisfy. With regard to those criteria, the following conclusions can be drawn:
- A. Subsection 14.45.050(A) requires that the TIA study contain all of the required elements listed under Section 14.45.020. Compliance with those requirements is addressed above under Conclusion No. 2. Comments were received expressing that the TIA should meet Oregon Department of Transportation standards for these types of reports. The TIA is required by the City and subject to the standards outlined herein. Should ODOT require analysis, which they have not to date, such a report would be evaluated by their office for compliance with whatever state standards are applicable.

Comments were also received requesting that geotechnical analysis be performed to determine if heavy truck traffic on the affected roads might impact residential properties on the nearby hillside. Such analysis is beyond the scope of what is required to be included in a TIA pursuant to this Section. Further, statements that a geologic hazards permit is required cite to the Newport Subdivision Ordinance (NMC Chapter 13) which is inapplicable to the project since the property is not being subdivided or partitioned, or they refer to a recommendation in the TIA that vegetation be cleared at the access points to improve vehicle line of sight. The removal of understory vegetation is not regulated by the geologic hazards chapter of the Newport Municipal Code (NMC Chapter 14.21). Tree removal can trigger the

requirement for a permit; however, it is limited to trees over 8-inches dbh (diameter breast height) and then only if the amount of the canopy area of the trees that are to be removed is more than 25 percent of the lot area (NMC 14.21.040(G)). The amount of clearing recommended in the TIA does not meet this threshold; therefore, a geologic hazard permit is not required on that basis. Comments were made that a geologic hazards permit should be required because of the additional truck traffic on the roads. This is not a condition that would trigger a geologic permit under the City's code. Lastly, testimony was provided at the hearing that NMC 14.45.060 authorizes the City to require the applicant prepare a geologic hazards permit as a condition of approving the TIA. This code provision authorizes the City to impose conditions needed to ensure that criteria for approving a TIA are satisfied. It cannot be used to require an applicant submit for a geologic permit, where the provisions of the City's code that are applicable to a geologic hazards do not require that a permit be obtained.

- B. Subsection 14.45.050(B) requires a TIA demonstrate that adequate transportation facilities exist to serve the proposed development or identify mitigation measures that resolve the traffic safety problems in a manner that is satisfactory to the City Engineer and, when state highway facilities are affected, to ODOT. The project does not access directly onto a state highway; therefore, ODOT approval is not required. In a memo dated March 11, 2013, Timothy Gross, City Engineer, indicates that the information contained in the documents prepared by Kittleson & Associates, Inc. and Stuntzner Engineering & Forestry, LLC demonstrate that the transportation facilities used to access the proposed Teevin Bros. log yard are both geometrically and structurally adequate as currently constructed (Attachment G). One exception is cited. Mr. Gross points out that a section of Yaquina Bay Road, east of SE Vista Drive, is settling due to what appears to be an embankment issue. A photograph of the road section depicts the settling problem (Attachment H). This portion of the road is under Lincoln County's jurisdiction, and Teevin Bros. should coordinate with the County to ensure the repair of this road section is complete before truck operations commence. With this condition, this standard is satisfied.

Comments received point out deficiencies in the applicant's initial draft of the TIA with regards to its description of existing conditions, lack of queuing analysis, and lack of information regarding the structural condition of the affected roadways. This has been addressed by the applicant in their supplemental reports. Further, the arguments were taken into consideration by the City Engineer, who found the applicant's analysis to be substantial enough to support approval.

The issue of safety was raised by the public both in support of, and in opposition to, the log yard project. The comments reflect individual perceptions about how the traffic functioned in the past, when a log yard last operated at the proposed location, or how it might operate in the future given that there are more residential property owners and tourists that use the same roads. Safety considerations are a major component of the TIA, which considered such factors as vehicle queuing, sufficiency of stopping distance, adequacy of vehicle site distance, and the geometry and structural condition of the roads. Deficiencies with vehicle line of sight at the entrances to the proposed log yard facility is the only safety issue identified in the TIA, which can be remedied by the applicant via the removal of screening vegetation. While the analysis establishes that the route log trucks will use is safe from a traffic engineering perspective, which is the threshold that must be met in order for the City to

approve a TIA, it does not mean that the roads cannot be made “safer” through the implementation of further improvements. The City of Newport, Port of Newport, Oregon Department of Transportation or other partners may implement such changes where appropriate. The applicant may also choose to participate; however, they cannot be compelled to do so as a condition of the City’s approval of the TIA.

The April 29, 2013 letter from Kittleson and Associates, Inc., notes that the TIA’s analysis of the larger intersections along the haul route establish that existing and projected volumes are sufficiently low to facilitate efficient turn movements into and out of the smaller road and driveway intersections along the same route with very little delay. The letter also points out that while crabbing season was delayed, the seasonal congestion attributed to such traffic was nonetheless accounted for in the report because the traffic volumes were inflated by 28% to reflect peak traffic conditions. Any traffic increases attributed to the crabbing season are accounted for within this figure. Both of these concerns were raised in the Greenlight Engineering letter, and were cited by appellants as inadequacies in the original TIA. The supplemental work by Kittleson and Associates, Inc. adequately addresses those concerns. Kittleson & Associates April 29th letter also establishes that the stopping sight distance for trucks and passenger cars will be adequate provided the applicant completes the vegetation management activities recommended in their report. This also adequately addresses a concern raised in the Greenlight letter.

As noted above, it is the City Engineer’s opinion that the TIA has demonstrated that the transportation facilities used to access the proposed Teevin Bros. log yard are both geometrically and structurally adequate as currently constructed. Therefore, it is not necessary for the City to turn to the question of the whether or not the project will impact the useful life of these facilities because deterioration of the road surface and its supporting elements is effectively normal wear and tear that will be addressed as part of the City’s maintenance program. In its April 29th letter, Stuntzner Engineering considered the “useful life” question from the perspective of the terminal serviceability level of the roadway as defined by AASHTO, pointing out that the facilities have not reached that point and are functioning today as adequately constructed industrial access roads. This is a plausible approach to addressing the issue.

- C. Subsection 14.45.050(C) notes that where a proposed amendment to the Newport Comprehensive Plan or land use regulation would significantly affect an existing or planned transportation facility, the TIA must demonstrate that solutions have been developed that are consistent with the provisions of OAR 660-012-0060. As earlier noted, this project does not require an amendment to the Newport Comprehensive Plan or land use regulations in order for it to proceed; therefore, compliance with this administrative rule is not required.
- D. Subsection 14.45.050(D) applies to affected non-highway facilities. It requires that the TIA establish that any Level of Service standards adopted by the City have been met, and development will not cause excessive queuing or delays at affected intersections, as determined in the City Engineer’s sole discretion. In the March 11, 2013 memorandum, the City Engineer notes that although the City of Newport has not adopted Level of Service standards for its non-highway facilities, the analysis as defined within the submittal indicates that the traffic attributed to the Teevin Bros. project will not cause excessive queuing or delays at affected intersections. This standard is; therefore, satisfied.

Comments were received asserting that the queuing analysis is inadequate because it simulates impacts of the additional truck traffic and that the report should have included actual data. The truck traffic must be simulated because the use has not been established on the property. Actual traffic data was incorporated into the analysis, where appropriate.

- E. Subsection 14.45.050(E) requires that proposed public improvements be designed and constructed to the standards specified in NMC Chapter 14.44 (Transportation Standards) or Chapter 13.05 (Subdivision and Partition), as applicable. The only recommended public improvement is to a section of Yaquina Bay Road that is under Lincoln County's jurisdiction. As noted by the City Engineer, the repair of this road section should be coordinated with the Lincoln County Highway Department.
6. Section 14.45.060(F) notes that the City may impose conditions of approval needed to meet operations, structural, and safety standards and provide the necessary right-of-way and improvements to ensure consistency with the City's Transportation System Plan. The only conditions imposed are those that require the applicant adhere to the recommendations contained in the TIA and for the repair of a section of Yaquina Bay Road, as outlined below.
7. Opponents of this project argue that City approval of the TIA designates SE Moore Drive, and portions of SE Bay Boulevard and Yaquina Bay Road as a truck route in violation of the statutory process for establishing such routes. Dennis Bartoldus, representing Rony's, Inc., specifically addresses this issue in a letter dated April 24, 2013 (Attachment I). He points out that the relevant statutes do not require that the City designate truck routes. Rather, they provide that the City may do so and set out the process by which such designations are to be perfected. Neither the TIA nor the City code upon which it is based assert that the subject roads are being designated as a truck route; therefore, the issue is not relevant to this application.

OVERALL CONCLUSION

The request complies with the criteria established for a Traffic Impact Analysis and is hereby **APPROVED** with the following condition(s):

1. Approval of this land use permit is based on the submitted materials from Kittleson & Associates, Inc., and Stuntzner Engineering and Forestry, LLC included as attachments to this decision. No work shall occur under this permit other than that which is specified within these documents. It shall be Teevin Bros. responsibility to comply with these documents and the limitations of approval described herein.
2. Teevin Bros. shall complete the sight distance improvements recommended in the TIA prepared by Kittleson & Associates, Inc., prior to truck operations occurring on the site.
3. Prior to commencing truck operations, Teevin Bros. shall coordinate with Lincoln County to repair the section of the Yaquina Bay Road that is settling along the planned haul route.

**Verbatim Minutes
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, April 22, 2013**

Commissioners Present: Jim Patrick, Jim McIntyre, Glen Small, Mark Fisher, Bill Branigan, and Gary East (*arrived at 6:11 p.m.*).

Commissioners Absent: Rod Croteau (*excused*).

City Staff Present: Community Development Director Derrick Tokos, Public Works Director/City Engineer Tim Gross, and Executive Assistant Wanda Haney.

A. **Roll Call.** Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 6:00 p.m.

Verbatim transcription begins [0:07]

Chair Patrick	The first order of business is roll call.
McIntyre	Jim McIntyre
Small	Glenn Small
Patrick	Jim Patrick
Fisher	Mark Fisher
Branigan	Bill Branigan

[0:18]

B. **Approval of Minutes.**

1. Approval of the Planning Commission work session and regular session meeting minutes of March 25, 2013, and the work session minutes of April 8, 2013.

MOTION was made by Commissioner Fisher, seconded by Commissioner McIntyre, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. **Citizen/Public Comment.** No comments on non-agenda items.

D. **Consent Calendar.** Nothing on the consent calendar.

E. **Public Hearings.**

Quasi-Judicial Actions:

1. **File No. 1-TIA-13-A:** *De novo* hearing on an appeal of the Community Development Director's decision of approval of a Traffic Impact Analysis (TIA) regarding SE Moore Drive (aka John Moore Road) and SE Bay Boulevard submitted by Teevin Bros. Land and Timber Co., LLC for a proposed log yard at 1650 SE Bay Blvd (Tax Assessor's Map 11-11-09-D, Tax Lots 100 & 101).

Verbatim Transcription Begins [1:15]:

Chair Patrick	We're going to open the hearing here shortly. I want to point out that this is a quasi-judicial hearing so the decorum in here is the same as it would be in the court room. The public hearing for the Newport Planning Commission is now open for appeal of the Community Development Director's decision of approving Traffic Implant Analysis applications submitted by Teevin Brothers Land and Timber Company for a log yard at 1650 SE Bay Blvd. File Number 1-TIA-13-A. Do any Commission members need to disclose any conflict of interest, bias, ex parte contact or site visit?
Mark Fisher	I would comment that that facility was used as a log yard when I was on the Port Commission for 8½ years. I have not been on the Port Commission for, I think it's 6 years. I have not talked to anybody from Teevin Bros. about this project. I have not talked to anybody from the Port about this project. I've had no contacts with anybody about this project. I have read all the articles in the newspaper and the documents—the many pages of documents provided us; although I have not studied those that have been received just now. I would hear the matter without bias. I do have questions of my own and I would not take either side, and if somebody can point out a problem with my hearing this, they should state it now.
Chair	We will get to that part shortly.

Fisher	Good.
Chair	Any other ex parte?
Jim McIntyre	I have looked at the site.
Bill Branigan	I've been up and down Bay Blvd and Moore Dr. I have not been too the international terminal but I'm familiar with the two roads.
Chair	Most of my ex parte contact is basically what was in the newspaper, most of which was in our packet. And then also the two websites: Lincoln County News Today and the one by Yaquina Bay Communications. Okay, anyone in the audience object to any of the Commission members hearing this appeal?
<i>From Audience</i>	Can you speak up?
Chair	Does anyone in the audience object to any of the Commission members hearing this appeal? <i>[Silence]</i> Okay, does anybody object to this Planning Commission as a body hearing this appeal? <i>[Silence]</i> There are things that I'm required to ask, so...Oregon land use law requires several items to be read into the record at the beginning of each and every public hearing. I have to read a land use statement. The applicable substantive criteria upon which the application will be decided are found in Chapter 14.45 of the Newport Municipal Code. These criteria are addressed in the Director's decision and will be read and summarized by staff during the presentation of the staff report. All testimony and arguments and evidence presented must be directed towards the criteria or other criteria in the Newport Comprehensive Plan or Newport Municipal Code, which the speaker believes to apply to the decision. Failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the counsel and the parties an opportunity to respond to the issue will preclude an appeal to the Oregon Land Use Board of Appeals (LUBA) based on that issue. An issue which may be a basis for appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the City. Such issues should be raised and accompanied by statements or evidence sufficient to afford the City decision makers and the parties adequate opportunity to respond to each issue. Failure of the applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the City to respond to the issue precludes an action for damage in circuit court. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. If such a request is made, the Commission must, at a minimum, leave the record open for receipt of written materials for a period of seven days. Any participant may file a written request for an opportunity to respond to new evidence submitted during the open record period, in which case, an additional seven days will be provided for written responses to be submitted. The Commission must also afford an applicant at least seven days after the record is closed for all other parties to submit final written argument in support of the application. The Commission may upon request of a participant, or upon its own accord, continue the hearing to a date certain to provide an opportunity for persons to present or rebut new evidence, arguments or testimony related to the approval criteria. The order of the proceedings. The staff, applicant/appellant will be allocated up to 20 minutes each for presentations. The applicant will also receive up to ten minutes for a final rebuttal. Others wishing to testify will be given three minutes each. The order of testimonies is as follows; staff reports, summarized for the record; communication received and entered into the record; and all of which the speaker filled out a speaker card. At the end we will ask if anyone wishes to give testimony before we have the rebuttals. Okay, and we will ask that as you will give your testimony, please come forward, sit at the front here because this is all recorded, state your name and your mailing address for the record. Alright, staff report.
Derrick Tokos	Thank you, a Derrick Tokos, Community Development. Before I go into the staff report, if it's okay with the Chair, I'll go ahead and introduce information that we received for this hearing up until 5pm. I'm just going to touch on these briefly. These are materials that the City's received and that the Planning Commission will have as part of the record. If you have copies of these letters, as I go through this, you won't have to resubmit them they are already in the record. The first is Exhibit H-1; it's from Bill Montgomery and it was submitted this morning at 7:05 am. The second, Exhibit H-2, is a series of emails, including Cameron LaFollette and the Oregon Coast Alliance, Kristi Peterson and others including a report form Green Light Engineering dated April 18, 2013. Next was received from Sean Malone, Attorney at Law, it's Exhibit H-3 with a number of exhibits included. The next, H-4, was received for the Planning Commission by Mike Peterson today; it also has a number of attached exhibits. Exhibit H-5 is a letter dated today received from Stan Shell. Exhibit H-6, also a letter dated today from Gene and Lin Shubert. Exhibit H-7 was that Green Light Engineering April 18 th memo by itself. Exhibit H-8, is a letter dated April 22, 2013 from Jackie Trahan. Exhibit H-9 is a letter dated April 22, 2013 from Stella White. Exhibit H-10 is a letter dated April 22, 2013 from Nancy Smock. Exhibit H-11 is a letter dated April 22, 2013 from a Larry Johnson. Exhibit H-12 letter dated April 22, 2013 from a Taji Cooter. Exhibit H-13 letter dated April 22, 2013 and associated attachments submitted by Oly Olson. Exhibit H-14, letter dated April 22, 2013 from Kristi Peterson. Exhibit H-15, submitted by George Mpitsos and Exhibit H-16

	was an email received from Serak Plexico.
Fisher	I don't appear to have H-16?
Tokos	That was received right before the hearing.
Fisher	Oh, okay.
Tokos	So it's in the record; the entire case file is here and available should anybody need access to information in the record, it is available throughout this hearing. The map before everybody that is up on the big screen; there is a point of reference; it's Figure 7 from a Traffic Impact Analysis. The staff decision serves as a staff report, I have not prepared a separate independent report; however, what I will be doing is going through the approval standards and then briefly touching on how they were addressed in the decision. Our City Engineer is available as well and may have some additional comments once I'm finished. Both myself and the City Engineer will be available for questions from the Commission. As noted, the approval standards for Traffic Impact Analysis are listed in Chapter 14.45 of the Newport Municipal Code. The first is 14.45.010. Chair would you like me to stop momentarily?
Chair	Yes, and put Gary East down as present.
Tokos	Disclosures.
Chair	Any ex parte contact, bias?
Gary East	No.
Chair	And I guess I should ask if anyone objects to Mr. East hearing tonight's... Okay, Aright.
Tokos	Our standards 14.45.010 Applicability. There are a number of a different triggers in the Code that can require Traffic Impact Analysis. In this case it has to do with the fact that the proposal would increase the use of city streets by ten or more vehicles that exceed 26,000 pounds in gross vehicle weight. Standard 14.45.020, Traffic Impact Analysis requirements, includes what's to be submitted as a part of a Traffic Impact Analysis: 'A' Is that a pre application conference be conducted with the City Engineer. That was conducted on November 30 of 2012 and there is a copy of the email related to that that was attached to the staff decision. Standard 'B' is that the Traffic Impact Analysis must be prepared by an Oregon registered professional engineer. This Traffic Impact Analysis included two components; it included two reports that have been prepared by Kittelson & Associates. Diego Arguea, PE is an Oregon registered professional engineer who signed those reports. There is also a supplemental letter from Ralph Dunham with Stuntzner Engineering and Forestry. He is also a licensed engineer. This requirement has been met for those reasons and was noted in the staff decision. 'C' is the typical average daily trips and PM peak hour trips are documented. The Code allows a couple different options there; it either needs to be documented in a manner that is consistent with the IT manual, which is an engineering manual that has standards modeled, different trip generation ratios for different types of uses. The Code also allows a specific trip generation study to be used if approved by the City Engineer, this alternative approach was used in this case and the approval was granted by the City Engineer and was all documented in the staff decision. Intersection level analysis is required at every intersection where 50 or more a peak hour vehicles trips can be expected from the proposal. This is accomplished in the TIA as documented in the staff decision. Transportation Planning Rule compliance is required when a proposal also requires that the City makes amendments to its functional plan or Comprehensive Plan, or land use regulation. Transportation Planning Rule compliance is not required in this case because the zoning of the property is I-3 and the proposed log yard is a use that is permitted in that district; therefore there were no amendments required of the City's Codes; therefore TPR compliance is not needed. Again that was documented in the decision. 'F' Gets at structural conditions, that is, that the analysis must address the conditions of the impacted road way and identify structural deficiencies or reduction in useful life of existing facilities related to the proposed development. Kittelson and Stuntzner established that the roads are structurally adequate for the anticipated truck traffic. Our interpretation of that provision is that if a study demonstrates no structural deficiencies, then there is no need to evaluate reductions in useful life of the facility; that is that normal wear and tear at that point with standard program maintenance and replacement is where we would go with that. Teevin Bros. can, and I anticipate they will, supplement the TIA as a result of this hearings process to address the useful life issue in the manner that I have just described. Again it leads to the same result. I would note that the Appellant will argue that this standard requires proof that the proposal will not degrade the facilities; such a requirement is not in the City's Code. Item 'G' if heavy truck traffic is the trigger for the TIA, then the analysis must evaluate the haul route. This was accomplished in the report and documented in the staff decision. The next standard is Standard 14.45.030 Study Area. It basically defines the area that needs to be evaluated in any kind of a report. It goes on to say that all site access points or intersection adjacent to the site signalized and unsignalized need to be included; roads through and adjacent to the site need to be included; all intersections needed for signal progression analysis need to be included; and then additional requirements of the City Engineer, if noted, through that pre application process or otherwise. This analysis was provided and documented in the Traffic Impact Analysis and discussed in the staff decision. The Appellant will argue that Teevin Bros. should address addition intersections within 500 ft of the project site, such as Running Springs Rd and I anticipate that Teevin Bros. will elect to supplement the TIA in this manner. However, this will not change

the fact that the approval criteria have been met, considering that those intersections handle an even lower volume of traffic than the ones that were analyzed in the report. The next standard is 14.45.040 Approval Process; it basically says that if a Traffic Impact Analysis is submitted with another type of review, like a conditional work permit or something of that nature, then it's to be evaluated following that same process. If the Traffic Impact Analysis submitted by itself, because there's no other required review by the City, then it is to be handled as a Type 2 Review with the initial decision made by the Community Development Director. In this case, it was an independent submittal and the initial decision was made by Community Development Director. The next standard is 14.45.050 Approval Criteria. 'A' basically says, you know, did they submit all of the required information; that information has been required; like I said Teevin Bro. will supplement its response to make sure all the "i's" are dotted and the "t's" are crossed. Again, those are minor issues and will not impact the balance of the findings. 'B' the TIA demonstrates that adequate transportation facility exists to serve the proposed development or identifies mitigation measures that resolve the traffic safety problems in a manner that is satisfactory to the City Engineer. Again, this is addressed in the Traffic Impact Analysis and in the staff decision: plans for Moore Dr; pavement exploration: core samples of Moore Dr and Bay Blvd are documented in those reports. This is substantial evidence upon which a decision can be based. The City Engineer evaluated the evidence and found it compelling enough to conclude that the roads are geometrically and structurally adequate as currently constructed. I would note that there was an exception noted by the City Engineer with respect to a small segment of Yaquina Bay Rd, east of SE Vista, where there is some localized settling and as a condition of approval that needs to be addressed. Standard 'C' has to do with applicable—is only applicable to amendments to comprehensive plans or land use regulations. Again, there are no amendments to the Comprehensive Plan or land use regulations required this case because the zoning is I-3 and the use is allowed in the I-3 Zone. 'D' has to do with the Traffic Impact Analysis establishes that City level of service standards have been met if adopted, and that the development will not cause excessive queuing or delays at affected intersections and, emphasis added, as determined in a City Engineer's sole discretion. The City has not adopted any level of service standards; therefore the applicant need not satisfy them. As to the queuing analysis, there was a queuing analysis included in the report, and the City Engineer determined that that standard had been satisfied. The last here has to do with proposed public improvements, there are no public improvements proposed or required in this case. Standard 14.45.060 has to do with conditions of approval; the City can impose them, if needed, to meet operational, structural and safety standards of the chapter. There were conditions of approval imposed in this case. The one I just noted with respect to the repair of the localized settling along Yaquina Bay Rd. There are also conditions with respect to the applicant removing some vegetation that obstructs vehicle line of sight at the property's entries and this was recommended in the Traffic Impact Analysis. There is also a Standard 14.45.070 which deals with fees in lieu, and this comes into play where the City can, if there were frontage improvements required of Teevin Bros., allow them to pay, basically, a fee to cover the cost of those improvements as opposed to doing those improvements up front. Again, no improvements were needed; therefore, that standard really isn't that relevant. Other issues raised but which are not relevant to the Traffic Impact Analysis: designation of truck routes under ORS 227. This has come up; it's discussed in the staff decision. The City is not obligated by statute to designate truck routes. This option may be pursued by the City if it wants to force truck traffic to use a specific route through the town to the exclusion of other streets. Again, this is not relevant to the Traffic Impact Analysis; it's not related to a standard for approval of the Traffic Impact Analysis. Geologic hazards, this was discussed in the decision; again, it's not relevant to Traffic Impact Analysis. Geologic hazards are regulated in the City's Code and it has a separate permitting process if it's required. Arguments made. There were arguments made that the geological provisions in the Subdivision Code should apply; they do not apply. This is not a subdivision proposal they are not dividing the property. Activity, such as vegetation removal and the road repair, are expressly exempt and those sites were included in the staff decision. Truck traffic by itself, just like vehicle traffic by itself, does not trigger a review under the geologic provisions. Even if the repair work were to be extensive enough to extend outside of the right-of-way, which is the scope of the exemption under the Geologic Code, and were sufficient enough to trigger a geologic permit that's a separate permitting process, independent of the Traffic Impact Analysis. Teevin Bros.' safety record has been brought up, again, this is not related to the approval criteria for the Traffic Impact Analysis, those criteria are directed to the adequacy of the road to accommodate truck traffic generally, not the end user. Satisfaction of ODOT requirements was also raised and again, this was also addressed in the staff decision. The Traffic Impact Analysis is required by the City to not—the traffic impact requirement is required by the City, not ODOT. The project does not access directly onto a state facility therefore ODOT standards are not applicable in this case. That's the extent of what I had to cover at this point. Tim, did you have anything else you wanted to add at this juncture?

Tim Gross	No.
Tokos	Do you have any questions of staff?
Chair	Questions?
Fisher	I have one, because I want to make sure that I'm clear. The governmental bodies involved, State of Oregon for

	Highway 20.
Tokos	Correct.
Fisher	The City for John Moore Rd and part of Bay Rd—Bay Blvd.
Tokos	Correct.
Fisher	And the County for part of Bay Rd.
Tokos	Correct.
Fisher	In that regard, regarding only the actual structural requirements for those road beds, such things as the amount of rock, the amount of black top or concrete, those are clearly identified by each of those bodies for roads such as that and if they found they were not adequate any one of those three bodies could require some upgrade, if they felt they were not adequate?
Tokos	The Oregon Department of Transportation with respect to its jurisdiction of Highway 20 would require or could require that the applicant submit to permits or other work if under their statutes they had the ability to do so. In this case, the Oregon Department of Transportation has not asked the applicant to do anything, and I don't believe that they have any cause to under their own statutes, but they would be the ones who would have to answer that. With respect to the City and the County, this is a city process, the engineer has had ample opportunity to and has shared his views with respect to this proposal. The County has received notice and has had an opportunity to participate in this process as well. If they had any concerns presumably they would have raised those through the process.
Fisher	So I can assume that in fact the road beds, as far as the engineers involved are concerned, are satisfactory or have they asked for certain improvements?
Tokos	If the City Engineer felt that the road section was inadequate, then that would have been raised through this process.
Fisher	Alright.
Branigan	I have a question. Highway 20 is maintained by ODOT and belongs to the State. One of the comments in there was to extend the, actually to decrease the speed limit on a Oregon 20 to allow for trucks to slow down as they kind of approach the light. Now, is that something that the State has signed off on doing or is that something we would still have to get the State involved with?
Tokos	That is, and Tim may have some comments on this, but that is something we are working with the State on to make the conditions at US 20 and Moore Dr safer than they currently are. I will note that in terms of the Traffic Impact Analysis there is what is safe and then there is safer. We can always strive to make facilities even safer than what they currently are, and I know that's one of the works that a task force independent of the Traffic Impact Analysis had been working on. It was a joint City/Port task force and one of the items that that task force identified that would approve conditions out there was that reduction in the posted speed limit and that's something our City Engineer has been working with the State on.
Chair	Okay, any other questions? Okay, then we'll have the applicant please come forward and give your testimony. You'll have up to twenty minutes.
Eric Oien	Good evening, Commissioners, Mr. Gross, Mr. Tokos, my name is Erick Oien. I'm general manger with Teevin Bros. Land and Timber. Our mailing address is PO Box 247, Rainier, Oregon. I'm accompanied today with Paul Langer to my right, our land use and facilities manager in Rainier. We'll keep our presentation very brief tonight. We have been through several other public presentations in which we've outlined in detail the nature of our operations. Tonight, we are pretty much here to reiterate that we stand by our Traffic Impact Analysis. We support the City's approval decision process. We have nothing further to add or additional analysis to include at this time. Should the City, the Commission, or any of the City staff have any further questions of us, we are happy to assist in following up on those matters.
Chair	Okay, any questions for?
Unknown	Not at this time.
Chair	Alright, thank you.
Oien	Thank you.
Chair	The appellatant, or what a second, I got to do the approval. I've got Yale Fogarty.
Yale Fogarty	My name is Yale Fogarty. I'm a lifelong resident of Newport area and also I'm president of ILWU Local 53 here in Newport. I handed a picture up there today, I need that back, but I wanted you guys to see that, and I'll bring that up in my comments. Me and my family have a—
Chair	One second. Yale? One second.
Tokos	Mr. Fogarty we have an aerial photo from 1989 that shows something very similar with that entire peninsula and a log yard would that be acceptable? Because it's in paper as opposed to this document?
Fogarty	No, because what you'll notice there is that the sand area where the Teevin's log yard is is not completed. That is an extremely older picture, back to the 1950's, and with that basically I'm trying to bring up there is the historical use of that facility, noting the logs being there and the old ship currently being loaded before that facility was even completely sand filled in and before the LNG Plant.

Tokos	Okay then Chair, what we can do is we'll take a photo of this and then enter it as exhibit what?
Unknown	It wouldn't be the exhibit—
Wanda Haney	I think we're at seventeen now.
Tokos	H-17? Okay.
Chair	H-17. Thank you.
Fogarty	Okay, thank you. Myself and my family have been making a living on the very docks in question for close to 60 years, and my extended family have been involved in moving cargo through Newport and Yaquina Bay for over a century. I don't believe this road study should have every been required, this is not a new operation for this facility. One of the first operations of the site, where the Teevin Bro log yard was to be located, was log storage for exports, which is the current proposal and that's why I brought that picture along today to prove, was that the very first uses there. Over several decades there have been millions of tons of cargo hauled to and from the international terminal. Lumber, logs, and paper come to mind; all hauled by trucks, tens of thousands of trucks all done along the same route safely without any negative infrastructure or traffic impacts. I attended Yaquina View School when I went to school in grade school here. When I attended there, many more children walked the school than currently do today, also there were a lots of parents that packed their kids to school by cars and that sort to get kids to school; there was a lot less bussing. And during that time, the playgrounds were not finished, yet no children were harmed by trucks using John Moore Dr. Keep in mind, Yaquina View School is no longer an active middle school, but has been closed since the last log export activity at the terminal. Also there have been a widening and sidewalk improvement along Bay Blvd that were not there during the last shipping operations at the terminal. Simply put, a decades-long history of thousands of heavy trucks hauling millions of tons of cargos to and from the international terminal, along the exact same route without any safety concerns or road way damage shows more proof than any projected study that it—what is a safe, stable route for cargo moving to the international terminal. I would also like to point out that this property is extremely valuable and rare. There is very little deep draft heavy industrial property in Oregon. If this property is land-locked from its intended use by not allowing trucks to use this historical route then it will most likely be lost forever. It is property that cannot be mitigated or replaced. This is not like other industrial grounds that can simply be rezoned and moved to another location. The deep water and industrial ground required for such a facility simply does not exist elsewhere within the state. The deep water estuary of Yaquina Bay and the location of the international terminals have a wide sweeping economic impact on the entire region of the state. Proof of this substantial investment—our substantial investments made by the State of Oregon in this project because they recognized the value statewide. I say again, this property and facility cannot be replaced as extremely rare. In closing, I believe the road study completed by Teevin Bros. required by the City of Newport proves proof beyond a doubt that this route is not just adequate, but totally suitable for the intended use. A history that spreads out over decades of the same identical use backs up the study proving beyond any doubt that this is a suitable route for trucks hauling cargo to and from the international terminals. Please deny this appeal and approve the Teevin Bros. Traffic Impact Analysis allowing Teevin Bros. to put the Port of Newport's international terminal to work, creating jobs and substantial economic benefits throughout the region and beyond. Thank you for the opportunity to speak tonight.
Small	Tells us again the approximate date of the photograph?
Fogarty	I believe that is probably around 1960.
Branigan	Question. When did we cease log operations?
Fogarty	Log operations have ceased and started and been back and forth, but I believe the last log ship was called here in 1999 and the reason why the log operation ceased was because the failure of the dock not because of the failure of demand. The facility actually went into failure and was condemned.
Fisher	I think Don Mann could tell us. He is sitting there.
Chair	Is Don Mann here? Do you have an exact date when the dock went out of service?
Don Mann	It was January 2001.
Chair	Alright, thank you. Evidently somebody thought your answer was wrong.
Fogarty	There you go.
Chair	Alright any other questions for? Alright, thank you. Pat Ruddiman?
Pat Ruddiman	Hello. My name is Pat Ruddiman. I live at 209 NE 10 th Ct here in Newport. I was born and raised in Newport and lived here fifty plus years and I'm a longshoreman. My father was also born and raised here and was a lifelong resident of Newport. My father was also a longshoreman and our combined total years on the waterfront is 65 years. Earlier today, I was in contact with Dwaine Smallwood, which was the Caffle Bros. yard manager for the time they were here in Newport. Caffle's first came here in 1969 and stayed til 1975 and the period he told me at any given day they received 30-40 trucks a day while loading the ships when their log suppliers had yards elsewhere they would had trucks up to 100 per day going up and down John Moore Rd. Caffle Bros. then came back in 1985 and they were handling logs for Georgia Pacific at the rate of 50 trucks per day. Plus, they

	were also handling logs for small timber owners of 20 to 30 trucks a day on top of the 50 they were already receiving. The second customer was ITT Rainier, which had a yard in Toledo. Prior to ship loading, they would delivery 40 trucks per day to stock pile on the facility for the ship loading and 100 trucks to a 150 trucks a day on top of the 50 to 80 that were already coming to Caffle Bros. to load the ship. These entire log trucks went up and down John Moore Rd, going by a fully operating grade school and busse/cars dropping off their kids, kids riding bicycles and walking to school with no fatalities or accidents. In 1989, ODOT widened the road to accommodate the truck traffic, so, I guess in a nut shell what I'm trying to say is, it worked then why can't it work now and I would highly recommend that this Commission approve Teevin's road study. And, Dwaine Smallwood said he would have loved to have been here tonight but his sister passed away last night, so I'm just referring his information he gave me today. Thank you.
Chair	Alright, thank you any questions?
Unknown	So you mentioned in 1989 ODOT widened the road, which road are you—?
Ruddiman	John Moore Rd.
Unknown	Okay.
Chair	Okay, any other questions? Alright, thank you. Okay, Appellant? You have up to 20 minutes; there's a main appellant, right?
Chair	Your attorney, I assume.
Unknown	Yeah, presumably the a—
Unknown	What's his name? Moore?
Chair	I don't know. I don't have that information.
From audience	[inaudible] hard to hear you [inaudible]
Chair	Is our things not turned on?
Tokos	I think you just need to talk closer to it.
Chair	Oh, okay.
Chair	So, a Sean Malone is representing the three [inaudible].
Chair	Sean Malone? Is anyone here that wants to represent the Appellant?
From audience	Do you want that Sean Malone to be read, is that what you are [inaudible].
Chair	No, what we have is a block time for the Appellant, whoever filed the appeal is the main appellant. And so if anyone would like to represent him and—I mean, we do have his written testimony and whatnot, but if they want to make any kind of testimony, now is the time for them to come forward.
Chair	Yeah, I do believe that they noted in their appeal that—or Mr. Malone noted in the appeal that he was filing on behalf of certain individuals. They would be the—I think it was the Landing at Newport Condominium Association and Mr. Peterson, and there may have been others listed, but they would be—they would serve as the appellant.
Mike Peterson	Mr. Malone's testimony will be on record; anyway I don't really have to read it here.
Chair	Ok, can I get your name and—
Peterson	It's Mike Peterson.
Chair	Okay and mailing address, please?
Peterson	It's PO Box 1985, Newport.
Chair	Okay. Alright.
Peterson	I had a short summary, which you folks would probably rather hear than the long version, but since I have—how much?
Chair	20 minutes.
Peterson	20 minutes, maybe I should lengthen it out just a little bit. I'll try to, you know, not put you to sleep. I had a two-part letter that I gave to you folks and it contains quite a few attachments to it.
Chair	Yes.
Peterson	The first one, addressed to the Newport Planning Commission. I'm simply writing in support of the appeal lodged against Mr. Tokos' approval of the Kittelson Traffic Impact Analysis. I note the following: Kittelson visited Newport twice last December and apparently drew their conclusion from these visits. They were informed at the time that the crabbing season opened on December 1. In reality, this opening was postponed to December 31, so this was not a correct traffic sample of what they did. It wasn't representative of the month or the year for that matter. So they should revisit and resample for an accurate assessment of that time. They used the road outside Coos Bay for their ATR comparison. This has four travel lanes and is not really comparable in that respect to Highway 20. They should redo their calculations using a different comparison route. On Page 11, they state that partial delivery, refuse collection, and septic pumping represent no change from before because

they are already done. I don't think this is correct; this may be done for the fish meal operation but certainly not for a log yard, which has not operated since the year 2000. I don't believe these gentlemen's estimates are correct, I'm saying. They should rework this portion of their trip generation calculations, they being Kittelson. They do a 95th percentile queuing study by SIM traffic, in other words simulated traffic, that's a computer program and by this traffic they came to the conclusion that available queue storage is expected to be adequate for the expected increases in traffic. Currently, if you just observe that area, the westbound, left-turn lane often spills backward far enough to block all westbound traffic, and their observation of adding 100 truck trips to this mix—they say it won't change anything that's pretty seriously flawed. They should be observing rather than keyboarding in these situations. So, the queuing is [inaudible] inadequate at present flow rates, so they should try repeating their observations in person. Page 16, they recommend that foliage be removed for better visibility. Their neglecting the landslide hazard area. The hazard zone extends through the northeast part of this log yard and if there were property owners normally on the east side, they would be required to have a geologic permit from a licensed geologist engineer. They assume that thousands of log trucks can safely run over the route because a few fish meal trucks use it now. That's an assumption. Once again, they don't seem to bother to prove it. In their structural analysis, they state quotes, "No aggregate depth information is provided. We assume that the base soil material was taken into account." So, when they did their cores of these streets, they're saying the base soil material was not examined. So, how do we know that these streets are even viable? This is an area with springs flowing beneath it. It's an area of geo hazards because of the high water table, and it has multiple cracks in the pavement, as well as the settling that Mr. Tokos mentioned before. But if you don't know what the base soil material is, how can you assume that this is a good road? You know I think that as far as I know, maybe they didn't get the core sample down deep enough because there was water flowing underneath it. We see several places where that's occurring. The core samples don't include the base material. We have to presume that a—of what the core—what the base material is. Assumptions don't take the place of reliable data and so the core sample should be repeated to include the base soil material. In addition, composition the base soil is crucial in determining the effect of heavy truck vibrations on adjacent structures. Improving the structure of the road by increasing its thickness and stiffness is not effective for reducing vibration levels in the predominate frequency range of traffic-induced vibration. I have a reference in the packet on this. There's been some misinformation about Moore Rd in this respect. The City has claimed a thicker asphalt stops truck vibrations, it does not. This explains our own vibrations personally, of our home vibrating when heavy loads pass on Moore Rd going downhill that is. No core was taken from the collapsed section of Bay Rd—Bay Blvd, I should say. One of six was taken from a geo hazard zone and no core was taken from the springs flowing through the cracks on Moore Rd. These areas should have been sampled the first time. A Port-appointed task force reportable considered safety factors on the projected truck route. They recommended changing some turn lanes and erecting some signs. They neglected to vet the Teevin Bros. safety record. For your convenience, I've enclosed a 24-month safety record of Teevin Bros. The 25 miles an hour stopping distance for a heavy truck is a 155 feet on level, dry pavement. This is in the commercial driver's license manual Figure 5.6. The TIA failed to mention that the trucks drive down at a 12 degree slope on John Moore Rd and through a flowing spring, and this elongates the stopping distance to nearly 200 ft. I think that's relevant to a Traffic Impact Analysis. Besides traffic jams, traffic impact includes the noise levels, carbon monoxide levels, dust and insect introduction, truck vibration of the geo hazard area, and the loss of millions of dollars in property values. These have not been addressed. Some turn lane paint will not remedy the many obvious safety hazards which will be imposed by this traffic. The Traffic Impact Analysis is an attempt to establish a de facto truck route without scheduling a citywide hearing as is proved by state law. The City is attempting to deny its citizens due process by pretending that this is an established truck route, and I can quote Mr. Tokos on that one, and also stating at the same time that it is not a truck route and I can quote Mr. Voetberg on that one. This is just double talk. It's dishonest, it's not necessary. I have a section here with a lot of attachments which pertains mainly to the geologic hazard issue. Basically I understand that Mr. Tokos to say that this just doesn't apply. He may be right, but I don't think it's that clear, 14.45.060 the Traffic Impact Analysis states that the City may deny or approve a TIA development proposal with conditions needed to meet operations structural and safety standards. And I'm emphasizing the safety standard part because that's what I am most interested in and that is what I would like to focus on. And, I believe that's why the geologic hazard issue is relevant to this TIA. In 2011, the City added a new section to the Municipal Code Chapter 14.21.001 the Geologic Hazards Overlay. This added new regulations to many parts of town, including the area which will be most affected by the Teevin land use application. The stated purpose of these regulations is to promote the public health, safety and general welfare by minimizing public and private losses due to earth movement hazards. Most of the people on the east side aren't even aware of this part of the City Code; it's been pretty recent and there are a lot of things that haven't been clear. Geologic permits are required of all persons proposing development, construction, or site clearing within a geologic hazard area. The geologic permit may be applied for in conjunction with any other permit required by the City. My theme is that the geologic permit should be part of this TIA permit. It's generally accepted that heavy trucks can cause landslides and there been some sematic problems with the cause and a—of landslides. Mr. Gross has observed

	<p>that geologic landslides are almost always caused by water, too much of it, usually, and that's most certainly true. The question here and the point is that the landslide hazard area has this condition. The triggering mechanism in these landslides often is heavy truck vibrations. So, there's a semantic difference between the cause and the trigger, and I'm concentrating now on the triggering mechanism. I have some references in here that you might read if you are interested later. Basically, this is not a designated truck route and we're adding a hundred log loads maybe a day to it. This is a safety concern. Heavy trucks are earth movement hazards. That is why that hazard zone was set up to mitigate those hazards. It's been found that the actual board feed of logs exported from here has been exaggerated at times. In the past, the route has been subjected to as many as 50 loaded log trucks per day, during three years only 1988, 1989, and 1990. The historic peak came in 1988 at about 85 trucks and did not approach this before or after. Moore Rd had to be extensively reinforced in 1989 due to this traffic level and it's never been subjected to a hundred loaded log trucks per day. The 100 mark would be reached if, as Teevin Bros. has predicted, the Port loads 2 China bound ships per month. They are gonna start with one; Teevin Bros. have said it could go up to two. Moore Rd and Bay Blvd have never been designated a truck route by the City. Mr. Voetberg told me point blank that it's not a truck route. I'll quote Mr. Tokos, "Log trucks use Moore Dr for many years. It is an established truck route. ODOT will look at that fact very closely." So, we hear both sides from the City. That's right, it's a truck route when the City talks to the State, but it isn't a truck route when the City talks to the citizen. Okay, I think I've made that point before. Streets and roads have not been excluded from the geologic hazard rules. I have a hazard map that I also included in your folks' envelopes. Road maintenance and repair have been exempted. Heavy truck traffic has not been exempted from the regulatory provisions which require a geologic permit. This is logical, since the truck vibrations are mentioned as landslide triggers in multiple articles and I've included some of these too. Is the Teevin proposal to construct a log yard a development? Certainly. Teevin pledges to add, what, 13 acres of asphalt. Is there landslide risk on part of the property? Yes, the northeast corner is part of the landslide hazard zone. Teevin has not established that the development, construction, or site clearing will occur outside of landslide risk areas. That is 14.21.020C and that's part of the geo hazard overlay. Could the Teevin log yard exist without an access route for the yard? No, this purported route passes directly through the landslide risk area in three separate locations, including in the log yard itself, and should be considered as part of the development because of the dramatic alterations in its usage and because the Port is of no use without this access. The land use application must include the proposed truck route, side access and its consequences. Should we believe that a double standard exists in this hazard zone? Did the City really intend to saddle property owners with geologic permits? Extensive site plans, depth estimates for excavation and fill, maps made by a certified engineering geologist, geologic reports, new construction limits, erosion control measures, temporary mulching and permanent plantings, accommodation and dispersal of water runoff, drainage swales, sediment control devices, debris basins and pollution control. Did the City mean to exempt corporations and their truck fleets from these same rules? This would be kind of an affront to reason and common sense. If an existing home in one of these slide areas conforms to this Code and is destroyed by fire or other casualty, the property owner must submit a geologic report before he can rebuild it. The report must be prepared by a certified engineering geologist. So, although the site development proposed by Teevin appears to represent little change compared to the previous use, it should not matter. Teevin is rebuilding and paving the log yard and its trucks supply drives through three different hazard areas and will continue doing so as long as Teevin Bros. occupies the property. Teevin Bros. represents a far greater hazard than a home rebuilt on its existing foundation. The regulations should be applied with public safety in mind. Mr. Tokos should not grant a free ride to a corporate earth movement hazard.</p>
Audience	[Cheers, applause.]
Chair	I want to remind you that—do you applaud at court?
Peterson	Excuse me?
Chair	Do you applaud at court? This is a quasi-judicial hearing. There will be no applause. No cheering. Thank you.
Peterson	I'm going to stop there. Okay. Thank you for allowing me to testify folks.
Chair	Any questions?
Unknown	No.
Unknown	Not at this time.
Unknown	Yeah, not from Mr. Peterson.
Chair	Okay, Alright, I'm gonna go through—I got a pile of papers here. Jackie Trahan?
Jackie Trahan	My name's Jackie Trahan. I live at 1328 SE Rio Vista. I moved here ten years ago as a place to retire, enjoy the community and environment, and I shouldn't have to be up here every week fighting for my home. I am writing in support of the appeal lodged against the approval of the Teevin Traffic Impact Analysis. I am merely highlighting parts that I think I can get in in three minutes. The entire analysis did not take into account the safety and well-being of Newport residents and visitors. The City of Newport's mission statement, quote "Pledges to develop, provide, promote the well-being and public safety of residents and visitors. The City will maintain fiscal responsibility, economic diversification, and livability for the city of Newport." The use of

	<p>Moore Dr and Bay Blvd as an access to an industrialized debarking facility through residential neighborhoods clearly does not meet this criteria. At a 12 to 14 percent grade, Moore Dr, a loaded log truck traveling at 25 miles per hour needs an excess of 190 ft to stop in order to avoid a collision with a pedestrian or a vehicle. No site measurements were completed in the TIA done by Teevin. Public safety of residents and visitors, motorists, pedestrians has been completely ignored by this report. Under Livability, the health issues of homeowners who will be subjected to elevated levels of carbon monoxide fumes and the exhaust of up to 100 log trucks per day, passing through neighborhoods at approximately every six minutes, has not been addressed. Other concerns include the loss of property value for all of Newport, the exit of homeowners, the overall negative economic effect due to the loss of tourism, and the inability to attract new resident and businesses. This is all covered under the mission statement umbrella of economic diversification. Both the Port and Teevin Bros. publically stated at the March 19th forum that they will contribute zero in revenue to the City of Newport; not 1 cent in property taxes or any other—or from any other source. They also stated that they would not set aside one half cent per thousand board feet of logs to help fund an alternate route to ensure the safety of Newport’s residents and to mitigate the wear and tear on the city streets. The tax paying citizens are expected to shoulder the entire burden of damaged roads, infrastructure failure in the geo hazard zone, and potential law suits from accidents. The City will be sacrificing city streets and neighborhoods, public safety, economic diversity by the likely opportunity to have nothing in return. This has been Astoria’s experience with their log yard. This is not in any way, shape, or form maintaining fiscal responsibility. Studies need to be conducted analyzing the overall economic effects this proposed activity will have on the city. An environmental impact study is needed. A geological survey is required, and the voices of Newport citizens need to be heard with a ballad initiative. And I didn’t finish everything I had; I thought I could get it in in 3 minutes, but you have the whole copy of it with a lot more information.</p>
Chair	Okay, any questions?
Unknown	Nope.
Chair	Alright, thank you. George Mpitsos? Can you say your last name so I at least know what it—
George Mpitsos	The m and p are pronounced like a p, so it’s pitsos; P-I-T-S-O-S.
Chair	Okay.
Mpitsos	I’m gonna charge you for that Greek lesson.
Chair	Okay.
Mpitsos	<p>I am here in favor of the appeal, but on a different level. I am not totally against this project, but I have serious concerns that I would like to talk about, and most of those is the quality of our marine environment. It is possible, and it has been shown worldwide, that an invasive species, a single one in fact can cause catastrophic effects on many other species. I read over 30,000 research publications per year in a dozen different fields. I will not cover them all here, but I will give you a reference that addresses this problem that I am talking about. It’s in <i>Nature</i>, it came out in 2000. The title of the paper is <i>Global Spread of Microorganisms by Ships</i>. I will give you two items—is the abstract and the small paragraph on the conclusion. “Commercial ships have spread many species around the world in a number of references given, but little is known of the extent of the potential significance of ship-mediated transfer of microorganisms” —more references. “Here we show that the global movement of ballast water by ships creates long-distance dispersal mechanisms for human pathogens and may be important in the worldwide distribution of microorganisms, as well as for the epidemiologist of waterborne diseases affecting plants and animals.” The conclusion to this paper is “despite growing concern about biological invasions and emergent diseases, the extent and effects of the transfer of microorganisms in ballast water are virtually unexplored. We know of no published estimates of microbial genetic diversity in ballast water, and the fate of microorganisms discharged from the ballast tanks remains unknown.” Now, here is the most important part of the conclusion, “Given the magnitude of ongoing transfer and its potential consequence of ecological and disease processes, large-scale movement of microorganisms by ships merits attention from both invasive biologist and epidemiologists.” Now, I have couple of—I have three different comments on this, if you’ll let me have the time. They are not very long. Okay, I chose a publication headed by Gregory M. Ruiz, largely because a DEQ representative, Ryan Hoff, with whom I spoke at the previous meeting held at the Oregon Community College, referenced Dr. Ruiz as a source of approval regarding the safety of using Yaquina Bay as the site for large-scale exports of Oregon lumber. “Although the above conclusion in the publication deals with ballast water, the same caveats need to be exercised with all-invasive biota and pathogens that are brought to our waters as a consequence of foreign shipping. Additionally, it is clear that Dr. Ruiz and his — which is the lead author—with his co-authors understand the dangers.” [<i>Timer Beeping</i>] May I finish this a couple—</p>
Chair	Yes, go ahead.
Mpitsos	“By comparison to ballast water, which represents a relatively small volume, the total volume of water that exists in Yaquina Bay in the nearby coastal water is huge, rendering the task of identifying invasive species, and

	especially in the end, the collection of time series data that are needed to implement the physics of inaudible dynamics. Importantly, it is as noted above in the conclusion, we need to progress very cautiously, else we could easily destroy our wonderful environment.” Given that caveat, I wonder how or why Dr. Ruiz gave Ryan the thumbs up about the safety of the proposed project, because he's always said he doesn't know, even for ballast water. So, these are complicated things we should not pass by. We could easily destroy our fishing industry here. Thank you.
Chair	Any questions?
Mpitsos	I would be delighted to answer questions.
Chair	Thank you. Stan Shell?
Stan Shell	Mr. Chairman, I would yield to Oly Olson and follow him.
Chair	Okay. So, I will save you for after Oly?
Shell	[inaudible]
Chair	Okay. Stella M. White?
Stella White	My name is Stella White. I live in Newport. My first husband and I were owner/operators of our own trucking company for 27 years. You have a letter I wrote, which doesn't mean beans from Shinola. What I want to discuss is Moore Rd. Since the truckers stopped running that road on logging trucks in '95, three main things have happened: Number one, there was building permits for homes, so it became a residential area. Number two, those homes have changed the underground springs on that road. They go across the road and under the road now, which erodes it. Putting those trucks on that road is going to kill it, or kill somebody. Number three, and most important, is the truckers themselves. They are not truckers anymore. They are cowboys. We were taught by the old-timers. We were taught road courtesy, manners, and respect. That is not taught anymore. The cowboys who couldn't make it in my time start truck-driving schools. They taught the [inaudible] the people to come out now, how to be cowboys like themselves, which means they play games on the highway. And cars play games with trucks, and if you do not believe me, get a CB. Listen to the horns. The truckers get up on the ass end of a car and see how close they can get without hitting it. The cars play games, cutting in front of a truck to see how close they can get to it. There was a pile up in Los Angeles on the freeway, of a log truck and 18 cars. In that accident, there was ten dead. My husband and I were behind that accident. The logs left that truck went through a convertible, decapitated the driver, which was a pregnant woman. Her son in the back seat was three years old. I held his hand until he died. People think accidents don't happen. They do happen. They think that trucking companies are so great; they take care of their equipment. They don't. My husband and I was told to take Truck 14 out by a large company. If I named the name, you'd know it. My husband said no. The truck had been tagged, which means the truck goes in to be pulled off for repairs. There's a tag put on the truck and the yard boss or man in the office gets a second tag. When my husband refused to take Truck 14 out, they told my husband if he did not take it, he'd be fired. My husband says, "I am not taking the death trap and I quit." They sent 14 out with a 21-year-old kid fresh out of truck-driving school. He came over the grapevine. The brakes failed. He went over the side and he was killed. This is the trucking companies you have nowadays. All they care about is the all-mighty dollar. They send trucks out on the road that should not be out on the road. Not only truck companies, but the sub haulers that are coming out of truck-driving school that are taught to get from point A to point B in a set amount of time, and the hell with whatever gets in front of them. And if you think I am wrong, get out on a highway near a truck and find out for yourselves. When I was trucking, there were ten percent cowboys. Now there's 80 percent cowboys and ten percent truckers. And you want to put this in a residential area? God help us all.
Chair	Any questions? Christy Peterson?
Christy Peterson	Hi, I am Christy Peterson. I live here in Newport; lived here for ten years and many of the items I was going to talk about today have already been addressed, but I would like to direct you to my presentation, where I have some charts here, which one of them is a Google Earth and it shows 190-foot increments in red. This chart right here, okay, that's in a packet that I gave you; it had four pages and it looked like this on the front. But what I did was just go through and mark where you see the red lines here, each of those represents 190 feet. And we went and took measurements on Moore Rd and found that the grade went from 4 percent in some places to 12, 14 percent in others. So when we were talking about a truck coming down that road, if it was on a flat road, it could stop in 155 feet going 25 miles an hour. When you're talking about those kind of grades, then you are talking about greatly increasing the stopping distance. And then you take into account the water that is on that road year-round, the springs are the worst. I have watched those because I am a—I like watching nature and seeing the water percolate up, especially there on Moore Rd, that you could see it coming up through the cracks in the pavement. If you look at the house up the street that has the gate that goes across the driveway, right up above that, coming out of that wooden fence there, you can see the water actually coming out. And so something has happened with those springs. When they came out and took these core samples, they did not go down and look at the underlying structure. I mean, that would be like fixing your car and not knowing—you know, you say, "Oh okay, well, I see this scratch on it," but the car's not running and you say, "Well, it is the scratch that caused

	<p>it." With these types of things, you have to know what you are dealing with; what that water table is doing; what—you know, is that sandstone under there? What is under there? But none of the core samples did that, and I do not know how many were taken, but I just thought, "Isn't that interesting? Why would they not do that?" Okay, and the other—so, each of the red lines there represents 190 feet. That is how long it would take that truck to stop. We took 190 just as an average, because you are going downhill and the road is wet most of the year. The other picture I have here that says what does 100 feet look like? We went and took that one by the Oregon Coast Bank and you can see, right here, you can see the grade, and this is right on—it would be the south side of the entrance to Oregon Coast Bank off of Moore Rd. So, that is the zero mark there; 190 feet is down where the yellow comes on the curb there. So that is how long it would take a truck to stop on that grade, approximately. And again, the distances here are approximate too. If anybody uses Google Earth, you can see that—you can try and get it to be 190 exactly, so some of them are like 180-so or whatever, but you could go and play with that yourself and figure out how long it would take for a truck to stop. And to please reconsider this plan. It has not been thought out. It has not been thought out. A lot of concerns. Thank you.</p>
Chair	Any questions? Okay, Lloyd Oly Olsen?
Lloyd Oly Olsen	<p>My name is Lloyd Oly Olsen. I live at 882 SE Crescent Place here in Newport. The transportation impact analysis provided by the City has authorized Teevin Bros. to use the truck circulation routes identified in Figure 7 of the TIA shown up on the charts. It is my contention that the City of Newport has established a de facto truck route by approval of the TIA without complying with specific Oregon revised statutes, and as such, the City is in now direct violation of statute 810.040 by not meeting the state requirements to establish a local truck route. It is also in direct violation with statute 227.400 that requires a city to hold public hearings before establishing or revising a truck route. The actions of the City of Newport have deprived the citizens of Newport the safeguards of a thorough approval process in promptly establishing a truck route under the procedures of 810.040. The City of Newport has also deprived property owners and residents their due process in providing written and oral testimony before a public hearing and a vote of the elected officials of the city as to approval of truck routes as required under 227.400. Many believe that the intent of these revised statutes is to provide specific procedures and obtain public input from stakeholders, staff, and others, so that the elected officials of the City are adequately inform and are fully aware of the consequences of their vote to establish a truck route. This is the proper and fair way to conduct public business. Once the City of Newport properly establishes a truck route, there will be no confusion or misunderstanding. The route will be designated by City ordinance. There will be appropriate street signing in the inclusion in the City's—and inclusion in the City's Comprehensive Plan. The truck route would be legal and will counter ambiguous comments from some city officials that Moore Dr has always been a truck route, it is now a truck, and will always be a truck route in the future. Property owners will then be able to make appropriate decisions on whether to develop their property or not, to sell or buy property, for businesses to start or expand, for real estate agents to conduct due diligence in informing new families or retirees that want to settle here in Newport. Depriving the citizens of their due process is a very serious matter, and combined with the absence of a City Council vote, plus the failure to follow the revised statute approval procedures, has placed the City of Newport in a very precarious situation. The City of Newport cannot establish a truck route from Highway 20 to the Teevin Bros. log yard by substituting a transportation impact analysis in lieu of complying to the requirements of Oregon Revised Statute. Thank you.</p>
Chair	Thank you. Any questions? Stan Shell?
Shell	<p>My name is Stan Shell. I live at 895 SE Crescent Place here in Newport. Gentlemen, tonight you have seen a significant pushback on the truck route proposed by the Port/Teevin that would put loaded log trucks through residential neighborhoods in Newport. This is one of the three main objections that many citizens of Newport have to the overall concept as envisioned by the Port. The other two objections relate to invasive species introduced in the Yaquina Bay by the foreign log ships and the industrial activity authorized by the Port in allowing debarking to take place on site. Many citizens have weighed in on both sides of this issue. A review of the pro-logging comments made by citizens in the newspaper or at public hearings like this can be summarized roughly by stating that the area needs jobs. And secondarily, number two, log trucks used to use John Moore Dr 25 years ago, back in the '80s, to deliver logs to the Port, so why not now? All those people that built retirement homes in the area should have known the history of the area, and they didn't. Done. See item one—jobs. Well, those of us that oppose the plan, and many of those opposed live outside the immediate area, have searched for alternatives that would allow the Port to proceed with certain mitigating alternatives. We have been told there are no alternatives if logs are going to be shipped to this plant. Well, what if there is an alternative that still allows logs to be processed, stored temporarily at the Port, and then shipped to foreign ports without all the drawbacks of John Moore and the noisy debarking at the Port? All this up and down over the TIA modifications to intersections, setting up heavy industry processing within earshot of the [inaudible] and residents on the hill overlooking it would all go away. Wouldn't that be nice if there was an alternative? Well, here it is. Approximately two miles beyond the Toledo Mill is an empty stretch of land of several acres in size on the deep side of the Yaquina River. Back in the '80s, as late as 1985, this was a log dump that bundled logs for river shipment to the Port of Newport. And guess what else they did there? They debarked the logs on this site. Why</p>

	<p>not explore this as an alternative to the current Port plan? There's some benefits—a number of them. It eliminates a safety concern regarding John Moore Dr; all this is insignificant now. Eliminates a City's expense in reworking the John Moore intersections at Highway 20 and the Bay Rd. It eliminates the Port's expense at upgrading its facilities to handle log processing; maybe the Port can use this money to pay down its debt. It also eliminates the noise and pollution concerns regarding the use of the debarker on the edge of the Newport tourist industry. The old debarker site is buffered by trees and far from all but one or two private homes. Another big point—all trucking jobs are retained. Trucking to the Toledo site is relatively neutral between the two plants. Certain extra jobs are created with the alternative plan. Some jobs will need to be in Toledo, and longshoremen will still be needed to barge the logs a few miles down the Yaquina to retrieve the logs on the river, stack them, and load them on the transport ships. Hancock and the Port still get to export logs to China. Another point—it's a shorter route to dispose of the bark—two miles to Toledo or the mill. Lastly, log trucks are old technology, but it's still cost-effective, and it's still in use in Oregon. I looked at a picture today of a big log raft heading down towards Vancouver on the Columbia. That was in 19—about 2012. Safety, environmental, and job concerns were all addressed with the alternative. There are a couple potential drawbacks though, and here they are: There is an expense of re-tooling and prepping the original log processing site in Toledo. Estimates of clearing and spreading the appropriate gravel in the area to make the log yard work is in the neighborhood of ten grand. The second problem with this alternative plan, and the one that I expect to get the most pushback, is that the Port of Newport may have to share some profit with Toledo area businesses, if this goes into effect. I personally think that you guys can very easily table this discussion. You do not have to make a discussion tonight. Let somebody stand up and give a cogent rebuttal of this proposal. Otherwise, I think it should be considered as an alternative to the original plan. Thank you.</p>
Chair	Any questions? Nancy Smock?
Nancy Smock	And Jackie Trahan please.
Chair	Sure.
Smock	I just got back from Portland, I'm pretty tired.
Chair	Okay.
Smock	My name is Nancy Smock. I live in Newport, and I bought a retirement home in Harbor Village across the street from where all this is happening, and it takes a long time to wait to get across that road when you are walking. And I can see trouble coming with all the log trucks and everything. In this park, there is all elderly people. And they have grandchildren and great-grandchildren and they all cross this road. Jackie, do you want to hit up on some of these?
Jackie Trahan	<p>Sure. Nancy asked if I could speak for her since she just got back from the doctor up in Portland. And so, I am just going to kind of paraphrase the letter that she wrote to you. Okay, because of the current traffic conditions, I feel that adding 50 log trucks coming and 50 going back up the hill would prevent me from safely crossing the street by foot. My home will no longer be in a quiet neighborhood, and the noise and congestion on the street will affect my quality of life, as well as my property value. The Newport Zoning Code, as part of the City's Comprehensive Plan, Chapter 14.1 Purpose and Definitions, under subheading 14.01.010 clearly states, quote, "To conserve and stabilize the value of property; to lessen the congestion on streets; to promote public health, safety, convenience, and general welfare," end quote. All of this has been ignored in the TIA by Teevin Bros. and the City. In order to grant any sort of road usage, these issues must be addressed. Also, Section 14.44.020.F of the Newport Municipal Code requires that, quote, "The TIA shall address the condition of the impacted roadways and identify structural deficiencies or reduction in the useful life of existing facilities related to the proposed development," end quotes. Teevin's TIA specifically states that they don't meet these requirements. The data they collected is, quote, "Not intended to address pavement life or for the use as a conditioned survey," quote-unquote. How could their application be approved when they write that their analysis does not meet the basic criteria? It must be rejected. Everyone was so concerned about the invasive species on the tsunami dock that washed ashore last summer. That was 72 feet long. The log ships would be at least 600 feet long, and many will be from third-world countries, not just China. What do you think would be on the bottom of those ships? At the March information meeting, a representative from the DEQ publicly stated that no inspections will be done on the ships entering our harbor. In addition, these vessels will be self-monitored when dumping their ballast and exchange water. Does anyone actually believe this would be done 200 miles offshore as required? No agency, period, will check that this is carried out. I think that Newport citizens deserve better treatment and should vote on this dangerous proposal. The TIA approval must be rescinded at an additional seven-day extension needs to be added to the record after today's hearing so that more people have time to submit responses. Thanks.</p>
Chair	Thank you. Any questions? Delores Williams?
Delores Williams	I have not submitted my letter yet so [inaudible]

Chair	It is okay.
Unknown	That's Page 18?
Williams	<p>My name is Delores Williams. I have moved here recently. I am resident about four years now. All I can say is there is some serious problems, and I am going to read a couple of them. I am in agreement of the appeal at this time that is before you. It doesn't take a genius to figure out that you do not have to run logging trucks down a residential populated place, even if they say John Moore is not a truck route. There is just a—this is just wrong for safety reasons, and doing the repairs on the road, which the Newport residents have to pay out of their tax dollars. There is a school, a ballpark field, a bank, mobile homes, and too much foot traffic. I will tell you that they have told you that there is no children in that school. I know for a fact that there is a small amount of children still going to that school. They are special-needs children. Granted, it is not open for public school. It is for children with special needs. Okay, and then there is so many things wrong with there being log trucks through this route. And what happens if a truck breaks down? It would tie up the whole route while they get a tow truck to haul the truck away. It only takes just one accident for lawsuits to begin. Do you want the City to be sued? Let me just say, once this—it only takes one accident, and there is—you don't bring log trucks down a residential area. Granted, they did at one time, but this area has been built up enormously since then. As for debarking, which they plan to do at the Port – again, it's so wrong. First of all, the noise and the pollution from an industrial endeavor is a health hazard and involves the Endangered Species Act. We have the Northern Spotted Owl in the area, which is on the endangered species list through the Oregon Fish and Wildlife, to say nothing about the threatened species like the bald eagle, the falcons, the blue heron, and some of the animals and fish. The debarking logging will affect their habitats, and personally, I do not want to see this happen. I still would like to see the Port succeed in exporting logs, but with a few changes. I was told that the logs could be brought into Toledo by a truck and debarked there, then place them on a barge to run down the river and place it on the waiting ship at the port. This seems more plausible this way, and I am sure that Teevin Bros. would not like this because it would cut into their profit. Now, I know we all have to give and take a little on this issue, and I am willing to let the ships into the bay with their invasive species to invade the bay, with the hope that down the road, when the invasive species in the bay that the state will help get rid of these species as I was lead to believe that they would do. They would told us that, you know, if there is evasive species in the bay, they would help clean it up. Well, personally, you don't let the invasive species in to start with, because once they are here, it is already too late. We have oysters. We have salmon in this lake. We have crab and shrimp. This is going to kill all of them, and it also goes into our tourists. People do not come here to go crabbing. So please find another way to bring the log trucks down to the port, instead of John Moore Dr, and get debarking done some other place other than our clean Newport City. I know that there is another way to get this issue resolved so to keep everybody happy. Thank you.</p>
Chair	Any questions? Ilene Young?
Ilene Young	<p>I am going to read a letter written by Taji Cooter. It's, "City of Newport Planning Commission. Dear Sirs, this letter is in support of the appeal of Teevin Bros TIA application for approval. My concerns are the traffic related air pollution and related health hazards caused by 50 to 100 heavy log trucks daily on John Moore Rd. One of the reasons I moved from Santa Barbara seven years ago was because of my asthma. My home in Santa Barbara was two miles from Highway 101. The black soot from the traffic was visible in my home. My daily regimen was wiping down window ledges, countertops, all surfaces in any room in which I'd left the window open too long. Patio furniture was covered during non-use. However, the visible pollution was secondary to the impact to my asthma, requiring many visits to emergency. Now I am very concerned that my home in Newport may be as close as 500 feet or a block from major traffic related air pollution compared to the two-mile distance from Highway 101 that I experienced in Santa Barbara. Air pollution has been linked to asthma and interestingly, autism. There are numerous articles on the internet regarding these topics. Particularly vulnerable are the elderly—I am 72—and the young. The two populations are adequately represented in our neighborhood, including Newport High School students who use the softball field closest to John Moore, and younger children who use another field on campus. I am also aware that Early Intervention, a program for children with developmental delays, disabilities, autism, et cetera, is housed in the building on campus. Thank you for your consideration. Yours sincerely, Taji Cooter."</p>
Chair	Could you enter that letter into the record, please?
Tokos	I believe—I think it is in there.
Chair	It's in there? Okay. We have it then? Just making sure.
Haney	Your name and address is on it?
Young	At the top.
Haney	Oh, okay.
Chair	Alright, any questions?
Unknown	No.
Chair	Okay. Rio Davidson?

Rio Davidson	Gentlemen. Planning Commission. A Traffic Impact Analysis has been submitted to the City by Kittelson & Associates, improved by Mr. Tokos and appealed. The Comprehensive Plan mentions seven options for the use in the McLean Point area, but does not mention a log yard. The port of Astoria has tried to use its facilities for a log yard and has lost over a million dollars a year over the past three years. The Newport terminal lies within the city limits, and this is an unwise use of city land which is directly adjacent to residences. The analysis visited Newport once or twice during December and did their analysis in the most traffic-free month of the year. Their selected ATRs [inaudible] Coos Bay, which has four travel lanes, not comparable to Highway 20, and as opposed to area of a heavy industry, and hardly comparable to Newport. And I do not know if you folks have driven through Coos Bay, but it is not a real pretty sight to see. And a lot of people that come here to town, they are driving here, and that is where the traffic is snarled. And we are talking about a quality of life here. Do we want to be another Coos Bay that is run down, has log yards everywhere, industry everywhere? Or do we want to stand out as a gem on the Oregon Coast? The report assumes that Moore and Bay Roads are structurally capable of handling 100 log trucks a day, because they now support intermittent fish trucks. They make no measurements, interview no residents. They photograph a single hole in Moore Rd and assume that the remainder of the two streets look the same. They even claim that Highway 20 has four travel lanes at the Moore intersection, and that crab fishing began on August 1 st —or December 1 st when it began December 31 st . These are small technicalities. I see no mention of the spring, which flows under Moore Rd and surfaces every winter. And there is no mention of the landslide onto Moore Rd two years ago. There is no mention of the uneven vibration introducing new settling of adjacent yards or crumbling concrete and walls. Their structural analysis of the road failed to include the underlying soil base; we've heard about that. This is an inadequate document—shoddy and unscientific and should not have been approved. I want to talk a little bit about how I feel about this, because I think that you guys are beginning to encounter a lot of pushback, but you do not realize that people are just starting to find out about this. So, you are just seeing the very beginning of a pushback on this. People do not want this logging terminal here because—not because of jobs. For me though, I am going to bring it personally, because I do have a job here and I do construction, and I hate to single out longshoremens and put them against construction workers, but the way our business works, it is market motivated. So, the real estate market directly affects my job. So yes, we are going to bring several jobs here, but unfortunately, it is going to be at the expense of all the construction workers, all the people who make money off housing—that's the real estate agents, all the people that sell supplies. So, are we willing to make that trade-off here? This is a 20-year contract. We are not talking about five years down the road. We are talking about making a commitment for Newport to be a new Coos Bay. We do not want to be a new Coos Bay. We are trying to make a new mark here—an environmentally-friendly mark; a visitor-friendly and family-friendly. Teevin Bros. is not family friendly, and unfortunately, not environmentally friendly. So, I want to leave you with the fact that you are just seeing the very beginning of a push-back, and we are not going to stop, and we are going to do whatever we can to stop this project. Whether you guys push it forward, we are going to take it to the next level. So, thank you very much.
Chair	Any questions? Okay. Lin Schubert? I can't tell, or Ian; I can't tell what this first one says.
Lin Schubert	Good evening, thank you. My name is Lin Schubert and I live in Newport, not too far off the bay front. I know that a lot of the opposition that has been published in the newspapers lately has specified that people are used to seeing log trucks driving by their homes, and they haven't noticed any problems, and children are still able to play out in the yard. Well, guess what? I don't live in Siletz. I live in Newport. And in Newport, I am used to seeing families walking together, people walking their dogs, bicyclers, joggers, tourists craning their necks and going very slowly because they are so busy looking at all the sights. And this type of an environment is not conducive to this logging operation. I have spoken with a lot of people in this community who are afraid to voice their opinions, and the reason that they are afraid to voice their opinions is because they work for businesses that could possibly see a conflict; they work for non-profits and they are afraid their funding is going to be cut. Trust me, there are a lot of people who are not being vocal about this, but were it put to a public vote, there would be more of an outcry than you are seeing now. Also, another item that has not really been addressed in any of these meetings is the fact that Moore Rd is a tsunami – it is a primary tsunami and earthquake evacuation route. Now, the State of Oregon and the County of Oregon are very concerned about tsunami and earthquake preparedness. But if you can imagine trying to get off the bay front if there's logging trucks on that road, it will be literally impossible. And you will see a lot more deaths and a lot more injuries as a result of it. I am firmly opposed to this project. I am not a person who is afraid of change. I welcome change, but it seems to me that this entire project has been presented backwards. There was no pre-planning. We put the cart way before the horse and we need to sit back and re-evaluate exactly what is happening. We need a bypass road. We need covered debarking. We need something that will not destroy the quality of life in this community. Thank you very much.
Chair	Any questions? Okay. Well, I have run out of the ones that filled out slips. Anyone wishing to address the Commission tonight in opposition? Please come forward, give your name and mailing address for the record.
Unknown	Ginny Goblisch. Oh, I do not know that many.

Dee Shannon	Hello, my name is Dee Shannon. I am general manager for The Landing at Newport. I represent 54 homeowners and we are vehemently against—a, for the appeal, and against the Teevin Bros. TIA. The application fails to provide the necessary evidence to support approval for the project for the following reasons: Intersections and driveways required for analysis were not analyzed; the traffic counts are missing from the significant impact of the fishing season. I think a lot of these things have already been brought up and explained. Intersection sight distance is limited at the sight driveway with no discussion regarding mitigation or need. The analysis of structural pavement conditions lacks useful information and admits that it fails to meet City requirements. The intersection of Highway 20/Moore Dr will operate near ODOT mobility standard. There are several issues that may further degrade the operations beyond what is recorded in the TIA. Section 14.45.030 of the Newport Municipal Code states that the following facility shall be included in the study area for all TIAs; all site access points; intersections, signalized and unsignalized, adjacent to the proposed site. If the proposed site fronts an arterial or collector street, the analysis shall address all intersections and driveways along the site frontage and within the access spacing distances extended out from the boundary of the site frontage. Yaquina Bay Blvd is classified as minor arterial roadway. Newport Municipal Code 14.14.120 indicates that the access spacing distance on a minor arterial roadway is 500 feet. The City of Newport Transportation System Plan recommends that the City Code adopts residential spacing of 150 to 300 feet on minor arterial roadways and a non-residential spacing of 200 to 400 feet. However, it does not appear that these recommendations have been incorporated into the Newport Municipal Code. Depending on how this requirement is interpreted, there may be up to four locations, public road intersections and driveways, that require analysis that are within 150 to 500 feet of the western boundary of the site frontage along Yaquina Bay Blvd. One such intersection would be Yaquina Bay Blvd running [inaudible] I think Mr. Tokos' addressed that. Neither the TIA nor the City decision addressed the requirements to study additional intersections or driveways clearly required by the Newport Municipal Code. The traffic counts are missing significant impact of the fishing season. Turning movement counts were conducted by the applicant in early to mid-December of 2012. The City Engineer, Timothy Gross, directed the applicant in an email dated December 10 th , 2012 to consider the peak fishing season during peak fishing season. Fishing season has a significant impact on truck traffic. I think they would be taken into consideration for the study. Mr. Gross goes on to describe that crab season begins on December 1 st . Again, traffic counts were conducted early to mid-December, typically well within the crab season. However, the crab season did not start in 2012 until December 30 th . The traffic counts missed crab harvesting season altogether, and the significant impact on truck traffic is not reflected in the TIA at all. The applicant has failed to produce an analysis that is reliable and based upon requirements of the City.
Chair	Okay, any questions? Okay.
Shannon	Thank you.
Chair	Anyone else in opposition before I ask for anyone—Okay. Anyone still that did not testify in favor? Ginny?
Unknown	Point of order, Chairman?
Chair	Yes?
Unknown	If the individuals that are speaking in favor of the Teevin proposals are now allowed to come back and repeat [inaudible] comment, then we should be able to [inaudible] their comment upon—I don't want to deny this lady's ability to speak, now.
Chair	As I stated—
Unknown	But, I think that somebody should be able to [inaudible].
Chair	The only rebuttal that is allowed in this type of a hearing is a rebuttal by the applicant, or by the—I got the word wrong.
Unknown	Appellant.
Chair	Appellant. Not the appellant, but the –
Tokos	No, you had it correct, the applicant.
Chair	The applicant. I had it right.
Unknown	Yeah.
Chair	The only rebuttal is by the applicant.
Unknown	Well, this is not a rebuttal.
Chair	This is not a rebuttal, this is testimony in favor, and like I said at the beginning, I would—and sometimes we actually get people who are both for and against, so I wait till the end. They are testifying in both ways, so we take all of the testimony and then we have the rebuttal. So, okay. So, Ginny?
Ginny Goblisch	My name is Ginny Goblisch. I live at 6720 Otter Crest Loop in Otter Rock. I am also a former Port of Newport Commissioner—was for many years.
From Audience	Can't hear you.
	Yeah, we cannot hear you.
Chair	Please. Please be seated.
Unknown	Sit down.

Goblisch	I am a former Port of Newport Commissioner. I served in that position for many years, and I guess I am in favor, which means I like the plan, right? Okay, so I am not in favor of the appeal.
Unknown	Okay, correct.
Unknown	Correct.
Goblisch	I just wanted to point out the obvious—speak to the issue, which is that this log operation and the trucking is being done in a zoned designated in historical area. This is nothing new, but the zoning has been in place for many, many years. It should be no surprise to anybody that the Port would want to take advantage of an economic opportunity when it comes along like this. It was—the Port was able to secure some of the funding to upgrade the terminal back in 2006 when it passed a bond measure specifically to rebuild the terminal and to clean up the facility, get rid of any pollutants and things. That is what the Port has done, and it has never been a secret. What the plan has been is to continue operations at the terminal. That is simply what this is. I think I will leave it at that, other than I would like to publically apologize to Teevin Bros. They want to come here and do business in good faith, and I think that they need to be shown a little more respect than they have been shown. Thank you.
Chair	Anyone else that did not sign up or—alright.
Unknown	Could we remember to start the timer on this one also?
Virginia Meriwether	Hello, my name is Virginia Meriwether and I live on Yaquina Bay. I lived on Yaquina Bay before Embarcadero was built; when the Marine Science Center was just going in and there was LNG tank. I have seen all the logging operations. When I was a kid here, the log rafts came down from Toledo and I spent the morning in Toledo looking at a kiln and a fantastic place for unloading logs. The train is right there. But my main point I wanted to make to you is about economic diversification and thinking in economic terms in depth for our community. I think we should not be shipping raw logs anywhere. I think we should be shipping lumber somewhere and everywhere. I think the basic err in this whole process is the product that is being shipped. For the citizens of Newport who voted, then passed the bond measure to improve the terminal, I don't quite understand their upset that you are doing your due diligence in that manner. So, I guess I wonder what is it they thought you were going to do with it. That is the only point I really wanted to make. I actually work on research about the invasive species in Yaquina Bay. I have documented proof that we have populations collapsing in Yaquina Bay due to bilge water, but that is a whole other story. Thank you.
Chair	Alright, any questions? Alright, go ahead. We will get Don later.
John Riedell	My name is John Riedell and I have a unit at The Landing. I want to thank you all for allowing me just a couple minutes to speak. One thing I want to point out to the Board and again, thank you, Jim, Glen, Jim, Mark, Gary, and Bill. I want to appreciate the fact that you are allowing me to speak. I want to talk about liability for just a minute and about what Kittelson has done in relation to the City liability and the traffic standards. Effectively, Kittelson's study provides us with a method and a process to provide traffic safely through a given area. That is effectively where the limit of their liability is to the City for any kind of a lawsuit that could be upcoming. Now, let us jump forward for just a minute to a case in point of what could happen to the City. We could have a truck doing 25 miles an hour going down that hill and hit somebody. Perfectly legal, perfectly within the standards, but they could kill somebody. And when that happens—or they could hurt somebody—when that happens, the City will get sued, not Kittelson, okay? You have no protection of any kind from Kittelson or the traffic standards in those circumstances. So, what this is saying is that, Jim, your group is held to a high standard of safety for the community here. You have to make the decision of whether or not it is a safe operation. Now, you are hearing a lot of stuff from people in the industry who are saying, "Yes, this is a safe operation. It works. We can make it work." You have to rise above that and make a personal decision as to whether or not this is good for the community. That is your charge. All of the industry, all of the insurance companies, are not going to give a rat's you-know-what about whether or not we did a study. They are going to look to every one of you and say, "Did you make the proper decision?" And I think that is what these people are asking you. And the unusual part to this is you are not looking at a standard traffic pattern or a standard process. You are looking at a very unusual case here, because we are talking about very, very, very heavy loads going down the highway. I've worked on projects where we never allow people to get anywhere near this kind of trucking. And so you are going to have to make that decision. Is this a safe operation? And you are going to live with that decision the rest of your life. And so I want you to think about that when you make this decision. Thank you for your time.
Chair	Okay. Anyone else? Don?
Don Mann	Thank you, Mr. Chairman, members of the Planning Commission. My name is Don Mann. I am the general manager of the Port of Newport. And generally, what we would like to do is go on the record in support of the findings and the final approval of the City regarding the transportation impact analysis as presented by Teevin Bros. on March 11 th , 2013, File Number 1-TIA-13. Generally, that is all we would have to say at this point, other than the fact that we are continuing to work with Teevin. There is no agreement with the company at this point. We are still working with them to achieve that. There is a lot of considerations. There is a lot of information that we are continuing to seek, as well as Teevin is continuing to seek. And we have more time than

	spent on this than most projects, but it is important to us because of the investment that the public has made in this facility and that we are about to finish up. And, are there alternatives? We are considering alternatives for truck routes at this point as part of the task force's job. There has been some options presented by the task force members and these will be definitely considered. And so at this point, it is too early to tell what the conclusion of that will be, but we are continuing to work on the project and we feel that we owe this to the people who passed our bond measure to repair the facility, and we will continue in that same vein. Thank you.
Chair	Any questions?
Fisher	A claim was made that you said at a meeting Teevin will pay no taxes. I assume that means property taxes. Is that accurate?
Mann	I do not remember saying that, and I believe that once we lease the property to Teevin, it goes on the tax roll and they do pay taxes.
Fisher	The same point, Mr. Tokos. Isn't it true that Teevin would be obligated for system development charges like any other entity?
Tokos	To the extent system development charges are required under the City's methodology; they are obligated to pay them.
Fisher	Is that also the school district will receive their system development charges from Teevin?
Tokos	It's a construction excise tax that the school imposes, and that would apply to Teevin Bros. office building when they bring it on, and yes, they will be required to pay that.
Fisher	I see no way that they would not be paying taxes. Even if you do not like them, they still are going to pay their share.
Tokos	Right.
Chair	Okay.
Mann	Thank you.
Chair	Anyone else?
Bob Wienert	My name is Bob Wienert. I am an estimator for Road and Driveway Company, the asphalt paving company here in Newport, Oregon. I have worked at this job for over 45 years. I have tried to keep quiet on this matter, but when the cowboys came up, it kind of set me off a bit. I do not know whether people realize our drivers – we have 14 of those dump trucks, not log trucks – dump trucks, but we fall under the same regulations as log trucks. Those trucks are checked on a quarterly basis by the State of Oregon. Our drivers are given physicals annually as a state law. Our particular company is required by the federal government to have monthly safety meetings, and I would like to invite Mrs. White to our monthly safety meeting at 5:00 next—this coming Wednesday. Teevin's, I heard, was a not-friendly environmental company. In my experience, I have had the pleasure of putting in four log yard – three log yards; hopefully a fourth. We did pave one up in Tillamook, whose next-door neighbor is Tillamook High School. Next-door neighbor. We paved that. It is an extremely clean log yard. It does through two blocks of residential neighborhood and has well over 150 trucks coming in per day. I have lived here, like I said, all my life, and you know what—and I have driven truck, and if I was down on the bay front during a tsunami, I would try to get up the hill in a hurry also. And do not think for a minute I wouldn't. Thank you very much for your time.
Chair	Okay. Any questions? Anyone else? Okay. We are on to the rebuttal. Teevin Bros?
Unknown	[inaudible]
Oien	I guess I could go first. And I am going to make mine a little bit emotional here, because I am—we, as a company, are reaching our wit's end on certain things here. Here we have somebody get up here and say we are not a family-friendly company. These people do not know anything about our company. We have put it out there at every meeting. We have been to five of these meetings. You know how many people have come visit us, learn about our company? Nobody. Nobody knows about our company. Nobody. We are a company that likes to show ourselves off. We are happy about what we do. We are happy the family-wage jobs we have, and we are very, very proud of our safety record. Get up and meet us. If you want to make these claims, come meet us. As far as this traffic impact study, we did exactly what we were required. We were asked to do more. We did more. And we are asked to do more; again, we will do it, period. That's all I have to say.
Paul Langner	Since I did not address the Commission earlier, Paul Langner, Teevin Bros. Company, Post Office Box 247, Rainier, Oregon 97048. Many things tonight. Six items I would like to talk about. One, the 100 truck trips. We have estimate 50 inbound, and those trucks, empty, will go out. That is your 100, but it is 50 loaded trucks inbound. The site itself, as you can see, does not fall inside the Geologic Overlay Zone. The site just is not in there, and this is concerning the site itself. Invasive species, we have brought experts in. We have done the water exchange. This is an issue that we are concerned about, but [inaudible] federal and state preemption of what is going on with invasive species. This is not a project we can take out. We are not—the fourth item, Teevin is not doing the trucking. These are not our trucks. We are not going to come down here. These are your local—these are your friends, these are your neighbors. They are the ones who are going to be doing the trucking here. It is not a bunch of cowboys coming in. It is your local people, your citizens, your friends. The number coring

	samples exceeded one. You can see that written in the report. There are normally, I think, five samples taken there. The samples were cor... the work was coordinated with the City. The City said, "We would like samples here, here, here, and here," and that is where we took them. And we had a member of the City along with us when we were doing this coring. The other one is the traffic count. I would like you to go back and take a look at it yourself when you have the chance and you will note in the Kittelson report the traffic count was increased by 28 percent. They did a traffic count in December and increased it by 28 percent to accommodate things such as crab season, fishing season, and tourism. Those are the end of my rebuttal.
Chair	Okay.
Langner	Any questions?
Chair	Any questions? Alright.
Unknown	I have a question.
Tokos	I don't think that is appropriate.
Chair	No. Anything else? Okay. Got to find my script.
Tim Gross	Would it be appropriate for me to discuss a little bit the analysis that was conducted as part of their TIA; how we did the core sampling? What we looked at in terms of the traffic count and the trip generation that was done as part of the TIA?
Chair	Yeah.
Gross	That information—
Unknown	Mr. Gross, could you speak louder please. We are having a hard time—
Chair	Yeah, nobody can hear you. I can barely hear you.
Gross	Is this better?
Chair	Yes.
Gross	Would it be appropriate for me to talk a little bit about the process that was used in the structural analysis on the roadway, the trip generation that was conducted as part of the TIA, and how they used that in their level of service analysis? The queuing that was done as part of that, and then what I as a city engineer am required to take a look at in terms of this TIA? I don't know if that's appropriate at this part in a public hearing –
Chair	That is right. I am curious too.
Gross	– if that is something I should have done at the beginning.
Chair	If I understand the process, it would be better if you just submitted it as testimony.
Tokos	That would typically cover it at that beginning as part of the staff report. At this juncture, you know, you are free to ask questions of anybody, including staff. If you are interested in that information, you can ask the City Engineer to provide it right now, and that is fine, or you can ask that it be submitted as part of the seven-day open-record period at your call.
Chair	Okay. Well, I would like to ask the City Engineer for whatever it is you are talking about.
Small	Well, I actually did have that jotted down as a question that I wanted to ask, and specifically about the coring sampling, so, if you could start there.
Gross	Yeah, the coring was done by Road and Driveway, and I was in attendance for all of the core samples that were taken. In addition, we had a cross-cut section of SE Moore Dr, probably halfway and maybe three-quarters of the way up the road where the road was actually cut and we were able to take a photograph of the entire section all the way through the pavement, the aggregate base, and then down into the subgrade material. In addition to that, we are familiar with the construction documents that were associated with SE Moore Dr and we went out and took core samples. The shallowest core sample we took, in terms of asphalt pavement, was 9 inches. The thickest section we got was 17 inches, and if you do a strength analysis, generally what you do is you take into consideration the thickness of the asphalt section, in addition to the aggregate base, and you can get basically a structural loading on your pavement. Oh, and we were getting such thick asphalt sections, there was really no need to go down into the aggregate base at that point, because the asphalt section provided enough structural strength to handle a 20,000-pound axel loading, which is what we are looking for. And so we could have gone and done additional and further analysis, but they had already essentially proven the point that the road has a structural integrity to handle the weight of the trucks that they are proposing to put on this road surface. And so we didn't—it would have taken a lot more work for us to get the aggregate base out. That is all hand digging, and it really wouldn't have changed the consensus that the road had the structural capacity to handle the trucks. I had noticed also a comment from the engineer in their appeal. They had mentioned the condition of the road surface at the intersection of SE Moore Dr and Bay Rd; that is actually where we got our thickest core section out of the road. I think that intersection had probably been changed at some point and overlaid many, many, many times. And, what you see on the road surface is not structural failures, but rather it is kind of an aesthetic surface failure. I think there was a thin overlay done on it at one point, and that is starting to peel back. If you take a look at it, that's what most of that is; it is not a structural issue. And so, in terms of the core sampling and the structural condition of the roadway, there has been nothing to indicate that that road is not anything but sufficient to handle this type of traffic. I believe that it mentions within the criteria for the Traffic Impact

	<p>Analysis to talk a little bit about peak hourly trips, and they mention within this that we're supposed to be using the Institute of Transportation Engineers (ITE) guidelines on trip generation, unless otherwise approved by the City Engineer, or the engineer that did the Traffic Impact Analysis had better information than ITE can provide, which is really based on typical types of installation. So for example, you are going to put in a gas station; so they have typical trip generation associated with a gas station. On this particular instance, Teevin Bros. has other logging operations and they know exactly how many vehicles they are going to generate. So, it does not make sense to go back to a model and use that for your trip generation when you have real numbers that you can use, and so that's why they used that. I took a look at their queuing analysis, and it's left up to the discretion of the City Engineer to determine if there is an issue with queuing. If you take a look at the charts that are provided in the transportation impact analysis and the delays associated with each of those intersections, there is almost a negligible impact by the additional truck traffic that would be generated by this development. And so there was no impact to queuing at any of the intersections that we reviewed. It is likely that we have to go back and modify some of the wording in the TIA to address the intersections immediately adjacent to the side that Mr. Tokos had mentioned earlier, but it was not a concern of mine, because the volume of the intersection is so much lower than the intersections they already analyzed, especially immediately adjacent to those intersections at their own driveways. And if you take a look at the volume to capacity ratio associated with those intersections, which tells you what the road can handle in terms of volume versus what it actually has on the road, and that is how they generally will look in an ODOT intersection. As a point of comparison, the intersection of Highway 20 and SE Moore Dr has a volume to capacity ratio after the development of a .8, which means that you can add 20 percent more traffic to that intersection before it gets to the point where your traffic is basically as much as you could possibly fit on the intersection and the highway at the same time, and that is the ODOT standard for an intersection of that type, is a .8. It is .01, I believe, at the driveway of Teevin Bros. on the west side, and I think the number is similar on the east side. I would have to go take a look at it. But the volumes are so incredibly low that they could go and take a look at the adjacent intersections and it won't make any difference. There is just no volume associated with those. And so really that is the bulk of what was my responsibility to review as part of this Traffic Impact Analysis. You know, we are here to look at, really, an engineering estimate of the capacity of the infrastructure to handle this development, and from a road perspective and a geometry perspective and a volume perspective and a level of service perspective, SE Moore Dr and Bay Rd can handle this development, the traffic associated with this development, in my opinion. And, I think that there maybe were some comments where people did not have the follow-up memorandum that came from Stuntzner Engineering; that is the memorandum that talks about the core samples and the structural condition of the roadway. It is important to include that with the original memo that was produced by Kittelson & Associates because they are part of the record and part of the TIA, both together. Do you have any additional questions on how we did the analysis?</p>
McIntyre	Tim, I have a question. There were several people that commented about underground springs on John Moore Rd. Did you investigate that when—in doing the study at all?
Gross	We did not look specifically into the spring on John Moore Rd. In fact, I think—I do not actually think the spring is coming up through the road. I have been out there and I've looked at it a number of times. I actually think it is coming onto the road from the adjacent property. You can see it coming across the sidewalk. Even if it was underneath the road to some level, there is not a single road in Newport that does not have springs under it, including State Highway 101 and Highway 20. And it's not necessarily something that would have a detrimental impact on the structure of the highway unless there was some sort of a pipe failure or something else where it could actually leach material out of the road. But the presence of water in and of itself is not something that would impact the ability of the road to handle truck traffic.
McIntyre	Okay.
Chair	How about concerns about the subgrade that is underneath there? Is there any purpose served in finding out what's—
Gross	Based on the construction documents that I've seen to date, there's an adequate base to that road. Any of the excavation that I have done in that area, and I have done quite a bit, has always generally been relatively clean sand base. There are some areas where you come across deleterious material in your road grade. I mean, that's Newport construction standard, you know, you fill in a ravine with anything that is nearby, but that's not—we have not seen any indication of that on either the Bay Rd or on SE Moore Dr. I cannot speculate on what might be buried some place or another. The evidence that I have seen to date would indicate that the road has the capacity to handle the traffic.
Chair	Okay. Any more questions for—okay. There has been a request made. I guess I have—I need to close the hearing, right?
Tokos	At least the oral testimony portion of it.
Chair	Okay, close that part of the hearing. I had at least two separate written requests to leave the record open for seven days and an oral request to leave the record open for seven days. So, you guys have this, so, which of

	these two options do you want to do?
Fisher	Well, I think we should leave the open for seven days to receive any written comments or photographs, or maybe if somebody that has knowledge, engineering-wise or something; I would like it long enough ahead of time that we can review it. I did review, I don't know, hundreds of pages, and then today, we get more. The sooner ahead we get them—I read every word. I cannot memorize it all, but when you are 75, you are lucky to get 20 percent. But I would love to see anything in writing and I would promise to review it carefully and maybe call you. I don't know. Is that legal, Derrick?
Chair	It is called ex parte contact.
Fisher	I better stick to reviewing the material.
Chair	By definition.
Fisher	I'll just review it.
Small	I would—if you made that in a form of a motion, I would second that motion that the record be left open.
Chair	Well, we don't have a choice about that. That's a given that—
Tokos	Correct. If I may, the statutes require that if a request is made, that it has to be granted for a minimum of seven days. My recommendation would be for the Commission to leave the record open for a period of seven days for additional written evidence, argument, and testimony, with a closing being 5:00 p.m., Monday, April 29 th , which means all documents must be received in the Planning office by that date. And then set out an additional seven days for folks to respond to any of the new evidence that's submitted. And then within that timeframe, ask that staff and/or the applicant prepare findings of fact for your consideration for approval, and that the appellant prepare a findings of fact for your consideration for denial. And then, that period would end on 5:00 p.m., May 6 th . And with each of these deadlines, we would forward on the materials to you so you would have a chance to review them. And then unless waived by the applicant, they are entitled to seven days for final argument, and that would be provided to you up until the May 13 th , essentially, Council meeting, at which point you would have an opportunity to deliberate and decide the matter.
Fisher	When you say final argument, do you mean written argument [inaudible].
Tokos	Final written argument, yes.
Fisher	Because I don't—we've had oral testimony tonight. We're not going to do that again.
Tokos	Correct.
Fisher	So moved. [Inaudible] that was.
Small	And second.
Chair	Moved and seconded.
Fisher	We need to do that. Those dates were proper. We going to vote on it?
Unknown	Do we have to—do we have to vote on it?
Chair	Yes, we do have to, if that's what we want to do, then that is what we need to do. We make a motion; we vote on it. So, anymore discussion on the process?
Unknown	Nope.
Chair	Okay, all those in favor signal by saying aye.
Several voices	Aye.
Chair	All opposed same sign.
	<i>Silence.</i>
Chair	Motion carries. So, we'll set deliberations for May 13 th at 7:00 p.m.
Tokos	That is correct.
Chair	Okay.
Tokos	May 13 th , 7:00 p.m., Council chambers.
Chair	Okay. Alright.

F. **New Business.** No new business.

G. **Unfinished Business.** No unfinished business.

H. **Director's Comments.**

1. **Reminder that the Volunteer Dinner is scheduled for 6:00 p.m. on April 23rd at the Oregon Coast Aquarium.** Tokos hoped someone could make it to the dinner. He won't be able to. Small said that he would be at the dinner to represent the Planning Commission.

I. **Adjournment.** Having no further business to discuss, the meeting adjourned at 8:17 p.m.

Respectfully Submitted by,

Paula Pinyerd, ABC Transcription Services, Inc. for
Wanda Haney, Executive Assistant

**Verbatim Minutes
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, May 13, 2013**

Commissioners Present: Jim Patrick, Jim McIntyre, Glen Small, Rod Croteau, Mark Fisher, Bill Branigan, and Gary East.

City Staff Present: Community Development Director Derrick Tokos and Executive Assistant Wanda Haney.

A. Roll Call. Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 6:00 p.m.

Branigan	Bill Branigan
East	Gary East
Fisher	Mark Fisher
Chair Patrick	Jim Patrick
Croteau	Rod Croteau
Small	Glen Small
McIntyre	Jim McIntyre

B. Approval of Minutes.

1. Approval of the Planning Commission regular session meeting minutes of April 22, 2013.

Croteau noted a correction to the attendance. **MOTION** was made by Commissioner Fisher, seconded by Commissioner McIntyre, to approve the Planning Commission minutes as amended. The motion carried unanimously in a voice vote.

C. Citizen/Public Comment. No comments on non-agenda items.

D. Consent Calendar. Nothing on the consent calendar.

E. Public Hearings.

Quasi-Judicial Actions:

1. **File No. 1-TIA-13-A:** Deliberation and decision on an appeal of the Community Development Director's decision of approval of a Traffic Impact Analysis (TIA) regarding SE Moore Drive (aka John Moore Road) and SE Bay Boulevard submitted by Teevin Bros. Land and Timber Co., LLC for a proposed log yard at 1650 SE Bay Blvd (Tax Assessor's Map 11-11-09-D, Tax Lots 100 & 101).

Verbatim Transcription Begins:

Chair	Okay, public hearings. Rod, you [inaudible]
Croteau	I was absent at the last Commission meeting, but I have read or listened to all of the testimony. I read all of the documents related to this issue, and so I think I'm in a good position to be able to vote in—without bias and in good conscience.
Chair	So that makes him eligible to join the deliberations?
Tokos	Yes, although I would recommend you go through the ex parte aspect of it.
Chair	Okay, any ex parte contact?
Croteau	No ex parte contact, but I am familiar with the site.
Chair	Okay. File No. 1-TIA-13-A: Deliberation and decision on an appeal of the Community Development Director's decision of an approval of a Traffic Impact Analysis (TIA) regarding SE Moore Dr and SE Bay Blvd submitted by Teevin Bros. Land and Timber Co., LLC for a proposed log yard, 1650 SE Bay Blvd. Before we start, does anybody have any questions of Staff?
Fisher	Nope.
Chair	I do.
Tokos	Okay.
Chair	The geologic hazard does touch a part of that property?
Tokos	Correct.
Chair	And that's—is that at the entrance? Or is that one of the entrances or exits?
Tokos	That is in the vicinity of the entrance and exit.

Chair	Okay. As I understand it, the geologic hazard does not apply to clearing brush, I don't believe.
Tokos	It does not and that was noted in the findings that I prepared for your consideration for approval.
Chair	Okay, I must have missed it in there, because I was looking for it and I did not see where it specifically called out that.
Tokos	Yeah, it does not apply to clearing of vegetation.
Chair	Okay. That was my only question. Alright, start our deliberations, Jim?
McIntyre	You know, I reviewed almost everything, and being limited on the amount of time I had to go back through it, my feeling is that it's—the concern I have is that have we completely resolved all of the concerns that were expressed by the attorney for ORCA and his summation of the TIA? I could not go back through and see the rebuttal to that by the City, and I do not know, I was just trying to scroll down through my documents to see. There were a lot of concerns that traffic counts were not accurate, were not high enough, and I believe in talking to Tim Gross, in our last meeting, that Tim indicated that those traffic counts had been not only taken, but they were adjusted upward to take into consideration the higher traffic flows during holiday seasons and the busy time of the year. Things like that. Are we—I guess I'm really want to be sure that we've commented on and resolved all of the issues that were concerns of ORCA and the attorney, Malone, as expressed in his letter.
Tokos	Are you asking a question to Staff?
McIntyre	Yes.
Tokos	I'll be brief. You have two sets of findings of fact that were submitted following the open-record period. One set of findings of fact was prepared by Staff and is the findings of fact for approval. You have a second set that's findings of fact that were prepared by the appellant per your direction and they are findings for denial. To the extent that the appellant—we felt—or I felt—that the appellant's arguments were relevant to the decision. It was addressed in the findings of fact that I prepared for you. I mean, that is really as far as I want to go for it. I mean, you guys have had a chance to review those, and if you are satisfied with them, so be it. If not, if there is something specific you feel that is a deficiency or you have a question about something that's in the findings, feel free to—if it is specific, I can respond to it. Otherwise, I would prefer not to, since the record is closed at this point.
McIntyre	I was satisfied with the findings and findings of fact that the City had prepared, and I'm in favor of going forward with the project. I am not in favor of granting the appeal. Because basically, I feel that the points that were brought up were either responded to and to my satisfaction by the City Engineer, and that there wasn't anything that—I understand the position of the folks that have brought the appeal, but in looking at the TIA and the response to the concerns in the appeal to the TIA, I believe that it has been to my satisfaction, anyhow, has been answered. Okay.
Small	I think that I am in agreement with Commissioner McIntyre. You know, the process was that Teevin Bros. were required to submit a Traffic Impact Analysis. They did that. The analysis was completed. It was submitted. It was approved. And then as the process allows, there was an appeal filed, and challenging the validity and the findings of that impact analysis. So, my understanding is this board was tasked with the responsibility of hearing and ruling on that appeal, but the purview was well defined for us and pretty limited. Our scope was to decide was the impact analysis done correctly and were the findings of that analysis sufficient to warrant approval. So, it doesn't matter—you know, all of the other points that were brought up—do we like the Teevin Bros? Do we agree with their business plan? Is there a better site for this log operation? Do we think truck drivers are cowboys? All of those things. While they may or may not be valid points, they are not within the purview of what we can decide. We are tasked with deciding was the analysis done correctly. Were the findings sufficient to warrant approval? Now having said that, I think there were some valid points that were brought up that warranted consideration, and Commissioner McIntyre pointed to some of those. The December analysis date, and was that a significant date? Was that a true sampling? And I made note of that, but then hearing the response to that, that the numbers were adjusted upwards by—what was it, 25 percent? I would ask—
Tokos	Twenty-eight percent.
Small	Twenty-eight percent—but that was a significant number, which would still fall within acceptable ranges. Another concern that I felt was a valid point was the core sampling and the road bed composition, and was that done correctly? And just hearing what was actually found in that core sampling and the depth of road bed composition and asphalt was more than sufficient to accommodate heavy-truck traffic. And then the issue with the sight lines on the frontage was addressed. And so having heard City Engineer Tim Gross' explanation or response to that, I am satisfied that the impact analysis was done correctly and that it is sufficient to warrant approval.
Croteau	I essentially agree with Commissioner McIntyre and Commissioner Small. At the same time, I appreciate that there are many concerns out there by the citizens and residents that live in that area, the area that will be impacted, but I come back to the fact that their focus of the TIA is fairly narrow and it is decided on largely technical grounds. Within the constraints of the TIA and the issues that it is supposed to address, it adequately addressed those issues. So I am in favor of going forward with the report as it was amended and with the

	conditions specified.
Fisher	There are numerous points in any process where ideas come forth, and some of them that were brought up by the group last time, where we received in letters, or since then, people have commented to me about, are thoughts that I have had too, like, "Wouldn't it be nice to actually cut the logs into lumber and ship out lumber?" Yeah, it would. "Wouldn't it be a positive thing maybe to bring them in by train to Toledo? Maybe that would even save money." Maybe a lot of things, but those are outside the purview of what we have been examining. Their ideas in a business plan or that the report might talk about, but they have nothing to do with the job we are appointed to do. I was very concerned after reading all the documents, and then when we had the meeting, and the only—City Engineer convinced me that in fact, the road bed is properly constructed for the job, that in all aspects, the things that have been brought up as concerns have been either handled on way or in fact, engineers feel they aren't. For example, when I go running on cold mornings, coming down the hill from Dave Capri and Allen Brown's house, there is always water there from a spring, and when it's wet and maybe icy, I am concerned. The engineer explained that in fact that is not a problem, and in the end, I either have to believe the City Engineer was honest and accurate, or he made mistakes, and it seems to me that he and the studies were accurate. And I—based on the narrow focus of what we are deciding, Commissioners McIntyre, Small, and the belated Commissioner Croteau have summed up my feelings, and I think the bases are covered, and I also believe we should deny the appeal.
East	Well, I really do not have much to add to all of that. Everybody's pretty much focused on the issues and voiced my opinion on it. So, with that said, I agree that we should approve the TIA.
Branigan	I would like to thank everybody who did submit testimony on the matter, and there was quite a bit of testimony that was submitted. Comments were very far ranging, brought forth many arguments as to why the appeal should be upheld. I have read through all of the testimony, went through the Kittelson Traffic Impact Analysis multiple times. I did go out over the weekend and walk the entire route, looking for where we did the core samples, to satisfy myself that, you know, the core samples were done in generally appropriate places; took careful look at the surface condition of the road; looked at where we had surface water features. And this was a mid-Saturday afternoon; spent some time down at the corner of John Moore and Bay Blvd just looking at the way the traffic came in and out and the volume of traffic that was down there. As the other Commissioners explained, our purview is really to just really rule on the Traffic Impact Analysis and not all of the other issues that were brought up. So, after some careful review, I find that the criteria established for the TIA was pretty thorough and is in favor of approving it with the two recommendations that were originally in there, in the Kittelson report by the City Engineer, and one was to complete the sight distance improvements near the entrance of the international terminal. And the other one was—I did notice that, and it was brought up, that close to the entrance to the international terminal, some of the Yaquina Bay Rd on the shoulder was slumping down. And it was recommended—and I agree that the Teevin Bros needs to coordinate with Lincoln County, since that's in Lincoln County, to replace that road. So, I would concur that we should approve what was originally approved and deny the appeal.
Chair	Well, everybody's pretty much covered everything. I do want to reiterate, it is a very narrow set of grounds we have to decide this on. It's basically the Traffic Impact Analysis, that is all we have to decide on, and we got a lot of interesting testimony, but none of it—very little of it is relevant to the things that was under appeal here. Looking through all the material, almost everything that was in the green light report was covered. There was a couple other things. I probably should mention about that geologic hazard. If you are not building in a Geologic Hazard Zone, it doesn't get triggered. And, if you are in the Geologic Hazard Zone, you can remove brush. Remember that, having gone through all that—
Unknown	A log roll out is not classified as a building or—it's a process.
Unknown	Well, I know, but actually the only piece that's inside the area is the approach into the yard, right off the road. That's the only part that is tagged as geologic. It's actually—
Chair	That other map does not – I mean, the way that I – the material that I looked at showed some cross-hatching over what was a portion of the log roll out area, and that is not true?
Tokos	No, the geologic hazard just extends over the approach road, just real close to Bay Blvd.
Unknown	Okay.
Chair	And it is a sloped area, almost all that ground on there is flat.
Unknown	Okay. Sorry.
Chair	The sample counts, I think they were adequately adjusted for, and it actually—our problem is that if they really want the accurate traffic count, you do it in July and August, which is our worst months. And even then, it still does not even trigger. And I also want to point that the TIA got triggered by the size of the trucks being ran, not by the traffic. It didn't get anywhere close to having enough traffic to trigger a traffic analysis; it was because of the heavy trucks that it got triggered. There was some things about the intersection counts not being counted. Well, if you don't have the traffic, then you don't need an intersection to all be—you need a traffic analysis, unless you got—basically, it was like 300 trips a day or 50 trips a peak hour, so that did not get triggered.

	We already discussed about the road bed. There were also concerns about a truck route. Well as I understand it, a truck route is what you do if you want to make sure all trucks go on that road to get to—and we don't have any designated truck routes. We prefer that they use whatever method they want to access the bay front, which is Hatfield and sometimes using not Herbert St and Fall? Yeah, Fall St at the bottom. So, that's why that didn't apply. And I think that was all the things that I could remember that was the basic things. And I have to agree, we have to approve the—
Unknown	Deny the appeal.
Chair	Do we deny the appeal or—somebody tell me how this motion ought to run.
Tokos	It would be—this is a de novo hearing, so you are making a decision as if anew.
Chair	Okay, so we need a motion to approve the traffic analysis.
Small	Well, I'd do that in regards to File Number 1-TIA-13-A. I would move that we approve the Traffic Impact Analysis, submitted by Kittelson & Associates for the Teevin Bros. with those noted conditions.
Chair	The three conditions?
Small	Correct.
Chair	Okay.
Branigan	I second it.
Chair	Seconded. Any more discussion on the issue? Hearing none, all those in favor signify by saying, "Aye".
Several voices	Aye.
Chair	All opposed same sign.
	<i>Silence.</i>
Tokos	Before we move on, the decision will be signed tonight. The appeal deadline to the City Council would be May 28 th at 5:00 p.m.
Chair	Any New Business?

F. **New Business.** No new business.

G. **Unfinished Business.** No unfinished business.

H. **Director's Comments.**

1. Tokos reminded the Commission that the alternative mobility standards work done in South Beach has to be adopted by the County, and the Board of Commissioners finally adopted that process on May 1st. There will be a hearing before the County Planning Commission. It is moving along. The trip budget does not go into effect until the County adopts it.
2. Tokos noted that the UGB expansion for the reservoirs was approved by the City Council at their last meeting, and it has now been forwarded to the County for their process. Some changes were made at the City Council level pertaining to the Etherington property. Tokos doesn't anticipate any issues at the County; but it could take time to move through their process.
3. Tokos mentioned the economic opportunity analysis that was adopted last November. He noted that the City Council had the advisory committee reform to work on the business retention and recruitment position. That was done. It provides for some funding from the City. The City is going through budget deliberations right now, and Tokos is unsure if the City Council will find to fully fund that position this year or not. May 30th at 6:00 p.m. at the budget meeting is when discussion will be held regarding that. At the next City Council meeting, Bill Hall will be speaking on behalf of the Lincoln Community Land Trust and why from their perspective this is an important agreement to enter into.

Mark Fisher noted that the Commissioners had received information about Nye Beach. Tokos noted that the City Council held a town hall meeting on April 29th in Nye Beach, and it was discussed conceptually along with that. The way that code is drafted, that process would be initiated by the City Council. Before the end of the calendar year, the Council needs to hold a meeting taking testimony from the Nye Beach area whether or not it is in the public interest to open it up to take a look at those design standards. Then if they feel it is, they would direct it to the Planning Commission to look at it. The Council has asked Tokos to meet with Nye Beach Merchants in advance to get a short list of issues that can be fleshed out and summarized for the Council at that time.

I. **Adjournment.** Having no further business to discuss, the meeting adjourned at 7:25 p.m.

Respectfully Submitted by,

Paula Pinyerd, ABC Transcription Services, Inc. for
Wanda Haney, Executive Assistant

meeting at which there is scheduled a consideration of a land use action, the land use action shall be automatically set over to the next regularly-scheduled approving authority meeting. In the event that an approving authority other than the City Council is unable to achieve quorum for two consecutive meetings, the land use action shall be scheduled for a public hearing before the next level of approving authority and shall be renoticed and a new public hearing held.

D. Public Hearing. The public hearing process identified above in 14.52.080(C) for quasi-judicial/limited land use hearings shall be utilized with the following modifications noted for the legislative hearing process to the following subsections of 14.52.080(C)(3):

1. Final Decision. The decision of the approving authority is final when reduced to writing and signed by the presiding officer of the approving authority. Final decisions shall be by order unless an ordinance is required for the decision. Appeal periods shall begin from the date the final decision is signed. For hearings that are for a review and recommendation only, no final order is required. Unless required by law to do so, the approving authority is not obligated to adopt a final order or ordinance if the approving authority chooses not to adopt a legislative amendment.
2. Notice of Decision. A notice of the decision (except for those made for the purpose of a review and recommendation only) made by the approving authority shall be given to:
 - a. Anyone who has made appearance of record (see Section 14.52.080(B)) and submitted a written request for a notice of decision; and
 - b. Anyone who has filed a written request for notice of the approving authority's decision.
 - c. The Department of Land Conservation and Development as required for a post acknowledgement plan amendment.

14.52.100 Appeals. Any person with standing may appeal a decision of the approving authority. No person shall have standing to appeal unless the person made an

appearance of record in the initial proceeding prior to the close of the public comment period, public hearing, or close of the record. All appeals shall be made no later than 15 calendar days after the date the final order is signed. "Appearance of record" shall mean either appearance in person or in writing. City Council decisions may be appealed to the Oregon Land Use Board of Appeals as provided by state law.

A. Appeal Document. All appeals shall be signed by the appellant or authorized agent and shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision.
2. A statement demonstrating that the appellant has standing to appeal.
3. A statement of the specific grounds which the appellant relies on as the basis for the appeal. If the appellant contends that the findings of fact made by the approving authority are incorrect or incomplete, the application shall specify the factual matters omitted or disputed. If the appellant contends that the decision is contrary to city code, an ordinance statute, or other law, the appeal shall identify the city code, an ordinance, statute, or other legal provision, and state how the applicable provision has been violated. For appeals of a quasi-judicial or limited land use action, a statement demonstrating that the appeal issues were raised with sufficient specificity in the hearing below.

B. Scope of Review. Unless the appeal is heard de novo, the appeal of a decision by a person with standing shall be limited to the specific issues raised during the hearing from which the decision is being appealed. Approving authorities may hear appeals on the record of the initial hearing (if a previous hearing was held) or de novo. An appeal from a land use action that had a previous hearing shall be held on the record unless the approving authority determines that a de novo hearing is warranted.

1. When de novo hearing is warranted.
 - a. Where a land use decision was made without a public hearing, the appeal shall be heard de novo.

b. Where a land use decision was made following a public hearing, the approving authority may consider holding the appeal de novo for any of the following reasons:

- i. (The appellant(s) have documented as part of a petition to appeal a significant procedural error that resulted in a substantive harm to their ability to participate in the initial hearing that could be cured by a subsequent de novo hearing.
- ii. The appeal of the decision is part of a package of land use requests submitted by the applicant that include other land use requests that will be considered in a new public hearing before the review authority, and it would be more efficient to conduct the appeal de novo in conjunction with the hearings for the other land use requests.
- iii. A significant number of appeals have been filed such that the efficiency of the appeal process would be better served through a de novo hearing.

2. Procedure for determining when de novo hearing is warranted on appeal from a land use decision made following a public hearing:

- a. Following the end of the appeal period for which an appeal has been filed with a request for a de novo hearing, the matter of the de novo appeal hearing request shall be scheduled at the next available approving authority meeting for consideration.
- b. The appeal authority shall review the submitted request for de novo hearing along with any staff and applicant (if other than appellant) input on the matter and make a decision.

C. Notice of Appeal. Notice of the appeal hearing shall be given to the applicant, the applicant's authorized agent (if any), and to interested persons. Interested persons are:

1. Anyone who has made appearance of record.

2. Anyone who has filed a written request for notice of the approving authority's decision; and
3. Anyone who has requested notice of any appeal hearing.

D. Appeal Hearings. The following is a minimum set of procedures for appeal hearings and may be supplemented by any duly adopted rules of procedure:

1. Appeal hearings on the record shall be conducted as follows:
 - a. A record of hearing shall be prepared by the Community Development Department containing the written material involving the approval through the filing of the appeal. A transcript of the hearing shall be prepared and included with the record.
 - b. Following preparation of the record, a date for the on-the-record hearing shall be set by the Community Development Department, and notice of the date of the appeal hearing shall be given.
 - c. The appellant(s) shall have seven calendar days from the date the record is available to supplement the petition for appeal by identifying items in the record in support of the appeal ("support brief").
 - d. The applicant(s) (if other than the appellant) and city staff shall have seven calendar days from the date the appellant support brief is due to respond ("response brief").
 - e. The appeal hearing will allow for comments by city staff, argument from appellant(s), applicant(s) (if other than appellant), rebuttal, and questions and deliberation by the approving authority.
2. De novo appeal hearings may be held by the appeals approving authority. In cases of a de novo hearing, the same procedure shall be used as was employed in the initial hearing.
3. Ability for City Council to deny appeal without hearing. The City Council may deny an appeal from a Planning Commission decision where the Planning Commission

has held a de novo hearing following an appeal of a decision of the Community Development Director for land use actions subject to the 120-day rule in ORS 227.178. If the City Council votes to deny an appeal, the Council shall adopt the Planning Commission Final Order as the final decision of the City.

E. Appeals Decision. Upon review of the appeal, the appeals approving authority may, by final order, affirm, reverse, or modify in whole or part the initial decision. When the appeals approving authority modifies or reverses a decision of the initial approving authority, the final order shall set forth findings and reasons for the change. The appeals approving authority may also remand the matter back to the initial approving authority for further consideration or clarification. A notice of the decision made by the approving authority shall be given to:

1. Anyone who has made appearance of record; and
2. Anyone who has filed a written request for notice of the approving authority's decision; and
3. Anyone who has requested notice of any appeal hearing.

F. Judicial Finality. No permit shall be issued, no permit or approval shall be considered valid, and no project may proceed, based on any land use decision of the City of Newport for a land use action processed under this section of the Ordinance, until such time as all rights of appeal from such decision have been exhausted and such decision is "judicially final." A decision shall be considered judicially final at such time as any applicable period for the appeal of such decision shall have expired without initiation of an appeal, or any properly initiated appeal shall have been exhausted, whichever is later. However, this shall not preclude the making of an application for, or the conduct of proceedings to consider, the issuance of a permit or approval based on such land use decision.

14.52.110 Decision Time. Once a complete application is received by the City of Newport, the city shall take final action, including resolution of all local appeals, on applications subject to ORS 227.178 within 120 days unless otherwise



Agenda Item # IX.B. _____
Meeting Date June 3, 2013 _____

CITY COUNCIL AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Resolution Initiating Withdrawal of a Portion of the Wolf Tree Destination Resort site from the Newport City Limits

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: _____

ISSUE BEFORE THE COUNCIL: Consideration of a resolution initiating the statutory process to withdraw a 71.39 acre property from the corporate limits of the City of Newport, as request by the owner Terry Lettenmaier. The property is a part of the larger 668 acre Wolf Tree Destination Resort site, and is specifically identified as Tax Lot 801, Section 5, T12S, R11W, W.M.

STAFF RECOMMENDATION: Staff recommends the City Council adopt the resolution.

PROPOSED MOTION: I move to adopt Resolution #3632, initiating the statutory process for withdrawing the subjects property from the city limits.

KEY FACTS AND INFORMATION SUMMARY: The subject property is a part of the Wolf Tree Destination Resort that was brought into the Newport Urban Growth Boundary in July of 1987 (Ord. #1492). The developer at that time envisioned constructing the resort in two stages. This property, being on the far northeastern edge of the site, was to be part of the second stage of development. It was annexed a year later, in September of 1988 (Ord. #1522) and made a part of the stage one concept because the developer came to the conclusion that additional acreage was needed to achieve the desired residential density once a preliminary design was completed for a planned golf course. Ultimately, the development never moved forward and the property has since changed hands.

The Wolf Tree resort site is zoned R-4/“High Density Residential” and C-2/“Tourist Commercial” with a Planned Destination Resort (PDR) overlay. The purpose of the overlay is to ensure that a destination resort use is established. To this end, it prohibits any development of the property that falls short of at least 150 rentable units, eating establishments for at least 100 persons, meeting room capacity for at least 100 persons and recreational facilities all of which must total an initial investment of at least \$6 million (in 1987 dollars). Such a scale of development would support the extension or development of urban services, which currently do not exist in the area.

On January 25, 2013, the City received a letter from Terry Lettenmaier requesting that property he and his wife Laurie Weitkamp purchased in July of 2011 be withdrawn from the City of Newport. Mr. Lettenmaier desires to construct one dwelling on the property. Withdrawing the property from the City helps achieve this objective by allowing them to approach the County to rezone the site to a designation where that use would be permissible.

ORS 222.460 sets out a procedure for withdrawing property from a City. The process must be initiated by Council resolution (i.e. this step), followed within 30 days by a noticed public hearing at which the public is invited to testify on the proposal. If, after taking testimony, the Council desires to proceed than it must prepare an order to that affect and schedule a second hearing within 20-50 days. This last hearing is intended to provide persons who reside in the affected area an opportunity to weigh in on whether or not the action should be referred to the ballot. Since nobody resides on the subject property, that won’t happen; however, because the statute requires two public hearings, the second hearing

will have to be held. If this resolution is adopted, than the first public hearing would be held at 7:00 pm on July 1, 2013 in the Council Chambers at Newport City Hall.

Steel String, Inc., who owns the balance of the Wolf Tree destination resort property, indicated in a January 31, 2013 email that they do not object to the withdrawal provided provisions are made to ensure that they can extend utilities through the subject property in the future if such an extension is needed to facilitate resort development. Mr. Lettenmaier is agreeable to reasonable provisions of this nature and the details for how such a reservation would work and how much of the property would be impacted can be resolved as part of the withdrawal process.

It is relevant to note that withdrawal of the property from the City does not mean that it is forever foreclosed from being a part of the destination resort. The property would still be within the Urban Growth Boundary and could presumably be annexed back into the City in the future.

At its February 4, 2013 meeting the City Council agreed to move forward with the withdrawal process provided Mr. Lettenmaier paid a fee of \$700 to off-set notification costs. Mr. Lettenmaier paid the requested amount on May 13, 2013 and has asked that the process move forward.

OTHER ALTERNATIVES CONSIDERED: None.

CITY COUNCIL GOALS: This request is not related to any adopted Council goals.

ATTACHMENT LIST:

- Resolution No. 3632 w/ attached map
- ORS 222.460
- January 25, 2013 letter from Terry Lettenmaier
- January 31, 2013 email from Steel String, Inc.

FISCAL NOTES: The property is presently under a forest tax deferral with an assessed value of \$25,570. Given that this is the case, the withdrawal would have a negligible impact on the City's tax base.

CITY OF NEWPORT

RESOLUTION NO. 3632

A RESOLUTION INITIATING WITHDRAWAL OF TERRITORY
FROM THE CITY OF NEWPORT

WHEREAS, except as expressly prohibited by city charter, ORS 222.460 provides that the legislative body of a city may order the withdrawal of territory from the city limits when it determines that it is in the public interest to take such action; and

WHEREAS, ORS 222.460 further sets out procedures for withdrawing territory, including information that must be contained in city resolutions, requirements for public hearings, thresholds for when elections are required, and disposition of taxes and assessments; and

WHEREAS, the Newport City Charter is silent as to the withdrawal of territory from the City limits; and

WHEREAS, the Newport Municipal Code (NMC) 14.52.030(A)(6) identifies the withdrawal of territory from the City limits as a land use action and requires the City Council to hold a public hearing prior to taking such action; but beyond this procedural requirement, the Newport Municipal Code sets no substantive criteria for the withdrawal of territory from the City; and

WHEREAS, on January 25, 2013, the City received a letter from Terry Lettenmaier requesting that property he and his wife Laurie Weitkamp purchased in July of 2011 be withdrawn from the City of Newport. The property is approximately 71.39 acres in size and is identified as Tax Lot 801, Section 5, T12S, R11W, W.M.; and

WHEREAS, the Lettenmaier property is a part of the Wolf Tree Destination Resort that was brought into the Newport Urban Growth Boundary in July of 1987 (Ordinance #1492) and annexed in September of 1988 (Ordinance #1522); and

WHEREAS, the Wolf Tree Destination Resort is subject to a Planned Development Overlay that prohibits any development of the property that falls short of at least 150 rentable units, eating establishments for at least 100 persons, meeting room capacity for at least 100 persons and recreational facilities, all of which must total an initial investment of at least \$6 million (in 1987 dollars); and

WHEREAS, Mr. Lettenmaier desires to construct one single family dwelling on the property and believes that this objective can best be accomplished if the property is withdrawn from the city limits and rezoned by Lincoln County; and

WHEREAS, Steel String, Inc., who owns the balance of the destination resort property at a little over 600 acres, indicated in a January 31, 2013 email that they do not object to the withdrawal provided provisions are made to ensure that they can extend utilities through the subject property in the future if such an extension is needed to facilitate resort development; and

WHEREAS, the City Council considered Mr. Lettenmaier's proposal, and testimony provided by Steel String, Inc., at a meeting on February 4, 2013 and agreed that the issues raised can be addressed through the withdrawal process. The Council further agreed to initiate the process provided a fee of \$700 was paid by Mr. Lettenmaier to off-set notification costs; and

WHEREAS, Mr. Lettenmaier paid the requested amount on May 13, 2013.

NOW, THEREFORE, THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

Section 1. The City Council intends to change the boundary of the City of Newport by means of a withdrawal of territory.

Section 2. The territory to be withdrawn from the City of Newport is real property in the County of Lincoln, State of Oregon, described as follows:

“U.S. Lot 3 and that portion of the southeast quarter of the northwest quarter lying northerly of Thiel Creek County Road, all in Section 5, Township 12 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon.

Excepting therefrom any portion falling within S.E. 98th Street (Thiel Creek Road and County Road 601).

Together with that portion of Government Lot 2 described as follows:

Beginning at the northwest corner of Government Lot 2; thence easterly along the north line of said lot to the northwest corner of Government Lot 1; thence south along the west line of said Lot 1, 655 feet; thence westerly, parallel with the north line of Government Lot 2 to the west line of said Lot 5; thence northerly along said west line to the point of beginning, all in Section 5, Township 12 South, Range 11 West of the Willamette Meridian, in Lincoln County Oregon.

Excepting that portion, if any, of the Tract described in Volume 261, Page 844, of the Lincoln County Film Records.”

The territory is further illustrated on the Lincoln County Assessors Cadastral Map attached as Exhibit A.

Section 3. The City Council will hold a public hearing at 7:00 pm on July 1, 2013 in the Council Chambers at Newport City Hall (169 SW Coast Hwy), to be noticed per ORS 22.120(3) and as a land use public hearing per NMC 14.52.030(A)(6), at which time City residents may appear and be heard on the question of the withdrawal of this territory.

Section 4. The effective date of this Resolution is June 3, 2013.

Adopted by _____ vote of the Newport City Council on June 3, 2013.

Signed on _____, 2013.

Sandra Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

WITHDRAWAL OF TERRITORY

222.460 Procedures for withdrawal of territory; content of resolution; hearing; election; taxes and assessments. (1) Except as expressly prohibited by the city charter, when the legislative body of a city determines that the public interest will be furthered by a withdrawal or detachment of territory from the city, the legislative body of the city, on its own motion, may order the withdrawal of territory as provided in this section.

(2) A withdrawal of territory from the city shall be initiated by a resolution of the legislative body of the city.

(3) The resolution shall:

(a) Name the city and declare that it is the intent of the legislative body of the city to change the boundaries of the city by means of a withdrawal of territory;

(b) Describe the boundaries of the affected territory; and

(c) Have attached a county assessor's cadastral map showing the location of the affected territory.

(4) Not later than 30 days after adoption of the resolution, the legislative body of the city shall hold a public hearing at which the residents of the city may appear and be heard on the question of the withdrawal of territory. The legislative body of the city shall cause notice of the hearing to be given in the manner required under ORS 222.120 (3).

(5) After receiving testimony at the public hearing, the legislative body of the city may alter the boundaries described in the resolution to either include or exclude territory. If the legislative body of the city still favors the withdrawal of territory pursuant to the resolution, as approved or modified, it shall enter an order so declaring. The order shall set forth the boundaries of the area to be withdrawn. The order shall also fix a place, and a time not less than 20 nor more than 50 days after the date of the order, for a final hearing on the resolution. The order shall declare that if written requests for an election are not filed as provided by subsection (6) of this section, the legislative body of the city, at the time of the final hearing, will adopt a resolution or ordinance detaching the territory from the city.

(6) An election shall not be held on the question of withdrawal of the affected territory from the city unless written requests for an election are filed at or before the hearing by not less than 15 percent of the electors or 100 electors, whichever is the lesser number, registered in the territory proposed to be withdrawn from the city.

(7) At the time and place set for the final hearing upon the resolution for withdrawal, if the required number of written requests for an election on the proposed withdrawal have not been filed, the legislative body of the city shall, by resolution or ordinance, declare that the territory is detached from the city.

(8) If the required number of requests for an election are filed on or before the final hearing, the legislative body of the city shall call an election in the city upon the question of the withdrawal of the affected territory.

(9) If an election is called and a majority of the votes cast at the election is in favor of the withdrawal of the designated area from the city, the legislative body of the city shall, by resolution or ordinance, declare that the territory is detached from the city. If the majority of the votes cast is against the withdrawal, the legislative body of the city shall enter an order declaring the results of the election and that no withdrawal shall occur.

(10) The described area withdrawn shall, from the date of entry of the order, be free from assessments and taxes levied thereafter by the city. However, the withdrawn area shall remain subject to any bonded or other indebtedness existing at the time of the order. The proportionate share shall be based on the assessed valuation, according to the assessment roll in the year of the levy, of all the property contained in the city immediately prior to the withdrawal. [1985 c.702 §2; 1989 c.1063 §13]

Note: 222.460 and 222.465 were added to and made a part of ORS chapter 222 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

PO Box 550
South Beach, OR 97366

January 25, 2013

Derrick Tokos
Community Development Director
City of Newport
169 South Coast Hwy
Newport, OR 97365

RE: De-annexation of 12-11-05-00-00801-00

Dear Mr. Tokos,

My wife, Laurie Weitkamp, and I own Lincoln County Map Taxlot 12-11-05-00-00801-00, which is 71 acres immediately north of SE 98th Street. This land is part of the Wolf Tree destination resort area in the City of Newport, and is currently zoned R-4 with a planned destination resort overlay. We would like to build a house on this property but this is not a permitted use under the current zoning. For this reason, we would like this land to be de-annexed from the City of Newport so that it can then be re-zoned by Lincoln County to allow a rural residence.

I would like to point out that the de-annexation of this property should not adversely affect future development of a destination resort on the remaining Wolf Tree area for the following reasons:

- This 71 acres is a small portion of the 668 total acres currently designated for the destination resort
- This land is in the far NE corner of the land allocated for the resort
- The topography of this land is steep, and it is also close to the airport approach

Given this, I think it is appropriate to remove this land from the destination resort area to allow rural residential use.

I ask that you initiate the process with the City Council for withdrawing this territory from the city per ORS 222.460.

Sincerely,



Terry Lettenmaier
541-961-5833 (cell)
541-867-4603 (home)
lett@peak.org

Lincoln County Property Report

Account # & LEGAL DESCRIPTION	ACCOUNT DETAILS	OWNER AND ADDRESS
Account #: R522062 Map Taxlot: 12-11-05-00-00801-00 Map: 12s11w05 Legal: TOWNSHIP 12, RANG 11, ACRES 20.30, POTENTIAL ADDITIONAL TAX LIABILITY, DOC201106639 TaxCode: 104 Acres: 20.30	Neighborhood: <u>RUTB</u> PropertyClass: <u>640</u>	Owner: LETTENMAIER TERRANCE M & Address: WEITKAMP LAURIE A PO BOX 550 SOUTH BEACH, OR 97366 Situs:

IMPROVEMENTS							VALUE AND SALES HISTORY					
Description	Area	Yr Built	Foundation	Heat	Plumbing	BDMS	Value	Value Year	Imp.	Land	Total Market	Total Assessed
...NoInventory								2012	0	203,960	203,960	7,910
								2011	0	229,170	229,170	7,680
								2010	0	260,230	260,230	7,460
								2009	0	286,020	286,020	7,240
								2008	0	307,700	307,700	7,030
								2007	0	277,230	277,230	6,830
								SaleDate	Price	Document	Type	Code
								NoSales				

LAND				RELATED ACCOUNTS		DISCLAIMER
Description	Acres	Market Value	Special Use Value	<u>R500182</u>	<u>R465957</u>	
DESIGNATED FOREST	20.30	203,960	7,910			<i>This report was produced using the Lincoln County assessment information. This information is maintained by the county to support its governmental activities. The County is not responsible for errors, omissions, misuse or misinterpretation. Report created:1/28/2013 using tax data exported 10/2012</i>

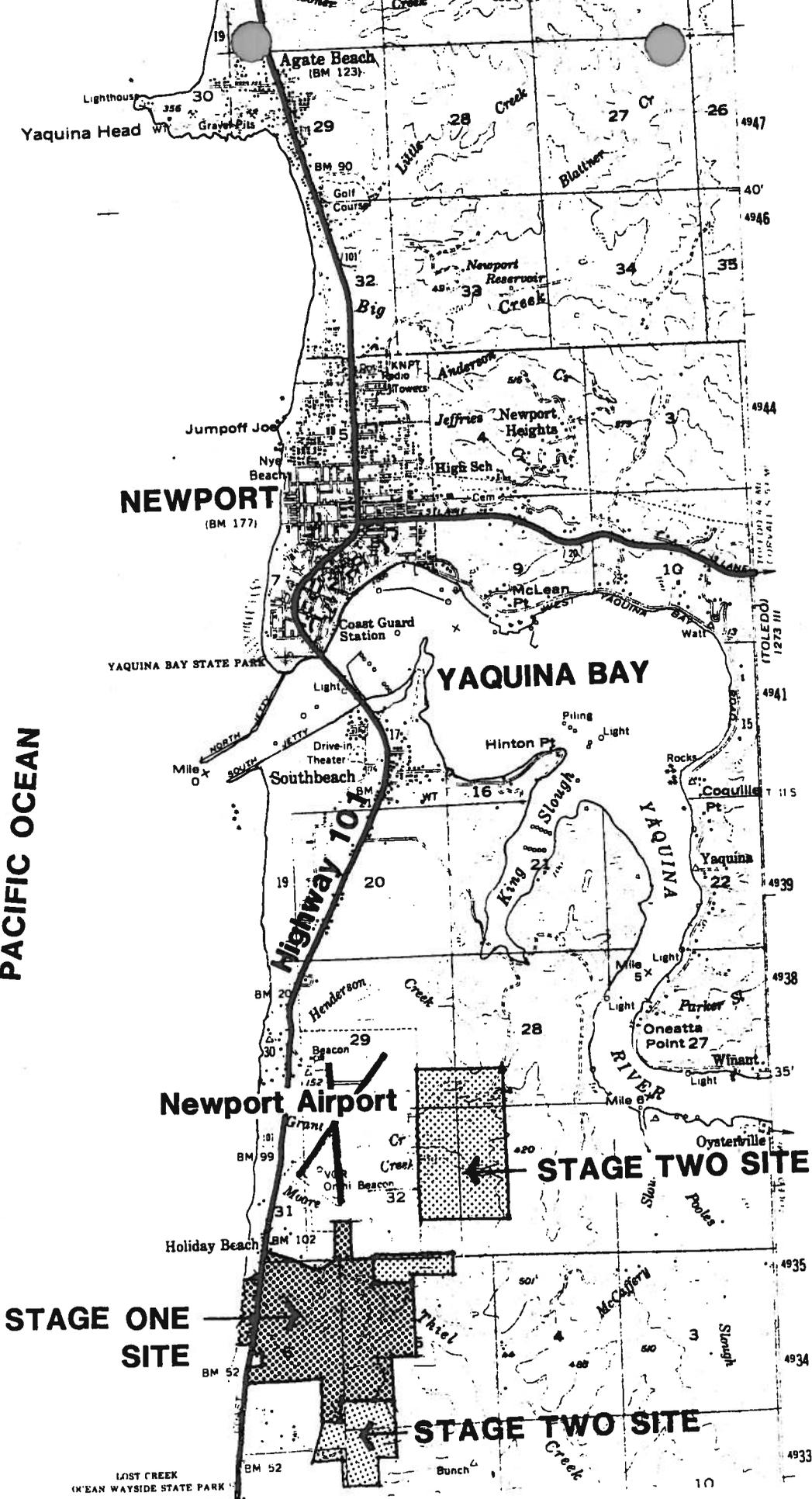
Lincoln County Property Report

Account # & LEGAL DESCRIPTION	ACCOUNT DETAILS	OWNER AND ADDRESS
Account #: R500182 Map Taxlot: 12-11-05-00-00801-00 Map: 12s11w05 Legal: TWN5HP 12, RNG 11, ACRES 51.09, POTENTIAL ADDITIONAL TAX LIABILITY, DOC201106639 TaxCode: 126 Acres: 51.09	Neighborhood: <u>RUTB</u> PropertyClass: <u>640</u>	Owner: LETTENMAIER TERRANCE M & Address: WEITKAMP LAURIE A PO BOX 550 SOUTH BEACH, OR 97366 Situs:

IMPROVEMENTS								VALUE AND SALES HISTORY				
Description	Area	Yr Built	Foundation	Heat	Plumbing	BDMS	Value	Value Year	Imp.	Land	Total Market	Total Assessed
...NoInventory								2012	0	513,330	513,330	17,660
								2011	0	576,750	576,750	17,140
								2010	0	654,940	654,940	16,650
								2009	0	719,690	719,690	16,170
								2008	0	774,260	774,260	15,700
								2007	0	697,580	697,580	15,240
								SaleDate	Price	Document	Type	Code
								7/13/2011	230000	201106639	32	WD
								7/9/2009	222000	200908197	28	SWD

LAND				RELATED ACCOUNTS		DISCLAIMER
Description	Acres	Market Value	Special Use Value	<u>R522062</u>	<u>R465957</u>	
DESIGNATED FOREST	5.83	58,580	2,270			<i>This report was produced using the Lincoln County assessment information. This information is maintained by the county to support its governmental activities. The County is not responsible for errors, omissions, misuse or misinterpretation. Report created: 1/28/2013 using tax data exported 10/2012</i>
DESIGNATED FOREST	38.32	385,020	12,690			
DESIGNATED FOREST	6.94	69,730	2,700			

PACIFIC OCEAN



VICINITY MAP

FIG. 1



Derrick Tokos

From: Bonnie Serkin <Bonnie@eenw.com>
Sent: Thursday, January 31, 2013 4:26 PM
To: Derrick Tokos
Cc: Will Emery
Subject: RE: De-annexation of a portion of Wolf Tree resort for 2-4-13 cc mtg

Hi Derrick-

Steel String, Inc. as owner of the 600+ acres known as the Wolf Tree Resort, has no objection to the de-annexation of approximately 71 acres that is adjacent to our resort property. We would appreciate your clarifying in the proceedings that our Wolf Tree Resort property is not affected by this de-annexation. It would also be appreciated if the "71-acre Lettenmaier parcel on SE 98th St." could be referred to as just that in the proceedings so that there is no confusion with our Wolf Tree Resort property.

If it is appropriate to include in the findings that de-annexation of the 71-acre parcel has no effect on the contiguity of our parcel with the City of Newport by means of its adjacency to the airport property, that would be useful as well.

Will the de-annexation also remove the 71-acre parcel from the UGB? If so, and I suppose even if not, just in case there is ever a need to extend utility services through the Lettenmaier parcel to our resort property, we would appreciate your considering adding a condition of approval for the de-annexation that requires the Lettenmaiers to consent to any future annexation (and re-inclusion in the UGB) of a utility corridor for the benefit of our resort property. We understand that it is more likely services would be extended through the airport or from Hwy 101 via 98th St., but just in case an alternate route is necessary, we would like to protect our access to services.

Thank you.

Bonnie Serkin
Chief Operating Officer
Steel String, Inc.

From: Derrick Tokos [mailto:D.Tokos@NewportOregon.gov]
Sent: Tuesday, January 29, 2013 1:32 PM
To: Bonnie Serkin; Will Emery
Subject: FW: De-annexation of a portion of Wolf Tree resort for 2-4-13 cc mtg

FYI

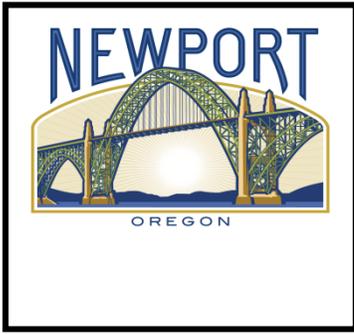
From: Derrick Tokos
Sent: Tuesday, January 29, 2013 10:19 AM
To: Cheryl Atkinson
Cc: Jim Voetberg; Peggy Hawker
Subject: De-annexation of a portion of Wolf Tree resort for 2-4-13 cc mtg

Here are the materials for this agenda item.

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



Agenda Item # IX.C. _____
Meeting Date June 3, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Consideration of an ordinance amending the effective date of Sections 9, 10, and 11 of Ordinance No. 2031 Relating to Clear Vision Standards

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: _____

ISSUE BEFORE THE COUNCIL: Consideration of whether or not it is in the public interest to change the effective date of revisions to the City of Newport Municipal Code relating to clear vision standards contained in Ordinance 2031, which puts in place a program for managing the City’s urban tree canopy. Ordinance 2031 was adopted as part of the City’s effort to obtain a Tree City USA designation from the National Arbor Day Foundation. The ordinance will become effective upon preparation and adoption of a tree plan, which is being developed by the City of Newport’s Parks and Recreation Committee.

STAFF RECOMMENDATION: Staff recommends that the Council adopt the ordinance, in that the proposed changes to clear vision requirements are not dependent upon the existence of a “tree plan” unlike the other provisions of Ordinance 2031.

MOTIONS FOR ADOPTION:

MOTION FOR EMERGENCY ADOPTION: I move for reading by title only of Ordinance 2054 amending provisions of the City of Newport Municipal Code relating to clear vision standards; for adoption by roll call vote; and that the ordinance be deemed an emergency effective immediately following review by the City Attorney and signature by the Mayor.

MOTION TO APPROVE WITHOUT EMERGENCY CLAUSE: I move for reading by title only of Ordinance 2054 amending provisions of the City of Newport Municipal Code relating to clear vision standards and for adoption by roll call vote subject to review by the City Attorney and signature by the Mayor.

KEY FACTS AND INFORMATION SUMMARY: Sections 9, 10, and 11 of Ordinance No. 2031 pertain to standards the City of Newport has in place related to clear vision areas (i.e. portions of a property adjacent to a street intersection that must be kept clear of sight obscuring obstructions in order to ensure traffic safety). The changes were needed because Chapter 9.25 of the Newport Municipal Code (NMC) and what at the time was Section 2-4-3 of the Zoning Ordinance (now NMC Chapter 14.17) contained conflicting standards related to the establishment and maintenance of clear vision areas. The amendments eliminate Chapter 9.25 and consolidate its provisions into NMC Chapter 14.17. The amendments further change how clear vision areas at street intersections are measured, using the curb line or edge of the road surface as opposed to the property boundary. This will make it easier for the public and staff to verify the size of the clear vision area in the field and avoids the need for costly surveys. The amendments also limit the City’s line of sight restrictions on properties with more than one street frontage (i.e. second front yards) to the cleared vision areas. This allows larger fences and plantings in front yards where there is no street intersection.

Changes to Section 9 include a cross reference to NMC 8.10.060. This provision is part of the City’s Nuisance Code, and requires further revision as part of Ordinance No 2054 to make it expressly clear that vegetation, walls, fences, or structures within a clear vision are constitute a safety hazard. Language in Section 9 of Ordinance No. 2031 reads as follows:

“Any vegetation, wall, fence, or other vision-obstructing structure exceeding 36 inches in height measured from the top of the curb, or where no curb exists, from the street centerline grade. Vegetation, walls, fences, or structures obstruct vision if they are within a clear vision area pursuant to Section 2-4-3 of the Newport Zoning Ordinance and, in the determination of the city manager, constitutes a safety hazard.”

With Ordinance No. 2054 that language will read as follows:

“Any vegetation, wall, fence, or other vision-obstructing structure exceeding 36 inches in height measured from the top of the curb, or where no curb exists, from the street centerline grade. Vegetation, walls, fences, or structures that obstruct vision constitute a safety hazard if they are within a clear vision area pursuant to Chapter 14.17 of the Newport Municipal Code.”

Considering that cleared vision standards are needed to ensure public safety, the Council may elect to adopt Ordinance 2054 by emergency, making it effective immediately upon review by the City Attorney and signature by the Mayor. Since Ordinance 2031 amended the Newport Zoning Ordinance it was required to go through a legislative adoption process with a review and recommendation from the Newport Planning Commission. Required notice of those proceedings is included in the case record (File No. 5-Z-11). Similar notice is not required for Ordinance No 2054 since the only change to the Zoning Ordinance relates to the citations and effective date of those provisions.

OTHER ALTERNATIVES CONSIDERED: None.

CITY COUNCIL GOALS: This ordinance does not relate to any specific Council goals.

ATTACHMENT LIST:

- Ordinance 2054 with emergency clause
- Ordinance 2054 without emergency clause
- Ordinance 2031

FISCAL NOTES: No fiscal impacts have been identified.

CITY OF NEWPORT
ORDINANCE NO. 2054
CITY OF NEWPORT
ORDINANCE NO. 2054

An Ordinance Amending the Effective Date
Of Sections 9, 10, and 11 of
Ordinance No. 2031
Relating to Clear Vision Standards

WHEREAS, the Newport City Council adopted Ordinance No. 2031, an ordinance amending the City of Newport Zoning Ordinance and Newport Municipal Code to establish criteria for the management of the city's urban tree canopy on March 5, 2012; and

WHEREAS, Ordinance No. 2031 was to become effective at such time as a tree plan was developed by the Parks and Recreation Committee, and approved by the City Council; and

WHEREAS, the Parks and Recreation Committee is in the process of developing a tree plan, but the plan is not yet completed; and

WHEREAS, city staff has found it increasingly necessary and important to implement the clear vision standards referenced in Sections 9, 10, and 11 of Ordinance No. 2031; and

WHEREAS, the city complied with all land use notice requirements during the process of adopting Ordinance No. 2031; and

WHEREAS, after the adoption of Ordinance No. 2031, the City Council codified the Newport Zoning Ordinance requiring the renumbering of the city's zoning provisions; and

WHEREAS, the City of Newport has determined that the clear vision standards referenced in Ordinance No. 2031, Sections 9, 10, and 11, are critical in providing necessary language and enforcement tools, relative to clear vision requirements, for the continued peace, health, and safety of the citizens of the City of Newport;

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Sections 9, 10, and 11 of Ordinance No. 2031 are hereby effective upon signature by the Mayor.

Section 2. Exhibit A of Ordinance No. 2054 enacts Chapter 8.10.060(D) of the Newport Municipal Code.

Section 3. Exhibit B of Ordinance No. 2054 repeals Chapter 9.25, Intersection Safety, of the Newport Municipal Code.

Section 4. Exhibit C of Ordinance No. 2054 enacts Chapter 14.17 of the Newport Municipal Code as shown in the attached Exhibit A.

Section 5. This ordinance is deemed an emergency for the continued peace, health, and safety of the citizens of the City of Newport, and is effective upon its passage by the City Council.

Adopted by the Newport City Council on June 3, 2013.

Signed by the Mayor on the _____ day of _____, 2013.

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

Approved as to form:

City Attorney

EXHIBIT A

(Section 9 of Ordinance No. 2031)

8.10.060

- D. Any vegetation, wall, fence, or other vision-obstructing structure exceeding 36 inches in height measured from the top of the curb, or where no curb exists, from the street centerline grade. Vegetation, walls, fences, or structures that obstruct vision constitute a safety hazard if they are within a clear vision area pursuant to Chapter 14.17 of the Newport Municipal Code.

DRAFT

EXHIBIT B

(Section 10 of Ordinance No. 2031)

EXHIBIT C

(Section 11 of Ordinance No. 2031)

14.17.001 CLEAR VISION AREAS

14.17.010 Purpose. The purpose of this section is to promote safety at intersections and drive access points by reducing obstructions to clear vision at intersections.

14.17.020 Clear Vision Area Defined. A vision clearance area includes the following:

- A. At the intersection of two streets, a triangle formed by the intersection of the curb lines, with each leg of the vision clearance triangle being a minimum of 35 feet in length. Where curbs are absent the edge of the asphalt or future curb location shall be used as a guide. The City Engineer may modify this requirement, in writing, upon finding that more or less distance is required (i.e., due to traffic speeds, roadway alignment, etc.).
- B. A portion of a lot subject to a front yard setback as defined in Section 14.11.001. A clear vision area does not include that portion of a second front yard outside of the area described in 14.17.020(A).

14.17.030 Clear Vision Area Requirements. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding three feet in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees located within a clear vision area shall have their branches and foliage removed to the height of eight feet above the grade.

14.17.040 Maintenance of Clear Vision Areas. It shall be the duty of the person who owns, possesses, or controls real property or right-of-way adjacent thereto, to maintain a clear vision area in the manner provided in this section.

14.17.050 Exemptions for Buildings. A building erected in compliance with zoning ordinance setbacks is exempt from this section.

14.17.060 Liability. The person owning, in possession of, occupying or having control of any property within the city shall be liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or trim obstructions and vegetation as required by this section. Furthermore, the person shall be liable to the city for any judgment or expense incurred or paid by the city, by reason of the person's failure to satisfy the obligations imposed by this section.

14.17.070 **Variances**. The requirements of this section shall be subject to the processes and criteria contained in Section 14.33.001.

DRAFT

CITY OF NEWPORT
ORDINANCE NO. 2054
CITY OF NEWPORT
ORDINANCE NO. 2054

An Ordinance Amending the Effective Date
Of Sections 9, 10, and 11 of
Ordinance No. 2031
Relating to Clear Vision Standards

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WHEREAS, Ordinance No. 2031 was to become effective at such time as a tree plan was developed by the Parks and Recreation Committee, and approved by the City Council; and

WHEREAS, the Parks and Recreation Committee is in the process of developing a tree plan, but the plan is not yet completed; and

WHEREAS, city staff has found it increasingly necessary and important to implement the clear vision standards referenced in Sections 9, 10, and 11 of Ordinance No. 2031; and

WHEREAS, the city complied with all land use notice requirements during the process of adopting Ordinance No. 2031; and

WHEREAS, after the adoption of Ordinance No. 2031, the City Council codified the Newport Zoning Ordinance requiring the renumbering of the city's zoning provisions; and

WHEREAS, the City of Newport has determined that the clear vision standards referenced in Ordinance No. 2031, Sections 9, 10, and 11, are critical in providing necessary language and enforcement tools, relative to clear vision requirements, for the continued peace, health, and safety of the citizens of the City of Newport;

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Sections 9, 10, and 11 of Ordinance No. 2031 are hereby effective 30 days after adoption of the ordinance.

Section 2. Exhibit A of Ordinance No. 2054 enacts Chapter 8.10.060(D) of the Newport Municipal Code.

Section 3. Exhibit B of Ordinance No. 2054 repeals Chapter 9.25, Intersection Safety, of the Newport Municipal Code.

Section 4. Exhibit C of Ordinance No. 2054 enacts Chapter 14.17 of the Newport Municipal Code as shown in the attached Exhibit A.

Adopted by the Newport City Council on June 3, 2013.

Signed by the Mayor on the _____ day of _____, 2013.

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

Approved as to form:

City Attorney

EXHIBIT A

(Section 9 of Ordinance No. 2031)

8.10.060

- D. Any vegetation, wall, fence, or other vision-obstructing structure exceeding 36 inches in height measured from the top of the curb, or where no curb exists, from the street centerline grade. Vegetation, walls, fences, or structures that obstruct vision constitute a safety hazard if they are within a clear vision area pursuant to Chapter 14.17 of the Newport Municipal Code.

DRAFT

EXHIBIT B

(Section 10 of Ordinance No. 2031)

EXHIBIT C

(Section 11 of Ordinance No. 2031)

14.17.001 CLEAR VISION AREAS

14.17.010 Purpose. The purpose of this section is to promote safety at intersections and drive access points by reducing obstructions to clear vision at intersections.

14.17.020 Clear Vision Area Defined. A vision clearance area includes the following:

- A. At the intersection of two streets, a triangle formed by the intersection of the curb lines, with each leg of the vision clearance triangle being a minimum of 35 feet in length. Where curbs are absent the edge of the asphalt or future curb location shall be used as a guide. The City Engineer may modify this requirement, in writing, upon finding that more or less distance is required (i.e., due to traffic speeds, roadway alignment, etc.).
- B. A portion of a lot subject to a front yard setback as defined in Section 14.11.001. A clear vision area does not include that portion of a second front yard outside of the area described in 14.17.020(A).

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14.17.040 Maintenance of Clear Vision Areas. It shall be the duty of the person who owns, possesses, or controls real property or right-of-way adjacent thereto, to maintain a clear vision area in the manner provided in this section.

14.17.050 Exemptions for Buildings. A building erected in compliance with zoning ordinance setbacks is exempt from this section.

14.17.060 Liability. The person owning, in possession of, occupying or having control of any property within the city shall be liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or trim obstructions and vegetation as required by this section. Furthermore, the person shall be liable to the city for any judgment or expense incurred or paid by the city, by reason of the person's failure to satisfy the obligations imposed by this section.

14.17.070 **Variances**. The requirements of this section shall be subject to the processes and criteria contained in Section 14.33.001.

DRAFT



Agenda Item # _____
Meeting Date June 3, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Authorization to Proceed with Real Property Exchange Involving City Property at 765 NW Beach Drive and 802 NW 3rd Street in Nye Beach

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: _____

ISSUE BEFORE THE COUNCIL: Exchange of approximately 525 sq. feet of city owned property immediately south and upslope of the Nye Beach Pump Station (Tax Lot 1000, 11-11-05-CC) for 150 square feet of property owned by Will and Tara Devenport adjacent to the staircase accessing the Visual Arts Center from NW 3rd Street (Tax Lot 1000, 11-11-05-CC). The Devenport’s will also dedicate a six (6) foot sidewalk easement along their NW Beach Drive frontage and will cover surveying and permit expenses.

STAFF RECOMMENDATION: Staff recommends the City Council proceed with the property exchange.

PROPOSED MOTION: I move to authorize the Devenport’s to include the subject, city-owned property in a partition plat and for the Mayor to sign said plat in order to implement the property exchange discussed at this meeting.

KEY FACTS AND INFORMATION SUMMARY: Will and Tara Devenport own property adjacent to the Nye Beach Pump Station and Visual Arts Center. It possesses frontage along both NW 3rd Street and NW Beach Drive and is developed with a single family dwelling. The property is configured such that two developable lots could be created. A new lot containing the existing home would take access from NW Beach Drive. The other new lot would access NW 3rd Street. Unfortunately, the property is about 175 sq. feet short of possessing enough land area for both lots to meet the 3,000 sq. ft. minimum lot size that applies to Nye Beach (NMC 14.30.060(B)(9)). The land is zoned C-2/ Tourist-Commercial.

In order to secure enough land to divide the property, the Devenport’s have requested that the City agree to a land exchange. The City would convey 525 sq. ft. of the undeveloped property that it owns immediately upslope of the Nye Beach Pump Station in exchange for 150 sq. ft. of the Devenport’s property adjacent to the public staircase that provides access to the Visual Arts Center. The Devenport’s would also grant the City a six (6) foot easement along their NW Beach Drive frontage for a future sidewalk. A deck attached to the Devenport dwelling encroaches onto the City’s property, and the public staircase encroaches onto the Devenport property. The exchange would resolve both of these encroachments.

A partition plat is required to reconfigure the two properties and to divide the Devenport piece into two parcels. This is a land use action that once completed will result in survey document that must be signed by all parties. The Devenport’s will be covering the surveying and permit expenses.

NMC 2.25.110 authorizes the city to trade property with private entities, provided it receives equivalent value in return. An appraisal is required if the value of the property exceeds \$25,000. Considering the small amount of land area involved, an appraisal is not warranted. While the City is receiving less land in the exchange, the fact that it is also receiving a sidewalk easement and that the Devenport’s are covering the surveying and permit expenses offsets this

difference. Further, the fact that the transfer resolves two structural encroachments is a net benefit to the community, which is a factor that the Council should consider.

OTHER ALTERNATIVES CONSIDERED: None.

CITY COUNCIL GOALS: This request is not related to any adopted Council goals.

ATTACHMENT LIST:

- Lincoln County Assessor's reports for the subject properties
- Assessment map of the properties
- Map showing the land area to be exchanged
- NMC 2.25.110

FISCAL NOTES: This property exchange resolves encroachments affecting both the City and Devenport's property and facilitates the creation of an additional developable lot in Nye Beach which should result in a positive impact to the City's tax base.

Lincoln County Property Report

Account # & LEGAL DESCRIPTION	ACCOUNT DETAILS	OWNER AND ADDRESS
Account #: R305456 Map Taxlot: 11-11-05-CC-10000-00 Map: 11s11w05CC Legal: NYE AND THOMPSON ADDN.-NEWPORT, BLOCK 12, LOT 1 PTN OF, DOC200900285 TaxCode: 107 Acres:	Neighborhood: <u>NS11</u> PropertyClass: <u>121</u>	Owner: DEVENPORT WILLIAM B & Address: DEVENPORT TARA L 750 NW 3RD ST NEWPORT, OR 97365 Situs: 750 NW 3RD ST

IMPROVEMENTS								VALUE AND SALES HISTORY				
Description	Area	Yr Built	Foundation	Heat	Plumbing	BDMS	Value	Value Year	Imp.	Land	Total Market	Total Assessed
MAIN AREA	576	1915	CB	WALL	B	2	32210	2012	56,270	498,980	555,250	179,420
FINISHED ATTIC	320	1915		WALL			13060	2011	56,600	552,340	608,940	174,200
CEDAR DECK/OUTDR WD	192						1700	2010	47,940	551,790	599,730	159,070
MULTI-PURPOSE SHED	144		FR				2010	2009	87,780	631,390	719,170	154,440
COVERED PORCH	24	1915					410	2008	94,490	591,740	686,230	149,950
DECK RAIL	14						600	2007	28,510	542,870	571,380	112,340
CEDAR DECK/OUTDR WD	56						960					
MAIN AREA	120	2010	CONC				5320					
								SaleDate	Price	Document	Type	Code
								2/11/2006	300000	200602752	27	WD

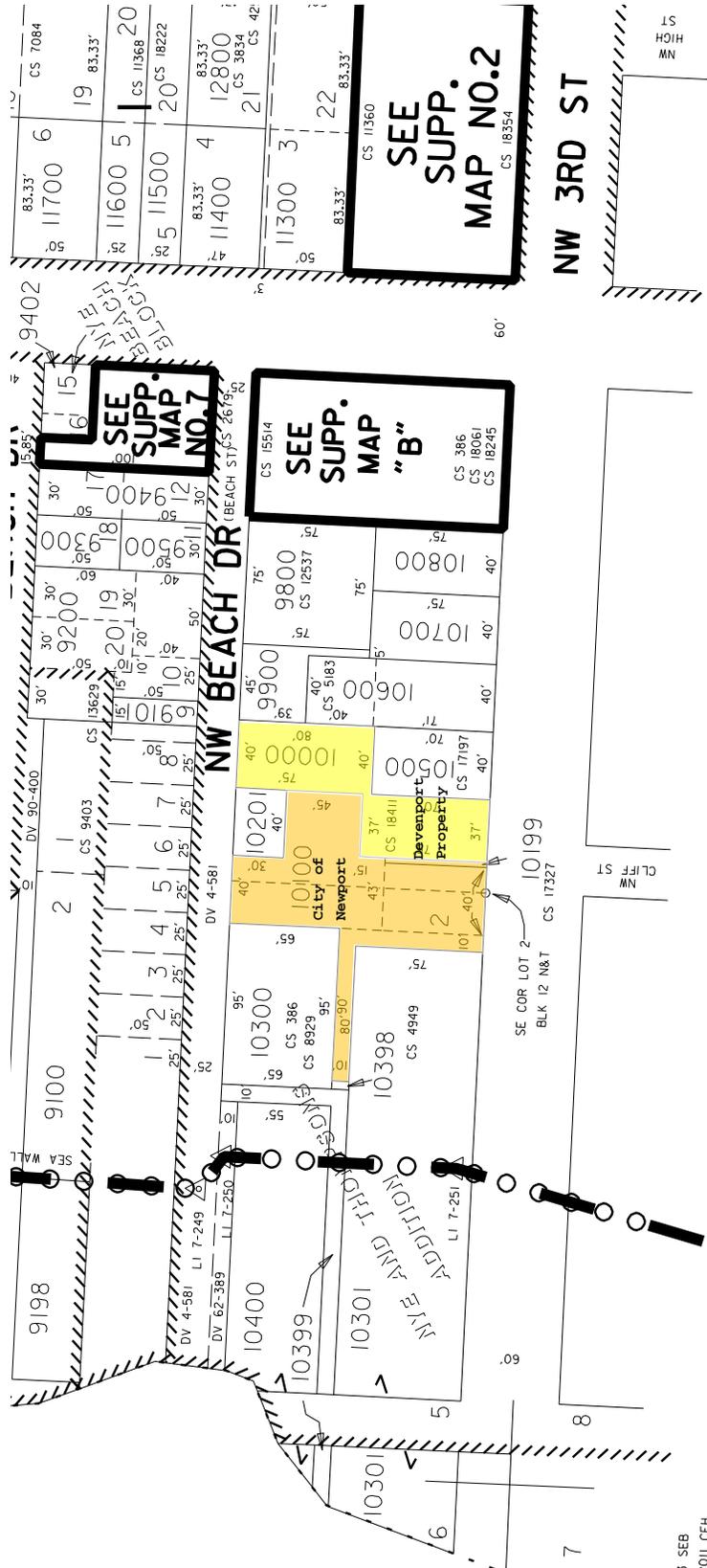
LAND				RELATED ACCOUNTS	DISCLAIMER
Description	Acres	Market Value	Special Use Value	No Related Accounts	<i>This report was produced using the Lincoln County assessment information. This information is maintained by the county to support its governmental activities. The County is not responsible for errors, omissions, misuse or misinterpretation. Report created:5/30/2013 using tax data exported 10/2012</i>
COM DEV OCEANVIEW SITE	0.07	290,300			
SITE DEVELOPMENT		12,000			
COM DEV OCEANVIEW SITE	0.06	196,680			

Lincoln County Property Report

Account # & LEGAL DESCRIPTION	ACCOUNT DETAILS	OWNER AND ADDRESS
Account #: R116302 Map Taxlot: 11-11-05-CC-10100-00 Map: 11s11w05CC Legal: NYE AND THOMPSON ADDN.-NEWPORT, BLOCK 12, LOT 1 & 2 PTNS OF, MF245-2077 TaxCode: 107 Acres:	Neighborhood: N516 PropertyClass: 941	Owner: CITY OF NEWPORT Address: CITY MANAGER 169 SW COAST HWY NEWPORT, OR 97365 Multisitus: 765 NW BEACH DR ;802 NW 3RD ST ;775 NW BEACH DR

IMPROVEMENTS								VALUE AND SALES HISTORY				
Description	Area	Yr Built	Foundation	Heat	Plumbing	BDMS	Value	Value Year	Imp.	Land	Total Market	Total Assessed
MAIN AREA	750	2002	CONC	NONE	4T;4LAV		281670	2012	281,670	897,750	1,179,420	0
								2011	281,670	997,500	1,279,170	0
								2010	349,210	997,500	1,346,710	0
								2009	238,840	1,140,000	1,378,840	0
								2008	238,840	1,068,750	1,307,590	0
								2007	265,200	992,090	1,257,290	0
								SaleDate	Price	Document	Type	Code
								NoSales				

LAND				RELATED ACCOUNTS	DISCLAIMER
Description	Acres	Market Value	Special Use Value	No Related Accounts	<i>This report was produced using the Lincoln County assessment information. This information is maintained by the county to support its governmental activities. The County is not responsible for errors, omissions, misuse or misinterpretation. Report created:5/30/2013 using tax data exported 10/2012</i>
COM DEV OCEANVIEW SITE	0.22	897,750			



SEE
SUPP.
MAP NO.2

SEE
SUPP.
MAP NO.7

SEE
SUPP.
MAP
"B"

NW 3RD ST

NW
HIGH
ST

SEE MAP II

'02/2003 SEB
03/25/2011 CEH

section shall be according to terms included in the lease.

2.25.090 Transfer to another Governmental Entity

The city may transfer real property of any type to another governmental entity or to a non-profit entity, with or without consideration, for so long as the property is used for public purposes by the entity to which it is transferred. The agreement shall provide for return of the property to the city if the property is no longer used by the transferee for public purposes.

2.25.100 Special Case Property

The city shall comply with all agreements and restrictions applicable to special case property. The city may transfer special case property following any of the applicable procedures provided by this chapter, subject to the restrictions imposed by deed or agreement. If the deed or agreement provides a procedure for transfer by the city, the city may transfer the property as provided by the deed or agreement.

2.25.110 Exchange of Real Property

- A. The city may trade or exchange real property with other governmental entities or with private parties.
- B. The city shall exchange real property with private entities only if the city receives at least equivalent value for the property it transfers. Payments may be made to compensate for any imbalance in the value of the property exchanged.
- C. For exchanges with private entities, the city shall require or obtain an appraisal if the value of the property transferred by the city or received by the city exceeds \$25,000.00.
- D. In determining the relative value of the properties exchanged, in addition to the factors normally considered in determining the value of property, the city may consider the following factors:
 - 1. Whether the property is adjacent to or otherwise enhances the value of other property the city owns.

2. The suitability of the property for city use.
3. Whether the transfer of the property being transferred by the city to a private party will result in a benefit to the city or community. Potential benefits may include allowing more cohesive development of an area, providing needed housing or employment opportunities, or increasing the city's tax base.

(Chapter 2.25 adopted by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008)

2.25.120 Lease of Real Property

- A. The City Council may authorize a lease of city-owned real property for a period not exceeding 99 years.
- B. The City Council is required to determine that the property is not needed for public use, and that the public interest would be furthered by leasing the property.
- B. The consideration for the lease may be cash or real property, or both.
- C. Every lease shall be authorized by order of the City Council, executing the same and providing terms and conditions as may be fixed and determined by the City Council.
- D. The lease may provide that the lessee shall pay ad valorem taxes assessable against the leased property, or that the city shall pay these taxes, in which case, the anticipated amount of taxes shall be taken into consideration in determining the rental charge.

(Chapter 2.25.120 enacted by Ordinance No. 2029, adopted February 21, 2012; effective March 22, 2012.)



Agenda Item # _____
Meeting Date 11/5/12

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Consideration of Award for the Tourism Marketing Grant for Newport Symphony Orchestra

Prepared By : C. Breves Dept Head Approval: Voetberg City Mgr Approval: _____

Issue Before the Council: The issue before Council is consideration of a tourism marketing grant application from the Newport Symphony Orchestra, in the amount of \$5,000, for assistance with marketing for the 2013-14 season expansion.

Staff Recommendation: This is entirely a City Council decision, although the current procedure requires a review and recommendation by the Destination Newport Committee.

Proposed Motion: I move to approve the tourism marketing grant fund application, submitted by the Newport Symphony Orchestra, for assistance with marketing and advertising for the expansion of the FY 2013 -14 season, in the amount of \$5,000.

Key Facts and Information Summary: The Newport Symphony Orchestra requested \$5,000 to assist with marketing efforts and event promotion for the FY 2013-14 season. The symphony would like to expand their season by adding matinees. The Newport Symphony will partner with local hotels and B&B, who commit to cross-promotion, to provide symphony getaways. The Destination Newport Committee discussed the request and is forwarding a positive recommendation.

Other Alternatives Considered: None

City Council Goals: The request does not address a specific City Council goal.

Attachment List: Tourism Marketing Grant Fund Application submitted by the Newport Symphony Orchestra.

Fiscal Notes: To date three events have been funded using these monies. If approved, this funding would come from TRT monies that have been set aside for this use. If this request is approved, the remaining balance would be \$10,000.

General Information:

Name of Applicant Organization: Newport Symphony Orchestra

Mailing Address: PO Box 1617

City, State, Zip: Newport, OR 97365

Telephone: 541-574-0614 Fax: _____

E-Mail Address: info@NewportSymphony.org

Principal Contact (If different from Applicant): Glenn Edwards

Mailing Address (If different from Applicant): 1410 NW Penny Ln

City, State, Zip: Albany, OR 97321

Telephone: 541-979-4829 Fax: _____

E-Mail Address: glenn.edwards@sisolutions.info

Date(s) and Time(s) of Event: _____

Description of Event or Activity*: Adding Matinee Concerts for Season spanning September to April

Nature of Event or Activity:

Single Day Event _____

Multi-night local lodging event _____ days

Extended calendar event. _____ days

Amount of Funding Requested: \$ 5,000-

Total Event/Activity Budget: \$ 20,000

What specific marketing expenditures will the granted funds be used for?*

Provide promotional/publicity tickets for first attendance for groups such as senior centers, extended marketing radius of up to 90 miles. Plus advertising funds for extended radius.

List event/activity supporters or partners*:

OCCA, MO's, David Ogden Stiers, Kanette Hoefler, Discovery Boat Tours, Don Taylor / First Presbyterian Church

*Use additional sheets as necessary.

Applicant/organization must be a non-profit corporation. Attach a copy of the IRS determination letter.

Has applicant received funding in prior years from the city for this event/activity? If yes, when:

Projected Event/Activity Impact:

Describe how the event/activity will affect the Newport economy (e.g., room nights, number of visitors/attendees, restaurant sales, retail sales, etc.):*

The addition of matinees will result in 50-70 professional musicians staying an additional night and day in Newport. Sunday afternoon concerts will add numerous "day trips" from farther away benefitting seniors. Opening up seats for Saturday night concerts will also allow for marketing overnight staying. Currently Saturday night concerts are already pre-sold at an 80% rate through Season ticket holders + early sales. About 1/3 of our Season ticket holders switched to the matinee for our January test run.

Financial Reporting Requirements:

Please provide a proposed budget of revenues and expenditures in a form similar to the following:

PROPOSED REVENUES			
Source #1	<u>Ticket Sales</u>	Amount	<u>\$10,000</u>
Source #2	<u>Individual Donations</u>	Amount	<u>\$2,500</u>
Source #3	<u>Business Sponsors</u>	Amount	<u>\$2,500</u>
Source #4	<u>Newport Marketing Grant</u>	Amount	<u>\$5,000</u>
Source #5	<u></u>	Amount	<u>\$</u>
TOTAL REVENUES			<u>\$20,000</u>

*Use additional sheets as necessary.

PROPOSED EXPENDITURES

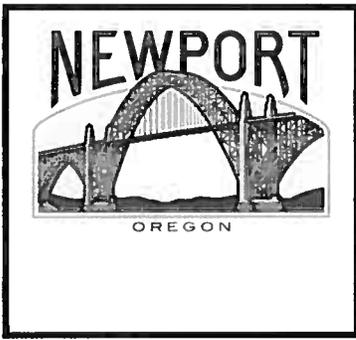
Use #1	<u>Additional Advertising</u>	Amount	\$ <u>2,000</u>
Use #2	<u>Promotional Ticketing</u>	Amount	\$ <u>3,000</u>
Use #3	<u>Player Stipends</u>	Amount	\$ <u>13,000</u>
Use #4	<u>PAC Rentals } →</u>	Amount	\$ <u>2,000</u>
Use #5	<u>Production Costs</u>	Amount	\$ _____
Use #6	_____	Amount	\$ _____
Use #7	_____	Amount	\$ _____
Use #8	_____	Amount	\$ _____
Use #9	_____	Amount	\$ _____
Use #10	_____	Amount	\$ _____
TOTAL EXPENDITURES			\$ <u>20,000</u>

REVENUES MINUS EXPENDITURES \$ -0-

As a final condition to accepting granted funds, the applicant agrees to provide the City of Newport with a final report summarizing result of the event/activity (e.g., attendance, local and regional publicity, lodging occupancy, closing revenue and expenditure report, etc.), with a detailed and verified accounting.

Feb 28, 2013
Date


Applicant Signature
Glenn Edwards
Applicant Printed Name



Agenda Item # IX. F.
Meeting Date 6/3/13

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Consideration of Agreement with the Oregon Coast Council for the Arts for Operation of the Performing Arts Center and Visual Arts Center

Prepared By: Hawker Dept Head Approval: ph City Manager Approval: _____

Issue Before the Council: The issue before Council is consideration of an agreement with the Oregon Coast Council for the Arts for the operation of the Performing Arts Center and Visual Arts Center.

Staff Recommendation: This is a Council decision, although Council has approved similar agreements with OCCA in the past.

Proposed Motion: I move to approve the agreement with the Oregon Coast Council for the Arts for the operation of the Newport Performing Arts Center and Visual Arts Center.

Key Facts and Information Summary: The City has, for many years, had an agreement with OCCA regarding the management of the PAC and the VAC. If approved, this agreement, with a five-year term, would provide a payment to OCCA, by the city, of \$112,500, for the Fiscal Year 2013/2014, with future years' payments to be established through the budgeting process. The agreement outlines OCCA's and the city's responsibilities.

Other Alternatives Considered: None. The city has determined that no other entity is capable of and willing to provide the management services, and OCCA is, therefore, the sole source of the services provided under this agreement.

City Council Goals: None.

Attachment List: Agreement between the City of Newport and the Oregon Coast Council for the Arts.

Fiscal Notes: \$112,500 for FY2013/2014, and an amount to be determined through the budgeting process for the subsequent years of the agreement.

AGREEMENT

This agreement is between the City of Newport, an Oregon municipal corporation (City) and the Oregon Coast Council for the Arts, an Oregon nonprofit corporation (OCCA).

RECITALS

A. City owns the Performing Arts Center (PAC) located at 777 W. Olive Street. City also owns the Visual Arts Center (VAC) located at 777 NW Beach Drive. The PAC and the VAC are referred to as the "facilities."

B. OCCA is a duly organized and registered non-profit corporation and tax-exempt entity.

C. OCCA promotes and assists arts on the Oregon coast, including within the City of Newport.

D. OCCA contributed approximately \$600,000 of the \$1.7 million cost of construction and furnishing of the PAC, with its contributions totaling about thirty-five percent of the total costs.

E. The contribution by OCCA was based on the mutual understanding that the OCCA would have certain rights in the City's art and cultural facilities, including some or all management rights of the facilities, subject to the City's right to use those facilities.

F. OCCA for many years has managed the facilities with greater management responsibilities of the PAC and lesser responsibilities as to the VAC. Originally the management of the PAC was subject to a detailed written agreement, but in recent years, the documentation of the management agreements has been minimal.

G. City and OCCA wish to enter into an agreement that more clearly establishes their respective obligations and rights relating to the management of the facilities.

H. This agreement is not subject to competitive bidding because the agreement effectuates the rights the OCCA acquired through its investment in the PAC. Furthermore, it is exempt from competitive bidding because it is a contract for personal services because the management of the facility requires professional-level management services. Furthermore, the City has determined that no other entity is capable of and willing to provide the management services, and OCCA therefore is the sole source of the services provided under this agreement.

TERMS OF AGREEMENT

Basic Term

OCCA will continue to manage the PAC and will have some management of the VAC, pursuant to the understanding by which OCCA provided funding for the PAC. The City will pay OCCA for the management of the facilities, subject to the detailed terms of this agreement.

Detailed Terms

1. This agreement is effective July 1, 2013, and shall remain in effect for five years, subject to the availability of budgeted funds.
2. OCCA shall manage and operate the VAC and shall continue its current level of management of the PAC, subject to the right of the City to use the facilities in whole or in part. The City has the right to use any portion of the facilities at any time that the facilities have not been committed to other use.
3. City shall pay OCCA \$112,500 for the period from July 1, 2013, through June 30, 2014. Payments shall be made quarterly. The amount the City pays for future fiscal years shall be set through the City's budgeting process, and shall be based on an amount sufficient, when considered with other sources of revenue, to pay OCCA's costs incurred in the management of the facilities. The parties anticipate that there will be reasonable increases in the amount paid in future years. OCCA may terminate this agreement within 30 days of the final adoption of any annual city budget or amendment of the budget items authorizing expenditures if OCCA determines in good faith that the budgeted amount is insufficient.
4. OCCA's responsibilities are to manage both the long-term and day-to-day operation of the PAC, including booking and scheduling of activities, providing for maintenance, cleaning, and security. OCCA shall continue its current level of management of the VAC, but shall not be responsible for cleaning or maintenance. The parties contemplate that OCCA's responsibilities as to management of the VAC may be increased and that any increase in responsibilities will be accompanied by additional payment from the City. In its operation of the facilities, OCCA shall act as if it were a public entity in providing equal treatment, due process, and other constitutional rights to the users of the facilities.
5. This agreement for management of the facilities is not a transfer of an interest or a lease, and the City remains the sole owner of the facilities, which are not subject to taxation, given the City's status as a governmental entity. If for any reason this agreement is determined to result in the facilities or operations of the facilities being subject to taxation, the agreement shall be

considered void.

6. The sole purpose of the City in owning the facilities and of OCCA in operating the facilities is to have the facilities available for the purposes of public cultural enrichment, education, and other public purposes which include the mission and purposes of the OCCA. No party expects to receive any net income from operation of the facilities, and all incomes from the facilities shall be used for the facilities and programs offered by the facilities.

7. OCCA shall provide a manager for each facility and the staff (paid and volunteer) necessary to operate each facility. OCCA may use contractors to provide services, such as food services. OCCA shall be responsible for booking, organizing, publicizing events at the facilities, as well as for ticket sales, collecting other payments, and other activities related to operation of the facilities and events at the facilities.

8. OCCA shall be responsible for utilities at the PAC, other than phone, water, and sewer, which will be provided at no cost by the City. City will continue to be responsible for all utilities at the VAC.

9. OCCA shall be responsible for cleaning, general maintenance, and minor repairs of the PAC. City shall be responsible for major repairs to the structure and essential components (heating, ventilation, plumbing and basic building electricity) of the PAC and VAC and for cleaning, maintenance and repair of the VAC. OCCA shall be responsible for any repairs caused by its acts or omissions.

10. Revenue for use of the PAC shall be paid to OCCA. Rental and other revenue from the VAC shall continue to be paid directly to the City.

11. City shall maintain insurance on the structure and public liability insurance. OCCA shall obtain and maintain public liability insurance as well as insurance on any personal property within the facility.

12. OCCA shall prepare and present to the City an annual report on activities, including a summary of revenue and expenditures. In addition to the annual report, OCCA shall submit a request for funding for the next fiscal year by March of each year.

13. OCCA shall defend, indemnify, and hold harmless the City, as well as its officials and employees, from all liability and claims, including attorney fees, relating to any act or omission of OCCA and its agents.

14. OCCA shall comply with all provisions required to be in an agreement of this type by state contracting law. A copy of relevant provisions is attached.

15. The rights and obligations created and imposed by this agreement are not transferable.

16. OCCA shall comply with all applicable laws and ordinances, including Federal equal rights laws.

17. OCCA is an independent contractor and not an employee of the City for any purpose. Although OCCA may be an agent of the City for purposes of ORS 30.260 to 30.300, it is not an agent of the City for other purposes and has no authority to bind the City.

18. The parties may terminate this agreement by mutual agreement. Either party may terminate this agreement on written notice provided at least 180 days before the proposed termination date.

19. In the event this agreement is determined to be subject to any competitive process requirement, the agreement shall terminate on selection of a contractor to manage and operate the facilities through a competitive selection process. OCCA shall not be prohibited from bidding. OCCA shall continue until a contractor has been selected.

20. Contact information. The contacts for notice and other purposes are:

For City:

City Manager
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
541.574.0601

For OCCA:

Catherine Rickbone
Executive Director
Oregon Coast Council for the Arts
P.O. Box 1315
Newport, Oregon 97365
541.265.278

ATTACHMENT A

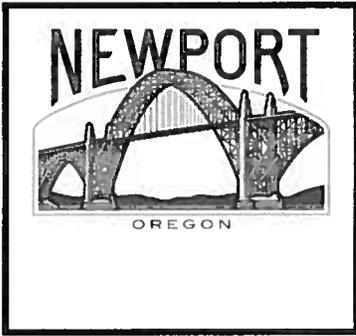
STATUTORY PROVISIONS

2796.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

2796.230 Condition concerning payment for medical care and providing workers' compensation.

- (1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- (2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.



Agenda Item # IX.G.
Meeting Date 6/3/13

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Appointment of Interim City Manager, Ted Smith, to the Lincom Executive Board

Prepared By: Hawker Dept Head Approval: ph City Manager Approval: _____

Issue Before the Council: The issue before Council is the appointment of Interim City Manager, Ted Smith, to the Lincom Executive Board.

Staff Recommendation: Staff recommends the appointment.

Proposed Motion: I move to appoint Interim City Manager, Ted Smith, to the Lincom Executive Board.

Key Facts and Information Summary: City Manager, Jim Voetberg, has been a member of the Lincom Executive Board. There will be a few additional meetings as Lincom is phased out, and it was requested that Council officially appoint the Interim City Manager, Ted Smith, to replace City Manager, Jim Voetberg, on this board.

Other Alternatives Considered: None.

City Council Goals: None.

Attachment List: None.

Fiscal Notes: None.



Agenda Item # IX. H.I.J.K.
Meeting Date June 3, 2013

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Consideration of an Adjustment to Utility Rates

Prepared By: Tim Gross, PW Dir/CE Dept Head Approval: _____ City Manager Approval: _____

Issue Before the Council:

Consideration of an adjustment to Utility rates to comply with a 5 year rate adjustment scenario for the purpose of generating sufficient revenue to implement a systematic program of improvements and replacement of the water, wastewater and storm water systems.

Staff Recommendation:

Adopt the following resolutions:

- Resolution 3628: A Resolution Setting Rates for Water Utility Charges, Fees, Deposits and Penalties, and Repealing Resolution No. 3592
- Resolution 3627: A Resolution Setting Wastewater Utility Rates and Repealing Resolution No. 3593
- Resolution 3629: A Resolution Setting Stormwater Utility Fees and Repealing Resolution No. 3594
- Resolution 3630: A Resolution Setting Utility Infrastructure Improvement Fees and Repealing Resolution No. 3595

Proposed Motions:

1. I move to adopt Resolution 3628: A Resolution Setting Rates for Water Utility Charges, Fees, Deposits and Penalties, and Repealing Resolution No. 3592
2. I move to adopt Resolution 3627: A Resolution Setting Wastewater Utility Rates and Repealing Resolution No. 3593
3. I move to adopt Resolution 3629: A Resolution Setting Stormwater Utility Fees and Repealing Resolution No. 3594
4. I move to adopt Resolution 3630: A Resolution Setting Utility Infrastructure Improvement Fees and Repealing Resolution No. 3595

Key Facts and Information Summary:

Attached for the Council's consideration are resolutions adjusting the billing rates for water and wastewater, and adjustments to the Utility Infrastructure and Stormwater Utility Fees. The rate

adjustments and fees proposed in these resolutions conform to the 5 year rate adjustment strategy identified and discussed in the FY13 and FY14 Budgeting Process, Council Meetings, and Public Hearings. The rates within the resolutions have been adjusted from 2012-13 rates as follows:

Water	Increase 15%
Wastewater	Increase 15%
Utility Infrastructure Fee	Increase 5%
Stormwater	Increase 5%

The details of the proposed resolutions adjusting utility rates are as follows:

Resolution 3628: A Resolution Setting Rates for Water Utility Charges, Fees, Deposits and Penalties, and Repealing Resolution No. 3592

The following changes to the FY13 water rate structure are proposed:

1. Section 1.A: Connection fees for the installation of new services have been adjusted to reflect actual costs.
2. Section 1.B: Wording has been revised to clarify when street cutting and asphalt restoration costs will be added to a new connection fee.
3. Section 2: The deposit for a new utility account has been modified. In the FY13 rate structure and before, the deposit for a new utility account was \$146 regardless of meter size. This deposit was discovered to be insufficient to cover losses the City incurred due to delinquent water bills. Utility customers can accrue up to 2 full months of utility billings before water is shut off for nonpayment. Consequently the deposit has been adjusted to cover 2 months of average usage. Likewise, larger meters have larger average monthly use, and the deposit has been set accordingly.
4. The base rate and cost per 1000 gallons over the 1st 1000 gallons have been increased 15%.

Resolution 3627: A Resolution Setting Wastewater Utility Rates and Repealing Resolution No. 3593

The following changes to the FY13 wastewater rate structure are proposed:

1. The base rate and cost per 1000 gallons have been increased 15%.
2. In previous rate structures residential properties outside the City limits but still served by City sewer have paid the same rates as City residents. The rate per 1000 gallons of water usage for services outside of City limits has been changed to be the same as commercial rates. This rate is \$0.85 per 1000 gallons higher than rates within the City which is equivalent to 14%. The base rate remains the same as services within the City.

Resolution 3629: A Resolution Setting Stormwater Utility Fees and Repealing Resolution No. 3594

The following changes to the FY13 Stormwater Utility Fee rate structure are proposed:

1. The Storm Water Utility Fee shall be increased by 5% from \$6.80 to \$7.14.

Resolution 3630: A Resolution Setting Utility Infrastructure Improvement Fees and Repealing Resolution No. 3595

The following changes to the FY13 Utility Infrastructure Improvement Fee rate structure are proposed:

1. The Utility Infrastructure Improvement Fee shall be increased by 5%. This fee varies depending upon meter size.

City Council Goals:

Not Applicable

Fiscal Notes:

- The financial impact of increasing water rates by 15% is a projected increase in revenue of \$385,000.
- The financial impact of increasing wastewater rates by 15% is a projected increase in revenue of \$575,000.
- The financial impact of increasing the Stormwater Utility Fee is a projected increase in revenue of \$25,040.
- The financial impact of increasing the Utility Infrastructure Improvement Fee by 5% is a projected increase in revenue of \$27,500.

Increases from water, wastewater, and Utility Infrastructure Improvement Fee revenue will be used to fund capital improvement projects. Additional fees collected from the Stormwater Utility Fee will be used to fund storm sewer maintenance and operations.

Attachment List:

- Resolution 3628: A Resolution Setting Rates for Water Utility Charges, Fees, Deposits and Penalties, and Repealing Resolution No. 3592
- Resolution 3627: A Resolution Setting Wastewater Utility Rates and Repealing Resolution No. 3593
- Resolution 3629: A Resolution Setting Stormwater Utility Fees and Repealing Resolution No. 3594
- Resolution 3630: A Resolution Setting Utility Infrastructure Improvement Fees and Repealing Resolution No. 3595

CITY OF NEWPORT

RESOLUTION NO. 3627

**A Resolution Setting Wastewater Utility Rates
And Repealing Resolution No. 3593**

Findings

- A. The City of Newport operates a wastewater utility that collects and treats wastewater from properties within the City and to some properties outside of the City limits but within the City's urban growth area.
- B. Newport Municipal Code Chapter 5.15 governs the operation and use of the wastewater utility. NMC Section 5.15.070 authorizes the City Council to set rates for wastewater service by resolution.
- C. The rates established by this resolution are calculated to cover the costs of sewer service, including amounts to pay for the operation, maintenance, repair, necessary replacement, and improvement of the system, but do not generate revenue above what is needed for sound operation and management of the sewer system.

Based on these findings, the City of Newport resolves as follows:

Section 1. Metered Rates

The charges imposed in this Section 1 apply to properties that have sanitary sewer service.

A. Single-Family Residences and Duplexes within City Limits

The charge for sewer service for single-family dwellings and duplexes within City limits shall be \$21.20 per month, plus \$6.10 per 1,000 gallons of water usage. Sewer user charges for the months of June, July, August, and September shall not exceed the highest monthly sewer user charge for the first four months of the calendar year.

B. Multi-Family Residences, Commercial Properties, and Single-Family Residences and Duplexes outside of City Limits

The basic charge for service for residential properties with three or more dwelling units, for all commercial properties, and for single-family residences and duplexes outside of City limits shall be \$21.20 per month plus \$6.95 per 1,000 gallons of water usage.

An "Extra Strength Charge" of \$1.20 per thousand gallons applies to commercial properties users when the combined biochemical oxygen demand and suspended solids strength of wastewater is greater than 600 milligrams per liter.

The charges for monitoring sewage discharge shall be \$15.15 per sample and \$7.90 per test.

Section 2. Individually Determined Rate

Commercial customers that are legally disposing of all or part of their processing wastewater to an acceptable waterway in conformance with applicable federal, state and City laws, regulations and permits shall have a sewer user charge established by the City Manager based on an individual determination of the impact of the property on the sewer system. The City Manager shall take into account, when establishing the sewer rate, the estimated quantity in gallons, as well as, any adverse treatment or maintenance costs that may be incurred by the City handling extra strength wastewater that is being returned to the City sanitary sewers.

Section 3. Septage

The rate for disposal of septage at the City's wastewater treatment plant shall be \$0.35 per gallon.

Section 4. Class A Sludge Sales

Class A sludge manufactured at the City's wastewater treatment plant may be purchased for \$1.45 per cubic yard.

Section 5. This Resolution repeals in entirety Resolution No. 3593.

Section 6. Effective Date

The effective date of this resolution is July 1, 2013. As applied to monthly bills, the change shall be based on the date of billing, not the date of service.

Adopted by the Newport City Council on May 20, 2013.

CITY OF NEWPORT

Sandra Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

CITY OF NEWPORT

RESOLUTION NO. 3628

A Resolution Setting Rates for Water Utility Charges, Fees, Deposits and Penalties, And Repealing Resolution No. 3592

Findings

- A. The City of Newport operates a water utility that diverts, stores, treats, and delivers water to customers within the City and to its customers outside the City.
B. The Newport Municipal Code Chapter 5.10 governs the operation and use of the City's water utility. NMC Section 5.10.200 specifically authorizes the City Council to set charges, fees, deposits, and penalties for water utility users.
C. The rates established by this resolution are calculated to cover the costs of water service, including amounts to pay for the operation, maintenance, repair, necessary replacement, and improvement, but do not generate revenue above what is needed for sound operation and management of the water system.

Based on these findings, the City of Newport resolves as follows:

Section 1. Connection Fee and Street Opening Fee

- A. The fee for a new connection to the water system is based on the size of service. The fees for new connections are:

Table with 2 columns: Service Size, Connection Fee. Rows include 5/8" x 3/4" (\$1,605.00), 1 inch (\$1,865.00), and Larger than 1 inch (Actual cost plus 10%).

- B. An additional fee of \$1,715.00 will be added to the above costs if cutting and restoration of asphalt streets is necessary.

Section 2. Deposit

The amount of deposit required under NMC 5.10.020 is based upon meter size and is generally equal to 2 months of average usage. Deposits will not be refunded prior to discontinuation of service except in extenuating circumstances and then only by authorization by the City Finance Director. Deposits for new utility accounts are:

Service Size	Deposit
5/8" x 3/4"	\$230.00
1 inch	\$280.00
1 1/4" x 1 1/2"	\$1,090.00
2 inch	\$1,430.00
3 inch and larger	\$2,110.00

Section 3. Miscellaneous Charges

- A. The charge for a normal reconnection or additional connection is \$18.00, in addition to any connection fee established under Section 1.
- B. The reconnection fee following a for-cause (delinquent payment or other cause) disconnect is \$40.00.
- C. The charge for opening a connection in violation of NMC Chapter 5.10 is \$90.00.
- D. The fee for late payment is \$18.00.
- E. The fee for a non-payment notice is \$18.00.

Section 4. Rates for Water Service Within the City Service Area

The rates in this Section 4 apply to all service areas.

The minimum monthly charge shall be based on the size of each meter except as otherwise defined within this section.

The minimum charge for unmetered fire suppression systems shall be based upon the size of the service line entering the property.

- A. The charges in this Section 4.A apply within the City of Newport.

Meter Size	Usage included with minimum charge	Minimum Charge	Cost per 1,000 Gallons in excess of included amount
5/8" x 3/4"	1,000 gallons	\$ 18.90	\$3.45
1 inch	1,000 gallons	\$ 26.00	
1 1/4" x 1 1/2"	1,000 gallons	\$ 38.25	
2 inch	1,000 gallons	\$ 65.50	
3 inch	1,000 gallons	\$ 97.80	
4 inch and over	1,000 gallons	\$ 162.55	

B. The charges in this Section 4.B apply outside the City of Newport

Meter Size	Usage included with minimum charge	Minimum Charge	Cost per 1,000 Gallons in excess of included amount
5/8" x 3/4"	1,000 gallons	\$ 36.10	\$5.70
1 inch	1,000 gallons	\$ 49.15	
1 1/4" x 1 1/2"	1,000 gallons	\$ 68.35	
2 inch	1,000 gallons	\$ 120.45	
3 inch	1,000 gallons	\$179.30	
4 inch and over	1,000 gallons	\$ 294.55	

Section 6. Temporary Service through Fire Hydrant

Fire Hydrant Installation	\$250.00
Monthly charge (no usage included)	\$129.00
Usage per 1,000 gallons	\$ 5.70

Section 7. Water purchased and privately transported

The amount charged for water purchased and transported by the purchaser directly from any authorized City facility is \$5.70 per 1,000 gallons.

Section 8. This Resolution repeals in entirety Resolution No. 3592.

Section 9. Effective Date of Rates, Fees, Charges and Penalties

The effective date of this resolution is July 1, 2013. As applied to monthly bills, the change shall be based on the date of billing, not the date of service.

Adopted by the Newport City Council on May 20, 2013.

CITY OF NEWPORT

Sandra Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

CITY OF NEWPORT

RESOLUTION NO. 33629

**A Resolution Setting Stormwater Utility Fees
And Repealing Resolution No. 3594**

Findings

- A. The City of Newport operates stormwater utilities that provide services to right of ways and properties within the City and to some right of ways and properties within the City's urban growth area.
- B. Newport Municipal Code Chapter 5.20 governs the operation and use of the stormwater utility. NMC Section 5.20.040 authorizes the City Council to set charges for stormwater service by resolution.
- C. The rates established by this resolution are calculated to cover the costs of stormwater service, including amounts to pay for the operation, maintenance, repair, necessary replacement, and improvement of the system, but do not generate revenue above what is needed for sound operation and management of the stormwater system.

Based on these findings, the City of Newport resolves as follows:

Section 1. Stormwater Utility Fee

- A. The charges imposed in this Section 1 apply to properties that have metered City water service.

Each customer shall pay a stormwater utility fee. The fees are set as follows:

<u>Water Meter Size</u>	<u>Monthly Stormwater Utility Fee</u>
All meter sizes	\$7.15

Irrigation-only meters will be exempt from the stormwater utility fee.

Section 2. This Resolution repeals in entirety Resolution No. 3594.

Section 3. Effective Date

The effective date of this resolution is July 1, 2013. As applied to monthly bills, the change shall be based on the date of billing, not the date of service.

Adopted by the Newport City Council on May 20, 2013.

CITY OF NEWPORT

Sandra Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

CITY OF NEWPORT

RESOLUTION NO. 3630

**A Resolution Setting Utility Infrastructure Improvement Fees
And Repealing Resolution No. 3595**

Findings

- A. The City of Newport operates water, wastewater, and stormwater utilities that provide services to properties within the City and to some properties within the City's urban growth area.
- B. Newport Municipal Code Chapter 5.10 governs the operation and use of the water utility. NMC Section 5.10.200 authorizes the City Council to set charges for water service by resolution.
- C. Newport Municipal Code Chapter 5.15 governs the operation and use of the wastewater utility. NMC Section 5.15.070 authorizes the City Council to set charges for wastewater service by resolution.
- D. Newport Municipal Code Chapter 5.20 governs the operation and use of the stormwater utility. NMC Section 5.20.040 authorizes the City Council to set charges for stormwater service by resolution.
- E. The rates established by this resolution are calculated to cover the costs of water, wastewater, and stormwater maintenance, repair, necessary replacement, and improvement of the system, but do not generate revenue above what is needed for these improvements.

Based on these findings, the City of Newport resolves as follows:

Section 1. Utility Infrastructure Improvement Fee

- A. The charges imposed in this Section 1 apply to properties that have metered City water service.

Each customer shall pay a monthly infrastructure improvement fee. The fees are set as follows:

Water Meter Size	Monthly Infrastructure Improvement Fee
3/4"	\$ 6.25
1"	\$ 12.50
1 1/2"	\$ 25.10
2"	\$ 43.85
3"	\$112.65
4"	\$175.25
5" and larger	\$400.60

Irrigation-only meters will be exempt from the Monthly Infrastructure Improvement Fee.

Section 2. This Resolution repeals in entirety Resolution No. 3595.

Section 3. Effective Date

The effective date of this resolution is July 1, 2013. As applied to monthly bills, the change shall be based on the date of billing, not the date of service.

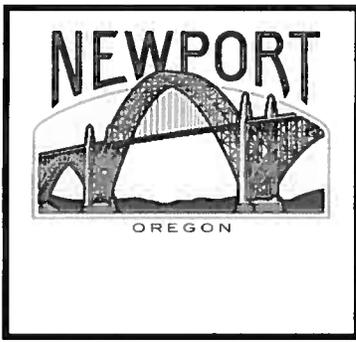
Adopted by the Newport City Council on May 20, 2013.

CITY OF NEWPORT

Sandra Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder



Agenda Item # IX. L.
Meeting Date 6/3/13

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Appeal of Special Event Permit Fee Waiver Denial - Celtic Heritage Alliance for the Celtic Festival

Prepared By: Hawker Dept Head Approval: ph City Manager Approval: _____

Issue Before the Council: The issue before Council is consideration of an appeal filed by the Celtic Heritage Alliance regarding the denial of a special event permit fee waiver for the upcoming Newport Celtic Festival and Highland Games.

Staff Recommendation: This is entirely a City Council decision.

Proposed Motion to Uphold the Appeal of the Special Event Fee Waiver: I move to uphold the appeal of the special event fee waiver, filed by the Celtic Heritage Alliance, on behalf of the Newport Celtic Festival and Highland Games, and waive \$652.10 which equals 35% of the special event permit fees totaling \$1,863.12 for police services during the event, and leaving a balance due the city from the Celtic Heritage Alliance of \$1,211.02. I further move that the City Recorder be directed to prepare a special event permit for signature by the Interim City Manager on receipt of \$1,211.02 from the Celtic Heritage Alliance.

Proposed Motion to Uphold the Decision of Staff: I move to uphold the decision of staff that because the Celtic Heritage Alliance has received a 2013 tourism promotion grant, in the amount of \$5,000, it is ineligible for a special event fee waiver pursuant to 9.80.020(F) of the Newport Municipal Code. I further move that once payment in the amount of \$1,863.12 is received by the city for police services to be rendered during the Newport Celtic Festival and Highland Games, the City Recorder be directed to prepare a special event permit for signature by the Interim City Manager.

Key Facts and Information Summary: In late April, Chief Miranda contacted Belinda Goody, president of the Celtic Heritage Alliance, regarding the submission of the group's special event permit and fee waiver application for the upcoming Newport Celtic Festival and Highland Games. Later that day, Ms. Goody came into the City Recorder's office and informed staff that the group's attorney had advised them that no special events permit is required for this event. Subsequently, on May 9, the city received an application for a special events permit and fee waiver. The City Recorder forwarded the application to department heads requesting an estimate of the fiscal impact of this event to the various departments. Chief Miranda indicated in a memo, dated May 16, 2013, that the fiscal impact to the Police Department is expected to be \$1,863.12.

In reviewing Chapter 9.80 of the Newport Municipal Code, staff noted that Section 9.80.020(F) provides that an organization receiving a tourism promotion grant is ineligible for a special event fee waiver. The Celtic Heritage Alliance received a tourism promotion grant in the amount of \$5,000 for the 2013 Newport Celtic Festival and Highland Games. Staff believes that, based on the Municipal Code, receipt of these grant monies would make the group ineligible to receive a special event fee waiver. In checking past actions, it was determined that the Celtic Festival received both a tourism promotion grant, in the amount of \$8,000 last year, along with a special event fee waiver in the amount of \$2,001, as well as the remainder of the Festival inventory, owned by the city, from the previous years' Festival. Staff is not recommending that the 2012 fee waiver be reimbursed to the city as this was an oversight on the part of staff.

Other Alternatives Considered: None.

City Council Goals: None.

Attachment List:

1. Appeal filed by the Celtic Heritage Alliance
2. Letter from the City Recorder noting the ineligibility of the Celtic Heritage Alliance to receive a special event fee waiver
3. Copy of Section 9.80 of the Newport Municipal Code
4. Memorandum from Chief Miranda regarding the fiscal impact to the Police Department by the Celtic Festival
5. Original application package requesting a special events permit for the 2013 Newport Celtic Festival and Highland Games

Fiscal Notes: Variable depending on Council action.



City Recorder
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

May 30, 2013

Re: Appeal of Special Event Permit Requirement

To the Newport City Council:

On behalf of the Celtic Heritage Alliance (CHA), this is to serve as an appeal of the City's decision to require a "special event" permit for the CHA's Newport Celtic Festival and Highland Games (the "Festival"), to be held at the Lincoln County Fairgrounds June 7-9, 2013, and of any fees inherent to said permit. This appeal is based on the language of the relevant section of the Newport municipal code, § 9.80.010. From the actual language of this ordinance and based on both the organization and the history of the Festival, CHA does not require a special event permit and should not be liable for any payment.

Background: On April 22, 2013, CHA was contacted by Chief Mark Miranda asking where our Special Event Permit Application was. On the same day, CHA President Belinda Goody visited the City Recorder's Office and explained to Peggy Hawker that we and two attorneys reviewed the City Ordinance and its definition of "Special Events," and did not believe we were required to submit a permit application because we were not requesting, nor did we require, any City services in connection with our event.

After a conversation with Ms. Hawker which implied that failure to do so might imperil the Festival, CHA completed and filed a permit application. The only City service that was discussed in connection with the Festival was the placement of signs at City boundaries. In spite of repeated inquiries and submissions of the application and its attachments, CHA was never notified concerning consideration of the application. Instead, on Wednesday, May 29, 2013, we received the attached response from Ms. Hawker stating that 1) our organization was ineligible for a fee waiver and 2) that "City staff" determined the bill for the permit to be \$1,863.12, arising for "police services" during the event. The response states, "Once this payment is received, the Special Event Permit for the Festival will be issued."

There has been additional confusion concerning when CHA might have a chance to address the Council concerning this matter. While we have been notified both that we are, and are not, to be included on the Council's June 3, 2013 meeting agenda, a review of the agenda posted subject to open meetings requirements does not include a mention of the issue. To avoid losing our right, this written appeal is being filed.

CHA Does Not Request, Nor Require, Any Newport City Services for the Festival.

The City Ordinance defines a *Special Event* as follows:

9.80.010 Special Event Definitions

###

—Special Event is any private activity conducted wholly or partly on public property that requires the use of city services, such as closure of a street or park, or provision of traffic control, or other services. Special Event includes, but is not limited to, a parade, festival, exposition, show, sale, party, or other similar activity. Special Event also includes events on private or other public property for which the city provides additional services.

###

—Special Event Permit Fees are based on the actual costs of the city providing the service requested, and may include personnel, benefit costs, equipment costs, and published room rental costs.

(emphasis added). **The code does not include language permitting the City, or departments within its government, to impose fees for services which have not been requested in such cases.**

Our grounds for this appeal are several.

First, there appears to be no involvement of the City Manager in this decision although the dollar amount being billed by the City is under \$2,000.00 in total, which is within the authority of the City Manager to approve or decline.

Second, it is a violation of non-profit rules for our organization to pay an “expected” cost. We must pay actual expenses from actual invoices - not estimates. Our auditors would call such a payment into question.

Third, we can find no justification for the police presence for which we are being billed. In accordance with the Oregon Liquor Control Commission, we have prepared and submitted both our required “Temporary Sales License Application (TSL),” and our “Plan to Manage Special Events,” including our 2013 OLCC Control Plan; all of which have been reviewed, approved and signed by Chief Mark Miranda. These did not include any additional police presence, a strong indication that Chief Miranda did not consider any police presence necessary prior to being presented with the permit application.

The State of Oregon Liquor Control requires events such as ours to hire DPSST-qualified Security Officers who are dedicated to patrolling the grounds during the event and are clearly identified as such. Further, they require Alcohol Monitors who help managed alcohol consumption during the event by checking IDs and interacting with guests who are consuming alcoholic beverages to prevent over-consumption. The Festival routinely hires qualified security forces and has trained Alcohol Monitors present.

Nor are there any grounds for Newport Police to consider an additional, hired presence necessary. To date, the Festival has experienced no reported alcohol-related incidents. We attribute this to the family-friendly atmosphere which, according to our 21-and-older wristband count, saw approximately 750 of the more than 4,000 attendees partake in alcoholic beverages. This is a minute percentage in comparison to much larger events like the annual Seafood & Wine festival.

Fourth, in 2011 when we began this event, we considered hiring the Newport Police Department as security for the event. However, we were told that the Department has an internal “non-compete” policy preventing its officers from being retained to serve in the same capacity as other local businesses (such as TCB) who offer the same type of service. Therefore, private security has been hired and paid by the Festival for all three years of its existence. In the unlikely event that an incident requiring authority could not be handled by CHA-retained security, the normal police response available to all Newport residents and visitors would, of course, be called.

For all these reasons, CHA neither requests nor requires the “additional officers during the event” referred to in Chief Miranda’s memorandum. The only request we make of the City is that our sign boards be posted at three locations at the edge of Newport to announce the Festival at the appropriate time.

The Unnecessary Services Contemplated Are a Financial Burden to a Volunteer-Organized Event.

CHA and its Festival, along with all other CHA events provided in Newport during each year, are organized and staffed completely by volunteers; we have no paid staff. All monies raised from the Festival are used to support our outreach events during the year, as the organization’s goal is to enrich life through recognition and celebration of Celtic heritage. While we are proud of the Festival’s success in its short history, it is run extremely tightly in terms of costs.

Chief Miranda’s reference to the Newport Police Volunteer organization (NPDV) as a source of cost is misplaced. The NPDV provides parking services during the event, as they have each year since the beginning, in exchange for a fundraising activity conducted at the Festival from a booth offered at no charge. CHA itself has contributed equipment to this effort. We understand that the services of the NPDV do not incur costs to the City. We have a mutually beneficial and positive relationship with the NPDV.

As is typical with events like this, we have requested services from area businesses such as TCB for security, Ultrasonic Events for sound and stage, Oregon Coast Event Rental for tents and tables and Best Pots for toilets. These are fee-based services we request and they provide – although many of them discount their services to help the event. Sponsors come forward each year to support these events. Unpaid volunteers dedicate their valuable time and usually, some personal expense to make these events happen. Event organizers work year round - even while working other jobs - to bring events like this to their community. This is in keeping with the spirit of volunteerism for which the Newport area is known. A payment of nearly \$2000 for services neither wanted nor needed is a significant financial burden to our organization.

With nearly 5,000 visitors during its weekend, there is no question that the Festival raises significant revenue for City businesses, especially those related to, or reliant on, tourism. To charge non-profit organizations for unrequested City services, or any organization which serves the community by generating visitors to Newport, which, in turn generates lodging tax revenues for the City, could be interpreted as “double-dipping” on the part of the City. Furthermore, it may drive events like Seafood & Wine, Wild Seafood Weekend, Loyalty Days, the County Fair and other tourism-generating events like these to move to more supportive environments, or to become non-existent.

Conclusion

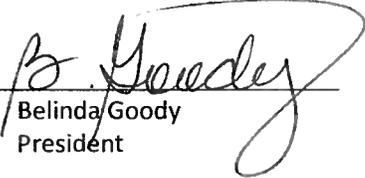
CHA respectfully repeats our contention that no special event permit is required for the Newport Celtic Festival and Highland Games. Should the City decide that a permit is required, we respectfully request that the City remove the police services referenced, and the bill for them, as unnecessary for approval of the permit.

Thank you for your consideration in this matter.

Respectfully submitted,

Celtic Heritage Alliance

By: _____


Belinda Goody
President

169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA



www.newportoregon.gov

MOMBETSU, JAPAN, SISTER CITY

May 29, 2013

Belinda Goody, President
Celtic Heritage Alliance
P.O. Box 504
Newport, Oregon 97365

Dear Belinda:

City of Newport staff has reviewed the application for a special event permit and fee waiver for the Celtic Festival. Because the Celtic Festival has received a tourism promotion grant, it is ineligible for a special event fee waiver pursuant to 9.80.020(F) of the Newport Municipal Code.

Staff has determined that the fiscal impact to the city is \$1,863.12 for police services during the event. Once this payment is received, the special event permit for the Festival will be issued.

Please let us know if you have questions or require additional information.

Very truly yours,

Peggy Hawker
City Recorder/Special Projects Director

Encs: Chapter 9.80 - Special Event Permits (Newport Municipal Code)
Memorandum from Police Chief Miranda regarding the fiscal impact to the Police Department

EST.

1882

CHAPTER 9.80 SPECIAL EVENT PERMITS

9.80.010 Special Event Definitions

“Fee Waiver” is a waiver of city fees for providing a service or facility use.

“Special Event” is any private activity conducted wholly or partly on public property that requires the use of city services, such as closure of a street or park, or provision of traffic control, or other services. Special Event includes, but is not limited to, a parade, festival, exposition, show, sale, party, or other similar activity. Special Event also includes events on private or other public property for which the city provides additional services. Special Events does not include:

- A. Events held in the Performing Arts Center or the Visual Arts Center unless special services are requested of the city;
- B. Events conducted at city facilities including the swimming pool and recreation center unless a Fee Waiver is requested;
- C. The use of meeting rooms at any city facility unless a Fee Waiver is requested or the fee has otherwise been waived by city policy.

“Special Event Permit Fees” are based on the actual costs of the city providing the service requested, and may include personnel, benefit costs, equipment costs, and published room rental costs.

9.80.015 Special Event Fees and Waivers

- A. Applicants may request a full or partial Fee Waiver of Special Event Permit Fees. A request for a Fee Waiver must be submitted with a Special Event permit application. The city may, in its discretion, approve all, part, or none of a Fee Waiver request. The following will be considered in the city’s review of a request for a Fee Waiver:
 - 1. Whether the event is a benefit to the community.
 - 2. Whether the event creates positive publicity for the city.

3. The city's cost of providing services for/to the event.
 4. Whether there are revenues that can be used to offset the impact of a Fee Waiver on the general fund.
 5. Whether the event promotes education, public health, or public safety.
 6. Whether the event is operated by a non-profit organization.
 7. Whether the event has in the past or is likely in the future to take action that, if taken by a governmental entity, would be unconstitutional. The city will not provide a Fee Waiver for any Special Event or entity that takes action in regard to the Special Event that, if taken by the city, would be unconstitutional.
- B. Unless waived, all fees required for the Special Event must be paid prior to the issuance of a permit. In no event, will the Fee Waiver be more than the city's cost of providing service to the event.

9.80.020 Special Event Applications

- A. All persons who wish to conduct a Special Event must submit an application form to the city recorder. Special Event application forms are available on the city's website at www.thecityofnewport.net. Special Event permit applications shall be reviewed and approved or denied administratively by the city manager following the procedures and standards of this chapter, unless the amount of the requested Fee Waiver is in excess of \$2,000, in which case the application shall be forwarded to the City Council for action.
- B. Applications will be deemed incomplete and will be denied if details about the Special Event are insufficient for staff to properly analyze and determine the impacts on city services, or if submitted with insufficient time to allow for city staff to evaluate the impacts and coordinate any city services required to allow the event to proceed.
- C. Temporary structures may be erected in conjunction with a Special Event provided the following are met:

1. The time limit for such structures is no longer than 30 days prior to and five (5) days after the Special Event.
 2. Permission for the structure is granted by the property owner.
 3. A city business license is obtained.
 4. The person or persons responsible for the temporary structure shall appropriately maintain the grounds and provide trash receptacles.
 5. Sanitary facilities are made available to the site during the Special Event.
 6. The structure does not interfere with the provision of parking for the permanent use on the site, or a traffic management plan is provided that is acceptable to the city.
 7. The structure satisfies the vision clearance requirements of the Zoning Code.
 8. Written approval for the temporary structure is obtained from the city's building official.
 9. The person or persons responsible for the temporary structure have signed the city agreement relating to the temporary structure.
- D. Applications must include evidence of compliance with any required permits from other governmental agencies (e.g., health department, liquor license, etc.), as may be requested by the city.
- E. Special Event organizers may be required to maintain liability insurance for the event in an amount deemed acceptable by the city manager, with the city named as an additional insured.
-  F. Recipients of tourism promotion grants are ineligible for Special Event Fee Waivers.
- G. The city manager is delegated the authority to establish rules, procedures, and policies to implement and supplement this chapter and to develop application forms and other standard materials to be used in the application

process.

9.80.022 Approval/Denial of Special Event Permit

- A. The completed application will be reviewed by the department heads. The applicant may be required to provide additional information. Denied applications may be amended and resubmitted.
- B. Reasons for denial of a Special Event permit include, but are not limited to:
 - 1. The city lacks the resources to provide the services that are required for the event.
 - 2. A requested facility or site is not available at the time requested.
 - 3. The event requests use of city streets at a time, or for a duration, that would create too great an impact on the public transportation system.
 - 4. The applicant submitted false information in connection with the application.
 - 5. The applicant has failed to complete all aspects of the application.
- C. If the Special Event application is approved and no Fee Waiver has been approved, the city recorder will collect the appropriate fee and issue the permit. If the Special Event application is approved and a Fee Waiver has been approved in full, the city recorder will issue the permit.
- D. If denied, the city recorder will notify the applicant in writing and give the reason for denial. If time permits, the applicant may correct the reasons for denial and resubmit the application for approval. If an applicant is again denied a permit, the applicant may appeal the denial, within 14 days of the date of the written denial by filing a written notice of appeal with the city recorder. The appeal shall be heard at a regular City Council meeting at least seven days after the date the appeal is filed. The appeal shall be decided by the City Council and is final.

9.80.032 Effectiveness of Special Event Permit

Special Events shall be approved for only the specified dates, times, and locations stated in the permit.

9.80.035 Violation of a Special Event Permit

- A. Any event subject to the provisions of this chapter that is staged without complying with all conditions of this chapter shall be subject to closure by the police department.
- B. The city may revoke a permit if it is determined by the city manager that the event is being operated in violation of the Newport Municipal Code.
- C. The city may revoke a permit and/or apply a fine of up to \$500 per day if it determines an applicant has violated this chapter.

(Ordinance No. 2000 repealed Ordinance No. 1948 and was adopted on March 15, 2010; effective April 14, 2010.)



Noble
Professional
Dedicated

Newport Police Department

Memorandum

One Team - One Future

Date: May 16, 2013

To: Peggy Hawker, City Recorder

From: Mark J. Miranda, Chief of Police 

Subject: **Special Event Application**

I have reviewed the application for the Celtic Festival & Highland Games. Based on what was presented, the expected attendance and past history, the Police Department will have additional officers on duty during the event. Newport Police Volunteers will also be assisting with the event. Cost is expected to be \$1863.12. If a fee waiver is granted, the City would be responsible for 35% of the cost.

[Print](#) | [Close Window](#)

Subject: Special Event Permit Application

From: "Newport Celtic Festival & Highland Games" <belinda@newportcelticfestival.com>

Date: Mon, Apr 22, 2013 3:38 pm

To: "Peggy Hawker" <P.Hawker@NewportOregon.gov>

Bcc: "Jill Lyon" <jillyon57@gmail.com>

Attach: sigimg1

icon_sm_facebook.gif

2013 - Special Events Permit App. and Waiver - Celtic Fest..pdf

Hi Peggy,

Attached please find our request for approval of our Special Events Permit for the 2013 Newport Celtic Festival & Highland Games.

Please note that as we are not requesting any City services other than the sign boards, our waiver request (under \$2,000) may be approved at the City Manager level.

Thank you for your assistance today.

Sincerely,

Belinda Goody
Executive Director
Celtic Heritage Alliance dba
Newport Celtic Festival & Highland Games



www.newportcelticfestival.com  [Like Us!](#)

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SPECIAL EVENT PERMIT APPLICATION

Submit to: City Recorder
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
p.hawker@thecityofnewport.net
541.574.0613

This application must be completed, signed, and submitted far enough in advance of the event to allow staff time to properly analyze and determine the impacts on city services. It is recommended that applications be submitted at least 60 days prior to the scheduled event. Late applications may be accepted, but the city cannot assure that late applications will be processed in time to issue the permit.

Use Additional Sheets if Necessary

Event Name: Celtic Festival & Highland Games

Event Date: June 7-8-9 Time(s): 9am-10pm

Location: Primary venue Lincoln Co. Fairgrounds + other smaller venues around City

Facilities to be used: Park None Requested

(Be specific) City Building: None Requested

Sidewalk: None Requested

Street: None Requested

Other City Property: 3x City Limit Sign Boards

Private Property: None Requested

Set-up Dates and Start Times: Fairgrounds, Wed June 5, Other sites same day - 2 hr

Take-down Dates and End Times: Fairgrounds, Mon June 10, Other sites same day + 2 hr

Estimated Crowd Size: Participants (Including Vendors and Volunteers)
Fairgrounds 500-600

Spectators Fairgrounds 5-7,000, other venues 100-200

Is this a New Event: No If not, Previous Dates/Years Held: 2011, 2012

Applicant: Celtic Heritage Alliance, Inc.

Mailing Address: P.O. Box 504, Newport, OR 97365

Telephone: (541) 574-6530

E-Mail: info@newportcelticfestival.com

Fax: (541) 574-9366

Contact Person (must be authorized to sign for applicant): Belinda Goody

Contact Person Address, Phone(s), E-Mail: PO Box 504, Newport, OR 97365
(541) 961-7696, belinda@newportcelticfestival.com

Applicant Status (Non-Profit/For Profit): 501(c) 3 Non-profit

DETAILED DESCRIPTION OF EVENT

Provide a detailed description of all activities associated with the event, including a detailed description of city services requested. In the description, state whether food, drink, and/or alcoholic beverages will be served. To the extent that the event involves use of parks, streets, or other city facilities, provide a description of how and when the facilities will be used and a diagram of the areas that the event will use. If applicable, provide a parking plan, security plan, medical assistance plan, letter control and disposal plan, and any other information that would be useful to the city. Use additional sheets as necessary to provide complete information.

(Please see addendum)



City Recorder
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
p.hawker@thecityofnewport.net
541.574.0613

April 22, 2013

Addendum to Special Event Permit Application

The attached Special Event Permit Application is hereby submitted in accordance with City Ordinance 9.80.010.

The Celtic Heritage Alliance will hold its annual Celtic Festival & Highland Games in Newport during the weekend of June 8 & 9, 2013 at the Lincoln County Fairgrounds and its regular "Friday Fringe Events" on June 7, 2013 at various locations around Newport.

The locations at which these events will be held are at the Lincoln County Fairgrounds (requiring an agreement with Lincoln County), at Nye Beach (requiring a permit from the Oregon Department of Parks & Recreation) and at Sam Case Elementary School (requiring an agreement with the School District).

In accordance with the Oregon Liquor Control Commission, we have prepared and submitted both our required "Temporary Sales License Application (TSL)," and our "Plan to Manage Special Events" including our 2013 OLCC Control Plan; all of which have been reviewed, approved and signed by Chief Mark Miranda of the Newport Police Department.

The State of Oregon Liquor Control requires events such as ours to hire DPSST qualified Security Officers who are dedicated to patrolling the grounds during the event and are clearly identified as such. Further, they require Alcohol Monitors who help managed alcohol consumption during the event by checking IDs, and interacting with guests who are consuming alcoholic beverages to prevent over-consumption.

To date, we have had no reported alcohol-related incidents. We attribute this to the family-friendly atmosphere which, according to our 21 and older wristband count, saw approximately 750 of the over 4,000 attendees partake in alcoholic beverages. This is a minute percentage in comparison to much larger events like the annual Seafood & Wine festival.

Due to the OLCC requirement for hired security, we are not requesting any City services in connection with this event including, but not limited to police services, fire services, or use of City facilities.

The only requests we have is that our sign boards be posted at the 3 signs at the edge of Newport to announce the festival at the appropriate time and a fee waiver as such.

We have requested the Newport Police Volunteers provide parking services during the event as they have each year since the beginning. In exchange, we do not charge NPDV for their coffee booth which allows them to raise funds for their non-profit organization to which we also donated a commercial coffee maker last year to help get them started. We understand that the services of the NPD Volunteers have no cost associated with them to the City.

At the present level of our request, and according to the City Ordinance; 9.80.020, Paragraph A; the attached Permit Application may be approved administratively by the City Manager as the amount of our request does not exceed the \$2,000.00 threshold for review by City Council.

We understand that, according to the Ordinance, Special Event Permit Fees are based on actual costs of the City providing the service request. Should the City Manager or City Council seek to impose fees for unrequested City services, regardless of the absence of this request by the Celtic Heritage Alliance, we respectfully request a Fee Waiver of any and all fees related to any and all City services imposed upon us in connection with this event in accordance with paragraph 9.80.015 (Special Event Fees and Waivers) whereby the City Council may approve all or part of said request.

In consideration of such request and as a part of the due diligence of the City Manager and City Council when making such decisions; we submit

1. there is a direct benefit to the community;
2. that this event creates positive publicity for the City;
3. the absence of a request for services reduces City expenses and need of having to provide such services;
4. that revenues generated by the event are greatly offset by the minute fee involved in placing signage;
5. that the event promotes education about arts & culture (a point validated when the Celtic Heritage Alliance was accepted as a member of the *Oregon Cultural Trust*); and
6. the event is run by a non-profit organization.

City Manager and City Council should also make note of the overall financial impact this event has which directly benefits the community of Newport and the City itself.

According to calculations carefully prepared through coordination with the Greater Newport Chamber of Commerce, the 2012 Celtic Festival & Highland Games generated an estimated \$23,795.00 in City Lodging Tax Revenues with an estimated \$415,397 dollars spent in the local area in retail shops, restaurants and lodging establishments.

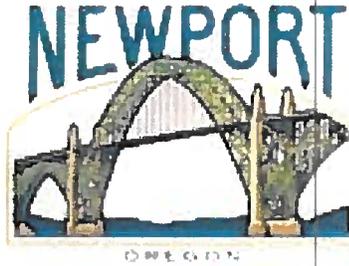
Therefore, we hereby respectfully request approval of the Special Event Permit Application attached hereto.

Thank you, in advance, for your consideration in this matter.

Sincerely,



Belinda Goody
President - Celtic Heritage Alliance



CHAPTER 9.80 SPECIAL EVENT PERMITS

9.80.010 Special Event Definitions

—Fee Waiver is a waiver of city fees for providing a service or facility use.

—**Special Event is any private activity conducted wholly or partly on public property that requires the use of city services**, such as closure of a street or park, or provision of traffic control, or other services. Special Event includes, but is not limited to, a parade, festival, exposition, show, sale, party, or other similar activity. Special Event also includes events on private or other public property for which the city provides additional services. Special Events does not include:

- A. Events held in the Performing Arts Center or the Visual Arts Center unless special services are requested of the city;
- B. Events conducted at city facilities including the swimming pool and recreation center unless a Fee Waiver is requested;
- C. The use of meeting rooms at any city facility unless a Fee Waiver is requested or the fee has otherwise been waived by city policy.

—**Special Event Permit Fees** are based on the actual costs of the city providing the service requested, and may include personnel, benefit costs, equipment costs, and published room rental costs.

9.80.015 Special Event Fees and Waivers

A. **Applicants may request a full or partial Fee Waiver of Special Event Permit Fees.** A request for a Fee Waiver must be submitted with a Special Event permit application. The city may, in its discretion, approve all, part, or none of a Fee Waiver request. The following will be considered in the city's review of a request for a Fee Waiver:

1. Whether the event is a benefit to the community.
2. Whether the event creates positive publicity for the city.
3. The city's cost of providing services for/to the event.
4. Whether there are revenues that can be used to offset the impact of a Fee Waiver on the general fund.
5. Whether the event promotes education, public health, or public safety.

6. Whether the event is operated by a non-profit organization.

7. Whether the event has in the past or is likely in the future to take action that, if taken by a governmental entity, would be unconstitutional. The city will not provide a Fee Waiver for any Special Event or entity that takes action in regard to the Special Event that, if taken by the city, would be unconstitutional.

B. Unless waived, all fees required for the Special Event must be paid prior to the issuance of a permit. In no event, will the Fee Waiver be more than the city's cost of providing service to the event.

9.80.020 Special Event Applications

A. All persons who wish to conduct a Special Event must submit an application form to the city recorder. Special Event application forms are available on the city's website at www.thecityofnewport.net. Special Event permit applications shall be reviewed and approved or denied administratively by the city manager following the procedures and standards of this chapter, **unless the amount of the requested Fee Waiver is in excess of \$2,000, in which case the application shall be forwarded to the City Council for action.**

B. Applications will be deemed incomplete and will be denied if details about the Special Event are insufficient for staff to properly analyze and determine the impacts on city services, or if submitted with insufficient time to allow for city staff to evaluate the impacts and coordinate any city services required to allow the event to proceed.

C. Temporary structures may be erected in conjunction with a Special Event provided the following are met:

1. The time limit for such structures is no longer than 30 days prior to and five (5) days after the Special Event.
2. Permission for the structure is granted by the property owner.
3. A city business license is obtained.
4. The person or persons responsible for the temporary structure shall appropriately maintain the grounds and provide trash receptacles.
5. Sanitary facilities are made available to the site during the Special Event.
6. The structure does not interfere with the provision of parking for the permanent use on the site, or a traffic management plan is provided that is acceptable to the city.
7. The structure satisfies the vision clearance requirements of the Zoning Code.
8. Written approval for the temporary structure is obtained from the city's building official.

9. The person or persons responsible for the temporary structure have signed the city agreement relating to the temporary structure.

D. Applications must include evidence of compliance with any required permits from other governmental agencies (e.g., health department, liquor license, etc.), as may be requested by the city.

E. Special Event organizers may be required to maintain liability insurance for the event in an amount deemed acceptable by the city manager, with the city named as an additional insured.

F. Recipients of tourism promotion grants are ineligible for Special Event Fee Waivers.

G. The city manager is delegated the authority to establish rules, procedures, and policies to implement and supplement this chapter and to develop application forms and other standard materials to be used in the application process.

9.80.022 Approval/Denial of Special Event Permit

A. The completed application will be reviewed by the department heads. The applicant may be required to provide additional information. Denied applications may be amended and resubmitted.

B. Reasons for denial of a Special Event permit include, but are not limited to:

1. **The city lacks the resources to provide the services** that are required for the event.

2. A requested facility or site is not available at the time requested.

3. The event requests use of city streets at a time, or for a duration, that would create too great an impact on the public transportation system.

4. The applicant submitted false information in connection with the application.

5. The applicant has failed to complete all aspects of the application.

C. If the Special Event application is approved and no Fee Waiver has been approved, the city recorder will collect the appropriate fee and issue the permit. If the Special Event application is approved and a Fee Waiver has been approved in full, the city recorder will issue the permit.

D. If denied, the city recorder will notify the applicant in writing and give the reason for denial. If time permits, the applicant may correct the reasons for denial and resubmit the application for approval. If an applicant is again denied a permit, the applicant may appeal the denial, within 14 days of the date of the written denial by filing a written notice of appeal with the city recorder. The appeal shall be heard at a regular City Council meeting at least seven days after the date the appeal is filed. The appeal shall be decided by the City Council and is final.

9.80.032 Effectiveness of Special Event Permit

Special Events shall be approved for only the specified dates, times, and locations stated in the permit.

9.80.035 Violation of a Special Event Permit

A. Any event subject to the provisions of this chapter that is staged without complying with all conditions of this chapter shall be subject to closure by the police department.

B. The city may revoke a permit if it is determined by the city manager that the event is being operated in violation of the Newport Municipal Code.

C. The city may revoke a permit and/or apply a fine of up to \$500 per day if it determines an applicant has violated this chapter.

(Ordinance No. 2000 repealed Ordinance No. 1948 and was adopted on March 15, 2010; effective April 14, 2010.)

CITY OF NEWPORT
169 S.W. COAST HWY
NEWPORT, OR 97365
Telephone : (541) 574-0611
Fax : (541) 574-3355



COPY

CITY OF NEWPORT ORDINANCE NO. 1604

BUSINESS LICENSE

LOCATION OF BUSINESS :
LINCOLN COUNTY FAIRGROUNDS

LICENSE EFFECTIVE :
FROM : 01-Jul-2012
TO : 30-Jun-2013

NAME AND ADDRESS OF BUSINESS
CELTIC HERITAGE ALLIANCE INC
PO BOX 504
NEWPORT, OR 97365

LICENSE NO. : **6907**
CUSTOMER : **04920**

License Fee :	95.00
Balance :	0.00

CLASSIFICATION : **FESTIVAL**

THIS IS TO CERTIFY that the Licensee has paid the required License Fee and is entitled to conduct business as indicated within the City of Newport, in a lawful manner and subject to the provisions of all ordinances in effect. This License is non-transferable, except through the Finance Department as the ordinance direct.

THIS LICENCE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES

NOTE : INFORMATION ON THIS FORM WILL BE RELEASED FOR LISTING ON AN INTERNET DATABASE

COPY



OREGON LIQUOR CONTROL COMMISSION
TEMPORARY SALES LICENSE APPLICATION

The Temporary Sales License (TSL) allows the sale of distilled spirits, malt beverages, wine, and cider for drinking within a license area. It also allows the sale of manufacturer-sealed containers of malt beverage, wine, and cider for drinking off the licensed area. You may apply for a maximum of 7 license days per application form (see #9).

Process Time: OLCC needs your completed application in sufficient time to approve it. Sufficient time is typically 1 to 4 weeks before the first event date listed in #9 below. Some events may need extra processing time.

License Fee: \$50 per license day or any part of a license day. Make payment by check or money order, payable to OLCC. A license day is from 7:00 am to 2:30 am on the succeeding calendar day.

PLEASE PRINT

1. Applicant Name: Celtic Heritage Alliance dba Newport Celtic Festival & Highland G E-mail belinda@newportcelticfestival.com
2. Mailing address: PO Box 504
3. City: Newport 4. State: OR 5. Zip Code: 97365 6. Fax: 541-867-8856
7. Contact Person: Laura "Belinda" Goody 8. Contact Phone: 541-961-7696
9. Date(s) of event: June 7, 8, & 9, 2013 (7th no alcohol) 10. Start/End hours of alcohol service: 11:00 to 7:00

LICENSED AREA BOUNDARIES: ORS 471 159 prohibits the OLCC from licensing an area that does not have defined boundaries. OLCC may require the licensed area to be enclosed and may require you to submit a drawing showing the licensed area and how the boundaries of the licensed area will be identified

11. Address of **Special Event** Licensed Area: 880 NE 7th Street - Lincoln County Fairgrounds Newport
 (Street) (City)

12. Identify the licensed area (for example: entire premises; a room within the premises; an area in a park; etc.):

Entire premises within the fenced in area of the Fairgrounds with the exception of the children's area ("Sprog's Corner"); Newport High School and the Family Events Arena where signs will be posted "No Alcohol" in those areas.

13. List the primary activities within the licensed area (like: dinner; auction; beer festival; wine festival; food fair; art show; music; patron dancing; sports event; etc.). If entertainment will be offered in the areas where alcohol will be sold or consumed, please describe the entertainment, the times it will be offered, and list the targeted age of attendees:

Celtic themed events and activities, history displays, vendors, arts, crafts, food, drink, music, dance, parade, sports, sheepdog demos, fashion show, Bonnie Knees contest.

14. Will minors and alcohol be allowed at the event? Yes No 15. If yes, will minors and alcohol be allowed in the same area? Yes No

16. What is the expected attendance per day in the licensed area (where alcohol will be sold or consumed)? 2,000

PLAN TO MANAGE THE SPECIAL EVENT LICENSED AREA: If your answer to #16 is 501 or more, in addition to your answers to questions 16, 17, and 18, you will need to complete the OLCC's **Plan to Manage Special Events** form, unless the OLCC exempts you from this requirement.

17. Describe your plan to prevent problems and violations.
Please see attached control plan.

18. Describe your plan to prevent minors from gaining access to alcoholic beverages and from gaining access to any portion of the licensed premises prohibited to minors.
Please see attached control plan.

19. Describe your plan to manage alcohol consumption by adults.
Please see attached control plan.

20. Are you planning to sell, offer, or serve to any person an unlimited number of alcoholic beverage(s) during any set period of time for a fixed price? (If you're unsure, discuss with your OLCC office) Yes No

MANAGER AND SERVICE PERMITS: You must name a manager or managers who will be at the special event. Employees and volunteers who serve alcohol, and the people who manage those servers, must have an issued service permit unless specifically exempted.

A nonprofit or charitable organization with a Registry Number issued by the Oregon Secretary of State's office (see TSL Application Guide) may use servers who don't hold a service permit. These servers must attend training provided by the applicant and read, sign, and date the OLCC provided brochure What Every Volunteer Alcohol Server Needs to Know.

21. Nonprofit or Charitable Organization Oregon Registry Number (or "N/A" if not applicable): 45-275744

22. List name(s) of on-site manager(s): Laura "Belinda" Goody 23. Contact Phone: 541-961-7696

24. Service permit number of manager(s): 433585

LIQUOR LIABILITY INSURANCE: If the licensed area is open to the public and expected attendance is 301 or more per day in the licensed area, you must have at least \$300,000 of liquor liability insurance coverage as required by ORS 471.168.

25. Insurance Company: Western States Insurance 26. Policy #: NBP1551080A 27. Expiration Date: 1/17/2014

27. If you will **NOT** provide distilled spirits, name at least two different substantial food items that you will provide:

1) Shepherd's Pie (Vendor) 2) Scottish Meat Pies (Vendor)

28. If you will provide distilled spirits, name at least three different substantial food items that you will provide:

1) _____ 2) _____ 3) _____

29. Applicant Name (please print): Laura "Belinda" Goody

30. APPLICANT SIGNATURE: *Laura B. Goody* 31. Date: 22 Apr 13

GOVERNMENT RECOMMENDATION: Once you've completed this form to this point, you must obtain a recommendation from the local city or county named in #32 below **before** submitting this application to the OLCC.

32. Name the city if the event address is within a city's limits or name the county if the event address is outside the city's limits: City of Newport on the Lincoln County Fairgrounds

CITY OR COUNTY USE ONLY	
The city/county named in #31 above recommends:	
<input type="checkbox"/> Grant <input checked="" type="checkbox"/> Acknowledge <input type="checkbox"/> Deny (attach written explanation of deny recommendation)	
City/County Signature: <u><i>[Signature]</i></u>	Date: <u>4-22-13</u>

FORM TO OLCC: This license is valid only when signed by an OLCC representative. Submit this form to the OLCC office regulating the county in which your special event will happen.

OLCC USE ONLY	
Fee Paid: _____	Date: _____
Receipt #: _____	
License is: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	
Restrictions: _____	
OLCC Signature: _____	Date: _____



OREGON LIQUOR CONTROL COMMISSION
PLAN TO MANAGE SPECIAL EVENTS

When the expected attendance per day in the area where alcohol will be sold or consumed is 501 or more, any applicant for a Temporary Sales License (TSL), Special Event Winery (SEW), Special Event Grower (SEG), Special Event Brewery-Public House (SEPBH), Special Event Distillery (SED), or a Temporary Use event must complete this form (unless exempted from this requirement by the OLCC) and submit it with the application to the OLCC.

Other applicants (those expecting 500 or fewer attendees per day in the licensed area) may choose to use this form. In some cases, even if the expected daily attendance is 500 or fewer, the OLCC may require this form.

Examples of times when the OLCC may require more detailed information, even if the expected daily attendance in the area where alcohol will be sold or consumed is 500 or fewer, include a licensed area: projecting an emphasis on alcohol consumption; projecting an emphasis on entertainment; or proposing to allow minors and alcohol together in the same area.

Please note that for some licensed areas, in order to convince the OLCC that you will adequately manage the licensed area, the OLCC may require more details in addition to your completed PLAN TO MANAGE SPECIAL EVENTS form or any other information you submitted regarding how you will control the licensed area.

If there will be more than one of the above licensees making alcohol available in the same area(s) of the same event, all licensees may agree to submit and follow one plan.

1. Event Name: Newport Celtic Festival & Highland Games
2. Applicant Name: Celtic Heritage Alliance - Laura "Belinda" Goody (President) E-mail belinda@newportcelticfestival.com
3. Date(s) of event: June (7), 8 & 9, 2013 4. Start/End hours of alcohol service: 11:00 am to 7:00 pm
5. Event Address: 880 NE 7th Street (Lincoln County Fairgrounds) 6. City/County: Newport/Lincoln
7. Estimated total attendance per day in area(s) where alcohol will be sold or consumed: 2,000
8. On-Site Contact Person(s) and Contact Phone(s):

Laura "Belinda" Goody - 541-961-7696	
--------------------------------------	--

9. Do you estimate that 30 percent or more of the people attending the event will be between 15 and 20 years of age? Yes No
10. Do you estimate the number of patrons in the licensed area will be about the same during the entire time that alcohol is sold or consumed? Yes No If no, what are the estimated times that a greater number of patrons will attend? _____
11. If any of the following people will work in the licensed area, list the minimum number you estimate will work during the estimated times when a greater number of patrons will attend and the estimated times when a regular number of patrons will attend:
- | | |
|---|---|
| <p><u>2</u> Servers (greater attendance times)</p> <p><u>3</u> DPSST Certified Security (greater attendance times)</p> <p><u>2</u> ID Checkers (greater attendance times)</p> | <p><u>2</u> Servers (regular attendance times)</p> <p><u>3</u> DPSST Certified Security (regular attendance times)</p> <p><u>2</u> ID Checkers (regular attendance times)</p> |
|---|---|

APPLICANT'S PLAN TO MANAGE THE EVENT

If the estimated attendance per day in the area(s) where alcohol will be sold or consumed is 2,000 or more, you must meet minimum standards for certain items. These items are marked below in **bold**. Please read the TSL Application Guide for an explanation of the minimum standards.

For #12 and #13, please see the TSL Application Guide

12. Will minor patrons and alcohol be allowed together in the same area? Yes No If yes, describe your plan to prevent minor patrons from obtaining alcohol:

Yellow "21 or older" wristbands will be applied to patrons whose IDs have been verified. For additional details, please see attached control plan.

13. Will any portion of the licensed premises be prohibited to minor patrons? Yes No If yes, describe your plan to prevent minor patrons from gaining access to the prohibited area:

Please see attached control plan.

14. Will **Alcohol Monitors** work in the licensed area? Yes No
(An Alcohol Monitor is a person in addition to alcohol servers and security staff who monitors the sale, service, and consumption of alcoholic beverages to help ensure that unlawful sales, service, and consumption of alcoholic beverages do not occur.)

15. If yes to #14, list the minimum number of **Alcohol Monitors** you estimate will work during the estimated times when a greater number of patrons will attend and the estimated times when a regular number of patrons will attend:

2 Minimum number during estimated times of greater patron attendance

2 Minimum number during estimated times of regular patron attendance

16. If yes to #14, describe how **Alcohol Monitors** will be readily identifiable as such to patrons:

Yellow "21 or older" wristbands will be applied to patrons whose IDs have been verified. For additional details, please see attached control plan.

17. Will all **Alcohol Monitors** be required to have a service permit? Yes No

18. If no to #17, those **Alcohol Monitors** without a service permit must be uncompensated volunteers who are directly supervised in the licensed area by an individual who has successfully completed an Alcohol Server Education course within the last five years. Please list the name(s) of the supervisor(s) and their Server Education completion date(s):

Laura "Belinda" Goody - #433585 Completed March 27, 2013. Exp. 3/27/2018

19. Is the applicant a nonprofit or charitable organization with a Registry Number issued by the Oregon Secretary of State's office? Yes No

20a. If yes to #19, will the applicant use servers who don't hold a service permit? Yes No

20b. If yes to #20a, describe the plan to train these people in at least the following: recognizing minors; properly checking identification; and how to recognize and respond appropriately to visibly intoxicated persons:

We will use persons who have been previously trained by our volunteers and any new volunteers will receive the same standard of training. We have encouraged our volunteers to take the service permit course online as a supplement to this. Some may have completed that training by the time of the event.

21. Will security or ID checkers be required to have a service permit? Yes No If no, describe the plan to train these people in at least the following: recognizing minors; properly checking identification; and how to recognize and respond appropriately to visibly intoxicated persons:

We will use persons who have been previously trained by our volunteers and any new volunteers will receive the same standard of training. We have encouraged our volunteers to take the service permit course online as a supplement to this. Some may have completed that training by the time of the event.

22. Will servers, security, or ID checkers wear clothing or other designation which readily identifies them as such to patrons? Yes No If yes, please describe:

Servers will be identified by wearing Nana's Irish Pub apparel. Security will wear clothing signifying that distinction and ID Checkers will also be our Alcohol monitors who will have shirts with "ALCOHOL MONITOR" on them.

For 23 - 25, please see the TSL Application Guide

23. List the **container sizes** for alcoholic beverages meant for consumption in the licensed area:

16 oz _____ Malt Beverages 5 oz _____ Wine 16 oz _____ Cider N/A _____ Distilled Spirits

24. List the **maximum amount of alcohol** in a container meant for consumption in the licensed area:

16 oz _____ Malt Beverages 5 oz _____ Wine 16 oz _____ Cider N/A _____ Distilled Spirits

25. Describe how **containers** used to serve alcoholic beverages for consumption in the licensed area will be of a different color and type when compared to containers used to serve nonalcoholic beverages:

Please see attached control plan.

26. Will you **limit the number of containers** of alcoholic beverages meant for consumption in the licensed area each purchaser may buy at any one time? Yes No If yes, describe the limit:

1 serving per person, per sale.

27. Describe the level of lighting the licensed area will have to ensure the proper monitoring of patrons:

A level of lighting sufficient to read common newspaper print; or

A level of lighting that will be (please describe):

The event spans summer daylight hours which will be light until 9:00 pm. The festival ends at 7:00 pm on Saturday and 5:00 pm on Sunday. This should not present any issues.

28. Describe your plan for making sure that no open containers of alcohol leave the licensed area:

This is a roaming event. Please see attached control plan.

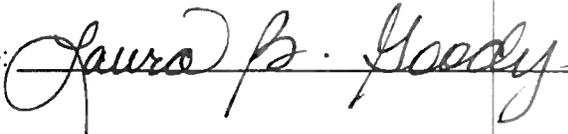
29. Describe your plan for dealing with issues that arise (such as a minor found with alcohol, minor in an area prohibited to minors, minor found with fake identification, patron found to be visibly intoxicated; etc.):

Please see attached control plan.

30. If other methods for adequately managing the licensed area will be used, describe them here (or submit a separate written, dated, and signed plan):

Please see attached control plan.

31. Applicant Name: Celtic Heritage Alliance - Laura "Belinda" Goody (President)

32. Applicant Signature:  33. Date: 22 Apr 13



Sign Here

Expires

03/27/2018

LAURA B GOODY
PO BOX 504
NEWPORT OR 97365

Permit Number

F	10/21/1968	5'03"	165	433585
Sex	Birthdate	Height	Weight	

COPY

COPY

COPY

OREGON LIQUOR CONTROL COMMISSION
PO BOX 22297
MILWAUKIE, OR 97269-2297



YOU PASSED THE ALCOHOL SERVER EDUCATION PROGRAM
ON _____ AND SCORED _____ PERCENT.

THIS LETTER VERIFIES THAT YOU HAVE MET THE SERVER EDUCATION
REQUIREMENT. PLEASE SEE BACK SIDE FOR IMPORTANT
INFORMATION.



COPY

IMPORTANT INFORMATION

If you are a server, you must have a service permit.

This is not your service permit. Your permit will be mailed to you separately if you have already submitted your service permit application.

If you have not applied for a service permit and you are selling and serving alcohol, ask your employer to help you complete an application today.

If you are not selling or serving alcohol, you can still receive credit for this class if you apply for a service permit within 90 days of the date you took the class.



2013 CONTROL PLAN

EVENT

3rd Annual Celtic Festival & Highland Games

June 7, 8, & 9, 2013

Gates Open to Staff, Vendors & Participants: 8:00 am - 7:00 pm Friday and Saturday,
8:00 am - 5:00 pm on Sunday

Gates Open to Patrons: 10:00 am – 7:00 pm Saturday and 10:00 am – 5:00 pm Sunday

Anticipated attendance: 3,000 - 6,000*

* Not all patrons consume alcohol as this is a family-friendly event.

FAMILIARITY

Volunteers, Security and other participants are provided an opportunity, along with detailed site maps, to tour the grounds prior to the event in order to become familiar with the layout.

SECURITY

Per OLCC regulations, on site security personnel will be provided by a business that has security personnel who are DPSST qualified to perform the duties of a Security Officer who will be dedicated to patrolling the grounds during the event. Security personnel will wear shirts/jackets which clearly identify them as such.

PARKING

- Parking and gate entry and exit control will be handled by Security personnel
- Make note of all fire lanes, disabled parking, loading zones and other parking areas
- If a car is parked illegally, call dispatch with the color, make, model, tag number and location; dispatch will notify Production Coordinator to make an announcement and owner given 15 minutes to respond and move vehicle. If unresponsive, a local towing company will be notified for further action
- This year, participants (vendors, volunteers, etc.) will be allowed to park in the Newport High parking lot with a permit

ENTRY AND EXIT

- Public must enter through main entrance on Harney Street
- Volunteers will enter through a designated entrance through 4-H building on Harney Street
- Patrons entry wristbands will be valid for reentry to the event and for entry on subsequent days in the case of multi-day pass holders. See Attachment 1 for detailed information.
- All bags may be subject to search upon entry to the event

- Searches may be made for prohibited items: guns, corkscrews, and other items deemed hazardous or illegal
- Gate to Newport High School field will not be a point of first time entry
- Vendors and performers will enter through a designated entrance on the Southwest corner of the fairgrounds for the purposes of unloading and loading their equipment and wares; this gate will be closed and monitored throughout the extent of the events and no public or patrons will be allowed through this gate at any time; except in the case of an emergency
- Staff and volunteers will have ID badges denoting their areas of responsibility and level of access
- Anyone issued an ID badge will be required to have it prominently displayed at all times during the event and are required for re-entry
- If a patron leaves the event and wishes to return, they must re-enter at the Main Entrance.
- Gate attendants must make sure that Patrons seeking reentry have a wristband and/or hand stamp before they re-enter the grounds. (See Attachment 1 for details)
- All re-entries are subject to bag check
- No outside food or drink is allowed

LIQUOR CONTROL

- The grounds are entirely fenced in and therefore no need for a designated "beer garden" exists
- Hired security and alcohol monitors will handle alcohol-related issues according to this plan
- For each 2,000-7,500 patrons, at least 3 Security personnel and 3 Alcohol Monitors will be provided
- 1 additional Security person and 1 additional Alcohol Monitor will be provided above this threshold
- Patrons wishing to purchase alcohol at the event must have their ID verified by an Alcohol Monitor at the point of sale
- Once validated, patrons will be issued a wristband identifying them as 21 or over for identification by alcohol vendors
- No person shall be issued a wristband if Security believes patron is already intoxicated
- Wristbands issued must be worn at all times
- Patrons under the age of 21 will not be issued YELLOW "21 or older" wristbands at any time
- NO MINORS WILL BE SERVED
- Alcohol Monitors who observe anyone drinking without a wristband should report this to Security
- Alcohol Monitor in the presence of Security will verify the absence of the wristband and request ID from the person. If the person is 21 or over, and prior to them continuing to consume alcohol, an Alcohol Monitor will issue them a wristband
- Persons under 21 who are observed consuming alcohol by an Alcohol Monitor, will be reported to Security who will validate the report and assess the situation. If valid, the person will be escorted from the grounds to the main exit and NPD notified
- Any persons escorted from the grounds should have their wristbands removed by Security or an Alcohol Monitor
- The Event Director should be notified by Security Personnel if they find VIPs or other non-patrons who are intoxicated. Event Director will work with Security Personnel to escort the person(s) from the grounds
- No alcohol will be allowed through any exit or on the grounds of the adjacent Newport High School
- Patrons exiting the event will have no alcohol in their glass; they must drink it or dump it out
- Patrons making purchases of bottled wine or other alcoholic beverages make pick those items up only as they exit the event (similar to "duty free" on airplanes).
- All servers are required to have an OLCC service permit and will monitor intoxication levels
- Servers will report intoxicated patrons to Alcohol Monitors or Security for handling

- Servers will refuse service to anyone not wearing a "21 or over" wristband or showing signs of intoxication
- OLCC permits will be required of all servers
- OLCC does not allow glasses or containers over 24 ounces in size
- Beer will be served in plastic cups (16oz or less)
- Wine will be served in plastic cups (5oz or less)
- Whisky/Whiskey samples will be served in a plastic cup (1oz) with no more than 3 samples per patron*
- * Whisky/Whiskey samples will be purchased and consumed within a smaller, gated area for age approved patrons.
- Alcohol purchase is limited to 1 serving per person, per sale
- The last call for poured alcohol sales is 30 minutes prior to closing
- Production should be notified by Security so an announcement can be made prior to notify vendors of time to stop pours
- No sales of alcohol 15 minutes before closing

ALCOHOL MONITORS

Oregon State-certified alcohol monitors will help manage alcohol consumption during this event. Duties include ID checking, interacting with guests who are consuming alcoholic beverages to prevent over-consumption, and helping find alternative transportation home.

- Alcohol Monitors should wear shirts/jackets that are of a distinctive color and say "Alcohol Monitor" on them.
- Alcohol Monitors should observe and report alcohol incidents to Security for handling
- Alcohol Monitors should not confront any intoxicated or unruly patron and do not handle removal of patrons
- Alcohol Monitors should pay particular attention to patrons exiting the event if they appear intoxicated and may attempt to drive
- Alcohol Monitors should move between the alcohol service area, and the remaining grounds to look for intoxicated patrons, outside alcohol brought in and minors in possession of alcohol

VISIBLY INTOXICATED OR UNRULY PATRONS

- Anyone who is an unruly patron, or has been denied service of alcohol should be escorted by Security from the grounds to the main exit. Subjects must be advised by Security that any attempt at re-entry will make them subject to trespassing laws.
- Patrons identified as being intoxicated or unruly should be approached by Security and asked to step aside from any other party before being questioned to determine their status. Should Security determine the person is intoxicated or is behaving in an unruly manner, Security will promptly and professionally escort them from the grounds to the main exit. Security will notify the dispatcher on any such event.
- Security should provide dispatcher with patron's name, date of birth, ID#, physical description and time of incident. Dispatcher will keep a record of any such incidents as they are reported. Dispatch should update gate personnel to prevent attempts at re-entry.

- If Security detains a patron and requires Police assistance, Security should contact Dispatch who will contact Newport Police Department. If possible, Security should promptly and professionally escort them from the grounds to the main exit and wait for Police assistance.

HANDLING EMERGENCY FOR POLICE, FIRE OR MEDICAL SITUATIONS

- Should any (non-mobile) emergency arise, contact the Dispatcher immediately or on designated radio frequency to describe the nature of the emergency, your location and proximity to nearest entry point, and request services needed. (See Attachment 1).
- Notification should be made to NPD Volunteer leader to prepare for vehicle arrival as needed.
- Notification should be made to Event Director (Belinda Goody) regarding any emergency situation.

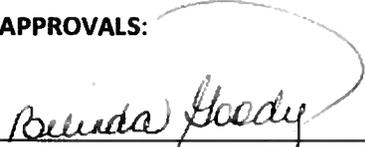
MINOR MEDICAL RESPONSES

- Should anyone require minor medical attention, and that person is mobile, Security should escort the patron to the designated First Aid area for treatment. Qualified first aid providers will be on hand to assist with minor issues. If the patron is uncertain whether they are mobile, contact Dispatch to request First Aid at your location.
- First Aid givers should log any treatment incidents and collect patrons name, date of birth, ID#, physical description and nature of incident and provide this to the Event Director at the end of the event.

LOST AND FOUND

- Any items found that appear to have been lost by a patron should be turned in to the First Aid Station
- Production should be notified so an announcement can be made

APPROVALS:



Belinda Goody, Executive Director, NCFHG

25 March 2013
Date



Mark Miranda, Chief, Newport Police Department

3-26-13
Date

OLCC Representative

Date



Attachment 1

Wristbands

Entry Wrist Band = 1 or 2 day pass (all adult entrants will wear a wrist band to show ticket purchase)

Entry Hand Stamp = 1 or 2 day pass (all youth entrants will wear a "PAID" hand stamp to show purchase)

Saturday: Blue = 1 Day Pass Saturday/Sunday: Red = 2 Day Pass Sunday: Green = 1 Day Pass

YELLOW "21 or Older" Wrist Band = as identified and applied by Alcohol Monitors at purchase points.

Badges

All "VIPs," vendors, performers and other non-patrons will have badges. Stars denote "Green Room/VIP Access." Badges will be color coded in bright colors and must be available at all times for security. Each badge has a code number on the reverse for inventory and tracking purposes.



KEY CONTACTS – All First Aid, Security, Dispatch and Lost and Found will be HQ at SW corner of fairgrounds near Exit Gate "B".

First Aid (Volunteers - Pending Confirmation)

Helen Ballantyne
Michelle Pelkey
Dixie Smith

Security Dispatch, Officers & Overnight Security - TBD (Request for Proposals to be sent soon)

Lead Contact: TBD
Phone: TBD

Fairground Management - Jack Whaley (via WVCC - formerly LINCOM): 541-265-4231

Newport Police Supervisor - (via WVCC - formerly LINCOM): 541-265-4231

Event Director - Belinda Goody

Cell: 541-961-7696

Designated Radio Frequencies (Subject to change)

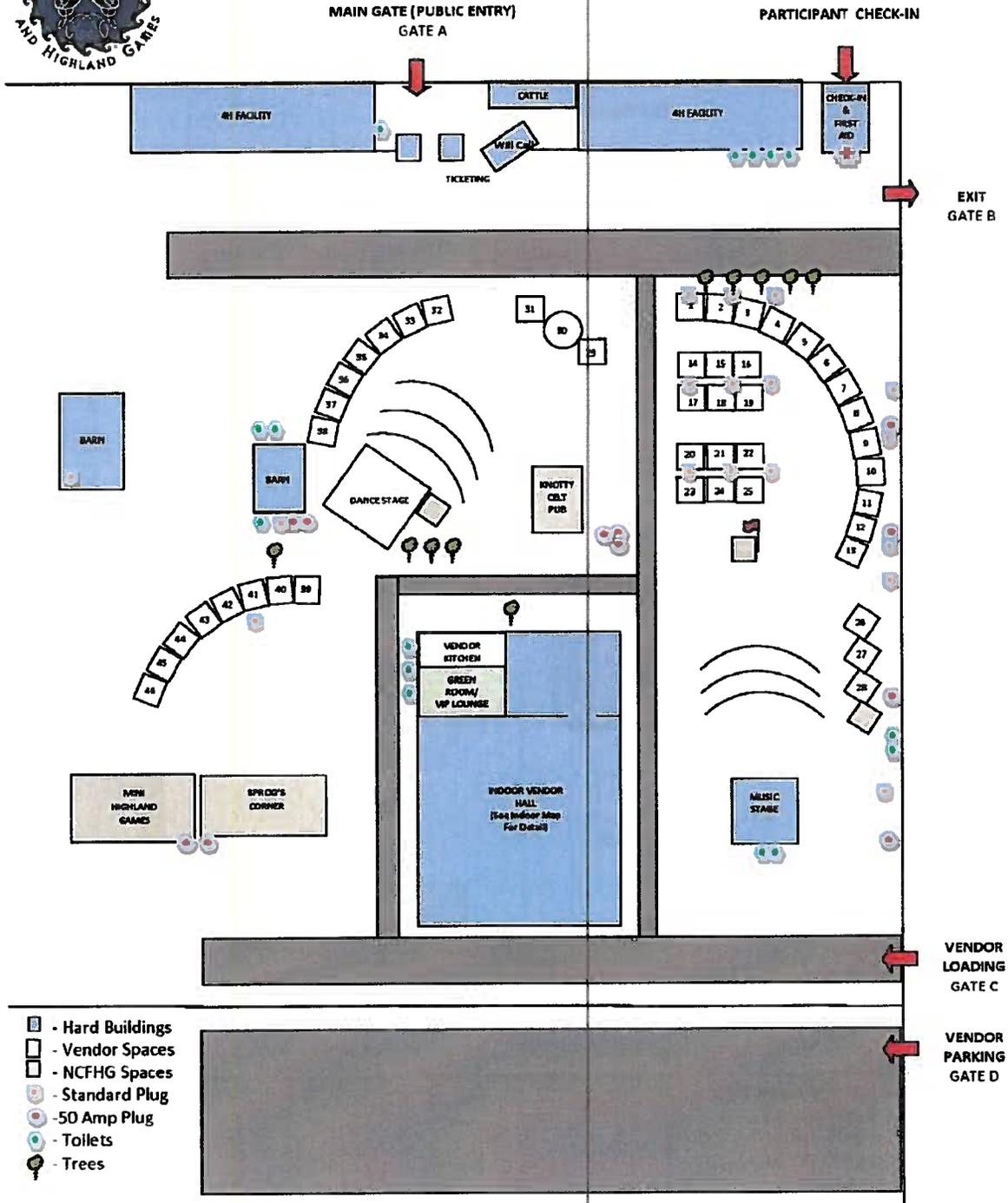
Channel 2 - First Aid and Security

Channel 4 - Event Staff & Volunteers

Channel 6 - Stage & Sound Production Staff (Ultrasonic)



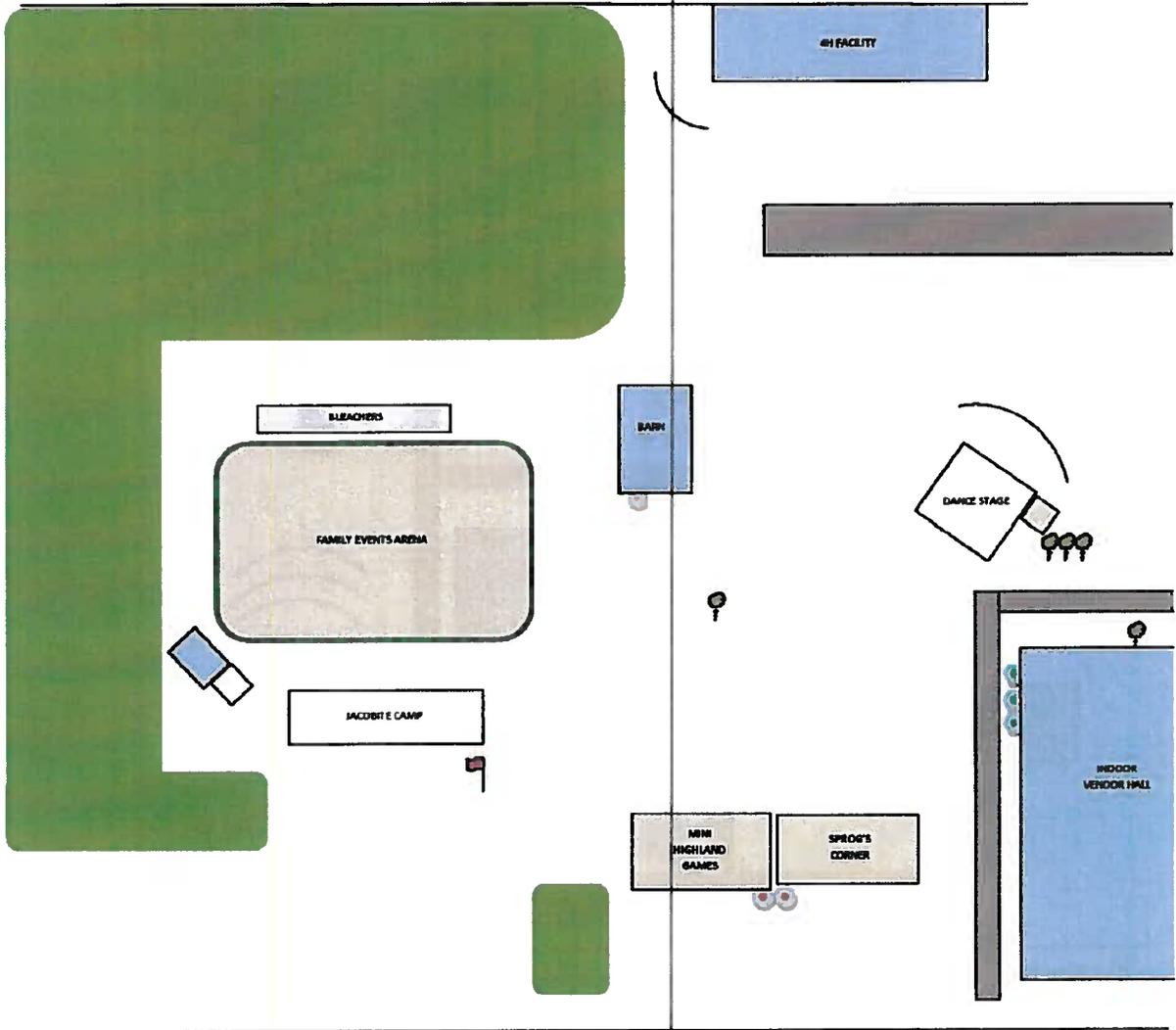
2013 Proposed Outdoor Vendor Map



- Hard Buildings
- Vendor Spaces
- NCFHG Spaces
- Standard Plug
- 50 Amp Plug
- Toilets
- Trees



2013 Proposed Outdoor Vendor Map



- Highland Games Field
- Hard Buildings
- Vendor Spaces
- NCFHG Spaces
- Standard Plug
- 50 Amp Plug
- Toilets
- Trees