



**CITY COUNCIL REGULAR SESSION AGENDA**  
**Monday, December 04, 2023 - 6:00 PM**  
**City Council Chambers**

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

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

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

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1. CALL TO ORDER AND ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. 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*

#### **4. PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS**

*Any formal proclamations or recognitions by the Mayor and Council can be placed in this section. Brief presentations to the City Council of five minutes or less are also included in this part of the agenda.*

##### **4.A Oath of Office Police Sergeant Steve Hallmark**

#### **5. 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.*

##### **5.A Receipt of Links for Video/Audio Files for All Meeting Minutes Received/Approved by City Council**

[Video Links for Minutes to be approved 12-04-2023.pdf](#)

##### **5.B Approval of City Council Regular and Work Session Minutes**

[11-06-2023 City Council Work Session Minutes- Final.pdf](#)

[11-06-2023 City Council Minutes-Final.pdf](#)

[11-20-2023 City Council Work Session Minutes- Final.pdf](#)

[11-20-2023 City Council Minutes-Final.pdf](#)

##### **5.C Receipt of Approved Committee Minutes**

[60+ Advisory Committee Minutes 01-23-23.docx.pdf](#)

[60+ Advisory Committee Minutes 02-27-23.pdf](#)

[60+ Advisory Committee Minutes 03-27-23.docx.pdf](#)

[60+ Advisory Committee Minutes 05-22-23.docx.pdf](#)

[60+ Advisory Committee Minutes 06-26-23.pdf](#)

[60+ Advisory Committee Minutes 08-28-23.docx.pdf](#)

[60+ Advisory Committee Minutes 09-25-23.docx.pdf](#)

[10-17-2023 water supply conservation and management minutes-final.pdf](#)

#### **6. PUBLIC HEARING**

*This is an opportunity for members of the audience to provide testimony/comments on the specific issue being considered by the City Council. Comments will be limited to three (3) minutes per person.*

##### **6.A Public Hearing and Possible Consideration of a Purchase and Sale Agreement**



**for the Abbey Street Pier Building Located at 669 SW Bay Boulevard**

[City Manager's Report  
Staff Report.pdf](#)  
[Draft Commercial Real Estate Sales Agreement.pdf](#)  
[Abbey Street Dock Access Easement\\_120423.pdf](#)  
[Abbey Street Pier Fire Suppression Easement\\_120423.pdf](#)  
[Hearing Notice.pdf](#)  
[DSL Lease 11546-ML.pdf](#)  
[DSL License 23348-LI.pdf](#)  
[Abbey St Pier Legal Descriptions and Exhibits.pdf](#)  
[P221296 Appraisal\\_Addenda.pdf](#)

**6.B Public Hearing and Possible Action to Determine Certain City-Owned Parcels of Tideland are Surplus to the City's Needs and Should Be Sold to the Yakona Nature Preserve and Placed in Conservancy**

[City Manager's Report  
Staff Report.pdf](#)  
[Tidelands Map.pdf](#)  
[Tax Lot Property Records.pdf](#)  
[City Vesting Deed.pdf](#)  
[Excerpt of Council Meeting Minutes 1.6.96.pdf](#)  
[Barton Proposal.pdf](#)  
[Yakona Backgrounder.pdf](#)  
[Sample Deed Restriction.pdf](#)  
[Hearing Notice No. 1.pdf](#)  
[Testimony from Mark Arnold.pdf](#)

**7. COMMUNICATIONS**

*Any agenda items requested by Mayor, City Council Members, City Attorney, or any presentations by boards or commissions, other government agencies, and general public will be placed on this part of the agenda.*

**7.A From Erik Jensen, Jensen Strategies - Discussion of Schedule for Executive Recruitment of the City Manager**

[City Manager's Report  
Community Meeting graphic.png](#)

**7.B Communication from the Parks and Recreation Advisory Committee -- Annual Progress Report on the Parks System Master Plan**

[City Manager's Report](#)  
[2023 PMP Update from P&R Committee](#)

**7.C Communication from the City Attorney -- Request for Payment of up to 40 Hours of Accrued Vacation Time**

[City Manager's Report](#)  
[Allen Email Vacation Carryover.pdf](#)  
[David Allen Vacation carryover exception request.pdf](#)

**8. CITY MANAGER'S REPORT**

*All matters requiring approval of the City Council originating from the City Manager and departments will be included in this section. This section will also include any status reports for the City Council's information.*

**8.A Consideration of Resolution No. 4001, Relating to the Application of SDC Charges to the Conversion of Commercial Buildings for Residential Use**

[City Manager's Report](#)  
[Staff Report.pdf](#)  
[Draft Resolution No. 4001 - SDCs for Commercial to Residential Conversions.pdf](#)  
[HB2984 Enrolled.pdf](#)  
[NMC Chapter 12.15 - System Development Charges.pdf](#)

**8.B Consideration of Adoption of Order Number 2023-2, an Order Acknowledging the Withdrawal of Conditional Use Permit Application No. 7CUP-21 for the Lincoln County Animal Shelter**

[City Manager's Report](#)  
[Staff Report.pdf](#)  
[Draft Order 2023-2 - Withdrawal of CUP application.pdf](#)

**8.C Report and Appropriation of Funding for Repairs for the Oceanview Drive Slide Under Limited Emergency 2023 - 2**

[City Manager's Report](#)  
[2023-02\\_Declaration Original.pdf](#)  
[2023-02\\_Declaration Updated with Extensions.pdf](#)  
[Staff Report \(12-4-23\).pdf](#)  
[MITIGATION LIMITS \(Attachment A\).pdf](#)  
[Rock Armoring Cross Section \(Attachment B\).pdf](#)  
[Storm Replacement \(Attachment C\).pdf](#)

## **8.D Report and Possible Action on SAIF Dividend for Workers Compensation**

[City Manager's Report](#)

## **8.E Report and Possible Action for Conversion to a Four-Day, Ten-Hour Work Week for General Office and Other Departmental Work**

[City Manager's Report](#)

[Staff Report.pdf](#)

[11-20-2023 Memo Regarding 4-10-Compressed Work Week.pdf](#)

[1.6.22\\_Memo\\_to\\_Council\\_-\\_Discussion\\_on\\_Current\\_Staffing\\_Levels.pdf](#)

## **8.F Report on Per -- and Polyfluoroalkyl Substances (PFAS) Litigation**

[City Manager's Report](#)

[David Allen Email PFAS Rev.pdf](#)

[3M - Summary Notice.pdf](#)

[DuPont - Summary Notice.pdf](#)

## **8.G Report on the Budget Calendar for the Fiscal Year Beginning July 1, 2024 and Ending June 30, 2025**

[City Manager's Report](#)

[Staff Report on Budget Calendar for 2024-25.pdf](#)

[2024-25 Budget Calendar 11-29-23.pdf](#)

## **9. REPORT FROM MAYOR AND COUNCIL**

*This section of the agenda is where the Mayor and Council can report any activities or discuss issues of concern.*

### **9.A Mayor and Council Reports**

[Hall Council Report .pdf](#)

## **10. PUBLIC COMMENT**

*This is an additional opportunity for members of the audience to provide public comment.*

*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.*

## **11. ADJOURNMENT**

**11-6-2023 - City Council Work Session Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/1146>

**11-06-2023 - City Council Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/1147>

**11-20-2023 - City Council Work Session Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/1156>

**11-20-2023 – City Council Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/1157>

**1-23-2023 - 60+ Advisory Committee Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/964>

**2-27-2023 - 60+ Advisory Committee Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/986>

**3-27-2023 - 60+ Advisory Committee Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/1005>

**5-22-2023 - 60+ Advisory Committee Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/1044>

**6-26-2023 - 60+ Advisory Committee Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/1062>

**8-28-2023 - 60+ Advisory Committee Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/1098>

**9-25-2023 – 60+ Advisory Committee Minutes**

Link: <https://thecityofnewport.granicus.com/player/clip/1115>

**10-17-2023—Water Supply Management Conservation Work Group**

Link: <https://thecityofnewport.granicus.com/player/clip/1127>

**City of Newport  
City Council Work Session Minutes  
November 06, 2023**

**LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY  
NEWPORT**

**Time Start: 4:00 P.M.**

**Time End: 5:39 P.M.**

**MEETING ATTENDANCE LOG**

<b>COUNCIL/BOARD MEMBER</b>	<b>STAFF</b>
Mayor Kaplan	Spencer Nebel, City Manager
Councilor Emond	Erik Glover, Assistant City Manager/City Recorder
Councilor Botello	Steve Baugher, Finance Director
Councilor Goebel	David Allen, City Attorney
Councilor Hall	Derrick Tokos, Community Development Director
Councilor Parker	
Councilor Jacobi	

<b>AGENDA TITLE</b>	<b>ACTIONS</b>
<b>Work Session</b>	
<b>City Manager's Report</b>	Nebel presented the written City Manager Report advising tonight's meeting would be a general meeting with PUD, interviews of executive search firm for City Manager recruitment and an executive session.
<b>Meeting with Members of the Board of Directors of Central Lincoln People's Utility District to discuss issues of mutual interest</b>	<p>Nebel advised the City raised a variety of requests/issues in the past, the PUD board suggested communicating directly with the Council. Executive team and board members of the Lincoln County PUD were in attendance and Council and PUD did introductions. Ty Hillebrand; General Manager, Mark Freeman; Director of Employee Customer &amp; Community Services, Brandon Hignite; Director of Shared Services, Paul Davies; Vice President of the Board, Peter Gitner; PUD Attorney.</p> <p>Hillebrand reported the PUD serves 41,000 meters, 110 miles of the Oregon coast and is publicly owned. He advised the franchise agreement expired in 2018 and the PUD has been operating under previous agreement terms since it expired. Ultimately the City requests/demands were not acceptable to the PUD staff and board, and thus item is unresolved. Hillebrand reported the requests were going to place a lot of additional costs on rate payers which was not a choice the PUD was interested in. Nebel reported the requests included Council priorities such as line undergrounding, and dark sky initiative. Brief</p>

	discussion on Big Creek Transmission Line, ADA retrofit upon power pole replacement, and PUD planned outage system was heard. Nebel reported that the City would schedule a future work session for the Council to discuss priorities/requests and whether Council wishes to retain the list or modify items.
<b>Authorization of a Contract with an Executive Consultant for Recruitment of the City Manager</b>	Nebel advised that the Council would be conducting interviews in the work session, and selecting in the regular meeting tonight. Nebel handed out proposal rating/scoring forms to the Council, and detailed the proposal and selection process. Interviews with Strategic Government Resources/SGR, Prothman, Jensen, and GMP were scheduled. Nebel noted that Prothman was not able to do an interview, but would like their submitted proposal scored. Council held discussion about the proposals and interviews. Nebel reported the goal was for the scoring sheets to be done independent, and then the full Council to make a choice in the regular meeting.
<b>Scheduling an Executive Session Pursuant to ORS 192.660(2)(e) to Discuss Real Property Transactions</b>	MOTION was made by Hall, seconded by Jacobi to move that the City Council schedule an executive session pursuant to ORS 192.660(2)(e) to discuss real property transactions to immediately follow the close of the November 6, 2023 work session. MOTION carried unanimously in a voice vote.

**City of Newport  
City Council Minutes  
November 06, 2023**

<b>LOCATION:</b> CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY NEWPORT <b>Time Start:</b> 6:22 P.M.	<b>Time End:</b> 9:19 P.M.
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**ATTENDANCE LOG/ROLLCALL**

COUNCIL/BOARD MEMBER	STAFF
Mayor Kaplan	Spencer Nebel, City Manager
Councilor Emond	Erik Glover, Assistant City Manager/City Recorder
Councilor Botello	David Allen, City Attorney
Councilor Goebel	Jason Malloy, Police Chief
Councilor Hall	Rob Murphy, Fire Chief
Councilor Parker	Steve Baugher, Finance Director
Councilor Jacobi	Derrick Tokos, Community Development Director

AGENDA ITEM	ACTIONS
<b>REGULAR MEETING</b>	
<b>CALL TO ORDER AND ROLL CALL</b>	
a. Roll Call	None.
b. Pledge of Allegiance.	Council, staff and the audience participated in the pledge of allegiance.
<b>PUBLIC COMMENT</b>	None
<b>PROCLAMATION, PRESENTATIONS AND SPECIAL RECOGNITIONS</b>	
a. Presentation by Restore Oregon by Rachel Browning, Board President	Browning spoke and presented a Powerpoint on Restore Oregon, and the Main Street Program in Oregon.
<b>CONSENT CALENDAR</b>	
a. <u>Ratify the Mayor's Appointment of Christina Simonsen, Wayne Patterson as Local Business Representative, Jim Patrick as Area Resident, Laurie Sanders, Jack Weber as General Public representative of the City Center Revitalization Workgroup for terms expiring 14 months from appointment date</u>	Glover read the consent calendar.  MOTION made by Parker, seconded by Jacobi to approve the consent calendar. MOTION carried unanimously in a voice vote.
b. <u>Receipt of Approved Committee Meeting Minutes Consisting of:</u> September 20, 2023 Parking Advisory Minutes September 25, 2023 Planning Commission Regular Session Minutes October 09, 2023 Planning Commission Work Session Minutes August 2023 Bicycle, and Pedestrian Advisory Committee Minutes	

<p>June 2023 Bicycle, and Pedestrian Advisory Committee Minutes  October 7, 2023 Audit Committee Minutes  January 31, 2022 Audit Committee Minutes  February 23, 2022 Audit Committee Minutes  April 26, 2022 Audit Committee Minutes  July 21, 2022 Audit Committee Minutes  October 20, 2022 Audit Committee Minutes  February 23, 2023 Audit Committee Minutes  July 21, 2023 Audit Committee Minutes</p>	
<p><b>PUBLIC HEARING</b>  <u>Public Hearing and Consideration of Whether it is in the Public Interest to Add a Purchase Option to the City of Newport's Airport Property Lease with McWatkins, LLC</u></p> <p>a. CITY MANAGER REPORT - Spencer Nebel  b. Public Hearing open  c. Public Comment  d. Public Hearing closed  e. Council Decision</p> <p><u>Public Hearing and Potential Adoption of Resolution No. 3997, a Resolution Providing for a Supplemental Budget and Making Appropriation/Total Requirement Changes for Fiscal Year 2023 - 2024</u></p> <p>a. CITY MANAGER REPORT - Spencer Nebel  b. Public Hearing open  c. Public Comment  d. Public Hearing closed  e. Council Decision</p>	<p>Nebel presented the written City Manager report.</p> <p>Kaplan opened the public hearing at 06:46 P.M.</p> <p>None was heard.</p> <p>Kaplan closed the public hearing at 06:47 P.M</p> <p>Council held discussion on the item. Tokos reported that lease payments are still due on any lease areas not purchased.</p> <p>It was noted a letter received from Alen Wells/McWatkins realtor seemed rather pointed and uncivil.</p> <p>MOTION was made by Goebel, seconded by Jacobi to move to find that it is in the public interest to add the proposed purchase option to the City of Newport airport property land lease with McWatkins, LLC and authorizes the City Manager execute the said amendment.  MOTION carried unanimously in a voice vote.</p> <p>Nebel presented the written City Manager report.</p> <p>Kaplan opened the hearing at 7:02 P.M.</p> <p>None was heard.</p> <p>Kaplan closed the hearing at 7:02 P.M.</p>



	<p>Matt Hall, Water Distribution Senior Worker and Direct Responsible Charge for the Water Distribution System was present to speak. Matt Hall Reported the current 2009 vac truck arrived to water distribution used, and is used almost daily across multiple situations to include most emergencies, maintenance costs are excessive and many parts are obsolete. He advised the proposed model is also capable of operation by one person, which would help out the under staffed crews.</p> <p>MOTION was made by Parker, seconded by Jacobi to move to adopt Resolution No. 3997, a resolution adopting a supplemental budget for Fiscal Year 2023 - 2024 making appropriation increases and changes for Fiscal Year 2023 - 2024, incorporating attachment "A" as part of the resolution.</p> <p>MOTION carried unanimously in a voice vote.</p>
<p><b>COMMUNICATIONS</b></p> <p>Communication from the Discover Newport Committee Regarding Request for a Budget Adjustment</p>	<p>Nebel presented the written City Manager Report.</p> <p>Wayne Patterson, Greater Newport Chamber of Commerce Director, Lauren Pahl, Chamber Marketing Manager, and Maggie Conrad, Event Director, and Janell Goplen, of the Discover Newport Committee were present to speak.</p> <p>Chamber provided a brief summary of the funding ask, the various budget funds of the City related to the subject and proposed projects for the budget. Council held discussion on the item.</p> <p>MOTION was made by Goebel, seconded by Jacobi to move to increase the appropriation for the Discovery Newport Program from \$500,000 to \$742,240 with this requirement that a report/plan for the \$100,000 for beautification line item be presented to Council before expenditure, with the change being reflected in a future supplemental budget.</p>
<p><b>CITY MANAGER'S REPORT</b></p> <p>a. Report and Possible Action Regarding Declaration of a Limited Emergency to Repair Damage Caused by a Slide on Oceanview Drive</p> <p>b. Authorization to Execute a Grant Contract with Oregon Parks and Recreation (OPRD) Local Government Grant Program (LGGP) for a Large</p>	<p>Nebel presented the City Manager report.</p> <p>MOTION was made by Hall, seconded by Emond to move to extend the limited emergency on Oceanview Drive to facilitate repairs to stabilize ground utilities, restore the embankment and conduct street repairs to November 21, 2023. MOTION carried unanimously in a voice vote.</p> <p>Parker advised he would be stepping off the dias, and abstaining from participation due to a potential conflict of interest by his employment</p>

<p>Grant for Agate Beach Neighborhood and Dog Park</p> <p>c. Adoption of Resolution No. 3998, a Resolution Authorizing the Use of General Fund Money for Equipment Purchases with the Water Fund and Stormwater Fund Reimbursing the General Fund Over a Five-Year Payment Schedule</p> <p>d. Adoption of Resolution No. 3999, a Resolution Providing for a Payment Schedule and Related Interest Rate Between the Agate Beach Closure Fund and the Public Parking Fund for the Bayfront Parking Implementation Project</p> <p>e. Scheduling a Public Hearing on Resolution No. 4000, a Resolution Setting Fees and Terms for Use of Certain Public Parking Areas Along the Bayfront</p> <p>f. Referring to the Voters an Ordinance Increasing the City Gas Tax</p>	<p>with the State Parks Department. It was noted he didn't have to, due to him not benefiting financially.</p> <p>MOTION was made by Jacobi, seconded by Emond to excuse Councilor Parker from voting/discussion on this item. MOTION carried unanimously in a voice vote, with Parker abstaining.</p> <p>Nebel presented the City Manager Report.</p> <p>MOTION was made by Jacobi, seconded by Botello to move to authorize the City Manager to execute a local government grant program agreement with the Oregon Parks and Recreation Department for the Agate Beach Neighborhood and Dog Park improvements with the maximum reimbursement being \$390,000 and our local match being \$260,000 for total project cost of \$650,000. MOTION carried unanimously in a voice vote, with Parker abstaining.</p> <p>Nebel presented the City Manager report.</p> <p>MOTION was made by Emond, seconded by Botello to move to adopt Resolution No.3998, a resolution setting payment of interfund loan between the General Fund and the Water and Stormwater Funds for the purchase of a vac truck. MOTION carried unanimously in a voice vote.</p> <p>Nebel presented the City Manager report.</p> <p>MOTION was made by Goebel, seconded by Parker to move to adopt Resolution No. 3999, a resolution setting payment of an interfund loan between the Agate Beach Closure Fund and the Public Parking Fund for the Parking Study Implementation Project. MOTION carried unanimously in a voice vote.</p> <p>Nebel presented the City Manager report. Tokos presented the staff report and answered questions from Council.</p> <p>MOTION by Parker, seconded by Emond to move to schedule a public hearing on set November 20, 2023 to consider resolution number 4000, a resolution setting fees and terms for use for certain public parking areas on the Bayfront. MOTION carried unanimously in a voice vote.</p> <p>Nebel presented the City Manager report.</p>
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<p>g. Discussion on the Possible Banning of the Sale of Fireworks in the City of Newport</p> <p>h. Report on the Status of Council Priorities for the 2023 - 2024 Goals and Objectives for the First Quarter of the Fiscal Year</p>	<p>Council held discussion, it was noted it was presented to the voters with a prepared food tax and it seems clearer to have dollars to invest in roads. Nebel advised City staff are prohibited from advocating for a measure when on ballot, Council is not. Council clarified they wanted it called the road maintenance tax, and the text needed some wordsmithing, but it was the general Council consensus to proceed.</p> <p>Murphy presented a summary. Council asked questions, and held discussion. Murphy advised he would have a draft ordinance for the next meeting.</p> <p>Nebel presented the City Manager report. Council held discussion.</p>
<p><b>LOCAL CONTRACT REVIEW BOARD</b></p> <p>a. Authorization to Purchase a 2023 Super Products 12-yard Hydrovac Jetter Truck in the Total Amount of \$584,000 from Western Systems through the Sourcewell Collective Purchasing Agreement #101221-SPL</p> <p>b. Authorization of a Contract with an Executive Consultant for Recruitment of the City Manager</p>	<p>Kaplan opened LCRB at 8:53 P.M.</p> <p>MOTION was made by Emond, seconded by Goebel to move to authorize the purchase of a 2023 Super Products 12-yard hydrovac truck through Sourcewell Collective Purchasing Agreement #101221-SPL from Western Systems in the amount of \$584,000. MOTION carried unanimously in a voice vote.</p> <p>Nebel advised the tabulations were calculated Jensen scored highest, GMP 2<sup>nd</sup>, SGR 3<sup>rd</sup>, and Prothman last. Council held discussion on the proposals and interviews.</p> <p>MOTION was made by Jacobi, seconded by Goebel to hire Jensen as search company for next City Manager. It was noted motion didn't match report, so it was withdrawn.</p> <p>MOTION made by Jacobi, seconded by Parker to move to direct the City Manager and City Attorney to enter into an agreement with Jensen Strategies to provide city manager recruitment assistance to the City Council following legal review by the City Attorney. MOTION carried unanimously in a voice vote.</p> <p>Kaplan closed LCRB at 09:08 P.M.</p>

## REPORT FROM MAYOR AND COUNCIL

### a. Mayor and Council Reports

Councilor Parker shared that he recently saw a Youtube video with first amendment auditors, and wanted to say that Glover looked very professional, and did a good job.

Parker inquired about any updates on a recently stolen Pride Flag, Nebel advised no further updates. Parker requested that Staff contact Sustainable NW to learn why NOAA declined to support a recent request for funds, and put on a future agenda.

Goebel requested a get-well card for Veronica Lundell be purchased for signature at an upcoming Council meeting. He advised she was putting up banners for Nye Beach and fell off a ladder. Nebel advised it was not a City program, but work in City ROW on a community project. Hall reported Lundell fundraiser for medical expenses raised \$17,000 so far.

Hall requested an update on library security. Nebel advised Library Director Kimberly will be presenting a draft of facility rules at an upcoming meeting for Council action, whereby those who break rules can be trespassed by staff. If someone returns after trespass warning they are subject to arrest.

Brief discussion on parking at library.

Hall detailed an upcoming event at the Performing Arts Center regarding arts as an economic engine.

## PUBLIC COMMENT

### a. Janelle Goplen- Newport, Oregon

Advised she recently performed a search and discovered that search results for Newport, Oregon had news items for Mayor Sawyer as first result, but noted second was fireworks in Newport, which was surprising, as she expected Seafood and Wine to be ranked higher

**City of Newport  
City Council Work Session Minutes  
November 20, 2023**

**LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY  
NEWPORT**

**Time Start: 3:42 P.M.**

**Time End: 4:27 P.M.**

**MEETING ATTENDANCE LOG**

<b>COUNCIL/BOARD MEMBER</b>	<b>STAFF</b>
Mayor Kaplan	Spencer Nebel, City Manager
Councilor Botello	Erik Glover, Assistant City Manager/City Recorder
Councilor Goebel	Barb James, HR Director
Councilor Emond	Laura Kimberly, Library Director
Councilor Hall	
Councilor Jacobi	
Councilor Parker	

<b>AGENDA TITLE</b>	<b>ACTIONS</b>
<b>Work Session</b>	
<b>City Manager's Report</b>	Nebel presented the written City Manager Report.
<b>Bilingual Position</b>	Nebel advised the first version of this position was primarily bilingual/translation focused, but has evolved to being a community outreach position. The current goal was to modify the Library Director position to serve this function, and create an Assistant Library Director to take on some of the current Library Director responsibilities. Council held discussion on the item and it was the general consensus to proceed.
<b>Climate Action Plan</b>	Nebel reported a survey went out to Council members, three were received, and the survey answers were polar opposites on what to prioritize in the plan, and what to exclude, so ranking would happen tonight. Council held a verbal discussion and voted on priorities in the plan, staffing challenges were noted. It was advised some of the items don't have a fit in a climate action plan. Nebel reported he would modify the draft in-line with Council selection/discussion tonight, and bring a draft plan back at the first or second meeting in January of 2024 for Council approval/adoption.
<b>Scheduling an Executive Session Pursuant to ORS 192.660(2)(h) to Consult with Counsel Concerning the Legal Rights and Duties of a Public Body with Regard to Current Litigation or Litigation Likely to be Filed</b>	MOTION was made by Hall, seconded by Emond to move to schedule an executive session pursuant to ORS 192.660(2)(h) to consult with Counsel concerning the legal rights and duties of a public body with regard to current litigation immediately following the close of the November 20, 2023 work session. MOTION carried unanimously in a voice vote.

**City of Newport  
City Council Minutes  
November 20, 2023**

<b>LOCATION:</b> CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY NEWPORT
<b>Time Start:</b> 6:12 P.M. <span style="float: right;"><b>Time End:</b> 9:35 P.M.</span>

**ATTENDANCE LOG/ROLLCALL**

COUNCIL/BOARD MEMBER	STAFF
Mayor Kaplan	Spencer Nebel, City Manager
Councilor Emond	Erik Glover, Assistant City Manager/City Recorder
Councilor Botello	David Allen, City Attorney
Councilor Goebel	Jason Malloy, Police Chief
Councilor Hall	Rob Murphy, Fire Chief
Councilor Parker	Steve Baugher, Finance Director
Councilor Jacobi	Derrick Tokos, Community Development Director
	Laura Kimberly, Library Director

AGENDA ITEM	ACTIONS
<b>REGULAR MEETING</b>	
<b>CALL TO ORDER AND ROLL CALL</b>	
a. Roll Call	None.
b. Pledge of Allegiance.	Council, staff and the audience participated in the pledge of allegiance.
<b>PUBLIC COMMENT</b>	
a. <b>Martin Desmond</b> - Newport, Oregon	Spoke reporting he was the Treasurer for Harbor Village Mobile Home Park, detailed the CREP (Community Renewable Energy Program) grants available from the state and encouraged the City to apply for the third round of funding. Nebel reported he would be happy to set a meeting with Desmond to discuss.
b. <b>Robert Hoefs</b> - Newport, Oregon	Spoke regarding 402 SW Bay Blvd, and his desire to have a vacation rental approved here. Brief discussion was held on the subject and the current waiting list.
<b>PROCLAMATION, PRESENTATIONS AND SPECIAL RECOGNITIONS</b>	None
<b>CONSENT CALENDAR</b>	
a. <u>Receipt of Approved Committee Meeting Minutes</u> Consisting of: October 18, 2023 Parking Advisory Minutes October 23, 2023 Planning Commission Regular Session Minutes October 23, 2023 Planning Commission Work Session Minutes	Glover read the consent calendar.  Brief discussion was held on the minutes, and the conversion to action minutes on Nov 1, 2023. Hall requested links to video files for consent calendar minutes items. Glover referenced a separate attachment could be made for that purpose, but not within the minutes.

<p>October 10, 2023 Park and Recreation Committee Minutes</p> <p>September 6, 2023 Park and Recreation Committee Minutes</p>	<p>MOTION made by Goebel, seconded by Emond to approve the consent calendar. MOTION carried unanimously in a voice vote.</p>
<p><b>PUBLIC HEARING</b></p> <p><b><u>Public Hearing and Potential Adoption of Resolution No. 4000, a Resolution Setting Fees and Terms for Use of Certain Public Parking Areas Along the Bayfront</u></b></p> <p>a. CITY MANAGER REPORT - Spencer Nebel</p> <p>b. Public Hearing open</p> <p>c. Public Comment</p> <p>d. Public Hearing closed</p> <p>e. Council Decision</p>	<p>Nebel presented the written City Manager report.</p> <p>Kaplan opened the public hearing at 06:29 P.M.</p> <p>None was heard.</p> <p>Kaplan closed the public hearing at 06:30P.M</p> <p>Council held discussion, requested clarification regarding 4 hour signage, and rest of year is 16. Tokos detailed the parameters. Concern regarding parking on holidays was heard. Tokos advised from May to October parking is paid on the Bayfront to include holidays, but the City Manager can provide coupons. Nebel advised holidays are busiest on the Bayfront and likely the biggest time needing turnover.</p> <p>MOTION was made by Emond, seconded by Jacobi move to adopt Resolution No. 4000, a resolution setting fees and terms for use for certain public parking areas on the Bayfront. MOTION carried unanimously in a voice vote.</p> <p>Council advised the signs are confusing, especially loading zone signs. Requested the addition of only, or striking the word parking.</p> <p>MOTION by Parker, seconded by Goebel to move to amend the red signs to remove the word parking from the 60 and 20 minute loading signs. MOTION carried unanimously.</p>
<p><b>COMMUNICATIONS</b></p> <p>Communication from the HB 4123 Homeless Strategic Plan Committee from Ernest Stephen of Morant Mcleod</p>	<p>Nebel presented the written City Manager Report.</p> <p>Ernest Stephens of Morant Mcleod attended via zoom and gave a Powerpoint presentation of a draft five-year plan for homeless items in Newport.</p> <p>Council held discussion on the item, and exchanged commentary.</p>



<p>Communication from the Airport Committee Regarding Authorization to Terminate Hangar Lease 3252 with Michael and Michelle Monsanto for Hangar Site 3 and Authorize a New Lease with LBL Properties, LLC.</p>	<p>Nebel presented the written City Manager report.</p> <p>Lance Vanderbeck, Airport Director was present to speak. He advised the newest version of the lease template would be used. Allen reported section 11 was modified.</p> <p>Nebel advised the motion would be changed from his report, due to guidance from Allen.</p> <p>MOTION was made by Jacobi, seconded by Emond to move to consent to the sale of the hangar on Hangar Site 3 to LBL Properties, LLC, and enter into a land lease with LBL Properties LLC for a new initial lease term of 15 years, and to terminate the existing land lease with Michael and Michele Monsanto effective on the date of the new lease with LBL Properties LLC. MOTION carried unanimously in a voice vote.</p>
<p>Communication from Councilor Parker and Update of various issues from an email dated October 22, 2023</p>	<p>Nebel presented the written City Manager report. He reported that a report on the Oceanview Traffic study will be brought back in January of 2024, in a combined discussion with new speed rules from the State of Oregon, and a discussion of 58<sup>th</sup> and Biggs.</p> <p>Question about NW 58<sup>th</sup> and Biggs was referenced. Tokos advised a traffic study was not being done, but rather a condition of the CUP whereby City wanted the developer to do an engineering assessment of if traffic calming measures and stop controls are warranted at intersections.</p> <p>Parker thanked Nebel for the report and advised he would discuss items with him at a later date.</p>
<p><b>CITY MANAGER'S REPORT</b></p> <p>a. Report on House Bill 2984 Related to the Assessment of System Development Charges when Commercial Buildings are Converted to Residential Use</p>	<p>Nebel presented the City Manager report.</p> <p>Discussion was held, questions regarding amounts with a conversion from commercial was heard. Tokos reported the max SDC credit period was 10 years, and this is formula based and depends upon the additional impact to system.</p> <p>MOTION was made by Kaplan, seconded by Goebel move to direct City Administration to prepare a resolution for consideration at the December 4 Council meeting to confirm that the City's existing system development charge methodology applies to the conversion of commercial buildings for residential use. MOTION carried unanimously in a voice vote.</p>



<p>b. Authorization of a Memorandum of Understanding Between the Oregon Department of Human Services, the City of Newport, and Lincoln County for the Placement of Two Connex Storage Containers at the Municipal Airport</p>	<p>Nebel presented the City Manager Report.</p> <p>Del Lockwood, Emergency Management Coordinator was present to speak.</p> <p>It was reported that the connex boxes contain emergency supplies, exercise will take place in May 2024 similar to a recent one at the Tillamook Airport.</p> <p>MOTION was made by Goebel, seconded by Botello to move to authorize the City Manager to sign a memorandum of understanding with the Department of Human Services and Lincoln County to accept emergency supplies to be stored at the Newport Municipal Airport. MOTION carried unanimously in a voice vote.</p>
<p>c. Review of Rules of Conduct for the City of Newport Municipal Library</p>	<p>Nebel presented the City Manager report, advising these rules take effect 30 days after adoption.</p> <p>Kimberly provided a brief report detailing a review of other community library rules to arrive at these approved by the Library Advisory Board. Allen detailed a summary of the rules. It was referenced to change vaporizing to vaping. Allen detailed the code may control that. Nebel advised having the rules numbered, would be a good change.</p> <p>MOTION was made by Parker, seconded by Emond to move to formally receive the draft Rules of Conduct for the Newport Municipal Library and offer no substantive objections/changes to the rules as proposed.</p> <p>MOTION carried unanimously in a voice vote.</p>
<p>d. Report on Draft Ordinance Restricting the Sale and Use of Fireworks within the City of Newport</p>	<p>Nebel presented the City Manager report.</p> <p>Rob Murphy, Fire Chief was present to speak. Jason Malloy, Police Chief was present to speak.</p> <p>Discussion was held, concerns regarding enforcement was heard. Question regarding number of fireworks related fires was heard. Murphy advised in the last year no fires in Newport, one in Waldport the agency responded to though.</p> <p>Murphy advised from memory it is typically one or two a year, and a mix of legal and illegal fireworks causations.</p>

	<p>MOTION was made by Jacobi, seconded by Hall to move to request that an ordinance be drafted to amend Newport Municipal Code 8.20.020 prohibiting the sale, possession and use of fireworks within the City of Newport except for permitted shows, with a public hearing being scheduled January 2 at 6 PM on the proposed ordinance.</p> <p>MOTION carried in a voice vote, with Parker and Goebel opposed.</p> <p>References to the cultural importance of fireworks was heard, and an exception for July 4 yearly date. Discussion about not supporting an ordinance with limited enforcement ability was heard. Discussion about restricting sale only was heard.</p>
e. Authorization of Funding for the July 4, 2024 Fireworks Display	<p>Nebel presented the City Manager report.</p> <p>MOTION was made by Parker, seconded by Emond to move to authorize the City Manager to commit \$50,000 for the 2024 Fourth of July fireworks show. MOTION carried unanimously in a voice vote.</p>
f. Report on Composition of Membership for the Airport Committee	<p>Nebel presented the City Manager report.</p> <p>Lance Vanderbeck, Airport Director was present to speak. He advised that overtime the committee has shifted towards 6 out of 7 members being lease holders at the airport, and he felt it was important to have a diverse mix of viewpoints from the community. Discussion about obtaining LatinX, business, commercial and tourism reps was heard. It was general consensus of the Council to explore a representative conversion model, with NOAA rep, Coast Guard rep, and Lifeflight rep as possible options.</p>
g. Report on Workplace Culture Initiatives	<p>Nebel presented the City Manager report. Detailed some of the primary items, creation of longevity pay, increasing match on retirement and reducing vesting period to 5 years full vest to match PERS, and conversion to 4/10 compressed work week, given the fact City offices are closed on Fridays already. Question about paid family/maternity leave was heard, Nebel advised Newport already has an extensive program between FMLA/OFLA, Paid Leave Oregon and Sick Time. Question about being open five days a week, on a 10 hour schedule was referenced. Nebel advised that the City is already closed Friday, reduced energy/utility cost is experienced</p>

<p>h. Report on Holiday Tree Lighting</p> <p>i. Status of the Oceanview Drive Slide Limited Emergency 2023-2</p>	<p>with a 4 day schedule and having employees working with no supervisor might not be the best. Discussion was held, Council requested the DEI section at the beginning be reviewed. Hybrid/remote work schedules was referenced as a possible missing piece, to allow folks to adjust hours to their needs. Question about 4/10 City office hours allowing for greater public access/extended hours was heard, Nebel advised the goal was to stay open until 6 P.M.</p> <p>Nebel requested Council to review the list in detail, and send him any final thoughts as the document would be placed in final form soon and used for as a planning document.</p> <p>It was the general Council consensus to proceed.</p> <p>Nebel provided information on the annual holiday tree lighting.</p> <p>Nebel presented the City Manager report</p> <p>Motion was made by Jacobi, seconded by Emond to move to extend the emergency declaration for Oceanview Drive (#2023-2) to January 3, 2024. MOTION carried unanimously in a voice vote.</p>
<p><b>LOCAL CONTRACT REVIEW BOARD</b></p> <p>a. Authorization to Execute Task Order No. 22 with HDR Engineering in an Amount Not to Exceed \$5,900,000 for Detailed Dam Design Services</p>	<p>Kaplan opened LCRB at 9:18 P.M.</p> <p>Verena Winter, Senior Project Manager/Project Engineer with HDR was present to speak.</p> <p>Council discussion was held. It was referenced that it would be nice to move LCRB items earlier in the agenda as the meeting was long Council was weary, and being asked to spend a lot of money. Nebel advised LCRB consent calendar was attempted previously, many items were pulled off for discussion which meant public hearings were delayed, and folks wanting to speak had to sit through a longer meeting.</p> <p>It was the general Council consensus to schedule a work session regarding meeting protocols in the near future.</p> <p>Winter presented a summary of the data and staff report It was noted that of the \$14 million</p>

	<p>allotment, the City has spent some of the funds, this request was from the original \$14 million award. Winter detailed what 30% milestone looked like, being an environmental permit, prep work done, and NEPA with the Army Corps of Engineers. Allen detailed Task Order 21, with the attached scope of work.</p> <p>MOTION was made by Parker, seconded by Botello to move to authorize the City Manager to execute Task Order No. 22 with HDR Engineering for continued detailed design services for the Big Creek Dam in an amount not to exceed \$5,900,000 MOTION carried unanimously in a voice vote.</p> <p>Kaplan closed LCRB at 09:30 P.M.</p>
<b>REPORT FROM MAYOR AND COUNCIL</b>	
a. Mayor and Council Reports	<p>Hall inquired about dates for the January goal setting, due to some expected work schedule conflicts. Nebel advised the budget calendar will be at the December meeting, which will include budget and goal setting dates.</p>
<b>PUBLIC COMMENT</b>	
a. <b>Auston Stromberg</b> - Newport, Oregon	<p>Shared that he appreciated the Council for all the work that they do. Spoke on fireworks in Newport advising that airborne fireworks are already illegal, fireworks on the beach is already illegal, and if Council does any further fireworks bans it will take fireworks away from regular people and children trying to safely enjoy them. Ultimately, what will happen is concerned citizens will call law enforcement on people enjoying a few fireworks with the children.</p>



January 23, 2023  
2:30 p.m.  
Newport, Oregon

#### Call to Order

Chair Ann Way called the meeting to order at 2:44 p.m.

#### 60+ Advisory Committee Agenda

The 60+ Advisory Committee met on the above date and time in the Council Chambers of Newport City Hall. Roll call: Ann Way, Bryn McCornack, Terrie Murphy, Vicki Bock, Council Liaison CM Hall.

Staff in attendance: Sonia Graham

Absent: Don Jay, Steve Lovas

Guest: Shelly Thompson

### **ACTION ITEMS**

#### **Approval of Minutes - November 28, 2022**

Bryn McCornack moved to approve minutes for. Terrie seconded. All in favor.

### **DISCUSSION ITEMS**

#### **Advisory Committee Member Interview - Shelly Thompson**

Move to approve Shelly as new Advisory committee member: Vicki Bock. Second: Terrie. All in favor.

At the last meeting the committee voted to approve Steve Lovas and Brenda Starr. Brenda has withdrawn from the Committee.

#### **FY 2022-2023 Committee Goal Report**

**Goal #1:** Overall goal to improve healthy living opportunities through evidence-based programs. Would like to work with Oceanview Senior Living to expand offerings for Walk with Ease program funded through grants. Bryn drove to Seattle last week to pick up donation of 50 Meta Portal Go's. Portable tablets with camera that tracks people as they move, can be provided to homebound individuals with a hot spot and they can join program with a push of a button. Go's are battery operated and portable. Also received donation of 20 Meta Portals - larger screen with electrical cord. Will enable greater participation for mobility challenged. Donations received from Tech Soup. Bryn will be writing an article about them for NRPA.

**Goal #2:** Been an active group. Includes Terrie, Ann, and Vicki on workgroup. Been trying to get tamale feed going. Will have to be pushed into March. Working on host program even though goal for next year. Vicki to report on workgroup that was formed. Plan to have four shifts with someone by door all the time Monday through Friday. Will have a badge to identify host, Vicki working to acquire badge. Terrie working on putting together logo indicating inclusiveness. Discussed badges with that logo. Ann suggested badges be kept simple. Agreed that badges should be about business card size. Vicki can get five badges for \$35. Ann will trust Vicki, Terrie, and Sonia's judgment on design. Will be simple design.

Terrie helped Ann create lunch ticket for free lunch and one-day pass to 60+ Center. Attaching ticket with monthly schedule and dropped at Veterans Services Office and at American Legion. None have been used yet. Will try for a couple of months, but want it to be productive. Ann spoke with VSO and American Legion and asked it be given to someone over age 60 and different person each week.

Tickets ready for next month. Ann waiting for February schedule of activities to distribute next bunch. May need to brainstorm another way to reach population if this doesn't work.

Terrie prepared clipboard for hosts with map of 60+ Center on it. All host has to do is get nametag and clipboard and sit down. Simple and easy to use. Bryn requested that we make sure lunch tickets say "complimentary" not "free".

CM Hall conducted a well-attended presentation regarding LGBTQ+ Terminology. Vicki suggested we hold more of that type. We talked at one time about doing something quarterly. Need to get it scheduled to make sure it works with CM's schedule. CM teaches next LGBTQ+ class in Spring term. Could be opportunity to make a group project. Class is four hour in-person class, 3-7 p.m. on Thursdays. Would be way for students to participate as a panel. Sonia willing to stay open for evening events as long as she is able to be there. CMs class starts in late March. Late April, or early May would work best for the panel.

Workgroup trying to find posters, stickers, etc. to create inclusive signage. Ann was given names of people to speak to for resources. CM suggested look at programming from communities that target seniors and are very inclusive (e.g. Miami, Key West, The Villages, etc.) Also working on creating sticker with gay pride banner with inclusive words. CM recommended using updated flag with side triangle, welcome symbol for black, brown, trans, and non-binary communities as well.

Collected 202 pairs of socks and 75 pounds of hygiene products for drive that was donated to Grace Wins Haven. Great story and picture in NewsTimes.

**Goal #3:** Still waiting for meeting with Don and Sonia to discuss what outlines prefer. All current procedures typed and with Sonia for proofing.

**Goal #4:** All committee members currently 60+ Activity Center members.

**Goal #5:** Improve community engagement for 60+ Activity Center. Don working on this, he has been out for personal reasons, no current updates.

Vicki asked about discounts for Rec Center. Many people come to the 60+ Activity Center to get the discount at Rec Center. Everybody is welcomed and offered a tour. Sometimes people just want the discount, often they are pleasantly surprised by what is offered here. Vicki suggested we have flyer posted to let members know about the discount at the Rec Center. Also, Vicki checked on free membership for cancer survivors. She verified that does exist, but for three months only. There is also Silver & Fit, Silver Sneakers, and Renew Active that offer free members through some insurance programs.

### **Supervisor's Report**

Attached reports are from months of December and January. Starting tomorrow, Sonia has new Tuesday employee in office. Dorinda is City Hall employee and will be working full days Tuesdays. Leadership Lincoln meal planning committee working with Keith Barnes, Veterans Service Officer to offer birthday meals each month to fight senior isolation. Leadership Lincoln was excited about it. Will also do a couple of special bigger community meals, to be planned. Sonia been working on reports due, put in budget request for building attendant and additional office staff. Capital equipment expense request due on Friday. Hoping to request budget for full-building sound system to be able to make announcements in case of emergency. Currently working with Enterprise Fleet Rentals to determine cost of wheelchair accessible van through City fleet as a lease.

CM asked if we have assisted hearing devices for people with hearing challenges to use. There are probably grants that exist to help with this sort of thing. At 75 years of age, half the population have some hearing loss. May be a good goal for equity and inclusion.

### **Public Comments**

No public comments have been brought forward.

Bryn announced seminar on Social Accountability Funding webinar sponsored by Samaritan on Wednesday, January 25. On Feb. 15, Oregon Community Foundation will have webinar to talk about changes in grant process.

### **Establish Next Agenda and Meeting Date**

Next meeting will be on Monday, February 27 at 2:30 p.m.

Sonia requested that Fee Schedule be added to agenda to discuss with Committee. CM will not able to attend.

Between February and March there will be an additional orientation meeting once the new committee member has been approved.

### **Adjournment**

Having no further business, the meeting adjourned at 3:45 pm.



February 27, 2023  
2:30 p.m.  
Newport, Oregon

### Call to Order

Chair Ann Way called the meeting to order at 2:32 p.m.

### 60+ Advisory Committee Agenda

The 60+ Advisory Committee met on the above date and time in the Council Chambers of Newport City Hall. Roll call: Ann Way, Bryn McCornack, Terrie Murphy, Vicki Bock, Shelly Thompson, Steve Lovas

Staff in attendance: Sonia Graham, Mike Cavanaugh  
Absent: Don Jay, City Liaison CM Hall

## **ACTION ITEMS**

### **Approval of Minutes - January 23, 2023**

Bryn McCornack moved to approve minutes. Terrie seconded. All in favor.

## **DISCUSSION ITEMS**

### **FY 2022-2023 Committee Goal Report**

Using new layout

**Goal #1:** Bryn is still working on Fit & Strong training. Goal is to offer one additional EBI. Moving on with other parks and rec depts that are interested in the universal script. She will be speaking at the OSU Extension quarterly meeting for instructors to talk about what doing with pilot, script, and PowerPoint for Walk with Ease.

**Goal #2:** Working on goal has been challenge. Tried to work with Veterans Services giving out complementary lunch tickets to Veterans Services and American Legion and no one in two months has taken up the opportunity. Sonia will speak with Veterans Services to see if there is some way the committee can help with other activities in conjunction with 60+ Center.  
Tamale feed - something keeps happening when schedule event. Suggested around Cinco de Mayo, have not heard back from person arranging with.  
Vicki leading workgroup. Ann has done several shifts as host and can talk to that. Getting someone to man the host position for hours at a time is not easy to find. Vicki will volunteer several shifts when she returns from Mexico and see how busy she is. Ann has been serving as host on Wednesdays from 1:30-3:00. She is enjoying it. She talks to everyone who comes in the door and up the stairs after exercise class. Glad that Sonia pushed for it and glad she is doing it. Great program and want to continue it. May want to change the times. Mike offered that we can run an attendance report based on the day and hours to identify the busy times.  
Other part of goal is to focus on diversity. Terrie working on posters. She has some set up, Ann wants to make sure that Vicki sees them since she is leading workgroup. Last month it was recommended to research other senior centers' marketing. Other places mean other things when identified as senior center including adult day care. Mostly found pictures similar to ours with older white women. When looking at Miami, Fl., found pictures that had some diversity with men, non-white men, men doing things like building birdhouses. Not an issue that is unique to us, pretty widespread issue. Ann found on the Miami site, a picture of a sign made out of wood that said "Welcome to our friendly, fabulous facility" Ann would like to find someone who can make the sign, she will help with painting and provide the wood. She also suggests that we have a second person sitting by the West door to greet people. Steve added that he volunteered at a senior center when he was a teen in New York and even with all



the diversity in the community, the people who used the senior center were the older white women, seems to be a ubiquitous issue.

**Goal #3:** Ann has the policies at home and would like to get them done. Sonia indicated which format she would prefer. Procedures have all been typed, about 1/3 are in the "Done" pile.

**Goal #4:** All committee members currently 60+ Activity Center members.

**Goal #5:** Don's goal. Have not heard from Don recently. Terrie working with Don on the goal. Terrie has not spoken with Don in months. Sonia added that Terrie has been making posters for activities, posters for the bulletin board.

Mike added that Goal #5 ties directly with Goal #2, seem to mesh well.

### **Fee Schedule Review**

Mike reported that recommendations from the Recreation Business Plan that was developed are being used to complete a fee analysis across the entire department. The 60+ Center is fairly simple as one price allows access to everything. Mike in series of several meetings with City Manager to review data collected. Fee analysis comparing direct costs of what it takes to run an activity. Using LERN model that Parks and Rec staff recently completed training in. A lot of the items that are in the black can be attributed to the 60+ Center. The changes that will come from the analysis have not yet been finalized.

Sonia shared that one of the items learned in the LERN training is to round up or down for round numbers. Hoping to implement at least rounding the nearest quarter. Also hoping to add a new fee just for social access to the Center. Right now one fee allows access to everything, classes, etc. Sonia would like feedback/input on charging one low fee, maybe \$10 just for access to the lounge, a separate fee for all access to include classes. Goal is to have more affordable way for everybody to be able to participate. Ann added that when she has been in the Center, she sees several people who come regularly just to sit in the lounge. \$10/year is a good deal for a warm, social outlet. If this happens it would be July 1.

Steve is on the Budget Committee. Steve asked why do we want less reliance on the General Fund when it is currently balancing? Mike responded, general principles and to be good stewards of the taxpayers' dollars. Most subsidies used to cover overhead. Want community to provide input on how much should be subsidized. Is each program a community or an individual benefit? If it's an individual benefit, it should not be as subsidized. Currently our fee structure dependent on CPI. Fees have strictly reflected CPI, not costs for each individual program. Want to make sure fees are responsibly structured.

Mike commends the 60+ Center because trips are all in the black. Fuel increases have been factored in.

### **Supervisor's Report**

Friends of the 60+ Activity Center received a \$2,500 donation from First Interstate Bank earmarked for the community meals. Some of the funds will be used for monthly birthday meals that will start in April. Veteran's Service Office has \$800 that will be used towards the monthly birthday meals.

Dorinda Howden is working Tuesdays from 8:00 - 5:00 and has filled in for emergencies when Judy was not able to come in.

Jalene Case has offered 9 complementary assessments and three 2-hour workshops to review for the Advisory Committee and 60+ Center staff. Ann thanked committee members for completing the assessments. She is excited to see how the group can use the assessments.

Ann asked Sonia for the contact information for Michael Meagher, who did a presentation on wood carving, if he can help make the wooden sign that Ann mentioned earlier.

### **Public Comments**

No public comments have been brought forward.

## **Establish Next Agenda and Meeting Date**

Next meeting will be on Monday, March 27 at 2:30 p.m. From 12:30 - 2:00 p.m. on March 27 will be the Advisory Committee Orientation session at the 60+ Activity Center. Terrie has prepared new member packets that have been distributed. Will not read document line for line, expect everyone to read beforehand. Sonia will give a tour of the Center first.

Ann concerned about committee members who are assigned to goals but do not work on them. Would like to discuss guidelines for attendance requirements, something for committee to discuss. Mike will look at City code to see if there are City attendance requirements. Thinks it's just a matter of having a conversation with the committee member.

Bryn asked Mike about a joint meeting between the 60+ Center Advisory Committee and the Parks and Rec Advisory Committee - had one several years ago. Mike agreed it is a good idea, it is on the Parks and Rec Advisory Committee annual calendar to have a joint committee meeting. One of their goals is to offer more support to the 60+ and Aquatic Center. Parks and Rec Advisory Committee meets on the first Wednesday at 5:30 p.m. Mike will research when joint meeting is scheduled.

Mike mentioned previous discussions with the Library to offer all-access passes for people to check out from library to use at the Rec & Aquatic Center and at the 60+ Center.

Ann asked Shelly and Steve what goals they would like to work on. Shelly would like to work on Goal #2 - Diversity. Steve will think about it and let the committee know which goal he is interested in next month.

## **Adjournment**

Having no further business, the meeting adjourned at 3:28 pm.



March 27, 2023  
2:30 p.m.  
Newport, Oregon

### Call to Order

Chair Ann Way called the meeting to order at 2:30 p.m.

### 60+ Advisory Committee Agenda

The 60+ Advisory Committee met on the above date and time in the Council Chambers of Newport City Hall. Roll call: Ann Way, Bryn McCornack, Terrie Murphy, Shelly Thompson, Steve Lovas

Staff in attendance: Sonia Graham, Mike Cavanaugh

Absent: Don Jay, City Liaison Beatrice Botello

Vicki Bock submitted resignation effective immediately.

## **ACTION ITEMS**

### **Approval of Minutes - February 27, 2023**

Bryn McCornack moved to approve minutes. Terrie seconded. All in favor.

## **DISCUSSION ITEMS**

### **FY 2022-2023 Committee Goal Report**

Goals show City Strategy - where directly ties to Vision 2040.

**Goal #1:** First objective to add one more evidence-based program. Last week Bryn met with Karen, the trainer for Living Well with Chronic Conditions. Will have an instructor training here in Newport in late Spring, early Summer with the goal of starting a class in Fall or Winter of 2023. Instructor training is a four-day eight-hour training session. Each class requires two workshop facilitators. Bryn did a presentation about the hybrid program working on to State of Oregon Walk with Ease facilitators. It went well, she has a link to the presentation for those interested. We will continue with the hope of having other facilitators in Oregon move to a hybrid offering.

Next WWE begins in May. Bryn and Sonia working on strategies for increasing enrollment. Working to put together a master plan for promotion.

Objective #5 - explore feasibility of a reciprocal referral relationship contract with UniteUs. Mike will check with Spencer.

**Goal #2:** Increase diversity, equity and inclusion. Five-year goal, this is year two. Been working constantly on trying to get other people, who don't look like us to come to the 60+ Center and be comfortable coming to participate. The first objective is to develop a strategy - we have not done this yet. Ann will set appointment to sit down with Sonia and develop a strategy.

Identify outreach strategies - we have done this, but need to do it again and write them down. We have, but have not identified anything with them.

We have stopped offering the complimentary lunches to Veterans (cards that were given to VSO and American Legion) because in two months, no one has redeemed one yet. Sonia is working with Veterans Services, we will participate with those efforts to hopefully be able to help Veterans that way.

The tamale feed is supposed to happen sometime towards the end of May. Have not heard back from Alex yet to confirm, offered Tuesday, May 23 from 9:00 - 2:00. Been logistical problems in the past, hopefully this will happen.

Outreach to homeless population through Grace Wins. Sonia will be offering a bbq on June 11. Ann invites all committee to come. Will need a food handlers card if handling food. Shelly said to count her in. There will be facilities for restroom and handwashing provided. The goal for next year is the host program. Ann finding it very enjoyable coming in Wednesdays. Calling people by their names makes them feel good. There's at least two people every week she knows she makes happy. Vicki had been the lead, Terrie will take over as lead.

**Goal #3:** Policies and procedures. The policies Ann typed up sitting on Sonia's desk. She had been hoping to turn them around and return to Ann today. She is actively reviewing and will get to Ann soon. All current procedures have gone through the process. Sonia has picked out format she wants to use for policies. There's not too many, most come from the City of Newport. Ann hopes to get through first round in the next two months.

**Goal #4:** Completed

**Goal #5:** Terrie has been making trip posters for the board and also for classes. Been changing them up and making them bright, interesting, and fun to make people take notice. Okay to give Terrie information early to have Terrie create posters.

Steve Lovas would like to work on policies and procedures goal. Shelly had said she wants to be part of Goal #2, she was not listed.

### **Committee Member Attendance and Participation**

Brought this up last month concerning members that we have not seen for months. Not able to get report from head of workgroup for Goal #5 because that committee member has been absent for months.

Advisory Committee member orientation earlier today. Brochure says that board members "attend periodic committee meetings." Bryn made motion that "Committee members attend 75% of advisory committee meetings and provide reasonable notice when they will be absent." Terrie seconded. Discussion: Not sure if 75% is reasonable or useable number. Also not sure what reasonable notice to attend is, but have had issue when don't have a quorum, so would like notice. Ann pointed out that notice should be provided to Sonia if member cannot attend meeting. 75% of would be eight meetings per year.

Normally when have issues with other committees, we have a discussion with the committee member. If it's going to be a consistent issue, setting a hardline is reasonable. Sonia had talked to the absent member who had been traveling. He was going to come talk to her but she has not since heard from him.

It's not unreasonable to expect people to attend. If you can't do your job, you can't do your job. 75% is not unreasonable. Within that 75% there will be times you cannot attend, but you need to let someone know.

Mike suggested that instead of a motion the language be drafted and added to the bylaws for the committee. The City Attorney would need to take a look at it before it gets approved. It has to go under committee bylaws.

There are general bylaws for all City committees. This would be a change just for this committee. Once approved, would need to go to City Council.

Bryn would like to be on workgroup to draft the language. Steve will also help. They will draft something, bring back to this committee, and then pass along.

Bryn moved to table the motion. Will create workgroup and report back at next meeting. Shelly seconded. All in favor.

### **Fee Schedule Review**

Mike discussing fees. Meeting with staff tomorrow. Have made progress with fee analysis, few more pieces to go through. Will provide analysis to City Council workgroup on April 3 and will share with committee how that went.

Using the LERN pricing formula and the Greenplay resource allocation recovery pyramid method to determine costs allocated per activity and price accordingly.

Most likely will present two ways of building price structure. Activities and programs using pyramid method. For memberships and passes more analyzing what is done in regional area with local competitors. Set fees that are comparable, not pricing anyone out of market. Hope to stay more balanced with new fees.

Not being subsidized from General Fund at all would leave only Aquatic Center. It would shut down 75% of activities.

This discussion happened previously in 2009 in conjunction with the 2009 business plan. The recommendation at the time was to move in this direction of cost recovery. City Council in 2009 decided not to make that move.

Suggested that the 60+ Activity Center look at offering a "Pay it Forward" membership structure where people pay more than an annual membership to pay for someone who is not able to pay the fee. One idea Mike is working on is how to keep scholarship funds sustainable, maybe with a surcharge in fees. Would create a more sustainable scholarship program.

Ann suggested that instead of stopping any program because of low attendance, first take a look into why people are not coming. There might be a reason that is not obvious on the surface. That is part of what was discussed in the LERN program. Try a program three times and try to determine why it did not work.

### **Supervisor's Report**

Bryn and Sonia went to Corvallis for a SOAR/SPRINT incubator. Really good training session from around Oregon. Different sessions talking about DEI, how to make inclusive programs. There was a pane from ARC about what makes them feel welcome, not welcome, what kind of advertising they would respond to.

Was able to talk to others about their fee structures. Will share with Mike.

Working with Veterans Office. Veterans Appreciation lunch on May 5, part of Loyalty Days. If anyone can come help serve, would be greatly appreciated.

Volunteer Appreciation lunch on April 18, committee members all attended.

April 19 is the first of monthly birthday lunches, also working with Veterans Service Office. Idea was to address isolation and loneliness. Will be for anyone who has a birthday in the month of April. Anyone who is able to come help is welcome. Bingo at 11:00, lunch at noon.

Terrie working hard on organizing the next Job and Volunteer Fair that will be held on April 25.

Sonia will be on KNPT with Keith Barnes on April 6 to talk about Birthday lunch.

Ann reminded members to include any volunteering done for 60+ Center that comes out of this, even if not directly related to goal work, in reporting of hours volunteered.

No comment on submitted report. When ran membership numbers last month, were a little over 1,100 members. Watching numbers monthly and they continue to increase. Also adding one or two items to the calendar every week. Sonia's goal to have so many items on calendar that we have to print on a larger 11x17 calendar to fit everything in.

Ann contacted Michael Meagher about creating wood sign. Ann does not currently have email at home, but she has not heard from him since. He had indicated interest. Sign will say "Welcome to our Fabulous, Friendly Community."

He did attend Author Fair previous Saturday and Michael mentioned he was working with Ann on the sign. Also, Author Fair well attended with about 30 people and 12 authors.

Steve suggested Sonia report on number of members added or deducted each month.

### **Public Comments**

No public comments have been brought forward.

### **Establish Next Agenda and Meeting Date**

Next meeting will be on Monday, April 24 at 2:30 p.m.

Steve and Bryn will report on language for attendance policy.

Sonia requested that people consider potential committee members who people might suggest apply.

### **Adjournment**

Having no further business, the meeting adjourned at 3:26 pm.



May 22, 2023  
2:30 p.m.  
Newport, Oregon

### Call to Order

Chair Ann Way called the meeting to order at 2:32 p.m.

### 60+ Advisory Committee Agenda

The 60+ Advisory Committee met on the above date and time in the Council Chambers of Newport City Hall. Roll call: Ann Way, Bryn McCornack, Terrie Murphy, Shelly Thompson, Steve Lovas

Staff in attendance: Mike Cavanaugh  
City Liaison CM Hall

## **ACTION ITEMS**

### **Approval of Minutes - March 27, 2023**

Terrie Murphy moved to approve minutes. Steve Lovas seconded. All in favor.

## **DISCUSSION ITEMS**

### **FY 2022-2023 Committee Goal Report**

**Goal #2:** Ann and Sonia developed a strategy. Something like "Identify the key people in the local community organizations who will help us to expand this goal." Includes the tribe, Alex, about four-five local organizations. As of today, have inclusion flags that CM had explained to us on the doors at the 60+ Activity Center. Also got flags from neighbor at Bloom that are hanging. Excited that we are now open and accepting of everybody.

Tamale feed was supposed to happen tomorrow (May 23), finally heard back from person who was supposed to offer today. Sonia and Ann had already decided to cancel since we had not heard back. Message was sent four weeks ago, and 3-4 more messages had been sent since then that were not responded to.

Ann and Bryn been working with the Veterans. They attended the Veterans lunch and come to Veterans Birthday lunch which is on the fourth Wednesday of the month. Encourage everyone to attend.

CM used to work with Veterans. She suggested a Veterans panel around Veterans Day where people can share their experiences. Shelly recommended we see if Keith Barnes, VSO has something similar already set up that he could share with us.

Ann and Terrie worked the booth at Bloom, had an ABC's of Fun wheel where people listed something fun we do at the 60+ Activity Center in exchange for a prize. They went with about two dozen tee-shirts, only brought back about 3-4. Also had six flowers to give away and six day passes.

**Goal #1:** Bryn made a presentation on March 21 to Walk with Ease facilitators in Oregon. Talked about how to reduce isolation in older adults and suicide prevention. On April 14, she did a presentation on loneliness for Samaritan clinicians. She spoke about how isolation affects mental health and talked about the hybrid program. Also did presentation at Newport Library with Sonia on April 11 talking about different things available at the 60+ Activity Center. New patron signed up from that talk and is participating in the Walk with Ease program. Bryn working with Keith to encourage Veterans to participate to reduce isolation. Have hotspots they can use to be included from home. Bryn is hoping to speak at Oceanview about the program (Shelly said they will set a date for her to do so.).

**Goal #3:** Form workgroup to work on policies and procedures. Ann suggested to Sonia to complete three policies and procedures a day before she starts work or before she goes home to bite off an easy chunk at a time. Sonia did complete some.

**Goal #4:** Completed

**Goal #5:** Improve community engagement to users of the facility - ongoing. Terrie stated getting new members all the time, and many renewing. Terrie is making posters for upcoming activities. Exciting to be getting new members. Ann said she knows we get at least one new member every Wednesday when she is there.

Host program: Ann will be moving to Florence sometime in the next few months. Ann has every intention of fulfilling her commitment to the Advisory Committee. She has been hosting every Wednesday since the first of January. People are getting used to her, she is having a lot of fun. People look for her, often sit down and chat. Observer of committee meeting talked to Ann while she was hosting. Vicki was going to get name tags, that did not happen. Ann does not know of anyplace local to get name tags. Host program will not continue after she leaves unless we can get people to volunteer. People have said they would volunteer when they get through surgeries. We have advertised the host program on the board and in Sonia's newsletters, but no one has taken us up on it yet. Bryn could do Wednesdays from noon to 1:30.

#### **Committee Member Attendance and Participation**

Workgroup of Bryn and Steve. Drafted a draft policy and sent to Sonia. It is not written to beat people up over the head, it's more of guidance for attendance. Sonia reviewed and sent to Ann. Ann had a couple of changes. One was to make it 10-12 meetings per year to attend. Something about members, needs to say "current board members." Mike suggested we put it on the next month agenda for review. Bryn has a copy - attendance guidance of committee. Other change is that when have workgroup meetings, need to let leader of workgroup know if board member cannot attend, not Sonia. Typically, don't meet one month in the summer, and often do not meet in December.

#### **Supervisor's Report**

Sonia has been super busy, hard to set a meeting with her. March and April reports attached to agenda.

#### **Public Comments**

No public comments have been brought forward.

#### **Establish Next Agenda and Meeting Date**

Next meeting will be on Monday, June 26 at 2:30 p.m. Committee goal reports.

The Budget Committee is meeting tomorrow night. Steve met with Sonia to review capital expense requests that Sonia requested. Steve will be her voice.

CM loved the Volunteer Appreciation event and really appreciates Sonia's newsletters.

Mike made sure committee is aware that there is a new proposed fee for lounge use only.

#### **Adjournment**

Having no further business, the meeting adjourned at 3:07 pm.



June 26, 2023  
2:30 p.m.  
Newport, Oregon

#### Call to Order

Chair Ann Way called the meeting to order at 2:37 p.m.

#### 60+ Advisory Committee Agenda

The 60+ Advisory Committee met on the above date and time in the Council Chambers of Newport City Hall. Roll call: Ann Way, Bryn McCornack, Terrie Murphy, Steve Lovas

Absent: Shelly Thompson

Staff in attendance: Sonia Graham

### **ACTION ITEMS**

#### **Approval of Minutes - May 22, 2023**

Bryn McCornack moved to approve minutes. Steve Lovas seconded. All in favor.

### **DISCUSSION ITEMS**

#### **FY 2022-2023 Committee Goal Report**

**Goal #1:** Revision of 2023 Goal #1 for FY 2022/2023. Fit & Strong Training has been postponed until 2023/2024 goal cycle. Added an equitable Fit & Strong hybrid class to the roster. First class completed June 28, 2023.

Objective 2 - Just one addition to continue in 2023/2024 goal cycle.

Objective 3 - On June 23, finalizing presentation to NRPA with 60+, Corvallis Community Center, and Samaritan. Scheduled to present to NRPA meeting in July 2023.

Objective 4 - From March 2023-June 2023, no electronic referrals from Samaritan have been received.

Objective 5 - Sonia and Mike working on

Next month, goals will be for new year. Everything achieved will be gone from list of goals.

**Goal #2:** First objective to develop a strategy. Sonia and Ann have not yet met to do. Ann will get something to Sonia.

Objective 2 - The office staff has been translating flyers into Spanish.

Objective 3 - Nothing new happening. Continuing monthly birthday lunch on 4<sup>th</sup> Wednesday of the month. Encourage people to come serve lunch. More and more young veterans coming in. Tamale feed on way back burner for now. Ann did not receive a response until the day before the event, Ann and Sonia had already agreed to cancel the previous Friday.

**Goal #3:** Form workgroup to work on policies and procedures. Nothing has happened in last month. Sonia will get policies and procedures that need to be fixed. Everything given to Sonia, just need to be updated. Close to being done. This will be an annual procedure to review policies and procedures. When Ann leaves, everything will be on 60+ Computer for updating.

Should updating policies and procedures go on 2023/2024 goals calendar. It will be because it was not completed. Will be a discussion with Sonia how she wants updates to happen. There will be a sheet at the front of the notebook with dates for renewal and review of policies and procedures.

**Goal #4:** Completed

**Goal #5:** Terrie been working on this. She has been putting up all kinds of flyers and posters on the board.



Steve attended a ribbon cutting at the Willamette Valley Cancer Institute, suggested we reach out to them as their clientele would likely be interested in the 60+ Activity Center.

### **Committee Member Interview**

Kathleen Kuebbing applying to rejoin. Kathy was on the Advisory Committee a few years ago. After questions, answers and discussions, Bryn McCornack moved to approve Kathy Kuebbing to the 60+ Activity Center Advisory Committee pursuant to City Council approval. Terrie Murphy seconded. All in favor.

### **Advisory Committee By-Laws Update**

Rather than look at this as an amendment to the by-laws, will present it as a guideline. Purpose to establish guidelines without being punitive. Added word "workgroup" to #4. Also, change 11 meetings to 10-12 meetings (sometimes skip once in summer and once in December, but may not always do so.)

As opposed to making this a part of the by-laws, this will be included with letter that is given to new Advisory Committee members.

### **Public Comments**

No public comments have been brought forward.

### **Supervisor's Report**

Report for May attached to agenda. Completed workshops that Jalene Case offered. Very good information about communication styles and how to work better together. Sonia sharing worksheets at monthly staff meetings and staff spending time talking about it. Veterans appreciation lunch was great in May. Sonia just graduated from Leadership Lincoln. Assisted with David's Chair fundraiser. Office staff helped gather donations, about \$3,800 raised. At this time we are next in line to receive a chair. Currently have 1,175 members compared to 893 this time in 2019. Just added another 3 or 4 activities to the calendar for July. People continue to submit ideas for how to make the Center more vibrant. Sonia and Terrie will have a table at the Senior Fair at the Lincoln County Fair. Bryn will come help as well. Sonia hoping to bring Judy and Christine to the Fair as well.

Budget update: Approved for some requests. Funding received to remove the wallpaper, repair, and paint the walls in the lounge and hallway. Sonia hoping to get some people to assist with colors and design.

Also approved budget for landscaping. Sonia hoping to work with patrons to form work parties and get assistance with planning and design.

Not approved funding for flooring. Will be moving forward with plans for remodel. Will be having all new plans drawn up. The north side 2<sup>nd</sup> Street entrance was not designed to be ADA accessible. Mike has already spoken with Spencer and got agreement that if we are going to do the remodel, everything should be ADA accessible. Sonia developing a survey with items of interest to get input preference from patrons about suggestions.

There was new signage put up in parking lot. Less reason for people to not know that it is 60+ Activity Center parking only.

Ann added that she spoke with Michael Meagher about making wooden signs. She told him she wants them to be inviting, welcoming, and encouraging diversity. One sign will be by check-in machine by 2<sup>nd</sup> St. entrance. The other will go between multi-purpose room door and plastic sign. Michael is donating the materials and his time, no charge. He will make the letters different colors for the word "friendly." The sign will say "Welcome to our fabulous, friendly community." He will make and install them for us.

### **Establish Next Agenda and Meeting Date**

Committee agreed to not meet in July, 2023.

Next meeting will be on Monday, August 28 at 2:30 p.m.

### **Adjournment**

Having no further business, the meeting adjourned at 3:30 pm.



August 28, 2023  
2:30 p.m.  
Newport, Oregon

#### Call to Order

Chair Ann Way called the meeting to order at 2:30 p.m.

#### 60+ Advisory Committee Agenda

The 60+ Advisory Committee met on the above date and time in the Council Chambers of Newport City Hall. Roll call: Ann Way, Bryn McCornack, Terrie Murphy, Steve Lovas

Absent: Shelly Thompson

Staff in attendance: Judy Cook filled in for Sonia Graham and Mike Cavanaugh

Guests in attendance: Kathy Kuebbing, Craig Hansen

### **DISCUSSION ITEMS**

#### **Committee Member Interview**

Craig Hansen applying to rejoin. After questions, answers and discussions, the committee voted half in favor, half opposed, to accepting Craig onto the committee. According to Roberts Rules of Order, the guidelines which this committee follows, a vote that is not approved by a majority of voting members fails. The committee failed to accept Craig onto the committee.

### **ACTION ITEMS**

#### **Approval of Minutes - May 22, 2023**

Bryn McCornack moved to approve minutes. Steve Lovas seconded. All in favor.

#### **FY 2022-2023 Committee Goal Final Report**

No questions regarding submitted final report (attached to agenda)

#### **FY 2023-2024 Committee Goal Report**

##### **Goal #1:**

- Target date of June, 2024 to have a second evidence-based program on the roster.
- Working with two additional rec centers and community centers to get Lebanon up and running with Walk with Ease in coordination with OSU Extension.
- Final oral presentation given to DST regarding lessons learned from Samaritan, NRPA, and 60+ partnership. Final report due in November 2023.
- Review registration and referral process - looking for process that does not need a separate report for each program.
- Mike and Sonia responsible for researching Unitus contract.

Adding one objective to explore Medicaid and Medicare reimbursements for evidence-based programs. IN conversation with Alicia Bublitz and Theresa Young. Also meeting with Jennifer Valentine from OR Health Authority.

##### **Goal #2: Terrie working with Ann on goal.**

- Ann has not yet met with Sonia.
- Still working on translating everything into Spanish.
- Have reached out to underserved communities and are continuing to work on that.
- Have not met with tribe yet. Ann and Terrie have discussed and need to talk again about best way to do that.
- Working with Veterans. Have the lunch the last Wednesday of every month.
- Check with Sonia to volunteer to help with lunch.

**Goal #3: Ann and Steve**

- Ann does not have ability to sit and work on a computer right now. Only about seven or eight policies left for her to review. When complete it will be moved to the 60+ Activity Center for keeping.
- Sonia has list of new policies and procedures to work on. Steve will be more involved with those.

**Goal #4: Terrie and Shelly**

- Been bringing in a lot of renewals and building membership up.

**Goal #5: Ann and Terrie**

- Ann has not hosted in about a month, Kathy has been.
- Guidelines for host completed, needs to be updated.
- Still working on signing up volunteers for hosting.
- Sign - Michael will not accept payment. Ann will follow up with him.

**Supervisor's Report**

June and July reports attached.

Sonia not in attendance, if you have questions, address her.

Positive comments regarding Friday emails and number of volunteer hours. Committee please get hours to Judy.

**Public Comments**

No public comments have been brought forward.

Terrie mentioned several events scheduled:

- Health Fair on October 20

**Establish Next Agenda and Meeting Date**

Next meeting will be on Monday, September 25 at 2:30 p.m.

**Adjournment**

Having no further business, the meeting adjourned at 3:20 pm.



September 25, 2023  
2:30 p.m.  
Newport, Oregon

#### Call to Order

Chair Ann Way called the meeting to order at 2:33 p.m.

#### 60+ Advisory Committee Agenda

The 60+ Advisory Committee met on the above date and time in the Council Chambers of Newport City Hall. Roll call: Ann Way, Bryn McCornack, Kathy Kuebbing, Terrie Murphy, Shelly Thompson

Absent: Steve Lovas

Staff in attendance: Sonia Graham, Mike Cavanaugh  
City Liaison: CM Hall

### **ACTION ITEMS**

#### **Approval of Minutes - August 28, 2023**

Bryn distributed the report that she read into the minutes at the previous meeting. An update of the goals for Fiscal Year 2023/2024.

Bryn McCornack moved to approve minutes as written with updated amendment to goal #1 for 2023/2024. Terrie Murphy seconded. All in favor.

### **DISCUSSION ITEMS**

#### **FY 2023-2024 Committee Goal Report**

##### **Goal #1:**

- Bryn in conversations with CCO for Samaritan regarding Medicaid reimbursements. 60+ would be a sub-contractor providing services.

##### **Goal #2: Ann and Terrie**

- Ann will be working on this week. The first objective not yet done. She will work on it and pass it by Sonia.
- Have not yet finished outreach strategies for community members.
- Terrie and Ann been speaking about reaching out to Siletz Tribe. Terrie gave Ann some names, Ann will reach out this week. She would like to invite them to do a presentation. Shelly offered assistance with contacting Siletz tribe, she has a couple of employees who are tribal elders. Shelly also suggested we invite a tribal elder to be on the Advisory Committee.

##### **Goal #3: Ann, Steve, and Kathy**

- Goal is ongoing because policies and procedures need to be reviewed on an annual basis.
- Ann is hoping to type or fix the rest of the policies and procedures this week.

##### **Goal #4: Terrie and Shelly**

- Having a volunteer lunch and strategy meeting Wednesday, September 26 to honor volunteers and discuss strategies.
- All Advisory Committee members invited. Person who was co-organizing and person who was going to bbq are both not able to attend. Need assistance between 11:00-11:30, Ann will come help. Purpose to get ideas from volunteers about what we can do better. Sharing input and ideas among volunteers. Bryn invited people down to see what's going on with new equipment at end of luncheon.

- Ann asked about objective to obtain immediate feedback on activities and events. Sonia thinks that goal had to do with using the scan machine to conduct surveys. Not sure if that is feasible. 60+ is conducting quarterly surveys with all classes and info provided to instructors.
- Last objective to create an automated process to renew membership. Jenny, former office clerk, used to contact people whose memberships were expiring. Sonia just asked Christine, new office clerk, to contact anybody whose memberships are expiring soon. Not automated, but calling everybody. Sonia believes this is why numbers are so high, currently at 1206 members. Print off report in CivicRec currently. Sonia has not begun to work on automating the process. CivicRec should be able to send out an automated report and Christine can make follow-up calls.

#### **Goal #5: Ann and Terrie**

- Ongoing goal because always want the Center to be a welcoming environment
- Ann has not heard from Michael about the wooden signs. She will send him an email to follow up.
- Ann will update the host schedule for the rest of the year. So far it is only her and Kathy Kuebbing who have acted as hosts.
- Goal when we do a remodel is to have the reception desk in the center of the room so everybody who enters will feel welcomed.
- Terrie does ask people to be hosts when they say they want to volunteer.

Distributed goal report was not up to date. Ann reviewed each goal to have the correct Advisory Committee members assigned to each goal.

- Goal 1 - Bryn she will still be responsible and is fine with the goal as written with the addition of Medicaid/Medicare
- Goal 2 - Ann will continue, Kathy, and 60+ staff
- Goal 3 - Ann, Steve
- Goal 4 - Terrie, Kathy, Shelly
- Goal 5 - Ann, Terrie, Kathy

Ann will send two months' worth of notes for the next meeting. Bryn will send Ann what she has electronically.

Next month need to start thinking about goals. Start working on goals in October and November because don't have a December meeting. Mike needs to have goals off to City Council soon. We come up with goals and try to match them to Vision 2040. It's not required but a good thing to do. We come up with goals and then objectives and members decide what they want to help with. Most of the meeting will be taken up with goal work. We sign off and send to the City who approves. We don't start working on new goals until July, 2024. We can begin work sooner, but not required.

#### **Newport Parks & Rec Advisory Committee**

Supposed to have someone here to talk about a survey. Sonia sends a survey every quarter, not sure it is necessary.

Sonia clarified that her survey is specifically about the specific classes from the students enrolled. Person who was supposed to be here probably couldn't get off work. She is copied on notes and agendas for P&R Advisory Committee. She understands that the P&R committee wants to know how to best help us out.

Mike added that the goal is to have a larger group approach to projects and goals to make sure that we are moving forward together. Parks and Rec Advisory Committee trying to think outside the box. Charlie Brown taking up the lead from the Parks and Rec side.

Clarified that it's okay for committee members to meet together socially or for outside meetings as long as there is not a quorum present.

Mike tries to get each division manager to report to Parks and Rec Advisory Committee at least once per year so they hear directly what's going on.

October 10, November 1, and December 6 are the next three Parks and Rec Advisory Committee meetings. Ann will try to attend if she can.

Anyone can come and watch as a visitor, meetings are open to the public.

### **Supervisor's Report**

August Supervisor's report was attached to packet. Report on September activities:

- 60+ and Parks and Rec hosted a fantastic event in conjunction with Newport Pride on September 23. 60+ hosted Drag Bingo which was very well attended.
- Final hike of the year at Heceta Head last Thursday. Just getting too cold and wet now. Next year will form two groups, one beginner, one advanced.
- Volunteer Appreciation lunch next week.
- Events coming up October and November
- September 27 is monthly birthday lunch. Could use a dishwasher and someone to serve food if they have their food handlers' card.
- Halloween there will be a Halloween party held by Association.
- Started working on Community Thanksgiving meal. If anybody wants to assist, let Sonia know. Lt. Michele from Salvation Army working on sourcing food. Members of 2022/2023 Leadership Lincoln meal planning group helping out as well. Meal will be on Sunday, November 19. There will be specific tasks on Saturday, November 18 for volunteers to sign up for. There will be two seatings, meals on wheels will deliver, volunteers will be fed between meals. Julia Dobies will manage kitchen again and MOW chef and cook will also be helping.

### **City Liaison CM Hall Comments**

When looking over 2023/2024 goals, can't think of better example of meeting many goals at once than the Newport Pride. It meant everything that the staff didn't just show up, they showed up as allies for all the events, even outside the Rec Center and 60+ Center.

Many thanks to the volunteers who were wrangled to help out. City services and facilities were made a safe space - critical to how LGBTQIA community is perceived in community. Shout out to Frank Perdue who was a big help as well. Destination Newport committee helped fund Pride, meant quite a bit.

This morning City Council met to interview candidates for vacant City Council position. Robert Emond was selected to fill the vacant position that opened with Jan Kaplan became Newport Mayor. Now have a full City Council again.

Applicant, Craig was not approved onto the Advisory Committee by way of a tie vote the previous month. Craig was informed and is fine with the decision. Bryn added that Craig is in the Center on a regular basis and hopes that he does stay connected and share the temperature of what people are saying since he is there. Terrie also invited Craig to join one of the other committees - Association or Friends. The Newport Senior Citizens Activity Association is having its annual meeting on November 15, Ann has it on her calendar to attend. Everyone is invited.

### **Public Comments**

No public comments have been brought forward.

### **Establish Next Agenda and Meeting Date**

Next meeting will be on Monday, October 23 at 2:30 p.m.

Will begin conversation about goals. Starting with current goals, then discuss adding new goals.

### **Adjournment**

Having no further business, the meeting adjourned at 3:24 pm.

October 17, 2023  
1:09 P.M.  
Newport, Oregon

### **Water Supply Management and Conservation Workgroup Meeting**

The workgroup met on the above date and time in the City Council Chambers of the Newport City Hall. Mid-Coast Water Shed - Mike Broili; Oregon Coast Community Forest - Jay Fineman; Customer Keven Shreeve; Civil West Engineering Restaurant/retail representative- Jason Pond; Rogue Brewing, John Moody; Pacific Seafood, Mark Saelens, Board of Director for the SWCD via zoom. Mayor/Council Liaison- Jan Kaplan. City Staff in attendance were: Assistant City Manager/City Recorder, Erik Glover, Spencer Nebel; City Manager, City Engineer, Aaron Collett, Water Treatment Plant Supervisor, Steve Stewart, Matt Hall; Water Distribution Senior.

### **CALL TO ORDER AND ROLL CALL**

Glover called the meeting to order at 01:09 P.M.

### **DISCUSSION ITEMS**

**Water Demand Analysis Presented to City Council-** Glover provided a summary of the report, and Broili asked about 2010 drop, Nebel reported the drop was likely due to economic conditions. Moody advised that it seemed to be a decline in production for seafood processors likely related to economic conditions.

Broili asked did the report consider climate change when this document went to Council. Broili referenced if things get out of hand the coast seems like the place to go, which would increase water demand. Nebel detailed there only being so much developable space in the distribution system, due to so many possible places for City expansion, unless UGB expansions are considered. Stewart reported that climate change was not a hot topic back between 2007-2018 or so, so it would maybe likely not be considered.

Glover detailed that the production is down to 2015 levels of production. Nebel said surimi production was down this year, would be a likely culprit. Moody reported fish plants ran 2-3 months this year, stopped first week of August. Nebel reported good news is using less water, the bad news is water revenues are down due to selling less water. Nebel reported that water is trending downward this year, the largest explanation is declines in fish producers, second issue is as water rates increase folks are mindful and more conservative. Nebel said stopped pumping on Siletz in early in August, off for a month and then came back on to meet demand.

Broili asked what surimi wasn't running. Moody said this is not normal, market conditions are down. Russia put a lot of pollock surimi on the market which tanked prices.

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October 17, 2023  
Water Supply Management and Conservation Workgroup  
Newport, Oregon

Shreeve referenced that this document talks about what was produced, but does not see data related to water loss. Nebel said we have that data, it is recorded in Finance and will come back in a presentable format at the next meeting for the group. Moody held a discussion about operating time period for the seafood production plants. Stewart reported water use was different for H&G and surimi production. Moody said higher.

Glover provided a summary of 2007 water master plan and the loss ratio referenced then.

Broili reported he would like to know what the number looks like now. Stewart reported there is a minimum or guideline for water loss ratio, it is more of a minimum if you are going after funding. Saelens used to say nationally it was not uncommon to have 25-30%, if Newport was at 16% back then, and we can document we are still there that's a pretty good number. Given that 0 is not attainable. Moody inquired if in that 16% is the City fire department use included? Nebel reported he'd have to look at the methodology used, to calculate what it is now. Stewart reported various city facilities are not in the grand total of water sold. It is not billed, so not regarded as sold. Meter is read though. Stewart reported that the fire chief will start sending him monthly use for fire purposes, which should be tracked. Moody reported if you don't know what is used, its hard to track water loss ratio. Hall shared that all the buildings are metered, which are read. But the water usage is just not billed.

Saelens you look at the projected trend of water you need, and series of things to conserve water which comes at the aspect of not making money, and the new dam. He inquired if the City is looking at how the dam replacement will relate to sustainable water in Newport, and how the project will ease that situation? Nebel reported lower reservoir storage doesn't really count as it is more of a leveling pond. Saelens shared it would be interesting to know if the dam comes online in 2030, and how much of that buffer is projected water use compared to if City didn't have it. He shared there didn't appear to be an easy solution for this one, but given the conundrum of reducing water use, but also having to sell water to pay for the fixed infrastructure costs. He advised it may be good to look into a program similar to the Blue Sky power program, where people pay more for electricity generated from renewable sources, if they want to pay for stabilizing water supply source or something.

**Water Rate Structure/Variable Rate Discussion.** Glover presented the written staff report which said Staff has attached the current Newport water rates, "23-24 Newport Water Rates", "Water Meter Flow Rates", "Water Rate Example", "Water Use Comparison". Under the Water Use Comparison attachment, Staff pulled information from the annual water use reporting of the State of Oregon. The idea was to locate cities of similar and larger sizes, and other coastal communities, to determine if any information on water use could be discerned. Please keep in mind that this is a very rudimentary comparison. Does not necessarily reflect finished water, any population increase due to tourist/seasonal population increases, any amounts pumped but not delivered, any required releases from impoundments/reservoirs, water line breaks, evaporation, fire



response, or potential water sales to another entity outside of the entity in question. Looking at the data the average water use is around 899 million gallons for the cities surveyed. In previous meetings of the workgroup, a water rate structure with conservation in mind was referenced. During research on this agenda item, Staff located an article: Conservation Water Rates for Residential Customers <https://fwrj.com/techarticles/0810%20tech1.pdf> This article seemed to share a good amount of information related to the topic. As indicated in the article, rate structuring is a difficult topic. Staff performed a very rudimentary example of what something like that could look like. With the Water Meter Flow rates attachment, you will note as meter size increases the GPM which can be diverted from the system increases as size increases, which is not earth shattering. It did seem apparent though, that a user with a larger meter pays more as a fixed/base rate, due to the fact that their actual and potential use carries a larger burden to the water infrastructure. Newport's current rates structure has a close variant of this, and was set by a previous water rate study. For purposes of this example, Staff took the current residential and commercial fixed charge for ¾" meter and scaled it up based upon meter size, and potential increase in max GPM over the ¾ meter size. Staff also setup a quick conservation minded pricing tier.

Under this example, water charges increase as consumption increases over set tiers. The EPA has some further information Understanding Your Water Bill | US EPA <https://www.epa.gov/watersense/understanding-your-water-bill> Under this kind of pricing model the increase in unit charge, rewards any efforts a user can make to conserve water, such as fixing a leaking internal or external water fixture, or installing higher efficiency fixtures. Generally fixed and variable rates are established by a rate study, Newport's was last done in 2018. One option that may could come out of this discussion is a recommendation to the Newport City Council to conduct a water system rate study, with an emphasis on evaluating the potential of a conservation minded rate structure for water user fees. One idea that is not necessarily directly related to the topic, is a potential community challenge related to water conservation methods. An example being an announcement of the opportunity, and a challenge to water users where they receive some of prize or recognition for their unique or standard measures for saving water. It could be structured such as the largest total amount of gallons saved on a monthly/annual basis, or largest percent reduction in use in a monthly or annual basis. It seems like it might could be a novel and fun way to incorporate the goals of the workgroup through a recommendation to the City Council.

Broil referenced that conservation reduces cash flow, depending upon to run the system. Nebel shared that on the rate discussion there is a number of things which come into play you pay the same rate amount for water, for 1000 gal as 100,000 water used. Historically, rates were almost structured where there was a lower rate for higher usage of water it was encouraged to facilitate industrial development. The other option some places are implementing a rate which increases in tiers, as the value of water increases, it can have some significant increases on bills. Nebel our water system is supported

entirely by rates which are charged, of those costs most of the cost are fixed for the infrastructure. He shared he committee may want to make a report on this concept.

Broili shared that Saelens spoke to setting rates before, and the struggle which was had to come up with an equitable way to offset the costs. Moody reported that 10% of Pacific Seafood overhead right now is water cost, the company is making strong efforts to reduce use, but it is still a sizeable sum of money. Pond reported that a big portion of Rogue Brewing costs is water as overhead, but will have to verify the percentage.

Nebel reported the current base rate buys no water used. The philosophy in utility rates is there are fixed costs regardless of if you use 1,000 or 100,000 gallons of water, which is the purpose of the base rate. Nebel reported the last rate study was done by FCS Group, who evaluated rates, to establish three classes of properties. Saelens asked when did rate study get done. Nebel reported he thought was about 5 years ago.

Saelens shared with fixed costs a utility needs to collect enough in base rate for costs, and then compare and contrast if I'm well off to own a second home I don't want to have to pay a high base rate because I am paying something I am not using. But yet I am getting something of value, any time I come here I can come and turn on the faucet and water comes out. He shared is he advocating taking a look at does it make sense to charge a higher base rate and more flat water usage charges. Or if it makes sense to look at increasing the usage cost, and reducing the base rate. He reported that he didn't really worry about if the City charges \$20 or \$40 dollars a month for base rate, he can afford it and likes living here, but unfortunately in other situations it makes a big difference for people.

Nebel reported the City has lower rates for low income qualified people, they have to apply through Community Services Consortium. He advised the City charges a 1% franchise fee to cover the costs for those folks. There is not a lot of people that need that help, but it is an option.

Discussion of Glover staff report. Discussion of other water systems around Oregon.

Group reported this is difficult for them to comprehend, as a subject. Glover reported this is why a professional rate study would be used if the group made the recommendation to City Council.

Broili asked what percentage of meters are smart read. Hall reported meters all are now digital or radio read. Broili detailed Seal Rock Water District info on water usage alerts. Nebel advised Newport also has that same app, and the City sent out a lot of materials during the implementation. The work group requested that Finance present the water smart alert system at the next meeting. Hall reported the City had the Water Smart system which sends out auto alerts, if customers/accounts are registered. He advised some of the meters are not able to be tower read, so they are read by drive by which does not report instantaneously. Current digital meters are read at the 15 minute time frame, in most of Newport automatically. Broili inquired if the City would notice if a leak occurs on someone's property?

Hall advised that if Neptune 360 is used it would red flag the water usage, not necessarily an audible alert though. If finance checks that data daily then they could call, but that may not be practicable. Moody reported his company has gotten calls from Finance several times reporting on a potential leak. Nebel asked what percent of town is tower read, verses drive by. Hall reported around 85% as a guess, and 15% which are drive by monthly. Pond inquired what would be observed if a main had a leak? Hall reported that the City does not have the technology for alerts on main leaks. Pond reported he observed one by the lighthouse recently. Hall reported that leaks do tend to occur in areas of ground movement in Newport.

**Discussion on Voluntary Curtailment/Drought Press Releases.** Glover provided a summary of the press releases sent out regarding a stage one voluntary water curtailment. Broili reported he also saw traffic/road signs, but only one at north and east not south. Nebel reported that was correct, because the City only owns two signs. Stewart reported that many people said they didn't know we are in drought until the signs went out, and appear to be one of the best ways to get that information out. Kaplan referenced that many people auto pay bill and don't open mail. Nebel shared City is now emailing out all notices to email accounts of customers. Broili reported the Lincoln Alert System may be an option. Kaplan reported it may be good to see how to connect with the alert system. Pond shared that engagement with the local schools may be good regarding droughts. The youth would likely take the information back home.

Moody asked how much water Newport uses per day in the summer. Stewart advised that 3 million gallons a day was typical.

Saelens shared that it was interesting folks didn't know we were in drought. Originally forecasts projected a 77% of normal precipitation in July, when they did future update it was only at 25% of July normal precipitation.

Broili reported that the City needs to ferret out ways to react to these issues, as if we know something is happening and can't convey that to the public it doesn't help. Saelens reported another previous hot button issue, was a summer time exemption for garden rates. The assumption was during these months it was going to the yard, and not the sewer system so sewer gallonage was not charged. He advised it is important that frequently reminding users watering a yard is a luxury in summer. Nebel reported the City did eliminate the summer watering exemption which was a painful process, but was the best decision for a variety of reasons.

**Discussion on Outsourced Committee Management.** Nebel reported the City continues to have staffing issues across departments. We have someone starting November 6th as Deputy City Recorder, which is critical in support of committees. He advised the City is still recruiting Public Works Director, the Operations Public Works Director has been out of work for an extended period. He reported that Broili and he discussed bringing someone in to provide technical support to the work group and putting it into a report regarding conservation for the City. Nebel advised he didn't think it will be a huge cost, the City has some funding we can use to put towards having someone assist.

We want them to help facilitate these meetings, and draft a report which goes to administration and council as the end result of the work group. Nebel advised the City has had a challenge trying to maintain the level of support internally, so the consultant could help. Broili reported the person could take on other tasks, such as in redoing the conservation and management document which is 6-7 years past due on renewal, and the funding for the water protection plan.

Nebel reported that part of the Water Management and Conservation Plan is being picked up in the Water Master plan, so he sees the work group fitting into that analysis for a recommendation. Broili advised that at least two of the people who would be about fill the consultant role, review and create the documents, and the water protection plan, and they would oversee the group which fit under one umbrella.

Nebel reported the Council last night authorized agreement for source water protection plan, and a consultant will be selected. Collett reported he is unsure if the water supply group would be involved in the effort or not. Broili reported he has been involved in 3 of them, and part of the process is an advisory group for the community.

Nebel advised the City may want to select a consultant for the source water protection plan, and may want to see about having extra work outside of the grant for the additional time needed to support the water management and conservation workgroup. Broili reported that in his view the water master plan, and water management and conservation plan fits into those efforts as well and should be included.

**Discussion about Beneficial Use of Treated Effluent Water.** Glover advised that he was thinking about one mission of the workgroup being a way to figure out how to conserve water, and got to thinking about beneficial use of effluent water. He advised it would likely not be a direct savings as water is still being used, but it would be water recycled for non-potable sources, instead of using potable water for that purpose, such as flushing toilets. He provided a summary sharing that he felt beneficial use for irrigation of a forest area by the wastewater treatment plant, a greenhouse, or using it for non-potable/ toilet flushing in special situations should be reviewed. Brief discussion was held about possible beneficial uses of treated effluent water.

Broili advised he would agree that it could be used for something like irrigation golf courses, and a number of different opportunities for that. He reported he has extensive experience with rainwater harvesting, and is not necessarily a smart technology unless used for flushing toilets, due to being there when you don't need it, and not being there when you need it for irrigation purposes. Shreeve reported that in some instances, communities have switched to a new water system and abandoned the old one to be used for effluent/purple pipe systems.

Saelens inquired if the City line does line run down HWY 101, and is it easily accessible. He advised a demo of the idea for something like irrigating of a City park, may make sense. Nebel reported the effluent line would have to be evaluated to see if that is possible or not, by evaluating the line maps. Nebel reported staff would be reviewing the

effluent line route. Moody reported seafood processors have to use potable water. Pond reported brewers also had to use potable water.

Broili inquired as to if the City effluent is treated to such a degree to be in contact with? Nebel reported he would need to evaluate that information.

Broili reported he would like to see PFAS on a future agenda. Stewart reported the City is extensively testing, and has zero in treated water, and is also not finding PFAS or lithium in finished water, but it seemed likely to be present in wastewater though.

**Report on Source Water Protection Grant and Watershed Acquisition.** Nebel gave a summary, advised group is not being invited to submit a full proposal on watershed acquisition through NOAA. Requests likely exceeded funds available, and review panel didn't feel it was as competitive as others. He advised Sustainable NW is pursuing other funding sources. Broili shared he is disappointed, but encourages City to keep moving forward on it. Nebel reported it is an important goal of the council.

Fineman reported he is happy to hear it is a goal of Council. He attended DEQ meeting at community college recently, watershed protection is a big effort right now across agencies. Nebel shared some of the criteria which hurts us is the protection of natural resources, they don't view reservoir as a natural resource. I believe legislation is passed to consider drinking water as an important resource to protect as well. Unsure how it will work through the state now. Broili inquired if City has identified the area to include in this effort. Nebel shared primarily most of our watershed is commercial forest owned. He added he thought acquisition is likely much easier when dealing with a handful of large landowners, than with a huge number of small land owners. Nebel reported it is cheaper to buy land when it has been cutover, although it does not retain as much moisture.

Fineman shared he has heard some direction of a regional plan. Nebel advised the NOAA plan wouldn't allow us as an individual City to do it, so we did it regionally with others through Sustainable NW. Broili added there are funds available for creating management plans. Nebel shared the City was applying for that, but got penalized because it was a drinking water reservoir versus other drinking water impacts. Saelens reported that Sustainable NW is already planning on this, is disappointed it didn't work. But there is still a community forest program through USFS. It is not as large, but ODF has a program which pays half of the costs, up to a max of \$400,000.

#### **PUBLIC COMMENT**

None was heard.

#### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 02:56 P.M.

Page 7 of 7  
October 17, 2023  
Water Supply Management and Conservation Workgroup  
Newport, Oregon

## **CITY MANAGER REPORT AND RECOMMENDATIONS**



**Meeting Date: December 4, 2023**

### **Agenda Item:**

**Public Hearing and Possible Consideration of a Purchase and Sale Agreement for the Abbey Street Pier Building Located at 669 SW. Bay Boulevard.**

### **Background:**

Following a public hearing on June 20, 2023, the City Council determined that the Abbey Street Pier building at 669 SW Bay Boulevard was no longer needed for public use and it was in the public's interest to sell the building. On August 7, 2023, the City Council selected Freddy Saxton of Advantage Real Estate, to market the property for sale on behalf of the City. The listing price for the property was \$729,000. An offer was received from Ocean Bento, LLC, in the amount of \$692,550. The City Council authorized a counter offer at \$710,000. That counter offer has been accepted.

Newport Municipal Code Section 2.25.040(f) sets out the process the City must follow for the direct sale of property to an interested party. Notice has been placed regarding the sale. On November 24 a copy of the sales agreement setting out the nature and general terms of the proposed sale, including an appraisal or other evidence of market value, is to be fully disclosed at the public hearing. In addition, there are easements that will need to be put into place to provide access to the public pier, which the city will be retaining, and to allow the City to continue to use a mechanical room in the building. This room contains the controls for fire suppression system installed to protect the dock. Other documents with the Department of State Lands lease the and license for the public access dock will also need to be updated.

### **Recommendation:**

I recommend the Mayor conduct a public hearing on the direct sale of the Abbey Street Pier building at 669 SW Bay Boulevard to Ocean Bento, LLC, in the amount of \$710,000 subject to the attached commercial real estate sales agreement.

Following the public hearing, and considering any public comment, I recommend the City Council consider the following motion:

**I move to approve the commercial real estate sales agreement for the Abbey Street Pier building at 669 SW Bay Boulevard and authorize the City Manager to execute the necessary documents to complete the transaction, including execution of necessary easements, subject to review and approval by the City Attorney.**

### **Fiscal Effects:**

Proceeds from the sale will be directed to the City's Land Reserve Fund.

**Alternatives:**

Seek changes to the sales agreement, hold off on pursuing a financial sale, or as suggested by the City Council.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer Nebel  
City Manager



**STAFF REPORT  
CITY COUNCIL AGENDA ITEM**

**Date:** December 4, 2023

**Title:** Public Hearing to Consider a Purchase and Sale Agreement Setting Out the Terms of Sale of the Abbey Street Pier Building at 669 SW Bay Blvd

**Prepared by:** Derrick I. Tokos, AICP, Community Development Director

**Recommended Motions:** I move to approve the commercial real estate sales agreement for the Abbey Street Pier Building at 669 SW Bay Blvd, and authorize the City Manager to execute the necessary documents to complete the transaction, subject to review and approval by the City Attorney.

**Background Information:** At its June 20, 2023 meeting, the City Council determined that the Abbey Street Pier Building at 669 SW Bay Blvd is no longer needed for public use, and that it is in the public interest to sell the building. The City Council further directed the City Manager to seek proposals from qualified real estate brokers to market the property for sale. At its August 7, 2023 meeting, the City Council selected Freddy Saxton, Advantage Real Estate, to market the property for sale on behalf of the City. The property was since advertised for sale with a listing price of \$729,000. On October 26, 2023, an offer was received from Ocean Bento, LLC in the amount of \$692,550. The City Council authorized a counter offer at \$710,000 and that counter offer was accepted.

Newport Municipal Code (NMC) Section 2.25.040(F) sets out the process the City must follow for the direct sale of property to an interested party. Notice of the proposed sale must be published in a newspaper of general circulation at least five days prior to the hearing. That occurred on November 24, 2023 (enclosed). A copy of the sales agreement setting out the nature and general terms of the proposed sale, including an appraisal or other evidence of market value of the property, shall be fully disclosed at the public hearing.

With this sale, an easement will need to be put in place to provide access to the public dock which the City will be retaining since the real property in front of the dock would be sold with the Abbey Street Pier Building. Additionally, a second easement will be needed to allow the City to continue to use the mechanical room in the building. The mechanical room contains the controls for the fire suppression system installed to protect the dock. Draft language for both easements is enclosed. The Department of State Lands lease for the commercial building, and license for the public access dock, will also need to be updated. Copies of the existing lease and license are enclosed, as are legal descriptions by Civil West Engineering illustrating the new in-water lease areas.

**Fiscal Notes:** Proceeds from the sale would be directed to the City land account for future land purchases, unless an alternative use of the funds is identified by Council.

**Alternatives:** Move forward with the potential sale, seek changes to the sales agreement, hold off on pursuing a potential sale, or as suggested by Council.

**Attachments:**

Draft Commercial Real Estate Sales Agreement  
Draft Public Dock Access Easement  
Draft Fire Suppression System Easement  
DSL Lease 11546-ML  
DSL License 23348-LI  
Updated lease/license legal descriptions  
Appraisal  
Public hearing notice



Sale Agreement # 10202023DC**FINAL AGENCY ACKNOWLEDGEMENT**

- 1 Property Address or Legal Description: 669 SW Bay Boulevard, Newport, OR 97365
- 2 Both Buyer and Seller acknowledge having received the Oregon Real Estate Initial Agency Disclosure Pamphlet at first contact with
- 3 their Agent, and hereby acknowledge and consent to the following agency relationships in this transaction:
- 4 Name of Buyer's Agent: Danielle Cutler License # 200607013
- 5 Name of Real Estate Firm: Windermere West Coast Properties License # 201236884
- 6 Address: 914 SW Coast Hwy Newport OR 97365 Phone: (541) 961-3868 Email: cutlerdani03@gmail.com
- 7 The agent is of: ☒ The Buyer exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").
- 8 Name of Buyer's Agent: \_\_\_\_\_ License # \_\_\_\_\_
- 9 Name of Real Estate Firm: \_\_\_\_\_ License # \_\_\_\_\_
- 10 Address: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_
- 11 The agent is of: ☐ The Buyer exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").
- 12 Name of Buyer's Agent: \_\_\_\_\_ License # \_\_\_\_\_
- 13 Name of Real Estate Firm: \_\_\_\_\_ License # \_\_\_\_\_
- 14 Address: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_
- 15 The agent is of: ☐ The Buyer exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").
- 16 Name of Seller's Agent: Freddy Saxton License # 200801080
- 17 Name of Real Estate Firm: Advantage Real Estate License # 200003082
- 18 Address: 205 E Olive St Newport OR 97365 Phone: (541) 961-2085 Email: freddy@advantagerealestate.com
- 19 The agent is of: ☒ The Seller exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").
- 20 Name of Seller's Agent: \_\_\_\_\_ License # \_\_\_\_\_
- 21 Name of Real Estate Firm: \_\_\_\_\_ License # \_\_\_\_\_
- 22 Address: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_
- 23 The agent is of: ☐ The Seller exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").
- 24 Name of Seller's Agent: \_\_\_\_\_ License # \_\_\_\_\_
- 25 Name of Real Estate Firm: \_\_\_\_\_ License # \_\_\_\_\_
- 26 Address: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_
- 27 The agent is of: ☐ The Seller exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").
- 28 If both Parties are each represented by one or more Agents in the same real estate firm, and the Agents are supervised by the same
- 29 principal broker in that real estate firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited
- 30 agent for both Buyer and Seller as more fully explained in the Form 9.2 Disclosed Limited Agency Agreement that has been reviewed
- 31 and signed by Buyer, Seller and Agent(s).
- 32 Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this
- 33 acknowledgement at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counteroffer will
- 34 be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of the Agreement or any terms
- 35 therein.
- 36 **ACKNOWLEDGED**
- 37 Buyer: [Signature] Print: Ocean Bento LLC and/or Assigns Dated: 10/26/23
- 38 Buyer: \_\_\_\_\_ Print: \_\_\_\_\_ Dated: \_\_\_\_\_
- 39 Buyer: \_\_\_\_\_ Print: \_\_\_\_\_ Dated: \_\_\_\_\_
- 40 Buyer: \_\_\_\_\_ Print: \_\_\_\_\_ Dated: \_\_\_\_\_
- DocuSigned by:
- 41 Seller: Erik Glaser, City of Newport Print: City of Newport Dated: 11/8/2023 | 3:46 PM PST
- 42 Seller: 3167CF0F4263432... Print: \_\_\_\_\_ Dated: \_\_\_\_\_
- 43 Seller: \_\_\_\_\_ Print: \_\_\_\_\_ Dated: \_\_\_\_\_
- 44 Seller: \_\_\_\_\_ Print: \_\_\_\_\_ Dated: \_\_\_\_\_

Sale Agreement # 10202023DC**1.2 OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT**

**1 THIS IS A LEGALLY BINDING CONTRACT. THE PARTIES TO THIS AGREEMENT SHOULD READ IT IN ITS ENTIRETY. IF THE PARTIES HAVE QUESTIONS ABOUT THEIR OBLIGATION UNDER THIS AGREEMENT, THEY SHOULD SEEK COMPETENT LEGAL AND FINANCIAL ADVICE.**

**3 1. Names of parties to this Agreement (the "Parties")** (attach detailed Party contact information as Exhibit A):

**4 Buyer** Ocean Bento LLC and/or Assigns **Seller** City of Newport  
**5 Buyer** \_\_\_\_\_ **Seller** \_\_\_\_\_  
**6 Buyer** \_\_\_\_\_ **Seller** \_\_\_\_\_  
**7 Buyer** \_\_\_\_\_ **Seller** \_\_\_\_\_

**8 2. Agreement to Purchase and Sell:**

**9 Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the Property described in Section 3 under the terms and conditions described in this Agreement, which becomes binding upon Mutual Acceptance by Buyer and Seller.**

**11 3. Property Description (the "Property").**

**12 3a. "Real Property":** The land and all improvements upon the land located at 669 SW Bay Boulevard Newport OR 97365 in the county of Lincoln, Oregon and further identified here and in Exhibit B (attach Exhibit B for additional property description and legal description) along with all fixtures, easements, rights and interests appurtenant thereto.

**15 3b. "Personal Property":** All of Seller's rights in the Personal Property included on **Form 2.4 Bill of Sale** or on an attached Exhibit.

**16 4. Financial Terms:**

**17 4a. "Purchase Price" of:** \$ 692,550.00  
**18 4b. "Earnest Money" in the form of checks, wire transfer, or promissory note:** \$ 6,925.00  
**19 4c. Remainder of Down Payment** \$  
**20 4d. Remainder of Purchase Price to be paid at Closing by** ☒ Cash ☐ Loan ☐ Seller-Financing: \$ 685,625.00  
**21 4e. \$ 0.00 of the Purchase Price** allocated for Personal Property included in an attached Bill of Sale (**Form 2.4**)  
**22 4f. If amounts above are based on Contingent Funds or Nonliquid Funds, specify:** \_\_\_\_\_

**24 4g. Earnest Money to be deposited with** Western Title, Newport ("Escrow Agent") within:

**25** ☒ **3 Business Days; or** ☐ \_\_\_\_\_ **Business Days** of Effective Date

**26 4h. Release of Earnest Money:** Earnest Money becomes nonrefundable and payable to Seller:

**27** ☐ At 5:00pm on the final day for Earnest Money Deposit in Section 4g.  
**28** ☐ After satisfaction or release by Buyer of the Contingencies in Section 9; or  
**29** ☒ Other: at close of escrow

**31 5. Closing:** Closing to take place in Newport Oregon with Escrow Agent no later than:

**32** ☒ 01/05/2024 [Date]; or  
**33** ☐ \_\_\_\_\_ **Calendar Days** after end of Due Diligence Period.

**34 6. Possession:** Seller to deliver possession to Buyer, subject to any tenancies:

**35** ☒ at Closing; or  
**36** ☐ on \_\_\_\_\_ [Date].

**37 7. Prorations (if applicable)** will occur as of ☒ Closing ☐ Possession ☐ Other Date \_\_\_\_\_

**38 8. Conveyance:** Transaction accomplished by way of ☒ Deed; or

**39 If transaction Seller-Carried (Form 8.1):** ☐ Deed, Promissory Note and Deed of Trust; or ☐ Land Sale Contract

**40 9. Contingencies:** Buyer's agreement to purchase Property is contingent on the following:

**41** ☒ Buyer's release of Due Diligence Contingency within 30 **Calendar Days** of Effective Date ("Due Diligence Contingency Period");  
**42** ☐ Buyer's release of Financing Contingency within \_\_\_\_\_ **Calendar Days** of Effective Date ("Financing Contingency Period");  
**43** ☐ Other \_\_\_\_\_

**45 10. Environmental Assessments:** By checking the below box, Seller agrees to the following:

**46** ☒ If Buyer's Phase 1 Environmental Assessment results in a determination that a Phase 2 Environmental Assessment is necessary, Seller hereby provides permission for Buyer to conduct invasive inspections during Phase 2 and agrees to extend the Due Diligence Contingency Period, if any, identified in Section 9 above by:

**49** ☒ 45 Calendar Days; or ☐ \_\_\_\_\_ **Calendar Days.**

Buyer Initials JBSeller Initials EG

Sale Agreement # 10202023DC**OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT**50 **11. FIRPTA.** Seller is a foreign person under 26 U.S. Code § 1445 (FIRPTA): ☐ Yes (Form 2.7) ☒ No51 **12. Assignment:** Assignment of this Agreement is: ☒ Permitted ☐ Prohibited without Seller's consent (see Section 44)52 **13. Additional Provisions:** Attach General Addendum (Form 2.2) if necessary:53 OFFER EXPIRATION: NOVEMBER 3<sup>rd</sup>, 2023 at 11:59 p.m.72 **14. Attached addenda and exhibits:****OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT TIME PERIOD TERMS**

77 **15. Counting Time:** This Agreement is to be interpreted using the time zone in which the Property is located. Any period counted in  
 78 either Business Days or Calendar Days commences on the next Business Day or Calendar Day, respectively, following the triggering  
 79 event. Unless otherwise stated in this Agreement, the triggering event is Mutual Acceptance of this Agreement. A period ends, or  
 80 a deadline is reached, at 5pm (if Business Days) or 11:59pm (if Calendar Days) on the final day of the period or on the day of the  
 81 deadline.

82 **16. Buyer Representations and Duties Regarding Financing; Financing Contingency:** If Buyer is financing any portion of purchase  
 83 price with a loan, Buyer shall diligently and in good faith take all steps necessary to obtain Buyer's loan. Buyer must Promptly  
 84 inform Seller of any developments regarding Buyer's financing that may affect Buyer's ability to comply with the terms this  
 85 Agreement. Upon request by Seller, Buyer shall Promptly provide Seller with evidence of Buyer's efforts to comply with the terms  
 86 of this paragraph.

87 If the Parties have made this Agreement subject to the Financing Contingency, the following applies: If Buyer has not affirmatively  
 88 released the Financing Contingency by the date identified for Buyer's satisfaction or release of Financing Contingency on page 1  
 89 of this Agreement, this Agreement will automatically terminate with all Earnest Money not yet released to Seller pursuant to the  
 90 other terms of this Agreement Promptly returned to Buyer.

91 **17. Title Reports, Documents and Contingency:** Within 1 Business Day after Mutual Acceptance, Seller shall order or cause to be  
 92 ordered a preliminary title report ("Preliminary Report"), together with complete and legible copies of all documents that will  
 93 remain as exceptions to Buyer's policy of title insurance ("Title Documents") from the Title Company, including but not limited to  
 94 conditions, covenants and restrictions ("CC&Rs"); deed restrictions; and easements. Unless waived in writing by Buyer, this  
 95 transaction is contingent upon Buyer's approval of the Preliminary Report and Title Documents as described in this Section ("Title  
 96 Review Contingency").

97 Buyer shall have ☒ 10 Business Days; or ☐ \_\_\_\_\_ Business Days after receipt of a Preliminary Report and Title Documents to  
 98 notify Seller in writing of any items disapproved by Buyer ("Title Review Period"). If an Amended Preliminary Title Report is issued  
 99 that supplements the Preliminary Report ("Amended Report") with additional liens, CC&Rs, deed restrictions, or encumbrances

Buyer Initials SWSeller Initials EGLO





## OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

("New Items"), Buyer's Title Review Period will extend for an additional **10 Business Days** after delivery of the Amended Report ("Extended Review Period"), or until the Closing Date, whichever is sooner. During this Extended Review Period, Buyer may disapprove only of the New Items in the Amended Report.

**If Buyer provides written disapproval of any items in the Preliminary Report and Title Documents or Amended Report, Seller has ☒ 10 Business Days; or ☐ \_\_\_\_\_ Business Days upon receipt of Buyer's notice** to correct the matters identified in Buyer's disapproval or provide assurances acceptable to Buyer that the matters will be corrected prior to Closing ("Title Correction Period"). If Buyer's written disapproval is based on an Amended Report and Buyer's notice of disapproval is delivered to Seller within **10 Business Days** before the Closing Date, the Closing Date will be extended for **10 Business Days** to provide sufficient time for the Title Correction Period. If Seller has failed to correct items disapproved by Buyer or otherwise failed to provide adequate assurances that such items will be corrected prior to Closing, within **2 Business Days** after the end of the Title Correction Period Buyer may give Seller a **Form 5.3 Buyer's Notice of Termination** stating that Seller failed to provide such corrections or assurances within the Title Correction Period, and all Earnest Money not yet released to Seller shall be returned to Buyer. **Buyer's failure to provide written disapproval and a Notice of Termination within the times set forth in this Section constitutes Buyer's acceptance of the matters disclosed in the Preliminary Report or Amended Report and Title Documents or Buyer's acceptance of Seller's title corrections.**

Seller will continue to have a duty to convey marketable title, regardless of this provision. Buyer shall be provided at Seller's expense an American Land Title Association ("ALTA") Standard Coverage Owner's Policy of Title Insurance, showing title vested in Buyer. Buyer may acquire extended coverage in which case Buyer shall pay the difference in cost between standard and extended coverage. If applicable, Buyer shall pay the cost of obtaining the ALTA Loan Policy of Title Insurance required by Buyer's lender. Seller may obtain a Seller's policy of title insurance at Seller's expense.

**18. Due Diligence (Inspections, Environmental Assessments, Document Review, Approvals):** Buyer, at Buyer's sole risk and expense, may have the Property and all its components inspected, including but not limited to any and all inspections, tests, and surveys concerning the structural condition of the improvements, all mechanical, electrical and plumbing systems, hazardous materials, pest infestation, soils conditions, wetlands, Americans with Disabilities Act compliance, zoning, and all other matters affecting the suitability of the Property for Buyer's intended use and/or otherwise reasonably related to the purchase of the Property including the economic feasibility of such purchase ("Due Diligence"), except that invasive inspections may only be done with Seller's written approval.

Buyer shall provide reasonable notice to Seller of inspections and conduct inspections at reasonable times. For portions of the Property occupied by tenants, Buyer shall make reasonable arrangements with Seller as to the time and duration of Buyer's inspections and shall take reasonable steps to protect tenants' property and avoid disturbing tenants. Seller shall provide reasonable access for Buyer's inspections. Buyer is responsible for restoration of the Property following any inspections performed by Buyer or on Buyer's behalf. Buyer shall indemnify, defend, and hold harmless Seller from and against any and all costs, losses, damages, expenses, liabilities, actions, liens or claims arising from or related to any inspection-related activities on or about the Property performed by Buyer, Buyer's agent, employee, contractor or invitee. Upon Seller's request, Buyer shall provide Seller a copy of any inspection or other buyer-procured reports requested by Seller.

**Within ☒ 20 Calendar Days; or ☒ \_\_\_\_\_ Calendar Days after Mutual Acceptance** ("Document Delivery Period"), Seller shall deliver to Buyer legible and complete paper or electronic copies of all the documents to which Seller has access that are listed on **Form 6.2 Commercial Diligence Document Request Sheet**. Until this transaction closes or terminates, Seller has an ongoing obligation to Promptly provide to Buyer documents listed in **Form 6.2** if those documents come within Seller's access and to provide updated copies of documents already delivered to Buyer if the information in the documents materially changes.

At Buyer's request, Seller will provide access to Seller's architects, engineers, contractors, subcontractors, managers, analysts, and appraisers in connection with the Buyer's inspection and document review of the Property.

**Due Diligence Contingency:** If the Parties have made this Agreement subject to the Due Diligence Contingency, the following applies: If by the end of the period selected by Buyer and Seller for Buyer's satisfaction or release of the Due Diligence Contingency on page 1 of this Agreement ("Due Diligence Period"), Buyer has not notified Seller in writing that Buyer accepts the Property and all aspects thereof in its then-current condition, this Agreement will automatically terminate with all Earnest Money not yet released to Seller pursuant to the other terms of this Agreement Promptly returned to Buyer.

This section does not apply to or affect rights granted in the **Form 2.8 Well Addendum** or **Form 2.9 On-Site Sewage Addendum**.

**19. Smoke and Carbon Monoxide ("CO") Detectors:** IF PROPERTY CONTAINS RESIDENTIAL HOUSING UNITS, PRIOR TO BUYER'S APPRAISAL, OR IF NO APPRAISAL IS CONDUCTED, AT LEAST **5 BUSINESS DAYS** BEFORE CLOSING SELLER SHALL ENSURE THE PROPERTY CONTAINS THE REQUIRED NUMBER OF APPROVED AND PROPERLY INSTALLED SMOKE DETECTORS/ALARMS AND CO

Buyer Initials

Seller Initials



## OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

ALARMS IN ACCORDANCE WITH ORS 479.260, OAR 837-045-0050, OAR 837-047-0120, OAR 837-047-0130 AND ANY OTHER REQUIREMENTS OF THE STATE FIRE MARSHALL, THE STATE BUILDING CODE, AND LOCAL MUNICIPAL CODES. If reinspection by Buyer's lender or appraiser is needed because of Seller's Failure to install working detectors or alarms prior to Buyer's appraisal, Seller will be responsible for the cost of reinspection.

**20. Risk of Loss:** Seller must Promptly notify Buyer in writing if all or a material part of the Property is destroyed without fault of Buyer and neither Closing nor Possession have occurred. Seller shall use reasonable diligence to submit all claims and related information to Seller's insurance company and Promptly inform Buyer of all relevant updates regarding Seller's insurance claim. At Buyer's sole discretion, Buyer may elect to continue with the transaction by notifying Seller in writing before Closing and within **10 Business Days** after receiving Seller's notice of Property destruction ("Post-Destruction Period"). Upon such notice from Buyer, the Closing Date shall automatically be extended for a reasonable period of time required to cure or repair any damage or destruction, but in no case longer than **60 Calendar Days**. The Parties may agree in a written contract outlining the terms and conditions under which Buyer will remain obligated to purchase the Property. If Buyer does not give Seller written notice of intent to proceed with the transaction and Seller has not repaired all damage or destruction to the Property, or if Seller fails to Promptly notify Buyer in writing if all or a material part of the Property is destroyed, Seller cannot enforce this Sale Agreement and Buyer may give Seller a **Form 5.3 Buyer's Notice of Termination** terminating the transaction. In this instance Buyer is entitled to a refund of the Earnest Money and to recover any portion of the Purchase Price that Buyer has paid. If all or a material part of the Property is destroyed without fault of Seller and either Closing or Possession have occurred, Buyer remains obligated to purchase the Property under the terms of this Agreement.

**21. Lead-Based Hazard Contingency:** IF PROPERTY CONTAINS TARGET HOUSING UNDER THE TOXIC SUBSTANCES CONTROL ACT (TSCA), SELLER SHOULD PROVIDE **FORM 2.6** AND **FORM 10.3** TO BUYER PRIOR TO ACCEPTING BUYER'S OFFER. Federal law requires that before being obligated under a contract to buy housing built prior to 1978, Seller must disclose to Buyer any known information concerning the presence of lead-based paint or lead-based hazards in the home or building. Buyer must receive **Form 10.3**, an EPA-approved information pamphlet on identifying and controlling lead-based hazards ("Protect Your Family from Lead in Your Home") from Seller and the Agreement must include the **Form 2.6 Lead-Based Hazard Addendum** that confirms that Seller has complied with all notification requirements. The **Form 2.6 Lead-Based Hazard Addendum** describes the **10 Calendar Day** (or different period of time if agreed to by the Parties) contingency period that, unless waived, Buyer has to inspect for lead-based hazards and give Buyer a **Form 5.3 Buyer's Notice of Termination** describing lead-based hazards identified in these inspections. **If Seller is required under this Section to provide Buyer with Form 10.3 and Form 2.6 and Seller fails to do so, Buyer may terminate this transaction and recover all Earnest Money by delivering a Form 5.3 Notice of Termination to Seller at any time prior to Closing.**

**22. Statutory Seller's Property Disclosure Statement:** The Parties should review ORS 105.465 to confirm that this transaction is not subject to Oregon's Seller's Property Disclosure Statement ("SPDS") law (ORS 105.462-105.490). If transaction is subject to the SPDS law, Seller must comply with that law by providing Buyer with a **Form 3.1 Seller Property Disclosure Statement**, or comparable form, after Buyer has made a written offer to purchase the Property and, unless waived by Buyer in writing, Buyer will have **5 Business Days** after both delivery of the SPDS and Mutual Acceptance to revoke Buyer's offer by delivering **Form 5.7 Seller Property Disclosure Statement (SPDS) Revocation of Offer** to the Seller disapproving of the Seller's Property Disclosure. If Seller is required to deliver the SPDS and fails or refuses to do so, Buyer may revoke Buyer's offer at any time before Closing by delivering **Form 5.7 Seller Property Disclosure Statement (SPDS) Revocation of Offer** to the Seller indicating that Seller failed or refused to provide the SPDS. Regardless of the applicability of the SPDS law, Seller's disclosure obligations under the terms of this Agreement and under the common law remain, including but not limited to Seller's duty to disclose known material defects to the Buyer and to notify Buyer if Seller gains Actual Knowledge of information that makes any previous representations made by Seller about the condition of the Property in this Agreement or any associated disclosures materially false.

**23. Closing Date:** If Closing Date falls on a day other than a Business Day, or any other day when the county recording office is closed, the Closing Date is the next day that is not a Saturday, Sunday, legal holiday, or day when the county recording office is closed.

## OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT GENERAL TERMS

**24. Definitions:** Definitions apply to this Agreement and each included addendum, unless otherwise specified in the subject addendum. In addition to the terms below, defined terms include those defined by the Parties on Page 1 of this Agreement

Buyer Initials

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## OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

- (e.g. Purchase Price, Earnest Money, Closing Date, Escrow Agent, etc.). Defined terms are capitalized when used in this Agreement.
- Actual Knowledge:** Direct knowledge of information, not including information that the relevant Party "should have" known.
- Business Day:** Any day other than Saturday, Sunday, or a legal state holiday under ORS 187.010.
- Buyer and Seller:** "Buyer" means any and all buyers, and "Seller" means any and all sellers, who are party to this Agreement.
- Closing:** When all documents are recorded and the sale proceeds are available to Seller.
- Contingent Funds:** Money that will belong to Buyer with the uncertain occurrence of a future event that is outside of Buyer's control, such as money gifts, proceeds from lawsuits, or a Year-End Bonus.
- Effective Date:** The date that Mutual Acceptance occurred.
- Fixture:** Any physical property that is permanently attached to real property including but not limited to the following, along with any integrally related controls or keys: doors and windows including storm doors and windows and door and window screens; awnings; installed irrigation equipment; installed landscaping features (including hardscapes and plantings); installed antennas; attached floor coverings; heating, ventilation, air conditioning systems and related components; installed fireplace and fireplace insert components; attached light fixtures and light bulbs; plumbing; water heaters; installed window blinds, and installed curtain or drapery rods (but not curtains or drapes). Physical property that is attached to real property solely for the purpose of preventing the physical property from damage or causing injury as a result of tipping, falling or sliding is not "permanently attached."
- Mutual Acceptance:** "Mutual Acceptance" of a document occurs when both Buyer and Seller have signed and delivered the document, with no modification of terms, to the other Party.
- Nonliquid Funds:** Money that is not currently available to the Buyer without some kind of transfer, such as 401K account balances, stock, cryptocurrency, or other things of value that Buyer must first sell or liquidate before realizing a cash sum.
- Parties/Party:** "Parties" refers to Buyer and Seller and "Party" refers to either the Buyer or the Seller, as determined by context.
- Personal Property:** Any physical property not permanently attached to real property and not otherwise defined as a Fixture.
- Possession:** When the Buyer has the legal right to occupy the Property, subject to any Tenancies.
- Promptly:** As soon as is practicable and no more than two Business Days.
25. **Headlines:** Headings at the beginning of each section and subsection are solely for convenience of reference.
26. **Property Description:** Buyer and Seller agree that if not provided on page 1 of this Agreement or in accompanying attachment, the legal description of the Real Property provided by the Title Company will be reviewed and confirmed by Buyer and Seller prior to conveyance of title. No Personal Property is included in this sale unless specifically identified by Buyer and Seller in this Agreement or in an exhibit or addenda thereto. If any fixtures or personal property included in this sale are controlled by wifi, Bluetooth or similar technology, Seller will promptly notify Buyer and will provide Buyer with all necessary instructions and access information at Closing.
27. **No Sale of Business:** This Agreement only relates to the purchase and sale of real property, accessories, and Personal Property. Any intent by the Buyer to assume or purchase shares or membership interest of any entity shall not be part of this Agreement or part of the Purchase Price. Parties are advised to seek out independent legal counsel to aid in the purchase and sale of stock, membership interest, or the transfer of any registered business names, assumed business names, trademarks, copyrights, or other intellectual property and goodwill.
28. **1031 Exchange Like-Kind Exchange:** If either Party intends to pursue this transaction as part of an Internal Revenue Code 1031 exchange ("Exchanging Party"), the Exchanging Party must Promptly notify the other Party and Escrow. The other Party shall cooperate so long as it will not delay Closing and does not cause additional cost or liability to the other Party. The Exchanging Party shall indemnify, defend and hold the other Party harmless from any liability, damages and costs arising out of the 1031 exchange.
29. **Additional Seller Representations:** Unless otherwise disclosed in writing, Seller represents the following:
- (i) Seller will deliver to Buyer, at the time Buyer is entitled to Possession, the Property and all its included components in substantially the same condition as when Buyer submitted Buyer's offer to purchase.
  - (ii) Seller will keep the Property fully insured through Closing and shall keep utilities paid through Closing.
  - (iii) Seller represents that Seller has no Actual Knowledge of any liens or assessments to be levied; boundary disputes or encroachments; pending or contemplated eminent domain or condemnation; pending or threatened litigation; any violation or alleged violation of law, rule or ordinance; or any unperformed obligations to any governmental authority related to the Property.

Buyer Initials

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## OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

(iv) Seller has no Actual Knowledge of any hazardous or toxic substance, waste or material being used, generated, stored, or disposed of on or transported to or from the Property in violation of any applicable law prior to or during the period in which Seller has owned the Property. "Hazardous or toxic substance, waste or material" means those defined in Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Hazardous Materials Transportation Act, and Oregon Revised Statutes 465.003.

(v) Seller represents that Seller knows of no other material defects related to the Property not otherwise described in this Agreement or in any addenda thereto.

(vi) Seller has no Actual Knowledge of discrepancies between boundaries in the legal description of the Property and any current possession and use boundaries.

Seller has an obligation to Promptly notify Buyer if Seller gains Actual Knowledge of information that makes any representations made by Seller about the condition of the Property in this Agreement or in any associated disclosures materially false.

**30. Buyer Acknowledgement of Condition of Property:** Buyer acknowledges that, subject to the representations made by Seller in this Agreement or any addenda thereto, and the representations made by Seller in Seller's Property Disclosure Statement (if any), Buyer accepts the present condition of the Property and is purchasing the Property in "as-is, where-is" condition. Neither Buyer's nor Seller's agent has a duty to investigate property conditions. Buyer is responsible for Buyer's own diligent investigation of property conditions. Nothing in this paragraph diminishes Buyer's rights under any express contingencies included in this Agreement.

**31. Special Tax Assessment:** Seller is obligated to inform Buyer if Property or any portion thereof is subject to federal, state or local laws governing historic properties, special assessment under ORS 358.475-ORS 358.565 (Historic Properties) or special assessment under ORS 308A or ORS 321 (Farm, Habitat, Forestland, etc.). If Property or any portion thereof is subject to special assessment under ORS 358.505, Seller shall provide Buyer with a **Form 4.3 Historic Property Addendum**, and the following statement applies: THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505. If Property is subject to any other Special Assessment, Seller shall provide Buyer with a **Form 2.22 Special Tax Assessment Addendum**.

**32. Earnest Money Deposit:** Buyer represents that Buyer has sufficient available funds for the Earnest Money agreed to on page 1 of this Agreement. Buyer shall deliver Earnest Money to the Escrow Agent within the timeframe and in a form described on page 1 of this Agreement. After the Earnest Money Deposit Deadline and if Buyer fails to deposit Earnest Money, Buyer's Earnest Money deposit fails due to insufficient funds or is reversed by Buyer or bank, Seller shall have the option to pursue the following remedies:

(i) Seller can provide Buyer with a **Form 5.2 Seller's Notice of Default**, giving buyer the Cure Period to provide the Earnest Money Deposit. Buyer's failure to cure after receiving a Notice of Default will result in Seller being entitled to bring action against Buyer for recovery of the intended Earnest Money sum.

(ii) Within **2 Business Days** after the end of the Earnest Money Deposit Deadline, Seller can terminate this transaction by delivering a **Form 5.4 Seller's Notice of Termination** to Buyer, at which point any Earnest Money Buyer has provided will be refunded to Buyer, and Buyer's further obligation to provide Earnest Money shall cease. Seller will not have a cause of action to recover the intended Earnest Money sum in this instance.

**33. IRS and Foreign Investment in Real Property Tax Act, 26 U.S. Code § 1445 (FIRPTA) Reporting:** Buyer and Seller acknowledge under 26 USC § 1445 ("FIRPTA"), if Seller is a foreign person as defined by FIRPTA, Buyer is required to withhold federal income taxes up to 15% of the Purchase Price. Seller warrants the identification of Seller's status as foreign or non-foreign under FIRPTA on Page 2 of this Agreement is correct. If Seller is not a foreign person under FIRPTA, Seller is required to provide Buyer, or Escrow Agent acting as a Qualified Substitute under FIRPTA, a completed signed Certification of Non-Foreign Status that meets the requirements of 26 CFR § 1.1445-2(b)(2) ("Certification"). Escrow Agent is authorized by law to act as a Qualified Substitute. If Escrow Agent acts as a Qualified Substitute, upon delivery of Seller's Certification to Escrow Agent, Seller and Buyer shall instruct Escrow Agent to provide Buyer a Qualified Substitute Statement that meets the requirements of 26 USC § 1445(b)(9). Buyer must retain the Certification or Qualified Substitute Statement until the end of the fifth taxable year following the taxable year in which this transaction takes place. Escrow shall deliver a copy of the Certification to IRS upon Buyer request. Seller's and Buyer's real estate agents are not experts in FIRPTA and will not act as a Qualified Substitute or as a transferor or transferee agent under FIRPTA. For detailed information on how to comply with FIRPTA Buyer and Seller should seek independent legal and tax advice from a qualified attorney or tax professional, and are encouraged to include **Form 2.7 FIRPTA Addendum** with this transaction.

**34. Tenants and Leases:** Seller agrees to make a good-faith effort to obtain completed tenant estoppel certificates attached hereto as **Form 7.2**, or other format agreed upon by the Buyer and Seller in writing, from each tenant occupying the Property, and to also make a good-faith effort to obtain tenant estoppel certificates as required by Buyer's lender, if applicable. The certificates that

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## OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

are so obtained shall be delivered to the Buyer during the Due Diligence Period. To the extent Seller is unable to obtain an estoppel certificate from any tenants, Seller must provide similar assurances in writing to Buyer based on Seller's Actual Knowledge, during the Due Diligence period.

If the Property is subject to leases, Buyer and Seller shall execute and deliver to each other through the Escrow Agent at Closing an Assignment of Lease agreement on **Form 6.1** or other format agreed to by the Buyer and Seller in writing.

**35. Proration of Taxes, Fees, Utilities, Rents and Deposits:** Unless otherwise agreed in writing:

**Buyer** shall be responsible for all property-related taxes, fees, and utility charges, and shall be entitled to all property related rents and other income that accrue after the date identified for Prorations on Page 1. If Buyer is taking Property subject to tenant, all deposits held by Seller on behalf of tenant shall be transferred to Buyer. If there is propane or heating oil on the Property, Buyer shall have the propane or oil company measure the level of the fuel at or before Closing and shall pay Seller for the market value of the fuel at the time of measuring.

**Seller** shall be responsible for paying all property-related taxes, fees and utility charges, and shall be entitled to all property-related rents and income, that accrue prior to the date identified for Prorations on Page 1.

All funds required to be exchanged or prorated between the Parties pursuant to this section other than propane or heating oil, shall be handled through Escrow. Real estate transfer taxes and escrow fees, if any, are split evenly between the Parties.

**36. Closing Costs:** Compensation for real estate agents will be paid at Closing according to the terms of any written compensation agreement between the Parties and their agents/agent's firms and/or between the agents/agent's firms. Unless otherwise agreed in writing or prohibited by Buyer's loan program, Closing Costs shall be divided as follows:

**Buyer shall pay at or before Closing:** Buyer's recording fees, Buyers closing costs not agreed to be paid by Seller, and, if applicable, lender fees and cost of lender's title insurance policy and the marginal cost of extended coverage owner's title insurance policy.

**Seller shall deduct from the proceeds of the Sale to pay:** Owner's title insurance policy [Owner's title policy will not be construed as a Seller credit], Seller's recording fees, the costs of clearing any liens or encumbrances that must be cleared to meet the terms of this Agreement and other Seller's closing costs.

**37. Closing, Possession, Property Condition, Cleaning, State Withholdings :** Closing and Possession must occur by 5:00pm on the Closing Date, which must not be later than the date identified in the Closing Section on page 1 of this Agreement. If the Parties selected a period of Calendar Days after the end of the Due Diligence Period for a "no later than" Closing Date, Buyer shall notify Seller at least **5 Calendar Days** in advance of Buyer's desired actual Closing Date. Seller shall deliver to Buyer, at the time of Possession, the Property and all its included components in substantially the same condition as when Buyer submitted Buyer's offer to purchase. If any Property system or appliance becomes inoperative or malfunctions prior to Possession, Seller shall repair the system or appliance such that the system or appliance is in the same condition as it was at the time of Buyer's offer or replace the system or appliance with one of at least equal quality. Prior to Possession, Seller shall clean all common area building interiors and remove all trash and debris from the common areas of the Property. If Seller removed any Fixtures, Seller shall repair or replace any surfaces damaged in the process of removing such Fixtures. Unless otherwise agreed, prior to Possession Seller shall remove from the Property all items not included in the sale and not belonging to tenants. Any items remaining at Possession that do not belong to tenants shall become property of the Buyer. Seller retains no rights to such property or to the proceeds of the sale of such property. Buyer may pursue claim against Seller to recover costs Buyer incurs removing or disposing of such property. Subject to the exemptions in ORS 314.258(3), if Seller is an out-of-state resident or corporation not registered or otherwise qualified to do business in Oregon, Escrow shall act as the Authorized Agent under ORS 314.258 for withholding purposes and the Parties will cooperate with Escrow to execute and deliver all documents required to carry out Oregon withholding laws.

**38. Deed and Condition of Title:** Except as otherwise agreed by the Parties in writing, Seller shall convey marketable title to the Property by Statutory Warranty Deed, or, if applicable, by personal representative's deed, or trustee's deed or similar legal fiduciary's deed that meets the requirements for conveying interests in real property contained in ORS Chapter 93. Title shall be conveyed free from encumbrances other than those matters included in the Preliminary Report or amended Preliminary Report and Title Documents accepted by Buyer according to the terms of the Title Contingencies section of this Agreement.

**39. Default:** Unless otherwise described in the last paragraph of this section, a Party will only be deemed in default under this Agreement when:

(i) A Party is in violation of an obligation or requirement of this Agreement or any Addendum thereto, and the Party is given written notice on **Form 5.1** or **Form 5.2 Notice of Default and Opportunity to Cure**, explaining the Party's failure to comply with terms in this Agreement; and

(ii) Such failure continues without cure or remedy for the period described in the Notice of Default ("Cure Period").

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The defaulting Party may cure the default by performing the required action or obligation within the Cure Period or by providing the other Party reasonable written assurances that prove that the claim of default was in error. If a provision of the Agreement or an addendum (a) grants a Party the right to terminate the Agreement using a **Form 5.3 or 5.4 Notice of Termination** and (b) does not also expressly grant the Party the right to send a **Form 5.1 or 5.2 Notice of Default**; then the Party may not send a Notice of Default based on that provision.

This section will not be construed as extending the time by which any contingency release must be given. A party will be in default under this Agreement without having received a Notice of Default and Opportunity to Cure in the event that (i) the Party misrepresented a material fact related to the subject matter of the contract, (ii) the Party wrongfully fails to Close or perform an obligation required to Close by the Closing Date, or (iii) the Party failed to meet an obligation under this Agreement and the language of the Agreement or an addendum expressly permits the other Party to terminate using a **Form 5.3 or Form 5.4 Notice of Termination** without first sending a **Form 5.1 or Form 5.2 Notice of Default and Opportunity to Cure**.

**40. Termination, Escrow Instructions:** After a Curable Default goes uncured, the non-defaulting Party will have **2 Business Days** to terminate this Agreement by giving the defaulting Party a **Form 5.3 or Form 5.4 Notice of Termination**, stating that the defaulting Party failed to cure or that an immediate default occurred. If the non-defaulting Party does not deliver the Notice of Termination within the **2 Business Days** after the default occurred, the non-defaulting Party will be considered to have released their right to terminate based on that default.

Upon failure of a contingency within the contingency's timeframe outlined in this Agreement, the Party permitted to terminate under the contingency provision may terminate this Agreement by providing a **Form 5.3 or Form 5.4 Notice of Termination** to the other Party indicating which contingency failed. If (i) the language of the Agreement or an addendum permits the party to terminate using a **Form 5.3 or Form 5.4 Notice of Termination** without first sending a Notice of Default and Opportunity to Cure, (ii) a Party misrepresented a material fact related to the subject matter of the contract, or (iii) a Party wrongfully fails to Close or cannot satisfy a condition to Closing by the Closing Date, the other Party may provide a **Form 5.3 or Form 5.4 Notice of Termination** to the other Party indicating the reason for the termination.

Upon delivery of a valid Notice of Termination, both Parties' further obligations under the Agreement will end. If a termination by either Party is not authorized by the Agreement or any addendum thereto, the non-terminating Party may be entitled to Earnest Money. In the instance of an unauthorized termination by Seller, Buyer may also pursue claims for money damages or specific performance. A non-terminating party who wishes to pursue remedies for unauthorized termination should follow the Section 42 Dispute Resolution provisions of this Agreement and consult an attorney.

Within **2 Business Days** after receiving a **Form 5.3 or Form 5.4 Notice of Termination**, the non-terminating Party shall provide a **Form 5.5 or 5.6 Response to Termination**. Failure to provide a **Form 5.5 or Form 5.6 Response to Termination** may result in dispute resolution actions being taken against the non-responding Party. The **Form 5.3 and Form 5.4 Notices of Termination** and the **Form 5.5 and Form 5.6 Responses to Termination** shall contain instructions for Escrow on how Earnest Money shall be distributed. Buyer's request for or acceptance of Earnest Money does not prohibit Buyer from pursuing claims for specific performance or monetary damages in the case of Seller's unauthorized termination. After consulting an attorney, Buyer may use **Form 5.5** to elect to waive claims to specific performance, release Seller from obligation to convey Property to Buyer, and authorize conveyance to a third-party.

The Parties agree that Escrow Agent is prohibited by Oregon law from disbursing Earnest Money without either:

- (i) Written, signed, and dated instructions from both Parties agreeing on the disposition of Earnest Money; or
- (ii) An order from a court of competent jurisdiction directed to Escrow Agent that provides disbursement instructions.

Notwithstanding the above, Escrow Agent may dispense Earnest Money to Buyer if Buyer revokes Buyer's offer with a valid **Form 5.7 Seller Property Disclosure Statement (SPDS) Revocation of Offer** pursuant to ORS 105.462-105.490 or if Buyer and Seller reach a separate agreement after the execution of this Agreement that instructs Escrow Agent on disposition of Earnest Money. Section 41 shall dictate Earnest Money disposition unless there is a good faith dispute over the right to Earnest Money. Disputes over Earnest Money shall be resolved according to the Section 42 Dispute Resolution provisions of this Agreement. The Parties shall hold harmless, defend and indemnify Escrow and all Listing Brokers, Buyer's Brokers, and Principal Brokers from all claims, actions, suits, charges and judgements whatsoever arising out of the Parties' failure to comply with the terms of this Agreement.

### **41. Property Earnest Money Disposition:**

**Buyer:** Unless otherwise agreed in writing, upon termination, Buyer has the right to recover all Earnest Money when (i) the provisions of this Agreement or any Addenda to this Agreement expressly permit such recovery; or (ii) either Party terminates this Agreement due to Seller's default. Buyer's acceptance of all recovered Earnest Money does not constitute a waiver or release of other legal remedies or causes of action available to Buyer in case of Seller's default.

Buyer Initials

Seller Initials

**OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT**

**Seller:** Unless otherwise agreed in writing, Seller has the right to keep all Earnest Money (i) upon successful Closing of this transaction, (ii) when the provisions of this Agreement or any Addenda to this Agreement expressly permit such recovery, or (iii) either Party terminates this Agreement due to Buyer's default and the provision under which Buyer is in default does not expressly permit Buyer to recover Earnest Money.

Buyer and Seller agree that the Earnest Money amount described on Page 1 of this Agreement is a binding liquidated sum that represents Buyer and Seller's best reasonable estimate of Seller's damages in case of a default by Buyer. Buyer and Seller agree that Seller's retention of the Earnest Money described on Page 1 of this Agreement is Seller's sole remedy against Buyer's default.

**42. Dispute Resolution:** Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this Agreement, shall be exclusively resolved in accordance with the dispute resolution provisions of this Section, under the laws of Oregon, and in the county where the real property is located. It will not be considered a waiver, release or violation of this provision to file a court action to preserve a statute of limitations, enable the recording of a notice of lis pendens, or to file a mechanics lien.

Disputes between Buyer and Seller shall be exclusively resolved through the Small Claims Court of the county in which the Property is situated if the dispute falls within the jurisdiction of that court. The Parties knowingly and voluntarily waive their statutory and constitutional right to have such matters resolved by jury trial or removed from the Small Claims Court to the Circuit Court.

All other disputes between Buyer and Seller, including disputes about the applicability of this provision, shall be submitted to mediation, and if unresolved through mediation, to binding arbitration. Mediation shall take place through Arbitration Services of Portland (ASP) unless Buyer's or Seller's agent is a member of the Portland Metropolitan Association of REALTORS® (PMAR), in which case mediation shall take place through the PMAR Buyer and Seller Mediation program. Arbitration shall take place through ASP, according to the then-existing rules of ASP.

The prevailing Party in any dispute resolution procedure (as determined by the judge, mediator or arbitrator, as applicable) shall be entitled to recover all reasonable attorneys' fees, costs and expenses incurred at trial, on appeal, at mediation and at arbitration, unless the prevailing Party refused to participate in mediation, in which case the prevailing party shall not be entitled to such fee, cost and expense recovery.

The following matters are excluded from this Dispute Resolution provision:

- (i) Judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land sale contract;
- (ii) An eviction or forcible entry and detainer action;
- (iii) Any matter within the jurisdiction of probate, small claims, or bankruptcy court;
- (iv) Matters that must be exclusively resolved under Article 17 of the Code of Ethics and Professional Standards Policies of the National Association of REALTORS®; and
- (v) Matters related to contracts with Buyer or Seller that predate this Agreement and contain a mandatory mediation or arbitration provision.

ALL PARTIES TO THIS AGREEMENT HAVE BEEN ADVISED TO CONSULT INDEPENDENT LEGAL COUNSEL TO UNDERSTAND THE PROVISIONS OF THIS AGREEMENT AND BY CONSENTING TO THIS AGREEMENT, HEREBY WAIVE THE STATUTORY AND CONSTITUTIONAL RIGHT TO BRING ISSUES AND CLAIMS RELATED TO THIS AGREEMENT TO A TRIAL BY JUDGE OR JURY, OTHER THAN SMALL CLAIMS COURT PROCEEDINGS AS DESCRIBED ABOVE, IN ANY STATE OR FEDERAL ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.

**43. Mandatory Statement Regarding Fire Protection District and Approved Uses:** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Buyer Initials

Seller Initials



Sale Agreement # 10202023DC

## OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

452 **44. Assignment to Third Party:** Assignment of this agreement by Buyer to an entity owned or controlled by Buyer or to a 1031  
 453 Exchange accommodator is permitted without Seller's consent in all cases. Buyer's authority to assign this Agreement to any  
 454 other Party is governed by the selection of Buyer and Seller on page 1 of this Agreement. This Agreement is binding upon and will  
 455 inure to the benefit of duly authorized assigns.

456 **45. Obligations Survive Death:** This Agreement survives the death of either or both Parties and is binding upon their successors and  
 457 estates.

458 **46. Time is of the Essence:** Time is of the essence in all terms, provisions, covenants, and conditions contained in this Agreement.

459 **47. Severability:** If any clause or provision of this Agreement is or becomes illegal, invalid, impossible to perform, or unenforceable  
 460 under present or future laws effective during the term of this Agreement, the Parties intend that the remainder of this Agreement  
 461 shall not be affected. The Parties intend that in lieu of each clause or provision of this Agreement that is or becomes illegal, invalid,  
 462 impossible, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms as may be possible,  
 463 legal, and enforceable.

464 **48. Nonwaiver:** The waiver by a Party of any breach, violation, or default of a provision of this Agreement will not operate as a waiver  
 465 of any subsequent breach, violation, or default of that or of any other provision.

466 **49. Entire Agreement; Modifications:** This Agreement sets forth the final and exclusive understanding of the Parties, and there are  
 467 no other representations, warranties, statements, or agreements between the Parties except as expressly set forth in this  
 468 Agreement. Any modification to the terms of this Agreement must be in writing, dated and signed by Buyer and Seller.

469 **50. Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original,  
 470 but all of which together shall constitute one and the same agreement.

471 Buyer's Offer: **Buyer's signature below and delivery to Seller is an offer to enter into this Agreement on the terms above.** If the  
 472 Buyer wishes to include an expiration date and time for this offer ("Offer Deadline"), Buyer should include it in the Additional Provisions  
 473 section of this Agreement. Buyer may withdraw this offer by giving Seller oral or written notice of withdrawal prior to Mutual  
 474 Acceptance

475 **BUYER:**  
 476 Buyer's Signature [Signature] Date & Time 10/26/23  
 477 Buyer's Signature \_\_\_\_\_ Date & Time \_\_\_\_\_  
 478 Buyer's Signature \_\_\_\_\_ Date & Time \_\_\_\_\_  
 479 Buyer's Signature \_\_\_\_\_ Date & Time \_\_\_\_\_

480 **Seller's Response: Seller:** ☐ ACCEPTS  
 481 ☐ REJECTS  
 482 ☒ COUNTERS Buyer's offer (use Form 2.1).

483 Seller will be bound by this Agreement only by selecting "ACCEPTS" and delivering a signed copy of this Agreement to Buyer prior to  
 484 Offer Deadline, if any. Acceptance after the Offer Deadline, if any, will only be valid upon Mutual Acceptance of **Form 2.3**. IN WITNESS  
 485 WHEREOF, the Parties have caused this Agreement to be executed as of the day and year accompanying the signatures below:

486 **SELLER:** DocuSigned by:  
 487 Seller's Signature [Signature] Date & Time 11/8/2023 | 3:46 PM PST  
 488 Seller's Signature 3167CF0F4263432... Date & Time \_\_\_\_\_  
 489 Seller's Signature \_\_\_\_\_ Date & Time \_\_\_\_\_  
 490 Seller's Signature \_\_\_\_\_ Date & Time \_\_\_\_\_

492 **This Purchase and Sale Agreement was delivered/presented on:**  
 493 10/27/2023 [Date], at 0830 [Time]

494 Freddy Saxton [Seller's Agent Name]  
 495 [Signature] [Seller's Agent Signature]  
 2B05EB9F255242D...

**This Agreement is not to be used as a Receipt of Earnest Money.**

Buyer Initials

Seller Initials

Sale Agreement # 10202023DC**6.2 COMMERCIAL DUE DILIGENCE DOCUMENT LIST**1 **1. Property Address or Description:** 669 SW Bay Boulevard, Newport, OR 973652 **2. Names of Parties to this Agreement:**3 **Buyer** Ocean Bento LLC and/or Assigns **Seller** City of Newport4 **Buyer** \_\_\_\_\_ **Seller** \_\_\_\_\_5 **Buyer** \_\_\_\_\_ **Seller** \_\_\_\_\_6 **Buyer** \_\_\_\_\_ **Seller** \_\_\_\_\_

7 **3. Due Diligence Documents.** Seller must deliver all documents selected below within the Document Delivery Period. Seller should  
 8 redact all personally identifying information of Tenants in the Selected Diligence Documents before delivery to Buyer. If Seller cannot  
 9 provide the Selected Diligence Documents, Seller must provide Buyer with a statement explaining why Seller is unable to provide the  
 10 Selected Diligence Documents. Until the transaction closes or until the transaction terminates, Seller shall have an ongoing obligation  
 11 to Promptly provide Buyer with the selected documents on this Due Diligence Document list as those documents come within Seller's  
 12 access. Seller must provide Buyer with updated copies of documents already delivered if the information in previously provided  
 13 documents materially changes.

14 **4. Selected Diligence Documents.** Buyer requests all of the following documents regarding the Property, or provide Buyer with  
 15 reasonable access to the below documents:

- 16 ☒ Property Tax statements.
- 17 ☒ Leases with Tenants on the Property.
- 18 ☒ Tenant Estoppel Certificates.
- 19 ☒ Tenant Ledgers.
- 20 ☒ Rent Roll, showing Tenant names, suite numbers, size of premises, terms and expiration dates, options to extend,  
 21 common area expense sharing, security deposits, concessions, business uses, and schedule of repairs.
- 22 ☐ Current and historic vacancy rates.
- 23 ☒ Service Contracts.
- 24 ☒ Financial Statements and Reports.
- 25 ☐ Copies of all loan documents being assumed, if any.
- 26 ☐ Operating and capital expense budgets of Property.
- 27 ☒ Utility Bills for the last two years.
- 28 ☒ Copies of all Owner's Insurance Policies in effect with respect to the Property.
- 29 ☐ List of all employees, if applicable, including name, wage, position, and benefits.
- 30 ☒ Title Insurance Policy documents.
- 31 ☒ Most recent Surveys of the Property
- 32 ☒ Building Inspection Reports, and Roof Reports.
- 33 ☒ Mechanical reports, including HVAC.
- 34 ☒ Geotechnical soil reports and Environmental Studies.
- 35 ☒ Seismic risk assessment reports.
- 36 ☒ Site Plans.
- 37 ☒ Architectural Drawings, Engineering Plans, and Blueprints.
- 38 ☒ Zoning Documents
- 39 ☒ Governmental Permits.
- 40 ☒ All licenses, permits, approvals, and certificates of occupancy for the Property and each tenant.
- 41 ☐ Approvals and Certifications.
- 42 ☐ Copies of any notices of violations or verifications of compliance with any federal, state, or local health, fire, building,  
 43 zoning, safety, environmental protection, or other codes, laws, rules, regulations, or ordinances relating to or applying  
 44 to the Property.
- 45 ☐ Documents related to any Property or building related litigation.

46 **5. Other Requested Documents:** Appraisal Report - most recent, all DEQ Environmental reports

47

48 **6. By signing below, the Parties agree to the terms of this addendum and make it part of the above referenced Sale Agreement:**

49 Buyer: [Signature] Dated: 10/8/23 Seller: Erik Glaser, City of Newport Dated: 11/8/2023 3:46 PM

50 Buyer: \_\_\_\_\_ Dated: \_\_\_\_\_ Seller: 3167CF0F4263432... Dated: \_\_\_\_\_

51 Buyer: \_\_\_\_\_ Dated: \_\_\_\_\_ Seller: \_\_\_\_\_ Dated: \_\_\_\_\_

52 Buyer: \_\_\_\_\_ Dated: \_\_\_\_\_ Seller: \_\_\_\_\_ Dated: \_\_\_\_\_

Sale Agreement # 10202023DC**2.1 COUNTEROFFER TO REAL ESTATE PURCHASE AND SALE AGREEMENT**1 **1. Property Address or Description:** 669 SW Bay Blvd., Newport, OR 973652 **2. Names of Parties to this Agreement:**3 **Buyer** Ocean Bento LLC **Seller** City of Newport Oregon4 **Buyer** \_\_\_\_\_ **Seller** \_\_\_\_\_5 **Buyer** \_\_\_\_\_ **Seller** \_\_\_\_\_6 **Buyer** \_\_\_\_\_ **Seller** \_\_\_\_\_7 **3. Description of Addendum.**

8 ☒ **SELLER Counteroffer # 1**. This Counteroffer is a rejection of (check one) ☒ Buyer's Offer ☐ Buyer's Counteroffer # \_\_\_\_\_ and  
 9 is an offer by Seller to enter into an agreement with Buyer on the terms below. Seller may withdraw this Counteroffer by giving Buyer  
 10 oral or written notice of withdrawal prior to Mutual Acceptance.

11 ☐ **BUYER Counteroffer # \_\_\_\_\_**. This Counteroffer is a rejection of Seller's Counteroffer # \_\_\_\_\_ and is an offer by Buyer to enter into  
 12 an agreement with Seller on the terms below. Buyer may withdraw this Counteroffer by giving Seller oral or written notice of  
 13 withdrawal prior to Mutual Acceptance.

14 **4. Counteroffer.** The Parties accept all of the terms and conditions contained in the above Offer or Counteroffer with the following  
 15 changes (Parties can attach documents reflecting the changes if desired):

16 **1) Purchase price is \$710,000.00**

17 **2) Subject to buyer providing acceptable proof of liquid cash funds within 2 business days of**  
 18 **mutual acceptance.**

19 **3) Seller response deadline to original offer is extended to 11/10/2023 at 5:00 PM.**  
 20 \_\_\_\_\_  
 21 \_\_\_\_\_  
 22 \_\_\_\_\_  
 23 \_\_\_\_\_  
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 25 \_\_\_\_\_  
 26 \_\_\_\_\_  
 27 \_\_\_\_\_  
 28 \_\_\_\_\_  
 29 \_\_\_\_\_

30 **5. Deadline.** This Counteroffer expires on 11/10/2023 [Date] at 8:00 ☐ a.m. ☒ p.m. (Deadline).  
 31 The offeree may accept the Counteroffer only by selecting "Accept" in Section 6 below and delivering a true, signed copy of this  
 32 Counteroffer form to the offeror prior to Deadline. If acceptance occurs after Deadline, the Parties must complete **Form 2.3 Late**  
 33 **Acceptance Addendum** in order for the Agreement to be binding on the Parties.

34 **6. Response:** ☐ **ACCEPTS** ☐ **REJECTS** ☐ **COUNTERS Counteroffer (use new Form 2.1 for Counter-Offer terms).**

35 **7. Signatures.**36 **By signing below, the Parties agree to the terms of this addendum and make it part of the above referenced Sale Agreement:**

37 Buyer's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

38 Buyer's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

39 Buyer's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

40 Buyer's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

41 Seller's Signature Erik Glover, City of Newport Date & Time 11/8/2023 | 3:46 PM PST  
 42 Seller's Signature \_\_\_\_\_ Date & Time \_\_\_\_\_  
 43 Seller's Signature \_\_\_\_\_ Date & Time \_\_\_\_\_  
 44 Seller's Signature \_\_\_\_\_ Date & Time \_\_\_\_\_



Sale Agreement # 10202023DC**2.1 COUNTEROFFER TO REAL ESTATE PURCHASE AND SALE AGREEMENT**1 **1. Property Address or Description:** 669 SW Bay Blvd., Newport, OR 973652 **2. Names of Parties to this Agreement:**3 Buyer Ocean Bento LLC and/or Assigns. SM Seller City of Newport Oregon

4 Buyer \_\_\_\_\_ Seller \_\_\_\_\_

5 Buyer \_\_\_\_\_ Seller \_\_\_\_\_

6 Buyer \_\_\_\_\_ Seller \_\_\_\_\_

7 **3. Description of Addendum.**

8 ☒ **SELLER Counteroffer # 1**. This Counteroffer is a rejection of (check one) ☒ Buyer's Offer ☐ Buyer's Counteroffer # \_\_\_\_\_ and  
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 32 Counteroffer form to the offeror prior to Deadline. If acceptance occurs after Deadline, the Parties must complete **Form 2.3 Late**  
 33 **Acceptance Addendum** in order for the Agreement to be binding on the Parties.

34 **6. Response:** ☒ **ACCEPTS** ☐ **REJECTS** ☐ **COUNTERS Counteroffer (use new Form 2.1 for Counter-Offer terms).**

35 **7. Signatures.**36 **By signing below, the Parties agree to the terms of this addendum and make it part of the above referenced Sale Agreement:**37 Buyer's Signature [Signature] Date & Time 11/8/2023 1:25 pm.

38 Buyer's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

39 Buyer's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

40 Buyer's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

DocuSigned by:

41 Seller's Signature Erik Glaser, City of Newport Date & Time 11/8/2023 | 3:46 PM PST

42 Seller's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

43 Seller's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

44 Seller's Signature \_\_\_\_\_ Date &amp; Time \_\_\_\_\_

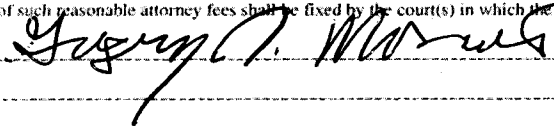
\$ 6,925.00 Newport, Oregon 11/14/2023  
CITY AND STATE WHERE EXECUTED DATE

On demand, I/we, jointly and severally, promise to pay to the order of Western Title & Escrow, Newport, OR

at (insert place payments to be made) 255 SW Coast Hwy, Suite 100, Newport, OR 97365  
the sum of Six thousand nine hundred twenty-five and no/100 DOLLARS,  
with interest thereon at the rate of 0.00 percent per annum from 11/14/2023 until paid. Prior to demand, interest  
shall be paid in the following manner: not applicable

If any payment due is not so paid, all principal and interest shall become immediately due and collectable at the option of the holder of this note. All or any portion of the principal hereof may be paid at any time.

If this note is placed in the hands of an attorney or other third party for collection, I/we promise and agree to pay the holder's reasonable attorney fees and/or collection costs, even though no suit or action is filed. If a suit or action is filed, the amount of such reasonable attorney fees shall be fixed by the court(s) in which the suit or action, including any appeal, is tried, heard or decided.



NO PART OF ANY STEVENS NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS

**After recording return to:**

City of Newport  
Attn: City Recorder  
169 SW Coast Hwy.  
Newport, OR 97365

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**EASEMENT**

\_\_\_\_\_, hereinafter called "Grantor," hereby gives, grants and conveys to the City of Newport, an Oregon Municipal Corporation in Lincoln County, Oregon, hereinafter called "Grantee," an easement over certain real property owned by Grantor, said easement being more particularly described below and illustrated on the schematic drawing attached as Exhibit A:

AN EASEMENT OVER A PORTION OF REAL PROPERTY IDENTIFIED IN BOOK 245, PAGES 2077-2083 OF THE DEED RECORDS OF LINCOLN COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT, CALLED THE "INITIAL POINT" THAT IS LOCATED AT THE NORTHEAST CORNER OF LOT 6 BLOCK 2 IN THE ORIGINAL TOWN OF NEWPORT OREGON, AT THE MOST EASTERLY CORNER OF LINCOLN COUNTY TAX LOT 4500; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 60.00 FEET TO THE MOST WESTERLY CORNER OF LINCOLN COUNTY TAX LOT 1300; THENCE NORTH 25° 59' 10" EAST, A DISTANCE OF 52.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 15.00 FEET; THENCE NORTH 25° 59' 10" EAST, A DISTANCE OF 28.00 FEET; THENCE NORTH 64° 00' 50" WEST, A DISTANCE OF 15.00 FEET; THENCE SOUTH 25° 59' 10" WEST, FOR A DISTANCE OF 28.00 FEET TO SAID TRUE POINT OF BEGINNING. CONTAINING 420.00 SQUARE FEET MORE OR LESS.

**PURPOSE; USE:** The easement encompasses a portion of an existing public access dock owned and maintained by Grantee, and subject to a public recreation facility license with the Oregon Department of State Lands. Its purpose is to facilitate continued use of the dock by the public once the adjacent commercial building is sold and no longer in public ownership. Grantee, its employees, contractors, agents, invitees and the public shall have a right of access over, under, and above the real property described herein, including the right of Grantee to construct, maintain, inspect, repair, replace, renovate or remove material related to maintaining and improving the dock and appurtenant utilities.

**TYPE OF EASEMENT:** The easement granted by Grantor to Grantee is perpetual.

**GRANTOR RESERVATION:** Grantor, its heirs, successors, and assigns retain all water, mineral and other rights not specifically granted herein, so long as Grantor, its heirs, successors, and assigns do not interfere with the uses allowed by this Easement when exercising such rights.



**CONSTRUCTION, MAINTENANCE AND REPAIRS:** Grantee, its employees, contractors, agents and invitees shall have the right to enter upon the easement to construct, maintain, inspect, repair, replace, renovate or remove material as needed to accomplish the purposes of the easement. Grantee shall be responsible for all maintenance and repairs of the dock and any appurtenant improvements constructed within the easement. In the event damage is caused to Grantor's property by Grantee's employees, contractors, agents or invitees, Grantee shall promptly, at Grantee's expense, make necessary repairs to restore the property to the condition existing prior to the damage. If Grantee fails to make such repairs promptly, Grantor may make such repairs and shall have a claim against Grantee for the cost of such repairs.

**INDEMNIFICATION:** Grantee shall, to the extent permitted by the Oregon Constitution and applicable Oregon law, hold Grantor harmless, and to indemnify and defend Grantor from any loss, claim or liability arising out of Grantee's use of the easement after the date of the execution and acceptance of this easement, including reimbursement for Grantor's attorney fees in defending any such claim.

**ATTORNEY FEES:** In the event any suit or action is filed to enforce any of the terms or conditions or omissions under this agreement, the losing party shall pay to the prevailing party the prevailing party's costs and attorney fees, including attorney fees on any appeal.

**SUBJECT TO ENCUMBERANCES:** This easement is granted subject to easements and encumbrances of record, provided, however, that this provision shall not relieve the Grantee from any of Grantee's obligations and responsibilities under this easement.

**CONSIDERATION:** The true and actual consideration for this easement is other than a monetary payment.

**BINDING EFFECT:** This easement and the covenants contained herein shall run with the property described herein and be binding on the heirs, successors and assigns of the parties. This easement will not be considered abandoned until Grantee has declared the easement abandoned and no longer in use, and releases this easement in a duly executed and recorded Release of Easement.

**MODIFICATION:** Any agreement or modification which affects or modifies the terms of the easement, including its use or obligations herein, shall be binding on the parties only if evidenced in writing, duly signed by Grantor, Grantee, their heirs, successors, or assigns, in a document the form of which would be received and recorded by Lincoln County, Oregon.

IN WITNESS whereof the parties have executed this instrument as of the date opposite their names.

Grantor:

\_\_\_\_\_  
(Name), dated \_\_\_\_\_

STATE OF OREGON            )  
  ) ss  
County of Lincoln            )

          This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023 by  
\_\_\_\_\_  
(Grantor Name)

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

**ACCEPTANCE OF EASEMENT**

The City of Newport, Oregon, does hereby accept the above-described easement this \_\_\_\_ day of  
\_\_\_\_\_, 2023.

\_\_\_\_\_  
Spencer R. Nebel, City Manager

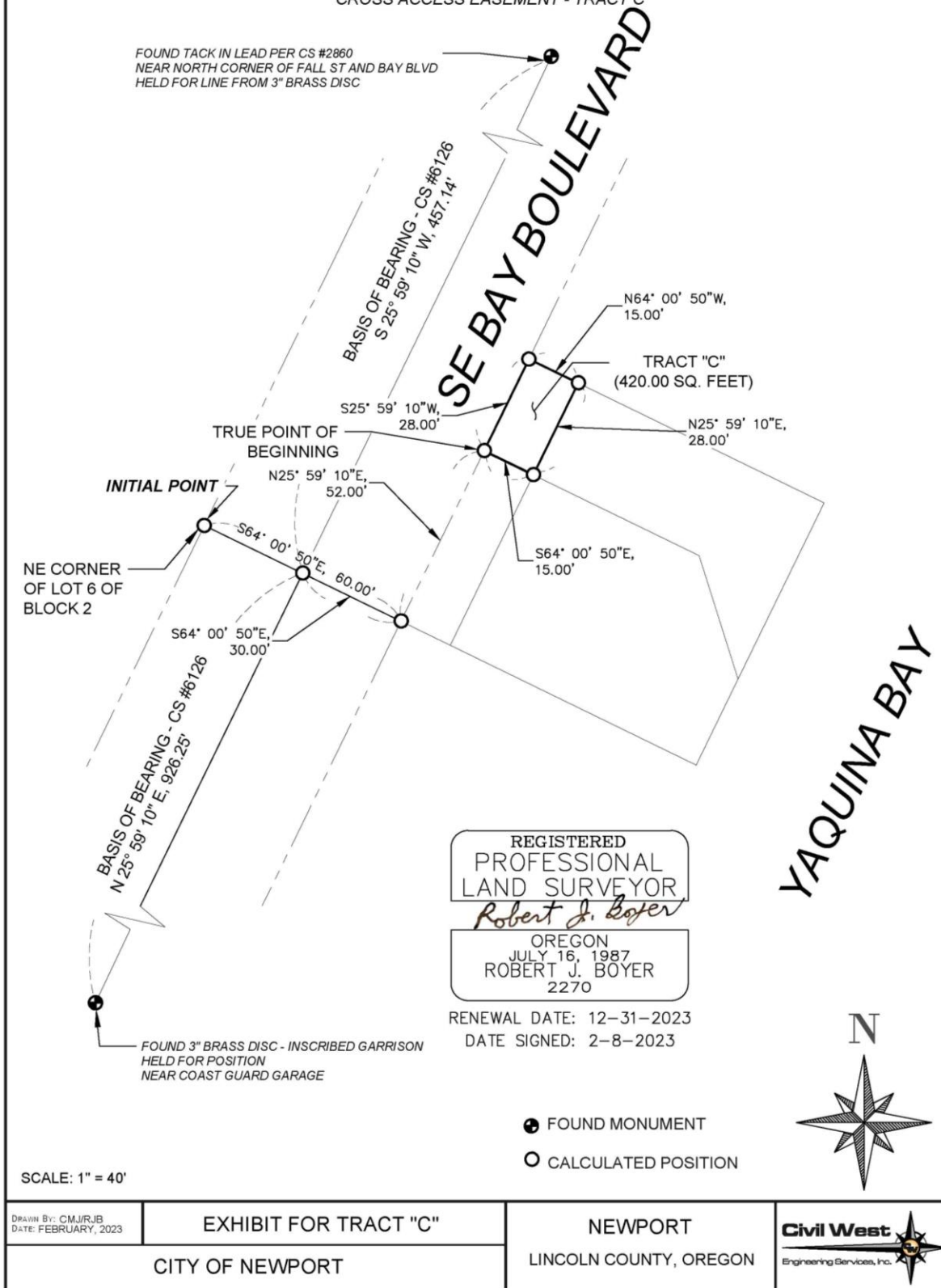
STATE OF OREGON            )  
  ) ss  
County of Lincoln            )

          This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023 by  
Spencer R. Nebel as City Manager of the City of Newport.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

# EXHIBIT A

ABBY ST PIER - TAX LOT 01300  
CROSS ACCESS EASEMENT - TRACT C



**After recording return to:**

City of Newport  
Attn: City Recorder  
169 SW Coast Hwy.  
Newport, OR 97365

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**EASEMENT**

\_\_\_\_\_, hereinafter called "Grantor," hereby gives, grants and conveys to the City of Newport, an Oregon Municipal Corporation in Lincoln County, Oregon, hereinafter called "Grantee," an easement over certain real property owned by Grantor, said easement being more particularly described below and illustrated on the schematic drawing attached as Exhibit A:

AN EASEMENT OVER REAL PROPERTY IDENTIFIED IN BOOK 245, PAGES 2077-2083 OF THE DEED RECORDS OF LINCOLN COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS ALL OF THAT CERTAIN PARCEL OF GROUND LYING AND BEING BETWEEN THE UNITED STATES HARBOR LINE AND THE EASTERLY LINE OF BAY BOULEVARD OF THE CITY OF NEWPORT, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEAST LINE OF BAY BOULEVARD THAT IS DULY OPPOSITE THE SOUTHEAST CORNER OF LOT 1 IN BLOCK 3 IN THE ORIGINAL TOWN OF NEWPORT, OREGON; THENCE ALONG THE SOUTHEAST LINE OF BAY BOULEVARD IN A SOUTHWESTERLY DIRECTION A DISTANCE OF 80 FEET; THENCE IN A SOUTHEASTERLY DIRECTION AND AT RIGHT ANGLES WITH SAID BAY BOULEVARD TO THE UNITED STATES HARBOR LINE; THENCE NORTHWESTERLY ALONG THE SAID UNITED STATES HARBOR LINE 80 FEET; THENCE AT RIGHT ANGLES TO THE POINT OF BEGINNING.

TOGETHER WITH:

BUILDING AND DOCK IMPROVEMENTS SUBJECT TO A SUBMERSIBLE LAND LEASE WITH THE OREGON DEPARTMENT OF STATE LANDS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT, CALLED THE "INITIAL POINT" THAT IS LOCATED AT THE NORTHEAST CORNER OF LOT 6 OF BLOCK 2 IN THE ORIGINAL TOWN OF NEWPORT OREGON, AT THE MOST EASTERLY CORNER OF LINCOLN COUNTY TAX LOT 4500; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 60.00 FEET TO THE MOST WESTERLY CORNER OF LINCOLN COUNTY TAX LOT 1300; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 15.00 FEET TO THE LINE OF PRE-FILL MEAN LOW TIDE BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 25° 59' 10" EAST, A DISTANCE OF 52.00 FEET; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 50.50; THENCE SOUTH 17° 32' 03" EAST, 35.58 FEET; THENCE SOUTH 25° 59' 10" WEST, FOR A DISTANCE OF 26.20 FEET; THENCE NORTH 64° 00' 50" WEST, A DISTANCE OF 75.00 FEET TO SAID TRUE POINT OF BEGINNING OF SAID DESCRIBED TRACT. CONTAINING 3584 SQUARE FEET MORE OR LESS, AND IDENTIFIED AS TRACT "A" OF EXHIBIT A.

**PURPOSE; USE:** The easement encompasses portions of the Abbey Street Pier Building at 669 SW Bay Boulevard situated above and below the harbor line. A fire suppression system for the adjacent public access dock is contained inside a mechanical room located on the main floor of the building. The purpose of this easement is to provide Grantee, its employees, contractors, agents, and invitees, access to the mechanical room and other components of the premises to construct, maintain, inspect, repair, replace, renovate or remove material related to operation of the fire suppression system for the benefit of the public access dock once the Abbey Street Pier Building is sold and no longer in public ownership.

**TYPE OF EASEMENT:** The easement granted by Grantor to Grantee is perpetual.

**GRANTOR RESERVATION:** Grantor, its heirs, successors, and assigns retain all water, mineral and other rights not specifically granted herein, so long as Grantor, its heirs, successors, and assigns do not interfere with the uses allowed by this Easement when exercising such rights.

**CONSTRUCTION, MAINTENANCE AND REPAIRS:** Grantee, its employees, contractors, agents and invitees shall have the right to enter upon the easement to construct, maintain, inspect, repair, replace, renovate or remove material as needed to accomplish the purposes of the easement. Grantee shall be responsible for all maintenance and repairs of the components of the fire suppression system within the easement that serve the public access dock. In the event damage is caused to Grantor's property by Grantee's employees, contractors, agents or invitees, Grantee shall promptly, at Grantee's expense, make necessary repairs to restore the property to the condition existing prior to the damage. If Grantee fails to make such repairs promptly, Grantor may make such repairs and shall have a claim against Grantee for the cost of such repairs.

**INDEMNIFICATION:** Grantee shall, to the extent permitted by the Oregon Constitution and applicable Oregon law, hold Grantor harmless, and to indemnify and defend Grantor from any loss, claim or liability arising out of Grantee's use of the easement after the date of the execution and acceptance of this easement, including reimbursement for Grantor's attorney fees in defending any such claim.

**ATTORNEY FEES:** In the event any suit or action is filed to enforce any of the terms or conditions or omissions under this agreement, the losing party shall pay to the prevailing party the prevailing party's costs and attorney fees, including attorney fees on any appeal.

**SUBJECT TO ENCUMBERANCES:** This easement is granted subject to easements and encumbrances of record, provided, however, that this provision shall not relieve the Grantee from any of Grantee's obligations and responsibilities under this easement.

**CONSIDERATION:** The true and actual consideration for this easement is other than a monetary payment.

**BINDING EFFECT:** This easement and the covenants contained herein shall run with the property described herein and be binding on the heirs, successors and assigns of the parties. This easement will not be considered abandoned until Grantee has declared the easement abandoned and no longer in use, and releases this easement in a duly executed and recorded Release of Easement.

**MODIFICATION:** Any agreement or modification which affects or modifies the terms of the easement, including its use or obligations herein, shall be binding on the parties only if evidenced in writing, duly signed by Grantor, Grantee, their heirs, successors, or assigns, in a document the form of which would be received and recorded by Lincoln County, Oregon.

IN WITNESS whereof the parties have executed this instrument as of the date opposite their names.

Grantor:

\_\_\_\_\_  
(Name), dated \_\_\_\_\_

STATE OF OREGON           )  
  ) ss  
County of Lincoln         )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 by  
(Grantor Name) \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

#### ACCEPTANCE OF EASEMENT

The City of Newport, Oregon, does hereby accept the above-described easement this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Spencer R. Nebel, City Manager

STATE OF OREGON           )  
  ) ss  
County of Lincoln         )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 by  
Spencer R. Nebel as City Manager of the City of Newport.

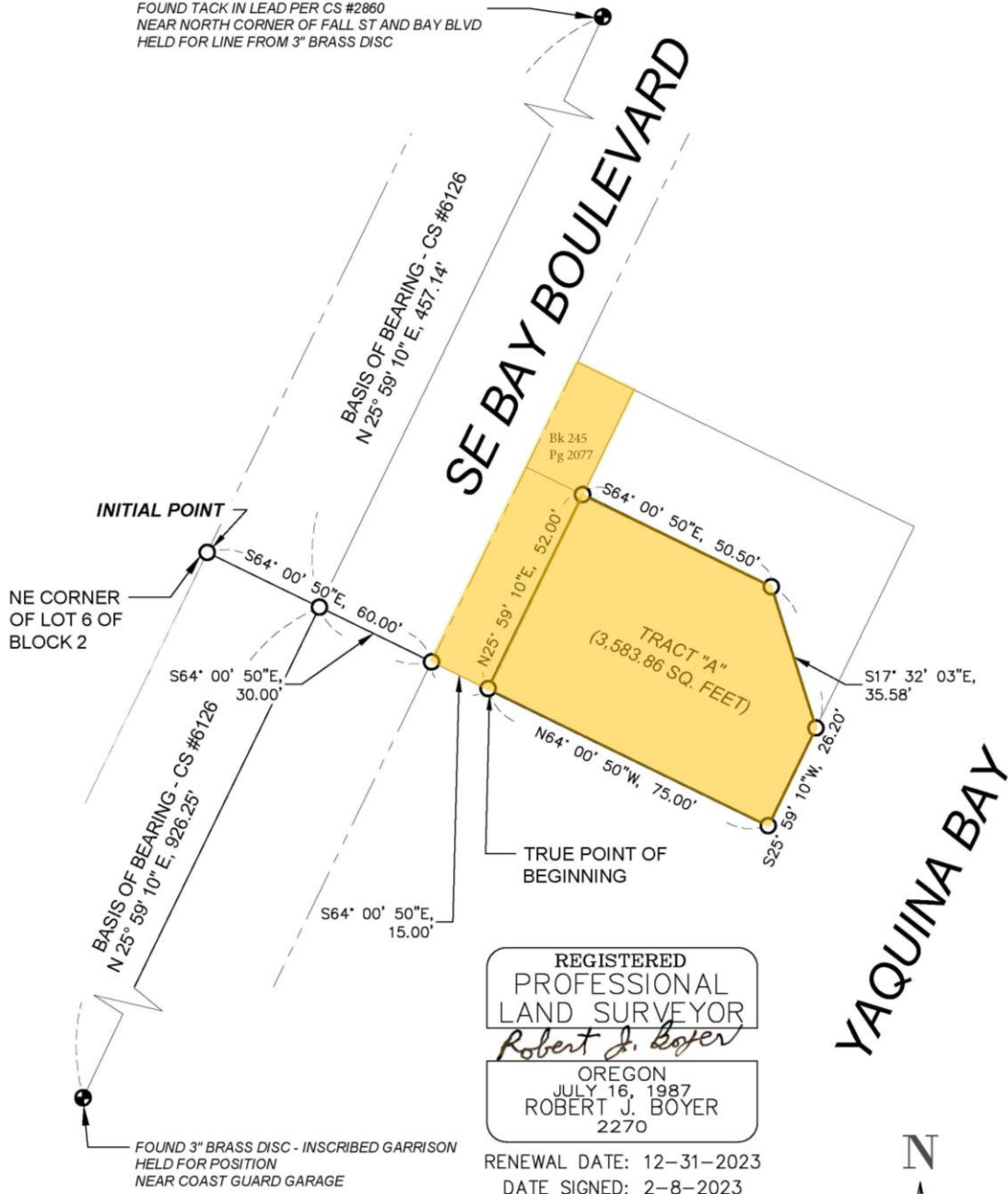
\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

# EXHIBIT A

ABBY ST PIER - TAX LOT 01300

DEPARTMENT OF STATE LANDS PRIVATE PIER LEASE - TRACT A

FOUND TACK IN LEAD PER CS #2860  
NEAR NORTH CORNER OF FALL ST AND BAY BLVD  
HELD FOR LINE FROM 3" BRASS DISC



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Robert J. Boyer*

OREGON  
JULY 16, 1987  
ROBERT J. BOYER  
2270

RENEWAL DATE: 12-31-2023

DATE SIGNED: 2-8-2023

● FOUND MONUMENT

○ CALCULATED POSITION



SCALE: 1" = 40'

DRAWN BY: CMJ/RJB  
DATE: FEBRUARY, 2023

EXHIBIT FOR TRACT "A"

CITY OF NEWPORT

NEWPORT

LINCOLN COUNTY, OREGON

**Civil West**  
Engineering Services, Inc.



**NOTICE OF PUBLIC HEARING  
BEFORE THE NEWPORT CITY COUNCIL  
REGARDING THE PROPOSED SALE OF  
DEVELOPED PROPERTY AT 669 SW BAY BOULEVARD**

The City Council of the City of Newport will hold a public hearing on Monday, December 4, 2023, at 6:00 P.M. in the City Hall Council Chambers (169 SW Coast Hwy), regarding the proposed sale of developed property known as the Abbey Street Pier Building, at 669 SW Bay Boulevard, to Ocean Bento, LLC in the amount of \$710,000. A copy of the proposed real estate contract, and other documentation setting up the nature and general terms of the proposed sale, including an appraisal of the property, will be available for public review at the hearing.

The City Council, at a prior hearing, determined that the subject property is not needed for public purposes and secured the services of a real estate broker to market the premises for sale. This hearing is being held to solicit public testimony on whether or not it is in the public interest to proceed with the sale of the property to Ocean Bento, LLC. Interested parties are encouraged to testify at the hearing.

Persons wishing to provide comment may do so by sending an email to: [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov) or for more information, please feel free to contact Erik Glover, Assistant City Manager/City Recorder, at 541-574-0613 or [e.glover@newportoregon.gov](mailto:e.glover@newportoregon.gov).

Published: Newport News-Times  
November 24, 2023



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affected by the proceed-  
ings in this estate may  
obtain additional informa-  
tion from the records of  
the court, the personal  
representative, or the  
attorney for the personal  
representative. Dated and  
first published this 17th  
day of November, 2023.  
Personal Representative/  
Attorney: Susan E. Snell,  
OSB #853356, Martin,  
Elliott & Snell, P.C., P.O.  
Box 575, Tualatin, Ore-  
gon 97062. N17, N24, D1  
90-01

#### PUBLIC SALE

Waldport Storage Co.,  
Mailing: po box 997 Wald-  
port, OR 97394, Location:  
956 S.W. Range Drive  
Waldport, OR 97394, Dec.  
2nd 2023 @ 12:00 pm.  
The sale will be held as  
follows: A complete Stor-  
age unit/space will be sold  
to the highest bidder. Indi-  
vidual items will not be  
sold. We reserve the right  
to reject any or all bids.  
Contents of the follow-  
ing will be for sale. Leona  
Rosenthal L257 10x25,  
Leona Rosenthal L266  
10x25, Farrah Rodgers  
F159 5x5, Jeremy Boggs  
F157 5x5, Brittini Simmons  
D94 10x10, Kylie Tryon  
D92 10x10, Tera Dibbern  
D90 5x5, Steven Tiemeier  
D78 10x15, Jozette Ben-  
nett C72 5x5, Miranda  
Wagman A24 5x5, Greg  
Bourne 2015 Pleasant  
Valley Teardrop Trailer.  
N17, N24 88-24

#### SUMMONS

In the Circuit Court of the  
State of Oregon, County  
Lincoln Debra R. Heinz,  
Plaintiff vs. Chad Haynes,  
Brianna Storer, State of  
Oregon Department of  
Human Resources and To  
all Other persons or parties  
unknown claiming an  
right, title, lien or interest  
in the property described  
in the complaint herein.  
Case No. 23CV257544.  
You are hereby required  
to appear and defend the  
Complaint filed against  
you in the above entitled  
action within thirty days  
(30) from the date of ser-  
vice of this summons  
upon you, and in the case  
of your failure to do so,  
for want thereof, Plaintiff(s)  
will apply for the relief  
demanded in the Peti-  
tion. NOTICE TO DEFEN-  
DANTS: READ THESE  
PAPERS CAREFULLY!  
You must "appear" in this  
case or the other side  
will win automatically. To  
"appear": you must file  
with the Court a legal  
paper called a "Motion"  
or "Answer." The "Motion"  
or "Answer" must be  
given to the Court Clerk  
or Administrator within  
30 days along with the  
required filing fee. It must  
be in proper form and  
have proof of service on  
the Plaintiff Attorney or if  
the Plaintiff does not have  
an attorney, proof upon  
the Plaintiff. If you have  
any questions, you should  
see an attorney imme-  
diately. If you need help  
finding an attorney, you  
may call the Oregon State  
Bar's Lawyer Referral Ser-  
vice at (503) 684-3763  
or toll-free in Oregon at:

(800) 452-7636. Gary Lynn  
Lovejoy, OSB# 023718  
Of Attorney for Plaintiff(s)  
STATE OF OREGON )  
ss. County of Lincoln )  
I, the undersigned, attorney  
of record for the Plaintiff  
certify that the foregoing  
is an exact and complete  
copy of the Summons in  
the above-entitled Case.  
Gary Lynn Lovejoy, OSB  
# 023718 Attorney for  
Plaintiff(s). N10, N17, N24,  
D1 85-01

#### NOTICE TO INTERESTED PERSONS IN THE CIRCUIT COURT OF THE STATE OF ORE- GON FOR THE COUNTY OF LINCOLN PROBATE DEPARTMENT

ESTATE OF SANDRA  
KAY BREED, DECEASED  
CASE No. 23PB09475  
NOTICE TO INTERESTED  
PERSONS Notice is given  
pursuant to ORS 113.155  
that Christopher A. Absher  
has been appointed per-  
sonal representative of the  
above estate. All persons  
having claims against the  
estate are required to  
present them within four  
(4) months after the date  
of the first publication of  
this Notice, or their claims  
may be barred. Claims  
are to be presented at the  
address of the attorney for  
the personal representa-  
tive, set forth below. All  
persons whose rights may  
be affected by this estate  
proceeding may obtain  
additional information  
from the records of the  
Circuit Court, the personal  
representative, or Jeffrey  
C. Hollen, attorney for  
the personal representa-  
tive. Date of first publica-  
tion: November 10, 2023.  
Jeffrey C. Hollen, OSB  
#761757, Attorney for the  
Personal Representative,  
541-574-1630, P. O. Box  
1167, 615 SW Hubert  
Street, Suite A, Newport,  
OR 97365. Christopher A.  
Absher, Personal Repre-  
sentative, 129 SE 126th  
Dr., South Beach, OR  
97366. N10, N17, N24  
83-24

#### NOTICE TO INTERESTED PERSONS IN THE CIRCUIT COURT OF THE STATE OF ORE- GON FOR THE COUNTY OF LINCOLN

In the Matter of the Estate of: Richard  
Neil Before, Deceased.  
Case # 23-PB-09220.  
NOTICE IS HEREBY  
GIVEN that William Curry  
has been appointed Per-  
sonal Representative of  
the Estate of Richard Neil  
Before. All persons having  
claims against the estate  
are required to pres-  
ent them, with vouchers  
attached, to the personal  
representative at P.O.  
Box 1270, Newport, OR,  
97365, within four months  
after the date of first pub-  
lication of this notice, or  
the claims may be barred.  
All persons whose rights  
may be affected by the  
proceedings may obtain  
additional information  
from the records of the  
Court, the personal rep-  
resentative, or the attorneys  
for the personal represen-  
tative, Macpherson, Gint-  
ner & Diaz, PO Box 1270,

Newport, Oregon 97365.  
PERSONAL REPRESENT-  
ATIVE: William Curry, 725  
N Royal Crest Cir, Las  
Vegas NV 89169. ATTOR-  
NEY FOR PERSONAL  
REPRESENTATIVE: Rich-  
ard S Diaz, OSB No.  
86-0313 P.O. Box 1270  
Newport, Oregon 97365  
Telephone 541-265-8881  
Fax No. 541-265-3571  
Email Address: diaz@  
mgdclaw.com N10, N17,  
N24 81-24

#### SUMMONS FOR SERVICE BY PUBLICATION

IN THE CIRCUIT COURT  
OF THE STATE OF ORE-  
GON FOR THE COUNTY  
OF LINCOLN CYNTHIA  
ROBERTS, Cotrustee of  
the Janet D. Roberts  
Living Trust Plaintiff, v.  
CUTLER CITY LUM-  
BER CO. Defendant. No.  
23CV43895 SUMMONS  
FOR SERVICE BY PUB-  
LICATION To: Cutler City  
Lumber Co., including any  
partner, officer, agent, or  
manager of Cutler City  
Lumber Co., Defendant.  
Date of First Publica-  
tion: November 3, 2023  
(response must be filed  
within 30 days of this  
date). Plaintiff, Cynthia  
Roberts, Cotrustee of the  
Janet D. Roberts Living  
Trust, has filed an action to  
quiet title, asking the court  
to declare Plaintiff the sole  
owner in fee simple, free  
of all other claims, of real  
property located at 10 S.  
Drift Creek Road, Lin-  
coln City, Lincoln County,  
Oregon 97367. NOTICE  
TO DEFENDANT: READ  
THESE PAPERS CARE-  
FULLY! You must "appear"  
in this case or the other  
side will win automati-  
cally. To "appear" you  
must file with the court  
a legal document called  
a "motion" or "answer."  
The "motion" or "answer"  
must be given to the court  
clerk or administrator  
within 30 days along with  
the required filing fee (go  
to [www.courts.oregon.gov](http://www.courts.oregon.gov)  
for fee information). It  
must be in proper form  
and have proof of service  
on the plaintiff's attorney  
or, if the plaintiff does not  
have an attorney, proof  
of service on the plaintiff.  
Forms may be available  
through the court above  
or online at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms). If  
you have questions, you  
should see an attorney  
immediately. If you need  
help in finding an attor-  
ney, you may contact the  
Oregon State Bar's Law-  
yer Referral Service online  
at [www.oregonstatebar.org](http://www.oregonstatebar.org)  
or by calling (503)  
684-3763 (in the Portland  
metropolitan area) or toll-  
free elsewhere in Oregon  
at (800) 452-7636. /s/  
Lindsay H. Duncan, OSB  
#120974 Of Attorneys for  
Plaintiff lindsay.duncan@  
thede-culpepper.com I,  
Lindsay H. Duncan, the  
undersigned attorney of  
record for Plaintiff, certify  
that the foregoing is an  
exact and complete copy  
of the original summons in  
the above-entitled cause.  
/s/ Attorney of Record for  
Plaintiff. N3, N10, N17,

N24 76-24

#### NOTICE OF SHERIFF'S SALE #23-1054

On December 14, 2023,  
at the hour of 10:00 a.m.,  
at the Lincoln County  
Courthouse, 225 W Olive  
St, Room 203, in the City  
of Newport, Oregon, the  
defendant's interest will be  
sold, subject to redemp-  
tion, in the real property  
commonly known as:  
5955 Balboa Avenue,  
Lincoln City, OR 97367.  
The court case number is  
15CV12092, RUSSELL L.  
BALDWIN, plaintiff(s) vs.  
SUZANNE SEIDA; DAVID  
M. SEIDA; KENT SEIDA,  
JR.; SEIDA LAND & LIVE-  
STOCK, LLC, an Oregon  
limited liability company;  
KENT SEIDA, SR. AND  
MARY SEIDA, husband  
and wife, defendant(s).  
This is a public auction  
to the highest bidder for  
cash or cashier's check,  
in hand. For more details  
go to <http://www.oregon-sheriffssales.org/county/lincoln/> N3, N10, N17,  
N24 74-24

#### TRUSTEE'S NOTICE OF SALE

TRUSTEE'S NOTICE OF  
SALE TS No.: 105795-  
OR Loan No.: \*\*\*6946  
Reference is made to  
that certain trust deed  
(the "Deed of Trust")  
executed by ANDREE  
L. CUENOD, as Grantor,  
to FIDELITY NATIONAL  
TITLE, as Trustee, in favor  
of MORTGAGE ELEC-  
TRONIC REGISTRATION  
SYSTEMS, INC., AS DES-  
IGNATED NOMINEE FOR  
FINANCE OF AMERICA  
MORTGAGE LLC, BEN-  
EFICIARY OF THE SEC-  
URITY INSTRUMENT, ITS  
SUCCESSORS AND  
ASSIGNS, as Beneficiary,  
dated 10/25/2021, record-  
ed 11/2/2021, as Instru-  
ment No. 2021-13972,  
in the Official Records of  
Lincoln County, Oregon,  
which covers the follow-  
ing described real prop-  
erty situated in Lincoln  
County, Oregon: Lot 8,  
Block A-1, Salmon River  
Hideout, Plat 2, Except  
the South 208.8 feet  
of the East 208.8 feet  
thereof, in the County  
of Lincoln and State of  
Oregon. ALSO EXCEPT-  
ING THEREFROM a tract  
of land being a portion of  
Lot 8, Block A1, SALMON  
RAPIDS HIDEOUT NO. 2,  
located in the Southeast  
quarter of the Southwest  
quarter of Section 25,  
Township 6 South, Range  
10 West, Willamette  
Meridian, Lincoln County,  
Oregon, being more par-  
ticularly described as fol-  
lows: Beginning at an iron  
rod marking the South-  
east corner of Lot 7, Block  
A1, SALMON RAPIDS  
HIDEOUT NO. 2; thence  
South 45° 05' 00" East  
35.06 feet; thence North  
13° 45' 00" East parallel  
to and 30 feet from when  
measured at right angle  
to the Easterly line of said  
Lot 7, 218.97 feet to the  
Southerly line of Salmon  
Berry Lane; thence South  
72° 24' 00" West 35.13  
feet to the Northeast cor-  
ner of said Lot 7; thence

South 13° 45' 00" West  
along the Easterly line of  
said Lot 7, 182.55 feet  
to the point of beginning.  
APN: R294455 / 06-10-  
25-CD-02201 Commonly  
known as: 195 N DAVIS  
LN OTIS, OR 97368 The  
current beneficiary is:  
FINANCE OF AMERICA  
REVERSE LLC Both the  
beneficiary and the trust-  
ee have elected to sell  
the above-described real  
property to satisfy the  
obligations secured by the  
Deed of Trust and notice  
has been recorded pur-  
suant to ORS 86.752(3).  
The default for which  
the foreclosure is made  
is caused by the death  
of the borrower. TOTAL  
REQUIRED TO PAYOFF:  
\$168,118.13 By reason  
of the default, the ben-  
eficiary has declared all  
obligations secured by the  
Deed of Trust immediately  
due and payable, includ-  
ing: the principal sum  
of \$145,286.55 together  
with interest thereon  
in the total amount of  
\$16,929.04, plus all  
accrued late charges, and  
all trustee's fees, foreclo-  
sure costs, and any sums  
advanced by the ben-  
eficiary pursuant to the  
terms and conditions of  
the Deed of Trust Where-  
of, notice hereby is given  
that the undersigned  
trustee, CLEAR RECON  
CORP, whose address is  
111 SW Columbia  
Street #950, Portland, OR  
97201, will on 2/22/2024,  
at the hour of 10:00 AM,  
standard time, as estab-  
lished by ORS 187.110,  
AT THE OLIVE STREET  
ENTRANCE TO THE LIN-  
COLN COUNTY COURT-  
HOUSE, 225 W OLIVE  
STREET, NEWPORT, OR  
97365, sell at public auc-  
tion to the highest bid-  
der in the form of cash  
equivalent (certified funds  
or cashier's check) the  
interest in the above-  
described real property  
which the grantor had or  
had power to convey at  
the time it executed the  
Deed of Trust, together  
with any interest which  
the grantor or his succes-  
sors in interest acquired  
after the execution of the  
Deed of Trust, to satisfy  
the foregoing obligations  
thereby secured and the  
costs and expenses of  
sale, including a reason-  
able charge by the trust-  
ee. Notice is further given  
that any person named in  
ORS 86.778 has the right  
to have the foreclosure  
proceeding dismissed and  
the Deed of Trust rein-  
stated by payment to the  
beneficiary of the entire  
amount then due (other  
than the portion of prin-  
cipal that would not then  
be due had no default  
occurred), together with  
the costs, trustee's and  
attorneys' fees, and cur-  
ing any other default com-  
plained of in the Notice  
of Default by tendering  
the performance required  
under the Deed of Trust  
at any time not later than  
five days before the date  
last set for sale. Without  
limiting the trustee's dis-  
claimer of representations

or warranties, Oregon law  
requires the trustee to  
state in this notice that  
some residential property  
sold at a trustee's sale  
may have been used in  
manufacturing metham-  
phetamines, the chemi-  
cal components of which  
are known to be toxic.  
Prospective purchasers  
of residential property  
should be aware of this  
potential danger before  
deciding to place a bid  
for this property at the  
trustee's sale. In constru-  
ing this notice, the mas-  
culine gender includes the  
feminine and the neuter,  
the singular includes plu-  
ral, the word "grantor"  
includes any successor  
in interest to the grantor  
as well as any other per-  
sons owing an obliga-  
tion, the performance of  
which is secured by the  
Deed of Trust, the words  
"trustee" and "beneficiary"  
include their respective  
successors in interest, if  
any. Dated: 10/10/2023  
CLEAR RECON CORP  
111 SW Columbia Street  
#950 Portland, OR 97201  
Phone: 858-750-7777  
866-931-0036 By: Name:  
Jessica Lopez Authorized  
Signatory of Trustee. N3,  
N10, N17, N24 68-24

#### NOTICE OF PUBLIC HEARING BEFORE THE NEWPORT CITY COUNCIL REGARDING THE PROPOSED SALE OF DEVELOPED PROPERTY AT 669 SW BAY BOULEVARD

The City Council of the  
City of Newport will hold  
a public hearing on Mon-  
day, December 4, 2023,  
at 6:00 P.M. in the City  
Hall Council Chambers  
(169 SW Coast Hwy),  
regarding the proposed  
sale of developed prop-  
erty known as the Abbey  
Street Pier Building, at  
669 SW Bay Boulevard,  
to Ocean Bento, LLC in  
the amount of \$710,000.  
A copy of the proposed  
real estate contract, and  
other documentation set-  
ting up the nature and  
general terms of the pro-  
posed sale, including an  
appraisal of the property,  
will be available for public  
review at the hearing. The  
City Council, at a prior  
hearing, determined that  
the subject property is not  
needed for public purpo-  
ses and secured the serv-  
ices of a real estate broker  
to market the premises for  
sale. This hearing is being  
held to solicit public testi-  
mony on whether or not  
it is in the public interest  
to proceed with the sale  
of the property to Ocean  
Bento, LLC. Interested  
parties are encouraged to  
testify at the hearing.  
Persons wishing to pro-  
vide comment may do so  
by sending an email to:  
[publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov)  
or for more  
information, please feel  
free to contact Erik Glover,  
Assistant City Manager/  
City Recorder, at 541-  
574-0613 or [eglover@newportoregon.gov](mailto:eglover@newportoregon.gov). N24  
93-24



**STATE OF OREGON  
DEPARTMENT OF STATE LANDS  
AMENDED AND RESTATED  
SUBMERGED AND SUBMERSIBLE LAND LEASE**

11546-ML

This Lease is an amendment to and restatement of that certain submerged and submersible lands lease, ML-10492/APP#11546, dated the 4<sup>th</sup> day of January, 2001, by and between the State of Oregon, by and through the Oregon State Land Board and the Department of State Lands, and City of Newport, as Lessee:

The State of Oregon, by and through the Oregon State Land Board and the Department of State Lands ("State"), hereby leases to the person(s) herein named ("Lessee"), the following described lands on the terms and conditions stated herein (the "Lease"):

NAME of LESSEE:  
City of Newport

ADDRESS:  
169 SW Coast Highway  
Newport OR 97365

Legal classification of Lessee is a Municipal Corporation,

Lands situated in Lincoln County more fully described as follows:

All state-owned submerged lands in the Yaquina Bay in Section 8, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon, more particularly described as follows:

Commencing at a point at the Southwestern corner of Lincoln County Tax Lot 01300, map number 111108CA, (44.62834426°, -124.05516052°) thence riverward along the Southerly line of said tax lot a distance of 15 feet, more or less, to the line of pre-fill Mean Low Tide and the TRUE POINT OF THE BEGINNING;

thence riverward along a line perpendicular to the thread of the stream a distance of 75 feet;

thence upstream and parallel to the line of pre-fill Mean Low Tide a distance of 50 feet;

thence shoreward along a line perpendicular to the thread of the stream a distance of 75 feet to the line of pre-fill Mean Low Tide;

thence downstream along said line of pre-fill Mean Low Tide a distance of 509 feet, more or less, to the TRUE POINT OF BEGINNING,

containing 3,750 square feet, more or less, and as shown on the attached Exhibit "A".

Total number of acres: 0.09 acres, more or less.

*This description is used to establish the approximate location and extent of the area subject to this Department of State Lands authorized use and was not prepared by a licensed surveyor. All locations, bearings, and distances were developed in the Oregon Coordinate Reference System Standard; Oregon Statewide Lambert Conformal Conic, NAD 1983, International Feet, GRS 1980 Spheroid.*

Hereinafter referred to as the "Leasehold".

## **SECTION 1 - LEASE TERM; RENEWAL; TERMINATION**

- 1.1 **Term:** This Lease will continue for a period of 15 years commencing on November 1, 2018, the month and date of which will be known as the "Lease Anniversary Date," and expiring on October 31, 2033, unless terminated earlier as provided under Section 1.4 or Section 7.2 below.
- 1.2 **Renewal:** Lessee may apply to renew this Lease for successive 15 year terms by submitting a completed lease renewal application form to State not less than 180 days prior to the expiration of the current term. Upon receipt of the application, State shall renew this Lease unless:
  - 1.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Lease, the applicable statutes or Oregon Administrative Rules; or
  - 1.2.2 State determines that the renewal of this Lease for all or any portion of the Leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0260.
- 1.3 **Notice of Intent Not to Renew:** Except as otherwise provided in this Lease, State shall provide written Notice to Lessee two years in advance if State intends not to renew this Lease for all or any portion of the Leasehold. If State determines not to renew this Lease, but less than two years remain in the Lease term, State shall, at Lessee's request, extend the term of this Lease to complete the two year Notice period, within which time Lessee shall vacate that portion of the Leasehold upon which the Lease is not being renewed and relocate any sublessees in an orderly fashion.
- 1.4 **Termination Upon Mutual Consent:** This Lease may be terminated by mutual written consent of Lessee and State.
- 1.5 **Holdover:** If Lessee does not vacate the Leasehold at the expiration or upon termination of the Lease, State may treat Lessee as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and Rent. State may unilaterally establish a new Rent for the month-to-month tenancy, payable monthly in advance. If a month-to-month tenancy results from holdover by Lessee under this Section, the tenancy will be

terminable at the end of any monthly rental period upon Notice from State given not less than 30 days prior to the termination date specified in the Notice.

## SECTION 2 – RENT; OTHER ASSESSMENTS

- 2.1 **Initial Annual Rent:** The rental payment to be paid by Lessee to State (the "Rent") for the first year of the Lease is \$2,304.75, based on the following Flat Rate. Receipt of the first year's Rent is hereby acknowledged.

Use Class	Area (square ft.)	Rate Choice	Annual Rent
Non-Marine Use	3,750 square feet	Flat Rate	\$2,304.75
		<b>TOTAL</b>	<b>\$2,304.75</b>

- 2.2 **Annual Rent Adjustment:** The Rent will be adjusted annually in accordance with the provisions of OAR 141-082-0305 in effect at the time. Each payment is due on the Lease Anniversary Date established in Section 1.1.
- 2.3 **Address for Rent Payments:** Until State provides Notice of a change in address (using a method described in Section 10.4), Lessee shall deliver all Rent payments to the following address:
- Department of State Lands  
775 Summer St. NE, Suite 100  
Salem, OR 97301-1279
- 2.4 **Assessments:** Lessee shall pay all taxes or assessments, or both, that are levied against the Leasehold, whether or not such taxes or assessments, or both, have been levied in the past against the Leasehold or State by the assessing agency.
- 2.5 **Liens:** With the exception of mortgages or other security interests authorized by State under Section 6, Lessee shall immediately cause to be discharged any lien or other charge placed on the Leasehold or its Improvements, arising directly or indirectly out of Lessee's actions. State may terminate this Lease if Lessee fails to discharge any lien or charge or provide State with a sufficient bond covering the full amount of the lien after ten days Notice to do so by State. Lessee shall pay and indemnify State for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether the costs, damages or charges are incurred prior or subsequent to any termination of this Lease.
- 2.6 **Late Charges and Interest:** Late payments by Lessee of Rent and other charges due under the Lease will cause State to incur costs and other damages not otherwise addressed in this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. In recognition of the foregoing, the parties agree that, notwithstanding other remedies permitted under the Lease and in addition to

these remedies, if Lessee has not made full payment of amounts due within 20 days of the date payment is due, Lessee shall pay an additional charge equal to five percent of the amount of the late Rent or other charge. In addition, all amounts due and owing under this Lease, including late charges, will bear interest at the lower of: (a) the highest interest rate allowable by law, or (b) 12% per year.

### **SECTION 3 - USE AND RESTRICTIONS ON USE**

- 3.1 Authorized Use: This Lease grants to Lessee the right to use the Leasehold for the specific purpose(s) described below in accordance with the Lease terms and conditions, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

#### **Non-Marine Use**

- 3.2 Restrictions on Use: Lessee shall:

3.2.1 comply with all applicable local, state and federal laws and regulations affecting the Leasehold and its use, including local comprehensive land use planning and zoning ordinances, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use;

3.2.2 dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the Leasehold, and, if Lessee allows debris, garbage or other refuse to accumulate within the Leasehold, allow State to remove the debris, garbage and other refuse, and collect the cost of such removal from Lessee;

3.2.3 not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the Leasehold except with written permission of State, and promptly report to State the cutting or removal of vegetation by other persons;

3.2.4 conduct all operations within the Leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or the growth of noxious weeds;

3.2.5 maintain all buildings, docks, pilings, floats, gangways, similar structures, or other improvements (each an "Improvement") in a good state of repair; and

3.2.6 not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.

- 3.3 Condition of Leasehold and Improvements: Lessee represents that it has inspected the Leasehold and Improvements, if any, and accepts the Leasehold and all Improvements in their present condition, AS IS. State has made no oral or written representations concerning the condition of the Leasehold or its Improvements, if any, nor their fitness or suitability for any purpose.
- 3.4 Limitation on Improvements: Lessee may not construct or place upon the Leasehold any Improvement that exceeds \$15,000 in cost or value unless Lessee has first obtained the prior written authorization of State or the Improvement is exempt under OAR 141-082-0265. State shall not unreasonably withhold or delay its approval for Improvements consistent with the purposes of this Lease. All Improvements must be consistent with the authorized use(s) of this Lease stated in Section 3.1 and in compliance with all applicable laws, regulations, and ordinances as stated in Section 3.2.1.
- 3.5 Disposition of Unauthorized Improvements or Structures: Lessee shall remove all unauthorized Improvements from the Leasehold upon receiving Notice from State, unless State elects to remove the Improvements at Lessee's cost and expense.
- 3.6 Removal of Authorized Improvements: Lessee shall remove all authorized Improvements within 90 days after the termination or expiration of the Lease or modification of the Lease under Section 4.2, unless otherwise agreed by the parties or the Improvement is exempt under OAR 141-082-0265. Lessee is responsible for any damage done to the Leasehold as a result of the removal of any Improvement. Any Improvement remaining on the Leasehold after the 90 days will at the option of State become the property of State, unless otherwise agreed by the parties.
- 3.7 Liability: Lessee shall defend, indemnify and hold State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses, including expert witness fees and costs and attorney's fees in an administrative proceeding, at trial, or on appeal ("Claims") arising from or attributable, in whole or in part, to the Lease or any operations conducted or allowed by Lessee on the Leasehold. As used in this Section 3.7 only, "State" means the State of Oregon and its boards, commissions, agencies, officers, employees, contractors, and agents. Lessee shall have control of the defense and settlement of any Claim; however, neither Lessee nor any attorney engaged by Lessee shall defend the Claim in the name of the State, nor purport to act as legal representative of State, without the approval of the Attorney General, nor shall Lessee settle any Claim on behalf of State without the approval of the Attorney General. State may, at its election and expense, assume its own defense and settlement in the event that State determines that Lessee is prohibited from defending State, that Lessee is not adequately defending the State's interests, or that an important governmental principle is at issue and the State desires to assume its own defense.

3.8 Waste Water Disposal: In addition to any other applicable laws and regulations, Lessee shall obtain any permits required by state or local authorities and shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and waste water disposal for boats and floating structures.

3.9 Hazardous Substances:

3.9.1 Lessee shall not use, store, or dispose of, or allow the use, storage, or disposal within the Leasehold of any material that may pose a threat to human health or the environment, including without limitation, hazardous substances, pesticides, herbicides, or petroleum products (a "Hazardous Substance") except in strict compliance with applicable laws, regulations and manufacturer's instructions, and Lessee shall take all necessary precautions to protect human health and the environment and to prevent the release of any Hazardous Substance on or from the Leasehold.

3.9.2 Lessee shall keep and maintain accurate and complete records of the amount of all Hazardous Substances stored or used on the Leasehold, and shall immediately notify State of any release or threatened release of any Hazardous Substance on or from the Leasehold or otherwise attributable to operations or activities on the Leasehold.

3.9.3 If any Hazardous Substance is released, and the release arises from or is attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold, Lessee shall promptly and fully remediate the release in accordance with state and federal regulations and requirements. If Lessee fails to so remediate, State may remove and remediate any release of a Hazardous Substance on or from the Leasehold or attributable to operations or activities conducted or allowed by Lessee on the Leasehold and collect the cost of removal or remediation from Lessee either as additional Rent or as damages.

3.9.4 In addition to any duty to indemnify specified elsewhere in this Lease, Lessee shall indemnify State to the fullest extent allowed by Oregon law against any claim or costs arising from or related to a release of a Hazardous Substance arising from or attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold.

3.10 Weed Control: Lessee shall control plant pests and diseases and noxious weeds, including aquatic weeds, within the Leasehold as directed by the local county weed control district, the Oregon Department of Agriculture or any other governmental authority which has authority for the prevention or control, or both, of noxious weeds, plant pests or diseases, or as may be authorized or directed by State.

## SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

- 4.1 Change of Leasehold Area or Use: Lessee may request that State amend the Lease to expand or reduce the size, or change the authorized use, of the Leasehold using a form provided by State. However, no such amendment will be effective unless authorized in writing by State. State shall process and review requests to amend the Lease in the same manner as a new lease application.
- 4.2 Special Conditions Applicable to Reductions in Leasehold Area. This Lease may be amended to reduce the Leasehold area only if the portion of the Leasehold to be removed from the Lease does not contain any Improvement. If the amendment results in a reduction of Rent due under the Lease, the reduction will be effective commencing on the Lease Anniversary Date that falls at least 12 months after the later of: (a) the date of the reduction in the Leasehold area; or (b) the date on which the amendment is fully executed.
- 4.3 Lessee Liable for Violations. Notwithstanding any reduction in the Leasehold area under this section, Lessee shall remain liable for any violation of Section 3.8 or 3.9 occurring on lands removed from the Leasehold prior to the amendment removing such lands.

## SECTION 5 – RESERVATIONS

- 5.1 Access: State reserves a right of access to the Leasehold, which, subject to any applicable provisions of the Oregon Residential Landlord and Tenant Act, ORS chapter 90, the State may exercise at all reasonable times to inspect and manage the State's interest in the Leasehold and to evaluate and ensure compliance with the terms and conditions of this Lease. State may examine pertinent records of Lessee for the purpose of ensuring compliance with the Lease.
- 5.2 Minerals: State reserves all rights to coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes including, without limitation, the right to explore, mine, develop, produce and remove such minerals and other deposits, along with the right of ingress and egress for these purposes, and to terminate this Lease as to all or any portion of the Leasehold when required for these purposes with 120 days prior written Notice to Lessee or as otherwise provided by law.
- 5.3 Easements: State reserves the right at any time to grant easements across the Leasehold for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, along with the right of ingress and egress for these purposes, subject to the inclusion in any such grant of easement of a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with Lessee's use(s) authorized in the Lease.



- 5.4 Public Access and Recreational Use: All state-owned submerged and submersible land must remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by State to public entry pursuant to the provisions of applicable Oregon Administrative Rules. Lessee may request State, but State is not obligated, to close the Leasehold to public entry or restrict recreational use by the public on all or portions of the Leasehold to protect persons or property from harm arising from or in connection with Lessee's activities.

This reservation does not grant the public any right to use or occupy, without Lessee's permission, Lessee-owned property or structures authorized under this Lease.

- 5.5 Other: State reserves all other rights not expressly granted to Lessee under this Lease.

## **SECTION 6 – ASSIGNMENTS; SUBLEASES**

- 6.1 Assignment and Sublease:

6.1.1 Except as provided in Section 6.2, Lessee may not assign this Lease or sublease the Leasehold or any portion of the Leasehold nor enter into any third party agreement respecting the Lease or the Leasehold without first obtaining the prior written consent of State pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be in writing using an application form prescribed by State. The application must be received by State at least 30 calendar days prior to the proposed effective date of the sublease or assignment. State shall make a good faith effort to complete its review of Lessee's application within 30 days following receipt. If the application is incomplete, or if State requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications may be extended and the proposed sublease or assignment may be delayed pending the completion of such review.

6.1.2 State reserves the right to condition its consent to an assignment or sublease as State deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest will be required to comply with all of Lessee's obligations under this Lease, and the applicable Oregon Administrative Rules. Lessee will remain liable for the performance of all obligations under this Lease unless State's written consent expressly releases Lessee from further liability.

6.1.3 For the purposes of this section, if Lessee is a corporation or partnership or limited liability company, the transfer of any corporate stock or partnership or membership interest (including by operation of law) will be deemed an assignment subject to the provisions of this section if the result of the transfer is a change of management control or controlling interest in Lessee.

6.1.4 Lessee may not grant a mortgage or security interest in this Lease without prior written consent of State, which consent shall not be unreasonably withheld. Any subsequent assignment by the creditor will require the prior written approval of State.

6.2 Permitted Assignments and Subleases: Notwithstanding Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of Lessee's interest in the Leasehold are permitted and written Notice to State is not required:

6.2.1 subleases of portions of Lessee's interest in the Leasehold area in the ordinary course of Lessee's business for the purposes approved under Section 3.1;

6.2.2 the sublease of the entire Leasehold for a term that is less than one year for a purpose specified in Section 3.1; or

6.2.3 the transfer of Lessee's interest in the Lease to a surviving spouse or immediate family member following the death of Lessee; except that, any other transfer of ownership following the death of Lessee is considered an assignment requiring State's approval.

## **SECTION 7 – DEFAULT**

7.1 Default: The following are events of default:

7.1.1 Failure of Lessee to pay any rent, tax, reimbursement or other charge or payment due under the Lease within 20 days after the date payment is due. For the purposes of this subsection, if the due date for payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, payment is due on the date set forth in the Notice from State to Lessee informing Lessee of its obligation to pay the charge or payment.

7.1.2 Failure of Lessee to comply with any non-payment-related term or condition or obligation of the Lease within 30 days after Notice by State specifying the nature of the deficiency, or, in the event of an emergency, within the time specified by State to resolve the emergency. Upon timely request from Lessee, State may in its good faith discretion permit the deadline for curing non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the 30 day period; (2) the interests of State will not be harmed by an extension; (3) default was not due to the willful act or gross negligence of Lessee; and (4) State and Lessee mutually agree upon a written plan and timeline for curing the non-compliance.

7.1.3 Any of the following:

- a) insolvency of Lessee;
- b) the filing by Lessee of a voluntary petition in bankruptcy;

- c) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee;
- d) the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within 30 days after filing; or
- e) attachment of or the levying of execution on the Leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

If Lessee consists of two or more individuals or business entities, the events of default specified in this paragraph apply to each individual or entity unless within ten days after an event of default occurs the remaining individuals or entities produce evidence satisfactory to State that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned under Section 6 of this Lease, the events of default specified in this subsection apply only with respect to the one then exercising the rights of Lessee under the Lease.

7.1.4 Notwithstanding the above, if State in good faith believes that a material default has occurred which may imperil State's rights in the land or the discharge of its Constitutional obligations with respect to the land, State may declare an immediate default without any right of Lessee to cure the deficiency.

- 7.2 Termination of Occupancy Upon Default: State may terminate Lessee's right to occupy the Leasehold for any default by Lessee that remains uncured past the time provided in Section 7.1. State shall exercise its right to terminate Lessee's occupancy under this section by providing Notice to Lessee of the default and of State's intent to terminate Lessee's right of occupancy under the Lease upon the date provided in the Notice. State may recover from Lessee all costs arising out of State's re-entry and, if State and Lessee mutually agree to terminate the Lease as provided in Section 1.4, all costs of re-letting the Leasehold. If State and Lessee mutually agree to terminate the Lease, State may recover the amount of unpaid rent that otherwise would have been required to be paid under the Lease from the date of default until a new Lease has been secured or, if State and Lessee do not agree to terminate the Lease and State is unable to secure another lessee for the Leasehold, until such time as the Lease expires. Lessee shall dispose of all Improvements as specified in Section 3.6 of this Lease. If Lessee owns a floating home and has placed the home on the Leasehold pursuant to the provisions of Section 3.1 of this Lease, the lease termination provisions of ORS chapter 90 will apply to the extent the provisions of this Lease are inconsistent with this chapter.

- 7.3 State's Right to Cure Defaults:

7.3.1 If Lessee fails to perform any obligation under this Lease, State may perform the obligation of the Lease 30 days after providing Notice to Lessee. All of State's expenditures to carry out the obligation must be reimbursed by Lessee on demand with interest at the rate of one percent per month accrued from the date of expenditure by State.

7.3.2 Notwithstanding Section 7.3.1, but subject to ORS chapter 90 if applicable, if any violation of a term or condition of this Lease, including without limitation use of the Leasehold in a manner not permitted under the Lease, is causing or threatens to cause personal injury or damage to the Leasehold or other property, or if damage to the Leasehold arises from some other cause, State may immediately enter upon the Leasehold and take such action as it deems necessary to stop the use or mitigate the injury or damage. If the injury or damage is due to a violation of the terms or conditions of this Lease, Lessee will be liable for all costs incurred by State as a result of the violation and the action taken by State to mitigate the injury or damage. State, at its option, may send Notice to Lessee of the violation and, upon receipt of the Notice, Lessee shall immediately cease the violation and repair the injury or correct all damage caused by the violation. State's failure to provide Notice of a violation may not be deemed a waiver of the violation by State or authorization to Lessee to continue or fail to correct the violation.

## **SECTION 8 – INSURANCE; BONDS**

- 8.1 LESSEE shall maintain during the term of this Lease, the required insurance coverages described in attached Exhibit B.
- 8.2 Bond: State reserves the right to require Lessee to furnish to State a surety bond or an equivalent cash deposit or certificate of deposit, in an amount to be determined by State in the exercise of its reasonable discretion, which names the State of Oregon as co-owner to ensure that Lessee will perform in accordance with all terms and conditions of the Lease.

## **SECTION 9 - ADDITIONAL CONDITIONS AND STIPULATIONS**

- 9.1 None.

## **SECTION 10 - MISCELLANEOUS**

- 10.1 Entire agreement: This Lease, together with the attached exhibits and attachments, constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Lease will bind either party unless in writing. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given, and will be valid and binding only if it is signed by each party. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Lease. This Lease supersedes all prior or existing lease or rental agreements between the parties with respect to the Leasehold described in this Lease.

- 10.2 No Partnership: State is not a partner nor in a joint venture with Lessee in connection with any business carried on in connection with this Lease or the Leasehold and has no obligation for Lessee's debts or other liabilities.
- 10.3 Non-Waiver: Waiver by either party of strict performance of any provisions of this Lease will not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

10.4 Notices:

10.4.1 Any communication required by the terms of this Lease to be given in writing (hereafter, a "Notice") must be given or be served by:

- a) depositing the same in the United States mail, postage prepaid; registered or certified mail, with return receipt requested; or
- b) personal delivery service with all charges billed to shipper; or
- c) expedited delivery service with all charges billed to shipper; or
- d) prepaid telegram, telex or facsimile;

addressed to the party for whom the Notice is intended at the address set forth below or at such other address as the party may designate from time to time.

For Notices to Tenant:

City of Newport  
169 SW Coast Highway  
Newport, OR 97365

For Notices to Landlord:

Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, OR 97301-1279

10.4.2 Notice is deemed received:

- a) upon receipt if sent by telegram, telex or facsimile or if personally delivered (as long as delivery is confirmed by the receiving telex or facsimile operator, including electronic confirmation of receipt, or by the courier delivery service, as the case may be); or
- b) three business days after the date of deposit in a post office or other official depository under the care and custody of the United States Postal Service, if sent by United States mail; or
- c) on the date of delivery by any expedited delivery service, or
- d) on the date any party declines to accept any Notice given as provided in this section.

10.4.3 Each party shall have an address, for Notice purposes, that is within the continental United States and, if any party resides outside the continental United States, the party shall designate an agent for the purpose of receiving Notices whose address is within the continental United States. Any party may change its address for the purpose of receiving Notices by delivering a Notice of the change of address to the other party as described in this section 7.3.

10.4.4 Communications between the parties that are not required by this Lease to be in writing may be by any mutually acceptable method.

- 10.5 Governing Law; Venue: This Lease and all matters related to the rights and responsibilities of the parties under it are governed by and subject to the laws of the State of Oregon and the administrative rules of the Department of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties under this Lease, and all such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease. Any claim, action, suit or proceeding (collectively, a "Claim") between State and Lessee that arises from or relates to the Lease must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; except that, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. However, in no way is this section or any other provision of this Lease to be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. Lessee, by execution of this Lease, hereby consents to the personal jurisdiction of all such courts.
- 10.6 Binding on Successors: This Lease is binding on and will inure to the benefit of the successors and assigns of the parties to it, but nothing in this section may be construed as a consent by State to any disposition or transfer of the Lease or any interest in it by Lessee except as otherwise expressly provided in this Lease.
- 10.7 Nondiscrimination: The Leasehold must be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 10.8 Right To Sue More Than Once: State may sue periodically to recover damages accrued to date and no action for damages will bar later actions for damages subsequently accruing.
- 10.9 Remedies Cumulative: The remedies contained in this Lease are in addition to, and do not exclude, any other remedy available at law or in equity, and the exercise by either party of any one or more of its remedies does not preclude the exercise by it at the same or different times of any other remedies for the same default or breach by the other party.
- 10.10 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party is entitled to recover all costs and disbursements incurred, including such sums as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or

action, and in any bankruptcy case or proceedings. State's obligation under this section is subject to the limitations of Article XI, section 7 of the Oregon Constitution.

- 10.11 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 10.12 Survival. Termination or expiration of the Lease will not extinguish or prejudice State's right to enforce the provisions of this Lease relating to indemnification, access to records, governing law, venue and consent to jurisdiction.

*[remainder of page intentionally left blank]*



Lessee, by the signature below of its authorized representative, hereby acknowledges that Lessee has read this Lease, understands it and agrees to be bound by its terms and conditions.

**STATE:**

The State of Oregon, acting by  
and through the Oregon State  
Land Board and the  
Department of State Lands  
775 Summer ST NE, STE 100  
Salem, OR 97301-1270

Kirle Savie  
DSL Authorized Signature/ Printed Name

5/22/19  
Date

**LESSEE:**

City of Newport  
A Municipal Corporation  
169 SW Coast Highway  
Newport, OR 97365

[Signature]  
Signature/Title  
(Note requirement below)

02/11/19  
Date

Note: If Lessee is a corporation, partnership, limited liability company or other form of business entity, signer warrants that s/he has the authority to sign the Lease on behalf of such entity by resolution of its Board of Directors or equivalent, or through delegation of authority to the signer.

STATE OF )  
County of )ss  
)

The foregoing instrument was acknowledged before me this 11 day

of February, 2019, by Spencer Nebel  
(name of officer or agent of political entity)

the City Manager of City of Newport  
(title of officer or agent) (name of political entity)



Melanie Nelson  
Signature  
My commission expires 9/10/21

**CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS**

By signature on this Lease for Lessee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Lessee and that Lessee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

Signature: \_\_\_\_\_

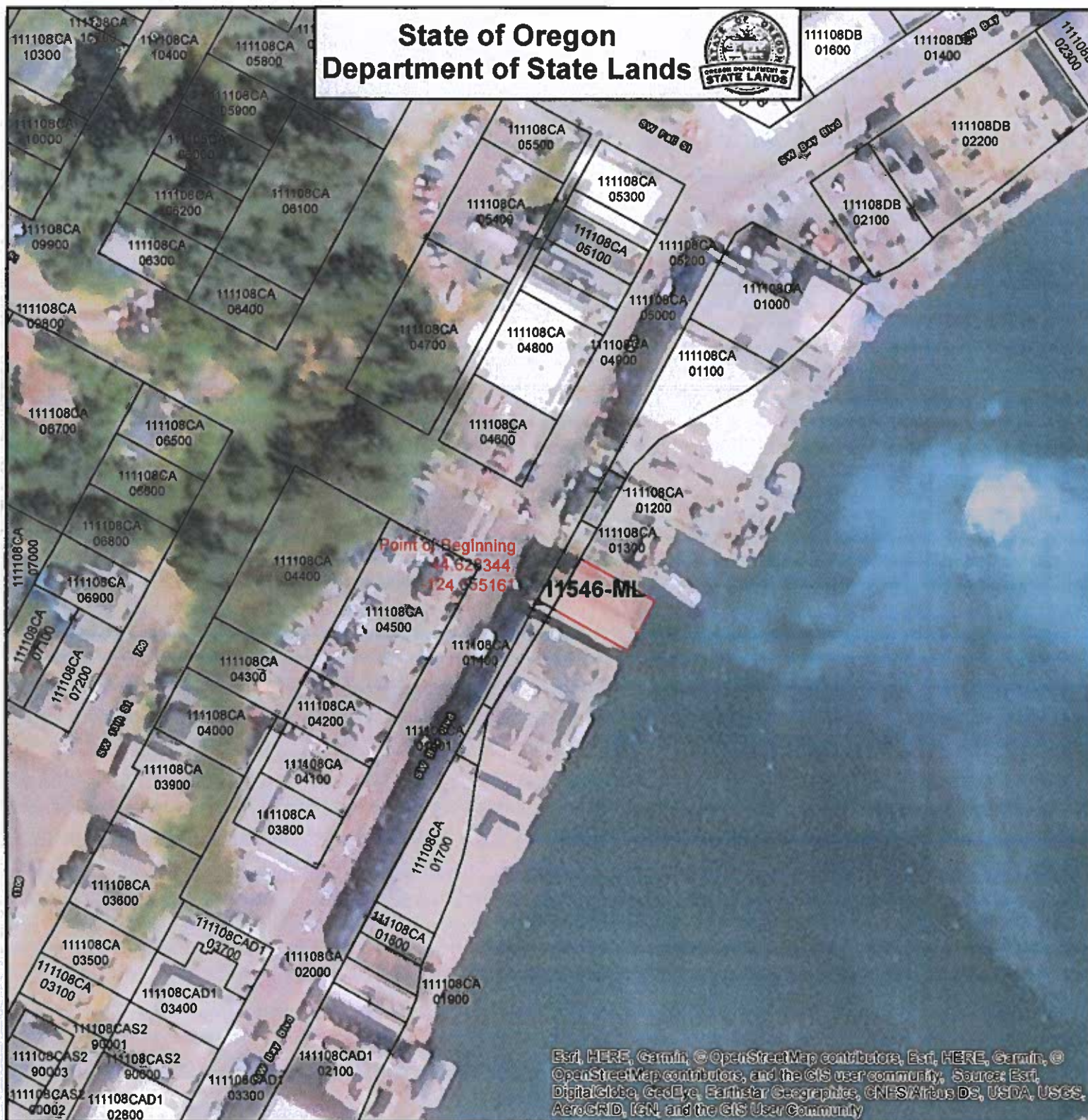
Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



# State of Oregon Department of State Lands



Esri, HERE, Garmin, ©OpenStreetMap contributors, Esri, HERE, Garmin, ©OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

## EXHIBIT A

**11546-ML Waterway Lease**  
**T11S, R11W Section 8**  
**3,750 Square Feet**  
**LINCOLN County**

- ▲ Points of Beginning
- Description lines
- Use Area

This map depicts the approximate location and extent of a Department of State Lands. Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

0 60 120

Feet



Map Projection:  
 Oregon Statewide Lambert  
 Datum NAD83  
 International Feet  
 State of Oregon  
 Department of State Lands  
 775 Summer St NE, Suite 100  
 Salem, OR 97301  
 503-988-5200  
[www.oregon.gov/DSL](http://www.oregon.gov/DSL)  
 Date: 11/20/2018





## Exhibit B INSURANCE REQUIREMENTS

During the term of the Lease, Lessee shall maintain in force at its own expense, each insurance item noted below: **(State must check boxes for #2, #3, and #4 to indicate whether insurance is required or not.)**

1. **Required by State of lessee with one or more workers, as defined by ORS 656.027.**

**Workers' Compensation.** All employers, including Lessee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Lessee shall require and ensure that each of its sublessees (if permitted) complies with these requirements.

2. ☒ **Required by State** ☐ **Not required by State.**

**(Commercial/General) Liability coverage**, insuring against claims for bodily injury, death and property damage. Coverage must include contractual liability coverage for the indemnity provided under this Lease. **The commercial/general liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds. See Number 7 below.**

Lessee shall provide proof of liability or commercial general liability insurance in not less than the following amounts:

**Bodily Injury/Death:**

☒ \$1,000,000/\$2,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

☐ \$2,000,000/\$4,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

☐ \$ \_\_\_\_\_

3. ☐ Required by State ☒ Not required by State.

**Marine Protection and Indemnity Coverage.** Lessee shall obtain, at Lessee's expense, and keep in effect during the term of the Lease, marine protection and indemnity coverage. Shall not be less than \$ \_\_\_\_.

4. ☐ Required by State ☒ Not required by State.

**Pollution Liability:** Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, pollution liability insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee, all arising out of Lessee's lease of the Leasehold. Shall not be less than \$ \_\_\_\_

5. **"Tail" Coverage.** If any of the required liability insurance is on a "claims made" basis, Lessee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Lease, for a minimum of 24 months following the termination or expiration of the Lease.

6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Lease, the Lessee shall furnish acceptable insurance certificates to State prior to commencing any work to be performed under the Lease. The certificate must specify all of the parties who are additional insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to State. Lessee shall pay for all deductibles, self-insured retention and self-insurance

7. **Additional Insured.** The commercial general liability and automobile liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds but only with respect to Lessee's activities to be performed under this Lease. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

8. **Change in coverage or cancellation.** Lessee shall notify Lessor when a change in coverage or cancellation occurs. Lessee shall provide Lessor copies of new coverage upon effect of change. As stated in section 2, Lessee shall ensure required insurance coverage is maintained over the term of the lease.

**STATE OF OREGON**  
**DEPARTMENT OF STATE LANDS**

Public Recreation Facility License  
23348-LI

The STATE OF OREGON, by and through its Division of State Lands (STATE), GRANTOR, does hereby grant to City of Newport, LICENSEE, a License for the construction, maintenance, repair, and/or replacement of a public recreational facility for the specific purpose of public access dock (Abbey Street Pier) on the following described property, to wit:

All state-owned submerged lands in the Yaquina Bay in Section 8, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon, more particularly described as follows:

Commencing at a point on the intersection of the Northerly line of Tax Lot 1300 (Lincoln County Assessor's Map Number 11-11-8CA Newport) and the line of pre-fill Mean High Tide on the right bank of the Yaquina Bay;

thence riverward along a line perpendicular to the thread of the stream to the line of pre-fill Mean Low Tide and the TRUE POINT OF BEGINNING

thence continuing riverward along said perpendicular line a distance of 75 feet, more or less;

thence downstream and 75 feet parallel, more or less to said line of pre-fill Mean Low Tide a distance of 31 feet, more or less;

thence shoreward along a line perpendicular to the thread of the stream a distance of 75 feet, more or less to the line of pre-fill Mean Low Tide;

thence upstream along said line of pre-fill Mean Low Tide a distance of 30 feet, more or less, to the TRUE POINT OF BEGINNING, containing 2,304 square feet (.05 acres), more or less, and as shown on the attached Exhibit "A".



1. LICENSE TERM AND RENEWAL

The LICENSEE, subject to compliance with the terms and provisions of this License, shall have and hold the Licensed Premises for the purposes stated above for fifteen (15) years beginning December 1, 2015 and expiring on November 30, 2030.

The LICENSEE Shall have an option to renew this License for an additional period of 15 years after the original and each renewal license term provided that Licensee has submitted a completed license renewal application form to State not less than one hundred and eighty (180) days prior to the License Expiration Date. Upon receipt of such application, this License shall be renewed by State unless:

State determines, in its sole discretion, that Licensee has not complied with the terms of this License, the applicable statutes and Oregon Administrative Rules; or

State determines that the renewal of this License for all or any portion of the License area would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0260.

2. CONSTRUCTION

Construction in navigable waters shall conform to standards and specifications set by U.S. Army Corps of Engineers or U.S. Coast Guard for the project. The bed and banks of the waterway shall be restored to a condition acceptable to the STATE as soon as construction or maintenance is completed. Any blasting construction shall be performed according to the laws of the state. Underwater blasting permits are required under ORS 509.140.

3. PREVENTION OF WASTE, DAMAGE AND INJURY

LICENSEE shall exercise reasonable diligence in its operation on and from said Licensed Premises; shall carry on all operations hereunder in a good and workmanlike manner having due regard for public safety and the prevention of waste and for the restoration and conservation of said Licensed Premises for future use, and shall take all reasonable steps to avoid damage to soil, timber, fish and fish habitat, wildlife and wildlife habitat and water quality of both ground water and surface water; shall make all reasonable efforts to minimize interference with existing navigational and recreational activities and scenic values; shall substantially restore the Licensed Premises to its original condition and shall do all things reasonably necessary to minimize erosion.

4. HAZARDOUS WASTE

LICENSEE shall refrain from storing on, or discharging from or onto, the Licensed Premises any hazardous wastes or toxic substances as defined in 42 USC§ 9601-9657, except as otherwise permitted by law.

5. COMPLIANCE WITH LAW

LICENSEE shall comply with all applicable federal, state, and local statutes, ordinances, rules and regulations in its use of the Licensed Premises. This License does not give LICENSEE permission to conduct any use on the Licensed Premises which is not in conformance with applicable land use requirements, and it is the LICENSEE's responsibility to determine and comply with those and all other requirements.

LICENSEE shall use the Licensed Premises only in a manner, or for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

6. DELIVERY OF PREMISES

Delivery of the Licensed Premises will occur upon the date of execution of this License. STATE will not provide a survey or pay any costs of a survey to determine boundaries. It is the LICENSEE's responsibility to make an accurate determination of the boundaries. The legal description provided by STATE is drawn from an assessor's map and/or other data deemed to be reliable. If LICENSEE elects not to have a survey performed and a discrepancy or boundary overlap later becomes evident, STATE, at its discretion, may provide a corrected description of the Licensed Premises.

7. ALTERATIONS AND IMPROVEMENTS

LICENSEE shall obtain the written consent from the STATE prior to making any alterations or additions to the Licensed Premises or improvements upon the Licensed Premises. Any removal/fill activity in the waters of the state shall require a permit from the Director in accordance with ORS 196-800 et seq.

8. ACCESS TO PROPERTY AND RECORDS

The STATE shall have access to the Licensed Premises at all reasonable times for the purpose of ensuring compliance with the terms and conditions of this License. The STATE shall have the right to examine pertinent records of LICENSEE for the purpose of ensuring compliance with the License.

Public access to the navigable waters must be maintained.

9. REPAIRS AND MAINTENANCE

LICENSEE agrees to make all repairs to the Licensed Premises which are necessary for the purposes set forth in this License. LICENSEE further agrees to maintain the Licensed Premises in reasonable safe condition during the period of this License. If LICENSEE fails to make the repairs required under this provision or fails to maintain the Licensed Premises in reasonably safe condition, STATE may revoke this License, provided LICENSEE fails to make the necessary repairs or perform the required maintenance within a reasonable time not to exceed thirty (30) days after written notification by STATE.

10. ASSIGNMENT OR SUBLETTING

LICENSEE shall not assign, mortgage, or sublet nor enter into any third party agreement respecting the License without first obtaining the prior written consent of STATE pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be in writing and must be received by STATE at least thirty (30) calendar days prior to the effective date of sublet or assignment. STATE reserves the right to condition its consent as it deems reasonably prudent, including the right to require changes to the terms of this License.

11. DEFAULT, NOTICE AND CURE BY LICENSEE

A default by the LICENSEE shall occur if any of the following shall occur and if said default shall continue and not be remedied within sixty (60) days after the STATE shall have given notice specifying the breach:

- a. LICENSEE charging the public for use of the Licensed Premises (a nominal charge for maintenance costs of the Licensed Premises may be allowed with written approval of the STATE).
- b. Failure of LICENSEE to comply with any term or condition imposed by the STATE in the License.
- c. Failure of LICENSEE to use the Licensed Premises for the purposes authorized under the terms of the License.
- d. LICENSEE maintaining a nuisance on the Licensed Premises.
- e. Failure by LICENSEE to remove any lien or encumbrances placed upon the Licensed Premises.

12. TERMINATION UPON LICENSEE'S DEFAULT

In the event of a default by LICENSEE, the License may be terminated at the option of STATE by thirty (30) days advance notice in writing to LICENSEE. In the event the License is terminated by either party, all remedies afforded under this License shall survive such termination. LICENSEE shall have sixty (60) days after date of termination to remove all fixtures and property from the Licensed Premises and to restore the Premises to its original (natural) condition. Failure to remove such items and restore the Premises within the sixty (60) day period will result in assignment of the file to the Department of Justice.

13. TERMINATION UPON MUTUAL CONSENT

This License may also be terminated by mutual written consent of LICENSEE and STATE.

14. INDEMNIFICATION

LICENSEE shall perform the services under this License as an independent entity. LICENSEE and STATE each shall be responsible, to the extent required by the Oregon Tort Claims Act (ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

15. RESERVATIONS

The interest of LICENSEE under this License shall at all times be subject to STATE's right to grant rights-of-way in and over said Licensed Premises or a portion of the Licensed Premises for other purposes, including but not limited to, railroads, telegraph and telephone lines, pipelines, irrigation or other water canals and ditches, and to STATE's right to lease all or part of the Licensed Premises for the exploration, discovery, development and production of oil, gas, or minerals of any nature whatsoever, provided the right-of-way or lease does not unreasonably interfere with the purpose of this License.

16. NON WAIVER

Waiver by either party of strict performance of any term of this License on any occasion shall not be construed as a waiver nor prejudice either party's right to require strict performance of the same provision in the future or any other provision.

17. PARTNERSHIP

STATE is not a partner nor a joint venturer with LICENSEE in connection with this License and shall have no obligation with respect to LICENSEE's debts or other liabilities.

18. MERGER

This License constitutes the entire agreement between the parties, and no oral statement, representation or agreement not herein expressed shall be binding upon any party.

19. MODIFICATION

This agreement may not be changed, altered or amended without mutual written consent of the parties.

This License is granted in order that LICENSEE can provide public recreational utilization of the Licensed Premises at no charge to the public, however, a nominal fee may be charged to cover maintenance costs of the Licensed Premises. If the facility is not used in compliance with this condition, the License will automatically terminate and the land shall revert to STATE.

WITNESS the seal of the Department of State Lands affixed this 14<sup>th</sup> of February, 2016.



STATE OF OREGON, acting by and through its Department of State Lands

Sandra N. Roumagoux  
Authorized Signature/Printed Name

LICENSEE

Sandra N. Roumagoux  
Authorized Signature

Mayor  
Title

**APPROVED AS TO FORM**

[Signature]





# Oregon Department of State Lands Land Management Division



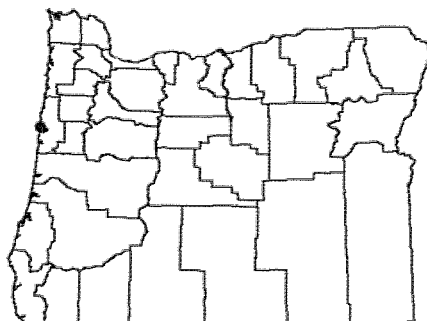
Source: Esri, DigitalGlobe, GeoEye, iSat, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, Swisstopo, and the GIS User Community



0 10 20  
Feet

1 inch = 36 feet

Map Projection:  
Oregon Statewide Lambert  
Datum NAD83  
International Feet



## Legend

Legal Description Point

Authorization Area

This map depicts the approximate location and extent of a Department of State Lands, Land Management Division authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

## Exhibit A

State of Oregon  
Department of State Lands  
775 Summer St, NE, Suite 100  
Salem, OR 97301  
503-986-5200  
[www.oregon.gov/DSL](http://www.oregon.gov/DSL)  
Date: 11/30/2015

This License is granted in order that LICENSEE can provide public recreational utilization of the Licensed Premises at no charge to the public, however, a nominal fee may be charged to cover maintenance costs of the Licensed Premises. If the facility is not used in compliance with this condition, the License will automatically terminate and the land shall revert to STATE.

WITNESS the seal of the Department of State Lands affixed this 14<sup>th</sup> of February 2016.



STATE OF OREGON, acting by and through its Department of State Lands

Charles Perino  
Authorized Signature/Printed Name

LICENSEE

Sandra N. Roumager  
Authorized Signature

Mayor  
Title

**APPROVED AS TO FORM**

[Signature]

Department of State Lands Private Pier Lease - Tract A

A Department of State Lands Private Pier Lease in a portion of Lincoln County Tax Lot 01300, map number 111108CA more particularly described as follows:

Commencing at a point, called the "initial point" that is located at the northeast corner of Lot 6 of Block 2 in the original town of Newport Oregon, at the most easterly corner of Lincoln County Tax Lot 4500; thence South  $64^{\circ} 00' 50''$  East, a distance of 60.00 feet to the most westerly corner of Lincoln County tax lot 1300; thence South  $64^{\circ} 00' 50''$  East, a distance of 15.00 feet to the line of pre-fill mean low tide being the **True Point of Beginning**; thence North  $25^{\circ} 59' 10''$  East, a distance of 52.00 feet; thence South  $64^{\circ} 00' 50''$  East, a distance of 50.50; thence South  $17^{\circ} 32' 03''$  East, 35.58 feet; thence South  $25^{\circ} 59' 10''$  West, for a distance of 26.20 feet; thence North  $64^{\circ} 00' 50''$  West, a distance of 75.00 feet to said true point of beginning of said described tract. Containing 3584 square feet more or less.

Date: February 8, 2023

Robert Boyer, PLS No.2270  
Civil West Engineering Services Inc.  
609 SW Hurbert St.  
Newport, OR 97365  
Phone: (503) 706-2790

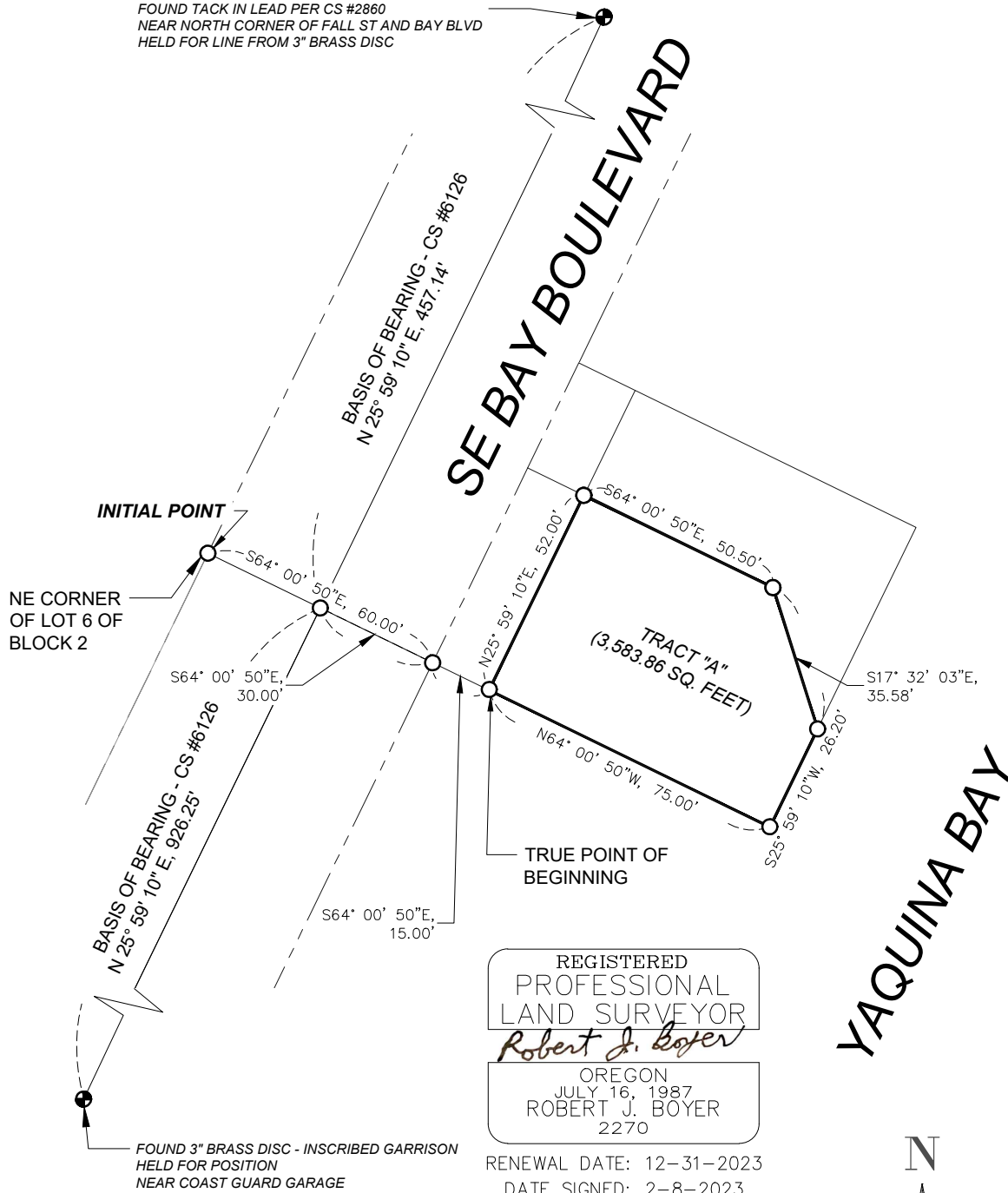


# EXHIBIT A

ABBY ST PIER - TAX LOT 01300

DEPARTMENT OF STATE LANDS PRIVATE PIER LEASE - TRACT A

FOUND TACK IN LEAD PER CS #2860  
NEAR NORTH CORNER OF FALL ST AND BAY BLVD  
HELD FOR LINE FROM 3" BRASS DISC



DRAWN BY: CMJ/RJB  
DATE: FEBRUARY, 2023

EXHIBIT FOR TRACT "A"

NEWPORT

LINCOLN COUNTY, OREGON

CITY OF NEWPORT



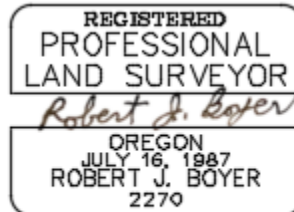
Department of State Lands Public Pier License - Tract B

A Department of State Lands Public Pier License in the northeasterly portion of Lincoln County Tax Lot 01300, map number 111108CA more particularly described as follows:

Commencing at a point, called the "initial point" that is located at the northeast corner of Lot 6 of Block 2 in the original town of Newport Oregon, at the most easterly corner of Lincoln County Tax Lot 4500; thence South  $64^{\circ} 00' 50''$  East, a distance of 60.00 feet to the most westerly corner of Lincoln County tax lot 1300; thence South  $64^{\circ} 00' 50''$  East, a distance of 15.00 feet to the line of pre-fill mean low tide; Thence North  $25^{\circ} 59' 10''$  East, a distance of 52.00 feet to the **True Point of Beginning**; thence South  $64^{\circ} 00' 50''$  East, a distance of 50.50 feet; thence South  $17^{\circ} 32' 03''$  East, a distance of 35.58 feet; thence North  $25^{\circ} 59' 10''$  East, a distance of 53.80 feet; thence North  $64^{\circ} 00' 50''$  West, for a distance of 75.00 feet; thence South  $25^{\circ} 59' 10''$  West, a distance of 28.00 feet to said true point of beginning. Containing 2416 square feet more or less.

Date: February 8, 2023

Robert Boyer, PLS No.2270  
Civil West Engineering Services Inc.  
609 SW Hurbert St.  
Newport, OR 97365  
Phone: (503) 706-2790



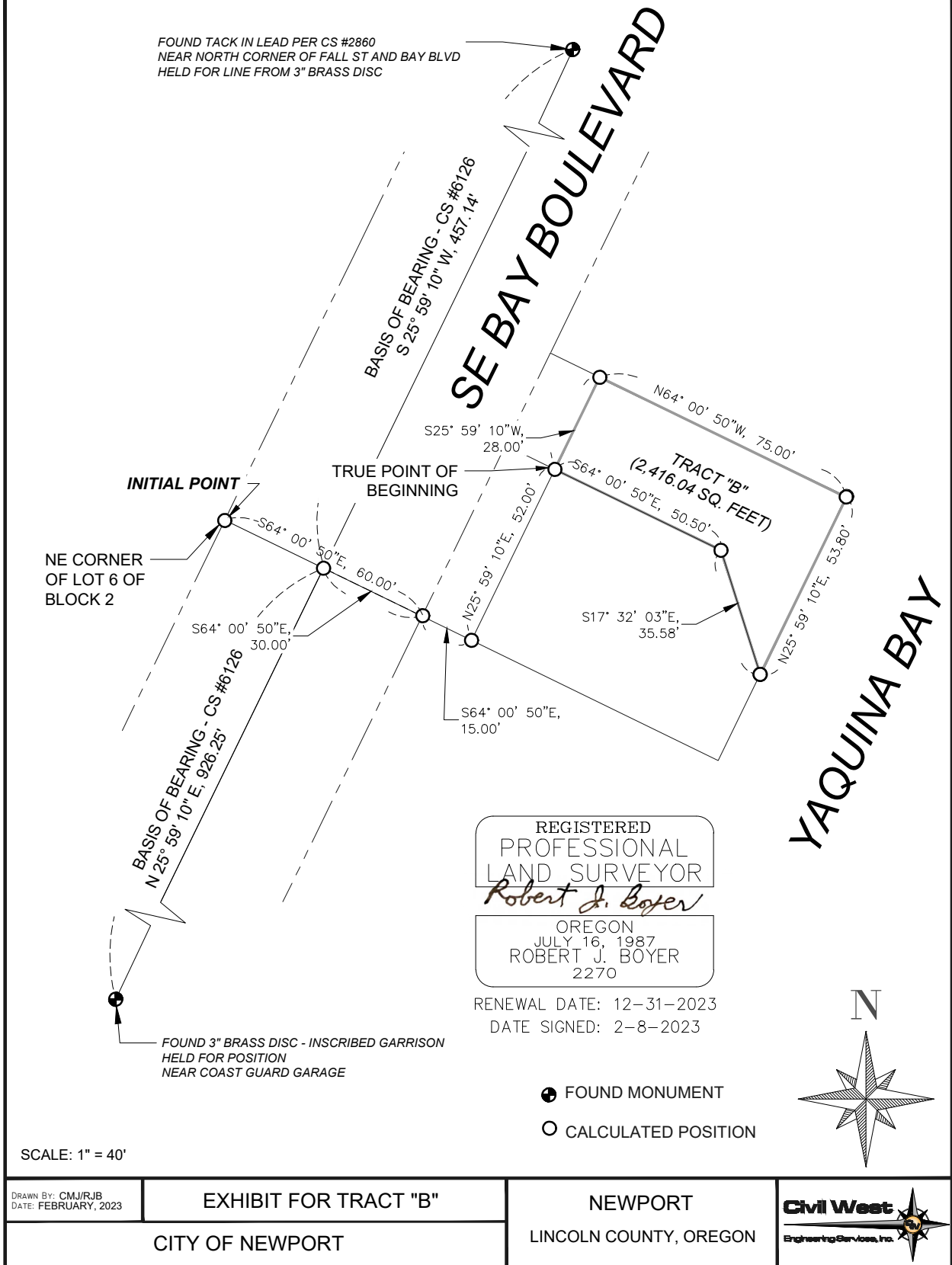
RENEWAL DATE: 12-31-2023  
DATE SIGNED: 2-8-2023



# EXHIBIT A

ABBY ST PIER - TAX LOT 01300

DEPARTMENT OF STATE LANDS PUBLIC PIER LICENSE - TRACT B



Cross Access Easement - Tract C

An easement over a portion of property owned by the City of Newport per Book 245, pages 2077-2083 of the Deed Records of Lincoln County, Oregon.

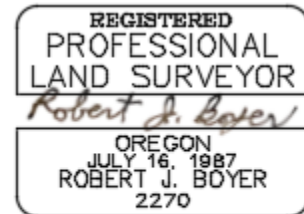
(Tax Lot #: 11-11-08-CA-01300)

An easement in the northerly portion of Lincoln County Tax Lot 01300, map number 111108CA more particularly described as follows:

Commencing at a point, called the "initial point" that is located at the northeast corner of Lot 6 Block 2 in the original town of Newport Oregon, at the most easterly corner of Lincoln County Tax Lot 4500; thence South 64° 00' 50" East, a distance of 60.00 feet to the most westerly corner of Lincoln County tax lot 1300; thence North 25° 59' 10" East, a distance of 52.00 feet to the **True Point of Beginning**; thence South 64° 00' 50" East, a distance of 15.00 feet; thence North 25° 59' 10" East, a distance of 28.00 feet; thence North 64° 00' 50" West, a distance of 15.00 feet; thence South 25° 59' 10" West, for a distance of 28.00 feet to said true point of beginning. Containing 420.00 square feet more or less.

Date: February 8, 2023

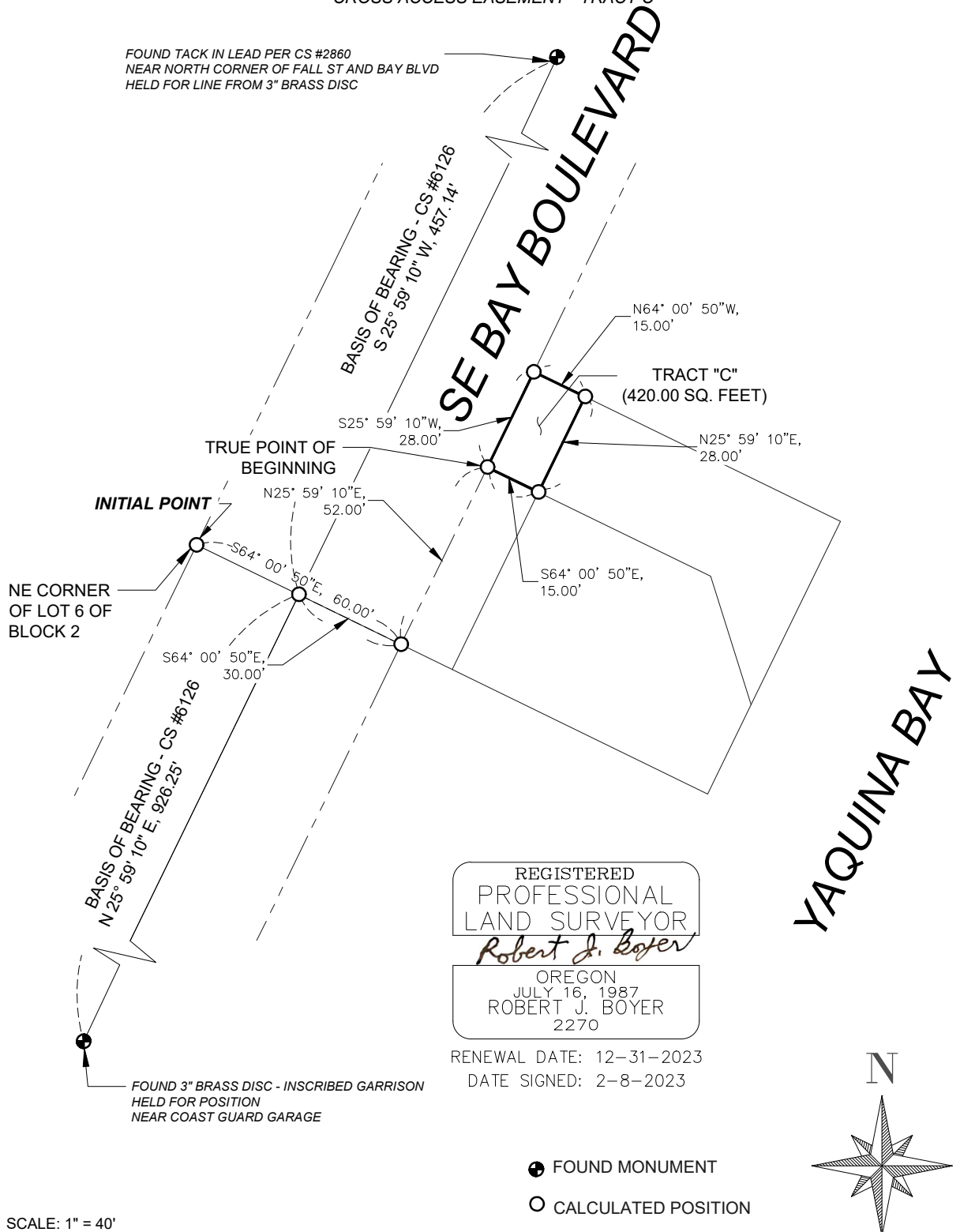
Robert Boyer, PLS No.2270  
Civil West Engineering Services Inc.  
609 SW Hubert St.  
Newport, OR 97365  
Phone: (503) 706-2790



RENEWAL DATE: 12-31-2023  
DATE SIGNED: 2-8-2023

# EXHIBIT A

ABBY ST PIER - TAX LOT 01300  
CROSS ACCESS EASEMENT - TRACT C



DRAWN BY: CMJ/RJB  
DATE: FEBRUARY, 2023

EXHIBIT FOR TRACT "C"

CITY OF NEWPORT

NEWPORT

LINCOLN COUNTY, OREGON





**POWELL BANZ**  
VALUATION

**VALUATION SERVICES**

Real Estate Appraisal  
Consulting  
Litigation  
Estate Planning  
Feasibility Analysis  
Rent Surveys

**PROPERTY TYPES**

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Subdivisions  
Multi-Family  
Single-Family  
Industrial  
Office  
Medical  
Retail  
Public  
Religious  
Parks / Open Space  
Farms / Agricultural  
Specialty

**SERVING**

Oregon  
Washington  
Idaho  
Northern California

**Powell Banz Valuation, LLC**

1467 13<sup>th</sup> Street SE  
Salem, Oregon 97302  
(503) 371-2403 voice  
(503) 371-2613 fax  
[www.powellbanz.com](http://www.powellbanz.com)

## REAL ESTATE APPRAISAL REPORT



Photo taken November 2, 2022, #13200-2

### **ABBAY STREET PIER BUILDING**

669 SW Bay Boulevard  
Newport, Oregon 97365  
**PO #: 22-026**

### **PREPARED FOR**

Derrick Tokos, AICP  
Community Development Director  
City of Newport  
169 SW Coast Highway  
Newport, Oregon 97365

### **PREPARED BY**

Katherine Powell Banz, MAI  
PBV File Number: P221296

### **EFFECTIVE DATE OF VALUE**

"As If" Date of Value: November 2, 2022



December 2, 2022

Derrick Tokos, AICP  
Community Development Director  
City of Newport  
169 SW Coast Highway  
Newport, Oregon 97365

**RE: ABBEY STREET PIER BUILDING**  
669 SW Bay Boulevard  
Newport, Oregon 97365  
**PO #: 22-026**

Dear Mr. Tokos:

As requested, the captioned property has been valued using generally accepted appraisal principles and practices. This appraisal report is intended to comply with the development and report requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) and the Appraisal Institute. A copy of the signed professional service agreement is included in the Addenda.

The subject is identified as the **Abby Street Pier Building**. Improvements consist of a two-story, 3,961 SF NRA retail building located along the Newport Bayfront. The improvement is situated on an estimated site area of 3,271 SF, with a portion of the site owned and the remainder leased from the Department of State Lands. The improvement shares a tax lot and leased land with a public pier; however, per the scope of work, this analysis considers the building and its supporting footprint only.

The building is located on W-2 (Water-Related)-zoned land. It is operating at 28% occupancy; one of the three retail suites is currently leased on a month-to-month basis.

The subject property was previously appraised by Powell Banz Valuation, LLC in a report (PBV Job #: P191293) dated August 9, 2019, just outside the prior three years.

Based upon my investigation and analysis of available information, the concluded value under the requested scenario, as of November 2, 2022, was:

MARKET VALUE SCENARIO	DATE	VALUE
"As If" Market Value – Leased Fee & Leasehold	November 2, 2022	\$600,000
Estimated Marketing/Exposure Time		One year or less

**This appraisal is based on the hypothetical condition that the subject improvements were partitioned from the surrounding public pier as of the date of value.**

**The concluded value is predicated on the following extraordinary assumptions:**

- **The appraiser's estimated subject site size at partition completion, including the allocation between the leased and owned site components, is generally accurate;**
- **The City of Newport will retain access to the mechanical room for pier maintenance.**

**These assumptions may have affected the assignment results. If determined to be false, the value conclusion herein will need to be revisited.**

This appraisal is subject to the conditions and comments presented in this report. If any questions arise concerning this report, please contact the undersigned.

Sincerely,

**POWELL BANZ VALUATION, LLC**



Katherine Powell Banz, MAI  
OR State Certified General Appraiser  
No. C000897  
Expiration Date: August 31, 2024

KPB:tgg  
Appraisal Report  
P221296



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## ADDENDA

Purchase Order – City of Newport	
Taxes, Assessment Data, Deed & Legal Description	
Department of State Lands Lease & Renewal Agreement	
Regional Description	
Appraiser Qualifications	
Appraiser Certification	

## EXECUTIVE SUMMARY

PROPERTY INFORMATION		
PO #:	22-026	
Property Name:	Abbey Street Pier Building	
Address:	669 SW Bay Boulevard Newport, Oregon 97365	
Tax Account Number:	Portions of: R357311, R366804, R530598	
Map/Tax Lot:	Portions of: 11-11-08-CA-01300, 01300-L2, 01300-L3	
Property Type:	Retail	
Current Use:	Multi-tenant retail building	
Owner of Record:	City of Newport	
BUILDING CHARACTERISTICS		
Number of Buildings:	1	
Number of Tenants:	1	
Gross Building Area:	4,133 SF	
Net Rentable Area:	3,961 SF	
Percent Occupied:	28%	
Year Built:	1979	
Condition:	Fair to average	
Substantial Deferred Maintenance:	See narrative	
SITE CHARACTERISTICS		
Land Area—Approx. Owned:	613 SF	
Land Area—Approx. Leased:	2,658 SF	
Zoning Designation:	W-2 (Water Related)	
Conforming Use:	Yes	
HIGHEST AND BEST USE		
As if Vacant:	Water/tourism-oriented retail use	
As Improved:	Existing multi-tenant retail improvements	
Excess / Surplus Land:	None	
VALUATION INFORMATION		
Cost Approach:	Not Presented	
Income Approach:	\$600,000	
Sales Comparison Approach:	\$555,000	
VALUE CONCLUSION – LEASED FEE & LEASEHOLD		
Concluded “As If” Market Value:	Effective Date of Value	Value Conclusion
Allocation for Furniture, Fixtures and Equipment:	November 2, 2022	\$600,000
	None	

## **PRELIMINARY APPRAISAL INFORMATION**

### **SCOPE OF WORK**

Scope of Work is defined in *2020-2021 USPAP (effective through December 31, 2022)* as “the type and extent of research and analyses in an assignment.” The scope of work addresses the application and extent of the development process. It can include, but is not limited to: the extent to which the property is identified, the extent to which tangible property is inspected, the type and extent of data researched and the type and extent of analyses applied to arrive at opinions or conclusions. The seven items used in defining the scope of work and the proposed solution are discussed in detail below:

This appraisal report is designed to inform the reader of all factors influencing the property's value in a clear and concise manner. The Preliminary Appraisal Information sections provide an overview of the property and general information. The Description section starts with general regional issues and proceeds to more specific issues directly related to the property. The Highest and Best Use section establishes the premise upon which the property is valued.

The goal of the appraiser is to produce a credible value conclusion. Credible is defined in *2020-2021 USPAP (effective through December 31, 2022)* as “worthy of belief.”

In order to conclude a credible market value opinion, the client and appraiser determined that the Valuation section focuses on the **“as if” stabilized market value** of the **leased fee** interest in the subject property with market rents in place. It describes the Income Capitalization and Sales Comparison Approaches, and includes comparable information, application of market information to the subject, and valuation analysis. The approaches utilized are reconciled into final value conclusions as applicable.

Based on the analysis contained herein, the in-place lease is below market and there are two vacant suites. Adjustments to the stabilized value are considered within each approach, as needed, to result in the **“as if” market value** of the **leased fee and leasehold estate**.

All comparable data has been verified by either a party to the transaction or an agent, unless otherwise identified. Supporting information is attached in the Addenda.

The building shares a pier and tax lot with the adjacent public pier; however, the client is considering selling the building and supporting site but retaining the public pier via a partition. **Per the scope of work, the following analysis considers the “as if” value assuming the building and supporting site were separate from the public pier.** Further; note the underlying supporting site is partially owned and partially leased from the Department of State Lands (noting the pier extends out into the waterway).

A survey or other precise measurements of the supporting site size was not provided; therefore, the appraiser estimated this area using measurements obtained at the time of inspection and via Google Earth. This appraisal assumes the measurements are reasonably correct and reflect the area the ownership would partition for the building's supporting site. If the measured area is determined to be false, the value conclusions will need to be revisited.

### **CLIENT AND INTENDED USER**

The client and intended user for this appraisal is the City of Newport.

## **PRELIMINARY APPRAISAL INFORMATION (continued)**

### **OTHER INTENDED USERS**

Other intended users include the client's legal and accounting professionals.

### **INTENDED USE**

The purpose of this appraisal is to estimate market value, in **leased fee**, under the applicable scenario, as described in this report.

Without prior written approval from the author, **the intended use of this report is limited to decision-making regarding a potential sale of the subject property by the client**. All other uses are expressly prohibited. Reliance on this report by anyone other than the client for a purpose not set forth above is prohibited. The author's responsibility is limited to the client. If you are not the stated intended user contact our office to have an appraisal customized for your needs.

### **TYPE OF VALUE**

The **"As If"** Value represents the value of the subject, under hypothetical condition(s) contrary to what is known by the appraiser to exist as of the date of inspection.

### **INSPECTION DATE**

November 2, 2022

### **EFFECTIVE DATE OF VALUE**

As If Market Value: November 2, 2022

### **DATE OF REPORT**

December 2, 2022

### **PROPERTY CHARACTERISTICS**

The subject is identified as the **Abby Street Pier Building**. Improvements consist of a two-story, 3,961 SF NRA retail building located along the Newport Bayfront. The improvement is situated on an estimated site area of 3,271 SF, with a portion of the site owned and the remainder leased from the Department of State Lands. The improvement shares a tax lot and leased land with a public pier; however, per the scope of work, this analysis considers the building and its supporting footprint only.

The building is located on W-2 (Water-Related)-zoned land. It is operating at 28% occupancy; one of the three retail suites is currently leased on a month-to-month basis.

## **PRELIMINARY APPRAISAL INFORMATION (continued)**

### **ASSIGNMENT CONDITIONS**

- An interior and exterior inspection of the subject.
- Interviewing the subject's property representative, Derrick Tokos, Community Development Director, City of Newport.
- Inspecting of the subject property neighborhood.
- Gathering and confirming lease comparables and improved sales from the immediate area and competing marketplaces.
- Inspecting the exterior of all comparables utilized in person or via photographs.
- Reviewing the subject's income and expense history as provided by the property representative.
- Highest and best use analysis.
- The application of the Income Capitalization and Sales Comparison Approaches to arrive at an indication of value for the subject property.
- A review of the written report.

### **APPRAISER ASSISTANCE**

Tyson Giza, Appraiser Assistant #AA03308 (expires July 26, 2023), aided in the following aspects of this appraisal assignment as outlined in ACLB Administrative Rules (OAR) 161-025-0030:

- Definition of the appraisal problem (A).
- Preliminary analysis, selection and collection of applicable data (B).
- Analysis of the subject property (C).
- Conducting a Highest and Best Use analysis (D).
- Estimating value of the subject property using the applicable approaches of value – the Income and Sales Comparison Approaches (F).
- Reconciliation of each value estimate to arrive at a final estimate of value (G).
- Reporting estimate(s) of value(s) as defined (H).

All work performed by Tyson Giza has been directed, reviewed and approved by Katherine Powell Banz, MAI.

## **PRELIMINARY APPRAISAL INFORMATION (continued)**

### **DEFINITION OF MARKET VALUE**

This definition is in compliance with the OCC (Office of the Comptroller of the Currency), FDIC (Federal Deposit Insurance Corporation), FIRREA (Federal Institutions Reform, Recovery, and Enforcement Act), and USPAP (Uniform Standards of Professional Appraisal Practice) as adopted by the Appraisal Foundation and the Appraisal Institute. This definition complies with the 2020-2021 USPAP (effective through December 31, 2022) regulations.

Market Value, as defined by *The Appraisal of Real Estate, 15th Edition* as published by the Appraisal Institute is:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."<sup>1</sup>

### **PROPERTY RIGHTS APPRAISED**

**Leased Fee Interest**, which is defined by *The Dictionary of Real Estate Appraisal, 7th Edition* (2022), Appraisal Institute, as:

*The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires.*

**Leasehold Estate:** *the right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.*

- **Sandwich Leasehold Estate:** *the interest held by the sandwich leaseholder when the property is subleased to another party; a type of leasehold estate.*
- **Subleasehold Estate:** *the right to occupy and use property that results when the lessee in a prior lease conveys (i.e., subleases) the right of use and occupancy to another, the sublessee; also known as a subleasehold interest.*

### **SPECIFIED FINANCING**

Cash to seller, with or without financing; considered to be cash equivalent.

---

<sup>1</sup> *The Appraisal of Real Estate, 15th Edition*. Chicago: Appraisal Institute, 2020.



## **PRELIMINARY APPRAISAL INFORMATION (continued)**

### **OWNERSHIP AND SALES HISTORY ANALYSIS**

According to Lincoln County Assessor's records, the subject property is currently vested under the ownership of **THE CITY OF NEWPORT**. The most recent transaction occurred June 11, 1992 between the NEWPORT URBAN RENEWAL AGENCY (Grantor) and THE CITY OF NEWPORT (Grantee) for a recorded consideration of \$0 in Warranty Deed 245-2077; this transaction was between governmental parties.

No transactions involving the subject have occurred in the last three years and the property is not currently listed for sale.

### **ASSESSMENT AND TAX INFORMATION**

Annual real estate taxes levied by the **Lincoln County** Assessor's Office are summarized on the following table:

Tax Account	Tax Lot	Real Market Value			Assessed Value (M50)	2022/2023 Taxes	Unpaid Taxes*	Tax Rate
		Land	Improvements	Total				
R357311	11-11-08-CA-01300	\$245,770	\$651,460	\$897,230	\$0	\$0.00	\$0.00	\$18.1165
R366804	11-11-08-CA-01300-L2	\$24,830	\$86,850	\$111,680	\$65,580	\$1,118.87	\$0.00	\$18.1165
R530598	11-11-08-CA-01300-L3	\$60,010	\$207,350	\$267,360	\$157,260	\$2,766.05	\$1,563.31	\$18.1165
<b>Total</b>		<b>\$330,610</b>	<b>\$945,660</b>	<b>\$1,276,270</b>	<b>\$222,840</b>	<b>\$3,884.92</b>	<b>\$1,563.31</b>	

Source: Lincoln County Assessor's Office

RMV as of July 2022, certified October 2022 by Lincoln County

\*Unpaid taxes excludes taxes owed for 2022/2023

**Note that the subject reflects only a portion of the above tax lots in the "as if" scenario.** The City of Newport is tax-exempt; however, the Abbey Street Pier Building's three retail tenants are all taxed and billed individually for this expense based on their shares of the leased space. Tax account R530598 (Lattas of Oregon Inc.; the first floor glass fusing space) are delinquent on their taxes, with the unpaid 2021/2022 tax reported on the above chart.

### **LEGAL DESCRIPTION**

Please refer to the Addenda for a full legal description.

### **INSPECTION**

Date of Inspection:	November 2, 2022
Property Representative:	Paul (last name unknown), City of Newport Facilities Department
Powell Banz Valuation, LLC:	Katherine Powell Banz, MAI (exterior only; interior via photographs and prior 2019 inspection) Jonathan B. Banz, MAI, AI-GRS Tyson Giza
Extent of Inspection:	A physical interior and exterior inspection was performed. The interior of the glass retail space on the first floor was not accessible; it was inspected from the exterior through the storefront windows.

## **PRELIMINARY APPRAISAL INFORMATION (continued)**

### **SOURCES OF INFORMATION**

The following sources were contacted to obtain relevant information:

<b>Source</b>	<b>Information</b>
Derrick Tokos, Community Development Director, City of Newport	Subject information including lease documents and operating statements.
Lincoln County Assessor's Office	Subject data; tax information.
City of Newport Planning Department	Zoning information.
Realquest	Subject data, comparable research.
Multiple brokers and real estate professionals	Local area data; comparable confirmation.
Regional Multiple Listing Service	Comparable research.
Flex Multiple Listing Service	Comparable research.
LoopNet	Comparable research.
CoStar	Comparable research.
County Deed Records	Comparable research.

### **COMPETENCY RULE**

I am aware of the competency rule as detailed in *USPAP*, and with my understanding, I possess the education, knowledge, technical skills, and practical experience to complete this assignment competently, in conformance with the stated regulations. I have appraised numerous retail properties in Newport, along the Oregon Coast, and throughout the State of Oregon in recent years.

### **PERSONAL PROPERTY, FIXTURES, AND INTANGIBLE ITEMS**

No personal property, trade fixtures, or intangible items were included in this valuation.

### **USE OF RECOGNIZED APPRAISAL APPROACHES**

This report utilizes two of the three recognized valuation methods: the Income Capitalization and Sales Comparison Approaches to value.

The Cost Approach is reliable when the improvements are new, nearly new or proposed. The subject was built in 1979. The Cost Approach was considered, but ultimately not developed due to the age of the improvements and the subjective nature of reliably estimating depreciation, which may conclude a value inconsistent with the primary approaches. The exclusion of this approach does not compromise the validity of the value conclusions contained herein.

### **UNAVAILABILITY OF INFORMATION**

All information necessary to develop an estimate of value of the subject property was available to the appraiser, except for a survey with the actual leased and owned subject site areas, and a precise subject supporting site area. Per the scope of work, the subject's supporting site area has been estimated utilizing on-site measurements and Google Earth aerial measurements.

## **PRELIMINARY APPRAISAL INFORMATION (continued)**

### **EXPOSURE TIME AND MARKETING PERIOD**

Exposure time is defined within the 2020-2021 USPAP (effective through December 31, 2022) as:

*The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market.*

Exposure time is best established upon the experience of recent comparable sales. The sales indicate a standard exposure period of **one year or less** for appropriately priced properties similar to the subject.

Marketing period is very similar to exposure time, but reflects a projected time period to sell the property, rather than a retrospective estimate.

Based on the subject property type and the data presented herein, a similar marketing period of **one year or less** remains reasonable.

## **ASSUMPTIONS AND LIMITING CONDITIONS**

This appraisal is subject to the following assumptions and limiting conditions:

### **HYPOTHETICAL CONDITIONS**

A hypothetical condition is a condition that is contrary to the facts, and yet will be used to value a property. An example of a hypothetical condition would be assuming a larger amount of land than actually exists to arrive at a value.

**This appraisal is based on the hypothetical condition that the subject improvements were partitioned from the surrounding public pier as of the date of value.**

### **EXTRAORDINARY ASSUMPTIONS**

An extraordinary assumption is an assumption made that does not exist, but could reasonably exist.

**The concluded value is predicated on the following extraordinary assumptions:**

- **The appraiser's estimated subject site size at partition completion, including the allocation between the leased and owned site components, is generally accurate;**
- **The City of Newport will retain access to the mechanical room for pier maintenance.**

**These assumptions may have affected the assignment results. If determined to be false, the value conclusion herein will need to be revisited.**

### **ORDINARY ASSUMPTIONS**

The analysis assumes that the Lincoln County Assessor's office legal description accurately represents the subject property. A survey has not been provided to the appraiser. If further verification is required, a survey by a registered surveyor is advised.

I assume no responsibility for matters legal in character, nor do I render any opinion as to title, which is assumed to be marketable.

All existing liens, encumbrances, and assessments have been disregarded, unless otherwise noted, and the property is appraised as though free and clear, under responsible ownership, and competent management.

The exhibits in this report are included to assist the reader in visualizing the property. I have made no survey of the property and assume no responsibility in connection with such matters.

Unless otherwise noted herein, it is assumed that there are no encroachments, zoning, or restrictive violations pertinent to the subject property.

This report is not a real property inspection; the appraiser only performed a visual inspection of accessible areas and this appraisal cannot be relied upon to disclose conditions and/or defects in the property.

The appraiser assumes no responsibility for determining if the property requires environmental approval by the appropriate governing agencies, nor if it is in violation thereof, unless noted.

## **ASSUMPTIONS AND LIMITING CONDITIONS (continued)**

Information presented in this report has been obtained from reliable sources, and it is assumed that the information is accurate.

This report shall be used for its intended purpose only, and by the parties to whom it is addressed. Possession of the report does not include the right of publication.

Simply because a borrower or third party may receive a copy of the appraisal, does not mean that the borrower or third party is an Intended User as that term is defined in USPAP.

The appraiser may not be required to give testimony or to appear in court by reason of this appraisal, with reference to the property in question, unless prior arrangements have been made.

The statements of value and all conclusions shall apply as of the dates shown herein. The appraiser has no present or contemplated future interest in the property that is not specifically disclosed in this report.

Neither all, nor any part, of the contents of this report shall be conveyed to the public through advertising, public relations, news, sales, or other media without the written consent or approval of the author. This applies particularly to value conclusions and to the identity of the appraiser and the firm with which the appraiser is connected.

This report must be used in its entirety. Reliance on any portion of the report independent of others may lead the reader to erroneous conclusions regarding the property values. No portion of the report stands alone without approval from the author.

The valuation stated herein assumes professional management and operation of the building(s) throughout the lifetime of the improvements, with an adequate maintenance and repair program.

The valuation is based on the projection that the improvements will maintain a stabilized occupancy level over its economic life, with tenants paying market level rents.

The liability of Powell Banz Valuation, LLC and employees is limited to the client only and only up to the amount of the fee actually received for the assignment. Further, there is no accountability, obligation, or liability to any third party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The appraiser is in no way responsible for any costs incurred to discover or correct any deficiency in the property. The appraiser assumes that there are no hidden or unapparent conditions of the property, subsoil, or structures that would render it more or less valuable. In the case of limited partnerships or syndication offerings or stock offerings in real estate, the client agrees that in case of lawsuit (brought by lender, partner, or part owner in any form of ownership, tenant, or any other party), any and all awards, settlements, or cost, regardless of outcome; the client will hold Powell Banz Valuation, LLC completely harmless.

The appraiser is not qualified to detect the presence of toxic or hazardous substances or materials which may influence or be associated with the property or any adjacent properties. I have made no investigation or analysis as to the presence of such materials, and expressly disclaim any duty to note the presence of such materials.

## **ASSUMPTIONS AND LIMITING CONDITIONS (continued)**

Therefore, irrespective of any degree of fault, Powell Banz Valuation, LLC and its principals, agents, and employees, shall not be liable for costs, expenses, damages, assessments, or penalties, or diminution in value, property damage, or personal injury (including death) resulting from or otherwise attributable to toxic or hazardous substances or materials, including without limitation hazardous waste, asbestos material, formaldehyde, or any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, solids, or gasses, waste materials or other irritants, contaminants, or pollutants.

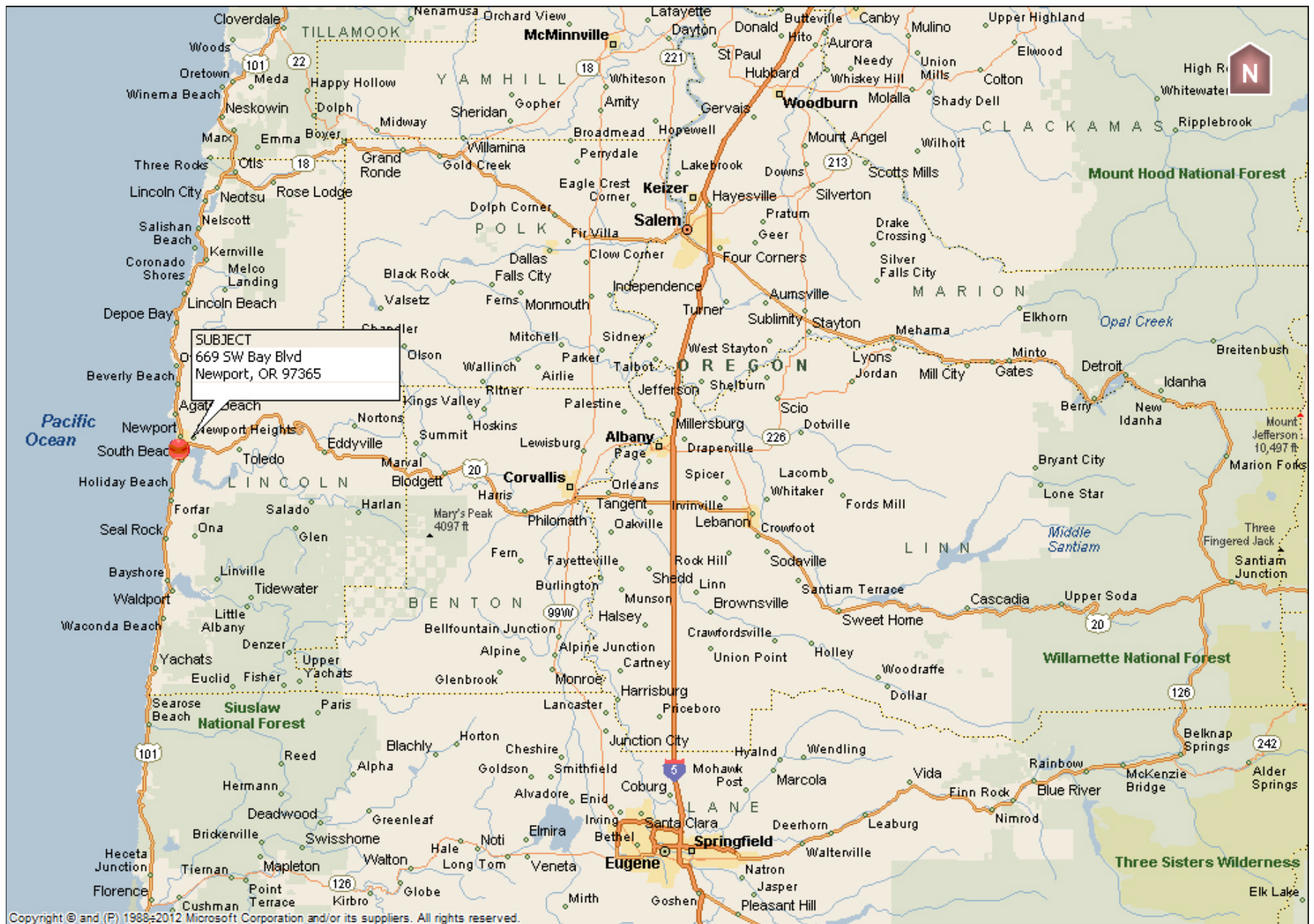
The appraiser assumes no responsibility for determining if the subject property complies with the *Americans with Disabilities Act (ADA)*, which prescribes specific building standards which may be applied differently to different buildings, depending on such factors as building age, historical significance, amenability to improvement, and costs of renovation. Powell Banz Valuation, LLC its principals, agents, and employees, shall not be liable for any costs, expenses, assessments, penalties, or diminution in value resulting from non-compliance. Except as otherwise noted herein, this appraisal assumes that the subject complies with all ADA standards appropriate to the subject improvements; if the subject is not in compliance, the eventual renovation costs and/or penalties would negatively impact the present value of the subject. If the necessary renovation costs, time period needed for renovation, and penalties for non-compliance (if any) were known today, appropriate deductions would be made to the value conclusion(s) reported herein.



## AERIAL PHOTOGRAPH (LINCOLN COUNTY GIS MAP)

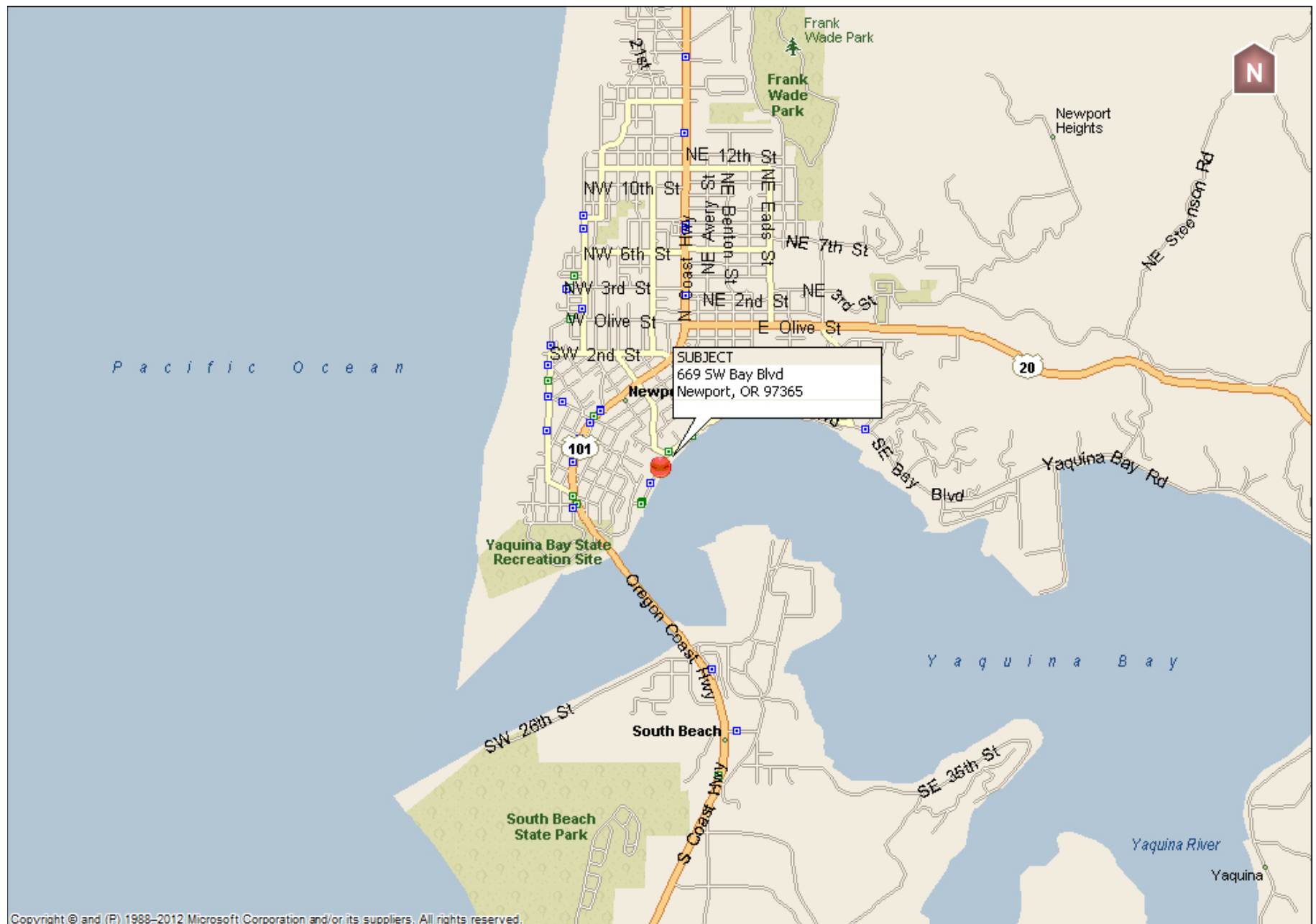


## REGIONAL MAP





## NEIGHBORHOOD MAP

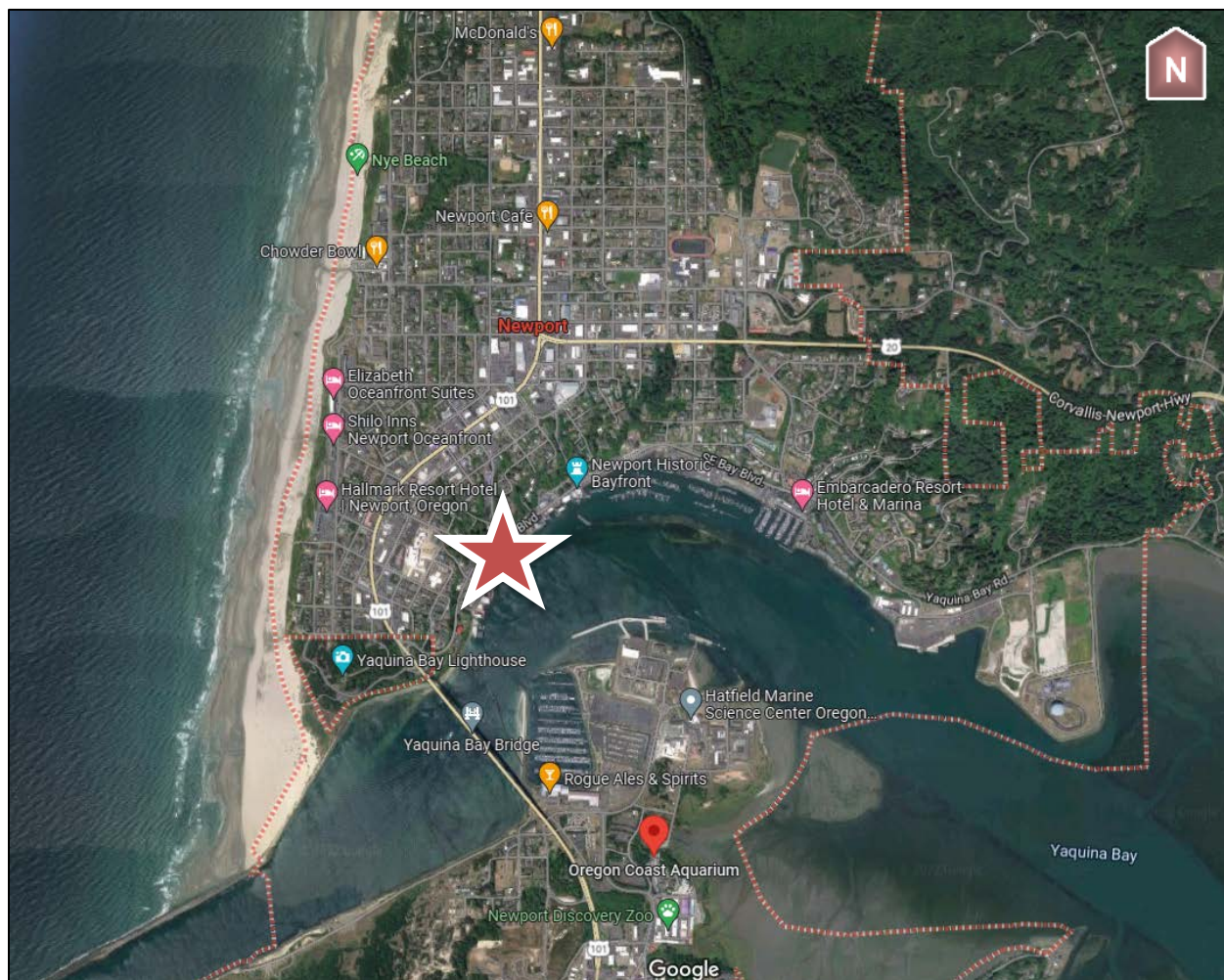


## **DESCRIPTION**

### **REGIONAL DESCRIPTION**

Please see the Addenda for a detailed description of the Central Coast Region.

### **NEIGHBORHOOD DESCRIPTION**



A neighborhood is defined as a geographic area characterized by a similarity of users and/or uses within which any change has a direct and immediate effect on the subject and its value or marketability. The subject is located in **Newport's Bayfront** on Yaquina Bay.

The area is served by all public utilities, including water, sewer, electricity, natural gas, telephone, and cable television. Police and fire protection are by the City of Newport.

Newport is heavily reliant on its tourism and seafood industries. The **Bayfront area**, which is east of Highway 101, consists of novelty retail shops and restaurants that cater to travelers as well as seafood processing facilities. The Hatfield Marine Science Center and the Oregon Coast Aquarium are major tourist attractions. Both are located south of the subject's immediate neighborhood, across the Yaquina Bay Bridge in South Beach. The Seafood and Wine Festival, which is held annually and sponsored by the City of Newport Chamber of Commerce, celebrated its 41st anniversary in 2019. This event takes place in February and is located just north of the Oregon Coast Aquarium, on OSU Drive.

## **DESCRIPTION (continued)**

Generally, Newport is situated along the length of the Highway 101 corridor, from NE 73<sup>rd</sup> Street on the north to SE 116<sup>th</sup> Street on the south. Newport's west boundary is the Pacific Ocean. East of Highway 101, it generally dissolves into residential acreage and timber land.

Highway 101 serves as the primary north/south transportation route through the city. It plays a major role in the local neighborhood due to the majority of commercial uses and city services aligned along it. Commercial development has grown up along both sides of the highway, including a wide variety of establishments catering to both travelers and local residents. The highway separates Newport into a tourist oriented west half and residential/heavy commercial uses on the east half.

The City of Newport has worked in conjunction with ODOT to update its **Transportation System Plan (TSP)** for 2022 and added several new goals to the prior TSP completed in 2012. One of the key opportunities noted in the TSP update is improving circulation along Oregon Coast Highway. Three circulation options were considered and evaluated based on their impact to the goals of the TSP and the objectives of the Northside Urban Renewal Area for the commercial core to improve traffic flow and reduce congestion.

The option that scored highest under the aforementioned criterion was converting the existing highway into a two-way couplet that splits between Abbey Street from the south and Angle Street to the north, as depicted in the image below. The location of the subject site is depicted by the green star, showing its proximity to the potential change in circulation of the highway.

Note that the other two circulation options, which include maintaining the existing two-way highway with streetscape improvements or a longer couplet option that runs between Angle Street and Bayley Street further south, have not been eliminated from further consideration. City Council and the Planning Commission are scheduled to review the new TSP between November 21 and November 28, 2022. The entire City of Newport TSP can be reviewed at the following link: [https://sites.jla.us.com/files/newport-tsp/1657732384\\_newport-tsp-adoptiondraft-7-7-22-full-document.pdf?2336784eb9](https://sites.jla.us.com/files/newport-tsp/1657732384_newport-tsp-adoptiondraft-7-7-22-full-document.pdf?2336784eb9)



**DESCRIPTION (continued)**

**FIGURE 37: US 101 SHORT COUPLET CIRCULATION OPTION**



The primary east/west arterial is Highway 20 (Olive Street), which connects Newport to Corvallis, heading east. Two circulation options were considered for Highway 20 as part of the updated TSP: the first option maintains the existing alignment but includes several streetscape upgrades to enhance bicycle and pedestrian environment, while the second option consists of a couplet between NE Harney Street/SE Moore Drive and Highway 101. Through the quantitative/qualitative analysis and public outreach evaluation process, maintaining two-way traffic on the existing highway emerged as the preferred alternative.

Within the city limits, Highway 20 becomes Olive Street and is primarily lined with commercial uses.

Oregon Coast Community College relocated to SE Harborton Street, east of Mike Miller Park. The adjacent Wilder Village is a multi-phase mixed-use development. The green/sustainable community consists of residences, townhomes, cottages, and future phases will include apartments and office/retail uses. At the corner of Olive Street and Highway 101, a former auto dealership was demolished to make way for a new Walgreens that was completed in 2014.

The **Oregon Coast Aquarium** opened in 1992 and is located on 23 AC adjacent to Yaquina Bay in the South Beach neighborhood of Newport. It is visited by nearly 500,000 tourists annually.



## **DESCRIPTION (continued)**

The Oregon Museum of Science and Industry (OMSI) opened the **Coastal Discovery Center at Camp Gray** in 2016, an educational camp located on nearly 20 acres. The facility has three classrooms, over 150 bunk beds, and serves more than 5,000 people annually with year-round programming.

Oregon State University's **Hatfield Marine Science Center (HSMC)** is located on 49 acres leased from the Port. The research facility has approximately 75-100 students, 12-14 faculty, and is visited by more the 150,000 tourists annually.

In 2015, OSU announced a plan to construct a \$50+ million, three-story, 72,000 SF Marine Studies Building.



According to a March 13, 2018 article published on the OSU website (<https://today.oregonstate.edu/news/osu-hold-ceremony-march-15-launch-construction-new-marine-studies-building>), the Gladys Valley Marine Studies Building is one of the first "vertical evacuation" sites for tsunamis in the United States. The facility includes a large academic and research core, connected to a separate community space, auditorium, and innovation laboratory. The roof is 47' high and has been designed to serve as an evacuation area for up to 900 people. Construction began in March 2018 and was completed in 2020.

The Newport Student Housing report (prepared for Newport by EcoNorthwest in November 2014) states that the Hatfield expansion would create demand in Newport for an additional 165 to 260 dwelling units. The increase in the student population was expected to place additional strain on Newport's low vacancy housing market.

The **Pacific Fleet of NOAA (National Oceanic and Atmospheric Administration)** relocated from Washington to the South Beach neighborhood of Newport. Construction began on the facility in January 2010 and was completed in mid-2011. The total cost of the project was estimated at \$38 million, of which \$19.5 million was provided by State of Oregon Lottery funds. NOAA is leasing the site from the Port of Newport under a 20-year lease at \$2.4 million per year.

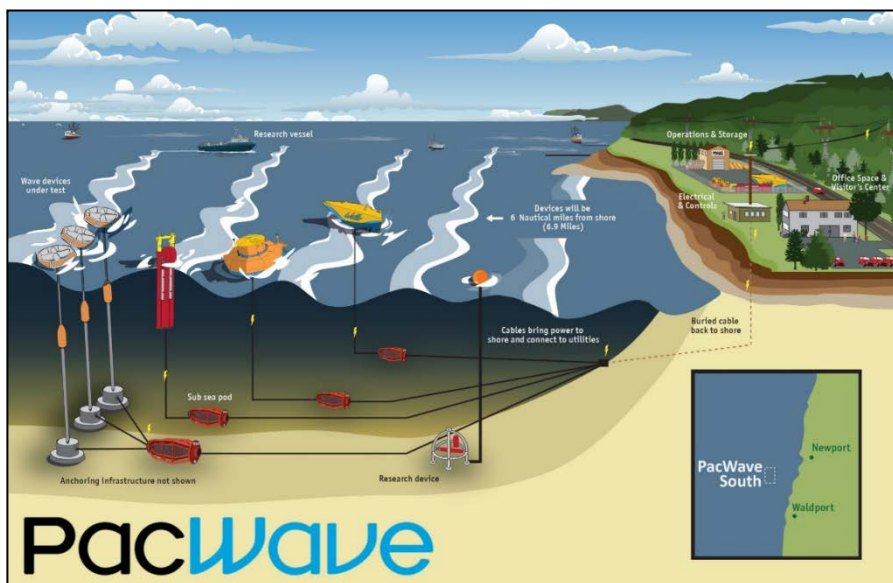
## **DESCRIPTION (continued)**

In 2015, voters passed Ballot Measure 21-163, which issued a 20-year bond for up to \$57 million for the construction of a new hospital, built on the same site as the existing **Samaritan Pacific Communities Hospital**, a 25-bed critical access hospital located at the corner of SW 9th Street and SW Abbey Street. The project included three different construction phases, all of which have now been completed. Phase one began in early summer 2017 with the addition of a new 120,000 SF building.



The existing hospital building remained open during initial phases of construction and was renovated. Samaritan Health, which operates the hospital, contributed another \$11 million toward the project. Phase two, which included complete renovation of an existing two-story building originally constructed in 1988, finished in late February 2020. The final phase included demolishing the original structure built in 1951 with construction of expanded parking along the front of the hospital. Construction for the final phase was completed in early 2021.

In February 2021, Oregon State University announced a federal lease has been issued that will allow an OSU-led project to operate the nation's first offshore wave energy testing facility in federal waters. The estimated \$80 million facility will be located 6.9 miles off-shore southwest of Newport. The project is known as PacWave South and it will include both off-and on-shore components. The illustration at right, courtesy of OSU, depicts an artist's rendering of the project.



According to OSU:

*"PacWave South will be the first pre-permitted, full-scale, utility grid-connected wave energy test site in the United States. It is designed to allow wave energy developers the opportunity to test different technologies for harnessing the energy of ocean waves...Current timelines suggest construction could begin this summer, and the facility should be operational by 2023."*

## **DESCRIPTION (continued)**

New residential development includes the **Wyndhaven Ridge Apartments** at 1345 NE Lakewood Drive. The first phase was completed in July 2021 with additional phases to follow. The project required the developer to apply for a building height variance, which was approved by City of Newport's Planning Commission. The project will total 78 new market-rate apartment units.

**Whaler Hotel**, located at 155 SW Elizabeth Street, offers immediate beach access and is undergoing a 25-unit expansion based on a conditional use permit and design review approval granted in May of 2021.

The future for residential and commercial property in Newport is strong over the long term. Buildable properties within the city limits have become scarce and the availability of adequate utilities to service new developments is questionable. This has raised the demand for both improved and unimproved properties.

Overall, the Pacific Ocean and Yaquina Bay, ocean related commerce, including the fishing and tourism industries as well as oceanic research and education, has resulted in sustained market conditions and new development in past years. In the long-term, the economic security of the area is anticipated to continue.

### **SITE DESCRIPTION**

#### **Hazardous Waste/Asbestos**

Upon physical inspection of the site, no hazardous material was evident. I have made no independent investigation regarding this issue. This appraisal assumes the site is free of all hazardous waste and toxic materials. Please refer to the Assumptions and Limiting Conditions section regarding this issue.

#### **Current Use**

The site is improved with the **Abbey Street Pier Building**, a two-story retail building that is demised into three rentable units. The building was constructed in 1979, according to Lincoln County Assessor's records.

#### **Site Size**

Per the scope of work, the subject is considered "as if" partitioned from the existing site, which includes a public pier, with only the supporting building site included.

Based on the appraiser's approximate measurements taken during the 2019 inspection, cross referenced with Google Earth aerial imagery, the subject's total supporting site area, including the area beneath the second floor walkways but excluding the remainder of the public pier, is **3,271 SF**.

The subject site includes an owned area (fronting Bay Boulevard) and a leased area (the area beneath the pier in Yaquina Bay, owned by the State of Oregon and leased from the Department of State Lands).

## **DESCRIPTION (continued)**

### **Site Size (continued)**

**Owned site area:** According to measurements taken from the subject's plat map, the larger parcel leased fee site size is 0.03 AC. This includes the area used as the public pier. Per the plat map, the larger site has a width of 80'. More specific site measurements were not available.

A site area of 0.03 AC suggests that, prior to rounding, the actual square footage may range from 0.025 AC to 0.035 AC, or 1,089 SF to 1,525 SF. Based on the larger site size width of 80', this suggests a site depth of  $(1,089 \text{ SF} / 80')$  13.6' to  $(1,525 \text{ SF} / 80')$  19.1'.

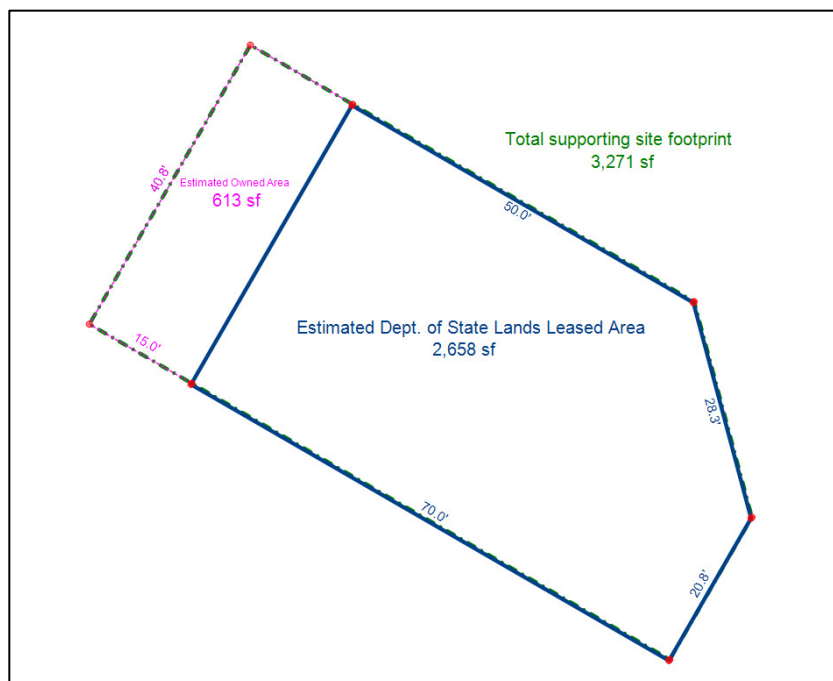
**A rounded depth of 15'** is assumed for the larger leased fee parcel.

Next, the subject's building width, including the exterior second floor walkway, was considered. It totals **40'10", or 40.83 feet**. Multiplying this total by the concluded rounded lot depth of **15'** results in an **owned supporting site area, in leased fee, for the subject building improvement**, of  $(40.83' \times 15')$  **613 SF**. The subject's site ownership extends to the high water line, determined by the Oregon Department of State Lands and is subject to change due to natural shifts in water patterns. Further research is advised to determine the current actual water line and survey the subject's lot depth and width for the supporting site.

**Leased site area:** The subject's total supporting site area is estimated to be **3,271 SF**. Subtracting the previously calculated owned site area from the total site area results in a leased site area of **(3,271 SF – 613 SF) 2,658 SF**. The appraiser's measurements for the total site area and leased/owned components are shown below. Note the drawing is approximate.

## DESCRIPTION (continued)

### Site Size (continued)



**Department of State Lands Lease** – The current lease term commenced in 2018 and carries an **18-year term**; the lease rate is determined by a formula from the Department of State Lands on a per SF basis with annual 3% escalations. Because the actual lease includes the pier area, which is excluded from this report, the appraiser's estimated leased area will be used herein. The 2022 lease rate is equal to \$2,594.10. Based on the total leased area of 3,750 SF, this equates to **\$0.6918 per SF**. Based on the subject supporting site's calculated leased area (2,658 SF), this results in an annual lease expense of **\$1,839**.

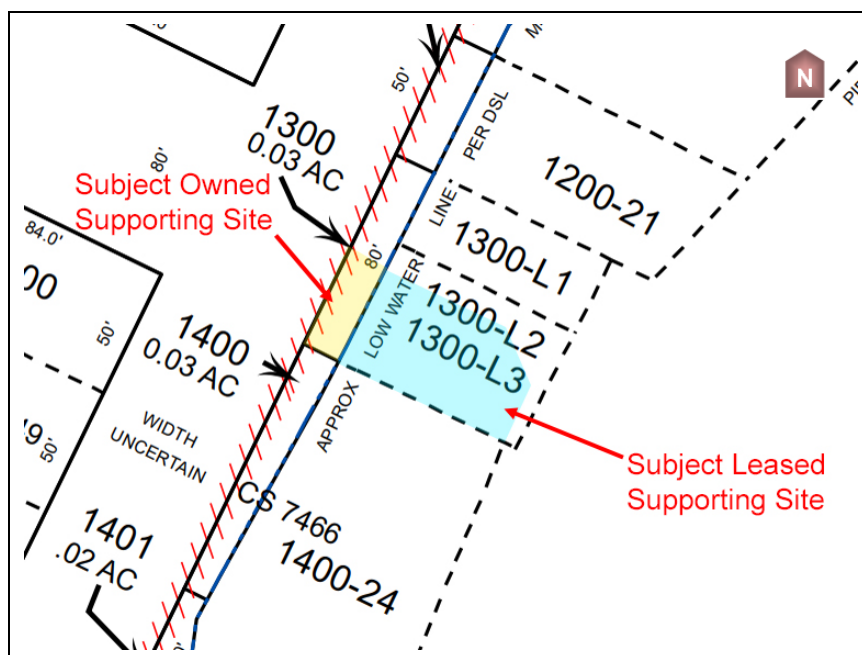
State Lands Lease		Per SF
Lease Rate	2022 lease rate	\$0.6918
x leased area - SUPPORTING SITE ONLY		2,658
2022 Department of State Lands Rent - Supporting Site Only		<b>\$1,839</b>

### Shape

Irregular.

**DESCRIPTION (continued)**

## Plat Map



## Map and Tax Lots

Portions of 111108CA 01300 (owned), 1300-L2, & 1300-L3 (leased).

## Topography

Access to the site is level at street grade along its west boundary, then submerged under water along Yaquina Bay; the constructed pier results in a flat area for building development.

### Proximate Properties--

## North

Public pier, with Mo's Seafood & Chowder Annex and fish processing facility beyond.

**East**

Yaquina Bay.

## South

Pacific Seafood Plant and other commercial services along SW Bay Blvd. beyond.

## West

SW Bay Boulevard, with public parking lot and restrooms beyond.

## Utilities

Public utilities, including water, sewer, garbage and electricity are available to the subject property.

## Street Improvements

**SW Bay Boulevard** is an asphalt paved street improved with curbs, gutters, streetlights and sidewalks. It is a two-way, two-lane street running parallel to the bay front. Southwest and northwest of the subject, there is angled street parking along the west side of the street.



## **DESCRIPTION (continued)**

### **Exposure**

**Good**, the supporting site benefits from an estimated 40' 10" of frontage along SW Bay Boulevard. The location is in-line, without corner exposure. However, it is near the heart of the Bay Boulevard retail corridor, which attracts significant pedestrian and car traffic from tourists.

### **Accessibility**

**Average**; the site is accessible to pedestrians from Bay Boulevard; there is no on-site parking or curb cut access.

### **Easements and Encumbrances**

A preliminary title report prepared by Western Title & Escrow and dated May 31, 2019 was provided for review. Encumbrances and easements include:

- Lessees' unpaid property taxes (discussed previously);
- The rights of public and governmental bodies for fishing, navigation, and commerce in and to any portion of the subject land lying below the high water line of the Yaquina Bay;
- The right, title, and interest of the State of Oregon in and to any portion lying below the high water line of Yaquina Bay.

Upon reviewing county plat maps, there did not appear to be any other adverse easements, encroachments, or encumbrances relevant to the subject property. If questions arise regarding easements, encroachments, or encumbrances, further research is advised.

### **Zoning and Comprehensive Plan**



## **DESCRIPTION (continued)**

The site is zoned **W-2 (Water Related)** by the City of Newport. Per Section 14.03.040 of the Development Code, this zone is intended "to provide areas within and adjacent to the Yaquina Bay Shorelands for water-dependent, water-related, and other uses that are compatible or in conjunction with water-dependent and water-related uses." Allowed uses include:

- Boat rentals, sport fishing, and charter boat services;
- Docks, wharves, and piers;
- Marinas, boat construction, repair and service, and boat fuel facilities;
- Marine research and education facilities;
- Seafood markets;
- Bait, tackle, and sporting goods stores specializing in water-related merchandise.

Further, all uses permitted in the C-2 district, including retail, are conditional uses in this zone. **The subject's retail uses are permitted as a conditional use.**

There are no minimum lot area, width, or setback requirements. The maximum building height is 35'.

Per Section 14.14.040, off-street parking for retail uses must be provided at the rate of one space per 300 SF, or (4,133 SF / 300 SF) 14 spaces. The subject has no on-site parking. However, the parking requirement may be met through off-site parking located within 200 feet of the subject in a "satellite" lot; the public parking lot across the street qualifies, and results in the zone parking requirements being met.

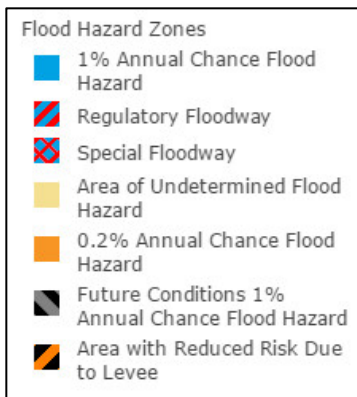
The complete zoning code can be located at the following City of Newport website address:

<https://www.newportoregon.gov/dept/adm/documents/newportmunicipalcode.pdf>

### **Zoning and Comprehensive Plan (continued)**

## **DESCRIPTION (continued)**

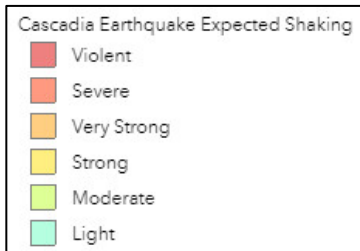
### **Floodplain**



According to the Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), Flood Insurance Rate Map (FIRM), Community-Panel No. 41041C0368E, dated October 18, 2019, the subject site lies in Zone AE, an area subject to inundation by the 1% annual chance flood hazard, with a base flood elevation of 13 feet. However; it is assumed the subject's pier is above the 13 feet flood minimum. The property representative did not report that the subject is required to carry flood insurance; further research is advised to confirm the improvements are outside of the flood zone.

## **DESCRIPTION (continued)**

### **Seismic Hazard**



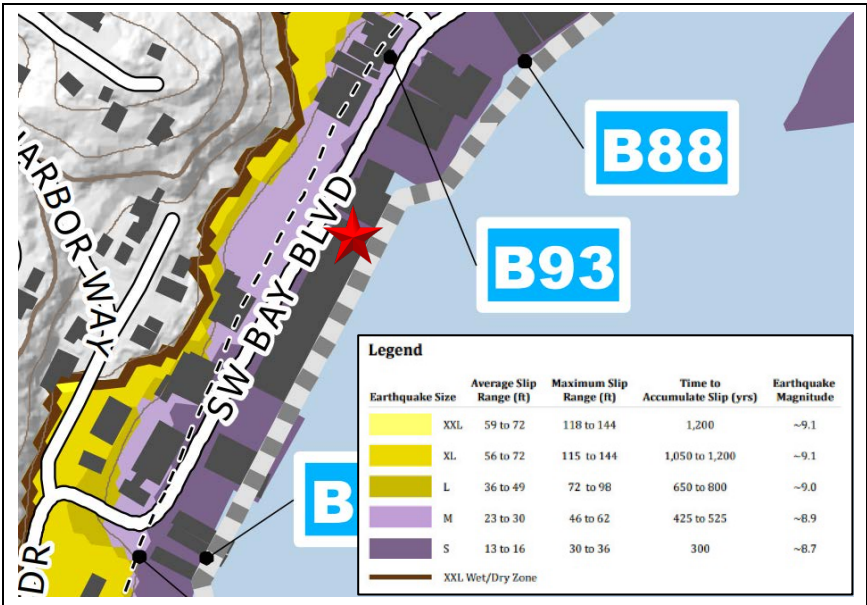
According to the Oregon Department of Geology and Mineral Industries (DOGAMI), the data show the amount of shaking expected if a magnitude 9.0 Cascadia Subduction Zone (CSZ) earthquake occurs. A CSZ earthquake will create a local tsunami that will inundate the Oregon coast.

The subject site will experience **severe** shaking in the event of seismic activity. This data shows the strongest shaking expected to occur during an earthquake in a 500-year period. The stronger the amount of shaking, the more structural damage will occur.

This seismic rating is typical for the immediate area and larger region.

**DESCRIPTION (continued)**

**Tsunami Hazard**



According to the DOGAMI Tsunami Inundation Map (TIM) above, the subject lies in an area subject to inundation by a “Small” tsunami from an 8.7 magnitude earthquake.

The color shading in the map above corresponds to five earthquake scenarios (S, M, L, XL, and XXL), and the areas expected to be inundated by the resultant tsunamis. The inundation maps incorporate the most recent tsunami science available, including recent publications by colleagues studying the Cascadia Subduction Zone, updated computer simulation models using high-resolution LIDAR topographic data, and knowledge gained from recent earthquakes and tsunamis.

**Soils**

Soils are assumed to be stable, supporting the subject and neighborhood buildings.

**Site Rating**

Overall, noting the W-2 zoning designation and bayfront location with Yaquina Bay views and frontage, the site has a good rating for a water-dependent commercial use. The shape of the site is conducive to development as well, though the improvement must be constructed on a pier due to the sloping topography into the bay.



## **DESCRIPTION (continued)**

### **DESCRIPTION OF IMPROVEMENTS**



(Photo taken November 2, 2022, #13200-2)

#### **Introduction**

The improvement description is primarily based upon a physical inspection of the property, an interview with the property representative, and assessor's records.

#### **Hazardous Materials/Asbestos**

This appraisal assumes that the structure is free of all hazardous waste and toxic materials, including (but not limited to) asbestos. I have made no independent investigation regarding this issue. Please refer to the Assumptions and Limiting Conditions section regarding this issue.

#### **Current Use**

The subject is the **Abbey Street Pier Building**, a two-story retail building constructed in 1979 as an urban revitalization project funded by the City of Newport. It is divided into three retail units, one of which is leased on a month-to-month basis. It is located adjacent to a public pier and fronts Yaquina Bay.



## **DESCRIPTION (continued)**

### **General Description**

The first floor is demised into two retail spaces.

**Latta's of Oregon, Inc., D.B.A. the Art Glass Factory**, leases the first floor street-fronting unit; it includes an open floor/display area, and tenant improvements include glass ovens, with a brick wall behind them. A break area in the corner includes a utility sink and counter.

There is also a single restroom in the space; this restroom is shared with the east-adjacent tenant, with the east-adjacent tenant accessing the space through a sliding door. The current rental rate is equal to \$1,223/month (\$1.10/SF/mo.).

The east, bay-facing space is now vacant and was most recently operating as an ice cream parlor. This space includes an open display/eating area, with counter and preparation space with sink. As noted, this space shares the restroom in the west-adjacent space. The tenant is no longer operating their business out of this space and was reportedly operating month-to-month prior to closing their business. The last rent payment received from this tenant was on August 16, 2022 for \$600 (\$1.00/SF/mo.).

Exterior access along the north elevation leads to three single restrooms, only one of which is functional. There is also a mechanical room, which includes componentry for the pier's fire suppression system. Per the client representative, the City of Newport would need to continue to retain access to this space subsequent to sale for continued maintenance of the public pier. This analysis assumes the City will continue to have access to the mechanical room at no charge, and the mechanical space is therefore not included in the net rentable area.

Access to the second floor is via two exterior stairwells, with an upper exterior deck running from the east stairwell to the north stairwell. The second floor space is vacant and was formerly used as an art gallery. The space includes an open retail floor, with one single restroom and storage spaces. This space also benefits from panoramic views of Yaquina Bay and vaulted ceilings with exposed wood beams and wood paneling. Several signs of deferred maintenance including water damage were observed in this space. It would require an investment toward interior renovations to be returned to rentable condition.

## DESCRIPTION (continued)

### Size

According to building measurements taken at the time of inspection, the subject's gross building area is shown below:

	First Floor (SF)	Second Floor (SF)	Total (SF)	% of NRA
Ice cream parlor	595	0	595	15.02%
Glass Shop	1,097	0	1,097	27.70%
Former Art Gallery (Vacant)	0	2,249	2,249	56.78%
<b>Usable Area</b>	<b>1,692</b>	<b>2,249</b>	<b>3,941</b>	<b>99.50%</b>
Common Area Restrooms	20	0	20	0.50%
<b>Net Rentable Area</b>	<b>1,712</b>		<b>3,961</b>	<b>100.00%</b>
Exterior Restrooms	110	0	110	2.78%
Mechanical Space	62	0	62	1.57%
<b>Gross Building Area</b>	<b>1,884</b>	<b>0</b>	<b>4,133</b>	<b>104.35%</b>

Gross building area is **4,133 SF**. This includes 62 SF of mechanical space, which houses the fire sprinkler room (which the City of Newport plans to retain access to and is therefore not considered rentable area).

**Net rentable area** is **3,961 SF**. Note: the lease documents do not have square footages for the spaces. Therefore, suite areas are determined from the appraiser's measurements.

There is a 20 SF common area restroom on the first floor, which is shared by the ice cream parlor and glass shop. Therefore, this space must be allocated proportionally between the first floor tenants:

Tenant Pro Rata Share					
Commercial Space	USF	% of First Floor USF	x Common Area (SF)	Share of Comm. Area	SF NRA
Ice Cream Parlor	595	35.17%	20	7	602
Glass Shop	1,097	64.83%	20	13	1,110
<b>Total Tenant Share</b>	<b>1,692</b>	<b>100.00%</b>			<b>1,712</b>

The subject also includes three exterior-accessed common area restrooms. These restrooms were formerly used as public restrooms, but, per the property representatives, they became too difficult to maintain and fostered illicit activities. The appraisers considered whether tenants and landlords would include the shared bathroom area in their common area calculation for net rentable area. However, noting that the existing tenants all have access to single restrooms, and also considering there is a public restroom to the west across the street at the public parking lot, it is concluded these restrooms would not be desirable to tenants and would not be counted in the tenants' rentable area. The three single restrooms' building area is considered with the mechanical space.

## **DESCRIPTION (continued)**

### **Site Coverage**

The site coverage is calculated below:

SITE COVERAGE	
First Floor Footprint	1,884
Site Area	3,271
<b>Site Coverage Ratio</b>	<b>57.60%</b>

This indicates a site coverage ratio of **57.60%**, which is bracketed by the sales used in the Sales Comparison Approach.

Site Coverage	
2	90.16%
<b>S</b>	<b>57.60%</b>
5	41.64%
1	33.72%
4	20.51%
6	15.42%
3	14.25%

### **Foundation**

Wood pier.

### **Exterior Walls**

Combination of board and batten and lap wood siding; per the property representatives, the west wall was replaced at a cost of \$80,000 between 2016 and 2018. At the time of inspection, damage was observed to the siding that had not been replaced, specifically along the north and east elevations.

It is noted that wear and tear, particularly to the exterior, is common in Oregon coastal buildings, specifically noting the harsh storms, salt spray, and other inclement weather.

### **Exterior Pedestrian Doors**

The first floor retail spaces have double storefront glass doors in aluminum frames; the second floor retail space is accessed via a single storefront glass door with aluminum frame. The mechanical and exterior-accessed single restrooms all have metal doors in metal frames.

### **Roof Structure**

Layered gable.

### **Roof Cover**

Composite asphalt shingle; per the property representative, the roof was replaced in 2015/2016 at an estimated cost of \$35,000.

### **Insulation**

Assumed to be to code.

## **DESCRIPTION (continued)**

<b>Heating and Air Conditioning</b>	Wall heaters; the fused glass tenant space has kilns which are the tenant's property.
<b>Floor Coverings</b>	<p>Floor coverings include:</p> <ul style="list-style-type: none"><li>• Tile with tile base and walls in the exterior-accessed single restrooms;</li><li>• Sheet vinyl with a wood base in the ice cream parlor;</li><li>• Vinyl tiles in the glass shop;</li><li>• Oiled wood floors in the art gallery.</li></ul>
<b>Interior Walls</b>	Interior walls are generally textured and painted drywall. There are ceramic bricks around the kilns in the glass shop, and the exterior common area single restrooms have floor-to-ceiling ceramic tiles.
<b>Interior Doors</b>	Wood core.
<b>Ceiling</b>	<p><b>First Floor:</b> painted and textured drywall.</p> <p><b>Second Floor:</b> vaulted, with stained wood planks and wood beams.</p>
<b>Interior Lighting</b>	Lighting is generally fluorescent, with a combination of can, box, and ceiling-mounted fixtures. Per the property representative, the exterior lights were replaced with LED within the last five to six years.
<b>Plumbing</b>	<p>Plumbing includes:</p> <ul style="list-style-type: none"><li>• Three former public restrooms, each equipped with one toilet and one sink, which are accessed from the building exterior (only one is operational);</li><li>• One single restroom on the first floor, located in the glass shop tenant suite and shared with the ice cream parlor tenant suite, and one single restroom on the second floor: both are improved with one toilet and one sink;</li><li>• The first floor tenant suites also both have hand-washing sinks in their main floor areas; the ice cream parlor also has a metal commercial sink.</li></ul>
<b>Elevator</b>	None. The subject's second floor is accessed via two exterior stairwells.

## **DESCRIPTION (continued)**

<b>Life Safety</b>	The subject's building improvement is not equipped with fire sprinkler protection. However, there is a sprinkler system under the larger pier. About 160' of this system was repaired in the last year.
<b>Condition</b>	<b>Fair to average.</b> Finishes are dated and would benefit from updating; some deferred maintenance (as is typical with coastal buildings) was noted to the exterior, as well as water damage to a portion of second floor ceiling. The subject reflects generally similar condition and quality to the majority of retail buildings along Bay Boulevard.
<b>Basement</b>	None.
<b>Building Age</b>	
<b>Actual Age</b>	The subject was constructed in 1979, according to county records. The actual age of the building is 43 years.
<b>Effective Age</b>	The effective age is 20 years based on visual observation.
<b>Total Economic Life</b>	45 years per <i>Marshall Valuation Service</i> .
<b>Remaining Economic Life</b>	25 years.
<b>Site Improvements and Landscaping</b>	The site is improved with a wood pier. There is no landscaping or other notable site improvements. The adjacent public pier area has landscaped planters and sitting areas and is popular as a fishing and relaxing space.
<b>Parking</b>	None on-site, as is typical with other buildings along the Bayfront. However, there is a public parking lot immediately west of the subject, with additional angled street parking along the west edge of Bay Boulevard.

The preceding information is a basic description of the subject improvements. This information is utilized in the valuation of the property. Reliance has been placed upon information provided by the property representative, the on-site inspection and county records. It is assumed there are no hidden defects, and that all structural components are functional and operational, unless otherwise noted. If questions arise regarding the integrity of the structure or their operational components, it may be necessary to consult additional professional resources.

**SUBJECT PHOTOGRAPHS**  
**NOVEMBER 2, 2022**



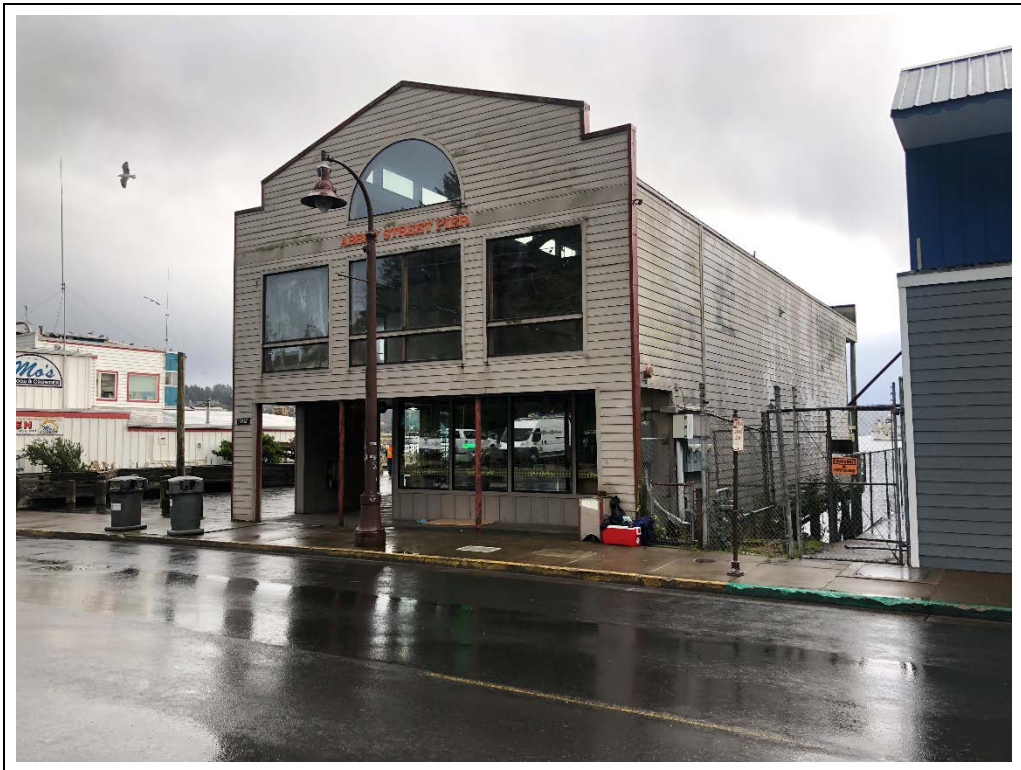
1. View southeast of north and west elevations. (13200-2)



2. View east of west elevation. (13200-4)



**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**



3. View northeast of south and west elevations. (13200-5)



4. View southwest from public pier of a portion of subject's north elevation. (13200-47)



**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**



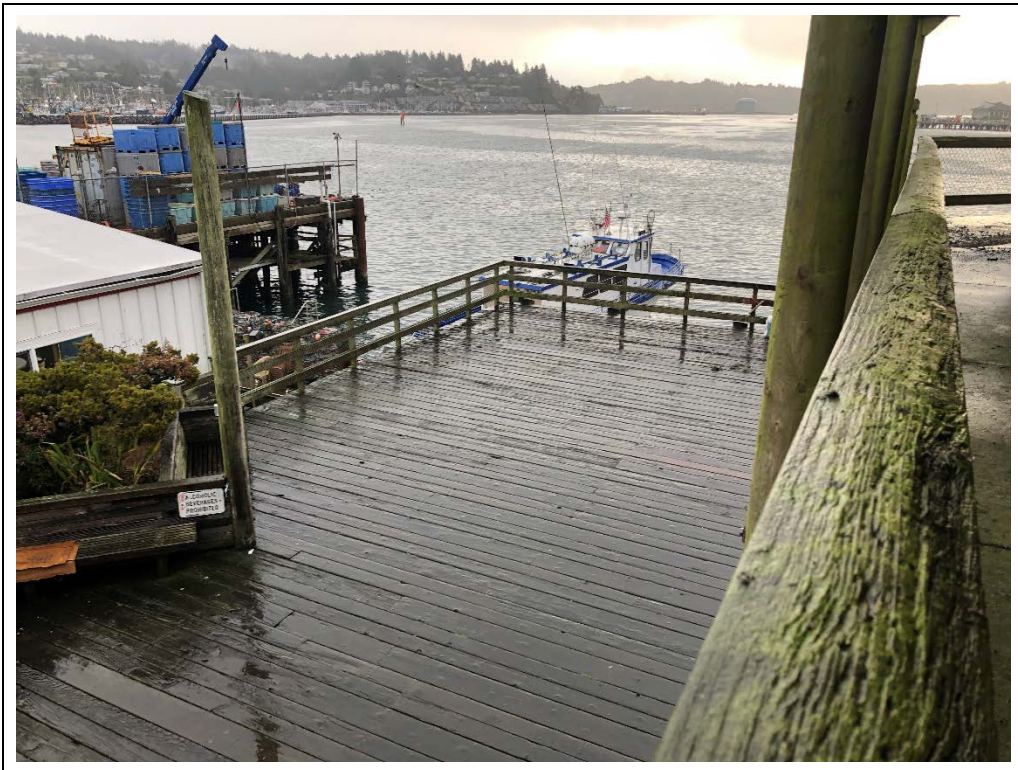
5. View south from public pier of the remaining area of north and west elevations. (13200-48)



6. View west across public pier; subject at left. (13200-46)



**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**



7. View northeast of public pier from second floor walkway/deck area, Yaquina Bay beyond. (13200-34)



8. View east across Yaquina Bay from second floor walkway/deck area. (13200-14)

**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**



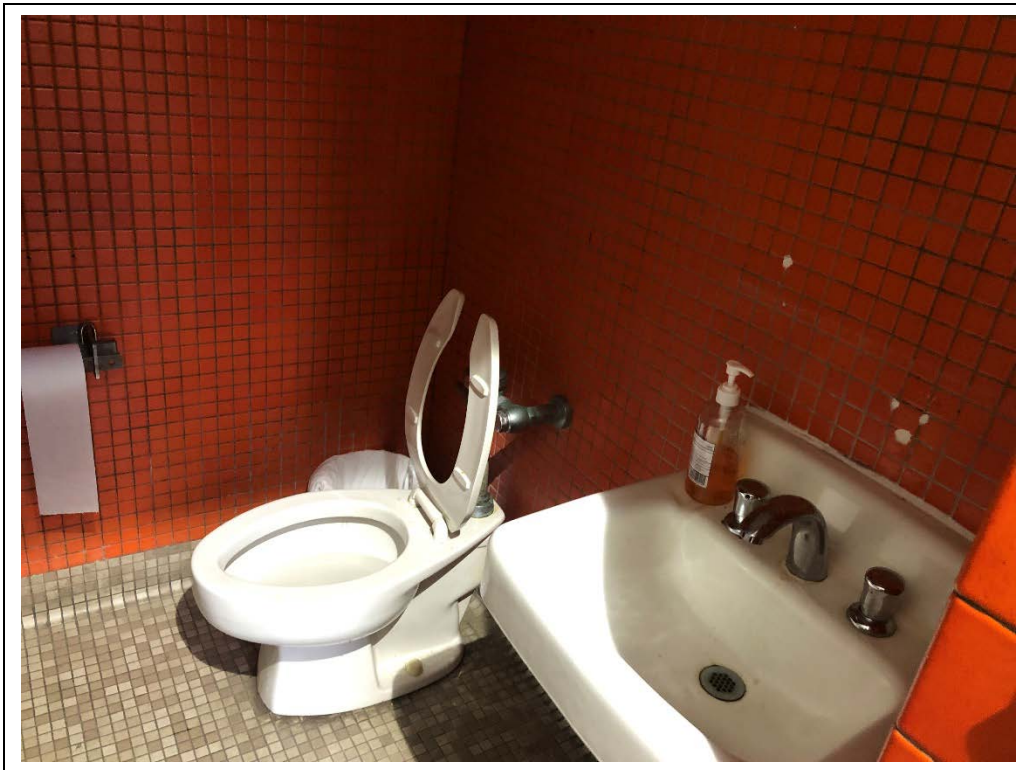
9. Street scene: view south along SW Bay Boulevard; subject at left.  
(13200-1)



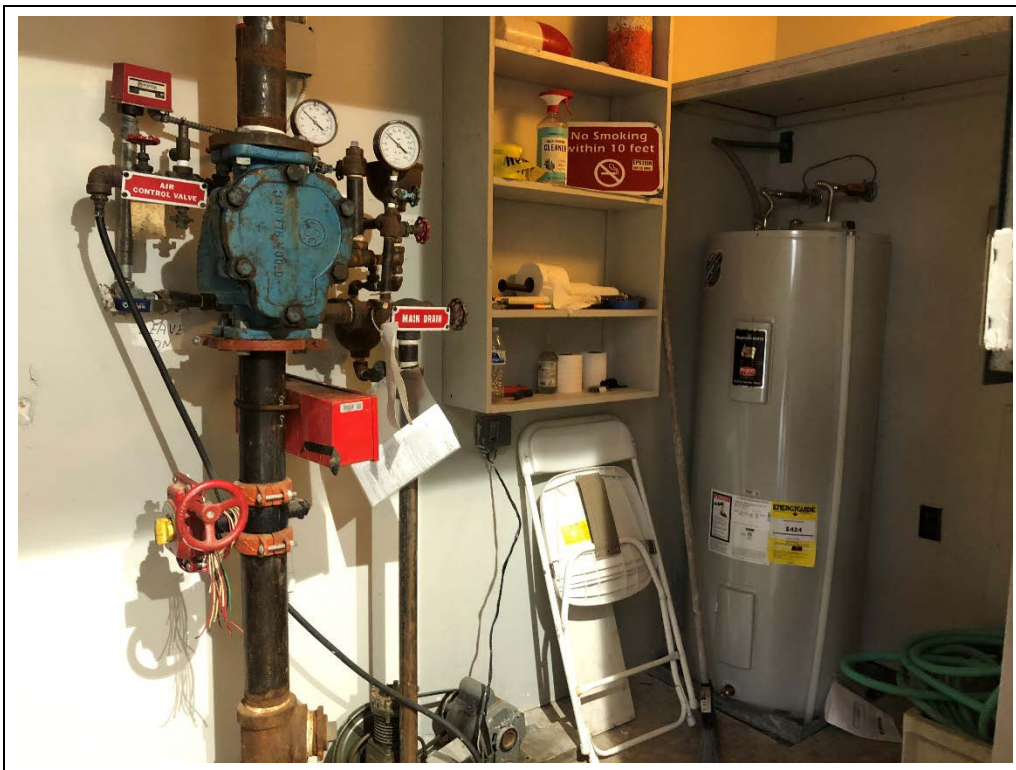
10. Street scene: view north along SW Bay Boulevard; subject at right.  
(13200-6)



**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**

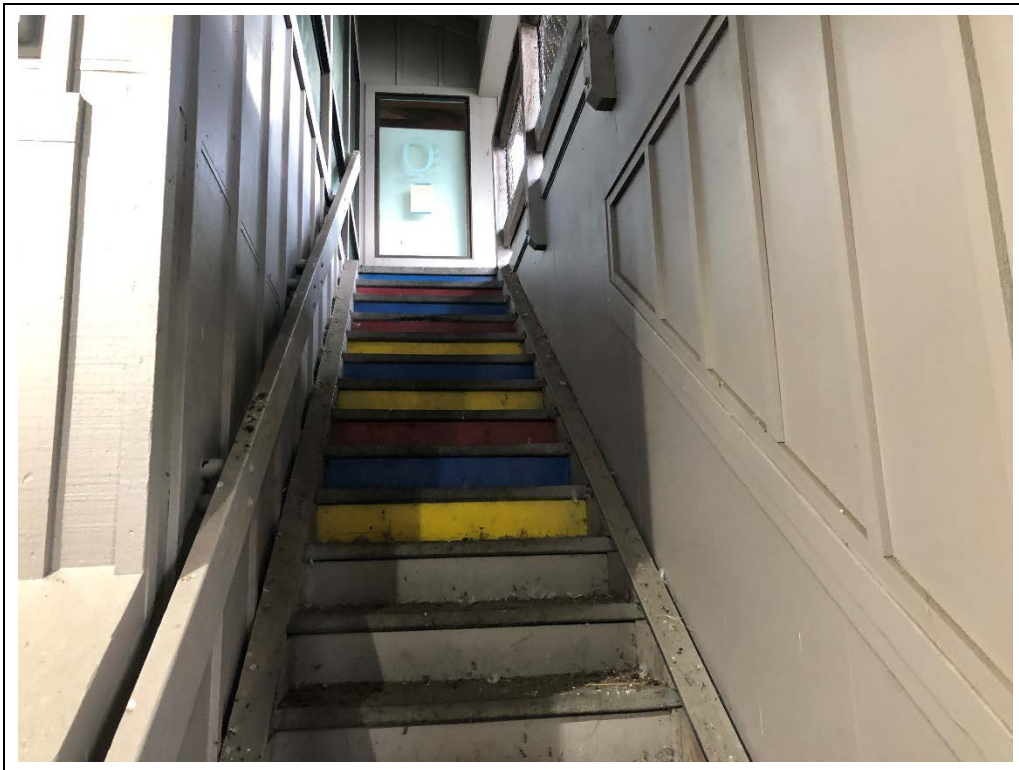


11. Exterior restroom. (13200-10)



12. Mechanical room. (13200-12)

**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**



13. Exterior stairwell along the north elevation providing access to second floor space. (13200-11)



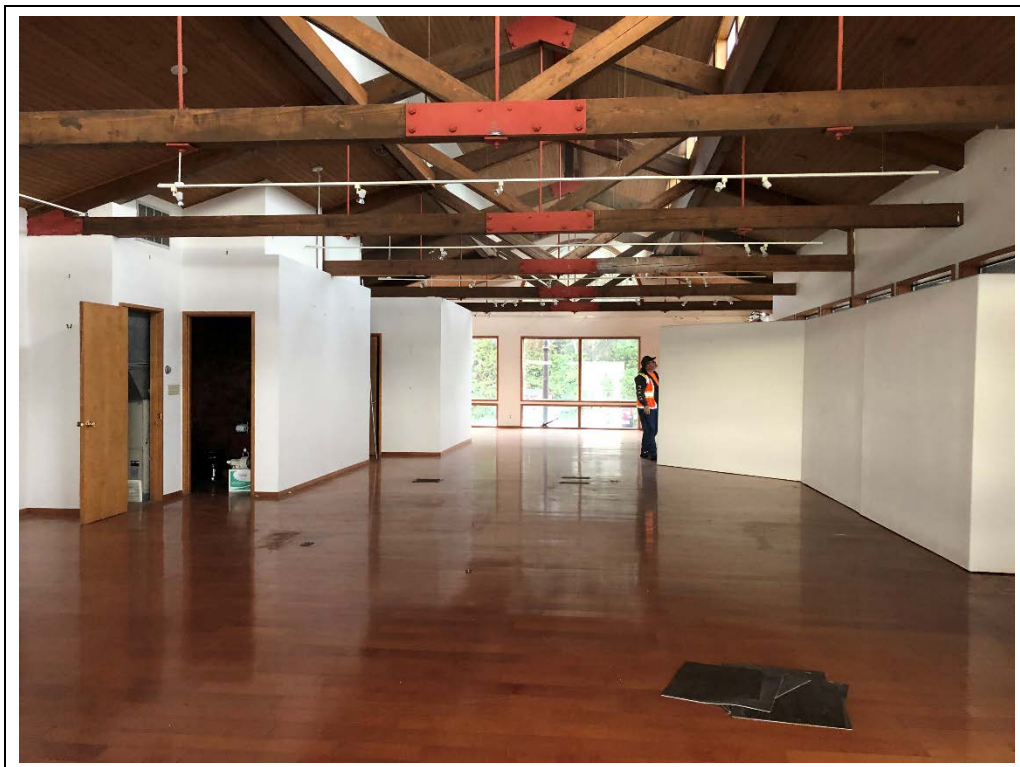
14. Second floor suite access. (13200-16)



**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**

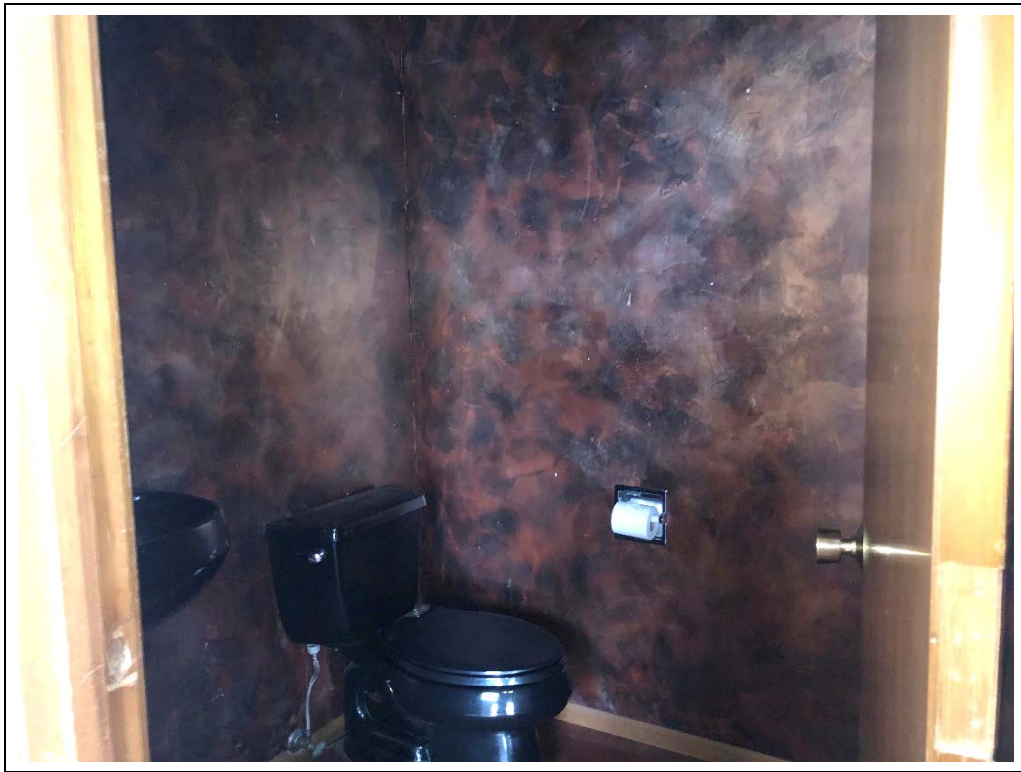


15. Interior view of vacant second floor space. (13200-19)



16. Alternate view. (13200-29)

**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**



17. Private restroom. (13200-24)



18. Water damage observed on wall/ceiling. (13200-25)

**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**



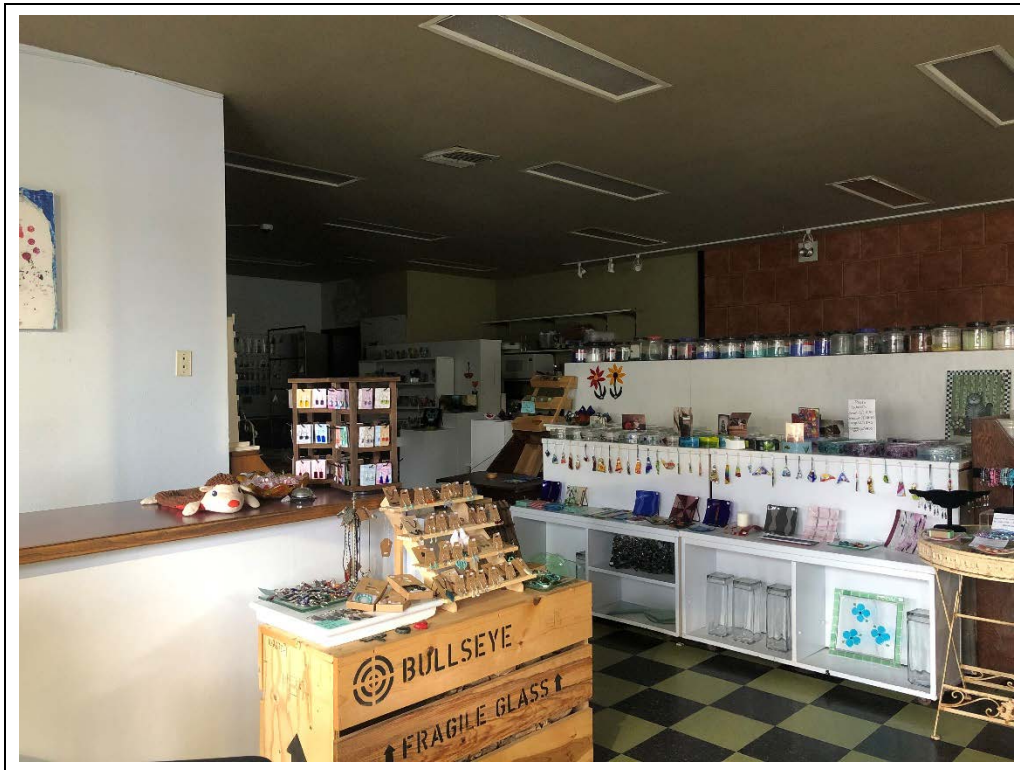
19. Interior view of former ice cream parlor. (13200-45)



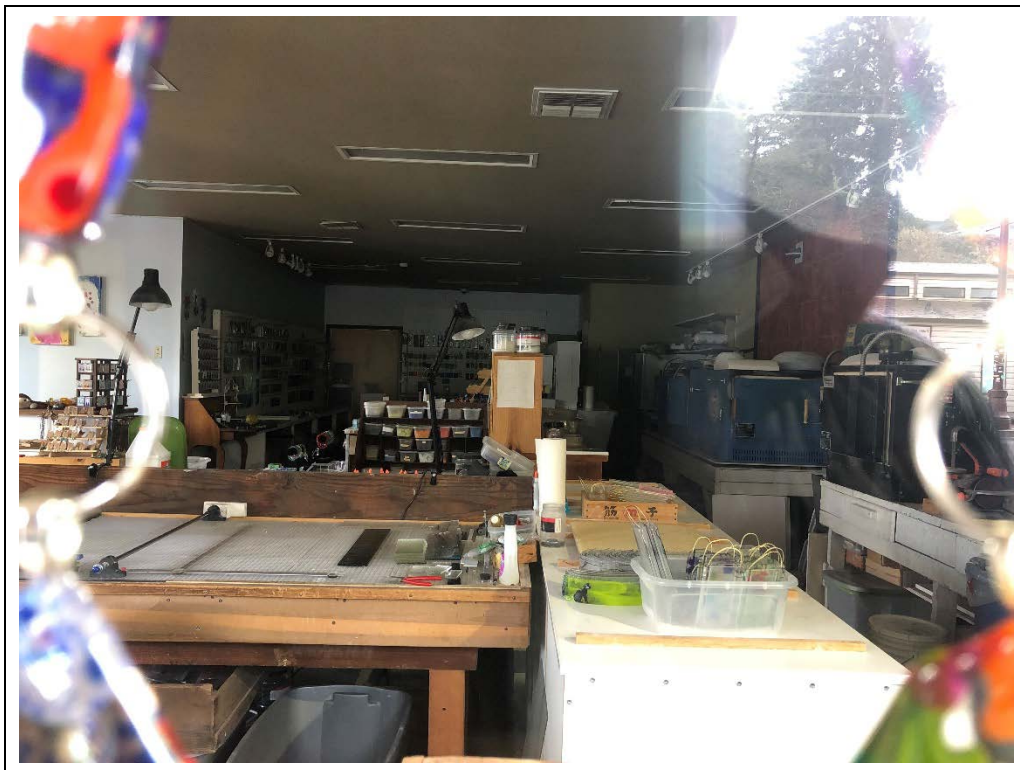
20. Alternate view. (13200-39)



**SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)**

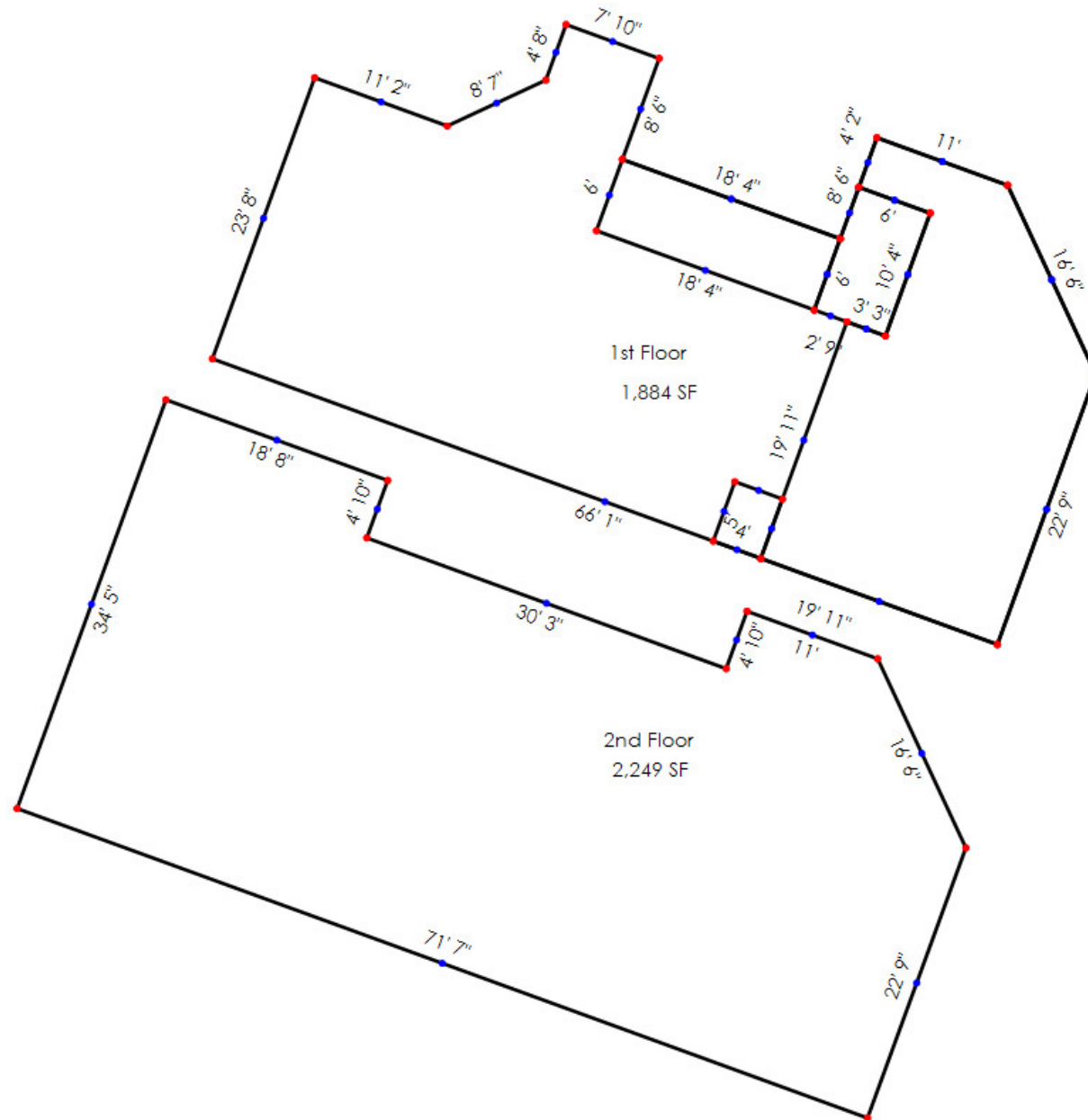


21. Interior view of glass shop space (not accessible on day of inspection; observed through exterior window). (13200-53)



22. Alternate view. (13200-52)

## BUILDING DIAGRAM



# MARKET ANALYSIS/HIGHEST & BEST USE

## MARKET OVERVIEW

### Population

According to the Portland State University Population Research Center, the most recent 2021 population in Newport is 10,591.

### Unemployment

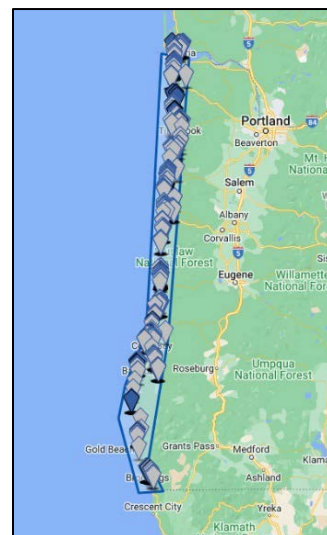
According to the State of Oregon Employment Department, the employment data as of October 2022 (most recent data available) reflects an unemployment rate of 5.2% in Lincoln County and 4.1% in the state of Oregon.

## MARKET CONSIDERATIONS

The local retail/office market was surveyed using CoStar to determine recent trends. **The search parameters included all office and retail properties along the Oregon coast greater than 1,000 SF.** A search was also made including only the subject's immediate Lincoln County area; however, it yielded limited results. The surveyed area is shown on the map at right.

**Supply & Demand Conditions** - Demand for office space is measured from the following indicators: (1) vacancy rate analysis (2) rent trends and (3) absorption. These items are addressed in the following narrative.

CoStar reports current inventory of 1,838 buildings totaling about 14.3 million SF as shown on the following charts.



INVENTORY SF	UNDER CONSTRUCTION SF	12 MO NET ABSORPTION SF	VACANCY RATE	MARKET RENT/SF	MARKET SALE PRICE/SF	MARKET CAP RATE
14.3M <span>+0.3%</span>	33K <span>-47.8%</span>	205K <span>+68.8%</span>	1.7% <span>-1.1%</span>	\$17.75 <span>+1.4%</span>	\$170 <span>+3.1%</span>	7.1% <span>+0%</span>
Prior Period 14.3M	Prior Period 63.2K	Prior Period 122K	Prior Period 2.8%	Prior Period \$17.51	Prior Period \$165	Prior Period 7.1%

Availability		Inventory	
Vacant SF	240K ↓	Existing Buildings	1,838 ↑
Sublet SF	3.1K ↑	Under Construction Avg SF	8.3K ↓
Availability Rate	2.5% ↓	12 Mo Demolished SF	0 ↓
Available SF	360K ↓	12 Mo Occupancy % at Delivery	100.0% ↓
Available Asking Rent/SF	\$17.91 ↓	12 Mo Construction Starts SF	9.1K ↓
Occupancy Rate	98.3% ↑	12 Mo Delivered SF	39.4K ↑
Percent Leased Rate	98.4% ↑	12 Mo Avg Delivered SF	9.9K ↑

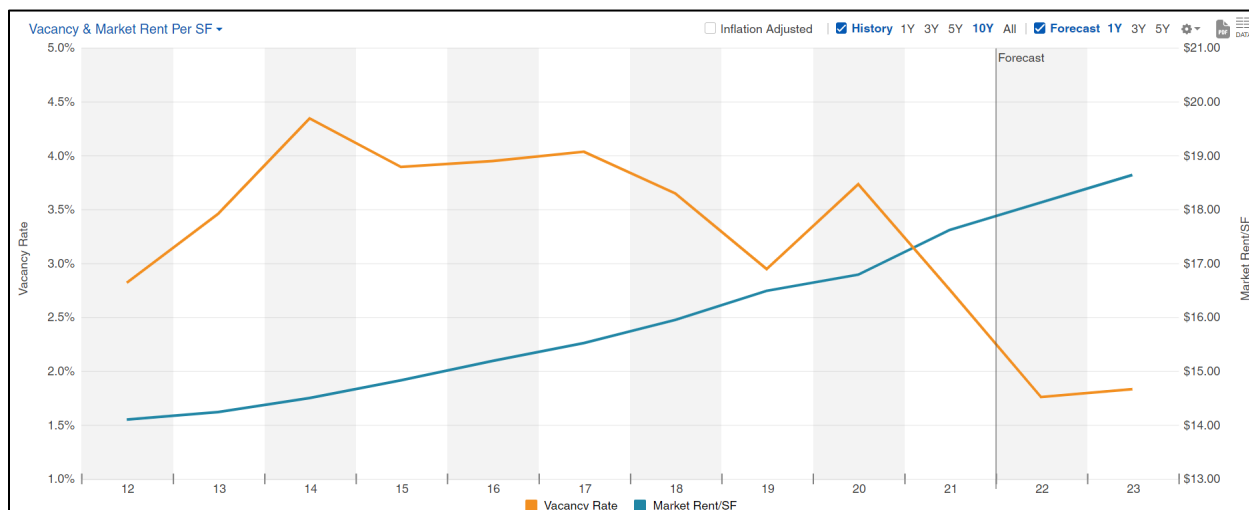
Sales Past Year		Demand	
Asking Price Per SF	\$120 ↓	12 Mo Net Absorp % of Inventory	1.4% ↑
Sale to Asking Price Differential	-8.6% ↓	12 Mo Leased SF	90.1K ↑
Sales Volume	\$64.8M ↓	Months on Market	9.3 ↓
Properties Sold	130 ↓	Months to Lease	4.4 ↓
Months to Sale	8.9 ↓	Months Vacant	5.4 ↓
For Sale Listings	63 ↑	24 Mo Lease Renewal Rate	93.7%
Total For Sale SF	384K ↑	Population Growth 5 Yrs	5.4%

According to CoStar, there is about 39,400 SF of new construction reported in the past year, with another 33,000 SF of new construction in progress. Overall, the market rent per SF is higher, the vacancy rate is lower, and net absorption is higher than the prior year's average.



## MARKET ANALYSIS/HIGHEST & BEST USE (continued)

**Vacancy and Market Rent** - The following chart illustrates changes in the average vacancy and rental rates per year for office and retail properties 1,000 SF and larger throughout the Oregon coast since 2012.

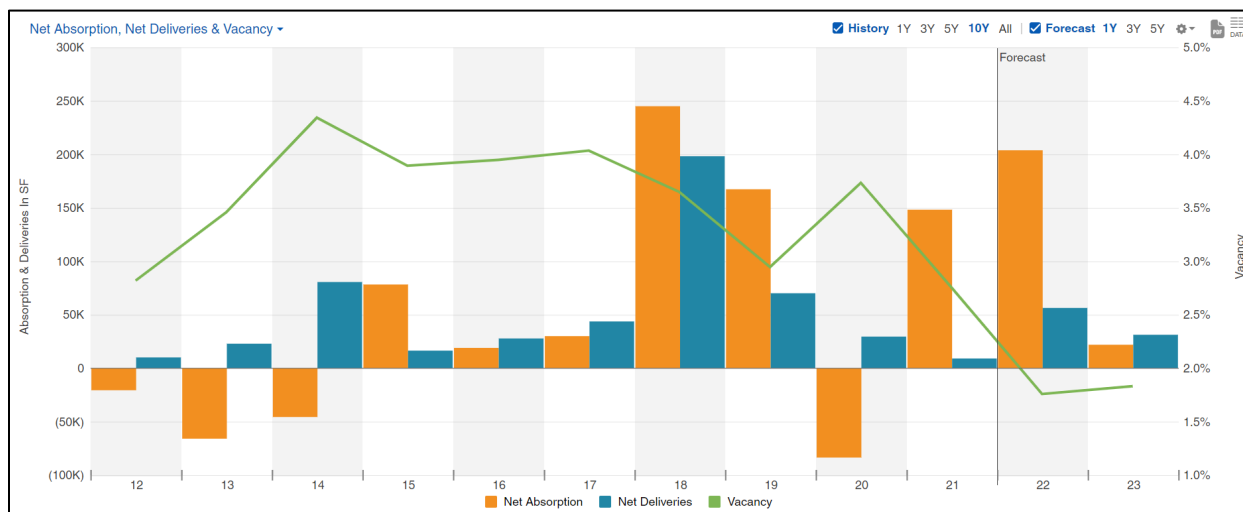


Vacancy fell between 2017 and 2019; the 2020 increase reflects the ripple effects of the COVID-19 pandemic and its associated social distancing, remote work, and resulting office/retail downsizing. However, even at the 2020 peak, vacancy reached only 3.7%, which remains below the market accepted industry standard of 5.0%. Current vacancy measures **1.7%**. However, it is noted that many coastal properties lease between owners and tenants without property managers and/or brokers. Given this, the vacancy rate reported by CoStar is likely understated, as the owner-listed spaces are frequently not catalogued on CoStar.

Rental rates have steadily increased over the past five years, currently averaging \$17.75/SF (\$1.48/SF/month) over the prior one-year period. This reflects a strong increase over the prior year where rent rates averaged \$17.51/SF (\$1.46/SF/month). Continued increases in market rent are anticipated over the next year. However, as the rental rates reported are in nominal dollars, the current high inflation may reduce the real increase in rental rates.

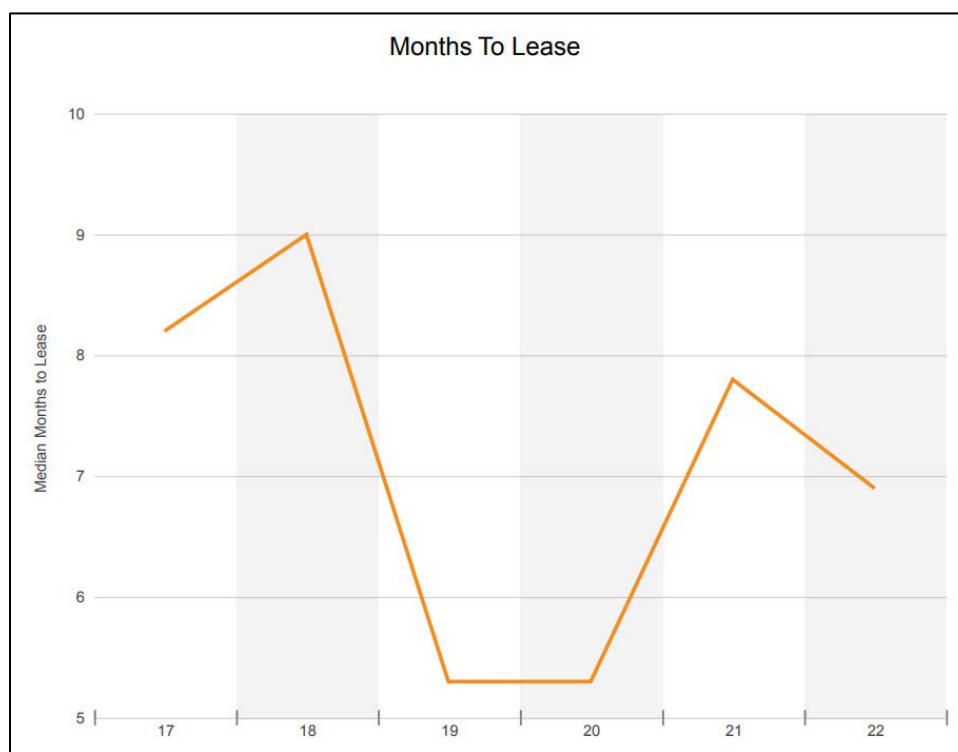
## MARKET ANALYSIS/HIGHEST & BEST USE (continued)

**Absorption, Deliveries, & Vacancy** – The chart below is based on office/retail properties in the surveyed market area.



The survey period has seen positive net absorption in all years except 2020, when the COVID-19 pandemic stalled the positive trends. However, by 2021 and 2022 YTD, absorption is again strongly positive and exceeds new deliveries.

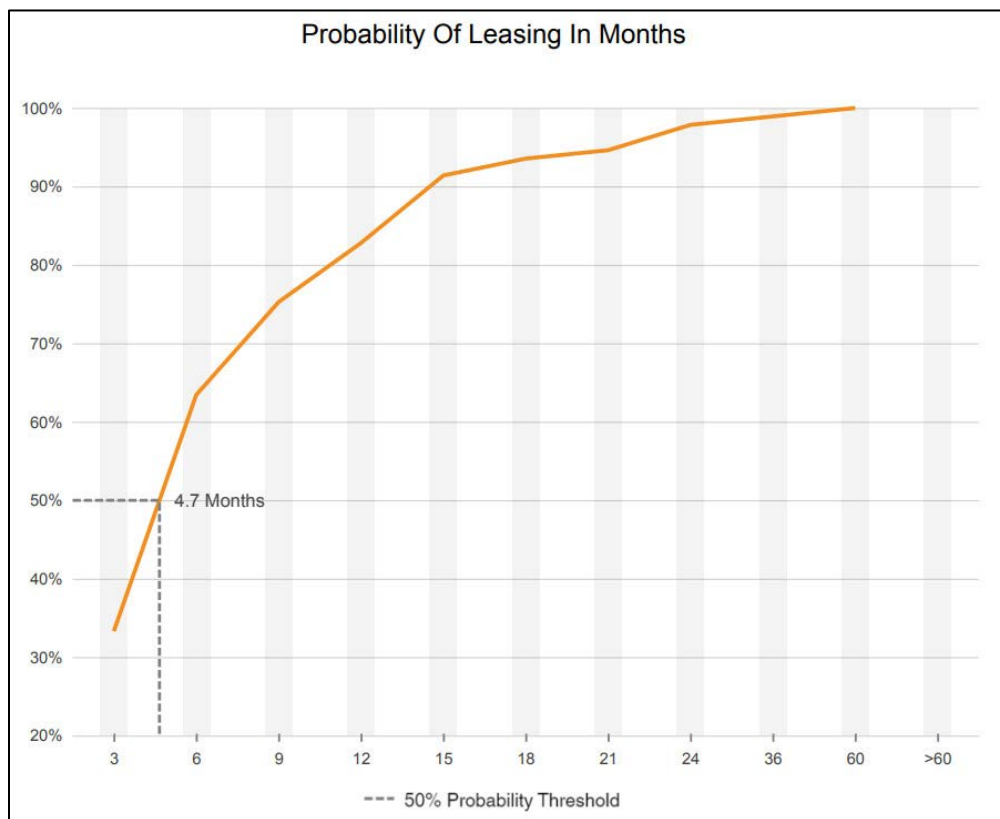
Market activity is further illustrated on the Months to Lease chart below.



Months to lease decreased sharply from 2018 to 2019, before climbing in 2020, with the onset of the COVID-19 pandemic. However, between 2021 and 2022, the months to lease has declined again, to about **seven months**.

## **MARKET ANALYSIS/HIGHEST & BEST USE (continued)**

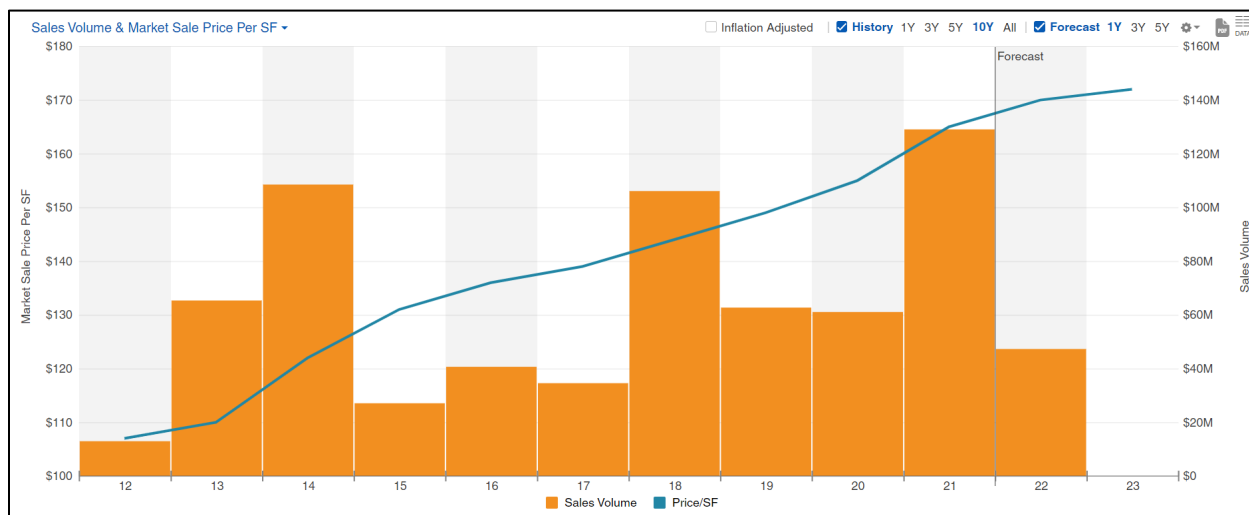
Within a one-year period, the probability of leasing office/retail space is about 82%. The probability of leasing within 18 months is about 95%. This suggests there is a reasonable opportunity of leasing the subject property if offered for lease and its marketing period would likely be within the overall average. There is a 50% probability of leasing space in roughly six months.



The subject's largest space has experienced multiple consecutive years of vacancy. Given this, an absorption period of **12 months** is estimated despite the statistics presented by Costar. This absorption period will be revisited in the lease-up cost analysis following the stabilized value conclusion.

## MARKET ANALYSIS/HIGHEST & BEST USE (continued)

**Sale Trends** – The chart below illustrates the trends in average market sale price per SF and sales volume:



According to the CoStar analytics, the average market sale price per SF for office and retail properties 1,000 SF and larger along the Oregon coast has increased steadily since 2017, despite the COVID-19 pandemic. Between 2020 and 2022 YTD, the average sale price per SF has increased from about \$152 per SF to about \$170 per SF, an increase of about **11.8%**, or about **0.35% per month**.

**Market Participants** were also interviewed regarding the coastal market and sale price appreciation in improved commercial properties. Lisa Anderson, broker with SMI Commercial Real Estate, noted the greater region has seen commercial price appreciation. However, she noted the lack of transactions in smaller markets makes it more difficult to ascertain the degree of price appreciation. She cited a retail property her firm sold in Waldport in 2021, and noted she was unsure if it would sell for significantly more today.

Gail Stonebreaker with Windermere sold a restaurant in Gleneden Beach in September 2021. She thought the commercial market was "a little" stronger than last year, and expected if she had the listing today, it would sell for slightly more.

Alan Wells, broker with Commercial Associates, has sold/is currently marketing multiple office buildings in Newport in recent years. He noted one of his listings has been on the market for more than four years, but attributed that to the owner's inflated expectations of market sale/lease prices on the coast, rather than a lack of demand. Diana Abbott with Martek Real Estate noted an office she sold in Newport was listed for five years before selling in 2021. However, she attributed the long listing period to the seller's expectations, noting the seller rejected several offers during the listing period. The asymmetry of information can be common on the coast, which frequently has out-of-market investors and owners (such as from the Willamette Valley and Portland regions) coupled with local users. The coastal market consistently commands lower leasing and sale prices as compared to larger metro areas.

**For the purposes of this analysis, a rounded market conditions adjustment of 3.00% per year (0.25% per month) will be applied to the comparable improved sales through the date of value.**

## **MARKET ANALYSIS/HIGHEST & BEST USE (continued)**

Since 2018, sales volume has ranged from just under \$50 million to over \$125 million in 2021. 2022 YTD is projected to have the lowest sales volume in the past 5 years.

### **MARKETABILITY CONCLUSION**

Overall, the market for office/retail space along the Oregon Coast has experienced low vacancy in recent years, as well as decreasing marketing times and positive net absorption in 2022 YTD. Vacancy is projected to remain below the industry standard, generally reflecting frictional movement of tenants from one space to another, as opposed to tenants leaving the market altogether. Rents are forecasted to continue a steady climb in the coming years.

### **STRENGTHS, WEAKNESSES, OPPORTUNITIES & THREATS (SWOT ANALYSIS)**

#### **Strengths –**

The subject's strengths include:

- Location along Bay Boulevard surrounded by tourist-friendly retail services;
- Waterfront view overlooking Yaquina Bay;
- Multi-tenant design demised into three retail spaces that could cater to a variety of businesses;
- Nearby public parking.

#### **Weaknesses –**

Weaknesses include:

- The fair to average condition limits marketability and will likely require landlord paid TIs to entice tenants to occupy the vacant space.

#### **Opportunities –**

Opportunities include:

- Assigning a local real estate broker to professionally market the vacant suites for lease and securing tenants to maximize income-generating ability.

#### **Threats –**

Threats include:

- Prolonged vacancy due to building condition/quality.

## **MARKET ANALYSIS/HIGHEST & BEST USE (continued)**

### **HIGHEST AND BEST USE**

#### **Introduction**

Highest and best use is a market driven concept which identifies the most profitable and competitive use to which a property can be put. It is further defined as follows:

*"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability."*<sup>2</sup>

The concept of highest and best use is fundamental to real property value. In one application of the concept, a site is valued as though vacant and available for development to its highest and best use. In another application, the highest and best use of the property as improved is estimated. A site may have one highest and best use as though vacant, while the improved site may have another optimal use.<sup>3</sup>

Highest and best use is essentially a market driven concept which identifies the ideal use(s) of a property which follow logical market criteria. It attempts to mirror the thinking of a buyer in the marketplace. Analysis pertaining to the legal, physical, financial and most productive uses of the site, both as though vacant and as improved, narrows development options to those best fitting the demand for the property. Once highest and best use is established, the appraisal process focuses on the identified sub-market, selecting parameters for meaningful analyses.

The highest and best use of the subject land and improvements has been tested separately against the four criteria in the following analysis.

#### **Vacant Site**

Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements.<sup>4</sup>

**Legally Permissible** - Legal factors influencing the subject are primarily zoning regulations and City ordinances. The subject site is zoned **W-2 (Water-Related)** by the City of Newport. As a vacant site, legal uses support a variety of **water-related commercial uses**; further, this zone allows conditional approval of all uses in the **C-2** zone, which allows most retail/office uses, including hotels and general retail.

**Physically Possible** - The physical characteristics of the site, notably the bayfront location, generally support any of the permitted uses, with no adverse conditions noted. Surrounding uses include other seafood processing facilities as well as retail development such as shops and restaurants aimed to attract tourists. Further, there is a State of Oregon Division of State Lands Submerged and Submersible Land Lease associated with site, allowing for construction of improvements into the bay, past the actual property boundary. This suggests a **water related commercial use** is the most likely use of the vacant site.

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<sup>2</sup> The Dictionary of Real Estate Appraisal, Fifth Edition. Chicago: Appraisal Institute, 2010.

<sup>3</sup> The Appraisal of Real Estate, Fourteenth Edition. Chicago: Appraisal Institute, 2013.

<sup>4</sup> The Dictionary of Real Estate Appraisal, Fifth Edition. Chicago: Appraisal Institute, 2010.



## **MARKET ANALYSIS/HIGHEST & BEST USE (continued)**

**Financially Feasible** - Due to the site's physical characteristics, surrounding development, and legal considerations, the greatest financial return would likely come from an income producing property with a water-related use. The subject has good commercial potential based on surrounding land uses, the Yaquina Bay frontage, zoning, access, and frontage along Bay Boulevard in a corridor of tourist-oriented retail development. Therefore, development of the site with a legally and physically supported **water-related commercial use** is financially feasible.

**Maximally Productive** - Legal and physical factors support a commercial use of the vacant site. Surrounding development, noting the heavy influence of tourism and subject's Yaquina Bay and Bay Boulevard frontage, suggests a retail use is more feasible than office. Therefore, a **water and tourism-related retail use** accurately describes the maximally productive use of the site, as it represents a financially feasible, physically possible and legally permissible use.

**Marketability** - Due to the subject's Yaquina Bay location along Bay Boulevard in an area of intensive commercial/industrial development specifically catering to fish processing and tourism, the subject has high marketability for a **commercial use** consistent with the allowable uses of the W-2 zoning ordinance. Availability of similar commercial-related sites along Bay Boulevard is extremely limited. One previously developed site sold to a seafood company for redevelopment in 2015; the lack of sales activity of vacant sites is due to the area being predominantly built-up. Marketability factors support a **water and tourism-related retail use**.

Because of the subject's size and location, I anticipate a **marketing period of one year**, if listed at or near market value. This is consistent with marketing periods of similar properties in the subject's market area.

**Highest and Best Use Conclusion As Vacant** - Based upon past, present and prospective market activity in the subject's market area, it is my opinion that a **water and tourism-related retail use** is an adequate expression of the highest and best use of the vacant site.

### **"AS IMPROVED"**

Highest and best use of a property as improved pertains to the use that should be made of an improved property in light of its improvements.

**Legally Permissible** - The subject site is zoned **W-2 (Water-Related)** by the City of Newport. The **existing multi-tenant retail use** is a conditional use and meets all known developmental standards, noting the lack of on-site parking is supplemented by the public parking across the street.

**Physically Possible** - The site is improved with the **Abbey Street Pier Building**, a 3,961 SF NRA multi-tenant retail building built in 1979 that reflects fair to average condition and quality. There is one current tenant that operates a glass retail shop. An ice cream parlor recently vacated the second ground floor space. There are also three individual restrooms accessible via exterior doors, and a mechanical room that houses the components for the pier's fire suppression system. Physical characteristics support the **existing multi-tenant retail use**.

## **MARKET ANALYSIS/HIGHEST & BEST USE (continued)**

**Financially Feasible** – With the ice cream parlor tenant vacating, the majority of the subject's rentable area is vacant. Additionally, based on the analysis contained herein, the in-place lease rate for the glass shop is below market. In general, marketability factors suggest low vacancy and stable rents for tourist-oriented retail properties on the coast; however, the vacant spaces are not being actively marketed for lease by ownership, which has likely prolonged vacancy periods. Investing toward necessary maintenance/repairs and/or offering incentives in the form of free rent or landlord-paid TI's may expedite the process of filling the vacant spaces and raising rents to market rates. Overall, the **existing multi-tenant retail improvements** are financially feasible.

**Maximally Productive** - The maximally productive use is synonymous with the financially feasible use, the **existing multi-tenant retail improvements**.

**Marketability** - The subject's good quality and centralized location appeal to a broad tenant base. The marketability of the subject as a multi-tenant retail building has been discussed previously. Because of the subject's size and location, I anticipate a marketing period of **one year or less**, if listed at or near market value. This is consistent with marketing periods of similar properties in the subject's neighborhood.

**Highest and Best Use Conclusion As Improved** - Based upon past, present and prospective activity in the market area, it is my opinion that the highest and best use of the subject as improved is adequately expressed by the **existing multi-tenant retail improvements**.

## **VALUATION METHODS**

### **SITE VALUE**

In valuing the subject site, as though vacant as of the effective date of this report, the Sales Comparison Approach is utilized. In this approach, recent sales and/or listings of similar sites are compared to the subject using the adjustment process (if appropriate) to indicate value. Where good market activity and data is available, this approach best reflects market behavior and provides a useful estimate of value for the subject land.

### **COST APPROACH**

The Cost Approach is based upon the principle that the value of property is significantly related to its physical characteristics and that no one would pay more than the cost to build a like facility in today's market on a comparable site. In this approach, the market value of the site is estimated and added to the depreciated value of the improvements. In addition, entrepreneurial profit is added. For proposed or newer properties, this approach may have significant relevance. For older properties or those with substantial depreciation, this approach has limited application. However, the Cost Approach may prove useful as an indication of potential supply, as measured by the amount of profit evident. These factors will be considered in addressing the emphasis placed on the Cost Approach.

### **INCOME APPROACH**

This approach is predicated on the assumption that there is a definite relationship between the net income a property will earn and its value. Net income is the income generated before payment of any debt service. The process of converting it into value is called capitalization. Net income is divided by a capitalization rate. Factors such as risk, time, interest on the capital investment, upside potential and recapture of the depreciating asset are considered in the rate. Applying a capitalization rate based on indications from comparable sales reflects expectations of buyers and sellers in the market.

Another capitalization concept employed with the Income Approach is the Discounted Cash Flow Analysis or yield capitalization. It is developed by projecting cash flows over a holding period assuming variations in income, expenses, lease terms, reversion rates and internal rates. The net present value of the cash flows is a method of measuring anticipated future benefits.

### **SALES COMPARISON APPROACH**

This approach analyzes sales of comparable properties with regard to the nature and condition of each sale. Logical adjustments and/or comparisons are made for varying physical characteristics. For land value, a common denominator is a price per square foot or price per acre; for improved properties, it may be the price per square foot, price per unit, or a gross income multiplier. This approach develops a good indication of value when sales of similar properties have occurred.

## **VALUATION METHODS (continued)**

### **RECONCILIATION**

This is the process by which the individual approach indications are weighed based on validity and applicability to the subject market. The indications often indicate different values. After factors influencing each approach are carefully considered (i.e. quality and quantity of data, sophistication of the market, etc.), a final point estimate of value is concluded.

In this report the Income Capitalization and Sales Comparison Approaches will be utilized to value the subject property.

The Cost Approach is excluded due the subjective nature of estimating depreciation in older properties. Its exclusion does not diminish the validity of the final value conclusion.

## **INCOME APPROACH**

The first step in the Income Approach is to analyze current income or estimate the subject's potential gross income. This process is accomplished through a comparison of the subject with rental properties in similar locations offering similar utility. Vacancy allowance and operating expenses are deducted, based on market analysis and support from the subject's operating history. Finally, the resulting net operating income is converted to value using a capitalization rate. Then, adjustments may be made to establish the leased fee estate.

### **POTENTIAL GROSS RENTAL INCOME**

To estimate market rent for the subject's rental space, the subject's actual rental achievements are compared with market rent comparables.

**ACTUAL LEASING** – Only one of the three retail suites are occupied while the other two are vacant.

**Latta's of Oregon, Inc. (glass shop)** leases the Bay Boulevard-facing first floor retail space. Per the lease, the suite size is "about 1,108 SF"; the appraiser's measurements indicate a suite size of 1,110 SF, with this size used herein. The lease commenced May 7, 2010, with two months' free rent and an initial 10-year term, expiring May 6, 2020. The tenant is currently month to month. Base rent is **\$1,223/month (\$1.10/SF)**.

The lease structure is **modified gross**, with the tenant responsible for its own electric/garbage, real property taxes, janitorial, and interior maintenance. The landlord is responsible for fire and extended perils insurance, exterior maintenance, structural maintenance, management, payments to the underlying ground lease, and water/sewer.

The other first floor retail space totals **602 rentable SF** (including the space's proportionate share of the common area single restroom) based on the appraiser's measurements. This was most recently leased and used as an ice cream parlor; however, the final rent payment (\$600) was received August 16, 2022 according to the property representative. The tenant has closed their business and the space is now effectively vacant.

The entire second floor is also vacant. Rentable area is equal to **2,249 SF** based on the appraiser's measurements. It was most recently occupied and used as an art gallery; however, the space has been vacant for approximately two years.

**ANALYSIS OF COMPARABLES** - The following analysis is conducted on a dollar per square foot per month basis, reflecting market behavior. The market rent is assigned to the rentable area of the space, which is typical in the market.

The following presentation summarizes the comparables found to be most similar to the subject property. Although I performed a thorough search for comparables in the subject's immediate Bayfront market, ultimately, the exploration yielded limited results. Therefore, the comparable search was expanded throughout the greater Central and North Oregon Coast, most notably to Lincoln City and Tillamook. Several brokers were interviewed and reported minimal activity for leasing retail space in Newport. Therefore the lease data does include some comparables for office space in the immediate area. Overall an adequate sampling of leases was found from which to compare to the subject.

## **INCOME APPROACH (continued)**

Following the comparable discussion is a Lease Comparable Tabulation Chart and Adjustment Grid, which summarizes the leases used in this analysis. A Lease Comparable Location Map is also provided. The following narrative analyzes the comparables with respect to the subject. When necessary, the comparables have been adjusted to reflect a lease structure similar to the subject: **modified gross** with the tenants responsible for their share of real estate taxes, electricity, janitorial, and interior maintenance. The landlord is responsible for fire and extended perils insurance, water/sewer, exterior maintenance, and the underlying ground lease (as applicable).

The comparable leases indicate an adjusted rental range from **\$1.11 to \$2.08 per SF per month**. Each comparable is briefly discussed in the following narrative.



## Multi-Tenant Commercial Property

Comparable 1

### Lease Information

Tenant	Various
Lease Type	New
Tenant Size	1,294 SF
Start Date	2019 blended rates
Lease Term	2 Years (24 Months)
Rent	\$16.44/SF (Yr.) / \$1.37/SF (Mo.)
Expense Structure	NNN
<b>Adjusted MG Rent</b>	<b>\$1.45/SF (Mo.)</b>

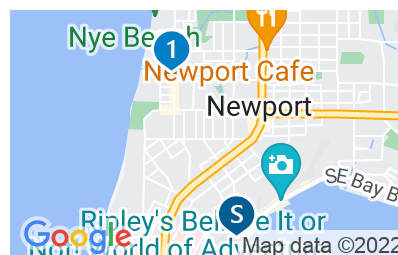
### Property

Type	Retail
Net Rentable Area (NRA)	3,882 SF
Buildings	1 Building, 2 Floors
Year Built	1999
Zoning	C-2
Topography	Level
Corner	Yes



310 NW Coast St  
 Newport, OR 97365

County  
 Lincoln



### Confirmation

Name	Chris Watkins
Phone Number	541-265-2544

### Remarks

This is a two-story multi-tenant commercial property located in the heart of the Nye Beach neighborhood in Newport. The building was constructed in 1999 and reflects good condition and quality. The site benefits from a non-signalized corner orientation.

This is the 2019 blended lease rate for three tenants, including a candy shop and clothing store. Per the broker, two of the leases have two-year terms, with the remaining leases month-to-month. The structures are all triple net.

## Office Building

Comparable 2

### Lease Information

Tenant	Dr. Kenneth Bishop, Chiropractor
Lease Type	New
Tenant Size	995 SF
Start Date	12/1/2019
Lease Term	3 Years (36 Months)
Rent	\$15.67/SF (Yr.) / \$1.31/SF (Mo.)
Expense Structure	Modified Gross: tenant pays electric/janitorial
<b>Adjusted MG Rent</b>	<b>\$1.11/SF (Mo.)</b>
Options/Extensions	None
Escalation Detail	No escalation in Yr 2; \$100/mo. escalation in Yr 3

### Property

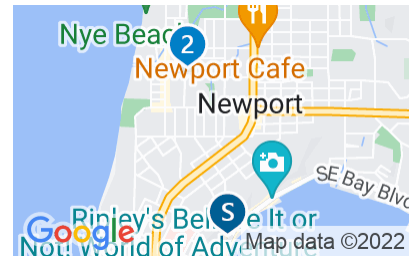
Type	Office
Gross Building Area (GBA)	8,933 SF
Net Rentable Area (NRA)	8,933 SF
Buildings	2 Buildings, 1 Floor
Parking	16 Spaces (1.8/1,000 SF NRA)
Year Built	1989
Land Area	0.5136 Acres (22,374 SF)
Site Coverage Ratio	26.58%
FAR	0.40
Building Class	C



530 NW 3rd St  
Newport, OR 97365

County  
Lincoln

APN  
R501032, 11-11-05-CC-  
40002-00 01



### Confirmation

Name	Dr. Kenneth Bishop
Phone Number	541-270-4309
Affiliation	Lessee
Date	2/9/2022

### Remarks

This reflects the lease to a chiropractor for a small office suite in Newport. Per the lessee, the lessor originally wanted \$1,800 per month (\$1.81/SF); the tenant and landlord eventually negotiated the resulting lease rate of \$1,300/month. The landlord pays all expenses except for unit electric and janitorial.

## Two-Tenant Retail w/ Drive Thru

Comparable 3

### Lease Information

Tenant	Maria's Taqueria
Tenant Type	Restaurant
Lease Type	New
Tenant Size	1,250 SF
Start Date	2/1/2020
Lease Term	5 Years (60 Months)
Rent	\$24/SF (Yr.) / \$2/SF (Mo.)
Expense Structure	NNN
<b>Adjusted MG Rent</b>	<b>\$2.08/SF (Mo.)</b>
Options/Extensions	1, 5-year
Average Escalations	2% (Yr.)
Escalation Detail	Renewal is at change in CPI

### Property

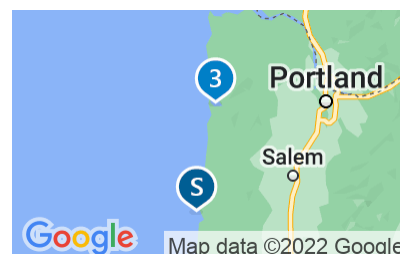
Type	Retail
Gross Building Area (GBA)	3,105 SF
Net Rentable Area (NRA)	3,105 SF
Buildings	1 Building, 1 Floor
Parking	17 Spaces (5.5/1,000 SF NRA)
Year Built	1995 (Renovated 2015)
Land Area	0.4059 Acres (17,680 SF)
Site Coverage Ratio	17.56%
FAR	0.18
Zoning	C-H
Shape	Rectangular
Topography	Level
Corner	Yes



1863 N Main Ave  
Tillamook, OR 97141

County  
Tillamook

APN  
1S0919-C0-00103



### Confirmation

Name	Michael Horwitz
Company	Capital Pacific
Phone Number	425-736-3406
Affiliation	Broker
Date	9/13/2022

### Remarks

Fully occupied two-tenant retail property occupied by Subway (w/ drive thru) and Maria's Taqueria. Originally built in 1995. Recent updates include new HVAC, roof repairs, and a building expansion completed in 2015, and resealing of the parking lot in 2019. Exposure is at a non-signalized corner along Highway 101.

This is the lease to a local taco shop of a former Taco Del Mar location.

## Professional Office Building

Comparable 4

### Lease Information

Tenant	Butler/Armstrong
Tenant Type	Office
Lease Type	Renewal
Tenant Size	642 SF
Start Date	1/1/2021
Rent	\$14.04/SF (Yr.) / \$1.17/SF (Mo.)
Expense Structure	MG - tenant pays taxes, utilities, janitorial
<b>Adjusted MG Rent</b>	<b>\$1.22/SF (Mo.)</b>
Options/Extensions	None
Escalation Detail	None

### Property

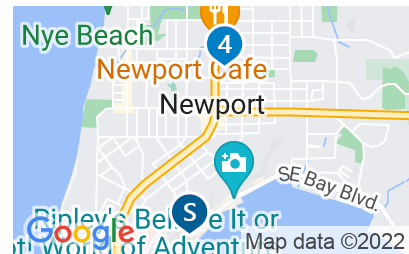
Type	Office
Gross Building Area (GBA)	4,400 SF
Net Rentable Area (NRA)	4,400 SF
Buildings	1 Building, 2 Floors
Foundation	Type Not Specified
Parking	19 Spaces (4.3/1,000 SF NRA)
Year Built	1997
Land Area	0.16 Acres (6,970 SF)
Site Coverage Ratio	31.56%
FAR	0.63



130 NE 4th St  
Newport, OR 97365

County  
Lincoln

APN  
11-11-05-DC-11500-00



### Confirmation

Name	Alan Wells
Company	Commercial Associates
Phone Number	541-754-6320
Affiliation	Broker
Date	9/9/2022

### Remarks

This is the 2021 lease rate for a month-to-month office lease in a Newport office building. The tenant remains in the building in 2022.

## Mixed Use Commercial/Residential Building

Comparable 5

### Lease Information

Tenant	Bayside Nutrition
Tenant Type	MG
Lease Type	New
Tenant Size	1,268 SF
Start Date	6/1/2022
Lease Term	1 Year (12 Months)
Rent	\$17.52/SF (Yr.) / \$1.46/SF (Mo.)
Expense Structure	MG
<b>Adjusted MG Rent</b>	<b>\$1.36/SF (Mo.)</b>

### Property

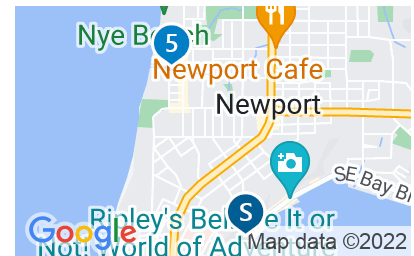
Type	Multi-Family, Retail
Gross Building Area (GBA)	2,068 SF
Net Rentable Area (NRA)	2,068 SF
Buildings	1 Building, 2 Floors
Year Built	1930 (Renovated Unknown)
Land Area	0.17 Acres (7,405 SF)
Site Coverage Ratio	17.12%
FAR	0.28
Shape	Generally Rectangular
Topography	Level
Corner	No



735 NW Beach Drive  
Newport, OR 97365

County  
Lincoln

APN  
11-11-05-CC-09900-00, 11-  
11-05-CC-09800-00



### Confirmation

Name	Freddy Saxton
Company	Advantage Real Estate
Phone Number	541-961-2085
Affiliation	Broker
Date	11/23/2022

### Remarks

Mixed use building with a 1,268 SF retail space on the ground floor and two apartment units on the second floor totaling an additional 800 SF. Located in the heart of Nye Beach. The separate 75' x 75' vacant lot is zoned C-2 and all utilities available at the street. Built in 1930 but well maintained and reflecting average condition. Street parking only.

Modified gross lease with the landlord paying taxes and building maintenance while the tenant pays all other expenses. The tenant leases the space on an annual basis and originally moved in to the space in June 2020.

## Bar & Grill

Comparable 6

### Lease Information

Tenant	The Sea Spritz
Tenant Type	Restaurant
Lease Type	New
Tenant Size	2,558 SF
Start Date	11/1/2022
Lease Term	5 Years (60 Months)
Rent	\$17.36/SF (Yr.) / \$1.45/SF (Mo.)
Expense Structure	NNN
<b>Adjusted MG Rent</b>	<b>\$1.53/SF (Mo.)</b>
Options/Extensions	None
Escalation Detail	Annual escalation of \$50 - \$100 per month

### Property

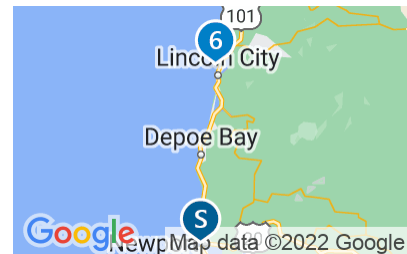
Type	Retail, Restaurant
Gross Building Area (GBA)	2,558 SF
Net Rentable Area (NRA)	2,558 SF
Buildings	1 Building, 1 Floor
Parking	6 Spaces (2.3/1,000 SF NRA)
Year Built	1950 (Renovated 2022 full renovation)
Land Area	0.15 Acres (6,534 SF)
Site Coverage Ratio	39.15%
FAR	0.39



1330 NE Hwy 101  
Lincoln City, OR 97367

County  
Lincoln

APN  
07-11-10-DC-03500-00



### Confirmation

Name	Korey Hazard
Company	Taylor & Taylor
Phone Number	541-961-7519
Affiliation	Broker
Date	9/12/2022

### Remarks

This is the signed lease for a single-tenant bar and grill in Lincoln City. The broker reported the landlord completely remodeled and upgraded the space prior to securing the tenant.



## **INCOME APPROACH (continued)**

The following narrative compares and contrasts the comparables relative to the subject property:

- **Expense Structure** – The subject has a modified gross expense structure, in which the tenants are responsible for their share of real estate taxes, electricity, janitorial, and interior maintenance, while the landlord is responsible for fire and extended perils insurance, water/sewer, exterior maintenance, and the underlying ground lease (as applicable). The comparables have varying expense structures. All have been adjusted, as applicable, to the subject's modified gross structure.
- **Location** – The subject is located along Bay Boulevard in Newport, an area of intense commercial development. It is also located on the east side of Bay Boulevard and benefits from a waterfront view amenity overlooking Yaquina Bay. Given this, the comparables are generally considered inferior to the subject with regard to location to account for the view amenity.
- **Parking** – The subject has no on-site parking but a public parking lot is located adjacent to the west. The comparables have on-site parking ranging between 2.3 to 4.9 spaces per 1,000 SF, all deemed slightly superior.
- **Condition** – The subject exhibits fair to average condition, with opportunities for updates. Comparables 1, 3, 5, and 6 are all deemed superior.
- **Quality** – The subject reflects average quality and wood frame construction. Comparable 6 was recently remodeled/upgraded prior to the tenant moving in and is deemed superior regarding quality.
- **Utility** – The subject possesses retail utility but could also be suitable for a service-oriented office user. Comparables 3 and 6 are utilized as restaurants and possess commercial kitchens. The restaurant buildout is superior.
- **Size (SF)** – The subject suites range in size from 602 to 2,249 SF. Comparable 5 is the largest space in the data set, which may have placed some downward pressure on its rent rate per SF, particularly when compared to the subject's two ground floor suites. No other adjustments are necessary for size.

## **LEASE RATE CONCLUSION**

The comparables are arrayed below, illustrating the subject's competitive position.

<b>Lease Comparable Array</b>		
<b>Comparable</b>	<b>Adjusted Rent/SF</b>	<b>Indication</b>
3	\$2.08	High
6	\$1.53	High
1	\$1.45	High
5	\$1.36	Slightly High
<b>SUBJECT</b>		
4	\$1.22	Slightly Low
2	\$1.11	Slightly Low

Based on the physical and locational factors affecting rent, the subject is bracketed by Comparables 4 and 5, suggesting a narrowed range of **\$1.22 to \$1.36 per SF**.

## **INCOME APPROACH (continued)**

The subject benefits from its waterfront view amenity and location along Bay Boulevard, the primary commercial corridor for tourists where surrounding development includes a mix of retail/restaurant businesses and commercial fishing.

Brodie Becksted, Principal Broker with Ocean Equity, was unaware of any recent leases in Newport but opined a rate range of \$1.60 to \$2.00/SF/month full service as a general rule of thumb for retail properties in the subject area.

However, based on the in-place rent, the fair to average condition of the improvements, and the qualitative adjustments applied to the comparable leases, the subject property would likely garner market rents below the range indicated by Mr. Becksted.

The **glass shop space on the first floor (1,110 SF)** has an in-place rent of \$1.10/SF/month. No documentation was provided beyond the original lease agreement which expired in 2020; the tenant is assumed to be operating month to month. The rent rate has escalated by approximately \$115/month since the original lease commenced in 2010. Overall market rent near the middle of the narrowed range of **\$1.30/SF/month** is concluded.

The **former ice cream parlor (602 SF)** was being leased for \$600/month (\$1.00/SF/month) prior to the tenant vacating. Due to economies of scale, the small size would likely place upward pressure on the rental rate. It faces away from Bay Boulevard but has windows overlooking the pier and Yaquina Bay beyond. Overall market rent near the upper end of the narrowed range of **\$1.35/SF/month** is concluded.

The entire **second floor space (2,249 SF)** has been vacant for several years and was formerly utilized as an art gallery. The prolonged marketing period can likely be attributed to ownership opting not to professionally market the space for lease. This space is not ADA-accessible; however, it has excellent second floor views overlooking the Bay and has an open floor plan with unique architectural finishes, noting the vaulted ceilings and exposed wood beams, which could cater to a variety of uses. Considering the larger size compared to the first floor spaces, market rent near the low end of the overall range of **\$1.20/SF/month** is concluded and will be applied.

The rent conclusions for the respective suites indicate a blended market rent equal to **\$1.25/SF/month**.

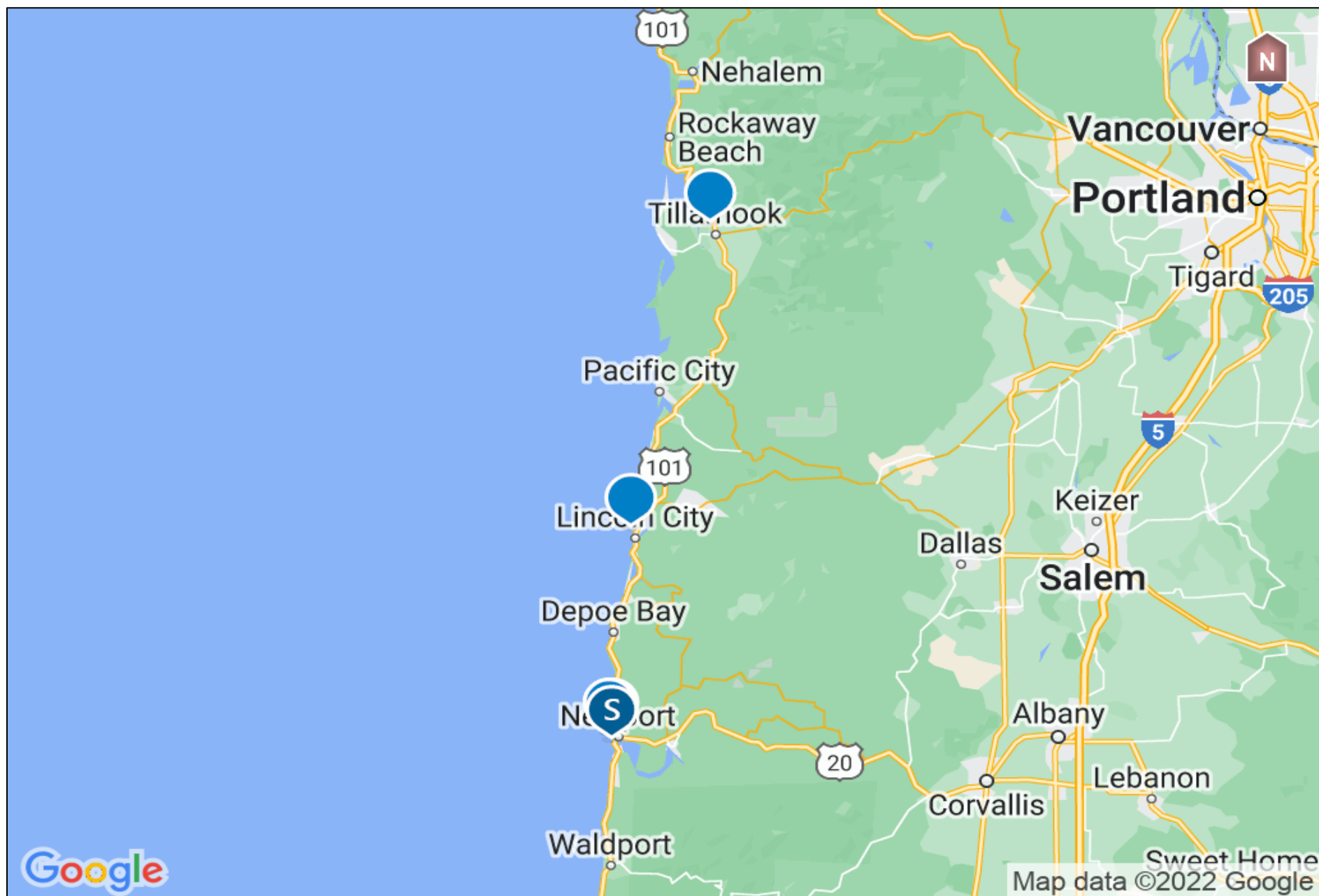
<b>Potential Gross Income</b>					
Glass Shop (mkt)	1,110 SF x	\$1.30 /SF x	12 mo. =		\$17,316
Former Ice Cream Parlor (mkt)	602 SF x	\$1.35 /SF x	12 mo. =		\$9,752
Former Art Gallery (mkt)	2,249 SF x	\$1.20 /SF x	12 mo. =		\$32,386
<b>PGI</b>	<b>3,961 SF x</b>	<b>\$1.25 /SF x</b>	<b>12 mo. =</b>		<b>\$59,454</b>

Potential gross income is concluded following the Lease Comparable Tabulation Chart and Location Map.

# LEASE COMPARABLE TABULATION CHART AND ADJUSTMENT GRID

Characteristics	Subject	Comparable 1		Comparable 2		Comparable 3		Comparable 4		Comparable 5		Comparable 6	
Name	Abby St. Pier Building	Multi-tenant Retail		Chiropractor Office		Maria's Taqueria		Butler/Armstrong		Bayside Nutrition		Bar & Grill	
Address	669 SW Bay Blvd. Newport, Oregon	310-316 NW Coast Street Newport, Oregon		530 NW 3rd St, Suite A Newport, OR		1863 Main Ave N Tillamook, OR		130 NE 4th Street Newport, OR		735 NW Beach Drive Newport, OR		1330 NE Hwy 101 Lincoln City, OR	
Lease Date		2019 Blended Lease Rate		Dec-19		Feb-20		Jan-21		Jun-22		Nov -22	
Size (SF)	602 to 2,249	1,294 Average		995		1,250		642		1,268		2,558	
Rent/SF/Month		\$1.37 Average		\$1.31		\$2.00		\$1.17		\$1.46		\$1.45	
Rent/SF/Year		\$16.44 Average		\$15.68		\$24.00		\$14.02		\$17.55		\$17.36	
Expense Structure	MG	NNN		MG		NNN		MG		MG		NNN	
Tenant Pays	Taxes, elec, int. maint.	All expenses		Electric, janitorial		All expenses		Taxes, utilities, int. maint.		ins, utilities		All expenses	
Term		2 Years / Month-to-Month		3 years		5 years		Month-to-month		1 year		5 years	
Renewal		Various		N/A		1, 5-year		N/A		None		None	
Escalation		Various		\$100 in yr 3		2%/year; renewal at CPI		N/A		None		annual: \$50 - \$100/month	
Tenant Improvements		Unknown		None		None		None		None		None; owner had finished reno	
Concessions		None		None		None		None		None		None	
Rentable Building Area (SF)	3,961	3,882		5,947		3,105		4,400		2,068		2,558	
Year Built	1979	1999		1989		1995		1997		1930/renovated		1950/2022 full renovation	
Parking Ratio	Street parking only	4.9 spaces/1,000 SF		2.7 spaces/1,000 SF + street		4.5 spaces/1,000 SF		2.3 spaces/1,000 SF		3.9 spaces/1,000 SF		2.3 spaces/1,000 SF	
Rent Adjustment		Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)
Conditions of Lease		Arm's Length	\$0.00	Arm's Length	\$0.00	Arm's Length	\$0.00	Arm's Length	\$0.00	Arm's Length	\$0.00	Arm's Length	\$0.00
Expense Structure		MG	\$0.08	MG	-\$0.20	MG	\$0.08	MG	\$0.05	MG	-\$0.10	MG	\$0.08
Other (Parking; Amort. TIs)		None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00
Market Conditions	No Quantitative Adj.	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00
Adjusted Rent/SF/Mth			<b>\$1.45</b>		<b>\$1.11</b>		<b>\$2.08</b>		<b>\$1.22</b>		<b>\$1.36</b>		<b>\$1.53</b>
Adjusted Rent/SF/Yr			\$17.40		\$13.28		\$24.96		\$14.62		\$16.35		\$18.32
Qualitative Adjustment		Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)
Location	Newport, Oregon	Inferior	-	Inferior	-	Inferior	-	Inferior	-	Inferior	-	Inferior	-
Parking	Street parking only	Superior	+/=	Superior	+/=	Superior	+/=	Superior	+/=	Superior	+/=	Superior	+/=
Condition	Fair to Average	Superior	+	Similar	=	Superior	+	Similar	=	Superior	+	Superior	+
Quality	Average	Similar	=	Similar	=	Similar	=	Similar	=	Similar	=	Superior	+
Utility	Retail	Retail	=	Office	=	Restaurant	+	Office	=	Retail	=	Restaurant	+
Size	602 to 2,249	Similar	=	Similar	=	Similar	=	Similar	=	Similar	=	Larger	-/=
Comparability			<b>+/=</b>		<b>-/=</b>		<b>++</b>		<b>-/=</b>		<b>+/=</b>		<b>++</b>
Conclusion			<b>Slightly High Indicator</b>		<b>Slightly Low Indicator</b>		<b>High Indicator</b>		<b>Slightly Low Indicator</b>		<b>Slightly High Indicator</b>		<b>High Indicator</b>

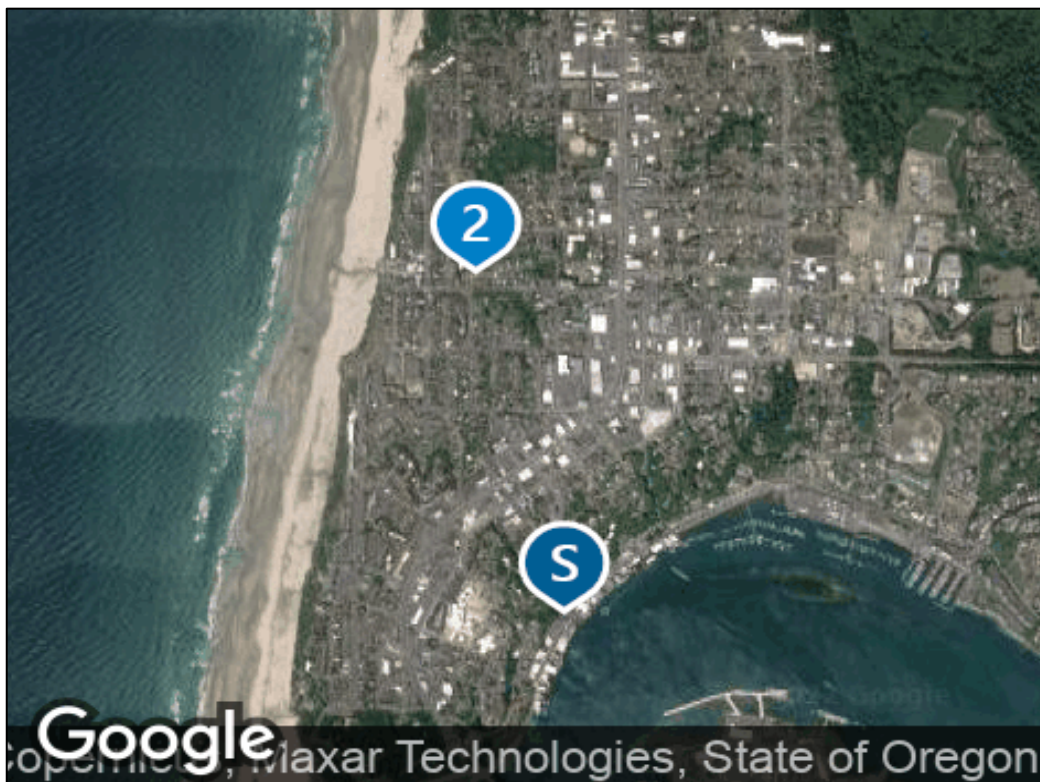
## LEASE COMPARABLE MAP



## **LEASE COMPARABLE DRIVE-TO MAP – COMP #1**

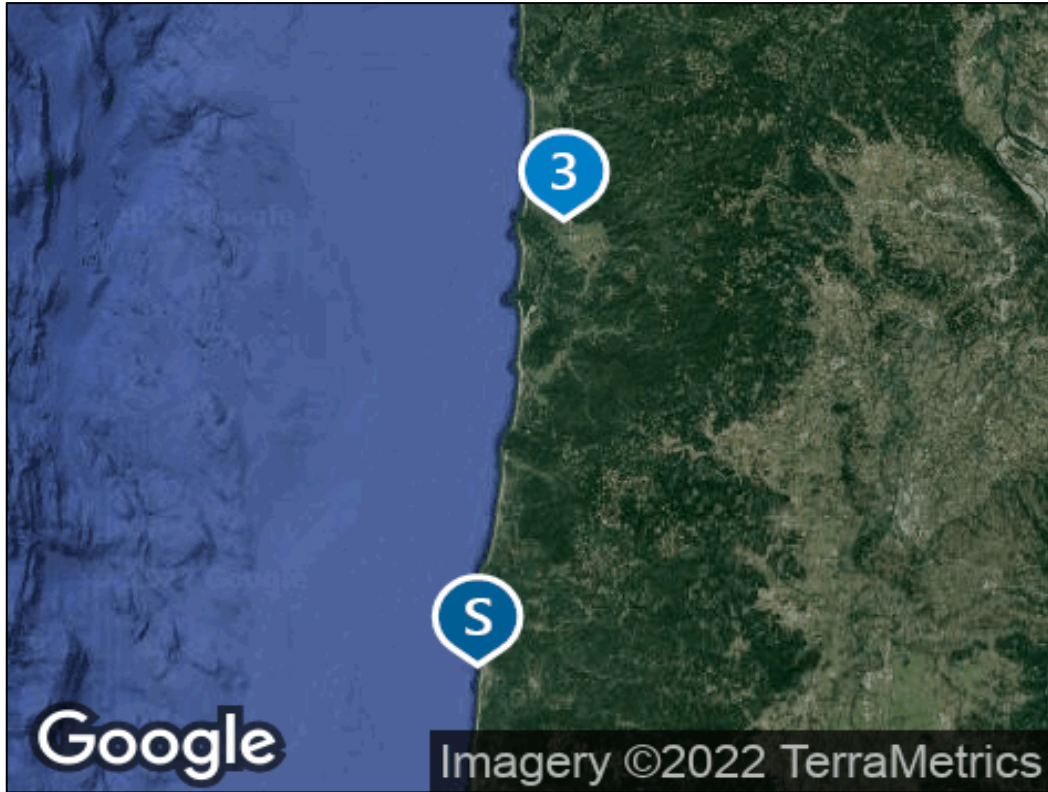


## **LEASE COMPARABLE DRIVE-TO MAP – COMP #2**

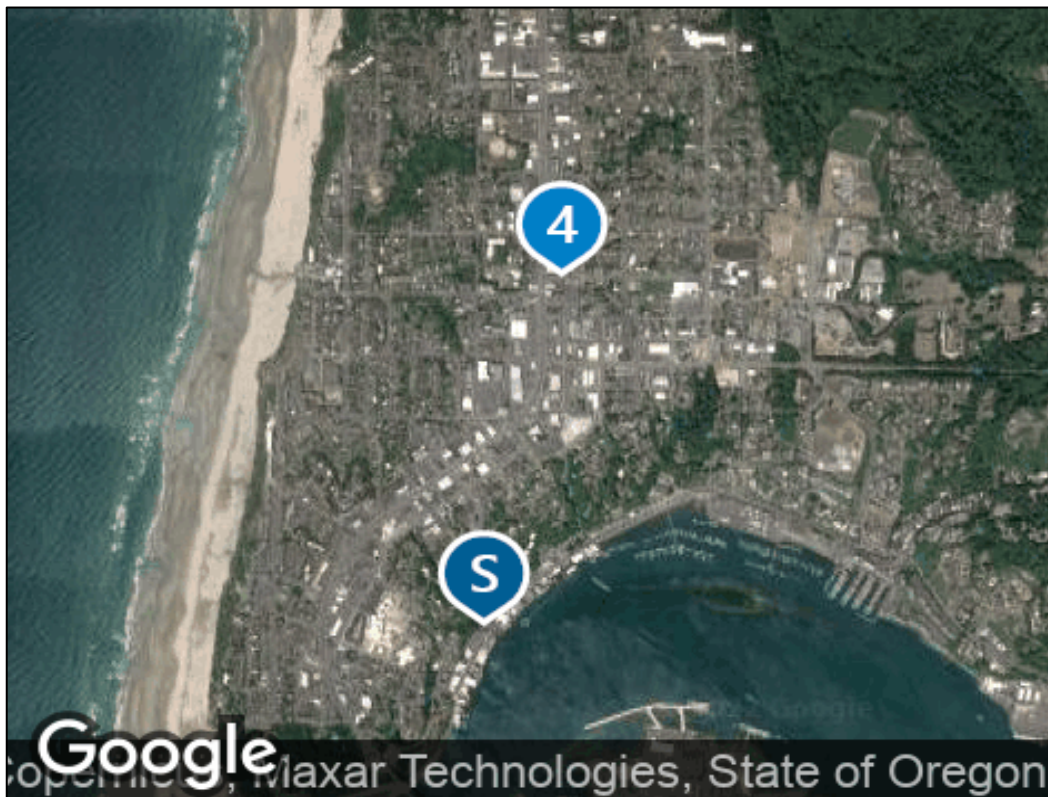




### **LEASE COMPARABLE DRIVE-TO MAP – COMP #3**



### **LEASE COMPARABLE DRIVE-TO MAP – COMP #4**





**LEASE COMPARABLE DRIVE-TO MAP – COMP #5**



**LEASE COMPARABLE DRIVE-TO MAP – COMP #6**



## **INCOME APPROACH (continued)**

### **POTENTIAL GROSS INCOME CONCLUSION**

**Rental Income Conclusion** -- Two sources were analyzed regarding appropriate market rent levels: the subject's actual leasing activity and rent comparables. Regarding the actual leasing activity, one of the three suites are occupied and the tenant is paying base rent equal to \$1.10/SF/month. The rental rate has increased by just \$115/month since the lease commenced in 2010, indicating it is below market. This was supported by the comparables and a market rent of \$1.30/SF/month was concluded. The current tenant is secured on a short term lease that is effectively month-to-month; therefore, no rent loss is applied.

Market rent for the two vacant suites were concluded at \$1.35/SF/month for the smaller 602 SF first floor space and \$1.20/SF/month for the second floor space.

Applying the concluded rents against the rentable area of 3,961 SF, results in a potential gross income, as detailed in the following chart, of:

<b>Potential Gross Income</b>					
Glass Shop (mkt)	1,110 SF x	\$1.30 /SF x	12 mo. =		\$17,316
Former Ice Cream Parlor (mkt)	602 SF x	\$1.35 /SF x	12 mo. =		\$9,752
Former Art Gallery (mkt)	2,249 SF x	\$1.20 /SF x	12 mo. =		\$32,386
<b>PGI</b>	3,961 SF x	\$1.25 /SF x	12 mo. =		<b>\$59,454</b>

### **VACANCY AND CREDIT LOSS**

This expense category accounts for the time between tenants, and possible prolonged vacancies under slow market conditions. This assignment reflects the probable vacancy during the economic life of the property, not necessarily the current vacancy.

Typical vacancy and credit loss allocations assigned by buyers and sellers of average quality, well-located commercial properties that have not experienced historical vacancy problems are 5%. As discussed in the Market Analysis, the subject's market area has experienced recent vacancy rates well below the market standard of 5%, although the vacancy rates indicated by Costar may overstate the lack of supply as many lease agreements on the coast are signed between ownership and tenant with no broker representation.

Based upon the above information and considering the subject has dealt with vacancy historically, a vacancy and credit loss allocation of **5.00%** will be used.

### **EFFECTIVE GROSS INCOME**

The **effective gross income** is calculated as follows:

<b>Potential Gross Income</b>		=	\$59,454
<b>Less, Vacancy &amp; Credit Loss</b>	-5.0% x	\$59,454 =	(\$2,973)
<b>Effective Gross Income</b>			<b>\$56,481</b>

## **INCOME APPROACH (continued)**

### **ESTIMATED OPERATING EXPENSES**

The subject's estimated market rents have been based upon a **modified gross** expense structure, with the landlord responsible for fire and extended perils insurance, water/sewer, the Department of State Lands land lease, exterior repairs and maintenance, management and structural maintenance/reserves costs, which are discussed in the following narrative.

#### **Fire and Extended Perils Insurance** -

Properties similar to the subject incur insurance expenses ranging from less than 1% to 3% of effective gross income. The costs are dependent upon the property's size, age, condition, and construction characteristics. The property representative reported an actual expense of **\$2,544.58 (\$0.64/SF)** for the current year. This is above the expense comparables, which range from \$0.17 to \$0.36 per SF. However, none of the comparables are located on the Bayfront, which may result in an increased expense. Therefore, most emphasis is placed on the actual expense. For the purposes of this analysis, an expense of **\$2,545, or \$0.64 per SF** is concluded. The expense is equivalent to 4.51% of EGI.

<b>FIRE/EXTENDED PERILS INSURANCE</b>	
	<b>/year</b>
Comparable 1	N/A
Comparable 2	\$0.36
Comparable 3*	\$0.70
Comparable 4	\$0.25
Comparable 5	\$0.13
Comparable 6*	\$0.70
Comparable 7	\$0.09
Comparable 8	\$0.25
Comparable 9	\$0.31
Comparable 10	\$0.14
Comparable 11^	\$0.81
<b>Average</b>	<b>\$0.37</b>
<b>Average w/out Liability/EQ</b>	<b>\$0.22</b>
* Liability Coverage Included.	
^ includes Fire, EQ, Liability	

**Water/Sewer** - Utility expenses can vary dramatically from year to year and from property to property. Per the property representative, average water usage in 2021/2022 was **9,670 gallons of water usage** per month. This is **high** noting the subject units' use types. Commercial water/sewer comparables were found and range from \$0.09 to \$0.24 per SF, averaging \$0.17 per SF. A water/sewer expense slightly above the comparables but below the subject's actual expense of **\$0.25 per SF** is concluded.

**Department of State Lands (DSL) Lease** — A portion of the subject pier is located on land leased from the Department of State Lands. The original lease document reports a leased area of 3,750 SF, including the adjacent public pier. The lease was renewed in late 2018 for 18 years; the lease rate is based on a flat fee calculated by the DSL and escalating 3% per year.

However; the subject's leased area does not include the entire pier, and was previously calculated to be 2,658 SF. The Department of State Lands lease rate, for the subject supporting site only, is calculated below for 2022 and will be used herein:

<b>State Lands Lease</b>	Per SF
<b>Lease Rate</b> 2022 lease rate	\$0.6918
<b>x leased area - SUPPORTING SITE ONLY</b>	2,658
<b>2022 Department of State Lands Rent - Supporting Site Only</b>	<b>\$1,839</b>

## **INCOME APPROACH (continued)**

**Repairs and Maintenance** – This expense category is typically dependent upon the property's size, age, condition, and construction characteristics. The subject's actual repairs/maintenance expenditures were not provided. The property representative indicated no major repairs have been completed in recent years.

Expense comparables for this expense are shown at right and range from \$0.42 - \$2.32 per SF, averaging \$1.18/SF.

Considering the subject's fair to average condition and average wood-frame construction quality, and noting the landlord is responsible for exterior repairs and maintenance only, an expense of **\$0.075 per SF** is concluded.

REPAIRS/MAINTENANCE	
	/year
Comparable 1	\$0.74
Comparable 2	\$1.60
Comparable 3	\$1.58
Comparable 4	\$0.94
Comparable 5	\$1.32
Comparable 6	\$0.42
Comparable 7	\$0.64
Comparable 8	\$1.00
Comparable 9	\$2.32
Comparable 10	\$1.09
Comparable 11	\$1.32
<b>Average</b>	<b>\$1.18</b>

**Management & Administration** – The subject has been owner-managed, with no management expense reported. Property management companies in the subject's market area generally charge 2% to 6% of effective gross income for industrial and commercial properties. The management costs are dependent upon the property's size, number of tenants, and lease structure.

Given the subject's three-tenant design, and modified gross expense structure, an expense of **3.00% of EGI** is considered appropriate and will be used in this analysis.

**Reserves for Replacement** - Reserves for replacement expense is not a typical annual cash expenditure, but rather, the annualized cost of major expenses in the future, such as the replacement of the roof cover, heating systems, asphalt paving, and other structural components. The reserves for replacement allowance buyers and sellers for this type of property typically allocate is 2 to 6% of effective gross income, depending on the age and condition of the facility.

Based on the quality of the subject improvements, as well as the repairs and maintenance allocation already deducted, a reserve for replacement allocation of **5.00% of EGI** is reasonable.

## **INCOME APPROACH (continued)**

Total Expenses are summarized below:

	\$/SF	\$	% EGI
F&E Insurance	\$0.64	\$2,545	4.51%
Water/Sewer	\$0.25	\$990	1.75%
Land Lease	\$0.46	\$1,839	3.26%
Repairs and Maintenance	\$0.75	\$2,971	5.26%
Management	\$0.43	\$1,694	3.00%
Reserves for Replacement	\$0.71	\$2,824	5.00%
	\$3.25	\$12,862	22.77%

Net operating income is summarized below:

<b>Effective Gross Income</b>	\$56,481
<b>Less, Expenses</b>	(\$12,862)
<b>Net Operating Income</b>	<b>\$43,619</b>
<b>Per SF</b>	<b>\$11.01</b>

## **OVERALL CAPITALIZATION RATE**

The final step in the Income Approach is to capitalize the net operating income by an appropriate overall rate. Overall capitalization rates vary based upon many factors including age, quality, condition, strength of tenants, vacancy history, anticipated tenant turnover expenses, appreciation potential, and general perceived risk in maintaining the estimated stabilized net operating income of the property.

The following chart summarizes market comparables.

### **CAPITALIZATION RATE COMPARABLES**

No	Location	Property Type	Sale Date	Year Built	Size (SF)	Sale Price	NOI	OAR	Indicator
1	Coldwell Banker Office 1815 NW Hwy 101 Lincoln City, OR	Single Tenant Prof. Office	Jun-20	1946	3,277	\$660,000 \$201.40	\$40,546 \$12	<b>6.14%</b>	Low
2	Avery Building 120 NE Avery Street Newport, OR	Multi-tenant Office	Dec-20	1994	20,740	\$3,315,000 \$159.84	\$245,287 \$12	<b>7.40%</b>	High
3	Two Tenant Retail 1863 Main Ave Tillamook, OR	Multi-tenant Retail	Jan-21	1995	3,105	\$1,125,000 \$362.32	\$81,697 \$26	<b>7.26%</b>	High
4	Multi-tenant Commercial 440 NE Commercial Street Waldport, OR	Multi-tenant Office/retail	Jun-21	1985	4,800	\$265,444 \$55.30	\$17,591 \$4	<b>6.63%</b>	High
5	Multi-tenant Commercial 1000 Main Ave N Tillamook, OR	Multi-tenant Office/retail	Nov-21	1984	24,899	\$800,000 \$32.13	\$57,928 \$2	<b>7.24%</b>	High
6	Two-tenant office building 14 SW Nye St Newport, OR	Multi-tenant Prof. Office	Jan-22	1977	2,539	\$378,500 \$149.07	\$24,000 \$9	<b>6.34%</b>	Low
								<b>Min 6.14%</b>	
								<b>Max 7.40%</b>	
								<b>Average 6.84%</b>	

## **INCOME APPROACH (continued)**

The comparables indicate a range from **6.14% to 7.40%**. The net operating income of each comparable is based on similar expense structure to that of the subject. Each of the comparables has varying physical and financial characteristics and brackets the subject in terms of age, condition, quality, location, durability of income stream, and overall market appeal. Overall, these sales are reasonably comparable to the subject from an investor's perspective. All of the sales transacted during/after the COVID-19 pandemic, suggesting they reflect changes in market conditions due to this event.

**Comparable 1 (6.14%)** is the seller leaseback sale of a single tenant realtor office in Lincoln City. Per the broker (also an entity of the selling ownership), the in place lease (carried forward to the new ownership) was slightly below market, which provided upward potential for a higher renewal. It is a **low indicator**.

**Comparable 2 (7.40%)** is the sale of a multi-tenant professional office building leased to government tenants (including the Oregon DHS). Its larger size placed upward pressure on the capitalization rate, noting the difficulty of leasing large offices in the Oregon coast market. It is a **high indicator**.

**Comparable 3 (7.26%)** is the sale of a two-tenant retail property in Tillamook. Tenants included two restaurants (Subway and a local taco shop). The high NOI per SF increases investment risk, making this a **high indicator**.

**Comparable 4 (6.63%)** is the sale of a multi-tenant office/retail strip center in Waldport. The low NOI per SF decreases risk (and also suggested there was upward potential from raising the in-place rents). However, this is offset by the inferior location and condition, making this a **high indicator**.

**Comparable 5 (7.24%)** is the sale of a multi-tenant commercial building in Tillamook. Its tenant mix included a restaurant, retail, and offices in a strip-mall type development. In-place rents were reportedly slightly below market. However, the large size for the local market increased risk, making this a **high indicator**.

**Comparable 6 (6.34%)** is the sale of a two-tenant professional office building in Newport. The property benefited from upward potential from leasing out some additional basement storage (not reflected in the NOI at the time of sale) and renewing the in-place tenants' leases at slightly higher rates, making this a **low indicator**. NOTE: This property sold leased on month-to-month terms with the in-place tenants, who will be vacating for future owner-user occupancy.

The comparables are arrayed below from high to low, illustrating the subject's perceived placement amongst the array:

<b>Comparable Capitalization Rate Array</b>		
<b>Comparable</b>	<b>OAR %</b>	<b>Indication</b>
1	7.40%	High
6	7.26%	High
4	7.24%	High
5	6.63%	High
<b>SUBJECT</b>		
3	6.34%	Low
2	6.14%	Low

The subject's income stream has been based on market rent and expenses. The Bayfront location along Bay Boulevard in Newport in the heart of a destination retail area are



## **INCOME APPROACH (continued)**

taken into consideration and present strong upside potential. The concluded market rents only consider a minor \$10/SF TI allowance and have potential to rise if the landlord opts to invest further toward interior updates/renovations to the vacant spaces and implements a routine maintenance plan for the exterior.

Concluding a capitalization rate of **6.50%** based on comparable sales is reasonable considering all factors.

### **INCOME CAPITALIZATION APPROACH CONCLUSION**

Dividing the estimated net operating income by the concluded overall capitalization rate, results in a **stabilized** market value of the subject property (assuming market rents), by the Income Capitalization Approach, of **\$670,000**.

<b>Net Operating Income</b>	\$43,619
<b>Divided by OAR</b>	6.50%
<b>STABILIZED Market Value - Rounded</b>	<b>\$670,000</b>
<b>Per SF</b>	\$169.15

**Lease-up costs: 2,851 vacant SF** – The previously concluded stabilized value assumes that the subject is operating at market lease rates and market occupancy.

Two of the three retail suites totaling 2,851 SF were vacant and not being marketed for lease. Therefore; a deduction must be made for costs to the property owner to achieve stabilization. These costs include:

- Rent loss over the lease up period to reach stabilized occupancy;
- Leasing commissions (5% over 36-month term);

A landlord-paid tenant improvement allowance of \$10/SF will also likely be necessary to entice a tenant to lease the spaces, noting the fair to average condition.

Overall, an **absorption period of 12 months** is estimated based on statistics presented in the Market Analysis and lease-up data. The lease-up analysis assumes the first floor retail space (602 SF) will be leased at the six-month period and the second floor space (2,249 SF) will be absorbed in the final period at the end of the 12-month lease-up phase.

Leasing Commissions:		5% over 5 year term												
Tenant Improvements/SF:		\$10.00												
		2022		2023										TOTAL
		Nov PERIOD 1	Dec PERIOD 2	Jan PERIOD 3	Feb PERIOD 4	Mar PERIOD 5	Apr PERIOD 6	May PERIOD 7	Jun PERIOD 8	Jul PERIOD 9	Aug PERIOD 10	Sept PERIOD 11	Oct PERIOD 12	
Area to Absorb (SF):		2,851	2,851	2,851	2,851	2,851	2,851	2,249	2,249	2,249	2,249	2,249	0	
2ND FLOOR SPACE		2,249	SF	0	0	0	0	0	0	0	0	0	2,249	
Rent Loss:		\$1.20	SF/Mo	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$0	\$29,687
Leasing Commissions:		5%	36 mo. Term	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,858	\$4,858
Tenant Improvements:		\$10	per SF	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$22,490	\$22,490
1ST FLOOR SPACE		602	SF	0	0	0	0	602	0	0	0	0	0	
Rent Loss:		\$1.35	SF/Mo	\$813	\$813	\$813	\$813	\$813	\$0	\$0	\$0	\$0	\$0	\$4,876
Leasing Commissions:		5%	36 mo. Term	\$0	\$0	\$0	\$0	\$1,463	\$0	\$0	\$0	\$0	\$0	\$1,463
Tenant Improvements:		\$10	per SF	\$0	\$0	\$0	\$0	\$6,020	\$0	\$0	\$0	\$0	\$0	\$6,020
TOTAL LEASE-UP COSTS:														\$69,394

## **INCOME APPROACH (continued)**

Deducting the costs to reach stabilization from the previously concluded stabilized value results in an **“as if” market value in leased fee/leasehold**, via the Income Approach, as of November 2, 2022, of (\$670,000 - \$70,000):

**\$600,000**

## ■ INCOME APPROACH SUMMATION TABLE ■

<b>Potential Gross Income</b>				
Glass Shop (mkt)	1,110 SF x	\$1.30 /SF x	12 mo. =	\$17,316
Former Ice Cream Parlor (mkt)	602 SF x	\$1.35 /SF x	12 mo. =	\$9,752
Former Art Gallery (mkt)	2,249 SF x	\$1.20 /SF x	12 mo. =	\$32,386
<b>PGI</b>	3,961 SF x	\$1.25 /SF x	12 mo. =	<b>\$59,454</b>
<b>Less, Vacancy and Credit Loss</b>	5.0%		=	<b>(\$2,973)</b>
<b>Effective Gross Income</b>			=	<b>\$56,481</b>
		\$/SF	\$	% EGI
F&E Insurance		\$0.64	\$2,545	4.51%
Water/Sewer		\$0.25	\$990	1.75%
Land Lease		\$0.46	\$1,839	3.26%
Repairs and Maintenance		\$0.75	\$2,971	5.26%
Management		\$0.43	\$1,694	3.00%
Reserves for Replacement		\$0.71	\$2,824	5.00%
		\$3.25	\$12,862	22.77%
<b>Total Expenses</b>			=	<b>(\$12,862)</b>
<b>Net Operating Income (NOI)</b>			=	<b>\$43,619</b>
<b>Per SF</b>			=	<b>\$11.01</b>
<b>Capitalization of Income</b>				
NOI	Divided By	OAR	=	Value
\$43,619	Divided By	6.50%	=	\$671,062
<b>Estimated Stabilized Market Value (Rounded)</b>			=	<b>\$670,000</b>
per SF				\$169.15
<b>Lease-up Costs (Vacant SF)</b>			=	<b>-\$70,000</b>
<b>Estimated "As If" Market Value (Rounded)</b>			=	<b>\$600,000</b>
per SF				\$151.48

## **SALES COMPARISON APPROACH**

In this section, the market value of the subject property will be estimated by direct comparison analysis, which compares improved sales to the subject property on a price per square foot basis. The price per square foot is based upon the physical characteristics of the property, and care must be taken in the comparable selection process. The comparables are analyzed considering such factors as location, site coverage/parking, exposure, access, condition, quality, utility, and size.

A survey of the market area was conducted and included CoStar, LoopNet, Regional Multiple Listing Service, Flex Multiple Listing Service, County assessor's records, and interviews with several local real estate professionals and developers familiar with the subject property type. A limited number of sales of retail properties with similar characteristics in the immediate Newport market were found. Therefore the search was expanded to include retail buildings north of the subject along the Oregon Coast, specifically in the markets of Pacific City and Lincoln City. One small commercial building built out as an office from the Newport market was also included. An adequate sampling of comparables sales was found, from which to conclude a credible value opinion. General analysis reflecting market behavior is utilized to determine which comparables are superior or inferior to the subject. This analysis establishes value parameters for the subject, allowing for a final conclusion of value. Following the comparable discussion is an Improved Sales Tabulation Chart and Adjustment Grid, which summarizes the sales used in this analysis. An Improved Sales Location Map is also provided.

### **ADJUSTMENTS**

#### **QUANTITATIVE ADJUSTMENTS**

**Property Rights Conveyed** – Properties are sold with a specific bundle of rights and typically reflect various forms of ownership interest. This analysis generally focuses on the **leased fee** value of the property, assuming stabilized occupancy and market rents. Therefore, the comparable sales are analyzed on a leased fee basis. All of the comparables were purchased for future owner occupancy; no adjustment is necessary.

**Financing Terms** – All of the comparable sales sold via conventional financing or cash, all assumed to be cash equivalent. No adjustment is necessary.

**Conditions of Sale** – The comparables generally reflect arm's length negotiations. Therefore, no adjustment is made.

**Market Conditions** - The comparables indicate an unadjusted range in sale price of \$128 to \$165 per SF, selling between December 2020 and September 2022. An adjustment for market conditions (time) is considered. As discussed in the Market Analysis, a positive market conditions adjustment of **+0.25% per month** is applied to the comparable sales through the date of value.

**QUALITATIVE ADJUSTMENTS** – The comparables are compared and contrasted to the subject on a qualitative basis. Categories include location, site coverage/parking, access, exposure, condition, quality, utility, and size. Each category is analyzed and the comparable is concluded to be similar, inferior or superior to the subject. The categories are reconciled, resulting in reasonable, low or high indicators for the subject.

The comparables are briefly discussed on the following pages, culminating in a conclusion of value.

## Newport Retail Building

Comparable 1

### Sale Information

Buyer	Luke & Christina Simonsen	
Seller	George & Valerie Valenzuela	
Sale Date	12/4/2020	
Transaction Status	Recorded	
Sale Price	\$400,000	\$128 /SF NRA
<b>Analysis Price</b>	<b>\$423,000</b>	<b>\$135 /SF NRA</b>
Rights Transferred	Fee Simple	
Marketing Time	133 days	

### Property

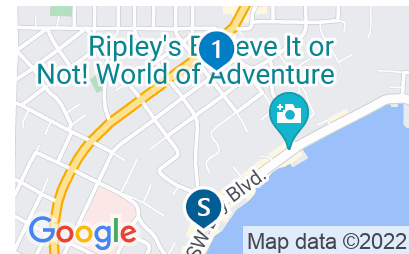
Type	Retail
Gross Building Area (GBA)	3,136 SF
Net Rentable Area (NRA)	3,136 SF
Buildings	1 Building, 2 Floors
Parking	7 Spaces (2.2/1,000 SF NRA)
Year Built	1928
Land Area	0.2135 Acres (9,300 SF)
Site Coverage Ratio	22.67%
FAR	0.34
Shape	Rectangular
Topography	Level to Sloping
Corner	Yes



255 SW 9th Street  
Newport, OR 97365

County  
Lincoln

APN  
11-11-08-BD-14500-00, 11-  
11-08-BD-14400-00



### Confirmation

Name FlexMLS/Deed/local news outlets

### Remarks

Converted residence historically used as a retail store on the first floor with an open floor plan that could cater to a variety of uses. Located along 9th Street, one block south of Oregon Coast Highway in Newport. Includes a 2BR/1BA apartment unit on the second floor. Seven off-street parking spaces are available along 9th Street.

This sold for -3.6% below the asking price after a marketing period of 133 days. The buyer is an owner user who will be re-opening their brewery business (Bier One Brewing) into the property following completion of renovations over a six-month period between December 2020 and June 2021 after they vacated their former Newport location.

## Single-tenant Retail Building

Comparable 2

### Sale Information

Buyer	Tustumena LLC	
Seller	Bainbridge Investments LLC	
Sale Date	2/25/2021	
Transaction Status	Recorded	
Sale Price	\$415,000	\$132 /SF NRA
<b>Analysis Price</b>	<b>\$436,788</b>	<b>\$139 /SF NRA</b>
Rights Transferred	Fee Simple	
Marketing Time	133 days	



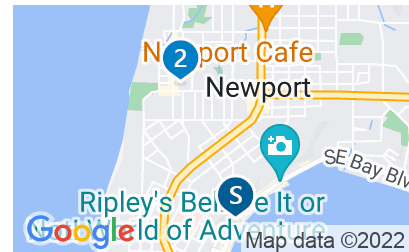
### Property

Type	Retail
Gross Building Area (GBA)	3,142 SF
Net Rentable Area (NRA)	3,142 SF
Buildings	1 Building
Foundation	Type Not Specified
Year Built	1925 (Renovated 2020)
Land Area	0.08 Acres (3,485 SF)
Site Coverage Ratio	90.16%
FAR	0.90
Shape	L-Shaped
Topography	Level
Corner	Yes

588 W Olive St  
Newport, OR 97365

County  
Lincoln

APN  
11-11-08-BB-03800-00



### Confirmation

Name FlexMLS/Deed/local news sources

### Remarks

Single-tenant retail building located in the Nye Beach neighborhood of Newport at the corner of Olive Street and High Street. Historically used as a discount retail store before undergoing renovations in 2019/2020 that included new siding, vinyl windows, ductless heating with A/C, new electrical, and updated insulation. Grandfathered retail use but the site is zoned residential. Street parking only.

Sold for -2.4% below the asking price after a 133 day marketing period. The buyer is a future owner user who will complete their own interior renovations and convert the retail space into an aesthetic medicine treatment clinic.



## Twist Wine Retail Building

Comparable 3

### Sale Information

Buyer	HAT GIRL LLC	
Seller	FROG PROPERTIES	
Sale Date	4/27/2021	
Transaction Status	Recorded	
Sale Price	\$550,000	\$153 /SF NRA
<b>Analysis Price</b>	<b>\$576,125</b>	<b>\$160 /SF NRA</b>
Recording Number	2021-3765	
Rights Transferred	Fee Simple	
Conditions of Sale	Typical	
Marketing Time	1225 days	

### Property

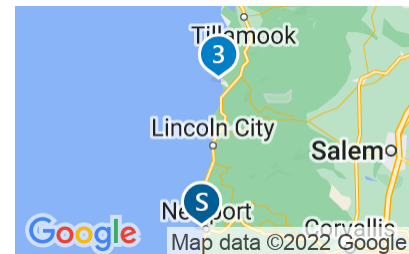
Type	Retail
Gross Building Area (GBA)	3,600 SF
Net Rentable Area (NRA)	3,600 SF
Buildings	1 Building
Parking	11 Spaces (3.1/1,000 SF NRA)
Year Built	1998
Land Area	0.29 Acres (12,632 SF)
Site Coverage Ratio	14.25%
FAR	0.28
Zoning	C-2
Shape	Generally Rectangular
Topography	Level
Corner	No



34930 Brooten Road  
Pacific City, OR 97112

County  
Tillamook

APN  
4S1019-CC-07700, 4S1019-  
CC-07800



### Confirmation

Name	VP for Dennis Regen
Company	Taylor & Taylor Realty
Phone Number	541-992-16722
Affiliation	Broker
Date	9/12/2022

### Remarks

Two-story retail building located along Brooten Road in the beachfront town of Pacific City, situated approximately 30 minutes north of Lincoln City. Built in 1998 and reflects good condition. An asphalt-paved parking lot is positioned west of the improvements and striped for four spaces while an additional seven spaces in a gravel lot are located north of the building. Within walking distance of the beachfront. Formerly used as an art gallery but suitable for a variety of retail uses.

This sold for -8.2% below the asking price after a multi-year marketing period. Per the broker representative, it was purchased for owner-occupancy for future use as a wine tasting shop. The seller was reportedly willing to wait for an offer they liked which resulted in the prolonged marketing period.

## Pacific City Retail/Residential Building

Comparable 4

### Sale Information

Buyer	Geoffrey & Patt Williams	
Seller	Rick Lablue Living Trust	
Sale Date	10/12/2021	
Transaction Status	Recorded	
Sale Price	\$535,000	\$165 /SF NRA
<b>Analysis Price</b>	<b>\$552,388</b>	<b>\$170 /SF NRA</b>
Rights Transferred	Fee Simple	
Marketing Time	92 days	

### Property

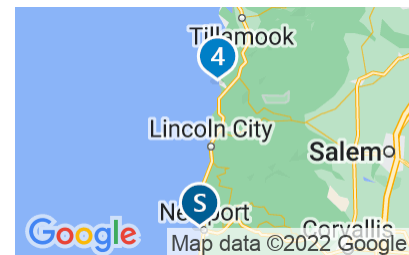
Type	Retail
Gross Building Area (GBA)	3,245 SF
Net Rentable Area (NRA)	3,245 SF
Buildings	1 Building
Parking	5 Spaces (1.5/1,000 SF NRA)
Year Built	1994
Land Area	0.22 Acres (9,583 SF)
Site Coverage Ratio	20.51%
FAR	0.34
Zoning	C-2
Shape	Generally Rectangular
Topography	Level
Corner	No



35350 Brooten Rd  
Pacific City, OR 97112

County  
Tillamook

APN  
4S1030-BB-06200



### Confirmation

Name FlexMLS/Deed/local news sources

### Remarks

Commercial retail building with an upstairs 3BR/1BA apartment which includes a large deck facing the Nestucca River and Pacific Ocean beyond. Attached two-car carport in addition to off-street parking. Ground level retail space has an open floor plan with track lighting and carpet throughout.

This sold for -2.7% below the asking price after a marketing period of 92 days. The buyers are the owners of the Pacific City Inn, an 18-unit hotel located adjacent to the north of the subject. The buyer's future plans for the property are unknown.

## Two-tenant office

Comparable 5

### Sale Information

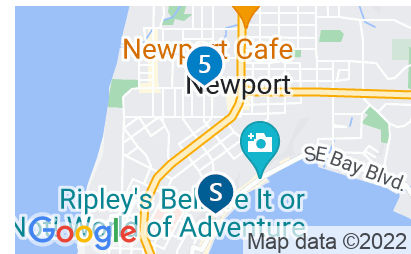
Buyer	CHRISTIAN SCIENCE SOCIETY OF NEWPORT, OREGON	
Seller	BRENNEMAN, JOHN D. & BRENNEMAN, JANET K.	
Sale Date	1/3/2022	
Transaction Status	Recorded	
Sale Price	\$378,500	\$149 /SF NRA
<b>Analysis Price</b>	<b>\$387,963</b>	<b>\$153 /SF NRA</b>
Recording Number	2022-000019	
Rights Transferred	Fee Simple	
Marketing Time	251 days	



14 SW Nye St  
Newport, OR 97365

County  
Lincoln

APN  
11-11-08-BA-14301-00



### Income Analysis

Occupancy	100.0%	
Net Operating Income	\$24,000	\$9.45 /SF NRA
Cap Rate	6.34%	

### Property

Type	Office
Gross Building Area (GBA)	2,539 SF
Net Rentable Area (NRA)	2,539 SF
Buildings	1 Building, 1 Floor
Parking	7 Spaces (2.8/1,000 SF NRA)
Year Built	1977
Land Area	0.14 Acres (6,098 SF)
Site Coverage Ratio	41.64%
FAR	0.42

### Confirmation

Name	Freddy Saxton
Company	Advantage Real Estate
Phone Number	541-961-2085
Affiliation	Agent
Date	2/11/2022

### Remarks

Small commercial building located within close proximity to the courthouse, library, and post office in Newport, one block west of Oregon Coast Highway. It is demised into two spaces; a 1,464 SF space with a reception area, four private offices, and one bathroom, and a smaller 1,075 SF space. Seven off-street parking spaces.

This sold to an owner-user; per the broker, the in-place office tenants (who had month-to-month lease terms at the time of sale) will be vacating and the buyer (a religious organization) will move in during Spring 2022.

## Taft Retail Building

Comparable 6

### Sale Information

Buyer	Taft Holdings LLC	
Seller	Diamond Head Holdings	
Sale Date	9/7/2022	
Transaction Status	Recorded	
Sale Price	\$362,000	\$137 /SF NRA
<b>Analysis Price</b>	<b>\$363,810</b>	<b>\$137 /SF NRA</b>
Rights Transferred	Fee Simple	
Marketing Time	40 days	

### Property

Type	Retail
Gross Building Area (GBA)	2,652 SF
Net Rentable Area (NRA)	2,652 SF
Buildings	1 Building
Parking	15 Spaces (5.7/1,000 SF NRA)
Year Built	1930
Land Area	0.24 Acres (10,454 SF)
Site Coverage Ratio	15.42%
FAR	0.25
Zoning	TVC
Shape	Rectangular
Topography	Level
Corner	No



4756 SE Highway 101  
Lincoln City, OR 97367

County  
Lincoln

APN  
07-11-27-DC-01800-00, 07-  
11-27-DC-01901-00



### Confirmation

Name FlexMLS/Deed/local news sources

### Remarks

Commercial retail building with frontage along Highway 101 in the Taft district of Lincoln City. Parking lot is striped to accommodate 15 vehicles. Ground floor was formerly used for CBD retail sales while the second floor consisted of a 2BD/1BR apartment.

This property sold for \$450,000 (\$170/SF) in August 2021 but was then re-listed in July 2022 and re-sold for \$362,000 (\$137/SF). Between the August 2021 and July 2022 sales, ownership gutted the interior and had planned for a renovation before opting to re-sell the property for unknown reasons. The new buyer is the co-owner of the local restaurant Hilltop Inn.

## **SALES COMPARISON APPROACH (continued)**

The following narrative compares and contrasts the comparables relative to the subject property based on:

- **Location** – The subject is located in Newport. It benefits from its location along Bay Boulevard with a waterfront view amenity overlooking Yaquina Bay. All six comparables are deemed inferior to account for the waterfront view amenity.
- **Site Coverage/Parking** – The subject's site coverage (57.6%) is bracketed by the comparables. There is no off-street parking; however, a public parking lot is nearby and within walking distance. Five of the six comparables have superior site coverage ratios and offer off-street parking. Comparable 2 does not have off-street parking and has a high site coverage ratio of 90.2%. The subject has several covered walking areas in addition to the presence of the adjacent public pier which is not factored into its site coverage and allows for increased pedestrian traffic in the area. Comparable 2 is deemed inferior due to the high site coverage.
- **Access/Exposure** – The subject has adequate access and good exposure noting its frontage along Bay Boulevard. Comparable 1 and Comparable 5 have frontage along secondary connector streets and are deemed inferior with regard to exposure. The remaining comparables have exposure along primary arterials in their respective cities and no adjustments are applied.
- **Condition** – The subject was constructed in 1979 and reflects fair to average condition. Comparables 3 and 4 were both constructed in the 1990's and deemed superior. Comparable 2 underwent several renovations in 2019/2020 and it is also deemed superior. Comparable 6 was not gutted at the time of sale and is deemed inferior regarding condition.
- **Quality** – The subject consists of wood-frame construction reflecting average quality. This is similar to all but Comparables 1 and 6, each of which were built between 1928 and 1930 and are dated structures that had not been adequately maintained prior to selling.
- **Utility** – The subject reflects retail utility. Comparables 1 and 4 include residential components in the form of single apartment units on the upper floors. The income-generating ability from the apartments is typically viewed as safer investments when compared office/retail properties due to the low vacancy. These are deemed slightly superior to account for the apartment components.
- **Size (SF)** – The subject size is similar to the comparables, which range from 2,539 to 3,600 SF NRA. Comparables 5 and 6 are each at least 33% smaller in size, which likely placed some upward pressure on the sale price per SF (superior).



## **SALES COMPARISON APPROACH (continued)**

The comparables are arrayed below, illustrating the competitive position of the subject.

<b>Comparable Improved Sales Array</b>		
<b>Comparable</b>	<b>Adjusted Price/SF</b>	<b>Indication</b>
4	\$170	High
3	\$160	High
<b>SUBJECT</b>		
5	\$153	Low
2	\$139	Low
6	\$137	Low
1	\$135	Low

Based on the physical and locational characteristics influencing value, the subject is bracketed by Comparables 5 and 3, suggesting a narrowed range of **\$153 to \$160 per SF**.

Considering the subject's qualitative characteristics, including the 1979 construction, retail utility, and location in Newport along Bay Boulevard with a waterfront view amenity overlooking Yaquina Bay, a rounded unit value of **\$158.00 per SF** is concluded. This equates to a concluded stabilized market value for the subject of (3,961 SF x \$158/SF) \$625,838, rounded to **\$625,000**.

### **ANECDOTAL DATA**

Two sales occurred in September 2022 along Bay Boulevard in Newport that were improved with dilapidated structures and positioned on very small tax lots. Each property was purchased for land value according to the listing agent. Considering this, the sales were excluded as comparables but will be analyzed to provide further insight into the subject's market value.

- **620 SW Bay Boulevard (pictured at right)** is a three-story, 6,300 SF retail structure positioned on a single tax lot totaling 2,614 SF of land area. It was purchased by an adjacent property owner as a teardown for future expansion of an existing restaurant (Mo's Chowder House). The building was constructed in 1886 and historically had been used as a gift shop on the first floor. The September 2022 sale price of \$446,250 reflects a **land sale value of \$171/SF**.
- The property adjacent to the north of 620 SW Bay Boulevard (TL 5200) was also acquired in a separate September 2022 transaction from a different seller by the same buyer who is planning the restaurant expansion. The property was improved with a small shack structure of no contributory value and also reflects a land sale. With a site size of 1,307 SF, the purchase price of \$210,000 reflects a **land sale value of \$161/SF**.





## **SALES COMPARISON APPROACH (continued)**

The subject improvements are in fair to average condition yet still contribute value to the property due to the very small site size of 3,270 SF. The concluded stabilized market value of \$625,000 reflects a **sale price per land SF for the subject of \$191/SF**. This is above the recent land sale values along Bay Boulevard, which is warranted considering the superior condition of the subject improvements and the subject's positioning on the east side of Bay Boulevard, with a more direct waterfront view. The concluded market value via the sale comparables is supported, but the Bay Boulevard sales do provide modest insight into market trends for properties in the subject's immediate area.

### **SALES COMPARISON APPROACH CONCLUSION**

After analyzing the comparable sales, the indicated **stabilized** market value via the Sales Comparison Approach, was (\$158/SF x 3,961 SF) **\$625,000, rounded**.

Recall absorption costs to reach stabilization were estimated at the conclusion of the Income Approach to total **-\$70,000**.

Deducting the absorption costs from the stabilized value results in an "as if" market value of the leased fee interest via the Sales Comparison Approach of:

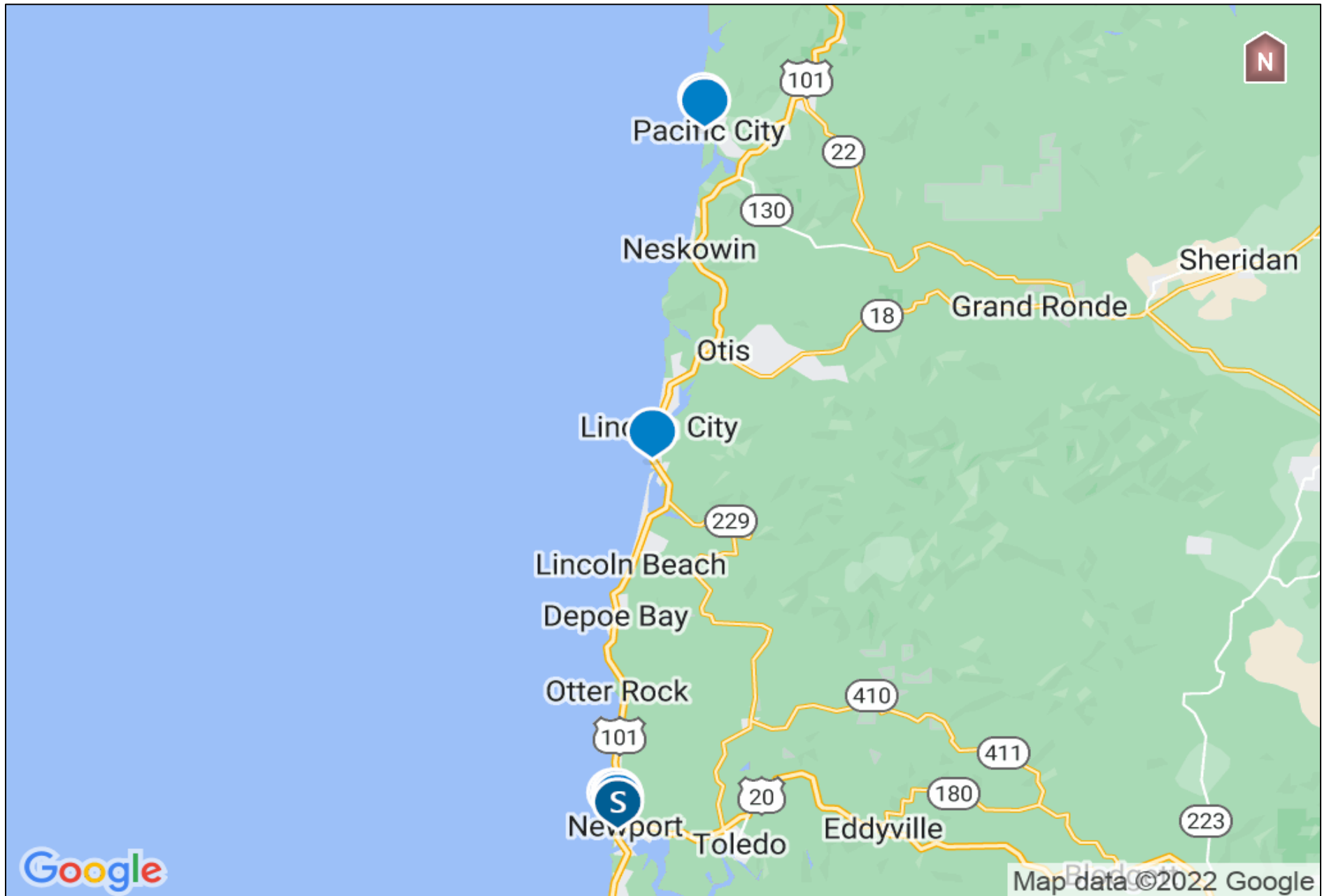
<b>Leased Fee/Leasehold Market Value: Sales Approach</b>	
Stabilized Value	\$625,000
<b>Total Absorption Costs</b>	<b>-\$70,000</b>
<b>"As If" Leased Fee Value</b>	<b>\$555,000</b>
per SF NRA	\$140.12

**\$555,000**

# IMPROVED SALES TABULATION CHART AND ADJUSTMENT GRID

Characteristics	Subject	Comparable 1		Comparable 2		Comparable 3		Comparable 4		Comparable 5		Comparable 6	
Name	Abby St. Pier Building	Retail/Residential Building		Newport Retail		Twist Wine Retail Building		Retail/Residential Building		Two-tenant office		Taft Retail Building	
Address	669 SW Bay Blv d. Newport, Oregon	255 SW 9th Street Newport, OR		588 W Olive Street Newport, OR		34930 Brooten Road Pacific City, OR		35350 Brooten Road Pacific City, OR		14 SW Nye St Newport, OR		4756 SE Highway 101 Lincoln City, OR	
Sale Date		Dec-20		Feb-21		Apr-21		Oct-21		Jan-22		Sep-22	
Sale Price		\$400,000		\$415,000		\$550,000		\$535,000		\$378,500		\$362,000	
Price/SF (Unadjusted)		\$128		\$132		\$153		\$165		\$149		\$137	
List Price		\$415,000		\$425,000		\$598,876		\$550,000		\$425,000		\$399,000	
List Price vs. Sale Price (% change)		-3.6%		-2.4%		-8.2%		-2.7%		-10.9%		-9.3%	
Days on Market		133		133		1,225		92		251		40	
Site Area (SF)	3,271	9,300		3,485		12,632		9,583		6,098		10,454	
Building Size (SF NRA)	3,961	3,136		3,142		3,600		3,245		2,539		2,652	
Site Coverage (%)	57.6%	33.7%		90.2%		14.2%		20.5%		41.6%		15.4%	
Year Built	1979	1928		1925/2020 reno.		1998		1994		1977		1930	
Parking	Street parking only	2.23 spaces/1,000 SF		Street parking only		3.06 spaces/1,000 SF		1.54 spaces/1,000 SF		2.76 spaces/1,000 SF		5.66 spaces/1,000 SF	
Buyer Motivation		Owner-user		Owner-user		Owner-user		Owner-user		Owner-user		Owner-user	
Value Adjustment		Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)
Property Rights Conveyed		Fee Simple	\$0	Fee Simple	\$0	Fee Simple	\$0	Fee Simple	\$0	Fee Simple	\$0	Fee Simple	\$0
Financing Terms		Conventional	\$0	Conventional	\$0	Conventional	\$0	Conventional	\$0	Conventional	\$0	Conventional	\$0
Conditions of Sale		Arm's Length	\$0	Arm's Length	\$0	Arm's Length	\$0	Arm's Length	\$0	Arm's Length	\$0	Arm's Length	\$0
Expenditures after purchase		None	\$0	None	\$0	None	\$0	None	\$0	None	\$0	None	\$0
Transactional Adj - Subtotal			\$400,000		\$415,000		\$550,000		\$535,000		\$378,500		\$362,000
Market Conditions	+0.25% per month	5.75%	\$23,000	5.25%	\$21,788	4.75%	\$26,125	3.25%	\$17,388	2.50%	\$9,463	0.5%	\$1,810
Adjusted Price			\$423,000		\$436,788		\$576,125		\$552,388		\$387,963		\$363,810
Adjusted Price/SF			\$135		\$139		\$160		\$170		\$153		\$137
Qualitative Adjustment		Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)
Location	Newport, Oregon	Inferior	-	Inferior	-	Inferior	-	Inferior	-	Inferior	-	Inferior	-
Site Coverage (%) / Parking	57.6%   Street parking only	Superior	+	Inferior	-	Superior	+	Superior	+	Superior	+	Superior	+
Access/Exposure	Bay Boulevard	Inferior	-	Similar	=	Similar	=	Similar	=	Inferior	-	Similar	=
Condition	Fair to Average	Similar	=	Superior	+	Superior	+	Superior	+	Similar	=	Inferior	-
Quality	Average	Inferior	-	Inferior	-	Similar	=	Similar	=	Inferior	-	Inferior	-
Utility	Retail	Retail/Residential	+/=	Retail	=	Retail	=	Retail/Residential	+/=	Office	=	Retail	=
Size (SF NRA)	3,961	Similar	=	Similar	=	Similar	=	Similar	=	Smaller	+	Smaller	+
Comparability			-		--		+		++		-		-
Conclusion			Low Indicator		Low Indicator		High Indicator		High Indicator		Low Indicator		Low Indicator
Confirmation													
Source		FlexMLS		FlexMLS		FlexMLS		FlexMLS		FlexMLS		FlexMLS	
Agent, Grantor or Grantee		Agent		Agent		Agent		Agent		Agent		Agent	
Name		Freddy Saxton		Freddy Saxton		VP for Dennis Regen		Freddy Saxton		Freddy Saxton		VP for Dennis Regen	
Phone/Email		541-961-2085		541-961-2085		541-992-1672		541-961-2085		541-961-2085		541-992-1672	
Confirmed		Phone		Phone		Phone		Phone		Phone		Phone	

## IMPROVED SALES MAP



## **IMPROVED SALES DRIVE-TO MAP – COMP #1**



## **IMPROVED SALES DRIVE-TO MAP – COMP #2**

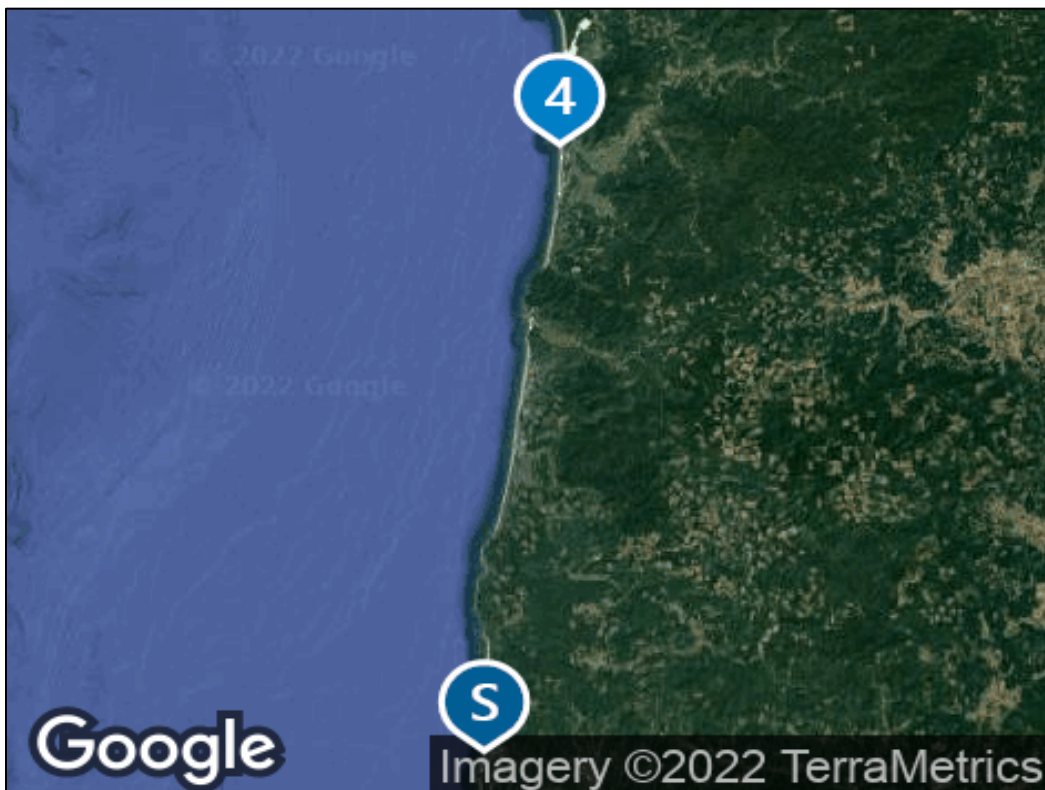




### **IMPROVED SALES DRIVE-TO MAP – COMP #3**



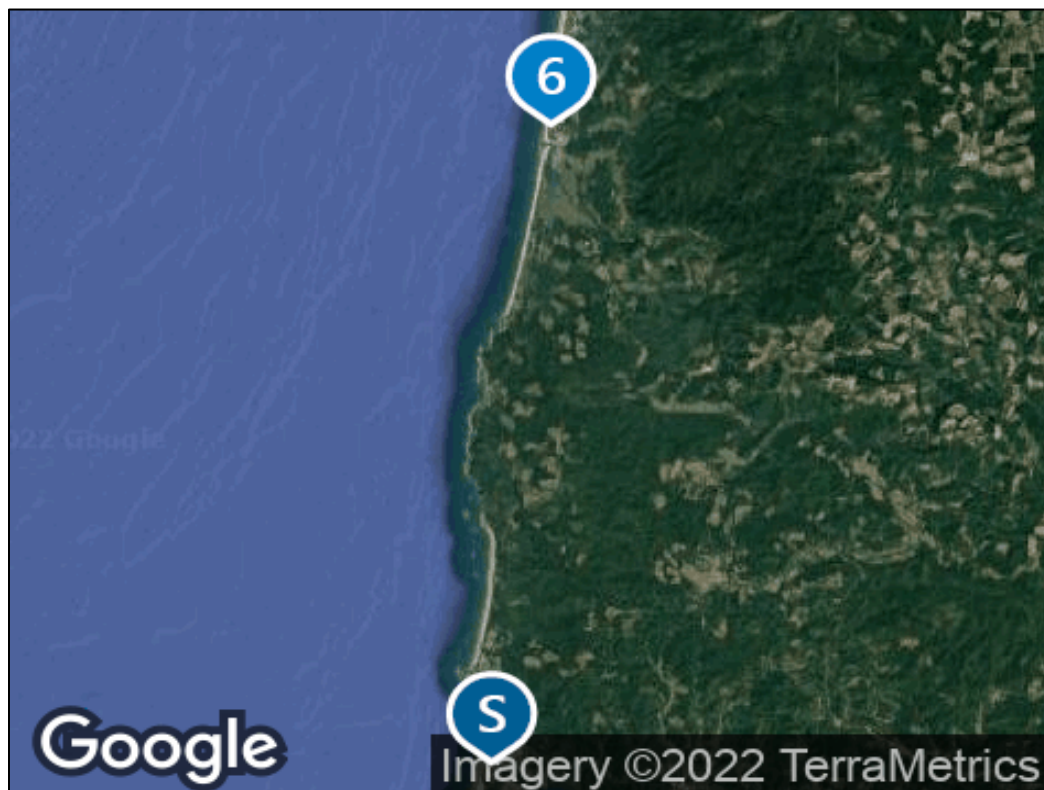
### **IMPROVED SALES DRIVE-TO MAP – COMP #4**



## **IMPROVED SALES DRIVE-TO MAP – COMP #5**



## **IMPROVED SALES DRIVE-TO MAP – COMP #6**





## **ANALYSIS OF VALUE CONCLUSIONS**

The Analysis of Value Conclusions is the final step in the appraisal process and involves the weighing of the individual valuation techniques in relationship to their substantiation by market data, and the reliability of each valuation technique to the subject property.

### **Indicated Values—**

Cost Approach: .....Not presented

Income Approach: .....\$600,000

Sales Comparison Approach: .....\$555,000

The following analysis summarizes the conclusions and explains the amount of weight applied to each value indication.

The **Income Capitalization Approach** to value is generally considered to be the best and most accurate measure of the value of income-producing properties, as the value estimate by this approach is based upon the premise that these properties are owned for their income-producing ability. In the case of the subject property, the improvements are being partially leased and the ownership position is receiving income. Two of the three retail suites were vacant while one space was being leased on a short-term agreement. Comparable information for market rent, vacancy and credit loss, and overall capitalization rates were good, with the estimate for each of these line items considered reliable. Considering this, and that it is a widely used approach by knowledgeable buyers and sellers when analyzing this type of property, the Income Capitalization Approach is given **primary weight** in this analysis.

The **Sales Comparison Approach** included six comparable sales from which to derive a value indication for the subject property. The price per square foot unit of comparison based on comparable property sales was used in this analysis and was determined to be the best unit of comparison in this approach. Although most of the sales were relatively current, all six sales were acquired by owner users, whereas the subject's most likely buyer is an investor based on its multi-tenant design, although the subject could potentially be renovated and owner-occupied if it were to be made available for sale, considering the lack of existing tenancy. No recent improved sales along Bay Boulevard with similar waterfront views were noted through market research. These factors limited the reliability of this approach and **secondary emphasis** is placed on it. It is noted that the comparable sales did provide valuable information regarding activity in the market and various investor expectations utilized in other sections of the report.

## **ANALYSIS OF VALUE CONCLUSIONS (continued)**

With primary emphasis placed on the Income Capitalization Approach, generally supported by the Sales Comparison Approach, the concluded **“as if” market value** of the **leased fee/leasehold** interest in the subject property, as of November 2, 2022, was:

**SIX HUNDRED THOUSAND DOLLARS**

**\$600,000**

This appraisal is based on the hypothetical condition that the subject improvements were partitioned from the surrounding public pier as of the date of value.

The concluded value is predicated on the following extraordinary assumptions:

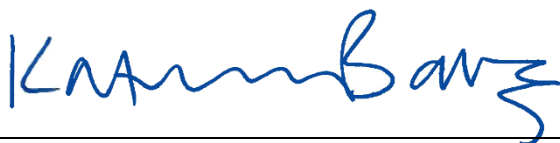
- The appraiser’s estimated subject site size at partition completion, including the allocation between the leased and owned site components, is generally accurate;
- The City of Newport will retain access to the mechanical room for pier maintenance.

These assumptions may have affected the assignment results. If determined to be false, the value conclusion herein will need to be revisited.

## **CERTIFICATION OF APPRAISAL**

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- I have performed no services as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this agreement.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective personal interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I, Katherine Powell Banz, MAI, have made a personal exterior inspection of the property that is the subject of this report. I have also inspected the interior via a 2019 inspection and current photographs of the building interior. All comparable data included herein was inspected in person or via photographs.
- Tyson Giza provided significant professional assistance to the person signing this report.
- The reported analysis, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I, Katherine Powell Banz, MAI, have completed the continuing education program for Designated Members of the Appraisal Institute.



Katherine Powell Banz, MAI  
OR Certified General Real Estate Appraiser  
License No. C000897  
Expiration Date: August 31, 2024

December 2, 2022  
Date

***PURCHASE ORDER - CITY OF NEWPORT***



## CITY OF NEWPORT

169 SW Coast Hwy  
Newport, OR 97365  
OrCPP #KN0010

## PURCHASE ORDER

P.O. Date: 10/3/22Vendor Name: Powell Banz ValuationAddress: 201 Ferry Street SE, Suite 300City/State/Zip: Salem, Oregon 97301Phone/FAX: 503.371.2403/503.371.2613Contact Name: Katherine Powell Banz, MAIEmail: kbanz@powellbanz.comPO #: 22-026Deliver to: City of NewportAddress: 169 SW Coast HwyCity/State/Zip: Newport, OR 97365Phone/FAX: 541.574.0626/541.574.0644Contact Name: Derrick I Tokos, AICPDepartment: Community Development

Description of items/services ordered:

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1.00	1	Appraisal of properties located at 669 SW Bay Blvd,	11,400.00	11,400.00
		415-425 SW Coast Hwy, and 641 SW Coast Hwy/626-636		0.00
		SW 9th St per the terms of a Professional Service Agreement		0.00
		dated 9/27/22, Bid #B4345 (enclosed)		0.00
TOTAL COST:				11,400.00

THIS PURCHASE ORDER INCORPORATES THE TERMS ON THE REVERSE SIDE AND THE CITY'S REQUEST FOR PROPOSAL AND CONTRACTOR'S RESPONSE THERETO, OR, IN THE ALTERNATIVE, THE CITY'S SOLICITATION DOCUMENT AND CONTRACTORS' BID. BY ITS SIGNATURE HEREUNDER, CONTRACTOR AGREES TO PERFORM THE SERVICES/PROVIDE THE PRODUCTS DESCRIBED IN SUCH DOCUMENTS, FOR THE FEE/AMOUNT SET FORTH THEREIN. THE CONTRACTOR WILL COMPLY FULLY WITH ALL TERMS AND CONDITIONS OF THE DOCUMENTS, THE NEWPORT MUNICIPAL CODE AND STATE AND FEDERAL LAW. IF THIS PURCHASE IS PLACED AGAINST STATE OF OREGON PRICE AGREEMENT # \_\_\_\_\_ OR COOPERATIVE PROCUREMENT ORGANIZATION \_\_\_\_\_

Member # \_\_\_\_\_ Agreement # \_\_\_\_\_. THE CONTRACT TERMS AND CONDITIONS AND SPECIAL TERMS AND CONDITIONS CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY THIS REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS EXPRESS OR IMPLIED.

Account Coding:

Fund	GL Dept	Expense Account	Project Code	Amount
101	1400	60100		11,400.00
			Total	11,400.00

Circle Numbers that apply:

Procurement Method: Solicitation Method: 7 - ITB

1 - Three informal Bids    4 - Emergency    8 - RFQ/RFI/RFP  
2 - Three written Bids    5 - Sole Source    9 - Exemption Code:  
3 - Formal Bids    6 - Special    #1 : \_\_\_\_\_

Notes/Special Instructions:

Authorizations:

[Signature] 10/3/22  
Department Director Date

[Signature] 10-3-22  
Finance Director Date

[Signature] 10-3-22  
City Manager Date

[Signature] 10/4/2022  
Contractor's Authorized Signature Date

Katherine Powell Banz, MAI  
Contractor's Printed Name

Powell Banz Valuation, LLC  
Name of Company

SUBMIT THIS FORM FOR SIGNATURE ALONG WITH QUOTATION DOCUMENTATION PRIOR TO PURCHASE OF NON ROUTINE GOODS OR SERVICES COSTING \$5,000 OR MORE.

#### TERMS OF CITY'S PURCHASE ORDER

1. In the course of providing Services under this Purchase Order, Contractor may have contact with the public. Contractor will maintain good relations with the public. The City may treat the failure to maintain good relations with the public as a non-curable breach of this Purchase Order and may disqualify Contractor from future work for the City.
2. Contractor shall be compensated as described in the Purchase Order. Unless otherwise set forth in the Purchase Order, Contractor shall begin Services on the Effective Date and shall complete Services no later than such date set forth in the Purchase Order or as agreed upon in writing by the parties.
3. Contractor certifies that: (a) Contractor is an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. In the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of the finding. (b) Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265. (c) No employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with this Agreement, except as specifically declared in writing. (d) Contractor currently has a City business license or will obtain one prior to delivering Services under this Agreement.
4. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed with good workmanship and in accordance with generally accepted professional practices and standards of the industry in which Contractor operates as well as the requirements of applicable federal, state and local laws. Contractor's work will conform to the requirements of this Purchase Order. Acceptance of Contractor's work by City shall not operate as a waiver or release of this warranty. Contractor is fully liable for the acts and omissions of Contractor and Contractor's subcontractors which cause any damage, injury, death, property damage or loss to any person or property. Contractor will indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this Agreement, but only to the extent attributable to Contractor's acts or omissions. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.
5. Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the Contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.
6. At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the Agreement pursuant to this Section due to no fault of Contractor, City shall pay Contractor for all approved and undisputed services rendered up to the date of termination. City may modify or terminate this Agreement without cause effective upon delivery of written notice to Contractor, or at such later date as may be established by City.
7. For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.
8. Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, earthquake, fire, flood, epidemic, quarantine restriction, strike, freight embargo, unusually severe weather; provided that the parties so disabled shall notify the other party in writing of the cause of delay. Each party shall make reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Agreement.
9. Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations, including, but not limited to those in Exhibit A. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.
10. Contractor will perform additional work as may be necessary to correct errors in Services performed under this Agreement without undue delay and without additional cost.
11. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon. In any action arising under this Agreement, the prevailing party shall be entitled to such sum as the court may award as reasonable attorney fees and court costs, including any appeal. Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, some provisions of which are attached to this Agreement as Exhibit A. All Contractor's work product accomplished under this Agreement, whether in the form of designs, drawings, as-builts, diagrams, specifications, reports, or other writings, shall become the exclusive property of the City. The City is the owner of any copyrights thereto, upon City's final payment to Contractor. This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

#### EXHIBIT A

**ORS 279B.220 Conditions concerning payment, contributions, liens, withholding.** 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. 5. In addition to the conditions specific in subsection 1-4 above, every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place. (ORS 279C.505).

**ORS 279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.** 1. If the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing a municipality, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. 2. If the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within thirty days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived. 3. If the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. 4. The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

**ORS 279B.230 Condition concerning payment for medical care and providing workers' compensation.** (see ORS 279C.530 for public improvement contracts) 1. 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. 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.

**ORS 279B.020, 279B.235; 279C.520, 279C.540 Condition concerning hours of labor.** 1. An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. 2. A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055 (or 279C.100) the employee shall be paid at least time and a half pay: (a) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (b) For all overtime in excess of ten hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (c) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020 (or 279C.540). 3. In the case of public contracts for personal services as described in ORS 279A.055 (or 279C.100), the contract shall contain a provision that the contractor's employees who work under the public contract shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. 4. Persons employed under the public contract shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

**ORS 279C.830 Relating to prevailing rate of wage in public works contracts.** 1. In the event this contract is a public works contract, the parties shall state in the contract the existing state prevailing rate of wage and if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that must be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do all or part of the work contemplated by the contract. When the prevailing rates of wage are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates. 2. Every contract and subcontract shall contain a provision that the workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. 3. Contractor will pay to the Commissioner of the Bureau of Labor and Industries (BOLI) a fee as provided in ORS 279C.825(1). The fee shall be paid to the commissioner under the administrative rule of the commissioner. 4. Every contract for public works, or in connection with a public works contract, shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).





**POWELL BANZ**  
VALUATION

September 27, 2022

**Bid Number: B4345**

Derrick Tokos, AICP  
Community Development Director  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365  
d.tokos@newportoregon.gov

Dear Mr. Tokos:

Thank you for considering Powell Banz Valuation, LLC for the appraisal assignment identified in the attached Professional Service Agreement. Please sign one copy of the agreement and return it via fax or e-mail, thereby indicating your authorization for us to proceed with this assignment.

The following is a list of information we will need to begin our analysis. Please forward with the agreement as soon as possible.

- Signed Professional Service Agreement
- Property contact for site inspections
- Lease documents and any addendums
- Current rent roll
- Operating expenses for the prior three years, presented annually
- Building plans (if available)

Our ability to honor the terms of this agreement will require your response by September 29, 2022. If you have questions regarding the enclosed, please feel free to contact me. We look forward to working with you.

Respectfully,

**POWELL BANZ VALUATION, LLC**

Katherine Powell Banz, MAI  
Principal  
+1 (503) 371-2403  
kbanz@powellbanz.com

**Professional Service Agreement****Bid Number: B4345****Property:** Newport Commercial Properties**Location:** Various locations, see attached**Client:** City of Newport**Contact:** Derrick Tokos, AICP

<b>Scope of Work:</b>	Three Appraisal Reports prepared in accordance with the Appraisal Institute and Uniform Standards of Professional Appraisal Practice. The reports will present the "As-Is" Market Value of the subject properties as of the date of inspection.
<b>Intended Use:</b>	Decision making for potential sale and purchase.
<b>Intended Users:</b>	Client and the client's legal & accounting professionals.
<b>Copies:</b>	One (1) Electronic Final Appraisal in PDF format. Two (2) hard copies (upon request). Additional copies will be billed at a rate of \$75 each.
<b>Professional Fee:</b>	\$11,400.00
<b>Retainer:</b>	\$0.00
<b>Terms:</b>	Commencement of the appraisal process will begin upon receipt of the signed Professional Service Agreement, retainer and any requested materials. The fee for the appraisal is due upon delivery of the report. Past due accounts will accrue a late payment charge of 1.5% per month, compounded monthly. In the event that either party commences any legal action relating to the provisions of the Agreement, including collection, the prevailing party shall be entitled to its actual attorney's fees and costs, including those incurred upon appeal. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon, and the venue of any action arising from this agreement shall be in Marion County, Oregon.
<b>Delivery:</b>	Six to seven weeks from the return of the Professional Service Agreement and requested items.
<b>Modification or Cancellation:</b>	<b><i>Changes in the Scope of Work, pre-trial conferences, trial preparation and testimony will be billed separately at the stated hourly rates below.</i></b> If the assignment is cancelled prior to completion, for any reason, the client will be billed at a minimum \$500 or for all time expended prior to cancellation. Billing rates are \$150 per hour for associate time, \$200 per hour for senior associate time, \$250 per hour for designated associate time and \$300 per hour for principal time. If the client delays completion of the assignment beyond 90 days, the fee will be renegotiated.
<b>Hazardous Waste Disclaimer:</b>	Powell Banz Valuation, LLC does not assume any duty to analyze or examine the property or adjacent property for the possible presence of toxic or hazardous substances or materials and accepts no liability regarding the issue. This appraisal report will contain a comprehensive disclaimer to this effect.

**Professional Service Agreement****Bid Number: B4345**
**POWELL BANZ**  
 VALUATION

**Property:** Newport Commercial Properties

**Location:** Various locations, see attached

**Client:** City of Newport

**Contact:** Derrick Tokos, AICP
**Liability:**

Powell Banz Valuation, LLC's responsibilities are rendered and limited to the client. Liability is limited to the fee actually received for the services requested herein.

I, Katherine Powell Banz, MAI, Principal of Powell Banz Valuation, LLC, agree to the above terms, assuming the Professional Service Agreement is returned by September 29, 2022.

I, Derrick Tokos, AICP, on behalf of City of Newport, agree to the above stated terms and authorize Powell Banz Valuation, LLC to prepare the above referenced appraisal.

 September 27, 2022  
 Katherine Powell Banz, MAI Date

\_\_\_\_\_  
 Derrick Tokos, AICP Date

Property	Address	Account Number	Map & Tax Lot	Fee
Abbey Street Pier Building	669 SW Bay Boulevard	R357311, R366804, R530598, R530599	11-11-08-CA-1300, 1300-L2, 1300-L3, 1300-L4	\$3,800
Guan & Zhu Property	415/425 SW Coast Highway	R104392, R111587	11-11-08-BD-09200, 9401	\$4,400
Vacant Lot	641 SW Coast Highway, 626/636 SW 9th Street	R220091, R222471, R217750	11-11-08-CA-15700, 15800, 15600	\$3,200
<b>Total Fee</b>				<b>\$11,400</b>

***TAXES, ASSESSMENT DATA, DEED & LEGAL DESCRIPTION***





Property      Owner      Property Address  
R357311    CITY OF NEWPORT    669 SW BAY BLVD

2022 In Process Real Market Value  
**\$897,230**

2022 GENERAL INFORMATION

Property Status	A Active
Property Type	Commercial
Legal Description	TWNSHP 11, RNG 11, ACRES 0.03, PARTIALLY NON-ASSESSABLE, MISC 8-108 MF245-2077
Alternate Account Number	-
Neighborhood	N226: BAY BOULEVARD BAYFRONT COMMERCIAL
Map Number	11-11-08-CA-01300-00
Property Use	942: PART EX - CITY PROP
Levy Code Area	104
Zoning	W-2

RELATED PROPERTIES

Linked Properties    R366804, R530584,  
R530598

2022 OWNER INFORMATION

Owner Name	CITY OF NEWPORT
Mailing Address	CITY MANAGER 169 SW COAST HWY NEWPORT, OR 97365

EXEMPTIONS/DEFERRALS

EXEMPTION CODE	EXEMPTION DESCRIPTION	EXPIRATION YEAR
CITY	CITY: CITY OWNED	-

2022 IMPROVEMENTS

⌄ Expand/Collapse All



☐ Improvement #1      Improvement Type  
 -                              C: COMMERCIAL

ID	SEGMENT TYPE	SEGMENT CLASS	YEAR BUILT	AREA	DETAILS
1	Building	-	1979	1,885	✕ Details
2	Building	-	1800	2,267	✕ Details

## 2022 LAND SEGMENTS

STATE CODE	SEGMENT TYPE	LAND SIZE
L1	CSBF: COM DEV BAYFRONT SITE	0.01 Acres
L2	CSBF: COM DEV BAYFRONT SITE	0.02 Acres
L3	CSD: COMMERCIAL SITE DEVELOPMENT	-
<b>TOTALS</b>		<b>1306.80 Sq. ft / 0.03 acres</b>

## CERTIFIED / IN PROCESS VALUES

YEAR	IMPROVEMENTS	LAND	RMV	SPECIAL USE	ASSESSED VALUE
2022 (In Process)	\$651,460	\$245,770	\$897,230	\$0	\$0
2021	\$429,010	\$237,140	\$666,150	\$0	\$0
2020	\$381,340	\$215,590	\$596,930	\$0	\$0
2019	\$133,190	\$108,500	\$241,690	\$0	\$0
2018	\$105,440	\$108,500	\$213,940	\$0	\$0
2017	\$105,440	\$108,500	\$213,940	\$0	\$0
2016	\$101,000	\$108,500	\$209,500	\$0	\$0
2015	\$139,890	\$138,000	\$277,890	\$0	\$0

TOTAL TAXES DUE

Current Year Due

Past Years Due

Total Due

Payment History for R357311 not found.

Please contact the Assessor's office if you have further questions.

## LINCOLNPROD PROPERTY RECORD CARD

Property ID: R357311

Map and Taxlot: 11-11-08-CA-01300-00

Tax Year: 2022

Run Date: 10/5/2022 9:16:54 AM

PROPERTY SITUS ADDRESS		GENERAL PROPERTY INFORMATION		VALUE HISTORY					
669 SW BAY BLVD Maintenance Area: 5-09		Prop Class:	942	Year	Land RMV	Imp RMV	Total RMV	Total AV	LSU Value
		NBH Code:	N226						
		Prop Type Code:	COM						
		Last Appr Date:							
		Appraiser:							
		Zoning:							
		Code Area:	104						
		Related Accts:	P308325, P527347, R530584, P69095, R366804, P528991,						
		Owner Comment:	PER CITY OF NEWPORT LETTER						
		Road Access:	PVD,CB,SW						
OWNER NAME AND MAILING ADDRESS				ASSESSMENT INFORMATION					
CITY OF NEWPORT CITY MANAGER 169 SW COAST HWY NEWPORT, OR 97365				Land Non-LSU:	245,770	Prior MAV:		CPR:	
				Land LSU:		Prior AV:		EX. MAV:	
				Improvement:	651,460	AV +3%:		LSU:	
				RMV Total:		Except RMV:		New M50 AV:	
LEGAL DESCRIPTION				SALES INFORMATION					
TWNShp 11, Rng 11, Acres 0.03, Partially Non-Assessable, Misc 8-108 MF245-2077				Date	Type	Sale Price	Adj Sale Price	Validity	Inst. Type
									Sale Ref

Acres: 0.03 Sqft: 1379

Effective Acres: 0.03

BUILDING PERMITS AND INSPECTIONS					
Type	Appraiser	Issue Date	Date Checked	% Comp	Comment

PARCEL COMMENTS		EXEMPTIONS		Exceptions			
GenLink- R366804-L, R530584-L, R530598-L; GenFlag- 2009 VALUE CHANGE,2016 VALUE CHANGE; GenCom- 2016-17 JV#370 VALUE ADJ ONLY, ENTERED 3-21-16. 2016-17 JV#364 LESS PTN TO NEW TL1300-L1 (EXN), ENTE; Prop-Note- ABBEY ST. PIER; Land- CITY OF NEWPORT;PARTIALLY NON ASSESSABLE/ADVALOREM//BALANCE ON R366804,R530598,R530599,FROM TERMINATED R530599,FROM TERMINATED R530599		Code	Exempt RMV	Code	Year	Amount	Method
		CITY		RC	2020	355240	4

MARKET LAND INFORMATION							LAND SPECIAL USE			
Type	Table	Method	Acres	Base Value	Adjustment Code - %	NBHD %	Total Adj %	Final Value	Code	SAV Unt Pr
CSBF: COM DEV BAYFRONT S 5BFF		FF	0.010	108,500				123,690		
CSBF: COM DEV BAYFRONT S 5BFF		FF	0.020	171,500	PRO-59			115,350		
CSD: COMMERCIAL SITE DEV NOSC		LT		5,000	EFF-200,PRO-59			6,730		
Total Acres:			0.030			Total Market Land Value:		245,770	Total LSU:	

**LINCOLNPROD PROPERTY RECORD CARD**

**Property ID:** R357311

**Map and Taxlot:** 11-11-08-CA-01300-00

**Tax Year:** 2022

**Run Date:** 10/5/2022 9:16:54 AM

COMMERCIAL IMPROVEMENTS																	
No.	Business Name	Occupancy	Class	Occ %	Stories	Hgt	Rank	Yr Blt	Eff Yr	Area	Perim	Adjustment Code-%	NBHD %	Total Adj %	RCN	% Comp	RMV
1.1		353-Retail Store		100	1		2.0	1979					4.100	4.100			651,460
1.2		353-Retail Store		100	1		2.0	1800		2,267			4.100	4.100			
Total RMV:																	651,460

COMMERCIAL ADDITIONS			
No.	Type	Desc	Value

COMMERCIAL BASEMENTS		
No.	Bsmt Type	Area

COMMERCIAL COMMENTS
ComImp - 2520048 - ABBEY STREET PIER EXEMPT PORTION

LINCOLNPROD PROPERTY RECORD CARD

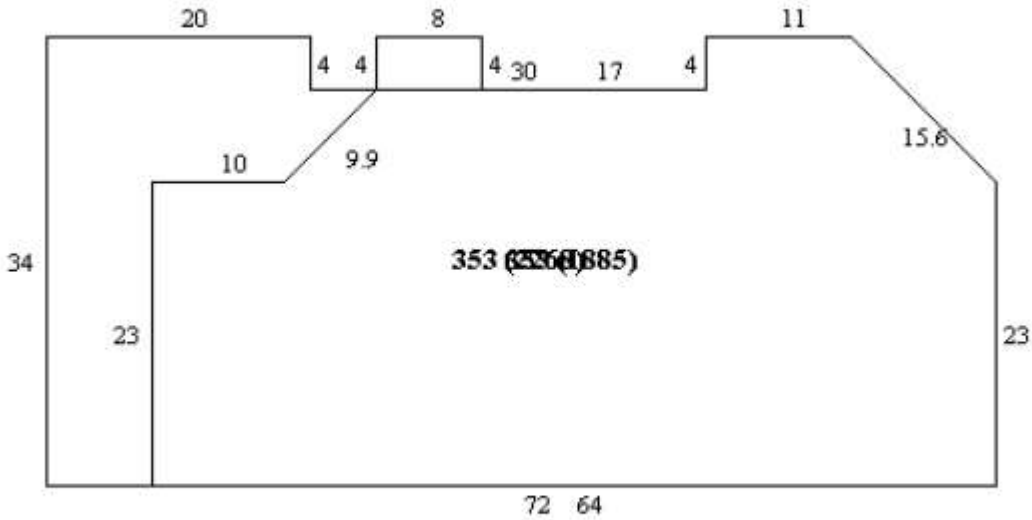
Property ID: R357311

Map and Taxlot: 11-11-08-CA-01300-00

Tax Year: 2022

Run Date: 10/5/2022 9:16:54 AM

Situs: 669 SW BAY BLVD



No Image Available

SKETCH VECTORS: A0CR64U23VL11U11L11D4L17U4L8D4VD7L7L10D23,A0L8CR72U23VL11U11L11D4L30U4L20D34  
 SKETCH COMMENTS:

Property	Owner	Property Address	2022 In Process Real Market Value
R530584	DEPT OF STATE LANDS OR/CITY OF NEWPORT, LEASE	-	<b>\$141,790</b>

#### 2022 GENERAL INFORMATION

Property Status	A Active
Property Type	Commercial
Legal Description	TWNSHP 11, RNG 11, TRACT ABBEY ST PIER,LEASE ONLY, M-9700
Alternate Account Number	-
Neighborhood	N226: BAY BOULEVARD BAYFRONT COMMERCIAL
Map Number	11-11-08-CA-01300-L1
Property Use	943: EX - LEASED TO CITY
Levy Code Area	104
Zoning	W-2

#### RELATED PROPERTIES

Linked Properties    R357311

#### 2022 OWNER INFORMATION

Owner Name	DEPT OF STATE LANDS OR/CITY OF NEWPORT, LEASE
Mailing Address	CITY MANAGER 169 SW COAST HWY NEWPORT, OR 97365


#### EXEMPTIONS/DEFERRALS

EXEMPTION CODE	EXEMPTION DESCRIPTION	EXPIRATION YEAR
CITY	CITY: CITY OWNED	-

#### 2022 IMPROVEMENTS

⌄ Expand/Collapse All



 Improvement #1      Improvement Type  
 -                              C: COMMERCIAL

ID	SEGMENT TYPE	SEGMENT CLASS	YEAR BUILT	AREA	DETAILS
1	Non-Building	-	1800	2,325	✕ Details

### CERTIFIED / IN PROCESS VALUES

YEAR	IMPROVEMENTS	LAND	RMV	SPECIAL USE	ASSESSED VALUE
2022 (In Process)	\$141,790	\$0	\$141,790	\$0	\$0
2021	\$93,380	\$0	\$93,380	\$0	\$0
2020	\$83,000	\$0	\$83,000	\$0	\$0
2019	\$83,000	\$0	\$83,000	\$0	\$0
2018	\$65,710	\$0	\$65,710	\$0	\$0
2017	\$65,710	\$0	\$65,710	\$0	\$0
2016	\$62,940	\$0	\$62,940	\$0	\$0

TOTAL TAXES DUE
Current Year Due
Past Years Due
Total Due

Payment History for R530584 not found.  
Please contact the Assessor's office if you have further questions.

## LINCOLNPROD PROPERTY RECORD CARD

Property ID: R530584

Map and Taxlot: 11-11-08-CA-01300-L1

Tax Year: 2022

Run Date: 10/5/2022 9:19:39 AM

PROPERTY SITUS ADDRESS		GENERAL PROPERTY INFORMATION		VALUE HISTORY			
Maintenance Area: 5-09		Prop Class:	943	Year	Land RMV	Imp RMV	Total RMV
		NBH Code:	N226			Total AV	LSU Value
		Prop Type Code:	COM				
		Last Appr Date:					
		Appraiser:					
		Zoning:					
		Code Area:	104				
		Related Accts:					
		Owner Comment:					
		Road Access:	PVD				
OWNER NAME AND MAILING ADDRESS				ASSESSMENT INFORMATION			
DEPT OF STATE LANDS OR				Land Non-LSU:		Prior MAV:	CPR:
CITY MANAGER				Land LSU:		Prior AV:	EX. MAV:
169 SW COAST HWY				Improvement:	141,790	AV +3%:	LSU:
NEWPORT, OR 97365				RMV Total:		Except RMV:	New M50 AV:
LEGAL DESCRIPTION				SALES INFORMATION			
TWNShp 11, Rng 11, Tract ABBEY ST				Date	Type	Sale Price	Adj Sale Price
PIER,LEASE ONLY, M-9700							Validity
							Inst. Type
							Sale Ref

Acres: 0 Sqft:

Effective Acres: 0

BUILDING PERMITS AND INSPECTIONS					
Type	Appraiser	Issue Date	Date Checked	% Comp	Comment

PARCEL COMMENTS		EXEMPTIONS		Exceptions		
GenLink- R357311-L; GenCom- 2016-17 JV#364 FROM TL1300 (EXN), ENTERED 3-21-16.; Prop-Note- DOCK OF ABBEY STREET PIER		Code	Exempt RMV	Code	Year	Amount
		CITY				Method

MARKET LAND INFORMATION				LAND SPECIAL USE			
Type	Table	Method	Acres	Base Value	Adjustment Code - %	NBHD %	Total Adj %
						Final Value	
						Code	SAV Unt Pr
						MSAV Unt Pr	LSU

## LINCOLNPROD PROPERTY RECORD CARD

Property ID: R530584

Map and Taxlot: 11-11-08-CA-01300-L1

Tax Year: 2022

Run Date: 10/5/2022 9:19:39 AM

## COMMERCIAL IMPROVEMENTS

No.	Business Name	Occupancy	Class	Occ %	Stories	Hgt	Rank	Yr Blt	Eff Yr	Area	Perim	Adjustment Code-%	NBHD %	Total Adj %	RCN	% Comp	RMV
1.1		163-Site Improvemen		100	1		2.0	1800					4.100	4.100			141,790
Total RMV:																	141,790

## COMMERCIAL ADDITIONS

No.	Type	Desc	Value
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## COMMERCIAL BASEMENTS

No.	Bsmt Type	Area	Depth
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## COMMERCIAL COMMENTS

ComImp - 2881065 - DOCK AT ABBEY STREET PIER (PORTION OVER DSL LAND)

Property	Owner	Property Address	2022 In Process Real Market Value
R366804	CITY OF NEWPORT/MATHEWS DON & FRAN, LEASE	669 SW BAY BLVD	<b>\$111,680</b>

## 2022 GENERAL INFORMATION

Property Status	A Active
Property Type	Commercial
Legal Description	TWNSHP 11, RNG 11, BLOCK BAY LATTE, LEASE ONLY, PARTIALLY NON- ASSESSABLE, M-9703
Alternate Account Number	-
Neighborhood	N226: BAY BOULEVARD BAYFRONT COMMERCIAL
Map Number	11-11-08-CA-01300-L2
Property Use	201: C - IMPROVED PROPERTY
Levy Code Area	104
Zoning	W-2

## RELATED PROPERTIES

Linked Properties R357311

## 2022 OWNER INFORMATION

Owner Name	CITY OF NEWPORT/MATHEWS DON & FRAN, LEASE
Mailing Address	345 SW BAY BLVD NEWPORT, OR 97365

## 2022 IMPROVEMENTS

⌵ Expand/Collapse All

<input type="checkbox"/> Improvement #1	Improvement Type
-	<b>C: COMMERCIAL</b>

ID	SEGMENT TYPE	SEGMENT CLASS	YEAR BUILT	AREA	DETAILS
1	Building	-	1979	465	⌵ Details
2	Non-Building	-	1800	-	⌵ Details

2022 LAND SEGMENTS

STATE CODE	SEGMENT TYPE	LAND SIZE
L1	CSBF: COM DEV BAYFRONT SITE	0.02 Acres
L2	CSD: COMMERCIAL SITE DEVELOPMENT	-
TOTALS		871.20 Sq. ft / 0.02 acres

CERTIFIED / IN PROCESS VALUES

YEAR	IMPROVEMENTS	LAND	RMV	SPECIAL USE	ASSESSED VALUE
2022 (In Process)	\$86,850	\$24,830	\$111,680	\$0	\$63,670
2021	\$57,200	\$23,960	\$81,160	\$0	\$61,820
2020	\$50,840	\$21,780	\$72,620	\$0	\$60,020
2019	\$50,840	\$21,780	\$72,620	\$0	\$58,280
2018	\$40,240	\$21,780	\$62,020	\$0	\$56,590
2017	\$40,240	\$21,780	\$62,020	\$0	\$54,950
2016	\$38,550	\$21,780	\$60,330	\$0	\$53,350
2015	\$347,070	\$112,000	\$459,070	\$0	\$414,370

SALES HISTORY

SALE DATE	SELLER	BUYER	INST #	SALE PRICE	INST TYPE
	CITY OF NEWPORT	CITY OF NEWPORT/MATHEWS DON & FRAN, LEASE	M-9703	-	L LEASE (LONG OR SHORT TERM)

	TOTAL TAXES DUE
	Current Year Due
	Past Years Due



Total Due

TAXYEAR	RECEIPT NUMBER	TRANSACTION DATE	PAYMENT AMOUNT
2021	LINC-413	7-7-2022	\$382.90
2021	1689031	5-26-2022	\$377.86
2021	1685051	2-17-2022	\$377.86
2021	1680419	11-29-2021	\$377.87
2020	1636720	6-14-2021	\$388.77
2020	1635589	5-18-2021	\$368.91
2020	1624749	11-24-2020	\$368.91
2019	1568625	11-21-2019	\$1,027.62
2018	1510836	11-19-2018	\$996.17
2017	1461593	11-21-2017	\$987.42
2016	1408076	11-22-2016	\$966.51
2015	1323961	11-3-2015	\$7,168.28
2014	1269399	11-4-2014	\$7,007.09
2013	1245179	11-19-2013	\$6,547.22
2012	1173764	11-8-2012	\$6,569.44
2011	1141562	11-17-2011	\$6,368.28
2010	1069323	11-10-2010	\$6,205.05
2009	1017858	11-12-2009	\$6,015.82
2008	972316	11-13-2008	\$5,915.90
2007	911367	11-7-2007	\$5,715.96
2006	891825	12-12-2006	\$5,685.10

2005	807828	11-3-2005	\$5,362.17
2004	802371	6-14-2005	\$73.05
2004	801716	5-25-2005	\$5,698.24
2003	720747	11-13-2003	\$5,196.04
2002	682402	11-18-2002	\$5,139.36
2001	630737	11-15-2001	\$5,036.18
2000	575262	11-14-2000	\$4,911.07
1999	540324	11-18-1999	\$4,722.13
1998	501140	12-2-1998	\$4,130.35
1997	452188	12-18-1997	\$4,219.85
1996	402622	11-15-1996	\$4,357.10
1995	376880	12-22-1995	\$20.04
1995	376211	12-11-1995	\$4,510.00
1994	305030	10-31-1994	\$4,461.34
1993	267911	11-9-1993	\$4,703.97

## LINCOLNPROD PROPERTY RECORD CARD

Property ID: R366804

Map and Taxlot: 11-11-08-CA-01300-L2

Tax Year: 2022

Run Date: 10/5/2022 9:18:54 AM

PROPERTY SITUS ADDRESS	GENERAL PROPERTY INFORMATION	VALUE HISTORY					
669 SW BAY BLVD Maintenance Area: 5-09	Prop Class: 201 NBH Code: N226 Prop Type Code: COM Last Appr Date: Appraiser: Zoning: Code Area: 104 Related Accts: P69095	Year	Land RMV	Imp RMV	Total RMV	Total AV	LSU Value
OWNER NAME AND MAILING ADDRESS	Owner Comment:	ASSESSMENT INFORMATION					
CITY OF NEWPORT 345 SW BAY BLVD NEWPORT, OR 97365	Road Access: PVD,CB,SW	Land Non-LSU:	24,830	Prior MAV:	61,820	CPR:	
		Land LSU:		Prior AV:	61,820	EX. MAV:	
		Improvement:	86,850	AV +3%:	63,675	LSU:	
		RMV Total:	111,680	Except RMV:		New M50 AV:	63,670
LEGAL DESCRIPTION		SALES INFORMATION					
TWN5HP 11, RNG 11, BLOCK BAY LATTE,LEASE ONLY, PARTIALLY NON- ASSESSABLE, M-9703		Date	Type	Sale Price	Adj Sale Price	Validity NON_SALE	Inst. Type L LEASE (LONG O
							Sale Ref M-9703

Acres: 0 Sqft:

Effective Acres: 0

BUILDING PERMITS AND INSPECTIONS					
Type	Appraiser	Issue Date	Date Checked	% Comp	Comment

PARCEL COMMENTS	EXEMPTIONS	Exceptions			
GenLink- R357311-L; GenFlag- 2009 VALUE CHANGE,2016 VALUE CHANGE; GenCom- 2016-17 JV#370 CREATE 3 NEW LEASE ACCTS FROM TL1300, ENTERED 3-21-16. PARTIALLY NON-ASSESSABLE/NON-A; Prop-Note- ABBEY ST PIER RETAIL;CITY OF NEWORT;PARTIALLY ADVALOREM/NON-ASSESSABLE	Code Exempt RMV	Code RC	Year 2016	Amount -362570	Method 4

MARKET LAND INFORMATION						LAND SPECIAL USE			
Type	Table	Method	Acres	Base Value	Adjustment Code - %	NBHD %	Total Adj %	Final Value	Code
CSBF: COM DEV BAYFRONT S 5BFF		FF	0.020	171,500	PRO-12			23,460	SAV
CSD: COMMERCIAL SITE DEV	NOSC	LT		5,000	EFF-200,PRO-12			1,370	MSAV
Total Acres:			0.020			Total Market Land Value:			LSU
									Total LSU:

## LINCOLNPROD PROPERTY RECORD CARD

Property ID: R366804

Map and Taxlot: 11-11-08-CA-01300-L2

Tax Year: 2022

Run Date: 10/5/2022 9:18:54 AM

## COMMERCIAL IMPROVEMENTS

No.	Business Name	Occupancy	Class	Occ %	Stories	Hgt	Rank	Yr Blt	Eff Yr	Area	Perim	Adjustment Code-%	NBHD %	Total Adj %	RCN	% Comp	RMV
1.1		353-Retail Store		100	1		2.0	1979					4.100	4.100			75,340
1.2		163-Site Improvemen		100	1		2.0	1800					4.100	0.492			11,510
Total RMV:																	86,850

## COMMERCIAL ADDITIONS

No.	Type	Desc	Value
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## COMMERCIAL BASEMENTS

No.	Bsmt Type	Area	Depth
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## COMMERCIAL COMMENTS

ComImp - 2535587 - MATHEWS LEASE

Property	Owner	Property Address	2022 In Process Real Market Value
R530598	CITY OF NEWPORT/LATTAS OF OREGON INC, LEASE	-	\$267,360

### 2022 GENERAL INFORMATION

Property Status	A Active
Property Type	Commercial
Legal Description	TWNSHP 11, RNG 11, BLOCK LATTAS FUSED GLASS,LEASE ONLY, M-9704
Alternate Account Number	-
Neighborhood	N226: BAY BOULEVARD BAYFRONT COMMERCIAL
Map Number	11-11-08-CA-01300-L3
Property Use	201: C - IMPROVED PROPERTY
Levy Code Area	104
Zoning	W-2

### RELATED PROPERTIES

Linked Properties    R357311

### 2022 OWNER INFORMATION

Owner Name	CITY OF NEWPORT/LATTAS OF OREGON INC, LEASE
Mailing Address	810 SE 5TH ST NEWPORT, OR 97365

### 2022 IMPROVEMENTS

⤴ Expand/Collapse All

☐ Improvement #1	Improvement Type
-	C: COMMERCIAL

ID	SEGMENT TYPE	SEGMENT CLASS	YEAR BUILT	AREA	DETAILS
1	Building	-	1979	1,108	⌵ Details
2	Non-Building	-	1800	1,573	⌵ Details

2022 LAND SEGMENTS

STATE CODE	SEGMENT TYPE	LAND SIZE
L1	CSBF: COM DEV BAYFRONT SITE	0.02 Acres
L2	CSD: COMMERCIAL SITE DEVELOPMENT	-
TOTALS		871.20 Sq. ft / 0.02 acres

CERTIFIED / IN PROCESS VALUES

YEAR	IMPROVEMENTS	LAND	RMV	SPECIAL USE	ASSESSED VALUE
2022 (In Process)	\$207,350	\$60,010	\$267,360	\$0	\$152,680
2021	\$136,540	\$57,900	\$194,440	\$0	\$148,240
2020	\$121,380	\$52,640	\$174,020	\$0	\$143,930
2019	\$121,380	\$52,640	\$174,020	\$0	\$139,740
2018	\$96,090	\$52,640	\$148,730	\$0	\$135,670
2017	\$96,090	\$52,640	\$148,730	\$0	\$131,720
2016	\$92,040	\$52,640	\$144,680	\$0	\$127,890

TOTAL TAXES DUE
Current Year Due
Past Years Due
Total Due



TAXYEAR	RECEIPT NUMBER	TRANSACTION DATE	PAYMENT AMOUNT
2020	1609439	11-17-2020	\$12,084.59
2016	1582923	7-15-2020	\$0.01
2016	1582922	7-14-2020	\$3,694.27

## LINCOLNPROD PROPERTY RECORD CARD

Property ID: R530598

Map and Taxlot: 11-11-08-CA-01300-L3

Tax Year: 2022

Run Date: 10/5/2022 9:20:18 AM

## PROPERTY SITUS ADDRESS

Maintenance Area: 5-09

## GENERAL PROPERTY INFORMATION

Prop Class: 201  
 NBH Code: N226  
 Prop Type Code: COM  
 Last Appr Date:  
 Appraiser:

Zoning:  
 Code Area: 104

Related Accts: P528991

Owner Comment: TAX PHONE REQUEST

Road Access: PVD

## VALUE HISTORY

Year	Land RMV	Imp RMV	Total RMV	Total AV	LSU Value
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## OWNER NAME AND MAILING ADDRESS

CITY OF NEWPORT  
 810 SE 5TH ST  
 NEWPORT, OR 97365

## LEGAL DESCRIPTION

TWNSHP 11, RNG 11, BLOCK LATTAS FUSED  
 GLASS,LEASE ONLY, M-9704

## ASSESSMENT INFORMATION

Land Non-LSU:	60,010	Prior MAV:	148,240	CPR:
Land LSU:		Prior AV:	148,240	EX. MAV:
Improvement:	207,350	AV +3%:	152,687	LSU:
RMV Total:	267,360	Except RMV:		New M50 AV: 152,680

## SALES INFORMATION

Date	Type	Sale Price	Adj Sale Price	Validity	Inst. Type	Sale Ref
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Acres: 0 Sqft:

Effective Acres: 0

## BUILDING PERMITS AND INSPECTIONS

Type	Appraiser	Issue Date	Date Checked	% Comp	Comment
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## PARCEL COMMENTS

GenLink- R357311-L; GenFlag- 2016 VALUE CHANGE; GenCom- 2016-17 JV#370 NEW LEASE FROM TL 1300, ENTERED 3-21-16. JV#370  
 FOR 16/17; Prop-Note- LATTAS OF OREGON LEASE ABBEY STREET PIER

## EXEMPTIONS

Code	Exempt RMV
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## Exceptions

Code	Year	Amount	Method
RCC	2016	124170	6

## MARKET LAND INFORMATION

Type	Table	Method	Acres	Base Value	Adjustment Code - %	NBHD %	Total Adj %	Final Value
CSBF: COM DEV BAYFRONT S 5BFF		FF	0.020	171,500	PRO-29			56,700
CSD: COMMERCIAL SITE DEV		LT		5,000	PRO-29,EFF-200			3,310
Total Acres: 0.020								Total Market Land Value: 60,010

## LAND SPECIAL USE

Code	SAV	Unt	Pr	MSAV	Unt	Pr	LSU
Total LSU:							

## LINCOLNPROD PROPERTY RECORD CARD

Property ID: R530598

Map and Taxlot: 11-11-08-CA-01300-L3

Tax Year: 2022

Run Date: 10/5/2022 9:20:18 AM

## COMMERCIAL IMPROVEMENTS

No.	Business Name	Occupancy	Class	Occ %	Stories	Hgt	Rank	Yr Blt	Eff Yr	Area	Perim	Adjustment Code-%	NBHD %	Total Adj %	RCN	% Comp	RMV
1.1		353-Retail Store		100	1		2.0	1979					4.100	4.100			179,530
1.2		163-Site Improvemen		100	1		2.0	1800					4.100	1.189			27,820
Total RMV:																	207,350

## COMMERCIAL ADDITIONS

No.	Type	Desc	Value
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## COMMERCIAL BASEMENTS

No.	Bsmt Type	Area	Depth
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## COMMERCIAL COMMENTS

ComImp - 2881093 - LATT'S OF OREGON LEASE 1108SQFT

Cancelled  
1000-22  
1100-21  
1100-23  
1300-21  
1300-L4  
1400-21  
1400-22  
1400-23  
1500  
1600  
1600-21  
1900-22  
2100-21  
2100-22  
2100-L1  
2200-21  
2300  
2300-21  
2400-21  
2401  
2401-21  
2401-22  
2401-23  
2700  
2900  
3000  
3200  
3700-21  
3800-21  
7402  
7800  
8000  
8100  
8200  
8900  
9700  
11300  
11700  
11800  
11900  
12100  
12301  
12400  
12800  
13800-21  
14000  
14100  
14500  
14900  
15000  
15300-21  
15500  
15600-42  
15700-22

Revised: SAO  
01/19/2022

NEWPORT  
11 11 08 CA

243

***DEPARTMENT OF STATE LANDS LEASE & RENEWAL  
AGREEMENT***

**STATE OF OREGON  
DIVISION OF STATE LANDS  
SUBMERGED AND SUBMERSIBLE LAND LEASE**

ML-10492

The Oregon State Land Board and the Division of State Lands (STATE) hereby lease to the person(s) herein named (LESSEE), the following described lands on the terms and conditions stated herein, to wit:

NAME of LESSEE:  
City of Newport

ADDRESS:  
810 SW Alder Street  
Newport OR 97365

Legal classification of LESSEE is a "Municipal Corporation",

Land situated in Lincoln County more fully described as follows:

All state-owned submerged lands in the Yaquina Bay in Section 8, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon, more particularly described as follows:

Commencing at a point on the intersection of the Southerly line of Tax Lot 1300 (Lincoln county Assessor's Map Number 11-11-8CA Newport) and the line of pre-fill Mean High Tide on the right bank of the Yaquina Bay;

thence riverward along a line perpendicular to the thread of the stream to the line of pre-fill Mean Low Tide and the TRUE POINT OF BEGINNING

thence continuing riverward along said perpendicular line a distance of 75 feet;

thence upstream and 75 feet parallel to said line of pre-fill Mean Low Tide a distance of 50 feet;

thence shoreward along a line perpendicular to the thread of the stream a distance of 75 feet to the line of pre-fill Mean Low Tide;

thence downstream along said line of pre-fill Mean Low Tide a distance of 509 feet, more or less, to the TRUE POINT OF BEGINNING, containing 3,750 square feet, more or less and as shown on the attached Exhibit "A".

Total number of acres: 3,750 square feet more or less.

Hereinafter referred to as "leasehold".

RECEIVED

DIVISION OF STATE LANDS  
RENTALS \$2,416.00



## SECTION 1 - LEASE TERM AND RENEWAL

- 1.1 Term: This Lease shall continue for a period of ~~15~~ <sup>18.5</sup> years commencing on November 1, 2000 the month and date of which shall be known as the LEASE ANNIVERSARY DATE, and expiring on October 31, 2018, the month and date of which shall be known as the LEASE EXPIRATION DATE.
- 1.2 Renewal: LESSEE shall have an option to renew this Lease for an additional period of 15 years after the original and each renewal lease term provided that LESSEE has submitted a completed lease renewal application form to the STATE not less than one hundred and eighty (180) days prior to LEASE EXPIRATION DATE. Upon receipt of such application, this Lease shall be renewed by the STATE unless:
- 1.2.1 The STATE determines, in its sole discretion, that the LESSEE has not complied with the terms of this Lease, the applicable statutes and Oregon Administrative Rules; or
  - 1.2.2 The LESSEE is no longer the preference right holder as defined by applicable state law, or
  - 1.2.3 The STATE determines that the renewal of this Lease for all or portions of the leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.
- 1.3 STATE shall provide LESSEE two (2) years advance written notice of its intent to not renew this Lease for all or portions of the leasehold pursuant to the provisions of this Section. In the event that the STATE determines not to renew this Lease, but less than two (2) years remain in the Lease term, the STATE shall utilize the holdover provisions (Section 7.11) of this Lease to complete the two (2) year notice period and to allow the LESSEE sufficient time to vacate the authorized area and to relocate any sublessees in an orderly fashion.

## SECTION 2 - AUTHORIZED USES

- 2.1 Purpose: This Lease shall grant the LESSEE the right to use the above described land for the specific purpose(s) described below in accordance with these LEASE TERMS and CONDITIONS, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

Commercial and Retail Building  
(Non-Marine Use)

### SECTION 3 - ANNUAL LEASE RENTAL PAYMENT CALCULATION AND ADJUSTMENTS

- 3.1 Annual Lease Rental Payment: The Lease rental payment to be paid by LESSEE to STATE shall be \$1,313.00 for the first year of the Lease as provided in Section 3.1.1 based on the Riparian Land Value as shown below. Receipt of the first year's Lease rental payment is hereby acknowledged.

3.1.1 The initial annual Lease rent payment shall be calculated as follows:

Use Class	Area (square ft.)	Rate Choice	Annual Rent
Non Marine Use	3,750 square feet	Riparian Land Value	\$1,313.00
<b>TOTAL</b>			<u>\$1,313.00</u>

- 3.2 Annual Lease Rental Payment Adjustment: The annual lease rental payment shall be adjusted annually in accordance with the provisions of the Oregon Administrative Rule in effect at the time. The second year's rent shall be \$1,353.00. The third year's rent shall be \$1,393.00. Each payment shall be due on the Lease Anniversary Date as shown in Section 1.1.

### SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

- 4.1 Modification of Leasehold Area or Use: LESSEE may request that the STATE expand or reduce the size, or change the use of the leasehold using a form provided by the STATE. However, no such change shall occur unless authorized in writing by the STATE.

4.1.1 The STATE may amend this Lease to reduce the leasehold area as requested if the portion of the leasehold is not in use, or does not contain any leasable structures. Structures and improvements within the vacated leasehold area shall be treated as in Section 9.3. If the modification results in a reduction of rental(s) due hereunder, such reduction shall become effective commencing on the first (1<sup>st</sup>) full year after the later of: (1) the date of the change of area or use, or (2) the date of the issuance of the STATE's written approval.

4.1.2 Requests to change an authorized use, or increase the leasehold shall be processed and reviewed in the same manner as a new lease application.

### SECTION 5 - RESERVATIONS AND RESTRICTIONS

- 5.1 Compliance: The STATE shall have access to the leasehold at all reasonable times for the purpose of evaluating and ensuring compliance with the terms and

conditions of this Lease. The State shall have the right to examine pertinent records of LESSEE for the purpose of ensuring compliance with the Lease.

5.2 Reservations: The STATE reserves:

- 5.2.1 The right to lease and dispose of all coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes together with the right to explore, mine, develop, produce and remove such minerals and other deposits with the right of ingress and egress thereto, and to terminate this Lease as to all or any portion of the leasehold when required for these purposes with one hundred twenty (120) days prior written notice to LESSEE or as otherwise provided in law.
- 5.2.2 The right to enter in and upon the leasehold at any time for purposes of inspection or management.
- 5.2.3 The right at any time to grant easements across the premises for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, with right of ingress and egress thereto. The STATE shall include in any such grant of easement a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with LESSEE's use(s) authorized in the Lease.
- 5.2.4 All rights not expressly granted to LESSEE are reserved by the STATE.

5.3 Public Access and Recreational Use Reservation: All state-owned submerged and submersible land shall remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by the STATE to public entry pursuant to the provisions of applicable Oregon Administrative Rules. LESSEE may request the STATE to close the leasehold to public entry or restrict recreational use by the public on all or portions of the leasehold to protect persons or property from harm arising from or in connection with the LESSEE's activities.

This reservation shall not grant the public any right to use or occupy LESSEE-owned property or structures authorized under this lease without LESSEE's permission.

5.4 Restriction on Use: In connection with use of the leasehold, the LESSEE shall:

- 5.4.1 Comply with all applicable local, state and federal laws and regulations affecting the leasehold and the use thereof, including local comprehensive land use planning and zoning ordinances, and correct at the LESSEE's own expense any failure of compliance

created through the LESSEE's fault or by reason of the LESSEE's use;

- 5.4.2 Dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the leasehold. If LESSEE allows debris, garbage or other refuse to accumulate within the leasehold, the STATE shall have the right to remove the debris, garbage and other refuse, and collect the cost of such removal from LESSEE;
  - 5.4.3 Not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the leasehold except with written permission of the STATE. The LESSEE shall promptly report to the STATE the cutting or removal of vegetation by other persons;
  - 5.4.4 Conduct all operations within the leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or growth of noxious weeds;
  - 5.4.5 Maintain all buildings, docks, pilings, floats, gangways, similar structures, and other improvements located within the leasehold in a good state of repair; and
  - 5.4.6 Not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.
- 5.5 Waste Water Disposal: In addition to any other applicable laws and regulations, LESSEE shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and disposal for on water boat and floating structures.
- 5.6 Hazardous Materials: LESSEE shall use, place, store or release, or allow to be used, placed, stored or released, any material that may pose a danger to the public, wildlife, or its habitat, including, but not limited to, hazardous wastes, pesticides, or toxic substances only in strict compliance with all laws and manufacturer's instructions and shall take all necessary precautions to protect the leasehold and its soil and vegetation. LESSEE shall keep and maintain accurate and complete records of the amount of such materials stored and/or used on the leasehold and shall immediately notify STATE of any potential risk to the leasehold, adjacent lands, waters, structures or property.

## SECTION 6 - REQUIREMENTS

- 6.1 Assignment and Sublease: Except as noted in Section 6.2, the LESSEE may not assign or sublease nor enter into any third party agreement without first obtaining the prior written consent of the STATE pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be received by the STATE, in writing at least thirty (30) calendar days prior to the effective date of

sublease or assignment. The STATE shall make a good faith effort to complete its review of such applications within thirty (30) days. If the application is incomplete, or if the STATE requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications shall be extended. The STATE reserves the right to condition its consent as it deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest shall be required to comply with all of LESSEE's obligations under this Lease, and the applicable Oregon Administrative Rules. LESSEE shall remain liable for the performance of the obligations under this Lease unless the STATE's written consent expressly releases LESSEE from further liability hereunder. For the purposes of this section, if LESSEE is a corporation or partnership, the transfer of any corporate stock or partnership interest (including by operation of law) shall be deemed an assignment subject to the provisions of this Section if the result of said transfer shall be the change of management control or controlling interest of LESSEE.

- 6.1.1 LESSEE may not grant a mortgage or security interest in this Lease without prior written consent of the STATE which shall not be unreasonably withheld. Any subsequent assignment by the creditor or civil recovery shall require the prior written approval of the STATE.

- 6.2 Permitted Assignments and Subleases: Notwithstanding the provisions of Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of the LESSEE's interest in the Leased Premises shall be allowed without further STATE approval:

- 6.2.1 Subleases of portions of the LESSEE's interest in the leasehold area, in the ordinary course of LESSEE's business for the purposes approved under this Lease as specified in Section 2.1.
- 6.2.2 Subleases of the entire leasehold for a term that is less than one year for the purpose specified in Section 2.1.
- 6.2.3 The transfer or ownership of the Lease caused by the death of the LESSEE shall be considered an assignment requiring the STATE's approval. However, a transfer of ownership to a spouse or immediate family member is an assignment that does not require the STATE's prior approval.

- 6.3 Condition of Premises and Improvements: The leasehold area has been inspected and is accepted in its present condition, and LESSEE takes the leasehold and improvements, if any, AS IS. The STATE has made no oral representations concerning the condition of the leasehold, nor its fitness or suitability for any purpose.

- 6.4 Liability: LESSEE agrees to defend and hold STATE harmless from any and all claims suffered or alleged to be suffered within the leasehold or arising out of the LESSEE's operations on the premises. Further, LESSEE shall be responsible for the payment of any fines or penalties charged against the leasehold as a

result of LESSEE's action in not complying with laws or regulations affecting the leasehold.

- 6.5 Assessments: LESSEE shall pay all taxes and/or assessments that may be legally charged on public lands or related improvements which are levied against the property subject to this Lease, whether or not such taxes and/or assessments have been levied against the leasehold or STATE by the assessing agency.
- 6.6 Bond: The STATE reserves the right to require the LESSEE to furnish to the STATE a surety bond or an equivalent cash deposit or certificate of deposit which names the State of Oregon as co-owner to ensure that the LESSEE will perform in accordance with all terms and conditions of the Lease.

## SECTION 7 - MISCELLANEOUS

- 7.1 No Partnership: The STATE is not a partner nor in a joint venture with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's debts or other liabilities.
- 7.2 Non-Waiver: Waiver by either party of strict performance or any provisions of this Lease shall not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 7.3 Binding Interest: This Lease shall be binding upon and inure to the benefit of the parties, and the respective heirs, administrators, successors, and assigns of the parties hereto.
- 7.4 Notices: Any official STATE notice required under this Lease shall be sent by certified mail and shall expressly be deemed to be delivered after the certified letter is mailed to the address given by the LESSEE in the signature block of this Lease or as shown on the most recent written notice of record with this Lease. LESSEE shall provide the STATE with a written notice of any change of address, change in corporation/partnership/ownership, or change in person(s) authorized to represent the LESSEE. The STATE shall provide written acknowledgment of such LESSEE written notices and retain copies of both the LESSEE notice(s) and STATE acknowledgment(s) with this Lease. LESSEE's failure to receive such written acknowledgment within thirty (30) days of the date LESSEE sent the original notice shall be constructive notice to LESSEE that: (1) the STATE has not properly received the notice, and (2) that such attempted notice shall be of no force and effect until such time as the notice is actually received and acknowledged by STATE.
- 7.5 Liens: In the event liens or other charges are placed on the leasehold premises, including land or improvements, arising out of LESSEE's actions directly or indirectly, the LESSEE shall immediately cause such liens to be discharged. The STATE may terminate this Lease if LESSEE fails to discharge such liens or charges or provide the STATE with a sufficient bond covering the full amount of



the lien after ten (10) days notice to do so by the STATE. LESSEE shall pay and indemnify the STATE for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether such costs, damages or charges are incurred prior or subsequent to any termination of this Lease.

7.6 Default: The following shall be events of default:

7.6.1 Failure of the LESSEE to pay any rent, tax, reimbursement or other charge or payment due hereunder within twenty (20) days of the date such payment is due. For the purposes of this subsection, if the due date for such payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, such payment shall be due on the date set forth in the notice from the STATE to the LESSEE informing the LESSEE of its obligation to pay such charge or payment.

7.6.2 Failure of LESSEE to comply with applicable laws, Oregon Administrative Rules or any non-payment related terms or conditions or obligations of the Lease within thirty (30) days after written notice by the STATE specifying the nature of the deficiency. Upon timely request from the LESSEE, the STATE may in its good faith discretion permit the deadline for curing such non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the thirty (30) day period, (2) the interests of the STATE will not be harmed by an extension, (3) such default was not due to the willful acts or gross negligence of the LESSEE, and (4) the STATE and the LESSEE are able to mutually agree upon a written plan and timeline for remediation.

7.6.3 Insolvency of LESSEE; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days. If LESSEE consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within ten (10) days after an event of default occurs the remaining individuals produce evidence satisfactory to STATE that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned in compliance with Section 6.1 of this Lease, the events of default so specified in this subsection shall apply only with respect to the one then exercising the rights of LESSEE under the Lease.

7.6.4 Notwithstanding the above, if the STATE in good faith believes that a material default has occurred which may imperil the STATE's rights in the land or its fiduciary duties under law, the STATE may declare an immediate default without any right of LESSEE to cure the deficiency.

7.7 Termination Upon Default: In the event of a default by LESSEE, the STATE shall have the right to terminate this Lease if it has given LESSEE notice of the default and of the STATE's intent to terminate this Lease if the default is not completely cured by the deadline contained in the notice and if the listed default has not been cured by the stated deadline. The deadline contained in the notice must be at least twenty (20) calendar days from the date the notice is sent by certified mail, or if earlier, the date LESSEE actually receives said notice. The STATE shall be entitled to recover from LESSEE all costs arising out of the re-entry and all costs of re-letting the premises. The STATE shall be entitled to recover the amount of unpaid rent required to be paid under the Lease from the date of default until a new Lease has been, or with the exercise of reasonable efforts could have been, secured, if the STATE was determined to re-let the leasehold. All improvements located thereon shall be disposed of as provided by Section 9.3 of this Lease. If the LESSEE owns a floating home and has placed such home on the property pursuant to the provisions of Section 2.1 of this Lease, the lease termination provisions of ORS 90.630 shall apply to the extent that they are inconsistent with the provisions of this Lease.

7.8 STATE's Right to Cure Defaults:

7.8.1 If the LESSEE fails to perform any obligation under this Lease, the STATE shall have the option to perform the obligation of the Lease after thirty (30) days written notice to the LESSEE. All of the STATE's expenditures to carry out the obligation shall be reimbursed by the LESSEE on demand with interest at the rate of one percent (1%) per month accrued from the date of expenditure by the STATE.

7.8.2 In the event any violation or breach of the provision of this Lease is causing damage to the leasehold or the LESSEE is utilizing the leasehold in a manner not permitted by the provision of this Lease, or in any case damages are occurring to the leasehold, the STATE may immediately enter upon the leasehold and take such action as necessary to cease such damages or use. In the event the damage or use is occurring by reason of a violation or breach of the provisions of this Lease, the LESSEE shall be liable for all costs incurred by the STATE by reasons of such violations. The STATE, at its option, may send notice to the LESSEE of such violations and LESSEE shall immediately cease such use or violation and correct such violation.

7.9 Termination Upon Mutual Consent: This Lease may also be terminated by mutual written consent of LESSEE and STATE.

- 7.10 Weed Control: The LESSEE shall control noxious weeds including aquatic weeds, plant pests and diseases within the leasehold as directed by the local county weed control district, the Oregon Department of Agriculture and/or any other governmental authority which may now or in the future have authority with regard to the prevention and/or control of noxious weeds, plant pests and/or diseases, or as may be authorized or directed by the STATE.
- 7.11 Holdover: If LESSEE does not vacate the leasehold at the time required at expiration or upon termination of a Lease, STATE shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and rental. The STATE shall have the option to unilaterally establish a new rental for the month-to-month tenancy, with said rental payable in advance. If a month-to-month tenancy results from holdover by LESSEE under this paragraph, the tenancy shall be terminable at the end of any monthly rental period upon written notice from STATE given not less than thirty (30) days prior to the termination date which shall be specified in the notice.
- 7.12 Governing Law: This Lease and all matters related to the rights and responsibilities hereunder are governed by and subject to the laws of the State of Oregon and the administrative rules of the Division of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties hereunder, and such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease.
- 7.13 Binding on Successors: This Lease shall be binding on and shall inure to the benefit of the successors and assigns of the parties hereto, but nothing in this section shall be construed as a consent by STATE to any disposition or transfer of the Lease or any interest herein by LESSEE except as otherwise expressly provided in this Lease.
- 7.14 Nondiscrimination: The leasehold shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 7.15 Right To Sue More Than Once: STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later actions for damages subsequently accruing.
- 7.16 Remedies Cumulative: The remedies contained in this Lease shall be in addition to, and shall not exclude any other remedy available at law or in equity, and exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.

- 7.17 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings.
- 7.18 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 7.19 Compliance With Applicable Law: The STATE's performance under this Contract is conditioned on the LESSEE's compliance with the provision of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein.
- 7.20 Late Charges and Interest: It is understood by both parties that late payments by the LESSEE of rent and other charges due hereunder will cause the STATE to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. As such, the parties agree that, notwithstanding other remedies permitted hereunder, if the LESSEE has not made full payment of amounts due within twenty (20) days of the date such payment is due, LESSEE shall pay an additional charge equal to five percent (5%) of the amount of the late rent or other charge. In addition, all amounts due and owing under this agreement, including late charges, shall bear interest at the lower of: (1) the highest interest rate allowable by law, or (2) twelve percent (12%) per year.

## SECTION 8 - INSURANCE

- 8.1 Commercial General Liability: LESSEE shall obtain at LESSEE's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage with an insurance company acceptable to the STATE. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Each annual aggregate limit shall not be less than \$1,000,000, when applicable.
- 8.2 Revisions/Amendments/New Requirements: The amounts and types of insurance (including those specified in Section 8) and the party responsible for procuring the insurance shall be established and reviewed when circumstances warrant. The requirements may be revised or amended by the STATE periodically at the STATE's sole discretion after STATE:
- (a) consults with its insurance advisor;
  - (b) consults with LESSEE;
  - (c) considers the commercial reasonableness of any requirements, amendments or revisions; and

- (d) considers the STATE's need for adequate insurance protection and the STATE's fiduciary obligations.

Within thirty (30) days notice to LESSEE of the STATE'S revision or amendment of the insurance requirements, LESSEE shall provide the STATE with satisfactory evidence that the LESSEE has obtained new insurance coverage which conforms with the revised/amended insurance requirements. If mutually agreed in writing, LESSEE may have additional time to obtain such insurance.

- 8.3 Named Insured Parties: The liability insurance coverages required for performance of the Lease shall include the State of Oregon, the Division of State Lands and their sections, officers and employees as additional insured but only with respect to the LESSEE's activities to be performed under this Lease.
- 8.4 Certificate(s) of Insurance: As evidence of the insurance coverages required by this Lease, the LESSEE shall furnish certificate(s) of insurance to the STATE prior to the issuance of this Lease, and not less often than annually thereafter and as reasonably requested by STATE. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities. The LESSEE shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

## SECTION 9 - IMPROVEMENTS

- 9.1 Authorized Improvements or Structures: No improvement that exceeds fifteen thousand dollars (\$15,000) in cost or value may be constructed or placed upon the leasehold unless the LESSEE shall have first obtained the prior written authorization of the STATE. Approval for improvements consistent with the purposes of this Lease shall not be unreasonably withheld or delayed. All improvements must be consistent with the authorized use(s) of this Lease as stated in Section 2.1.
- 9.2 Unauthorized Improvements or Structures: Unauthorized improvements shall, at the election of the STATE, either be removed from the leasehold by LESSEE (or if STATE so elects, by the STATE at LESSEE's cost and expense), or remain within the leasehold.
- 9.3 Removal of Structures and Improvements: Any LESSEE-owned structure or improvement must be removed within ninety (90) days of the termination of the Lease or modification of the lease as in Section 4.1.1 unless otherwise agreed by the parties as in the case of a structure exempt from authorization under OAR 141-082-0030(4). LESSEE shall be responsible for any damage done to the leasehold as a result of the removal of the structure improvements. Any structure or improvements remaining on the leasehold after the ninety (90) day period may at the option of the STATE become the property of STATE, unless otherwise agreed by the parties.





The LESSEE expressly agrees to all covenants herein and binds him/herself for the payment of the rental herein before specified.

DIVISION OF STATE LANDS

*Stephen G. Bunker*  
Authorized Signature

*Jan 4, 2001*  
Date

Division of State Lands  
775 Summer ST NE, STE 100  
Salem, OR 97301-1279

LESSEE

*Sam Sasaki, City Manager*  
Signature/Title

(Note requirement below)

*11/28/00*  
Date

*City of Newport*  
*810 S.W. Alder St., Newport OR 97365*  
Mailing Address

Note: If the LESSEE is a corporation, the signer warrants that s/he has the authority to sign the lease on behalf of the corporation by resolution of its Board of Directors, or through delegation of authority to the signer.

STATE OF OREGON )  
 )ss  
County of Lincoln )

The foregoing instrument was acknowledged before me this *28th* day of *NOVEMBER*, 20*00*, by *SAM SASAKI* (officer or agent of corporation), the *CITY MANAGER* (title of officer or agent) of *CITY OF NEWPORT* corporation, a *OREGON* (state or place of incorporation) corporation, on behalf of corporation.



*Michael Shoberg*  
Signature

My commission expires *12-16-2004*

## CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

I, the undersigned, hereby swear or affirm under penalty of perjury that to the best of my knowledge, I am not in violation of any Oregon Tax Laws.

For the purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4) which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-County Metropolitan Transit District of Oregon ("Tri-Met") Employer Payroll Tax, and Tri-Met Self-Employment Tax).

Signature: Sam Sasaki

Date: 11/28/00

Printed Name: SAM SASAKI

Title: City Manager

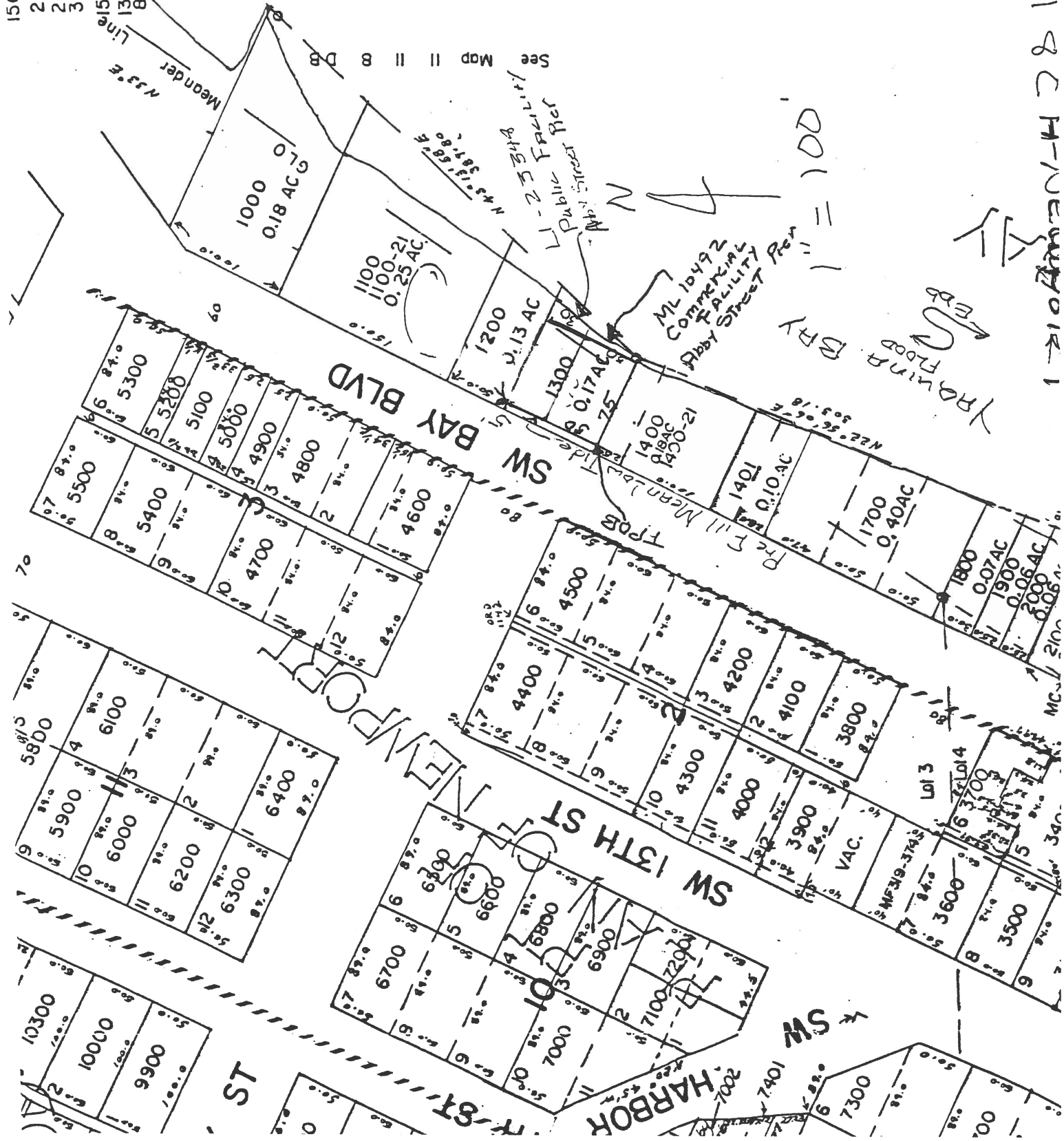
J:\AttachmentAwes\ML Waterway Lease Exhibit A.doc\ML-10492.doc

ML 10442  
Exhibit A

NE 1/4 SW 1/4 Sec 8  
T11S R11W Wm  
Lincoln Co.

11-16-8  
STEVE TAYLOR

15600-V2 3000  
2300-A1 15000  
2900 7402  
3200 15500  
15700-A1 11700  
13800-21 12301  
12400 12800  
15300-21 11900  
2100-A1 2100-A1  
2401-21 2300





## Derrick Tokos

---

**From:** TAYLOR Jacob <Jacob.Taylor@state.or.us>  
**Sent:** Wednesday, May 15, 2019 4:17 PM  
**To:** Derrick Tokos; 'TAYLOR Jacob'  
**Cc:** Steven Rich  
**Subject:** RE: Abbey Street Pier Lease (ML-10492/11546-ML)

Derrick,

I looked through my shelf and found your file. I apologize for the delay, there has been some turnover in this position over the past year. There is a new agreement that is waiting for the appropriate signature before I can send it out. My supervisor will be back on Monday and I'll make sure this is the first thing he sees when he gets back.

I can answer any questions you may have on it. Your first years rent will be \$2,304.75 and will increase by 3% each year.

If you would like to you can give me a call and we can discuss it in further detail.

Sincerely,

Jacob Taylor, Proprietary Coordinator  
 Aquatic Resource Management Program  
 Oregon Department of State Lands  
**Phone (503) 986-5303**  
 Field Cell (503) 302-3852  
 Fax (shared) 503-378-4844  
[www.oregon.gov/DSL](http://www.oregon.gov/DSL)

775 Summer St. NE, Suite 100  
 Salem, OR 97301

---

**From:** Derrick Tokos <D.Tokos@NewportOregon.gov>  
**Sent:** Wednesday, May 15, 2019 3:53 PM  
**To:** 'TAYLOR Jacob' <Jacob.Taylor@state.or.us>  
**Cc:** Steven Rich <S.Rich@NewportOregon.gov>  
**Subject:** Abbey Street Pier Lease (ML-10492/11546-ML)

Hi Jacob,

I received your email regarding the Bay Street pier and will get back to you shortly. On a different note, we submitted a renewal on the other public access pier back in October of 2018, but have not received an updated agreement. It is the Abbey Street Pier where we own the adjacent commercial building (see lease numbers above).

Is there a new agreement that you can email? If not, can you tell me if the amount of the annual rent has changed?

I am having a conversation with our elected officials on Monday about whether or not they want to renew the leases in the commercial building or potentially sell the structure. The lease info is relevant to that discussion.

Thanks,

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





# Waterway Lease Application Form

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

(West of the Cascade Crest) <b>WESTERN REGION</b> Department of State Lands 775 Summer Street NE, Suite 100 Salem, OR 97301-1279 503-986-5200 FAX: 503-378-4844	Mail completed application with the applicable non-refundable application fee, made payable to:  Oregon Department of State Lands.  We accept Visa and Master Card, please call (503) 986-5200	(East of the Cascade Crest) <b>EASTERN REGION</b> Department of State Lands 1645 NE Forbes Road, Suite 112 Bend, OR 97701 541-388-6112 FAX: 541-388-6480
---	--	--

<input type="checkbox"/> <b>Modification</b>	<input type="checkbox"/> \$ 375.00 (Reduction in Lease area) <input type="checkbox"/> \$ 750.00 (Increase in Lease area)	<input type="checkbox"/> <b>New \$750.00</b>
<input type="checkbox"/> <b>Renewal</b>	<input checked="" type="checkbox"/> \$ 375.00 (with No Changes)	

Existing Department of State Lands No. 11546-ML

AGENCY WILL ASSIGN NO. \_\_\_\_\_

## 1 - APPLICANT INFORMATION

Applicant's Name: <u>City of Newport</u>	Home /Cell Phone:
Address: <u>169 SW COAST HIGHWAY</u> <u>NEWPORT, OREGON 97365</u>	Business Phone: <u>541.574.0613</u>
	Fax: <u>541.574.0609</u>
	Email: <u>P.hawker@newportoregon.gov</u>
Co-Applicant's Name: <u>N/A</u>	Home /Cell Phone:
Address:	Business Phone:
	Fax:
	Email:
Authorized Agent's Name: <u>N/A</u>	Home /Cell Phone:
Address:	Business Phone:
	Fax:
	Email:
Riparian Property Owner Name: (if different than applicant) <u>N/A</u>	Home /Cell Phone:
	Business Phone:
Address:	Email:
	Fax:

## 2 - PROJECT LOCATION

Street, Road or other descriptive location		Legal Description			
<u>ABBEY STREET PIER</u>		Township <u>11S</u>	Range <u>11W</u>	Section <u>8</u>	Quarter <u>SW</u>
In or Near (City or Town) <u>NEWPORT</u>	County <u>LINCOLN</u>	Tax Map # <u>11-11-8CA</u>			
Waterway: <u>YAQUINA BAY</u>	River Mile: <u>1.4</u>	County Property Tax Account # <u>R357311, R366804</u>			

### 3 - PROJECT PURPOSE & DESCRIPTION

Activity Type (Check all that apply):	Area requested (length x width)
a) <input type="checkbox"/> Log rafts/log storage areas	_____
b) <input type="checkbox"/> Commercial marina and floating home moorages	_____
c) <input type="checkbox"/> Noncommercial marina and owner-oriented floating home moorages	_____
d) <input type="checkbox"/> Marine industrial; marine services; fish processing facilities	_____
e) <input checked="" type="checkbox"/> Non-marine uses (restaurant, retail sales, offices, motel, residences, etc.)	4,000 SF
f) <input type="checkbox"/> Historical vessel moorages	_____
g) <input type="checkbox"/> Other (Research)	_____

SEE ATTACHMENT A

Are you aware of any Endangered Species on the project site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are you aware of any Cultural Resources on the project site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the project site near a State Scenic Waterway?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

### 4 - PROJECT PURPOSE & DESCRIPTION

<input checked="" type="checkbox"/> Existing Facility	<input type="checkbox"/> Proposed for Construction
Project Purpose and Need: Public Pier	
Project Description:	
Estimated Start Date:	Estimated Completion Date:

### 5 - ADDITIONAL INFORMATION

Names, addresses and phone numbers for adjacent property owners. 541.574.0603	
City of Newport, 169 SW Coast Highway, Newport 97365	
MO's ANNEX, 657 SW Bay Blvd., Newport - 541.265.7512	
Have you applied for Corps of Engineers or Department of State Lands permits for this project? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, what identification number(s) were assigned by the respective agencies: N/A	
Corps #	State of Oregon #

**6 - CITY/COUNTY PLANNING DEPARTMENT AFFIDAVIT**

266

**(to be completed by local planning official)**

- ☐ This project is not regulated by the local comprehensive plan and zoning ordinance.  
☒ This project has been reviewed and is consistent with the local comprehensive plan and zoning ordinance.  
☐ This project has been reviewed and is **not** consistent with the local comprehensive plan and zone ordinance.  
☐ Consistency of this project with the local planning ordinance cannot be determined until the following local approval(s) are obtained:

☐ Conditional Use Approval☐ Development Permit☐ Plan Amendment☐ Zone Change☐ Other \_\_\_\_\_An application ☐ has ☐ has not been made for local approvals checked above.

Signature of local planning official

Title

City / County

Print/Type Name

Date

**7 - BUSINESS INFORMATION****LIMITED LIABILITY COMPANY:** Complete the following

- Do you have authority from the Oregon Secretary of State to do business in the State of Oregon? ☐ Yes ☐ No  
Is the LLC presently in good standing with the Oregon Secretary of State? ☐ Yes ☐ No  
In what state is the LLC primarily domiciled? \_\_\_\_\_  
Is the LLC name and the Oregon business address the same as stated in this application? ☐ Yes ☐ No  
If no, state the legal Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Street or Box Number

City

State

Zip Code

Additionally, a LIMITED LIABILITY COMPANY must submit the following with the application:

A certified copy of the company's Articles of Organization

A copy of the company's operating agreement

**CORPORATION:** Complete the following:

- Do you have authority from the Oregon Secretary of State to do business in the State of Oregon? ☒ Yes ☐ No  
Is the corporation presently in good standing with the Oregon Secretary of State? ☒ Yes ☐ No  
In what state are you incorporated? OREGON  
Is the legal corporation name and Oregon business address the same as stated in this application? ☒ Yes ☐ No  
If no, state the legal Corporate Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Street or Box Number

City

State

Zip Code

**PARTNERSHIP OR JOINT VENTURE:** Complete the following

NAME	BUSINESS ADDRESS	% SHARE	DIVISION

**TRUST:** Complete the following for each beneficiary of the Trust:

NAME	BUSINESS ADDRESS

**OR** identify the Trust document by title, document number, and county where document is recorded:

TITLE	DOCUMENT NUMBER	COUNTY

**A resolution that the individual designated to sign is authorized to act on behalf of the company in this matter.**



## 8 - LESSEE CHOICE

(Refer to OAR 141-082-0305)

- ☒ Calculate my rent under the Flat Rate Method.
- ☐ Calculate my rent based on 5% of the riparian land value.
- ☐ Calculate my rent based on 3% of the gross annual boat slip rental income.  
(Attach monthly income statements for all boat slip rental and boat rental income)

## 9 - FOR A COMPLETE APPLICATION, PLEASE SUBMIT ALL THE FOLLOWING:

- a) A street or highway location map with road directions to the site from the nearest main highway or road.
- b) Assessor map that contains the riparian uplands. Do not mark on this map.
- c) A copy of the current year's property tax statement which identifies the present owner's name(s), land values, land size and tax account numbers of the riparian uplands.
- d) A legal description of the lease area with an accurate delineation of the area relative to the tax lot boundaries of the upland parcel. (The department may require a survey for this purpose).
- e) A separate drawing of all existing and proposed structures for the lease area. Label each separate activity type stated in Section 3 and show the dimensions of each area by length and width, as stated in Section 3.
- f) Lessee Choice for the calculations of the annual lease fee, Section 8.
- g) Enclose applicable non-refundable application fee, made payable to: Oregon Department of State Lands.

## 10 - APPLICANT SIGNATURE

I hereby request a state authorization for 18 (number) years.

*Application is hereby made for the activities described herein. I certify that I am familiar with the information contained in the application, and, to the best of my knowledge and belief, this information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I understand that the granting of other permits by local, county, state or federal agencies does not release me from the requirement of obtaining the authorization requested before commencing the project. I understand that payment of the required state application fee does not guarantee authorization.*

Spencer R. Nebel  
Print /Type Name

City Manager  
Title

[Signature]  
Applicant Signature

10-16-18  
Date

*I appoint the person named below to act as my duly authorized agent.*

\_\_\_\_\_  
Print /Type Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Date

## ATTACHMENT A

## LIST OF ENDANGERED SPECIES ON PROJECT SITE

11546-ML

**Occurs Regularly**

Coho Salmon (Oregon Coast population segment)

**Occurs Less Frequently or in Low Numbers**

Eulachon Smelt  
Green Sturgeon  
Marbled Murrelet

**Possible**

Southern Resident Killer Whale

## Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R357311	Neighborhood:	N226	Owner and	CITY OF NEWPORT
Map Taxlot:	11-11-08-CA-01300-00	Property Class:	942	Mailing Address:	CITY MANAGER 169 SW COAST HWY NEWPORT, OR 97365
Tax Map:	11s11w08CA			Site Address(es):	669 SW BAY BLVD ;663 SW BAY BLVD ;673 SW BAY BLVD
Web Map:	View Map				
Info:	TWNShp 11, Rng 11, Acres 0.01, Partially Non- Assessable, Misc 8-108 MF245-2077				
Tax Code:	104				
Acres:	0.01				

Improvements						Value History			
Description	Area	Yr Built	Found Heat	Plumb BDMS	Value	YearImp.	Land	Total Market	Total Assessed
MAIN AREA	1885 sq ft	1979			\$105,440	2017	105,440	108,500	213,940
MAIN AREA 2ND FLOOR	2267 sq ft				\$0	2016	101,000	108,500	209,500
						2015	139,890	138,000	277,890
						2014	139,890	138,000	277,890
						2013	116,830	115,000	231,830
						2012	131,430	115,000	246,430
						2011	131,430	115,000	246,430
Foundation Code List Heating/AC Code List Plumbing Code List									
						<b>Sales History</b>			
						No Sales Data			

Land				Related Accounts			Disclaimer
Description	Acres	Market Value	Special Use Value	R366804	R530584	R530598	For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information. <b>Tax data exported 10/2017.</b>
COM DEV BAYFRONT SITE	0.01	108,500		R530599			

Today's Date: 10/16/2018

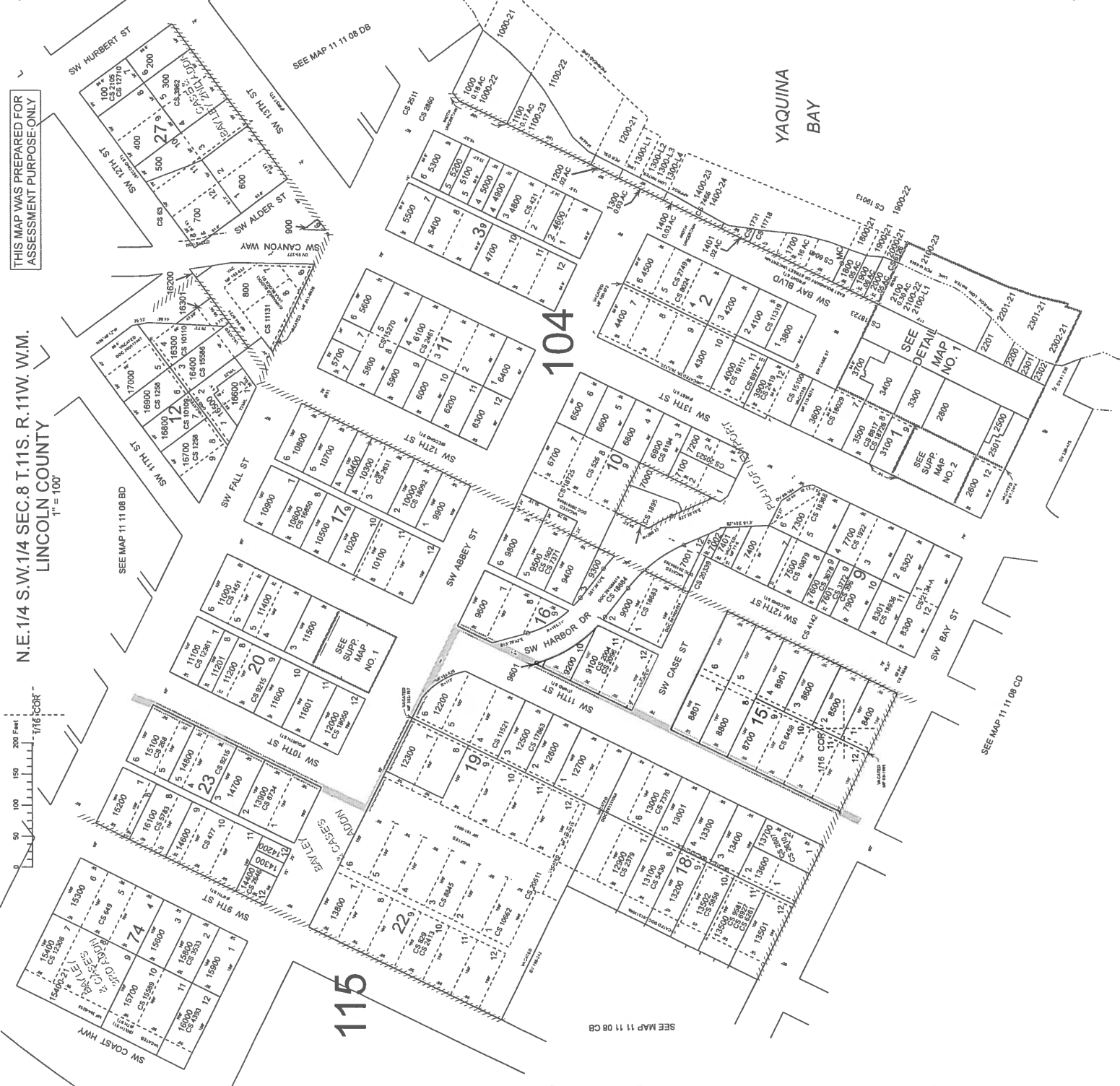


THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

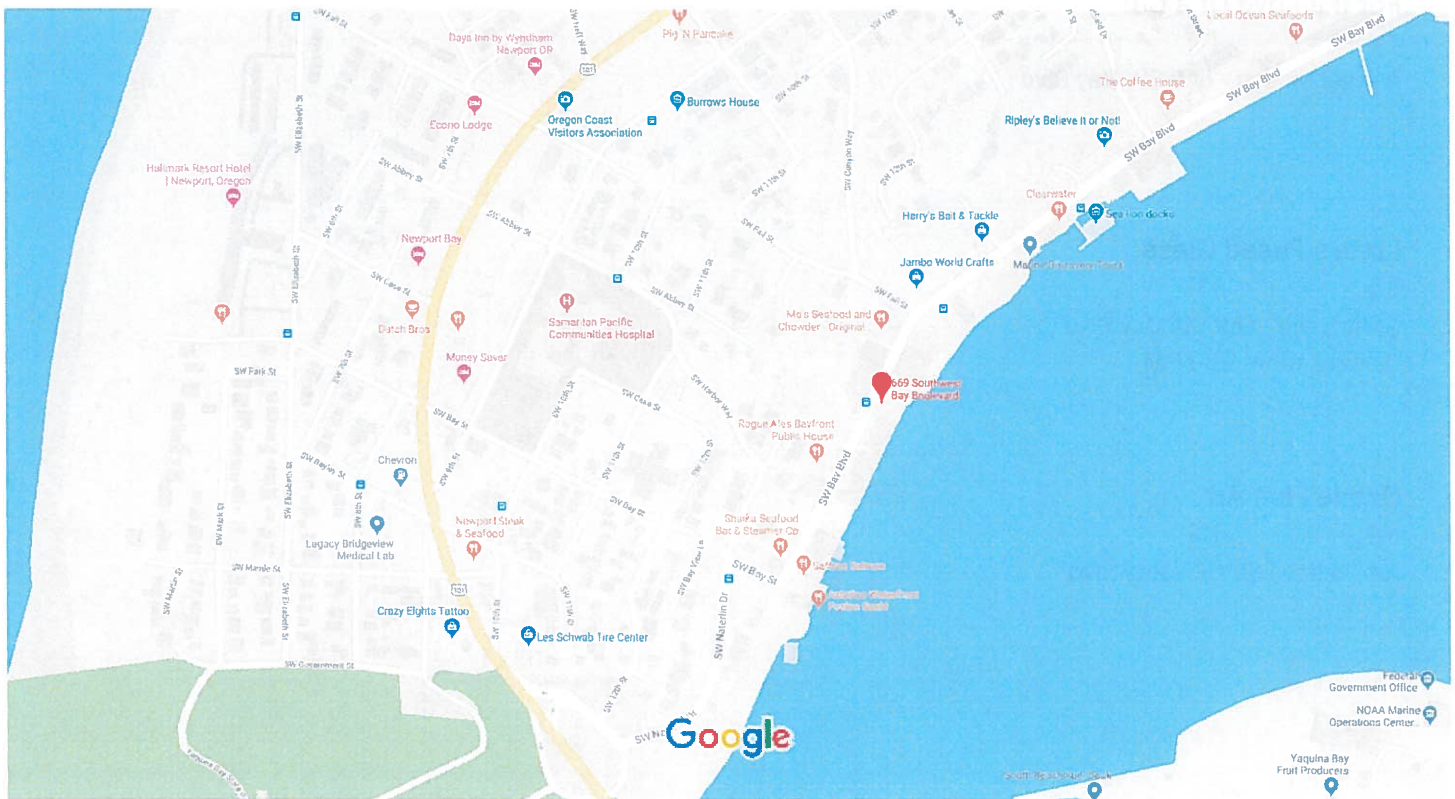
N.E. 1/4 S.W. 1/4 SEC. 8 T.11S. R. 11W. W.M.  
LINCOLN COUNTY  
1" = 100'

0 50 100 150 200 Feet  
- 1/16 COR -

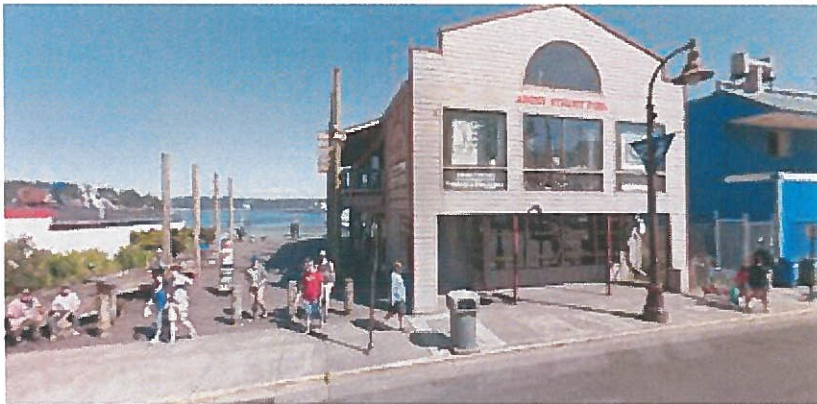
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15300-22  
15500-42  
15700-20



# Google Maps 669 SW Bay Blvd



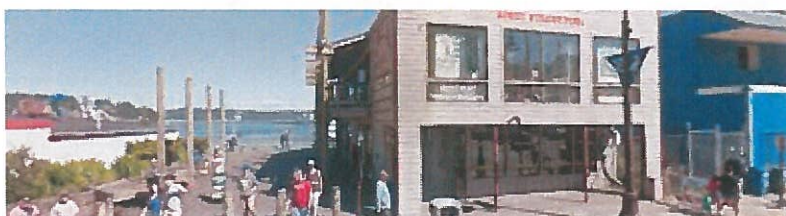
Map data ©2018 Google 200 ft



669 SW Bay Blvd

Newport, OR 97365

JWHV+9X Newport, Oregon



# Payment Receipt Confirmation

*Your payment to the Dept of State Lands was successfully processed.*

## Transaction Summary

Description	Amount
Other Authorizations - APP0011546	Total Amount Paid \$375.00

## Transaction Detail

SKU	Description	Unit Price	Quantity	Amount
1	Other Authorizations - APP0011546	\$375.00	1	\$375.00
Total				\$375.00

## Customer Information

**Customer Name** Margaret Hawker  
**Local Reference ID / Last 5 Digits of Application Number** APP0011546

**Receipt Date** 10/22/2018  
**Receipt Time** 01:45:22 PM PDT

## Payment Information

**Payment Type** Credit Card  
**Credit Card Type** MASTERCARD  
**Credit Card Number** \*\*\*\* \* 1762  
**Order ID** 79925172  
**Name On Card** Margaret Hawker

## Billing Information

**Billing Address** 169 SW COAST HIGHWAY  
**Address 2**  
**Billing City, State** NEWPORT, OR  
**ZIP/Postal Code** 97365  
**Country** US

## ***REGIONAL DESCRIPTION***

# **CENTRAL OREGON COAST - REGIONAL DESCRIPTION**

## **LOCATION**



The Central Oregon Coast Region is located in Lincoln and Lane Counties. It is bound on the north by Tillamook County, the Coast Range to the east, by Highway 126 to the south and the Pacific Ocean on the west. The area can be accessed north/south by Highway 101, east/west by Highway 20 and Highway 34 providing linkage to the Corvallis area, by Highway 126 to the Eugene/Springfield area and by Highway 18 from Roads End to McMinnville. Each of the east/west linkages connect to the Interstate 5 Freeway as it passes through the Willamette Valley. Cities/towns in this region of the Coast vary in population with some of the largest being Lincoln City, Depoe Bay, Newport, Waldport and Yachats.

## **GENERAL**

**Lincoln City** was incorporated in 1965 from the communities of Oceanlake, Delake, Taft, Cutler City, and Nelscott. It has approximately seven miles of beaches and hiking trails. Located on the 45<sup>th</sup> parallel, it is the home of the Chinook Winds Casino Resort owned and operated by the Confederated Tribes of the Siletz Indians of Oregon. It is one of the largest Oregon Coastal cities and rests conveniently west of Salem with comparable drive time to both Portland and Eugene, at just over two hours. Its larger city amenities, long unobstructed beaches, numerous lodging options, indoor and outdoor activities, and proximity to metro areas make it a destination for a variety of visitors.



## **CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)**

**Depoe Bay** offers whale watching tours and deep sea fishing from what is claimed “the world’s smallest navigable harbor”. A sea wall runs almost the full length of town with “spouting horns,” rock formations that turn crashing waves into plumes of water, sometimes onto Highway 101.

**Newport** has many attractions including the Oregon Coast Aquarium, the Hatfield Marine Science Center, two historic lighthouses, and bayfront that was previously the canning district of the area. The bay front has a variety of retail and restaurant options and includes attractions such as Mariner Square. There is a US Coast Guard Station and a host of charter boats offering whale watching and deep sea fishing. Newport is also home to the Pacific Fleet of NOAA (National Oceanic and Atmospheric Administration), located in the neighborhood of South Beach.

**Waldport** offers fishing, clamming and has a free crabbing dock. Numerous state recreation areas offer beach access and wildlife viewing. The drive along Highway 34 to Corvallis offers a scenic route through the Coast Range. The Alsea Bay Bridge has a clearance of 70 feet with steel and concrete piles reaching more than 100 feet into the bedrock below.

**Yachats** is considered a village with only 1,010 people, as of 2021. It is located at the mouth of the Yachats River and nestles between the Coast Range and the Pacific Ocean. It has been a vacation destination drawing people who appreciate its unique variety of festivals, including the long-running annual “la de da” Parade.

### **TOPOGRAPHY**

The area is bisected by the Coast Range with a narrow level area of development along the coast. The Salmon, Siletz and Alsea Rivers flow to the Pacific Ocean; as well as D River, the shortest river in the world, flowing a mere 120 feet from Devils Lake to the Ocean. Topography overall is relatively flat, rising to gentle rolling hills from sea level. This allows development, although some areas lie in flood plains, especially along the rivers and tend to experience flooding during unusually heavy rainfall. Tsunami areas dot the coastline.

### **CLIMATE**

The region’s temperate, maritime climate is characterized by moderate year-round temperatures. Average summer temperatures range from a breezy 60 to 70 degrees on the oceanfront to 80 to 90 degrees a few miles inland. The average winter daytime temperature is a mild 50 degrees, dropping to an average 37 degrees at night. Up to 90 inches of precipitation fall annually, mainly in winter, as cool, moisture-laden Pacific air masses pass over the Coast Range.

### **POPULATION**

The Central Oregon Coast attracts a large amount of second home buyers from residents who live in the Portland, Salem, and Eugene MSAs. Coast homes are often utilized as second homes or vacation rentals. However, the year-round population of the area is also reflecting growth. Population forecasts published by the Portland State University Center for Population Research and Census show a general upward trend in permanent population for the region.



## CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

Growth for the nearby MSAs is summarized in the following chart (most recent data available for MSA populations):

MSA POPULATION GROWTH												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	% Change 2020/21	Avg Annual Change
Eugene/Springfield MSA	354,200	356,125	358,805	362,150	365,940	370,600	375,120	378,800	383,181	382,647	-0.14%	0.89%
Salem/Keizer MSA	397,120	399,945	403,885	408,340	413,680	420,200	426,135	430,700	434,110	436,098	0.46%	1.09%
Corvallis MSA	86,785	87,725	88,740	90,005	91,320	92,575	93,590	94,360	95,316	93,976	-1.41%	0.92%
Portland/Vancouver/Hillboro	2,266,573	2,292,725	2,326,397	2,307,745	2,348,710	2,454,774	2,491,885	2,522,223	2,517,410	2,539,633	0.88%	1.34%

Source: Population Research Center, Portland State, April 2022

Future population growth within the region will be governed in part by the success of base industries such as specifically lumber, wood products, fishing, and tourism. Each plays a part in achieving some level of stability. Uncertainty over the amount of timber and fish that will ultimately be available for harvest is a major concern. The largest employment groups in the region are leisure and hospitality, government, and retail trade, with manufacturing a larger employment sector as one moves north toward the influence of the Columbia River and Portland.

Population trends for the Central Coast Region are summarized in the following table:

POPULATION TRENDS												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2020-2021 % Change	Annual Avg. % Change
Newport	10,150	10,160	10,095	10,165	10,190	10,215	10,125	10,285	10,400	10,591	1.84%	0.48%
Lincoln City	7,965	8,020	8,400	8,485	8,485	8,665	8,730	8,795	8,865	10,067	13.56%	2.93%
Waldport	2,040	2,050	2,060	2,075	2,080	2,095	2,105	2,110	2,125	2,321	9.22%	1.53%
Yachats	705	715	720	725	740	740	745	760	780	1,010	29.49%	4.81%
Lincoln County	46,295	46,560	46,890	47,225	47,735	47,960	48,210	48,260	48,305	50,903	5.38%	1.11%
Lane County	354,200	356,125	358,805	362,150	365,940	370,600	375,120	378,880	381,365	382,647	0.34%	0.89%
State of Oregon	3,883,735	3,919,020	3,962,710	4,013,845	4,076,350	4,141,100	4,195,300	4,236,400	4,243,851	4,266,620	0.54%	1.10%

Source: Population Research Center, Portland State, April 2022

Population forecasts published by the Portland State University Center for Population Research generally show a steady upward trend in permanent population for the region between 2012 and 2021. Oregon experienced tremendous growth between 2000 and 2007 due to a mass migration of people to the Portland metro region. However, the recession all but stopped population growth between 2008 and 2011. In general, the surveyed populations have grown in accordance with markets beginning to recover and consumers regaining confidence.

### EMPLOYMENT

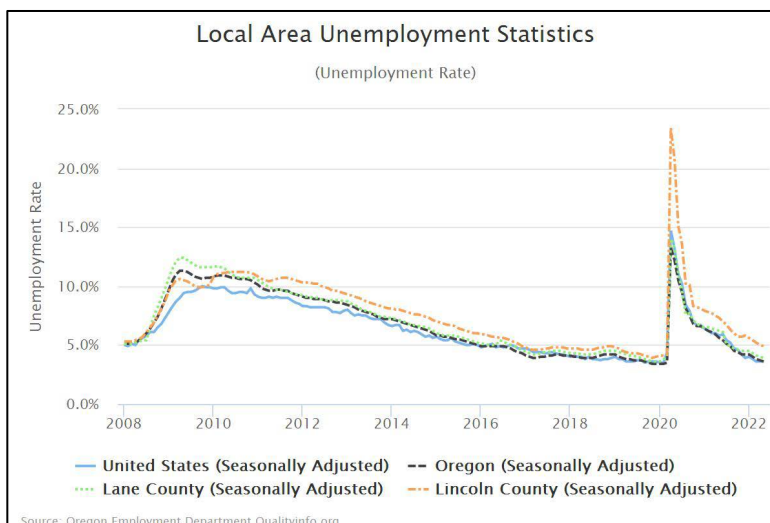
Prior to COVID-19, the Central Oregon Coast had generally recovered from the Great Recession. According to the Oregon Employment Department, the Central Oregon Coast economy began to slow in early 2008. Unemployment rates in the Central Coast Region, as well as the State of Oregon and United States, peaked in 2009. Because much of the Central Coast's employment relies on tourism, unemployment rates are higher than the rest of the state. However, the unemployment rate has steadily decreased in recent years, reaching pre-recession levels over the past few years.

Prior to the onset of the COVID-19 Pandemic, the Lincoln County unemployment rate was at a record low of 3.9% in March 2020 (as reported by <https://www.qualityinfo.org/>). Lane County's rate was 3.5% as of March 2020. Unemployment in Lincoln County spiked to 25.9% in April of 2020, the highest unemployment rate in the state at the time and

## **CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)**

significantly above the Oregon rate of 14.7%. Lane County's unemployment spiked to 16% in April 2020.

Unemployment rates have steadily declined and are nearing pre-pandemic levels. Lincoln County has seen a dramatic decrease in unemployment rates from pandemic highs and is currently 4.9% as of May 2022. Lane County has a lower rate at 3.9%, slightly higher than the State rate of 3.6%. Rates are expected to continue to decline as the region recovers from the economic effects of the pandemic.



The dominant sectors of the Central Coast economy have historically been leisure and hospitality, government, trade transportation and utilities. The chart on the following page, provided by the State of Oregon Employment Department, summarizes various sectors of employment in the Central Coast through May 2022.

## **CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)**

<b>Lincoln County Current Labor Force and Industry Employment</b>					
	<b>--Change From--</b>				
	<b>May 2022</b>	<b>April 2022</b>	<b>May 2021</b>	<b>April 2022</b>	<b>May 2021</b>
<b>Labor Force Status</b>					
Civilian labor force	21,210	21,107	21,069	103	141
Unemployed	884	1,003	1,477	-119	-593
Unemployment rate	4.2%	4.8%	7.0%	-0.6	-2.8
<i>Unemployment rate (seasonally adjusted)</i>	4.9%	5.0%	7.3%	-0.1	-2.4
Employed	20,326	20,104	19,592	222	734
<b>Nonfarm Payroll Employment</b>					
Total nonfarm employment	17,820	17,510	17,600	310	220
<i>Total nonfarm employment (seasonally adjusted)</i>	17,730	17,680	17,510	50	220
Total private	14,280	14,050	14,060	230	220
Mining, logging, and construction	940	940	980	0	-40
Mining and logging	120	130	140	-10	-20
Construction	820	810	840	10	-20
Manufacturing	1,070	970	1,050	100	20
Durable goods	170	170	170	0	0
Nondurable goods	900	800	880	100	20
Food manufacturing	360	280	360	80	0
Trade, transportation, and utilities	3,120	3,100	3,200	20	-80
Retail trade	2,690	2,680	2,740	10	-50
Food and beverage stores	780	760	780	20	0
Transportation, warehousing, and utilities	250	250	280	0	-30
Information	130	130	100	0	30
Financial activities	910	900	940	10	-30
Professional and business services	1,000	1,010	970	-10	30
Education and health services	2,030	2,030	2,100	0	-70
Leisure and hospitality	4,640	4,520	4,240	120	400
Accommodation and food services	4,430	4,330	4,080	100	350
Accommodation	1,750	1,700	1,640	50	110
Food services and drinking places	2,680	2,630	2,440	50	240
Other services	440	450	480	-10	-40
Government	3,540	3,460	3,540	80	0
Federal government	330	330	340	0	-10
State government	300	290	310	10	-10
Local government	2,910	2,840	2,890	70	20
Indian tribal	800	790	840	10	-40
Local education	900	890	850	10	50
Local government excluding education and tribal	1,210	1,160	1,200	50	10

## **CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)**

### **NATURAL RESOURCES**

Traditionally, the Central Coast Region has depended heavily upon tourism, fishing, timber and wood product industries.

The majority of commercial marine fishing activity for the region occurs in Newport. Commercial landings in the Newport Group (which includes Depoe Bay) account for 38% of the total catch for the state (source *Economic Contributions of Oregon's Commercial Marine Fisheries, October 2019 Update, Oregon Department of Fish and Wildlife*). Competition in the processing industry has resulted in consolidation and increased competition among processors in recent years, resulting in seven new seafood processors opening in the state since 2015. Economic contribution of the fishing industry extends beyond harvesting and processing to supporting local retail, tourist, industrial, regulatory, and research industries.

Historically, Lane County's economy has been based on timber and agriculture.

Timber is important because the county is on the edge of Oregon's largest stand of timber as 90% of Lane County is forestland. However, with the reductions in timber harvesting and the continued population growth affecting many agricultural areas, there has been a change of emphasis in the economic development of the county.

Housing related industries, such as the construction sector and Oregon's timber industry, have a history of "boom and bust" cycles. The Great Recession and corresponding housing crisis put the state's wood products manufacturing sector squarely in the "bust" part of that cycle. Since August 2006 Oregon's wood products manufacturing sector shed 9,100 jobs or one-quarter of its employment. However, increases in population should help spur new development in the Central Coast Region.

### **Onshore Landings by Port Group (2017)**

LOCATION	LANDINGS (MILLIONS)	PERCENT OF LANDINGS	VESSEL LANDINGS
Astoria	154.49 LBS	51%	5,113
Tillamook	2.06 LBS	1%	1,225
Newport	114.92 LBS	38%	3,804
Coos Bay	21.03 LBS	7%	3,493
Brookings	10.96 LBS	4%	3,708
<b>Total</b>	<b>303.46 LBS</b>	<b>100%</b>	<b>17,343</b>

Source: ECDNorthwest using data from PacFIN

Note: Landings for Dungeness crab represent the 2016- to 2017 season.

### **Processors by Location (2018)**

LOCATION	EMPLOYING ESTABLISHMENTS	EMPLOYMENT
Southern Oregon Coast	7	326
Central Oregon Coast	9	418
Northern Oregon Coast	10	449
Inland Processors	8	52
<b>Total</b>	<b>34</b>	<b>1,245</b>

Source: ECDNorthwest using data from Oregon Employment Department

Note: Southern Oregon Coast includes Coos, Curry, coastal Douglas, and coastal Lane counties. Central Oregon coast includes Lincoln and Tillamook counties. North Oregon Coast includes Clatsop County.

## **CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)**

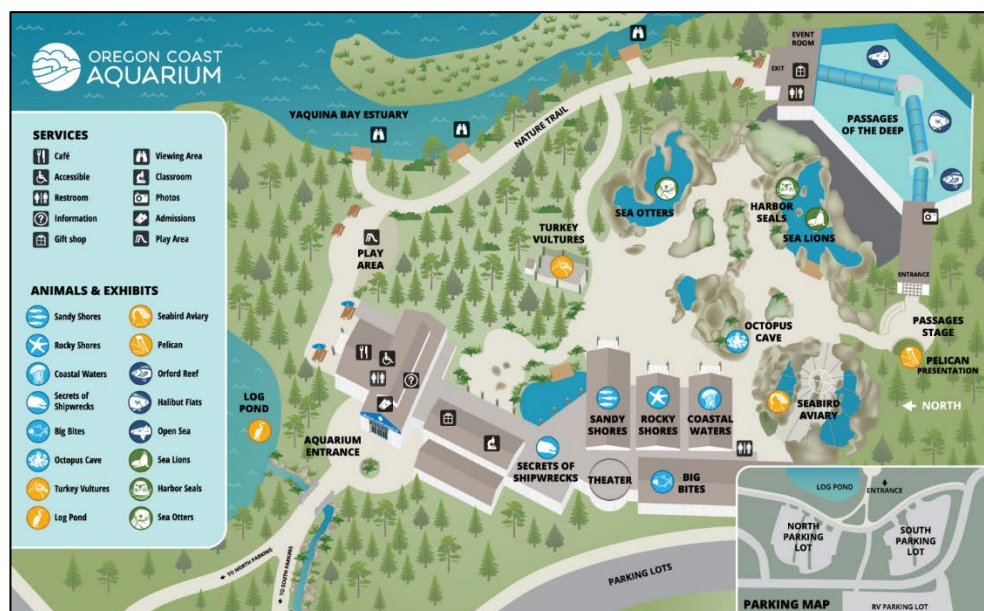
### **NOAA – LINCOLN COUNTY**

The biggest news to hit the Oregon Coast is the relocation of NOAA from Washington to the South Beach neighborhood of Newport in Lincoln County. The Port of Newport was awarded a lease to the **Pacific Fleet of NOAA (National Oceanic and Atmospheric Administration)** in August 2009. After months of speculation regarding whether the relocation would come to fruition, final approval was released at a June 3, 2010 ground-breaking ceremony, in which an estimated 500 people gathered at the five-acre site, according to the *Newport News Times*. Construction began in January 2010, with the facility completed ahead of schedule. The total cost of the project was estimated to be \$38 million, of which \$19.5 million was provided by State of Oregon Lottery funds. **NOAA is leasing the site from the Port of Newport under a 20-year lease at \$2.4 million per year.** The new facility brought approximately 175 well-paying federal jobs to the area.

### **MARINE RESEARCH AND EDUCATION**

The relocation of NOAA to Newport is just one more thread in a continuing blanket of aquatic development. Notable projects include the Oregon Coast Aquarium, Aquarium Science Program at Oregon Coast Community College, and the new Ocean Observatories Initiative. All of this development and initiative has turned Newport into a world-class destination for marine research and education.

**The Oregon Coast Aquarium** opened in 1992 and is located in the South Beach neighborhood of Newport. The facility sits on 23 acres along Yaquina Bay near the Pacific Ocean. A campus map is presented below, per the Aquarium website ([www.aquarium.org](http://www.aquarium.org)).



USA Today considers the Oregon Coast Aquarium world-class and *Coastal Living* magazine ranks it among the top 10 aquariums in North America. The Aquarium is an American Zoo and Aquarium Association (AZA) accredited institution, and is considered a “living classroom,” with over 40,000 students visiting the campus each year.

The aquarium was home to Keiko, the orca who starred in the movie *Free Willy*, from January 1996 until September 9, 1998, when he was shipped to Vestmannaeyjar, Iceland.



## **CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)**

### **The Hatfield Marine Science Center (HMSC)**

in Newport serves as Oregon State University's coastal campus and an oceanographic research base for state and federal agencies. Opened in 1965, the HMSC conducts research programs dedicated to whales, wildlife refuges, fisheries,



underwater volcanoes, and marine animal genetics. In the summer of 2020, the \$61.7 million **Gladys Valley Marine Studies Building** at HMSC opened. The 72,000 SF building includes 6,000 SF of office space, a 250-seat auditorium, three additional classrooms, two meeting rooms, a café, and a 2,563 SF lab space. The facility accommodates more than 300 researchers and students, plus six state and federal agencies. The building also serves as an emergency assembly site able to accommodate more than 900 people. The building was designed to withstand a 9+ earthquake and XXL tsunami event.



**The Aquarium Science (AQS) Building**, used for the **Aquarium Science program** at Oregon Coast Community College, was constructed in 2010 and was opened for classes in the fall of 2011. This 9,500 SF facility, located at the Central Oregon Coast Community College campus in Newport was built with State and Lincoln County funds. The AQS building is designed to be a teaching facility and laboratory that mimics the organization and set-up of working spaces typical of a

public aquarium facility. Spaces include a water quality lab, teaching lab, animal holding lab, food preparation lab, life support room and workshop. The facility was built with operational and energy efficiency in mind through the use of recirculating heat and solar panels. The key intention of the AQS facility is to provide an environment for Aquarium Science students to gain knowledge and hands-on skills that will assist them in the Aquarium Science industry.

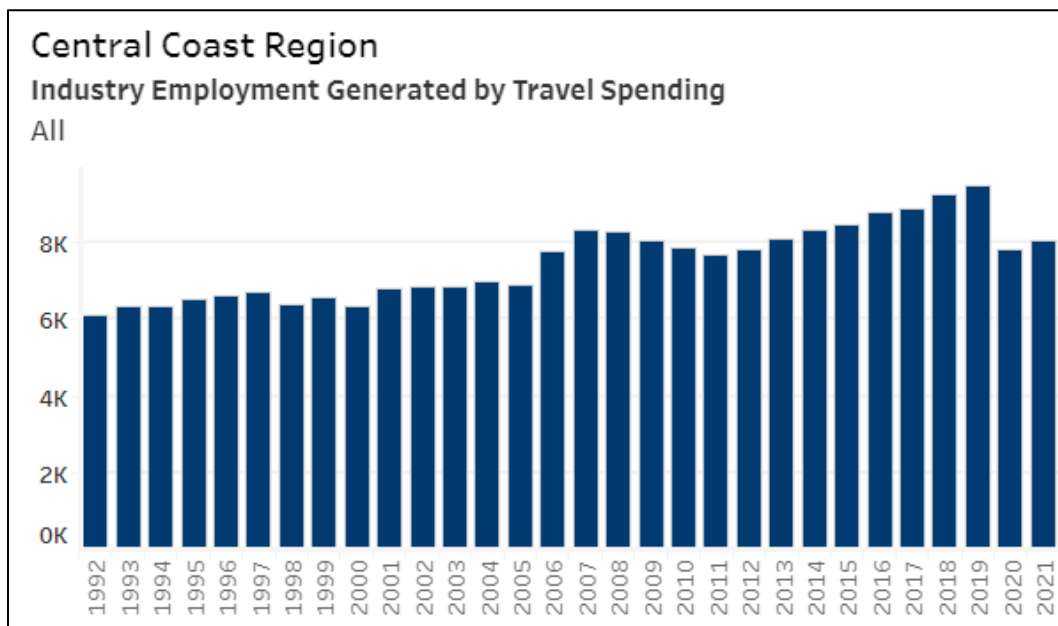
The Pacific Northwest component of the coastal observatory of the **Ocean Observatories Initiative**, called the Endurance Array, operated by Oregon State University, places a series of long-term moorings off the Northwest coast. It includes a network of under-sea gliders that are programmed to patrol the near-shore waters and collect a variety of data. Gliders transmit data from each of their instruments onshore several times a day. OQI's Cyber-Infrastructure will be able to make data from all Endurance Array Instruments available online in near real time. The construction of the infrastructure began September 1, 2009 and lasted six years. Current operations and maintenance planning is based on a 25-year life span.



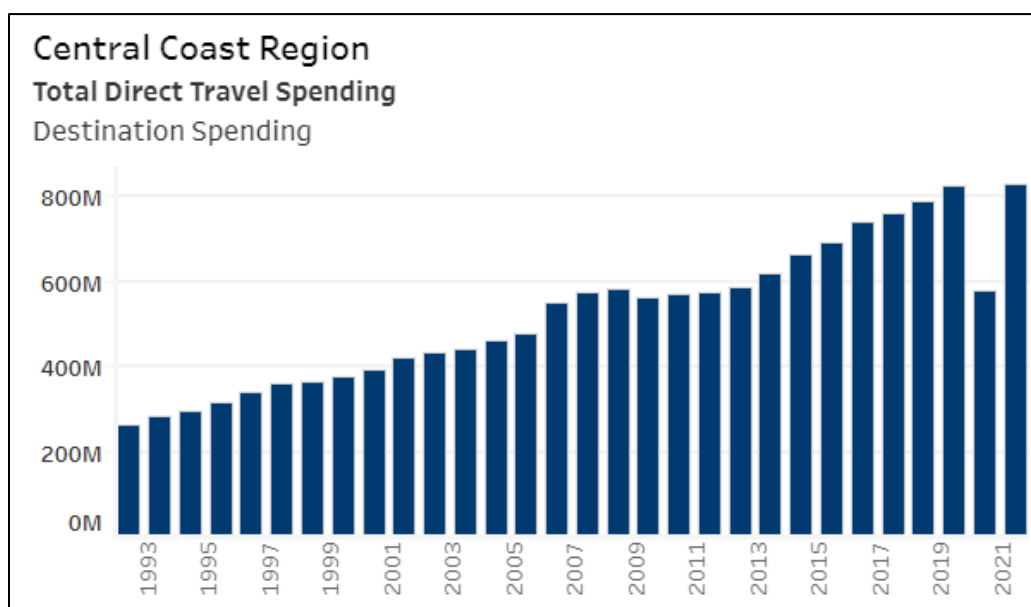
## CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

### TOURISM

The Central Coast Region is well positioned to attract tourists with numerous public parks and plentiful public beach access. Festivals draw travelers throughout the year. In 2021, the tourism sector accounted for approximately 8,033 jobs for the Central Coast region. Historical employment figures are illustrated in the chart below. (Source: Travel Oregon, <https://www.travelstats.com/impacts/oregon>):



Direct travel spending for 2021 totaled approximately \$826.9 million, up significantly from \$579.6 million in 2020, but similar to the 2019 figure of \$823.2 million. Reduced spending in 2020 was likely due to the COVID-19 pandemic and subsequent stay home orders issued by Governor Kate Brown. Historical tourist spending figures are displayed below (Source: Travel Oregon, <https://www.travelstats.com/impacts/oregon>):



## **CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)**

### **PROPERTY TAXES**

In November 1996, Oregon voters approved a property tax limitation measure (Measure 47) which went into effect during the 1997/98 tax year. Under the provisions of this measure, property taxes at July 1, 1997 will be reduced to the smaller of the 1994/95 tax, or the 1995/96 tax less ten percent. Tax increases for subsequent years are limited to three percent per year, with exceptions for new construction, major remodeling, annexations and rezoning.

On May 21, 1997, voters approved a re-write of Measure 47 in the form of Measure 50. This revision effectively rolls back assessed values and tax levies freezing tax rates to 1995/96 levels. In addition, appreciation is capped at three percent per year. Ramifications of this revision are yet to be interpreted by county assessors.

### **PUBLIC SERVICES**

Lincoln County has over forty-thousand residents around the coastal and inland communities such as Lincoln City, Depoe Bay, Newport, Waldport, Yachats, Toledo, Siletz and Eddyville. Its school district serves about 5,400 students from Kindergarten through Twelfth grade, with a total of approximately 520 employees, according to the district website ([www.lincoln.k12.or.us](http://www.lincoln.k12.or.us)). Each incorporated city has an adequate education system for its K-12 students. The principal industries of Lincoln County are lumber, fishing, agriculture and tourism.

### **GENERAL SERVICES**

General and professional services in the region include a number of accounting/tax firms, attorneys/legal firms, banks, insurance companies, real estate sales and title companies. Hospital services are available in each county. Police and fire protection are provided by the incorporated cities. Both organizations make use of full, part-time, and volunteer workers.

The region enjoys a variety of cultural and recreational attractions including libraries, clubs, fraternal organizations, art groups, fishing, hunting, golfing, factory tours, casinos, resorts, golfing, Hatfield Marine Science Center, and various outdoor activities.

### **MEDICAL SERVICES**

In **Lincoln City**, Samaritan North Lincoln Hospital currently operates within the North Lincoln Health District. The mission of the North Lincoln Health District is to deliver high quality health care services to the residents and visitors of the District and its surrounding communities. Samaritan North Lincoln Hospital is an accredited 25-bed hospital located in a peaceful setting on Devils Lake in Lincoln City. The non-profit hospital, originally constructed in 1967, is the only hospital serving Lincoln City. It has a licensed professional staff of more than 20 local physicians, physician assistants and nurse practitioners. In addition, many consulting physicians and specialists provide services at Samaritan North Lincoln Hospital on a regular basis. Currently, a replacement hospital is under construction.

## **CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)**

The following information was published by Samaritan Health Services on September 27, 2017. "Samaritan North Lincoln Hospital administrators and the local community gathered on September 12, 2017 for a ceremonial ground breaking for the new replacement hospital slated



for completion in late 2019. The new structure will feature many new and updated services and facilities incorporating several high tech and next generation medical advances." The new hospital is being constructed on the site of the main parking lot located in the southeast corner of the 12-acre campus. According to the Samaritan Health Services website, construction began on July 9, 2018 and was completed in October 2019, with the new Samaritan North Lincoln Hospital opening February 10, 2020. Samaritan Health Services is funding the \$42 million facility, which is being planned with future expansion capabilities in mind. The preceding rendering illustrates the planned front elevation of the proposed hospital.

In **Newport**, voters passed Ballot Measure 21-163 in 2015, which issued a 20-year bond for up to \$57 million for the construction of a new hospital, to be built on the same site as the existing **Samaritan Pacific Communities Hospital**, a 25-bed critical access hospital located at the corner of SW 9<sup>th</sup> and SW Abbey Streets. Construction began in early summer 2017 (pictured at right, nearing completion of Phase 1 construction); the project included the remodel of 40,000 SF of the existing facility and construction of a new 86,000 SF, three-story addition.



Samaritan Health, which operates the hospital, was slated to contribute another \$11 million toward the project, which was completed in winter 2020. The City of Newport plans a new signalized intersection at SW Abbey Street and Coast Highway in response to expected increased traffic to the hospital campus.

### **TRANSPORTATION**

The primary mode of transportation throughout the region is the private automobile, which is supplemented by private bus carriers and taxi services. Local airports, usually a general aviation facility, offer charter and scenic flights, and flight instruction. There are bus carriers in each County along the coast as well. The Lincoln County Transit is based in Newport and the Lane Transit District is in Eugene.

## **CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)**

### **SUMMARY**

In summary, the Central Coast Region is characterized as a series of small coastal communities relying primarily on fishing, agriculture, forest products and tourism. Overall, the economic outlook for the area is good; however, the Great Recession forced many second homeowners to sell their properties and developers were caught with partially developed projects that were no longer feasible. A slow recovery occurred over the past several years. As the market continues to recover, growth should increase and property values will begin to rise again. The long-term outlook for the region is good.

## ***APPRAISER QUALIFICATIONS***



## POWELL BANZ

### VALUATION

The firm concentrates on complex commercial, industrial and multi-family valuation assignments for government, corporations and individuals. Work has been performed on a national scale. This is a sample of clients served:

#### **Financial:**

AKT, LLP  
Bank of America  
Bank of the Pacific  
Bank of the West  
Banner Bank  
Church Extension Plan  
Citizens Bank  
CitiGroup  
CIT Small Business Lending  
Continental Bank  
Evangelical Christian Credit Union  
First Bank  
First Community Credit Union  
First Federal, McMinnville  
First Interstate Bank, N.A.  
HomeStreet Bank  
JPMorgan Chase Bank, NA  
Northwest Community Credit Union  
OnPoint Community Credit Union  
Oregon Coast Bank  
OSU Federal Credit Union  
Pioneer Trust Bank, N.A.  
Regents Bank  
Riverview Community Bank  
Siuslaw Bank  
Umpqua Bank  
Washington Federal  
Wells Fargo Bank  
Willamette Community Bank  
Willamette Valley Bank

#### **Governmental:**

Benton County  
Bonneville Power Administration  
City of Albany  
City of Coos Bay  
City of Corvallis  
City of Eugene  
City of Lincoln City  
City of Newport  
City of Salem  
City of Silverton  
City of Sweet Home  
City of Woodburn  
Dallas School District  
Douglas County  
FDIC

## EXPERIENCE & QUALIFICATIONS

Federal Home Loan Bank  
Klamath County  
Lane County  
Marion County  
Military Dept. - State of Oregon  
Mount Angel School District  
Oregon Attorneys General  
Oregon Dept. of Parks & Recreation  
Oregon Dept. of Transportation  
Oregon Division of State Lands  
Oregon Dept. of General Services  
Polk CDC  
Port of Portland  
Riverdale School District  
Salem/Keizer School District  
U.S. Army Corps of Engineers  
U.S. Bureau of Land Management  
U.S. Dept. of Interior  
U.S. Marshall's Office  
U.S. Forest Service  
Washington Dept. of Fish & Wildlife  
Woodburn School District  
Yamhill County Housing Authority

#### **Insurance/Medical:**

Corvallis Clinic  
Good Samaritan Hospital (Corvallis)  
SAIF  
Salem Health  
Samaritan Albany General Hospital  
Samaritan Health Services  
St. Paul Fire & Marine

#### **General:**

Arnold, Gallagher, PC  
Catholic Community Services  
Martinis & Hill  
McDonalds Corporation  
Roth's Fresh Market  
MDH Management LLC  
Saalfeld Griggs PC  
Feibleman & Case, PC  
First American Title  
Morrow Equipment  
Sherman, Sherman, Johnnie & Hoyt  
Mtn. West Development Corp.  
State Farm Insurance Co.  
GHR Lawyers





**Katherine Powell Banz, MAI** is a Principal and Certified General Appraiser with Powell Banz Valuation, LLC. Katie is licensed in Oregon and Washington and has performed a diverse range of commercial valuation assignments throughout the Northwest since joining the firm in 2002. In 2014 Katie and her husband, Jonathan Banz, MAI, AI-GRS purchased the business and rebranded the company Powell Banz Valuation, LLC.

Katie's professional experience includes a wide variety of valuation-related work, including consultation, appraisal, expert witness testimony, appraisal review, and feasibility analysis of income producing properties; including retail, office, development land, industrial, single and multi-family residential, and special use properties such as churches and schools.

Katie was the 2018 President of the Greater Oregon Chapter of the Appraisal Institute (GOCAI). She was an active GOCAI Board Member from 2012-2020. Katie also volunteered as a Region Representative for the Appraisal Institute Region 1 from 2017-2020, and is serving on the 2021 Region 1 Nominating Committee.

Katie graduated from Linfield College (McMinnville, Oregon) in 1997 with a Bachelor of Arts degree. Following college, she worked as a graphic artist and project manager with the Boeing Company in Seattle until joining Powell Valuation Inc in 2002.

In her spare time, Katie enjoys reading, gardening, striving to live a creative life, and spending time with her husband and Great Danes.

#### EXPERTISE & SERVICES

- Real Estate Valuation
  - Professional & Medical Office
  - Retail
  - Industrial
  - Subdivision Analysis
  - Multi-Family
  - Lodging
  - Special Purpose Properties
- Expert Witness Testimony
- Eminent Domain and Condemnation
- Market Analysis & Feasibility Studies
- Appraisal Review



[kbanz@powellbanz.com](mailto:kbanz@powellbanz.com)  
503-371-2403

#### AFFILIATIONS

- State of Oregon Certified General Appraiser, #C000897
- State of Washington Certified General Appraiser (#1101856)
- Designated Member of the Appraisal Institute (#480999)
- State of Oregon Supervising Appraiser
- Greater Oregon Chapter of the Appraisal Institute - GOCAI:
  - 2019/2020 Region 1 Representative
  - 2019 Past President
  - 2018 President
  - 2017 Vice President
  - 2016 Treasurer
  - 2015 Secretary
  - 2012- 2014 Board Member
- Board Member -Deepwood Museum & Gardens, Salem, OR (2014-2019)

#### EDUCATION / DESIGNATION

- MAI - Appraisal Institute
- B.A. - Linfield College

## ***APPRAISER CERTIFICATION***



KATHERINE J BANZ  
POWELL BANZ VALUATION, LLC  
201 FERRY ST SE STE 300  
SALEM, OR 97301

**Appraiser Certification and Licensure Board**  
**State Certified General Appraiser**  
*28 hours of continuing education required*

License No.: C000897

Issue Date: September 01, 2022

Expiration Date: August 31, 2024

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**Chad Koch, Administrator**

## CITY MANAGER REPORT AND RECOMMENDATIONS



Meeting Date: December 4, 2023

### **Agenda Item:**

**Public Hearing and Possible Action to Determine Whether Certain City-Owned Parcels of Tideland Property are Surplus to the City's Needs and Should Be Sold to the Yakona Nature Preserve and Placed in Conservancy.**

### **Background:**

Bill Barton, on behalf of the Yakona Nature Preserve, has expressed an interest in purchasing City-owned tidelands that are located in the vicinity of the Yakona Nature Preserve, for incorporation into the preserve. Newport Municipal Code chapter 2.25 sets out the processes the City must follow for the sale of property. Under this provision the tidelands qualify as "substandard undeveloped property" which are defined as "lots or parcels without structures that are not of minimal buildable size for the zone in which they are located and cannot be developed for other reasons."

The Code provides that notice must be given to all property owners within 300 feet of the subject property ten days prior to the hearing, and to any parties who have inquired about purchases within one year prior to the date of the Council meeting. This has been done. To date, Community Development Director, Derrick Tokos, has received one inquiry regarding this matter. Following the public hearing, the Council will need to determine that the title and property are surplus to the city's needs and are no longer needed for public use, and that it is in the public interest to sell the property.

If this determination is made, the City Council will schedule a hearing to consider potential terms of sale. This could be done at the January 2, 2024 City Council meeting.

The property in question are the parcels that are submersible lands located near Poole Slew and Yaquina Bar outside of the city limits and the city's urban growth boundary. These properties were donated by Jack and Lily Stocker who donated five parcels to the City of Newport in 1995. The Council accepted these parcels with the thought that they may have potential mitigation value, or value as future inventory land that the City could trade. In 2008, one of the parcels was conveyed to the Central Coast Land Conservancy as a match for North American Wetlands Conservation funds. The remaining four parcels still remain in city ownership. If the properties are conveyed, the properties would be placed in a Conservancy and deed restricted.

If Council determines the properties are surplus, the Council will then need to provide directions of how the sale of the property should proceed. The property has nominal value with the Lincoln County assessor's office placing a value of \$5,870 on the four parcels existing of 9.23 acres in total size. Mr. Barton has indicated that he is comfortable with

paying that amount. Following the public hearing, the City Council will need to determine how the property should be sold. The public hearing will provide an opportunity should there be any interest in the title and property from other property owners. The second motion provides instructions to the City Manager to coordinate conveyance documents with the Yakona Nature Preserve and schedule a public hearing on these documents so Council may consider, and potentially approve, the proposed terms of sale. Notice of the second hearing will be provided in the same manner as it was for the first hearing.

**Recommendations:**

I recommend that the Mayor conduct a public hearing to determine if four parcels of city-owned tidelands consisting of a total of 9.23 acres located outside the city's urban boundary should be deemed surplus to the city's needs and sold to the Yakona Nature Preserve and placed in conservancy. Following the public hearing, and considering any comments made, I recommend the City Council consider the following motion:

**I move to determine that four tideland parcels, identified as tax lots 11 - 11 - 21 - 00 - 01190 - 00; 11 - 11 - 22 - CO - 04200 - 00; 11 - 11 - 27 - 00 - 03100 - 00; and, 11 - 11 - 28 - 00 - 00201 - 00 which are collectively 9.23 acres located outside the urban growth boundaries of the city, in the proximity of the Yakona Nature Preserve, are no longer needed for public use and that it is in the public interest to sell the property.**

If this motion is approved, I recommend the City Council consider the following motion:

**I move to direct the City Manager to coordinate the preparation of land conveyance documents with the Yakona Nature Preserve, and schedule a public hearing on these documents for Tuesday, January 2, 2024.**

**Fiscal Effects:**

Any proceeds received from the sale of land will go into the City's Land Reserve Fund.

**Alternatives:**

If public comment is received as part of this hearing, those comments should be considered prior to recommending either motion above.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel", is written over a light blue horizontal line.

Spencer Nebel  
City Manager



**STAFF REPORT  
CITY COUNCIL AGENDA ITEM**

**Date:** December 4, 2023

**Title:** Public Hearing to Determine if Certain City-Owned Tidelands are Surplus to the City's Needs and Should be Sold to the Yakona Nature Preserve and Placed in a Conservancy

**Prepared by:** Derrick I. Tokos, AICP, Community Development Director

**Recommended Motions:**

*Motion 1, Determination that the Tidelands are Surplus to the City's Needs:* I move to find that the tidelands the City of Newport owns by virtue of a warranty deed recorded in Book 311, at Page 119 of the Lincoln County Book of Records, are no longer needed for public use, and that it is in the public interest to sell the property.

*Motion No. 2, Schedule a Hearing to Consider the Potential Terms of Sale:* I move to direct the City Manager to coordinate the preparation of conveyance documents with the Yakona Nature Preserve, and to schedule a public hearing once they are finalized so that the Council may consider and potentially approve the proposed terms of sale. Notice of the hearing shall be provided in the same manner as it was for this meeting.

**Background Information:** In December of 1995, Jack and Lily Stocker donated five tideland parcels to the City of Newport (ref: Warranty Deed, Book 311, Page 119, Lincoln County Book of Records). At its January 2, 1996 meeting, the Newport City Council adopted a motion accepting the donation of real property. The minutes reflect that the Council viewed these these submerged and submersible lands near Poole Slough as having potential mitigation value, or value as future inventory land that the City could trade. In 2008 the City conveyed one of the parcels to the Central Coast Land Conservancy (Ref: Deed Instrument #200803360). The property is adjacent to other land owned by the Conservancy and was provided as match for North American Wetlands Conservation Fund funds pursuant to a grant agreement between the Conservancy and U.S. Fish and Wildlife Service. A deed restriction was placed on the conveyed parcel requiring that it be conserved in order to protect the ecological values of the salt marsh and fish and wildlife species that depend upon it. The City of Newport retains ownership of the four remaining parcels. Bill Barton, on behalf of the Yakona Nature Preserve, has approached the City to acquire the four parcels with the intent of placing them into a conservancy to protect the tidelands in a manner similar to what was done in 2008.

Newport Municipal Code (NMC) Chapter 2.25 sets out the process the City must follow for the potential sale of the property. The tidelands qualify as "substandard undeveloped property," which are defined as lots or parcels without structures that are not of minimum buildable size for the zone in which they are located or that cannot be developed for other reasons (NMC 2.25.020(A)). A hearing is required to provide members of the public an opportunity to testify as to whether or not it is in the public interest to sell the property. The City must mail notice to property owners within 300-feet of the subject property 10-days prior to the hearing and to any parties who have inquired about purchase within one year prior to the date of the Council meeting. A copy of the required notice is enclosed. At the close of the hearing, the Council must decide whether or not to authorize the sale of the property. The Council may offer a property for sale only if it determines it is surplus to the city's needs (NMC 2.25.030(A)).

If the Council decides to sell the property, it shall direct the City Manager to proceed with the sale, with directions as to how the sale should proceed. The directions should include the extent to which the sale should be publicized. The City Manager, consistent with the direction of Council, would then determine the existence of interested prospective purchasers and negotiate for the sale of the property to achieve



the best results for the City, considering the sale price and the anticipated use of the property (NMC 2.25.030(B)). Once details of the sale have been negotiated, the negotiated agreement for the sale of the property must be submitted for Council action at a regularly scheduled Council meeting (NMC 2.25.030(C)).

The four tideland parcels, identified as Tax Lots 11-11-21-00-01190-00, 11-11-22-C0-04200-00, 11-11-27-00-03100-00, and 11-11-28-00-00201-00), are collectively 9.23 acres in size. Tax Lot 1190 is rectangular in shape on the west side of the Yakona Nature Preserve, extending into King Slough. The other three parcels are located immediately east of the Preserve along the Yaquina River. These tideland properties are situated along the bank of the river between the mean low and mean high water lines. The Lincoln County Assessor's Office has assigned real market values to the properties, the total value of which is \$5,870. It would be reasonable for the Council to view this as a representative value, and Bill Barton has indicated that he is comfortable with paying that amount. The properties would be placed in a conservancy and deed restricted. A sample deed restriction from the 2008 conveyance is attached.

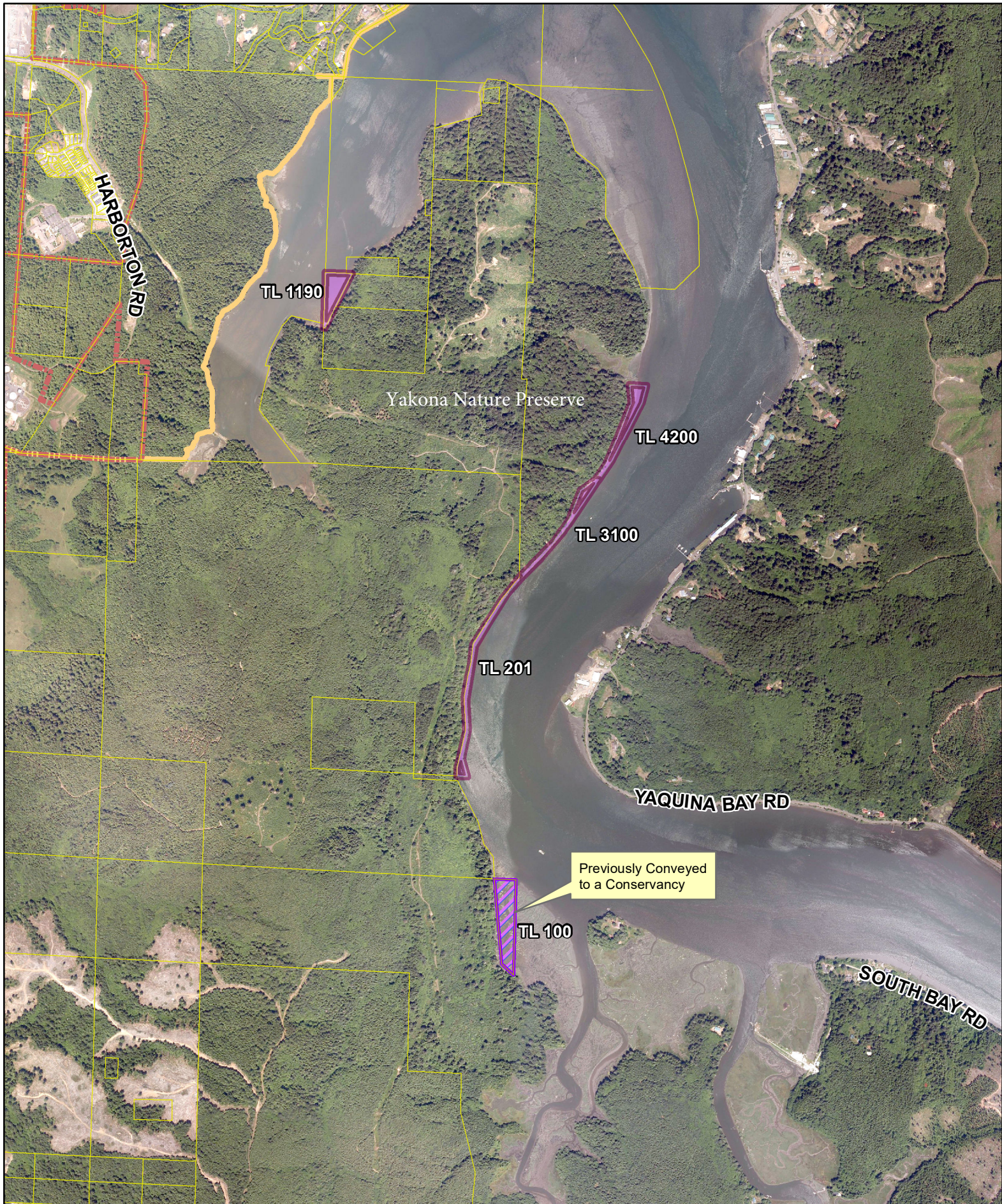
**Fiscal Notes:** There are no fiscal impacts associated with this agenda item. If the property is sold, then the proceeds would be directed to the City land account for future land purchases, unless an alternative use of the funds is identified by Council.

**Alternatives:** Move forward with the potential sale in a manner different then outlined above, hold off on pursuing a potential sale, or as suggested by Council.

**Attachments:**

Tidelands Map  
Tax Lot Property Records  
Vesting Deed  
Council Minutes Excerpt for 1.6.96 Meeting  
Barton Proposal  
Yakona Backgrounder  
Sample Deed Restriction  
Hearing Notice





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

## City of Newport Owned Tidelands (Bk. 311, Pg. 0119)

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

0 800 1,600 3,200 Feet

N  
295'

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



LINCOLNPROD PROPERTY RECORD CARD

Property ID: R420417

Map and Taxlot: 11-11-22-C0-04200-00

Tax Year: 2024

Run Date: 11/28/2023 4:45:17 PM

PROPERTY SITUS ADDRESS

Maintenance Area: F-12

GENERAL PROPERTY INFORMATION

Prop Class: 940  
NBH Code: S132  
Prop Type Code: COM  
Prop Code: Z5: COMMERCIAL NEWPORT & LINC  
Next Appr Date:  
Next Appr Reason:  
Last Appr Date: 02/11/2013  
Appraiser: JM  
Zoning: MW  
Code Area: 100  
Related Accts:

OWNER NAME AND MAILING ADDRESS

CITY OF NEWPORT  
CITY MANAGER  
169 SW COAST HWY  
NEWPORT, OR 97365

LEGAL DESCRIPTION

TWN5HP 11, RNG 11, TRACT TIDELAND,  
ACRES 3.02, MF311-0119

Acres: 3.02      Sqft:  
Effective Acres: 3.02

BUILDING PERMITS AND INSPECTIONS

Type      Appraiser      Issue Date      Date Checked      % Comp      Comment

PARCEL COMMENTS

GenFlag- M\_13C  
GenCom- JV#703 REMAP INPUT 10-25-06, JV#1933 INPUT 5-17-96  
Land- LAND IN RIVER

EXEMPTIONS

Code      Exempt RMV  
CITY      1,920

Exceptions

Code      Year      Amount      Method

VALUE HISTORY

Year	Land RMV	Imp RMV	Total RMV	Total AV	LSU Value
2023	1,920		1,920		
2022	1,810		1,810		
2021	1,540	0	1,540	0	0
2020	1,460	0	1,460	0	0
2019	1,460	0	1,460	0	0
2018	1,510	0	1,510	0	0

ASSESSMENT INFORMATION

Land Non-LSU: 1,920      Prior MAV:  
Improvement:      Prior MAV Adj:  
Non-LSU RMV Total:      Prior AV:  
Land LSU:      Prior AV Adj:  
RMV Total:      AV +3%:  
SALES INFORMATION      Except RMV:  
CPR:  
EX. MAV:  
LSU:  
New M50 AV:

Date	Type	Sale Price	Adj Sale Price	Validity	Inst. Type	Sale Ref
	37			SALE	WD WARRANTY DEE	MF311-0119

MARKET LAND INFORMATION

Type      Table      Method      Acres      Base Value      Adjustment Code - %  
MTL: MARINE TIDE LAND      TL      A      3.020      500  
Total Acres: 3.020

NBHD %      Total Adj %      Final Value  
1,270      1,270      1,920

Total Market Land Value: 1,920

LAND SPECIAL USE

Code      SAV Unit Pr      MSAY Unit Pr      LSU  
Total LSU:

LINCOLNPROD PROPERTY RECORD CARD

Property ID: R118049

Map and Taxlot: 11-11-27-00-03100-00

Tax Year: 2024

Run Date: 11/28/2023 4:46:21 PM

PROPERTY SITUS ADDRESS

Maintenance Area: F-12

OWNER NAME AND MAILING ADDRESS

CITY OF NEWPORT  
CITY MANAGER  
169 SW COAST HWY  
NEWPORT, OR 97365

LEGAL DESCRIPTION

TWNSHP 11, RNG 11, TRACT TIDELAND,  
ACRES 1.05, MF311-0119

Acres: 1.05      Sqft:  
Effective Acres: 1.05

BUILDING PERMITS AND INSPECTIONS				
Type	Appraiser	Issue Date	Date Checked	% Comp Comment

PARCEL COMMENTS

GenFlag- M\_13C  
GenCom- JV#708 REMAP INPUT 10-30-06. JV#1933 INPUT 5-17-96  
Land- LAND IN RIVER

EXEMPTIONS

Code      Exempt RMV  
CITY      670

Exceptions

Code      Year      Amount      Method

MARKET LAND INFORMATION				
Type	Table	Method	Acres	Base Value Adjustment Code - %
MTL: MARINE TIDE LAND	TL	A	1.050	500
Total Acres:			1.050	

NBHD %      Total Adj %      Final Value  
1.270      1.270      670  
Total Market Land Value:      670

LAND SPECIAL USE			
Code	SAV Unit Pr	MSAV Unit Pr	LSU
Total LSU:			

GENERAL PROPERTY INFORMATION

Prop Class: 940  
NBH Code: S132  
Prop Type Code: COM  
Prop Code: Z5: COMMERCIAL NEWPORT & LINC  
Next Appr Reason:  
Last Appr Date: 02/11/2013  
Appraiser: JM  
Zoning: MMW  
Code Area: 100  
Related Accts:

VALUE HISTORY

Year	Land RMV	Imp RMV	Total RMV	Total AV	LSU Value
2023	670		670		
2022	630		630		
2021	540	0	540	0	0
2020	510	0	510	0	0
2019	510	0	510	0	0
2018	530	0	530	0	0

ASSESSMENT INFORMATION

Land Non-LSU: 670      Prior MAV:  
Improvement:      Prior MAV Adj:  
Non-LSU RMV Total:      Prior AV:  
Land LSU:      Prior AV Adj:  
RMV Total:      AV +3%:  
SALES INFORMATION      New M50 AV:

Date	Type	Sale Price	Adj Sale Price	Validity	Inst. Type	Sale Ref
	37			SALE	WD WARRANTY DEE	MF311-0119







Original in 11-11-21

GRANTOR:  
Jack Stocker and  
Lily Stocker  
GRANTEE:  
City of Newport

AFTER RECORDING  
RETURN TO:  
City Recorder  
City of Newport  
810 SW Alder Street  
Newport, Oregon 97365

UNTIL A CHANGE IS REQUESTED  
SEND TAX STATEMENTS TO:  
City Recorder  
City of Newport  
810 SW Alder Street  
Newport, Oregon 97365

### WARRANTY DEED

Jack Stocker and Lily Stocker, husband and wife, Grantors, convey and warrant to the City of Newport, a municipal subdivision of the State of Oregon, Grantee, the following described real property free of encumbrances except as specifically set forth herein, situated in Lincoln County, Oregon, to-wit:

#### PARCEL I:

Tidelands in front of and adjacent to U.S. Lot 5, Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

11-11-22C  
4200

#### PARCEL II:

Tidelands adjacent to U.S. Lot 8, Section 27, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

11-11-28  
100

#### PARCEL III:

Tidelands adjacent to U.S. Lots 1 and 2, Section 28, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

NOW  
11-11-27  
3100

11-11-28  
201

EXCEPTING therefrom any portion, if any, lying within that tract conveyed by Dennis S. Lund and Gary G. Gibson to Becker Industries, Inc., by instrument recorded June 4, 1975, in Book 56, page 1977, Microfilm Records for Lincoln County, Oregon.

#### PARCEL IV:

Tidelands adjacent to Lot 1, Section 33, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

11-11-33  
100

#### PARCEL V:

Tidelands lying with the northwest quarter of the southeast quarter in Section 21, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, being adjacent to that tract described by instrument recorded June 14, 1995, in Book 301, page 884, Film Records to Alan S. Crandall, et ux, and adjacent to that portion of the northwest quarter of the southeast quarter described in instrument recorded February 23, 1967, in Book 275, page 264, Deed Records to William E. Rowe, et ux.

SOLA TO CENTRAL COAST LAND CONSERVANCY  
INST # 200803760 (NOW WIEFLANDS CONSERVANCY  
201611029

11-11-21  
1190

The said property is free from encumbrances except:

1. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.
2. "Right-of-way for County roads as now surveyed and located" as set forth in instrument recorded March 2, 1945, in Book 103, page 120 (affects Parcels I, II, III and IV). Exact location unknown.



3. "Easement granted to West Coast Power Co. for right-of-way for powerline and poles" as set forth in instrument recorded March 2, 1945, in Book 103, page 120 (affects Parcels I, II, III and IV). Exact location unknown.

4. Leases granted to U.S. Coast Guard for harbor light stations, as set forth in instrument recorded March 2, 1945, in Book 103, page 120 (affects Parcels I, II, III and IV). Exact location unknown.

5. The right, title and interest of Jan Marie Lorene Rowe Oates, if any, as set forth in instrument recorded October 4, 1985, in Book 165, page 701 (affects Parcel V).

6. Any adverse claim based on the assertion that any portion of said land was not tide, submerged or submersible land subject to disposition by the State of Oregon, or that any portion thereof has ceased to be submerged or submersible lands by reason of erosion or by reason of having become upland by accretion.

7. Rights and easements for commerce, navigation, recreation and fishery.

The true consideration for this conveyance is none, but there is other good and valuable consideration, this being a donation to the Grantee.

Dated this 29 day of December, 1995.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS OR LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Jack Stocker  
Jack Stocker

Lily Stocker  
Lily Stocker

STATE OF OREGON )  
 ) ss.  
County of Lincoln )

December 29, 1995

Personally appeared the above named Jack Stocker and Lily Stocker and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:



(12-26941CNPT158e wd)

Amy E. Purdom  
Notary Public for Oregon  
My commission expires: 8-6-99

STATE OF OREGON ) ss.  
County of Lincoln )  
I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon.  
Book 311 Page 0119  
WITNESS my hand and seal of said office affixed.

Dana W. Jenkins  
DANA W. JENKINS, Lincoln County Clerk

Doc : 6146716  
Rect: 61940 36.00  
12/29/1995 03:54:54pm





Newport City Council Minutes, 2 January 1996

City Attorney Minor said we could also file a civil action and seek restitution. If the vandals are not of age, then the parents must pay for at least part of it.

Bateman said he also will match the \$100 reward offer, and all other members of the Council did similarly.

Minor reported that Jack and Lily Stocker offered the City a substantial donation of submerged and submersible lands near Poole Slough. The title report was clean, so Stocker signed and recorded a deed transferring the land to the City before the end of 1995 year. Minor asked the Council to ratify acceptance of Stocker's offer.

The Mayor said these are tide and overflow lands that have potential mitigation value, and value as future inventory land we could trade. Stocker once wanted to grow oysters there, but never did so.

Bateman moved, seconded by Threlkeld, to accept Stockers' donation of real property. On call for vote, all members present voted aye, motion carried.

NEW BUSINESS

City Engineer Ritzman wrote a memo recommending placement of a stop sign on NE 71st Street at its intersection with NE Avery Street (previously abandoned Old Coast Highway.) Belloni moved, seconded by Bateman, to approve the request. On call for vote, all members present voted aye, motion carried.

ORDINANCES & RESOLUTIONS

The Council introduced Ordinance No. 1739, entitled AN ORDINANCE AMENDING ORDINANCE 1623, SECTION 9, SUBSECTION A AS IT RELATES TO CALCULATING CREDITS FOR SYSTEM DEVELOPMENT CHARGES at the last regular meeting. Bateman moved, seconded by Fowler, to read the ordinance for the second time by title only and place it on final passage. On call for vote, all members present voted aye, motion carried. The Manager read the ordinance for the second time by title only. The Mayor called for public comment. Hearing none, he asked for the vote on final passage. On roll call Bateman, Belloni, Collson, Fowler, Sabanskas, Threlkeld and Updenkelder all voted aye, no negative votes. The Mayor declared Ordinance 1739 duly adopted.

The Council introduced Ordinance No. 1741, entitled AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF NEWPORT'S COMPREHENSIVE PLAN MAP (ORDINANCE NO. 1621, AS AMENDED), ANNEXATION OF CERTAIN TERRITORY AS HEREIN DESCRIBED, AMENDMENT TO THE CITY OF NEWPORT'S ZONING MAP (ORDINANCE NO. 1308, AS AMENDED) FOR SAID TERRITORY, WITHDRAWAL OF SAID TERRITORY FROM THE NEWPORT RURAL FIRE PROTECTION DISTRICT AND THE LINCOLN COUNTY LIBRARY DISTRICT, AND MAKING FINDINGS OF FACT, ALL IN THE CITY OF NEWPORT, COUNTY OF LINCOLN, STATE OF OREGON. (Requested by Lincoln County School District, site for new middle school.) Since no member present asked to have the ordinance read in full, Bateman moved, seconded by Fowler, to read the ordinance for the first time by title only. On call for vote, all members present voted aye, motion carried. The Manager read the ordinance for the first time by title only, and the Council laid the ordinance over to the next regular meeting for final passage.

The Mayor said by the next meeting he will try to have a four-way agreement for extension of NE Highway 41.

COPY

October 20, 2023

*Via Hand Delivery*

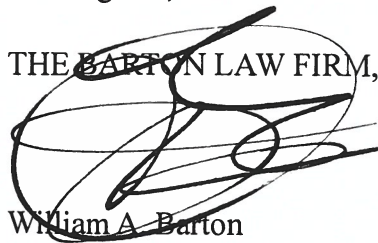
Spencer Nebel  
Newport City Manager  
169 SW Coast Highway  
Newport, OR 97365

Dear Spencer:

Thanks for meeting with me the morning of Thursday, October 19<sup>th</sup>. Enclosed please find the corporate documents for the Yakona Nature Preserve which will be the purchaser of the properties we discussed adjacent to or in the location of the nature preserve. Please assign the properties an appraised value and we can move to consummate the purchase.

Best regards,

THE BARTON LAW FIRM, P.C.

A handwritten signature in black ink, appearing to be 'William A. Barton', is written over the printed name and extends with a long horizontal line across the page.

William A. Barton

Encls.



## Restated Articles of Incorporation - Nonprofit

Secretary of State - Corporation Division - 255 Capitol St. NE, Suite 151 - Salem, OR 97310-1327 - http://www.FilingInOregon.com - Phone: (503) 986-2200

FILED

DEC 12 2017

REGISTRY NUMBER: 1347678-96OREGON  
SECRETARY OF STATE

In accordance with Oregon Revised Statute 192.410-192.490, the information on this application is public record.  
We must release this information to all parties upon request and it will be posted on our website.  
Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

For office use only

1) NAME OF CORPORATION: Yaquina Nature Preserve Foundation2) NEW NAME OF THE CORPORATION: (If changed) Yakona Nature Preserve

3) A COPY OF THE RESTATED ARTICLES MUST BE ATTACHED.

4) CHECK THE APPROPRIATE STATEMENT:

☒ The restated articles contain amendments which do not require membership approval. The date of the adoption of the amendments and restated articles was October 31, 2017. These amendments were duly adopted by the board of directors.

☐ The restated articles contain amendments which require membership approval. The date of the adoption of the amendments and restated articles was \_\_\_\_\_.

The vote of the members was as follows:

Class(es) entitled to vote	Number of members entitled to vote	Number of votes entitled to be cast	Number of votes cast FOR	Number of votes cast AGAINST

5) EXECUTION: (Must be signed by at least one officer or director.)

By my signature, I declare as an authorized authority, that this filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment or both.

Signature: 

Printed Name:

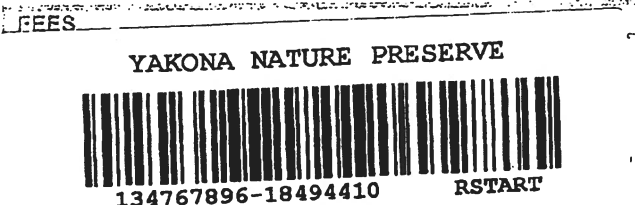
Title:

William A. BartonSecretary

CONTACT NAME: (To resolve questions with this filing.)

Saskia M. de Boer

PHONE NUMBER: (Include area code.)

(503) 294-9246

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
YAKONA NATURE PRESERVE**

Pursuant to ORS 65.451, YAKONA NATURE PRESERVE (formerly known as YAQUINA NATURE PRESERVE FOUNDATION), (the "corporation"), an Oregon nonprofit public benefit corporation, adopts the following Amended and Restated Articles of Incorporation, which supersede the existing Articles of Incorporation and all prior amendments thereto.

**ARTICLE I**

The name of the corporation is YAKONA NATURE PRESERVE.

**ARTICLE II**

The corporation is a public benefit corporation.

**ARTICLE III**

The corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes permitted by Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("IRC").

**ARTICLE IV**

Notwithstanding any other provision of these Articles of Incorporation, the corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income taxation under IRC Section 501(c)(3) and (b) by a corporation contributions to which are deductible under IRC Sections 170(c)(2), 2055(a)(2) and 2522(a)(2). No part of the net earnings of the corporation shall inure to the benefit of any private shareholder or individual. No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as may be permitted under IRC Section 501(h), and the corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.



## ARTICLE V

During any time that the corporation is classified as a "private foundation" as defined in IRC Section 509, the corporation:

- (a) shall not engage in any act of self-dealing as defined in IRC Section 4941(d);
- (b) shall distribute its income and, when necessary, amounts from principal at such time and in such manner as not to subject the corporation to the taxes on failure to distribute income imposed by IRC Section 4942;
- (c) shall not retain any excess business holdings as defined in IRC Section 4943(c);
- (d) shall not make any investments in such manner as to subject the corporation to the taxes on investments which jeopardize charitable purpose imposed by IRC Section 4944; and
- (e) shall not make any taxable expenditures as defined in IRC Section 4945(d).

## ARTICLE VI

Upon dissolution or final liquidation of the corporation, after the payment or provision for payment of all of the liabilities of the corporation, the remaining assets of the corporation shall be distributed to such organization or organizations that are then described in IRC Sections 501(c)(3), 170(c)(2), 2055(a)(2), and 2522(a)(2) as the board of directors shall determine.

## ARTICLE VII

The corporation has no members.

## ARTICLE VIII

No director or uncompensated officer shall be personally liable to the corporation for monetary damages for conduct as a director or officer, provided that this Article shall not eliminate or limit the liability of a director or officer for any act or omission for which such elimination of liability is not permitted under the Oregon Nonprofit Corporation Act. No amendment to the Oregon Nonprofit Corporation Act that further limits the acts or omissions for which elimination of liability is permitted shall affect the liability of a director or officer for any act or omission which occurs prior to the effective date of the amendment.

## ARTICLE IX

The corporation shall indemnify to the fullest extent permitted by the Oregon Nonprofit Corporation Act any person who is made, or threatened to be made, a party to an action, suit, or proceeding, whether civil, criminal, administrative, investigative, or otherwise (including an action, suit, or proceeding by or in the right of the corporation), by reason of the fact that the

1347678-46

person is or was a director, officer, employee or agent of the corporation. The corporation shall pay for or reimburse the reasonable expenses incurred by any such person in any such proceeding in advance of the final disposition after the board of directors has taken such action as required by ORS 65.404, including providing notice of the proposed indemnification to the Attorney General. No amendment to this Article that limits the corporation's obligation to indemnify any person shall have any effect on such obligation for any act or omission that occurs prior to the later of the effective date of the amendment or the date notice of the amendment is given to the person. This Article shall not be deemed exclusive of any other provisions for indemnification or advancement of expenses of directors, officers, employees, agent and fiduciaries that may be included in any statute, bylaw, agreement, general or specific action of the board of directors.

#### ARTICLE X

All references in these Articles of Incorporation to sections of the Internal Revenue Code of 1986, as amended, or the Oregon Nonprofit Corporation Act shall be deemed to refer also to the corresponding provisions of any future federal tax or Oregon nonprofit corporation laws.

#### ARTICLE XI

The address of the corporation's registered office and the name of its initial registered agent at that location are:

William A. Barton  
214 SW Coast Hwy  
Newport, OR 97365

#### ARTICLE XII

The mailing address of the principal office of the corporation is as follows:

Yakona Nature Preserve  
214 SW Coast Hwy  
Newport, OR 97365

DATED: October 31, 2017.

  
 \_\_\_\_\_  
 William A. Barton, Secretary

A stylized, green, coniferous tree with a wide, spreading canopy and a thick, textured trunk. The tree is positioned centrally behind the word 'YAKONA'.

# YAKONA

HOME VISION THE PRESERVE HISTORY  
ABOUT ENGAGE GALLERY



## LAND ACKNOWLEDGEMENT

The lands comprising the Yakona Nature Preserve & Learning Center encompass a portion of the ancestral homeland of the Yaqo'n people, who have lived in the region for millennia. Contact with European trade ships and fur trappers introduced smallpox, measles, and other diseases for which indigenous people had no immunities, and racial injustices led to outright massacres of scores of native people. Consequently, by the middle of the 19th century, approximately 80% of the Yaqo'n population was eliminated. What had been as many as 700 individuals was reduced to approximately 80.

White settlers colonizing what was to become the State of Oregon in the 19th century led to well-documented genocide across the land, from which the Yaqo'n did not escape. The creation of the Siletz Reservation in 1855 was ostensibly intended to provide indigenous people a safe haven, and many tribes from across western Oregon and northern California were rounded up and forcibly moved to it. The local Yaqo'n were now living amongst other tribes who had different languages, customs, and ways of life.

The promise of protection was short lived – by 1865, the federal government carved the Yaquina watershed out of the Siletz Reservation and opened it to white colonists, who were allowed to take the homes of the Yaqo'n and other indigenous people living on the Siletz Reservation for their own. Marginalized, the native people lived and worked among the recent immigrants, but by the beginning of the 20th century, the Yaqo'n had been reduced to less than 15 individuals. Today, one large extended family enrolled with the Confederated Tribes of Siletz Indians can trace their ancestry to the Yaqo'n people.

We must never forget how this country was taken from its indigenous populations. With every European "discovery" of the riches this land offered, the injustices of genocide, relocation and subsequent habitat destruction followed. The story of the Yaqo'n and other indigenous peoples across the state and nation has been repeated innumerable times. With respect to those who have gone

before, the Yakona Nature Preserve & Learning Center will ensure that all who visit are educated in the history of the land and its indigenous people, and welcomed and embraced as stewards and partners in its mission.



## BECOME A FRIEND OF YAKONA

Friends of Yakona are notified of upcoming group hikes and events, and are offered volunteer engagement opportunities

<input type="text"/>	<input type="text"/>
First Name	Last Name
<input type="text"/>	
Email Address	

**Sign Up**

Yakona Nature Preserve is a 501(c)(3) private operating foundation. Our federal tax ID number is 82-2403781

Yakona Learning Center is a 501(c)(3) public charity. Our federal tax ID number is 88-3696351



After Recording, Return to:  
Central Coast Land Conservancy, Inc.  
P.O. Box 1344  
Depoe Bay, OR 97341

## Notice of Property Restriction

The Central Coast Land Conservancy, Inc. (CCLC) is the owner of a certain piece or parcel of land located in Lincoln County, Oregon in the town of Newport, more particularly described as:

Tidelands adjacent to Lot 1, Section 33, Township 11 South, Range 11 West, Willametter Meridian, in Lincoln County, Oregon as conveyed and warranted to the City of Newport by Jack Stocker and Lily Stocker as Parcel IV of Warranty Deed recorded on December 29, 1995, in Book 311, Page 0119, Lincoln County Book or Records, (the "Property").

The Property is a match for North American Wetlands Conservation Fund funds pursuant to a Grant Agreement between the U.S. Fish and Wildlife Service and Central Coast Land Conservancy dated 2007, Agreement Number:OR-N61 (P/N 3765), a copy of which is kept at the Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 1849 C Street, NW, Washington, DC 20240 and at the office of CCLC at P.O. Box 1344, Depoe Bay, OR 97341.

This property was conserved in order to conserve the ecological values of the salt marsh and the fish and wildlife species that depend on it.

CCLC hereby agrees to be bound by the terms of the Grant Agreement as they relate to the Property, including the obligation to ensure the long term conservation of the Property and to obtain the consent of the U.S. Fish and Wildlife prior to the conveyance or encumbrance of any interest therein.

~~Dated~~ March 7, 2008

Fran Recht, Secretary  
The Central Coast Land Conservancy, Inc.  
P.O. Box 1344, Depoe Bay, OR 97341

State of Oregon )  
County of Lincoln )

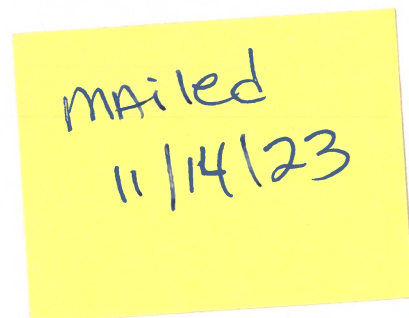
This instrument was acknowledged before me on March 17, 2008 by Fran Recht of Depoe Bay, Oregon

Notary Public—State of Oregon



my Commission expires April 8, 2011





**NOTICE OF PUBLIC HEARING  
BEFORE THE NEWPORT CITY COUNCIL  
REGARDING THE POTENTIAL SALE OF  
SUBSTANDARD UNDEVELOPED PROPERTIES  
LOCATED ALONG THE YAQUINA BAY ESTUARY**

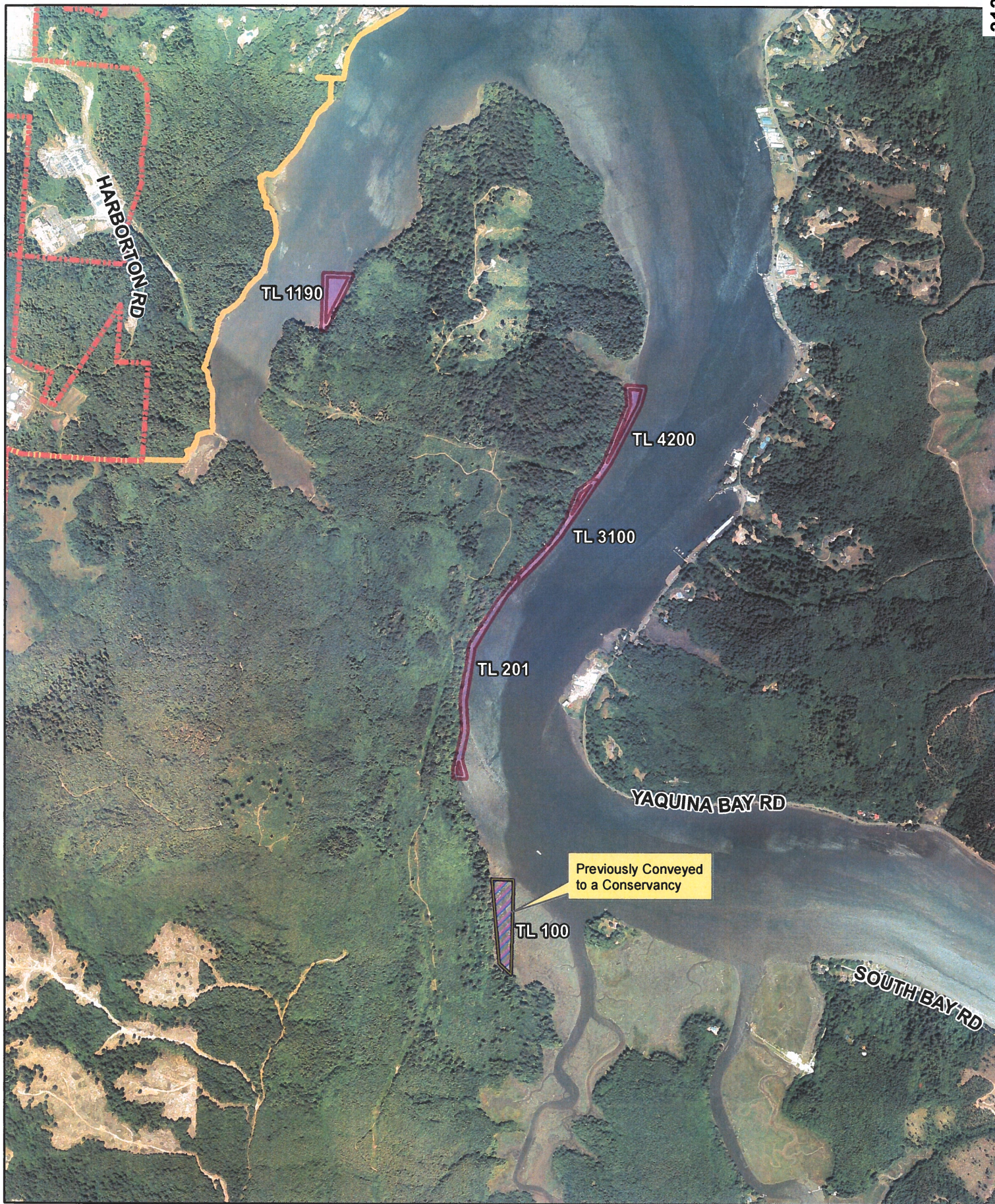
The City Council of the City of Newport will hold a public hearing on Monday, December 4, 2023, at 6:00 P.M. in the City Hall Council Chambers (169 SW Coast Hwy), regarding the potential sale of four substandard undeveloped tideland properties located along the Yaquina Bay estuary. These properties are defined as Lincoln County Assessor's Tax Map 11-11-22-C0, Tax Lot 200; Tax Map 11-11-27-00, Tax Lot 3100; Tax Map 11-11-28-00, Tax Lot 201; and Tax Map 11-11-21-00, Tax Lot 1190. This hearing is being held because the City has been approached by an individual that is interested in acquiring the parcels so that they can be placed in a conservancy.

Public testimony is being solicited at this hearing to determine if the potential sale is in the public interest and whether or not the property is needed for public use. Interested parties are encouraged to testify at this hearing.

Persons wishing to provide comment may do so by sending an email to: [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov) or for more information, please feel free to contact Erik Glover, Assistant City Manager/City Recorder, at 541-574-0613 or [e.glover@newportoregon.gov](mailto:e.glover@newportoregon.gov).

<sup>1</sup> Notice of this action is being sent to the affected property owners within 300 feet of the subject properties according to Lincoln County tax records.





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

## City of Newport Owned Tidelands (Bk. 311, Pg. 0119)

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

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

0 800 1,600 3,200  
 Feet





CITY OF NEWPORT  
CITY MANAGER  
169 SW COAST HWY  
NEWPORT, OR 97365

EMERY INVESTMENTS INC  
2712 SE 20TH AVE  
PORTLAND, OR 97202

KINGS FOREST LLC  
PO BOX 613  
NEWPORT, OR 97365

STOCKER NICHOLAS ROBERT  
25 N LOMBARD ST  
PORTLAND, OR 97217

YAKONA NATURE PRESERVE  
PO BOX 870  
NEWPORT, OR 97365

YAQUINA BAY KINGS  
SHELLFISH LLC  
PO BOX 64  
NEWPORT, OR 97365

Yaquina Bay Undeveloped Property Sale  
Notification Mailing List

Owners within 300 feet of 4 tax lots

**NOTICE OF PUBLIC HEARING  
BEFORE THE NEWPORT CITY COUNCIL  
REGARDING THE POTENTIAL SALE OF  
SUBSTANDARD UNDEVELOPED PROPERTIES  
LOCATED ALONG THE YAQUINA BAY ESTUARY**

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Published: Newport News-Times  
November 24, 2023



# 11/24/2023 PUBLIC NOTICES

## NOTICE OF A PUBLIC HEARING FOR A COMPREHENSIVE LAND USE PLAN AMENDMENT

The following request will be reviewed at a public hearing by the Toledo City Council on December 6, 2023, at 6:00 pm, at Toledo City Hall, 206 N Main Street, Toledo, Oregon. Any comments you wish to make will be appreciated. Please contact Planner Justin Peterson at (541) 336-2247 ext. 2130 for further information. In-Person and Virtual Meeting: The meeting will be held at Toledo City Hall with an option for attendance through the Zoom video meeting platform. Call (541) 336-2247 ext. 2060 or e-mail [lisa.figueroa@cityoftoledo.org](mailto:lisa.figueroa@cityoftoledo.org) to receive the Council meeting login information. City File No. PA-1-23 is a proposed ordinance to adopt the updated 2023 Comprehensive Land Use Plan document. The draft Comprehensive Land Use Plan can be viewed online at [www.cityoftoledo.org/citycouncil/page/comprehensive-plan-update](http://www.cityoftoledo.org/citycouncil/page/comprehensive-plan-update). Criteria for the request: Toledo Municipal Code Chapter 19.20, the 2000 Toledo Comprehensive Land Use Plan, and Oregon Statewide Planning Goals. If City File #PA-1-23 is approved, the Toledo City Council will consider the proposed ordinance: "An Ordinance Amending Toledo Municipal Code Chapter 1.08 to Adopt the 2023 Toledo Comprehensive Land Use Plan". The proposed ordinance will also be considered at the Toledo City Council regular meeting on December 6, 2023, beginning at 6:00 pm. The proposed ordinance is available for review at the City Recorder's Office, Toledo City Hall, 206 N. Main St. Toledo OR. The ordinance can also be viewed at <https://www.cityoftoledo.org/citycouncil/page/2022-comprehensive-plan-update>. Oregon law requires that testimony and evidence presented be directed toward the relevant criteria in the Toledo Zoning Ordinance, Comprehensive Plan, or other City plans or policies which a person believes pertains to the request, and which will be used in making the decision. The application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at City Hall at no cost and copies can be provided at reasonable cost. The staff report and recommendation to the City Council will be available for review at no cost seven days before the scheduled hearings and copies can be provided on request at a reasonable cost. You may present your testimony at the public hearing or provide written comments to the Planning Department prior

to the public hearing date. Failure to raise an issue in person or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals. N24, D1 93-01

## NOTICE OF PUBLIC HEARING BEFORE THE NEWPORT CITY COUNCIL REGARDING THE POTENTIAL SALE OF SUBSTANDARD UNDEVELOPED PROPERTIES LOCATED ALONG THE YAQUINA BAY ESTUARY

The City Council of the City of Newport will hold a public hearing on Monday, December 4, 2023, at 6:00 P.M. in the City Hall Council Chambers (169 SW Coast Hwy), regarding the potential sale of four substandard undeveloped tideland properties located along the Yaquina Bay estuary. These properties are defined as Lincoln County Assessor's Tax Map 11-11-22-C0, Tax Lot 200; Tax Map 11-11-27-00, Tax Lot 3100; Tax Map 11-11-28-00, Tax Lot 201; and Tax Map 11-11-21-00, Tax Lot 1190. This hearing is being held because the City has been approached by an individual that is interested in acquiring the parcels so that they can be placed in a conservancy. Public testimony is being solicited at this hearing to determine if the potential sale is in the public interest and whether or not the property is needed for public use. Interested parties are encouraged to testify at this hearing. Persons wishing to provide comment may do so by sending an email to: [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov) or for more information, please feel free to contact Erik Glover, Assistant City Manager/City Recorder, at 541-574-0613 or [e.glover@newportoregon.gov](mailto:e.glover@newportoregon.gov). N24 92-24

**NOTICE TO INTERESTED PERSONS**  
CIRCUIT COURT OF OREGON LINCOLN COUNTY Probate Department In the Matter of the Estate of JANET ELAINE MCKINNEY, Deceased. CASE NO. 23PB09427 NOTICE TO INTERESTED PERSONS Notice is hereby given that Susan E. Snell has been appointed and has qualified as the personal representative of the estate. All persons having claims against the estate are hereby required to present their claims, with proper vouchers, within four months after the date of first publication of this notice, as stated below, to the personal representative at: Martin, Elliott & Snell, P.O. Box 575, Tualatin, Oregon 97062, or the claims may be barred. All persons whose rights may be

affected by the proceedings in this estate may obtain additional information from the records of the court, the personal representative, or the attorney for the personal representative. Dated and first published this 17th day of November, 2023. Personal Representative/Attorney: Susan E. Snell, OSB #853356, Martin, Elliott & Snell, P.C., P.O. Box 575, Tualatin, Oregon 97062. N17, N24, D1 90-01

## PUBLIC SALE

Waldport Storage Co., Mailing: po box 997 Waldport, OR 97394, Location: 956 S.W. Range Drive Waldport, OR 97394, Dec. 2nd 2023 @ 12:00 pm. The sale will be held as follows: A complete Storage unit/space will be sold to the highest bidder. Individual items will not be sold. We reserve the right to reject any or all bids. Contents of the following will be for sale. Leona Rosenthal L257 10x25, Leona Rosenthal L266 10x25, Farrah Rodgers F159 5x5, Jeremy Boggs F157 5x5, Brittini Simmons D94 10x10, Kylie Tryon D92 10x10, Tera Dibbern D90 5x5, Steven Tiemeier D78 10x15, Jozette Bennett C72 5x5, Miranda Wagaman A24 5x5, Greg Bourne 2015 Pleasant Valley Teardrop Trailer. N17, N24 88-24

## SUMMONS

In the Circuit Court of the State of Oregon, County Lincoln Debra R. Heinz, Plaintiff vs. Chad Haynes, Brianna Storer, State of Oregon Department of Human Resources and To all Other persons or parties unknown claiming a right, title, lien or interest in the property described in the complaint herein. Case No. 23CV257544. You are hereby required to appear and defend the Complaint filed against you in the above entitled action within thirty days (30) from the date of service of this summons upon you, and in the case of your failure to do so, for want thereof, Plaintiff(s) will apply for the relief demanded in the Petition. NOTICE TO DEFENDANTS: READ THESE PAPERS CAREFULLY! You must "appear" in this case or the other side will win automatically. To "appear": you must file with the Court a legal paper called a "Motion" or "Answer." The "Motion" or "Answer" must be given to the Court Clerk or Administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the Plaintiff Attorney or if the Plaintiff does not have an attorney, proof upon the Plaintiff. If you have any questions, you should see an attorney immediately. If you need help finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at:

(800) 452-7636. Gari Lynn Lovejoy, OSB# 023718 Of Attorney for Plaintiff(s) STATE OF OREGON ) ss. County of Lincoln ) I, the undersigned, attorney of record for the Plaintiff certify that the foregoing is an exact and complete copy of the Summons in the above-entitled Case. Gari Lynn Lovejoy, OSB # 023718 Attorney for Plaintiff(s). N10, N17, N24, D1 85-01

**NOTICE TO INTERESTED PERSONS**  
IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN PROBATE DEPARTMENT ESTATE OF SANDRA KAY BREED, DECEASED CASE NO. 23PB09475 NOTICE TO INTERESTED PERSONS Notice is given pursuant to ORS 113.155 that Christopher A. Absher has been appointed personal representative of the above estate. All persons having claims against the estate are required to present them within four (4) months after the date of the first publication of this Notice, or their claims may be barred. Claims are to be presented at the address of the attorney for the personal representative, set forth below. All persons whose rights may be affected by this estate proceeding may obtain additional information from the records of the Circuit Court, the personal representative, or Jeffrey C. Hollen, attorney for the personal representative. Date of first publication: November 10, 2023. Jeffrey C. Hollen, OSB #761757, Attorney for the Personal Representative, 541-574-1630, P.O. Box 1167, 615 SW Hubert Street, Suite A, Newport, OR 97365. Christopher A. Absher, Personal Representative, 129 SE 126th Dr., South Beach, OR 97366. N10, N17, N24 83-24

**NOTICE TO INTERESTED PERSONS**  
IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN In the Matter of the Estate of: Richard Neil Before, Deceased. Case # 23-PB-09220. NOTICE IS HEREBY GIVEN that William Curry has been appointed Personal Representative of the Estate of Richard Neil Before. All persons having claims against the estate are required to present them, with vouchers attached, to the personal representative at P.O. Box 1270, Newport, OR, 97365, within four months after the date of first publication of this notice, or the claims may be barred. All persons whose rights may be affected by the proceedings may obtain additional information from the records of the Court, the personal representative, or the attorneys for the personal representative, Macpherson, Gintner & Diaz, PO Box 1270,

Newport, Oregon 97365. PERSONAL REPRESENTATIVE: William Curry, 725 N Royal Crest Cir, Las Vegas NV 89169. ATTORNEY FOR PERSONAL REPRESENTATIVE: Richard S Diaz, OSB No. 86-0313 P.O. Box 1270 Newport, Oregon 97365 Telephone 541-265-8881 Fax No. 541-265-3571 Email Address: [diaz@maggdlaw.com](mailto:diaz@maggdlaw.com) N10, N17, N24 81-24

**SUMMONS FOR SERVICE BY PUBLICATION**  
IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN CYNTHIA ROBERTS, Cotrustee of the Janet D. Roberts Living Trust Plaintiff, v. CUTLER CITY LUMBER CO. Defendant. No. 23CV43895 SUMMONS FOR SERVICE BY PUBLICATION TO: Cutler City Lumber Co., including any partner, officer, agent, or manager of Cutler City Lumber Co., Defendant. Date of First Publication: November 3, 2023 (response must be filed within 30 days of this date). Plaintiff, Cynthia Roberts, Cotrustee of the Janet D. Roberts Living Trust, has filed an action to quiet title, asking the court to declare Plaintiff the sole owner in fee simple, free of all other claims, of real property located at 10 S. Drift Creek Road, Lincoln City, Lincoln County, Oregon 97367. NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY! You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee (go to [www.courts.oregon.gov](http://www.courts.oregon.gov) for fee information). It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff. Forms may be available through the court above or online at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms). If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at [www.oregonstatebar.org](http://www.oregonstatebar.org) or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636. /s/ Lindsay H. Duncan, OSB #120974 Of Attorneys for Plaintiff [lindsay.duncan@thede-culpepper.com](mailto:lindsay.duncan@thede-culpepper.com) I, Lindsay H. Duncan, the undersigned attorney of record for Plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled cause. /s/ Attorney of Record for Plaintiff. N3, N10, N17,

N24 76-24

## NOTICE OF SHERIFF'S SALE #23-1054

On December 14, 2023, at the hour of 10:00 a.m., at the Lincoln County Courthouse, 225 W Olive St, Room 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 5955 Balboa Avenue, Lincoln City, OR 97367. The court case number is 15CV12092, RUSSELL L. BALDWIN, plaintiff(s) vs. SUZANNE SEIDA; DAVID M. SEIDA; KENT SEIDA, JR.; SEIDA LAND & LIVESTOCK, LLC, an Oregon limited liability company; KENT SEIDA, SR. AND MARY SEIDA, husband and wife, defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> N3, N10, N17, N24 74-24

## TRUSTEE'S NOTICE OF SALE

TRUSTEE'S NOTICE OF SALE TS No.: 105795-OR Loan No.: \*\*\*6946 Reference is made to that certain trust deed (the "Deed of Trust") executed by ANDREE L. CUENOD, as Grantor, to FIDELITY NATIONAL TITLE, as Trustee, in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS DESIGNATED NOMINEE FOR FINANCE OF AMERICA MORTGAGE LLC, BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS, as Beneficiary, dated 10/25/2021, recorded 11/2/2021, as Instrument No. 2021-13972, in the Official Records of Lincoln County, Oregon, which covers the following described real property situated in Lincoln County, Oregon: Lot 8, Block A-1, Salmon River Hideout, Plat 2, Except the South 208.8 feet of the East 208.8 feet thereof, in the County of Lincoln and State of Oregon. ALSO EXCEPTING THEREFROM a tract of land being a portion of Lot 8, Block A1, SALMON RAPIDS HIDEOUT NO. 2, located in the Southeast quarter of the Southwest quarter of Section 25, Township 6 South, Range 10 West, Willamette Meridian, Lincoln County, Oregon, being more particularly described as follows: Beginning at an iron rod marking the Southeast corner of Lot 7, Block A1, SALMON RAPIDS HIDEOUT NO. 2; thence South 45° 05' 00" East 35.06 feet; thence North 13° 45' 00" East parallel to and 30 feet from when measured at right angle to the Easterly line of said Lot 7, 218.97 feet to the Southerly line of Salmon Berry Lane; thence South 72° 24' 00" West 35.13 feet to the Northeast corner of said Lot 7; thence

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**Four Tideland Tax Lots Owned by City of Newport**  
(Comments by Mark Arnold on 12/4/2023)

Tideland is the ground that underlies the ebb and flow of the tide.

All four tidal lots:

- None is inside the city limits.
- None is accessible by a public road.
- None is accessible by a private forest road.
- There are no easements for access to these tidal lots from upland lots.
- None is being used for any public or other purpose.

The three tidal lots along the edge of Yaquina Bay  
(TL 4200 in Section 22C; TL 3100 in Section 27; TL 201 in Section 28):

- These are very narrow banks between the bay and a very steep hillside. In some of the steepest areas, the hillside climbs from zero tide level to 160 feet elevation in a horizontal distance of about 200 feet, approximately a 36-degree angle.
- Due to the steep incline, it appears impossible to walk on most of these tax lots.

The tidal lot in Kings Slough (TL 1190 in Section 21):

- This tax lot consists of very high mud flats with deep mud at the edge of Kings Slough.
- It does not abut any navigable channel in Kings Slough.
- The south end of this tax lot collects fallen tree branches and sometimes fallen tree trunks that float in on high tide, then get stuck in the mud when the tide goes out.
- It appears to be dangerous to walk anywhere on this tax lot, due to deep mud, except at the very edge adjacent to shoreline of the upland properties.

There are some legal considerations about the deeds for these tax lots:

- Whether a potential problem with a conflicting deed has been satisfactory resolved.
- Consistency with State laws and court decisions about ownership of tideland.

I would like to discuss these considerations with City Planning and the City Attorney.



## TL 4200, Section 22C, 2016 Aerial Image, 40-Foot Contours

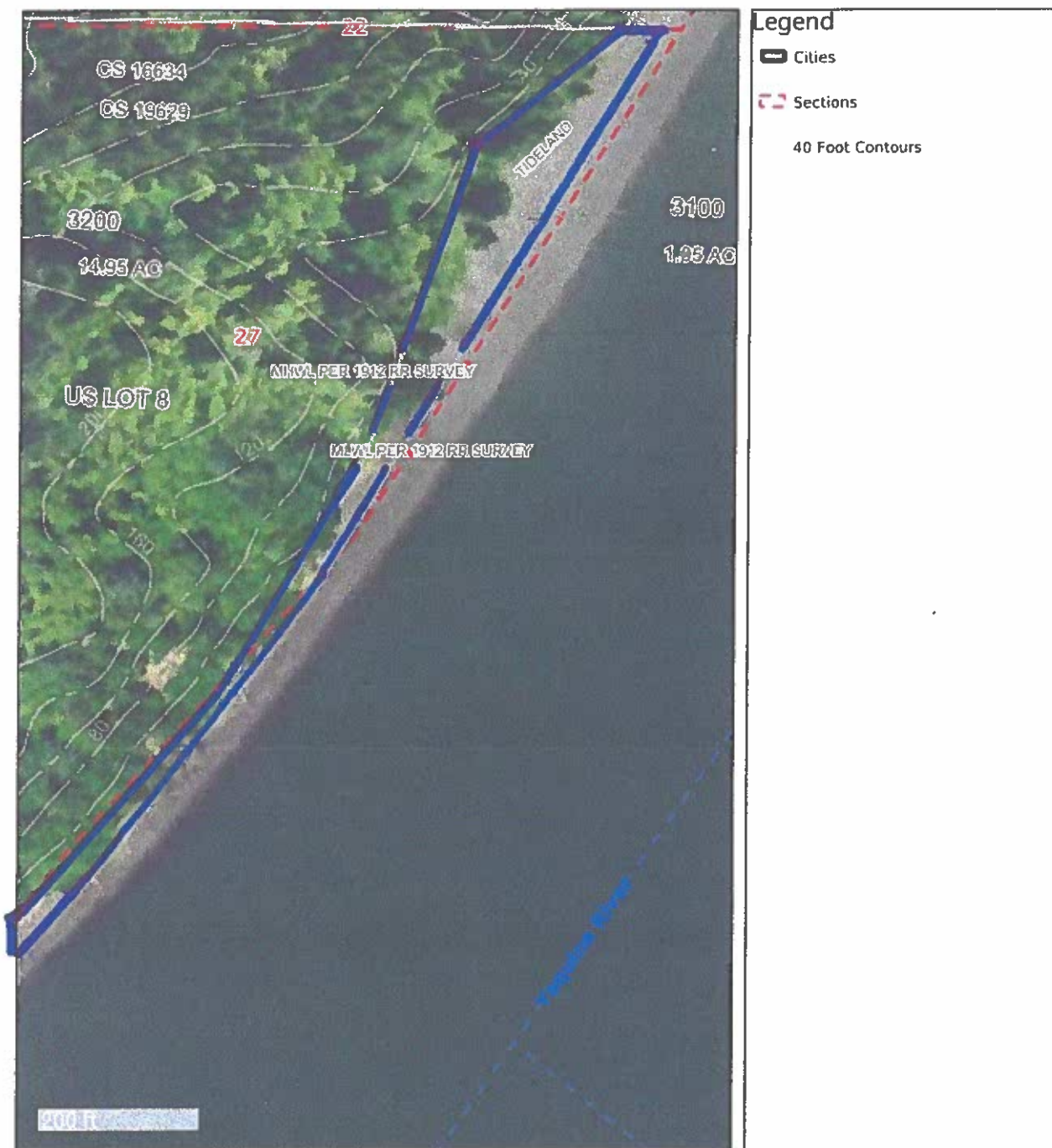


Printed on 12 / 2 / 2023

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## TL 3100, Section 27, 2016 Aerial Image, 40-Foot Contours



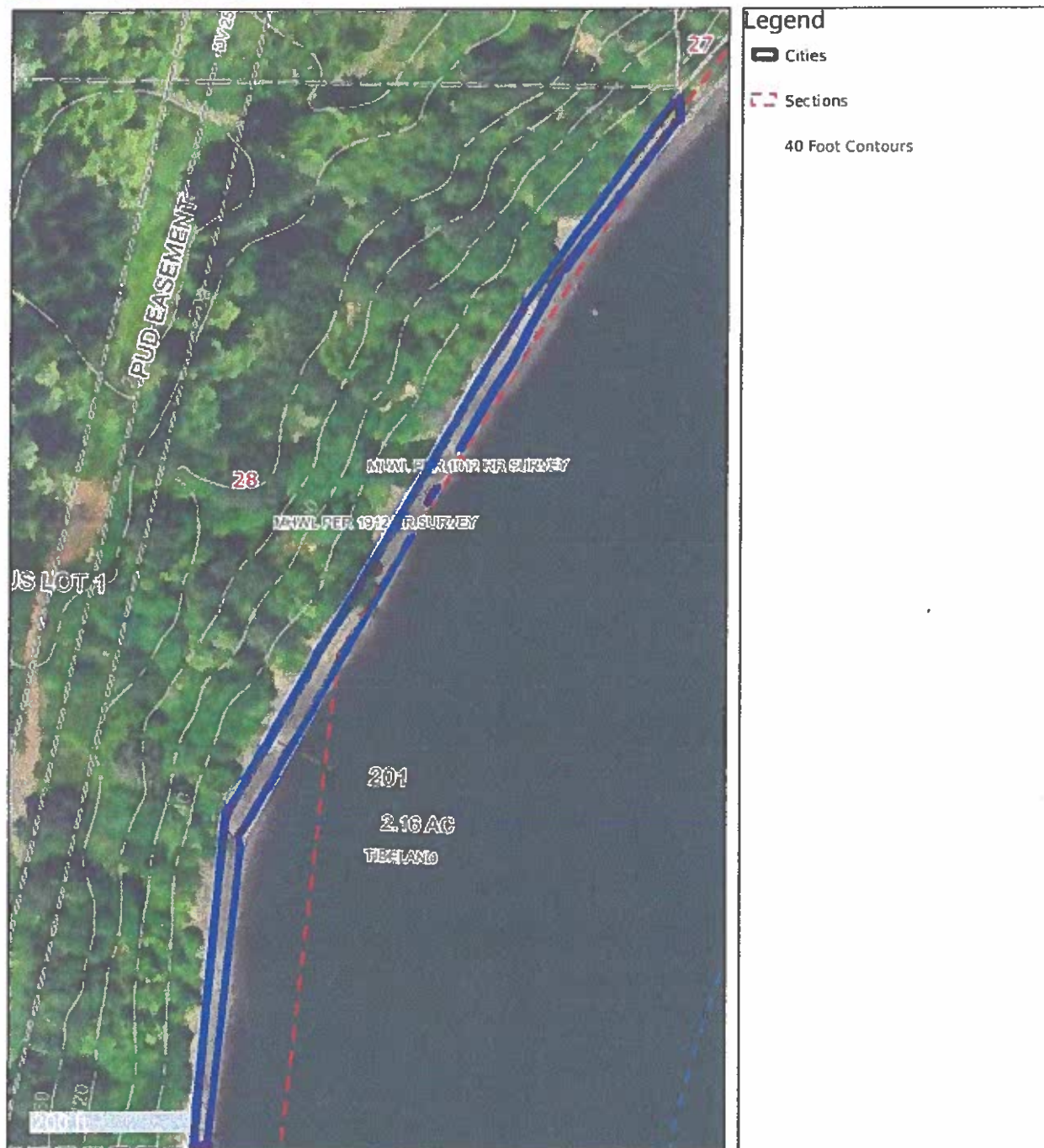
Printed on 12 / 3 / 2023

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## TL 201, Section 28, 2016 Aerial Image, 40-Foot Contours



Printed on 12 / 2 / 2023

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## North and Middle of Kings Slough, 2011 Aerial Image



Printed on 12 / 3 / 2023

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## TL 1190, Section 21, & Adjacent Tideland, 2011 Aerial Image



Printed on 12 / 3 / 2023

Lincoln County Government Use only. Use for any other purpose is entirely at the risk of the user. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users should review the primary information sources to ascertain their usability.





Looking north from south end of City of Newport tidal lot 1190 in Section 21 (T11S, R11W).  
 Note: Most of tideland in these photos is beyond the small, 3-acre City of Newport tidal lot.  
 This City tidal lot extends north about 700 feet. The distant shoreline is about 3/4 mile away.



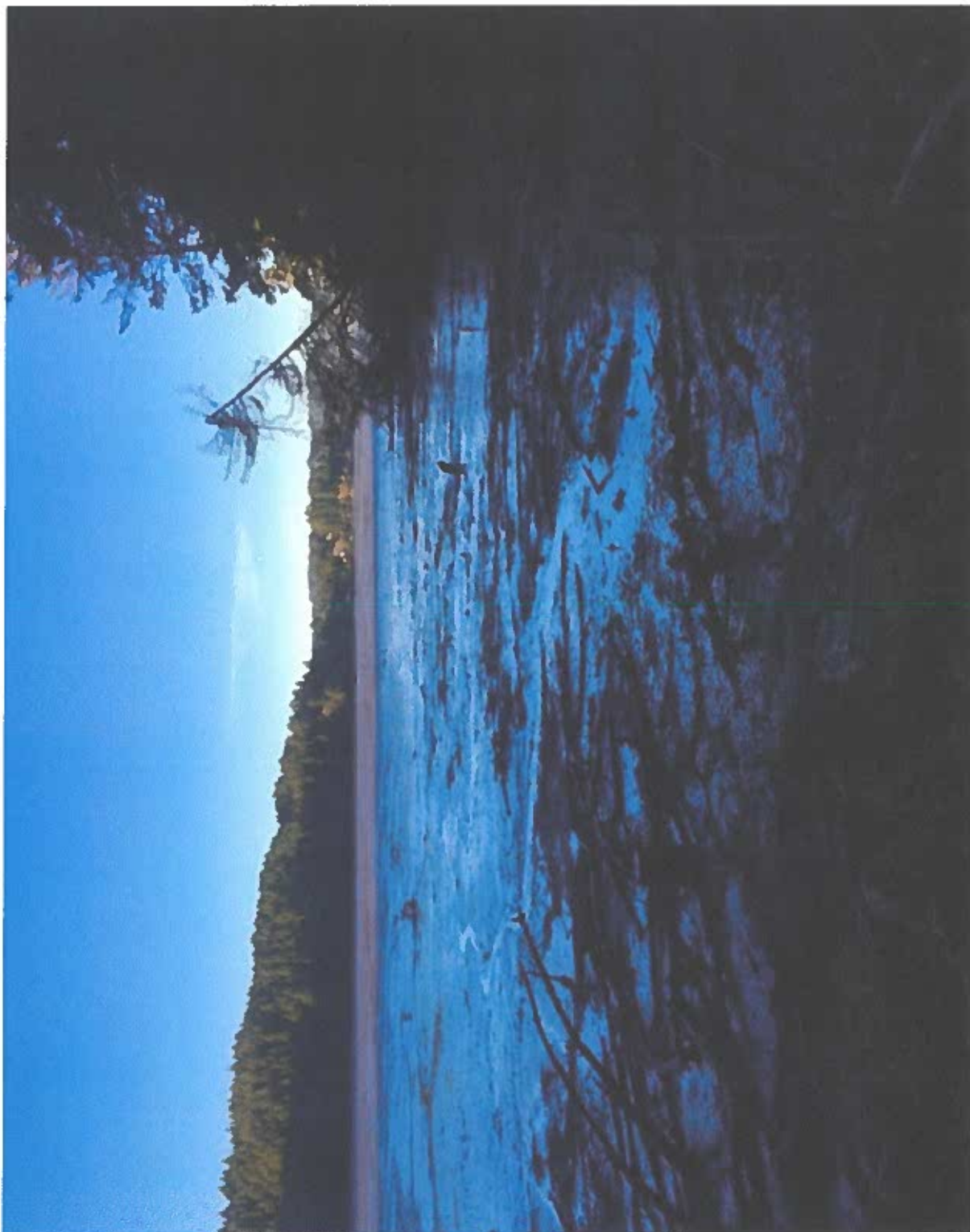
Mud flats in late afternoon shadow. 1.8-foot tide level (0.3 foot higher than mean low tide).



7.5-foot tide level (mean high tide)

(Photos taken on 11/26/23 from corner of adjacent TL 1200 in Section 21)

Tideland Tax Lot 1190, Section 21, and Adjacent Tide Land  
1.8-Foot Tide Level on 11/26/23



## CITY MANAGER REPORT AND RECOMMENDATIONS



Meeting Date: December 4, 2023

### Agenda Item:

From Erik Jensen, Jensen Strategies - Discussion of Schedule for Executive Recruitment of the City Manager.

### Background:

The City Council has retained Jensen Strategies to assist Council in the executive search processes for a new city manager upon my retirement at the end of the fiscal year. Erik Jensen will be providing an update on the city manager executive search at Monday's Council meeting. The tentative schedule impacting the Council is as follows:

- **December 4, 2023 Regular Council Meeting** - Review of the proposed recruitment schedule.
- Beginning the Week of December 4 - Jensen Strategies will be doing stakeholder interviews of Council members and Department Heads. In addition, notice of an online survey will be provided to all City employees and to community members to provide feedback regarding the qualities that are important in the next city manager.
- December 12, 2023 - Virtual Community Input Meeting from 6-7pm (This is for public input. Council should not attend or participate in this session. An announcement is attached for your review. As an alternative, community members will be able to submit feedback via online survey)
- **January 8, 2024 Special Work Session** - Jensen Strategies has requested that the Council meet in a special work session to draft the position and community profile based on the feedback obtained in December. (Jensen Strategies will participate virtually in this meeting)
- **January 16, 2024 Regular Council Meeting** - Council adopts profile/hiring process.
- January 29 through February 19, 2024 - Position advertised. (Jensen Strategies will then screen applications, conduct preliminary Zoom interviews in preparation to discuss potential candidates with the Council at an executive session)
- **March 18, 2024 Regular Council Work Session** Jensen Strategies will review applications in executive session with Council to select finalists for interviews. (Jensen Strategies will participate in person with the executive session.)
- April 2-3, 2024 - Candidate receptions and panel interviews.
- **April 4 Special Council Executive Session to interview candidates.** This is a Thursday and Council should plan on the entire day for the interview process. (Jensen Strategies will be on site for the interviews.)
- **April 5 Executive Session for Council Deliberation on hiring a City Manager.** This will likely be in the morning and Council should allow a couple of hours for this meeting. (Jensen Strategies will be onsite for this executive session.)

Please review your calendars to make sure that you will be able to participate in the Council meetings outlined above. Please note the three meetings highlighted in blue fall outside of regularly scheduled meetings. These are the January 8, 2024 work session. This could be at noon or 4:00pm on that day, the full Council interviews that would be held all day on Thursday April 4, 2024 and the executive session to deliberate on hiring a City Manager Friday April 5 in the morning. Council will need to confirm or modify the schedule at Monday's Council meeting to finalize these dates.

**Recommendation:**

I recommend the city Council consider the following motion:

**I move to confirm the schedule as presented by Jensen Strategies for the city manager executive search.**

**Fiscal Effects:**

None.

**Alternatives:**

Modify the schedule, or as suggested by the City Council.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer Nebel  
City Manager

# VIRTUAL COMMUNITY INPUT MEETING

The City of Newport will be recruiting its next City Manager.

**Join to discuss what you would like to see in the next City Manager.**

Zoom link: <https://bit.ly/NewportCMInputSession>

Meeting ID: 844 8472 6867

Password: NewportCM

Zoom Call In Number: +1 669 900 9128



For questions or technical difficulties contact  
emily@jensenstrategies.com  
603-477-5615

**TUESDAY,  
DECEMBER 12TH  
6 - 7 PM**





## CITY MANAGER REPORT AND RECOMMENDATIONS



Meeting Date: December 4, 2023

**Agenda Item:**

Communication from the Parks and Recreation Advisory Committee -- Annual Progress Report on the Parks System Master Plan.

**Background:**

The Newport Parks and Recreation Advisory Committee has provided an annual report to the City Council on the status of projects related to the implementation of the Parks Master Plan. The report identifies completed projects that are being removed or de-emphasized at this time and projects that have seen a change or have progressed this year. The report identifies opportunities for the future. I will include a copy of this report in the materials for the annual goal setting session that Council will be holding after the first of the year. I appreciate the efforts of the Parks and Recreation Advisory Committee and staff in continuing to utilize the Parks Master Plan as a basis for future projects to enhance the quality of life in the City of Newport.

**Recommendation:**

I recommend the City Council consider the following motion:

I move to accept the annual report of the Newport Parks and Recreation Advisory Committee on the status of the Parks Master Plan projects for 2023.

**Fiscal Effects:**

None.

**Alternatives:**

None recommended.

Respectfully submitted,

Spencer Nebel  
City Manager

## **MEMORANDUM**

To: Newport City Council  
Newport City Manager Spencer Nebel  
From: Nancy Steinberg, Chair, Newport Parks & Recreation Advisory Committee  
Date:  
RE: Tracking of Parks Master Plan implementation, 2023

In consultation with city staff in the Community Development and Parks and Recreation Departments, the Parks and Recreation Advisory Committee annually tracks the status of projects outlined in the 2019 Parks Master Plan (PMP). This memo serves as both an update on progress made on PMP projects and recommendation for where there are opportunities for future funding and support for pending projects.

### **Completed project:**

T-B: 13<sup>th</sup> St. & Spring St. beach access – this project has been completed.

### **Removed or de-emphasized projects:**

S-08: Community gardens and trails at the airport

The property suggested for this project in the PMP is now being leased for industrial use. The department is considering other locations for community gardens.

S-B: Marine Science Drive non-motorized boat launch

Another project in the PMP recommends a non-motorized boat launch at the South Beach Marina; all that is needed to complete this project is signage as the boat launch already exists. Conversations are underway to create and install that signage. Once that project is complete, it is probably not necessary to pursue creation of another non-motorized launch in such close proximity, especially with the complication of the limited-access NOAA facility nearby.

P-C: Improved beach access at Jump-off Joe

A landslide in this area has made beach access unsafe.

### **Projects that have seen a change or progress this year:**

P-01: Agate Beach playground & dog park

Funding has been acquired from ORPA for this project! This project will go forward in the coming calendar year.

P-09: Frank Wade Park improvements

Community garden fence has been installed. Funding is in hand to rehabilitate the pickleball/tennis courts.

S-05: Nye Beach Turnaround universal beach access

This project is less urgent now that David's Chair has been brought to Don & Ann Davis Park.

T-H/T-I: Ocean to Bay Trail improvements and T-K: Ocean to Bay Trail completion

An extensive signage and kiosk project is near completion for the Ocean to Bay Trail.

X-08: Forest Park trail improvements

NEWTS (Newport Trail Stewards) might be interested in taking this on after Big Creek trails are done.

T-G: Big Creek Reservoir trail system

The NEWTS have made great progress on this project, and continue to write successful grant proposals. Phases I and II of the trail system are done, including a skills park area; Phase III is underway. The group organizes volunteer trail work days to maintain the trails.

T-O: Chestnut Street open space

South Beach Church is a willing partner in this project – they are currently building a new church structure and the city will work with them, the Wilder housing development and OSU to finish the trail and connect it to the new OSU housing. Funds are needed on the city side to complete the trail.

T-C: Agate Beach neighborhood & Ernest Bloch Wayside trail connection

This project has now been federally funded (Federal Lands Access Program) and work will probably start next calendar year (after a public input process).

P-05: Coast Park improvements

Hillside improvements have been made. Some play equipment has been repaired. The slide will be replaced soon, but not connected to the pirate ship. The Whaler Motel construction project will include addition of a new trail.

P-13: Mombetsu Park improvements

Some vegetation has been replanted, and the park has received more maintenance attention.

#### P-K: Additional Wilder neighborhood park

New development at Wilder will include a new pocket park to be managed as a city park.

#### S-02 Wilder dog park improvements

Some upgrades have been completed at the dog park, but a new fence is still needed. The park will not be moved, as had been previously discussed.

### **Opportunities for the future:**

The committee agreed that rather than request funding or other resources for additional priority projects this year, it would be best for departmental staff to focus on the many projects for which funding was recently acquired, as outlined above.

However, the committee did discuss which Parks Master Plan projects should be prioritized next, after the ones listed above are underway or close to completion. We agreed that the following projects represent important opportunities for the department in the medium term:

#### Sam Moore Parkway and playground

This playground (6<sup>th</sup> Street near the skate park) should be the next one in the city to be renovated, and some funding might be able to be moved from the Agate Beach project to be dedicated to renovations here. In addition, Sam Moore Parkway needs rehabilitation, including adding lighting, which might increase its use and make the path feel safer. The committee agreed that this project should be made a priority soon.

#### Chestnut Street – funding for city part of trail

The presence of a willing partner in South Beach Church for realizing the long-held vision for paths and boardwalks in this area of Idaho Point represents an important opportunity for the city. Some funding will be needed to complete the city's contribution to this new trail system and to connect it to the church property, Wilder and OSU housing when it is built.

#### Pollinator corridors

The PMP calls for a pollinator corridor to be constructed using plantings along Highway 101, but the 101 corridor in Newport has been determined to be suboptimal for this type of project. Another such project was proposed for Marine Science Drive, but it has not moved forward. The Parks and Recreation Committee suggests that any new parks

and transportation projects undertaken in the city – with a prime example being the federally-funded project that will take place on the west side of 101 near Yaquina Head – include pollinator-friendly plantings to the extent possible.

#### Community gardens

The committee is extremely supportive of continuing discussions to find new locations for community gardens in the city and suggests continued/renewed emphasis be placed on CG projects.



## **CITY MANAGER REPORT AND RECOMMENDATIONS**



**Meeting Date:** December 4, 2023

**Agenda Item:**

**Communication from the City Attorney -- Request for Payment of up to 40 Hours of Accrued Vacation Time .**

**Background:**

City policy places a cap on the amount of vacation time that can be carried over from one calendar year to the next, which is 240 hours. The City policy also provides for payment of up to 40 hours of accrued vacation time in excess of the 240 hours allowed to be carried over. City Attorney David Allen is requesting that the Council consider this payout for the 2023 calendar year. This is a policy that is utilized for other employees who request reimbursement for vacation hours that would otherwise be lost at the end of the calendar year.

**Recommendation:**

None by me since the city attorney is directly employed by Council. This request is consistent with how other requests are handled within the City organization when vacation time exceeds the carryover limits. An appropriation motion for Council to consider is as follows:

**I move to authorize payment of up to 40 hours of accrued vacation time in excess of the 240 hours allowed to be carried over one calendar year to the next for city attorney David Allen subject to completion of the vacation carryover exception request form.**

**Fiscal Effects:**

Additional compensation will be paid up to the 40 hours as requested in the vacation carryover exception request.

**Alternatives:**

As suggested by the City Council.

Respectfully submitted,

Spencer Nebel  
City Manager

-----Original Message-----

From: David Allen <D.Allen@NewportOregon.gov>

Sent: Tuesday, November 28, 2023 3:45 PM

To: Jan Kaplan <J.Kaplan@NewportOregon.gov>; Dietmar Goebel <D.Goebel@NewportOregon.gov>

Cc: Erik Glover <E.Glover@NewportOregon.gov>; Spencer Nebel <S.Nebel@NewportOregon.gov>;

Barbara James <B.James@NewportOregon.gov>

Subject: Dec. 4 council meeting

Jan and Dietmar -

In follow-up to what we went over yesterday (Mon. 11/27), attached is the city's form for a vacation carryover exception request. At this point and as we discussed, I have a considerable amount of accrued vacation time, even without the additional three days (24 hours) of annual vacation leave that I declined to include in my employment agreement (which was part of previous agreements with city attorneys/managers).

As noted at the top of the attached request form, city policy does provide for payment of up to 40 hours of accrued vacation time in excess of the 240 hours allowed to be carried over from one calendar year to the next. For my position, this would require mayor/council approval, which you both indicated you would recommend at the Dec. 4 council meeting.

Through the end of the Dec. 2023 pay period, I will have accrued 330 hours of vacation leave, assuming I take no further vacation days this calendar year (although I will try to do so). I currently receive 14 hours per month, which is the same as dept. heads with less than five years of service with the city. Up to this point, I've taken seven vacation days this calendar year. Along with the 15 paid holidays offered to city employees (including three selectable holidays), I've found that to be sufficient for my purposes this calendar year.

Erik - you can include this e-mail along with the attached request form as a Dec. 4 council agenda item, and I've also cc'd Spencer and Barb on this as a FYI. --David



## VACATION CARRYOVER EXCEPTION REQUEST

*Under City policy, the maximum accrual for vacation benefits is 240 hours. Although an employee's accrual may exceed this amount during the year, the maximum accrual amount is the amount that can be carried over from one calendar year to the next without written permission of the City Manager or designee. The City in certain circumstances, at its sole discretion, may choose to pay an employee for vacation time accrued in excess of the maximum accrual rather than allowing for the carryover of vacation time over the maximum accrual. In no instance will the City pay for more than 40 hours per year.*

Date: \_\_\_\_\_

Employee Name: \_\_\_\_\_

Current Number of Vacation Hour's Accrued: \_\_\_\_\_

Number of Vacation Hours Over the 240 Hours Cap Requested to Be Carried Over: \_\_\_\_\_

Justification for the Request: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Reviewed by Supervisor/Department Head

Comments: \_\_\_\_\_

Supervisor/Department Head

Date

### APPROVAL (REQUESTS FOR EXCEPTIONS TO VACATION CARRYOVER MUST BE APPROVED BY THE CITY MANAGER)

Request Approved as Requested ☐ Yes ☐ No

Request Approved with Modifications ☐ Yes \_\_\_\_\_ hours approved

Reason for Denial/Modification \_\_\_\_\_

City Manager

Date

### HUMAN RESOURCES USE

Hours of Current Vacation Accrual

Hours Over the Maximum Accrual

Hours approved for Carryover

Date Payroll Notified: \_\_\_\_\_ Copy to Employee & Supervisor: \_\_\_\_\_ Initials: \_\_\_\_\_

### PAYROLL USE

Date of Pay Period Carryover: \_\_\_\_\_ Initials: \_\_\_\_\_

## **CITY MANAGER REPORT AND RECOMMENDATIONS**



**Meeting Date: December 4, 2023**

### **Agenda Item:**

**Consideration of Adoption of Resolution No. 4001, a Resolution Relating to the Application of System Development Charges to the Conversion of Commercial Building to Residential Uses.**

### **Background:**

At the November 20, 2023 City Council meeting, a report was provided on the impact that House Bill 2984 will have on the City's System Development Charges (SDCs). House Bill 2984 was approved by the legislature in 2023 and requires Cities to permit conversion of a building from commercial to residential use without requiring a zone change or conditional use permit. It does not apply to lands zoned for heavy industrial use. The Planning Commission is working on the land-use component of this legislation.

In addition, there is a component of the bill specific to system development charges that is time sensitive. This requires the City Council to adopt a resolution at its December 4 meeting confirming that the City's existing system development charge methodology applies to conversion of commercial properties for residential use. This is not a common situation; however, the legislation was structured in such a way that requires local governments to affirm the existing policy regarding collection of SDC fees when commercial properties are converted to residential use. Please note that the City's policy provides a credit in SDC fees for any prior use of the property that has occurred within the prior ten-year period as it relates to the calculation of SDC fees for new projects.

### **Recommendation:**

I recommend the City Council consider the following motion:

**I move to adopt Resolution No. 4001, a resolution relating to the application of SDCs to the conversion of commercial property to residential use.**

### **Fiscal Effects:**

Adoption of the resolution will continue the City's current policy of collecting SDC fees on these types of conversions.

### **Alternatives:**

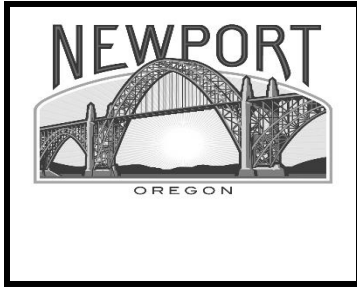
Do not approve the resolution, or as suggested by the City Council.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer Nebel  
City Manager





**STAFF REPORT  
CITY COUNCIL AGENDA ITEM**

Meeting Date: December 4, 2023

**Title:** Consideration of Resolution No. 4001, Relating to the Application of SDC Charges to the Conversion of Commercial Buildings for Residential Use

**Prepared by:** Derrick I. Tokos, AICP, Community Development Director

**Recommended Motion:** I move adoption of Resolution No. 4001, a resolution relating to the application of SDC charges to the conversion of commercial buildings for residential use.

**Background Information:** At its November 20, 2023 meeting, the City Council received a copy of HB 2984 (2023), a housing related bill passed in the last legislative session that requires cities allow conversion of a building from commercial to residential use without requiring a zone change or conditional use permit. Additionally, and to the point of this draft resolution, the bill prohibits cities from requiring the payment of SDC charges for commercial to residential conversions unless they have adopted a specific policy requiring such payment on or before December 31, 2023.

Newport's SDC methodology, last amended in 2017, requires that all new development or redevelopment, including commercial to residential conversions, pay system development charges for impacts that they have on the City's water, wastewater, transportation, storm drainage, and parks public systems. Credit is given for any prior use of a property within the past 10 years. The methodology does not carve out exceptions for particular types of development. This was intentional, to ensure equitable application of the rules. That is, all new development or redevelopment pays for its proportional share of any impact it has on the public systems.

The Council requested that a resolution be prepared for this meeting so that it may consider whether or not it wishes to confirm that it is the City's policy to apply its existing SDC methodology to the conversion of commercial buildings for residential use. If the resolution is adopted, then the City will have met the December 31, 2023 deadline in the bill and it can continue to apply its SDC methodology as drafted. If the Council does not want to adopt the resolution, then it should direct staff to amend the City's SDC methodology to add commercial to residential conversions as a listed exemption. This would require an amendment to NMC Section 12.15.060.

**Fiscal Notes:** It is rare for the City to see commercial to residential conversions, namely because there are few commercial structures in the City that are suitable. When it does occur, it tends to be small scale, such as adding a single apartment into an upper story office space. SDCs payable from such conversions are likely to be modest, if they are not off-set entirely, given that such projects receive a credit for the prior use.

**Alternatives:** Seek changes to the resolution, forgo executing the resolution, or as suggested by Council.

**Attachments:**

Draft Resolution No. 4001

HB 2984 Enrolled

NMC Chapter 12.15 System Development Charges

**CITY OF NEWPORT**

**RESOLUTION NO. 4001**

**A RESOLUTION RELATING TO THE APPLICATION  
OF SDC CHARGES TO THE CONVERSION OF  
COMMERCIAL BUILDINGS FOR RESIDENTIAL USE**

WHEREAS, HB 2984 is a housing related bill adopted in the 2023 legislative session that relates to the conversion of commercial buildings for residential use; and

WHEREAS, Section 6(c) of the bill prohibits cities from requiring the payment of a System Development Charge (SDC) for commercial to residential conversions unless the charge is calculated pursuant to a specific adopted policy for commercial to residential conversions adopted on or before December 31, 2023; and

WHEREAS, Newport's SDC methodology, last amended in 2017, requires that all new development or redevelopment, including commercial to residential conversions, pay system development charges for impacts that they have on the City's water, wastewater, transportation, storm drainage, and parks public systems; and

WHEREAS, credit is given for the impact of any use of property in the past 10 years so, for example, if a prior commercial use had a greater impact on a particular public system then the new residential use, an SDC charge would not be assessed; and

WHEREAS, conversely, if a commercial to residential conversion results in a greater impact, such as an increased demand on water or wastewater systems, then an SDC charge would be assessed for the additional impact; and

WHEREAS, Newport's SDC methodology does not carve out exceptions for particular types of development, ensuring equitable application of the rules and that all new development or redevelopment pays for its proportional share of any impact it has on the public systems; and

WHEREAS, the Newport City Council wishes to confirm that it intends to continue to assess SDC charges in accordance with its duly adopted SDC methodology, including in circumstances where commercial buildings are converted to residential use.

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

The Newport City Council hereby declares that it is the City's specific policy to apply its System Development Charge Methodology, last amended in 2017, to all new development or redevelopment, including commercial to residential conversions, that impact the City's water, wastewater, transportation, storm drainage, and parks public systems.

Adopted by the City Council of the City of Newport this 4<sup>th</sup> day of December, 2023.

---

Jan Kaplan, Mayor

ATTEST:

---

Erik Glover, City Recorder

DRAFT

## Enrolled

# House Bill 2984

Sponsored by Representative MARSH; Representatives ANDERSEN, DEXTER, FAHEY, HELM, MCLAIN, Senators ANDERSON, DEMBROW, GOLDEN, JAMA, PATTERSON (Presession filed.)

CHAPTER .....

### AN ACT

Relating to housing; amending ORS 197.308.

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

**SECTION 1.** ORS 197.308, as amended by section 4, chapter 47, Oregon Laws 2022, is amended to read:

197.308. (1) As used in this section[,]:

(a) “Affordable housing” means residential property:

[(a)] (A) In which:

[(A)] (i) Each unit on the property is made available to own or rent to families with incomes of 80 percent or less of the area median income [*as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development*]; or

[(B)] (ii) The average of all units on the property is made available to families with incomes of 60 percent or less of the area median income; and

[(b)] (B) Whose affordability [*is enforceable*], including **affordability under a covenant** as described in ORS 456.270 to 456.295, **is enforceable** for a duration of no less than 30 years.

(b) “Area median income” means the median income for the metropolitan statistical area in which housing is located as determined by the Housing and Community Services Department and adjusted for household size based on information from the United States Department of Housing and Urban Development.

(2) A local government shall allow affordable housing[, and may not require a zone change or conditional use permit for affordable housing,] if the proposed affordable housing is on property that is:

(a) Owned by:

(A) A public body, as defined in ORS 174.109; or

(B) A nonprofit corporation that is organized as a religious corporation; or

(b) Zoned:

(A) For commercial uses;

(B) To allow religious assembly; or

(C) As public lands.

**(3) A local government shall allow the conversion of a building or a portion of a building from a commercial use to a residential use.**

[(3)] (4) [Subsection (2)] **Subsections (2) and (3)** of this section:

*[(a) Does not apply to the development of housing not within an urban growth boundary.]*

**(a) Prohibit the local government from requiring a zone change or conditional use permit before allowing the use.**

(b) *[Does]* **Do** not trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development.

*[(c) Applies on property zoned to allow for industrial uses only if the property is:]*

*[(A) Publicly owned;]*

*[(B) Adjacent to lands zoned for residential uses or schools; and]*

*[(C) Not specifically designated for heavy industrial uses.]*

*[(d)] (c)* **Do** not apply on lands where the local government determines that:

(A) The development on the property cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the lot is complete;

(B) The property contains a slope of 25 percent or greater;

(C) The property is within a 100-year floodplain; or

(D) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:

(i) Natural disasters and hazards; or

(ii) Natural resources, including air, water, land or natural areas, but not including open spaces or historic resources.

**(5) The development of housing under subsection (2) of this section may occur only:**

**(a) Within an urban growth boundary; and**

**(b) On lands zoned to allow for industrial uses only if the property is:**

**(A) Publicly owned;**

**(B) Adjacent to lands zoned for residential uses or schools; and**

**(C) Not specifically designated for heavy industrial uses.**

**(6) The development of housing under subsection (3) of this section:**

**(a) Applies only within an urban growth boundary of a city with a population of 10,000 or greater;**

**(b) May not occur on lands zoned to allow industrial uses;**

**(c) May require the payment of a system development charge as defined in ORS 223.299 only if:**

**(A) The charge is calculated pursuant to a specific adopted policy for commercial to residential conversions adopted on or before December 31, 2023; or**

**(B) The charge is for water or wastewater and includes an offset for at least 100 percent of the water or wastewater system development charges paid when the building was originally constructed; and**

**(d) May not be subject to enforcement of any land use regulation that establishes a minimum number of parking spaces that is greater than the lesser of:**

**(A) The amount that may be required for the existing commercial use; or**

**(B) The amount that may be required in lands zoned for residential uses that would allow the converted development.**

*[(4)] (7)* A local government shall approve an application at an authorized density level and authorized height level, as defined in ORS 227.175 (4), for the development of affordable housing, at the greater of:

(a) Any local density bonus for affordable housing; or

(b) Without consideration of any local density bonus for affordable housing:

(A) For property with existing maximum density of 16 or fewer units per acre, 200 percent of the existing density and 12 additional feet;

(B) For property with existing maximum density of 17 or more units per acre and 45 or fewer units per acre, 150 percent of the existing density and 24 additional feet; or



(C) For property with existing maximum density of 46 or more units per acre, 125 percent of the existing density and 36 additional feet.

[(5)(a)] **(8)(a)** Subsection [(4)] **(7)** of this section does not apply to housing allowed under subsection (2) of this section in areas that are not zoned for residential uses.

(b) A local government may reduce the density or height of the density bonus allowed under subsection [(4)] **(7)** of this section as necessary to address a health, safety or habitability issue, including fire safety, or to comply with a protective measure adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the local government must adopt findings supported by substantial evidence demonstrating the necessity of this reduction.

**SECTION 1a. If House Bill 3442 becomes law, section 1 of this 2023 Act (amending ORS 197.308) is repealed and ORS 197.308, as amended by section 4, chapter 47, Oregon Laws 2022, and section 1, chapter \_\_, Oregon Laws 2023 (Enrolled House Bill 3442), is amended to read:**

197.308. (1) As used in this section[,]:

(a) “Affordable housing” means residential property:

[(a)] **(A)** In which:

[(A)] **(i)** Each unit on the property is made available to own or rent to families with incomes of 80 percent or less of the area median income [*as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development*]; or

[(B)] **(ii)** The average of all units on the property is made available to families with incomes of 60 percent or less of the area median income; and

[(b)] **(B)** Whose affordability [*is enforceable*], including **affordability under a covenant** as described in ORS 456.270 to 456.295, **is enforceable** for a duration of no less than 30 years.

**(b) “Area median income” means the median income for the metropolitan statistical area in which housing is located as determined by the Housing and Community Services Department and adjusted for household size based on information from the United States Department of Housing and Urban Development.**

(2) A local government shall allow affordable housing[, *and may not require a zone change or conditional use permit for affordable housing,*] if the proposed affordable housing is on property that is:

(a) Owned by:

(A) A public body, as defined in ORS 174.109; or

(B) A nonprofit corporation that is organized as a religious corporation; or

(b) Zoned:

(A) For commercial uses;

(B) To allow religious assembly; or

(C) As public lands.

**(3) A local government shall allow the conversion of a building or a portion of a building from a commercial use to a residential use.**

[(3)] **(4)** [Subsection (2)] **Subsections (2) and (3)** of this section:

[(a)] *Does not apply to the development of housing not within an urban growth boundary.*

**(a) Prohibit the local government from requiring a zone change or conditional use permit before allowing the use.**

(b) [Does] **Do** not trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development.

[(c)] *Applies on property zoned to allow for industrial uses only if the property is:*

[(A)] *Publicly owned;*

[(B)] *Adjacent to lands zoned for residential uses or schools; and*

[(C)] *Not specifically designated for heavy industrial uses.*

[(d)] **(c)** Except as provided in paragraph [(e)] **(d)** of this subsection, [*does*] **do** not apply on lands where the local government determines that:

(A) The development on the property cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the lot is complete;

(B) The property contains a slope of 25 percent or greater;

(C) The property is within a 100-year floodplain; or

(D) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:

(i) Natural disasters and hazards; or

(ii) Natural resources, including air, water, land or natural areas, but not including open spaces or historic resources.

~~[(e)]~~ (d) ~~[Does]~~ Do apply to property described in paragraph ~~[(d)(C)]~~ (c)(C) and (D)(i) of this subsection if more than 60 percent of the lands within the urban growth boundary that the property is within are located within a tsunami inundation zone or if more than 30 percent of the lands within the urban growth boundary that the property is within are located within a 100-year floodplain.

**(5) The development of housing under subsection (2) of this section may occur only:**

**(a) Within an urban growth boundary; and**

**(b) On lands zoned to allow for industrial uses only if the property is:**

**(A) Publicly owned;**

**(B) Adjacent to lands zoned for residential uses or schools; and**

**(C) Not specifically designated for heavy industrial uses.**

**(6) The development of housing under subsection (3) of this section:**

**(a) Applies only within an urban growth boundary of a city with a population of 10,000 or greater;**

**(b) May not occur on lands zoned to allow industrial uses;**

**(c) May require the payment of a system development charge as defined in ORS 223.299 only if:**

**(A) The charge is calculated pursuant to a specific adopted policy for commercial to residential conversions adopted on or before December 31, 2023; or**

**(B) The charge is for water or wastewater and includes an offset for at least 100 percent of the water or wastewater system development charges paid when the building was originally constructed; and**

**(d) May not be subject to enforcement of any land use regulation that establishes a minimum number of parking spaces that is greater than the lesser of:**

**(A) The amount that may be required for the existing commercial use; or**

**(B) The amount that may be required in lands zoned for residential uses that would allow the converted development.**

~~[(4)]~~ (7) The development of housing allowed under subsection ~~[(3)(e)]~~ (4)(d) of this section may only occur:

(a) Within an urban growth boundary located no more than 10 miles from the Pacific Ocean;

(b) In areas that require compliance with minimum federal regulations under the National Flood Insurance Program or with local floodplain development regulations adopted by the applicable local government, provided that the local regulations are equal to or more stringent than the minimum federal regulations;

(c) In locations that do not include floodways or other areas with higher risks of greater water velocity and debris flow;

(d) In communities with emergency response, evacuation and post-disaster plans that have been updated for the housing development; and

(e) In areas that are not public parks.

~~[(5)]~~ (8) A local government may prohibit affordable housing or require a zone change or conditional use permit to develop affordable housing in areas described in subsection ~~[(3)(e)]~~ (4)(d) of this section.

[(6)] (9) A local government shall approve an application at an authorized density level and authorized height level, as defined in ORS 227.175 (4), for the development of affordable housing, at the greater of:

(a) Any local density bonus for affordable housing; or

(b) Without consideration of any local density bonus for affordable housing:

(A) For property with existing maximum density of 16 or fewer units per acre, 200 percent of the existing density and 12 additional feet;

(B) For property with existing maximum density of 17 or more units per acre and 45 or fewer units per acre, 150 percent of the existing density and 24 additional feet; or

(C) For property with existing maximum density of 46 or more units per acre, 125 percent of the existing density and 36 additional feet.

[(7)(a)] (10)(a) Subsection [(6)] (9) of this section does not apply to housing allowed under subsection (2) of this section in areas that are not zoned for residential uses.

(b) A local government may reduce the density or height of the density bonus allowed under subsection [(6)] (9) of this section as necessary to address a health, safety or habitability issue, including fire safety, or to comply with a protective measure adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the local government must adopt findings supported by substantial evidence demonstrating the necessity of this reduction.

**Passed by House March 28, 2023**

**Received by Governor:**

**Repassed by House June 23, 2023**

.....M.,....., 2023

**Approved:**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2023

.....  
Dan Rayfield, Speaker of House

.....  
Tina Kotek, Governor

**Passed by Senate June 21, 2023**

**Filed in Office of Secretary of State:**

.....M.,....., 2023

.....  
Rob Wagner, President of Senate

.....  
Secretary of State

## CHAPTER 12.15 SYSTEM DEVELOPMENT CHARGES

### 12.15.005 Purpose

This chapter is intended to authorize system development charges (“SDCs”) to impose a portion of the cost of capital improvements for water, wastewater, storm drainage, transportation, and parks on developments and redevelopments that create the need for or increase the demands on capital improvements, consistent with state law. The provisions of this chapter are to be interpreted consistent with state law.

### 12.15.010 Scope and Interpretation

The SDCs authorized by this ordinance are separate from and in addition to any applicable tax, assessment, charge, or fee. SDCs are not taxes on property or on a property owner as a direct consequence of ownership of property within the meaning of Article XI Section 11B, of the Oregon Constitution or the legislation implementing that section and are not subject to the limitations imposed by that section.

### 12.15.015 Definitions

The following definitions apply in this chapter.

- A. **Applicant** means the person who applies for a residential, commercial, industrial, or other connection to the city’s water supply system or sanitary sewer system and/or who develops property within the city or within the city’s Urban Growth Boundary.
- B. **Building** means any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons or property of any kind and for any public, commercial, industrial, or other use. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintenance during the term of a building permit.
- C. **Capital Improvements** means public facilities or assets used for:
  - 1. Wastewater collection, transmission, treatment and disposal, or any combination.

2. Water supply, treatment, distribution, storage, metering, fire protection, or any combination.
  3. Drainage and flood control.
  4. Transportation facilities including vehicle and pedestrian.
  5. Parks and recreation.
- D. **Development** means any construction of improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and water and sewer fixtures. Development includes redevelopment of property requiring a building permit. Development includes improved open areas such as plazas and walkways.
- E. **Equivalent Dwelling Unit** or **EDU** means the base element of the formula by which systems development charge rates are determined for various buildings or developments.
- F. **Owner** means the owner or owners of record title or the purchaser(s) under a recorded land sales agreement, and other persons having an interest of record in the described real property.
- G. **Permittee** means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer system, or right-of-way access permit is issued.
- H. **Qualified Public Improvement** means a capital improvement that is:
1. Required as a condition of development approval;
  2. Included in an adopted SDC project list and:
    - a. Not located on or contiguous to a parcel of land this is the subject of the development approval; or
    - b. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular



development project to which the improvement fee is related.

For the purposes of this definition, “contiguous” includes improvements within a right of way that abuts the parcel.

#### 12.15.020 System Development Charged Imposed; Method for Establishment

- A. The amount of system development charges may be set and revised by resolution of the City Council. Any resolutions setting or amending the amount of any SDC shall state the amount of the charge and the methodology used to set the amount of the charge.
- B. Unless otherwise exempted, SDCs for water, wastewater, storm water, transportation and parks are imposed on all development within the city, on all development outside the city that connects to the water and/or sewer facilities of the city, and on all other development which increases the usage of the water and/or sewer system or that contributes to the need for additional or enlarged capital improvements. This shall include new construction and the alteration, expansion or replacement of a building or development if such alteration, expansion or replacement results in a change in any of the components of the formula for determining the amount of SDCs to be paid. For redevelopment, the amount of the SDC to be paid shall be the difference between the rate for the proposed redevelopment and the rate that would be applicable to the existing development.

#### 12.15.025 Methodology

- A. The methodology used to establish or modify a reimbursement fee shall be based on the cost of then-existing facilities including without limitation, design, financing and construction costs; prior contributions by then-existing users; gifts or grants; the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements; and other relevant factors identified by the City Council. The methodology shall promote the objective that future systems users shall contribute an equitable share of the cost of then-existing facilities.
- B. The methodology used to establish or modify the improvement fee shall consider the cost of projected

capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Council. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

- C. The methodology used to establish or modify improvement fees or reimbursement fees, or both, shall be adopted and may be amended by Council resolution.

#### 12.15.030 Authorized Expenditures

- A. Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of debt for such improvements.
- B. Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development.
- C. SDC proceeds may be expended only on projects identified in the SDC capital improvement project list or on the direct costs of complying with the provisions of this chapter, including the costs of developing SDC methodologies, system planning, providing an annual accounting of SDC expenditures and other costs directly related to or required for the administration and operation of this SDC program.

#### 12.15.035 Expenditure Restrictions

- A. SDCs shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- B. SDCs shall not be expended for costs of the operation or routine maintenance of capital improvements.

#### 12.15.040 SDC Projects Plan

- A. The Council shall adopt and may amend by resolution an SDC Projects Plan for each type of SDC that lists:
  - 1. The capital improvements that the city intends to fund in whole or in part with the improvement fee revenues; and
  - 2. The estimated cost of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues.
- B. In adopting the SDC Projects Plan, the city may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.
- C. If the amount of SDC charges will be increased by a proposed modification to the SDC Projects Plan, the city shall:
  - 1. Provide at least 30 days' notice prior to adopting the modification to those who have requested notice; and
  - 2. Hold a public hearing if a written request for a hearing is received at least seven days prior to the date scheduled for adoption of the proposed modification.

#### 12.15.045 Adoption or Amendment of Methodology

- A. The Council shall hold a public hearing prior to adopting or amending the methodology on which any SDC is based.
- B. The Council shall provide written notice to persons who have requested notice of any adoption or modification of SDC methodology at least 90 days before the hearing. If no one has requested notice, the city shall publish notice in a newspaper of general circulation in the city at least 90 days before the hearing.
- C. The revised methodology shall be available to the public at least 60 days before the first public hearing of the adoption or amendment of the methodology. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city. If the city fails to

provide sufficient notice, it can cure the defect by issuing a new notice and holding a new hearing. The city may consider comments submitted at improperly noticed hearings.

- D. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC methodology if the change is based on a change in project costs, including cost of materials, labor and real property, or on a provision for a periodic adjustment included in the methodology or adopted by separate ordinance or resolution, consistent with state law.
- E. A change in the amount of an improvement fee is not a modification of the SDC methodology if the change is the result of a change in the SDC Projects List adopted in accord with this chapter.

#### 12.15.050 Collection of Charge

- A. The SDC is payable on:
  - 1. Issuance of a building permit or any construction activity for which a building permit is required but not obtained.
  - 2. Issuance of a development permit or approval for development not requiring the issuance of a building permit. A permit or approval to connect to the water and/or sewer system;
  - 3. Issuance of a permit to connect to the water system or actual connection to the water system if a permit is not obtained.
  - 4. Issuance of a permit to connect to the sewer system or actual connection to the sewer system if a permit is not obtained.
- B. SDCs are payable only for those types of improvements affected by the development, permit or connection. For example, a permit to connect an existing structure to the sewer system does not necessarily trigger an obligation to pay Parks, Transportation, Water or Stormwater SDCs.
- C. The amount of SDC payable shall be established by resolution relying on an approved methodology and SDC

project plan. The SDC project plan, methodology and amount of charge may be adopted in a single resolution, and more than one type of SDC (water, sewer, storm, transportation and park) can be included in a single resolution.

- D. No permit listed in Subsection A. may be issued unless applicable SDCs have been paid or an agreement entered to pay over time as allowed by this chapter.

#### 12.15.055 Installment Payments

- A. The owner of the parcel of land subject to a systems development charge may apply for payment in twenty 20 semi-annual installments, to include interest on the unpaid balance, in accordance with state law. A shorter payment plan is acceptable if approved by the city. The parcel of land shall be subject to a lien for the unpaid balance.
- B. The city manager shall provide application forms for installment payments which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
- C. An applicant for installment payment shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the property interest of the applicant is adequate to secure payment of the lien.
- D. The city manager shall docket the lien in the city's lien docket. From that time the city shall have a lien upon the described parcel for the unpaid balance, together with interest on the unpaid balance. The lien shall be enforceable in any manner authorized or permitted by state law.

#### 12.15.060 Exemptions

- A. The following actions are exempt from payment of SDCs:
  - 1. Additions to multi-family and other dwelling units that are assessed SDCs on an Equivalent Dwelling Unit basis, provided the addition does not result in a new dwelling unit.
  - 2. An alteration, addition, replacement, change in use or permit or connection that does not increase the parcel's or

structure's use of a public improvement system is exempt from payment for the SDC payment applicable to that type of improvement. Some redevelopment may be subject to some types of SDCs and not to others.

3. Temporary and seasonal uses, including special events, mobile food units (other than pods), and patio or deck seating associated with eating or drinking establishments.

(Chapter 12.15.060(A) was amended by Ordinance No. 2187, adopted on September 7, 2021; effective October 7, 2021.)

- B. If all SDCs were paid at the time of the first action that triggered the obligation to pay, no additional payment is required at the time of other actions that would trigger the obligation to pay, even if the amount payable has increased, unless there has been a change in the design or use that would affect the amount payable.

#### 12.15.065 Credits

- A. When a development occurs that is subject to SDCs, the SDC for the existing use(s), if applicable, shall be calculated and if it is less than the SDC for the use that will result from the development, the difference between the SDC for the existing use and the SDC for the proposed use shall be the SDC that is assessed. If the change in the use results in the SDC for the proposed use being less than the SDC for the existing use, no SDC shall be required; however, no refund or credit shall be given.
  1. For the purpose of this section, "existing use" is any use or structure on a property within the last 10 years. If more than one use or structure was on a property within this timeframe than the existing use shall be that which placed the greatest demand on the capital system during this period of time.
  2. Credits shall not be transferable from one development to another, except as provided in NMC [12.15.065\(D\)\(6\).](#)\*
  3. Credits shall not be transferable from one type of capital improvement to another.

#### Examples:



*SDCs had been paid for three dwelling units on a property and the property is redeveloped with five dwelling units. A credit for three dwelling units' worth of SDCs will be provided, so the amount payable would be the amount for two dwelling units.*

*SDCs had been paid for two dwelling units and the property is redeveloped with a large retail use, with both residential units eliminated. The SDCs would be the difference between the SDCs payable for the new commercial structure and use and the SDCs that would be charged for two dwelling units.*

*SDCs were paid based on restaurant use, but then the property was converted to another retail use with lower SDCs. The property is then reconverted back to restaurant use within 10 years of the date a restaurant was last operating, using exactly the same configuration as the original restaurant. At the time of the conversion to retail use, no SDCs are payable, because the amount payable is less than the credit. The credit for restaurant use remains with the property, so at the time of reversion to restaurant use, no additional SDCs are payable, because the credit remained in effect and the credit for the original use is exactly the same as the amount that is owed, so no payment is required, even if the SDC rates have increased in the interim.*

- B. For credit certificates issued under prior SDC ordinances, such credits are to be used by the deadline specified in the ordinance in effect on the date they were issued. Certificates issued without a deadline shall automatically terminate if not used by December 31, 2020.
- C. Notwithstanding subsection (A), credit given against storm drainage SDC assessments for existing use(s) shall be limited to circumstances where SDCs were previously paid or the impervious surfaces existed as of January 1, 2008. A credit may be provided for new development that incorporates improvements designed to reduce the impact of runoff on the storm drainage system (e.g. cisterns, detention facilities, pervious surface technology, etc.). In each case, the city will review the proposed mitigation measures and determine an appropriate storm drainage SDC credit for impervious surface reduction.

- D. A credit of the improvement fee portion of the SDC only shall be given to the permittee against the cost of the SDC charged, for the cost of a qualified public improvement incurred by the permittee, upon acceptance by the city of the public improvement. The credit shall not exceed the amount of the improvement fee even if the cost of the capital improvement exceeds the improvement fee.
1. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request shall be filed in writing no later than 60 days after acceptance of the improvement by the city. The city may deny the credit provided for in this section if the city demonstrates that the application does not meet the requirements of this section or if the improvement for which credit is sought is not included in the SDC Project List.
  2. When construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project or otherwise imposed on the same property.
  3. Credits for qualified public improvements may be used for future phases of development, redevelopment, a change in use of the property, or transferred to another property as provided in NMC [12.15.065\(D\)\(6\)](#).\*
  1. Credit for qualified public improvements shall not be transferable from one type of capital improvement to another.

2. Credits for qualified public improvements shall be used within 10 years from the date the credit was given.
  3. Credits for qualified public improvements may be transferred from one property to another within the 10 year period the credits are valid if (a) the receiving property is being developed with a residential use and (b) the amount of credit transferred is less than or equal to 50% of the total SDC assessment that would otherwise be payable.\*
  4. If the public improvement for which a credit is sought is not on the SDC Project List, the applicant may submit an application for both the credit and for the placement of the improvement on the SDC project list. If the city manager determines that the project is of a type and location that is appropriate for inclusion, the project shall be added to the SDC Project List and a credit may be given, but the addition of the project shall not change the SDC amount payable by others.
  5. The City Council shall conduct a public hearing no later than August 21, 2023, to evaluate the impact of transferred SDC credits on the City's ability to fund qualified public improvements and determine if changes should be made to provisions of this section related to the transfer of SDC credits.\*
- D. The extent of the property to be considered in computing and allocating credits shall be stated by the applicant, and the applicant must have written authorization from the property owner(s). If properties under different ownership are developed together, the city may require the applicants to specify where any credits for the provision of capital improvements may be used and under which circumstances. Two or more contiguous properties may pool existing SDC credit rights as part of a common scheme for redevelopment of the contiguous properties.
- E. For all credits under any portion of this section, the property owner is responsible for providing the facts justifying a credit.

#### 12.15.070 Notice

- A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or

modification of a methodology for any SDC. Written notice shall be mailed to persons as provided in this chapter. The failure of a person on the list to receive notice that was mailed does not invalidate the action of the city.

- B. The city may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

#### 12.15.075 Segregation and Use of Revenue

- A. All funds derived from an SDC are to be segregated by accounting practices from all other funds of the city. That portion of the SDC calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth allowed in this chapter.
- B. The city manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amounts spent on each project funded in whole or in part with SDC revenues shall be included in the annual accounting.
- C. The moneys deposited into the SDC account shall be used solely as allowed by this chapter and state law, including, but not limited to:
  - 1. Design and construction plan preparation;
  - 2. Permitting and fees;
  - 3. Land and materials acquisition, including any cost of acquisition or condemnation, including financing, legal and other costs;
  - 4. Construction of capital improvements;
  - 5. Design and construction of new water facilities required by the construction of capital improvements and structures;

6. Relocating utilities required by the construction of improvements;
7. Landscaping;
8. Construction management and inspection;
9. Surveys, soils, and material testing;
10. Acquisition of capital equipment;
11. Repayment of moneys transferred or borrowed from any budgetary fund of the city which were used to fund any of the capital improvements as herein provided;
12. Payment of principal and interest, necessary reserves and cost of issuance under bonds or other indebtedness issued by the city to fund capital improvements.

#### 12.15.080 Refunds

- A. Refunds may be given by the city upon finding that there was a clerical error in the calculation of the SDC.
- B. Refunds shall not be allowed if the applicant fails to timely claim a credit or fails to timely seek an alternative SDC rate calculation.
- C. Refunds may be given on application of a permittee if the development did not occur and the all permits for the development have been withdrawn.

#### 12.15.085 Appeal Procedure

- A. A person challenging the propriety of an expenditure of SDC revenues may appeal the decision of the expenditure to the City Council by filing a written request with the city manager describing with particularity the decision and the expenditure from which the person appeals. An appeal of the expenditure must be filed within two years of the date of the alleged improper expenditure.
- B. Appeals of any other decision required or permitted to be made by the city manager under this ordinance must be filed in writing with the city manager within 10 days of the decision.

- C. After providing notice to the appellant, the City Council shall determine whether the city manager's decision or the expenditure is in accordance with this ordinance and state law. The Council may affirm, modify, or overrule the decision. If the Council determines that there has been an improper expenditure of SDC revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only by writ or review.
- D. A legal action challenging the methodology adopted by the City Council shall not be filed later than 60 days after adoption and shall use the writ of review process.

#### 12.15.090 Prohibited Connection

No person may connect to the water or sewer system of the city or obtain a building permit unless the appropriate SDCs have been paid, or the installment payment method has been applied for and approved.

#### 12.15.095 Severability

The provisions of this ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section, or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this ordinance shall be in full force and effect and be valid as is such invalid portion thereof had not been included. It is the City Council's intent that this chapter would have been adopted if the unconstitutional provision not been included.

#### 12.15.100 Penalty

Violation of this chapter is a civil infraction.

*(\*Chapter 12.15 was amended by Ordinance No. 2135, adopted on July 16, 2018; effective August 15, 2018.)*

*(Chapter 12.15 was amended by Ordinance No. 2113; adopted on August 7, 2017; effective September 6, 2017.)*





## CITY MANAGER REPORT AND RECOMMENDATIONS



Meeting Date: December 4, 2023

**Agenda Item:**

Consideration of Adoption of Order Number 2023-2, an Order Acknowledging the Withdrawal of Conditional Use Permit Application No. 7CUP-21 for the Lincoln County Animal Shelter.

**Background:**

As you are aware, the Newport Planning Commission approved a conditional use permit application from Lincoln County to construct an animal shelter on a five-acre site at the Newport Municipal Airport. This item was appealed to the City Council and then to the Oregon Land Use Board of Appeals (LUBA) by Dan McCrea who is a hanger owner at the airport. Both Mr. McCrae and Lincoln County stipulated to suspend the appeal while Lincoln County searched for alternate location for the animal shelter. Lincoln County has formally requested withdrawal of the conditional use permit application since they have identified an alternate site for the animal shelter in Waldport. In order to close out this appeal, it is appropriate for the City Council to adopt an order acknowledging withdrawal of the Lincoln County conditional use permit to construct an animal shelter at the Newport Municipal Airport.

**Recommendation:**

I recommend the City Council consider the following motion:

I move to adopt order number 2023-2, an order acknowledging the withdrawal of Lincoln County's conditional use permit application to construct an animal shelter at the Newport Municipal Airport, and that no further action will be taken on this matter.

**Fiscal Effects:**

None.

**Alternatives:**

Modify the order, or as suggested by the City Council.

Respectfully submitted,

Spencer Nebel  
City Manager



**STAFF REPORT  
CITY COUNCIL AGENDA ITEM**

**Date:** December 4, 2023

**Title:** Final Order Acknowledging Lincoln County's Withdrawal of Conditional Use Permit Application No. 7-CUP-21 for the Lincoln County Animal Shelter

**Prepared by:** Derrick I. Tokos, AICP, Community Development Director

**Recommended Motion:** I move to adopt Order No. 2023-2, an order acknowledging the withdrawal of Lincoln County's conditional use permit application to construct an animal shelter at the Newport Municipal Airport, and that no further action will be taken in this matter.

**Background Information:** The Newport City Council, by Order No. 2022-1 on April 18, 2022 (File No. 7-CUP-21), affirmed the Newport Planning Commission's decision to approve a Conditional Use Permit (CUP) application from Lincoln County to construct a 12,000+/- sq. ft. animal shelter and 10,000+/- sq. ft. of storage on a 5-acre site at the Newport Municipal Airport. The City's decision to approve the CUP application was appealed to the Oregon Land Use Board of Appeals (LUBA) by Dan McCrea who owns a hangar at the airport. The parties then stipulated to suspend the appeal while Lincoln County searched for an alternative location for the animal shelter. After the County secured a new site for the animal shelter, the parties stipulated to a voluntary remand, which LUBA ordered on September 27, 2023. Pursuant to the stipulation for voluntary remand, Lincoln County has formally requested withdrawal of its CUP application. This final order is needed to bring the matter to closure. Copies of the June 30, 2023 stipulation to suspend the appeal and October 20, 2023 request by Lincoln County to withdraw the conditional use permit application are enclosed with the draft order. LUBA's final order remanding the City's decision so that the permit application could be withdrawn is also enclosed.

**Fiscal Notes:** There are no fiscal impacts associated with this agenda item.

**Alternatives:** Adopt the final order, request modifications to the order, or as suggested by Council.

**Attachments:**  
Draft Final Order 2023-2 with attachments

**THE CITY COUNCIL OF THE CITY OF NEWPORT,  
COUNTY OF LINCOLN, STATE OF OREGON**

In the Matter of:

WITHDRAWAL OF CONDITIONAL USE PERMIT APPLICATION     )  
(FILE NO. 7-CUP-21)   ) ORDER NO.  
2023-2

---

**WHEREAS:**

A. The Newport City Council, by Order No. 2022-1 on April 18, 2022 (File No. 7-CUP-21), affirmed the Newport Planning Commission's decision to approve a conditional use permit (CUP) application from Lincoln County to construct a 12,000+/- sq. ft. animal shelter and 10,000+/- sq. ft. of storage on a 5-acre site at the Newport Municipal Airport; and

B. Order No. 2022-1 was appealed to the Oregon Land Use Board of Appeals (LUBA) in LUBA No. 2022-046. The parties then stipulated to suspend the appeal and later stipulated to a voluntary remand, which LUBA ordered on Sept. 27, 2023; and

C. Pursuant to the stipulation for voluntary remand, Lincoln County has formally requested withdrawal of its CUP application (attached are copies of Oct. 20, 2023 and June 30, 2023 correspondence with enclosures).

**The City of Newport orders as follows:**

1. The foregoing recitals are hereby confirmed and adopted in support of this order.
2. The Newport City Council hereby enters this order acknowledging the withdrawal of Lincoln County's conditional use permit application (File No. 7-CUP-21). No further action will be taken in this matter.

So ordered this 4<sup>th</sup> day of December, 2023.

---

Jan Kaplan, Mayor

ATTEST:

---

Erik Glover, City Recorder



**Board of Commissioners**

Courthouse, Room 110  
225 W. Olive Street  
Newport, Oregon 97365  
(541) 265-4100  
FAX (541) 265-4176

June 30, 2023

David Allen  
Newport City Attorney

Sean Malone  
Attorney for Petitioner McCrea

Sent via Email

Re: LUBA No. 2022-046  
Stipulation to Suspend Appeal

Pursuant to paragraph 2 of the Stipulation to Suspend the Appeal in this matter, please consider this letter notification that Lincoln County has found and secured a suitable alternative location for the proposed future site of the Lincoln County Animal Shelter. This location has been approved by the Lincoln County BOC and the purchase of the property has been executed. The acquisition did not occur prior to September 6, 2022 due to complications with having the desired land partitioned prior to negotiations.

Attached please find a copy of the Warranty Deed for the acquired property, which was recorded on June 14, 2023.

If the parties all agree to a voluntary remand of the decision, it is the intention of the Lincoln County BOC to direct staff to work with Newport to withdraw the CUP application.

  
Kaety Jacobson, Commissioner

  
Brian Gardner, Assistant County Counsel

Encl. Copy of WD

**RECORDING REQUESTED BY:**



255 SW Coast Highway, Suite 100  
Newport, OR 97365

**AFTER RECORDING RETURN TO:**

**Order No.:** WT0251376-JET

Kaety Jacobson  
Lincoln County, a political subdivision of the State of Oregon  
225 W Olive Street, Rm 110  
Newport, OR 97365

**SEND TAX STATEMENTS TO:**

Lincoln County, a political subdivision of the State of Oregon  
225 W Olive Street, Rm 110  
Newport, OR 97365

APN: R901102

Map: 13-11-31-BA-00801

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STATUTORY WARRANTY DEED**

**Dahl and Dahl, Inc.**, Grantor, conveys and warrants to **Lincoln County, a political subdivision of the State of Oregon**, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Lincoln, State of Oregon:

Parcel 2, PARTITION PLAT 2023-5, 5A, 5B, in the City of Waldport, County of Lincoln and State of Oregon, according to the official plat thereof recorded May 1, 2023, Lincoln County Records.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS **(\$175,000.00)**. (See ORS 93.030).

**Subject to:**

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

**BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.**



# STATUTORY WARRANTY DEED

(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated June 13, 2023; if a corporate grantor, it has caused its name to be signed by order of its board of directors.

Dahl and Dahl, Inc.

BY: [Signature]

Zachary R. Dahl  
President/Secretary

State of OREGON

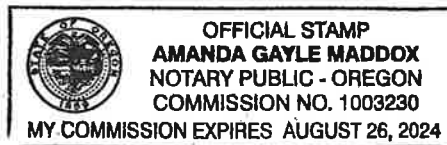
County of Lincoln

This instrument was acknowledged before me on June 13, 2023 by Zachary R. Dahl, President and Secretary of Dahl and Dahl, Inc.

[Signature]

Notary Public - State of Oregon

My Commission Expires: AUG 26, 2024



Acceptance of Conveyance:

Lincoln County, acting by and through the Board of Commissioners, does hereby accept the foregoing Warranty Deed.

Grantee:

By: [Signature]

Kaety Jacobson, Chair

## EXHIBIT "A"

### Exceptions

#### Subject to:

1. The Land has been classified as Designated Forestland, as disclosed by the tax roll. If the Land becomes disqualified, said Land may be subject to additional taxes and/or penalties.
2. Regulations, levies, liens, assessments, rights of way and easements of Waldport #3 Road District.
3. Regulations, levies, liens, assessments, rights of way and easements of Southwest Lincoln Water District.
4. Subject property is either situated within the urban renewal boundaries or within the shared area of the City of Waldport and is subject to the terms and provisions thereof, as outlined by Ordinance No. 545,  
Recorded: November 24, 1987  
Document No.: Book: 187 Page: 2045  
Amended by instrument,  
Recorded: July 8, 1999  
Document No.: Book: 385 Page: 102  
Amended by instrument,  
Recorded: July 8, 1999  
Document No.: Book: 385 Page: 135  
  
Urban Renewal Plan No. 2,  
Recorded: August 30, 2005  
Document No.: 200513722, Lincoln County Records  
And Approval,  
Recorded: June 2, 2006  
Document No.: 200608374, Lincoln County Records
5. Rights of the public to any portion of the Land lying within the area commonly known as roads and highways.
6. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:  
  
Entitled: Easement  
In favor of: Frank J. and Laura F. Booth  
Purpose: as set forth therein  
Recording Date: May 1, 1962  
Recording No: Book 224, page 402  
Affects: Exact location unknown
7. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
  
Granted to: Central Lincoln People's Utility District  
Purpose: as set forth therein  
Recording Date: April 26, 1967  
Recording No: Book 277, page 168
8. Easements, conditions, restrictions and notes as delineated on the official plat.



**Board of Commissioners**

Courthouse, Room 110  
225 W. Olive Street  
Newport, Oregon 97365  
(541) 265-4100  
FAX (541) 265-4176

October 20, 2023

Derrick Tokos  
Director Newport Community Development Dept.

Sent via Email: d.tokos@newportoregon.gov

Re: File No. 7-CUP-21  
Lincoln County CUP Application for Animal Shelter

The County wants to thank the City of Newport for its consideration of its application for a conditional use permit in File 7-CUP-21. Based upon a variety of reasons, the County has secured another location for our proposed animal shelter and the County will be moving forward at that site.

In coordination with Newport City Attorney David Allen, and attorney Sean Malone, representing Dan McCrea, the appeal of the approval of this CUP has been remanded back to the City of Newport. Attached please find a copy of the Remand Order in LUBA 2022-046.

Please consider this letter, the County's formal request to withdraw its application for a CUP in File 7-CUP-21.

Thank you again.

A handwritten signature in blue ink that reads "Claire Hall".

Claire Hall, Commissioner

A handwritten signature in blue ink that reads "Brian Gardner".

Brian Gardner, Assistant County Counsel

Encl. Copy Remand Order LUBA 2022-046

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

DAN MCCREA,  
*Petitioner,*

vs.

CITY OF NEWPORT,  
*Respondent,*

and

LINCOLN COUNTY,  
*Intervenor-Respondent.*

LUBA No. 2022-046

FINAL OPINION  
AND ORDER

Appeal from City of Newport.

Sean T. Malone represented petitioner.

David N. Allen represented respondent.

M. Gerard Herbage represented intervenor-respondent.

ZAMUDIO, Board Member; RYAN, Board Chair; RUDD, Board  
Member, participated in the decision.

REMANDED

09/27/2023

You are entitled to judicial review of this Order. Judicial review is  
governed by the provisions of ORS 197.850.

Opinion by Zamudio

The parties request that the decision challenged in this appeal be remanded.  
OAR 661-010-0071(2)(e). Accordingly, the decision is remanded.

## **CITY MANAGER REPORT AND RECOMMENDATIONS**



**Meeting Date: December 4, 2023**

### **Agenda Item:**

**Report and Appropriation of Funding for Repairs for the Oceanview Drive Slide Under Limited Emergency 2023 - 2.**

### **Background:**

On November 1, 2023 a limited emergency declaration was issued to address slide issues on Oceanview Drive. Preliminary efforts to stabilize the sanitary sewer line were unsuccessful with that sewer line breaking, creating additional settlement in the rock that was placed in the slide area. The collapsed piece of pipe was replaced and the sanitary sewer line has been operating normally since that time. In order to proceed with the balance of repairs to Oceanview Drive, a 24-inch storm pipe that is located in the bottom of the canyon will be replaced with approximately 100 linear feet of new 24-inch pipe. The new pipe will be placed approximately 10 feet below the surface versus the 27-foot depth of the existing pipe. In addition, six-inch rock armoring will be placed on the edge of pavement to the bottom of the ravine, over an approximate length of 150 feet to stabilize the balance of the road that was impacted by the slide. The existing storm lines (27 feet deep) will be abandoned, filling those pipes with flowable low strength concrete, as well as filling two existing manholes to create a new bottom where the raised pipes will be located. Roads and curb repair will be completed after the new storm pipe is in place. If all goes well, the road could be reopened prior to the holiday.

Under the limited emergency, the City Manager has authority to spend up to \$250,000 to address the work needing repairs or a replacement. The estimated cost of the work outlined in this report is \$305,000. I am proposing that \$147,000 be re-appropriated from the Big Creek Bridge Abutment project, and \$158,000 be re-appropriated from the Street Repair and Improvement Program to address the emergency repairs. If additional funding is needed it will come from Street contingency funds.

### **Recommendation:**

I recommend that the City Council consider the following motion:

**I move to re-appropriate \$147,000 from the Big Creek Bridge Abutment project (17009) and \$158,000 from the Street Repair and Improvement Program (25-23010) to address necessary repairs to Oceanview Drive under limited emergency declaration 2023-2 and authorize the use of contingency funds in the Street Fund if additional funding is necessary to complete this work. I authorize the City Manager to proceed with the necessary contracts to complete these repairs.**



**Fiscal Effects:**

There are sufficient funds in these two projects to complete this work. This may delay initiation of those projects until the next fiscal year. In addition, \$115,000 is available in the Street Fund should there be any cost overruns.

**Alternatives:**

None recommended.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer Nebel  
City Manager

**Emergency # 2023-02**  
**DECLARATION OF A LIMITED EMERGENCY**

**Findings:**

1. Section 1.70.050 of the Newport Municipal Code reads:
  - A. A limited emergency is defined, but not limited to, an emergency that is limited in effect, such as a landslide that affects only one area, or a water shortage that affects only water supply and usage.
  - B. The City Manager, or Acting City Manager, has the authority to declare a limited emergency. It is the obligation of the City Manager, or Acting City Manager, to notify the City Council of the declaration of a limited emergency.
  - C. If the anticipated cost for addressing the limited emergency is no greater than \$250,000, the limited emergency shall be effective until the next regularly scheduled City Council meeting. In the event that the anticipated cost will likely exceed \$250,000, the City Manager, or Acting City Manager, will schedule a meeting of the City Council to be held as soon as possible. The City Council may extend or terminate the emergency at that time.
2. The City to take any of the following necessary actions during the emergency:
  - A. Procure goods and services without compliance with normal procurement procedures.
  - B. Use any available city funds for emergency purposes.
  - C. Close or limit the use of streets and other public places.
  - D. Order and assist the evacuation of people to protect safety or health.
  - E. Turn off water, gas, or electricity.
  - F. Control, restrict, and/or regulate the sale of goods and services, including the imposition of price controls.

**IT IS RESOLVED:**

On October 25, 2023 at 08:09 P.M. Public Works was notified of the occurrence of a landslide/sinkhole on NW Oceanview Drive just north of NW 25<sup>th</sup> St intersection. On October 25, 2023 public works crews responded and discovered that the sinkhole/landslide eliminated approximately one-half of the southbound lane and had undermined the remaining half of the lane. Subsequent erosion has further undermined the entire southbound lane and is endangering the northbound lane. In addition, crews

determined that communication lines, and a sanitary sewer line ran through the affected area and were exposed/unsupported, but did not fail. On October 25, 2023 Public Works crews closed off NW Oceanview Drive from NW 25<sup>th</sup> St. to the Agate Beach Wayside. Public Works has had geotechnical consultant on site to obtain an analysis on the repair.

On November 02, 2023 crews will begin work to provide emergency support for the suspended sanitary sewer line, and shoring of the slide area.

The Limited Declaration of Emergency is declared to facilitate immediate temporary repairs to the landslide/sink hole area to mitigate the risk of further erosion to the roadway surface, a sanitary sewer or communications line failure, and to facilitate the process to bring contractors onsite to effect permanent repairs to the slide/sinkhole area allowing the section of NW Oceanview Drive to be opened.

At the City Council meeting to be held on Monday, November 06, 2023, the City Council will be asked to extend or terminate the emergency.



Spencer R. Nebel, City Manager



Date

**Emergency # 2023-02**  
**DECLARATION OF A LIMITED EMERGENCY**

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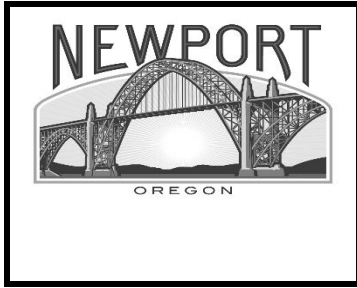
At the City Council meeting to be held on Monday, November 06, 2023, the City Council will be asked to extend or terminate the emergency.

  
\_\_\_\_\_  
Spencer R. Nebel, City Manager

  
\_\_\_\_\_  
Date

\*At the November 6, 2023 meeting the City Council extended the limited emergency to November 21, 2023.

\*At the November 20, 2023 meeting the City Council extended the limited emergency to January 3, 2024.



**STAFF REPORT  
CITY COUNCIL AGENDA ITEM**

Meeting Date: December 4, 2023

**Title:** Oceanview Drive Slide Repair Update

**Prepared by:** Chris Beatty - Acting City Engineer

**Recommended Motion:** None

**Background Information:**

The roadway slide on Ocean View Drive occurred in October 2023. The temporary slide repair, consisting of placing rock armoring on the slope in the immediate area of the slide along with replacing a damaged sanitary sewer pipe, has been completed.

The permanent repair is underway and consists of the following tasks:

1. Replacing the 24" storm pipe under Oceanview Drive with approximately 100 lineal feet of new 24" pipe. The existing pipe is approximately 27-feet deep, perhaps damaged, and has been identified in the Stormwater Master Plan as needing repair or replacement. During our investigation and development of a plan to remedy the storm pipe issue, raising the pipe to a depth of approximately 10-feet was possible. This could be done by replacing additional approximately 65 lineal feet of pipe upstream to an existing manhole. (Refer to Attachment C).
2. Initially, the plan was to bore a new pipe underneath Oceanview Drive but it was discovered during potholing of existing utilities that there were significant utilities, not field marked, where the bore pit needed to be placed. Open trenching of the pipe became the only plausible option. Construction-Building-Road, LLC (CBR) will be performing the storm pipe work.
3. Placing 6" rock armoring from the edge of pavement to the bottom of ravine over an approximate length of 150-feet. This amount to approximately 1,500 cubic yards of rock. This repair will be in accordance to the recommendations from the City's Geotechnical Engineer of Record, Foundation Engineering, Inc. (FEI). The Geotechnical Engineer will be on-site during construction to provide guidance to the Contractor, Road & Driveway (R&D). An access road parallel to Oceanview Drive will need to be constructed for construction equipment to access the bottom of the ravine. This work also required permitting with Oregon State Parks (OSP) as the ravine is within their property. Coordination with (OSP) is taking place by city staff. (Refer to Attachments A & B for limits and cross section).
4. In order to construct the above-mentioned tasks, tree removal and trimming will be required. Oregon Coast Tree Company will be performing this work.



5. The existing storm lines to be replaced will require abandonment. This will consist of filling the pipe with flowable, low-strength concrete along with filling two (2) existing manholes to create a new bottom where the raised pipes will be located. This work will be performed by either CBR or Ryan Wyles Excavating (RWE).
6. Sidewalk, curb, and asphalt repair will be required where new storm pipe will be placed and where asphalt was removed to complete the temporary repair. This work will be completed by R&D and RWE.

The tentative schedule is as follows:

Tree removal and trimming	Thursday, November 30
Rock armoring of slope	Friday, December 1
Storm pipe replacement	Monday, December 4
Existing pipe abandonment	Following storm pipe replacement
Surface restoration	Following all work above, weather dependent

If all goes as planned the work should be completed prior to Christmas, perhaps sooner. At that point, the road could be re-opened to vehicular traffic.

#### **Fiscal Notes:**

Based on the Declaration of a Limited Emergency the cost of an emergency repair should not exceed \$250,000. If the cost exceeds this amount, the City Manager will schedule a meeting of the City Council to discuss additional funding. In this case it appears that the total will exceed \$250k as outlined below:

Installing approximately 165 lineal feet of new 24" storm pipe -	\$100k
Placing 6" rock armoring on from top of slope to bottom of ravine -	\$150k
Tree cutting/trimming services -	\$ 5k
Abandoning existing 24" and 12" storm pipes, misc., OSP permits -	\$ 15k
Geotechnical services during construction -	\$ 5k
Previous temporary slide repair already completed -	<u>\$ 30k</u>

<b>Approximate Estimated Total -</b>	<b>\$305k</b>
--------------------------------------	---------------

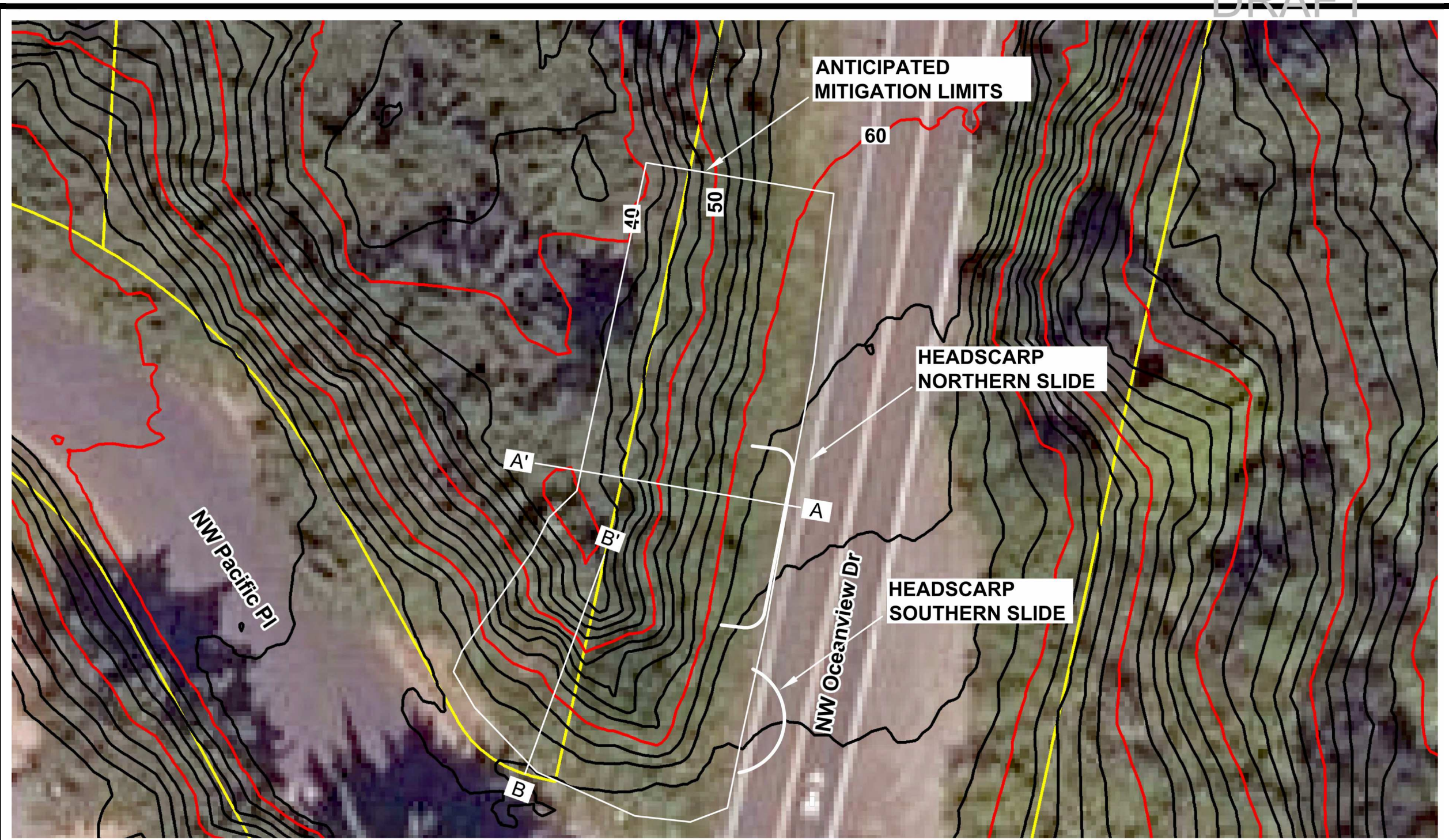
#### **Alternatives:**

None

#### **Attachments:**

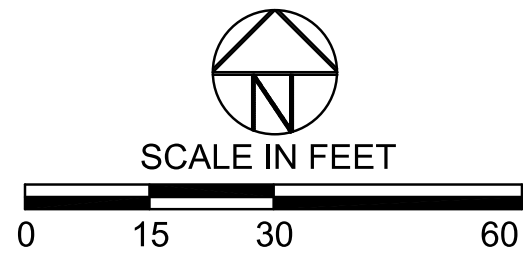
- A - Rock Armoring Limits
- B - Rock Armoring Cross Section
- C - Storm Pipe Replacement






- NOTES;
- 1. BASE MAP WAS PROVIDED BY THE CITY OF NEWPORT.
  - 2. SCARP AND CROSS-SECTION LOCATIONS ARE APPROXIMATE.
  - 3. SEE MEMO FOR A DISCUSSION OF THE SITE CONDITIONS.

Attachment A - Rock Armoring Limits

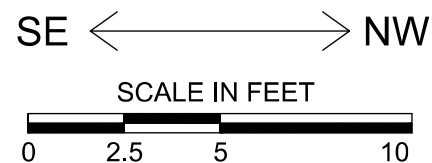
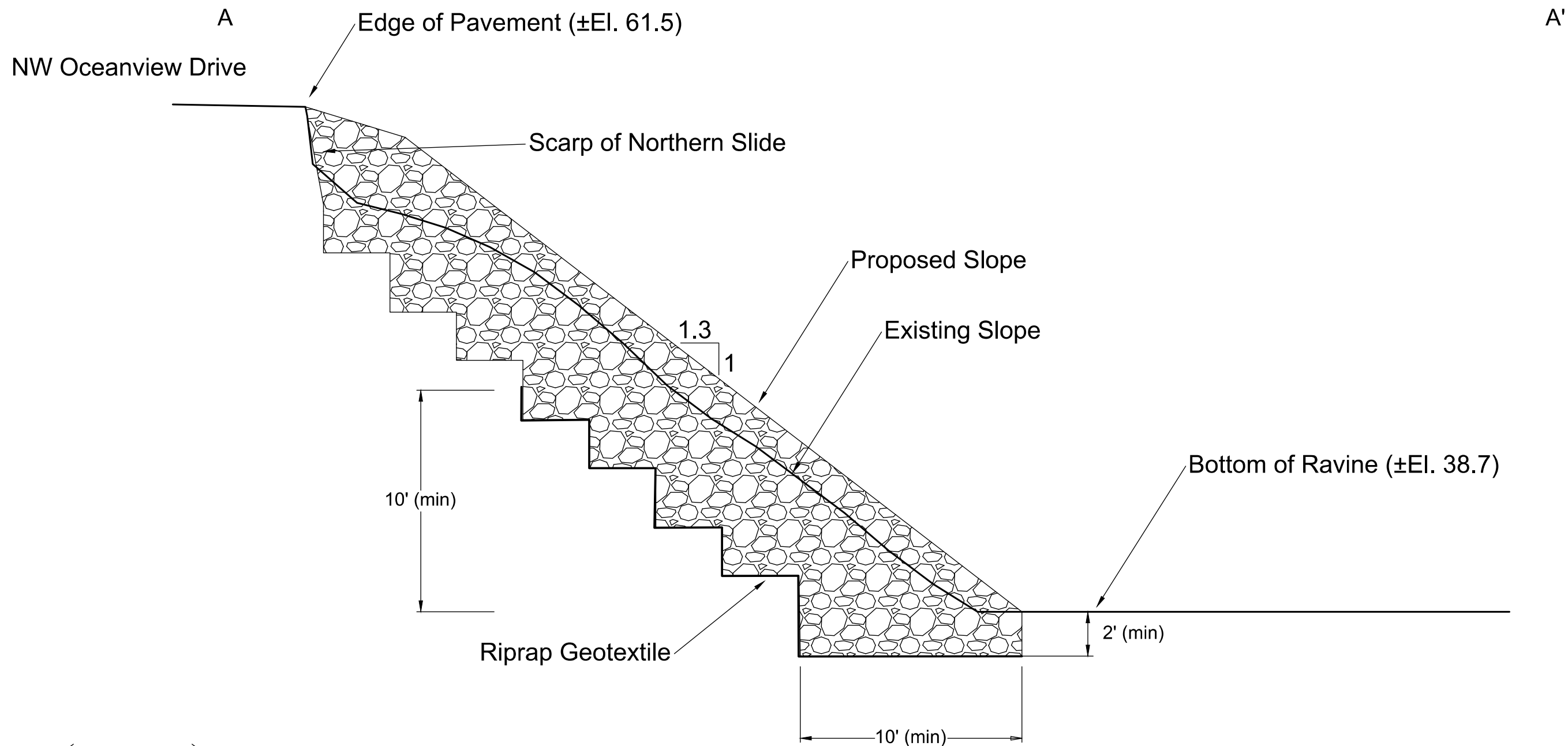


 <b>Foundation Engineering, Inc.</b> Professional Geotechnical Services		
PROJECT NO. 2231007	DATE 11/2/23	DRAWN BY DLR

ANTICIPATED MITIGATION LIMITS
NW OCEANVIEW DRIVE SLIDE NEWPORT, OREGON

FIGURE NO.
■

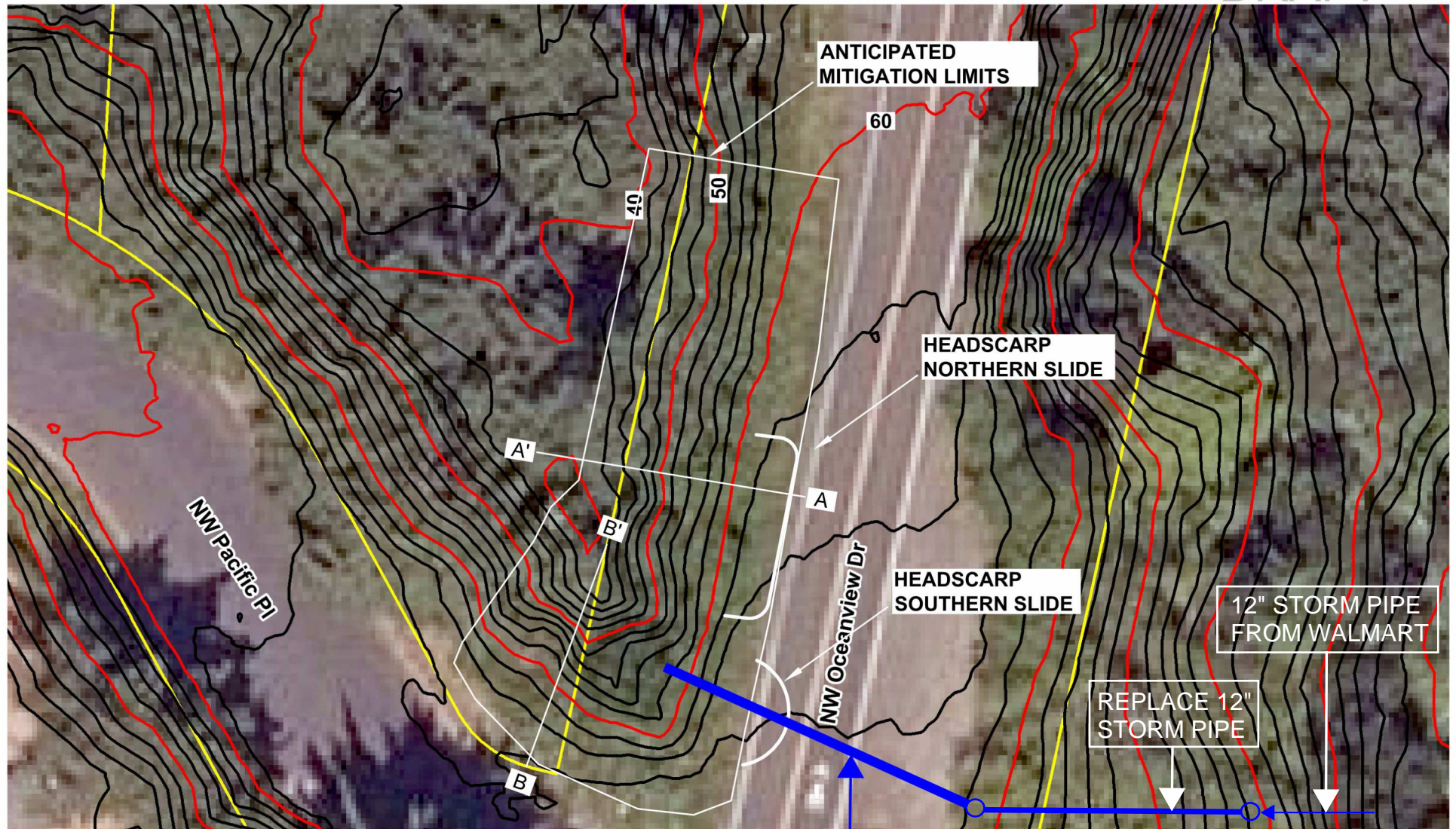




Attachment B - Rock Armoring Cross Section

- NOTES:
1. EXISTING GROUND SURFACE PROFILE IS APPROXIMATE AND IS BASED ON FIELD MEASUREMENTS USING A STEEL TAPE AND A 2-FOOT I-BEAM LEVEL.
  2. APPROXIMATE GROUND ELEVATIONS WERE ESTIMATED USING LIDAR IMAGING.
  3. SEE MEMORANDUM FOR A DISCUSSION OF SITE CONDITIONS AND CONSTRUCTION RECOMMENDATIONS.

<div> <b>Foundation Engineering, Inc.</b> Professional Geotechnical Services</div>			CROSS-SECTION A-A' - PROPOSED SLOPE	FIGURE NO.  5
PROJECT NO. 2231007	DATE: 11/2/23	DRAWN BY: DLR	NW OCEANVIEW DRIVE SLIDE NEWPORT, OREGON	

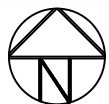


NOTES;

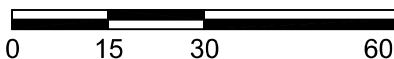
1. BASE MAP WAS PROVIDED BY THE CITY OF NEWPORT.
2. SCARP AND CROSS-SECTION LOCATIONS ARE APPROXIMATE.
3. SEE MEMO FOR A DISCUSSION OF THE SITE CONDITIONS.

PROPOSED 24"  
CULVERT. APPROX.  
10' DEEP

Attachment C  
Storm Pipe Replacement



SCALE IN FEET



**Foundation Engineering, Inc.**  
Professional Geotechnical Services

PROJECT NO. 2231007	DATE 11/2/23	DRAWN BY DLR
------------------------	-----------------	-----------------

ANTICIPATED MITIGATION LIMITS

NW OCEANVIEW DRIVE SLIDE  
NEWPORT, OREGON

FIGURE NO.

.



## CITY MANAGER REPORT AND RECOMMENDATIONS



Meeting Date: December 4, 2023

### Agenda Item:

**Report and Possible Action on SAIF Dividend for Workers Compensation.**

### Background:

Annually, SAIF provides a dividend based on the overall worker's compensation performance. This is based on the premium loss ratio and a premium dividend factor to determine the amount that goes to each employer. In the current fiscal year, the City received a dividend from SAIF in the amount of \$35,419. The City provides an employee safety program to encourage employees to act safely and responsibly when performing their work duties for the City. When injuries on the job are limited, the workers comp fund performs better. As a financial encouragement and reward, I am suggesting to Council that the dividend be shared among all employees who were employed by the City continuously from January 1 through December 4, 2023, with the dividend amount being divided equally for full-time employees with part-time employees working continually this 11-month period receiving 50% of the individual dividend amount. If the Council is comfortable with this plan, we will proceed with this prior to the end of the year.

Disclosure -- Please note as city manager I would also be an employee who would receive part of this dividend on an equal basis with all other full-time employees.

### Recommendation:

I recommend that the City Council consider the following motion:

**I move to allocate the 2023 dividend from SAIF of \$35,419 by providing equal shares to all full-time employees, with part-time employees receiving 50% of that share, provided that all employees were continuously employed by the City from January 1 through December 4, 2023.**

### Fiscal Effects:

This amount would be paid out as payroll for all eligible employees in amount equaling \$35,419

### Alternatives:

Do not distribute the dividend amount, or as suggested by the City Council.

Respectfully submitted,

Spencer Nebel

City Manager



## **CITY MANAGER REPORT AND RECOMMENDATIONS**



**Meeting Date: December 4, 2023**

### **Agenda Item:**

**Report and Possible Action for Conversion to a Four-Day, Ten-Hour Work Week for General Office and Other Departmental Work.**

### **Background:**

At the November 20 City Council meeting, the Council heard a report on the recommendations to strengthen workplace culture within the City of Newport. One of these issues is consideration shifting to a 4/10 work week for various offices and workplaces in the city currently working a 5/8 shifts or other schedules. This does not necessarily apply to operations that provide services six or seven days a week, such as the Library, Newport Recreation Center and airport, and there are a number of other departments who have been working a 4/10 schedule prior to this time. It would directly impact operations such as City Hall and office functions in other departments. There are number of issues we need to work through in order to implement this work week, I am asking for Council authorization to consider implementing this schedule on the first of the year for those offices and locations where this schedule would be appropriate.

One of the key operational issues that Council needs to consider, is that the City Hall operations would be shifted to a four-day week versus a five-day week. This is mitigated somewhat by the closure of City Hall to the public on Fridays; however, most offices have been readily available by appointment on Fridays for folks with scheduling difficulties. The proposed City Hall hours would be from 8 AM till 6 PM and the normal work schedule would be from 7:30 AM till 6 PM with a half-hour lunch for folks working the 4/10 schedule. We have had a number of requests for an alternate schedule for certain employees that have other mitigating circumstances, again, if there are alternate work schedules that would not affect the open hours for City Hall.

### **Recommendation:**

I recommend that the City Council consider the following motion:

**I move to authorize the City Manager to establish a four-day ten-hour work week in certain offices with City Hall offices being open to the public from 8 AM to 6 PM Monday through Thursday effective the first of the year.**

### **Fiscal Effects:**

There may be some minor cost savings for lighting, heat, and other actions. There will be a reduction of costs for employees commuting four days versus five days a week, reducing miles traveled, and there would be expanded public hours from our current schedule.

**Alternatives:**

Do not make this change at this time, look at other alternatives, or as suggested by the City Council.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer Nebel  
City Manager



**STAFF REPORT  
CITY COUNCIL AGENDA ITEM**

Meeting Date: December 04, 2023

**Title:** Report on Conversion to Compressed Work Week and Adoption of Hours of Operation for Various City Facilities and Departments

**Prepared by:** Erik Glover, Assistant City Manager/City Recorder

**Recommended Motion:** I move to approve the transition to a compressed schedule 4/10 for applicable City facilities, and Departments where appropriate, effective January 1, 2024.

**Background Information:**

Since 2021 the City has been undergoing a work place culture review. This included a review of various organizational workplace culture items, such as benefits, schedule, holidays, awards, education incentives, and compensation/pay, to ensure that Newport operates as an employer of choice, which is especially important given the “Great Resignation” which occurred during/after the Covid-19 pandemic. The end result of this effort was the creation of a strategic plan for strengthening workplace culture. Through much of 2022 and 2023 the City has operated with a vacancy rate in the order for 20%.

These actual vacancies and retirements included some key department head positions, to include Tim Gross- Public Works Director, Mike Murzynsky- Finance Director, Aaron Collett- City Engineer, Richard Dutton- IT Director, David Powell- Public Works Director, Judy Mayhew- Recreation Superintendent, Peggy Hawker- City Recorder/Special Projects Director, Clare Paul- Assistant City Engineer, Andrew Grant-Waste Water Treatment Plant Supervisor.

In addition to the above, various staff level positions have been experiencing vacancy and turnover. Many of these positions have had to undergo multiple recruitment cycles to result in a successful hire. While good from a budgetary impact, these vacancies have resulted in other staffers having to wear multiple hats to attempt to mitigate service delivery disruptions.

The Department Heads through the workplace culture planning sessions arrived at a variety of strategies to ensure Newport operates as an employer of choice. One such strategy was the idea to convert City facilities which could do so, to a 4-10 or compressed work week schedule. City Hall for example, has been closed on Fridays, except by appointment since the Covid-19 pandemic, to provide for staff work time.

A survey was developed and drafted, which was sent out to Department Heads who shared it with their applicable staff members to obtain feedback on the conversion. A variety of responses were received, but 77% of the surveyed members reported they were interested in a 4/10 compressed work week.

Staff contacted multiple entities around the State of Oregon, who currently operate on a 4/10 work week to learn the pros and cons of the conversion. The entities included but were not limited to: Tigard, Happy Valley, Cascade Locks, Sweet Home, MWVCOG, Beaverton, Central Point (some departments), Lowell, Bandon, Estacada, Clackamas County, Burns, Brookings, Hubbard and Oakridge.

Typical responses for pros included that employees like better/more hours for public engagement (outside of standard work hours) encouraging work life balance, it helps to facilitate recruitment/allow their entity to stand out, reduced financial spend on facility utilities, increasing organizational sustainability due to one entire less commuting day for employees, and reduced sick time use with employees using standard Friday off for appointments.

Typical responses for cons included there is one less day a week to schedule meetings, holidays which fall on a Friday/standard off day is a concern, the aspect of whether to pay 8/hours or 10 hours for a holiday, childcare difficulties, and ergonomic strain for longer work hours.

At the December 5, 2022 City Council meeting and the November 20, 2023 City Council meeting drafts of the entire workplace culture strategic plan were presented and feedback solicited. At the November 20, 2023, general discussion was held on a variety of the strategies, but discussion relating to 4/10s conversion indicated that the proposed transition date was January 1, 2024, and primarily centered around possible hybrid/remote changes, extended hours for public engagement, reduced utility expenses. No motions were made, but no major concerns were expressed by the City Council.

Following this meeting Departments were contacted with additional 4/10 work schedule questions, to determine the possibility to convert to 4/10's on January 1, 2024.

See the attached breakdown below:

Location	Existing	New Schedule
<b>City Hall</b>		
City Manager	8-5 Monday-Thursday. Friday appointment only.	4/10s M-Th 7:30-6. Open hours to public 8-6.
Human Resources	8-5 Monday-Thursday. Friday appointment only.	4/10s M-Th 7:30-6. Open hours to public 8-6.
Community Development	8-5 Monday-Thursday. Friday appointment only.	4/10s M-Th 7:30-6. Open hours to public 8-6.
Engineering	8-5 Monday-Thursday. Friday appointment only. Some staff work 4/10's already.	Staffed. M-Th 730-6. Existing 4/10 staff will remain on 4/10's one works m-th, the other will work tu-Friday. Exec assistant 5/8's or 9/80.
Finance	8-5 Monday-Thursday. Friday appointment only.	4/10's M-TH 7:30-6. Open hours to public 8-6. Flex schedules for certain positions for monthly functions.
<b>Police Department</b>		
Patrol	No change to existing schedule.	No Change
Records	No change to existing schedule.	No change from 9/80s
Admin	8-5 Monday-Thursday, with call outs. Friday appointment only.	Staffed-7:30-6 M-Th 4/10's Chief works M-TH, Lt. already on 4/10's, will stay on 4/10s Tu-Friday
<b>Airport</b>		
	8-5, 7 days a week	No change. 8-5 P.M 7 days a week.
<b>Library</b>		
	Tu-Sat 9-6 or 10am to 7 pm.	No change. Tu-Sat 9-6 or 10am to 7 pm.
<b>Fire Department</b>		
Firefighter	No change to existing schedule.	No change to existing schedule.
Admin Staff	M-F 8-5, with callouts.	7:30-6 PM 4/10's. Chief will work M-Th, Assistant Chief will work Tu-Fri
Exec Assistant	Part time	No Change to existing schedule.
Emergency Management Coordinator	M-F 8-5, with callouts.	
<b>Recreation/Parks Department</b>		
Senior Center	M-F 8-5	Facility hours 830-530 m-f. 4/10s M-Th 745 to 615 with 30 minute lunch.
Aquatic Center	M-F 8-5	Tu-Fri 7-7, Sat 8-6, Sunday Monday Closed. Move to 9/80s 8am-530 w 30 minute lunch
Recreational Center	M-F 830-530	TU-Fri 7am to 8pm. Sat 8-7, Sunday Monday Closed. Move to 9/80s for most positions, exception being financial specialist who cannot change due to schedule.
Parks/Custodial Crew	M-F 730-4	4/10s. Need to determine schedule for 7 day coverage.
Admin	M-F 830-530	Move to 9/80s, 8am to 530 w 30 minute lunch.
<b>Public Works</b>		
Streets	M-Th 630-5. call out as needed.	No change.
Water Dist	M-Th 630-5. call out as needed.	No change.
Wastewater Plant	No change from existing schedule for operators. Supervisor/Admin/Environmental compliance may be able to work 4/10s.	No change from existing schedule for operators. Supervisor/Admin/Environmental compliance may be able to work 4/10s.
Wastewater Collections	M-Th 630-5. call out as needed.	No change.
Water Plant	No change from existing schedule for operators	No change. Supervisor/Admin may be possible to go with 4/10's.
Facilities	M-F 8-5, call out as needed.	4/10's with City Hall hours.
PW SHOP/Admin	M-F 8-5 call out as needed.	4/10s. Exec Assistant 6-4:30 P.M. OPS Supervisor 6:30-5:00 PM.
<b>Information Technology</b>		
Admin	M-F 8-5, calls/evenings weekends as needed.	4/10 or 5/8's until support roles are filled.
Gis Tech	M-F 8-5	5/8's.
Sys Admin 1	None	4/10s
Sys Admin 2	None	4/10s
IT Temp	None	Schedule flexible by nature.

**Fiscal Notes:** None

**Alternatives:** None recommended

**Attachments:** Various



Spencer R. Nebel  
City Manager  
CITY OF NEWPORT  
169 S.W. Coast Hwy.  
Newport, OR 97365  
s.nebel@newportoregon.gov

## Staff Memo

**Date:** November 21, 2023  
**To:** Department Heads  
**From:** Erik Glover, Assistant City Manager/City Recorder  
**Re:** Conversion to 4/10 Work Week and Schedule Questions

Hello Everyone,

At the November 20, 2023 City Council meeting the concept of a conversion to 4/10's, or a compressed work week was presented to Council for feasible departments/divisions. The Council did not voice any objection to the concept. **The goal would be to implement these revised hours of operation effective January 1, 2024.**

**Please review the following questions and return an email with your responses to me by December 1, 2023 at noon.** Please return an answer for each facility/division within your department, with the goal of January 1, 2024 being the transition date. Please break out your responses such as: Dept Head, Admin Staff, Line staff, as may be appropriate for the division or department.

- Would any employees have an option of working a five-day schedule or other alternative schedule instead of a four-day schedule, even if offices are closed.
- If yes, which positions could work an alternative schedule.
- Effective January 1, 2024 what divisions/departments/staff roles can be moved to 4/10's.
- Is there a concern with defining the standard work week as M-Th 7:30 am to 6:00 pm with a half-hour lunch? (Other proposed start/end times would be considered). Offices would not be open to the public until 8:00 AM.

I have attached the workplace culture report shown to Council, for your review. I have also attached the previous 4/10 survey which went out a number of months ago, which showed a 77% support for the conversion to 4/10's.

Thank you for your time. If you have any questions please let me know.

Sincerely,

*Erik Glover*

Erik Glover  
Assistant City Manager/City Recorder





Spencer R. Nebel  
City Manager  
CITY OF NEWPORT  
169 S.W. Coast Hwy.  
Newport, OR 97365  
s.nebel@newportoregon.gov

January 6, 2022

TO: City Council

FROM: Spencer R. Nebel

SUBJECT: Discussion on Current Staffing Levels and Capacity Issues

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As part of the goal-setting process, it is important for Council to be aware of some of the challenges that the City of Newport is facing from a personnel standpoint. In the news we have all heard about the “great resignation” and the challenges that almost all employers are having in hiring and retaining employees during this period of time. The City is no exception. Human Resources Director, Barb James, has put together a report specifically outlining the impact that these issues have had on the City of Newport.

For this past calendar year, the City had 40 terminations (retirements, resignations, etc.) and 30 new hires. This, coupled with the fact that we had vacancies at the beginning of 2021, impacts our ability to do certain things in certain departments. Later in this report there is a listing of the number of times we have had to post certain positions before filling it, or for positions that are still vacant. For your information, I have also enclosed a personnel report showing vacancies in various departments. It also should be noted, that in departments where we lose experienced individuals, there is a period of time in which the employees hired to fill those positions need to get up to speed before they can be fully functional for that department. The attached report shows vacancies or jobs that will become vacant. These are highlighted in yellow for departments impacted by vacancies. Those positions with “PT” listed after them are part-time positions, meaning they are less than 30 hours per week positions.

The impact of vacancies varies from department to department. Departments impacted by vacancies have challenges moving forward with new tasks, and in some cases, keeping up with existing obligations. For example, in the Finance Department, the position of Account Technician-Utility Billing has remained open for six months. The remaining individuals in that department have had to fill-in for that critical vacant position. This then impacts other various efforts that the Finance Department provides to the City. Another department that is significantly impacted is Engineering. Engineering will be replacing an Engineering Tech, Administrative Assistant, and Senior Project Manager. This, coupled with having a new City Engineer in place, will have an impact on the work that this

department can undertake. Parks and Recreation has had challenges in filling many of its part-time positions, as well as undergoing changes with key personnel, including the replacement of a Parks Maintenance Supervisor, still vacant after three recruitment efforts; the retirement of Kathy Crews who was Aquatic Supervisor (this has been filled by Keely Naughton, which now means Keely's former position as Assistant Aquatic Supervisor is vacant); and the retirement of Peggy O'Callaghan has recently been filled by Sonia Graham. These significant changes, as well as the Parks Maintenance ongoing vacancies, have limited the work that the Parks and Recreation Department can do. Finally, in Public Safety, both Police and Fire, have been working short-handed due to retirements and resignations throughout the entire calendar year. This results in additional overtime, and can create a burnout situation for employees during these times. This also impacts the level of service that can be provided. These stories are repeated in a number of departments, including my own, which has operated without a Deputy City Recorder for half of last year.

The following is a report compiled by Human Resources Director, Barb James, showing the level of activity HR has been involved with during the 2021 calendar year. I have also attached a list of obligations for staff to support various advisory work group and other support efforts on behalf of the City of Newport. While the time obligations for each of these commitments vary, anytime staff supports a "public body" there are requirements to generate agendas and background materials, conduct the meetings, including technical support, and follow-up by the development of minutes for those meetings, along with the tasks that are recommended for staff to try to accomplish from the committees. The support of these various committees, work groups, and participation in other outside groups, requires a significant amount of time to do them effectively. Council needs to be careful about not over-committing staff resources so that we have volunteers participating in these groups that cannot be adequately supported by City staff to accomplish their tasks effectively.

Status of Personnel Activity January 1, 2021 - December 22, 2021

**Terminations**

Total = 40

Retirements = 8 (included in the total above)

EMPLOYEE	DEPARTMENT	YEARS OF SERVICE
Kathy Crews	P&R -Aquatic Center	21
Greg Evans	Public Works	26
Mitch France	Police	13
James Guenther	Public Works	45
Jeffery Ingram	Library	31

Bert Johnson	Fire	20
Peggy O'Callaghan	P&R -60+ Center	17
Doug Moss	Engineering	4

### Terminations by Department

Airport	1
City Manager's Office	3
Community Development	1
Engineering	2
Finance	1
Fire	1
IT	0
Library	2
Parks and Recreation	21

➤ 60+ Center	2
➤ Aquatic Center	8
➤ Recreation Center	10
➤ Parks Maintenance	1
➤ Sports	0

Police 4

Public Works 4

➤ Water Distribution	2
➤ Streets	1
➤ Wastewater Collections	1
➤ Water Trmnt. Plant	0
➤ Wastewater Trmnt. Plant	0

### New Hires

Total = 30

## New Hires by Department

Airport	1
City Manager's Office	2
Community Development	1
Engineering	1
Finance	0
Fire	1
IT	0
Library	0
Parks & Recreation	18

➤ 60+ Center	1
➤ Aquatic Center	5
➤ Recreation Center	11
➤ Parks Maintenance	0
➤ Sports	1

Police 2

Public Works 4

➤ Water Distribution	1
➤ Streets	0
➤ Wastewater Collections	1
➤ Water Treatment Plant	0
➤ Wastewater Trmnt. Plant	1

## Recruitments

Total requisitions opened for the year - 102

Open Requisitions - 48 (includes some that have not been closed due to recent or upcoming hires or positions are on hold. These positions are listed below.)

- Emergency Preparedness Coordinator
- Librarian I
- Deputy City Recorder (PT)
- Executive Assistant -Police
- Firefighter/EMT
- Police Officer
- Utility Worker I - Wastewater Collections

- Recreation Leader
- Building Attendant
- Lifeguard
- Reserve Police Officer (on hold)

Current Open Requisitions/Vacancies - 37

60+ Center Office Clerk

Accounting Technician - Utility Billing

Airport Specialist

Assistant Aquatic Supervisor

Assistant City Manager/City Recorder

Assistant Fire Chief-Fire Marshal

AV Technician

Bi-lingual Community Resource Specialist

Building Attendant x 2

Custodial Worker

Deputy City Recorder - FT

Engineering Technician

Fire Engineer

GIS Technician

Librarian I

Lifeguard x 6

Parks Maintenance Supervisor

Parks Maintenance Worker x 2

Police Officer x 6

Public Works Operations Superintendent

Public Works Office Assistant

Recreation Leaders x 2

Senior Utility Worker - Water Distribution

Utility Worker I - Streets

Positions posted multiple times

Police Officer	Ongoing
Police Sergeant	2
Fire Captain	3
Accounting Technician - Utility Billing	2
Public Works Operations Superintendent	3
Lifeguard	Ongoing
Building Attendant	Ongoing
Recreation Leader	Ongoing
Seasonal Recreation Leader	3
Control Desk	2
Assistant Aquatic Supervisor	2
Bi-lingual Community Resource Specialist	2
Parks Maintenance Supervisor	3
60+ Center Office Clerk	2
Deputy City Recorder	2
Library Specialist I-II	3
Utility Worker I - Wastewater Collections	3
Utility Worker - Water Distribution	2
Senior Utility Worker - Water Distribution	2
Safety Officer	5
Sports Program Coordinator	2

Year 2021 has been an extremely challenging year for recruitment and staffing. Early in 2021, it seemed childcare, fear of infection, and unemployment benefits were some of the main catalysts behind the staffing crisis. Economists say changing demographics like ageing and retiring workers are also a factor behind the shortages.

Multiple openings occurred at the City in 2021 due to staff turnover and retirements. There has been a reduced applicant pool across the organization for most of our posted positions. Positions needed to be posted multiple times due to a lack of qualified applicants, individuals unable to successfully pass the pre-employment process after receiving a contingent job offer, and/or a lack of commitment from the candidate once a contingent job offer was extended.



Examples include the Fire Captain recruitment. The position was posted three times before we were successful in filling the position. The recruitment process was lengthy due to a combination of issues; 1) having a limited pool of qualified applicants, 2) two contingent job offers were made, with both candidates failing to successfully pass the background, and 3) having to post the position multiple times because of the first two issues listed above.

Other examples are the Police Officer and Sergeant recruitments. Law enforcement agencies across the United States are struggling to recruit and hire police officers. Newport is no different. The City has lost a number of police officers in 2020/2021 for various reasons, creating five vacancies at its highest point. The Police Officer recruitment has been posted multiple times, and is one of the City's ongoing recruitments for 2021. There has been a limited pool of qualified candidates, an inability for candidates to successfully pass the pre-employment background process, and a lack of commitment on the part of candidates once a contingent job offer was made. Similar issues that we have encountered for other recruitments.

Respectfully submitted,



Spencer R. Nebel  
City Manager

## CITY MANAGER REPORT AND RECOMMENDATIONS



Meeting Date: December 4, 2023

### Agenda Item:

**Report on Per -- and Polyfluoroalkyl Substances (PFAS) Litigation.**

### Background:

Attorney David Allen will give an update on the proposed class action settlement regarding the impact of Per - and polyfluoroalkyl (PFAS) has had on public water systems in the United States. The City of Newport is a member of a class of claimants in the class action lawsuits filed against manufacturers of products containing PFAS. The City Council has an option to opt out of the settlement. Based on information available at this time, City Attorney David Allen does not believe that would be in the City's best interest.

PFAS are widely-used, long-lasting chemicals that have components which break down very slowly over time. PFAS components are found in the blood of people and animals all over the world, and are present at low levels in a variety of food products and in the environment. According to the Environmental Protection Agency website, there are still a lot of questions about how harmful PFAS are to people and the environment, how much exposure there is to PFAS, and how to effectively detect and measure PFAS in the air, water, soil, fish and wildlife.

The water treatment plant has begun testing for PFAS in the finished drinking water. This is now being done on a quarterly basis. As of this date, we have taken three quarterly samples of our finished drinking water and submitted it for testing. The first two quarters showed PFAS as nondetectable in our finished drinking water. The last quarter test results have not been received yet. We have not tested our raw water to determine PFAS levels in the reservoir.

### Recommendation:

No action is required by the City Council at this time unless Council wants to opt out of the two settlements with 3M and DuPont.

### Fiscal Effects:

Undetermined at this point.

### Alternatives:

Council could opt out of the settlement agreements; however, Council would then have to attain legal counsel to move forward.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer Nebel  
City Manager

You can include the following summary along with the two attached summary notices for the Dec. 4 council agenda packet, which will be an informational item:

The city of Newport is a member of a class of claimants in class action lawsuits filed against the manufacturers of certain products containing PFAS, otherwise known as 'forever chemicals'. The lawsuits claim that PFAS manufactured by these defendants contaminated public drinking water sources.

Two of the defendants - 3M and DuPont - have agreed to settle the claims filed against them in these lawsuits in return for payments to impacted water systems. No action is required at this time in order to participate in the settlements. Participating in the settlements would qualify claimants for payments to offset the costs of remediating impacted drinking water sources, but in return would release certain future claims against 3M and DuPont. According to the public works department, the city did not test positive for PFAS in its May 2023 test, and its prior test in April 2021 was also non-detect.

In a recent inquiry to the Oregon city attorneys listserv, the city of Portland, and also another city in the Portland area, responded as to opting out of the settlements. Other cities that responded to the inquiry indicated they are participating in the settlements, which is a position that the city attorney supports after conferring with city staff on this matter.

**SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
**AND COURT-APPROVAL HEARING**

*In re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-02873  
This Document relates to: *City of Camden, et al., v. 3M Company*, No. 2:23-cv-03147-RMG

**UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION**

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**TO THE SETTLEMENT CLASS:** All Active Public Water Systems in the United States of America that have one or more Impacted Water Sources as of June 22, 2023; and all Active Public Water Systems that do not have one or more Impacted Water Sources as of June 22, 2023 and

- (i) are required to test for certain PFAS under U.S. EPA’s UCMR-5, or
- (ii) serve more than 3,300 people, according to U.S. EPA’s SDWIS data system.

All capitalized terms not otherwise defined herein shall have the meanings set forth in the Settlement Agreement, available for review at **[www.PFASWaterSettlement.com](http://www.PFASWaterSettlement.com)**.

**Active Public Water System** means a Public Water System whose activity-status field in SDWIS states that the system is “Active.”

**Impacted Water Source** means a Water Source that has a Qualifying Test Result showing a Measurable Concentration of PFAS.

As used above, **Public Water System** means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year, consistent with the use of that term in the Safe Drinking Water Act, 42 U.S.C. § 300f(4)(A), and 40 C.F.R. Part 141.

**Public Water System** includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Solely for purposes of the Settlement Agreement, the term “Public Water System” refers to a Community Water System of any size or a Non-Transient Non-Community Water System that serves more than 3,300 people, according to SDWIS; or any Person (but not any financing or lending institution) that has legal authority or responsibility (by statute, regulation, other law, or contract) to fund or incur financial obligations for the design, engineering, installation, operation, or maintenance of any facility or equipment that treats, filters, remediates, or manages water that has entered or may enter Drinking Water or any Public Water System; but does not refer to a Non-Transient Non-Community Water System that serves 3,300 or fewer people, according to SDWIS, or to a Transient Non-Community Water System of any size. It is the intention of the Settlement Agreement that the definition of “Public Water System” be as broad, expansive, and inclusive as possible.

**What Is the Purpose of this Notice?** The purpose of this Notice is (i) to advise you of a proposed settlement of certain Claims against 3M Company (“3M” or “Defendant”) in the United States District Court for the District of South Carolina (the “Court”); (ii) to summarize your rights in connection with the Settlement; and (iii) to inform you of a Court hearing to consider whether to grant final approval of the Settlement (the “Final Fairness Hearing”), to be held on February 2, 2024, at 10:00 a.m. EST in Charleston Courtroom #1, J. Waties Waring Judicial Center, before the Honorable Richard M. Gergel, United States District Judge of the United States District Court for the District of South Carolina, located at 85 Broad Street, Charleston, South Carolina 29401.

**What Are the Key Terms of the Proposed Settlement?** 3M has agreed to pay an amount not less than

\$10,500,000,000 and not more than \$12,500,000,000, inclusive (the “Settlement Amount”), subject to final approval of the Settlement by the Court and certain other conditions specified in the Settlement Agreement. 3M shall additionally pay up to \$5,000,000 to cover costs incurred by the Notice Administrator in the course of executing the Notice Plan. Together, these payments constitute the “Settlement Funds.” In no event shall 3M be required under the Settlement Agreement to pay any amounts above the Settlement Funds. Any fees, costs, or expenses payable under the Settlement Agreement shall be paid out of, and shall not be in addition to, the Settlement Funds. Each Settlement Class Member that has not excluded itself from the Class will be eligible to receive a settlement check(s) from the Claims Administrator based on the Allocation Procedures developed by Class Counsel, which are subject to final approval by the Court as fair and reasonable and whose administration is under the oversight of the Special Master.

## **What Are My Options?**

**YOU CAN PARTICIPATE IN THE SETTLEMENT.** You must file a Claims Form to be eligible to receive a payment under the Settlement. You can submit your Claims Form online at **[www.PFASWaterSettlement.com](http://www.PFASWaterSettlement.com)**, or you can download, complete, and mail your Claims Form to the Claims Administrator at AFFF Public Water System Claims, P.O. Box 4466, Baton Rouge, Louisiana 70821. The deadline for a Phase One Settlement Class Member to submit a Phase One Public Water System Settlement Claims Form is 60 days following the Effective Date, and the deadline for a Phase Two Settlement Class Member to submit a Phase Two Action Fund Claims Form is July 31, 2026.

Regardless of whether you file a Claims Form or receive any distribution under the Settlement, unless you timely opt out as described below, you will be bound by the Settlement and any judgment or other final disposition related to the Settlement, including the Release set forth in the Settlement Agreement, and will be precluded from pursuing claims against 3M separately if those Claims are within the scope of the Release.

**YOU CAN OPT OUT OF THE SETTLEMENT.** If you do not wish to be a Settlement Class Member and do not want to participate in the Settlement and receive a settlement check, you may exclude yourself from the Class by completing and mailing a notice of intention to opt out. Any Person within the Settlement Class that wishes to opt out of the Settlement Class and Settlement must serve a written and signed statement entitled “Request for Exclusion” on the Notice Administrator, the Special Master, the Claims Administrator, 3M’s Counsel, and Class Counsel no later than **December 11, 2023**.

**YOU CAN OBJECT TO THE SETTLEMENT.** Any Settlement Class Member that has not successfully excluded itself (“opted out”) may object to the Settlement. Any Settlement Class Member that wishes to object to the Settlement or to an award of fees or expenses to Class Counsel must file a written and signed statement designated “Objection” with the Clerk of the Court and provide service on 3M’s Counsel and Class Counsel no later than **November 11, 2023**.

## **VISIT [WWW.PFASWATERSETTLEMENT.COM](http://WWW.PFASWATERSETTLEMENT.COM) FOR COMPLETE INFORMATION ABOUT YOUR RIGHTS**

**The Court’s Final Fairness Hearing.** The Court will hold the Final Fairness Hearing in Charleston Courtroom #1, J. Waties Waring Judicial Center of the United States District Court for the District of South Carolina, located at 85 Broad Street, Charleston, South Carolina 29401, on **February 2, 2024 at 10:00 a.m. EST**. At that time, the Court will determine, among other things, (i) whether the Settlement should be granted final approval as fair, reasonable, and adequate, (ii) whether the Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement, (iii) whether the Settlement Class should be conclusively certified, (iv) whether Settlement Class Members should be bound by the Release set forth in the Settlement Agreement, (v) the amount of attorneys’ fees and costs to be awarded to Class Counsel, if any, and (vi) the amount of the award to be made to the Class Representatives for their services, if any.



The Final Fairness Hearing may be postponed, adjourned, or continued by Order of the Court without further notice to the Class.

**How Do I Get More Information?** Please visit **www.PFASWaterSettlement.com** or call toll free **1-855-714-4341**. You may also contact Class Counsel or the Notice Administrator for more information:

<b>Class Counsel</b>	<b>Class Counsel</b>
Scott Summy <b>Baron &amp; Budd, P.C.</b> 3102 Oak Lawn Ave., Ste. 1100 Dallas, TX 75219 Email: ssummy@baronbudd.com	Michael A. London <b>Douglas &amp; London</b> 59 Maiden Lane, 6th Fl. New York, NY 10038 Email: mlondon@douglasandlondon.com
Paul J. Napoli <b>Napoli Shkolnik</b> 1302 Avenida Ponce de Leon San Juan, PR 00907 Email: pnapoli@NSPRlaw.com	Elizabeth A. Fegan <b>Fegan Scott LLC</b> 150 S. Wacker Drive, 24 <sup>th</sup> Floor Chicago, IL 60606 beth@feganscott.com
Joseph F. Rice <b>Motley Rice LLC</b> 28 Bridgeside Blvd. Mt. Pleasant, SC 29464	

<b>Notice Administrator</b>	<b>Claims Administrator</b>
In re: Aqueous Film-Forming Foams Products Liability Litigation c/o 3M Notice Administrator 1650 Arch Street, Suite 2210 Philadelphia, PA 19103 Email: PFASSettlement@AngeionGroup.com	AFFF Public Water System Claims PO Box 4466 Baton Rouge, LA 70821 Email: Info@pfaswatersettlement.com

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
**AND COURT-APPROVAL HEARING**

*In re: Aqueous Film-Forming Foams Product Liability Litigation*, MDL No. 2:18-mn-02873  
**This Document relates to: City of Camden, et al., v. E.I. DuPont de Nemours and Company, et al.,  
No. 2:23-cv-03230-RMG**

**UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION**

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**TO THE SETTLEMENT CLASS:** All Public Water Systems in the United States of America that draw or otherwise collect from any Water Source that, on or before June 30, 2023, was tested or otherwise analyzed for PFAS and found to contain any PFAS at any level; and

All Public Water Systems in the United States of America that, as of June 30, 2023, are (i) subject to the monitoring rules set forth in the U.S. EPA's Fifth Unregulated Contaminant Monitoring Rule ("UCMR 5") (i.e., "large" systems serving more than 10,000 people and "small" systems serving between 3,300 and 10,000 people), or (ii) required under applicable state or federal law to test or otherwise analyze any of their Water Sources or the water they provide for PFAS before the deadline of sample collection under UCMR 5.

All capitalized terms not otherwise defined herein shall have the meanings set forth in the Settlement Agreement and the Allocation Procedures, available for review at [www.PFASWaterSettlement.com](http://www.PFASWaterSettlement.com).

As used above, "Public Water System" means a system for the provision of water to the public for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. A "Public Water System" shall include the owner and/or operator of that system and any public entity that is legally responsible for funding (by statute, regulation, other law, or contract), other than a State or the federal government, a Public Water System described in such Paragraph or has authority to bring a claim on behalf of such a Public Water System.

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**What Is The Purpose of This Notice?** The purpose of this Notice is (i) to advise you of a proposed settlement of certain claims against The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours, Inc., Corteva, Inc., and E.I. DuPont de Nemours and Company n/k/a EIDP, Inc. (collectively the "Settling Defendants") in the United States District Court for the District of South Carolina (the "Court"); (ii) to summarize your rights in connection with the Settlement; and (iii) to inform you of a Court hearing to consider whether to grant final approval of the Settlement (the "Final Fairness Hearing"), to be held on December 14, 2023 at 10:00 a.m., before the Honorable Richard M. Gergel, United States District Judge of the United States District Court for the District of South Carolina, located at 85 Broad Street, Charleston, South Carolina 29401.

**What Are The Key Terms of the Proposed Settlement?** The Settling Defendants have agreed to pay one billion one hundred eighty-five million dollars (\$1,185,000,000)(the "Settlement Amount"), subject to final approval of the Settlement by the Court and certain other conditions specified in the Settlement Agreement. In no event shall the Settling Defendants be required to pay any amounts under the Settlement Agreement above the Settlement Amount. Any fees, costs, or expenses payable under the Settlement Agreement shall be paid out of, and shall not be in addition to, the Settlement Amount. Each Settlement Class Member who has not excluded itself from the Class will be eligible to receive a settlement check(s) from the Claims Administrator based on the Allocation Procedures developed by Class Counsel, which are subject to final approval by the Court as fair and reasonable and which are under the oversight of the Special Master.

**What Are My Options?**

**YOU CAN PARTICIPATE IN THE SETTLEMENT.** You must file a Claims Form to be eligible to

receive a payment under the Settlement. You can submit your Claims Form online at **[www.PFASWaterSettlement.com](http://www.PFASWaterSettlement.com)**, or you can download, complete and mail your Claims Form to the Claims Administrator at AFFF Public Water System Claims, PO Box 4466, Baton Rouge, LA 70821. The deadlines to submit a Claim Forms are illustrated below. Regardless of whether you file a Claims Form or receive any distribution under the Settlement, unless you timely opt out as described below, you will be bound by any judgment or other final disposition of the Released Claims, including the Release set forth in the Settlement Agreement, and will be precluded from pursuing claims against the Settling Defendants separately if those Claims are within the scope of the Release.

<b>Deadline Description</b>	<b>Deadline Date</b>
Phase One Public Water System Claims Form	60 Days after the Effective Date
Phase One Special Needs Claims Form	45 Days after the Phase One Public Water System Claims Form Deadline
Phase Two Testing Claims Form	1/1/2026
Phase Two Public Water System Claims Form	6/30/2026
Phase Two Special Needs Claims Form	8/1/2026
Phase One Supplemental Fund Claims Form	12/31/2030
Phase Two Supplemental Fund Claims Form	12/31/2030

**YOU CAN OPT OUT OF THE SETTLEMENT.** If you do not wish to be a Settlement Class Member, and do not want to participate in the Settlement and receive a Settlement Benefit Check, you may exclude yourself from the Class by completing and mailing a notice of intention to opt out. Any Person within the Settlement Class who wishes to opt out of the Settlement Class and Settlement must file a written and signed statement entitled “Request for Exclusion” with the Notice Administrator and provide service on all Parties no later than **DECEMBER 4, 2023**.

**YOU CAN OBJECT TO THE SETTLEMENT.** Any Settlement Class Member who has not successfully excluded itself (“opted out”) may object to the Settlement. Any Settlement Class Member who wishes to object to the Settlement or to an award of fees or expenses to Class Counsel must file a written and signed statement designated “Objection” with the Clerk of the Court and provide service on all Parties in no later than **NOVEMBER 4, 2023**.

**VISIT [WWW.PFASWATERSETTLEMENT.COM](http://WWW.PFASWATERSETTLEMENT.COM) FOR COMPLETE INFORMATION ABOUT YOUR RIGHTS**

**The Court’s Final Fairness Hearing.** The Court will hold the Final Fairness Hearing in Hon. Sol Blatt, Jr., Courtroom of the United States District Court for the District of South Carolina, located at 85 Broad Street, Charleston, South Carolina 29401, on **December 14, 2023 at 10:00 a.m.** At that time, the Court will determine, among other things, (i) whether the Settlement should be granted final approval as fair, reasonable, and adequate, (ii) whether the Released Claims should be dismissed with prejudice pursuant to the terms of the Settlement Agreement, (iii) whether the Settlement Class should be conclusively certified, (iv) whether Settlement Class Members should be bound by the Release set forth in the Settlement Agreement, (v) the amount of attorneys’ fees and costs to be awarded to Class Counsel, if any, and (vi) the amount of the award to be made to the Class Representatives for their services, if any. The Final Fairness Hearing may be postponed, adjourned, or continued by Order of the Court without further notice to the Class.

**How Do I Get More Information?** Please visit [www.PFASWaterSettlement.com](http://www.PFASWaterSettlement.com) or call toll free **1-855-714-4341**. You may also contact Class Counsel or the Notice Administrator for more information:

Class Counsel	Class Counsel	Class Counsel
Scott Summy <b>Baron &amp; Budd, P.C.</b> 3102 Oak Lawn Ave., Ste. 1100 Dallas, TX 75219 Email: <a href="mailto:summy@baronbudd.com">summy@baronbudd.com</a>	Michael A. London <b>Douglas &amp; London</b> 59 Maiden Lane, 6th Fl. New York, NY 10038 Email: <a href="mailto:london@douglasandlondon.com">london@douglasandlondon.com</a>	Paul J. Napoli <b>Napoli Shkolnik</b> 1302 Ponce de Leon Santurce, PR 00907 Email: <a href="mailto:pnapoli@NSPRLaw.com">pnapoli@NSPRLaw.com</a>

Notice Administrator	Claims Administrator
In re: Aqueous Film-Forming Foams Products Liability Litigation c/o Notice Administrator 1650 Arch Street, Ste 2210 Philadelphia, PA 19103 <a href="mailto:PFASSettlement@AngeionGroup.com">PFASSettlement@AngeionGroup.com</a>	AFFF Public Water System Claims PO Box 4466 Baton Rouge, LA 70821 Email: <a href="mailto:info@pfaswatersettlement.com">info@pfaswatersettlement.com</a>

The paragraphs above provide only a general summary of the terms of the settlement. In the event of a conflict between this Notice and the Settlement Agreement, the terms of the Settlement Agreement control. You can review the Settlement Agreement itself for more information about the exact terms of the settlement. The Settlement Agreement is available at [www.PFASWaterSettlement.com](http://www.PFASWaterSettlement.com).

## CITY MANAGER REPORT AND RECOMMENDATIONS



Meeting Date: December 4, 2023

**Agenda Item:**

**Report on the Budget Calendar for the Fiscal Year Beginning July 1, 2024 and Ending June 30, 2025.**

**Background:**

The process is underway to develop a budget for the fiscal year beginning July 1, 2024. Key dates impacting the City Council are as follows:

January 2, 2024 - appoint Budget Committee members (vacancies will be filled by interviews conducted prior to the preliminary budget meeting on March 5, 2024)

February 12, 2024 - City Council goal setting session from 9 AM till 4 PM.

February 20, 2024 - Council-approved draft goals.

March 5, 2024 - beginning at 6 PM is the preliminary Budget Committee meeting.

March 18, 2024 - public hearing and adoption of the goals for the fiscal year beginning July 1, 2024.

April 23, 2024 - beginning at 5 PM is the first Budget Committee meeting.

May 14, 2024 - beginning at 5 PM is the second Budget Committee meeting.

May 28, 2024 - beginning at 6 PM at is the third Budget Committee meeting.

June 17, 2024 - budget adoption (URA at 5:45 PM and City Council at 6 PM).

The meetings in red are meetings held outside of a regularly scheduled City Council meeting.

In addition, Mayor Kaplan and I have had discussions about the format for the goal setting session that will take place in February. We are looking at changing this process since this set of goals will be critical to help the new city manager understand what the City priorities are as identified by the City Council. I will be recommending to the Council that the list of goals be substantially simplified in order to make it comprehensible and meaningful for the manager hired to implement those goals. These goals can also be critical as Council goes through the interview process in evaluating the skill sets of candidates, as compared to the priority goals as established by City Council. In addition, I am proposing more detailed departmental presentations to Council as these top priorities are identified. I would also like to have a greater focus to explain the core functions and

time commitments that individual departments have, particularly as it relates to new initiatives moving forward. I think this process would be very helpful to fine tune and clearly prioritize the City Council wants the new manager and staff to focus on as the City embarks with new manager leadership at the beginning of the next fiscal year. We will set up a time to talk in more detail about the format for the goal setting session at a work session in January.

**Recommendation:**

No action is required on this report.

**Fiscal Effects:**

None.

**Alternatives:**

Please review the dates of the Budget Committee meetings and goal setting session. We may be able to work around any conflicts with those dates, particularly for the goal setting session. It is important to have everyone present at this meeting that day.

Let me know if you have any questions or conflicts with any of the dates

Modify the dates, or as suggested by the City Council.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel", is written over a faint, light blue circular stamp.

Spencer Nebel  
City Manager





**STAFF REPORT  
CITY COUNCIL AGENDA ITEM**

Meeting Date: 12/04/24

**Title:** Budget calendar for fiscal year 2024-2025.

**Prepared by:** Steve Baugher

**Recommended Motion:** None

**Background Information:**

Attached is the proposed budget and goal calendar for fiscal year 2024-25. On the budget calendar schedule, the items in red impact the City Council, items in blue impact the Department Heads, and items in black impact the City Manager and/or Finance Department.

The budget calendar includes the following dates that Budget Committee and Council members will meet:

Preliminary Budget Meeting	6pm, 03/05/24
First Budget Committee Meeting	5pm, 04/23/24
Second Budget Committee Meeting	5pm, 05/14/24
Third Budget Committee Meeting	6pm, 05/28/24
City Council Meeting - City Budget Public Hearing	6pm, 06/17/24
NURA Council Meeting - NURA Budget Public Hearing	5:45pm, 6/17/24

**Fiscal Notes:** None.

**Alternatives:**

Please review the budget calendar to determine if there is any Council scheduling conflicts or recommended changes to the budget calendar.

## CITY OF NEWPORT

### Budget Calendar - Detailed for Fiscal Year 2024-2025

Finance: Distribute Capital Project Request Form and Equipment Request Form to Department Heads.....	12/04/23
CM: Preliminary Budget and Fee Schedule Review at Staff Meeting .....	12/04/23
CM/City Recorder: Notice for Budget Committee Appointments .....	12/05/23
Finance: Distribute Fee Schedule to Department Heads .....	12/08/23
<i>Department Heads: Capital Project Request Forms Due to Finance .....</i>	<i>12/18/23</i>
<b>City Council: Appoint Budget Committee Members .....</b>	<b>01/02/24</b>
Finance: Distribute Received Capital Project Requests to Engineering .....	01/02/24
<i>Department Heads: Submit any Corrections to Fee Schedules to Finance.....</i>	<i>01/05/24</i>
Finance: Distribute Preliminary Personnel Schedule to Department Heads for Personnel Request Changes (Additions, Eliminations, or Modifications) .....	01/08/24
Finance: Supplemental Budget to Council to Correct Beginning Balances on Capital Projects .....	01/16/24
Finance: Distribute Preliminary Budget Worksheets (Six Months Actuals) to Department Heads for Review Only- Nothing to be Returned .....	01/17/24
<i>CM/Engineering/Finance Meeting on Capital Projects .....</i>	<i>1pm-5pm 01/17/24</i>
<i>Department Heads: Preliminary Personnel Schedule with Requested Changes Due to Finance .....</i>	<i>01/22/24</i>
<i>Department Heads: Equipment Requests (\$5,000 and up) Due to Finance.....</i>	<i>01/29/24</i>
<i>Department Head Meeting on Overall Budget .....</i>	<i>10am-12pm 02/12/24</i>
<i>Engineering: Distribute Reviewed Capital Project Requests to Finance .....</i>	<i>02/16/24</i>
Finance: Budget Committee Agenda Available by .....	5pm, 02/20/24
<i>Department Heads: Submit Fee Schedule with Additions, Eliminations, or Modifications to Finance .....</i>	<i>02/23/24</i>
<b>Budget Committee: Preliminary Budget Meeting .....</b>	<b>6pm, 03/05/24</b>
<i>Appoint/Elect Presiding Officer</i>	
Finance: Distribute Preliminary Budget Worksheets (Eight-Months Actuals) to Department Heads to fill out Budget Requests .....	03/05/24
<i>Department Heads: Submit Budget Requests and Narratives to Finance.....</i>	<i>03/11/24</i>
<i>Department Heads Meeting on Capital Projects.....</i>	<i>9am-1pm 03/13/24</i>
Finance: Submit Preliminary Budgets to Budget Officer .....	03/18/24
<i>CM/Finance: Department Heads' Meetings with Budget Officer to Review, Revise and Balance Budgets.....</i>	<i>03/19/24 thru 03/21/24</i>
Finance: Publish First Notice of Budget Committee Meetings (City and NURA).....	03/29/24
<i>(Finance Only: To Paper on 03/20/24)</i>	
<i>CM/Finance/Engineering Final (Wrap-Up) Meeting on Capital Projects .....</i>	<i>1-5pm 04/02/24</i>
CM: Budget Officer Completes Budget Message.....	04/10/24
Finance: Publish Second Notice of Budget Committee Meetings (City & NURA).....	04/10/24
<i>(Finance Only: City Website on 04/10/24)</i>	
Finance: Completed Proposed Budget to Printer .....	04/10/24
Finance: Distribute Proposed Budgets to Budget Committee & Department Heads.....	04/16/24
<b>Budget Committee: First Budget Committee Meeting .....</b>	<b>5pm, 04/23/24</b>
<i>Receive City and NURA Budgets and Budget Message</i>	
<i>Public Hearing on Possible Uses of State Shared Revenues</i>	
<i>Review Budget Documents and Discuss Relevant changes</i>	
<i>Respond to Questions from the Budget Committee</i>	
<i>Provides for Members of the Public time for Input, Questions and Comments</i>	

\*\* Revised 11/29/2023 3:36 PM

*Present Report on Financial Policy of UEFBs and Contingencies*

Finance: Budget Committee Agenda Package Available by ..... 5pm, 05/09/24

**Budget Committee: Second Budget Committee Meeting..... 5pm, 05/14/24**

*Budget Committee Deliberations*

*Respond to Questions from First Meeting*

Finance: Budget Committee Agenda Package Available by ..... 5pm, 05/24/24

**Budget Committee: Third Budget Committee Meeting ..... 6pm, 05/28/24**

*Respond to Questions from Second Meeting*

*Budget Committee Approval of the Budget Documents (City and NURA)*

*Approval of Ad Valorem Property Tax Amount or Rate*

*for City General Fund, City Debt Service Funds and the NURA*

Finance: Publish Notice of Budget Hearing (One Notice Required) (City and NURA) ..... 06/07/24  
*(Finance Only.... To paper on 05/29/24)*

*Publish Financial Summaries (Separate City and NURA)*

**City Council: City Budget Public Hearing..... 6pm, 06/17/24**

**NURA Council: NURA Budget Public Hearing ..... 5:45pm, 06/17/24**

*Public Hearing on Proposed Uses of State Shared Revenues*

*Separate Public Hearings on City Budget and NURA Budget*

*Adopt Budgets and Make Appropriations (City and NURA)*

*Impose and Categorize Taxes for City and NURA*

Finance: Transmit Tax Certification Documents..... 07/05/24

*To County Assessor by 07/12/24*

Finance: File Budget Document with County Recorder and Designate

**Goal Calendar - Detailed for Fiscal Year 2024-2025**

Notice Sent to Departments and Staff for the Fiscal Year 2024-2025 Goal Setting Session..... 10/10/23

Update Status of Fiscal Year 2023-2024 Department and Committee Goals on the Website ..... 11/06/23

2040 Vision Advisory Committee Presents Annual Report to the City Council ..... 01/02/24

Update Status of Fiscal Year 2023-2024 Department and Committee Goals on the Website ..... 01/05/24

Enter Fiscal Year 2024-2025 Goals on the Website..... 01/10/24

**City Council Goal Setting Meeting..... 02/12/24**

**Council approves draft goals ..... 02/20/24**

**2040 Vision Advisory Committee Provides a Report on Draft Goals to the City Council ... 03/04/24**

**Public Hearing and Adoption of the Goals ..... 03/18/24**

Update the Status of Fiscal Year 2023-2024 Department and Committee Goals on the Website .. 04/03/24

## **CM Hall's City Council Report, 11/20 - 12/3, 2023**

11/20/23: League of Oregon Cities - Equity Lens Policy Review

11/20/23: City Council Work Session

11/20/23: City Council Meeting

11/30/23: Attended Victory Institute LGBTQ+ Elected Leaders Conference

- Meeting with US Senator Tammy Baldwin (WI)
- Workshop: LGBTQ+ Issues in Education
- Social Security and the LGBTQ Community
- How to Deliver an Effective Speech
- Inflation Reduction Act - Tax Incentive Considerations for Local Government with US Representative Joyce Beatty (OH)
- Political Strategies for Confronting anti-LGBTQ+ Colleagues

12/1/23: Attended Victory Institute LGBTQ+ Elected Leaders Conference Sessions:

- Back in the Political Playbook: LGBTQ+ Issues and Candidates in the 2024 Elections
- Countering the Global Anti-LGBTQ Movement
- “We’re Still Here”: LGBTQ+ Indigenous Leaders and the Continued Fight for Equality
- Running in Hostile Regions

12/2/23: Attended Victory Institute LGBTQ+ Elected Leaders Conference Sessions:

- The Politics of Hate: Understanding and Combating Anti-Trans Political Attacks
- Building Accessible and Inclusive Campaigns
- From Burden to Fulfillment: Learning to Love Fundraising... and Succeed
- “Queer LGBTQ+ Political Hall of Fame Induction Enough