



AGENDA & Notice of Planning Commission Work Session Meeting

The Planning Commission of the City of Newport will hold a work session meeting at **6:00 p.m., Monday, June 23, 2014**, at the Newport City Hall, Conference Room "A", 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder, 541-574-0613.

The City of Newport Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the work session.

NEWPORT PLANNING COMMISSION Monday, June 23, 2014, 6:00 P.M.

AGENDA

A. Unfinished Business.

1. Review Comprehensive Plan amendment to include Beachfront Protective Eligibility Inventory (File No. 3-CP-14).

B. New Business.

1. Review and discussion on draft Memo of Agreement between Lincoln County, Lincoln City, and City of Newport for workforce housing.

C. Adjournment.

Memorandum

To: Newport Planning Commission/Advisory Committee
From: Derrick Tokos, Community Development Director *DT*
Date: June 20, 2014
Re: Draft Revisions to Newport Comprehensive Plan and Zoning Ordinance

Enclosed is a copy of the Natural Features element of the Newport Comprehensive Plan. Goal 18 provisions that require local governments limit beachfront protective structures to properties that were developed on January 1, 1977 are contained within this chapter. Explanatory language is at page 38. I have highlighted the relevant language. It doesn't appear that any changes are needed. Corresponding policy language is on page 49 (ref: Policy #6). The current policy will need to be updated to reference the DLCD eligibility inventory, the definition of "development" listed in the goal, and the opportunity for an interested party to pursue a goal exception. Appropriate language has been added.

Many of the policies contained in the Natural Features element are implemented in the Ocean Shorelands Overlay Zone chapter of the Newport Zoning Ordinance (Chapter 14.38). I have added provisions for the review of beachfront protective structures in the attached draft. At a minimum, the City must confirm eligibility for a structure of this nature to be installed. Beyond that, the City must also apply discretionary criteria to address standards in Goal 18 that get at potential visual impacts, protecting public beach access, minimizing impacts to neighbors, and long term costs to the public. The Oregon Parks and Recreation Department (OPRD) is required to conduct a comparable review if a proposed beachfront protective structure extends below the statutory beach zone line. Attached is a copy of OAR 736, Division 20, which contains the standards they are required to apply. The City has the option of deferring to OPRD, and that is how I have structured the draft language. Alternatively, new code language can be crafted to require City discretionary standards be met in all cases. This approach gives the city the most influence over the design and placement of these types of structures, but may force some landowners to obtain approval from both the City and OPRD. A copy of relevant language from the Tillamook County ordinance is enclosed as an example of a jurisdiction that requires discretionary standards be met for all projects.

At this work session, I am looking for your feedback on the draft amendments so that the changes can be noticed for a public hearing. Given DLCD's 35-day notice requirements, the earliest a hearing can be held is July 28th. A copy of the inventory maps will be available at the meeting.

Attachments

- Draft amendments to Natural Features element of the Comprehensive Plan
- Draft amendments to Chapter 14.38 of the Newport Zoning Ordinance
- Statewide Planning Goal 18 – Beaches and Dunes
- Relevant provisions of OAR 736, Division 20
- Excerpts from Tillamook County Land Use Ordinance (Chapter 3.085)

Goal 18 is accurately referenced on pg. 38 of the inventory, so no change is needed. I have highlighted the language. New policy language adopting the inventory has been added to Policy 6 on pg. 49. That language is underlined.

NATURAL FEATURES

Introduction:

Various sections of Newport's Comprehensive Plan have anticipated a demand for additional land to accommodate growth. Sometimes that growth encroaches into areas that are environmentally sensitive or geologically hazardous. Unfortunately, not all developers or other users of the land are aware that several environmental factors exist restricting the development potential of much of the land in the Newport area. Many areas have limitations for development, so special care must be taken prior to and during construction. If care is not taken in those areas, major financial and property losses and possible loss of life may occur.

The prevention of loss of property and/or life is a goal unto itself and should be a major consideration when identifying environmental constraints. But there are also properties that are the site of significant natural features. To protect those features, care must also be taken in nearby development.

This section of the plan will discuss the various environmental issues that face the City of Newport. Where possible, sensitive or hazardous lands will be identified and policies will be developed to protect them. Where not known, procedures must be established to identify and protect these areas.

Geology:

The underlying geology of an area dictates the land forms created by erosive forces. Wind and rain sculpt the land into hills and valleys, wave action builds beaches, streams and rivers flatten mountains, and the earth's internal forces push the land upward to start the process over again.

People, too, shape the land to serve their needs. Houses and shopping centers are built, roads are cut, land is cleared, all to facilitate the needs and desires of a greater number of people. But how do all these forces interact and how do we avoid situations that are in conflict? To answer these questions, we must first examine the underlying geology and then identify inherent problems created because of that geology.

The Newport area is predominantly composed of five geologic units: the Nye mudstone, the Astoria formation, the Yaquina formation, the Cape Foulweather basalt, and the Quaternary marine deposits. A bulletin describing the characteristics of the five

units and mapping the general location of each is the Environmental Geology of Lincoln County, Oregon, prepared by the State of Oregon Department of Geology and Mineral Industries.¹ The map of the Newport area also shows a geologic cross section that bisects the heart of Newport.

The Environmental Geology bulletin contains an appendix that summarizes planning concerns in the Newport area:

"Coastal erosion and landslides are extensive from Otter Rock southward to Yaquina Head. Here the abundance of landslides is due to the steep seaward dip of the underlying bedrock. Problems are especially apparent where highway fills have been placed across canyons or small valleys. Repairs are required annually in these areas. Sliding extends east of the highway, and in some areas the power lines require frequent repair and realignment.

"There are large landslides on both the north and south sides of Yaquina Head. The landslide on the south side has made several buildings unusable. In Agate Beach, subsurface drainage is restricted and a public sewerage system is necessary before additional developments are made.

"In the vicinity of Jumpoff Joe [sic] in Newport, the sea coast has retreated as much as several hundred feet since the turn of the century. A number of homes have been destroyed or badly damaged in recent years [the 1940's] as a result of landslides in this area. Before any additional shoreline areas are developed, the stability of the slope should be studied by soil engineers and geologists. Often an apparently stable slope can be reactivated by the addition of houses and streets.

"From Nye Beach southward to Yaquina Bay the shoreline is being eroded by storm waves. People considering building structures on these cliffs should be aware that the cliffs are eroding back about one foot per year, and erosion could be much more severe if landslides occur. The practice of placing embankments over steep vegetated slopes is extremely hazardous because the vegetation will decompose to produce a slip plain at the interface between the embankment and the original ground.

"East of the shoreline in Newport from about Nye Beach south to the bay, the marine terraces are overlain by loose dune sand. These sands are stabilized where covered by vegetation; however, where the vegetation has been removed or none has grown, the sand is exposed to erosion or transport by wind. Frequently during high winds, the sand can be observed drifting across streets and into properties adjacent to the street.

¹ State of Oregon Department of Geology and Mineral Industries, Bulletin 81: Environmental Geology of Lincoln County, Oregon, 1973.

"Just east of Newport, in the vicinity of McClean [sic] Point, much of the slope has been affected by landslides. Development in this area should proceed with great caution. The making of steep cuts, removal of toe support, the additional weight of embankments on the upper slopes, and the addition of moisture from the developments, including subsurface sewage disposal, all add to the instability of the slope. Serious problems can arise, especially following periods of extremely heavy rainfall. Developments in this area could suffer serious slope problems unless the slopes and embankments are properly constructed and a public sewerage system is installed.

"The area south of Yaquina Bay from Highway 101 eastward as far south as Henderson Creek is subject to a seasonal high water table. Before development reaches a greater density, a public sewerage system should be installed. A high water table creates problems for foundations of structures, and in some areas the water will stand at the surface after a heavy rainfall."²

The geologic and climatic environment of Newport is attended by a variety of natural hazards that have the potential for creating serious problems involving property. On the other hand, an understanding of these conditions and a sensible approach to coping with them in the planning stages of development can eliminate much of the grief that might otherwise occur.

In order for planning and development to go forward in such a way as to lessen the damage brought on by these conditions, the data and suggestions in this section are introduced as policies for the City of Newport. Local sites shall be evaluated by qualified geologists in order to protect the individual land owners, investors, and developers from problem areas in Newport that are subject to geologic hazards. The geologists shall also make suggestions as to how these problems can be avoided or corrected.

Areas Subject to Geologic Hazards

Marine Terraces

A significant portion of Newport is situated on a marine terrace. These elevated platforms, representing former strand- lines of the sea, extend the full length of the city, interrupted only by headlands and the Yaquina Bay. The terrace materials consist of weakly cemented sand, silt, and pebbly sand overlain in many areas by old, fairly stable dunes. Bedrock beneath the terrace and dune sediments tilts seaward and is exposed in sea cliffs in some places.

² Ibid., pgs. 168-169.

"The margins of these terrace areas adjacent to the ocean are attractive places to build, and many small beach cottages, permanent homes, condominiums, and motels occupy these locations. Unfortunately, the sea cliffs at the terrace margins are slowly but continually receding. Wave erosion during storms and high tides undermines the cliffs, while rain, wind, and frost loosen the upper portions; as a result, masses of terrace material slip seaward at unpredictable rates and in unexpected places.

"In general, marine terrace margins can be expected to retreat from 6 inches to 1 foot per year; however, in certain areas, recession can average more than 10 feet per year. In some locations, erosion may not be evident for a decade and then 10 or 15 feet of the cliff may drop off in a single season. Occasionally, very large areas involving a number of acres of land may slide seaward, such as in the JumpOff [sic] Joe area of Newport.

"Excessive slippage along terrace margins is due to the sliding of weakened, water-saturated bedrock along its seawardtilted bedding planes. Of course, the overlying terrace sediments move with it. Particularly vulnerable to bedding-plane failure is the Nye Mudstone. This type of movement may have vertical and horizontal components of only 2 feet to as much as 50 feet. At first the surface of the slide block is not disrupted, but it is generally back-tilted, or rotated down, on the landward side. Water often accumulates in a sag pond at the back of the slide.

"The surface of these slump areas may range from 50 to 100 feet wide and from 200 to 1,000 feet long. To the untrained eye, such apparently level areas of ocean frontage might appear to be desirable building sites. Unfortunately, however, these areas are extremely unstable since the ground surface must adjust to constant wave erosion at the toe of the slide. In a short time, the entire slump block can be eroded away. During the limited life of the slump block, home owners will be plagued with continual problems of settlement, such as cracks in walls, jammed doors and windows, and water- and sewer-line difficulties."³

Old Dune Areas

In certain areas, such as South Beach and Nye Beach, large old sand dunes have developed a thick soil profile and have remained stable for many years. "However, the need for easily excavated fill material and the preparation of ground for building sites has led to the removal of the stabilizing soil layer and has exposed loose sand. If these exposed areas are not immediately stabilized, the wind will soon erode basins and troughs, causing the sand to migrate to adjacent housing areas where it can cover driveways, sidewalks, streets, and lawns."⁴

³ Ibid., p. 127.

⁴ Ibid., p. 132.

Sandspits and Active Dunes

"Sandspits and their active dunes are of recent origin and should be regarded as relatively temporary features. Some parts of the spits and dunes are built up quickly by water and wind and destroyed by the same agents a few years later. Their instability results from the interplay of numerous environmental factors, including ocean currents, size and number of storms, volume of stream sediment entering the ocean, and variations in tides and wind patterns."⁵

Sandspits and active dunes are found mostly at the mouth of Yaquina Bay and in South Beach. "Preservation of vegetation on the dunes south of Yaquina Bay is recommended since excavation into loose sand could initiate further dune migration....It is essential that the foredune be preserved. Construction in this dune area could be hazardous."⁶

Hillside Development Areas

"Nearly all aspects of hillside land development combine to create slope instability unless the entire construction project is properly engineered. It should be emphasized that slope failure may occur 5 [sic] to 10 [sic] years after the start of the development, by which time the developer may have divested himself of interest and responsibility.

"Development of hillside properties⁷ has a considerable adverse effect on slope stability. Whenever material is excavated from a side hill, it results in a steeper than natural slope. Material excavated from the cut is usually placed immediately downslope to provide a nearly horizontal area for a yard or garden. Both operations create instability by oversteepening and adding weight to the slope.

"Most hillside housing developments progress gradually....By the time the development is complete, nearly half of the ground surface is covered by buildings, streets, driveways, and sidewalks, preventing normal infiltration of precipitation. Not only will the total rainfall be concentrated in small areas, but additional water will build up from septic-tank drainage, roof drains, and lawn sprinkling, causing possible oversaturation of downslope soils and eventual slope failure involving large sections of the total hillside area."⁸

⁵ ibid., p. 132.

⁶ ibid., p. 132.

⁷ Properties with a slope greater than 12%.

⁸ State of Oregon, Bulletin 81: Environmental Geology of Lincoln County, Oregon, p. 135.

Inland Mountainous Areas

"Construction inland from the coast...usually involves steep topography along the valleys of the major rivers and smaller streams. (Flood-plain development and its associated hazards are discussed under 'Flood-prone Areas,' below.) Since the early days of settlement...these valleys have provided the best access inland from the ocean. As a result, farms, small towns, roads, and highways have followed them. Logging roads have penetrated far into the mountainous areas along the steep walls of the smaller tributary streams, and some of these roads have come into permanent use.

"The valleys were excavated by streams to great depth during the ice ages of the Pleistocene when sea levels were considerably lowered. Melting of the ice during interglacial episodes caused a rise in sea level and gradual drowning and silting up of the lower reaches of the valleys. Meandering streams now impinge on the steep walls, removing support of the weathered rock and soil mantle, causing new landslides and renewed movement of old slide masses. Man-made cuts for road construction, basement excavations, and other purposes have the same effect on the potentially unstable soil and rock."⁹

Summary

The Newport area has many places that are subject to geologic hazards. As the city grows, those areas are being encroached upon more and more. Another conflict is that those areas with the worst geologic problems are also the areas most desirable for development and, therefore, command the highest prices.

The different geologic units pose different problems that cannot be summarized in a general section of any report. Consequently, it is necessary to generally identify hazardous areas and require site specific studies prior to development. All possible geologic hazards should be explored and satisfactory solutions determined prior to any construction. If correction will be uneconomical, the project should be abandoned. To ignore a geologic hazard is to invite disaster.

Earthquakes:

"Earthquakes are products of deep-seated faulting and subsequent release of large amounts of energy. Vibrations radiating from the fracture are felt or recorded at the Earth's surface as earthquakes. In some places, such as the San Andreas Fault in California, the

fault producing the earthquake can be mapped at the surface, but usually the fault is buried

⁹ *Ibid.*, p. 135.

(concealed) and cannot be observed at the surface. In Lincoln County, faults are numerous in the bedrock units. Snively and others (1972 a, b, c) indicate a complex system of northwest- and northeast-trending normal faults, some of which have large vertical displacements. The age of faulting is not well established, but the youngest bedrock unit involved is late Miocene (15 m.y. [million years]). No faulting is present in the marine terrace deposits of late Pliocene to early Pleistocene, indicating that fault movement is at least older than 0.5 m.y. Although faulting is extensive in the County, no master earthquake-producing fault system is indicated.

"Earthquake summaries by Berg and Baker (1963) and Couch and Lowell (1971) provide historical earthquake data for Lincoln County. The data indicate that the recorded seismic history extends back only some 70 years to the late 1800's....During this period, seven earthquakes were reported: four at Newport with intensity ratings (Modified Mercalli) of IV; one at Waldport, intensity rating IV; one at Seal Rock, intensity rating III; and one at Alsea, intensity rating III..."¹⁰ (See Table 1 on page 34.)

"These studies also indicate that distant earthquakes, such as in the Gorda Basin off the southwest Oregon coast, could produce intensities of between VI and VII. Ground motion during earthquakes, from nearby earthquake epicenters as well as distant earthquakes, can affect not only buildings, bridges, and similar structures but also areas of potential land subsidence and landslides. Granular soils, especially thick sections of loose, saturated sand and gravel, will consolidate and subside as a result of shaking ground motion. Because subsidence is usually uneven, buildings on such ground may be tipped or destroyed. In regions of moderate to high relief with unstable slopes and saturated ground conditions (such as most of Lincoln County during winter and spring months), earthquake vibrations could start massive slope failure. In addition, fluid response in saturated lowlands soils could result in liquefaction as downslope flow, even on gentle slopes."¹¹

¹⁰ *Ibid.*, p. 124.

¹¹ *Ibid.*, p. 125.

Table 1
City of Newport

Year	Date	Location	Intensity	Remarks
1897	Jan. 26	Newport	IV	
1902	June 14	Newport	IV	
1916	Jan. 14	Newport	IV	
1928	Sept. 4	Newport	IV	Felt for radius of 10 miles
1940	May 25	Waldport	IV	Felt at Toledo and Depoe Bay; small objects moved at Waldport.
1941	Oct. 19	Seal Rock	III	
1957	Mar. 22	Alesea	III	

Flood-prone Areas:

"Stream flooding: Flooding of the coastal lowlands in Lincoln County is an annual menace, occurring several times in some years. Major floods causing extensive damage have occurred at least ten times since 1921, generally in December or January, but some have been as early as November 20 or as late as March 31. The interval between major floods has been from 1 year to as long as 15 years, with the average just over 5 years.

"Floods are always associated with periods of heavy rainfall, especially after the ground has been soaked to near capacity or after the ground has been deeply frozen. Snow melt can add considerably to the flood intensity. Near the mouths of streams, flooding can be markedly increased by high tides resulting from strong onshore winds during severe winter storms.

"Destructive flooding by streams occurred in Lincoln County during the winters of 1921, 1931, 1964-65, and 1972. Summarized briefly here, the high water inundated the flood plains of all the major streams. Houses, barns, and livestock were lost; bridges, sections of railroad, and boat docks were swept away; logs and debris from inland were carried out to sea and lodged on distant beaches; residential and business areas of some communities were under water, as were also some resorts; highways throughout the County were blocked by floodwaters and landslides. During the 1964-65 floods, the entire County was isolated.

"Control of flooding in Lincoln County by construction of flood-control dams appears to be extremely unlikely due to the configuration of the stream valleys relative to the cost and effectiveness of a reservoir. Levees and dikes can offer some protection from floods in the lower reaches of the streams where the tidal effect is pronounced.

"The severity of floods in Lincoln County and Newport together with the infeasibility [sic] of adequate flood control structures points out that flood control measures must be in the form of flood-plain zoning regulations."¹²

The outline of flood-prone areas on the Flood Insurance Rate Maps (FIRM) prepared by the Federal Emergency Management Agency (FEMA) should be adequate for determining flood prone areas. "Flood-plain zoning and strict construction criteria are imperative if the annual flood loss is to be reduced....It is essential that local government, the land developer, real estate agent, builder, and prospective lot-buyer become aware of areas of potential flooding before committing themselves to developing the property."¹³

"Ocean Flooding: Ocean flooding is unpredictable and can occur any time of the year. Its causes include storms at sea, strong westerly winds, tidal forces, and large unusual waves. Large unusual waves, although of short duration, can be very destructive. They include tsunamis caused by earthquakes on the sea floor and additive waves created when the crests of several in-phase waves are superimposed and reach the shore simultaneously.

"In the past 33 years [1940-1973], wind and high tides have twice caused excessive flood damage along Oregon's coast. A third destructive wave was a tsunami resulting from the Alaska 'Good Friday' earthquake of 1964; smaller seismic waves have occurred since that time. Although there is no accurate method of predicting the frequency and magnitude of ocean flooding, the occurrence of three damaging floods in 33 years suggests an average of about once every 10 years. Similar waves in the future will probably be even more destructive because of the greatly increased construction of residences, motels, and

¹² *Ibid.*, p. 125.

¹³ *Ibid.*, 140.

condominiums at or just above the normal high-tide line. The presence of logs above normal high-tide level is clear evidence of the elevations the sea can reach."¹⁴

Again, the Flood Insurance Rate Maps have determined from past experience the maximum wave elevations for velocity flooding (V Zones) and areas of shallow marine flooding (AO Zones). The siting of future structures should be based on these maps.

Ocean Shorelands:

This section summarizes inventory information about the shorelands adjacent to the Pacific Ocean. Policy statements follow the inventory information. Identification of the shorelands boundary was based upon the consideration of several characteristics of the land. Resources and hazard areas within the ocean-related portion of the shorelands boundary are mapped on the Ocean Shorelands Map on page 50 (that map can be used by property owners and developers to help determine the level of review required before issuance of development permits). These include:

- 1.) Beaches, as identified in the Oregon Beach Law.
- 2.) Dunes, as identified in the 1980 Newport Comprehensive Plan by RNKR Associates.¹⁵
- 3.) Younger, stabilized dunes and open sand and wet interdunes as identified in the Soil Conservation Service (SCS) study Beaches and Dunes of the Oregon Coast (for areas not identified in the RNKR study).¹⁶
- 4.) Areas of 100-year coastal flood with wave action as identified on the Flood Insurance Rate Maps.
- 5.) Shoreland protection measures as mapped by RNKR Associates.¹⁷
- 6.) Significant shoreland and wetland biological habitat identified by Dr. D.W. Thomas and the U.S. Fish and Wildlife Service.¹⁸
- 7.) Coastal headlands.

¹⁴ *Ibid.*, p. 141.

¹⁵ RNKR Associates, Environmental Hazard Inventory: Coastal Lincoln County, Oregon, 1979.

¹⁶ U.S. Soil Conservation Service, Beaches and Dunes of the Oregon Coast, 1975.

¹⁷ RNKR Associates, Environmental Hazard Inventory: Coastal Lincoln County, Oregon, 1979.

¹⁸ D.W. Thomas, Significant Shoreland and Wetland Biological Habitats and Riparian Vegetation, 1981.

- 8.) Areas necessary for water-dependent and water-related uses, specifically recreational uses and navigation facilities.
- 9.) Landslide areas as identified by RNKR Associates in 1979 (map numbers 13:25 through 16:25).
- 10.) Features of exceptional scenic quality.
- 11.) Riparian vegetation along streams is included within significant wildlife habitat areas.
- 12.) The conditionally stable dunes landward of the foredune.
- 13.) The older, stabilized dunes of the South Beach dune sheet.
- 14.) The deflation plain east of the foredune and the stabilized dunes.

Beaches and Dunes

Ocean Beaches

Formations: There are four stretches of ocean beach within the Newport urban growth boundary (UGB):

- 1.) Beverly Beach: The area from Yaquina Head to north of Schooner Creek.
- 2.) Agate Beach: The area from Yaquina Head south to Jump-Off Joe Rock.
- 3.) Nye Beach: The area from Jump-Off Joe Rock south to the north jetty.
- 4.) South Beach: The area south of the south jetty to the southern urban growth boundary.

The sand of the Newport beaches is similar to other Oregon beaches. Sea cliff erosion and marine deposition or erosion are the major factors affecting the supply of sand on the beach. The stability and movement of sand on the beach varies seasonally. The sand is generally eroded from beaches during winter storms. Gentler waves in summer deposit sand on the beach.

This on-and-off shore movement of sand is in addition to the transport of sand along the beach (littoral drift). There appears to be a seasonal reversal in the direction of sand transport along the beach. Waves from the south-west accompany the prevailing winds in the winter months and wind and waves from the northwest predominate during the summer. Sand movement appears to be essentially in balance when averaged over several years. This condition is known as "zero net littoral drift."

The impact of this zero net littoral drift and the extension of the jetties at the entrance to Yaquina Bay has been accretion of sand adjacent to the north and south jetties. The accumulation of sand by the jetties has resulted in some further erosion at greater distances from the jetty. The accumulation of sand on either side of the jetties at the mouth of Yaquina Bay led to dune formation when much of that sand blew inland.

Recreational Uses: The recreational values of the beaches have long been recognized by Oregonians. These beaches are important resources that have long held an attraction for residents and visitors. As the name implies, many agates have been found at Agate Beach. Agate Beach, Nye Beach, and South Beach have razor clams. The beaches, especially during the summer, are populated with beachcombers, surfers, sailboarders, runners, kite fliers, and many other recreation enthusiasts.

Oregon Beach Law: The 1967 Legislature passed the Oregon Beach Law (ORS 390.605-390.700) to codify the public's right to use the dry sand areas of the beaches. The Shoreland Boundary Line was established by that legislation to resolve the question of ownership and the right of the public to use the dry sand areas of the Oregon beaches. In the landmark court case of State Ex Rel Thronton v. Hay, the Oregon Supreme Court said that the state had effectively proven the public's right to use the land seaward of the shoreland boundary line even though the ownership may rest with a private land owner. (It should be noted that the wet sand areas are property of the state as determined by the 1899 Oregon legislature except where sold before 1947.)

The area between the mean high water and the vegetation line is an area where the public's right is paramount but where private ownership is recognized. The state legislature grappled with the question of erosion and the receding nature of the coast line in creating this in between area and in 1969 exempted these lands from taxation.

The Oregon Beach Law also regulates improvements, motor vehicle and aircraft use, pipelines, cable or conduit crossings, and removal of natural products on the ocean shore (ORS 390.635- 390.725). Implementation requirements of the Land Conservation and Development Commission's Beaches and Dunes Goal further restricted permits for beach front protective structures to where development existed before January 1, 1977.

Pursuant to this requirement, the Oregon Transportation Commission adopted new Beach Improvement Standards on March 28, 1978.

In addition to the above law, Goal 18/"Beaches and Dunes" limits the issuance of permits for beach front protective structures to those areas where development existed on January 1, 1977. Development means houses, commercial and industrial buildings, and vacant subdivision lots that are physically improved through the construction of streets and the provision of utilities to the lot. Also included are areas where an exception to (2) of the implementation requirements of Goal 18 has been approved.

Dune Areas

The material underlying much of the area within the Newport UGB is sand. Most of this is marine terrace deposits, although these are sometimes difficult to distinguish from older sandstone bedrock or older stabilized dunes. Once the old town area of the city between Nye Beach and the bayfront had dunes, but the area is now largely developed and little remains of these dunes.

All of these areas have sandy soils of either the Netarts, Warrenton, or Yaquina series wherever the soil profile has begun to develop. These series have been mapped by the SCS, and the maps are on file at the Newport Planning Department. It is important to protect these lands from erosion that would create open sand area.

There is a small area with active hummock dunes between Yaquina Bay State Park and the north jetty that is not shown separately on the Ocean Shorelands map because it lies seaward of the beach zone line. The most significant dune area is in South Beach, which is discussed below.

South Beach Dune Complex

The information about dune forms summarized below is drawn from the Beaches and Dunes Handbook for the Oregon Coast¹⁹ and the report and mapping of RNKR Associates in Environmental Hazard Inventory: Coastal Lincoln County, Oregon.²⁰ These are the most recent sources of information concerning the South Beach dunes.

The South Beach dune complex is the largest dune area in Newport. It was built up from the sand supply on the accretion beach next to the south jetty. RNKR Associates described several types of dune landforms within this South Beach dune sheet, which is the only dune complex identified within the Newport UGB. These dunes are shown on Sheet 4 of the Ocean Shorelands Map (beginning on page 50). The dune complex is located primarily within South Beach State Park, although it extends a short way north and south of the park.

¹⁹ U.S. Soil Conservation Service, Beaches and Dunes of the Oregon Coast, 1975.

²⁰ RNKR Associates, Environmental Hazard Inventory: Coastal Lincoln County, Oregon, 1979.

The four dune landforms identified in this area are:

- 1.) Active foredunes: a ridge of sand adjacent to the swash zone of the beach extending south from the mouth of Yaquina Bay.
- 2.) Conditionally stable dunes: present on the landward side of the active foredunes.
- 3.) Older stabilized dunes: present in approximately the center of South Beach State Park.
- 4.) Deflation plain: present on the landward side of the other dune types.

Each of these dune types has different resource values, hazards, and development limitations.

The active foredune collects sand blown from the open beach. The foredune develops where European beach grass causes wind-blown sand to accumulate in a long ridge. These dunes need protection if they are to remain effective barriers to wind erosion and ocean storms. Foredunes are dynamic landforms subject to substantial growth in height and width on accretion beaches, and are vulnerable to rapid removal on eroding beaches. Therefore, buildings are not appropriate on active foredunes.

The conditionally stable dunes landward of the foredune have developed a denser vegetative cover, including more plant species. Although no longer subjected to wind erosion like foredunes, conditionally stable dunes have not had time for significant soil development. Conditionally stable dunes may be appropriate for development with special precautions in places that are not subject to hazards such as ocean flooding.

The older, stabilized dunes of the South Beach dune sheet exhibit soil development and tree cover. Since this dune area is entirely within a state park, no development is anticipated.

To the east of the foredune and the stabilized dunes is an extensive deflation plain. A deflation plain is created when the wind removes dry sand particles from areas landward of the foredune. The summer water table limits the depth of sand removal because groundwater moisture binds the sand together. Standing water is common during the winter when the water table is higher. Some deflation plains are subject to ocean flooding.

All of South Beach is known to have a groundwater aquifer, these dunes deposits are generally thin, and they cannot (as in other places on the Oregon coast) be relied on to supply large volumes of ground water. The dune sands rarely exceed 15 feet in thickness (except in a small area of South Beach) and are deposited directly on marine terrace material. The dune aquifer is not subject to significant development pressures because much of the aquifer is within South Beach State Park. Areas outside the park slated for development are or will be served by municipal water and sewer systems.

The primary value of the South Beach dune complex is recreational. Two deflation plain wetlands south of the old jetty railroad and open sand areas have been identified as significant habitat, as discussed below. The parcel of land between South Beach State Park and Yaquina Bay has been identified as being suited for tourist commercial uses subject to compliance with zoning regulations.

In addition to the dune forms in the South Beach Dune Complex described above, the following additional dune landforms are located within the Newport UGB:

- 1.) Open sand dunes areas, in the absence of vegetation, operate only in response to sand supply and wind. Open dune sand areas are defined as wind-drifted sand in the form of dunes and ridges which are essentially devoid of vegetation.

Active open dune sand areas are highly dynamic and may advance onto forest land, pasture land, crop land, roads, railroads, lakes, and stream channels, thereby endangering residential, commercial, and industrial property. Yet, at the same time, many open sand dunes have tremendous aesthetic and recreational importance.

- 2.) Interdunes include a broad range of geomorphic landforms varying from wet open dune sand forms to wet areas in recent and older stabilized dunes.

In general, broad areas that are both stable and wet were mapped as wet interdune, and the stabilized area was shown as being secondary. This arrangement points out the major unit to be managed. Most wet interdunes are principally wildlife habitat areas. However, many areas mapped as wet interdunes are old deflation plains or reexposed coastal terraces. A primary development limitation is the inability of some wet interdune areas to accommodate subsurface sewage disposal.

- 3.) Younger stabilized dunes are youthful, cross-bedded, windstable dune landforms that have weakly-developed sandy soils with little or no development of cemented nodules, lenses, or horizons. Vegetation on these dunes ranges from native grasses, European beachgrass, and shrubs such as scotch broom and tree lupine to woody species. The dominant tree is shore pine, but Sitka spruce, western hemlock, Douglas Fir, western red cedar, Oregon crabapple, and red alder also occur.

The younger stabilized dunes are differentiated from older stabilized dunes by differences in soil profile characteristics and the predominance of shore pine and other woody species. Texture and cementation are the primary criteria use for differentiation, although organic matter, depth, and distribution are also considered.

The younger stabilized dune mapping unit includes the stabilized dunes and transition forests. These areas contain many species of birds, mammals, amphibians, and reptiles. Occasional snags serve as nesting areas for a variety of birds.

Younger stabilized dunes offer opportunities for the placement of man-made facilities. Established vegetation provides shelter from the wind and a location from which to venture out into the open sand. However, on-site investigation is needed because building sites may be limited by slope, depth of water table, and horizontal and vertical permeability if septic- tanks are used. Some septic drain field failures have been reported in areas mapped as younger stabilized dunes. Surface or subsurface drainage that significantly reduces soil moisture in stable areas might result in the killing of low shrubs and should be avoided. Excavation and vegetation removal in stabilized dune areas needs to be well managed to prevent exposure of open sand to wind erosion and subsequent blow-outs.

Shoreland Hazards

Ocean Flooding

Ocean flooding is the inundation of lowland areas along the coast by salt water due to tidal action, storm surge, or tsunamis (seismic sea waves). Landforms in Newport subject to ocean flooding include beaches, the bases of sea cliffs, marshes and low-lying interdune areas. All areas shown on the Flood Insurance Rate Map in Zone V and areas below the 10 foot elevation south of and adjacent to the south jetty are considered to be areas subject to ocean flooding.

The National Flood Insurance Program (FIA) requires that all living areas or residences built or rebuilt within the floodplain be built so that the lowest habitable floor is at least one foot above the base flood level. In addition, buildings, foundations, and other structures must be built so that flood problems are not worsened in other areas. The City of Newport flood plain management regulations for coastal high hazard zones have been recognized as appropriate by FEMA.²¹

Shoreline Protection Measures

Ocean wave undercutting and consequent sea cliff erosion has been identified as a major source of beach sand. The following description of landslide areas also notes the role of ocean wave action. In an effort to protect property from cliff retreat, sand movement, and ocean flooding, several shoreline protection features have been built.

RNKR Associates mapped riprap armor along the shoreline in order to inventory these features. These are shown on the Ocean Shorelands map beginning on page 50. Control of shoreline protection features by local authorities is needed to prevent unexpected changes in beach equilibrium or aggravated erosion of adjacent lands. RNKR suggested several questions to be answered in the review of new shoreline protection structures which have been incorporated into ordinances controlling development along the shoreland.

In addition to city policies and regulations, beach areas within the vegetation line established by ORS 390 are under the jurisdiction of the Oregon State Parks and the Division of State Lands. A permit is required from those agencies prior to the construction of any beach front protective structures.

²¹ Federal Emergency Management Agency, letter to the City of Newport, 1987.

Landslide and Coastal Erosion Areas

Landslide and Coastal Erosion areas were mapped within the Newport urban growth boundary in the 2004 document titled Evaluation of Coastal Erosion Hazard Zones Along Dune and Bluff Backed Shorelines In Lincoln County, Oregon: Cascade Head to Seal Rock, by the Oregon Department of Geology and Mineral Industries (OFR O-04-09). The document and maps are included here by reference. The report describes several types of mass movement (mud flow, slump, soil creep, and debris avalanche) and defines the mapped landslide areas:

Prehistoric Mass Movements: Generally speaking, these are very large landslide and slide blocks that predate historical observations on the Oregon coast (about 150 years) and are deeply eroded with no evidence of recent slide activity.

Potentially Active Mass Movements: These are areas of mass movements that are currently stable (no bowed trees or cracked soil and pavement) but with evidence of recurrent movement in the last 150 years. Unlike the prehistoric slides, these features are generally not extensively eroded and have well-preserved topography indicative of recent movement. Many show no evidence of movement since 1939 or 1967 aerial photography but are probably more likely to have movements than the prehistoric slide areas.

Active Mass Movements: These areas have evidence such as bowed trees and cracked soil or pavement that indicate ongoing down slope movement of large masses of soil or rock.

Quaternary Landslides: Quaternary landslides were mapped by Snively and others (1976 and 1996). These landslides are shown in inland portions of the City and were not investigated in the 2004 DOGAMI report.

Landslide Terrain: Areas identified as landslide terrain were interpreted by Schlicker and others (1973) from aerial photos and reconnaissance-level fieldwork. The terrain may be landslide or just rolling topography similar to that produced by landslide processes and needs to be field checked.

Bluff and Dune-Backed Shoreline Hazard Areas: Coastal bluff and dune-backed shoreline areas characterized by existing, active erosion processes and three zones of potential future erosion (high, moderate, and low) that respectively depict decreasing risk of becoming active in the future as modeled in the DOGAMI report. The respective hazard zones are more particularly described as follows:

Active Erosion Hazard Zones – For dune-backed shorelines, the active hazard zone encompasses the active beach to the top of the first vegetated foredune, and

includes those areas subject to large morphological changes adjacent to the mouths of bays due to inlet migration. On bluff-backed shorelines the active hazard zone includes actively eroding coastal bluff escarpments and active or potentially active coastal landslides.

High Risk Erosion Hazard Zones – For dune backed shorelines, the high risk scenario is based on a large storm wave event (wave heights 47.6 ft high) occurring over the cycle of an above average high tide, coincident with a 3.3 ft storm surge. For bluff-backed shoreline areas, the high risk zone portrays bluff retreat that would occur if only gradual erosion at a relatively low mean rate were to occur over a 60-year period after the slope reaches and maintains its ideal angle of repose (for talus of the bluff material).

Moderate Risk Erosion Hazard Zones – For dune-backed shorelines, the moderate risk scenario is based on an extremely severe storm event (waves 52.5 ft high) coupled with a long term rise in sea level of 1.31 ft. For bluff-backed shoreline areas, the moderate risk zone portrays an average amount of bluff retreat that would occur from the combined processes of block failures, retreat to an angle of repose, and erosion for 60 to 100 years.

Low Risk Erosion Hazard Zones – For dune-backed shorelines, the low risk scenario is similar to the moderate risk approach but incorporates a 3.3 ft vertical lowering of the coast as a result of a Cascadia subduction zone earthquake. For bluff-backed shoreline areas, the low risk zone illustrates a worst case for bluff retreat in 60-100 years considering maximum bluff slope failure, erosion back to an ideal angle of repose, and gradual bluff retreat for 100 years.

Shoreland Resources

Significant Habitats

Significant material regarding shoreland and wetland biological habitats and riparian vegetation along the ocean shoreline in Lincoln County were compiled by Dr. D.W. Thomas in September 1981.²² Recent aerial photographs and additional information from the Nature Conservancy, Oregon Department of Fish and Wildlife (ODFW), the U.S. Army Corps of Engineers, OCC&DC, and the U.S. Fish and Wildlife Service National Wetlands Inventory were obtained during that study. In July 1983, the City of Newport, in coordination with Lincoln County and the Oregon Department of Fish and Wildlife, reexamined the Thomas Study in the South Beach dune complex. The Ocean Shorelands Map (beginning on page 50) was amended to include only those areas considered by ODFW to be significant shoreland and wetland biological habitat (see the description of South Beach's significant habitat areas on the next page).

²² D.W. Thomas, Significant Shoreland and Wetland Biological Habitat and Riparian Vegetation, 1981.

The City of Newport also amended the Ocean Shoreland map to exclude the Yaquina Estuary north and south jetties and existing jetty access roads as significant habitat.

The following significant shoreland and wetland biological habitats on Newport's ocean shorelands have been noted and are shown on the Ocean Shorelands map (beginning on page 50):

- > Grant Creek west of Highway 101.
- > An unnamed drainage east and west of Highway 101 just to the north of the Newport Municipal Airport property and south of South Beach State Park.
- > South Beach dune complex.
- > The cliffs and offshore rocks at Yaquina Head.

Coastal Headlands

There are two headlands within the Newport urban growth boundary, and one is the well-known Jump-Off Joe Rock. A prominent headland in the last century, only skeletal remains are left, and it is now a minor promontory of the marine terrace upon which most of the City of Newport is located. It has been subject to rapid and substantial marine erosion and seacliff retreat. (See the History and the Parks and Recreation sections of this plan.)

The remaining and more prominent coastal headland is Yaquina Head. This headland is formed by the Cape Foulweather basalt. The surficial extent of this geologic unit was mapped in 1973 by Schlicker.²³ The seaward exposure of this unit is included within the shorelands boundary as a major visual resource of the Newport area. Walker, Havens, and Reickson's Visual Resources Analysis of the Oregon Coastal Zone identified Yaquina Head as an area with potential for an exceptional coastal experience. Congress designated about 100 acres of the Head as an Outstanding Natural Area (ONA) on March 5, 1979, in Section 119 of Public Law 96-199. The act also provided for wind energy research within the ONA. The boundary of the Yaquina Head ONA established by this act is shown on the Ocean Shorelands map.

Once the site of a privately-owned commercial quarry, the primary developed land uses on this headland now are the Yaquina Head Lighthouse and a few residences.

²³ State of Oregon, Bulletin 81: Environmental Geology of Lincoln County, Oregon, 1973.

Recreation Associated with the Pacific Ocean

Yaquina Head, city and state parks, and several public rights-of-way to the ocean beaches provide for recreational opportunities along the ocean shorelands. The designation of the beaches as a special recreational area by the State of Oregon and the acquisition and development of Agate Beach, South Beach, and Yaquina Bay State parks encompass all of the area that is especially suited for recreation along the ocean shorelands within the Newport UGB. Public access to the beach outside of state parks occurs over public rights-of-way or specially acquired parcels. Major public access points are noted on the Ocean Shorelands map and the Inventory Of Oregon Coastal Beach Access Sites, published by Benkendorf and Associates,²⁴ hereby included within this plan by reference.

Navigation Facilities

Navigation facilities are important uses in the ocean shorelands area. Navigation facilities currently consist of the jetties at the mouth of Yaquina Bay, the Yaquina Bay Lighthouse, and the Yaquina Head Lighthouse.

GOALS/POLICIES NATURAL FEATURES

Goal 1: To protect life and property, to reduce costs to the public, and to minimize damage to the natural resources of the coastal zone that might result from inappropriate development in environmentally hazardous areas.

Policy 1: In areas of known hazards, the City of Newport shall require a site evaluation of the potential dangers posed by environmental hazards prior to city review and approval of a proposed development. It shall be the applicant's burden to show that construction in an environmentally hazardous area is feasible and safe. Site investigations in geologic hazardous areas shall be prepared by a registered geologist or engineer.

Policy 2: The city shall maintain and, where necessary, update ordinances that control development in an environmentally hazardous area.

Policy 3: Where hazardous areas are not specifically identified but a potential hazard may exist, the City should establish procedures within its land use regulations to require a site-specific analysis tool, such as a geologic report.

²⁴ Benkendorf and Associates, Inventory of Oregon Coastal Beach Access Sites, 1989.

Policy 4: The city shall continue its participation in the Flood Insurance Program administered by the Federal Emergency Management Agency.

Policy 5: Development within the Ocean Shorelands Boundary, as identified on the Ocean Shorelands Map, shall comply with development criteria established within the Zoning Ordinance, except to the extent development is permitted in accordance with the variance procedures of the Zoning Ordinance. The city shall, from time to time, evaluate those regulations to assure compliance with city goals.

Policy 6: Nonstructural solutions to problems of erosion or flooding shall be preferred to structural solutions. Where flood and erosion control structures are shown to be necessary, they shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns.

Policy 7: Engineering solutions or other measures to provide appropriate safeguards shall be required prior to issuance of building permits in identified hazardous areas if required by a geological report.

Goal 2: To protect and, where practical, enhance identified environmentally sensitive areas.

Policy 1: Identified environmentally sensitive areas shall be mapped on the Ocean Shorelands Map.

Policy 2: Residential development and commercial and industrial buildings shall be prohibited on active foredunes, conditionally stable foredunes that are subject to ocean undercutting or wave overtopping, and beaches and deflation plains that are subject to ocean flooding. Other development in these areas shall be permitted only if the findings required in Policy 8, below, are met and it is demonstrated that the proposed development:

- > Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; and
- > Is designed to minimize adverse environmental effects.

Policy 3: Foredunes shall not be breached by non-natural causes except in an emergency and shall be restored after the emergency by the party causing the breach.

Policy 4: The city shall cooperate with federal and state agencies, private individuals, and others in the determination of natural areas.

Policy 5: The city will complete the Goal 5 process for wetlands identified on the U.S. Fish and Wildlife Service Wetland Inventory maps by the next regularly scheduled periodic review.

Policy 6: Beach front protective structures may be permitted on properties identified as eligible on the "Goal 18 Beachfront Protective Structure Eligibility Inventory" prepared by the Department of Land Conservation and Development, dated April 30, 2014, or on properties where development existed on January 1, 1977. Development means houses, commercial and industrial buildings, and vacant subdivision lots that are physically improved through the construction of streets and the provision of utilities to the lot. Also included are areas where an exception to this Goal 18 requirement has been approved. The criteria for review of all shore and beach front protective structures shall provide that:

- > Visual impacts are minimized;
- > Necessary access to the beach is maintained;
- > Negative impacts on adjacent property are minimized; and
- > Long-term or recurring costs to the public are avoided.

Policy 7: Significant shoreland and wetland biological habitats and coastal headlands shall be protected. Uses in these areas shall be consistent with the protection of natural values.

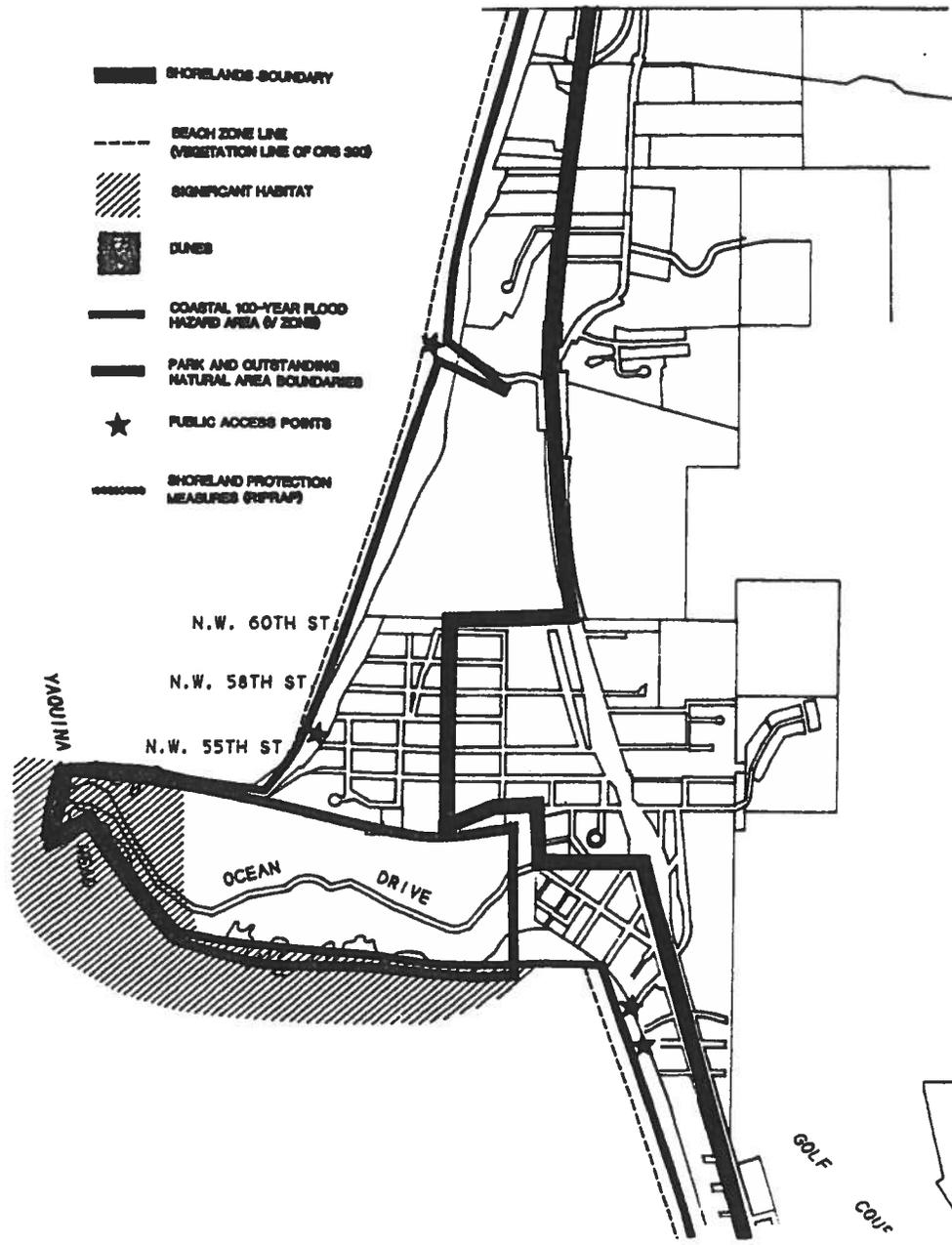
Policy 8: Development in beach and dune areas other than older, stabilized dunes shall only be permitted if the following issues are examined and appropriate findings are made:

- > The type of use proposed and the adverse effects it might have on the site and adjacent areas;
- > Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;

- > Methods for protecting the surrounding area from any adverse effects of the development; and
- > Hazards to life, public and private property, and the natural environment that may be caused by the proposed use.

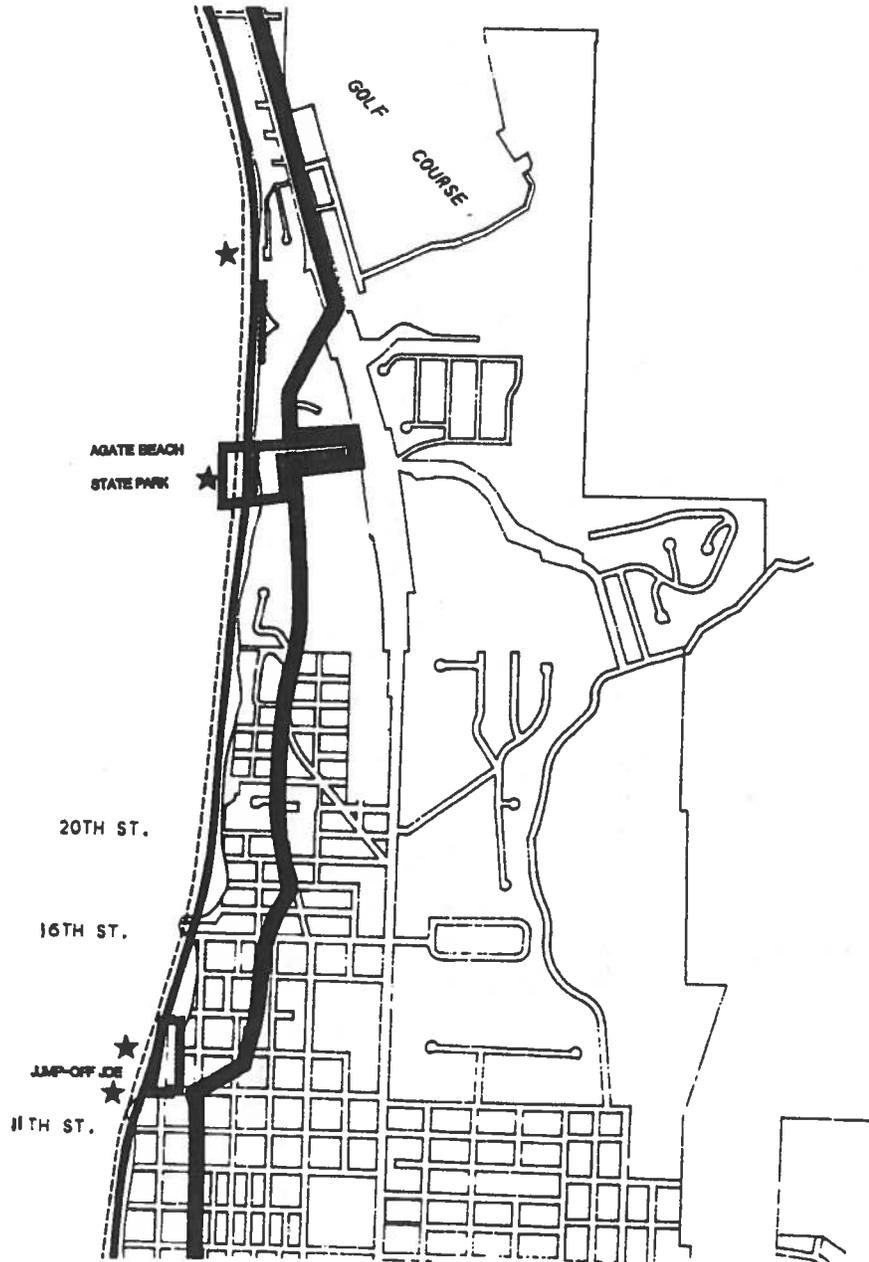
Policy 9: Excavations and fill shall be limited to those minimal areas where alteration is necessary to accommodate allowed development. Cleared areas, where vegetation is removed during construction, shall be revegetated or landscaped to prevent surface erosion and sedimentation of near shore ocean waters.

OCEAN SHORELANDS



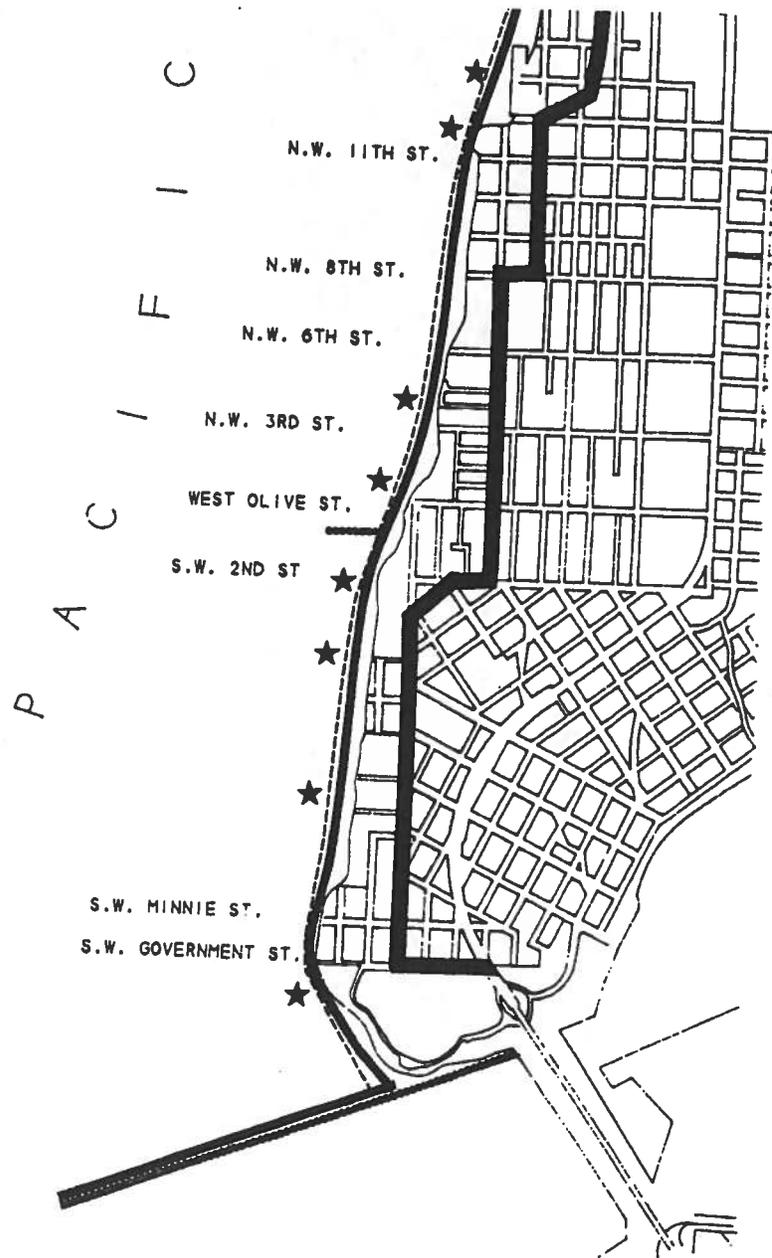
Page 50. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

OCEAN SHORELANDS



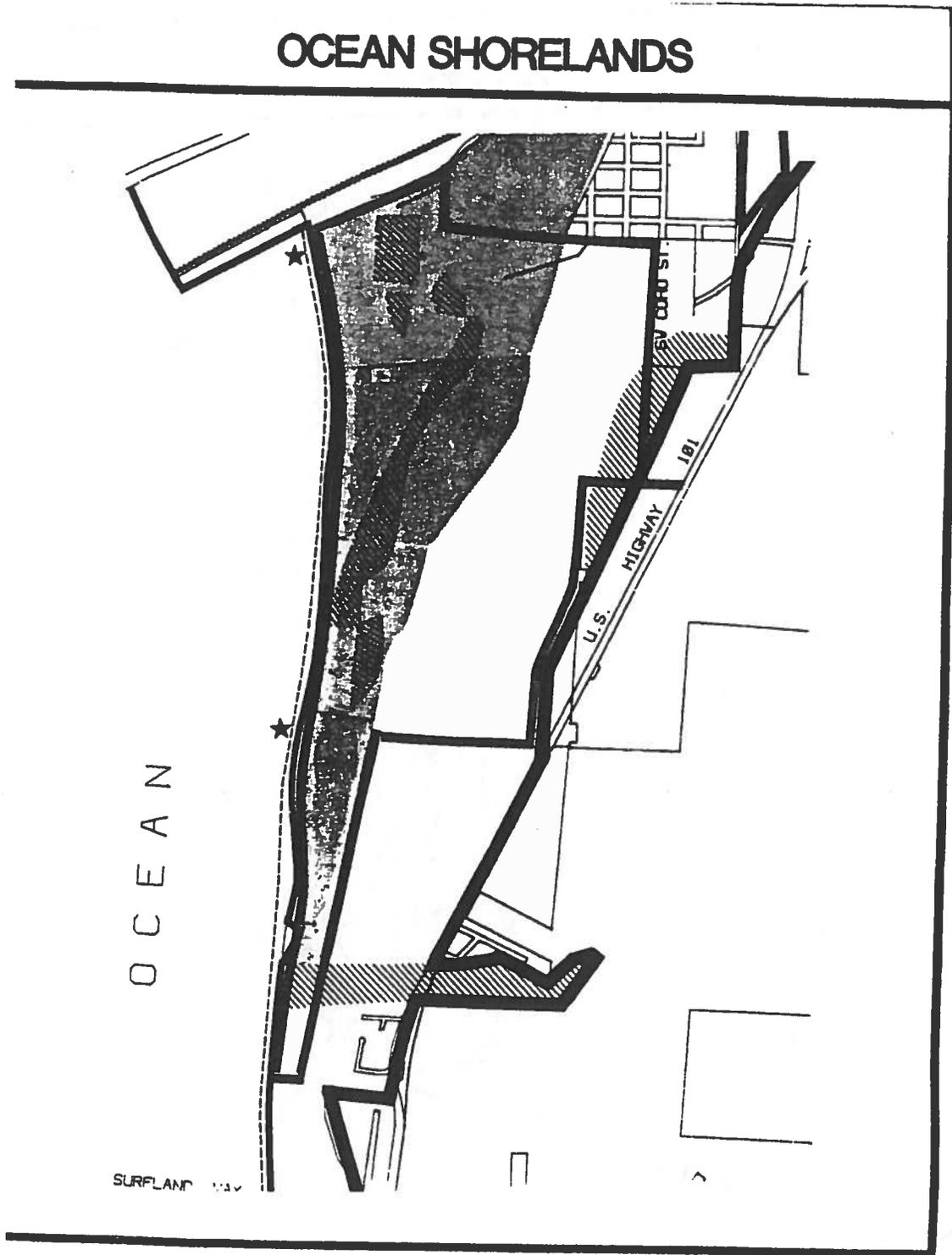
Page 51. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

OCEAN SHORELANDS



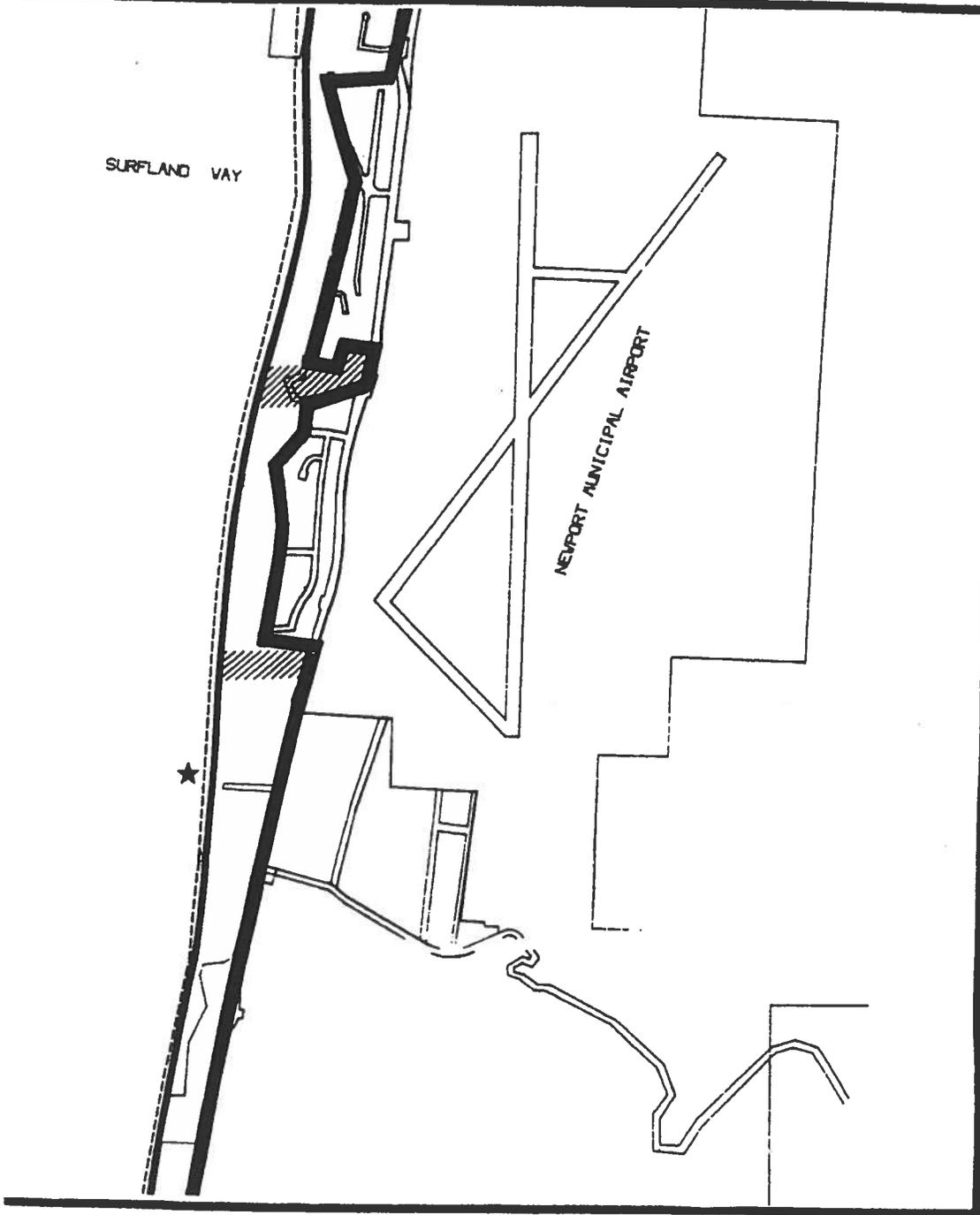
Page 52. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

OCEAN SHORELANDS



Page 53. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

OCEAN SHORELANDS



Page 54. CITY OF NEWPORT COMPREHENSIVE PLAN: Natural Features.

June 23, 2014 Markup Copy of Draft Amendments to Chapter 14.38 of the Newport Zoning Ordinance Relating to the Ocean Shorelands Overlay Zone

Formatting Note: New language is shown with a double underline. Deleted language is in ~~strikeout~~. Staff comments are shown in *italics*.

CHAPTER 14.38 OCEAN SHORELANDS OVERLAY ZONE

14.38.010 Purpose. It is the purpose of this section to recognize the value of the natural resources as identified on the Ocean Shorelands Map contained in the Comprehensive Plan and not addressed by other sections of this Ordinance, more specifically, significant habitat, park and outstanding natural areas, and public access points. This section, in conjunction with the various underlying zones, implements the Natural Features policies contained in the City of Newport Comprehensive Plan.

14.38.020 Definitions. For purposes of this section, the following definitions shall apply:

- A. Natural Resources: A significant habitat, park, and outstanding natural area or public access point as inventoried on the Ocean Shorelands Map contained in the Comprehensive Plan.
- B. Ocean Shorelands: Land with the Ocean Shorelands Boundary as shown on the Ocean Shorelands Map in the Comprehensive Plan.
- C. ~~Planning Director~~Community Development Director: The Planning Director for the City of Newport or designate.

14.38.030 Permitted Uses. Any permitted use or condition-al use authorized in the underlying zone may be permitted, subject to the applicable provisions of this Ordinance and the additional provisions of this overlay zone.

14.38.040 Procedure. Upon receipt of a request for a land use action or a building permit for property within the Ocean Shorelands, the ~~Planning Director~~Community Development Director shall determine which natural resource is applicable. Applicants requesting approval of land use actions or building permits within areas subject to the provisions of this section shall submit, along with any application, a detailed site plan and written statement demonstrating how the proposed activities will conform to applicable standards in the section.

Upon acceptance of the application, the Community Development Department shall process the request in accordance with a Type II Land Use Action decision process consistent with Section 14.52.001, Procedural Requirements.**

14.38.050 Standards for Review. The following standards for the applicable natural resource shall be used in considering the findings required in Section-2-5-7.04014.38.040:

- A. Significant Habitat.
 - 1. No residential, commercial, or industrial development shall be allowed within the boundaries of a significant habitat.

(* Section added by Ordinance No. 1344 (11-7-83); completely revised by Ordinance No. 1681 (8-16-93).

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

- 2. Development proposed adjacent to a significant habitat shall be located no closer than 50 feet from the habitat area.

3. Low intensity structural developments such as hiking trails, platforms for wildlife viewing, or similar types of educational, scientific, or recreational uses may be permitted within the boundaries of the significant habitat or the 50 foot setback area under the following conditions:
 - a. Such development shall not act as a barrier to fish or wildlife.
 - b. Such development shall not result in major disturbances or displacement of fish or wildlife.
 - c. Such development shall not alter a water course.
 - d. Such development shall not result in a permanent destruction of wetland vegetation.

B. Park and Outstanding Natural Area.

1. Residential, commercial, or industrial development is prohibited within a Park and Outstanding Natural Area boundary.
2. Development proposed adjacent to a Park and Outstanding Natural Area shall be located no closer than twenty-five (25) feet from the Park and Outstanding Natural Area.
3. The setback area required in (2), above, shall comply with the following:
 - a. Natural vegetation shall be maintained whenever possible.
 - b. If natural vegetation cannot be maintained, it shall be replaced within one year after issuance of a final occupancy permit. A bond may be required by the Planning Director to cover the cost of such replacement.

C. Public Access Points. Public access points shall be retained or replaced if sold, exchanged, or transferred.

D. Beachfront Protective Structures.

1. Beachfront protective structures, including riprap, revetments, or other manmade improvements intended to stabilize or support a slope, may only occur on property:
 - a. Identified as eligible on the "Goal 18 Beachfront Protective Structure Eligibility Inventory," prepared by the Department of Land Conservation and Development, dated April 30, 2014; or
 - b. Where development existed as of January 1, 1977. As used in this subsection, "development" means houses, commercial and industrial buildings, and vacant subdivision lots that are physically improved through the construction of streets and provision of utilities to the lot; or

c. That has been the subject of an exception to Statewide Planning Goal 18 to specifically authorize the installation of a beachfront protective structure.

2. Proposals to install beachfront protective structures on land that is entirely upslope of the State of Oregon beach zone line (ORS 390.770) shall demonstrate that:

a. Development on the property is threatened by coastal erosion or flooding; and

b. Non-structural solutions cannot adequately protect development on the property; and

c. Obstruction of existing views of the ocean and beaches from adjacent properties is minimized; and

d. Public ownership or use easement rights providing access to the ocean have been preserved; and

e. The project has been designed to avoid or minimize ocean erosion or safety problems for neighboring properties; and

f. Long-term or recurring costs to the public are avoided.

3. Proposals to install beachfront protective structures on any portion of a property that is seaward of the State of Oregon beach zone line are subject to review and approval by the Oregon Parks and Recreation Department (OPRD) pursuant to Chapter 736, Division 20 of the Oregon Administrative Rules. In such cases, the Community Development Director shall confirm that eligibility standards of NMC 14.38.050(D)(1) are satisfied and a copy of the OPRD authorization shall be provided prior to issuance of building permits.

Staff: The city is responsible for verifying eligibility of properties for beachfront protective structures under Statewide Planning Goal 18, irrespective of where the improvement will occur. However, with respect to the discretionary review criteria, the city may defer to OPRD for proposals that extend below the beach zone line. Discretionary criteria are those that address potential impacts to views, public access, neighboring properties, and long-term costs to the public. This is the approach that I have taken with the above revisions.

Alternatively, the city can structure its code to require a discretionary review for all projects involving the installation of beachfront protective structures. If this approach is taken, then OPRD may accept the city's findings as satisfying their review standards in cases where a project will occur below the beach zone line.

If the Commission believes that it is imperative that the City have a say in ensuring that adverse impacts associated with these types of structures be minimized in all cases, then it should ask that I amend the draft to indicate as much. Some additional criteria may be needed to ensure that OPRD is satisfied and will not need to undertake a duplicative review. If the Commission is comfortable deferring to OPRD on projects below the beach zone line, then the language listed above (or some variation of it) should suffice.

Oregon's Statewide Planning Goals & Guidelines

GOAL 18: BEACHES AND DUNES

OAR 660-015-0010(3)

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and

To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes, and dune vegetation for development.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for identifying and designating beach and dune uses and policies. Inventories shall describe the stability, movement, groundwater resource, hazards and values of the beach and dune areas in sufficient detail to establish a sound basis for planning and management. For beach and dune areas adjacent to coastal waters, inventories shall also address the inventory requirements of the Coastal Shorelands Goal.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon the inventory, comprehensive plans for coastal areas shall:

1. Identify beach and dune areas; and
2. Establish policies and uses for these areas consistent with the provisions of this goal.

IDENTIFICATION OF BEACHES AND DUNES

Coastal areas subject to this goal shall include beaches, active dune forms, recently stabilized dune forms, older stabilized dune forms and interdune forms.

USES

Uses shall be based on the capabilities and limitations of beach and dune areas to sustain different levels of use or development, and the need to protect areas of critical environmental concern, areas having scenic, scientific, or biological importance, and significant wildlife habitat as identified through application of Goals 5 and 17.

IMPLEMENTATION REQUIREMENTS

1. Local governments and state and federal agencies shall base decisions on plans, ordinances and land use actions in beach and dune areas, other than older stabilized dunes, on specific findings that shall include at least:

- (a) The type of use proposed and the adverse effects it might have on the site and adjacent areas;
- (b) Temporary and permanent stabilization programs and the planned

maintenance of new and existing vegetation;

(c) Methods for protecting the surrounding area from any adverse effects of the development; and

(d) Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

2. Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if the findings required in (1) above are presented and it is demonstrated that the proposed development:

(a) Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and

(b) Is designed to minimize adverse environmental effects.

3. Local governments and state and federal agencies shall regulate actions in beach and dune areas to minimize the resulting erosion. Such actions include, but are not limited to, the destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage), the exposure of stable and conditionally stable areas to erosion, and construction of shore structures which modify current or wave patterns leading to beach erosion.

4. Local, state and federal plans, implementing actions and permit reviews shall protect the groundwater

from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies. Building permits for single family dwellings are exempt from this requirement if appropriate findings are provided in the comprehensive plan or at the time of subdivision approval.

5. Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. Local comprehensive plans shall identify areas where development existed on January 1, 1977. For the purposes of this requirement and Implementation Requirement 7 "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved. The criteria for review of all shore and beachfront protective structures shall provide that:

(a) visual impacts are minimized;

(b) necessary access to the beach is maintained;

(c) negative impacts on adjacent property are minimized; and

(d) long-term or recurring costs to the public are avoided.

6. Foredunes shall be breached only to replenish sand supply in interdune areas, or on a temporary basis in an emergency (e.g., fire control, cleaning up oil spills, draining farm lands, and alleviating flood hazards), and only if the breaching and restoration after breaching is consistent with sound principles of conservation.

7. Grading or sand movement necessary to maintain views or to prevent sand inundation may be allowed for structures in foredune areas only if

the area is committed to development or is within an acknowledged urban growth boundary and only as part of an overall plan for managing foredune grading. A foredune grading plan shall include the following elements based on consideration of factors affecting the stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties. The plan shall:

(a) Cover an entire beach and foredune area subject to an accretion problem, including adjacent areas potentially affected by changes in flooding, erosion, or accretion as a result of dune grading;

(b) Specify minimum dune height and width requirements to be maintained for protection from flooding and erosion. The minimum height for flood protection is 4 feet above the 100 year flood elevation;

(c) Identify and set priorities for low and narrow dune areas which need to be built up;

(d) Prescribe standards for redistribution of sand and temporary and permanent stabilization measures including the timing of these activities; and

(e) Prohibit removal of sand from the beach-foredune system.

The Commission shall, by January 1, 1987, evaluate plans and actions which implement this requirement and determine whether or not they have interfered with maintaining the integrity of beach and dune areas and minimize flooding and erosion problems. If the Commission determines that these measures have interfered it shall initiate Goal amendment

proceedings to revise or repeal these requirements.

GUIDELINES FOR GOAL 18

The requirements of the Beaches and Dunes Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to beaches and dune areas and implementation of the Beaches and Dunes Goal.

Beaches and dunes, especially interdune areas (deflation plains) provide many unique or exceptional resources which should be addressed in the inventories and planning requirements of other goals, especially the Goals for Open Space, Scenic and Historic Areas and Natural Resources; and Recreational Needs. Habitat provided by these areas for coastal and migratory species is of special importance.

A. INVENTORIES

Local government should begin the beach and dune inventory with a review of Beaches and Dunes of the Oregon Coast, USDA Soil Conservation Service and OCCDC, March 1975, and determine what additional information is necessary to identify and describe:

1. The geologic nature and stability of the beach and dune landforms;
2. Patterns of erosion, accretion, and migration;
3. Storm and ocean flood hazards;

4. Existing and projected use, development and economic activity on the beach and dune landforms; and
5. Areas of significant biological importance.

B. EXAMPLES OF MINIMAL DEVELOPMENT

Examples of development activity which are of minimal value and suitable for development of conditionally stable dunes and deflation plains include beach and dune boardwalks, fences which do not affect sand erosion or migration, and temporary open-sided shelters.

C. EVALUATING BEACH AND DUNE PLANS AND ACTIONS

Local government should adopt strict controls for carrying out the Implementation Requirements of this goal. The controls could include:

1. Requirement of a site investigation report financed by the developer;
2. Posting of performance bonds to assure that adverse effects can be corrected; and
3. Requirement of re-establishing vegetation within a specific time.

D. SAND BY-PASS

In developing structures that might excessively reduce the sand supply or interrupt the longshore transport or littoral drift, the developer should investigate, and where possible, provide methods of sand by-pass.

E. PUBLIC ACCESS

Where appropriate, local government should require new developments to dedicate easements for public access to public beaches,

dunes and associated waters. Access into or through dune areas, particularly conditionally stable dunes and dune complexes, should be controlled or designed to maintain the stability of the area, protect scenic values and avoid fire hazards.

F. DUNE STABILIZATION

Dune stabilization programs should be allowed only when in conformance with the comprehensive plan, and only after assessment of their potential impact.

G. OFF-ROAD VEHICLES

Appropriate levels of government should designate specific areas for the recreational use of off-road vehicles (ORVs). This use should be restricted to limit damage to natural resources and avoid conflict with other activities, including other recreational use.

H. FOREDUNE GRADING PLANS

Plans which allow foredune grading should be based on clear consideration of the fragility and ever-changing nature of the foredune and its importance for protection from flooding and erosion. Foredune grading needs to be planned for on an area-wide basis because the geologic processes of flooding, erosion, sand movement, wind patterns, and littoral drift affect entire stretches of shoreline. Dune grading cannot be carried out effectively on a lot-by-lot basis because of these areawide processes and the off-site effects of changes to the dunes.

Plans should also address in detail the findings specified in Implementation Requirement (1) of this Goal with special emphasis placed on the following:

- **Identification of appropriate measures for stabilization of graded areas and areas of deposition, including use of fire-resistant vegetation;**
- **Avoiding or minimizing grading or deposition which could adversely affect surrounding properties by changing wind, ocean erosion, or flooding patterns;**
- **Identifying appropriate sites for public and emergency access to the beach.**

DIVISION 20

BEACH CONSTRUCTION/ALTERATION STANDARDS

736-020-0001

Scope and Purpose

These rules implement the statutory mandates in ORS 390.605 to 390.660 and 390.690 to 390.770 to protect and preserve the scenic and recreational values and public rights in the ocean shore, permit certain types of development according to standards of review and grant emergency permits where property is in imminent peril of destruction by the Pacific Ocean or natural forces. The purpose of these rules is to describe the permitting requirements, fees, review standards, permit conditions, enforcement measures and administrative relief opportunities that apply to applicants for permits to make improvements on the ocean shore, construct pipelines, cables or conduits across the ocean shore, or to remove products along the ocean shore.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0002

Definitions

- (1) "Alteration" -- means "improvement" as that term is defined by statute, ORS 390.605(1), and included in these definitions at OAR 736-020-0002(9).
- (2) "Commission" -- means the Oregon Parks and Recreation Commission.
- (3) "Construction Value" -- means the costs of labor, equipment, materials, and all contractor fees, where those costs are incurred by the applicant or the applicant's agent(s).
- (4) "Department" -- means the Oregon Parks and Recreation Department.
- (5) "Director" -- means the Oregon Parks and Recreation Director.
- (6) "Emergency Permit" -- means a written or oral permit for a new improvement, or the repair, replacement or restoration of an existing or authorized improvement, deemed necessary to protect property or property boundaries in imminent peril of being destroyed or damaged by action of the Pacific Ocean or the waters of a bay or river.
- (7) "Fill" -- means the total of deposits, by artificial means, of material at any one location within the boundaries of the ocean shore.
- (8) "Imminent Peril" -- means a situation in which property is likely to be severely damaged or destroyed by action of the Pacific Ocean or waters of a bay or river, or by landslide or other natural forces, and where such damage would be likely to occur prior to the time required for approval of an Ocean Shore Permit.
- (9) "Improvement" -- means filling a portion of the ocean shore; removal of material from the ocean shore; or a structure, appurtenance or other addition, modification or alteration constructed, placed or made on or to the land (ORS 390.605(1)). For the purpose of these rules, the term "alteration" shall be used in place of "improvement" except as otherwise specified in these rules.
- (10) "Just Compensation" -- means payment(s) of cash, or other legally acceptable valuable consideration, as compensation to the State of Oregon for the right to construct or occupy the ocean shore with a pipeline, cable or conduit or gather natural products from the ocean shore for commercial use or private gain.
- (11) "Line of Established Upland Shore Vegetation" -- means that line along the Pacific Ocean shore where upland vegetation cover becomes continuous; or, where minor gaps, breaks or landward indentations in the line of continuous vegetation occur, the projected line across the gap, break or landward indentation connecting the line of continuous vegetation on either side.
- (12) "Material" -- means rock, gravel, sand, silt, and other inorganic substances removed from the ocean shore and any materials, organic or inorganic placed within the ocean shore.
- (13) "Ocean Shore" -- means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800 (ORS 390.605 (2)). For purposes of these rules, at the mouth of estuaries, the inland extent of the ocean shore extends only to that point at which the statutory vegetation line crosses the estuary.

(14) "Ocean Shore Permit" -- means a permit for a structure, appurtenance or other addition, modification or alteration, including habitat restoration, constructed, placed or made on the ocean shore as required by the provisions of ORS 390.640; a permit for a pipeline, cable line, or conduit placed or made across or under the ocean shore as required by the provisions of ORS 390.715; or a permit for the removal of products from the ocean shore as required by the provisions of ORS 390.725.

(15) "Property" -- means an upland building, road, street, highway, sewer or water line, or other infrastructure improvement.

(16) "Public Agencies" -- means federal and state agencies, local governments, and municipal and quasi-municipal jurisdictions designated under Oregon law.

(17) "Removal" -- means the taking of material from the ocean shore, or the movement, alteration or displacement of material on the ocean shore by artificial means.

(18) "Responsible Party" -- means the person(s), including the landowner, applicant or permittee and their contractors or agents, or the company, organization, local, state or federal agency or other entity in violation of the ocean shore statutes, rules, standards, permit conditions or order of the Director, pertaining to an improvement project; pipeline, cable or conduit project; or natural product removal project on the ocean shore.

(19) "State Recreation Area" -- means a land or water area, or combination thereof, under the jurisdiction of the State Parks and Recreation Department used by the public for recreational purposes (ORS 390.605(3)).

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0003

Ocean Shore Permit Application Review Process

(1) In accordance with ORS 390.640, 390.715, and 390.725, no person shall make an alteration, or construct a pipeline, cable line or conduit or remove any natural product on any property that is within the ocean shore, without first obtaining a permit to do so from the Department in accordance with the provisions of OAR 736-020-0003 through 0032, 736-020-0035, or 736-020-0040 as described in these rules, except as provided by section (9) of this rule.

(2) Any person desiring to construct an ocean shore alteration, under ORS 390.640; or place any pipeline, cable line, or other conduit over, across or under the state recreation area or submerged lands adjoining the ocean shore under ORS 390.715; or remove sand, rock, mineral or marine growth or other natural product of the ocean shore for trade, sale, resale or for use in the production, manufacture, fabrication or marketing of a commercial product under ORS 390.725, except as provided by section (9) of this rule, shall submit an application to the Department. It shall be in such form as may be prescribed by the Department and shall be signed by the party, parties, or the authorized agent for the party or parties seeking the permit. Such application:

(a) If for an alteration (improvement) under ORS 390.640, shall contain a description of the proposed project, the location thereof and any other information so prescribed on the application form; and

(b) If for an ocean front protective structure, shall be accompanied by an analysis of hazard avoidance alternatives, including relocation of existing buildings or other infrastructure, or increased setbacks for new buildings or infrastructure. Such analysis shall describe why hazard avoidance alternatives are not feasible, or if tried, why they were not successful. Relevant factors may include topographic limitations, limits of area for relocation, or cost. If the cost of moving a building or infrastructure is listed as a factor which makes hazard avoidance unfeasible, then the application shall include cost estimate(s) from licensed contractors specializing in building relocation; and

(c) If for an ocean front protective structure greater than 50 feet in length, shall be accompanied by a report from a registered professional geologist experienced in coastal processes that describes:

(A) The potential impacts from the proposed project on sand source, supply and movement on the affected beach as well as within the same littoral cell;

(B) The bank or bluff stability and erosion rates on the subject property and adjacent properties and the potential impacts of the proposed project on bluff stability and erosion rates on the subject and adjacent properties;

(C) A review of potential non-structural solutions, including, but not limited to, vegetative stabilization, non-structural dynamic revetments and foredune enhancement. The review shall describe reasons why non-structural solutions were unsuccessful, if tried, or why they were considered unfeasible.

- (D) The known or suspected geologic and seismic hazards in the project area and how the proposed project may affect or be impacted by those geologic and seismic hazards.
- (d) If for a pipeline, cable line or other conduit under ORS 390.715, shall contain proposed plans for the work indicating the location, nature, scope and purpose of the project, the materials and equipment to be used and the estimated time for completion; or
- (e) If for natural product removal under ORS 390.725, shall contain a description of the material to be removed, the location thereof, the method of removal (including a description of equipment to be used), the amount thereof, the purpose for which it shall be used and the time and duration of removal.
- (f) Shall include the names of all ocean front property owners owning property that abuts the property described in the application.
- (3) Upon receipt of a satisfactory and complete permit application, the site of the proposed project will be posted with a public notice for a period of not less than 30 days. The notice shall contain the name of the applicant, a description of the proposed improvement, pipeline, cable line or conduit or natural product removal project and such other details of the project as the Department may deem of interest to the public.
- (4) In addition to the notice described in section (3) of this rule, notice of the application shall be provided to adjacent, oceanfront landowners, with property boundaries common to those of the property described in the application.
- (5) During the period specified in the public notice described in section (3) of this rule, the applicant or any member of the public may request a hearing on the proposed project. Such requests for hearing shall be in writing, and if filed by persons other than the applicant, shall state the interests in the proposed project of the person making the request. The Department may schedule and hold a public hearing on any application on the Director's initiative.
- (6) If timely, written requests for a hearing are received from the applicant, or 10 or more other persons, or the Director decides a hearing is necessary, the Department shall schedule and hold a public hearing prior to acting on the project application.
- (7) Following the public hearing on a project application, or, if no public hearing was held, after the time for requesting a public hearing has expired, consideration will be given to determine if the granting of such permit would in any way be detrimental to the interests and safety of the public and to the preservation of the natural resource, scenic, recreational and economic values of the ocean shore.
- (8) In addition to the requirements and considerations in sections (1) through (7) of this rule, the Department shall also apply those standards set forth in OAR 736-020-0005 through 736-020-0030.
- (9) The Department may waive the permitting requirements described in this rule for those structures and appurtenances or other additions constructed or placed on the ocean shore, or removal or fill activities conducted on the ocean shore, which meet one or more of the following conditions:
- (a) The alteration would have no identifiable construction value;
 - (b) The alteration involves the removal or fill of less than 50 cubic yards of material on the ocean shore;
 - (c) The alteration is an incident of an individual or group recreational activity; and
 - (d) The alteration utilizes materials naturally available on the ocean shore.
 - (e) The alteration consists of returning sand or other natural product to the ocean shore, when necessary to clear public access routes, protect buildings from sand or debris inundation, or protect other public or private infrastructure.
- (10) The Department shall give notice of any application for a project under ORS 390.640, 390.715, OR 390.725, hearing on such an application, or decision to approve or deny such an application, to any person making written request for such notice.
- (11) Prior to the issuance of any permit under these rules and regulations, the Department shall send copies of the application to:
- (a) The Department of Fish and Wildlife;
 - (b) The Department of Geology and Mineral Industries;
 - (c) The Division of State Lands;
 - (d) The Department of Land Conservation and Development;
 - (e) The State Historic Preservation Office;

(f) Any Indian tribe identified by the Legislative Commission on Indian services as having a potential interest in the proposed project; and

(g) Any other appropriate agency, for their comments and recommendations.

(12) As part of the applicant's application materials, appropriate information shall be submitted regarding necessary permits, or other necessary authorization from any affected unit of local, state or federal government.

(13) In the event it is determined that the issuance of a permit hereunder will affect property not owned by the applicant, the Department shall withhold the issuance of such permit until such time as the applicant shall have obtained an easement, license, or other written authorization from fee owner of such land. Such easement, license, or other written authority, shall meet the approval of the Department, except as to the compensation to be paid to the private fee owner.

(14) At its option, and prior to the issuance of any permit under ORS 390.715 or 390.725, the Department may require the applicant to obtain liability insurance in an amount prescribed by the Department, insuring against any and all property damage or personal injury which might arise out of the work or project covered by the proposed permit. In the event the same is required by the Department, the applicant shall produce satisfactory evidence of such insurance in the form of a certificate from the insuring company indicating that such insurance is in effect; and further that such insurance will not be cancelled without first giving ten days prior notice thereof to the Department.

Stat. Auth.: ORS 183.545, ORS 184, ORS 390.605 et seq. & ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: PR 12-1984, f. & ef. 12-12-84; PR 8-1992, f. & cert. ef. 11-12-92; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0004

Fees

(1) Fees -- each application filed under ORS 390.640, for an alteration on the ocean shore shall be accompanied by a processing fee for the purpose of partial recovery to the department of its administrative costs. The fee shall be determined according to the construction value of the project. The application processing fee shall be:

(a) \$400 for projects with a construction value less than \$2,500; and

(b) \$400 plus three percent of the construction value over \$2,500 for projects with a construction value equal to or greater than \$2,500.

(2) In determining the construction value of a proposed project, the Department:

(a) May consider the entire project, not just that portion on the ocean shore. Examples of, but not the only, projects where the entire alteration may be considered in establishing construction value include, ocean shore protective structures such as riprap revetments, concrete seawalls, and other hard structures of wood, metal, rock or concrete; dynamic revetments, log, cobble and sand berms and other non-structural forms of ocean shore protection;

(b) May, in its discretion, consider only that portion of a project on the ocean shore. Examples of, but not the only, projects where only that portion of the alteration on the ocean shore may be considered in establishing construction value include, stairways, ramps and other access and viewing facilities, sand removal, beach nourishment, dune grading and vegetation management;

(c) May assess only the base fee to public agencies proposing projects whose primary purpose is to improve public access to the ocean shore, or maintain, repair or replace existing public infrastructure on the ocean shore regardless of construction value;

(d) May waive the application fee for public agency applications proposing projects that would have the primary purpose of enhancing the natural, resource, scenic, recreational and economic values of the ocean shore, or restoring native beach or dune habitat, contributing to the recovery of sensitive species, including state and federally listed threatened and endangered species or otherwise benefitting the native biological values of the ocean shore.

(3) Evidence the Department may consider in establishing the construction value of a project shall include:

(a) Itemized estimates from licensed, bonded, contractors;

(b) Construction values accepted by the county or city for purposes of issuing local permits;

(c) Itemized costs of equipment rental and other such charges if the project is completed by the property owner;

(d) Estimates that reflect unit costs typically associated with the type, quality and standards of construction proposed in the application; and

(e) Other evidence of costs acceptable to the Department if (a), (b), (c), or (d) of this section are not available.

(4) The Department may require an applicant to provide additional information, supporting evidence or seek additional independent bids for a project if the Department believes the project costs represented by the applicant are not reflective of costs typically associated with the type, quality and standards of construction proposed in the application.

(5) Refunds – if a written request is received to withdraw an application, application fees may be refunded according to the following schedule:

(a) If the application is withdrawn within the first three working days following the date of submittal, the entire application fee shall be refunded;

(b) If the application is withdrawn prior to the close of the 30-day notice posting period described in ORS 390.650(3), one-half of the amount in excess of the \$400 basic application fee shall be refunded;

(c) No refund shall be made for an application withdrawn more than 30 days after the date of submittal.

(6) No fee reductions shall be allowed for modifications to an application, made after an application is submitted to the Department, that result in a reduced construction value.

(7) The Department may assess such additional fees as it determines necessary to cover increased construction value resulting from modifications to a proposed project made after the application is submitted to the Department. In assessing such additional fees, the Department shall be governed by the provisions of sections (1) through (4) of this rule.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0005

Factors Evaluated

(1) Each site on the ocean shore presents different conditions and applicants have varying project needs. Evaluations point up the relative significance of the general, scenic, recreational, safety, and other interests of the public. In acting on any application for an ocean shore permit under ORS 390.640, 390.715 or 390.725, the Department shall consider:

(a) Provisions necessary to protect the affected area from any use, activity or practice that is not in keeping with the conservation of natural resources or public recreation;

(b) The public need for healthful, safe, esthetic surroundings and conditions; the natural, scenic, recreational, economic and other resources of the area and the present and prospective need for conservation and development of those resources;

(c) The physical characteristics or the changes in the physical characteristics of the area, and the suitability of the area for particular uses and improvements (This may include bank alignments, topography, shoreline materials and stability, width of the beach, past erosion, storm water levels, sand movement, water currents, adjoining structures, beach access, land uses, etc.);

(d) The land uses, including public recreational use; the improvements in the area; the trends in land uses and improvements; the density of development; and the need for access to particular sites in the area.

(e) The need for recreation and other facilities and enterprises in the future development of the area and the need for access to particular sites in the area.

(2) Public opinion in response to public notice or hearings on an application shall be considered in evaluating each proposed ocean shore project.

(3) Considered together, and in accordance with the intent of the Legislature, the factors listed in sections (1) and (2) of this rule assist in the overall decision for granting, an ocean shore permit, or denying, or modifying the ocean shore permit application when the level of impact is determined to be unacceptable.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 -- ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 6-1999(Temp), f. & cert. ef. 11-10-99 thru 5-8-00; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0010

General Standards

The following general standards shall be applied, where applicable, to each application for an ocean shore permit:

- (1) Project Need -- There shall be adequate justification for the project to occur on and alter the ocean shore area.
- (2) Protection of Public Rights -- Public ownership of or use easement rights on the ocean shore shall be adequately protected.
- (3) Public Laws -- The applicant shall comply with federal, state, and local laws and regulations affecting the project.
- (4) Alterations and Project Modifications -- There are no reasonable alternatives to the proposed activity or project modifications that would better protect the public rights, reduce or eliminate the detrimental affects on the ocean shore, or avoid long-term cost to the public.
- (5) Public Costs -- There are no reasonable special measures which might reduce or eliminate significant public costs. Prior to submission of the application, the applicant shall consider alternatives such as nonstructural solutions, provision for ultimate removal responsibility for structures when no longer needed, reclamation of excavation pits, mitigation of project damages to public interests, or a time limit on project life to allow for changes in public interest.
- (6) Compliance with LCDC Goals -- The proposed project shall be evaluated against the applicable criteria included within Statewide Land Conservation and Development Goals #5: Natural Resources, Scenic and Historic Areas, and Open Spaces, #17: Coastal Shorelands, #18: Beaches and Dunes, and #19: Ocean Resources, and other appropriate statewide planning goals. In accordance with the Statewide Land Conservation and Development Commission Goal #18, permit applications for beachfront protective structures on the ocean shore shall be considered only where development existed on January 1, 1977. The project shall be consistent with local comprehensive plans where such plans have been approved by LCDC. When the application is for a pipeline, cable line or conduit under ORS 390.715, the project shall be consistent with Statewide Planning Goal #19, Ocean Resources, and applicable requirements of the Oregon Territorial Sea Plan.

Stat. Auth.: ORS 184 & ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PR 12-1984, f. & ef. 12-12-84

736-020-0015

Scenic Standards

Projects on the ocean shore shall be designed to minimize damage to the scenic attraction of the ocean shore area. The following scenic standards shall be applied, where applicable, to each application for an ocean shore permit.

- (1) Natural Features -- The project shall retain the scenic attraction of key natural features, for example, beaches, headlands, cliffs, sea stacks, streams, tide pools, bedrock formations, fossil beds and ancient forest remains.
- (2) Shoreline Vegetation -- The project shall retain or restore existing vegetation on the ocean shore when vital to scenic values.
- (3) View Obstruction -- The project shall avoid or minimize obstruction of existing views of the ocean and beaches from adjacent properties.
- (4) Compatibility with Surroundings -- The project shall blend in with the existing shoreline scenery (type of construction, color, etc.).

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 -- ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0020

Recreation Use Standards

The following recreation use standards shall be applied, where applicable, to each application for an ocean shore permit.

- (1) Recreation Use -- The project shall not be a detriment to public recreation use opportunities within the ocean shore area except in those cases where it is determined necessary or legally required to protect sensitive biological resources such as state or federally listed species.
- (2) Recreation Access -- The project shall avoid blocking off or obstructing public access routes within the ocean shore area except in those cases where it is determined necessary or legally required to protect sensitive biological resources such as state or federally listed species.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0025

Safety Standards

The project shall be designed to avoid or minimize safety hazards to the public and shoreline properties. The following safety standards shall be applied, where applicable, to each application for an ocean shore permit.

- (1) Structural Safety -- The project shall not be a safety hazard to the public due to inadequate structural foundations, lack of bank stability, or the use of weak materials subject to rapid ocean damage.
- (2) Obstructional Hazards -- The project shall minimize obstructions to pedestrians or vehicles going onto or along the ocean shore area.
- (3) Neighboring Properties -- The project shall be designed to avoid or minimize ocean erosion or safety problems for neighboring properties.
- (4) Property Protection -- Beachfront property protection projects shall be designed to accomplish a reasonable degree of increased safety for the on-shore property to be protected.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0030

Natural and Cultural Resource Standards

- (1) Projects on the ocean shore shall avoid or minimize damage to the following natural resources, habitat, or ocean shore conditions, and where applicable, shall not violate state standards:
 - (a) Fish and wildlife resources including rare, threatened or endangered species and fish and wildlife habitats.
 - (b) Estuarine values and navigation interests.
 - (c) Historic, cultural and archeological sites.
 - (d) Natural areas (vegetation or aquatic features).
 - (e) Air and water quality of the ocean shore area.
 - (f) Areas of geologic interest, fossil beds, ancient forest remnants.
- (2) When necessary to protect native plant communities or fish and wildlife habitat on the subject or adjacent properties, only native, non-invasive, plant species shall be used for revegetation.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: HC 1221, f. 4-21-70; 1 OTC 6-1978, f. & ef. 4-5-78; PRD 7-2000, f. & cert. ef. 5-10-00

736-020-0032

Permit Conditions

- (1) All permits issued under these Division 20 rules may be conditioned to avoid, minimize or mitigate impact to the ocean shore, assure public safety, preserve the natural, scenic, recreational and economic values of the ocean shore and require the applicant to comply with the rules of other federal, state, and local agencies with jurisdiction over the permitted activity.
- (2) The following conditions shall apply to any permit for a project authorized by the Department under ORS 390.640, 390.715, or 390.725.
 - (a) Permittee shall agree to save and hold harmless the State of Oregon, the Commission, and its members, and all officers, agents and employees of the Department, from any claim, suit or action whatsoever for damages to property, or injury or death to any person or persons due to negligence of permittee, its or their officers, agents or employees, and arising out of the performance of any work or project covered by the granting of a permit.
 - (b) In no event shall the issuance of any permit hereunder be construed as a sale, lease, granting of easement or any form of conveyance of the state recreational area, ocean shore or submerged lands.

(c) As a condition to the granting of a permit hereunder, the Department may, in its discretion, require the permittee to provide a cash or performance bond in an amount sufficient to assure full compliance with the terms of the permit.

(d) The duration of any permit granted hereunder shall be solely within the discretion of the Department. The Director may revoke, suspend or not renew an ocean shore permit only after giving notice and opportunity for a hearing as provided in ORS 183.415 to 183.430, 183.440 to 183.460, and 183.470.

(e) The permittee shall comply with the provisions of ORS 390.235 through 390.240, ORS 358.905 through 358.955, and OAR 736-051-0060 through 736-051-0090 as these statutes and other statutes and rules affect the discovery, excavation, salvage, removal and disposition of archaeological resources and the permitting requirements for these activities as they affect archaeological sites on public and private land.

(f) If, during the period covered by any permit, the permittee shall fail to comply with the conditions provided herein and otherwise imposed by the Department, the Department shall exercise its authority under Oregon Laws 1999, Chapter 373, and the provisions of OAR 736-020-0100 to cease any further activity by the permittee on the ocean shore except as directed by the Department. In such circumstances, the Department may assess a civil penalty according to the provisions of OAR 736-080-0005 through 736-080-0070.

(3) In addition to the permit conditions listed in sections (1) and (2) of this rule, for any permit issued under ORS 390.640, the permittee shall file with the county clerk in the county where the permit applies, a Memorandum of Permit Issued, to be attached to the deed for the property where the permit applies. The permittee shall pay any and all filing and recording costs and shall supply to the Director a copy of the recorded instrument as proof of compliance with this permit condition.

(4) In addition to the permit conditions listed in sections (1) and (2) of this rule, the following conditions shall also apply to permits for projects authorized by the Department under ORS 390.715.

(a) If at any time subsequent to the installation of a pipeline, cable or conduit, the physical characteristics of the state recreation area, ocean shore or submerged lands shall change, whether due to natural or other causes, and by reason thereof the location of such pipeline, cable or conduit shall constitute a hazard to the public or is thereby detrimental to the preservation of the economic, scenic, and recreational value of the ocean shore, the permittee shall, at the request of the Department, make such changes in the location and installation thereof as will eliminate such hazard or detrimental condition. In any event, no permit shall be granted for the construction and installation of any pipeline, cable line, or other conduit, less than 2-1/2 feet below the lowest known surface elevation of the ocean shore, state recreational areas, or submerged lands.

(b) The Department may, where it deems necessary, require the permittee to agree to protect the state from any damages which might result from leaks, breaks or other malfunctions of the subject pipeline, cable or conduit.

(c) The permittee shall submit "as built" drawings following the completion of any pipeline, cable line, or conduit constructed on the ocean shore.

(d) The permittee shall notify the Department in writing at such time as any pipeline, cable line, conduit, or any portion of any pipeline, cable line or conduit authorized by an ocean shore permit and belonging to the permittee shall be sold or otherwise transferred to another party.

Stat. Auth.: ORS 183.545, ORS 184, ORS 390.605 et seq. & ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: PR 12-1984, f. & ef. 12-12-84; PR 8-1992, f. & cert. ef. 11-12-92; PRD 7-2000, f. & cert. ef. 5-10-00

Governing the Removal of Sand, Rock, Minerals, and Marine Growth or Other Natural Products of the Ocean Shore

736-020-0035

Natural Product Removal from the Ocean Shore: Exceptions, Compensation

(1) In accordance with ORS 390.725, natural products of the ocean shore, such as agates, small amounts of marine algae, driftwood or souvenirs of the ocean shore, may be taken by any person, for their own, noncommercial use, from the State recreation areas as described by ORS 390.635, without a permit, except that no person shall collect any amount of natural product of the ocean shore where prohibited by state or federal regulation or right of private ownership.

(2) Each natural product removal permit issued by the Department shall specify an amount and/or form of just compensation to be paid by the permittee. At the Department's discretion, just compensation may be comprised of any combination of the following:

(a) A flat fee ;

- (b) A flat fee plus reporting requirements as specified by the Department;
 - (c) A percentage, not to exceed three percent, of the applicant's gross revenues resulting from the sale of the ocean shore product;
 - (d) A fee rate per measure, such as weight or volume, not to exceed three percent of the applicant's gross revenues resulting from the sale of the ocean shore product;
 - (e) Administrative costs to the State of processing the application, issuing the permit, and monitoring the project for permit compliance.
- (3) At its discretion, the Department may schedule payment of just compensation over the life of the permit to reflect changing market values, variations in the volume of natural product removal and the availability of the natural product being harvested. Failure of the permittee to make any scheduled payment of just compensation shall be cause for the Department to revoke the permit.
- (4) Just compensation payments made under section (2) of this rule are subject to ORS 273.105(2). In accordance with this statute, just compensation payments in excess of the Department's administrative costs of reviewing and processing the application, issuing and administering the permit, and monitoring the project, shall be deposited into the Common School Fund as provided by ORS 273.105(2).

Stat. Auth.: ORS 183.545, ORS 189, ORS 390.605 et seq. & ORS 390.124

Stats. Implemented: ORS 390.605 - ORS 390.770 & ORS 390.990 - ORS 390.995

Hist.: 1 OTC 1215, f. 2-10-1970; PR 11-1984, f. & ef. 12-12-84; PR 8-1992, f. & cert. ef. 11-12-92; PRD 7-2000, f. & cert. ef. 5-10-00

- c. Accessory structures for on-site subsurface sewage disposal systems may not be located oceanward of the primary structure on the subject property unless the following provisions are met:
 - (1) The primary structure on the subject property is an authorized residential, commercial, or industrial structure in existence as of October 28, 1992;
 - (2) The accessory structure is required for repair of an existing disposal system, and there is no viable alternative system or location landward of the primary structure; and
 - (3) The owner of the subject property submits an affidavit to the Department acknowledging that the property owner has been informed an oceanfront protective structure will not be authorized to protect the disposal system against erosion, and that the owner has sole responsibility for notifying any purchaser of this condition prior to sale of the property.

3. Private Beach Access

- a. Boardwalks and pedestrian footpaths to the beach shall be permitted in all dune areas, except where restricted in Fore-dune Management Areas.
- b. Off-road recreational vehicle use in dune areas shall be permitted in Sand Lake Recreational Area. Motor vehicles registered to operate on public highways and roads shall be allowed to travel on beaches where posted by the State Parks and Recreation Division. Operation of motor vehicles at other beach locations will require a Vehicle Permit (ORS 390.668) from State Parks.
- c. In Fore-dune Management Areas, where heavy use of public easements or rights of way destabilizes dune areas on adjoining private property, signs may be placed at landward entrance points to encourage the use of alternative public access points. Signs shall be subject to review by the Fore-dune Management Authority, Tillamook County, and the State Parks and Recreation Division.

4. Beachfront Protective Structures

- a. For the purposes of this requirement, "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through the construction of streets and provision of utilities to the lot.

Lots or parcels where development existed as of January 1, 1977, are identified on the 1978 Oregon State Highway Ocean Shores aerial photographs on file in Tillamook County.

- b. Beachfront protective structures (riprap and other revetments) shall be allowed only in Developed Beachfront Areas and Foredune Management Areas, where "development" existed as of January 1, 1977, or where beachfront protective structures are authorized by an Exception to Goal 18.
- c. Proposals for beachfront protective structures shall demonstrate that:
 - 1. The development is threatened by ocean erosion or flooding;
 - 2. Non-structural solutions can not provide adequate protection;
 - 3. The beachfront protective structure is place as far landward as possible;
 - 4. Adverse impacts to adjoining properties are minimized by angling the north and south ends of the revetment into the bank to prevent flank erosion;
 - 5. Public costs are minimized by placing all excess sand excavated during construction over and seaward of the revetment, by planting beachgrass on the sand-covered revetment, and by annually maintaining the revetment in such condition.
 - 6. Existing public access is preserved; and
 - 7. The following construction standards are met:
 - a. The revetment includes three components; an armor layer, a filter layer of graded stone (beneath armor layer), and a toe trench (seaward extension of revetment structure).
 - b. The revetment slope is constructed at a slope that is between 1:1 to 2:1.
 - c. The toe trench is constructed and excavated below the winter beach level or to the existing wet sand level during the time of construction.
 - d. Beachfront protective structures located seaward of the state beach zone line (ORS 390.770) are subject to the review and

approval of the State Parks and Recreation Division. Because of some concurrent jurisdiction with the Division of State Land, the Parks Division includes the Division of State Lands in such beach permit reviews.

- e. The State Parks and Recreation Division shall notify Tillamook County of emergency requests for beachfront protective structures. Written or verbal approval for emergency requests shall not be given until both the Parks and Recreation Division and the County have been consulted. Beachfront protective structures placed for emergency purposes, shall be subject to the construction standards in Section 3.140 (17).

5. Beach Log Removal

- a. Drift log removal from beach areas seaward of the state beach zone line is subject to the approval of the State Parks and Recreation Division. The Parks Division shall notify the county of all requests for commercial driftwood removal from Non-State Park Beaches, including requests for emergency permits to remove driftwood.

B. USES AND ACTIVITIES PERMITTED CONDITIONALLY

1. Public Beach Access

- a. New public beach access points shall be allowed where identified in Tillamook County's Public Access Program to Coastal Shorelands, contained in the Goal 17 (Coastal Shorelands) Element of the Comprehensive Plan.

2. Sand Mining and Mineral Extraction

- a. Sand mining and mineral extraction shall only be permitted outside Developed Beachfront or Fore-dune Management Areas.
- b. Sand mining shall be permitted in other beach and dune areas only where a geological investigation establishes that a historic surplus exists at the site, and the mining will not impair the beach and dune processes near the site, including ground water circulation and littoral drift. Sand mining operations seaward of the state beach zone line is subject to the approval by the State Parks and Recreation Division (ORS 390.725).

Memorandum

To: Newport Planning Commission/Advisory Committee
From: Derrick Tokos, Community Development Director 
Date: June 20, 2014
Re: Newport, Lincoln City, and Lincoln County Workforce Housing Initiative

Enclosed is a memo that I prepared for the City Council's March 17, 2014 meeting outlining how the potential partnership with the Lincoln Community Land Trust has evolved from an agreement with the City of Newport that would have facilitated the construction of at least six (6) owner occupied units over a five (5) year period on vacant land from the City's property inventory, to a broader more generalized agreement between Lincoln County and the cities of Newport and Lincoln City. This was done, in part, to address the Council's desire to expand the scope of the partnership so that additional resources could be brought to the table.

The new partnership calls for each jurisdiction to provide funding in the amount of \$30,000 per year for three years to pay for a full-time executive director position and associated administrative support services for the Trust. This position would be responsible for facilitating the construction of workforce housing utilizing land, revolving loans, and other resources that may be available from the funding partners or other sources. The commitment to provide funds is temporary, with the intent being that the Trust work toward full budgetary self-sufficiency at the end of the funding period.

All three jurisdictions have budgeted the \$30,000 as contributions for the upcoming fiscal year. A draft Memorandum of Understanding (MOU) memorializing the agreement between the three jurisdictions is enclosed. It is tentatively scheduled for presentation and possible action by the City Council at its July 21, 2014 meeting. Also, attached is a draft job description for the Executive Director position. The Trust is proceeding to advertise the position with interviews planned for August. They hope to have the position filled by October 1st.

The Planning Commission reviewed the prior agreement between the Trust and City Newport and provided a favorable recommendation to the City Council. At this work session, I am looking for your feedback as to whether or not the Commission wants to weigh in on the new three party arrangement and support the MOU. If the Commission wants to make a formal recommendation, then I can prepare a letter for possible action at the July 13th meeting. The City has invested significant resources in understanding the availability and condition of its housing stock, and facilitating the provision of workforce housing is an identified priority (ref: Goals 1 and 2 of the Housing Element). Also, as noted in the attached News-Times article, Oregon State University's planned campus expansion will place further pressure on the local housing market and is an example of why it is imperative that creative solutions be sought to ensure the availability of housing to Newport workers of all wage levels.

Attachments

Staff Memo to the Newport City Council, dated March 12, 2014, with attachments
Draft Memorandum of Understanding
Draft Job Description for LCLT Executive Director
News-Times article titled "Marine Science Center Exploring Expansion," dated June 20, 2014

Memorandum

To: Newport City Council
From: Derrick Tokos, Community Development Director 
Date: March 12, 2014
Re: Potential Lincoln County, City of Newport and Lincoln City Workforce Housing Partnership

In September of 2013, the Newport City Council considered entering into a workforce housing agreement with the Lincoln Community Land Trust and Community Services Consortium for the construction of at least six (6) owner occupied units over a five (5) year period.

The agreement was put forth as a step toward addressing the inadequate supply of workforce housing in our community, as documented in the 2011 Newport Housing Needs Analysis. That study outlines the difficulties workers face in finding housing within the city limits, and the negative influence that it has on (a) long-term growth of the economy, (b) the City's ability to attract and retain employees and employers, (c) emergency response times by emergency personnel living outside of the city, and (d) reinvestment in the economy by community members who spend more on housing. The agreement also would have implemented Goals 1 and 2 of the Housing Element of the Newport Comprehensive Plan, which commit the City to actively participating in the development of workforce housing.

While the City Council did not act upon the agreement at its September 2013 meeting, it did not rule out doing so in the future. The Council had reservations with the level of investment the City would be making (i.e. land and revolving loan funds) as compared to the return of just six (6) units and expressed a desire to see if the partnership could be expanded and additional resources brought to the table in order for there to be a more meaningful impact.

On October 24, 2013, a Lincoln County Housing Forum was convened, with representation from the Housing Authority of Lincoln County, Community Service Consortium, Lincoln County Development Corporation, Lincoln Community Land Trust, Samaritan House, Habitat for Humanity, and the Confederated Tribes of the Siletz. The concept of a broader coalition to fund the construction of workforce housing units was discussed, and led to the general acknowledgement that the Land Trust was the only entity whose mission focuses on the provision of workforce as opposed to low-income housing.

Since that meeting, the Land Trust has put together a proposal for a partnership between Lincoln County, the City of Newport, and Lincoln City to pool respective resources to staff a position at the Trust to perform the real estate and administrative services needed to realize a meaningful number of workforce housing units within our respective communities. The three jurisdictions would also make available revolving loan funds, land, tax foreclosed properties, or similar assets to assist the Trust in accelerating the growth of its housing portfolio, with the expectation that it will become self-sustaining in the future. Details of the proposal are further outlined in the attached PowerPoint presentation. It effectively seeks approval for a three (3) year pilot program, with a \$30,000 per year commitment from each of the jurisdictions. Other cities within the County would be asked to make smaller annual contributions. The County Board of Commissioners

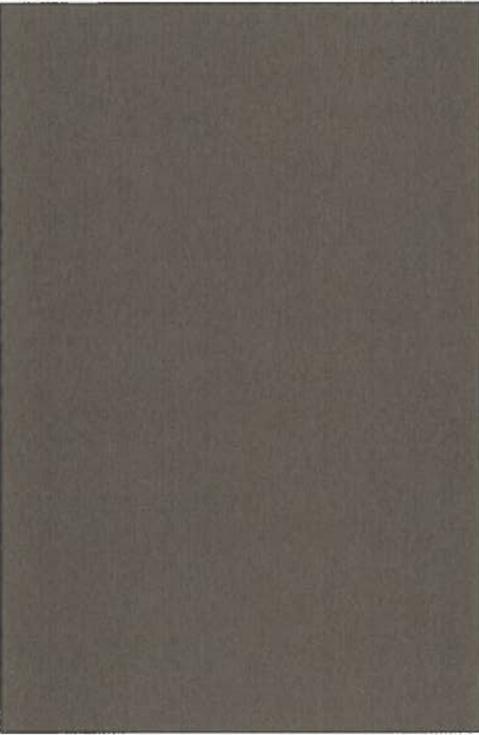
considered the proposal at its March 12, 2014 meeting and were supportive provided the two cities agree to participate as well, and there is adequate resources in their community and economic development fund. The Lincoln City Council will consider the proposal at a meeting on March 24, 2104.

A \$30,000 a year commitment, for three years, is a modest investment when viewed in the context of the full range of services that the City supports and is a small, but meaningful step toward implementing the City's housing policies. If; however, that figure is difficult to reach in a given year, the City can draw down its revolving loan fund (originally funded to the tune of \$180,000 through the sale of a city-owned property), recognizing that such a step would reduce the funds available for loan purposes moving forward.

If there is general consensus amongst the Council that this approach is worth further pursuing then a draft intergovernmental agreement between the three jurisdictions can be prepared, vetted with the Newport Planning Commission, and brought forward for consideration and possible action at a future date.

Attachments:

- March 2014 PowerPoint Presentation from the Lincoln Community Land Trust
- Agenda Summary and Draft Workforce Housing Agreement from 9/3/13 City Council Meeting
- Minutes from the 9/3/13 City Council Meeting



The Lincoln Community Land Trust

Building stronger communities,
one house at a time
March, 2014

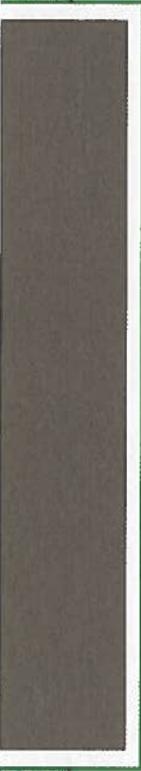
Mission Statement:

- The mission of the Lincoln Community Land Trust is to provide permanent affordable homeownership for working individuals and families within Lincoln County.



A Request to Lincoln County and the Cities of Newport and Lincoln City

- A three-year, \$30,000 per year commitment to provide operating support for the LCLT
- This will support a full-time executive director for the trust and cover operating expenses
- Make available land and/or revolving loan funds for construction of workforce housing
- Goal would be for position to be self-sustaining by fourth year



Sustainability Plan

- Continued membership support from all cities and counties
- Ground lease income and development fees
- Increased grant writing, memberships and fundraising

Why is this a needed and appropriate investment of public resources?

- State Land Use Goal 10 gives cities and counties the task of inventorying buildable lands for residential use and declares, “plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households.”



Why is This a Smart Investment of Public Resources?

- Infrastructure is already in place; the model is proven
- Relationships built with lenders, Realtors, other housing providers
- Now we can grow the model
- Opportunity for public-private partnership and strong leveraging of resources



Workforce Housing is Economic Development

- Disparity between wages and housing prices makes it difficult for local employers to attract and retain workers, even in professional positions

Workforce housing supports essential public missions

- Critical public safety and public works staff need to live close to the communities they serve
- City of Lincoln City has seen percentage of workers living within city's zip code drop from two-thirds to one-third
- How will this impact the response to a natural disaster?



Further Benefits

- Community vitality and diversity is maintained and enhanced when people at a broad range of income levels can afford to work there
- Shorter commutes for workers equal less congestion, wear and tear on roads and impact on the environment

Priorities for staff position

- Organizational development
 - Community outreach and engagement
- Resource development
 - Grant writing, property acquisitions
- Project management

Priorities for Staff and Board

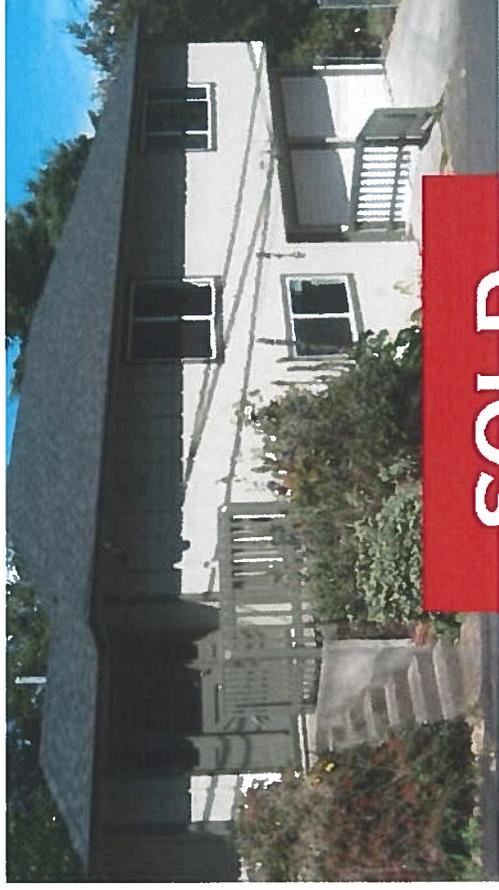
- Further community education and engagement about LCLT's mission
- Development of sustainable funding
- Development of a detailed plan for construction and rehabilitation of affordable housing units

Quick Recap

- LCLT Founded 2007
- Non-profit status secured, board of directors chosen, by-laws and ground lease created, homebuyer education program established
- Green building policies put in place
- Education of banks and mortgage lenders about the LCLT model

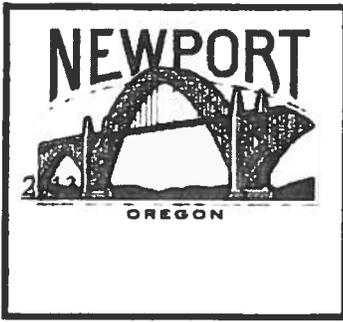
On The Ground So Far...

- One new home constructed, two existing homes rehabbed
- One home sold, negotiations with potential buyer for second home in progress



Questions?





Agenda Item #
Meeting Date

September 3, 2013

**CITY COUNCIL/URBAN RENEWAL
AGENCY AGENDA ITEM SUMMARY**
City of Newport, Oregon

Issue/Agenda Title Consideration and Possible Adoption of a Workforce Housing Development Agreement Between the City of Newport, Lincoln Community Land Trust, and Community Services Consortium

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

ISSUE BEFORE THE COUNCIL: Consideration of whether or not it is in the public interest for the City of Newport to enter into an agreement with the Lincoln Community Land Trust (LCLT) and Community Services Consortium (CSC) that establishes a framework for the construction of permanently affordable workforce housing in Newport. The Newport Planning Commission considered the proposal at its 3/11/13 meeting and recommends that the Council move forward with the agreement.

STAFF RECOMMENDATION: Staff recommends the Council accept the Planning Commission's recommendation and adopt the agreement.

PROPOSED MOTION: I move that the City Council enter into a workforce housing development agreement with the Lincoln Community Land Trust and Community Services Consortium, and authorize the City Manager to sign the document as presented.

KEY FACTS AND INFORMATION SUMMARY: In 2011, the City completed a comprehensive Housing Needs Analysis which concluded that Newport lacks an adequate supply of affordable workforce housing. As a consequence it is difficult for workers to find housing within the city limits, which negatively influences long term growth of the economy; the City's ability to attract and retain employees and employers; emergency response times by emergency personnel living outside the city; and reinvestment in the economy by community members who spend more on housing.

In response to these findings, the City Council amended the Housing Element of its Comprehensive Plan to put in place specific policies and implementation measures to address this deficiency. One of the measures, Implementation Measure 2.1, calls for the City to establish a residential land bank program where it will donate City-owned property for construction of workforce housing in order to eliminate the cost of real property from the sales price of the units, thus making them more affordable. State law allows local governments to release property in this manner provided it is not needed for public purposes (ORS 271.330).

The proposed workforce housing agreement sets out a framework by which LCLT, with the support of CSC, will construct six owner occupied units over a five year period. Provisions in the agreement anticipate that individual projects (either a single family dwelling or duplex) will be constructed at a rate of about one structure per year. The LCLT, in consultation with the City, will identify suitable city-owned property. They are also responsible for preparing concept plans and preliminary cost estimates sufficient to demonstrate to City policy making bodies that the ultimate sales price of the unit will fall within a range of 60 to 120 percent of median family income. Such case-by-case proposals will be presented to the Planning Commission for a recommendation, followed by a hearing

before the Council for a determination as to whether or not it is in the public interest to release the property. Any property that the City releases for construction of workforce housing will include a deed restriction requiring that it be used expressly for workforce housing purposes for a period of at least 20-years from the date a certificate of occupancy is issued. At the time each unit is completed, and a certificate of occupancy issued, LCLT will place the property into a 99 year inheritable and renewable land lease, impose contractual limitations on the sale of the unit, and manage the lease and contract to ensure that the unit is used for workforce housing purposes.

The proposed agreement contains a detailed list of the administrative and real estate development services that LCLT and/or CSC are responsible for performing. The scope of services is intended to be "cradle-to-grave" including property selection; unit design, construction and sale; provision of Housing and Urban Development (HUD) approved homebuyer education; and ensuring ongoing affordability for future buyers through enforcement of land lease terms and associated restrictions. Private contractors will have the opportunity to construct workforce housing units according to a competitive bid process. City obligations include the donation of real property, payment of \$10,000 per project for construction management, and provision of at least \$150,000 of revolving loan funds to finance construction with the expectation that loans would be paid back and reissued for each successive project. The City is also responsible for maintaining a reserve fund of \$30,000 that can be used on an as-needed basis to improve transferred properties so that they are suitable for development.

Construction of workforce housing places otherwise vacant land on the property tax rolls, which allows the City to recover the value of the donated property through tax receipts over time. At its work sessions, Council members expressed concerns that inheritability language in the LCLT land lease may lead to circumstances where persons with incomes in excess 120% of median family income could acquire the properties. The LCLT has agreed to modify its standard land lease agreement to ensure that this does not happen and a draft of the lease agreement would be available with each project that is brought forward for Council review. Further, Sections 8 and 9 of this final draft of the framework agreement make it expressly clear that any land transferred for workforce housing purposes must be managed for that purpose for at least 20 years or the property and improvements revert back to the City.

This agreement is structured in a manner that allows the City to actively facilitate construction of workforce housing without having to hire staff to administrative and manage a housing program. To further ensure that this remains the case, the County has agreed to guarantee completion of an individual project should LCLT or CSC be unable to perform its responsibilities. This should prevent the City from being placed in a position where it must complete a project that has been initiated or is partially under construction. The LCLT and CSC are in the process of redefining the manner in which CSC provides staffing assistance to the Trust. This may lead to changes in terms of how the Trust carries out its responsibilities, but should not materially impact the conceptual framework for realizing new workforce housing units that is outlined in this agreement. Further, the agreement is subject to annual review by all parties and may be terminated by any party upon 30 days prior written notice if they are not satisfied with how the work is progressing.

Another issue brought up by Council members at the work sessions was a desire to see examples of other local jurisdictions that are making the type of commitment (land and funds) that the City of Newport is prepared to undertake as part of this agreement. Lincoln City is probably the best example. For several years now Lincoln City has managed a revolving loan program for construction of workforce housing that is comparable to what Newport recently established. That program has funded the construction of two Trust homes. They also have an affordable housing fund that they use for purchasing properties. The resources in that fund were fully utilized to the tune of about \$800,000 as part of the City's recent \$2.5 million dollar purchase of the 363 acre Villages at Cascade Head property. It is anticipated that a significant portion of the property will be set aside for workforce and affordable housing needs.

The City Council held a work session on 4/15/13 to consider the agreement. At that time, staff presented a sample list of properties that the City owns that might be suitable for the construction of workforce housing to show that there is a sufficient number of sites should an agreement be adopted. On 5/20/13 Bill Hall, Chair of the Lincoln Community Land Trust, and Ben Baggett with the Community Services Consortium, made a presentation and answered questions from Council members regarding the Trust's activities and the potential benefits of this arrangement.

OTHER ALTERNATIVES CONSIDERED: Other partnerships were considered; however, the LCLT model of placing properties into a 99-year inheritable and renewable land lease to ensure affordability is particularly well suited for a "land bank" program.

CITY COUNCIL GOALS: Entering into an agreement of this nature that puts in place a land bank for the construction of workforce housing is a stated Council goal.

ATTACHMENT LIST:

- Workforce Housing Agreement
- Draft Lincoln County Project Assurance (approved by the Board on 8/28/13)
- Newport Comprehensive Plan Housing Policies
- ORS 271.330
- Relevant portion of the 5/20/13 Council meeting minutes
- Copy of the 4/15/13 Council work session minutes
- Copy of the 3/11/13 Planning Commission minutes
- Press release regarding the Lincoln City Village at Cascade Head land purchase, dated 5/31/13

FISCAL NOTES: The agreement envisions a \$10,000 annual commitment from the City to cover LCLT's construction management expenses, the first year of which is budgeted. The \$180,000 revolving loan fund, originally created from proceeds of the sale of City property, would be drawn down to \$150,000 with \$30,000 being committed to one-time site improvements. As noted, the \$150,000 would be offered as a loan, to be paid back once a project is completed and the unit is sold.

**WORKFORCE HOUSING DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF NEWPORT,
LINCOLN COMMUNITY LAND TRUST AND
COMMUNITY SERVICES CONSORTIUM**

This Agreement between the City of Newport (City), the Lincoln Community Land Trust, a public benefit corporation under ORS 65.001(37) (LCLT), and the Community Services Consortium (CSC) defines the roles and responsibilities of each entity related to the development of permanently affordable workforce housing in Newport.

RECITALS:

WHEREAS, City lacks an adequate supply of affordable workforce housing, as documented in the 2011 Newport Housing Needs Analysis; and

WHEREAS, as a consequence, it is difficult for workers to find housing within the city limits, which negatively influences long term growth of the economy; the City's ability to attract and retain employees and employers; emergency response times by emergency personnel living outside the city; and reinvestment in the economy by community members who spend more on housing; and

WHEREAS, consistent with Goals 1 and 2 of the Housing Element of the Newport Comprehensive Plan, City is committed to actively participating in the development of workforce housing; and

WHEREAS, to this end, as authorized by ORS 271.330, City intends to relinquish title to City-owned real property at no cost to LCLT in order to eliminate the cost of real property from the sales price of affordable workforce housing units; and

WHEREAS, City wishes to also grant to LCLT City revolving loan funds for the purpose of constructing workforce housing units on said properties; and

WHEREAS, LCLT and CSC, as qualified non-profit organizations under ORS 271.330(2)(b)(A), are ideal partners for City in this endeavor as LCLT places properties upon which workforce housing units are constructed into 99-year inheritable and renewable land leases that LCLT or its successor, CSC, will manage to ensure long term affordability; and

WHEREAS, LCLT further possesses the organizational capacity to perform all necessary due diligence and project management services, including but not limited to property selection; unit design, construction and sale; provision of Housing and Urban Development (HUD) approved homebuyer education; and ensuring ongoing affordability for future buyers through enforcement of lease terms and associated restrictions; and

WHEREAS, LCLT will afford private contractors the opportunity to construct workforce housing units according to a competitive bid process, such process being independent of city or state public contracting procedures; and

WHEREAS, the construction of workforce housing places otherwise vacant land on the property tax rolls, which allows City to recover the value of the donated property through tax receipts over time; and

WHEREAS, LCLT would be subject to all standard terms of a City revolving loan fund, ensuring loaned funds are recouped by City with interest; and

WHEREAS, the parties' goal is to construct at least six (6) owner-occupied units over the five (5) year term of this contract; and

WHEREAS, CSC currently provides staff support to the LCLT so that it may carry out its organizational responsibilities and is similarly interested in promoting workforce housing in Newport; and

WHEREAS, the parties desire to establish the extent to which CSC will support LCLT in its effort to develop workforce housing in Newport and serve in LCLT's stead should LCLT no longer be able to uphold its obligations under this Agreement.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promise hereafter stated, as follows:

1. **RECITALS.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions, and are not mere recitals.
2. **PURPOSE:** This Agreement describes the respective responsibilities of each party in providing for the development and management of permanently affordable workforce housing units within the City of Newport.
3. **TERMS OF THIS AGREEMENT:** This Agreement shall be effective on the date that it is signed by all parties. Unless extended as provided in this Section 3 or terminated earlier pursuant to Section 10, with the exception of LCLT's continuing obligations, the term of this Agreement shall be for a period of one year. This Agreement may be extended up to four (4) times, each for a period of up to one (1) year upon written mutual consent of all parties. Upon expiration or termination, this Agreement shall automatically be extended to govern LCLT's completion of any work previously initiated hereunder.
4. **WORKFORCE HOUSING DEFINED:** For the purpose of this Agreement, the term "workforce housing" means housing constructed by or for LCLT, which is marketed and sold to an individual or family making between 60 and 120 percent of median family income and employed, or, for families, with at least one household member employed, in Lincoln County.
5. **LINCOLN COMMUNITY LAND TRUST RESPONSIBILITIES:** LCLT will assign staff with knowledge and training in the community land trust model and the development of workforce housing units to perform the following general duties:

A. Administrative Services

- i. Coordinate projects;
- ii. Develop and manage project budgets;
- iii. Coordinate with other contracts (e.g. accounting, legal);
- iv. Coordinate with local banks for lending resources to potential homebuyers;
- v. Conduct marketing efforts for the sale of each unit;
- vi. Provide or coordinate homebuyer training courses and manage the application process for prospective buyers; and
- vii. Maintain ongoing affordability of the units by updating and/or enforcing the land leases for each unit and by ensuring the resale restriction formula is applied to each subsequent sale.

B. Real Estate Development Services

- i. Identify property suitable for construction of workforce housing units;
- ii. Prepare concept plans and preliminary cost estimates sufficient to demonstrate to City policy making bodies that the sales price achieves the affordability provisions;
- iii. Provide all necessary contracting documents (RFP, contract, notices, etc.);
- iv. Oversee the contractor selection and award process;
- v. Collect necessary documentation from selected contractor per contract terms;
- vi. Manage construction from design, site preparation to occupancy of the units;
- vii. Evaluate deliverables against project scope, cost, and schedule;
- viii. Perform routine progress meetings on site as required;
- ix. Track progress payments using percentage completion method;
- x. Maintain submittals and project documents;
- xi. Serve as single point of contact to the City, contractor, key stakeholders;
- xii. Ensure that contract terms with contractor and City are satisfied;
- xiii. Provide regular project updates to the City and general public; and
- xiv. Coordinate activities for sale of homes with a real estate agent.

C. Additional duties will be performed as mutually agreed upon by the LCLT Board of Directors and City to carry out the objectives of this Agreement.

6. **CITY OF NEWPORT RESPONSIBILITIES:** City agrees to provide the following resources to LCLT to facilitate construction of workforce housing on that parcel within City's corporate limits:

A. City shall identify City-owned real property appropriate for the location of workforce housing units. Upon a determination by the Newport City Council that such City-owned real property is not needed for public use and should be utilized for low income (workforce) housing for a period of at least 20 years, consistent with Oregon Revised Statute 271.330, City shall transfer such identified property for construction of workforce

housing units. Additional deed and sale terms beyond those required by this Agreement may be negotiated by the parties prior to transfer of an individual City parcel to LCLT.

- B. Upon transfer of a particular City parcel subject to the terms of this Agreement, City shall also pay LCLT \$10,000 for professional services associated with LCLT's performance of this Agreement's terms regarding the transferred parcel, which parties agree is sufficient to construct at least one single family dwelling or duplex each year.
 - C. Reserve up to \$30,000 to be applied in whole or in part on an as-needed basis towards site improvements on transferred parcels, upon City's receipt of LCLT's reasonable written request. Such requests shall be made by LCLT concurrent with presentation of development plans to the City Planning Commission and Council. Once depleted, this \$30,000 amount will not be replenished.
 - D. Make available a minimum of \$150,000 of City revolving loan funds for construction of units on the transferred parcel, subject to a separate loan agreement between the parties containing standard City loan terms.
 - E. Allocate staff time to assist LCLT in identifying suitable properties and bringing forward appropriate sites and plans to the City Planning Commission and Council.
7. **TIMING OF DEVELOPMENT:** LCLT shall obtain certificates of occupancy for each workforce housing unit constructed on transferred property within eighteen (18) months of the transfer date, unless an alternative timeline is authorized in writing by City.
8. **DISPOSITION OF TRANSFERRED PROPERTY:** Each City parcel conveyed to LCLT shall be subject to a deed restriction requiring that such property be used expressly for workforce housing purposes for a period of at least 20 years from the date a certificate of occupancy is issued. The deed restriction shall further include a reversionary interest in City, ensuring that ownership of the transferred property will return to City in the event that the use limitation is violated.
9. **AFFORDABILITY ASSURANCE:** Once a certificate of occupancy is obtained for a unit, LCLT agrees to place the property into a 99 year inheritable and renewable land lease, impose contractual limitations on the sale of the unit, and manage the lease and contract to ensure that the unit is used for workforce housing purposes.
10. **TERMINATION:** The City and LCLT agree to review this agreement not less than every 12 months. This agreement may be terminated upon written mutual consent of all parties specifying the termination date, or by any party upon 30 days' prior written notice.
11. **DISPUTE RESOLUTION:** If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this Agreement, the parties shall, upon the request of City, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually

agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lincoln County Circuit Court, upon the request of either party. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.

12. WORKER'S COMPENSATION: The LCLT and its subcontractors, if any, are subject employers under the Oregon Workers' Compensation laws and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers.

13. INDEMNITY:

A. LCLT shall hold harmless, indemnify, and defend City from any and all liability, actions, claims, losses, damages, or other costs including attorney fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during, or in connection with the performance of LCLT's duties described in this Agreement, except liability arising out of the sole negligence of the other. If any aspect of this indemnification shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the indemnification provision.

B. City shall hold harmless, indemnify, and defend LCLT up to the limits of the Oregon Tort Claims Act, from any and all liability, actions, claims, losses, damages, or other costs including attorney fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during, or in connection with the performance of City's duties described in this Agreement, except liability arising out of the sole negligence of the other. If any aspect of this indemnification shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the indemnification provision.

14. COMPLIANCE WITH NON-DISCRIMINATION REQUIREMENTS: The LCLT will not unlawfully discriminate against any employee or person served on account of race, color, sex, sexual orientation, gender identity, religion, ancestry, sexual orientation or national origin in its performance of this agreement. Further, the LCLT agrees to:

A. Comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) in regard to persons served; and

B. Adhere to Title VII of the Civil Rights Act of 1964 (42 USC 2000e) in regard to employees or applicants for employment; and

C. Conform to the requirements of the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973; and

D. Satisfy the requirements of the Americans with Disabilities Act; and

- E. Prevent any funds from this agreement from being used to sponsor, promote, or otherwise to engage in political activities.
15. **ASSIGNMENT:** LCLT and/or CIS may assign any of their responsibilities under this Contract upon receipt of City's prior written consent, which consent shall not be unreasonably withheld.
16. **GUARANTY:** CSC or its assigns unconditionally and irrevocably guarantees the performance by LCLT or its assigns of each and every obligation of LCLT under this Agreement. This guaranty shall be continuing and shall terminate only upon the satisfaction by LCLT or its assigns of each and every one of LCLT's obligations under this Agreement.
17. **GUARANTOR'S CONSENT:** CSC consents that it will not be necessary for the City, in order to enforce this guaranty, to initiate an action or exhaust any remedies against LCLT. CSC consents that this guaranty may be immediately enforced upon LCLT's failure to perform any obligation under this Agreement. Guarantor consents that the parties may, from time-to-time modify, alter, or change this Agreement without in any way releasing or discharging CSC from its obligations under this Agreement. This guaranty shall not be released, extinguished, modified, or any way affected by failure on the part of City to enforce all the rights and remedies available to it under this Agreement.
18. **AMENDMENTS:** No amendments to this Agreement shall be effective unless made in writing and signed by all parties. There are no understandings, agreements or representations, oral or written regarding this Agreement except as specified or referenced herein.
19. **SEVERABILITY:** If any court of competent jurisdiction shall hold any provisions of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.
20. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
21. **EXECUTION:** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same agreement. City shall provide each party with a set of all executed counterparts. By signature of their authorized representatives below, the parties to this agreement acknowledge that they have read this Agreement, understand it, and agree to be bound.
22. **NOTICE:** All notices required by this agreement must be in writing and delivered to the parties at the addresses set forth below.

Lincoln Community Land Trust
Benjamin Baggett, Executive Director
545 SW 2nd Street, Suite A
Corvallis, OR 97333

Community Services Consortium
Martha Lyon, Executive Director
545 SW 2nd Street, Suite A
Corvallis, OR 97333

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

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum on the dates show hereunder,

Dated at Newport, Oregon this _____ day of _____, 2013

CITY OF NEWPORT

LINCOLN COMMUNITY LAND TRUST

By: _____

By: _____

Printed Name: Ted Smith
Title: Interim City Manager
Address: 169 SW Coast Highway
Newport, OR 97365

Printed Name: Bill Hall
Title: Chair, Board of Directors
Address: 545 SW 2nd Street, Suite A
Corvallis, OR 97333

Date: _____

Date: _____

COMMUNITY SERVICES CONSORTIUM

By: _____

Printed Name: Martha Lyon
Title: Executive Director
Address: 545 SW 2nd Street, Suite A
Corvallis, OR 97333

Date: _____

**Memorandum of Agreement
By and Between
Lincoln County and Community Services Consortium
Project Assurance**

The Community Services Consortium (CSC), an ORS Chapter 190 interagency entity, provides administrative and operational services under contract for the Lincoln Community Land Trust (LCLT), a public benefit corporation established under ORS Chapter 65, furthering LCLT's mission to promote and provide affordable low and moderate income housing in Lincoln County through a variety of projects countywide. One such activity being undertaken is a Workforce Housing Development Agreement (Agreement) between CSC, LCLT and the City of Newport (City) to provide funding and transfer property to LCLT to develop affordable workforce housing on property currently owned by City. Under this Agreement, LCLT will provide project management services, including but not limited to selection of properties, unit design, unit construction and sale in accordance with terms of the land trust program. LCLT will also provide Housing and Urban Development approved homebuyer education and enforce lease terms and other restrictions designed to ensure ongoing affordability of the housing for future buyers of the property. In the event that LCLT is unable to provide these services, CSC will ensure performance up to the limits of the LCLT/CSC/City of Newport Agreement dated _____, 2013.

The Agreement between CSC, LCLT and the City contemplates at least six units being developed over the five year term of the Agreement. Provisions in the Agreement anticipate that the individual projects (either a single family dwelling or duplex) will be constructed at the rate of about one structure per year. The Agreement will be reviewed every year, and may be terminated by mutual consent or upon 30 days written notice to the other party. If a project is started, it is the expectation of the parties that the project will be completed even if the parties decide to terminate the Agreement for the remainder of the units.

CSC currently has staffing for LCLT to undertake this Agreement. In the event that this situation changes, however, and there has been the initiation of an individual project as outlined above and if replacement staffing is not available from CSC, Lincoln County (County) is willing to assure that the started project is completed. County agrees to fund up to \$20,000 for CSC to hire a contractor(s) to fulfill LCLT's obligations (except as noted hereafter) under paragraph 5 of the Agreement with the City for that started project. LCLT will still be required to fulfill the obligations under paragraph 5.A.vii of the Agreement to maintain ongoing affordability by managing leases and applying the resale restriction formula for subsequent sales for that developed property.

This funding assurance is intended only for completion of a project underway (meaning land has been transferred by the City to the LCLT, construction and contracting documents have been prepared, contractors have been hired and construction is underway or scheduled to be started) and only for the administrative and real estate development services outlined in the Agreement. County does not commit this or additional funding to complete the minimum six

units contemplated by the parties. It is intended to insure that once a project is underway it will be completed.

This Memorandum of Agreement is for the benefit of CSC, LCLT, and City and will continue until the Agreement between CSC, LCLT and City is terminated.

So Understood and Agreed this ____ day of August, 2013

Lincoln County

Community Services Consortium

Vice-Chair

Chair

MINUTES FROM 9/3/13 MTG

Consideration of HDR Agreement for Engineer of Record for a Dam Consultant.

Gross reported that the issue before Council is the consideration of an agreement with HDR Engineering, Inc. for an Engineer of Record for dam consulting services. Busby noted that he did not see a "not to exceed" amount. Gross reported that it would be within the task order. MOTION was made by Sawyer, seconded by Swanson, to approve the contract with HDR Engineering, Inc., to provide Engineer of Record services for dam evaluation and design, and direct the City Manager to execute the contract. The motion carried unanimously in a voice vote.

Consideration of Lincoln Community Trust Agreement. Tokos and Commissioner Hall appeared before the Council. Tokos stated that although he is a member of LCLT, he is representing the city tonight. Tokos presented a PowerPoint presentation that included information regarding: the city's lack of affordable housing units; the city's housing goals, policies, and implementation measures; the workforce housing agreement; responsibilities of the Lincoln County Land Trust and the Community Services Consortium; and city responsibilities. He noted that the proposal is a small step, but would make available six owner-occupied housing units.

Busby stated that this is the fourth time this issue has been brought to Council. He noted that housing to support the city's greatest growth industry - marine science - factors into this equation, but other than that, he noted that he is not sure how far the city should go to be in the housing business especially when it is financially strapped. He added that the city is spending more money than it is taking in, and regardless of the cause and need, he questioned whether the city can afford to give away \$300,000 in cash and assets. He further asked whether this is the place to give away money since it would only benefit six families. He stated that if the government gets into the business of selling houses, it affects people selling other houses and creates a negative impact. He noted that it would place houses on the tax rolls, but if the property was sold outright, and was buildable, the city would eventually receive the same amount of tax monies.

Allen noted that he had all his questions and comments addressed at the work session earlier today. He asked about the view of the LCLT, and Hall said it was a county-wide view of which Newport is just one piece. He noted that communities that purchase a large tract of land with some set aside for affordable housing could impact the discussion that might occur in Newport. He added that there are good arguments both ways, and it is a policy choice. Allen noted that he is not ready to make a policy choice until he hears what other Lincoln County cities are going to do. He added that this may need a more comprehensive review, and that he is not willing to proceed until further information is available; particularly what Lincoln City is planning.

Sawyer noted that both viewpoints are wonderful, and added that he thinks there are limited options to affect housing in Newport. He stated that he would like to see a list of properties and hear why the city has never elected to put them on the market. He added that he does not believe those properties will be "hot." Sawyer proposed tabling this issue for two to four weeks so that Tokos can contact Lincoln City to determine what its' timeline is relative to the development of workforce housing at its' newly-acquired property. He also asked that Tokos prepare a list of the city's properties with the market and assessed values before a final decision is made by Council.

Swanson stated that she would like to look at alternate plans and needs additional information. Sawyer noted that Council has limited options on how it can affect the need.

Hall noted that Lincoln City has a lot of highly buildable land, and that pursuing the discussion at a local level, and determining whether there is a broader commitment from the two cities would be a beneficial step.

Beemer noted that in view of Sawyer's suggestion, it would be better to wait to make a decision on this issue. He stated that he was prepared to make a motion with a proviso that if the result is not much within a year, that the city's participation in the program cease. Allen noted that the Planning Commission considered this issue prior to the Lincoln City land purchase. He stated that he is not against the proposal, but is not in a position to support it at this time as the LCLT should be approaching other communities. Allen noted that he would like a list of, and status of, properties. Allen suggested revisiting this issue after the first of the year.

MOTION was made by Sawyer, seconded by Beemer, to table the adoption of the workforce housing development agreement until the first of the year, and until further information is available on the properties and the position of Lincoln City. Allen asked whether other communities are supportive of this approach or are moving in a different direction, and noted that it would be nice to see where other communities are at on the issue, as other communities can help inform Council in making a decision. He added that if there is no need to move forward tonight; he recommends waiting for more information as it can lead to better policy choices at the end of the day. He noted that he prefers to wait a couple of months. Tokos noted that a month is enough and that he can get the Lincoln City information. It was noted that the issue is determining how Lincoln City is approaching its most recent land purchase. Allen stated that he is interested in seeing whether Tokos has checked in with Toledo as this is a county-wide issue. He asked where other Lincoln County cities stand on the issue. Allen noted that if possible, the matter could be brought back to Council before the end of the year. The motion carried unanimously in a voice vote.

PUBLIC HEARINGS

Public Hearing and Consideration of Ordinance No. 2050 Amending the Newport Zoning Code Relating to Manufactured Dwelling Parks and Recreational Vehicles.

Roumagoux opened the public hearing at 7:34 P.M. and asked for the staff report. Tokos reported that the issue before Council is consideration of whether it is in the public interest to make it easier for park models and other types of recreational vehicles to be used as a place of habitation within manufactured dwelling parks. He added that the revisions also clarify that, within the city limits, recreational vehicles may be used as a place of habitation within manufactured dwelling and recreational vehicle parks. Tokos stated that the Planning Commission recommends that the amendments be adopted. He reported that with Policy 8, Goal 2 of the Housing Element of the Newport Comprehensive Plan, the city committed to review its zoning ordinance to allow and encourage "park model" recreational vehicles as a viable housing type. He added that the Planning Commission conducted the review and determined that the minimum lot size standards, maximum density limitations, and minimum acreage requirements currently in place for manufactured dwelling parks prevent park models from being a viable housing option. Tokos stated that the Commission further determined that language in the ordinance dealing with the storage and use of recreational vehicles could be interpreted to prevent them from being used as a place of habitation within

Memorandum of Understanding
By and Between
Lincoln Community Land Trust, a 501(c)(3) nonprofit
and
the City of Newport, the City of Lincoln City and
Lincoln County

This Memorandum of Understanding (MOU) is entered into by **The Lincoln Community Land Trust (LCLT)**, a 501(c)(3) nonprofit organization and the **City of Newport, the City of Lincoln City and Lincoln County (together the Public Partners)** pursuant to ORS Chapter 190. It is intended to establish base funding by the **Public Partners** for administrative services to be provided by **LCLT** in supporting **LCLT's** mission to provide permanently affordable homeownership for working individuals and families within Lincoln County .

The **Public Partners**, subject to annual appropriations through their individual local budget processes, will each annually on July 1 provide **\$30,000** to **LCLT** beginning July 1, 2014 and continuing through June 30, 2017 (total of **\$90,000** per public partner and **\$270,000** by all the Public Partners for the three fiscal years). The funding will support a full time staff person for the **LCLT** and associated administrative support services. It is intended that the funding will cover all costs associated with the position and services and **LCLT** will be responsible for covering any shortfalls between actual costs and the funding provided. If **LCLT** should for any reason not be able to fulfill its obligations, any remaining funds will be returned to the **Public Partners**.

In addition to the funding support for **LCLT's** mission, the **Public Partners**, without a specific commitment of resources or properties, agree to give a high priority, within requirements under law, to providing surplus or foreclosed land held by them and/or revolving loan funds to the **LCLT** for housing development. Without committing to a specific number of homes in specific locations, **LCLT** commits to making a priority to distribute housing units throughout the county with as much equity as possible.

It is intended that the funding provided by this MOU is temporary in nature and that **LCLT** will work towards full budgetary self-sufficiency by the end of this funding allocation. Towards that end, **LCLT** shall provide a report to the **Public Partners**, no later than December 1, 2016, detailing its accomplishments to that date, funding for services after July 1, 2017 and how it intends to be fully funded for services thereafter.

The parties understand that the law reserves certain decisions to the governing bodies of the respective parties, and nothing in this agreement shall divest those governing bodies of their authority.

So Understood and Agreed this ____ day of _____, 2014:

Lincoln Community Land Trust

Lincoln County

Chair

Chair

City of Lincoln City

City of Newport

Mayor

Mayor

Executive Director

The Lincoln Community Land Trust seeks an Executive Director. The successful candidate will have strong skills and an established track record in fund raising, community relations and project management. We are looking for an energetic individual with passion and persistence, a demonstrated ability to exercise strategic vision, and a commitment to serving low and moderate-income households seeking the dream of homeownership. Lincoln Community Land Trust is committed to addressing the disparate homeownership rates in Lincoln County a popular vacation destination on the Oregon Central Coast.

Under the direction of the nine-member Board of Directors, the Executive Director provides leadership for strategic planning, operations, programs, fiscal management, and resource development. The primary responsibilities of the Executive Director include:

- resource development and management, so that the organization can grow and manage its portfolio of housing on a fiscally sustainable basis;
- developing and strengthen stakeholder relationships within the government, philanthropic, public and private arenas and communities;
- leading the organization in long range planning.

Qualifications

Essential Skills and experience:

- Established skills and success in grant writing and fundraising.
- Established record of effective advocacy for a cause or program; effective relationship building and collaboration with Board of Directors, funders and stakeholders.
- An appreciation of, and experience with, operations, and systems, including budgeting, and basic accounting.
- Strong working knowledge of public relations and marketing, and excellent written and oral communication skills.
-
- Working knowledge of building trades and construction, green building and universal design/creating residential accessibility.
- Ability to travel locally using one's own vehicle, while carrying acceptable insurance and holding a valid driver's license; occasional overnight travel to conferences and meetings.

Desirable skills, qualities and experience:

- Five or more years in effectively managing an organization, department or group of people.
- Graduate degree in community development, public administration, business, planning or related field; experience may substitute for graduate degree.
- Experience with real estate finance or development.

- Ability to manage multiple complex tasks at the same time with a sense of purpose, mission and skill. A sense of humor is also desirable.

APPLICATION PROCESS

The Executive Director reports to the LCLT Board of Directors, a nine member board comprised of homeowners and representatives from LCLT's service area.

Hours: Full-time, salaried, exempt employee

Salary: \$50,000.00

Benefits: paid holidays, compensated vacation and sick time, limited medical reimbursement fund

Please direct a cover letter (2 pages maximum) to the LCLT Board Chair and include a resume (2 pages maximum) and three references (2 professional, 1 personal)

Please submit materials via PDF, MS Word or text document to: {Enter Contact's Email Here}. The cover letter should clearly show how your experience or skills meet the qualifications and demonstrate your ability to perform the core responsibilities.

LCLT is an equal opportunity employer committed to strengthening our workplace through diversity. Pursuant to federal, state and local law and our personnel policies, we do not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability or source of income.

About LCLT

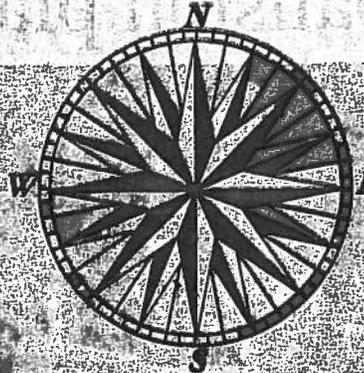
Lincoln Community Land Trust (LCLT), a 501(c)(3) organization established in 2008, is a community based membership organization that offers permanently affordable homeownership opportunities to working individuals and families of Lincoln County. The trust was first established as an action item in *At Home in Lincoln County: A Ten-Year Housing Plan for Lincoln County* jointly sponsored by Lincoln County Government and Community Services Consortium (the regional Community Action Agency). An all-volunteer organizing committee formed and began meeting in September 2007.

The mission of the LCLT is to '*provide permanently affordable homeownership for working individuals and families within Lincoln County.*' The LCLT is the only organization in Lincoln County, outside of tribal lands, focused on providing permanently affordable homeownership opportunities. LCLT has two homes in its portfolio. One is a remodel and the second was constructed in 2012. Processes and best practices established from those projects will guide future projects.

Until now, part-time staffing for the LCLT has been provided under a contract agreement with the Community Services Consortium, the Community Action agency serving Lincoln, Linn and Benton Counties. The individual hired through this recruitment will be the LCLT's first full-time employee and will work closely with the Board of Directors to oversee the transition of the LCLT to independent status.

To learn more about us, visit www.lincolnclt.org

NEWS



TI

Lincoln County's Leading Newspaper

newport

Newport, Oregon

Friday, June 20, 2014

GROWING

Marine science center exploring expansion

BY DANI PALMER
Of the News-Times

NEWPORT — With students from nearly every Oregon State University college involved in some type of marine work, and enrollment expected to increase, Hatfield Marine Science Center is looking to expand.

Director Robert Cowen said the campus is considering the addition of a 100,000-square-foot build-

ing for new classrooms and labs that would host additional programs.

He added that officials are "being optimistic" about getting the approval and funding needed to break ground in 2016.

"Several different things came together to create the opportunity," he said.

Nearly each of OSU's 12 colleges have some individual

SCIENCE CENTER on Page A7

ACCESS DENIED

Lincoln City withholds

BY RICK BEASLEY
Of the News-Times

LINCOLN CITY — A voluminous list of public barriers to disabled people has been withheld from a citizen committee charged with recommending improvements.

The decision to hold back the findings of a report on widespread municipal deficiencies under the Americans with Disabilities Act (ADA) perplexes and bothers one member of the citizen group, known as the ADA Public Advisory Team.

"Without knowing what the problems are, we can't tell the city what we think their priorities should be," said Jim Hoover, a general contractor and self-described "small government guy" who has emerged as an unlikely champion of ADA rules. "There are only two reasons I can see for not making the data available. One, there are so many things listed they don't want people to know how big a problem it is, and two, they don't want people

WITHHOLDING on Page A5

Self-emer ability

YACHTS

Covered bridge costs escalate

County to pay additional funds

SCHOOL DISTRICT

LCSD keeps pi



SCIENCE CENTER

Continued from page 1

involved in the marine field in some way, whether it be through economics in regard to fisheries or marine focused art and music.

Officials want to "bridge together" those multiple disciplines at Hatfield, and with Gov. John Kitzhaber's 40-40-20 goal - to have 40 percent of adult Oregonians with a bachelor's degree or higher, 40 percent with an associate's degree or other certificate and the other 20 percent with at least a high school diploma - they expect enrollment to increase in the years to come.

The estimated \$50 million building would accommodate up to 500 additional students over a 10-year period, Hatfield currently has about 50 in residence "so that's significant growth," Cowen said.

More students also means more faculty - about 25 over a period of time added to the 12 Hatfield has now.

Officials are seeking funding for the building and additional staffing now in the form of grants, state money and philanthropy.

To accommodate the increased student load, they're also looking to add about 75 new courses at Hatfield in new majors and minors. Cowen said they would be a mix of highly specialized interdisciplinary courses that are both new to OSU and already in existence at the Corvallis campus; courses that would relate to areas such as

shipping, port business, fishing and energy, and be built around need.

The goal is to "engage as many interests as possible," he said.

"It's a huge opportunity for OSU and for the coast in terms of developing programs that would be pretty much unique in the world," Cowen added.

He said students already have access to resources on and off campus. With entities like the National Oceanic and Atmospheric Administration (NOAA) in Newport, the fishing fleet and access to coastal habitats for experiential learning, there's much to take advantage of.

There's "no doubt" issues to still deal with, he added. Officials are determining needed partners, and building housing for all those new students will be a big task.

It won't be happening on campus. Cowen said they will be looking to the community for help in developing affordable rental housing, acknowledging that there's already a shortage.

But, he added, Hatfield officials expect the expansion to become an economic development opportunity that will bring more revenue into the local economy.

Those entities officials have talked to about the project have been supportive.

Lincoln County commissioners have sent a letter of support to OSU Foundation President and CEO Mike Goodwin.

"These efforts are about education and better un-

derstanding the Pacific, the world's largest ocean, and how it relates to all our futures. Acidification, global warming and increased competition between new and traditional ocean users present great challenges for policy makers at every level," Commissioner Terry Thompson said in a press release. "Strong science can guide rational solutions that produce the best outcomes for all of us."

In late April, the county commissioners committed \$15,000 to an economic study of the historical and projected future impacts of marine research and education on coastal communities to help determine the viability of an expansion at Hatfield.

"This is an important first step in establishing the economic case for adding a branch to the OSU campus," Thompson added. "We would expect to see many benefits to coastal economies and labor forces as OSU continues to grow and expand."

If expansion becomes reality, Cowen said the addition of students, faculty and programs will be gradual.

"It's exciting," he added, but officials want to make sure anything done maintains Hatfield's mission to serve the entire Oregon coast through academics and research.

Contact reporter Dani Palmer at 541-265-8571, ext. 217, or danielle@newport-newstimes.com. Follow her on Twitter @thedanipalmer.

COVERED BRIDGES

Continued from page 1

cause ODOT can come back to haunt you, and we don't want the bridge to fall into disrepair."

The project will begin soon and will be completed by the end of this summer's con-

flatory measure, but it was partnering with the state on the project and had no input on the ODOT estimate.

The "detour" bridge, which is one of four covered spans in the county, was last overhauled in 1989 at the cost of \$135,000. During that project, the structure received

In order to receive the federal funding, earlier this year the county "legalized" about 175 feet of the county road as it extends north of the bridge.

An adjacent property owner had challenged the county's claim that the small portion of road running north

Now best a new gas f

NEW YORK
MAY 1967
FOUR YEAR

1967
MAY 1967
FOUR YEAR



AGENDA & NOTICE OF PLANNING COMMISSION MEETING

The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m. Monday, June 23, 2014**, at the Newport City Hall, Council Chambers, 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder, 541-574-0613.

The City of Newport Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

NEWPORT PLANNING COMMISSION Monday, June 23, 2014, 7:00 p.m. AGENDA

A. Roll Call.

B. Approval of Minutes.

1. Approval of the Planning Commission work session and regular meeting minutes of June 9, 2014.

C. Citizens/Public Comment.

1. A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

D. Consent Calendar.

1. Final Order for File No. 3-CUP-14. Final order approving a Conditional Use Permit per NMC Chapter 14.25.020(E) as requested by Eric & Cherie Gullerud for approval of a vacation rental in a residence located at 732 NW 2nd Ct. where the requirements per NMC 14.25.050 for off-street parking spaces cannot be met. The Planning Commission conducted a public hearing in this matter on June 9, 2014.

E. Action Items.

F. Public Hearings.

G. New Business.

H. Unfinished Business.

I. Director Comments.

J. Adjournment.

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall June 9, 2014

Planning Commissioners Present: Jim Patrick, Bill Branigan, Gary East, Rod Croteau, Bob Berman, and Mike Franklin.

Citizens Advisory Committee Members Present: Lee Hardy and Dustin Capri.

Citizens Advisory Committee Members Absent: Suzanne Dalton (*excused*).

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

Chair Patrick called the Planning Commission work session to order at 6:32 p.m. and turned the meeting over to CDD Tokos.

A. Unfinished Business.

1. Review draft changes to Flood Insurance Rate Maps. Tokos said that he trusted that the Commissioners had looked at the materials. He said that here we have one of three different flood-related issues moving along on different timeframes on the Federal, State, and down to the local level. Tokos explained that the flood insurance maps show where the 100-year floodplain is; and if a property is within that area, flood insurance is required. Flood insurance can be obtained optionally as well. The issue with the flood insurance maps was that the hydrologic studies were done in the late 70s, and the paper maps were adopted in the early 80s. Then the 1982 maps were digitized, and new maps were issued in 2009; which is what we are using now. Outside of picking up amendments done over the years parcel by parcel, there was nothing else; they didn't update the hydrologic analysis. What this round does is update the hydrologic analysis within the coastal area taking into consideration changes in wave height and frequency. They have pretty good data with wave intensity over the years and good tide gauges. From that, DOGAMI prepared this study. Tokos hasn't seen the study, just the maps that derived from it. DOGAMI is the contractor for FEMA in this in our area. Tokos said what is here is an initial very draft edition more for the jurisdictions to take a quality control look at. When they release the preliminary maps, then they will be taking formal comment from the general public and everybody at that point. They want the local jurisdictions to see if there are any major errors or anything problematic. Their timeframe for having the preliminary documents is September or October. Tokos noted that this edition of mapping is Lidar-based, which provides highly accurate elevation data. They haven't updated the hydrologic data for streams and rivers; it's still based on the late 70s work. Tokos said that because it's largely on a bluff, a lot of coastal area didn't get impacted on the north side. More property in Newport came out as opposed to what went in. They lowered the flood elevation from 13 feet to 11.5 feet in the bay. They had pretty good tide gauge data for at least 40 years and felt they could take that down a little bit.

Tokos said there were three particular areas to look at and had attached some sample maps. The first was along the Bay Front showing the before and after. He noted that a lot of Port areas are out. It basically cleared up the line work along the Bay. There are a lot of commercial buildings on the bay side of Bay Boulevard that now will be out as opposed to all of them on the bay side being in previously. Similarly along the coast line it is comparable. Berman asked in looking at the proposed maps, if the way to interpret them is that anything that is blue is now included. Tokos confirmed that blue is in. He said on the coast there is a pretty static elevation of 38 feet on the existing 2009 maps; on the new ones those are broken down into segments of the coast line. The State looked at it in greater detail; and the flood elevations vary. The first is just over 22 feet, and the next segment is 32.5 feet. It's based on the coastal conditions and the dynamics as the waves come in. That's why some coastal areas are different than others where previously they weren't because they didn't have much detail.

There was some discussion about the effect of the Cascadia zone. Patrick said that he didn't understand on the first map how they are getting the area underneath a house removed. Tokos said there are three areas that got our attention so far. One of them is Neolha Point and the assisted living facility where there is the dynamic of drainage and the bay. That is only one. We prepared comments and sent them off to the State; and they will take that and decide whether that warrants changes. Tokos noted that photos were attached from 2005 when a pretty significant event happened. It was when Neolha Point was being constructed as depicted in these photos. Tokos said that the comment from Jonathan Allen was that they didn't know tide gauge data. This was 11.9 feet; pretty close to the 100-year flood event, which is 11.5 feet. Tokos believes that they haven't really factored in that drainage properly. That is what really caused it. Franklin asked if it was not properly backhoed during construction. Tokos said the water was coming from the south from the drainage; and there was so much water that it went over the top. It's lower on the other side, and it just inundated it. Tokos said in this case, we think these properties should stay in. They are likely to receive another flood. They should be in the 100-year floodplain and insurance should be mandatory.

Tokos said that the Nye Beach Turnaround is a different issue that we are further engaging them on. They are adding quite a bit of area inland. From the seawall they are taking it all the way up to the Peerless Puffin, which is quite a bit further than previously. It's our view that the existing map would be fine and is more accurate of what would happen in a 100-year event. The lowest level of parking would be impacted, but not much above that. Tokos said that he is trying to find some information on when the last time was that the seawall was overtopped and how far it went. That seems like an area where they are adding property they shouldn't have. Patrick said that by Lidar they are showing water running through the middle of a building. He wondered how they are getting Lidar if there is a building there. Franklin had a question about the water following the curb line down there. Patrick said that looking at the top of the red that is about three feet higher than the door of the VAC, four feet higher than the door of the bathrooms, and about two feet higher than the front door at the pump station. Franklin added that those three items are excluded from being in the red. He wondered if they take into consideration the walls between the parking lots. Tokos said that elevation should be accounted for. As Jonathan explained, part of it has to do with the seawall and the methodology they used for predicting storms. The seawall doesn't have much give and will get overtopped as opposed to angled rip-rap, which will dissipate some of it. Tokos noted that they are saying that it will run up; but we don't think it will happen to that degree at that location. Franklin wondered what they mean by flood. He said that any water that comes up will decrease with the tide. There is no standing water in this area; it goes back into Nye Creek and drains out. Tokos said this would not be related to Nye Creek; it would all be wave action. Patrick said that if that kind of flood event happens, Nye Creek will back up. Tokos noted that Nye Creek was never mapped as being within any kind of floodplain. Big Creek is mapped, but it is a more free-flowing distributary; Nye Creek is more fully piped. Berman wondered if this map stayed exactly like this, would that mean that if the City sold that parking lot for development the developer would have to pay for insurance. Tokos said there are two commercial buildings this effects; Peerless Puffin and the one right behind it. Those would be impacted and have to buy flood insurance. Franklin said that's the deck of the Chowder Bowl and a piece behind the Puffin. Tokos said when getting into this kind of detail, if any part of a building is impacted, it needs flood insurance. Franklin noted that they took out that area down there; the center of the road and all the way around. Patrick said he's not buying that in real life. Franklin noted that the art gallery at the bottom of the turnaround has been there for about 100 years. Tokos said that had been compromised in the past with storms going through its windows. That would stay in. That is extremely low and is the most suspect anyway. Patrick said the building is impacted, but the ground behind it isn't; and that doesn't make sense. Franklin said in reality it will come down from the top, which is in the red, and get behind the building. Maybe that particular area needs to remain in.

Croteau asked about the Big Creek Road area and wondered if there was no further refinement there because quite a bit of area has been removed. Tokos said this is elevation mapping. They didn't change the hydrologic analysis for creeks, which is problematic because it's not flowing as it did in the 70s. He said that those are homes that have flooded before; immediately on Harney right along there and those back on the west side. But yet they are being removed; and that is what our concern is. If there is no flood history and they are being removed, that is entirely appropriate; but there is plenty of history of that here. Tokos noted that in the materials is a chart showing the changes in Newport acreage. Over 161 acres were removed, 82 acres added, and close to 1400 acres had no change. They are actually pulling out more than they are putting in; but it needs to be logical. We don't want them pulled out, and then we get a flood and they don't have insurance. Branigan asked when the last time was that the Harney homes flooded. Tokos said that he hasn't had a chance to pull that information. Hardy said that the homes she manages on Iler had high water in the last 25 years. They had submerged garage floors. Tokos said there are construction standards for flood insurance. When doing construction, you have to elevate the lowest floor area of finished space at least one foot above the 100-year flood base and below that point has to be flood proofed. He said most of the time with crawl spaces, they use very large vents. There are special vent enclosures that allow flood water to pass through. They are slightly different than what you would normally put over those.

Croteau asked if there are plans to do hydrologic data on creeks and rivers in the future. Tokos said no, not in the foreseeable future because it's largely funding based. Croteau asked then if it will just remain 70s data. Tokos said with just better elevation data.

Tokos said by and large that is where a lot of errors were. Hardy said that she recalled at one time getting a definition of flood as being if a square mile or two square miles were submerged. If that much was not submerged, then it wasn't considered a flood. Tokos said that he hasn't heard that. Hardy said that was when she was talking to an insurance agent regarding the Iler properties.

Again, Tokos said this is one of three things coming down the pike. There will also be new flood insurance rate changes. The original attempt was to take it to actuarial rates, but it was unworkable. The legislature is still shooting for full actuarial rates. It's still out there. Another thing is that the Endangered Species Act (ESA) is being settled at the State level. There will be some changes to when a property is damaged due to flood and you want to replace it in an area that has certain habitat; and you can't just do that without some sort of mitigation. Tokos said he doesn't know more than that. He doesn't know the program coming out of the legislature, but that also is coming down the pike.

Berman asked if these maps based on Lidar have nothing to do with inundation. Tokos said these have nothing to do with tsunamis.

Croteau asked what the Planning Commission needs to do with this. Tokos said eventually the Commission will be required to adopt changes to the flood insurance program, which will include the maps and text changes to the code for review in floodplains. It will be worked through in work session, and then the Commission will hold hearings on the new ordinance. We will be notifying folks within impacted areas. They will have questions about the changes, so the Commissioners will want to be up-to-date on those issues. He noted however that the Commission doesn't have as wide a range of options on this as on a lot of stuff.

Adjournment. Having no further discussion, the work session meeting adjourned at 7:03 p.m.

Respectfully submitted,

Wanda Haney,
Executive Assistant

Draft Minutes
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, June 9, 2014

Commissioners Present: Jim Patrick, Rod Croteau, Gary East, Bill Branigan, Bob Berman, and Mike Franklin.

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

A. Roll Call. Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:05 p.m. On roll call, Berman, Croteau, Patrick, Franklin, East, and Branigan were present.

B. Approval of Minutes.

1. Approval of the Planning Commission regular session meeting minutes of May 27, 2014.

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

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

D. Consent Calendar. Nothing on the consent calendar.

E. Action Items. No action items.

F. Public Hearings.

Quasi-Judicial Hearings:

1. **File No. 3-CUP-14.** Consideration of a request submitted by Eric & Cherie Gullerud per Chapter 14.25.020(E)/ “Bed and Breakfast and Vacation Rental Facilities – General Provisions” of the Newport Municipal Code (NMC) for a conditional use permit for approval of a vacation rental in a residence where the requirements per NMC 14.25.050 for off-street parking spaces cannot be met. The residence is located at 732 NW 2nd Ct (Assessor’s Map 11-11-08-BB; Tax Lot 11700).

Patrick opened the hearing portion of the meeting at 7:06 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of ex parte contact, bias, conflicts of interest, or site visits. Berman, Croteau, Franklin, and East declared site visits. Patrick called for objections to any of the Commissioners or the Commission as a whole hearing this matter; and none were heard. He read the summary of File No. 3-CUP-14 from the agenda and called for the staff report.

Tokos noted that he had with him the complete record of the case should anyone need to see it. He explained that the request is for a Conditional Use Permit for relief from the off-street parking required normally, which is one space per bedroom, when an application is made for a vacation rental. The application also mentions relief for landscaping. As explained in the staff report that is not necessary because the property is not in a residential zone. The landscaping requirement applies to residentially-zoned property. Tokos read the criteria for a Conditional Use Permit from NMC Section 14.34.050. He noted that the staff analysis goes through each of these; and the applicant’s responses are included in the report as well. Tokos said he saw no issues with the first criterion. The request complies with the second criterion. The only overlay on the property has to do with the design of buildings and has no real bearing on this type of proposal. He said the most pertinent issue is the criterion dealing with adverse impacts greater than existing properties. One primary reason for off-street parking is to insure sufficient parking is available for renters and is not overtaxing on-street parking so adjoining homes don’t have access to it. There is a lot of demand for on-street parking in this location. There are a limited number of residences in this location. As outlined in the staff report, Tokos believes that the Commission can find that there are enough on-street spaces to accommodate the vacation rental use. This is an area that is developed and has established uses on it. Regarding the last criterion, there are no proposed building modifications. Tokos said that for reasons outlined in the staff report, he believes the Commission has grounds to find that it would be appropriate to grant relief from this one standard. The applicant would still need the VRD endorsement and to meet all other requirements for vacation rentals; it would just be off-street parking that they would be relieved from.

Berman said that because he drives that street regularly, he had a general thought. He said it’s usually fine, but if a large pickup is coming in the other direction; it’s just a real standoff. He wondered if there is any possibility of considering making that a one-way street. Tokos said that he doesn’t think the City has looked at it; but for purposes of this CUP, we have to consider it to be two-way traffic. A change like that would have to be reviewed by Public Works. Berman wondered if that is something worth looking at.

Tokos said if that evaluation were to be done, they would be looking at the potential to add angled parking to take it down to one way kind of like the street to the north. Franklin noted that NW 2nd Court is a lot narrower. Berman said that he thought that might be a nice way to mitigate a potential parking problem; but he doesn't think we should hold up approval. Tokos said we probably would have to take parallel parking off one side if we went with angled parking. Franklin said that the way he looks at it, with a 3-bedroom home they could have three vehicles; and that is the way it has been impacted all along. There is not much of an impact. It won't be putting more on the street than before. He asked about going away from the landscaping coverage standard and allowing them to park in the front yard. Tokos said that would require structural modification. The house is within eleven feet of the property line. They don't have the width for parking on the side; they only have five feet from the side. Branigan wondered if we knew how many homes on that street are vacation rentals; and it was noted that maybe the applicant could answer that.

Proponent: The applicant, Cherie Gullerud, 1290 NW Kline Pl, Corvallis, OR 97330, came forward to testify. Gullerud explained that they purchased the house in October 2013. They used a loan to update the plumbing, wiring, and interior. She said that they worked hard to keep the craftsman style of the home. They used all local contractors. Ideally they would love to live in it; but they are several years away from retirement. They felt the highest and best use of the house would be to turn it into a vacation rental. Also, they would like to recoup their expenses. Because it is close to the beach, they feel it would make an ideal year-round vacation rental; and they would like to join the ranks of such rentals. She noted that the code requires an off-street parking space per bedroom; and the house has three bedrooms. The lot is 2,578 square feet, and the house takes up the bulk of the lot. They could talk about trying to put parking in the front lawn, but it would probably have to be some sort of drive-through and would destroy the culture of the neighborhood. Gullerud said that it's their desire that the conditional use permit be granted so that friends and family can enjoy the residence. They wanted to take this step before applying for a rental license. She said that she didn't believe that any house on 2nd Court is used as a vacation rental. She described the uses of the surrounding houses.

Berman said that one alternative would be to use it as a monthly rental, which wouldn't have the same requirements. He asked why they chose to do a vacation rental. Gullerud said that they wanted to have the opportunity to come out here and visit. She said they have a pretty extensive family, and everyone loves to come to Oregon. They wouldn't want to tie up the house. If it proves not to be lucrative, they would. She noted that everything has been upgraded, and it would be a nice monthly rental; but it has no driveway and very little storage, which lends itself to a short-term rental.

Branigan asked Gullerud if she would manage it herself or have a local management company. Gullerud said that a neighbor has a real estate license and has expressed interest in managing it for her. She noted that she comes from a long family line of rentals; but mostly low income. She has done a lot of month-to-month rental. She would like to try this.

There were no other proponents or opponents present to testify.

Patrick closed the public hearing at 7:24 for Commissioner deliberation. Berman said that his only concern, being a regular user of that street, is parking. He doesn't see any way around it. He will go ahead and vote for the conditional use permit. He would like to request that Gullerud encourage those renting to bring as few cars as possible. He said that he would encourage her vacation rental to be considerate of the neighborhood and minimize the number of cars. Croteau believed that the conditions are met for approval. He sees no problem. Franklin said he also would be in favor of approval. He wished there was another opportunity for parking. He noted that many times people bring boats, which could clog up that street. East agreed and believed the request should be approved. He noted that on 3rd Street heading toward 101, there is a lot of parking established, but it might be a bit of a walk. Branigan concurred, but subject to the owners making application for endorsement for vacation rental and going through the inspection to determine conformance with the basic safety and health elements. Patrick concurred. He felt that it met the criteria. He noted that Nye Beach has its problems with the small lots; but that's part of its charm.

MOTION was made by Commissioner Croteau, seconded by Commissioner East, to approve the conditional use permit as requested in File No. 3-CUP-14 with the conditions indicated by his fellow Commissioner. Berman noted that he didn't see in the materials the list of people to whom the notice was sent. It was confirmed that those required to receive notice had. Gullerud had a question about 3rd Street. She said they wanted to advertise limited parking and wondered if it would be okay to give a map and suggest the best parking is over here. She wondered if it's okay to park at the PAC when nothing is going on. Croteau said people park there all the time. Berman noted that it is City property. Tokos said they are welcome to park in any public lot. They should be considerate of the areas that are time limited; but they are clearly posted for three hours. People are free to park at the PAC and the VAC. The motion carried unanimously in a voice vote.

Tokos noted that he will have a Final Order available for signature at the next Planning Commission meeting and then will get it in the mail to Gullerud.

G. New Business. No new business.

H. Unfinished Business.

1. Tokos asked Berman to apprise the others on the medical marijuana letter presented to the City Council. Berman noted that the Council had asked him up for his comments. And he described what was in the minutes and in the letter. He recalled that essentially

the Commission had recommended three and rejected three requests from the Chief of Police. The Chief also had an opportunity to testify before the Council. In the end, the Council referred the matter to the Business License Task Force for priority consideration. That Task Force will be taking a look at it shortly. The Council specifically wanted to reopen one thing that the Commission rejected, which was that the police department be called first when there is an alarm. Berman said it is a good argument and sees why the Chief would want that; but he thinks the Chief will get tired of it quickly. The Business License Task Force will take a look at that. Berman said that the Council thanked the Planning Commission for our work. They agreed it was not a land use matter. Tokos said the Business License Task Force will pick up on that at their next meeting on the 17th at 3:00 p.m. Croteau noted that he is now the only Commissioner on that Task Force. Berman said that he would be willing to fill in on the Business License committee. It was felt that it would be worthwhile to have two representatives.

2. Tokos noted that he had hoped to have materials for this meeting regarding beachfront protective structures. It will come in a work session. He noted that there are a couple of options for the Commission, and he has to frame them right. He has to see how much the Commission wants to get into and how much to push off to the State Parks Department. He should have that in a couple of weeks.

3. Tokos noted that the Comprehensive Plan amendments to the Library Services element will be before the City Council at their next meeting on the 16th.

I. Director's Comments.

1. Tokos said that at their next meeting, the City Council will consider a MOU with the Port dealing with Yaquina Bay Fruits' maraschino cherry operation. They have been operating in violation of their conditional use permit for some time. There is a path now with the text change that would allow manufacturing in relation to retail, which would allow them to change their model to something akin to what the Rogue is doing. It would still be manufacturing but would have a retail component. Yaquina Fruits would have a display of their manufacturing and a gift shop with a maraschino cherry candy line. It will require reconstruction of their facilities and paving of their parking lot so there is a significant cost involved. The owner, Harry Noah, decided it wasn't economical. That is where we left it; but now he's changed his mind. The Port has to do a lease extension and asked if the City could work with an additional twelve months, which we can do but we want it in writing so that we don't have him coming back saying he needs another twelve-month extension. Tokos said the Commission will likely see a conditional use permit in the next four to six months.

2. Tokos noted that he will be putting together an application for a Transportation Growth Management Grant. Matching funds are in the budget. It is taking LIDs as a way of financing improvements. The City hasn't done an LID for a while for a number of reasons. We can take that and work with the TSP standards in a better way. We can put something together for people to better understand what LIDs are and how they work. The Commission will see the public outreach and engagement piece. The City has a several areas where we have a number of remonstrance agreements. Tokos said this will lead to code changes.

3. There will be a work session with the City Council on the parking districts. Tokos is inviting representatives from the different districts to participate. The Council wants to check in on how these districts are going.

4. Tokos said that at their next meeting, the Council will appoint Lee Hardy to fill Jim McIntyre's position on the Planning Commission.

J. Commissioner's Questions.

1. Berman asked Tokos if he wasn't going to meet with the County about Urban Renewal. He asked if they are inclined to go along with it and not make waves. Tokos said that we have met with the County, and they are receptive to the concept. We will be meeting with them again. He expects that the County will be supportive of the concept.

K. Adjournment. Having no further business to discuss, the meeting adjourned at 7:40 p.m.

Respectfully submitted,

Wanda Haney,
Executive Assistant

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION)
FILE #3-CUP-14, APPLICATION FOR A) FINAL
CONDITIONAL USE PERMIT AS SUBMITTED) ORDER
BY ERIC & CHERIE GULLERUD)**

ORDER APPROVING A CONDITIONAL USE PERMIT per Chapter 14.25.020(E)/“Bed and Breakfast and Vacation Rental Facilities – General Provisions” of the Newport Municipal Code (NMC) for approval of a vacation rental in a residence at 732 NW 2nd Court where the requirements of NMC 14.25.050 for off-street parking spaces cannot be met.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on June 9, 2014; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the requested conditional use permit with the following condition(s):

1. The applicant/owner shall make application for an endorsement for a vacation rental pursuant to NMC Chapter 14.25, and is subject to inspection by the Building Official or designee to determine conformance with basic health and safety elements and the endorsement standards of 14.25.050, except the requirements for parking outlined under NMC 14.25.050(C).

BASED UPON THE ABOVE, the Planning Commission determines that the request for a Conditional Use Permit to authorize a vacation rental at 732 NW 2nd Court is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport, and the request is therefore granted.

Accepted and approved this 23rd day of June, 2014.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 3-CUP-14

FINDINGS OF FACT

1. Eric & Cherie Gullerud submitted an application on May 6, 2014, for approval of a Conditional Use Permit, per Chapter 14.25.020(E)/ "Bed and Breakfast and Vacation Rental Facilities – General Provisions" of the Newport Municipal Code, for approval of a vacation rental in a residence where the requirements of NMC 14.25.050 for off-street parking spaces cannot be met.
2. The subject property is located at 732 NW 2nd Ct. (Lincoln County Assessor's Map 11-11-08-BB, Tax Lot 11700). The parcel is approximately 2,587.5 sq. ft. per Lincoln County Tax Assessor records.
3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: Commercial.
 - b. Zone Designation: C-2/"Tourist Commercial" (Nye Beach Design Review Overlay District).
 - c. Surrounding Land Uses: Uses include tourist commercial and single-family and multi-family residential uses.
 - d. Topography and Vegetation: The site is flat, and the front yard is landscaped with lawn. The rear yard is covered with a deck.
 - e. Existing Structures: A residence built in 1913.
 - f. Utilities: All are available to the site.
 - g. Development Constraints: None known.
 - h. Past Land Use Actions: None known.
4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on May 8, 2014, to affected property owners required to receive such notice by the Newport Zoning Ordinance, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., June 9, 2014, or be submitted in person at the hearing. The notice was also published in the Newport News-Times on May 30, 2014. No written comments were received prior to the hearing.
5. A public hearing was held on June 9, 2014. At the hearing, the Planning Commission received the staff report and heard testimony from the applicant. The minutes of the June 9, 2014, hearing are hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" – Applicant's Written Findings of Fact
Attachment "A-1" – Site Plan
Attachment "A-2" – Building Photographs

- Attachment "A-3" – Aerial Photo
- Attachment "B" – Public Hearing Notice
- Attachment "C" – Assessment Map of the Property
- Attachment "D" – Zoning Map of the Area

6. Pursuant to Chapter 14.25.020(E)“Bed and Breakfast and Vacation Rental Facilities – General Provisions” of the Newport Municipal Code (NMC), if one or more of the standards required under Section 14.25.050 cannot be met, an owner may seek approval of a vacation rental or bed and breakfast use as a Conditional Use, pursuant to 14.34.010. A Conditional Use Permit may allow relief from one or more of the endorsement standards of 14.25.050, but does not excuse the general endorsement requirements of 14.25.010. With this application, the applicant is seeking approval of a conditional use permit because the existing residence (built in 1913) does not meet the requirements for one off-street parking space per bedroom.

7. The applicant explains that their intent is to convert the existing residence into a short-term vacation rental with three bedrooms, which is consistent with other uses throughout the Nye Beach neighborhood. Due to the limited lot size and existing footprint of the residence, this property cannot satisfy business license endorsement standards as required by Newport Municipal Code with respect to off-street parking. Pursuant to 14.25.050(C), one off-street parking space per bedroom is required.

8. The applicable criteria for the conditional use request are found in NMC Section 14.34.050:

- a. The public facilities can adequately accommodate the proposed use.
- b. The request complies with the requirements of the underlying zone or overlay zone.
- c. The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.
- d. A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

CONCLUSIONS

Regarding the applicable criteria for the conditional use request, the following conclusions can be made:

A. *Criterion #1. The public facilities can adequately accommodate the proposed use.*

1. Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets, and electricity. All public facilities are available and serve the site and existing residence.

2. The applicant’s findings indicate that the proposed three-bedroom vacation rental is expected to house vacationers in limited numbers for short-term stays so the expected impact of this use is

significantly less than that of full-time occupancy. The house has been used as a family vacation home and a monthly rental in the past. It was acquired in November of 2013 by new owners who believe the highest and best use is as a vacation rental.

3. Photographs provided by the applicant and an aerial image of the site establish that the residence is located in a developed residential/commercial area where public services are available. This constitutes substantial evidence that the Commission can rely upon to find that public facilities are sufficient to support the use.

4. Given the above, the Planning Commission concludes that the public facilities can adequately accommodate the use of the residence as a vacation rental.

B. *Criterion #2. The request complies with the requirements of the underlying zone or overlay zone.*

1. This criterion addresses special requirements of the underlying or overlay zone beyond the standard zoning ordinance requirements. The subject property is located within the Nye Beach Design Review Overlay zone. The zoning is C-2 within the Nye Beach Design Review Overlay District. Vacation rentals are permitted in the C-2 zone; and the conditional use permit process is an avenue for those that are unable to meet all of the endorsement standards. The applicants note the request for conversion of the existing residence to a vacation rental is in compliance with the City's zoning code regulations as of July 1, 2012, and that the request is consistent with other uses in the Nye Beach neighborhood.

2. The applicant notes, and Lincoln County Assessment records confirm, that the residence was built in 1913. It was last updated in the 1980s. This predates establishment of the Nye Beach Design Review Overlay. Further, the Overlay standards are tailored to ensure that new structures are designed to complement streetscape and design elements already present in the area. The standards are not applicable to a change in use of this nature.

3. Given the above, the Planning Commissions concludes that this criterion is satisfied.

C. *Criterion #3. The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.*

1. This criterion relates to the issue of whether or not the proposed use has potential "adverse impacts" greater than existing uses and whether conditions may be attached to ameliorate those "adverse impacts." Impacts are defined in the Zoning Ordinance as the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood.

2. The applicant notes that because of the nature of the building and its extensive decking, business activities should be well-contained within the property. No adverse impact to the neighborhood regarding unreasonable noise, dust, air quality, etc., is anticipated. In its history, the dwelling has never been accessible to off-street parking.

3. A primary reason for the off-street parking requirement is to ensure that sufficient parking is available to persons renting a unit, and that available on-street spaces are not overtaxed such that

adjoining homes and businesses are adversely impacted. The aerial photograph shows that parallel parking is available on both sides of NW 2nd Court. There are no restrictions on the use of these parallel spaces. Commercial uses bookend both sides of NW 2nd Court and the available parallel parking spaces are heavily utilized. This may mean that spaces will not be available to vacation rental users at all times or the users will occupy spaces that would otherwise have been available to owners/tenants of other residences within the block or for employees/customers of the commercial establishments. A key consideration though, is whether or not conversion of this unit from conventional ownership or a month-to-month tenancy into a vacation rental use will attract enough additional vehicles that it will adversely impact established uses in the area. Given the modest size of the applicants' dwelling (at 3 bedrooms), and the fact that the unit will likely be occupied on a seasonal basis, the Commission finds that available on-street spaces are adequate to accommodate the vacation rental without adversely impacting neighboring uses.

4. The applicant's site plan shows that the property is 2,587.5 square feet in size with the house being setback less than 12 feet from NW 2nd Court. Side yard setbacks are roughly 5-feet in width. Approximately 20-feet of driveway depth would be needed to provide an off-street parking space. This could only be accommodated through substantial renovation of the residence, which would be impractical.

6. Given the above, the Planning Commission concludes that this criterion has been satisfied.

D. *Criterion #4. A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.*

1. The applicants note that the application is for relief to the parking requirement for an existing structure and not for a proposed building or building modification. The original structure was built in 1913. Additions to the home were made sometime after that; but no improvements have occurred since the 1980s. The new owners have upgraded the interior to increase the energy-efficiency and enhance patron comfort and safety.

2. Given the above, the Planning Commission concludes that the use of the dwelling as a vacation rental will be consistent with the overall development character of the neighborhood.

E. The application seeks relief from landscaping requirements that apply to vacation rentals. The landscaping standards require that at least 50% of the front yard and 40% of the total lot area be landscaped (ref: NMC 14.25.050(E)). These standards are intended to prevent undeveloped portions of a property from being converted into extra parking spaces, creating a streetscape that is inconsistent with a typical residential environment and allowing for more people to reside in a unit than it can reasonably accommodate making it more likely that there will be nuisance impacts to neighbors. These standards only apply to properties that are situated in residential zones. The subject property is zoned C-2/"Tourist Commercial," which is not a residential zoning designation; therefore, there was no need for the Commission to consider a deviation from this standard as it does not apply to the subject property.

OVERALL CONCLUSION

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for a conditional use permit found in Section 14.34.050 of the Newport Municipal Code (NMC); and, therefore, the requested conditional use permit to convert an existing residence to a vacation rental dwelling can satisfy the approval criteria for a conditional use and is hereby approved with the imposition of the following conditions of approval:

1. The applicant/owner shall make application for an endorsement for a vacation rental pursuant to NMC Chapter 14.25, and is subject to inspection by the Building Official or designee to determine conformance with basic health and safety elements and the endorsement standards of 14.25.050, except the requirements for parking outlined under NMC 14.25.050(C).