



# Meeting Notice

---

Please note that there will not be a 6:00 p.m. Newport Planning Commission work session meeting held prior to the regular 7:00 p.m. session on **Monday, July 14, 2014**.

---



## AGENDA & NOTICE OF PLANNING COMMISSION MEETING

---

The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m. Monday, July 14, 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, July 14, 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 23, 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.**

**E. Action Items.**

1. Approval of a letter from the Newport Planning Commission to the Newport City Council regarding Commission support of the Memorandum of Understanding (MOU) between the City of Newport, the City of Lincoln City, Lincoln County, and the Lincoln Community Land Trust forming a partnership to further the workforce housing initiative.

**F. Public Hearings.**

1. File No. 1-SV-14: A proposed street vacation initiated by the Newport City Council to vacate portions of SW 31<sup>st</sup> Street, SW 32<sup>nd</sup> Street, SW 33<sup>rd</sup> Street, SW Coho Street, SW Brant Street, SW Abalone Street, and SW Anchor Way as road rights-of-way that are not needed for public purposes. These street vacations are being undertaken in concert with a subdivision plat that will reconfigure SW 30<sup>th</sup> Street, SW 35<sup>th</sup> Street and SW Abalone Street for future street improvements. The Planning Commission will review this matter and make a recommendation to the Newport City Council.

2. 1-SUB-13: A subdivision plat initiated by the Newport Urban Renewal Agency that will reconfigure properties owned by the Oregon Museum of Science and Industry (OMSI), Investors XII, LLC, and Dick Murry in order to position SW 30<sup>th</sup> Street, SW 35<sup>th</sup> Street, and SW Abalone Street rights-of-way for future street improvements. New rights-of-way need to be dedicated for this purpose, and a subdivision platting process is the most efficient method of establishing the location of the road rights-of-way.

**G. New Business.**

**H. Unfinished Business.**

**I. Director Comments.**

**J. Adjournment.**

**Please Note:** ORS197.763(6): "Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing." (applicable only to quasi-judicial public hearings)

**Draft MINUTES**  
**City of Newport Planning Commission**  
**Work Session**  
**Newport City Hall Conference Room A**  
**June 23, 2014**

**Planning Commissioners Present:** Rod Croteau, Bill Branigan, Lee Hardy, Bob Berman, Mike Franklin, and Jim Patrick.

**Planning Commissioners Absent:** Gary East (*excused*).

**Citizens Advisory Committee Members Present:** Dustin Capri.

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

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

Prior to Chair Patrick's arrival, Vice Chair Croteau called the Planning Commission work session to order at 6:02 p.m. and turned the meeting over to CDD Tokos.

**A. Unfinished Business.**

1. Review Comprehensive Plan amendment to include Beachfront Protective Eligibility Inventory (File No. 3-CP-14). Tokos noted that included in the packet were some provisions on beachfront protective structures. He said that effectively using what the City has already is a way of doing these amendments as efficiently as possible. The City's Comprehensive Plan has a chapter for Natural Features, which covers a lot of things we are required to cover under land use planning. The inventory is on page 38 where it already covers the relevant part of Goal 18, which is the highlighted language. It explains what development means verbatim out of the rule. The language about an exception where approved is also verbatim. When asked, Tokos said if Newport has any exceptions, they were some time ago. He said that he didn't see a need to make changes to the background of the Comprehensive Plan because it seems to cover what needs to be covered. The change in the Comprehensive Plan is actually Policy 6, which implements that; and that language is on page 49. He is adding language that beachfront protective structures may be permitted on properties identified as eligible on the inventory by DLCD, it includes areas where a goal exception has been approved, and it provides the definition of development. We already had the discretionary standards language in Policy 6 that were never implemented in the code.

Franklin asked if the Commission will be able to see the maps if they change; and Tokos said absolutely. He said assuming the Commission moves this forward from work session to public hearing, we would have all that information available. Patrick asked when was the last time Newport had an exception to Goal 18. Tokos said he could take a look at that and identify that during the public process. This language would cover that, and it would be duly noted. He said that if Newport had any, it would have been some time ago. We haven't had a lot of goal exceptions. They are rare for cities; it's usually more rural. Goal exceptions have to go all the way up through the State. Tokos can take a look in the records and let the Commission know in the formal process if Newport has any exceptions and where they may be.

Berman noted that there were four criteria here, but in the other reference later on there are six of them. Tokos said these four are verbatim of the goal. They are 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. He said that what some of those mean is a little vague, which was intentional because we need for it to be somewhat broad and subject to interpretation at the local level. For the Comprehensive Plan policy, he would recommend putting in more specific language than this. In the development code, you can be more specific in what these mean. This language gives authority to put the code together by talking about what we want to do that. Policy 6 is the scope of what we can look at in the development code. The development code is where you want to be specific about how we address these issues.

Franklin thought that the one that says "negative impacts on adjacent property are minimized" seemed hard. Tokos said these are discretionary standards. He structured this as a Type 2 (Staff) review appealable to the Planning Commission. He could have it go straight to the Planning Commission. At the end of the day, it is a discretionary decision subject to appeal. Berman asked if these maps that were included in the material are part of the Comprehensive Plan. Tokos said yes, even though they are very rough they are the maps in the Comprehensive Plan that show the ocean shorelands. We haven't tried to refine them. He said that they are suitable for this purpose. He noted that the black line shows the boundaries. Everything from 101 to the coast falls within ocean shorelands. It picks up all beachfront property, which is all we need to care about for this exercise. Whether it deals with habitat is something else.

Tokos asked if there were any questions on the Comprehensive Plan policies. He asked if they seem to make sense. Everyone agreed that they did. Tokos then moved on to the actual code changes. He said that the place that seems to make the most sense for this is in the Ocean Shorelands chapter. It fits cleanly here. This whole chapter is set up as Planning Director review depending on the issue; significant habitat, parks and outstanding natural areas, and public access points. So he added beachfront protective structures at the end. Branigan asked on 14.38.020 where Tokos changed "Planning Director" to "Community Development Director," why not change it in the definition. Tokos said this should be Planning Director because that is the term in the Administrative Rule. Elsewhere in our code we use Community Development Director. We want to be consistent in terminology. Tokos said that for Beachfront Protective Structures, what most jurisdictions have tried to do is define that; and that is what this first part is here. What this explains is that it can be a lot of different things; riprap, revetments, or other manmade improvements to stabilize or support a slope. He thought it seemed reasonable to put in more language to provide context. It says it is including these types; it doesn't preclude something else if we run into it. We are talking about manmade improvements to stabilize or support a slope. The code goes on to say that you are eligible if you are on the inventory, which is what item "(a)" says; or item "(b)" if you can prove there was development on the property on January 1, 1977. Then "(b)" gives the goal definition of development. Item "(c)" is the goal exception option. Number "2" gets into the discretionary standards and acts to define them better. Tokos said he set this up, because as you see from the Administrative Rule, OPRD has to do a comparable review if the beachfront protective structure extends below the vegetation line. He crafted this to cover this above that line; if below that line the City would accept OPRD's evaluation. He said that we don't have to do it that way. He noted that Tillamook County didn't; they require in all circumstances landowners to have double review. All standards are different. Somebody doing structures below that vegetation line in Tillamook County has to get approval from both and has to meet different standards. Below the vegetation line, the State has to do an evaluation. Tokos said if the Commission elects to have discretionary review, the State can take the City's findings and use them as their own. If they don't agree, they don't have to use the City's findings; they are not obligated. Tokos said it depends on how strongly the Commission feels if someone is doing new riprap on the bank and it extends below that vegetation line because it will be highly visible. He said it comes down to how much say you want or if you want to say OPRD can deal with it, and we will just deal with the eligibility part of it. Tokos said that area above the vegetation line where we could have a number of projects come in is in Agate Beach where slopes are way up high. That's where we could have a number of projects that wouldn't get to the vegetation line. Having that under our standards would make sense. OPRD looks at an extensive set of standards; far more than Tokos outlined here. These seem to address what we are required to address.

Capri noted that if someone wants to build a two-story house, they could block the adjacent property's view; where under item "2(d)" if it's riprap, they couldn't block the view. With a protective structure, you have no right to block their view. Tokos said no you don't in this case. We have a statewide goal and it's in the Comprehensive Plan. If someone came in tomorrow and wanted to put in riprap, we would have to address that as a staff decision and possibly a Planning Commission hearing. The goal language regarding visual impacts would have to apply. Patrick said an example of this would be in Bay Shore where houses were built at varying heights on the existing dunes and someone builds riprap at their level blocking the view of the house lower down. Capri assumed that this is making it so you are putting in riprap when all other things don't work. Tokos said that is what items "(a)" and "(b)" get at. You have to demonstrate that you have a problem at this point, and the structure is the solution to that. Vegetation is one way to stabilize if you can pull it off; if the slope can take vegetation. Capri said if you've gone through options that don't work and you have to put in riprap; if it's blocking the neighbor, you can't put it in. Tokos said if you look at the State standards, OPRD has a pretty fair pattern with what they have to apply for scenic standards. That is on page 6 of the Administrative Rule. He noted that Capri was worried about visual impact. OPRD defined view obstruction as being to existing views of the ocean and beaches on adjacent properties. That is what they mention they are concerned about; but there may be other views people are concerned about. Franklin asked, view from where? Tokos said this would be obstruction of existing views of the ocean and beaches from adjacent properties; and adjacent means next to. It's existing views of very identifiable features; ocean and beaches. Hardy said that she hasn't seen riprap the height of a house. Patrick said someone could do it with a high bank by putting a new wall in and building it out six to eight feet. Tokos said yes, it could block the view to the northwest or something. Branigan said but you can build a house and block someone's view and it's okay. Tokos said it says minimize. What they are driving for is that you have to explore other opportunities that have less impact to the beachfront visual corridor in case it doesn't have to be a riprap bank of that mass to achieve what you are trying to achieve. He said some folks get it. We would have that worked into the analysis. Going back to the code, Tokos noted that public ownership and use (item "2(d)") is pretty straightforward. You can't put the protective structure over the top of a beach access. If you are losing slope but there is an access down to the beach there, you can't block that access. You have to look for a way to achieve what you want but still preserve the access.

Patrick said if there is a separate approach in the State's jurisdiction, there is no sense for us to do it. Berman said he could make the argument for consistency. What could happen is that the State applies one set of standards to one property, and a neighbor two doors down comes into the City and has to comply with a whole different analysis. Branigan said the State doesn't do the upslope. Patrick said they would have to come get two reviews. Tokos asked if we should be keeping ours simple; looking at eligibility. Or should we be looking at it more because of where it is located; down on the beach. Do we want to have a say on discretionary stuff if it gets down on the beach? He said if you feel OPRD, given their responsibility for protecting the beach, can do an adequate job then let them handle it and we just review eligibility. Capri asked if Tokos felt OPRD could handle it.

Tokos said yes; especially Tony Stein who is currently the director. He has overseen stuff all along the beach. Hardy said if we only do above the vegetation line, we want to have a parallel value system so we don't have the State standards widely varied from what the City wants to allow upslope. Tokos said that if any portion of the structure extends below the vegetation line, OPRD gets the whole thing; we just deal with eligibility. Franklin said they have more experience; so let them do it. Tokos said we can always change the rule.

Croteau said there is something to say for having as much say at the local jurisdiction as we can. He gave an example of Nye Beach. Yes, it is discretionary; but he would rather have it set here by us along with the State. We may agree or disagree. It's not a burdensome level of review we are asking for here. It is discretionary and will take some interpretation. Tokos said they would do a review and we would do a review. Tokos would modify this code and strip out number "3". It would be drafted as more of an acknowledgement so they are aware they have to do a review. Building permits are not issued until that review is complete. We are not obligated to get the rules the same as the State's, which means that we would have a say, but OPRD may end up differently anyway. They may say "no, City, we don't agree with you; and this is appropriate or this is not." If it's below the vegetation line, they are going to trump. Berman asked if Tokos is saying the State is going to do that anyway. Tokos said, yes they are going to do a discretionary review anyway. Tokos said if the Commission wants, he can talk to Tony Stein and ask if this is enough for OPRD to feel they could accept the City's findings or would they want to see more on the City's side to make this process easier on the applicant. Is there a way to hammer out the discretionary at one level with either one doing it and the other accepting it? Then there may possibly be a few more standards coming back to the Planning Commission. Berman thought that's needed for consistency. He said that places where this turns up are the heart and soul of Newport. He would be more comfortable if we are looking at all requests. Branigan asked how many we get. Tokos said it's very rare. Hardy said there are a lot more in the County. Tokos said that stuff will hit in mass if we get a severe weather turn and we start losing the bluff. It will be either move the house or stabilize the slope. Franklin said and they will want to handle it quickly. In those cases the neighbor will be wanting to riprap too. Patrick said if they are grandfathered. He said that has been the big rubbing point; erosion shifting to either side of the riprap.

Hardy said there are other issues that riprap won't solve. You have huge slide blocks in town. Drainage control might help somewhat; but that stuff moves whenever it wants. Croteau said that drainage control is a much bigger issue.

Capri suggested adding language to item "2(c)" "obstruction of existing views of the ocean and beaches from adjacent properties is minimized to the extent practical." Tokos said he probably could do that.

Tokos asked if it's the general consensus to look at this in all cases and was told yes.

Berman asked if there is a non-grandfathered area that is public access and it starts to disappear, what would it take to get some structure to maintain that public access. Tokos said that is a goal exception right now. It goes through us and then to the State by whoever is trying to protect that access. He noted that at Beverly Beach you can see their attempt to stabilize that slope is right up to the edge of the pavement. They can't armor that embankment. The State Highway Department is not exempted from that goal; but they can get a goal exception. They are looking into that. They identified alternatives such as relocating the highway slightly to the east, which seemed viable in the past. They are looking again to see if the exemptions are good ones, alternative analyses, and things of that nature. Berman mentioned the beach access that was at the end of 60<sup>th</sup>. There could be a 10 foot drop that exists. Tokos said you see beach accesses have been lost all up and down the coast. He said the State does have the ability to do emergency authorization in certain circumstances. He will take a look at that because we will probably need to incorporate that. We would similarly want to do something since you want to look below the vegetation line. Patrick said as soon as the bluff gets eroded, it is State property because it's the high water mark. Capri asked if as a private citizen you can ask the State to repair State land. Tokos said you would have to talk to the State agency responsible for that and whether they would be willing to do that. They would have to approach the local jurisdiction to check for goal exception. ODOT can't just do that unilaterally. Patrick said if access is on a platted street then the City could apply to themselves. Tokos said or come in with a request down the road to do some sort of staircase structure. Berman asked if a beachfront protective structure is permanent. Tokos said he wouldn't go there per se.

Berman talked about a big gulley by his house where each couple of years he has dumped rocks in there with OPRD approval. Tokos said that's riprap effectively. Berman said that Stein said it was okay if he did it. Berman asked if that type of dumping rocks is beachfront protective structure. Patrick asked if it was above the vegetation line; and Berman said mostly. Tokos said OPRD takes the full extent of responsibility of the project because they take jurisdiction below that line.

Tokos said he will modify the code as discussed and get it noticed to the State for a hearing in late July or early August because of the 35-day notice requirement.

Croteau said when looking at past history, he would also be interested if goal exceptions were granted in the past; if so, he would like to see it. Tokos said he is nervous whether the City has been doing what it's supposed to have in the past; but he can bring that forward. Franklin asked if the Commission could get an example of things done in the past. Tokos said Stein could provide

that. They have had to reject things up and down the coast. Patrick said mostly because they are ugly piles of rocks. Tokos said these are mostly cases where a property owner goes a little bit overboard in terms of what they are doing. It's where there is some loss to the slope and they're going to fix it to last for the next 200 years and it's way more than what is technically needed and there are way more impacts to neighbors. Patrick said that he's seen pictures of some 150-foot tall walls.

## B. New Business.

1. Review and discussion on draft Memo of Agreement (MOU) between Lincoln County, Lincoln City, and City of Newport for workforce housing. Tokos noted that workforce housing is an ever-evolving conversation and takes a lot of patience because it's difficult to get any progress on it. He said as a Planning Commission we talked about goals in the housing element of the Comprehensive Plan and did an update to the housing inventory and policies. We did that large outreach with the Technical Advisory Committee in 2010 and made a number of changes based on the recommendations from that. We put in the accessory dwelling units and manufactured dwellings sections. The City set up a revolving loan program this year from the sale of property on the Bay Front as resources for workforce housing construction. As one of the goals, we are looking to put a land bank in place, which is making City property available and entering into an agreement with the Lincoln Community Land Trust (LCLT). When a home is constructed, LCLT retains the ownership of the land. The homeowner is buying the unit at unit cost; not plus the land cost, which makes that home more affordable for the workforce. LCLT had two properties developed and sold. Both of which were in Lincoln City because that's where the property was available. The latest home was a 3-bedroom new construction and sold for just under \$135 thousand. Tokos said the original concept was that there would be an agreement between the Land Trust and the City of Newport where the City would make properties available over a five-year period to get basically a unit a year; six units over five years. The City would make available revolving loan funds to cover the costs of construction. The loan funds come back when the unit is sold and would be used for the next house. Tokos noted that the Planning Commission provided a favorable recommendation for that to the City Council. The Council didn't rule out going with that but decided they would be more comfortable if this was a broader partnership. Tokos said that is what is being brought forward now. He had included a copy of the MOU that provides that the city of Lincoln City, the city of Newport, and Lincoln County will each contribute \$30 thousand a year; which is more than it was. It was just our annual dues. These contributions are for three years to fund and hire our own executive director for the Land Trust so that we have somebody locally. The agreement is more general in terms of other commitments; revolving loan funds available, properties available, and County tax-foreclosed properties. It was intentionally a little vague. All three parties aren't in a position to spell that out. Tokos said that MOU is going to Lincoln County on the 22<sup>nd</sup>, Lincoln City later in the month, and Newport on July 21<sup>st</sup> tentatively. All three jurisdictions have budgeted the funds. Tokos said it was discussed at the Newport budget committee, and there was an attempt to get it out of the budget. He noted that we don't have unanimity on the City Council. The majority supported it so it cleared the budget committee.

Tokos said the Planning Commission is charged with taking a stance on these issues, and you supported it prior. His question is if the Commission is prepared to support this concept. He said it's very comparable; it's just a broader partnership for a shorter term of three years and is vaguer about who is offering up what.

Croteau said we have spent a lot of time on this issue and want to get something moving. He said there are a lot of people involved, and there is the commercial factor. We need to act responsibly. He said this is a baby step necessary for moving forward with this. The broader base of funding is better; but the time is short. He said that he gives this this blessing. We have to get started on this issue.

Tokos said that is what the housing study shows. It's a pinch point for employers. Tokos had included a recent newspaper article and said look at OSU and the housing it needs for those students. We don't have the capacity for an additional 5,000 students. Franklin asked how we could resolve that quickly. Tokos said that is what Croteau is getting at. Tokos said that he thinks that those on the City Council that support this understand that this is just a piece of the puzzle that's not presently being addressed by anyone else. If over three years we get six to eight units, that's six to eight that didn't exist prior. Those opposed are saying that we are making a lot of resources available for a small number of units and is this the best use of those resources. Capri asked what about townhouses or row houses, which would impact more people. Tokos said that he wouldn't rule that out; but do we have land suitable for that in Newport inventory, or Lincoln City, or the County tax-foreclosed properties. Do we have resources for this type of construction; it would be more expensive to construct than a single-family home. Do we have an organization capable of handling a bigger project yet? Croteau said there is a big demographic. We need single-family homes. Townhouses are great for young couples starting out; not for families. He said he doesn't know how OSU will house all of these students without constructing a dormitory. Tokos said Wilder is an excellent place for them; and they are talking. From OSU's perspective that is a pretty big expense on their capital. Croteau said that's even more reason to put the chips on the table as soon as we can. Tokos said that the housing study and the interviews with major employers indicate that they are having a hard time recruiting teachers, medical professional, etc., let alone the service category. Tokos said that is why the Land Trust is talking up to 120% of median family income. We have such a tight housing market, particularly with second homes. People are holding on to those homes. Franklin said and there is no big place for the City to expand. Tokos said we have a development trying to hit that market by selling cottages and smaller homes. They had some under \$210 thousand; now they are probably \$220-\$230

thousand on the smaller sites. Tokos said the difference between \$400 thousand and \$450 thousand is one thing. The difference between \$150 thousand and \$200 thousand is a big thing in terms of who you hit. Franklin asked who's eligible to buy these homes. Could an investor come in and buy them up? Tokos said they have to hit individual thresholds. They don't own the land, and they recognize that when they walk in. It is a 99-year renewable lease. These folks looking to have their own home recognize they can't reach the home they want without a program like this. Tokos said the first house the Land Trust sold was in the \$140-\$145 thousand range and was a 5-bedroom rehab.

Berman agreed that we need to get started. He noted that there are no commitments to the distribution of the properties. It references the Villages, and he can see Lincoln City making some of that property available and our \$30 thousand goes to construct in Lincoln City, which doesn't benefit Newport. Tokos said that two things that would temper that is that the Trust will be aware where the contribution is coming from, and it's only a three-year commitment so if there are a bunch in Lincoln City, then what are the chances Newport will continue. He added what's not to say that a home in Siletz or Toledo won't benefit Newport. The study showed that we have a large number of people that work here but don't live here. Berman said that he couldn't see these folks living in Lincoln City and contributing to the Newport economy. Several of the other members said, these people work here. Tokos said that he can put language in here that encourages that. Berman said he would like to see it stronger than that. He said something along the lines that in recognition that the contribution is coming equally from the three, each of the three will have at least one property constructed. Tokos said the Trust could approach the City and the City decides not to release property; so if Siletz is the closest available, then that is where it's going. Patrick said that Newport doesn't have much for inventory; at least nothing that's very good. Capri asked what about the lots across from City Hall. Tokos said those are probably some of the best. Tokos said the path the City Council will want to take is to have all the details brought forward as a proposal. We probably will have a new Council when we start the project. Tokos said the tax foreclosed properties with the County are probably the best. A number of those properties are developed, so we are talking rehab and we can turn them over faster. In the past the County has talked about their fiduciary responsibility to the public; and when these properties are sold, they are paying property taxes.

Croteau said this is a win-win. It's a small investment. It will get sorted out in time. Once the minimum is in place, we can push forward. We can experiment. There is a lot of oversight. Hardy agreed there is quality control. Tokos said the Trust has that in place in terms of contractors. There are standards they have to meet. The Trust has a little bit of experience. Franklin asked if local labor is utilized. Tokos said yes. The new construction in Lincoln City was done by a Lincoln City contractor. Croteau said a land trust is not breaking new ground; they work. It was asked if it could be a point of emphasis for the Trust to use local contractors. Tokos said that he is a member of the board for the Land Trust, Lincoln City has representatives on the board, and County Commissioner Bill Hall is the board chair. Tokos said he expects how the selection of a contractor plays out is just because of the cost. He said the bottom line for the Trust is if it's going to hit the budget. There isn't much in the way of wiggle room. Franklin asked if they have looked at going with somebody like HiLine homes. Tokos said the Trust has talked to Adair Homes, but haven't gotten comfortable with them. That is a 99-year lease and is in the Trust inventory for a very long time so they are looking for quality construction. They want it to be energy efficient so that the utility bills won't break the person getting into it. The Trust has pretty strict standards in terms of energy efficiency; and volume builders haven't gotten there.

Tokos asked if there was consensus for him to bring a letter of support forward for the next meeting; and the answer was yes. It was noted that we have to start somewhere.

**C. Adjournment.** Having no further discussion, the work session meeting adjourned at 7:04 p.m.

Respectfully submitted,

---

Wanda Haney  
Executive Assistant

**Draft Minutes**  
**City of Newport Planning Commission**  
**Regular Session**  
**Newport City Hall Council Chambers**  
**Monday, June 23, 2014**

**Commissioners Present:** Jim Patrick, Rod Croteau, Lee Hardy, Bill Branigan, Bob Berman, and Mike Franklin.

**Commissioners Absent:** Gary East (*excused*).

**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 7:06 p.m. On roll call, Hardy, Berman, Croteau, Patrick, Franklin, and Branigan were present. East was absent, but excused.

**B. Approval of Minutes.**

1. Approval of the Planning Commission work session and regular session meeting minutes of June 9, 2014. Franklin noted some language changes to a couple of his comments.

**MOTION** was made by Commissioner Croteau, seconded by Commissioner Berman, to approve the Planning Commission minutes with the changes noted. The motion carried unanimously in a voice vote.

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

**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 2<sup>nd</sup> 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.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Croteau, to approve the final order for File No. 3-CUP-14 as presented. The motion carried unanimously in a voice vote.

**E. Action Items.** None.

**F. Public Hearings.** None.

**G. New Business.** None.

**H. Unfinished Business.** None.

**I. Director's Comments.**

1. Tokos let the Commissioners know that there will be a South Beach Town Hall meeting at 6:00 p.m. next Monday at OCCC. The upcoming South Beach projects will be covered. He said it would be great if one or two Commissioners could show up; but not a quorum. He said if anyone was interested to give him a heads up. Tokos said that we sent out notices to those in the South Beach area; and the agenda is on line. A presentation will be made by Bob Cowen with HMSC. OMSI will give an update on their campus design. Bonnie Serkin with Wilder will give a presentation on what they are doing there. There is a range of things to be discussed. Patrick said he would like to go. He said that he noticed that Ferry Slip had been extended. Tokos confirmed that the improvements to Ash Street connecting 40<sup>th</sup> Street to Ferry Slip were wrapped up.

2. Tokos noted that the budget was adopted.

3. Tokos said a big project coming down the pike is urban renewal on the north side. That is still out there to come back to the Planning Commission once we have had a conversation with the taxing entities. We have the funds to get a consultant on board to get the plan prepared should the City Council decide to proceed. Before that they will receive a recommendation from the Planning Commission of what your thoughts are on whether the City should proceed and which option they should pursue. The conversations with the other entities haven't happened yet because Tokos and City Manager Nebel, who wants to participate, have both been busy; they had to get through the budget. Berman asked when the three options get narrowed down to one. Tokos anticipates out of the

recommendation from the Planning Commission and direction from the City Council. If they say yes, the Council will say which option they want to be pursued. Before we hire a consultant, we have to pick an option. We will bring the consultant on board for the outreach; and the boundary will be set at that point. We have to have it relatively defined for the consultant. Tokos explained that if the Council provides direction that a district be formed, it has to go through the hearings process. It will be brought back to the Planning Commission for a recommendation to the City Council; and you will likely make a recommendation on which option to pursue. Patrick said it also depends on the feedback of the taxing entities. Tokos agreed. He said they may say they are on board, but could you avoid the one that impacts them the most; or they may say go forward. We will see what they say.

**J. Commissioner's Questions.**

1. Croteau asked if at some point the Commission will review parking districts. Tokos said the City Council had a work session on that and wanted updated on what the districts have accomplished. That was all they were looking for. The Council is aware that in the case of Nye Beach, that economic improvement district will be up for renewal in another year. Tokos said that each district has accomplished something; Nye Beach the most, and Bay Front the least, but it was formed last. Part of that is coming from some of those involved in the Bay Front realizing that this is only an interim step to get to a real solution such as structured parking; the district will not generate enough revenue. The parameter of the district is that it all falls on the businesses and while businesses do have some responsibility, it's not solely their responsibility for funding something like that. The Bay Front and Nye Beach are looking at metered parking for example as a supplemental revenue source to support structured parking. If they get these parking spaces, you can lift off-street parking requirements and allow properties to develop in a more intense manner than they are now. It's not just city standards. We as a city could say you no longer need to provide off-street parking; but a developer will see the parking situation is unworkable. The standards aren't a barrier. Franklin asked if in Nye Beach the City has put forth an option for employees to park in the PAC parking lot. Tokos said it is public parking. He noted that Nye Beach has tried to encourage that; but most in Nye Beach aren't looking at that as desirable yet.

**K. Adjournment.** Having no further business to discuss, the meeting adjourned at 7:21 p.m.

Respectfully submitted,

---

Wanda Haney,  
Executive Assistant

CITY OF NEWPORT  
169 SW COAST HWY  
NEWPORT, OREGON 97365

COAST GUARD CITY, USA



phone: 541.574.0629  
fax: 541.574.0644  
[thecityofnewport.net](http://thecityofnewport.net)

[mombetsu, japan, sister city](#)

To: Newport City Council  
From: Newport Planning Commission  
Date: July 14, 2014

**RE: Support for Development of Workforce Housing**

Dear Council Members,

It is our understanding that on July 21<sup>st</sup> you will be considering a Memorandum of Understanding (MOU) between the Lincoln Community Land Trust, City of Newport, Lincoln City and Lincoln County that outlines a three year partnership to provide the Trust with funding to facilitate construction of workforce housing. This effort to address a critical need within our community has our full support and we strongly recommend that you move forward with the agreement.

As a Commission we have invested considerable time and energy in updating the City's housing inventories. We have worked collaboratively with area employers, residents, and other stakeholders to better understand housing needs within our community and with your help and support the City has taken meaningful steps to fulfill its obligation to ensure adequate housing is available and affordable to Newport workers at all wage levels. Much of what we have accomplished to date has been through changes to City zoning regulations to make available additional housing options (i.e. Accessory Dwelling Units, Park Model RVs, etc.). However, in order for the City to realize an adequate supply of workforce housing, it must pursue more proactive and creative strategies.

That is how we view this agreement. The more narrowly focused agreement between the City and Trust that we recommended you support in 2013 would have resulted in at least six (6) owner occupied workforce housing units being constructed over a five (5) year period utilizing land from the City's real property inventory and revolving loan funds that it has put in place to finance the construction. This approach expands the partnership and potential for additional land and financial resources that over the long term could result in a more meaningful impact on what is truly a county-wide challenge.

Oregon State University's initiative to expand its student enrollment by 500 at the Hatfield Marine Science Center campus is an example of the exciting growth opportunities our community may experience in the coming years. It also places additional demands on our limited supply of affordable workforce housing. We want our community to achieve its full economic potential and see the partnership established with this MOU as playing an important support role, establishing a framework that can be built upon to expand the supply of workforce housing that we will be needed to support economic growth such as the OSU initiative.



The \$30,000 per year over a three-year period is a modest investment of City resources. The Trust has a bit of experience, and there is room for the partners to experiment and see what works. There is also ample oversight, with each of the partner jurisdictions being represented on the Trust's Board of Director's. Also, requests for additional resources such as land or revolving loan funds will be subject to approval by the affected jurisdiction on a case-by-case basis.

The Commission recognizes that it will take time for the Trust to develop its inventory of work force housing. Near-term expectations should be measured and commensurate to the level of investment that is being made. The real benefit here is the development of an organizational structure and mutli-jurisdictional partnership that will begin to chip away at this challenging issue over time.

We are excited about this opportunity for our City to begin to take modest steps toward addressing this critical need within our community and are encouraged that Newport, Lincoln City, and Lincoln County are pooling their respective resources to expand the availability of affordable workforce housing.

Sincerely,

Jim Patrick, Chairman  
On behalf of the Planning Commission

Attachments:

Draft Memorandum of Understanding  
News-Times article titled "Marine Science Center Exploring Expansion," dated June 20, 2014

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 annual reports by July 1 of each year and a final 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

NEWPORT'S HAPPY HITTER SEE SPO

# NEWS

Lincoln County's Leading Newspaper

Newport, Oregon

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

YACHATS

## Covered bridge costs escalate

County to pay additional funds

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  
abilit

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

flationary 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 proj-

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 por-

**Now  
best  
a new  
gas**



## PLANNING STAFF REPORT Case File 1-SV-14

A. **APPLICANT:** City of Newport (initiated by the Newport City Council on April 7, 2014).

B. **REQUEST:** Vacate a portion of SW 31<sup>st</sup> Street, SW 32<sup>nd</sup> Street, SW 33<sup>rd</sup> Street, SW Coho Street, SW Brant Street, SW Abalone Street, and SW Anchor Way.

C. **SUBJECT PROPERTY:** Real property abutting each of the rights-of-way to be vacated is identified by tax lot reference and ownership, as follows:

SW 31<sup>st</sup> Street: Tax Lots 2803 and 3100 of Lincoln County Assessor's Map 11-11-17-CA. The properties are owned by the Oregon Museum of Science and Industry (OMSI).

SW 32<sup>nd</sup> Street: Tax Lots 3100 and 3700 of Lincoln County Assessor's Map 11-11-17-CA. The properties are owned by OMSI.

SW 33<sup>rd</sup> Street: Tax Lots 3500, 3501, 3600, 3700, 4400, 4401, 4402, 4600, 4601, 4700 and 4800 of Lincoln County Assessor's Map 11-11-17-CA. The properties are owned by OMSI.

SW Coho Street: Tax Lots 2703, 2803, 3100, 3200, 3600, 3700, 4400, and 4600 of Lincoln County Assessor's Map 11-11-17-CA. The properties are owned by OMSI.

SW Brant Street: Tax Lots 4601 and 4700 of Lincoln County Assessor's Map 11-11-17-CA. The properties are owned by OMSI.

SW Abalone Street: Tax Lot 4800 of Lincoln County Assessor's Map 11-11-17-CA. This property is owned by OMSI. Tax Lot 1400 of Lincoln County Assessor's Map 11-11-17-DC. This property is owned by Investors XII, LLC.

SW Anchor Way: Tax Lot 1800 of Lincoln County Assessor's Map 11-11-17-DB and Tax Lot 1400 of Lincoln County Assessor's Map 11-11-17-DC. These properties are owned by Investors XII, LLC. Tax Lots 1200 and 1201 of Lincoln County Assessor's Map 11-11-17-DB. These properties are owned by Dick Murry.

D. **STAFF REPORT**

1. **REPORT OF FACT**

- a. **Plan Designation:** High Density Residential, Commercial and Industrial.
- b. **Zone Designation:** R-4/"High Density Multi-Family Residential," C-1/"Retail and Service Commercial," and I-1/"Light Industrial."
- c. **Surrounding Land Uses:** The street right-of-way that is to be vacated is

located in the City's South Beach neighborhood. The area contains a mix of public, commercial, water-dependent and water-related, industrial and residential uses. Land adjacent to the portions of SW 31<sup>st</sup> Street, SW 32<sup>nd</sup> Street, SW 33<sup>rd</sup> Street, SW Coho Street, SW Brant Street, and SW Abalone Street that are to be vacated is undeveloped and is residentially zoned. Land adjacent to the portion of SW Anchor Way that is to be vacated is zoned commercial to the north and west, and light industrial to the south and east. The commercial property is vacant and the light industrial property is developed with an auto dealership (d.b.a. Toby Murry Motors). The dealership includes two buildings, and there are an additional three building on the property that are leased for light-industrial uses.

- d. **Topography and Vegetation:** Most of the rights-of-way to be vacated are on gradually sloped ground that is vegetated with beach grasses and scotch broom. The SW 31<sup>st</sup> Street right-of-way and a portion of the SW Coho Street right-of-way is located within a natural coastal gully and wetland. The section of SW Anchor Way that is to be vacated is developed with a paved roadway.
- e. **Existing Structures:** No buildings exist within the rights-of-way. Fencing associated with the auto dealership extends into the SW Anchor Way right-of-way.
- f. **Utilities:** Water and sewer mains exist within portions of the SW 33<sup>rd</sup> Street, SW Brant Street, and SW Anchor Way rights-of-way that are to be vacated. Easements will be reserved over these utilities. An abandoned 48-inch storm drain line exists in the southern end of the Anchor Way right-of-way.
- g. **Development Constraints:** None known.
- h. **Past Land Use Actions:**

File No. 1-CP-05. Proposal amended the Newport Comprehensive Plan Ocean Shorelands Map to remove an erroneous "Park and Outstanding Natural Area Boundary" designation from property identified as Tax Lot 1800, of Lincoln County Assessor's Map 11-11-17-DB (Ordinance No. 1894).
- i. **Notification:** Notification to abutting and affected property owners, to City departments, and to public/private utilities/agencies was mailed on June 23, 2014. Notification distance is as specified in ORS 271.080(2) for street vacations. Notice of this Planning Commission public hearing was also published in the Newport News-Times on July 4, 2014, and July 9, 2014.

j. **Attachments:**

- Attachment "A" – Staff memo dated April 7, 2014 containing findings in support of this Council initiated street vacation, with attachments. (*Note: Exhibit A to the memo has been updated to the final version of the concept map. The boundary of rights-of-way to be vacated are the same as those presented to the City Council on April 7, 2014.*)
- Attachment "B" – Legal descriptions of the rights-of-way that are to be vacated.
- Attachment "C" – Copy of ORS Chapter 271.080 to 271.230.
- Attachment "D" – Notice and mailing list for the public hearing.

2. **Explanation of the Request for Street Vacation:**

The Newport Urban Renewal Agency is coordinating with the Oregon Museum of Science and Industry (OMSI), Investors XII, LLC, and Dick Murry (Toby Murry Motors) to reconfigure road rights-of-way adjoining their properties in order to facilitate the extension of SW Abalone Street and the construction of portions of SW 30th Street and SW 35th Street. New rights-of-way need to be dedicated for this purpose. The Agency is proposing to create the rights-of-way with a subdivision plat that is being considered by the Planning Commission at a public hearing this same evening (ref: File 1-SUB-13).

Certain existing road rights-of-way on or adjacent to the OMSI, Investors XII, and Dick Murry properties are not needed for public purposes. These rights-of-way are proposed to be vacated in exchange for the rights-of-way that are being acquired. While rights-of-way proposed to be vacated can be depicted on a plat, the actual method of vacating the rights-of-way follows a separate process that requires hearings before the Planning Commission and City Council as provided in NMC Chapter 14.52 and ORS Chapter 271. In order to begin a street vacation, a petition must be filed indicating that nearby and abutting property owners want the rights-of-way to be vacated, or the Council may initiate the process on its own accord. On October 6, 2008, the City Council adopted policies to govern when it would utilize the Council initiated street vacation option. Those policies require consideration of (a) the extent of public benefit; (b) the extent of present and anticipated future use of the right-of-way; (c) potential environmental and geologic impacts; (d) financial factors; (e) effect on property owners; (f) consistency with applicable plans, ordinances and regulations; and (g) the amount and quality of the information provided by the person requesting the vacation. The Council may consider other factors as well. In a memo dated April 1, 2014 (Attachment A), staff explains how these policies are satisfied. Specific rights-of-way subject to this proposal are depicted on Exhibit A to that staff memo.

3. **Evaluation of the Request for Street Vacation:**

- a. **Comments:** Abutting and affected property owners, city departments and public/private utilities/agencies were notified on June 23, 2014 (Attachment D). As of July 10, 2014, no comments were received.
- b. **Planning Commission Review Required:** Pursuant to NMC 14.52.030, Approving Authorities, the City Council will decide street vacation proposals following a public hearing and upon receipt of a recommendation from the Planning Commission.
- c. **Applicable Criteria set forth in Oregon Revised Statutes (ORS) 271.130:**
  1. Have the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, objected in writing to the vacation of the subject streets; and
  2. Will the vacation of the right-of-way adversely affect the market value of abutting properties and, if so, have those owners consented in writing to the vacation; and
  3. Has notice has been duly given [*required for hearing before the City Council, pursuant to ORS 271.080*]; and,
  4. Will the public interest will be prejudiced by the vacation of such plat or street or parts thereof [*arguably required by ORS 271.130(1) through its cross reference to ORS 271.080*].
- d. **NMC Chapter 14.26 Maintenance of Public Access:** The city shall review, under ORS 271.080 - 271.230, proposals for the vacation of public easements or rights-of-way that provide access to or along the Yaquina Estuary or the Pacific Ocean. The city shall review, under ORS 271.300 - 271.360, proposals for the sale, exchange, or transfer of public ownership that provide access to or along the Yaquina Estuary or the Pacific Ocean. Existing public ownerships, rights-of-way, and similar public easements that provide access to or along the estuary or the ocean shall be retained or replaced if they are sold, ex-changed, or transferred. Rights-of-way may be vacated to permit redevelopment of existing developed shoreland areas, provided public access across the affected site is retained.
- e. **Staff Analysis:**

The Planning Commission reviews this request and makes a recommendation to the City Council. In order to recommend approval of the request, the Planning Commission must find that the applicant's proposal meets (or is capable of meeting) the following criteria:

- (1) Have the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, objected in writing to the vacation of the subject streets; and;

Notice of this proposal to vacate the listed street segments was provided to affected property owners on June 23, 2014. Pursuant to ORS 271.080, individuals entitled to notice are those that own property within a notice area that extends 400 feet beyond the terminal points, and 200 feet perpendicular to, a stretch of right-of-way that is being vacated. A list of the affected owners is included with this report (Attachment "D"). If the owners of two-thirds of the land area that is subject to notice object in writing then the street vacations cannot proceed. To date, the City has not received any written objections to this street vacation proposal.

- (2) Will the vacation of the right-of-way adversely affect the market value of abutting properties and, if so, have those owners consented in writing to the vacation; and

Street rights-of-way that are proposed to be vacated are not needed to provide access to abutting properties and when vacated will accrue to these properties increasing their size and value. Undeveloped rights-of-way internal to Block 1 of the proposed subdivision break up the property, creating obstacles that OMSI (the owner) would otherwise have to work around when developing the property. Vacating these rights-of-way gives OMSI a single block of land to work with, which likely enhances the property's value. For these reasons, it is reasonable for the Planning Commission to conclude that vacating these rights-of-way will not adversely impact the abutting properties, meaning that consent from these owners is not required.

With that said, the Newport Urban Renewal Agency has worked collaboratively with each owner to ensure that land being vacated by this action, along with rights-of-way being acquired through the subdivision process, will result in lots configured in a manner that meet their business needs. The Agency is also appraising rights-of-way it is acquiring and will pay the owners just compensation as outlined in the appraisals to ensure that the owners are treated fairly. Those appraisals will be available prior to the City Council considering this street vacation proposal.

SW Anchor Way provides access to residential property south of SW 35<sup>th</sup> Street. While these are not abutting properties, they would be adversely impacted if that street is vacated because they presently have no other means of access. This concern is being addressed with the retention of a temporary access easement over Anchor Way until SW 35<sup>th</sup> Street is constructed, which would provide the properties with alternative access.

- (3) Whether notice has been duly given [required for hearing before the City Council, pursuant to ORS 271.080]; and,

The Newport Municipal Code does not contain notice requirements for this type of Planning Commission hearing, and ORS Chapter 271 does not require Planning Commission action on a street vacation proposal. Abutting and affected owners received written notice as provided in ORS 271.080 and notice was published in the News-Times (Attachment "D"). This is sufficient for the Commission to find that this requirement has been satisfied.

- (4) Whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof [arguably required by ORS 271.130(1) through its cross reference to ORS 271.080].

On October 6, 2008, the City Council adopted policies to govern when it would utilize the Council initiated street vacation option for the purpose of ensuring that the public interest is no prejudiced by a street vacation. Those policies, and findings explaining how they have been satisfied, are included in the staff memorandum dated April 1, 2014 (Attachment "A"). The Planning Commission may rely up this memo as evidence that this requirement has been met.

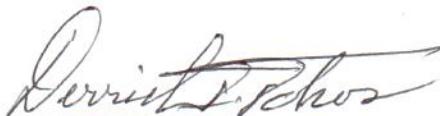
- (5) As outlined in NMC Chapter 14.26 Maintenance of Public Access, the city shall review, under ORS 271.080 - 271.230, proposals for the vacation of public easements or rights-of-way that provide access to or along the Yaquina Estuary or the Pacific Ocean. The city shall review, under ORS 271.300 - 271.360, proposals for the sale, exchange, or transfer of public ownership that provide access to or along the Yaquina Estuary or the Pacific Ocean. Existing public ownerships, rights-of-way, and similar public easements that provide access to or along the estuary or the ocean shall be retained or replaced if they are sold, ex-changed, or transferred. Rights-of-way may be vacated to permit redevelopment of existing developed shoreland areas, provided public access across the affected site is retained.

Currently, SW 33<sup>rd</sup> Street provides access to the Pacific Ocean across Block 1 of the proposed subdivision plat for Sunset Dunes. The property is owned by OMSI. This standard requires the City retain rights-of-way such as this for access purposes, unless it is replaced with another point of access across the property. Alternative access across the property will be provided at SW 30<sup>th</sup> Street, which is just a few hundred feet to the north. OMSI will be dedicating right-of-way across the northernmost end of its lot to allow for the access and is contributing funds for the extension of that roadway between SW Brant and SW Abalone Street. Considering that SW 30<sup>th</sup> Street is in close proximity to SW 33<sup>rd</sup> Street, it is reasonable for the Planning Commission to

find that the right-of-way OMSI will be dedicating is suitable replacement for the loss of public access at SW 33<sup>rd</sup> Street. Other rights-of-way proposed to be vacated do not provide ocean or estuary access, in part because they are isolated remnants of the streets with other segments having been vacated in the past.

4. **Conclusion:** If the Planning Commission finds that the proposal meets the minimum City and statutory criteria (or is capable of meeting the criteria) established for the street vacation, the Commission may forward a favorable recommendation to the City Council. If the Planning Commission finds that the criteria have not been met (or are not capable of being met), the Commission should identify changes necessary to meet the criteria or should deny all or part of the request.
- D. **STAFF RECOMMENDATION:** Findings contained in this report establish that the street vacation proposal can satisfy City and statutory approval standards provided the following conditions are imposed:

1. The Newport City Council should make the ordinance vacating a portion of SW 31st Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street, and SW Anchor Way effective upon recordation of the Sunset Dunes subdivision plat and conservation easement over Lot 1, Block 1 of the plat.



Derrick I. Tokos, AICP  
Community Development Director  
City of Newport

June 10, 2014

# City of Newport

Community  
Development

## Memorandum

To: Newport City Council  
From: Derrick Tokos, Community Development Director  
Date: April 1, 2014  
Re: Rationale in Support of Council Initiated Street Vacation for portions of SW 31st Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street and SW Anchor Way

---

The Newport Urban Renewal Agency is coordinating with the Oregon Museum of Science and Industry (OMSI), Investors XII, LLC, and Dick Murry (Toby Murry Motors) to reconfigure road rights-of-way adjoining their properties to facilitate the extension of SW Abalone Street and the construction of portions of SW 30<sup>th</sup> Street and SW 35<sup>th</sup> Street. New rights-of-way need to be dedicated for this purpose. The Agency is proposing to create the rights-of-way with a subdivision plat that will need to be reviewed and approved by the Newport Planning Commission pursuant to Chapter 13 of the Newport Municipal Code (NMC) and Chapter 92 of the Oregon Revised Statutes (ORS). The location of the new rights-of-ways are shown on a conceptual drawing of the proposed subdivision plat, titled "Sunset Dunes" (Exhibit A).

Existing road rights-of-way that are not needed are proposed to be vacated. While areas to be vacated can be depicted on a plat, as is the case here, the actual method of vacating the rights-of-way follows a separate process that requires hearings before the Planning Commission and City Council as provided in NMC Chapter 14.52 and ORS Chapter 271. In order to begin a street vacation, a petition must be filed indicating that nearby and abutting property owners want the rights-of-way to be vacated or the Council may initiate the process on its own accord. On October 6, 2008, the City Council adopted policies to govern when it would utilize the Council initiated street vacation option (Exhibit B). The following analysis briefly describes why vacating the above described rights-of-way is consistent with these policies.

In performing this analysis, the rights-of-way to be vacated are referred to generally as follows:

Area A (shown in yellow): Is 30,867 square feet in size, and includes portions of SW Coho Street and SW 31<sup>st</sup> Street that are situated within a coastal gully, the boundaries of which are depicted as Lot 1, Block 1 of the subdivision plat. There are no City utilities at this location.

Area B (shown in green): Is 113,335 square feet in size, consisting of portions of SW 32<sup>nd</sup> Street, SW 33<sup>rd</sup> Street, SW Coho Street, and SW Brant Street. These rights-of-way are internal to Lot 2, Block 1 of the subdivision plat and encompass areas where OMSI proposes to construct a youth camp. City would retain utility easements over public water and sewer mains located in portions of SW 33<sup>rd</sup> Street and SW Brant Street.

Area C (shown in red): Is 1,643 square feet in size, and includes a portion of SW Abalone Street that is south of where the roadway is planned to curve east into SW 35<sup>th</sup> Street. This small area falls within the boundary of the subdivision plat and the City would reserve an easement over water and sewer mains at this location.

Area D (shown in blue): Is 37,486 square feet in size, and consists of all but the most northerly portion of SW Anchor Way lying between SW 35<sup>th</sup> Street and US 101. A paved public roadway exists at this location, although it extends outside the right-of-way at several locations, encroaching onto the Investors XII and Dick Murry properties as depicted on the subdivision plat. This road would revert to a private drive and an access easement would be placed over it to ensure that properties that need to use the road to access a public street can continue to do so. The most northerly portion of Anchor Way will be retained and identified as SW 32<sup>nd</sup> Street. This will ensure that the Investors XII and Dick Murry properties can continue to access the 32<sup>nd</sup> and US 101 intersection using a public road approach. A small segment of abandoned storm drainage line is located within the right-of-way. There are no other City utilities at this location.

1. **Policy 1: The extent of public benefit.** The policy defines public benefit as including one or more of the following (a) the vacation is part of a trade of properties that results in a better street system “high benefit”; (b) elimination of responsibility and liability for an area that may not have a real public use or purpose; (c) increase in taxable property by facilitating development that would not otherwise occur; (d) the vacation facilitates development that improves the city by providing jobs, or improved appearance or character of the area; or (e) clears up confusion as to the exact location of the right-of-way and/or public street.

Vacating these rights-of-way provides a public benefit because it helps the City realize a better street system. Areas A, B, and C are unimproved rights-of-way that are not needed for future street development. Area D, while improved, effectively serves as an internal drive for two commercial properties and is; therefore, not needed as part of the public system. By trading these rights-of-way for land that the City needs to extend SW Abalone Street, and to construct portions of SW 30<sup>th</sup> Street and SW 35<sup>th</sup> Street consistent with its Transportation System Plan, the City improves its street system.

Further, elimination of Area B is necessary in order for OMSI to develop its planned coastal science camp, which will add jobs, improve the appearance of the undeveloped lot, and enhance the character of the area through its focus on being a complimentary marine research and educational venue. Vacating Area D will resolve a confusing situation where the as-traveled roadway was constructed partially outside of the dedicated right-of-way. A new access easement for this stretch of road will cover its entire extent.

2. **The extent of present and anticipated future use of the right-of-way.** Rights-of-way are property dedicated to the public for use as a street, path, trail, or utility corridor. This policy must also be read in concert with NMC 14.26.010 (and state law) which require rights-of-way be retained if they provide ocean access, unless adequately replaced. As noted, Areas A, B, and C are not needed for future public streets and the roadway within Area D need not be a public street since it will effectively serve two commercial properties. Areas A and B potentially provide access to the ocean through South Beach State Park. OMSI; however, will be dedicating right-of-way and improving SW 30<sup>th</sup> Street to provide alternative access along its northern boundary. They will also place Area A into a conservation easement that will provide for public access. The City has historically viewed the gully and wetland areas in Area A as part of its public storm drainage system (ref: 2004 South Beach Stormwater Master Plan); however, those plans were predicated upon the OMSI site being developed with high-density residential units. The 2012 Coho/Brant

Infrastructure Refinement Plan, which acknowledged the likelihood of the OMSI coastal camp development, established that Area A is not critical to the proper functioning of the City's storm drainage system. Areas B and C are not needed for utility purposes except where easements will be reserved over existing lines. Area D is not needed for utility purposes as the two commercial properties are adequately served by other adjoining rights-of-way.

3. Potential environmental and geologic impacts. This policy recognizes that certain rights-of-way should be retained to preserve sensitive environmental features such as wetlands or steep slopes that may be prone to landslides or erosion. Area A contains wetlands and is one of the few remaining natural coastal gully's in the area. The City and OMSI, in a non-binding Memorandum of Agreement (MOU), dated March 2013, acknowledge the value of this resource and express an intent to preserve it with a conservation easement that will be enacted through Lincoln County's Land Legacy Program (Exhibit C). Once the conservation easement is in place, it will not be necessary for the City to retain control over the right-of-way in order to preserve the gully. Areas B, C, and D do not contain City identified or inventoried environmental or geologic features.
4. Financial factors. This policy requires the City consider the cost to the public of initiating vacation proceedings, which would otherwise be borne by an applicant when filing a petition. When an applicant files a petition to vacate a street it is because they will be the primary beneficiary of the action. That is, if the street is vacated it becomes their property. In this case though, the street vacations are being pursued as part of a package that also includes rights-of-way being dedicated by all three property owners. The value of both the vacated right-of-way and new dedications is being taken into consideration and all parties, including the City, benefit from the new street and property alignments.
5. Effect on property owners. This policy gets at the difficulty an applicant may face in obtaining the consents required in order to file a petition. It is not a compelling factor in this case, although it is relevant to note that the abutting property owners are willing participants in the platting effort.
6. Consistency with applicable plans, ordinances, and regulations. This policy calls for street vacations to be consistent with the City's adopted Transportation System Plan. As noted, that is the case in the subject circumstances.
7. The amount and quality of the information provided by the person requesting vacation. This policy seeks to ensure that the City Council is provided with adequate information to evaluate whether or not these policy objectives are satisfied. This memo, and its accompanying attachments, provide an adequate basis for the Council to determine that the policies have been met.
8. Other factors. The non-binding MOU between the City of Newport and OMSI calls for the City to initiate street vacation proceedings for rights-of-way identified in Areas A and B in exchange for dedication of right-of-way for SW 30<sup>th</sup> Street and SW Abalone Street.

#### Attachments

Exhibit A, Conceptual "Sunset Dunes" Subdivision Plat

Exhibit B, Newport City Council Policy on Requests for City Initiated Right-of-Way Vacations

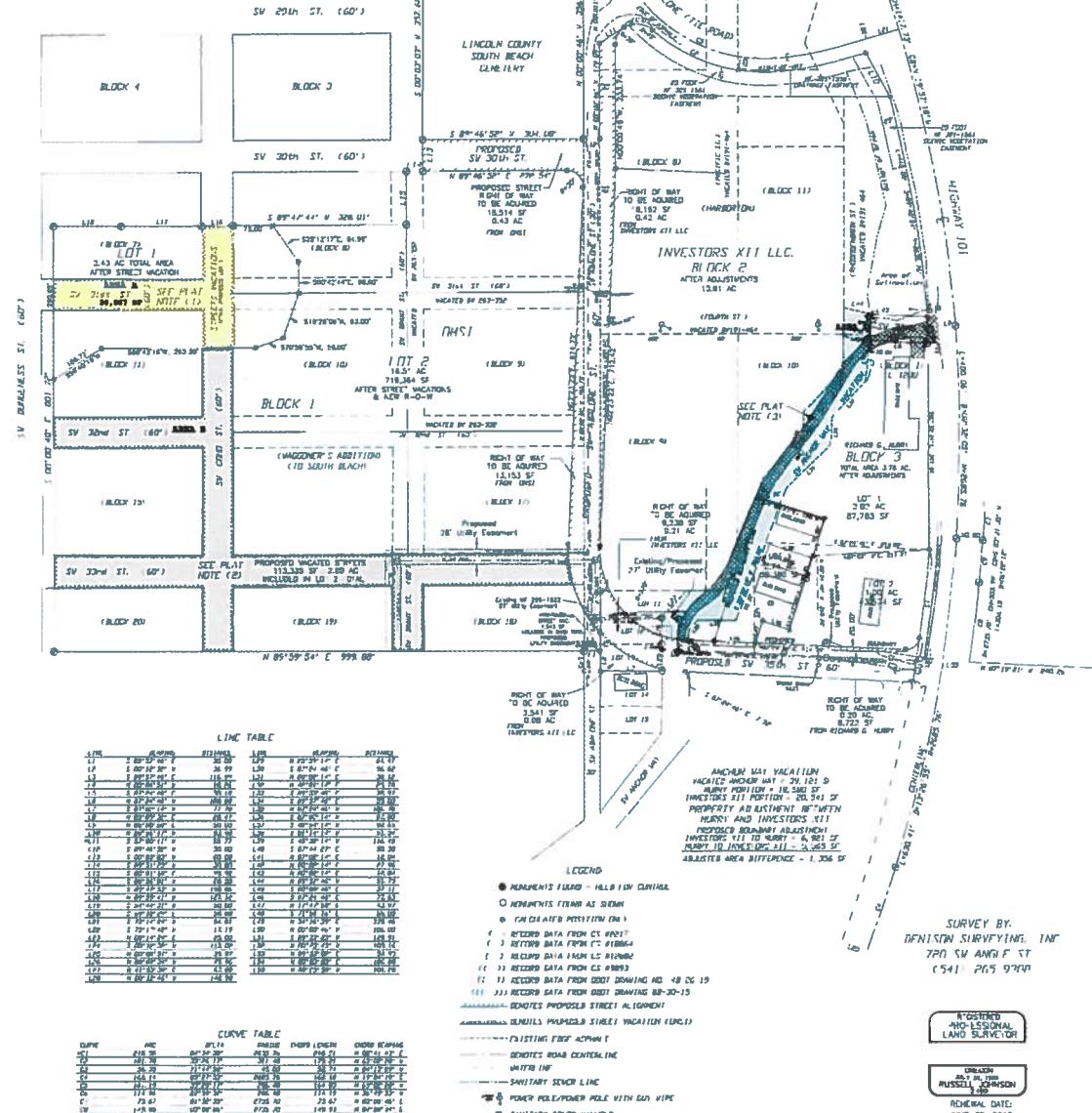
Exhibit C, Non-binding Memorandum of Understanding Between the City of Newport and OMSI, dated March 2013

PLAT II:  
SUNSET DUNES

CONCEPT MAP FOR PROPOSED SUBDIVISION  
AND PROPOSED SW ABALONE AND SW 35TH STREET  
CITY OF NEWPORT, LINCOLN COUNTY, OREGON  
FOR THE CITY OF NEWPORT

**SURVEYOR'S NARRATIVE:**  
 THE PURPOSE OF THIS SURVEY IS TO ESTABLISH THE BOUNDARIES OF TRACTS AS DESCRIBED IN LOT 100 REPORT NUMBER PNOA, DATED AUGUST 12, 2013, BY WESTERN TITLE COMPANY.  
 THIS SURVEY FOUND AND HOLD THE BOUNDARIES AT THE SOUTHEAST AND NORTHEAST CORNERS OF THE HABERDORF LOTS 11-13, BLOCK 11, AND THE NORTHERN LINE OF THE LOTS 11-13, BLOCK 11, AS BEARING, IN DEGREES, 000° 44' 46" AND 093° 27' 31". THIS RESULTED IN A DIFFERENCE OF BEARING BETWEEN THE RECORD BEARINGS IN THE PLAT OF HABERDORF AND THE LINES AS ESTABLISHED IN THIS SURVEY BY DOUBLE 40'. THE BOUNDARIES THAT WERE ESTABLISHED AND FOUND IN SAID SURVEY WERE HELD FOR THE BOUNDARIES OF THE LOTS 11-13, BLOCK 11, AS THE BOUNDARIES OF THE EASTERN TRACTS WERE DERIVED BY THE FOLLOWING METHODS:  
 1) THE EASTERN BOUNDARY ENTITLED 1011 WAS DERIVED BY MATCHING THE BOUNDARY LINE OF THE CENTER OF THE HABERDORF LOTS 11-13, BLOCK 11, AS RECORDED IN THE RECORD DATA, AS INDICATED BY THE POINT NUMBER 40-26-15. 2) THE WESTERLY LINE OF WAY BETWEEN SW 30TH AND THE NORTH LINE OF TAX LOT 1300 APPEARS TO BE THE WESTERLY LINE OF TAYS AVE., PER THE PLAT OF HABERDORF. CONSIDER SURVEYS 1012 (BURELLI) AND 1013 (PREPARED BY BOTH PARTIES) THIS DOCUMENTS THE SURVEY OF THE HABERDORF LOTS 11-13, BLOCK 11, AS BEARING, IN DEGREES, 000° 44' 46" AND 093° 27' 31". THIS SURVEY WAS MADE ON THE RECORD DATA OF THE HABERDORF LOTS 11-13, BLOCK 11, AS ESTABLISHED IN SAID SURVEY 1012. 3) THE RECORD DATA FROM SAID CS 99016 IN THE DETERMINATION OF SAID TAYS AVE. 30) THE RECORD DATA FROM SAID CS 99016, WAS HELD TO DETERMINE THE NORTHERLY LINE OF SW 35TH, THE EASTLINE LINE UP, LOTS 11-13, BLOCK 11, HABERDORF, AS DERIVED BY A WILSON & HOWARD SURVEY, AS SHOWN IN APPENDIX A. 4) THE BOUNDARIES OF THE HABERDORF LOTS 11-13, BLOCK 11, AS BEARING, IN DEGREES, 000° 44' 46" AND 093° 27' 31", WERE DERIVED AT HABERDORF, HABERDORF, AT THE NORTHEAST CORNER OF TL 1300 AND THE RECORD ANGLES AND DISTANCES FROM THE PLAT OF HABERDORF AFTER TRYING SEVERAL METHODS TO MATCH THE DATA OF THE PLAT. THIS SURVEY HAD TO DIVIDE THE HABERDORF LOTS 11-13, BLOCK 11, AS BEARING, IN DEGREES, 000° 44' 46" AND 093° 27' 31", INTO THE NORTHERN END OF BLOCKS 11-13, BLOCK 11, AS WELL AS THE CENTERS OF BLOCKS 11-13, BLOCK 11, AS BEARING, IN DEGREES, 000° 44' 46" AND 093° 27' 31", AS WELL AS THE CORNERS OF BLOCKS 11-13, BLOCK 11, AS BEARING, IN DEGREES, 000° 44' 46" AND 093° 27' 31", AS WELL AS THE CORNERS OF THE BLOCKS 11-13, BLOCK 11, AS BEARING, IN DEGREES, 000° 44' 46" AND 093° 27' 31".  
 THIS SURVEY IS BASED ON THE HABERDORF LOTS 11-13, BLOCK 11, AS THE BOUNDARY FOLIAR AT THE NORTHEAST CORNER OF TL 1300 AND THE RECORD ANGLES FROM THE PLAT OF HABERDORF. THIS SURVEY DISCREPES THAT THE HABERDORF LOTS 11-13, BLOCK 11, AS BEARING, IN DEGREES, 000° 44' 46" AND 093° 27' 31", AS THE NORTHERN CORNERS OF THE BLOCKS 11-13, BLOCK 11, AS ESTABLISHED IN CS 99016 (BURELLI) AND THE RECORD ANGLES AS DESCRIBED ABOVE ARE APPROXIMATELY 10 FEET OFF THE RECORD LINE OF THE HABERDORF LOTS 11-13, BLOCK 11, AS BEARING, IN DEGREES, 000° 44' 46" AND 093° 27' 31", AS THE BOUNDARIES OF THE HABERDORF LOTS 11-13, BLOCK 11, AS THE NORTHERLY BOUNDARY OF THE HABERDORF LOTS 11-13, BLOCK 11, AS THE SOUTHERLY LINE OF SW 35TH STREET. THIS SURVEY HELD 1011 AS THE NORTHERLY BOUNDARY OF THE HABERDORF LOTS 11-13, BLOCK 11, AS THE SOUTHERLY BOUNDARY OF SW 35TH STREET. THIS SURVEY HELD 1011 AS THE NORTHERLY BOUNDARY OF THE HABERDORF LOTS 11-13, BLOCK 11, AS THE SOUTHERLY BOUNDARY OF SW 35TH STREET.

**PLAT NOTES**  
 (1) STREETS VACATION LOCATED IN PROPOSED LOT 1, BLOCK 1  
PER CITY ORDINANCE 8  
 (2) STREETS VACATION LOCATED IN PROPOSED LOT 2, BLOCK 1  
PER CITY ORDINANCE 8  
 (3) SEE ANCHOR WAY VACATION PER CITY ORDINANCE 8  
 (4) A TEMPORARY PUBLIC EASEMENT OVER EXISTING STREET AND WILL TERMINATE WHEN 35TH STREET IS CONSTRUCTED BETWEEN THE NEARBY MASONRY WAY AND US HWY 101.



ADOPTED 10-6-08

**NEWPORT CITY COUNCIL  
POLICY ON REQUESTS FOR CITY-INITIATED RIGHT-OF-WAY VACATIONS**

*Background*

State law provides for two ways of initiating right-of-way vacations:

1. Petition by adjacent property owners.
2. Motion by City Council.

The council has received many requests over the years to initiate right-of-way vacations. Over the years, the council's practice has shifted. At one time it granted most requests to initiate vacations, but then started a practice of denying all requests. Most recently, its practice has been to initiate vacations when in the City's interest, rather than solely in the interest of the adjacent property owners.

The council has decided to adopt a written policy regarding requests to initiate street vacations to guide its future decision-making. This document sets out the council's policy. The policy will consider the interests of the City, but only as one factor of several factors to be considered in making the decision whether to initiate a street vacation when requested to do so.

Vacations initiated by adjacent property owners provide protection for adjacent and nearby property owners by requiring consents of all adjacent property owners and of a percentage of nearby property owners. If the council initiates the vacation, a hearing will be held after notice to adjacent and nearby property owners and the council will consider the views of all property owners in making the final decision. Even if the council initiates, it cannot vacate if the majority of the property owners object, and it cannot vacate over the objection of an abutting property owner without paying any damages the property owner sustains from the vacation. The council is free at any time in the process to terminate the proceedings or to decide against vacation.

Initiation by the council is not a decision on the merits and should not be viewed as an expression of approval of the vacation, only as a willingness to consider the issue of vacation. Additional information will be provided after the process is initiated and the council will make its final decision only after consideration of all the evidence. Each decision applying this policy and each final decision on vacation is based on the specific circumstances of the situation and is not precedent for any subsequent decision. Whether vacation is initiated by petition of property owners or by motion of the council, the process includes review by the planning commission and a final decision by the council. In making its decision, the planning commission should not take into account that the matter was initiated by the Council.

This policy is an expression of the council's opinion at the time it is adopted and may be rescinded or amended at any time.

*Basic Policy*

The council will consider and balance the following factors in deciding a request to initiate a street vacation. In balancing the factors, one factor may outweigh all other factors.

1. The extent of public benefit.
2. The extent of present and anticipated future use of the right of way.
3. Potential environmental and geologic impacts.
4. Financial factors.
5. Burden on property owners.
6. Consistency with applicable plans, ordinances and regulations.
7. The amount and quality of the information provided by petitioner.
8. Other factors that the council determines to be relevant.

Many of these factors are similar to factors the council considers in making the final decision whether to vacate. There is no reason for the council to initiate a vacation if it is likely that the council would ultimately deny the vacation. But the fact that the council is likely to grant the vacation is not sufficient reason by itself for the council to initiate the vacation. The council's ultimate decision will be based on whether the public interest will be served by council initiation of the vacation and whether the person seeking vacation has presented a persuasive case that the balancing of the factors strongly favors council initiation.

*Specific Considerations*

1. The extent of public benefit.

In most ROW vacations, in addition to the benefit to the adjoining property owners, there is often some general public benefit. Public benefits may include one or more of the following:

- a. In some cases, the vacation is part of a trade of properties that results in a better street system. In these cases, the public benefit is very high.
- b. Elimination of responsibility and liability for an area that may or may not have a real public use or purpose.

- c. Increase in taxable property. While in many cases, this may be minor, in some cases, the vacation may allow development that would not otherwise occur in the same manner, resulting in substantially higher valuation and taxes.
- d. Development that improves the city. If the vacation allows development, expansion or redevelopment, the development may improve the city. Potential benefits to the city include additional housing, additional commercial or industrial development that provide jobs, or improved appearance or character of a neighborhood.
- e. In some cases, there may be confusion about the exact location of the right of way, or the constructed street may not align with the platted or recorded right of way. There may also be confusion regarding whether property is owned outright or is dedicated right of way. Cleaning up discrepancies and confusion is a strong factor in determining whether the council should initiate vacation.

The council's policy is to not initiate vacation unless the council determines that the public benefit from the vacation, if ultimately approved, would be substantial.

## 2. The extent of present and anticipated future use of the right of way.

In some cases, the ROW is in a location that it is not and never will be used for vehicular or pedestrian traffic. Rights of way are property dedicated to the public for use as a street, path, trail or utility corridor. If there will never be any public use of the property for these purposes, there is little reason to maintain the property as a right of way. Unless other factors favor non-initiation by the city, it is appropriate for the city to initiate vacations if it is obvious that the right of way will not be used for street, paths, roads, or trails. However, if the area serves some other public purpose, the city may want assurances that the adjacent property owners are willing to accept conditions to protect the public purposes, such as a condition requiring an easement (a utility easement, conservation easement or similar easement to protect public rights) as part of the vacation. Review of the document creating the easement may be needed to determine the extent of the rights dedicated to the public to determine the appropriateness of the vacation and any reservation of rights.

At the other extreme, if a right of way is currently developed with a street that serves not only the properties seeking vacation, but other properties that rely on that section of right of way, then the city should not initiate vacation. Similarly, if the vacation would land-lock other properties, vacation should not be initiated by the city.

The mere fact that a right of way has been developed with a street does not mean that the city must keep the right of way. If the street is used only to access properties seeking the vacation, it may be appropriate for the city to initiate the

vacation based on consideration of the other factors, so long as continued access to all properties is assured.

### **3. Potential environmental and geologic impacts**

Many rights of way within the city actually serve non-transportation public purposes. There are storm drainage facilities in some undeveloped rights of way, vegetation in some rights of way is needed to retain slopes and avoid erosion, or slopes may be needed to prevent or limit the effects of landslides.

Potential environmental and geologic impacts are a reason not to initiate a right of way vacation. However, if the persons seeking vacation indicate that they are willing to accept conditions to protect against potential environmental and geologic impacts, the council can initiate the vacation if the other factors support council initiation.

### **4. Financial factors**

a. The city incurs costs in processing a vacation proceeding, regardless of who initiates it. If the applicant is unwilling to pay the fee that is charged to applicants who initiate vacation by petition, this is a strong factor against city initiation.

b. Although most right of way was acquired at no cost to the city as a voluntary dedication in a plat or otherwise, some rights of way may have been acquired by purchase. Unwillingness of the person seeking vacation to refund the purchase price is a factor against city initiation. Any financial detriment to the city is a strong factor against vacation. Financial benefit to the city that would facilitate other rights of way is a factor in favor of vacation.

### **5. Effect on property owners**

In some cases, if the city does not initiate, the property owners may face extraordinary difficulties in obtaining the consents needed to petition for vacation. This may have the effect of precluding development or redevelopment of the property. The extent of absentee ownership and the often irregular layout of rights of way in the city make it difficult and time-consuming for property owners to petition for vacation. The council can consider the effect on the property owners in making its decision whether to initiate. In applying this factor, the council should consider the efforts the person seeking vacation made to obtain signatures on a petition to vacate. The council is aware that there are always difficulties in obtaining signatures, only extraordinary difficulty should be considered a factor in favor of vacation, and only if the applicant has made a good faith effort to obtain signatures or has demonstrated that attempts to obtain signatures would be futile.

## **6. Consistency with applicable plans, ordinances and regulations**

The city has a transportation system plan that requires some streets and may call for vacation of other streets. A provision in the TSP calling for vacation of the street is a strong factor in favor of council initiation. Provisions in the TSP that either prohibit the vacation or expressly include the street as part of the plan are strong and probably conclusive factors against council initiation of the vacation.

The vacation may affect whether nearby properties continue to meet city standards, including access standards. The council will not normally initiate a vacation that would cause a lot to cease to comply with access requirements. However, the council can consider the property owners' plans for the property and willingness to commit to taking action (lot consolidation or reconfiguration) that would avoid landlocking any lot.

## **7. The amount and quality of the information provided by the person requesting vacation**

The council will be able to evaluate the factors in this policy only if it has sufficient information to do so. The applicant is responsible for providing the justification for council initiation. Failure to provide sufficient information to support council initiation under these factors is a reason to deny the request for council initiation.

## **8. Other factors**

It is difficult to anticipate all situations and all factors that may apply in a given request for a city-initiated vacation. The council can consider any factors it determines to be relevant to a decision to vacate.

### **Burden of Proof**

The burden of proof is on the applicant to demonstrate that the public interest would be furthered by the Council's initiation of the vacation.

March 4, 2013

**Memorandum of Understanding  
among  
City of Newport, Oregon ("City"),  
Newport Urban Renewal Agency ("Agency")  
and  
Oregon Museum of Science and Industry ("OMSI")**

**Recitals**

- A. The City and Agency have established an overall infrastructure plan for the South Beach area, as depicted in the Coho/Brant Infrastructure Refinement Plan, dated August 2012 (the "Plan"). All Parties desire to work collaboratively to implement the Plan in a coordinated and equitable fashion in order to further neighborhood improvement goals. Except where the context otherwise indicates, when used herein the term "Parties" means City, Agency, and OMSI.
- B. As OMSI contemplates development of its South Beach property as a world-class educational center and begins the fundraising process, OMSI requires a degree of certainty as to the cost and timing of infrastructure improvements in the area.
- C. In order to implement the Plan, the City and Agency require certain right-of-way and easement dedications from OMSI for SW 30<sup>th</sup> Street and SW Abalone Street.
- D. Internal to the OMSI property, there are currently unutilized rights-of-way that may interfere with the logical and/or efficient use of the property. City, Agency, and OMSI desire that these rights-of-way be vacated in order to allow OMSI development to proceed.
- E. Agency has identified funding for certain projects in the South Beach area, including for SW Abalone, SW 30<sup>th</sup>, a multi-use pathway along SW Abalone, and improvement of the Coastal Gully area on the northern portion of the OMSI property.
- F. The Funding Plan for SW Abalone and SW 30<sup>th</sup> relies on a combination of Agency (urban renewal) funding and private property owner funding. Cost sharing between private property owners should be equitable, based on the proportionate share of street frontage for each project, which may involve creation of an LID, as addressed within this MOU.
- G. The Coastal Gully areas on and adjacent to the OMSI property represent sensitive and treasured resources. The Parties intend to see these areas enjoy permanent protection with limited public access.
- H. Similar to SW Abalone and SW 30<sup>th</sup>, fully implementing the projects identified in the Plan will require the financial participation of property owners in the area, including OMSI. The parties

share the goal of determining the appropriate timing for these improvements and an equitable distribution of those costs among benefitted owners.

- I. Project costs referenced herein are derived from conservative estimates included in the Plan and represent OMSI's proportional share of the planned improvements to SW Abalone and SW 30<sup>th</sup>. The figures assume roughly \$1,000 per lineal foot to construct a half-street improvement, as opposed to the \$1,400 per lineal foot assumed in the Plan for full build-out of these streets.

### Agreement

#### **1. Property Dedication – Abalone Extension and SW 30<sup>th</sup>**

- a. Agency shall pursue the subdivision or partitioning of property owned by OMSI and the City, as depicted in Exhibit A, for the purpose of establishing a final alignment for the extension of SW Abalone Street and SW 30<sup>th</sup> Street. Such application may include adjoining property owned by Investors XII, LLC and Richard Murry (dba Toby Murry Motors) provided they are willing to participate in the platting effort.
- b. OMSI and the City will collaborate to determine the best design approach for incorporating a shared-use pathway on the west side of SW Abalone and south side of SW 30<sup>th</sup> Street. OMSI will provide easements, as needed, to accommodate the pathway(s).
- c. Agency will incorporate into the subdivision or partition plat easements for the pathway(s), or any other services needed to facilitate development of the OMSI property, provided such information is available at the time the plat is prepared.
- d. City will initiate vacation proceedings as part of the platting process for the existing platted rights-of-way within the boundary of the OMSI property, including portions of SW Coho Street, SW Brant Street, SW 31<sup>st</sup> Street, SW 32<sup>nd</sup> Street, SW 33<sup>rd</sup> Street and 18-feet of residual road right-of-way that may exist along the south line of the OMSI property as shown on the plat of Waggoner's Addition to South Beach, as shown on the attached Exhibits A and B. Where needed, as determined by the City in its sole discretion, easements will be retained to accommodate existing and future utilities.
- e. OMSI agrees to dedicate a right-of-way for SW 30<sup>th</sup> Street and the extension of SW Abalone Street. The right-of-way width for the extension of SW Abalone Street and SW 30<sup>th</sup> Street shall be in substantial conformity with the recommended width depicted in the Plan, as illustrated on Exhibit D.
- f. In keeping with the timeline in 4.a., OMSI and Agency shall work together in good faith to determine the contribution value of the rights-of-way and easements to be dedicated by OMSI for the purposes of accommodating parks and transportation improvements in the area. In determining what credit, if any, OMSI should receive for these dedications, the parties will consider such elements as previous right-of-way dedications, rights-of-way to be vacated, Agency costs to subdivide or plat the property, and the December 2011 purchase price of the OMSI property. The parties may utilize an independent appraiser, paid for by the Agency, to assist in the determination of value.

- g. Based on the outcome of the valuation described in 1.f above, Agency shall, at its sole discretion, either compensate OMSI for the value, if any, of the right-of-way and easement dedications, or accept the value of the dedications as offsetting OMSI's required financial contributions to the SW Abalone and SW 30<sup>th</sup> projects as a benefitted property owner, per 3.c., below.
- h. Agency shall incur all costs attributed to the subdivision or partition process, including surveying, plat preparation, appraisal fees and permit and recording fees.

**2. Coastal Gully Preservation**

- a. OMSI and the City will collaborate on a program to preserve, in perpetuity, environmentally sensitive Coastal Gully areas on their respective properties, as generally depicted on Exhibit C, through the use of Lincoln County's Conservation Easement program or similar mechanism. The precise area to be included in the conservation easement will be mutually agreed by OMSI and the City. The goal of both Parties is for these areas to be managed in a manner that allows them to be used as part of OMSI's environmental education curriculum while providing for low impact public access to the areas as envisioned in the Plan.
- b. OMSI and the City recognize that this collaboration may result in their respective land ownership and rights-of-way within the Coastal Gully area being consolidated into a single lot or parcel through the platting process and that it may be necessary to put in place conservation easements over the affected areas.
- c. To the extent that OMSI has any Parks System Development Charge liabilities stemming from any permanent residential uses that may be developed on the site, it is anticipated by the parties that these charges may be offset by the value of the Coastal Gully areas that are permanently preserved by Conservation Easements or other similar means. Such offset is permissible because the City's Parks Capital Improvement Plan (CIP) calls for the acquisition and development of trails in South Beach, the Coho/Brant Infrastructure Refinement Plan envisions such trails at this location, and the System Development Charge methodology allows credits for qualifying public improvements or dedications for projects listed in the CIP. The value of these Coastal Gully areas will be established as part of the Conservation Easement process through the Lincoln Land Legacy Program. OMSI and the City will collaborate to define the conditions of public access to the Coastal Gully area taking into consideration the intended use of the OMSI property.

**3. Cost Responsibilities - SW 30<sup>th</sup> Street and SW Abalone Extension Projects**

- a. SW 30<sup>th</sup> Street, SW Brant to SW Abalone - OMSI's financial contribution shall be limited to 52.4% of the total project costs or \$165,000, whichever is less.
- b. SW Abalone Street Extension, SW 29<sup>th</sup> to SW 35<sup>th</sup> - OMSI's financial contribution shall be limited to 18.8% of the total project costs or \$335,000, whichever is less.
- c. To the extent that OMSI is due any payment or financial consideration for the value of the rights-of-way and/or easements to be dedicated for the SW 30<sup>th</sup> and SW Abalone projects as

described in 1.f above, such payment or consideration may, at Agency's discretion, be applied as a credit against OMSI's financial contributions as defined in 3.a and 3.b above.

- d. At OMSI's request, City will initiate a Local Improvement District ("LID") formation process for the SW 30<sup>th</sup> Street and/or the SW Abalone Extension project. The LID may be a single owner (e.g., OMSI only) LID or, at City's discretion, may include abutting owners who receive benefit from the projects. Should an LID be formed, City may require that SW Abalone Street be constructed to its full planned dimensions as described in the Plan. The City shall allow OMSI, at its request, to finance its LID assessment for a period of up to 30 years through an installment payment agreement per ORS 223.210 and 223.215, and NMC 12.05.055.

#### **4. Project Timing – SW 30<sup>th</sup> Street and SW Abalone Extension Projects**

- a. The Parties agree to work collaboratively to develop a Project Schedule for the phased development of the OMSI property and related infrastructure improvements in the area. The schedule will define the specific dates for infrastructure project delivery such that OMSI site preparation and construction activities may proceed by July 1, 2014 in order to achieve a camp opening by April 1, 2016.
- b. Consistent with the Project Schedule developed under 4.a above, the City and/or Agency will either:
  - i. Provide the necessary funding, in combination with OMSI's financial contributions, such that OMSI's Phase I development may proceed and open; or
  - ii. Revise the scope of required infrastructure such that OMSI's Phase I development may proceed and OMSI does not exceed the total amount of financial participation as described in 3.a and 3.b above.

#### **5. Safe Haven Hill Tsunami Evacuation Route Enhancements**

- a. City has constructed interim improvements that enhance access to the designated tsunami evacuation area immediately northeast of the OMSI property, known as Safe Haven Hill. City is committed to maintaining those improvements, which consist of a gravel access path and cleared assembly area at the top of the hill.
- b. City has further applied for and received preliminary approval from the Federal Emergency Management Agency (FEMA) to further enhance the assembly area with a paved shared-use path, sidewalks, trails, stairs and a disaster supply shed. City will construct the enhancements once FEMA obligates matching funds for the work.
- c. OMSI acknowledges that these enhancements are important to the success of its educational center, will continue to support implementation of the improvements, and will install wayfinding signage and provide informational materials to its guests so that they understand the purpose for, and route to, the evacuation assembly area.

**6. Delivery Schedule**

- a. The Parties will work in good faith to complete their respective responsibilities under this MOA in time to allow OMSI site preparation and construction activities to proceed on OMSI's property by July 1, 2014.

**7. Non-Binding MOU**

- a. It is the intent of the Parties to work together in good faith to implement the terms of this MOU such that development on the OMSI property may proceed and the infrastructure projects in the area are delivered in an efficient and equitable manner. However, this agreement is non-binding on the Parties and represents only the intent of the Parties with respect to the subjects herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum on the dates shown hereunder,

**City of Newport by**

Signature:



Printed Name/Title:

Sandra Roumagoux, Mayor

169 SW Coast Hwy

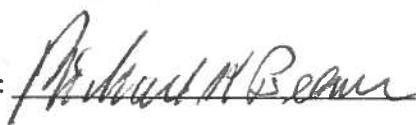
Newport, Oregon 97365

Date:



**Newport Urban Renewal Agency by**

Signature:



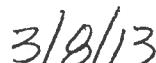
Printed Name/Title:

Richard Beemer, Chair

169 SW Coast Hwy

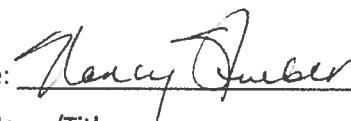
Newport, Oregon 97365

Date:



**Oregon Museum of Science and Industry by**

Signature:



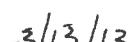
Printed Name/Title:

Nancy Stueber, President and CEO

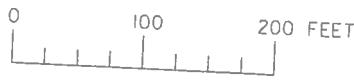
1945 SE Water Ave

Portland Oregon 97214

Date:



OR  
.Y



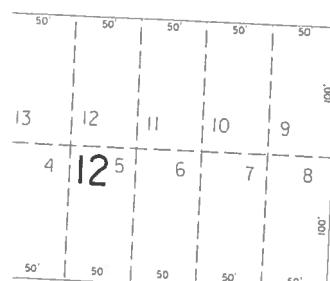
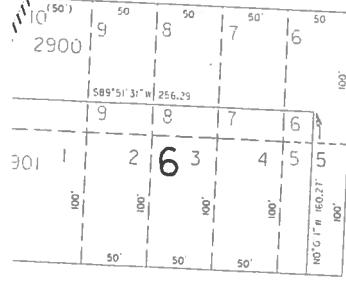
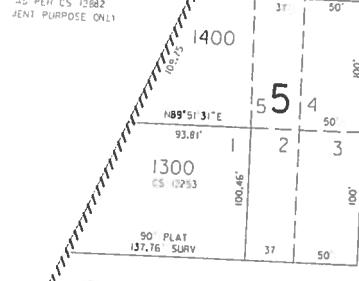
NE 1/4 SW 1/4 SECTION 17 T11S R11W WM  
LINCOLN COUNTY

$I'' = 100$

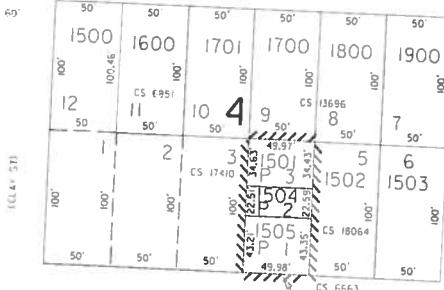
SEE MAP II II 17 B

SOUTH  
BEACH

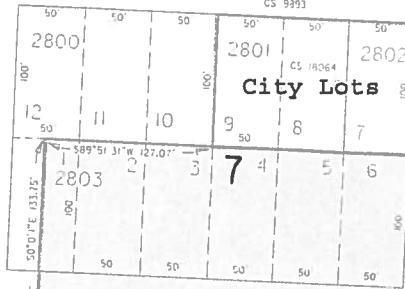
OF STREETS AND LOTS  
ITION AND PRORATIONING  
AS PER CS 12882  
ENT PURPOSE ONLY



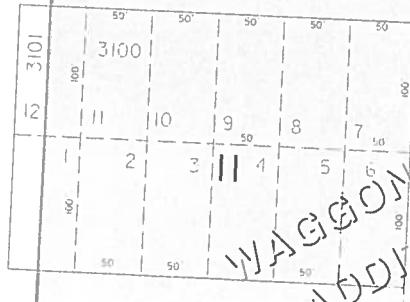
SW 29TH ST



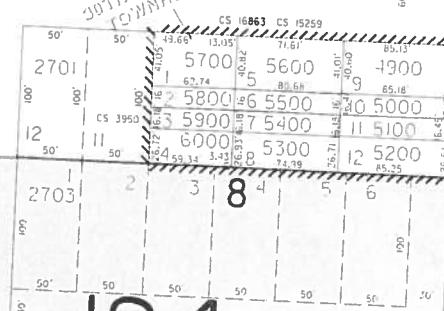
ST SW 30TH ST



110.0' (SW 31ST ST) (6TH S)



SW CONO ST



124

200  
2.19 AC

Boundary  
OMSI Prc

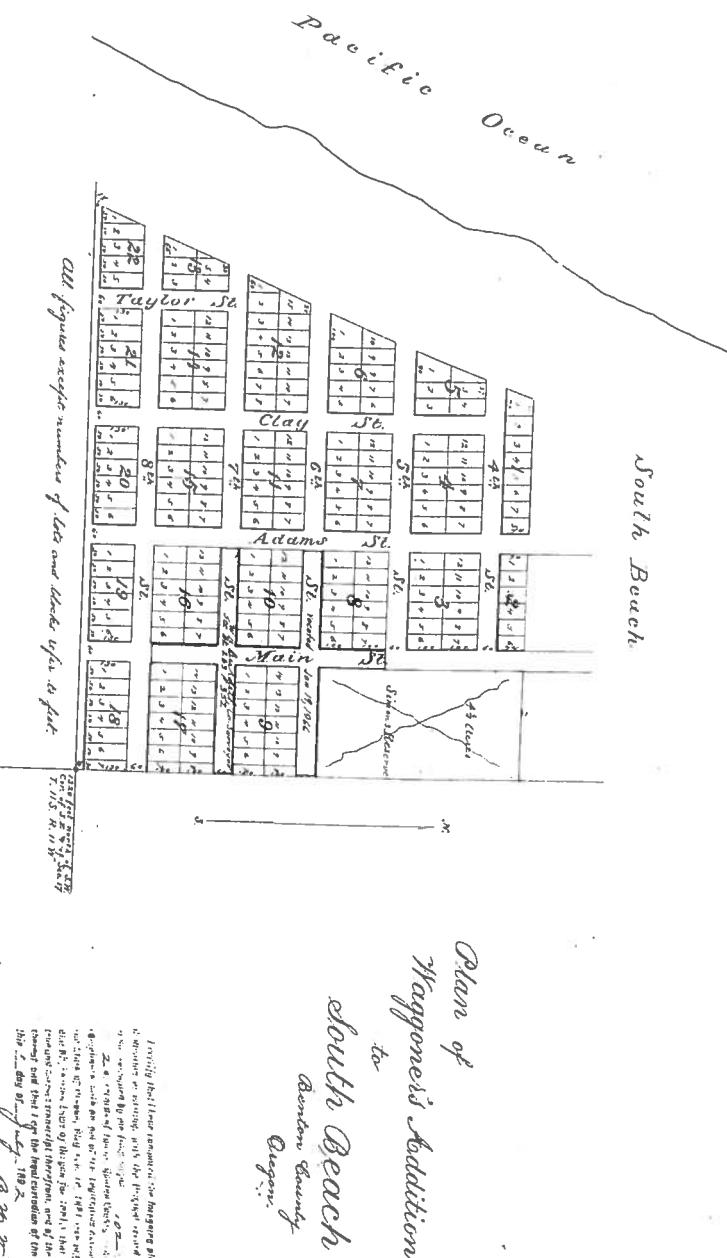
SW BRANT ST  
15 74 PLAT 6  
98.21 SURV  
VACATED  
MF 190-0935  
(MAIN ST)

100  
2.48 4C

1463-5-31

## Exhibit B

Memorandum of Understanding  
Between the City of Newport,  
Newport Urban Renewal Agency,  
and Oregon Museum of Science  
and Industry



Waggoner Addition to the Town of South Beach, Benton County, Oregon.  
This Addition is bounded by B. Lee, M. H. Mills, and George L. Waggoner, Thomas Graham, and G. R. Gause. Lots, except that they are not names in the index of the Board of Land Surveyors, are numbered in the accompanying plan that said tract has been surveyed and plotted to us for the purpose of naming the same recorded in the Clerk's Office of the County of Benton and State of Oregon, as an addition to the town of South Beach, as is known as Waggoner Addition to South Beach and no longer referred to as one of the public lots as they are marked and designated on said plan.

Dated Jan. 30, 1970.

On behalf of C. Waggoner  
M. H. Mills  
G. R. Gause  
J. D. Lee  
G. L. Graham

Received for Record Jan. 30, 1970 and Recorded  
By At. William Co. Clerk

Attest:  
County of Benton  
Date: January 30, 1970  
Benton County  
Attest: B. Lee, M. H. Mills, G. R. Gause, J. D. Lee, G. L. Graham

*B. Lee*  
*M. H. Mills*  
*G. R. Gause*  
*J. D. Lee*  
*G. L. Graham*

## Exhibit C

Memorandum of Understanding  
Between the City of Newport,  
Newport Urban Renewal Agency,  
and Oregon Museum of Science  
and Industry

### PREFERRED ALTERNATIVE

#### Map 3-2. Coastal Gully Open Space Concept Plan

CAMERON  
McCarthy  
Urban Environment

Newport Coho/Brant Infrastructure Refinement Plan  
Coastal Gully Open Space Park Concept  
Newport, Oregon  
June 15, 2012

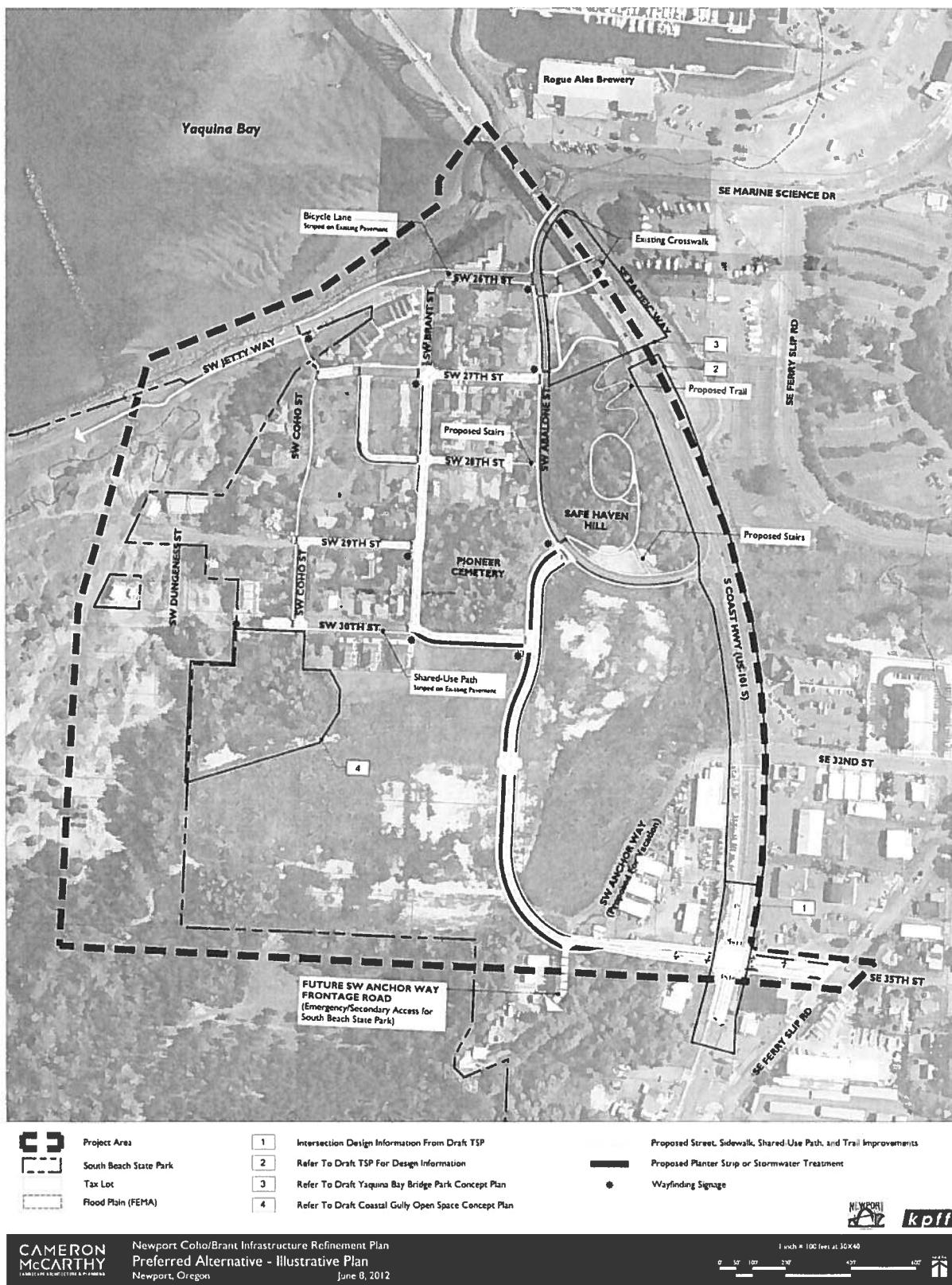


kpff

## Exhibit D

Memorandum of Understanding  
Between the City of Newport,  
Newport Urban Renewal Agency,  
and Oregon Museum of Science  
and Industry

Map 3-8. Illustrative Plan



**LAND DESCRIPTION FOR THE BOUNDARIES  
OF THE PORTION OF SW 31<sup>ST</sup> STREET TO BE  
VACATED LYING WITHIN THE PLAT  
OF WAGGONER'S ADDITION  
TO SOUTH BEACH**

All that portion of **SW 31<sup>st</sup> Street** lying within the Plat of **WAGGONER'S ADDITION** to South Beach, located in the SW ¼ of Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon being more particularly described as follows:

That portion of platted **SW 31<sup>st</sup> Street** lying westerly of the westerly Right of Way of SW Coho Street and easterly of the westerly boundary of a tract as described in Document No. 2011-10432, Lincoln County Film Records, said portion being a 60 foot wide strip.

This description is based on Lincoln County Survey No. 18864 by Russell Johnson.

Street Vacation Description  
DSI-4313 (11-11-17 CA)  
21 April 2014

**LAND DESCRIPTION FOR THE BOUNDARIES  
OF THE PORTION OF SW 32nd STREET TO BE  
VACATED LYING WITHIN THE PLAT  
OF WAGGONER'S ADDITION  
TO SOUTH BEACH**

All that portion of SW 32nd Street lying within the Plat of **WAGGONER'S ADDITION** to South Beach, located in the SW  $\frac{1}{4}$  of Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon being more particularly described as follows:

That portion of platted **SW 32nd Street** lying westerly of the westerly Right of Way of SW Coho Street and easterly of the westerly boundary of a tract as described in Document No. 2011-10432, Lincoln County Film Records, said portion being a 60 foot wide strip.

This description is based on Lincoln County Survey No. 18864, by Russell Johnson.

Street Vacation Description  
DSI-4313 (11-11-17 CA)  
21 April 2014

**LAND DESCRIPTION FOR THE BOUNDARIES  
OF THE PORTION OF SW 33rd STREET TO BE  
VACATED LYING WITHIN THE PLAT  
OF WAGGONER'S ADDITION  
TO SOUTH BEACH**

All that portion of **SW 33rd Street** lying within the Plat of **WAGGONER'S ADDITION** to South Beach, located in the SW  $\frac{1}{4}$  of Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon being more particularly described as follows:

That portion of platted **SW 33rd Street** lying easterly of the westerly boundary of a tract as described in Document No. 2011-10432, Lincoln County Film Records and westerly of the westerly Right of Way of SW Abalone Street as indicated on the Plat of **SUNSET DUNES**, recorded in Book \_\_, Page \_\_, Lincoln County Plat Records, said portion being a 60 foot wide strip.

This description is based on Lincoln County Survey No. 18864, by Russell Johnson.

Street Vacation Description  
DSI-4313 (11-11-17 CA)  
21 April 2014

**LAND DESCRIPTION FOR THE BOUNDARIES  
OF THE PORTION OF SW COHO STREET TO BE  
VACATED LYING WITHIN THE PLAT  
OF WAGGONER'S ADDITION  
TO SOUTH BEACH**

All that portion of **SW COHO Street** lying within the Plat of **WAGGONER'S ADDITION** to South Beach, located in the SW  $\frac{1}{4}$  of Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon being more particularly described as follows:

That portion of platted **SW COHO Street**, said portion being a 60 foot wide strip lying southerly of a line between the Southeast corner of Lot 7, Block 7 and the Southwest corner of Lot 12, Block 8, Plat of **WAGGONER'S ADDITION** to South Beach and northerly of a line as described below:

Commencing at the Southeast corner of Lot 7, Block 7, Plat of **WAGGONER'S ADDITION** to South Beach; thence South  $00^{\circ}01'32''$  East, along the east line of Block 7 and continuing along the east line of Block 11, a distance of 231.65' to the Point of Beginning; thence North  $89^{\circ}43'16''$  East to the west line of Block 10, a distance of 60.42 feet and the terminus of said southerly line.

This description is based on Lincoln County Survey No. 18864, by Russell Johnson.

Street Vacation Description  
DSI-4313 (11-11-17 CA)  
21 April 2014

**LAND DESCRIPTION FOR THE BOUNDARIES  
OF THE PORTION OF SW COHO STREET TO BE  
VACATED LYING WITHIN THE PLAT  
OF WAGGONER'S ADDITION  
TO SOUTH BEACH**

All that portion of **SW COHO Street** lying within the Plat of **WAGGONER'S ADDITION** to South Beach, located in the SW  $\frac{1}{4}$  of Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon being more particularly described as follows:

That portion of platted **SW COHO Street**, said portion being a 60 foot wide strip lying northerly of the southerly boundary of a tract as described in Document No. 2011-10432, Lincoln County Film Records and southerly of a line as described below:

Commencing at the Southeast corner of Lot 7, Block 7, Plat of **WAGGONER'S ADDITION** to South Beach; thence South  $00^{\circ}01'32''$  East, along the east line of Block 7 and continuing along the east line of Block 11, a distance of 231.65' to the Point of Beginning; thence North  $89^{\circ}43'16''$  East to the west line of Block 10, a distance of 60.42 feet and the terminus of said southerly line.

This description is based on Lincoln County Survey No. 18864, by Russell Johnson.

Street Vacation Description  
DSI-4313 (11-11-17 CA)  
21 April 2014

**LAND DESCRIPTION FOR THE BOUNDARIES  
OF THE PORTION OF SW BRANT STREET TO BE  
VACATED LYING WITHIN THE PLAT  
OF WAGGONER'S ADDITION  
TO SOUTH BEACH**

All that portion of **SW BRANT Street** lying within the Plat of **WAGGONER'S ADDITION** to South Beach, located in the SW  $\frac{1}{4}$  of Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon being more particularly described as follows:

That portion of platted **SW BRANT Street** lying southerly of the southerly Right of Way of **SW 33<sup>rd</sup> Street** and northerly of the southerly boundary of a tract as described in Document No. 2011-10432, Lincoln County Film Records, said portion being a 60 foot wide strip.

This description is based on Lincoln County Survey No. 18864, by Russell Johnson.

Street Vacation Description  
DSI-4313 (11-11-17 CA)  
21 April 2014

**LAND DESCRIPTION FOR THE BOUNDARIES  
OF THE PORTION OF SW ABALONE STREET  
TO BE VACATED LYING WITHIN  
THE PLAT OF HARBORTON**

All that portion of **SW ABALONE STREET** lying within the Plat of **HARBORTON**, located in the SW  $\frac{1}{4}$  of Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon being more particularly described as follows:

Beginning at the southeast corner of a tract as described in Document No. 2011-10432, Lincoln County Film Records, said corner being a 5/8 inch rebar established in Lincoln County Survey No. 12882, by Charles Denison; thence South  $89^{\circ}57'46''$  East to the easterly Right of Way of Platted SW Abalone Street, a distance of 30.00 feet; thence North  $00^{\circ}12'32''$  East, along said easterly Right of Way, a distance of 35.48 feet to the westerly Right of Way of Re-platted SW Abalone Street as indicated on the Plat of **SUNSET DUNES**, recorded in Book \_\_, Page \_\_, Lincoln County Plat Records; thence along the Re-platted westerly Right of Way, on the arc of a 230 foot radius curve right (the long chord of which bears N  $36^{\circ}00'30''$  W, 51.28'), a distance of 51.38 feet to the westerly Right of Way of Platted SW Abalone Street; thence South  $00^{\circ}00'46''$  East, along said westerly Right of Way, a distance of 76.94 feet to the point of beginning.

Street Vacation Description  
DSI-4313 (11-11-17 CA)  
21 April 2014

**LAND DESCRIPTION FOR THE BOUNDARIES  
OF THE PORTION OF SW ANCHOR WAY  
TO BE VACATED LYING WITHIN  
THE PLAT OF HARBORTON**

Commencing at the Northeast corner of a tract of land as described in Microfilm 250-0776, Lincoln County Film Records, said corner being at the intersection of SW 32<sup>nd</sup> Street and Oregon Coast Highway 101; thence North 87°24'46" West, along the north line of said tract, a distance of 108.08 feet to the Northwest corner thereof and the Point of Beginning of the following described Right of Way of **SW ANCHOR WAY**; thence North 03°07'25" East, a distance of 49.92 feet; thence North 76°51'41" West, a distance of 53.12 feet; thence South 00°02'14" West, a distance of 51.06 feet; thence South 07°02'14" West, a distance of 66.38 feet; thence South 42°54'14" West, a distance of 95.49 feet; thence South 01°14'14" West, a distance of 50.01 feet; thence South 45°32'14" West, a distance of 107.01 feet; thence South 20°59'14" West, a distance of 235.85 feet; thence North 89°57'46" West, a distance of 63.36 feet; thence South 41°53'38" West, a distance of 67.02 feet; thence South 00°07'34" East to the northerly Right of Way of Re-platted SW Abalone Street, as indicated on the Plat of **SUNSET DUNES**, recorded in Book \_\_, Page \_\_, Lincoln County Plat Records, a distance of 33.88 feet; thence along the arc of a 170 foot radius curve left (the long chord of which bears S 79°35'02" E, 46.31'), a distance of 46.46 feet; thence continuing along said Re-platted SW Abalone Street, South 87°24'46" East, a distance of 4.65 feet; thence North 00°02'14" East, a distance of 18.10 feet; thence North 42°01'14" East, a distance of 25.78 feet; thence South 89°55'46" East, a distance of 72.97 feet; thence North 20°59'14" East, a distance of 264.85 feet; thence North 45°32'14" East, a distance of 116.48 feet; thence North 01°14'14" East, a distance of 51.34 feet; thence North 42°54'14" East, a distance of 92.65 feet; thence North 07°02'14" East, a distance of 77.78 feet to the point of beginning.

**VACATION**

**271.080 Vacation in incorporated cities; petition; consent of property owners.** (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

(2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing.

[Amended by 1999 c.866 §2]

**271.090 Filing of petition; notice.** The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.

**271.100 Action by city governing body.** The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

**271.110 Notice of hearing.** (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.

(2) Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.

(3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the

amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor.  
[Amended by 1991 c.629 §1; 2005 c.22 §196]

**271.120 Hearing; determination.** At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

**271.130 Vacation on city governing body's own motion; appeal.** (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.

(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.

(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.

(4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases. [Amended by 1995 c.658 §101]

**271.140 Title to vacated areas.** The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

**271.150 Vacation records to be filed; costs.** A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

**271.160 Vacations for purposes of rededication.** No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original

unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

**271.170 Nature and operation of statutes.** The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

**271.180 Vacations in municipalities included in port districts; petition; power of common council; vacating street along railroad easement.** To the end that adequate facilities for terminal trackage, structures and the instrumentalities of commerce and transportation may be provided in cities and towns located within or forming a part of any port district organized as a municipal corporation in this state, the governing body of such cities and towns, upon the petition of any such port, or corporation empowered to own or operate a railroad, steamship or other transportation terminal, or railroad company entering or operating within such city or town, or owner of property abutting any such terminal, may:

(1) Authorize any port commission, dock commission, common carrier, railroad company or terminal company to occupy, by any structure, trackage or machinery facilitating or necessary to travel, transportation or distribution, any street or public property, or parts thereof, within such city or town, upon such reasonable terms and conditions as the city or town may impose.

(2) Vacate the whole or any part of any street, alley, common or public place, with such restrictions and upon such conditions as the city governing body may deem reasonable and for the public good.

(3) If any railroad company owns or has an exclusive easement upon a definite strip within or along any public street, alley, common or public place, and if the city governing body determines such action to be to the advantage of the public, vacate the street area between the strip so occupied by the railroad company and one property line opposite thereto, condition that the railroad company dedicates for street purposes such portion of such exclusive strip occupied by it as the city governing body may determine upon, and moves its tracks and facilities therefrom onto the street area so vacated. The right and title of the railroad company in the vacated area shall be of the same character as previously owned by it in the exclusive strip which it is required by the city governing body to surrender and dedicate to street purposes.

**271.190 Consent of owners of adjoining property; other required approval.** No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

**271.200 Petition; notice.** (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected

thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.

(2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

**271.210 Hearing; grant of petition.** Hearing upon the petition shall be had by the city governing body at its next regular meeting following the expiration of 30 days from the filing of the petition. At that time objections to the granting of the whole or any part of the petition shall be duly heard and considered by the governing body, which shall thereupon, or at any later time to which the hearing is postponed or adjourned, pass by a majority vote an ordinance setting forth the property to be vacated, or other rights, occupancy or use to be thereby granted. Upon the expiration of 30 days from the passage of the ordinance and the approval thereof by the mayor of the city or town, the ordinance shall be in full force and effect.

**271.220 Filing of objections; waiver.** All objections to the petition shall be filed with the clerk or auditor of the city or town within 30 days from the filing of the petition, and if not so filed shall be conclusively presumed to have been waived. The regularity, validity and correctness of the proceedings of the city governing body pursuant to ORS 271.180 to 271.210, shall be conclusive in all things on all parties, and cannot in any manner be contested in any proceeding whatsoever by any person not filing written objections within the time provided in this section.

**271.230 Records of vacations; fees.** (1) If any town or plat of any city or town is vacated by a county court or municipal authority of any city or town, the vacation order or ordinance shall be recorded in the deed records of the county. Whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon a copy of the plat that is certified by the county clerk, trace or shade with permanent ink in such manner as to denote that portion so vacated, and shall make the notation "Vacated" upon such copy of the plat, giving the book and page of the deed record in which the order or ordinance is recorded. Corrections or changes shall not be allowed on the original plat once it is recorded with the county clerk.

(2) For recording in the county deed records, the county clerk shall collect the same fee as for recording a deed. For the services of the county surveyor for marking the record upon the copy of the plat, the county clerk shall collect a fee as set by ordinance of the county governing body to be paid by the county clerk to the county surveyor. [Amended by 1971 c.621 §31; 1975 c.607 §31; 1977 c.488 §2; 1979 c.833 §30; 1999 c.710 §12; 2001 c.173 §5]

**CITY OF NEWPORT**  
**NOTICE OF A PUBLIC HEARING ON A PARTIAL STREET VACATION**

The Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, July 14, 2014, at 7:00 p.m. in the City Council Chambers to review and make a recommendation to the Newport City Council on File No. 1-SV-14 as initiated by the City Council to vacate portions of SW 31<sup>st</sup> Street, SW 32<sup>nd</sup> Street, SW 33<sup>rd</sup> Street, SW Coho Street, SW Brant Street, SW Abalone Street, and SW Anchor Way as road rights-of-way that are not needed for public purposes. These street vacations are being undertaken in concert with a subdivision plat that will reconfigure SW 30<sup>th</sup> Street, SW 35<sup>th</sup> Street and SW Abalone Street for future street improvements. For city-initiated street vacations, Oregon Revised Statutes (ORS) 271.130 provides: (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide; (2) All city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated. Additionally, pursuant to ORS 271.120, the governing body must determine by ordinance that the above requirements have been satisfied and that the public interest will not be prejudiced by the vacation action. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by applicant and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development (Planning) Department (address above) seven days prior to the hearing. The file materials and the applicable criteria are currently available for inspection at no cost or copies may be purchased for reasonable cost at this address. Contact Derrick Tokos, Community Development Director (541) 574-0626, [d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov) (mailing address above).

**FOR PUBLICATION ONCE ON FRIDAY JULY 4, 2014, AND ONCE ON WEDNESDAY, JULY 9, 2014.**





**CITY OF NEWPORT**  
**NOTICE OF A PUBLIC HEARING ON A PARTIAL STREET VACATION<sup>1</sup>**

**NOTICE IS HEREBY GIVEN** that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, July 14, 2014, to review and make a recommendation to the Newport City Council on the following:

**File No. 1-SV-14:**

This City-Council-initiated request is to vacate portions of SW 31<sup>st</sup> Street, SW 32<sup>nd</sup> Street, SW 33<sup>rd</sup> Street, SW Coho Street, SW Brant Street, SW Abalone Street, and SW Anchor Way as road rights-of-way that are not needed for public purposes. These street vacations are being undertaken in concert with a subdivision plat that will reconfigure SW 30<sup>th</sup> Street, SW 35<sup>th</sup> Street and SW Abalone Street for future street improvements.

**Applicable Criteria:** For city-initiated street vacations, Oregon Revised Statutes (ORS) 271.130 provides: (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide; (2) All city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated. Additionally, pursuant to ORS 271.120, the governing body must determine by ordinance that the above requirements have been satisfied and that the public interest will not be prejudiced by the vacation action.

**Testimony:** Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by applicant and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department (address under "Reports/Materials") must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

**Reports/Materials:** The staff report may be reviewed or a copy purchased at the Newport Community Development (Planning) Department, City Hall, 169 S.W. Coast Hwy, Newport, Oregon, 97365, seven days prior to the hearing. The file materials and the applicable criteria are currently available for inspection at no cost or copies may be purchased for reasonable cost at this address.

**Contact:** Derrick Tokos, Community Development Director (541) 574-0626, [d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov) (mailing address above in "Reports/Materials").

**Time/Place of Hearing:** Monday, July 14, 2014; 6:00 p.m.; City Hall Council Chambers (address above in "Reports/Materials").

**MAILED:** June 23, 2014.

**PUBLISHED:** July 4, 2014 & July 9, 2014/News-Times.

---

<sup>1</sup> Notice of the public hearing is being sent to affected property owners (according to Lincoln County Assessor's records) within the notification distance required for the request, affected public/private utilities/agencies, and affected city departments

**Lincoln County Assessor**  
**Lincoln County Courthouse**  
225 W Olive St  
Newport OR 97365

**Planning & Development Mgr**  
Oregon Dept Of Transportation  
Region 2 Headquarters  
455 Airport Rd SE Bldg B  
Salem OR 97301-5395

**NW Natural**  
ATTN: Alan Lee  
1405 SW Highway 101  
Lincoln City OR 97367

**Lincoln County School District**  
ATTN: Superintendent  
PO Box 1110  
Newport OR 97365

**DLCD Coastal Services Ctr**  
810 SW Alder St Ste B  
Newport OR 97365

**Central Lincoln PUD**  
ATTN: Randy Grove  
PO Box 1126  
Newport OR 97365

**Charter Communications**  
ATTN: Keith Kaminski  
355 NE 1<sup>st</sup> St  
Newport OR 97365

**Lincoln County Surveyor**  
880 NE 7<sup>th</sup> St  
Newport OR 97365

**CenturyLink**  
ATTN: Corky Fallin  
740 State St  
Salem, OR 97301

**Lincoln County Clerk**  
**Lincoln County Courthouse**  
225 W Olive St  
Newport OR 97365

**Lincoln County Commissioners**  
**Lincoln County Courthouse**  
225 W Olive St  
Newport OR 97365

**OREGON DEPT OF PARKS & REC**  
ATTN: TONY STEIN  
810 SW ALDER ST  
NEWPORT OR 97365

**Ted Smith**  
Library Director

**Tim Gross**  
Public Works

**Rob Murphy**  
Acting Fire Chief

**Mark Miranda**  
Police Chief

**Bob Gazewood**  
Interim Finance Director

**Elwin Hargis**  
Building Official

**Victor Mettle**  
Code Administrator/Planner

**EXHIBIT 'A'**  
Affected Agencies

**Jim Protiva**  
Parks & Rec.

SV'PC

STATE OF OREGON  
% DEPT OF PARKS & RECREATION  
725 SUMMER ST NE STE C  
SALEM, OR 97301

OREGON DEPT OF TRANSPORTATION  
TECHNICAL LEADERSHIP CTR  
RIGHT OF WAY SECTION MS#2  
4040 FAIRVIEW IND DR SE  
SALEM, OR 97302

INVESTORS XII LLC  
830 OHARE PKY STE 100  
MEDFORD, OR 97504

WARD PAUL S &  
WARD JUDITH A  
241 SW BIRCH  
DALLAS, OR 97338

SONNENBERG EUGENE A &  
SONNENBERG LINDA G  
TRUSTEES  
PO BOX 275  
SOUTH BEACH, OR 97366

INDUSTRIAL WELDING SUPPLY INC  
PO BOX 20340  
SALEM, OR 97307

GRANTHAM & HOOPER  
% SOUTH BEACH GROCERY INC CONT  
PO BOX 581  
SOUTH BEACH, OR 97366

STEWART JAMES E TRUSTEE ETAL  
5293 AMBER FIELDS DR  
SHINGLE SPRINGS, CA 95682

JACKSON DEBRA LYNN &  
GLIDDEN BYRON J  
31532 FOX HOLLOW RD  
EUGENE, OR 97405

CROWDER DANIELLA &  
CROWDER ELLIOTT D  
312 SW 29TH ST  
NEWPORT, OR 97365

SIMMONS CLAUDE B &  
SIMMONS WANDA K  
20680 NE SIERRA DR  
BEND, OR 97701

ERISMAN PHYLLIS  
355 SW 29TH ST  
NEWPORT, OR 97365

COOPER MELISSA MARY  
ATTN HEINEN MARY ISABELLA  
2124 FRUITVALE RD  
NEWPORT, OR 97365

DERISCHEBOURG SARA JANE  
315 SW 29TH ST  
NEWPORT, OR 97365

GAFFIN JOYCE  
PO BOX 530  
SOUTH BEACH, OR 97366

T&M PACIFIC PROPERTIES LLC  
PO BOX 567  
NEWPORT, OR 97365

SHRIFTER THOMAS C &  
SHRIFTER SUSAN L  
225 SW 29TH ST  
NEWPORT, OR 97365

CLINE BROOKS DYANNNE  
217 SW 29TH  
NEWPORT, OR 97365

MARSHALL LINDA L &  
MARSHALL RICK &  
MARSHALL ANN  
1147 SW IRICK COURT  
DALLAS, OR 97338

\*\*undeliverable\*\*  
STEVENS GREGORY H &  
STEVENS DAVID T  
PEPPERDINE UNIVERSITY  
24255 PACIFIC COAST HWY #3247  
MALIBU, CA 90263

JONES CYNTHIA L &  
JONES DAVID F  
2653 BRENTWOOD AVE  
BURLEY, ID 83318

VILLA BY THE SEA LLC  
ATTN ROBERT H FOSS MANAGER  
920 SCENIC WOOD PLACE  
ALBANY, OR 97321

WOODS MICHAEL R &  
WOODS FLORENCE M  
1617 NE 205TH AVE  
FAIRVIEW, OR 97024

LAWRENCE KIM D  
250 SW 30TH ST  
NEWPORT, OR 97365

BRAXLING BONNIE ABERSON TRSTEE  
PO BOX 240  
NEWPORT, OR 97365

\*\*UNDELIVERABLE\*\*  
MIDDLEBROOKS AMANDA  
226 SW 30TH  
NEWPORT, OR 97365

OREGON MUSEUM OF  
SCIENCE & INDUSTRY  
ATTN CARLSON PAUL E  
1945 SE WATER AVE  
PORTLAND, OR 97214

SMITH KENNETH L  
1227 NW LAKE ST  
NEWPORT, OR 97365

HOFFMAN CRAIG S &  
HOFFMAN REBECCA L  
PO BOX 549  
TOLEDO, OR 97391

SOUTH BEACH INN VESTMENTS LLC  
ATTN HOSPITALITY ASSOC INC  
45 SE 32ND ST  
NEWPORT, OR 97365

**NEWPORT HOSPITALITY LLC**  
135 SE 32ND ST  
NEWPORT, OR 97365

**ARLO DEVELOPMENT CO**  
PO BOX 19478  
PORTLAND, OR 97280

**ROWLEY WILLIAM D TRUSTEE**  
PO BOX 1746  
NEWPORT, OR 97365

**BATES ENTERPRISES III LLC**  
5156 SW MULTNOMAH BLVD #A  
PORTLAND, OR 97219

**OCEAN INVESTORS**  
PO BOX 501  
NEWPORT, OR 97365

**ORCAS TRIAD II LLC**  
ATTN GRAHAM DORLAND  
7933 N PIMA VILLAGE CT  
TUCSON, AZ 85718

**MURRY RICHARD G**  
13398 ALSEA HWY  
TIDEWATER, OR 97390

## PLANNING STAFF REPORT

- A. **APPLICANT:** Newport Urban Renewal Agency (Oregon Museum of Science and Industry (OMSI); Investor's XII, LLC; and Dick Murry, property owners).
- B. **REQUEST:** Proposal to subdivide portions of Wagoneer's Addition to South Beach Subdivision, Harborton Subdivision, and certain unplatte property, as the plat of "Sunset Dunes." The new subdivision plat reconfigures privately owned property for the purpose of positioning SW 30<sup>th</sup> Street, SW 35<sup>th</sup> Street, and the SW Abalone Street rights-of-way for future street improvements in a manner consistent with the August 12, 2012 Coho/Brant Infrastructure Refinement Plan. The new plat also establishes a perimeter for a coastal gully feature (Lot 1, Block 1) that OMSI intends to encumber with a conservation easement. Street rights-of-way identified on the proposed plat as "to be vacated" are being vacated via a separate hearings process (ref: File 1-SV-14), and are depicted for reference purposes only.
- C. **LOCATION:** The properties are located in the City's South Beach neighborhood, south of the Lincoln County Pioneer Cemetery and Safe Haven Hill tsunami evacuation assembly area, west of US 101, and north and east of the South Beach State Park.
- D. **LOT SIZE:** Approximately 33.51 acres, excluding new rights-of-way. This figure includes rights-of-way that accrue to private properties through the street vacation process. Agency is acquiring 1.64 acres of new road rights-of-way to supplement existing rights-of-way that will remain. Specific properties subject to this subdivision proposal include:

**OMSI Ownership:** Portions of Blocks 7, 8, 11, 15, and 20 and all of Blocks 9, 10, 16, 17, 19 and 20, Waggoner's Addition to South Beach and unplatte property identified as Tax Lots 200, 2703, 2803, 3100, 3200, 3300, 3500, 3501, 3600, 3700, 4400, 4401, 4402, 4600, 4601, 4700, and 4800 of Lincoln County Assessor's Map 11-11-17-CA.

**Investor's XII Ownership:** Portions of Blocks 7, 9, and H, and all of Blocks 8, 10, and 11, Harborton identified as Tax Lot 1800 of Lincoln County Assessor's Map 11-11-17-DB and Tax Lot 1400 of Lincoln County Assessor's Map 11-11-17-DC.

**Dick Murry Ownership:** Portion of Block I, Harborton identified as Tax Lots 1200, 1201, and 1300 of Lincoln County Assessor's Map 11-11-17-DB.

E. **STAFF REPORT**

1. **Existing Conditions**

- a. **Plan Designation:** High Density Residential, Commercial and Industrial.

- b. **Zone Designation:** R-4/"High Density Multi-Family Residential," C-1/"Retail and Service Commercial," and I-1/"Light Industrial."
- c. **Surrounding Land Uses:** The South Beach neighborhood contains a mix of public, commercial, water-dependent and water-related, industrial and residential uses. Land uses in the area near the subject property include developed single-family and multi-family uses to the north along with a Pioneer Cemetery maintained by Lincoln County and a tsunami evacuation assembly area known as "Safe Haven Hill" that is owned by ODOT. Commercial and light industrial uses border the proposed plat to the east, across US 101, and the South Beach State Park borders the plat to the west. Developed light-industrial, residential and South Beach State Park uses border the plat to the south.
- d. **Topography and Vegetation:** Property subject to the plat is gradually sloped, with much of it having been graded in the past. Disturbed areas contain beach grasses and scotch broom. A natural coastal gully exists at the far northwest corner of the site. This area includes a small wetland, and wetland features also exist in isolated pockets along the south and east borders of the plat.
- e. **Existing Structures:** Property owned by Dick Murry is developed with an auto dealership (d.b.a. Toby Murry Motors). The dealership includes two buildings, and there are an additional three building on the property that are leased for light-industrial uses. The property is paved. Land owned by Investors XII, LLC and OMSI is undeveloped.
- f. **Utilities:** City currently maintains an 8-inch water line along SW Abalone Street as currently platted. It also has a 12-inch water line within portions of SW Brant, SW 33<sup>rd</sup>, and SW 35<sup>th</sup> Streets. Sanitary sewer service is available from an 8-inch line within SW Brant, SW 33rd, and SW 35th Streets. A 60-inch storm drainage line is within SW 35<sup>th</sup> Street, a 48-inch line is further to the north at US 101, and 12-inch and 18-inch lines are at the far northeast corner of the plat. Electricity, phone, fiber, and natural gas are available to the area. The Dick Murry property (proposed Block 3) currently receive services. This proposed subdivision is positioning the OMSI and Investors XII, LLC properties for the same.
- g. **Development Constraints:** Isolated wetland areas as noted above.
- h. **Past Land Use Actions:**

File No. 1-CP-05. Proposal amended the Newport Comprehensive Plan Ocean Shorelands Map to remove an erroneous "Park and Outstanding

Natural Area Boundary” designation from property identified as Tax Lot 1800, of Lincoln County Assessor’s Map 11-11-17-DB (Ordinance No. 1894).

- i. **Notice:** Public notice of the application and public hearing was mailed to surrounding property owners within 200 feet of the subject property and public entities and agencies on June 23, 2014. Notice of the public hearing was also published in the Newport News-Times on July 4, 2014.

- j. **Planning Staff Report Attachments:**

- Attachment "A" – Concept Map for the Sunset Dunes Subdivision, dated June 6, 2014
- Attachment "B" – Conceptual road alignments and estimate/cross-section drawings from the 2012 Coho/Brant Infrastructure Refinement Plan
- Attachment "C" – Transportation System Plan Functional Classification Map for South Beach
- Attachment "D" – Memorandum of Understanding between the City of Newport, Newport Urban Renewal Agency and OMSI, dated March 2013
- Attachment "E" – Draft Conservation Easement for Lot 1, Block 1 of the proposed subdivision
- Attachment "F" – Public Hearing Notice

2. **Explanation of the Request:** This subdivision plat reconfigures privately owned property for the purpose of positioning SW 30th Street, SW 35th Street, and the SW Abalone Street rights-of-way for future street improvements. The 10th Amendment to the South Beach Urban Renewal Plan identifies the extension of SW Abalone Street from SW 29th Street to SW Anchor Way, and SW 30th Street from SW Brant Street to SW Abalone Street as roadways that are to be constructed during its second project phase, which covers the years 2013-2016. It is also anticipated in the Plan that SW 35th Street will be constructed during this same period of time. The conceptual alignment for these road projects were established through public outreach as part of the 2012 Agency funded Coho/Brant Infrastructure Refinement Plan, and the most recent update to the Newport Transportation System Plan. Agency subsequently budgeted funds for survey, right-of-way acquisition and design work. The balance of the funding needed to construct SW 30th Street and SW Abalone Street will come from Agency, OMSI, and System Development Charges. Construction is anticipated to occur in the summer and fall of 2015 and will coincide with OMSI’s construction of its Coastal Discovery Center. SW 35th Street, between US 101 and SW Anchor Way, will be constructed by the State when they build a new intersection at SW 35th and US 101. The State anticipates beginning preliminary design work on that intersection later this year, with construction beginning spring of 2017.

A subdivision platting process is an efficient method of establishing the location of the road rights-of-way. The plat will also identify the perimeter of a coastal gully feature at the northwest corner of the OMSI ownership. Agency purchased lots adjacent to the gully in 2010 and placed the lots into a conservation easement. Agency has also entered into a non-binding Memorandum of Understanding with the City and OMSI, dated March 2013, outlining an intent by all parties to preserve the gully area.

Agency has engaged the three impacted property owners and has revised and modified the draft subdivision plat in response to their feedback. Certain rights-of-way are labeled on the concept map as areas “to be vacated.” This has been done for reference purposes as there is a separate parallel process that will accomplish the street vacations (ref: File 1-SV-14). Unlike a subdivision that will be approved by the Planning Commission, the vacation of city streets must be accomplished by ordinance adopted by the Newport City Council.

3. **Evaluation of the Request:**

- a. **Comments:** Notices of the requests were mailed on June 23, 2014, to affected property owners and various City departments, public/private utilities and agencies within Lincoln County, and other individuals (Attachment “F”). No comments were received in response to the notice.

- b. **Applicable Criteria:**

The request must be consistent with criteria set forth in Chapter 13.05 of the Newport Municipal Code for tentative subdivision plat approval.

- c. **Staff Analysis for Tentative Subdivision Plat:**

The criteria for approval of a tentative subdivision plat have been addressed as follows:

- i. *NMC Section 13.05.015(A) Criteria for Consideration of Modification to Street Design. As identified through the street standard requirements, modifications may be allowed to the standards by the approving authority. In allowing for modifications, the approving authority shall consider modifications of location, width and grade of streets in relation to existing and planned streets, to topographical or other geological/environmental conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system as modified shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the*

*traffic to be carried considering the terrain. Where location is not shown in the Transportation System Plan, the arrangement of streets shall either:*

1. *Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or*
2. *Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.*

The rights-of-way for SW 30<sup>th</sup> Street, SW Abalone Street, and SW 35<sup>th</sup> Street have been sized to accommodate the construction of streets consistent with the cross-sections for each that were developed with the 2012 Coho/Brant Infrastructure Refinement Plan (Attachment "B"). That Refinement Plan has been adopted into the City's Transportation System Plan (TSP) and put in place the street standards requirements for these roadways. The street extensions are depicted graphically in the plan (ref: map 3-8, Attachment "B"). The SW Abalone Street extension is also depicted on the TSP Functional Classification Map (Attachment "C").

- ii. NMC Section 13.05.015(B) Minimum Right-of-Way and Roadway Width. *Unless otherwise indicated in the Transportation System Plan, the street right-of-way and roadway widths shall not be less than the minimum width in feet shown in the following table:*

Type of Street	Minimum Right-of-Way Width	Minimum Roadway Width
Arterial, Commercial, Industrial	80 feet	44 feet
Collector	60 feet	44 feet
Minor Street	50 feet	36 feet
Radius for turn-around At end of cul-de-sac	50 feet	45 feet
Alleys	25 feet	20 feet

*Modifications to this requirement may be made by the approving authority where conditions, particularly topography, geology, and/or environmental constraints, or the size and shape of the area of the subdivision or partition, make it impractical to otherwise provide buildable sites, narrower right-of-way and roadway width may be accepted. If necessary, slope easements may be required.*

As depicted on the Concept Map for Sunset Dunes (Attachment “A”) the rights-of-way for SW 30<sup>th</sup> Street and SW Abalone Street satisfy the minimum width requirement for local and collector streets, respectively. The roadway width for both streets will be less than what is listed in this table; however, as noted, that table is superseded if alternative standards are provided in the TSP. That is the case here, with reduced street sections for both roadways being contained in the Coho/Brant Infrastructure Refinement Plan (Attachment “B”).

- iii. *NMC Section 13.05.015(C) Reserve Strips.* *Reserve strips giving a private property owner control of access to streets are not allowed.*

The concept map for the Sunset Dunes subdivision plat does not contain any reserve strips.

- iv. *NMC Section 13.05.015 (D) Alignment.* *Streets other than minor streets shall be in alignment with existing streets by continuations of their center lines. Staggered street alignment resulting in "T" intersections shall leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and, in no case, shall be less than 100 feet. If not practical to do so because of topography or other conditions, this requirement may be modified by the approving authority.*

The concept map illustrates how SW 30<sup>th</sup> Street and SW Abalone Street are to be extended. New right-of-way for SW 30<sup>th</sup> Street will allow the existing street to be extended along its existing center line alignment. Existing right-of-way for SW Abalone Street has been expanded from 30-feet to 60-feet and is off-set slightly to the west to allow the street to curve and merge with SW 35<sup>th</sup> Street. This merger with SW 35<sup>th</sup> Street, shown in the TSP, is appropriate since SW Abalone Street will not be extended further to the south into the State Park. The “T” intersections of SW 30<sup>th</sup> at SW Abalone Street, and SW Abalone Street where it ties into the existing curved section, satisfy the 200-foot centerline to centerline separation requirement.

- v. *NMC Section 13.05.015(E) Future Extensions of Streets.* *Proposed streets within a land division shall be extended to the boundary of the land division. A turnaround if required by the Uniform Fire Code will be required to be provided. If the approval authority determines that it is not necessary to extend the streets to allow the future division of adjoining land in accordance with this chapter, then this requirement may be modified such that a proposed street does not have to be extended to the boundary of the land division.*

Alignments for SW 30<sup>th</sup> Street, SW Abalone Street, and SW 35<sup>th</sup> Street conform to the City's TSP. SW 30<sup>th</sup> Street need not be extended beyond SW Abalone because the only property that it would serve is a vacant commercial site that does not need additional public street access. Similarly SW 35<sup>th</sup> Street need not be extended to the west or SW Abalone to the south because the OMSI and State Park properties do not need additional public street access.

vi. NMC Section 13.05.015(F) Intersection Angles.

1. *Streets shall be laid out to intersect at right angles.*
2. *An arterial intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection.*
3. *Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection.*
4. *Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line.*
5. *No more than two streets may intersect at any one point.*
6. *If it is impractical due to topography or other conditions that require a lesser angle, the requirements of this section may be modified by the approval authority. In no case shall the acute angle in Subsection F.(1.) be less than 80 degrees unless there is a special intersection design.*

The concept map for the Sunset Dunes subdivision illustrates that these standards have been met.

vii. NMC Section 13.05.015(G) Half Street. *Half streets are not allowed. Modifications to this requirement may be made by the approving authority to allow half streets only where essential to the reasonable development of the land division, when in conformity with the other requirements of these regulations and when the city finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract property to be divided, the other half of the street shall be provided.*

This sub-section addresses the provision of a half-street within the proposed subdivision (such that half of a right-of-way is provided adjacent to another property which would provide the other half of the right-of-way). The proposed subdivision does not include any half-street dedications.

viii. NMC Section 13.05.015(H) Sidewalks. *Sidewalks in conformance with the city's adopted sidewalk design standards are required on both sides of all streets within the proposed land division and are required along any street that abuts the land division that does not have sidewalk abutting the property within the land division. The city may exempt or modify the requirement for sidewalks only upon the issuance of a variance as defined in the Zoning Ordinance.*

This sub-section requires sidewalks on both sides of streets within land divisions; however, it is superseded by alternate standards if they are adopted into the Newport TSP. That is the case here, whereby SW 30<sup>th</sup> Street will be constructed with a multi-use path on the south side of the street with no bike/pedestrian improvements on the north side (Attachment "B"). SW Abalone Street will be constructed with a multi-use path on the west side, and although sidewalk is to be constructed on the east side, that improvement will be deferred until the commercial property develops. SW 35<sup>th</sup> Street will include a multi-use path to the south and sidewalk to the north.

ix. NMC Section 13.05.015(I) Cul-de-sac. *A cul-de-sac shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a circular turn-around meeting minimum Uniform Fire Code requirements. Modifications to this requirement may be made by the approving authority. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to connect from a cul-de-sac to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.*

Under this sub-section, the maximum length of a cul-de-sac is 400 feet, it may not serve more than 18 dwelling units, and it must terminate with a circular turn-around. The subdivision concept map does not include any cul-de-sacs.

x. NMC Section 13.05.015(J) Street Names. *Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street. Street names and numbers shall conform to the established pattern in the city, as evident in the physical landscape and described in City of Newport Ordinance No. 665, as amended.*

Street names are identified on the subdivision concept map (Attachment "A"). They are SW 30<sup>th</sup> Street, SW Abalone Street, and SW 35<sup>th</sup> Street. All are existing streets that are being extended or widened.

- xi. *NMC Section 13.05.015(K) Marginal Access Street. Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.*

This relates to subdivisions that abut an arterial street and allows the Planning Commission to require deeper lots, non-access reservations, landscaping and the like to buffer residential uses from traffic. US 101 is an arterial street abutting the proposed subdivision. Lots that abut the highway are commercial and industrial zoned properties with sufficient depth that the buffering options outlined in this standard need not be exercised.

- xii. *NMC Section 13.05.015(L) Alleys. Alleys shall be provided in commercial and industrial districts. If other permanent provisions for access to off-street parking and loading facilities are provided, the approving authority is authorized to modify this provision if a determination is made that the other permanent provisions for access to off-street parking and loading facilities are adequate to assure such access. The corners of alley intersections shall have a radius of not less than 12 feet.*

This sub-section requires that alleys be provided in commercial and industrial districts unless other permanent provisions are made to access off-street parking and loading facilities. Blocks 2 and 3 of the proposed subdivision include commercial and industrial zoned land. Both are adequately sized to provide off-street parking and loading. A portion of SW Anchor Way situated between the properties is proposed to be vacated, but will continue to serve in this capacity as a private drive.

- xiii. *NMC Section 13.05.020(A) Blocks General. The length, width, and shape of blocks for non-residential subdivisions shall take into account the need for adequate building site size and street width, and shall recognize the limitations of the topography.*

There are three (3) blocks in the proposed subdivision, as illustrated on the concept map. Each corresponds with the different ownerships and

zoning designations. They also recognize building site needs, availability of access and topographic limitations. The OMSI property (Block 1) is within an R-4 zoning designation. The property is substantially flat and large enough to accommodate the Coastal Discovery Center that they plan to construct at this location. Access is available off of SW 30<sup>th</sup> and SW Abalone Street. Investor's XII, LLC owns the property within Block 2. This area is relatively flat and undeveloped. Given the large parcel size of 10.81 acres, it is well suited for a range of building types that can be constructed under the C-1 zoning, and access is available off of SW Abalone Street and SW 32<sup>nd</sup> Street. Block 3, owned by Dick Murry, is developed with an automotive dealership and small manufacturing/industrial uses consistent with the I-1 zoning. The site is accessed via SW 32<sup>nd</sup> Street, US 101 and SW 35<sup>th</sup> Street.

- xiv. NMC Section 13.05.020(B) Block Size. *No block shall be more than 1,000 feet in length between street corners. Modifications to this requirement may be made by the approving authority if the street is adjacent to an arterial street or the topography or the location of adjoining streets justifies the modification. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to allow connectivity to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a block of greater than 1,000 feet if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.*

As illustrated on the concept map (Attachment "A") none of the proposed blocks is more than 1,000 feet in length between street corners. It could be argued that the west line of Block 2 exceeds this requirement since SW 30<sup>th</sup> Street does not extend into the site. This property is adjacent to US 101, an arterial street, which makes it impractical to break the Block up by extending a street through the property. The existing access point at SW 30<sup>th</sup> Street and multiple points along SW Abalone Street, which will tie into a future signal at SW 35<sup>th</sup> and US 101, ensure that the site possesses adequate access for future commercial development. Planned multi-use path and sidewalk improvements along SW Abalone Street preclude the need for any bike/pedestrian easement through the property at this time.

- xv. NMC Section 13.05.025(A) Utility Lines. *Easements for sewers and water mains shall be dedicated to the city wherever a utility is proposed outside of a public right-of-way. Such easements must be in a form acceptable to the city. Easements for electrical lines, or other public*

*utilities outside of the public right-of-way shall be dedicated when requested by the utility provider. The easements shall be at least 12 feet wide and centered on lot or parcel lines, except for utility pole tieback easements, which may be reduced to six (6) feet in width.*

Easements are shown for City of Newport water, sewer, and storm drainage mains where they extend outside of existing and/or proposed rights-of-way, as illustrated on the proposed concept map. Notice of this subdivision application was sent to NW Natural, Century Link, Central Lincoln PUD, and Charter Communications. None of these utilities have requested that easements be dedicated outside of the public rights-of-way.

xvi. *NMC Section 13.05.025(B) Utility Infrastructure. Utilities may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.*

No new utilities are proposed to be placed at this time. This requirement is intended to prevent subdivision monuments from being disturbed. It is prospective in nature and can be addressed with a condition of approval.

xvii. *NMC Section 13.05.025(C) Water Course. If a tract is traversed by a water course such as a drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of the water course, and such further width as will be adequate for the purpose. Streets or parkways parallel to the major water courses may be required.*

The subject properties are not traversed by a watercourse such as a drainageway, channel or stream.

xviii. *NMC Section 13.05.030(A) Size. The size (including minimum area and width) of lots and parcels shall be consistent with the applicable lot size provisions of the Zoning Ordinance, with the following exception:*

*Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.*

The subject properties are zoned and planned for business or industrial use, and all three owners have been involved in reviewing and providing feedback on how the lots have been configured to ensure that they meet current and future business needs, including the provision of off-street services and parking.

xix. NMC Section 13.05.030(B) Street Frontage. *Each lot and parcel shall possess at least 25 feet of frontage along a street other than an alley.*

As depicted on the concept map (Attachment “A”), all of the proposed lots possess at least 25-feet of street frontage.

xx. NMC Section 13.05.030(C) Through Lots and Parcels. *Through lots and parcels are not allowed. Modifications may be made by the approving authority where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities or to overcome specific disadvantages of topography and orientation. The approving authority may require a planting screen easement at least 10 feet wide and across which there shall be no right of access. Such easement may be required along the line of building sites abutting such a traffic artery or other incompatible use.*

No new through lots are created with this proposed subdivision. Lot 1, Block 2, owned by Investors XII, LLC, is already a through lot with SW Abalone Street paralleling US 101. This will remain the case, and is necessary to ensure that this commercial property possesses adequate access and is separated (setback) from residential areas further to the west.

xxi. NMC Section 13.05.030(D) Lot and Parcel Side Lines. *The side lines of lots and parcels shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve. Modifications to this requirement may be made by the approving authority where it is impractical to do so due to topography or other conditions or when the efficient layout of the land division has the lines running as close to right angles (or radial) as practical.*

As illustrated on the concept map, proposed lot lines run at right angles to the street that they face where practical to do so. Given the angled alignment of the section of Anchor Way that is to be vacated, it is not possible to adhere to the right angle requirement. Similarly the line between Lots 2 and 3, Block 3, cannot be brought into SW 35<sup>th</sup> Street at a right angle given the location of the existing buildings and a requirement of the Toyota dealership that it maintain a footprint that is at least 3 acres in size (the dealership encompasses Lots 1 and 2). Lastly, Lot 1, Block 1 is irregularly shaped because it is intended to define the boundary of a coastal gully that encompasses the area. It is the intent of the Agency, City, and OMSI to protect the gully as a natural feature as outlined in a Memorandum of Understanding, dated March 2013 (Attachment “D”). Further, the parties intend to record a conservation easement over the newly created lot, a draft of which is enclosed (Attachment “E”).

xxii. NMC Section 13.05.030(E) Special Setback Lines. All special building setback lines, such as those proposed by the applicant or that are required by a geological report, which are to be established in a land division, shall be shown on the plat, or if temporary in nature, shall be included in the deed restrictions.

There are no known special building setback requirements. The scenic vegetation easements that encumber Block 2 may serve this purpose, and the locations of those easements are depicted on the concept map (Attachment "A").

xxiii. NMC Section 13.05.030(F) Maximum Lot and Parcel Size. Proposed lots and parcels shall not contain square footage of more than 175% of the required minimum lot size for the applicable zone. Modifications to this requirement may be made by the approving authority to allow greater square footage where topography or other conditions restrict further development potential or where the layout of the land division is designed and includes restrictions to provide for extension and opening of streets at intervals which will permit a subsequent division into lots or parcels of appropriate size for the applicable zone designation.

This standard is intended to ensure that oversized parcels are not configured in such a way that they will preclude further division and a logical extension of the street network in order to achieve the density allowances in the respective zoning districts. The minimum lot size for all three zones is 5,000 sq. ft., and all of the proposed lots exceed the 175% threshold. This limitation on the maximum lot size can be exceeded if conditions exist that would hamper the development potential of the properties. That is the case here, as each of the properties has been sized to accommodate intended uses. In OMSI's case it is a Coastal Discovery Center, which requires a large footprint and separation from other uses. Similarly, the Investors XII, LLC lot is sized to potentially accommodate larger commercial uses that cannot locate on smaller lots. Lastly, the lots owned by Dick Murry have been sized to accommodate needs of existing businesses that cannot be adequately met with smaller lots.

xxiv. NMC Section 13.05.030(G) Development Constraints. No lot or parcel shall be created with more than 50 % of its land area containing wetlands or lands where the city restricts development to protect significant Statewide Land Use Planning Goal 5 or Goal 17 resources, except that areas designated as open space within a land division may contain up to 100% of a protected resource. Modifications to this requirement may be made by the approval authority if the approval

*authority determines that the proposed lot or parcel contains sufficient land area to allow for construction on the lot or parcel without impacting the resource or that a variance or other permit has been obtained to allow for impacts on the identified resource.*

The only proposed lot that may exceed the 50% threshold is Lot 1, Block 1; however, that area is proposed to be protected as natural “open space” with limited development potential pursuant to the Memorandum of Understanding between the Agency, City and OMSI (Attachment “D”) and a conservation easement (Attachment “E”).

xxv. *NMC Section 13.05.030(H) Lots and Parcels within Geologic Hazard Areas.* *Each new undeveloped lot or parcel shall include a minimum 1000 square foot building footprint within which a structure could be constructed and which is located outside of active and high hazard zones and active landslide areas (See Section 2-4-7 of the Zoning Ordinance for an explanation of hazard zones). New public infrastructure serving a lot or parcel shall similarly be located outside of active and high hazard zones and active landslide areas.*

The subject properties are not located within a geologic hazards area.

xxvi. *NMC Section 13.05.035 Public Improvements.*

This sub-section outlines procedures that are to be followed by a developer to ensure that public improvements (i.e. streets, drainage, water, sewer, and sidewalk) are installed in a manner that is consistent with city construction specifications, that the city has an opportunity to review the construction plans and is notified prior to the commencement of the improvements, that underground utilities are installed prior to surfacing of streets and that the improvements are inspected by the city engineer.

Agency, with financial contributions from OMSI, will be installing street, bike/pedestrian, water, sewer, storm drainage, and lighting improvements within rights-of-way and easements depicted on the concept map. That work will be performed by the City of Newport pursuant to Agency Order No. 2014-1. Accordingly, it is not necessary for the Commission to impose conditions of approval requiring a developer coordinate with the City since it is the City that will be performing the work.

xxvii. *NMC Section 13.05.040 Public Improvement Requirements.* *The following public improvements are required for all land divisions, except*

*where a subdivision plat is reconfiguring or establishing rights-of-way for future public streets...*

This sub-section outlines public improvements (i.e. streets, drainage, water, sewer, and sidewalk) that are required for all land divisions, except where a subdivision plat is reconfiguring or establishing rights-of-way for future public streets. This subdivision proposal fits this limited exception, as the purpose of the plat is to reconfigure and/or extend SW 30<sup>th</sup> Street, SW Abalone Street, and SW 35<sup>th</sup> Street. Therefore, it is not necessary that a condition be imposed requiring that improvements to these roadways be in place prior to a final plat being recorded.

**xxviii. NMC Section 13.05.045 Adequacy of Public Facilities and Utilities.**

*(Electric and Phone). Tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the land division as demonstrated by a written letter from the public facility provider or utility provider stating the requirements for the provision of public facilities or utilities (electric and phone) to the proposed land division. For public facilities of sewer, water, storm water, and streets, the letter must identify the:*

1. *Water main sizes and locations, and pumps needed, if any, to serve the land division.*
2. *Sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division.*
3. *Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding.*
4. *Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development.*

This concept map has been prepared in consultation with the City of Newport Public Works Department to ensure that the proposed lots are configured in a manner that will facilitate extension of the listed services. Additionally, all of these utilities, including electric and phone service, are currently being provided to Block 3 of the proposed subdivision and existing development to the south and north of the proposed subdivision. Given these circumstances, it is feasible that these services can be provided to each of the proposed lots. Confirmation of availability of these services can be required as a condition of approval of the tentative plat (i.e. concept map).

**xxix. NMC Section 13.05.050 Underground Utilities and Service Facilities.**

*All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The subdivider shall make all necessary arrangements with the serving utility to provide the underground service.*

*The subdivider shall secure from the non-city-owned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.*

As noted, given that these services are currently available to Block 3 of the proposed subdivision, and are available to established uses to the north and south of the subject site, it is feasible that the Agency can obtain written statements of this nature from the service providers. A condition of approval should be imposed to ensure that this requirement is satisfied.

**xxx. NMC Section 13.05.055 Street Lights. Street lights are required in all land divisions where a street is proposed. The city may adopt street light standards. In the absence of adopted standards, street lights shall be place in new land divisions to assure adequate lighting of streets and sidewalks within and adjacent to the land division.**

Street lighting is budgeted and will be installed by the City when it extends SW 30<sup>th</sup> Street and SW Abalone Street. The State of Oregon will construct SW 35<sup>th</sup> Street between Abalone (at Anchor Way) and US 101 and lighting is budgeted and will be installed as part of that project

**xxxii. NMC Section 13.05.060 Street Signs. Street name signs, traffic control signs and parking control signs shall be furnished and installed by the city.**

Budgets for the extension of SW 30<sup>th</sup> Street and SW Abalone Street, and the construction of SW 35<sup>th</sup> Street, include funds for the installation of

street name signs, traffic control signs and parking control signs. The City will be constructing the improvements on behalf of the Agency, including the installation of these signs.

xxxii. NMC Section 13.05.065 Monuments. Upon completion of street improvements, monuments shall be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines.

This standard is prospective, and can best be addressed as a condition of approval.

d. **Final Plat Requirements for Subdivisions.**

i. NMC 13.05.090(A) Submission of the Final Plat. Submission of Final Plat. Within two years after tentative plan approval, such other time established at the time of tentative plan approval, or extensions granted under this chapter, the owner and/or applicant (collectively referred to as the "developer") shall cause the land division to be surveyed and a final plat prepared. If the developer elects to develop the land division in phases, final plats for each phase shall be completed within the time required (e.g. Phase I completed within two years, Phase II completed within the next two years, etc.). The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.

This standard sets out the timeframe and steps that are to be taken to prepare a final plat for recording once the tentative plat (i.e. concept map) is approved. Agency has not proposed to phase the platting; therefore, a final plat must be recorded within two years of the date of approval. A condition of approval should be imposed to make it clear that these steps must be taken in order for the subdivision to be final.

ii. NMC 13.05.090(B) Provision of Improvements. It shall be the responsibility of the developer to install all required improvements and to repair any existing improvements damaged in the development of the property. The installation of improvements and repair of damage shall be completed prior to final plat approval. Except as provided in Subsection C., or where payment in lieu of constructing a required improvement is allowed by the city and has been paid by the developer per Chapter 14.45, the final plat will not be approved until improvements are installed to the specifications of the city and "as constructed" drawings are given to the city and approved by the city engineer. The developer shall warrant the materials and workmanship of all required public

*improvements for a period of one year from the date the city accepts the public improvements.*

As noted in the finding establishing compliance with NMC Section 13.05.040 Public Improvement Requirements (ref: page 15), this subdivision plat is being pursued for the purpose of reconfiguring or establishing rights-of-way for future public streets. Therefore, planned public improvements need not be installed prior to final plat approval.

4. **Conclusion:** If the Planning Commission finds that the criteria established in the Newport Municipal Code for granting approval of a tentative subdivision plat have been met, then the Commission can approve the application. As always, the Commission may attach any reasonable conditions of approval, which it finds are necessary to ensure that approval criteria are satisfied. Conditions of approval need to be related to the applicable criteria and request (i.e. they must have a rational nexus) and need to be roughly proportional to the impact created by the subdivision in order to be constitutionally permissible. The burden on demonstrating that conditions of approval have both a rational nexus and are roughly proportional is on the government, not the applicant. If, on the other hand, the Commission finds that the request does not comply with the criteria and cannot be made to comply through reasonable conditions of approval (as required by ORS 197.522), then the Commission should make findings for denial.

A final order reflecting the Commission's decision will be brought back for adoption at the next meeting following the Commission's decision.

- F. **STAFF RECOMMENDATION:** Findings contained in this report establish that the proposed subdivision can satisfy City approval standards provided the following conditions are imposed:

1. Once the final plat is recorded, the Community Development Department shall advise utility providers of the requirement that utilities may not be placed within one foot of a survey monument location noted on the recorded document.
2. A conservation easement shall be recorded over Lot 1, Block 1 of the proposed subdivision. Such easement shall carry out the intent outlined in the Memorandum of Understanding between the Agency, City, and OMSI dated March 2013, and the recording information for the easement is to be cross-referenced on the final plat.
3. Agency shall obtain letters from electrical, telephone, cable television, and natural gas utilities service providers stating the requirements for the provision of undergrounding service to the proposed lots. Further, Agency shall obtain a letter from the Public Works Department identifying (a) water main sizes and locations, and pumps needed, if any, to serve the land division; (b) sewer mains sizes and

locations, and pumping facilities needed, if any, to serve the land division; (c) Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding; and (d) Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development. Such letters shall be submitted to the Community Development Department prior to the City signing off the final plat for recording.

4. The Newport Public Works Department shall include language in its construction contracts advising contractors that survey monuments are to be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines once the planned roadway improvements are completed.
5. A final plat shall be submitted within two years of the tentative plat (i.e. concept map) approval. The Agency shall finalize the survey, secure the signatures on the plat from all impacted owners, and prepare necessary conveyance documents to ensure that the lot configuration, ownership, and rights-of-way are established as illustrated on the tentative plat. The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.



Derrick I. Tokos, AICP  
Community Development Director  
City of Newport

July 10, 2014



### SURVEYOR'S NARRATIVE:

THE PURPOSE OF THIS SURVEY IS TO ESTABLISH THE BOUNDARIES OF TRACTS AS DESCRIBED IN LOT BOOK REPORT NUMBER 79066, DATED AUGUST 12, 2013, BY WESTERN TITLE COMPANY. THIS SURVEY FOUND AND HELD THE MONUMENTS AT THE SOUTHEAST AND NORTHEAST CORNERS OF THE TRACT SURVEYED IN COUNTY SURVEY NO. 18864 BY THIS FIRM, FOR THE BASIS OF BEARING (N 00° 00' 46" W, 965.75'). THIS RESULTED IN A DIFFERENCE OF BEARING BETWEEN THE RECORD BEARINGS IN THE PLAT OF HARBORTON AND THE LINES AS ESTABLISHED IN THIS SURVEY BY 00° 12' 46". THE MONUMENTS THAT WERE ESTABLISHED AND FOUND IN SAID SURVEY WERE HELD FOR THE BOUNDARIES OF THE WESTERLY TRACT (OMSI). THE BOUNDARIES OF THE EASTERLY TRACTS WERE DERIVED BY THE FOLLOWING METHODS:  
 1) THE EASTERLY BOUNDARY (HIGHWAY 101) WAS DERIVED BY HOLDING THE MONUMENTS ALONG THE CENTERLINE OF THE HIGHWAY AT STATIONS PDC 253+30.39, PDC 247+00.00 AND PDC 243+00.00, AS INDICATED ON ODOT DRAWING NO. 4B-26-19. 2) THE WESTERLY RIGHT OF WAY BETWEEN SW 3RD AND THE NORTH LINE OF TAX LOT 1300 APPEARS TO BE THE WESTERLY R/W OF TAYS AVE, PER THE PLAT OF HARBORTON. COUNTY SURVEYS 2217 (BURDETTE) AND 9816 (FREDRICKSON) BOTH INDICATE THIS SCENARIO. THIS SURVEY HELD THE MONUMENT FOUND AT THE NORTHEAST CORNER OF TL 1200, AS ESTABLISHED IN SAID CS #9816 IN THE DETERMINATION OF SAID TAYS AVE. 3) THE RECORD DATA FROM SAID CS #9816, WAS HELD TO DERIVE THE NORTHERLY R/W OF SW 35TH. THE EASTERLY LINE OF LOTS 11-13, BLOCK 9-HARBORTON WERE DERIVED BY HOLDING THE MONUMENTS ESTABLISHED IN CS #9893 (BURRELL). 4) THE R/W'S OF RHODODENDRON DRIVE WERE DERIVED BY HOLDING THE MONUMENT AT THE NORTHEAST CORNER OF TL 1200 AND THE RECORD ANGLES AND DISTANCES FROM THE PLAT OF HARBORTON. AFTER TRYING SEVERAL METHODS TO MATCH THE DATA ON THE PLAT, THIS SURVEY HAD TO CHANGE SOME OF THE DISTANCES ALONG RHODODENDRON TO MATCH THE ALIGNMENT OF SW 35TH STREET.  
 5) THE NORTH END OF BLOCKS 9 AND 10, AS WELL AS THE CORNERS OF BLOCKS 7, 8, 11 AND 12 WERE CALCULATED FROM THE DATA DERIVED FROM THE MONUMENT FOUND AT THE NORTHEAST CORNER OF TL 1200 AND THE RECORD ANGLES FROM THE PLAT OF HARBORTON. THIS SURVEYOR DISCOVERED THAT THE TRANSITION FROM THE EAST AND WEST SIDES OF RHODODENDRON DO NOT COINCIDE. THEREFORE, THE CORNERS OF THE BLOCKS WERE CALCULATED AS DESCRIBED. THIS METHOD LEAVES A DIFFERENCE BETWEEN THE NORTHERLY LINE OF LOTS 11-13 AS ESTABLISHED IN CS #9893 (BURRELL) AND THE METHOD USED AS DESCRIBED ABOVE OF APPROXIMATELY 18 FEET. THIS METHOD FIT THE INTENTIONS OF THE PLAT OF HARBORTON. BUT, IMPROVEMENTS HAVE BEEN BUILT BASED ON THE POSITION OF THE BURRELL MONUMENTS. THEREFORE, THIS SURVEY HELD THE MONUMENTS AS THE SOUTHERLY BOUNDARY OF THE HARBORTON LOTS. 6) THE NORTHERLY BOUNDARY IS THE SOUTHERLY R/W OF ABALONE STREET "THE ROAD", AS DEFINED IN THE DESCRIPTION OF SAID ROAD IN ODOT DRAWING NO. BB-30-15. THE WESTERLY BOUNDARY AT THE NORTH END IS THE EASTERLY R/W OF SW ABALONE STREET.

### PLAT OF:

### SUNSET DUNES

### CONCEPT MAP FOR PROPOSED SUBDIVISION AND PROPOSED SW ABALONE AND SW 35TH STREET CITY OF NEWPORT, LINCOLN COUNTY, OREGON FOR THE CITY OF NEWPORT

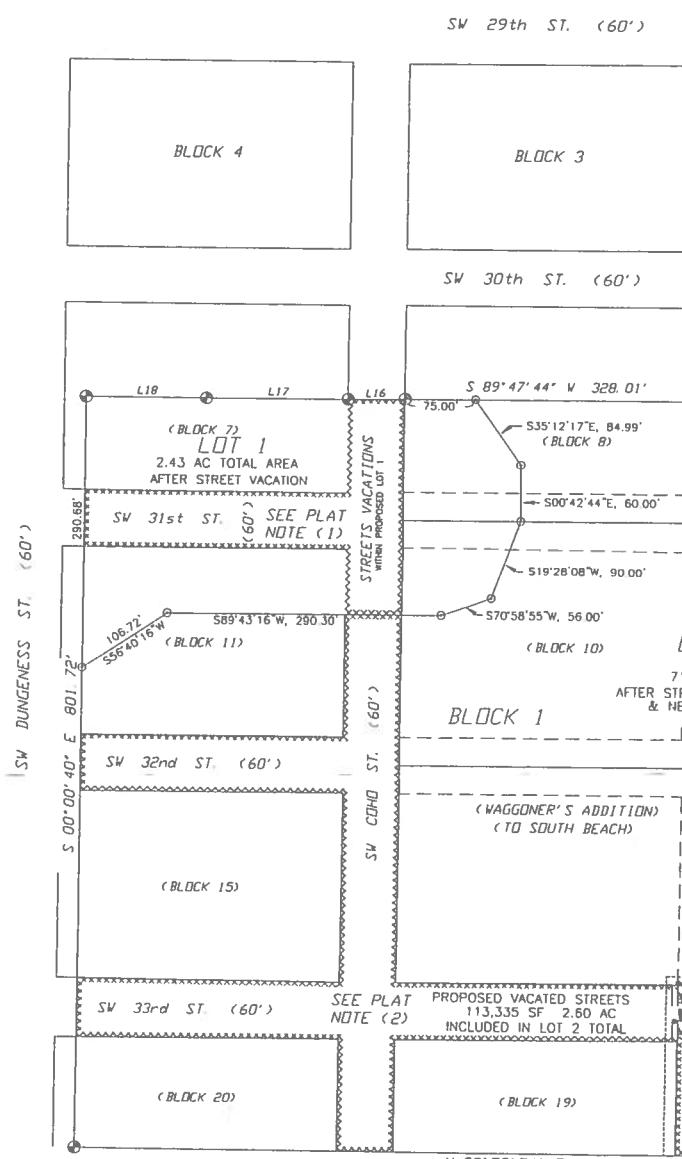
#### PLAT NOTES

(1) STREETS VACATION LOCATED IN PROPOSED LOT 1, BLOCK 1  
PER CITY ORDINANCE #

(2) STREETS VACATION LOCATED IN PROPOSED LOT 2, BLOCK 1  
PER CITY ORDINANCE #

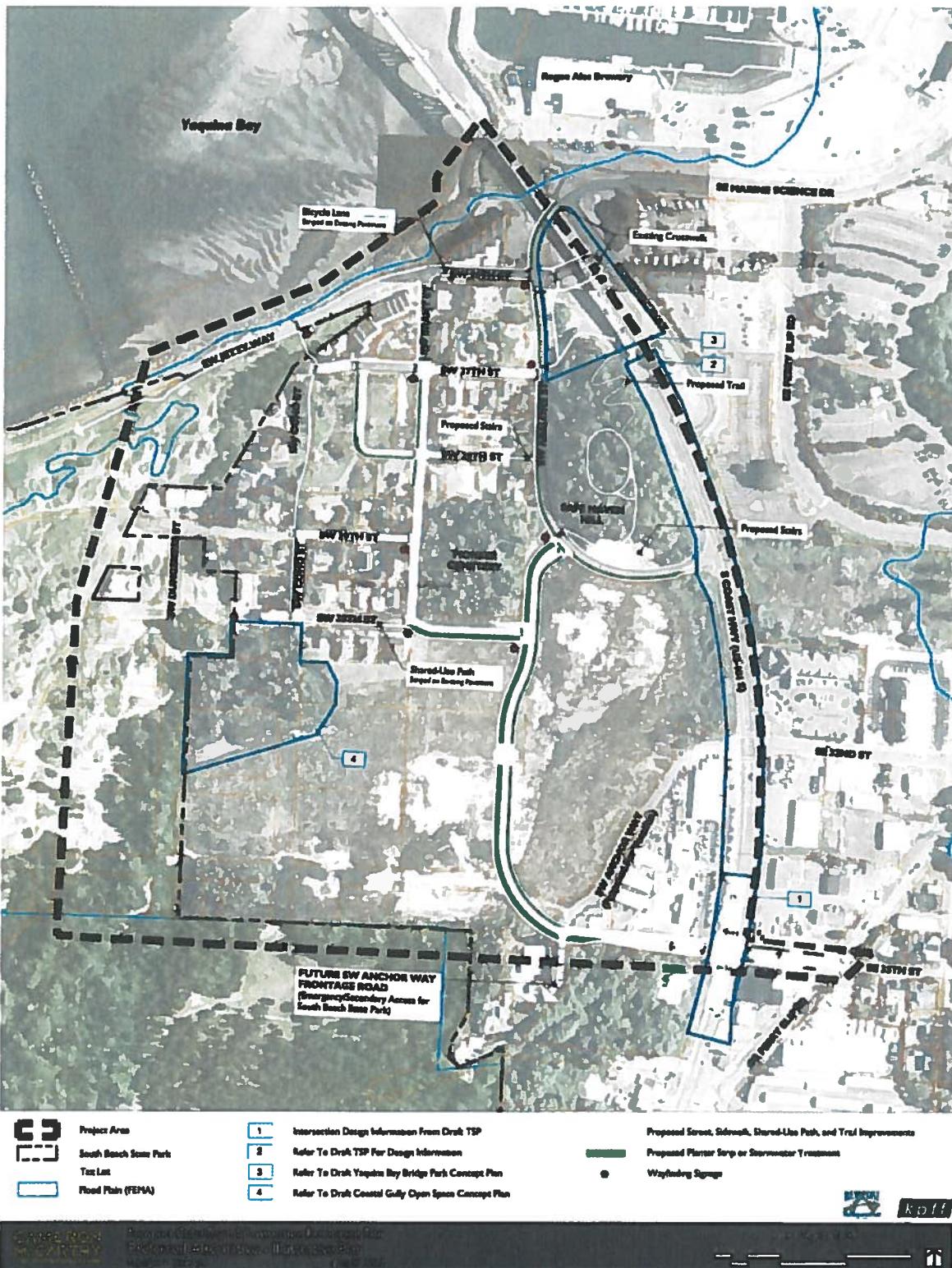
#### (3) SEE ANCHOR WAY VACATION PER CITY ORDINANCE #

(a.) A TEMPORARY PUBLIC EASEMENT OVER EXISTING STREET AND WILL TERMINATE ONCE 35TH STREET IS CONSTRUCTED BETWEEN THE FORMER ANCHOR WAY AND US HWY 101.



## PREFERRED ALTERNATIVE

### **Map 3-8. Illustrative Plan**



## IMPLEMENTATION

### Project No. 5: SW 30th Street, SW Brant Street to SW Abalone Street

This project involves the following improvements:

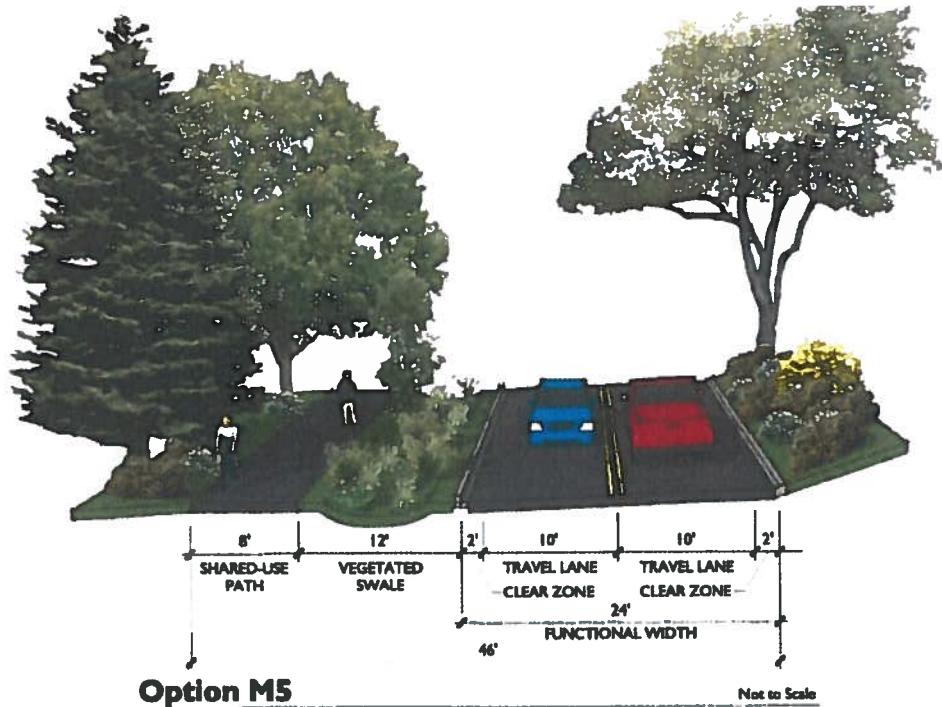
- 24' roadway with two travel lanes
- 8' shared-use path
- Stormwater and water infrastructure
- Right-of-way acquisition

**Table 4-7. SW 30th Street**

DESCRIPTION	COST
Construction Cost (DCC) <sup>1</sup>	\$168,000
Contingency (40%)	\$67,000
<i>Subtotal for Estimated Construction Costs</i>	<i>\$235,000</i>
Project Management, Engineering & Construction Management	\$59,000
<i>Subtotal for Estimated Project Cost (excluding Right-of-way)</i>	<i>\$294,000</i>
Total Project Right-of-Way	\$17,000
<b>TOTAL ESTIMATED PROJECT COST</b>	<b>\$311,000</b>

<sup>1</sup> All costs are in 2012 dollars.

### Proposed Design Section



**Project No. 8:**  
**SW Abalone Street, SW 29th Street to Anchor Way**

This project involves the following improvements:

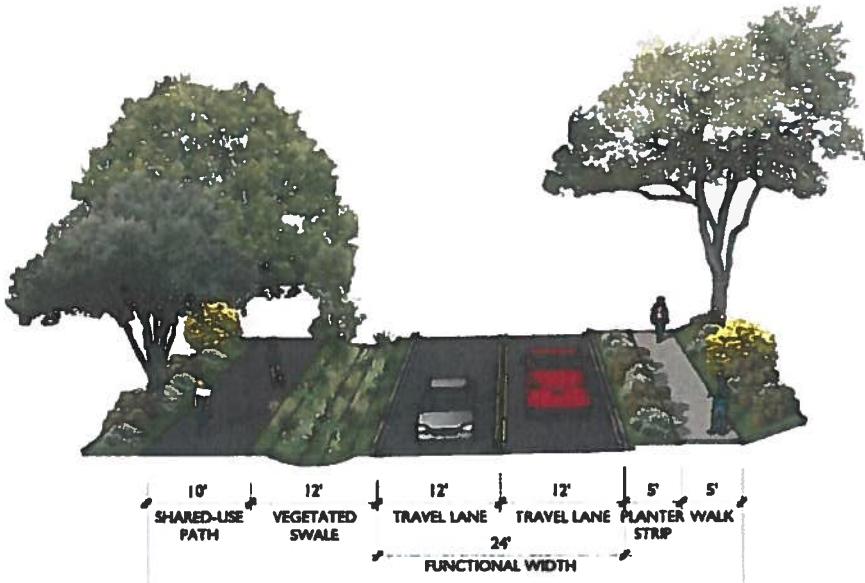
- 24' roadway with two travel lanes
- 5' separated sidewalk with planter strip on east side
- 10' shared use path on west side
- Stormwater, water, and sanitary sewer infrastructure
- Street and path lighting
- Right-of-way acquisition as needed

**Table 4-10. SW Abalone Street**

DESCRIPTION	COST
<b>Construction Cost (DCC)<sup>1</sup></b>	<b>\$878,000</b>
<b>Contingency (40%)</b>	<b>\$351,000</b>
<b><i>Subtotal for Estimated Construction Costs</i></b>	<b>\$1,229,000</b>
<b>Project Management, Engineering &amp; Construction Management</b>	<b>\$307,000</b>
<b><i>Subtotal for Estimated Project Cost (excluding Right-of-way)</i></b>	<b>\$1,537,000</b>
<b>Total Project Right-of-Way</b>	<b>\$237,000</b>
<b>TOTAL ESTIMATED PROJECT COST</b>	<b>\$1,773,000</b>

<sup>1</sup> All costs are in 2012 dollars.

**Proposed Design Section**



**Option C2**

Not to Scale

**Project No. 17:**  
**SW Abalone Street & SW 35th Street**

This project involves the following improvements:

- Water quality treatment and bypass structure

**Table 4-20. SW Abalone Street & SW 35th Street Water Quality Structure**

DESCRIPTION	COST
<b>Construction Cost (DCC)<sup>1</sup></b>	<b>\$48,000</b>
<b>Contingency (40%)</b>	<b>\$19,000</b>
<b><i>Subtotal for Estimated Construction Costs</i></b>	<b><i>\$67,000</i></b>
<b>Project Management, Engineering &amp; Construction Management</b>	<b>\$17,000</b>
<b><i>Subtotal for Estimated Project Cost (excluding Right-of-way)</i></b>	<b><i>\$84,000</i></b>
<b>Total Project Right-of-Way</b>	<b>\$-</b>
<b>TOTAL ESTIMATED PROJECT COST</b>	<b>\$84,000</b>

<sup>1</sup> All costs are in 2012 dollars.

**Project No. 18:**  
**Coastal Gully Open Space**

This project involves the following improvements:

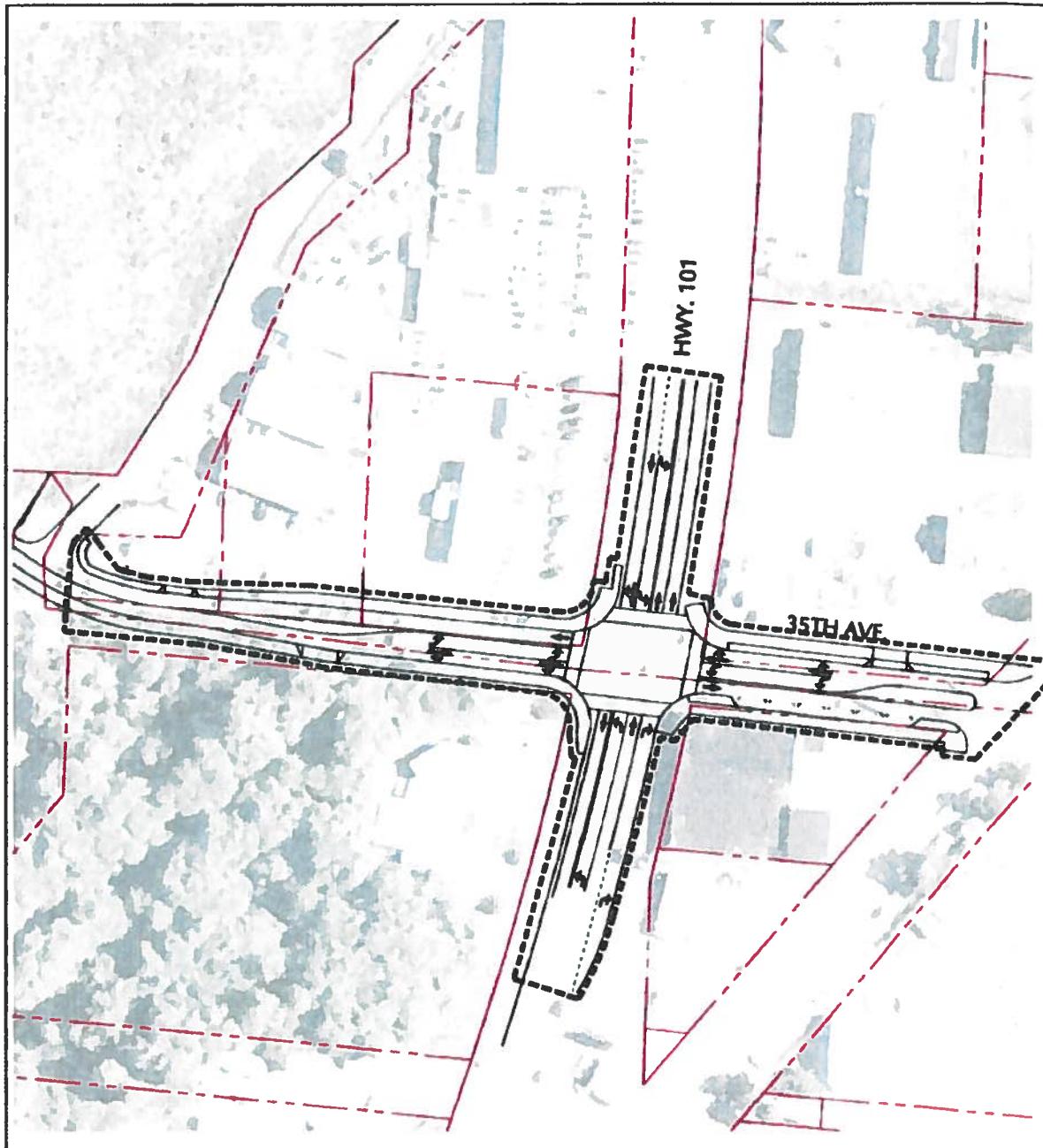
- Trailhead, parking, trails, and boardwalks

**Table 4-21. Coastal Gully Open Space**

DESCRIPTION	COST
<b>Construction Cost (DCC)<sup>1</sup></b>	<b>\$113,000</b>
<b>Contingency (40%)</b>	<b>\$45,000</b>
<b><i>Subtotal for Estimated Construction Costs</i></b>	<b><i>\$159,000</i></b>
<b>Project Management, Engineering &amp; Construction Management</b>	<b>\$34,000</b>
<b><i>Subtotal for Estimated Project Cost (excluding Right-of-way)</i></b>	<b><i>\$193,000</i></b>
<b>Total Project Right-of-Way</b>	<b>\$-</b>
<b>TOTAL ESTIMATED PROJECT COST</b>	<b>\$193,000</b>

<sup>1</sup> All costs are in 2012 dollars.

Map 3-4. Highway 101 / SW 35th Street Intersection Improvements



---

## IMPLEMENTATION

### **Project No. 9: Highway 101/SW 35th Street, Anchor Way to Ferry Slip Road**

This project involves the following improvements:

#### **Highway 101/35th Street Intersection**

- Widen and improve intersection to accommodate additional lanes
- Signalize

#### **SW 35th Street**

- 36' wide roadway with two travel lanes and a center turn lane
- 8' parking lane on the south side
- 8' curbside sidewalks
- Stormwater infrastructure
- Street lighting
- Right-of-way acquisition as needed

#### **SW Abalone Extension (Anchor Way to Highway 101)**

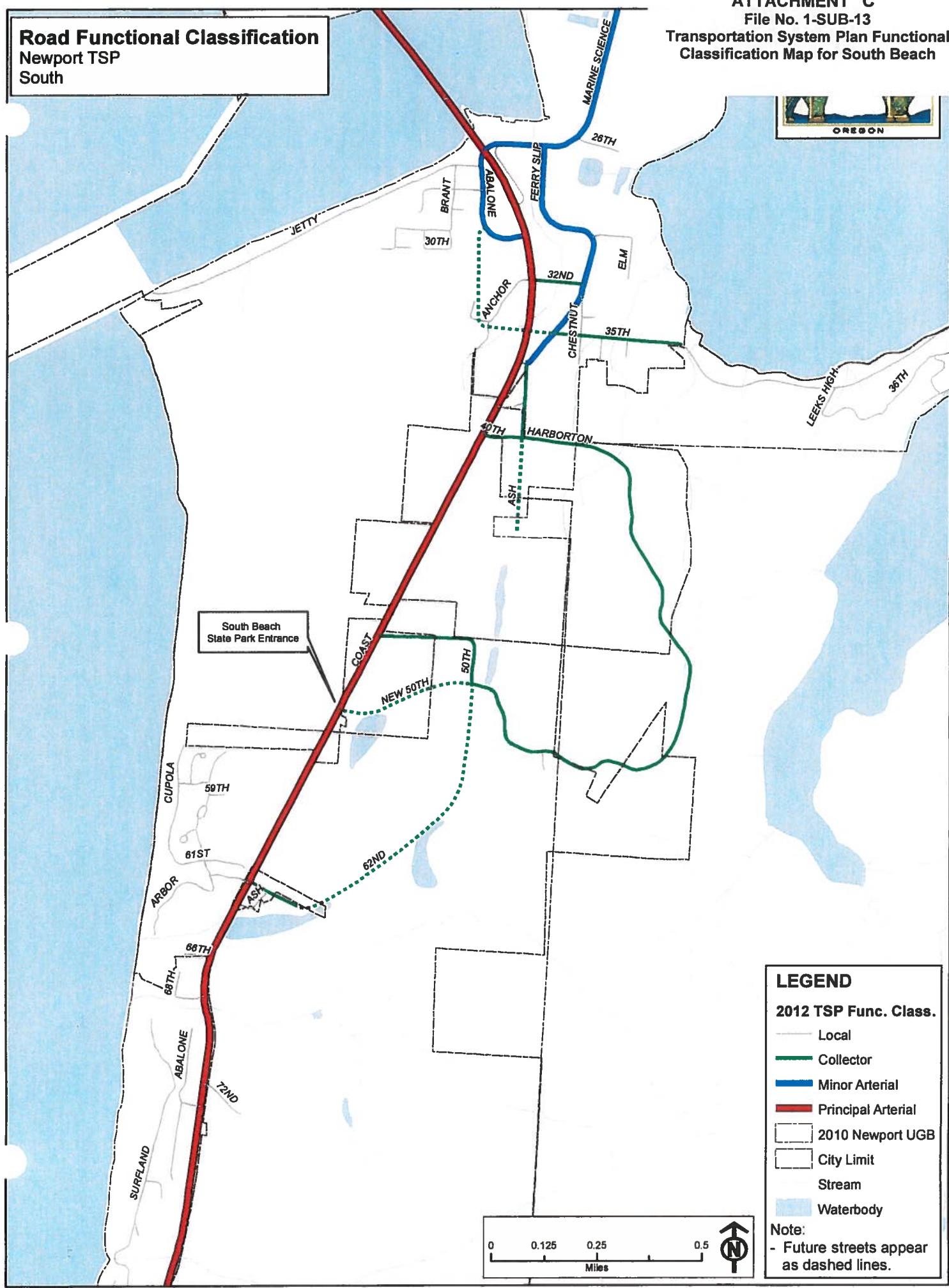
- 36' roadway with two travel lanes and center turn lane
- 8' curbside sidewalk on north side
- 10' shared use path on south side
- Stormwater, water, and sanitary sewer infrastructure
- Street and path lighting
- Right-of-way acquisition as needed

**Table 4-11. Highway 101/35th Street, Anchor Way to Ferry Slip Road**

DESCRIPTION	COST
Construction Cost (DCC) <sup>1</sup>	\$1,012,000
Contingency (40%)	\$405,000
<i>Subtotal for Estimated Construction Costs</i>	<i>\$1,417,000</i>
Project Management, Engineering & Construction Management	\$354,000
<i>Subtotal for Estimated Project Cost (excluding Right-of-way)</i>	<i>\$1,771,000</i>
Total Project Right-of-Way	\$205,000
<b>TOTAL ESTIMATED PROJECT COST</b>	<b>\$1,977,000</b>

<sup>1</sup> All costs are in 2012 dollars.

**Road Functional Classification**  
Newport TSP  
South



March 4, 2013

**Memorandum of Understanding**  
**among**  
**City of Newport, Oregon ("City"),**  
**Newport Urban Renewal Agency ("Agency")**  
**and**  
**Oregon Museum of Science and Industry ("OMSI")**

**Recitals**

- A. The City and Agency have established an overall infrastructure plan for the South Beach area, as depicted in the Coho/Brant Infrastructure Refinement Plan, dated August 2012 (the "Plan"). All Parties desire to work collaboratively to implement the Plan in a coordinated and equitable fashion in order to further neighborhood improvement goals. Except where the context otherwise indicates, when used herein the term "Parties" means City, Agency, and OMSI.
- B. As OMSI contemplates development of its South Beach property as a world-class educational center and begins the fundraising process, OMSI requires a degree of certainty as to the cost and timing of infrastructure improvements in the area.
- C. In order to implement the Plan, the City and Agency require certain right-of-way and easement dedications from OMSI for SW 30<sup>th</sup> Street and SW Abalone Street.
- D. Internal to the OMSI property, there are currently unutilized rights-of-way that may interfere with the logical and/or efficient use of the property. City, Agency, and OMSI desire that these rights-of-way be vacated in order to allow OMSI development to proceed.
- E. Agency has identified funding for certain projects in the South Beach area, including for SW Abalone, SW 30<sup>th</sup>, a multi-use pathway along SW Abalone, and improvement of the Coastal Gully area on the northern portion of the OMSI property.
- F. The Funding Plan for SW Abalone and SW 30<sup>th</sup> relies on a combination of Agency (urban renewal) funding and private property owner funding. Cost sharing between private property owners should be equitable, based on the proportionate share of street frontage for each project, which may involve creation of an LID, as addressed within this MOU.
- G. The Coastal Gully areas on and adjacent to the OMSI property represent sensitive and treasured resources. The Parties intend to see these areas enjoy permanent protection with limited public access.
- H. Similar to SW Abalone and SW 30<sup>th</sup>, fully implementing the projects identified in the Plan will require the financial participation of property owners in the area, including OMSI. The parties

share the goal of determining the appropriate timing for these improvements and an equitable distribution of those costs among benefitted owners.

- I. Project costs referenced herein are derived from conservative estimates included in the Plan and represent OMSI's proportional share of the planned improvements to SW Abalone and SW 30<sup>th</sup>. The figures assume roughly \$1,000 per lineal foot to construct a half-street improvement, as opposed to the \$1,400 per lineal foot assumed in the Plan for full build-out of these streets.

#### **Agreement**

1. **Property Dedication – Abalone Extension and SW 30<sup>th</sup>**

- a. Agency shall pursue the subdivision or partitioning of property owned by OMSI and the City, as depicted in Exhibit A, for the purpose of establishing a final alignment for the extension of SW Abalone Street and SW 30<sup>th</sup> Street. Such application may include adjoining property owned by Investors XII, LLC and Richard Murry (dba Toby Murry Motors) provided they are willing to participate in the platting effort.
- b. OMSI and the City will collaborate to determine the best design approach for incorporating a shared-use pathway on the west side of SW Abalone and south side of SW 30<sup>th</sup> Street. OMSI will provide easements, as needed, to accommodate the pathway(s).
- c. Agency will incorporate into the subdivision or partition plat easements for the pathway(s), or any other services needed to facilitate development of the OMSI property, provided such information is available at the time the plat is prepared.
- d. City will initiate vacation proceedings as part of the platting process for the existing platted rights-of-way within the boundary of the OMSI property, including portions of SW Coho Street, SW Brant Street, SW 31<sup>st</sup> Street, SW 32<sup>nd</sup> Street, SW 33<sup>rd</sup> Street and 18-feet of residual road right-of-way that may exist along the south line of the OMSI property as shown on the plat of Waggoner's Addition to South Beach, as shown on the attached Exhibits A and B. Where needed, as determined by the City in its sole discretion, easements will be retained to accommodate existing and future utilities.
- e. OMSI agrees to dedicate a right-of-way for SW 30<sup>th</sup> Street and the extension of SW Abalone Street. The right-of-way width for the extension of SW Abalone Street and SW 30<sup>th</sup> Street shall be in substantial conformity with the recommended width depicted in the Plan, as illustrated on Exhibit D.
- f. In keeping with the timeline in 4.a., OMSI and Agency shall work together in good faith to determine the contribution value of the rights-of-way and easements to be dedicated by OMSI for the purposes of accommodating parks and transportation improvements in the area. In determining what credit, if any, OMSI should receive for these dedications, the parties will consider such elements as previous right-of-way dedications, rights-of-way to be vacated, Agency costs to subdivide or plat the property, and the December 2011 purchase price of the OMSI property. The parties may utilize an independent appraiser, paid for by the Agency, to assist in the determination of value.

- g. Based on the outcome of the valuation described in 1.f above, Agency shall, at its sole discretion, either compensate OMSI for the value, if any, of the right-of-way and easement dedications, or accept the value of the dedications as offsetting OMSI's required financial contributions to the SW Abalone and SW 30<sup>th</sup> projects as a benefitted property owner, per 3.c., below.
- h. Agency shall incur all costs attributed to the subdivision or partition process, including surveying, plat preparation, appraisal fees and permit and recording fees.

## **2. Coastal Gully Preservation**

- a. OMSI and the City will collaborate on a program to preserve, in perpetuity, environmentally sensitive Coastal Gully areas on their respective properties, as generally depicted on Exhibit C, through the use of Lincoln County's Conservation Easement program or similar mechanism. The precise area to be included in the conservation easement will be mutually agreed by OMSI and the City. The goal of both Parties is for these areas to be managed in a manner that allows them to be used as part of OMSI's environmental education curriculum while providing for low impact public access to the areas as envisioned in the Plan.
- b. OMSI and the City recognize that this collaboration may result in their respective land ownership and rights-of-way within the Coastal Gully area being consolidated into a single lot or parcel through the platting process and that it may be necessary to put in place conservation easements over the affected areas.
- c. To the extent that OMSI has any Parks System Development Charge liabilities stemming from any permanent residential uses that may be developed on the site, it is anticipated by the parties that these charges may be offset by the value of the Coastal Gully areas that are permanently preserved by Conservation Easements or other similar means. Such offset is permissible because the City's Parks Capital Improvement Plan (CIP) calls for the acquisition and development of trails in South Beach, the Coho/Brant Infrastructure Refinement Plan envisions such trails at this location, and the System Development Charge methodology allows credits for qualifying public improvements or dedications for projects listed in the CIP. The value of these Coastal Gully areas will be established as part of the Conservation Easement process through the Lincoln Land Legacy Program. OMSI and the City will collaborate to define the conditions of public access to the Coastal Gully area taking into consideration the intended use of the OMSI property.

## **3. Cost Responsibilities - SW 30<sup>th</sup> Street and SW Abalone Extension Projects**

- a. SW 30<sup>th</sup> Street, SW Brant to SW Abalone - OMSI's financial contribution shall be limited to 52.4% of the total project costs or \$165,000, whichever is less.
- b. SW Abalone Street Extension, SW 29<sup>th</sup> to SW 35<sup>th</sup> - OMSI's financial contribution shall be limited to 18.8% of the total project costs or \$335,000, whichever is less.
- c. To the extent that OMSI is due any payment or financial consideration for the value of the rights-of-way and/or easements to be dedicated for the SW 30<sup>th</sup> and SW Abalone projects as

described in 1.f above, such payment or consideration may, at Agency's discretion, be applied as a credit against OMSI's financial contributions as defined in 3.a and 3.b above.

- d. At OMSI's request, City will initiate a Local Improvement District ("LID") formation process for the SW 30<sup>th</sup> Street and/or the SW Abalone Extension project. The LID may be a single owner (e.g., OMSI only) LID or, at City's discretion, may include abutting owners who receive benefit from the projects. Should an LID be formed, City may require that SW Abalone Street be constructed to its full planned dimensions as described in the Plan. The City shall allow OMSI, at its request, to finance its LID assessment for a period of up to 30 years through an installment payment agreement per ORS 223.210 and 223.215, and NMC 12.05.055.

#### **4. Project Timing – SW 30<sup>th</sup> Street and SW Abalone Extension Projects**

- a. The Parties agree to work collaboratively to develop a Project Schedule for the phased development of the OMSI property and related infrastructure improvements in the area. The schedule will define the specific dates for infrastructure project delivery such that OMSI site preparation and construction activities may proceed by July 1, 2014 in order to achieve a camp opening by April 1, 2016.
- b. Consistent with the Project Schedule developed under 4.a above, the City and/or Agency will either:
  - i. Provide the necessary funding, in combination with OMSI's financial contributions, such that OMSI's Phase I development may proceed and open; or
  - ii. Revise the scope of required infrastructure such that OMSI's Phase I development may proceed and OMSI does not exceed the total amount of financial participation as described in 3.a and 3.b above.

#### **5. Safe Haven Hill Tsunami Evacuation Route Enhancements**

- a. City has constructed interim improvements that enhance access to the designated tsunami evacuation area immediately northeast of the OMSI property, known as Safe Haven Hill. City is committed to maintaining those improvements, which consist of a gravel access path and cleared assembly area at the top of the hill.
- b. City has further applied for and received preliminary approval from the Federal Emergency Management Agency (FEMA) to further enhance the assembly area with a paved shared-use path, sidewalks, trails, stairs and a disaster supply shed. City will construct the enhancements once FEMA obligates matching funds for the work.
- c. OMSI acknowledges that these enhancements are important to the success of its educational center, will continue to support implementation of the improvements, and will install wayfinding signage and provide informational materials to its guests so that they understand the purpose for, and route to, the evacuation assembly area.

**6. Delivery Schedule**

- a. The Parties will work in good faith to complete their respective responsibilities under this MOA in time to allow OMSI site preparation and construction activities to proceed on OMSI's property by July 1, 2014.

**7. Non-Binding MOU**

- a. It is the intent of the Parties to work together in good faith to implement the terms of this MOU such that development on the OMSI property may proceed and the infrastructure projects in the area are delivered in an efficient and equitable manner. However, this agreement is non-binding on the Parties and represents only the intent of the Parties with respect to the subjects herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum on the dates shown hereunder,

**City of Newport by**

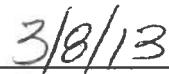
Signature:



Printed Name/Title:

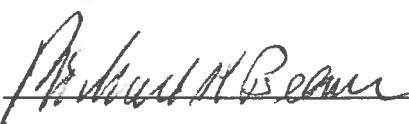
Sandra Roumagoux, Mayor  
169 SW Coast Hwy  
Newport, Oregon 97365

Date:



**Newport Urban Renewal Agency by**

Signature:



Printed Name/Title:

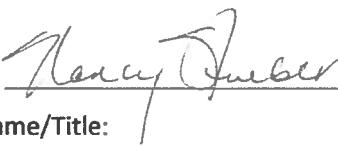
Richard Beemer, Chair  
169 SW Coast Hwy  
Newport, Oregon 97365

Date:



**Oregon Museum of Science and Industry by**

Signature:



Printed Name/Title:

Nancy Stueber, President and CEO  
1945 SE Water Ave  
Portland Oregon 97214

Date:

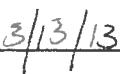
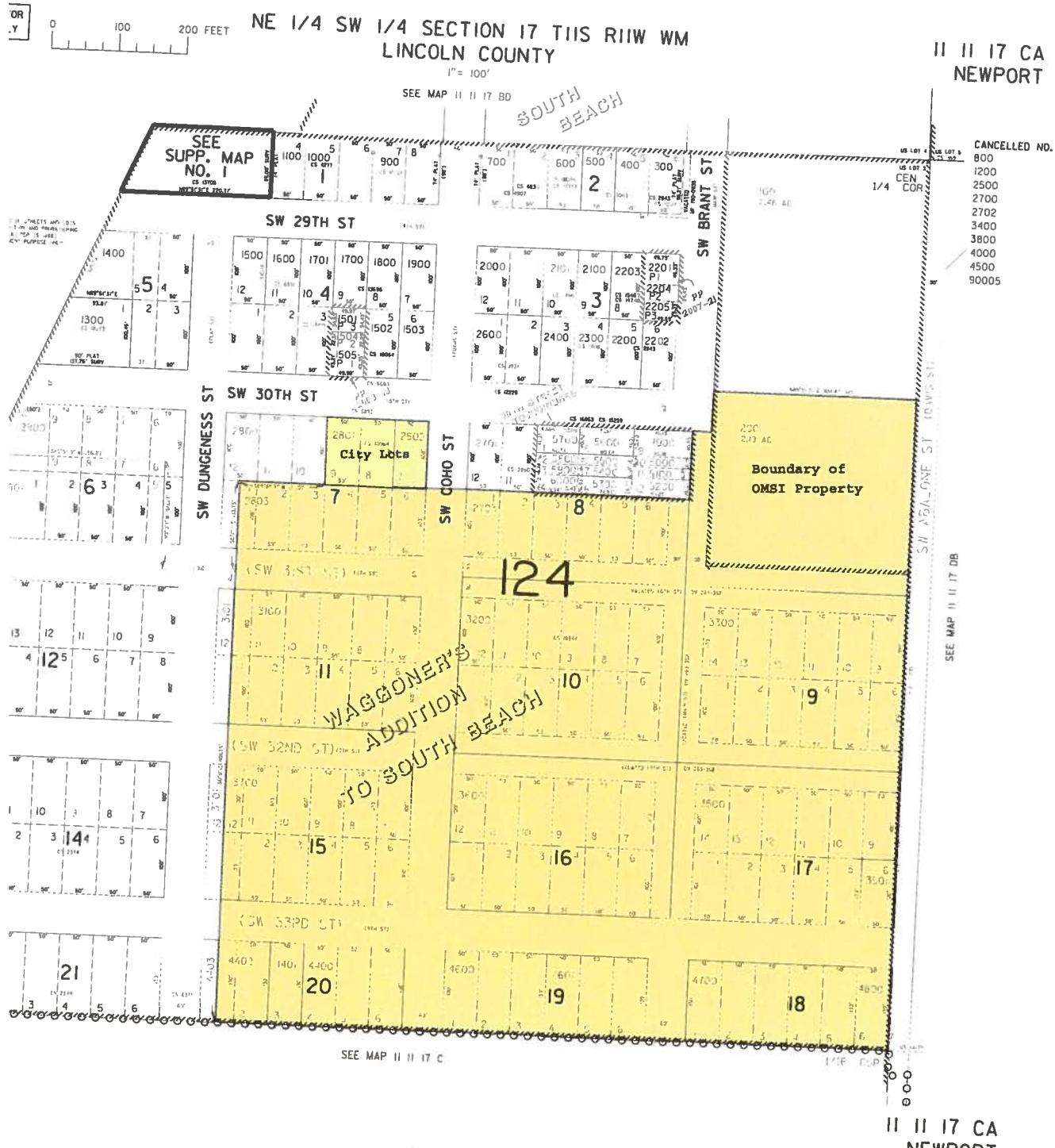


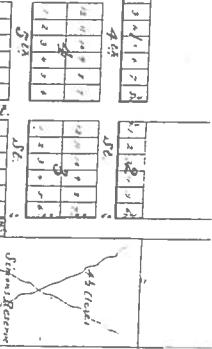
Exhibit A

**Memorandum of Understanding  
Between the City of Newport,  
Newport Urban Renewal Agency,  
and Oregon Museum of Science  
and Industry**



## Exhibit B

Memorandum of Understanding  
Between the City of Newport,  
Newport Urban Renewal Agency,  
and Oregon Museum of Science  
and Industry



Plan of  
Waggoner's Addition  
to  
South Beach  
Benton County  
Oregon.

F. J. H. [Signature]

STATE OF OREGON } J. D. O. this 30<sup>th</sup> day of January 1890  
County of Benton } personally came before me the Sheriff Judge of said County  
John W. Ward, A. D. Lee, Rich. Wells, Thomas Graham and  
G. R. Davis and George Waggoner to me personally known to  
be the identical persons described in and who executed the  
foregoing instrument and acknowledged to me that they  
executed the same freely and for the uses and purposes  
stated in the same.

Witness my hand this 30<sup>th</sup> day of January 1890  
Dated this 30<sup>th</sup> 1890  
John W. Ward  
Rich. Wells  
Thomas Graham  
G. R. Davis

Received for Record Jan 30, 1890 and Recorded  
by [Signature] at 12 M. M. on Feb 1, 1890

F. J. H. [Signature]

Received for Record Jan 30, 1890 and Recorded  
by [Signature] at 12 M. M. on Feb 1, 1890

## Exhibit C

Memorandum of Understanding  
Between the City of Newport,  
Newport Urban Renewal Agency,  
and Oregon Museum of Science  
and Industry

### PREFERRED ALTERNATIVE

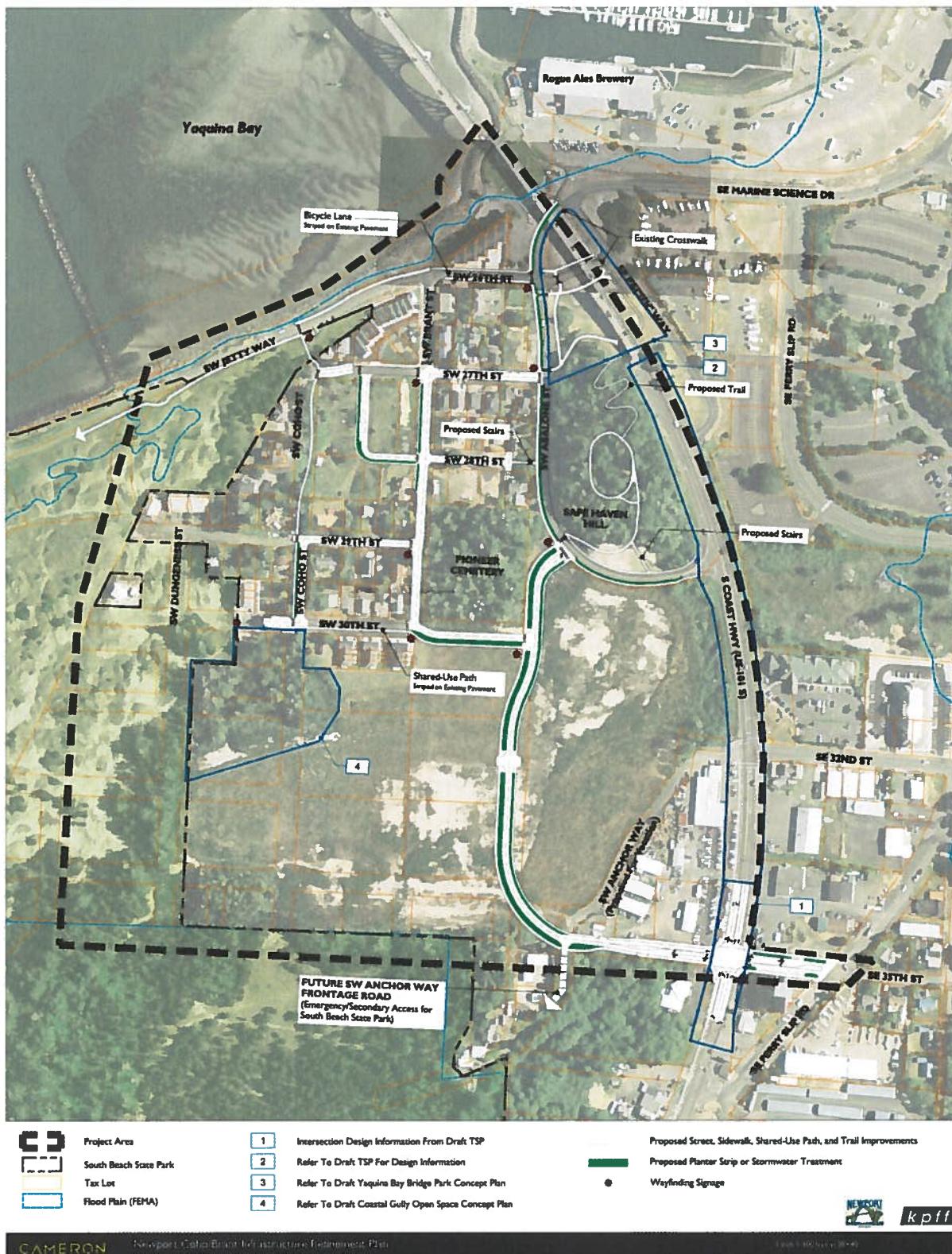
Map 3-2. Coastal Gully Open Space Concept Plan



## Exhibit D

Memorandum of Understanding  
Between the City of Newport,  
Newport Urban Renewal Agency,  
and Oregon Museum of Science  
and Industry

Map 3-8. Illustrative Plan



After Recording Return to:

---

---

---

## CONSERVATION EASEMENT

### GRANT OF IRREVOCABLE (PERPETUAL) CONSERVATION EASEMENT BY THE OREGON MUSEUM OF SCIENCE AND INDUSTRY TO CITY OF NEWPORT, OREGON

#### ARTICLE 1: CONVEYANCE AND PURPOSE OF CONSERVATION EASEMENT

1.1 The Property. Oregon Museum of Science and Industry, an Oregon nonprofit public benefit corporation ("OMSI"), is the owner of a parcel of real property in the City of Newport, Lincoln County, Oregon which consists of approximately 19.60 acres of land more particularly described in **Exhibit A** attached hereto and by this reference made a part hereof (the "Property").

1.2 Memorandum of Understanding. In the course of developing the Property for an outdoor school and campus (the "Project," as further defined below), OMSI has entered into a Memorandum of Understanding ("MOU") dated March 4, 2013, with the City of Newport, a municipal corporation of the State of Oregon, and with the Newport Urban Renewal Agency (together with the City of Newport, herein the "City"), as part of an overall infrastructure plan for the South Beach area as depicted in the Coho/Brant Infrastructure Plan, dated August 2012 (the "Plan"), and OMSI and the City have agreed to work collaboratively to implement the Plan in a coordinated and equitable fashion in order to further neighborhood improvement goals. As parties to the MOU, OMSI and the City, among other things, agreed as follows:

"(a) OMSI and the City will collaborate on a program to preserve, in perpetuity, environmentally sensitive Coastal Gully areas on their respective properties as generally depicted on Exhibit C [of the MOU], through the use of Lincoln County's Conservation Easement program or similar method. The precise area of the conservation easement will be mutually agreed by OMSI [and the City]. The goal of both Parties is for these areas to be managed in a manner that allows them to be used

as part of OMSI's environmental education curriculum while providing for low impact public access to areas as envisioned in the Plan.

"(b) OMSI and the City recognize that this collaboration may result in their respective land ownership and rights-of-way within the Coastal Gully area being consolidated into a single lot or parcel through the platting process and that it may be necessary to put in place conservation easements over the affected areas."

1.3 Easement Grant. OMSI does hereby grant to City a permanent, irrevocable, non-exclusive easement (the "Conservation Easement") of the nature and character described herein over that portion of the Property generally described on the attached **Exhibit B** and depicted on **Exhibit C**, each attached hereto and by this reference made a part hereof (the "Easement Area"). The Conservation Easement shall continue in effect in perpetuity and shall run with the land, subject to the terms and conditions hereof.

1.4 Purpose; Project. The purpose of the Conservation Easement is the preservation, promotion, enhancement, and restoration of the native trees, vegetation, wetland, natural beauty and scenic values of the Easement Area in perpetuity (the "Purpose"). The grant of the Conservation Easement initially is intended to be consistent with the development of OMSI's outdoor school and campus project on the Property for an environmental education program (the "Project").

## ARTICLE 2: PHOTOGRAPHS OF PROPERTY

Photographs of the Easement Area in its current condition shall be kept by both the OMSI and the City to document its condition as of the execution of this Conservation Easement.

## ARTICLE 3: CONDITIONS OF CONSERVATION EASEMENT

3.1 The following covenants shall apply to the Easement Area:

a. No cutting of native trees or removal of natural vegetation, except as allowed by law and as may be agreed for restoration and enhancement activities.

b. No development or construction of any structures, buildings, or other non-natural features except for boardwalks and trails related to the educational use of the Easement Area and other lawful development.

c. No mining such as aggregate, sand, rock, gases, or minerals and no petroleum drilling.

d. No cell, radio or other communication towers.

e. No application of herbicides or pesticides is permitted if alternative methods of control, including removal by hand are available and not cost prohibitive. If alternative applications are not available or are cost prohibitive, hand application or injection of herbicides or pesticides may be used after notice has been posted in prominent locations in the Easement Area for at least ten days prior to application. The notice, at a minimum, shall identify the time and location of the areas of application, and the chemicals being used.

f. No grading, cuts or fills or other alteration of topography is permitted except in the placement or construction of signs, benches, the construction of trails, or as contemplated in 3.2.k, or as allowed by the law and as may be agreed for restoration and enhancement activities.

g. No dumping of garbage, yard debris, and other waste, nor permanent storage of trash anywhere on the Easement Area.

h. No dumping or storage of hazardous materials.

i. No use of motorized vehicles anywhere on the Easement Area except in sign, bench, or trail construction that shall be agreed upon by OMSI and City.

j. No subdivision of the Easement Area for any additional development except as allowed by law.

k. No fencing except as allowed by the law.

l. Nothing in this Agreement precludes structures, uses and activities which are allowed by law.

3.2 OMSI may (shall have the right to) engage in the following activities in the Easement Area:

a. If catastrophic events impact the Easement Area such as a mudslide, blow down, tsunami, earthquake or fire (collectively "Events") occur, OMSI shall in good faith and in a timely manner use reasonable efforts to restore and stabilize the damaged areas according to best practices that are consistent with and support the purposes of this Conservation Easement and as long as such shall not further compromise the stability of the Easement Area. In restoring the Easement Area, OMSI may remove and sell any salvageable timber resulting from the Event. If the catastrophic event is an earthquake or tsunami and if it devastates the Easement Area and surrounding areas, OMSI shall have no obligation to restore and stabilize the Easement Area.

b. Improve the Property including the Easement Area as allowed by the law.

c. Remove noxious weeds, bushes, and other invasive species.

d. Remove any falling or fallen trees that threaten the safety of OMSI personnel, public trail hikers, residence/structures, or threaten the ingress and egress of the road or trails.

e. Plant or transplant trees, bushes, perennials, annuals and other flora anywhere on the Easement Area.

f. Place signs on the Easement Area that reinforce the Conservation Easement such signage related to trail use, educational information, personal safety and prohibited activities.

g. Sell, rent, mortgage, gift or devise the Property including the Easement Area.

h. Possess all other rights to control and manage the Easement Area normally accorded property owners.

i. OMSI shall have the right to enter into additional easements and legal agreements concerning the Property and the Easement Area without approval of City as long as the additional easements or agreements do not materially violate or conflict with this Conservation Easement. The City shall be promptly informed in writing as to any additional easements/ agreements.

j. All costs and liabilities to maintain the Property, including the Easement Area shall be the sole responsibility of OMSI.

k. Removal of the man-made earthen fill features on the south, southeast, and eastern borders of the easement. Wetland features will be protected from all earthwork activities.

#### ARTICLE 4: ENFORCEMENT OF THE CONSERVATION EASEMENT

4.1 This Conservation Easement may be enforced by OMSI or the City or their respective successors in interest.

4.2 Any alleged violation of the Conservation Easement will be brought to the attention of both OMSI and the City. If the violation includes acts contrary to state statutes, additional enforcement may include Newport Police Department, Lincoln County District Attorney's Office, and all other Lincoln County or State of Oregon Authorities.

4.3 Remedial measures for violations by third parties shall be instituted by OMSI at the City's reasonable request.

4.4 OMSI shall inspect the Easement Area at least annually to ensure that the covenants in this Conservation Easement are being adhered to, or sooner if a violation of the Conservation Easement is suspected or reported.

4.5 OMSI shall maintain a written and photographic record of any inspections, reports of violations, and all remedial actions taken to assure the enforcement of the Conservation Easement.

4.6 Specific actions to be taken if a violation is suspected.

a. Notice of Intention to Undertake Certain Action; Clarification of Conservation Easement Terms. The reason for requiring OMSI to notify and obtain approval from the City prior to undertaking certain activities, which might impair the conservation values or otherwise defeat or frustrate the purpose of this Conservation Easement, is to afford the City an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the covenants, other terms, conditions and/or purpose of the Conservation Easement. Whenever notice is required, or if OMSI has a question as to whether an activity is consistent with the terms of this Conservation Easement or might negatively impact the conservation values of the Easement Area, OMSI shall notify the City in writing not less than fourteen (14) days prior to the date OMSI intends to undertake the activity in question; except that in an emergency forty-eight (48) hour oral notification to the City shall suffice. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity in sufficient detail to permit the City to make an informed judgment of the activity as to its consistency with the purpose of this Conservation Easement.

This term is in addition to any other notice or public forum actions required under this Conservation Easement.

b. City's Response. City shall give OMSI a written response of its determination within ten (10) days after the receipt of OMSI's written request. In the event the City fails to respond to OMSI's written request within the ten (10) day period, such request shall be deemed approved. The City's approval shall be based upon the City's reasonable determination (a) that the proposed use or activity would be consistent with the provisions of the Conservation Easement, (b) that the proposed action will preserve and enhance the conservation values protected by this Conservation Easement, and (c) that the likely effect of the proposed action upon the conservation values of the Easement Area will be positive. Approval or disapproval shall be within the reasonable discretion of the City and may be granted upon conditions, provided they tend to further the purpose of this Conservation Easement. The consent of the City obtained in one circumstance shall not be deemed or construed to be a waiver by the City for any subsequent activities by OMSI under this Article.

c. Mediation. If a dispute arises between the Parties concerning the

consistency of any proposed use or activity with the purpose or terms of this Conservation Easement that they cannot resolve through unassisted consultation between themselves, and OMSI agrees not to proceed with, or shall discontinue, the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing upon the other. Within ten (10) days of the receipt of such a request, the Parties shall mutually select a single experienced and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to the presiding judge of the Lincoln County Circuit Court for the appointment of an experienced and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

(1) Purpose. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Conservation Easement.

(2) Participation. The mediator may meet with the parties and their counsel jointly or ex parte. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of both parties with settlement authority will attend mediation sessions as requested by the mediator. The Parties may invite additional persons, such as residents in and around the subject property, to participate in the mediation.

(3) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator to third parties only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

(4) Time Period. Neither party shall be obligated to continue if the mediation process exceeds a period of forty five (45) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

(5) Costs. The costs of the mediator shall be borne equally by OMSI and the City; the parties shall bear their own expenses, including attorney's fees, individually.

d. City's Remedies. It is the City's preference and intent to work on a voluntary basis with the OMSI to solve any problems that arise through unassisted and assisted discussions. However, despite good efforts there may be situations that require corrective action to be taken and the following procedures shall be followed and the following

time frames provided to allow correction of problems before further action.

(1) Notice of Violation; Corrective Action. If the City determines that OMSI or any occupant of the Property is conducting or allowing a use, activity, or condition on the Easement Area which is prohibited by the terms of this Conservation Easement or that a violation of the terms of this Conservation Easement is threatened, City shall give written notice to OMSI of such violation or threatened violation and demand corrective action sufficient to cure the violation or terminate the threat, and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purposes of this Conservation Easement, to restore the portion of the Easement Area so injured.

(2) Injunctive Relief. If OMSI fails to cure the violation within thirty (30) days after receipt of notice thereof from the City, or under circumstances where the violation cannot reasonably be cured within this period, fails to begin curing such violation within this period, and/or fails to continue diligently to cure such violation until finally cured. The City may enter upon the Easement Area and cure the violation, or bring an action at law or in equity in court of competent jurisdiction to enforce the terms of this Conservation Easement to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Easement Area to the condition that existed prior to injury.

(3) Damages. The City will be entitled to recover compensatory, but not punitive or consequential, damages for OMSI's violation of the terms of this Conservation Easement, or injury to any conservation values protected by this Conservation Easement. Without limiting OMSI's liability therefore, the City shall apply any damages recovered to the cost of undertaking any corrective action on the Easement Area.

(4) Emergency Enforcement. If the City, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Easement Area, the City may (i) pursue its remedies under 4.6(b) without prior notice to OMSI or without waiting for the period provided for cure to expire; and (ii) enter upon the Easement Area for the purpose of assessing damage or threat to the conservation values thereon and determining the nature of curative or mitigation actions that should be taken. Notwithstanding the foregoing, the City shall use its best efforts to give forty eight (48) hours' notice to OMSI of such actions taken under this sub-paragraph.

(5) Scope of Relief. The City's rights under this paragraph apply equally in the event of either actual or threatened violations of the covenants, other terms, conditions and purpose of this Conservation Easement. OMSI and City expressly agree that the Easement Area, by virtue of its protected features, is unique and that a violation of this Conservation Easement, and any ensuing harm or alteration of the Easement Area, will result in damages that are irremediable and not subject to quantification. Accordingly, OMSI agrees

that City's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that City shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the City may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The City's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereinafter existing at law or in equity.

(6) Liquidated Damages. Inasmuch as the actual damages to the conservation values of the Easement Area which could result from a breach of this Conservation Easement by OMSI would be impractical or extremely difficult to measure, the Parties agree that the money damages City is entitled to recover under ORS 105.810 shall be the following:

(i) With respect of the construction of any improvement prohibited by the Conservation Easement, that is not subsequently removed and the Easement Area restored to its previous condition within a reasonable amount of time specified by the City, the damages shall be an amount equal to the actual cost of removal of such improvement;

(ii) With respect to any use or activity prohibited by this Conservation Easement and not involving the construction or maintenance of an improvement, an amount equal to \$10,000 in 2014 Dollars; provided, however, that if timber is harvested in violation of the terms of this Conservation Easement, the amount determined under this subparagraph (ii) will be equal to the actual sales price or value realized upon disposition of such harvested timber; and

(iii) any other damages allowable under ORS 105.810 specifically including, without limitation, restoration of lost or damaged conservation values. Provided, however that in no circumstances shall the City be entitled to treble damages.

e. Costs of Enforcement. In any suit or action brought by the City to enforce or interpret the provisions of this Conservation Easement, the prevailing party shall be entitled to a judgment against the non-prevailing party for the prevailing party's costs and reasonable attorney's fees, including the costs of attorney's fees on appeal and in enforcing any judgment or decree, including in a bankruptcy proceeding.

f. City's Discretion. Enforcement of the terms of this Conservation Easement shall be at the reasonable discretion of the City, and any forbearance by the City to exercise its rights under this Conservation Easement in the event of any breach of any covenant or term of this Conservation Easement by OMSI shall not be deemed or construed to be a waiver by the City of such covenant or term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the City's rights under this Conservation

Easement. No delay or omission by the City in the exercise of any right or remedy upon any breach by OMSI shall impair such right or remedy or be construed as a waiver.

g. Waiver of Certain Defenses. OMSI hereby waives the defenses of laches, and prescription. Laches constitutes the neglect or omission to assert a right as, taken in conjunction with lapse of time and other circumstances, causes prejudice to the adverse party. Prescription is defined as a manner of acquiring rights in a property of another by the passage of time and usage.

h. Acts Beyond the OMSI's Control. Nothing contained in this Conservation Easement shall be construed to entitle the City to bring any action against OMSI for any injury to or change in the Easement Area resulting from causes beyond OMSI's control, including without limitation, other government's action, fire, flood, storm, tsunami, earthquake and other naturally occurring earth movement and other similar natural events, or from any prudent action taken by OMSI under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

Additionally, damage caused by trespassers shall not be subject to action against OMSI.

## ARTICLE 5: LIABILITIES, TAXES, AND INDEMNIFICATION

5.1 Legal Requirements. OMSI shall conduct its activities and uses in accordance with all applicable federal, state and local laws, regulations and requirements.

### 5.2 Taxes

. For so long as the Easement Area is entitled to exemption from ad valorem property tax under Oregon law, the remainder of this Section 5.2 shall not be applicable. Subject to the foregoing and except as agreed by the parties in providing for the grant of this Conservation Agreement through the Lincoln Land Legacy program, OMSI shall pay or cause to be paid before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "taxes"), including any such taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish the City with satisfactory evidence of payment upon request. The City is authorized, but in no event obligated, to make or advance any payment of taxes, upon fifteen (15) days prior written notice to OMSI in accordance with any bill, statement or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation, caused by such payment shall bear interest until paid by OMSI the lesser of nine percent (9%) per annum or at the maximum rate allowed by law. It is intended that this Conservation Easement constitutes an enforceable restriction within the meaning of ORS 271.715 through 271.795.

### 5.3 Hold Harmless.

a. In accordance with Oregon law including but not limited to the Oregon

Tort Claims Act (ORS 30.260 to 30.300), OMSI shall hold harmless, indemnify, and defend the City and its officers, employees, agents, attorneys, and contractors and the successors and assigns of each of them (collectively the “City’s Indemnified Parties”) from and against all liabilities, penalties, losses, expenses, claims, damages, demands, causes of action, judgments or costs, including, without limitation, reasonable attorney’s fees, arising from or in any way connected with or incident to injury to or the death of any person, or physical damage to any property, resulting from any of OMSI’s negligent, reckless or intentionally wrongful acts, omissions, conditions, or other matter related to or occurring on or about the Easement Area.

b. In accordance with Oregon law, including but not limited to the Oregon Tort Claims Act (ORS 30.260 to 30.300), the City shall hold harmless, indemnify, and defend OMSI and its officers, executives, employees, agents, attorneys, and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively “OMSI’s Indemnified Parties”) from and against all liabilities, penalties, losses, expenses, claims, damages, demands, causes of action, judgments or costs, including, without limitation, reasonable attorney’s fees, arising from or in any way connected with or incident to injury to or the death of any person, or physical damage to any property, resulting from any negligent, reckless or intentionally wrongful acts, omissions, or conditions related to or occurring on or about the Easement Area by the City, its officers, officials, employees, agents, attorneys, contractors, heirs, successors and assigns.

## ARTICLE 6: EXTINGUISHMENT, CONDEMNATION, INABILITY TO PERFORM AND SUBSEQUENT TRANSFER

6.1. Extinguishment. If circumstances arise in the future that render the Purpose of this Conservation Easement impossible to accomplish (such circumstances to include global climate change, urbanization, unstable soils, etc.), then this Conservation Easement can be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which OMSI or the City shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Easement Area subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Oregon law at the time, in accordance with Section 6.2 of this Conservation Easement.

6.2 Condemnation. If all or any of the Easement Area is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, in whole or in part, OMSI and the City shall act jointly to recover the full value of the interest in the Easement Area subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by OMSI and the City in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Except as provided by applicable law, the entire balance of the amount recovered shall be paid to OMSI, and the City agree that the City's share of the balance of the amount recovered shall be zero.

**6.3    The City's Inability To Fulfill Its Obligations.** If the City for any reason cannot fulfill its obligations under this Conservation Easement, then after notice to OMSI and notice to the public given thirty (30) days before the effective date of any action, the City shall assign its rights and obligations to another public entity, including but not limited to the State of Oregon, that is willing and able to receive the benefits and assume the obligations of the Conservation Easement; provided, however, that the assignee public entity's obligations shall be subject to the limitations of the Oregon Constitution, local charters, state and local laws, and the Oregon Tort Claims Act (ORS 30.260 to 30.300).

Such other entity, with purposes similar to Grantee's, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable).

**6.4    Application of Proceeds.** The City shall use any proceeds received under the circumstances described in this Article 6 for the purposes of this Conservation Easement grant.

**6.5    Subsequent Transfers.** OMSI agrees to:

a.    Incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Easement Area, including, without limitation, a leasehold interest;

b.    Describe this Conservation Easement in and append it to any executory contract for the transfer of any interest in the Easement Area;

c.    Give written notice to the City of the transfer of any interest in all or a portion of the Easement Area no later than thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, email and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of OMSI to perform any act required by this subsection shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

## ARTICLE 7: AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, OMSI and the City are free to jointly amend this Conservation Easement; provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of the City under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable). Any proposed change that affects the provisions and

integrity of this Conservation Easement shall be directed to OMSI and the City for their review and input, and shall require their written agreement to such changes if such changes alter any conditions set forth in the Conservation Easement. Changes shall not materially alter the conservation purposes of this Conservation Easement. Any such amendment shall be consistent with the Purpose of this Conservation Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Lincoln County, Oregon, and any other jurisdiction in which such recording is required.

#### ARTICLE 8. ASSIGNMENT

This Conservation Easement is transferable, but the City may assign its rights and obligations under this Conservation Easement only to an organization that is a governmental entity or that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under applicable Oregon law (or any successor provision(s) then applicable), provided that if such vesting in any of the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Conservation Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Oregon law and the Internal Revenue Code and with regard to the Purpose of this Conservation Easement. As a condition of such transfer, the City shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Conservation Easement. The City shall notify OMSI in writing, at OMSI's last known address, in advance of such assignment. The failure of the City to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Conservation Easement or limit its enforceability in any way.

#### ARTICLE 9. RECORDATION

The City shall record this instrument in a timely fashion in the official records of Lincoln County, Oregon, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

#### ARTICLE 10. GENERAL PROVISIONS

10.1 Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Oregon.

10.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Purpose of this Conservation Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

10.3 Severability. If any provision of this Conservation Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

10.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement Area, including the MOU, all of which are merged into this Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Article 7 hereof.

10.5 No Forfeiture. Nothing contained in this Conservation Easement will result in a forfeiture or reversion of OMSI's title in any respect.

10.6 Successors and Assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties to this Conservation Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Easement Area.

10.7 Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

10.8 Counterparts. The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

## ARTICLE 12. SCHEDULE OF EXHIBITS

- A. Legal Description of the Property
- B. Legal Description of Easement Area
- C. Drawing of Easement Area

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor (OMSI) and Grantee (City of Newport) have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2014.

**Grantor:**

OREGON MUSEUM OF SCIENCE AND INDUSTRY,  
an Oregon nonprofit corporation

---

**Signature**

---

Name (print or type)

Title

[Acknowledgment follows]

STATE OF OREGON )  
                      ) ss.  
County of \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_, as \_\_\_\_\_ of Oregon Museum of Science and Industry, an Oregon nonprofit corporation appeared before me and declared the foregoing instrument to be his voluntary act and deed.

---

## NOTARY PUBLIC FOR OREGON

---

**Grantee:**

## City of Newport, a municipal corporation

---

**Signature**

Name (print or type)

Title

STATE OF OREGON                )  
                                    )  
County of \_\_\_\_\_                ) ss.

On the \_\_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_, as \_\_\_\_\_ of  
City of Newport, an Oregon municipal corporation appeared before me and declared the  
foregoing instrument to be its voluntary act and deed.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

## **EXHIBIT A**

### **Legal Description of the Property**

## **EXHIBIT B**

### **Legal Description of the Easement Area**

**EXHIBIT C**

**Drawing of Easement Area**

