AGENDA & Notice of Planning Commission Work Session Meeting

The Planning Commission of the City of Newport will hold a work session meeting at **6:00 p.m., Monday, November 23, 2015,** at the Newport City Hall, Conference Room "A", 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

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

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

NEWPORT PLANNING COMMISSION
Monday, November 23, 2015, 6:00 p.m.

AGENDA

A. Unfinished Business.

1. Continued review of the draft changes to the Local Improvement District (LID) code.

B. Adjournment.

***Draft* MINUTES**
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
November 9, 2015
6:00 p.m.

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

Planning Commissioners Absent: Mike Franklin *(excused)*.

PC Citizens Advisory Committee Members Present: Dustin Capri.

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

Chair Patrick called the Planning Commission work session to order at 6:00 p.m. and turned the meeting over to CDD Tokos.

A. Unfinished Business.

1. Draft Changes to the Local Improvement District (LID) Code. Tokos said he has started to receive materials from the consultant, and this seemed like an opportune time to bring this to everybody at this work session. He wanted to spend most of the time talking about policy language, but he said he'd be happy to go through the code as well. Tokos noted that this is a TGM State-funded project to help us rework our rules, but also to create a model that can be used by small jurisdictions statewide. LIDs haven't been used effectively, particularly in small jurisdictions. We also have a work group that Hardy and Franklin are assisting on. This technical advisory committee will be scheduling another meeting in the latter part of this month or in December. Tokos went over the Comprehensive Plan policies, which are as he received them. He really thinks the policies are the place to provide guidance on how this type of tool should be used. He thinks this is as little bit light. There should be some scope here. We could start by putting in policy language for how to deal with implementation. The subdivision code isn't supposed to be what this is about as far as the consultant's work. He noted that Policy 4 is about identifying the cost to support subdivisions; and Policy 6 similarly. It's suggesting approval without essential services in place. The city code has current rules that wouldn't allow land divisions without sufficient services. He said that Policy 10 goes in a similar direction getting into the relocation of infrastructure placed in rights-of-way or easements. Tokos said he's not saying that may be good or bad. There's probably a lack in the public facility elements now. He hopes the Planning Commission can help with this. He thinks Policy 8 is a key one, but needs work. He thinks this policy should be split to provide guidance on when to initiate LIDs; when should it be done. There is no guidance there; and he thinks there should be. That would not only help staff for knowing where to focus but also for the elected officials to decide how to use this tool. How do they go about deciding to proceed with one? Once they've held the public hearing and took testimony, are there factors they should be leaning on more than others to create a district to fund improvements.

Regarding emergency approval, possibly we want in the code that the Council could say there's an emergency, and it would trump the waiver of remonstrance. But what constitutes an emergency. That should be framed in the policies. Certainly the failure of a water line or asphalt in an area where there's maybe a dozen homes may be an emergency. There's also room for a fiduciary policy. The consultant didn't put any of those together. What assessments, what measures are favored over others, financing. We need some language in there about financing. Do you use interest off the capital fund to catalyze an LID fund that people could tap into? There's room for what kind of financial exposure the City is willing to take.

Tokos said that Policy 7 seemed fine; it's just general scope of different funding tools the City can tap into for maintaining public facilities. He wondered if LIDs are just a tool of last resort. Should it be framed that way? You can pad together funding if you need to do other things; urban renewal, loans, revenue bonds. If you're down to the last $50-100 thousand, should that be used to make a project go?

Branigan said if a group gets together and requests an LID, then the question is who controls what they do. They would have to get funding. H assumes the property owners themselves must have some sort of loan they get to make the improvements. Hardy thought they would finance it as a line of credit on their mortgage. She said if this can be "not to exceed 30% of the value of the property," you're looking at big bucks. She would say most can't do it. Tokos said it's correct that property owners can approach the City. The City helps administer it. Hardy said if you have two scopes of work, who has the final say. Tokos said that's a good policy consideration. How should we approach something that doesn't meet the TSP? If it's just a partial improvement, should the policy be that the City initiates for something that is less than the standard. How do we decide what's appropriate? Hardy said some are hinged on other projects. Tokos said his sense is to set the policies up so that we do not allow LIDs to proceed for improvements that don't meet the TSP. If you take it through the TSP, it gets adopted in. But on an ad hoc basis, it

puts the City Engineer in a pickle because then he has to auger out if it's okay in a vacuum. Branigan asked if property owners get together and want to do an LID and the City Engineer says they can do this or that, does the City Council still have to get in and approve an LID. Tokos said yes because it's public it's designed, constructed, and held in perpetuity. It's not like it's a private shared water line; you're coming in to replace a public water line along a local street that the City has to maintain. Croteau said it ends up public, and the City has the ultimate responsibility so it has to set standards for doing it and for financing as well. He agreed that this document is a little light on those aspects. He wondered what this was supposed to do; just present an overview of intent. Tokos said there are a couple of documents; two that would be code-related, and another that is administrative. The policy memo he emailed to the Commissioners. This he thinks needs a lot of work. We need more policies. The code would be redrafted and there would be the actual ordinance that we would implement the LIDs with, which would be far more detailed as it should be. It gets into details. Tokos planned to spend time on that; but getting back to the Comprehensive Plan, he asked if the Commissioners had any other observations about policy direction or areas that should be concentrated on.

Hardy asked if you'd use the same for pre-existing versus new. She thought they almost need to be approached differently. In a subdivision, you're starting with bare ground and theoretically a financially-capable developer. In a pre-existing neighborhood, it can be a combination of variable qualities of services, a variety of age. It's more complicated when you're looking at improving something that already exists as opposed to new. Patrick said he's not sure why we'd be doing LIDs for brand new subdivisions. Tokos said that strikes him as a developer's way of getting the City to finance the infrastructure. Capri said there's a development on 68th Street where that's essentially what the developer did. Tokos said for that particular development that strikes him as a failure of the land division code, which is to ensure that there are enough improvements so that when you buy a vacant lot you can do what you actually want without having to extend sewer or water mains. The buyer should just be responsible for building their home and their own service line; nothing beyond that. That is the developer financed aspect of it. We don't have to allow that. Patrick said the City's been burnt by that before; twice in Lakewood and once in Candle Tree. He said the other one was Running Springs that went back to the bank, and the City wasn't in that. Tokos asked, so you would like to see some language? Patrick said unless under some scenario; maybe if it's possible to do affordable housing, but anything normal then no. Croteau asked if a planned development thing is what he's thinking. Capri asked if the City contributed in Wilder. Tokos said Urban Renewal contributed at 40th and 101. That's a collector road. They didn't look at the City to help them finance anything. Capri asked if they came in in the first place asking the City, it wouldn't have happened. Tokos said no; where we did contribute it was Urban Renewal. OMSI is an example. There was a partnership there, which is a common tool with Urban Renewal. Croteau asked if an LID is a viable mechanism for an affordable-housing-type project as Patrick had mentioned. Patrick said he sees a possibility where it could be used like that. Tokos said we could build that in, or we could use something else; we could do it with Urban Renewal. He expects that conversation in Agate Beach. Berman said, but you're restricted to the current Urban Renewal area. Patrick said you don't do new subdivisions under Urban Renewal. Tokos said you could absolutely use Urban Renewal in subdivisions. There's no reason it couldn't be used for local streets, too. It can be done; he's not saying that's what should be done. Berman said that's not like an LID, which can be used anywhere. Tokos agreed, only in the Urban Renewal area. Patrick thinks LIDs shouldn't be used for new subdivisions. He can't think of a good reason to hang the City out there. He said the City has to come up with financing and get money back out of it. Tokos said we basically fund the construction. We have to find a way to pay for it. With this set up, that would happen. He thinks more work is needed on it to create an LID fund that generates interest off other capital.

Capri asked how property owners pay into the fund. Tokos said when they pay their share, that would be revenue allocated to that specific project, or revenue that would go into that LID fund. We have to budget for the project. We have to make sure there's enough of a balance to cover the cost of construction, the LID is formed, and then we wait to get it paid back into that fund. Capri asked if it's paid from their taxes or if they write a check. Tokos said they write a check, or we lien their property and get paid when they sell. If it's as a lien, we could be sitting there a very long time before we recover that. That's the danger of up-fronting all of that; it takes time to get paid. Croteau asked if we couldn't do a payment schedule. Tokos said yes, pay up front with a payment schedule. He said it has to be paid up front, so the money has to come from somewhere. Capri asked about where the City gets their money if they have to lien ten of twelve. Patrick said wait for them to sell or they die. Tokos said they are hit with interest; but in the lien scenario it's outstanding for a while and we don't know when it's coming back in. Croteau said the City's hanging out there until everybody pays up. Patrick said if it can be 30% of the property value, a lot of people will walk away. Hardy said look what that does to property values. They have a pre-existing mortgage, a declining market, and this lien. She said somebody will get burnt. Patrick said that's what happened in the past. Capri asked if any worked out well. Tokos said yes. The intention is that it would be smaller stuff. The last one was a sewer extension for a half dozen homes off Vista. Small ones work out better. It's desirable for some folks. Tokos said in that area south of Southshore where the developer sold the lots and walked away, and they don't have adequate access, there is one property owner trying to get an LID. Capri said they don't have adequate water, road width and grade, turnaround, septic, and they need a geologic survey. There are five property owners. The lots got sold. His clients bought thinking they were going to be able to build right away. One owner's been working on the issue for twelve or thirteen years. Tokos said that gives a good sense of how difficult it is for individuals to organize an LID. If the City Council initiates it, that drags everybody in for a conversation at that point. He thinks there needs to be policy language when that power is exercised. He thinks the City Council would appreciate that. Berman said it's a huge power. If it can be up to 30%, think how much money could be involved. He wouldn't be amenable if the City Council decided his neighborhood needs sidewalk. He would fight it. He wondered if he would have no basis for fighting it. Tokos said that

gets at what constitutes an emergency. A property owner can otherwise remonstrate against it if they haven't already signed a waiver to opt in as part of a development. Berman asked how he would know. Tokos said when you buy your property, it shows up in the title search. He said he thinks it's highly unlikely that a sidewalk would constitute an emergency. Berman said there's been talk about a signal at NE 73rd. If that's through an LID, he may get forced to pay for that. Tokos said what if there are fatalities at that intersection. He could see that as an emergency. East said he was surprised the Fire Department didn't ask for a signal when they put their station up there. Tokos said we have business owners on the hook to pay for the signal. There were some residential owners, but they were time limited. There was a ten-year period that has passed. So most are just industrial property owners. Tokos said he could see public safety being a good reason to initiate an emergency. He said the same for chronic. Along the golf course, the water lines keep breaking all of the time. An LID could be formed to replace the water lines because it serves a limited number of residents. That's the type of thing where property owners will say they will pay money because they're tired of being without water. Croteau said it could be that we incorporate examples of what constitutes emergencies; traffic safety, infrastructure collapse. Patrick added, failure of the roadbed. Capri said the water is a big one for fire safety as well; fire hydrants. Tokos also thought public health. Patrick asked, like a broken water line. Tokos said that would be infrastructure failure. Collecting storm water could be a health hazard because of mosquitos. Patrick thought that sidebars on emergencies should be listed.

Tokos asked if the Commissioners agree that policies regarding subdivisions and partitions isn't what we are talking about right now. The consensus was that they didn't think so. Patrick said there might be a case for minor partitions. Tokos didn't think we were talking about LIDs in the context of these either. It's more of a land use tool. LID is just the financing. Tokos said he has noted the emergencies we just talked about, and clear policy for when the City Council should initiate an LID. Croteau said decision-making criteria. Tokos said, define how to proceed. Croteau said and fleshing out finances. Patrick said, and when it's owner-driven, what the forms of LIDS are. Capri mentioned fire equipment turnarounds. He said there are a lot of streets that don't meet what the Fire Marshal and the code would now say. He said the trucks keep getting bigger. Tokos said he could see an emergency to be hammerheads where they have repeat calls and have difficulty getting access. Capri asked if the development on 68th that we talked about would qualify for an LID. Tokos said certainly, if the owners can get organized. East asked where the breaking point is if all of the homeowners don't want to participate. Tokos said there's some discussion about owner-initiated LIDs that gets to how many property owners it takes. Patrick thought it was 50% plus one.

Tokos said that's another question. What's the relative priority when someone files a petition? He said some of this isn't easy. The City Engineer has to prepare a cost estimate and plans. It takes a dedication of resources. He wondered if there should be a policy for relative priority. He said the policy could say "addressed by the Public Works Director as resources permit" unless it's an emergency. Tokos said that gives him, the City Council, and the Public Works Director direction on how to apply LIDs. Patrick said if it's owner-initiated and they have a failed sewer line, they could declare an emergency and get moved to the head of the list from that side too. Tokos wondered if the policy should be that if it's an emergency it becomes priority; and others are as resources permit. Hardy asked if something like that occurs, why it wouldn't be the City's responsibility to step up and fix it. Tokos said there's fixing; and then really fixing it. The City would patch it, and it comes out of the maintenance fund. We can't do a full fix given the maintenance budget. Patrick said, say 32nd was the only way to ten or twelve residences, and the road slipped. If the City made it one-way, that wouldn't be popular with the owners down there. Berman asked what the typical time cycle would be. If they walk in with an emergency and all neighbors agree, when would the equipment roll? Tokos said it will take some time. If it's an emergency and we're moving really fast we could probably have a cost estimate and concept-level plans within a week if Public Works drops everything else. If it's an emergency we could immediately hire contractors; otherwise we have to put it out for bid and are looking at four to six months. Croteau said you have emergency emergencies and long-term emergencies that need a permanent fix; like when it's obvious that you can't continue paving. Capri said maybe it shouldn't be labeled emergency. Maybe high priority fixes. Tokos said we might need to take a look at the statutory language; we'd have to use the same references. Branigan said a water or sewer break would be an emergency; but if it's a real emergency the City will patch it. So he questions whether property owners are going to try to form an LID. Croteau said not after the first time, but after chronic failure. Branigan said the City is paying for repairs so eventually will do an LID, but he doesn't think the property owners will. Croteau said if your basement fills with sewage three times in a year, you'll look differently at the picture.

Tokos noted that there was some time to being going through the structure of the code. He said again, as the Commissioners have observations to please let him know and he will share them with the consultant, Todd Chase. Branigan asked if the consultant has done work for other municipalities; and if so, have they done anything for this code. Is there something to take a look at? Tokos thought that was Chase's approach. He's sure for this Chase borrowed from a lot of jurisdictions. This was his initial cut. Tokos said the first part is typical for a code. Then it goes through definitions. Hardy had a question under section 5 of 12.05.010 where it mentions "overall citywide benefits." She asked how you quantify that. It says at least 25% benefit accruing to city residents if improvements enhance property. She said now you're back to benefitting people. She thinks Chase floats between those two concepts; and they are entirely different. Tokos said there are different ways of looking at this benefit; and it might be worthwhile to define that in the context of the LID code. It could mean enhance its value, improve service; if you're looking at the broader community, maybe a section of a gravel road. Maybe it's a commonly driven street that a large percentage of the community uses. Patrick said that doesn't strike him as being right for triggering this. Hardy said there are areas that were annexed at different times and have different conditions. You can't use a one-size fits all; you have to make it

specific. Tokos gave an example of a collector street parallel to 101 that you're able to construct except for the last 200 feet, and the broader public uses it. To fund that last 200 feet, you need to form an LID. You could make the case that the broader public would benefit. Patrick said this is saying that you can do an LID if 25% is attributable to the public. He said that would be a reason to use other funds. He doesn't see this tracking as a triggering mechanism for an LID. Hardy said, like Urban Renewal. Tokos said it could be a question of what constitutes benefit.

Going back to the definitions on the first page, Branigan had a question about the timeline in number three. Tokos wondered why even have that in the definitions. Branigan didn't understand why that was in here. You have to pay it all or pay over ten years. Patrick agreed, you can pay over ten years but not in three. He wondered why string it over ten years. Branigan said it didn't make sense. Tokos wasn't sure why it was in the definitions.

Moving on to 12.05.015 (Engineer's Report), Tokos noted that Tim Gross and company would have to put this together to have an informed conversation whether or not an LID should occur. Capri asked where you come up with a realistic cost estimate without knowing the design. Tokos said we have to do preliminary cost estimates for lots of different things. We're pulling from past experience with like-type projects, or we contact other jurisdictions that have done something similar. When you're pulling from the TSP or facility plans you know what you are putting together. Berman wondered if there's some way to come up with better estimates than they did for the water treatment plant and the swimming pool. Tokos noted that the water treatment plant was before Gross' time, and he didn't pull the cost estimate together for the pool; that was Parks and Rec. Gross was only involved in the design. Tokos said there are provisions that should be in here to deal with when actual costs come in in excess of estimates so that you're not on the hook to commit. He's not sure what percent of the estimate. Patrick wondered if Tokos has talked to Gross about how much it costs them to do this work. Tokos said that's one thing we should think about. By and large this work is handled in-house and not farmed out. Patrick said there's still cost associated; and he would be interested in how much. If it's owner-initiated, and Engineering goes to all this trouble; maybe the City should get reimbursed for it. East said if it's owner-initiated, maybe they should be responsible for all engineering costs. Tokos said say it's owner-initiated and meets the threshold. So Engineering puts all this work in and there's the City Council's time. Then the owner changes his mind and it gets remonstrated. Should there be some reimbursement? Is that getting at it? The consensus was, yes. East said that way the City is just looking at it and approving the plans; and the owners are on the hook for the scheduling costs. Patrick said also then they can do it outside the City. Capri said we'd have standards. Is there a fee associated? Tokos said that's what we are talking about; at least administrative costs if the LID doesn't proceed. East said if they did everything privately on their own, the additional cost when it comes to the City would be like a plan check or approval; not the full engineering fee. Tokos said he will take a look at it.

Tokos explained that 12.05.020 says what the City Council can do with the engineer's report. He said it allows the body to make sure what is in that report is what they want. This would be more if it's City Council initiated. Capri asked if the Council knows enough about criteria one through six to make any changes. Tokos said conceptually maybe they don't, but they can decide if it makes sense to move forward when they have the scope and the cost. They have the right to stop it. Capri said it says here that the Council can change the report and then approve it. Patrick said there should be some room for the City Council to do certain things; like say the scope will be this rather than this. Tokos agreed that to say something like the Council can direct that it be modified and brought back would make sense. He said that's a good point.

Because time was running short, Tokos suggested tabling the review of the rest of the code until the next meeting. He can get a revised set of the Comprehensive Plan for the Commissioners to look at.

B. <u>Adjournment</u>. Having no further time for discussion, the meeting adjourned at 6:57 p.m.

Respectfully submitted,

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Wanda Haney
Executive Assistant

City of Newport

Community Development Department

Memorandum

To: Newport Planning Commission/Citizen Advisory Committee

From: Derrick Tokos, Community Development Director

Date: November 18, 2015

Re: Newport Local Improvement District Implementation Strategies

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Enclosed is a copy of the cover memo from FCS Group dated October 21, 2015, along with the draft set of amendments to Chapter 12.05 of the Newport Municipal Code outlining the rules for forming Local Improvement Districts. I have added the comments that you provided before the end of the November 9th work session. At this meeting, I am hoping we can complete a review of the draft code so that I can get comments back to the consultant.

I passed along your feedback on the draft Comprehensive Plan policies; however, I do not know at this time whether or not FCS Group will be able to get us a revised draft for your review on Monday. Those comments are summarized as follows:

1. Some of the policies seem to be outside the scope of what we are trying to accomplish with the LID update. Namely the proposed addition to Policy #4, Policy #6, and Policy #10. The first two relate to subdivisions and partitions and the last has to do with where public improvements are to occur. The Commission would like to see the policies focused on providing decision makers and staff on how to utilize Local Improvement Districts as a funding tool.

2. Recommended Policy #7 is good, but why the reference to "essential" public services? Wouldn't it be applicable to public services generally?

3. Policy #8 is good, but it might be better framed as two different goals. The first should provide policy guidance to staff and decision makers on circumstances for when the City should initiate an LID. The first sentence starts to get at this, but there should be other factors. Another, separate policy should provide decision makers guidance for deciding to proceed to form an LID. The second part of Policy #8 lists considerations. It needs to go a step further and articulate when the considerations should be viewed to be compelling enough that the city should proceed.

4. A policy is needed for how to respond to LID petitions. When should a petition be prioritized for action, or should there be a general policy that the city will respond to a petition and begin work on a preliminary engineer's report when resources permit?

5. What constitutes an "emergency?" There were strong feelings that policy sidebars are needed here since this is a tool that could trump a landowners' ability to remonstrate against an improvement. There was general consensus that failed or chronically failing infrastructure fits the bill. A compelling, broader public interest might fit as well, but would need to be clearly

framed. Recommendations from the City Engineer or a facility plan might be an appropriate authorities that decision makers can lean on to establish that infrastructure is chronically failing.

6. Policy directions should be provided for LID petitions that seek to do less than a full improvements. There seemed to be general consensus that a street improvement should conform to the Transportations System Plan or align with exists on the ground to either side of the improvement.

7. There should be fiduciary policies that provide direction on appropriate assessment methods and financing of assessments. What kind of tolerance or "risk" should the city take on up fronting costs? There was general consensus that this type of policy should be conservative and minimize risk.

8. For LID petitions that are filed, but ultimately do not proceed, should there be a policy objective to recover costs in preparing the Preliminary Engineer's Report? It would be helpful to have a cost recovery policy.

FCS GROUP
Solutions-Oriented Consulting

Memorandum

To: Derrick Tokos, AICP, City of Newport **Date:** October 21, 2015

From: Todd Chase and Timothy Wood, FCS GROUP

CC: David Helton, ODOT/TGM; and Carl Springer, DKS Associates

RE: Newport LID TGM Project, Task 4.1 Draft LID Plan/Code Amendments (D-4A)

1. PURPOSE

This memorandum provides recommended draft comprehensive plan and Newport Municipal Code amendments that are intended to address the issues and best practices identified in the previous work tasks and deliverable work products. This work effort included a review of the City's existing plan and code documents along with a legal review of the City's existing LID ordinance.

2. RECOMMENDATIONS

At this time, no specific comprehensive plan amendments have been identified as requirements for implementing a new LID ordinance. Our recommendations include: repealing the existing Newport LID ordinance in its entirety; and replacing it with a new ordinance citing Chapter 12.05 Local Improvement Districts of the municipal code. Our specific recommendations are intended to provide more transparency, objective clarity and direction for the public, city staff, and City Council when initiating, forming and administering LIDs in the future.

The attached draft recommended code amendments include the following enhancements:

- Clarity with regard to terms and definitions used;
- Transparency in the LID formation procedures used by the city staff and council;
- User-friendly code, with clear and concise sections that describe the various steps and processes required to form an LID;
- More detail in what is to be included in the engineer's report
- Recommendations regarding factors the council may consider when initiating an LID;
- Recommendations regarding methods to be considered with apportioning the costs of an LID;
- Code provisions aimed at enhancing public and stakeholder outreach;
- Code provisions aimed at reducing administrative costs when forming LIDs;
- Code provisions aimed at leveraging alternative sources of funding for LIDs that meet certain requirements
- Miscellaneous housekeeping items, such as processes for appeals and the recording of liens.

ATTACHMENT A

DRAFT CODE AMENDMENTS

(separate document)

CHAPTER 12.05 LOCAL IMPROVEMENT DISRICTS
(10/21/15 draft)

12.05.005 Definitions:

The following definitions apply unless inconsistent with the context:

"Local Improvement" has the meaning given under ORS 310.140 (9) (a) means a capital construction project or part thereof, undertaken by a local government, pursuant to ORS 223.399, or pursuant to a local ordinance or resolution prescribing the procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited by all or part of the improvement:

1) That provides a special benefit only to specific properties or rectifies a problem caused by specific properties; and
2) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and
3) For which the property owner may elect to make payment of the assessment plus appropriate interest over a period of at least 10 years.

Commented [DT1]: Why not allow earlier payment? Why is this in the definitions?

"Local Improvement District (LID)" means the area determined by the council to be specially benefited by a local improvement, within which properties are assessed to pay for the cost of the local improvement.

"Lot" means a lot, block or parcel of land.

"Owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment role in the office of the County Assessor.

"Remonstrance" means a written objection to the formation of an LID filed by an owner of property within a proposed LID.

"Non-Remonstrance Agreement" means a written agreement with the city, executed by an owner or the owner's predecessor in title, waiving the right of an owner to file a remonstrance.

12.05.010 Initiation of Local Improvement Districts

A. The council by motion or on petition of the owners of half the property benefited by the proposed public improvement may direct that a preliminary engineering report be prepared to assist the council in determining whether a local improvement district should be formed to pay all or part of proposed street, sewer, sidewalk, drain and/or other public improvements.

Commented [DT2]: The term "benefitted property" should be defined.

B. When initiating an LID without petition by property owners, the city council may consider one or more of the following preliminary evaluation factors:

1. The percentage of the proposed district subject to pre-existing non-remonstrance agreements. If over 25% of the property within a potential local improvement district (as measured by area or street frontage) has recorded non-remonstrance agreements on file with the city, a new district may be considered.

2. Health and safety benefits to the city. A new district may be considered if public improvements are necessary to address existing or potential health and safety benefits to city residents, businesses, employees or visitors; and such improvements enhance the value of properties within the district.

3. Ability to leverage alternative methods of funding from existing sources. A new district may be considered if

public improvements are necessary to fund capital facilities identified in an adopted city transportation system plan or public facility plan or capital improvement program; with at least 25% of the total estimated capital improvement cost to be derived from existing alternative local funding sources; and such improvements enhance the value of properties within the district.

4. Potential for non-local grant funding. A new LID may be considered if public improvements are necessary to fund capital facilities identified in an adopted city transportation system plan or public facility plan or capital improvement program; with at least 25% of the total estimated capital improvement cost to be derived from potential non-local state or federal funding sources; and such improvements enhance the value of properties within the district.

5. Overall city-wide benefits (e.g. economic, travel time, fiscal). A new LID may be considered if public improvements are necessary to fund capital facilities identified in an adopted city transportation system plan or public facility plan or capital improvement program; with at least 25% of the total benefit accruing to city residents, businesses, employees or visitors outside the potential LID; and such improvements enhance the value of properties within the district.

Commented [DT3]: Why should "broader public benefit" be a factor to allow an LID to be initiated?

6. Consistency with stated goals in city comprehensive plan. A council initiated LID should be consistent with one or more goals or objectives identified in the local jurisdiction's comprehensive plan, public facility plan or related local policies adopted by resolution or ordinance. For example, special consideration may be granted for improvements that promote safe access to schools or targeted area redevelopment plans and objectives.

7. The priority of the project per adopted public facility plans or capital improvement programs. In addition to the above factors, a council initiated LID may be considered if it can facilitate implementation of a high priority improvement that has been identified in an adopted transportation plan, public facility plan, or capital improvement program; and such improvements enhance

the value of properties within the district.

8. Potential return on investment and risk. In the consideration of any of the above mentioned factors, a council initiated LID should have a reasonable chance of being self-financing, with adequate reserves to ensure that payments are made on bonds/loans, regardless of the property owners repayment. Risk mitigation considerations should consider the possibility of unknown cost or construction issues (e.g., need for additional right of way, construction in drainage areas or wetlands, and topographic challenges). It is recommended that the aggregate assessment within a prospective local improvement district be less than one-third the existing market value of properties within the district.

C. When a potential LID project is deemed by the city engineer or community development director to meet one or more of these factors, a council initiated district may be advanced by the council through a resolution requesting that a preliminary engineering report on LID formation be prepared.

12.05.015 Preliminary Engineer's Report

A. The preliminary engineer's report shall contain:

1. A full description of the project and its boundaries.~~.~~

2. A description of each parcel of land specially benefited, including the name of the record owner of the parcel.

3. An estimate of the probable cost of the project (or a statement of the actual cost if the project has been completed), including property acquisition, design, construction, engineering, legal ~~and~~, administrative, interest or other costs.

4. A recommendation as to what portion of the total costs of the project should be paid by specifically benefited property in addition to the assessed valuation and any unpaid assessments against each lot.~~.~~

5. A recommendation of a method of assessment, together with an estimate of the cost per unit to

specially benefited property.

6. A recommendation whether to proceed with formation of the local improvement district.

Commented [DT4]: How are these costs accounted for if an LID doesn't get formed? Should there be a deposit to cover the cost of preparing a report?

12.05.020 Council's Action on Engineer's Report

A. After the engineer's report has been filed with the city recorder, the council may thereafter by motion approve the report, modify the report and approve it as modified, require the engineer to supply additional or different information for such improvements, or it may abandon the improvement.

Commented [DT5]: Modifications should be made by professional staff and brought back to decision makers for their consideration. Policy makers should not have authority to modify an engineer's report.

12.05.025 Notice of Hearing on District Formation

A. Unless all owners of specially benefited property have petitioned for formation of the local improvement district and waived the right of remonstrance, the city shall ~~mail~~ provide notice to property owners of a council hearing on the proposed district ~~at least ten days prior to the hearing~~ by submitting a notice in a newspaper of general circulation within the town and by mailing notice to the owner's address listed in the county tax records. The city may provide additional notice.

B. Within ten (10) business days of the filing of the report required by NMC 12.05.15 the recorder shall cause a notice to be published twice in a newspaper of general circulation within the city setting out the following:
   1. That a written project report for a proposed LID is on file and is available for examination at City Hall
   2. The date said report was filed
   3. The estimated probable cost of the proposed local improvement or the actual cost of the improvement if it has been completed;
   4. A description of the proposed improvement district and that a map of the proposed district is available for examination at City Hall;
   5. The time and place of the hearing required by NMC 12.05.25
   6. A statement that written and oral testimony submitted by any person will be considered at such hearing but that said testimony will not be considered as a remonstrance; and
   ~~1.~~7. That property owners wishing to remonstrate against the formation of the proposed district

should present their remonstrance in writing at the time and in the manner set forth in NMC 12.05.025 C

~~B. The notice shall contain:~~ C. Not less than ten (10) days prior to the hearing required by NMC12.05.025, mail to each property owner designated in the written engineering report a notice stating:

1. The information set forth in Subsection B of this section;
2. The proposed method of assessment;
3. The estimated amount of the assessment for each lot or portion thereof owned by the owner and whether the assessments are being levied prior to construction based upon estimates of project cost or after construction based upon known costs; and
4. The specific procedure for filing remonstrance provided by NMC12.05.025 C

D. Post a copy of the preliminary map of the proposed improvement district at City Hall.

~~1. A general description of the proposed local improvement(s) and the boundaries of the district, which shall include all specially benefited properties and no properties that are not specially benefited.~~

~~2. An estimate of the total cost of the improvement.~~

~~3. The date, time and place of the public hearing.~~

~~4. A statement of the place where the preliminary engineer's report and other information on the project may be obtained.~~

~~5. A description of the proposed method of assessment and allocation of costs.~~

~~6. A statement that the purpose of the hearing is to hear comments and remonstrances and that all comments and remonstrances must be submitted prior to the close of the hearing.~~

~~7. A statement that the council may modify the proposed improvement(s) and modify the proposed boundaries of the district.~~

~~8. A statement that the costs, proposed allocation of costs, and proposed method of assessment are estimates or proposals only and that the actual assessment will be based on actual costs and on a method of assessment to be determined only after the construction of the local improvement(s) is completed.~~

12.05.030 Hearing on District Formation

A. After the engineer's report, as submitted or modified, has been approved or accepted by city council resolution, ~~T~~The council shall hold a public hearing on the proposed improvement and formation of the district and consider oral and written testimony, as well as remonstrances. Such hearing shall be held after the receipt of the engineering report described in NMC 12.05.015 but not less than fifteen (15) days after the date of the second publication of notice.

B. If property owners owning two-thirds or more of the property area within the district to be specially assessed remonstrate against the improvement, the council shall suspend formation of the district for a period of not less than six (6) ~~not proceed with forming the district and financing the improvement by special assessment. This~~months. This provision shall not apply if the only improvements to be constructed are sidewalks or if the council unanimously declares the improvement to be needed because of an emergency. If a property has multiple owners, a remonstrance by an owner shall be considered a fraction of a remonstrance to the extent of the interest in the property of the person filing the remonstrance.

C. All remonstrances must be in writing and filed with the city recorder by the end of the public hearing. Remonstrances may be withdrawn any time prior to the close of the hearing.

D. If insufficient remonstrances are filed to prevent the formation of the local improvement district, the council shall have discretion whether or not to form the district and proceed with the public improvement.

E. Based on testimony at the hearing, the council may modify the scope of the improvements and/or the district boundary. The council may use any reasonable method of

determining the extent of the local improvement district based on the benefits of the proposed local improvement(s). If any modifications approved by council include additional property or result in a likely increase in assessments on any property, the city shall hold another hearing and provide notice of the additional hearing in the same manner as it provided notice of the initial hearing.

F. A decision to accept the engineer's report, form the local improvement district and proceed with making the local improvements shall be by resolution. This resolution shall at a minimum address the following:
   1. Create the local improvement district and establish its boundaries;
   2. Determine generally the time for commencing and the manner of construction;
   3. Establish an account for the receipt and disbursal of monies relating to the project; and
   4. Establish the method for allocating the costs associated with the project.

12.05.035 Final Plan and Specifications

A. After a council decision to form the district and proceed with the local improvement(s), the city engineer shall be responsible for acquisition of necessary rights-of-way and easements and for development of a final plan and specifications prior to publishing contract solicitation documents.

B. After developing the final plan and specifications, the city engineer shall prepare a new estimate of costs. If the new estimate ~~significantly~~ exceeds the original cost estimate by 10% or more ~~available to the council~~ at the time of its hearing or if the city engineer deems there to be~~there are~~ significant changes in the project as a result of the additional unanticipated work, a supplemental engineer's report shall be prepared and submitted to the council which shall hold a hearing on the revised engineer's report. The hearing shall be noticed in the same manner as the original hearing, and property owners shall have the right to submit a remonstrance based on the revised engineer's report. The council shall follow the same procedure and standards applicable to the original hearing.

12.05.040 Construction

A. Construction work on the local improvement(s) may be by the city, by another government agency, by contract with a private contractor, or by any combination of those entities. Any contracting shall be in accordance with the city's public contracting rules.

B. Construction may proceed after the development of the final plan and specification if the final plan and specifications do not significantly differ from the improvements authorized by the council after the initial hearing. If an additional hearing is held, construction may proceed after a council decision accepting the revised engineer's report and directing that the local improvement(s) be constructed.

12.05.045 Costs Included In Assessment

The costs and expenses that may be assessed against specially benefited property include but are not limited to:

A. The costs of property, right-of-way or easement acquisition, including the cost of any condemnation proceedings.

B. Engineering and survey costs.

C. Costs of construction and installation of improvements, including but not limited to: streets, curbs, sidewalks gutters, catch basins, storm water improvements, driveways, accessways, lighting, traffic control devices, painting, and striping, surface water management facilities, water and sewer lines, lift stations, and fire hydrants.

D. Costs of preliminary studies.

E. Advertising, legal, administrative, survey, engineering, notice, supervision, materials, labor, contracts, equipment, inspection and assessment costs.

F. Financing costs, including interest charges.

G. Attorney fees.

H. Any other necessary expenses.

12.05.050 Method of Assessment

A. The Council shall:

(1) Use a fair and reasonable method for determining the extent of the improvement district boundaries that is consistent with the benefits derived.

(2) Use a fair and reasonable method for apportioning the actual cost or estimated cost of the local improvement among the benefited properties.

B. The Council may:

(1) Authorize payment by the City of all or any part of the cost of such improvements; provided that the method selected creates a reasonable relation between the benefits derived by the property specially benefited and the benefits derived by the City as a whole.

(2) At any time prior to the effective date of the resolution levying the assessments for any improvement district, modify the method adopted in the resolution forming the improvement district if the Council determines that a different method is a more just and reasonable method of apportioning the cost of the project to the properties benefited.

(3) Use any other means to finance improvements, including federal or state grants-in-aid, user charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance to pay either all or any part of the cost of the improvements.

C. In establishing a fair and reasonable method for apportioning the actual or estimated cost of local improvements among benefited properties, the Council shall rely upon the following guidelines:

(1) Individual property owners shall pay for public improvements specially benefiting their property. The determination of benefit shall be made irrespective of whether the property is vacant or the owner elects to connect to the local improvements. Special costs or features of the improvement that benefit a particular parcel of property in a manner peculiar to that parcel shall, together with a share of the overhead for the improvement, be assessed separately against the parcel.

(2) Costs of the improvement to be borne by the City shall be excluded from the assessment before apportionment. The City will pay the cost of:

(i) Extra capacity improvements when the size of the public improvements required exceed the minimum standards established in the Specifications and Standards for Construction of Public

Improvements adopted in accordance with local transportation plans or public facility plans, and the project has been included in the City budget document for the fiscal year during which construction of the improvement is scheduled; or

(ii) Special and unusual costs when the Council determines that circumstances exist which warrant City payment of all or a portion of the cost of the public improvements.

D. In establishing a fair and reasonable method for apportioning actual or estimated costs of local improvements among benefited properties, the Council may, but in no way is required to, rely upon the following guidelines:

(1) Improvement Costs of Streets.

(i) Street improvement costs may include all improvements required or as established by the improvement district from right of way to right of way. Such improvements shall meet the minimum standards adopted under the Newport Transportation System Plan and may include any of the elements identified in Section 12.05.045.

(ii) Costs shall be applied on a per linear foot basis, or other method identified in the engineer's report. Where a property owner requests or requires supplemental approach construction, the costs associated with that additional construction shall be assessed to the individual property owner.

(2) Improvement Costs of Sidewalks. Parcels abutting a sidewalk shall be liable for a proportionate share of the cost of the sidewalks, based on the front footage of the parcel abutting the sidewalk. Where, however, the Council finds that construction of a sidewalk on both sides of the street is unnecessary or unfeasible, the cost of the sidewalk on one side of the street may be assessed to both the parcels abutting the sidewalk and the parcels on the opposite side of the street from the sidewalk.

(3) Improvement Costs of Surface Water Management. The cost to be assessed shall be apportioned to each parcel within the improvement district on the basis of its land area that contributes to or otherwise directly benefits from the City's drainage system.

(4) Improvement Costs of Water and Sewer Lines.

(i) The properties specially benefited by a sewer main or water pipe shall bear the cost of the system up to and including eight inches of pipe diameter. These costs shall be apportioned to each parcel on the basis of a cost per square foot of service area, determined by dividing the total system cost by the total service area.

(ii) In addition to main or pipe costs, each property benefited by a sewer main or water pipe shall be considered to have at least one service line connection point. If more than one service line connection point is provided for a benefited parcel, it shall be assessed for the actual number of service line connection points. All costs related to the service lines, including overhead costs, shall be divided by the total number of service line connection points, to determine the cost per service line connection point.

(5) Corner Lots. Corner lots may be exempted from an assessment for the first 100 feet of frontage on the side abutting a local improvement, or for the full length of the side abutting the improvement, whichever is shorter, if one or more of the following conditions exist and the City Council grants an exemption:

(i) The local improvement is required to serve a new subdivision or new development, the corner lot is located outside the subdivision or development, and the corner lot will receive no benefit from the local improvement for which the assessment is levied; or

(ii) The corner lot has two sides abutting the local improvement for which the assessment is levied and is being assessed for the full frontage of one side abutting the improvement; or

(iii) The Council determines the Corner Lot receives no benefit from the local improvement for which the assessment is levied and the property has been previously assessed for the same type of local improvement on the side not abutting the local improvement for which the assessment is levied.

The City Council need not grant a Corner Lot exemption if the Council determines the property will receive a benefit from the local improvement for which the assessment is being levied.

(6) Minimum Frontage. All lots may be assessed for an equivalent front footage of no less than 60 feet.

(7) Benefited Property. A benefited property may be defined as one which is adjacent to any street, easement or right of way on which a local improvement is installed or which reasonably is capable of connecting to, or directly benefiting from, the improvement.

(8) Assessment Alternative. Assessment alternatives that vary from those listed in this section may be identified within the engineer's report. A weighting method may be considered among multiple alternatives to determine a hybrid alternative assessment.

(9) Equal Assessments. If property owners of all or part of the benefited properties within the improvement district are in unanimous agreement, and so request, then their share of the improvement costs may be apportioned in equal amounts.

12.05.055 Alternative Methods of Financing

A. The Council may allocate a portion of the cost of such improvement from the funds of the city. The council may base this on topographic concerns, the physical layout of the improvement, unusual or excessive public use of the improvement, or other characteristics. The amount assessed against all property specially benefited will be proportionately reduced.

B. The council may use other means to finance, in whole or in part, the improvements, including federal or state grants-in-aid, sewer or other types of service charges, revenue or general obligation bonds.

12.05.060 ~~Method of~~ Final Assessment

A. After final acceptance of the public improvements by the city, the city engineer shall prepare a final report that describes the completed improvement, lists the total costs with a breakdown of the components of the total cost, and proposes a method of assessment. The city engineer shall prepare the proposed assessments for each lot within the improvement district, file the assessments with the finance director, and submit a proposed assessment resolution to the city council. The city engineer shall provide an explanation of any difference in the proposed cost allocation or method of assessment previously proposed.

B. The city council shall hold a hearing on the final engineer's report and at that hearing shall establish by resolution the method of assessment and amount to be assessed against each specially benefited property.

C. The council in adopting a method of assessment of the costs of the improvement(s) may use any method of apportioning the sum to be assessed that the council determines to be just and reasonable among the properties in the local improvement district.

D. After the council adopts the assessment resolution, the city will schedule a council hearing and mail notice of the proposed assessments to each owner of assessed property within the district at least 10 days before the hearing. The notice shall contain:

1. The name of the owner and a description of the property to be assessed.

2. The amount of the assessment.

3. The proposed allocation and method of assessment.

4. The date, time and place of the council hearing on objections to the assessment, and the deadline to submit written objections before the hearing.

5. A statement that the assessment as stated in the notice or as modified by the council after the hearing will be levied by the council, charged against the property, and be due and payable.

E. Any mistake, error, omission or failure relating to the notice shall not invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been provided to the property owner, or if owner cannot be located, notice is published once a week for two consecutive weeks in a newspaper of general circulation in the city.

F. The council shall hold the public hearing and consider oral and written objections and comments. After the hearing, the council shall determine the amount of assessment to be charged against each property within the district according to the special benefits to each property from the improvement(s). The final decision spreading the assessment shall be by resolution.

G. If the initial assessment has been made on the basis of estimated cost, and, upon completion of the work, the cost is found to be greater than the estimated cost, the council may make a deficit assessment for the additional cost, provided, however, the council may not make a deficit assessment for more than ten (10) percent of the initial assessment. Proposed assessments upon the respective lots within the special improvement district for a proportionate share of the deficit shall be made.

notices shall be sent, opportunity for objections shall be given, any objections shall be considered, and a determination of the assessment against each particular lot, block, or parcel of land shall be made in the same manner as in the case of the initial assessment, and the deficit assessment shall be spread by resolution.

H. If assessments have been made on the basis of estimated cost and upon completion of the improvement project the cost is found to be less than the estimated cost, the council shall ascertain and declare the same by resolution, and when so declared the excess amounts shall be entered on the city lien record as a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or that person's legal representative or successor, shall be entitled to repayment of the excess amount. If the property owner has filed an application to pay the assessment by installment, the owner shall be entitled to such refund only when such installments, together with interest thereon, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the amount of the refund shall be deducted from such assessment, and the remainder shall remain a lien on the property until legally satisfied.

12.05.065 Notice of Assessment

Within 10 days after the effective date of the resolution levying the assessments, the finance director shall send by first-class mail to the owner of the assessed property a notice containing the following information:

A. The date of the resolution levying the assessment, the name of the owner of the property assessed, the amount of the specific assessment and a description of the property assessed.

B. A statement that application may be filed to pay the assessment in installments in accordance with the provisions of this chapter.

C. A statement that the entire amount of the assessment, less any part for which application to pay in installments is made, is due within 30 days of the date of the notice and, if unpaid on that date, will accrue interest and subject the property to foreclosure.

Supplementary notice of assessment in form and content to be determined by the finance director may also be published or posted by the finance director.

12.05.070 Financing of Program

A. The City of Newport Local Improvements Fund will be used for the payment of construction costs or for the retirement of debt incurred by the City in connection with local improvement projects on which the payment of assessments has been deferred under this Ordinance.

B. The initial funds for the program will be taken from interest earnings accumulated in the City of Newport Capital Construction Fund in an amount not to exceed 40% of the total accumulated interest earnings as of June 30 of the preceding fiuscal year. Program resources shall be replenished from time to time by interest payments on deferred accounts, payments made when deferments are terminated and by additional interest revenue from the Capital Construction Fund.

C. Deferments shall be granted on a pro rata or otherwise equitable basis, depending upon individual assessment amounts for applications received within the time period set under Section 12(3) for submittal, to the extent that Program funds are available.

12.05.075 Payment

A. Unless an application is made for payment in installments as provided by this section, assessments shall be due and payable in full within 30 days after the date the notice of assessment is mailed, and if not so paid, shall bear interest at the rate of 9 percent per year. The city may proceed to foreclose or enforce collection of the assessment lien if the amount is not paid in full within 90 days of the date the notice of assessment is mailed.

B. Any time within 10 days after the notice of assessment is mailed or within 10 days of resolution of any writ of review proceeding challenging the assessment, the owner of the property may apply to pay the any assessment in excess

of $500 in ten equal annual installments, with the first payment to be paid within 10 days of the determination by the finance director of the amount of the annual payment. The application shall state:

1. That the applicant waives all irregularities or defects, jurisdictional or otherwise, in any way relating to the assessment.

2. State that the applicant understands the terms and conditions of the city's payment policies including the penalties for nonpayment.

C. On receipt of an application for payment in installments, the finance director shall determine whether the city will finance the payments internally or issue bonds or obtain a loan for the amount financed. The interest rate will be set at the interest rate charged to the city, plus 2%. If the city finances the payments internally, the interest rate shall be at the interest rate payable to the city if it had invested the money in a local government pool account, plus 3%. The finance director shall then notify the property owner of the payment amounts and due dates.

D. If any installment payment is not paid within one year of the due date, the council shall adopt a resolution declaring the entire amount of principal and interest due and payable at once.

E. The entire amount of principal and accrued interest shall be payable on any sale of the specially assessed property or change in its boundaries.

12.05.080 Lien and Foreclosure

A. The finance director shall enter in the city lien docket:

1. A statement of the amounts assessed upon each particular lot, parcel of land or portion thereof;

2. A description of the improvement;

3. The names of the owners; and

4. The date of the assessment resolution.

B. On entry in the lien docket, the amount entered shall

become a lien and charge upon the properties that have been assessed for such improvement.

C. All assessments liens of the city shall be superior and prior to all other liens or encumbrances on property.

D. The city may collect any payment due and may foreclose the liens in any manner authorized by state law.

12.05.085 Errors in Assessment Calculations

Claimed errors in the calculation of assessments shall be called to the attention of the finance director who shall determine whether there has been an error. If the finance director determines that there has been an error, the matter shall be referred to the council for an amendment of the assessment resolution. On amendment of the resolution, the finance director shall make necessary corrections in the city lien docket and send a correct notice of assessment by certified mail.

12.05.090 Abandonment of Proceedings

The council may abandon and rescind proceedings for improvements at any time prior to the final completion of the improvements. No assessment shall be imposed if improvements are not completed.

12.05.095 Curative Provisions

No improvement assessment shall be rendered invalid by a failure of any incompleteness or other defect in any engineer's report, resolution, notice, or by any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps required by this chapter, unless the assessment is unfair or unjust. The council shall have the authority to remedy or correct any matter by suitable proceedings and action.

12.05.100 Reassessment

A. Whenever all or part of an assessment or reassessment for any local improvement is declared void, set aside for any reason, not enforced by a court or the council determines the assessments should be adjusted, the council may make a new assessment but shall not be required to repeat any portion of the procedure properly completed.

B. The reassessment procedures for making the new assessment will follow the same procedures used for the initial assessment under NMC12.05.050 and 12.05.085. The new assessment is not limited to the amounts included in the original assessments or to the property included within the original assessment if the council finds that additional property is specially benefited and subject to assessment.

C. Credit must be allowed on the new assessment for any payments made on the original assessment as of the date of payment. Interest on the original assessments must be included in the new assessment to the extent the new assessment includes amounts also included in the original assessment. The council will include interest as part of the overall assessable project cost. The amount will be based on the construction financing interest rate in effect and applicable to the district at the time of the original proceedings on moneys paid on the construction or financing of the project.

~~Whenever any assessment or reassessment is set aside or its enforcement restrained by any court with jurisdiction or when the council is in doubt as to the validity of the assessment or reassessment, the council may make a reassessment in the manner provided by the state law or may follow the procedure applicable to an original assessment, but shall not be required to repeat any portion of the procedure properly completed.~~

12.05.105 Remedies

Actions of the council under this chapter are reviewable only by writ of review.

12.05.110 Interpretation and Coordination with State Law

The provisions of this chapter shall be interpreted consistent with state law relating to local improvement districts and Bancroft bonding. When state law authorizes local governments to adopt standards and procedures different from those specified in the statutes, the city may comply with either this chapter or state statutes. To the extent that any standard or procedure is not governed by this chapter, the city shall comply with state statutes.

12.05.115 Confidentiality

To the maximum extent possible under the law, the applications, records and other information relating to deferments shall be kept confidential by the City.

12.05.120 Appeals

Owners of property against which an assessment or reassessment for local improvements has been imposed may seek a review of any council decision under the provisions of ORS 34.010 to 34.102.

AGENDA & NOTICE OF PLANNING COMMISSION MEETING

The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m. Monday, November 23, 2015**, 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, November 23, 2015, 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 November 9, 2015.

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. Adoption of Final Order for File No. 3-PAR-15-A. Denial of an appeal filed by the applicant and property owner, Jonathan Holbrook, and upholding the Community Development Director's decision to deny this partition. The Planning Commission held a public hearing on this matter on November 9, 2015.

F. Public Hearings.

1. File No. 2-AX-15/4-Z-15. Consideration of requests to: (1) annex approximately 0.23 acre of real property (consisting of property currently identified as Tax Lot 00400 of Assessor's Tax Map 10-11-20-BB and currently addressed as 7576 N Coast Hwy) into the Newport city limits; (2) amend the City of Newport Zoning Map to establish an I-1/"Light Industrial" zoning designation for the subject property consistent with the existing Newport Comprehensive Plan designation of Industrial; and (3) withdraw said territory from the Newport Rural Fire Protection District and the Lincoln County Library District. The Planning Commission will make a recommendation to the City Council on this matter.

G. New Business.

H. Unfinished Business.

1. Update on City Council's steps to update the Newport Business license code for recreational marijuana facilities.

I. Director Comments.

1. November 30th City Council Town Hall Meeting (draft agenda enclosed)
2. Update on ePermitting Implementation

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
Regular Session
Newport City Hall Council Chambers
Monday, November 9, 2015

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

Commissioners Absent: Mike Franklin *(excused)*.

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

A. **Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Hardy, Berman, Croteau, Patrick, East, and Branigan were present. Franklin was absent but excused.

B. **Approval of Minutes.**

1. Approval of the Planning Commission regular session meeting minutes of October 12, 2015, and the work session meeting minutes of October 26, 2015.

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

C. **Citizen/Public Comment.** No public comments.

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

E. **Action Items.** No items requiring action to be taken.

F. **Public Hearings.** Patrick opened the public hearing portion of the meeting at 7:02 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Berman, Croteau, Patrick, East, and Branigan declared site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

1. **File No. 3-PAR-15-A.** A *de novo* hearing on an appeal of the Community Development Director's decision of denial by Final Order adopted 9/24/15 for the partition of Tax Lot 607 of Assessor's Map 10-11-20-BC filed by the applicant and property owner, Jonathan Holbrook.

Patrick opened the hearing for File No. 1-PAR-15-A at 7:03 p.m. by reading the summary of the file from the agenda. He called for the staff report. Tokos noted that in their packets was a memo dated November 4th outlining his thoughts on where things stand. He noted also that the packets contained a memo from City Engineer Tim Gross who was in attendance and available to answer questions as well. The packets also contained the applicant's appeal, the original decision; and he had the complete case record. Tokos said what the Commission has here that's in question, as he outlined in his memo, is what the public facilities requirements are for a partition. He said you have a request to divide an existing parcel into two. He said part of it is if it should go in this direction or all lots should be holistic. The parcel is served off a gravel roadway. He noted that the Commissioners had a copy of that map in their packet. He said the standards that apply are found in NMC 13.05.095(A)(5), which he walked through in his memo. He said that standard has two parts. One is that the public facilities are adequate under Section 13.05.045. The other is that the proposed streets within the partition comply with the standards under Section 13.05.015, including any allowed modifications or a variance has been obtained. In his memo, Tokos explained that the standard provides that the land division may only be approved if the public facility and utility providers confirm in writing that they can adequately provide service to the proposed land division. The Commissioners have in their packets utility provider letters indicating that they can serve the development; so it is reasonable for the Planning Commission to accept those letters as adequate to

satisfy that requirement. For public facilities (water, sewer, streets, and storm drainage) that falls to Public Works and is penned typically by the City Engineer. In the packet, the Commissioners have a letter from Tim Gross indicating that the existing private street would have to be improved with curb, gutter, drainage structures, an aggregate base, and paving in order to be adequate to serve additional parcels. Gross further notes that a roadside ditch storm drainage conveyance system was never installed as was proposed in the cross-section drawings on the maps identified as Partition 5-PAR-05 "Holbrook Estates." Lastly, Gross notes that each parcel is required to have separate sewer services that are contained within private sewer easements for maintenance purposes.

Tokos said, with respect to that second sentence of that original standard (13.05.095(A)(5)), the Director's decision finds that the existing private street is a "proposed street" because the parcels that it will serve don't exist yet, and it is located within the partition. Tokos noted that Mr. Holbrook argues that a street is "proposed" only if it is being modified or extended. The Planning Commission needs to determine which approach is the more appropriate interpretation. If the Commission agrees with the Director, the private street must be improved to a standard that meets the provision of NMC 13.05.015, which includes a 50-foot right-of-way and a 36-foot-wide roadway. That dovetails with the City Engineer's concerns as outlined in his letter. A variance wasn't applied for; and it's unlikely that one could have been approved because there's no hardship or practical difficulty here. It's a cost issue for the size of the street; and financial constraints aren't something you can consider with a variance. The approval authority can modify the standards; but that's typically through a planned development. In Wilder, for example, we allowed the 24-foot width. Gross and Tokos mentioned to Holbrook that that's an option for him. We can look at each of the parcels, which is proposed to be increased to ten, and consider the given length of the road what that should be; and that would be the standard for subsequent development that would occur out there, including the subject one. Tokos said the concern with accepting a holistic interpretation that it's a proposed street only if the existing is being extended is that it creates a loophole. Someone could plat in a lot at whatever standards they want and then come back and partition the property. Tokos said if the Commission believes it's not proposed because it's pre-existing and Holbrook should be able to utilize it as it exists, then he would really encourage the Commission to re-visit the land division code that's in place to make sure that when parcels are created, those are suitable for the intended use when done. In that way that person buying a parcel has confidence that they can build their home without incurring the cost of extending the street or sewer or water lines. That those are available and in place, and the buyer is just responsible for constructing their home and driveway and onsite utilities.

Tokos said in the appeal, there is a fair amount of talk about Chapter 14.44. Tokos explained why he doesn't believe that is applicable. He noted that those transportation standards were adopted as part of the update to the Transportation System Plan (TSP) when we were doing the South Beach work in order to create standards for infill lots. It has very specific language. Streets within or adjacent to a proposed partition or subdivision are to be improved in accordance with the TSP and have to meet the rules of the subdivision code. He called that out in his memo. Tokos said, considering what is outlined in his memo and the information in the case record, the Commission needs to determine if the application satisfies the approval standards, or can through the imposition of reasonable conditions. If the Commission can't find that the standards have been met, or can with reasonable conditions, then the application must be denied. The Commission should clearly articulate its reasoning and direct staff to prepare findings and a final order consistent with where the Commission wants to go with the appeal.

Tokos' recommendation is that the Planning Commission carefully consider the adequacy of the street and storm drainage conveyance system that would serve the proposed parcels. If the Commission accepts that the street must be improved to the current TSP standards of a 36-foot paved section, then you need to look at whether imposing the condition that the applicant construct those improvements is reasonable. Tokos noted that this stretch of private street is approximately 140 feet in length from US 101. He said, in determining whether or not the improvement is reasonable, the Commission has to consider if it appears to be roughly proportional to the impact of creating two new parcels. If the Commission believes that it is, then you should impose the condition. If not, then the Commission should deny the partition on the basis that the road access and associated storm drainage system is not adequate to serve additional parcels. He said if the Commission feels that the street improvement condition is reasonable, then you should also consider imposing a condition that individual sewer services be installed and private sewer maintenance easements be put in place as recommended by the City Engineer.

Branigan said part of the code says that if there are less than four residences, it's a private drive. If there are more than four, then it becomes a private street. He wondered how we got to that number for the code. Tokos said as he recalls we had the discussion that at what point do we care. If there are four or fewer, it can be a private driveway and

not subject to street standards. If there are more than four, it becomes a street and needs to be evaluated to make sure it's adequate. He said, infill or not, the one theme was four is as far as a driveway goes; then it becomes a private street and needs to be constructed to standards so that it's safe. At some point there's enough homes served that it's very important that it be more than just a private driveway. It becomes more challenging for maintenance.

Croteau asked if what he's hearing is at some point in the future when it's totally built out, this will become the city's responsibility. Tokos said this is a private street and not proposed to be in the city's hands. He said it's been the city's experience that over a long period of time, property owners will approach the city to take it on. Branigan asked if it's a private road but still has to meet the city's codes as far as depth of asphalt and such. Tokos said, but it's the city's view that it does unless a planned development is done or an alternate street section is done. The subdivision code does allow modification to the 50-foot right-of-way. That's typical with a planned development. That's when you look at it as a holistic thing and make a decision. Southshore is a private street system. There have also been some smaller streets like with the Coho/Brant project. From the audience, Holbrook noted that there is also the minimum fire code. Tokos said that the Commission has had that conversation. Berman asked if it only makes sense to vary the standards if an entire subdivision is resubmitted in a full buildout plan. Tokos said it allows for modification to those standards. The only way we've done it to date is with a planned development. That's not a requirement. Berman asked if there's something between what exists now and the full TSP standards that would be acceptable. City Engineer Gross said what he discussed with Wilder is the minimum he would accept is 24 feet. Thirty-six feet is the standard, and that's driven by parking on the street. With 24 feet, you have no parking. He said it depends on what you want the street to be. He said the city's design standards aren't to build a Cadillac of streets, but to allow the street to work as well as possible. The cross-section, thickness, and how it's constructed; you wouldn't deviate. The most he would deviate would probably be the width. He doesn't have much anxiety in how wide it is other than getting equipment in for maintenance and emergency response. He said it depends on the neighborhood. If there's off-street parking, and you're not parking on the street; it's no big deal. If there's no off-street parking, then you're parking on the street. That's why the 36-foot width was put in place; so you can park on the street without hindering traffic. He said the Planning Commission needs to consider that.

Hardy asked how this neighborhood is proposed to be developed if it's not a subdivision. Tokos said this is a partition at this point. He said as the Commissioners saw from this material, it's been a series that have over time continued to create additional parcels. Now there are nine. He had included a map showing the nine lots and the driveway that provides access to those existing nine lots that are there. Hardy asked if these are all the under the same ownership. Tokos confirmed, all one owner at this time. Hardy asked what the goal is. Tokos said that's something she could talk to Mr. Holbrook about.

Proponents: Jonathan Holbrook, 405 SE Scenic Loop, Newport, the applicant and property owner came forward to testify. He had materials that he handed out to the Commissioners. He read through the letter that was included, which he noted was very code-related. He noted that he's a local building designer and has read and interpreted planning and building codes on a daily basis for approximately 30 years. He said that at issue is the approval of a minor partition denied solely on the recommendation of the Public Works Director. Holbrook explained that he wishes to gain approval of the partition without having to provide the private access easement and storm drainage. He said he will present evidence that the partition meets the criteria of the NMC and should be approved without the road improvements. He noted that Section 13.05.095 states that if the tentative plan complies with the criteria, the plan shall be approved. Holbrook said in this situation, it boils down to one criterion that one individual, the City Engineer, believes the plan doesn't meet. Holbrook said the meaning of the second part of the criteria under Section 13.05.05(A)(5) boils down to the word "proposed." He said, when reading the code it's mandatory that you use literal definitions to interpret all parts of the code, which is extremely important to uniformly disseminate information and approvals. He believes that the clear intent of the code is that "proposed" refers to new construction or modification of roadways only. Holbrook explained that the dictionary defines "proposed" as "to form or put forward a plan;" and the definition of "planned" is "to arrange the part of: Design <plan a **new** layout." He noted that in this instance the highway access and private easement access road is an access to the property that was approved by the City, ODOT, the Fire Marshal, and Public Works; and there are no "proposed" or "new" streets or any modification to streets. Holbrook believes that the intent of the Municipal Code is to require street upgrades to subdivisions, which is a land division of four or more parcels; and only new streets, not existing streets, for minor partitions. He noted that to support this, Section 14.44.050(B) states that the City may accept a future improvement "guarantee" in the form of a surety bond, letter of credit, or non-remonstrance agreement in lieu of street improvements if it determines that one or more condition exists. The fourth condition listed is that the improvement is associated with an approved land partition

or minor replat and does not create any new streets. He believes that if a minor partition meets the criteria, which he feels that his does, and doesn't create any new streets, approval should fall back on the first part of Section 13.05.095(A)(5), which only requires that streets be "adequate." He said it makes sense why the code defines "subdivision" and "minor partition" as two separate approvals; it's to allow a lower level of criteria for approval.

Holbrook said that the pertinent portion of Section 13.05.045(B)(3) reads, "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 the need for additional conveyance capacity, without increasing erosion or flooding." Holbrook said in his situation there is no increase in flow or concentration of surface drainage as there is no change to the roadway or the property; and any increased flow from future structures will be mitigated in the building permit process. Section 13.05.045(B)(4) reads "street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development." He said this addresses city roadways outside the development; and as there are no city roadways outside the development, only Highway 101, he meets this criterion. For confirmation of this, Holbrook provided a letter from Public Works (Page A-1 of his submitted materials) and noted also that ODOT made no comment on his partition, meaning they approved it. Holbrook said that if the Commission does not agree with his interpretation of the code and feels that Holbrook should have to abide by Section 13.05.015, he asked the Commissioners to review item B of that section, which states "modifications to this requirement (minimum right-of-way and roadway width) 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." He referred the Commissioners to page A-22, the last page of his packet, with a site plan showing the parcels. It shows the 50-foot right-of-way requested by the Public Works Director. Highway 101 is on the right side. "PL" indicates property line. Then there's the line of the 50-foot edge of the right-of-way, the 20-foot garage setback, and a 15-foot rear setback line. He said this leaves an almost unbuildable piece of property. He believes it's physically impossible to install a road that the City is requesting at this time.

Going back to his letter, Holbrook noted that as stated previously, he feels that he meets the criteria; and as such, the code mandates approval. He said that both the Development Director and the Public Works Director continue to imply that his access road is inadequate; so he presented some attachments as further evidence of the adequacy of the roadway. He asked the Commissioners to turn to page A-1 of his packet, which was a letter of approval from the Public Works Department, dated October 12, 2015. Page A-2 is an approval letter from Toby Cole of the Fire Department, dated January 30, 2010. Page A-3 is an approval of the roadway from Rob Murphy, dated November 2, 2015. Pages A-4 through A-14 is the last minor partition for this piece of property, dated November 4, 2008, which also has approvals of the roadway by Community Development Director James Bassingthwaite and Public Works Director Lee Ritzman, and final approval by Community Development Director Derrick Tokos. He noted that at the bottom of page A-8 is criterion C. The code was updated in 2009, and this predates that update. He said if you review the criteria in 2008, they are basically the same as required now. In 2008, his partition was approved. He pointed out that page A-15 has a picture of the roadway of a minor partition approved in 2011 after the code change. This roadway is essentially the same as the roadway he is applying for now and was approved without requirements for road improvements. On NW 55th, the roadway is 19 feet wide, gravel, and has no storm drainage. Holbrook's current road is 21 feet, gravel, with no storm drainage also. His roadway is actually better than this roadway here. In preparing for this appeal, Holbrook did an impromptu Agate Beach road survey, which is shown on page A-18. He noted that his private easement road is at the very bottom. The Highway 101 road entrance is 27 feet wide. He obtained the permit, and it was approved by ODOT and the City. He said as you review the existing roads in Agate Beach in general, you'll see his 101 access is better than a majority of the city's public streets in north Newport. He noted that the next page, A-19, you'll see a visual of the property. It shows the highway entrance that is 27 feet wide. It's well-maintained. He put in the red lines to indicate where the driveway to the property is, which is immediately adjacent to the highway access. In dividing this into two parcels, the first would be on the left with direct access to the highway. The northerly parcel would have the driveway access, which is immediately to the right of the electrical box shown there. It's pretty much adjacent to the highway access. If he doesn't divide the property, this driveway will still be the driveway for the development. Holbrook noted that the division of this property is not adding any more traffic to the private roadway easement shown here. Page A-20 shows the gravel private easement access from the south looking north. Page A-21 is a photo taken from near the northerly property line looking south up the private easement access. The highway access is to the left just past the hill. He showed red lines to give an idea of what it would look like installing 35 feet. Between the utility pole on top of the hill and the electrical box is approximately 39 feet. In order

to install a 50-foot right-of-way and a 36-foot roadway, he would have to remove the electrical box and possibly the telephone pole.

Going back to his letter, Holbrook said that when reading the code, the first step is to do a literal interpretation of how the code reads and follow it as closely as possible. He said unfortunately when you have well-defined rules, they will rarely be all-inclusive to all conditions in the field; and that's why codes typically include "exceptions" to allow conditions that fall outside of the narrow definition of a specific code regulation. He noted that Section 14.44.010 states that the purpose is to provide planning and design standards for the implementation of public and private transportation facilities and city utilities and to indicate when and where they are required. Section 14.44.040 reads that no development may occur unless required public facilities are in place or guaranteed in conformance with the provisions of this code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Holbrook said in his case there is negligible impact on public facilities. He's invested approximately $250 thousand installing sewer, water, electrical, phone, cable, gas, a new highway access, and roadways. All of which were recently approved by the City and ODOT. There are no city streets adjacent to this property to be impacted. Holbrook said the Public Works Director's condition of approval would necessitate moving existing utilities, building a 36-foot by 170-foot paved roadway with storm system. There is no city storm water system to be impacted in this area. He said that those improvements would run into the tens of thousands of dollars, and would very likely exceed the value of the parcel created; which would clearly not be proportional to the negligible impact. Holbrook said that the Development Director's contention that he should then be denied approval is not stated in this provision of the code; only that improvements shall be roughly proportional to the impact of the development on public facilities. Holbrook has also agreed to sign a non-remonstrance agreement to participate in any future road district, which he'd gladly do. Holbrook said in the Public Works Director's denial, he fails to recognize any of the code-allowed exceptions to the rule. He believes that this last exception that he quoted is a direct mandate to protect property owners from excessive conditions of approval such as this.

Holbrook said an even larger issue is the setting of precedent that will allow one individual, the Public Works Director, to set completely unreasonable conditions on property owners who simply want to divide a piece of property into two. He noted that as shown on his impromptu road survey, a clear majority of the roads in north Newport do not meet the city standards quoted by the Public Works Director. Many roads are gravel with no storm drainage. Holbrook believes that if these conditions of approval are enforced, it would effectively shut down a large portion of minor partitions applied for because the street improvements required could potentially cost more than the value of the land created. He stated that this will create a further shortage of buildable land, which we are already experiencing. He said that he believes it should be part of the Planning Commission's job to provide a check and balance to the city administration. He said if the Commission agrees with the conditions set forth by the Public Works Director, this will have a huge impact on the ability of citizens of Newport to develop their property, reducing the value of their property, while substantially reducing potential property tax income for the City. Clearly a lose-lose situation.

In closing, Holbrook said that he believes he has demonstrated multiple Municipal Code options for the Planning Commission to allow his partition without the road or drainage improvements; and hopes that it will be approved.

Hardy asked what Holbrook's overall goals are with this property. Holbrook said he's a life-long resident born and raised here. On those parcels, he is building single-family residences; a nice low-density buildout. He said the parcels are fairly large. He's keeping many of the trees, and has created public space. There's a trail. It will be a very nice development, and a low-density development. He attempted a partition earlier this year, which was going to be denied; so he withdrew it. This is a partition he feels should be approved. It meets the criteria. It's directly on the highway. He said that it doesn't impact the road further in the subdivision at all. He intends to do a very nice, well-developed subdivision. His daughter has a house in there; and there's a family in there. He intends to sell single-family residences in there. Hardy said, so you're essentially creating a subdivision. Holbrook said the issue tonight is a minor partition; he's not creating a subdivision tonight. This is a partition on one piece of property on the highway with minimal impact in there. Hardy asked him why not do a holistic development instead of piecemealing it. Holbrook said it's a combination of things. The property has huge gullies; and doing a proper city street wouldn't be feasible. For one, physically; the topography wouldn't allow it and have buildable sites. The other issue is money; it absolutely would be impossible to recover any money he used if he's required to build the streets they want. He said, looking at the broader picture, if the City requires a developer to spend so much money developing their property what will happen is developers won't develop in Newport; and there will be a huge shortage. Our children won't be able

to afford homes here soon. He thinks that's a big issue. Part of it is the cost of developing property; it's extremely high. For him to install this road would be more than the property is worth. He will have to get approval; if not this won't happen. He said that's the nature of things in Newport. He said he's heavily in debt to do this project. To lay out more money to do these types of improvements is not going to happen.

Patrick said that in the first part of Holbrook's letter, he's talking about a minor partition and what has to be done. Patrick said that the Commission specifically discussed somebody minor partitioning their way into a subdivision. That is how we came up with four lots. He said if you did a driveway in and have thirty acres; at what point does that become a street and not a driveway. Holbrook said everything he did was with City approval. Patrick said the code now says if you have more than four lots, it's now a street. Holbrook said that's if you're developing more than four. Patrick said that's not what it means; not what it says. If there are more than four on it; it's now a street, not a driveway anymore. The Commission had a discussion about how a developer could build out and call it a private driveway. It falls back on the adequacy of the road. Croteau thought that anybody who lives in Agate Beach knows that those streets are inadequate. Patrick said most have fifty feet, but are built out to nineteen feet and built badly. He said if you do a minor partition on an existing street, we look at the traffic and what's going to happen. Holbrook said the number of lots he has in there are extremely low usage. It's over four, but that minor partition approved in 2011 serves approximately fifty residences; and his is not larger than that one. He said the street has been adequate for fifty years or he thinks something would have been done with it. Patrick said it all comes down to money. The Commission's thinking is not to create new problems. Holbrook said he's fine with a non-remonstrance agreement and building the road out at a later date; but at this point he can't financially do it. Later on when he's sold the properties, you can get the people together and do a road district.

Holbrook said a whole other issue going on out there that the Commission should be aware of also has to do with NW 70th Street; and we're talking about a historical thing. He said right after the City turned down his previous partition, the City representatives met with him on NW 70th Street. He said it has a very interesting history. It was a private roadway. It was platted as NW 70th Street but was owned by private individuals. The property went into foreclosure, and the County owned it for a while and then deeded it to the City. Holbrook was interested in the plans the City had for it; and when he met with the City they told him the City is not going to touch it and he could have it back as a private easement to access all these properties. He said that NW 70th is currently going across his property. He was surprised the City would say he could have this city street back and at the same time tell him that he can't do any more partitions because his access isn't good enough. He said his access is directly on the highway, and the roadway is fine. He feels put out by the fact that they won't allow this minor partition right on the highway.

Croteau asked Tokos for his input. Tokos said NW 70th is not a city street; it's a strip of land that's privately owned. It goes back to before the City annexed it. Eventually the County obtained it; probably through foreclosure. The County later conveyed it to the City; but the City never accepted it. The City owns it free title, but the gravel road is a private road. A number of properties there have easement rights to that road that they can maintain to access their properties on that strip of land that happens to be owned by the City. The City won't accept the street until it's improved to standards we accept for maintenance purposes on an ongoing basis.

Berman asked if the State knows about the traffic impact because would the existing gravel driveway serve the traffic. He noted that he couldn't find that driveway. Holbrook said that the highway access is the driveway. He noted that the City put a "NW 70th Street" sign on his property even though there is no such thing. Berman asked if driving south, you could turn right onto Parcel 2. Holbrook said yes, he permitted and installed that highway access; the existing access. He said the driveway is considered NW 70th, but is his property. Berman was confused about the access. The Commission spent some time looking at the maps trying to place the location of the driveway.

Berman noted that several of Holbrook's comments in writing were personal in nature; and he felt they were inappropriate. He doesn't think those things belong in a civil discussion. He told Holbrook that he doesn't believe either Tokos or Gross bear a grudge against Holbrook. Croteau agreed with Berman.

Croteau noted that that land has drainage swales and wondered where they empty into the ocean. Holbrook said out by 68th Street. Croteau said, so on somebody else's property. Patrick said that he saw somewhere that in one of the previous partitions, there was some storm swale work that was supposed to be done that wasn't. Gross said he discussed that in the memo he provided. It was in the initial partition. He said there's really no storm drainage along the side of the road. There is no way for storm water runoff to get to the canyon that takes it down to 68th Street; it's

inadequate. Constructing new homes creates impervious surfaces, and the runoff is discharged to the street; and there's no storm drainage on the street. Those homes starting to develop will increase the runoff in the development; and the development is not constructed to handle the runoff. There's no way to get it to the storm drainage system. Branigan asked if all of that water doesn't come out by the pump station at the bottom of 68th Street. Gross believes it ties into Schooner Creek.

There were no other proponents present to testify.

Opponents or Interested Parties: There were no opponents or interested parties present to testify.

Patrick closed the hearing at 8:09 for Commission deliberation. Hardy said she's somewhat troubled by the apparent attempt to piecemeal a subdivision without a holistic plan that incorporates the current City requirements. So she's reluctant to get enthusiastic about it at this point. She said if an individual is buried in a piece of property and can't do the right thing by it, there are other options. They could try to liquidate the property and go try somewhere else. She doesn't think you want to necessarily hold the City hostage for the sake of trying to do it in a way that's essentially substandard today. Berman said he has a lot of sympathy for Holbrook's situation; but it seems to him that Holbrook's original thoughts on the total buildout should probably have gone into a full subdivision land division proceedings and gotten all the requirements at that point for the road, which were less at the time the first action began. He would still like to see that happen; and he can see the Commission being quite flexible on those design standards if we could see the whole picture (how many lots are there going to be, where are all of the sewer accesses; all those kinds of things). He thinks the Commission would have some flexibility to try to make it feasible from a cost point of view for Holbrook to continue this development. Berman agrees with Hardy that the divisions of one lot into two on an ongoing basis just isn't the way the City would like to see that buildout go. Croteau agreed with Hardy and Berman. He just doesn't see this as responsible development at this time. East agreed; you just can't partition your way into a subdivision. At this point it's private. It does have less than four lots at this point. He's wondering if the Commission sets a limit that Holbrook can't go any further at this point without putting in a full plan so we know what his future plans are; not let it go any further than that. Do we stop it at this point? Berman clarified that there are nine total parcels in there now. East said yes, nine total; but at this point Holbrook is in the process of building two houses or has built one. Holbrook explained one house is built that accesses on NW 70th, the private access easement. East asked, and one under construction? Holbrook confirmed that. Berman agreed with Hardy, Berman, and Croteau. There's a reason that we put in four properties so we don't piecemeal our way to a subdivision. Looking at this, we have nine parcels; and Holbrook is coming in for a minor partition for one of the parcels. Next year Holbrook will come in with yet another request for another partition; and suddenly we end up with a subdivision, but we got there piecemeal-wise. Branigan really thinks that if Holbrook is going to go forward with this, he just needs to bite the bullet and come back and make this a subdivision because that's what it's going to become. With all the gullies and ravines, he thinks that storm water will be a major issue back there. He said he would request that Holbrook come back with a full subdivision plan holistically where he wants to go with this instead of coming at us one at a time. Patrick agreed with the others. He pointed out that this is already up to nine units and could possibly be as high as twelve. He knows the Commission put the rules in place to keep people from doing exactly that. He drove down that road and has some fire access issues; although technically there is supposed to be another access back to the highway so it's a loop road, but he didn't see it. Patrick's thinking is if Holbrook comes back with something, the Commission will be willing to work with him and give him something. We've given skinny streets up in Wilder. This has to be built correctly. Most of these rules we're doing now is because we see the kind of problems we've created in the past. We put these rules in place because we've been looking at what we have, and we have to fix it. We don't want to create any more problems in the future. About half of our discussions as a Planning Commission is what we've done wrong. We're looking at the past and what we've done wrong, and we don't want to do it again.

MOTION was made by Commissioner Croteau, seconded by Commissioner Hardy, that the appeal be denied and that the Planning Director's decision stands. The motion carried unanimously in a voice vote.

Holbrook thanked the Commission and apologized for wasting their time. Patrick said it's not a waste. He told Holbrook he thinks that he has an opportunity to find another way to make this work. Holbrook apologized to Gross and Tokos for some of his comments. Tokos noted that he will bring findings and final order reflecting the Commission's decision back at the next meeting.

G. **New Business.** No new business to discuss.

H. Unfinished Business.

1. Recreational marijuana. Tokos noted that the City Council had a work session on recreational marijuana, and he believes that they are going basically in the same direction as the Planning Commission recommended. They will consider a package of changes as business license changes at their next meeting. At their last meeting, they passed a motion that if we get any of the Land Use Compatibility Statements (LUCS) we are just to date stamp them and note the time they came in and sit on them until the City rules are in place. The Council did agree to add some language that would give the existing medical marijuana dispensaries basically first dibs at getting the recreational licenses. It's crafted in basically that we're treating then as retailers as long as they have that limited retail sales provision under the Health Authority. Somebody else would have to be 1,000 feet from them. If they choose not to pursue retail sales, then they are just back to being a medical dispensary. The Council agreed the 1,000-foot separation would be appropriate. They weighed whether or not it might be advantageous to do a land use regulation simply so we could check the "no" box on the LUCS forms; but they decided no, we can simply indicate that if it's within 1,000 feet of one of those retail facilities, a business license isn't going to be issued. The endorsement process for those will look very similar to what's already in place for medical marijuana dispensaries. Berman asked if the Council had discussed fees. Tokos said no; other than it's likely going to be something comparable to what medical marijuana dispensaries are paying, which he believes is a modest endorsement fee intended to cover the background checks.

2. Street vacation. Tokos noted that the street vacation for the hospital was approved by the Council, and the ordinance has been recorded so that's all finalized.

3. Berman said in the hearing matter there was a reference to erosion. He wondered what happened to that whole undertaking. Tokos said it's still on the shelf until the Storm Water Master Plan is done. That's done in the technical sense but not in a policy sense. Tokos said now that he has a fulltime building official, he actually has resources. The other thing about erosion control is if you put in rules, there's an expectation that they are enforced; and we have to have the resources to do it. Tokos noted that we're in the process of actually getting the mechanical program. We applied to have it transferred from the County to the City. That's in a public comment period. We met with the County and offered a way through an intergovernmental agreement that it wouldn't hurt them too much cost-wise; although it's not a lot of revenue. We are seeking this so we can offer all permits in-house so somebody can get a combination without having to deal with both the City and the County. We'll see how that goes. It's moving along.

4. Croteau asked if we have applicants for our advisory committee. Tokos said we have only one, and there are two vacancies; so he asked the Commissioners to please beat the bushes.

I. Director Comments. No additional director comments.

J. Adjournment. Having no further business, the meeting adjourned at 8:22 p.m.

Respectfully submitted,

_____

Wanda Haney
Executive Assistant

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

IN THE MATTER OF PLANNING FILE NO. 3-PAR-15-A, APPLICATION FOR PARTITION TO DIVIDE REAL PROPERTY INTO TWO PARCELS, AS SUBMITTED BY JONATHAN B. HOLBROOK, PROPERTY OWNER	)))))	**FINAL ORDER**

ORDER DENYING A REQUEST per Chapter 13.05 of the Newport Municipal Code (NMC) for approval to partition property identified as Tax Lot 607 of Lincoln County Assessor's Tax Map 10-11-20-BC (Parcel 1 Partition Plat 2010-04) into two parcels. The resulting Parcel 1 would have been approximately 10,913 square feet in size, and Parcel 2, 9,200 square feet in size. The subject property is located in an R-1/"Low Density Single-Family Residential" zoning district.

WHEREAS:

1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code (NMC); and

2.) The Planning Commission has duly reviewed the request and has given proper and timely notice to affected property owners; and

3.) At the public hearing on said application, the Planning Commission received testimony and evidence; and

4.) At the conclusion of said public hearing, after consideration and discussion, the Planning Commission denied the request for a partition.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact, Exhibit "A," support the denial of the request to partition the above referenced property into two parcels.

BASED UPON THE ABOVE, the Planning Commission determines that the request for the tentative plan for a partition does not comply with applicable provisions of the City of Newport Municipal Code, and cannot be made to comply through the imposition of reasonable conditions.

Dated this 23rd day of November, 2015.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 3-PAR-15-A

FINDINGS OF FACT

1. The request submitted by the applicant and property owner, Jonathan B. Holbrook, is for consideration of a partition application per Chapter 13.05 of the Newport Municipal Code (NMC) to divide property identified as Tax Lot 607 of Lincoln County Assessor's Tax Map 10-11-20-BC (Parcel 1 Partition Plat 2010-04) into two separate parcels.

2. The application materials for the proposed partition were received by mail on July 23, 2015. A copy of the application materials are in File No. 2-PAR-15 and are incorporated by reference into these findings.

3. The subject property is identified as Tax lot 607 of the Lincoln County Assessor's Tax Map 10-11-20-BC (Parcel 1 Partition Plat 2010-04) and is located immediately north of the intersection of NW 70th Street and Highway 101. The Comprehensive Plan designation for the property is Low Density Residential, and the zoning designation is R-1/"Low Density Single-Family Residential."

4. The applicant's tentative partition map indicates that the subject property is approximately 20,113 square feet (0.46 acre) in size. Proposed Parcel 1 would contain roughly 10,913 square feet (0.25 acre) of land; and proposed Parcel 2 would contain roughly 9,200 square feet (021 acre) of land. Both parcels are vacant.

5. Notices of the proposed action were sent on July 24, 2015, to affected property owners within 100 feet of the subject property, affected public agencies and utilities within Lincoln County, and affected City departments. The notice contained the criteria by which the request for the tentative plan for the proposed partition is to be assessed. Affected parties were given until August 7, 2015, in which to make comment on the application.

6. By the close of the comment period, no comments were received by the Community Development Department.

7. NMC Section 13.05.095(A) outlines the criteria for the review of a tentative plan for a partition. Those criteria are:

(a) The tentative plan complies with the definition of a partition.

(b) All lots or parcels within the tentative plan meet the requirements of NMC Section 13.05.030. Alternatively, if the original lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming.

(c) Approval of the tentative plan does not interfere with the provision of key public facilities.

(d) The applicant has agreed to sign consent to participate in sewer, water, or street local improvement districts that the subject lots or parcels would be part of once those districts are formed. The consent shall be a separate document recorded upon the lots or parcels subject to the partition. The document shall be recorded prior to final plat approval.

(e) Public facilities serving the partition are adequate under Section 13.05.045. Proposed streets within the partition comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.

(f) All required public improvements will be provided.

(g) Any required submitted geological hazard report concludes that the property can be developed in the manner proposed, in accordance with any recommendations contained in the report.

8. On September 24, 2015, the Community Development Director issued a Final Order and Findings of Fact denying the partition application. The decision was subject to a 15 day appeal period, as provided by NMC 14.52.100. The deadline for filing an appeal was October 9, 2015.

9. A timely appeal of the Director's decision was filed on October 9, 2015 by the applicant and property owner, Jonathan B. Holbrook. Included with the appeal was a letter, dated October 8, 2015, with attachments, that responded to and refuted the findings for denial listed in the Director's decision. Appellant's grounds for appeal are summarized as follows:

A. Parcels resulting from the proposed partition possess at least 25-feet of street frontage along a street other than an alley as required by NMC 13.05.030(B); and

B. Evidence included with the appeal establishes that public facilities serving the partition are adequate under Section 13.05.045; and

C. Director's decision misinterprets the second sentence of NMC 13.05.095(A)(5) to reach the conclusion that the private street serving the partition parcels is a "proposed street" within the partition that must be improved to the standards listed in Section 13.05.015; and

D. Even if NMC 13.05.095(A) requires that the private street comply with the standards listed in Section 13.05.015, Chapter 14.44 of the Newport Municipal Code allows exceptions to those street improvement requirements that the proposed partition satisfies.

10. The appellant requested, and the Newport Municipal Code requires, that an appeal of a land use decision that was made without a public hearing be conducted as a *denovo* proceeding (NMC 14.52.100(B)(1)). The City of Newport

Planning Commission is the approval authority for an appeal of the Community Development Director's decision (NMC 14.52.030(B)(13)).

11. A hearing date for the appeal was scheduled for November 9, 2015. Direct mail notice of the hearing was provided to the appellant and adjoining property owners within 200 feet of the subject site (NMC 14.52.100(C)). Notice of the hearing was also published in the Newport News-Times on October 30, 2015.

12. A copy of the record was provided to the Newport Planning Commission and was available at the public hearing. At the hearing, the Commission read a prepared statement advising those in attendance of statutory requirements for the conduct of quasi-judicial hearings as outlined on ORS 197.763. The Commission received the Community Development Director's staff report and took testimony from City Engineer Tim Gross and the appellant. No other parties were present at the hearing. The minutes of the November 9, 2015 hearing are hereby incorporated by reference. The Community Development Director's staff report with exhibits and a written response from appellant dated November 8, 2015 that was submitted at the hearing, are likewise incorporated by reference into the findings.

13. At the end of the hearing, the Commission closed the record, deliberated, and unanimously approved a motion to affirm the Community Development Director's decision to deny the partition with the expectation that staff would present findings of fact and a final order to that effect for consideration by the Commission at its November 23, 2015 meeting.

CONCLUSIONS

1. With regard to the criteria established in Newport's Municipal Code (NMC) Section 13.05.095(A) for approving a tentative plan for a partition, the following conclusions can be drawn:

A. Criterion # 1. *The tentative plan complies with the definition of a partition.*

Pursuant to Section 13.05.005(D) ("Definitions") of the Newport Municipal Code (NMC), a partition is the division of land into not more than three parcels in a calendar year.

The property identified as Tax Lot 607 was created by a partition plat approved by the City of Newport and recorded in 2010 as Parcel 1 Partition Plat No. 2010-04.

The applicant notes that the tentative plan complies with the definition of a partition; one property being divided into two.

The tentative plan complies with the definition of a partition.

B. Criterion # 2. *All lots or parcels within the tentative plan meet the requirements of NMC Section 13.05.030. Alternatively, if the original*

lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming.

NMC 13.05.030 sets out dimension and access requirements for new parcels, and has been addressed by the applicant as follows:

i. NMC 13.05.030(A) requires that the minimum area and width of parcels comply with the applicable lot size provisions of the Zoning Ordinance. The minimum lot size requirement for the R-1 zone is 7,500 square feet; and the proposed partition will result in two parcels. Parcel 1 is 10,913 square feet in size, and Parcel 2 is 9,200 square feet. Both parcels meet the minimum lot size standards in the district.

ii. NMC 13.05.030(B) requires that each parcel possess at least 25 feet of street frontage along a street other than an alley. The term "street" is defined by NMC 13.05.005, as follows:

> "**Street**. A public or private way other than a driveway that is created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land. For the purposes of this section, a "driveway" is a private way that begins at a public right-of-way that is proposed to serve not more than four individual lots/parcels cumulative as the primary vehicular access to those individual lots/parcels."

The applicant's tentative plan illustrates that both proposed parcels possess at least 25 feet of frontage along a private easement road (i.e. a private way) that extends north from US 101 along the east boundary of the properties, parallel to the highway. This private way currently serves as the primary vehicular access to eight parcels, including the subject property, and is therefore by definition a street (as opposed to a driveway).

The appellant points out that the tentative partition map shows that each of the proposed parcels possesses at least 25-feet of frontage along US 101. This serves to show that the proposed partition satisfies this approval criterion two different ways.

iii. NMC 13.05.030(C) prohibits the creation of through lots (i.e. lots with parallel street frontage along the front and rear property lines). The tentative partition map shows that no through lots are being created.

iv. NMC 13.05.030(D) requires the side lot lines of parcels run at right angles to the street upon which they face or as close to a right angle as is practical. The tentative partition map shows that this criterion has been met for both parcels.

v. NMC 13.05.030(E) requires that any special setbacks lines proposed by the applicant or recommended in a geologic report be depicted on the tentative partition map. No special setback lines exist other than easement access lines as shown on the tentative map.

vi. NMC 13.05.030(F) specifies a maximum parcel size of 175% of the required minimum lot size for the zone district, unless topography or other conditions restrict further development potential or the layout of the land division provides for the extension of streets that will permit subsequent division and development of the property at densities appropriate to the zoning designation. The tentative partition map shows that the proposed lots do not contain more than 13,125 square feet of land area, which is 175% of the required minimum lot size. This standard is satisfied.

vii. NMC 13.05.030(G) states that 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 natural resources, unless the lot or parcel is specifically designated as open space. City inventories do not identify any wetlands on the property nor are there any city protected natural resources on either of the proposed parcels.

viii. NMC 13.05.030(H) requires that an applicant who is creating undeveloped parcels within a geologic hazards area have an engineering geologist establish a minimum 1,000 square foot building footprint on each proposed parcel as a "buildable" area. The standard further prohibits new public infrastructure needed to serve the new parcel or parcels from being placed within active or high hazard zones or active landslide areas. Neither of the proposed parcels is within a city defined geologic hazards area.

C. Criterion # 3. *Approval of the tentative plan does not interfere with the provision of key public facilities.*

i. Key public facilities in the vicinity of the proposed partition include water and sewer main lines. Such lines appear to be within existing easements of record and the proposed tentative partition plan shows that existing easements will not be altered.

ii. Considering the above, this partition does not appear to interfere with the provision of key public facilities.

D. Criterion # 4. *The applicant has agreed to sign consent to participate in sewer, water, or street local improvement districts that the subject lots or parcels would be part of once those districts are formed. The consent shall be a separate document recorded upon the lots or parcels subject to the partition. The document shall be recorded prior to final plat approval.*

A non-remonstrance agreement of this nature is needed when properties adjoin underdeveloped streets and the cost of improving the street and related services is disproportionate to the level of impact attributed to the proposed land division. The appellant has agreed to sign consent to any local improvement districts.

E. Criterion # 5. *Public facilities serving the partition are adequate under NMC Section 13.05.045. Proposed streets within the partition comply with the standards under Section 13.05.015, including any allowed modification, or a variance has been obtained.*

i. The first sentence of the criterion states "Public facilities serving the partition are adequate under Section 13.05.045." This standard provides that a land division may only be approved if the public facility and utility providers confirm in writing that they can adequately provide service to the proposed land division (NMC 13.05.045(A)). Utility providers that must sign-off are those that provide electricity and phone service. Appellant included letters with his appeal from Central Lincoln and Century Link that indicate they can serve the development. The Planning Commission concludes that these letters satisfy the requirement relative to electricity and phone service.

ii. For public facilities (water, sewer, streets, and storm drainage), the Commission received testimony from Tim Gross, City Engineer, in the form of a letter dated November 3, 2015. The letter indicates that the existing private street would need to be improved with curb, gutter, drainage structures, an aggregate base, and paving to a width of 36-feet in order for it to be adequate to serve additional parcels. Mr. Gross further notes that a road-side ditch storm drainage conveyance system was never installed as originally envisioned to serve the existing parcels (Partition 5-PAR-05, "Holbrook Estates"). Lastly, Mr. Gross points out that water and sewer service is adequate to support additional parcels; however, work may be needed to ensure each proposed parcel has separate sewer services that extend to the City sewer main and that those services are contained within private sewer easements for maintenance purposes. The Commission concludes that Mr. Gross's testimony is compelling considering his position with the City and professional training and that the private street and storm drainage systems serving the proposed parcels are inadequate as presently constructed.

iii. With respect to the second sentence of NMC 13.05.095(A)(5), the Director's decision finds that the existing private street is a "proposed street" because the parcels that it will serve don't exist yet. It is the proposed street access for those parcels and is located within the partition. Appellant's argument is that a street is "proposed" only if it is being modified or extended. After carefully

considering the testimony, the Commission concludes that the Director's interpretation is correct, and that the private street must be improved to a standard that meets the provisions of NMC 13.05.015. Such standards include the provision of a 50-foot right-of-way and 36-foot wide roadway. The City Engineer's concern that the existing private street and storm drainage system is inadequate and needs to be improved to a 36-foot wide paved section, with associated drainage improvements, dovetails with this requirement. The Commission notes that an applicant can seek a variance to the standards listed in NMC 13.05.015; however, no such application was made by the appellant and a hearing regarding a variance would need to be properly noticed. It is also unlikely that a variance could be justified, as there does not appear to be a hardship or practical difficulty in constructing a larger street. Testimony from the appellant indicates that it is primarily a cost issue.

iv. The Planning Commission recognizes that the Newport Municipal Code allows the approval authority to modify street standards (NMC 13.05.015(A)). In doing so, it must consider the location, width and grade of streets in relation to existing and planned streets, topographical or other geographical/environmental conditions, public convenience and safety, and the proposed use of land to be served by the streets. The Commission concludes that it cannot reasonably accomplish this with the information provided for a two parcel partition. The appellant would need to provide a buildout plan for how he intends to further divide the existing nine parcels (i.e. the neighborhood") so that the Commission can determine if topographical or other conditions warrant relief from the street standards listed above. This has often been accomplished through the review and approval of a subdivision and/or Planned Development. The Commission encourages the appellant to consider this option and notes that applicants have successfully used subdivision and Planned Development processes to develop reduced street sections and alternative storm drainage designs, including the recently approved 24 foot wide, paved street section in the Wilder Planned Development (File No. 1-SUB-15, 2-PD-15, & 3-PD-15).

v. Accepting appellant's view that, for the purposes of NMC 13.05.095(A)(5), a "proposed street" only exists if it is being modified or extended would create an avenue for persons to circumvent the City's land division rules resulting in parcels being created without adequate services. For example, someone could potentially blade in a roadway of any size, length or grade, no matter how inadequate it may be, and then later come in to partition the property two or three parcels at a time and claim that the road is an existing private street exempt from city standards that would otherwise require it be upgraded to adequately serve the new parcels. Such an interpretation also undermines a distinction that

the City built into its definition of "street" which notes that a public or private way becomes a street within the meaning of the land division code if it serves more than four individual lots or parcels (NMC 13.05.005(J)). Otherwise, it is a driveway that is not regulated by the land division code. This distinction was made intentionally to establish a maximum number of lots or parcels that can be served off of an unregulated roadway. Once enough lots are created through a partition or subdivision process it becomes a private street subject to improvement standards in NMC 13.05.015. With appellant's interpretation, the City would never get to the construction standards for a private street that is already in place unless an applicant happened to propose a change to the street.

vi. Considering the above, this standard has not been satisfied.

F. Criterion # 6. *All required public improvements will be provided.*

i. The street is private, so public improvements are limited to water, sewer, and storm drainage systems. Water mains are in place to serve the proposed parcels. Sewer service exists to the west and would have to be extended to the proposed parcels. Appellant owns the property between the city sewer main and proposed parcels and provided evidence showing that sewer services could be extended to the new parcels within private maintenance easements. As pointed out by City Engineer, Tim Gross, the appellant has not demonstrated that the storm drainage system is adequate and whether or not public improvements are required to establish an adequate storm drainage system. For this reason, the Commission concludes that this standard has not been satisfied.

G. Criterion # 7. *Any required submitted geological hazard report concludes that the property can be developed in the manner proposed, in accordance with any recommendations contained in the report.*

i. According to the City's geological hazards maps, the subject property is not in any identified geologic hazards zone.

H. Appellant cites Chapter 14.44, Transportation Standards, as allowing exceptions to street standards listed in NMC 13.05.015. The Commission notes that Chapter 14.44 was adopted by the City in 2012 as part of a Transportation System Plan update to put in place standards for responding to development of existing infill lots, not land divisions. Chapter 14.44 specifically notes that streets within or adjacent to a development subject to Chapter 13.05, Subdivision and Partition, are to be improved in accordance with the Transportation System Plan and the street standards of Section 13.05.015 (ref: NMC 14.44.050(A)(2)). For this reason, the Commission concludes that Chapter 14.44 is not relevant to this partition application.

l. The Commission recognizes that it must approve an application for a land division if it meets the approval criteria, or can meet the criteria through the imposition of reasonable conditions. In determining whether or not a condition is reasonable, the Commission considers whether or not it appears to be roughly proportional to the impact of the land use application, which in this case is a land division to create two parcels.

Appellant provided testimony that he lacks the financial resources to construct a street and drainage system as called for in the City Engineer's November 3, 2015 letter and required pursuant to NMC 13.05.015 (i.e. a 36-foot paved street section with curb and gutter, drainage structures, and aggregate base). The existing private street is approximately 140-feet in length from US 101 to the point where it meets the north line of proposed Parcel 1. It is unclear though, from the information in the record, whether or not storm drainage improvements along this segment of the street would be adequate or if off-site improvements would be needed in order for the drainage system to be sufficient to support additional parcels. This highlights the need for the appellant to approach future land divisions with buildout in mind as opposed to tackling it piecemeal. Imposing a condition requiring the appellant to improve the private street and storm drainage system as called for in NMC 13.05.015 and required pursuant to NMC 13.05.095(A) would be costly and is not proportional to the impact of two parcels. Therefore, the Commission concludes that it cannot approve appellant's application through the imposition of reasonable conditions and must; therefore, deny the appeal and partition because the street access and storm drainage system are not adequate to serve additional parcels.

OVERALL CONCLUSION

The request does not comply with the criteria established for the approval of a tentative plan for a partition and is hereby **DENIED**.

PLANNING STAFF REPORT
Case File No. 2-AX-15 / 4-Z-15

A. **APPLICANT:** Gail Malcolm, Project Manager (Debra Smith, General Manager, authorized representative) (Central Lincoln People's Utility District, property owners).

B. **REQUEST:** Consideration of requests to: (1) annex approximately 0.23 acre of real property (consisting of property currently identified as Tax Lot 400 of Assessor's Tax Map 10-11-20-BB into the Newport city limits; (2) amend the City of Newport Zoning Map to establish an I-1/"Light Industrial" zoning designation for the subject property consistent with the existing Newport Comprehensive Plan designation of Industrial; and (3) withdraw said territory from the Newport Rural Fire Protection District and the Lincoln County Library District.

C. **LOCATION:** 7576 N Coast Highway (Lincoln County Assessor's Map 10-11-20-BB, Tax Lot 400).

D. **PROPERTY SIZE:** Approximately 0.23 acres.

E. **STAFF REPORT:**

1. **REPORT OF FACTS:**

a. **Plan Designation:** The subject territory is within the Newport Urban Growth Boundary, and is designated as "Industrial" on the Newport Comprehensive Plan Map.

b. **Zone Designation:** City of Newport zoning is established at time of annexation. Either the I-1/"Light-Industrial," I-2/"Medium-Industrial" or I-3/"Heavy Industrial" designations are consistent with Comprehensive Plan designation of Industrial. The applicant is requesting the I-1 zone designation.

c. **Surrounding Land Uses:** Vacant I-1/"Light Industrial" zoned property borders the site to the north, south and east. Single family residences exist across US 101 to the west in an R-1/ "Low Density Residential" zoned area.

d. **Topography and Vegetation:** The property is gradually sloped and is partially vegetated with native shrubs and trees.

e. **Existing Buildings:** A 1,350 square foot, single family residence constructed in 1948.

f. **Utilities:** The existing dwelling receives water service from the City of Newport. Sewer is likely handled via an on-site septic system.

g. **Development Constraints:** None known.

h. **Past Land Use Actions:** None.

i. **Notification:** Required notice to the Department of Land Conservation and Development was provided on November 4, 2015.

For the Planning Commission public hearing, notification in accordance with the NMC Section 14.52.060(C) requirements included mailing notice to surrounding property owners, City departments and other public agencies and utilities, and other individuals on October 28, 2015. The notice of public hearing in the Newport News-Times was published on November 13, 2015.

j. **Attachments:**

Attachment "A" – Applicant Request
Attachment "B" – Notice of Public Hearing and Map
Attachment "C"– Aerial Photo of Area to be Annexed
Attachment "D" – Newport Zoning Map
Attachment "D-1" – Uses allowed in the I-1, I-2 and I-3 zones
Attachment "D-2" – Intent of Zoning Districts
Attachment "E"– Legal Description of the Area to be Annexed
Attachment "F"– Northgate Industrial Park Subdivision Plat (reduced)
Attachment "G"– Copy of ORS 222.170 through 222.183
Attachment "G-1"– Copy of ORS 222.460 through 222.465

2. **Explanation of the Request:** Pursuant to NMC Section 14.52.030(A) (Approving Authorities), all actions that have the City Council as the approving authority (with the exception of withdrawals) shall first be referred to the Planning Commission for review and recommendation.

The applicant is asking that the subject property be brought into the city limits of Newport and rezoned for light industrial use so that it can be redeveloped in the future in conjunction with adjoining lots that they have purchased in the Northgate Industrial Park subdivision. There is a 50-foot conservation easement and 20-foot sewer and storm drainage easement that follow the west line of the Northgate Industrial Park. The easements wrap around the subject parcel. By acquiring the site and annexing it into the city, the applicant has an opportunity to straighten out the easements, freeing up land for future development. The applicant intends to demolish the existing residence, and the driveway onto US 101 will be abandoned.

As part of the annexation and as provided for in Oregon Revised Statutes (ORS) 222.524, the subject property would be withdrawn from the Newport Rural Fire Protection District and the Lincoln County Library District as the City of Newport provides these services.

3. **Evaluation of the Request:**

a.) **Comments:** Notices of the proposed annexation and Zoning Map amendments were mailed on October 28, 2015, to affected property owners and various City departments, public/private utilities and agencies within Lincoln County, and other individuals. As of November 16, 2015 no comments have been received.

b.) **Applicable Criteria:**

(1) Annexation/Withdrawal:

Newport Municipal Code (NMC) Section 14.37.040: The required consents have been filed with the City; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits.

Note: There are no specific criteria for withdrawals from a district. Withdrawals are done in conjunction with the annexation when the City becomes the service provider for the property.

(2) Zone Map Amendment:

Zone Map Amendments (as per NMC Section 14.36.010): Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.

c.) **Staff Analysis:**

(1) Annexation: Newport Municipal Code (NMC) Section 14.37.040: The required consents have been filed with the city; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits.

A. The required consents have been filed:

Pursuant to Oregon Revised Statutes (ORS) 222.170(2), the City need not hold an election on the annexation of contiguous territory if it receives the consent of more than 50 percent of the owners of land in the territory, and such owners own more than 50 percent of the land area within the territory.

The subject property was acquired by the Central Lincoln People's Utility District on September 25, 2015, as evidenced with a warranty deed recorded with the Lincoln County Clerk's Office under Instrument No. 2015-09854. Debra Smith, the District's General Manager, signed the application form requesting that the property be annexed. By signing the application form, Ms. Smith has provided the requisite consent that the territory be annexed. See Planning Staff Report Attachment "A" (Applicant Request).

B. territory to be annexed is within the acknowledged urban growth boundary (UGB);

City records show that the property is within the Urban Growth Boundary of the City of Newport.

C. territory to be annexed is contiguous to the existing city limits.

The north, east and south sides of the property are contiguous to the city limits. See Planning Staff Report Attachment "C" (Aerial Photo of Area to be Annexed).

(2) Zone Map Amendment: Zone Map Amendments (as per NMC Section 14.36.010): Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.

The Comprehensive Plan designation of Industrial is implemented by the I-1/"Light Industrial," I-2/"Medium Industrial," or I-3/"Heavy Industrial" zoning designations. The applicant intends to develop the subject property and adjoining lots into a maintenance yard that will replace an existing maintenance yard in South Beach. They have requested that an I-1/"Light Industrial" zone designation be placed on the property. Lots to the north, east, and south that are inside the city and owned by the applicant are currently under an I-1 designation. A maintenance yard for an electrical utility is permitted in the I-1/"Light Industrial" zone district as an Industrial Service Use (NMC 14.03.070(7)) or as a Community Service Use (NMC 14.03.070(14)) (See Planning Staff Report Attachment "D-1"). The intent of the I-1, I-2, and I-3 zoning districts is included as Planning Staff Report Attachment "D-2."

The Industrial Comprehensive Plan Map designation for this property provides additional land for a range of potential industrial uses consistent with the Comprehensive Plan and the City's 20-year buildable land inventory. It is logical to apply an I-1 zoning designation to the property given that it borders land under the same designation on three sides. The Planning Commission may conclude that the application of a zone designation in conformance with the Comprehensive Plan would further a public necessity and promote the general welfare.

4. **Conclusion:** If the Commission finds that the request meets the criteria, then the Commission should recommend approval of the request with any conditions for annexation as the Commission deems necessary for compliance with the criteria. Additionally, the Commission should

recommend to the City Council whether or not the zoning designation should be I-1, I-2, or I-3. If, on the other hand, the Commission finds that the request does not comply with the criteria, then the Commission should identify the portion(s) of the criteria with which the annexation request is not in compliance.

F. **STAFF RECOMMENDATION:** Based on the information received as of November 16, 2015, the applicant appears to be able to meet the applicable criteria for the annexation request and zoning map amendment.

Derrick Tokos
Community Development Director/City of Newport

November 17, 2015

Attachment "A"
File No. 2-AX-15 / 4-Z-15

City of Newport
Land Use Application

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

Applicant Name(s): Gail Malcolm, Project Manager	Property Owner Name(s): Central Lincoln People's Utility District
Applicant Mailing Address: P.O. Box 1126, Newport, OR 97365	Property Owner Mailing Address:
Applicant Telephone No: (541)574-2054 E-mail: gmalcolm@cencoast.com	Property Owner Telephone No: (541)265-3211 E-mail:
Authorized Representative(s): Debra Smith, General Manager	
Authorized Representative Mailing Address: P.O. Box 1126; Newport, OR 97365	
Authorized Representative Telephone No: (541)574-2005	E-Mail: dsmith@cencoast.com

Project Information

Property Location: 7576 North Coast Highway; Newport, OR 97365	
Tax Assessor's Map No.: 10-11-20-BB	Tax Lot(s): 00400-00
Zone Designation: RR-2	Legal Description: That part of Lot 3 in Section 20, Township 10 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon (see attached Exhibit A)
Comp Plan Designation: Industrial	
Brief Description of Land Use Request(s): Annex property described in Legal Description into the City of Newport.	
Existing Structures: Single family residence - 1350 square feet, built in 1948.	
Topography and Vegetation: The lot is generally level with natural shrubs and low lying tree vegetation	

APPLICATION TYPE (please check all that apply)

- [x] Annexation
- [ ] Appeal
- [ ] Comp Plan/Map Amendment
- [ ] Conditional Use Permit
  - [ ] PC
  - [ ] Staff
- [ ] Design Review
- [ ] Geologic Permit
- [ ] Interpretation
- [ ] Minor Replat
- [ ] Partition
- [ ] Planned Development
- [ ] Property Line Adjustment
- [ ] Shoreland Impact
- [ ] Subdivision
- [ ] Temporary Use Permit
- [ ] UGB Amendment
- [ ] Vacation
- [ ] Variance/Adjustment
  - [ ] PC
  - [ ] Staff
- [ ] Zone Ord/Map Amendment
- [ ] Other_____

FOR OFFICE USE ONLY

File No. Assigned: 2-AX-15 / 4-Z-15

Date Received: 10/23/14 | Fee Amount: [illegible] | Date Accepted as Complete: _____

Received By: [illegible] | Receipt No.: [illegible] | Accepted By: _____

(SEE REVERSE SIDE)

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

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

Applicant Signature(s)	10-23-15 Date Signed
Property Owner Signature(s)	Date Signed
Debra J Smith Authorized Representative Signature(s)	10/23/15 Date Signed

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

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

Screen Print from AbleTerm session(OAA) 10:49 AM 10/22/2015

```
*                    - -  Property Data Selection Menu  - -
                                                 Owner: HAZARD PATRICK BRIAN &
Prop ID     : R285902     (Real Estate)       (169784) HAZARD EUDOKLYA
Map Tax Lot: 10-11-20-BB-00400-00                      PO BOX 1418
Legal       : TWNSHP 10, RNG 11, ACRES 0.23,           NEWPORT, OR 97365
              MF381-0822
-------------------------------------------------------------------------------
Situs       : 7576 N COAST HWY                           Year Built : 1948
                                                         Living Area: 1350
Name(s)     :
     Area : 133
Sale Info :                                                2015 Roll Values
Deed Type : BSD                                       RMV Land  $        65,150 (+)
Instrument: MF381-0822                          RMV Improvements  $        58,460 (+)
     2015 Tax Status * Unpaid Taxes *                   RMV Total  $       123,610 (=)
Current Levied Taxes :          1,073.55       Total Exemptions  $             0
Special Assessments  :             66.25                M5 Net Value  $       123,610
                                                       M50 Assd Value  $       91,590
-------------------------------------------------------------------------------
  (1) Alt Disp (AD)        | (2) Primary (Y)          | (3) Secondary (SE)
  (4) Land/Impr (I)        | (5) Gen Appr (G)         | (.) More
-------------------------------------------------------------------------------
Enter Option from Above or <RET> to Exit: __
```

WTE DPT 107073 [illegible]

After recording return to:
Order Number: 107073

Western [illegible]
255 SW Coast Hwy., Suite 100
Newport, OR 97365

Grantee Name(s)

Central Lincoln People's Utility District
attn: Gail Malcolm
P. O. Box 1126
Newport, OR 97365

Until a change is requested, all tax statements shall be sent to the following address:

Same as Above

Lincoln County, Oregon
09/30/2015 01:15:48 PM 2015-09854
DOC-WD Cnt=1 Pgs=3 Stn=70
$15.00 $11.00 $20.00 $10.00 $7.00 - Total =$63.00

00110839201500098540030034

I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk

Reserved for Recorder's Use

STATUTORY WARRANTY DEED

Patrick Brian Hazard and Eudoklya Hazard, as tenants in common, Grantor(s) convey and warrant to
Central Lincoln People's Utility District, a political subdivision of the State of Oregon, Grantee(s), the following described real property free of encumbrances except as specifically set forth herein.

That part of Lot 3 in Section 20, Township 10 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, lying South of the South line of the Siletz Indian Reservation, described as follows:

Beginning at a point at the intersection of the South line of Government Lot 3 (being South of the South line of the Siletz Indian Reservation) in Section 20, Township 10 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, and the East right of way line of the relocated Oregon Coast Highway No. 101; thence North 7° 57' East 22.9 feet along said highway East line to the true point of beginning; thence North 7° 57' East 100 feet along said right of way; thence South 81° 48' East 100 feet; thence South 7° 57' West 100 feet; and thence North 81° 48' West 100 feet to the true point of beginning.

Account: **R285902**
Map & Tax Lot: **10-11-20-BB-00400-00**

This property is free of encumbrances, EXCEPT: All those items of record, if any, as of the date of this deed, including any real property taxes due, but not yet payable.

The true consideration for this conveyance is **$100,000.00**. (Here comply with requirements of ORS 93.030.)

By signature below, the Grantee hereby accepts the conveyance contained herein.

Debra J. Smith, General Manager

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Executed this 25 day of September, 2015

Patrick Brian Hazard

Eudoklya Hazard

State of **Oregon**, County of **Lincoln**) ss

This instrument was acknowledged before me on this 25th day of September, 2015 by **Patrick Brian Hazard** and **Eudoklya Hazard**

Notary Public for the State of Oregon
My commission expires:

OFFICIAL STAMP
LUCILLE M. DIAZ
NOTARY PUBLIC-OREGON
COMMISSION NO. 474840A
MY COMMISSION EXPIRES JANUARY 21, 2017

Attachment "B"
File No. 2-AX-15 / 4-Z-15

CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING [1]

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, November 23, 2015, to review the following request for annexation, zone designation, and withdrawal and to make a recommendation to the City Council on this request. A public hearing before the City Council will be held at a later date and notice will be provided for the Council hearing.

File No. 2-AX-15 / 4-Z-15

Applicants: Gail Malcolm, Project Manager (Debra Smith, General Manager and authorized representative) (Central Lincoln People's Utility District, property owner).

Request: Consideration of requests to: **(1) annex approximately 0.23 acre of real property** (consisting of property currently identified as Tax Lot 00400 of Assessor's Tax Map 10-11-20-BB into the Newport city limits; **(2) amend the City of Newport Zoning Map to establish an I-1/"Light Industrial" zoning designation for the subject property** consistent with the existing Newport Comprehensive Plan designation of Industrial; and **(3) withdraw said territory from the Newport Rural Fire Protection District and the Lincoln County Library District**.

Applicable Criteria: (1) Annexations (as per Newport Municipal Code (NMC) Section 14.37.040): The required consents have been filed with the city; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits. (2) Zone Map Amendments (as per NMC Section 14.36.010): Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.

Location: 7576 N Coast Highway (Lincoln County Assessor's Map 10-11-20-BB Tax Lot 00400).

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Newport Comprehensive Plan and its implementing ordinances that a person believes applies 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 and written testimony will be taken during the course of the public hearing. Letters to the Community Development (Planning) Department (address below in "Reports/Application Material") must be received by 5:00 p.m. the day of the hearing or must be submitted to the Planning Commission in person during the hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant, those in favor or opposed to the application, and questions and deliberation by the Planning Commission. 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/Application Materials: The staff report may be reviewed or purchased for reasonable cost at the Newport Community Development (Planning) Department, City Hall, 169 SW Coast Hwy., Newport, Oregon 97365, seven days prior to the hearing. The application materials, applicable criteria, and other file material are 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 (mailing address above in "Reports/Application Materials").

Time/Place of Planning Commission Hearing: Monday, November 23, 2015; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Application Materials").

MAILED: October 28, 2015
PUBLISHED: Friday November 13, 2015/News-Times.

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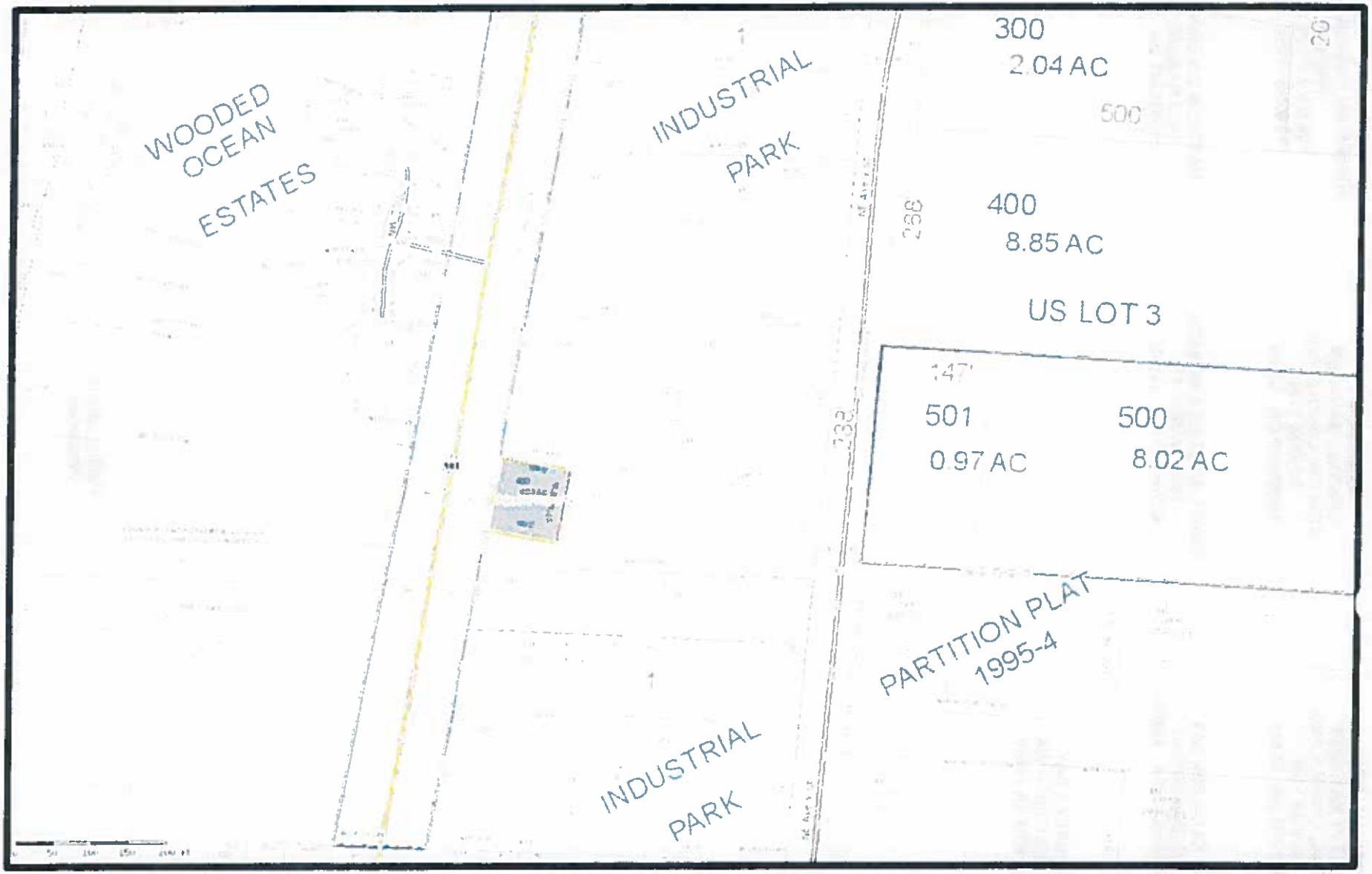
[1] This notice is being sent to the applicant, the applicant's authorized agent (if any), affected property owners within 200 feet of the subject property (according to Lincoln County tax records), affected public/private utilities/agencies within Lincoln County, and affected city departments.



Printed 10/28/2015

GAIL MALCOM
PROJECT MANAGER
CENTRAL LINCOLN PUD
PO BOX 1126
NEWPORT OR 97365

DEBRA SMITH
GENERAL MANAGER
CENTRAL LINCOLN PUD
PO BOX 1126
NEWPORT OR 97365

JOSEPH ALLEN & LINDA LORENA PALMER
105 NW 77TH CT UNIT B
NEWPORT OR 97365

MARY KATHLEEN DAY
781 GOLDFINCH WAY
ANAHEIM HILLS CA 92807

GENE L & PATSIE A MONSON
1975 NW NYE ST
NEWPORT OR 97365

MATTHEW C & ERIN M PRICE
7601 N COAST HWY
NEWPORT OR 97365

AUDREY T DAY
781 GOLDFINCH WAY
ANAHEIM CA 92807

Mailing Labels
Properties

NW Natural
Account Services
ATTN: Annexation Coordinator
220 NW 2nd Ave
Portland, OR 97209

Email:
DLCD

CenturyLink
ATTN: Mr. Corky Fallin
740 State St
Salem OR 97301

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

Lincoln County Surveyor
880 NE 7th St
Newport OR 97365

WVCC
911 Emergency Dispatch
555 Liberty St SE Rm P-107
Salem OR 97301-3513

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

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

Charter Communications
ATTN: Jim Leeth/Jackie Emmons
521 NE 136th Ave
Vancouver, WA 98684

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

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

US Post Office
ATTN: Postmaster
310 SW 2nd St
Newport OR 97365

ODOTR2PLANMGR@ODOT.STATE.US

Joseph Lease
Building Official

Lincoln County Planning Dept
210 SW 2nd St
Newport OR 97365

OREGON DIVISION OF STATE LANDS
775 SUMMER ST NE
SALEM OR 97310-1337

Victor Mettle
Code Administrator/Planner

Lincoln County Library District
PO Box 2027
Newport OR 97365

ATTN: PLAN AMENDMENT SPECIALIST
DEPT OF LAND CONSERVATION & DEVELOPMENT
635 CAPITOL ST NE STE 150
SALEM OR 97301-2540

Rob Murphy
Fire Chief

Newport Rural Fire Protection District
PO Box 923
Newport OR 97365

Mark Miranda
Police Chief

Ted Smith
Library

Tim Gross
Public Works

Spencer Nebel
City Manager

EXHIBIT 'A'
(Affected Agencies)
Annexations

Mike Murzynsky
Finance Director

CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING

The City of Newport Planning Commission will hold a public hearing on Monday, November 23, 2015, at 7:00 p.m. in the Council Chambers at City Hall to review File No. 2-AX-15/4-Z-15, a request for annexation, zone designation, and withdrawal submitted by Gail Malcolm, Project Manager (Debra Smith, General Manager and authorized representative) (Central Lincoln People's Utility District, property owner). The Commission will make a recommendation to the City Council on this request, which will then hold a public hearing at a later date. Notice of that hearing will also be provided. The request is to (1) annex approximately 0.23 acre of real property (consisting of property currently identified as Tax Lot 00400 of Assessor's Tax Map 10-11-20-BB and currently addressed as 7576 N Coast Highway) into the Newport city limits; (2) amend the City of Newport Zoning Map to establish an I-1/"Light Industrial" zoning designation for the subject property consistent with the existing Newport Comprehensive Plan designation of Industrial; and (3) withdraw said territory from the Newport Rural Fire Protection District and the Lincoln County Library District. The applicable criteria for annexations (as per Newport Municipal Code (NMC) Section 14.37.040) are that the required consents have been filed with the city; the territory to be annexed is within the acknowledged urban growth boundary (UGB), and the territory to be annexed is contiguous to the existing city limits. The criteria for Zone Map Amendments (as per NMC Section 14.36.010) are that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare. Testimony and evidence must be directed toward the criteria described above or other criteria in the Newport Comprehensive Plan and its implementing ordinances that a person believes applies 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 and written testimony will be taken during the course of the public hearing. Letters 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 or must be submitted to the Planning Commission in person during the hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant, those in favor or opposed to the application, and questions and deliberation by the Planning Commission. 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 purchased for reasonable cost at the Newport Community Development (Planning) Department (address above) seven days prior to the hearing. The application materials, applicable criteria, and other file materials are 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 (address above).

(For Publication once on Friday November 13, 2015)

"All the money we raise goes to kids running," he said. "The club is 100 percent to help support that. The middle school and high school athletes notice the biggest benefit."

school.

Tucker said roughly "12-15" kids, who competed in junior high are now freshman and sophomores, are "eager to get back in the water."

However, a challenge has presented itself when it comes

going to try to stay local," he added.

In its first year back, the Toledo swimming program is already building momentum toward the future.

And the high participation

pretty remarkable."

The Boomers will practice at the local Toledo Public Pool on Monday-Thursday, and swim team participants are given a pass to use the facility during other available hours.

SDAY 5:00pm y Prior

FRIDAY EDITION: 5:00pm Tuesday Prior

OF OREGON IN AND FOR THE COUNTY OF LINCOLN NATIONSTAR MORTGAGE LLC, PLAINTIFF, VS. LAVONA BECK, INDIVIDUALLY AND AS CONSTRUCTIVE TRUSTEE OF THE ESTATE OF KENNETH E. PITNER; UNKNOWN HEIRS OF KENNETH E. PITNER; PARTIES IN POSSESSION DEFENDANTS. NO. 15CV22068 CIVIL SUMMONS TO THE DEFENDANTS: UNKNOWN HEIRS OF KENNETH E. PITNER NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!

A lawsuit has been started against you in the above-entitled Court by Nationstar Mortgage LLC, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is on file at the Lincoln County Courthouse. You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff. The object of the complaint is to foreclose a deed of trust dated August 3, 2010 and recorded as Document No. 2010-08076 given by Kenneth E Pitner on property commonly known as 200 NE Evergreen Lane, Yachats, OR 97498 and legally described as Described in the Deed of Trust as:Lot 16, EVERGREEN MEADOWS, in Lincoln County, Oregon. HUD #'S: ORE413962-413963-413964 MANUFACTURER: Homebuilders Northwest MANUFACTURER'S SERIAL #: 2397 MODEL: 48806P YEAR: 2000 SIZE: 48 X 40 "which, by intention of the parties shall constitute a part of the realty and shall pass with it." And more accurately described as: Lot 16, EVERGREEN MEADOWS, County of Lincoln, State of Oregon. The complaint seeks to foreclose and terminate all interest of Unknown Heirs of Kenneth E. Pitner and all other interests in the property. The "motion" or "answer" (or "reply") must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee. The date of first publication of the summons is November 9, 2015. If you are in the active military service of the United States, or believe that you may be entitled to protection of the SCRA, please contact our office. If you do not contact us, we will report to the court that we do not believe that you are protected under the SCRA. If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684 3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636. Attorneys for Plaintiff, SHAPIRO & SUTHERLAND, LLC. /s/. Mary Hannon, Mary Hannon # 131074 (mhannon@logs.com), 7632 SW Durham Road, Suite 350, Tigard, OR 97224, (360)260-2253, Fax (360)260-2285. N-6, 13, 20, 27 (94-27)

PUBLIC NOTICE

The PCHD Board of Directors will meet on Monday, November 16th, 2015 at 4:00pm in the Education Conference Room at 930 SW Abbey St, Newport, Oregon. The meeting agenda includes previous month minutes, monthly financial reports, and facilities reports. Jamie Kraft, Recorder PACIFIC COMMUNITIES HEALTH DISTRICT. For additional information contact 541-574-1803. N-13 (97-13)

PURSUANT TO ORS CHAPTER 819

Notice is hereby given that the following vehicle will be sold, for cash to the highest bidder, on 12/3/2015. The sale will be held at 10:00am by AA ROWLEYS TOWING, 4822 COAST HWY SUITE B SOUTH BEACH, OR. 2006 FORD F 250 PU VIN = 1FTSW21P96ED55176. Amount due on lien $3856.00. Reputed owner(s) DONALD S & TALON S LINGER. N-13, 20 (98-20)

CITY OF DEPOE BAY REQUEST FOR PROPOSALS FOR ENGINEERING SERVICES COAST AVENUE INFRASTRUCTURE IMPROVEMENTS PROJECT

The City of Depoe Bay is seeking proposals for engineering services for Coast Avenue, in the city limits of Depoe Bay, Oregon. A preliminary design report has been completed and approved for this project. The project includes infrastructure and improvements as identified in the 2015 Coast Avenue Improvements Pre-Design Report. Engineering services will include drawings for construction, bid process for construction, on-site inspections, any needed permits, final as-built drawings. Engineering service must have proper insurance as per city requirements. Contact City Superintendent Brady Weidner at 541-765-3005 for more information, including a copy of the 2015 Pre-Design Report and a site visit. Proposals shall be in a sealed envelope clearly marked "Coast Avenue Infrastructure Improvements". Proposals shall be mailed to City of Depoe Bay, P.O. Box 8, Depoe Bay, OR 97341, or hand delivered to City Hall, 570 SE Shell Ave., Depoe Bay, OR. Email or FAX proposals are not accepted. Proposals will be accepted until no later than 2:00 PM, Friday, December 11, 2015. The City of Depoe Bay reserves the right to reject any and all proposals. E.O.E. N-13, 18 (99-18)

NOTICE OF SHERIFF'S SALE #15-1504

On December 17, 2015, at the hour of 10:00 a.m. at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 5050 South Pacific Coast Highway, Waldport, Oregon 97394. The court case number is 15CV17407, Rothauge Development, LLC, plaintiff vs. Mary E. West, The Commercial Center, Inc., Creditors Collection Service, Inc., and Ray Klein, Inc. defendants. This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to http://www.oregonsheriffs.com/sales-lincoln.htm. N-13, 20, 27, D-4 (01-04)

NOTICE OF SHERIFF'S SALE #15-1500

On December 15, 2015, at the hour of 10:00 a.m. at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 1439 N Nye Street, Toledo, OR 97391. The court case number is 144631, Wells Fargo Bank, N.A. as Trustee for First Franklin Mortgage Loan Trust 2001-FF1, Asset-Backed Certificates, Series 2001-FF1, plaintiff vs. Geneva Weaver, Atlantic Credit and Finance, Inc., Midland Funding LLC, Ray Klein, Inc. dba Professional Credit Service; Riverwalk Holdings LTD; Stone Creek Financial, Inc.; and Persons or Parties unknown claiming any right, title, lien, or interest in the property described in the complaint herein, defendants. This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to http://www.oregonsheriffs.com/sales-lincoln.htm. N-13, 20, 27, D-4 (02-04)

NOTICE OF SHERIFF'S SALE #15-1502

On December 15, 2015, at the hour of 10:00 a.m. at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 2575 S.W. Anchor Avenue, Lincoln City, OR 97367. The court case number is 141851, Pennymac Corp., plaintiff(s) vs. Barbara Joan Balswick, Mother of Damon Balswick; Individually and as Constructive Trustee of the Estate of Damon Balswick; Richard Dale Balswick, Father of Damon Balswick; Dutch Ness, Inc.; Unknown Heirs of Damon Balswick; JPMorgan Chase Bank, National Association, Successor in Interest by Purchase from the Federal Deposit Insurance Corporation, as Receiver of Washington Mutual Bank F/K/A Washington Mutual Bank, FA; Occupants of the Premises defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to http://www.oregonsheriffs.com/sales-lincoln.htm. N-13, 20, 27, D-4 (03-04)

NOTICE OF SHERIFF'S SALE #15-1498

On December 15, 2015, at the hour of 10:00 a.m. at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 770 SE 7th Street, Toledo, OR 97391. The court case number is 15CV05987, Deutsche Bank National Trust Company, solely as Trustee for Harberview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-4, plaintiff vs. John L. Drago; The Estate of Boni Lou Drago, deceased; West Coast Bank; Midland Funding LLC; Portfolio Recovery Associates; Velocity Investments LLC; and Persons or Parties Unknown claiming any right, title, lien, or interest in the property described in the complaint herein, defendants. This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to http://www.oregonsheriffs.com/sales-lincoln.htm. N-13, 20, 27, D-4 (04-04)

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The City of Newport Planning Commission will hold a public hearing on Monday, November 23, 2015 at 7:00 p.m. in the Council Chambers at City Hall to review File No. 2-AX-15, 4-Z-15, a request for annexation, zone designation, and withdrawal submitted by Gail Malcolm, Project Manager (Debra Smith, General Manager and authorized representative) (Central Lincoln People's Utility District, property owner). The Commission will make a recommendation to the City Council on this request, which will then hold a public hearing at a later date. Notice of that hearing will also be provided. The request is to (1) annex approximately 0.23 acre of real property (consisting of property currently identified as Tax Lot 00400 of Assessor's Tax Map 10-11-20-BB and currently addressed as 7576 N Coast Highway) into the Newport city limits; (2) amend the City of Newport Zoning Map to establish an I-1 "Light Industrial" zoning designation for the subject property consistent with the existing Newport Comprehensive Plan designation of Industrial, and (3) withdraw said territory from the Newport Rural Fire Protection District and the Lincoln County Library District. The applicable criteria for annexations (as per Newport Municipal Code (NMC) Section 14.37.040) are that the required consents have been filed with the city; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits. The criteria for Zone Map Amendments (as per NMC Section 14.36.010) are that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare. Testimony and evidence must be directed toward the criteria described above or other criteria in the Newport Comprehensive Plan and its implementing ordinances that a person believes applies 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 and written testimony will be taken during the course of the public hearing. Letters 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 or must be submitted to the Planning Commission in person during the hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant, those in favor or opposed to the application, and questions and deliberation by the Planning Commission. 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 purchased for reasonable cost at the Newport Community Development (Planning) Department (address above) seven days prior to the hearing. The application materials, applicable criteria, and other file materials are 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 (address above). N-13 (05-13)

NOTICE TO INTERESTED PERSONS

Notice is hereby given that the undersigned has been appointed Trustee for the Trustmaker Arthur B. Helm, DECEASED on May 26, 2015, Lincoln County, Oregon. All persons having claims against said trust estate are required to present them, with proper vouchers, within four months after the date of first publication of this notice, as stated below, to the Trustee at PO Box 734, Waldport, OR 97394, or they may be barred. All persons whose rights may be affected by these proceedings may obtain additional information from the Trustee or the attorney for the Trustee. DATED and first published: Arthur B. Helm, Trustee of the Helm Revocable Living Trust, dated January 26, 2001, as restated June 11, 2009 and any amendments thereto. Joan G. Wilder, Trustee. Holly A. Gibbons, J.D., Attorney for the Trustee, PO Box 700, Waldport, OR 97394. N-13, 20, 27 (06-27)

Attachment "C"
File No. 2-AX-15 / 4-Z-15

NEWPORT
City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
Phone 1 541 574 0629
Fax 1 541 574 0644

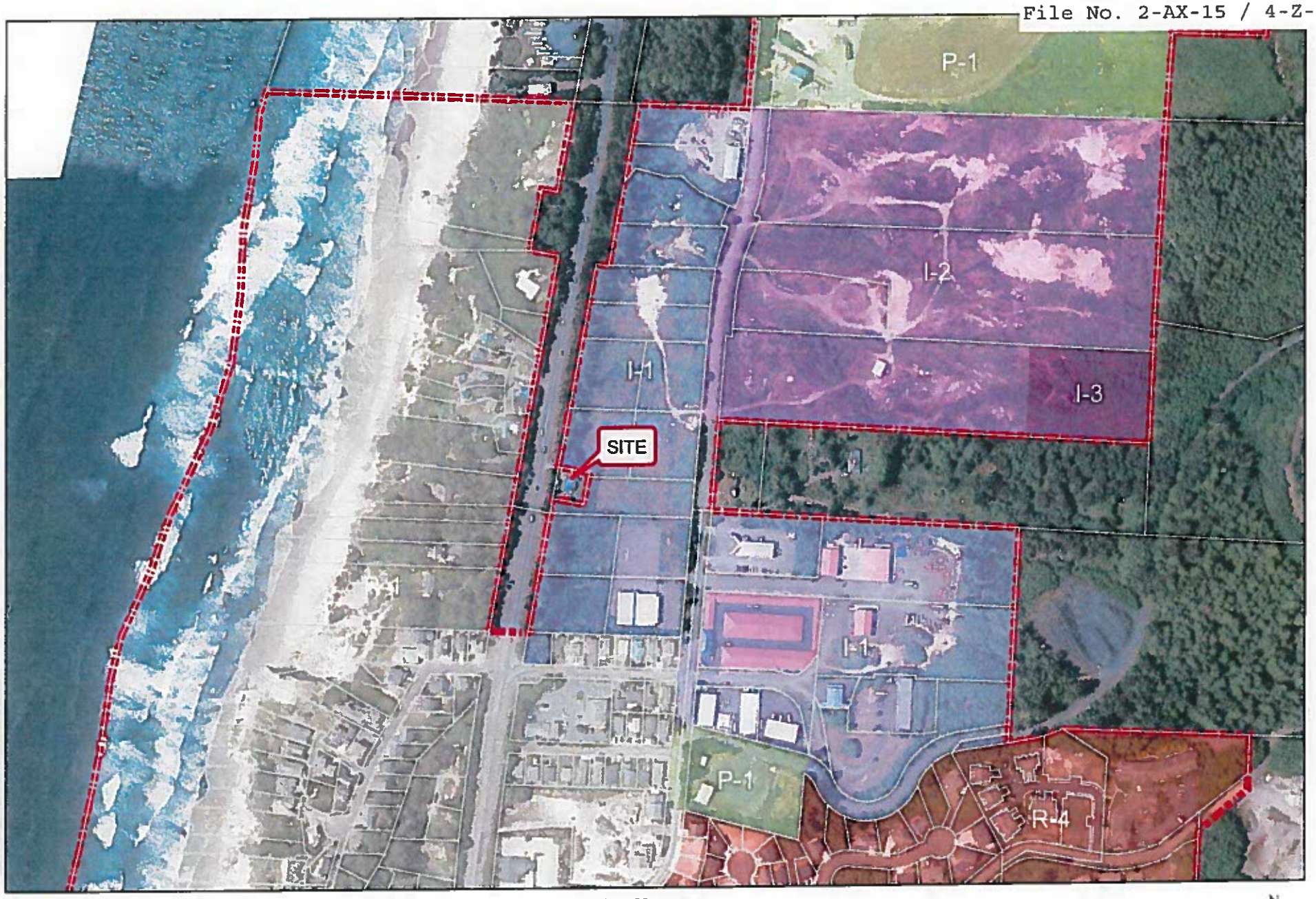
7576 N Coast Highway
city limits (red), water (blue), sewer (green)

Image Taken July 2013
4-inch, 4-band Digital Orthophotos
David Smith & Associates, Inc. Portland, OR

0 75 150 300 Feet

N

Attachment "D"
File No. 2-AX-15 / 4-Z-15



City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
Phone 1 541 574 0629
Fax 1 541 574 0644

Zoning Map
7576 N Coast Highway

Image Taken July 2013
4-inch, 4-band Digital Orthophotos
David Smith & Associates, Inc. Portland, OR

0 200 400 800 Feet

N

Rev 1/2012

CITY OF NEWPORT
I-1/"LIGHT INDUSTRIAL" ZONING DISTRICT USES

PERMITTED USES

Office
(examples: financial (lenders, brokers, bank hdqtrs.); data processing; professional svcs. (lawyers, accountants, engineers, architects, sales); government; public utilities; TV & radio studios; medical & dental clinics and labs; contractors (if equipment not kept on site).)

Retail Sales & Service

Sales-oriented, general retail
(examples: consumer, home, & business goods including art, art supplies, bicycles, books, clothing, dry goods, electronic equipment, fabric, pharmaceuticals, plants, printed material, stationery & video; food; vehicle service (but not repair of vehicles).)

Sales-oriented, bulk retail
(examples: stores selling large consumer home & business goods including appliances, furniture, hardware, home improvements; sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light & medium trucks & other recreational vehicles.)

Personal Services
(examples: bank branches; urgent medical care; laundromats; photographic studios; photocopy & blueprint svcs.; printing, publishing & lithography; hair, tanning& personal care svcs.; tax preparers, accountants, engineers, architects, real estate agents, legal, financial svcs.; art studios; art, dance, music, martial arts & other recreational or cultural classes/schools; taxidermists; mortuaries; veterinarians; kennels (limited to boarding & training w/no breeding); animal grooming.)

Entertainment
(examples: restaurants (sit-down & drive-thru); cafes; delicatessens; taverns & bars; hotels, motels, recreational vehicles & other temporary lodging (w/ avg. length of stay < 30 days); athletic, exercise & health clubs or gyms; bowling alleys, skating rinks, game arcades; pool halls; dance halls, studios & schools; theaters; indoor firing ranges; miniature golf facilities, golf courses & driving ranges.)

Repair-oriented
(examples: repair of TVs, bicycles, clocks, watches, shoes, guns, appliances & office equipment; photo

(PERMITTED USES CONTINUED)

or laundry drop-off; quick printing; recycling drop-off; tailor; locksmith; upholsterer.)

Major Event Entertainment
(examples: fairgrounds; sports complexes; ball fields; exhibition & meeting areas; coliseums or stadiums; equestrian centers & animal arenas; outdoor amphitheater; theme or water parks.)

Vehicle Repair
(examples: vehicle repair; transmission or muffler shop; auto body shop; alignment shop; auto upholstery shop; auto detailing; tire sales & mounting.)

Self-Service Storage
(examples: single-story & multi-story facilities that provide individual storage areas for rent (aka mini warehouses).)

Parking Facility
(examples: short & long-term fee pkg. facilities; commercial district shared pkg. lots; commercial shuttle pkg.; park-&-ride lots.)

Contractors & Industrial Service
(examples: welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage, or wrecking heavy machinery, metal, & building materials; towing & vehicle storage; auto & truck salvage & wrecking; heavy truck servicing & repair; tire re-treading or recapping; truck stops; building, heating, plumbing, or electrical contractors; printing, publishing & lithography; exterminators; recycling operations; janitorial & building maintenance svcs.; fuel oil distributors; solid fuel yards; research & development labs; dry-docks & repair or dismantling of ships & barges; laundry, dry-cleaning & carpet cleaning plants; photofinishing labs.)

Manufacturing & Production

Light Manufacturing
(examples: light industrial uses that do not generate excessive noise, dust, vibration, or fumes including processing food & related products (where activities are wholly contained w/in a structure) such as bakery products, canned & preserved fruits & vegetables, sugar & confectionary products &

(PERMITTED USES CONTINUED)

beverages; catering establishments; breweries, distilleries & wineries; manufacture of apparel or other fabricated products made from textiles, leather, or similar materials; woodworking including furniture & cabinet making; fabrication of metal products & fixtures; manufacture or assembly of machinery equipment or instruments including industrial, commercial & transportation equipment, household items, precision items, photographic, medical & optical goods, artwork, jewelry & toys; manufacture of glass, glassware & pressed or blown glass; pottery & related products; printing publishing & lithography production; sign-making; movie production facilities.)

Warehouse, Freight Movement & Distribution
(examples: separate warehouses used by retail stores such as furniture & appliance stores; household moving & general freight storage; cold storage plants including frozen food lockers; storage of weapons & ammunition; major wholesale distribution centers; truck, marine, or air freight terminals; bus barns; parcel services; major post offices; grain terminals; stockpiling sand, gravel, or other aggregate materials.)

Wholesale Sales
(examples: sale or rental of machinery, equipment, heavy trucks, bldg. materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment & store fixtures; mail-order houses; wholesalers of food, clothing, auto parts, bldg. hardware & office supplies.

Basic Utilities & Roads
(examples: water & sewer pump stations; sewage disposal & conveyance systems; electrical substations; water towers & reservoirs; water quality & flow control devices; water conveyance systems; stormwater facilities & conveyance systems; telephone exchanges; suspended cable transportation systems; bus stops or turnarounds; local, collector & arterial roadways; highway maintenance.)

Community Service
(examples: churches; libraries; museums; senior centers; community centers; publicly-owned swimming pools; youth club facilities; hospices; police stations, fire & ambulance stations; drug & alcohol centers; social service facilities; mass shelters or short-term housing (when operated by a public or non-profit agency); soup kitchens; surplus food distribution centers.)

Daycare Facility
(examples: preschools, nursery schools, latch key programs (more than 12 children under age 13 outside their homes); adult daycare programs.)

(PERMITTED USES CONTINUED)

Educational Institutions

Trade/Vocational Schools/Other
(examples: nursing & medical schools (not accessory to a hospital), seminaries, public & private daytime schools, boarding schools, military academies, trade/vocational schools.)

Communication Facilities
(examples: broadcast towers, communication/cell towers, point-to-point microwave towers.)

CONDITIONAL USES

Waste & Recycling Related
(examples: sanitary landfills; limited-use landfills; waste composting; energy recovery plants; sewer treatment plants; portable sanitary collection equipment storage & pumping; hazardous waste collection sites.)

Utility, Road & Transit Corridors
(examples: highways; rail trunk & feeder lines; regional electrical transmission lines; regional gas & oil pipelines.

Courts, Jails & Detention Facilities
(examples: courts, prisons, jails, probation centers, juvenile detention homes.)

PROHIBITED USES

Manufacturing & Production

Heavy Manufacturing
(examples: industrial uses that should not be located near residential areas due to noise, dust, vibration, or fumes including processing food & related products (where some portion of the materials are stored or processed outdoors) such as dairies, slaughter houses, or feed lots; leather tanning & finishing; weaving or production of textiles; lumber mills, pulp & paper mills & other wood products mfg.; production of chemicals, rubber, structural clay, concrete, gypsum, plaster, bone, plastic, or stone products; primary metal industries including blast furnaces, foundries, smelting & rolling & finishing metal products; production & refinement of fossil fuels; concrete batching; asphalt mixing; mfg. of prefabricated structures including mobile homes.

(PROHIBITED USES CONTINUED)

Educational Institutions

Elementary & Secondary Schools
College & Universities
(examples: elementary, middle & high schools, universities, liberal arts colleges, community colleges.)

Hospitals
(examples: hospitals & medical complexes that include hospitals or emergency care facilities.)

Mining

Sand & Gravel
Crushed Rock
Non-Metallic Minerals
All Others
(examples: sand & gravel extraction; excavation of rock; mining of non-metallic minerals.)

CITY OF NEWPORT
I-2/"MEDIUM INDUSTRIAL" ZONING DISTRICT USES

PERMITTED USES

Office
(examples: financial (lenders, brokers, bank hdqtrs.); data processing; professional svcs. (lawyers, accountants, engineers, architects, sales); government; public utilities; TV & radio studios; medical & dental clinics and labs; contractors (if equipment not kept on site).)

Retail Sales & Service
Sales-oriented, general retail
(examples: consumer, home, & business goods including art, art supplies, bicycles, books, clothing, dry goods, electronic equipment, fabric, pharmaceuticals, plants, printed material, stationery & video; food; vehicle service (but not repair of vehicles).)

Sales-oriented, bulk retail
(examples: stores selling large consumer home & business goods including appliances, furniture, hardware, home improvements; sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light & medium trucks & other recreational vehicles.)

Repair-oriented
(examples: repair of TVs, bicycles, clocks, watches, shoes, guns, appliances & office equipment; photo or laundry drop-off; quick printing; recycling drop-off; tailor; locksmith; upholsterer.)

Vehicle Repair
(examples: vehicle repair; transmission or muffler shop; auto body shop; alignment shop; auto upholstery shop; auto detailing; tire sales & mounting.)

Self-Service Storage
(examples: single-story & multi-story facilities that provide individual storage areas for rent (aka mini warehouses).)

Parking Facility
(examples: short & long-term fee pkg. facilities; commercial district shared pkg. lots; commercial shuttle pkg.; park-&-ride lots.)

Contractors & Industrial Service
(examples: welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage, or wrecking heavy machinery, metal, & building materials; towing & vehicle storage; auto & truck salvage & wrecking; heavy truck servicing & repair; tire re-treading or recapping; truck stops; building, heating, plumbing, or electrical contractors; printing, publishing & lithography; exterminators; recycling operations; janitorial & building maintenance svcs.; fuel oil distributors; solid fuel yards; research & development labs; dry-docks & repair or dismantling of ships & barges; laundry, dry-cleaning & carpet cleaning plants; photofinishing labs.)

(PERMITTED USES CONTINUED)

Manufacturing & Production
Light Manufacturing
(examples: light industrial uses that do not generate excessive noise, dust, vibration, or fumes including processing food & related products (where activities are wholly contained w/in a structure) such as bakery products, canned & preserved fruits & vegetables, sugar & confectionary products & beverages; catering establishments; breweries, distilleries & wineries; manufacture of apparel or other fabricated products made from textiles, leather, or similar materials; woodworking including furniture & cabinet making; fabrication of metal products & fixtures; manufacture or assembly of machinery equipment or instruments including industrial, commercial & transportation equipment, household items, precision items, photographic, medical & optical goods, artwork, jewelry & toys; manufacture of glass, glassware & pressed or blown glass; pottery & related products; printing publishing & lithography production; sign-making; movie production facilities.)

Warehouse, Freight Movement & Distribution
(examples: separate warehouses used by retail stores such as furniture & appliance stores; household moving & general freight storage; cold storage plants including frozen food lockers; storage of weapons & ammunition; major wholesale distribution centers; truck, marine, or air freight terminals; bus barns; parcel services; major post offices; grain terminals; stockpiling sand, gravel, or other aggregate materials.)

Wholesale Sales
(examples: sale or rental of machinery, equipment, heavy trucks, bldg. materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment & store fixtures; mail-order houses; wholesalers of food, clothing, auto parts, bldg. hardware & office supplies.

(PERMITTED USES CONTINUED)

Basic Utilities & Roads
(examples: water & sewer pump stations; sewage disposal & conveyance systems; electrical substations; water towers & reservoirs; water quality & flow control devices; water conveyance systems; stormwater facilities & conveyance systems; telephone exchanges; suspended cable transportation systems; bus stops or turnarounds; local, collector & arterial roadways; highway maintenance.)

Daycare Facility
(examples: preschools, nursery schools, latch key programs (more than 12 children under age 13 outside their homes); adult daycare programs.)

Educational Institutions

Trade/Vocational Schools/Other
(examples: nursing & medical schools (not accessory to a hospital), seminaries, public & private daytime schools, boarding schools, military academies, trade/vocational schools.)

Communication Facilities
(examples: broadcast towers, communication/cell towers, point-to-point microwave towers.)

CONDITIONAL USES

Retail Sales & Service

Personal Services
(examples: bank branches; urgent medical care; laundromats; photographic studios; photocopy & blueprint svcs.; printing, publishing & lithography; hair, tanning& personal care svcs.; tax preparers, accountants, engineers, architects, real estate agents, legal, financial svcs.; art studios; art, dance, music, martial arts & other recreational or cultural classes/schools; taxidermists; mortuaries; veterinarians; kennels (limited to boarding & training w/no breeding); animal grooming.)

Entertainment
(examples: restaurants (sit-down & drive-thru); cafes; delicatessens; taverns & bars; hotels, motels, recreational vehicles & other temporary lodging (w/ avg. length of stay < 30 days); athletic, exercise & health clubs or gyms; bowling alleys, skating rinks, game arcades; pool halls; dance halls, studios & schools; theaters; indoor firing ranges; miniature golf facilities, golf courses & driving ranges.)

(CONDITIONAL USES CONTINUED)

Major Event Entertainment
(examples: fairgrounds; sports complexes; ball fields; exhibition & meeting areas; coliseums or stadiums; equestrian centers & animal arenas; outdoor amphitheater; theme or water parks.)

Manufacturing & Production

Heavy Manufacturing
(examples: industrial uses that should not be located near residential areas due to noise, dust, vibration, or fumes including processing food & related products (where some portion of the materials are stored or processed outdoors) such as dairies, slaughter houses, or feed lots; leather tanning & finishing; weaving or production of textiles; lumber mills, pulp & paper mills & other wood products mfg.; production of chemicals, rubber, structural clay, concrete, gypsum, plaster, bone, plastic, or stone products; primary metal industries including blast furnaces, foundries, smelting & rolling & finishing metal products; production & refinement of fossil fuels; concrete batching; asphalt mixing; mfg. of prefabricated structures including mobile homes.

Waste & Recycling Related
(examples: sanitary landfills; limited-use landfills; waste composting; energy recovery plants; sewer treatment plants; portable sanitary collection equipment storage & pumping; hazardous waste collection sites.)

Utility, Road & Transit Corridors
(examples: highways; rail trunk & feeder lines; regional electrical transmission lines; regional gas & oil pipelines.

Community Service
(examples: churches; libraries; museums; senior centers; community centers; publicly-owned swimming pools; youth club facilities; hospices; police stations, fire & ambulance stations; drug & alcohol centers; social service facilities; mass shelters or short-term housing (when operated by a public or non-profit agency); soup kitchens; surplus food distribution centers.)

Mining

Sand & Gravel

Non-Metallic Minerals
(examples: sand & gravel extraction; mining of non-metallic minerals.)

PROHIBITED USES

Educational Institutions

Elementary & Secondary Schools
College & Universities
(examples: elementary, middle & high schools; universities, liberal arts colleges, community colleges.)

Hospitals
(examples: hospitals & medical complexes that include hospitals or emergency care facilities.)

Courts, Jails & Detention Facilities
(examples: courts, prisons, jails, probation centers, juvenile detention homes.)

Mining

Crushed Rock
All Others
(examples: excavation of rock.)

CITY OF NEWPORT
I-3/"HEAVY INDUSTRIAL" ZONING DISTRICT USES

PERMITTED USES

Parking Facility
(examples: short & long-term fee pkg. facilities; commercial district shared pkg. lots; commercial shuttle pkg.; park-&-ride lots.)

Contractors & Industrial Service
(examples: welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage, or wrecking heavy machinery, metal, & building materials; towing & vehicle storage; auto & truck salvage & wrecking; heavy truck servicing & repair; tire re-treading or recapping; truck stops; building, heating, plumbing, or electrical contractors; printing, publishing & lithography; exterminators; recycling operations; janitorial & building maintenance svcs.; fuel oil distributors; solid fuel yards; research & development labs; dry-docks & repair or dismantling of ships & barges; laundry, dry-cleaning & carpet cleaning plants; photofinishing labs.)

Manufacturing & Production

Light Manufacturing
(examples: light industrial uses that do not generate excessive noise, dust, vibration, or fumes including processing food & related products (where activities are wholly contained w/in a structure) such as bakery products, canned & preserved fruits & vegetables, sugar & confectionary products & beverages; catering establishments; breweries, distilleries & wineries; manufacture of apparel or other fabricated products made from textiles, leather, or similar materials; woodworking including furniture & cabinet making; fabrication of metal products & fixtures; manufacture or assembly of machinery equipment or instruments including industrial, commercial & transportation equipment, household items, precision items, photographic, medical & optical goods, artwork, jewelry & toys; manufacture of glass, glassware & pressed or blown glass; pottery & related products; printing publishing & lithography production; sign-making; movie production facilities.)

Heavy Manufacturing
(examples: industrial uses that should not be located near residential areas due to noise, dust, vibration, or fumes including processing food & related products (where some portion of the materials are stored or processed outdoors) such as dairies, slaughter houses, or feed lots; leather

(PERMITTED USES CONTINUED)

tanning & finishing, weaving or production of textiles; lumber mills, pulp & paper mills & other wood products mfg.; production of chemicals, rubber, structural clay, concrete, gypsum, plaster, bone, plastic, or stone products; primary metal industries including blast furnaces, foundries, smelting & rolling & finishing metal products; production & refinement of fossil fuels; concrete batching; asphalt mixing; mfg. of prefabricated structures including mobile homes.

Warehouse, Freight Movement & Distribution
(examples: separate warehouses used by retail stores such as furniture & appliance stores; household moving & general freight storage; cold storage plants including frozen food lockers; storage of weapons & ammunition; major wholesale distribution centers; truck, marine, or air freight terminals; bus barns; parcel services; major post offices; grain terminals; stockpiling sand, gravel, or other aggregate materials.)

Wholesale Sales.
(examples: sale or rental of machinery, equipment, heavy trucks, bldg. materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment & store fixtures; mail-order houses; wholesalers of food, clothing, auto parts, bldg. hardware & office supplies.

Basic Utilities & Roads
(examples: water & sewer pump stations; sewage disposal & conveyance systems; electrical substations; water towers & reservoirs; water quality & flow control devices; water conveyance systems; stormwater facilities & conveyance systems; telephone exchanges; suspended cable transportation systems; bus stops or turnarounds; local collector & arterial roadways; highway maintenance.)

Educational Institutions

Trade/Vocational Schools/Other
(examples: nursing & medical schools (not accessory to a hospital), seminaries, public & private daytime schools, boarding schools, military academies, trade/vocational schools.)

(PERMITTED USES CONTINUED)

Mining

Sand & Gravel
Crushed Rock
Non-Metallic Minerals
(examples: sand & gravel extraction; excavation of rock; mining of non-metallic minerals.)

Communication Facilities
(examples: broadcast towers, communication/cell towers, point-to-point microwave towers.)

CONDITIONAL USES

Retail Sales & Service

Sales-oriented, general retail
(examples: consumer, home, & business goods including art, art supplies, bicycles, books, clothing, dry goods, electronic equipment, fabric, pharmaceuticals, plants, printed material, stationery & video; food; vehicle service (but not repair of vehicles).)

Sales-oriented, bulk retail
(examples: stores selling large consumer home & business goods including appliances, furniture, hardware, home improvements; sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light & medium trucks & other recreational vehicles.)

Waste & Recycling Related
(examples: sanitary landfills; limited-use landfills; waste composting; energy recovery plants; sewer treatment plants; portable sanitary collection equipment storage & pumping; hazardous waste collection sites.)

Utility, Road & Transit Corridors
(examples: highways; rail trunk & feeder lines; regional electrical transmission lines; regional gas & oil pipelines.

PROHIBITED USES

Office
(examples: financial (lenders, brokers, bank hdqtrs.); data processing; professional svcs. (lawyers, accountants, engineers, architects, sales); government; public utilities;

(PROHIBITED USES CONTINUED)

TV & radio studios; medical & dental clinics and labs; contractors (if equipment not kept on site).)

Retail Sales & Service

Personal Services
(examples: bank branches; urgent medical care; laundromats; photographic studios; photocopy & blueprint svcs.; printing, publishing & lithography; hair, tanning& personal care svcs.; tax preparers, accountants, engineers, architects, real estate agents, legal, financial svcs.; art studios, art, dance, music, martial arts & other recreational or cultural classes/schools; taxidermists; mortuaries; veterinarians, kennels (limited to boarding & training w/no breeding), animal grooming.)

Entertainment
(examples: restaurants (sit-down & drive-thru); cafes; delicatessens; taverns & bars; hotels, motels, recreational vehicles & other temporary lodging (w/ avg. length of stay < 30 days); athletic, exercise & health clubs or gyms; bowling alleys, skating rinks, game arcades; pool halls; dance halls, studios & schools; theaters; indoor firing ranges; miniature golf facilities, golf courses & driving ranges.)

Repair-oriented
(examples: repair of TVs, bicycles, clocks, watches, shoes, guns, appliances & office equipment; photo or laundry drop-off; quick printing; recycling drop-off; tailor; locksmith; upholsterer.)

Major Event Entertainment
(examples: fairgrounds; sports complexes; ball fields; exhibition & meeting areas; coliseums or stadiums; equestrian centers & animal arenas; outdoor amphitheater; theme or water parks.)

Vehicle Repair
(examples: vehicle repair; transmission or muffler shop; auto body shop; alignment shop; auto upholstery shop; auto detailing; tire sales & mounting.)

Self-Service Storage
(examples: single-story & multi-story facilities that provide individual storage areas for rent (aka mini warehouses).)

Community Service
(examples: churches; libraries; museums; senior centers; community centers; publicly-owned swimming pools; youth club facilities; hospices; police stations, fire & ambulance stations; drug & alcohol centers; social service facilities; mass shelters or short-term housing (when operated by a

(PROHIBITED USES CONTINUED)

public or non-profit agency); soup kitchens; surplus food distribution centers.)

Daycare Facility
(examples: preschools, nursery schools, latch key programs (more than 12 children under age 13 outside their homes); adult daycare programs.)

Educational Institutions

Elementary & Secondary Schools
College & Universities
(examples: elementary, middle & high schools; universities, liberal arts colleges, community colleges.)

Hospitals
(examples: hospitals & medical complexes that include hospitals or emergency care facilities.)

Courts, Jails & Detention Facilities
(examples: courts, prisons, jails, probation centers, juvenile detention homes.)

Mining

All Others
(other than sand & gravel extraction, excavation of rock, mining of non-metallic minerals.)

Section 2-2-6.010 amended by Ordinance No. 1336 (7-5-83); Section 2-2-4 amended by Ordinance No. 1344 (11-7-83); Sections 2-2-1 and 2-2-6 amended by Ordinance No. 1356 (1-3-84); Sections 2-2-3, 2-2-4, 2-2-5, 2-2-6, and 2-2-7 amended by Ordinance No. 1447 (12-16-85); Section 2-2-6.015 amended by Ordinance No. 1468 (8-19-86); Section 2-2-4 amended by Ordinance No. 1526 (11-7-88); Section 2-2-2.010 amended by Ordinance No. 1565 (14.36.0010); Section 2-2-4 amended by Ordinance No. 1567 (14.36.0010); the above became obsolete when Sections 2-2-1 through 2-2-12 were totally amended by Ordinance No. 1575 (7-2-90); and then the entire Section was repealed and replaced by Ordinance No. 2022 (10-20-11).

14.03.030. City of Newport Zoning Map. The zoning districts established by this section are officially identified on the map entitled "City of Newport Zoning Map," by reference incorporated herein. Zoning district boundaries, as shown on the official map, shall be construed as follows:

A. City limit lines;

B. Platted lot lines or other property lines as shown on the Lincoln County Assessor's plat maps;

C. The centerline of streets, railroad tracks, or other public transportation routes;

D. The centerline of streams or other watercourses as measured at Mean Low Water. In the event of a natural change in location of the centerline of such watercourse, then the zoning district boundary shall be construed to moving with the channel centerline; and

E. The Mean Higher High Tide Line.

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

R-1/"Low Density Single-Family Residential." The intent of the R-1 district is to provide for large lot residential development. This district should also be applied where environmental constraints such as topography, soils, geology, or flooding restrict the development potential of the land.

R-2/"Medium Density Single-Family Residential." The intent of this district is to provide for low density, smaller lot size residential development. It is also the ambition of this district to serve as a transitional area between the low density

residential district and higher density residential districts.

R-3/"Medium Density Multi-Family Residential." This district is intended for medium density multi-family residential development. It is planned for areas that are able to accommodate the development of apartments. New R-3 zones should be near major streets, on relatively flat land, and near community or neighborhood activity centers.

R-4/"High Density Multi-Family Residential." This district is intended to provide for high density multi-family residential and some limited commercial development. New R-4 zones should be on major streets, on relatively flat land, and near commercial centers.

C-1/"Retail and Service Commercial." The intent of the C-1 district is to provide for retail and service commercial uses. It is also intended that these uses will supply personal services or goods to the average person and that a majority of the floor space will be devoted to that purpose. Manufacturing, processing, repair, storage, or warehousing is prohibited unless such activity is clearly incidental to the business and occupies less than 50% of the floor area.

C-2/"Tourist Commercial." The intent of this zone is to provide for tourist needs, as well as for the entertainment needs of permanent residents.

C-3/"Heavy Commercial." The intent of this zone is to provide for commercial uses that are frequently incompatible with retail and service commercial uses. This zone is also intended to provide uses that utilize more than 50% of the floor area for storage, repair, or compounding of products but do not constitute a nuisance because of noise, dust, vibration or fumes.

I-1/"Light Industrial." The intent of this zone is to provide for commercial and industrial uses that can be located near residential or commercial zones. Uses that are associated with excessive noise, dust, vibration, or fumes shall be prohibited.

I-2/"Medium Industrial." The intent of this zone is to provide areas suitable for industrial activities, including manufacturing, fabricating, processing, packing, storage, repairing, and wholesaling. This classification should be applied to industrial areas having good access to

transportation facilities and not near residential zones.

I-3/"Heavy Industrial." The intent of this zone is to provide for industrial uses that involve production and processing activities generating noise, vibration, dust, and fumes. Typically, this zone requires good access to transportation, large lots, and segregation from other uses due to nuisances.

W-1/"Water-Dependent." The intent of the W-1 district is to protect areas of the Yaquina Bay Shorelands, as identified in the Newport Comprehensive Plan, for water-dependent uses. For purposes of this section, a water-dependent use is one which needs contact with or use of the water for water-borne transportation, recreation, energy production, or water supply. All uses in a W-1 district shall comply with the following standards:

A. Existing water-dependent uses or future water-dependent uses anticipated by the Comprehensive Plan shall not be preempted or restricted by non-water-dependent uses. In determining whether or not a use preempts or restricts a water-dependent use, the following shall be considered:

    1. Water-related uses accessory to and in conjunction with water-dependent uses.

    2. Temporary or mobile uses such as parking lots or temporary storage areas.

    3. Incidental and accessory non-water-dependent uses sharing an existing structure with a water-dependent use.

B. Applicable policies in the Yaquina Bay Estuary and Yaquina Bay Shoreland sections of the Comprehensive Plan shall be followed.

C. In determining whether a conditional use should be allowed, consideration shall be given to whether the site or portion thereof is within an area designated as especially suited for water-dependent or water-related uses in the Comprehensive Plan. If the property is within that area, then the site shall be protected for water-dependent and water-related recreational, commercial, and industrial uses.

W-2/"Water-Related." The intent of the W-2 district is to pro-

ALTA Owner's Policy
Policy No. 107073
Policy Jacket No.: 82306-94399044

Exhibit "A"

That part of Lot 3 in Section 20, Township 10 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, lying South of the South line of the Siletz Indian Reservation, described as follows:

Beginning at a point at the intersection of the South line of Government Lot 3 (being South of the South line of the Siletz Indian Reservation) in Section 20, Township 10 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, and the East right of way line of the relocated Oregon Coast Highway No. 101; thence North 7° 57' East 22.9 feet along said highway East line to the true point of beginning; thence North 7° 57' East 100 feet along said right of way; thence South 81° 48' East 100 feet; thence South 7° 57' West 100 feet; and thence North 81° 48' West 100 feet to the true point of beginning.

Attachment "F"
File No. 2-AX-15 / 4-AX-15

Northgate Industrial Park

A REPLAT OF "OCEAN FOREST ESTATES"
LOCATED IN THE NW 1/4 and NE 1/4 OF SECTION 20, T10S, R11W, W.M.
CITY OF NEWPORT, LINCOLN COUNTY, OREGON

DECEMBER 12, 2000

STATE OF OREGON
S.S.
COUNTY OF LINCOLN

I HEREBY CERTIFY THAT THIS SUBDIVISION PLAT WAS RECEIVED FOR RECORD ON THIS 15th DAY OF March, 2001 AT 04:35 O'CLOCK PM, AND RECORDED AS SUBDIVISION PLAT Book 16 Page 50-508 LINCOLN COUNTY RECORDS

[signature] 03/15/2001
COUNTY CLERK ~~DEPUTY~~

INDEX

NEW EASEMENTS

(A) 10 FOOT PUBLIC UTILITY EASEMENT, EASTERLY PORTION OF LOTS 1, 4, 5, 8, 9, 10 AND 11

(B) 20 FOOT PUBLIC SEWER AND STORM DRAIN EASEMENT, WESTERLY PORTION OF LOTS 2, 3, 5, 7, 8, 10 AND 11.

(C) 20 FOOT PUBLIC SEWER AND STORM DRAIN EASEMENT, BETWEEN LOTS 12 AND 31, 17 AND 81, 18, 9 AND 10)

(D) 60 FOOT PUBLIC ROAD EASEMENT, WITH 50 FOOT RADIUS CULDESAC, FOR INGRESS, EGRESS AND UTILITIES, PORTION OF LOTS 1, 2, 3 AND 4

(E) 60 FOOT PUBLIC ROAD EASEMENT, WITH 50 FOOT RADIUS CULDESAC, FOR INGRESS, EGRESS AND UTILITIES, PORTION OF LOTS 6, 7, 8 AND 9

(F) 40 FOOT PRIVATE ROAD EASEMENT FOR INGRESS, EGRESS AND UTILITIES, BETWEEN LOTS 11 AND 12

(G) 20 FOOT PUBLIC STORM DRAIN AND QUALITY CONTROL EASEMENT, BENEFITS LOTS 1 THRU 13.

DECLARATION

KNOW ALL PEOPLE BY THESE PRESENTS, THAT AVERY STREET PARK, L.L.C. AN OREGON LIMITED LIABILITY COMPANY, OWNER OF THE PROPERTY DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE, HAS CAUSED SAID PROPERTY TO BE SUBDIVIDED IN ACCORDANCE WITH THE PROVISIONS OF O.R.S. CHAPTER 92, AND DO HEREBY DECLARE THIS PLAT TO BE A TRUE AND ACCURATE MAP THEREOF, WITH ALL LOTS, PUBLIC AND PRIVATE EASEMENTS BEING SHOWN HEREON THE ACCOMPANYING PLAT

[signature]
MANAGER GARY J. GALLAGHER TRUSTEE AVERY STREET PARK L.L.C.

MONUMENT DESCRIPTIONS

(1) INITIAL POINT "IRON MOUNTAIN BEACH" AND "OCEAN FOREST ESTATES" FOUND: A 3" IRON PIPE, 0.1' ABOVE GRADE (IRON MOUNTAIN BEACH)

(2) NORTHWEST CORNER BLOCK 1 "IRON MOUNTAIN BEACH" FOUND: A RUSTED 1" IRON PIPE, FLUSH (IRON MOUNTAIN BEACH)

(3) FOUND: A 1/2" IRON ROD, 0.1' ABOVE GRADE (OSHD)

(4) FOUND: A 3/4" BOLT, 0.3' BELOW GRADE [REF. PLAT]

(5) FOUND: A 1" IRON PIPE, 0.4' BELOW GRADE [C.S. 668]

(6) FOUND: A 5/8" IRON ROD, 0.2' BELOW GRADE (OSHD)

(7) FOUND: A 5/8" IRON ROD, 0.2' BELOW GRADE (OSHD)

(8) FOUND: A 5/8" IRON ROD WITH A ALUMINUM CAP MARKED "TOM HAMILTON PLS 1816" DISTURBED (C.S. 14,710)

(9) FOUND: A 5/8" IRON ROD WITH A ALUMINUM CAP MARKED "TOM HAMILTON PLS 1816" DISTURBED (C.S. 14,710)

(10) FOUND: A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED, "DENSON SURV NEWPORT OR", DISTURBED (C.S. 14,267)

(11) 1/4 CORNER SECTIONS 17 AND 20 FOUND: A 3/4" IRON ROD, FLUSH. [REF. PLAT]

(12) FOUND: A 5/8" IRON ROD, 0.5' ABOVE GRADE [REF. PLAT]

ACKNOWLEDGEMENT

STATE OF MT

COUNTY OF LAKE

ON THIS 17th DAY OF January, IN THE YEAR 2001, BEFORE ME [signature], THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED GARY J. GALLAGHER, PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE, TO BE THE PERSON WHO EXECUTED THE WITHIN INSTRUMENT AS A MEMBER ON BEHALF OF AVERY STREET PARK, L.L.C., THE COMPANY THEREIN NAMED, AND ACKNOWLEDGED TO ME THAT THE AVERY STREET PARK, L.L.C. EXECUTED IT

[signature]
WITNESS MY HAND AND OFFICIAL SEAL

MY COMMISSION EXPIRES: 6-3-03

APPROVALS

CITY OF NEWPORT PLANNING COMMISSION, CHAIRPERSON	DATE
[signature] CITY OF NEWPORT PLANNING DIRECTOR	March 2, 2001 DATE
Tom Hamilton LINCOLN COUNTY SURVEYOR/DEPUTY	9 March 2001 DATE
Linda Pitzer by cd LINCOLN COUNTY TAX COLLECTOR	3-14-01 DATE

APPROVALS

Rob Thomas by cd LINCOLN COUNTY ASSESSOR	03-14-01 DATE
[signature] LINCOLN COUNTY COMMISSIONER	3.14.01 DATE
Sean Cowan LINCOLN COUNTY COMMISSIONER	3-13-01 DATE
[signature] LINCOLN COUNTY COMMISSIONER	3-13-01 DATE

I, GARY KEITH NYHUS CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL.

REGISTERED PROFESSIONAL LAND SURVEYOR
[signature]
OREGON JULY 26, 1991 GARY KEITH NYHUS 2615
RENEWAL DATE: DEC. 31, 2002

NYHUS SURVEYING INC.
-GARY NYHUS-
PROFESSIONAL LAND SURVEYOR
P.O. BOX 206
740 E. THISSELL RD. TIDEWATER, ORE 97390
(541) 528-3234

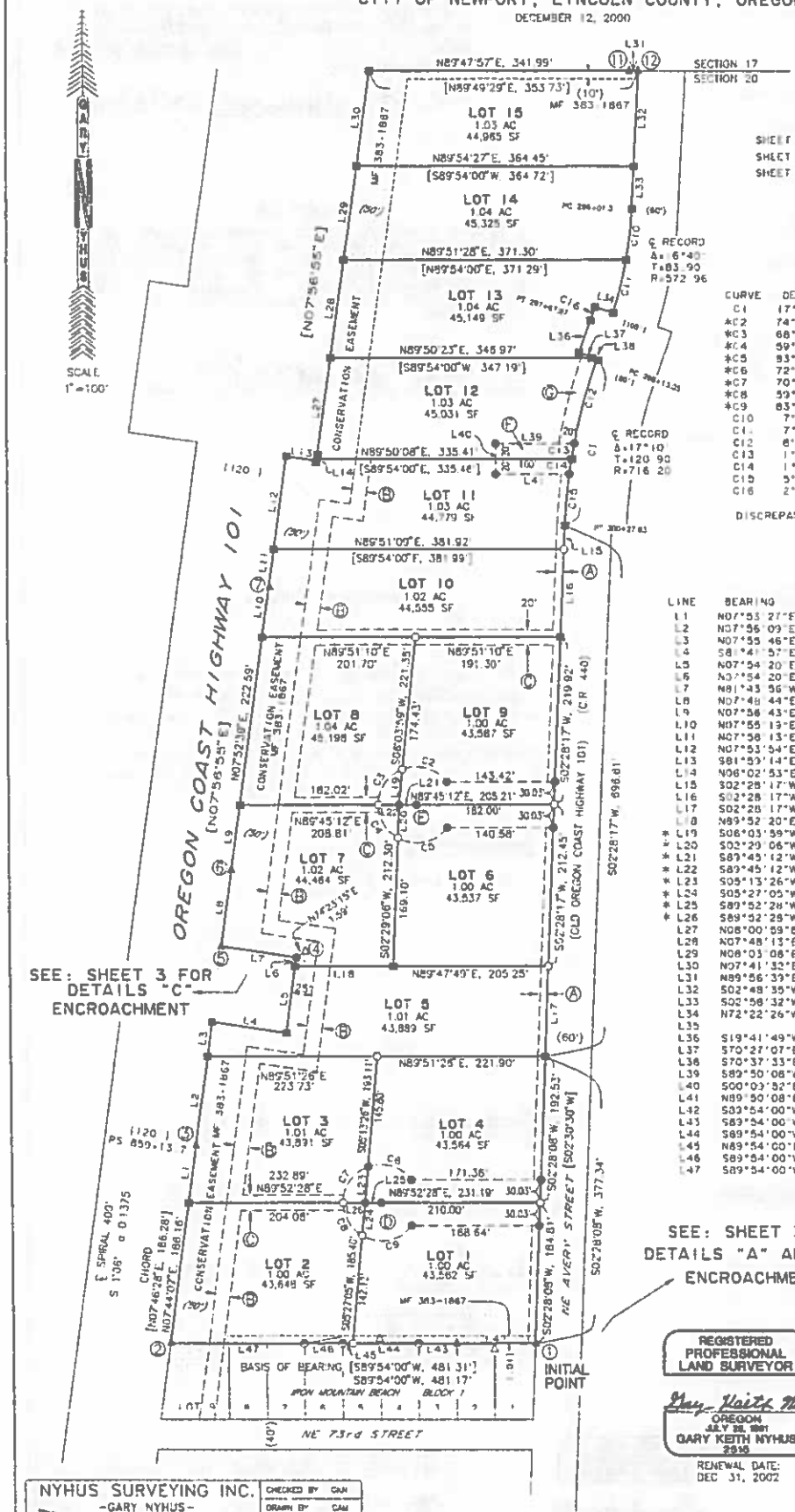
CHECKED BY:	GKN
DRAWN BY	GAM
DATE:	12-12-2000
SCALE:	1" = 100'
PROJECT	99016

DRAWN BY: GM MAPPING -GREG MURRY- (541) 528-7062 / 574-6568

97NRPLAT

Northgate Industrial Park

A REPLAT OF "OCEAN FOREST ESTATES"
LOCATED IN THE NW 1/4 and NE 1/4 OF SECTION 20, T10S, R11W, W.M.
CITY OF NEWPORT, LINCOLN COUNTY, OREGON
DECEMBER 12, 2000



INDEX

CURVE TABLE

CURVE	DELTA	R	L	T	LONG CHORD	
C1	17°10'38"	746.20'	223.71'	112.73'	S11°05'08"W	222.87'
*C2	74°17'37"	50.00'	64.83'	37.88'	N74°15'48"W	60.39'
*C3	68°50'11"	50.00'	60.07'	34.26'	S34°10'18"W	56.52'
*C4	59°38'39"	50.00'	52.05'	28.66'	S30°04'07"E	49.73'
*C5	93°29'10"	50.00'	72.86'	44.62'	N76°21'59"E	66.58'
*C6	72°44'13"	50.00'	63.47'	36.82'	N73°21'50"W	59.30'
*C7	70°23'36"	50.00'	61.43'	35.27'	S35°04'16"W	57.64'
*C8	59°28'36"	50.00'	51.90'	28.56'	S29°51'51"E	49.60'
*C9	83°39'10"	50.00'	73.00'	44.75'	N78°34'15"E	66.69'
C10	7°05'55"	542.96'	67.27'	33.68'	S06°31'30"W	67.23'
C11	7°33'06"	542.96'	71.56'	35.83'	S13°51'01"W	71.51'
C12	8°49'49"	746.20'	114.99'	57.61'	S15°15'34"W	114.88'
C13	1°33'38"	746.20'	20.32'	10.16'	S10°03'53"W	20.32'
C14	1°33'13"	746.20'	20.23'	10.12'	S08°30'27"W	20.23'
C15	5°14'02"	746.20	68.16'	34.11'	S05°06'50"W	68.14'
C16	2°03'09"	517.96'	18.55'	9.28'	S18°39'06"W	18.55'

NOTE: CURVES NON-TANGENT DUE TO DISCREPANCY BETWEEN FOUND MONUMENTATION AND RECORD INFORMATION

LINE TABLE

LINE	BEARING	DISTANCE		LINE	BEARING	DISTANCE	
L1	N07°53'27"E	75.51'	CHORD	[L1]	N07°57'42"E	75.53'	CHORD
L2	N07°56'09"E	118.60'		[L2]	N07°56'55"E	118.6[illegible]	
L3	N07°55'46"E	45.78'		[L3]	N07°56'55"E	45.82'	
L4	S81°41'57"E	99.82'		[L4]	S81°48'00"E	100.00'	
L5	N07°54'20"E	88.27'		[L5]	N07°56'55"E	88.2[illegible]	
L6	N07°54'20"E	11.79'		[L6]	N07°56'55"E	11.79'	
L7	N81°43'56"W	99.66'		[L7]	N81°48'00"W	100.00'	
L8	N07°48'44"E	101.04'		[L8]	N07°56'55"E	101.06'	
L9	N07°56'43"E	86.20'		[L9]	N07°56'55"E	86.92'	
L10	N07°55'13"E	77.44'		[L10]	N07°56'55"E	77.47'	
L11	N07°56'13"E	38.71'		[L11]	N07°56'55"E	38.68'	
L12	N07°53'54"E	123.31'		[L12]	N07°56'55"E	123.27'	
L13	S81°59'14"E	40.14'		[L13]	S82°03'05"E	40.00'	
L14	N06°02'53"E	2.09'		[L14]	N07°56'55"E	2.13'	
L15	S02°28'17"W	30.75'		[L15]	S02°30'30"W	30.75'	
L16	S02°28'17"W	115.11'		[L16]	S02°30'30"W	115.11'	
L17	S02°28'17"W	118.38'		[L17]	S02°30'30"W	118.39'	
L18	N89°52'20"E	128.25'		[L18]	N89°54'00"E	128.13'	
* L19	S06°03'59"W	46.91'		L19			
* L20	S02°29'06"W	43.20'		L20			
* L21	S89°45'12"W	23.21'		L21			
* L22	S89°45'12"W	26.79'		L22			
* L23	S05°13'26"W	47.31'		L23			
* L24	S05°27'05"W	43.28'		L24			
* L25	S89°52'28"W	21.19'		L25			
* L26	S89°52'28"W	28.81'		L26			
L27	N08°00'59"E	133.40'		[L27]	N07°56'55"E	133.29'	
L28	N07°48'13"E	129.95'		[L28]	N07°56'55"E	129.8[illegible]	
L29	N08°03'06"E	124.18'		[L29]	N07°56'55"E	123.92'	
L30	N07°41'32"E	126.06'		[L30]	N07°56'55"E	126.25'	
L31	N89°56'39"E	11.76'		[L31]	N89°54'54"E	11.77'	
L32	S02°48'35"W	125.69'		[L32]	S02°56'59"W	125.65'	
L33	S02°56'32"W	55.91'		[L33]	S02°56'59"W	55.94'	
L34	N72°22'26"W	25.00'		[L34]	N72°20'06"W	25.00'	
L35				L35			
L36	S19°41'49"W	44.78'		[L36]	S19°40'30"W	45.08'	
L37	S70°27'07"E	21.22'		[L37]	S70°19'30"E	21.17'	
L38	S70°37'33"E	3.83'		[L38]	S70°19'30"E	3.83'	
L39	S89°50'08"W	103.61'		L39			
L40	S00°03'52"E	40.00'		L40			
L41	N89°50'08"E	36.95'		L41			
L42	S03°54'00"W	104.74'		[L42]	S89°54'00"W	104.56	
L43	S89°54'00"W	49.87'		[L43]	S89°54'00"W	50.00'	
L44	S89°54'00"W	86.23'		[L44]			
L45	N89°54'00"E	14.01'		L45			
L46	S89°54'00"W	49.93'		[L46]	S89°54'00"W	50.00'	
L47	S89°54'00"W	176.39'		[L47]	S89°54'00"W	76.64'	

LEGEND

- ● MONUMENT SET: 5/8" X 30" RE-BAR WITH YELLOW PLASTIC CAP MARKED "NYHUS LS 2515"
- ■ MONUMENT FOUND: 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "DENISON SUR INC LS 574 OR LS 2126" [PLAT]
- ▲ MONUMENT FOUND: HELD FOR CONTROL, AS NOTED
- ○ MONUMENT FOUND: 5/8" RE-BAR WITH YELLOW PLASTIC CAP MARKED "NYHUS LS 2515" O.S. [illegible]
- △ MONUMENT FOUND: AS NOTED
- ⊖ MONUMENT FOUND: 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "DENISON SURV NEWPORT OR" (C.S. 14,267)
- ( ) RECORD INFORMATION, AS NOTED
- ⊕ CALCULATED POSITION ONLY
- [ ] RECORD INFORMATION, SUBDIVISION PLAT BOOK 14, PAGE 42, "OCEAN FOREST ESTATES"
- * MEASURED SAME AS RECORD, UNLESS NOTED LINCOLN COUNTY SURVEY 16,138

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON JULY 28, 1981 GARY KEITH NYHUS 2515
RENEWAL DATE: DEC. 31, 2002

NYHUS SURVEYING INC.
-GARY NYHUS-
PROFESSIONAL LAND SURVEYOR
P.O. BOX 206
740 E. THISSELL RD. TIDEWATER, ORE 97390
(541) 528-3234

CHECKED BY: GAN	
DRAWN BY: CAM	
DATE: 12-12-2000	
SCALE: 1" = 100'	
PROJECT: 24018	

DRAWN BY: CM MAPPING -CHRIS MURPHY- (541) 929-7083 / 574-6566

0 100 200 300

27HRPLAT

Northgate Industrial Park

A REPLAT OF "OCEAN FOREST ESTATES"
LOCATED IN THE NW 1/4 and NE 1/4 OF SECTION 20, T10S, R11W, W.M.
CITY OF NEWPORT, LINCOLN COUNTY, OREGON
DECEMBER 12, 2000

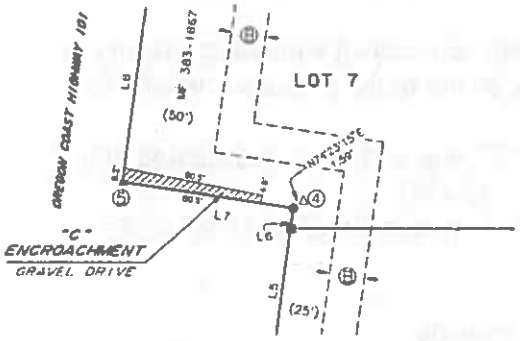
SURVEYOR'S NARRATIVE

THE PURPOSE OF THIS PLAT IS TO REPLAT LOTS 1 THRU 15 "OCEAN FOREST ESTATES" (PLAT BOOK 14, PAGE 42) IN ORDER TO RECONFIGURE PUBLIC AND PRIVATE EASEMENTS WITHIN THIS SUBDIVISION.

THIS SURVEY FOUND AND HELD ORIGINAL PLAT MONUMENTATION AND MONUMENTS REESTABLISHED IN LINCOLN COUNTY SURVEY 16,138. UNDISTURBED MONUMENTS ESTABLISHED IN C.S. 14,267 AND 14,710 ALONG THE SOUTHERLY BOUNDARY OF THIS PLAT (NORTH BOUNDARY OF IRON MOUNTAIN BEACH) WERE ALSO HELD

BEARINGS ARE BASED ON THE PLAT RECORD FOR THE SOUTHERLY BOUNDARY OF THIS SUBDIVISION

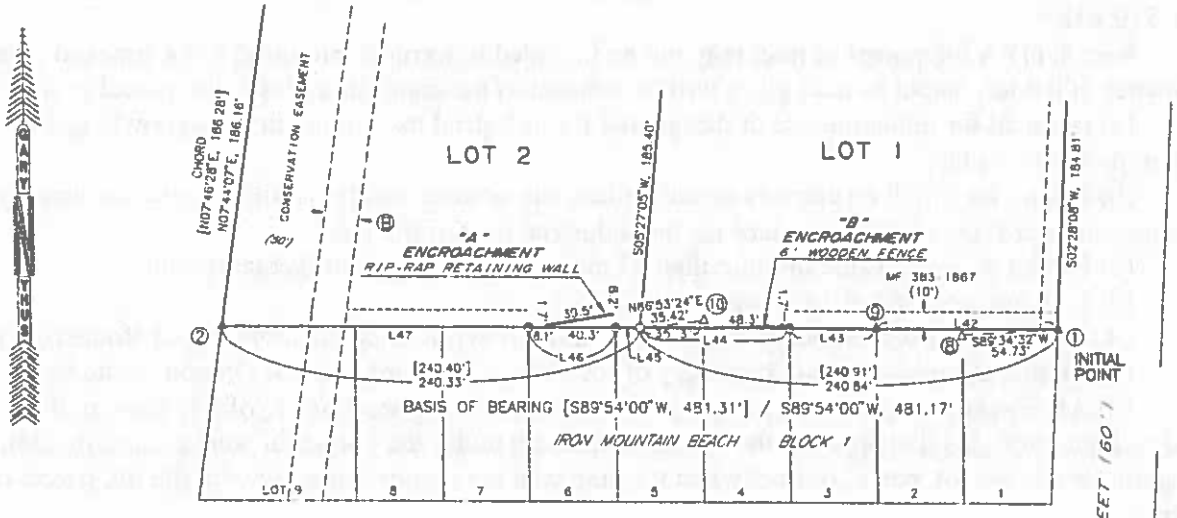
THIS SURVEY WAS PERFORMED WITH A WILD T1610 (1.5") THEODOLITE AND DI 1600 (2mm±3ppm) EDM



SURVEYOR'S CERTIFICATE

I, GARY KEITH NYHUS, A REGISTERED LAND SURVEYOR IN THE STATE OF OREGON, CERTIFY THAT I HAVE ACCURATELY SURVEYED AND MARKED WITH PROPER MONUMENTS AS PROVIDED IN O.R.S. 92.060 THE LANDS REPRESENTED ON THE ACCOMPANYING PLAT OF "NORTHGATE INDUSTRIAL PARK", A REPLAT OF "OCEAN FOREST ESTATES" (PLAT BOOK 14, PAGE 42) LOCATED IN SECTION 20, TOWNSHIP 10 SOUTH, RANGE 11 WEST OF THE WILLAMETTE MERIDIAN, CITY OF NEWPORT, LINCOLN COUNTY, OREGON, THE BOUNDARY BEING DESCRIBED AS FOLLOWS;

BEGINNING AT THE INITIAL POINT, A 5" IRON PIPE BEING THE INITIAL POINT OF "IRON MOUNTAIN BEACH (PLAT BOOK 8, PAGE 24) AND SAID "OCEAN FOREST ESTATES", THENCE SOUTH 89° 54' 00" WEST, 481.17 FEET ALONG THE NORTHERLY BOUNDARY OF "IRON MOUNTAIN BEACH" TO THE EASTERLY RIGHT-OF-WAY BOUNDARY OF RELOCATED HIGHWAY 101, THENCE ALONG A SPIRAL CURVE RIGHT (LONG CHORD BEARS NORTH 07° 44' 07" EAST, 186.16 FEET); THENCE ALONG SAID SPIRAL CURVE (LONG CHORD BEARS NORTH 07° 53' 27"E 75.51 FEET); THENCE NORTH 07° 56' 09" EAST, 118.60 FEET, THENCE NORTH 07° 55' 46" EAST, 45.78 FEET; THENCE SOUTH 81° 41' 57" EAST, 99.82 FEET; THENCE NORTH 07° 54' 20" EAST, 100.06 FEET; THENCE NORTH 81° 43' 56" WEST, 99.66 FEET TO THE EASTERLY RIGHT-OF-WAY BOUNDARY OF HIGHWAY 101, THENCE NORTH 07° 48' 44" EAST, 101.04 FEET, THENCE NORTH 07° 56' 43" EAST, 86.20 FEET; THENCE NORTH 07° 52' 35" EAST, 222.59 FEET; THENCE NORTH 07° 55' 19" EAST, 77.44 FEET, THENCE NORTH 07° 58' 13" EAST, 38.71 FEET; THENCE NORTH 07° 53' 54" EAST, 123.31 FEET, THENCE SOUTH 81° 59' 14" EAST, 40.14 FEET; THENCE NORTH 06° 02' 53" EAST, 2.09 FEET; THENCE NORTH 08° 00' 59" EAST 133.40 FEET; THENCE NORTH 07° 45' 13" EAST, 129.95 FEET, THENCE NORTH 08° 03' 08" EAST, 124.18 FEET; THENCE NORTH 07° 41' 32" EAST, 126.06 FEET TO THE NORTH LINE OF SECTION 20; THENCE NORTH 89° 47' 57" EAST, 341.99 FEET TO A 3/4 INCH IRON ROD (QUARTER CORNER BETWEEN SECTIONS 17 AND 20), THENCE NORTH 89° 56' 39" EAST, 11.76 FEET TO THE WESTERLY RIGHT-OF-WAY OF COUNTY ROAD 440 (OLD HIGHWAY 101); THENCE SOUTH 02° 48' 35" WEST 125.69 FEET, THENCE SOUTH 02° 58' 32" WEST, 55.91 FEET, THENCE ALONG THE ARC OF A 542.96 FOOT RADIUS CURVE RIGHT (LONG CHORD BEARS SOUTH 06° 31' 30" WEST, 67.23 FEET) 67.27 FEET; THENCE ALONG THE ARC OF A 542.96 FOOT RADIUS CURVE RIGHT (LONG CHORD BEARS SOUTH 13° 51' 01" WEST, 71.51 FEET) 71.56 FEET; THENCE NORTH 72° 22' 26" WEST, 25.00 FEET; THENCE ALONG THE ARC OF A 517.96 RADIUS CURVE RIGHT (LONG CHORD BEARS SOUTH 18° 39' 08" WEST, 18.55 FEET) 18.55 FEET; THENCE SOUTH 19° 41' 49" WEST, 44.78 FEET, THENCE SOUTH 70° 27' 07" EAST, 21.22 FEET, THENCE SOUTH 70° 37' 33" EAST, 3.83 FEET, THENCE ALONG THE ARC OF A 746.20 FOOT RADIUS CURVE LEFT (LONG CHORD BEARS SOUTH 11° 05' 08" WEST, 222.87 FEET) 223.71 FEET; THENCE SOUTH 02° 28' 17" WEST, 696.61 FEET, THENCE SOUTH 02° 28' 08" WEST, 377.34 FEET TO THE INITIAL POINT.



NOTE: DETAIL MAP NOT TO SCALE

LEGEND

- ● MONUMENT SET: 5/8" X 30" RE-BAR WITH YELLOW PLASTIC CAP MARKED "NYHUS LS 2515"
- ■ MONUMENT FOUND: 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "DENISON SUR INC LS 574 OR LS 2126" [PLAT]
- ▲ MONUMENT FOUND: HELD FOR CONTROL, AS NOTED
- ○ MONUMENT FOUND: 5/8" RE-BAR WITH YELLOW PLASTIC CAP MARKED "NYHUS LS 2515" C.S. 16138
- △ MONUMENT FOUND: AS NOTED
- ⊖ MONUMENT FOUND: 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "DENISON SURV NEWPORT OR" (C.S. 14,267)
- ( ) RECORD INFORMATION, AS NOTED
- [ ] RECORD INFORMATION: SUBDIVISION PLAT BOOK 14, PAGE 42, "OCEAN FOREST ESTATES"
- { } RECORD INFORMATION: SUBDIVISION PLAT BOOK 8, PAGE 24, "IRON MOUNTAIN BEACH"

LINE TABLE

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L42	S89°54'00"W	104.74'	{L42}	S89°54'00"W	104.56'
L43	S89°54'00"W	43.87	{L43}	S89°54'00"W	50.00'
L44	S89°54'00"W	86.23'	{L44}		
L45	N89°54'00"E	14.01	L45		
L46	S89°54'00"W	49.93'	{L46}	S89°54'00"W	50.00'
L47	S89°54'00"W	176.39	{L47}	S89°54'00"W	176.39

REGISTERED PROFESSIONAL LAND SURVEYOR
Gary Keith Nyhus
OREGON
JULY 24, 1981
GARY KEITH NYHUS
2515
RENEWAL DATE: DEC 31, 2002

NYHUS SURVEYING INC.
-GARY NYHUS-
PROFESSIONAL LAND SURVEYOR
P.O. BOX 206
740 E. THISSELL RD. TIDEWATER, ORE 97390
(541) 528-3234

97NRPLAT

CHECKED BY:	GKN
DRAWN BY	GAM
DATE	12-12-2000
SCALE	
PROJECT	99016

DRAWN BY: GM MAPPING -GREG MURRY- (541) 528-7082 / 574-6586

ANNEXATION OF CONTIGUOUS TERRITORY

(Temporary provisions relating to annexation of certain industrial lands)

Note: Sections 3 and 10, chapter 737, Oregon Laws 1987, provide:

Sec. 3. (1) Notwithstanding any other provision of law, when property:

(a) Is property on which no electors reside;

(b) Is zoned for industrial uses;

(c) Has sewer and water lines paid for and installed by the property owner; and

(d) Has an assessed valuation, including improvements, of more than $7 million

that property can only be annexed by or to a city after the city receives a petition requesting annexation from the owner of the property.

(2) Property described in subsection (1) of this section shall not be included with other territory as part of an annexation, or annexed under ORS 222.750, unless the owner of the property consents to the annexation in the form of a petition for annexation.

(3) This section applies to property that, on September 27, 1987, was within the jurisdiction of a local government boundary commission. [1987 c.737 §3; 1997 c.516 §14]

Sec. 10. Section 3, chapter 737, Oregon Laws 1987, is repealed on June 30, 2035. [1987 c.737 §10; 1989 c.226 §1; 1997 c.226 §1; 2005 c.844 §8]

Note: Sections 7, 8 and 11, chapter 539, Oregon Laws 2005, provide:

Sec. 7. Section 8 of this 2005 Act is added to and made a part of ORS 222.111 to 222.180. [2005 c.539 §7]

Sec. 8. (1) A lot, parcel or tract may not be included in territory proposed to be annexed unless the owner of the lot, parcel or tract gives written consent to the annexation, if the lot, parcel or tract:

(a) Is zoned for industrial use or designated for industrial use zoning in an acknowledged comprehensive plan;

(b) Is land on which no electors reside, unless one or more electors living on-site are employed or engaged to provide security services for the industrial user of the land;

(c) Has an assessed value of more than $2 million, including improvements; and

(d) Is in unincorporated Jackson County, either:

(A) Within the urban unincorporated community of White City, west of Oregon Route 62; or

(B) Within the urban growth boundary of the City of Medford, west of Oregon Route 99.

(2) After annexation of a lot, parcel or tract described in subsection (1) of this section, the development rights that apply to the lot, parcel or tract under the industrial zoning classification applicable to the lot, parcel or tract when it is annexed are retained and run with the lot, parcel or tract.

(3) As used in this section, "urban unincorporated community" means an unincorporated community that:

(a) Includes at least 150 permanent residential dwelling units;

(b) Contains a mixture of land uses, including three or more public, commercial or industrial land uses;

(c) Includes areas served by a community sewer system; and

(d) Includes areas served by a community water system. [2005 c.539 §8]

Sec. 11. Sections 2, 4, 6, 8 and 10 of this 2005 Act are repealed June 30, 2016. [2005 c.539 §11]

Note: Sections 5, 6, 7, 9 (2) and 11, chapter 844, Oregon Laws 2005, provide:

Sec. 5. (1) Notwithstanding any provision of ORS 195.205 to 195.225, 199.410 to 199.534, 222.111 to 222.180, 222.750 and 222.840 to 222.915, property described in subsection (2) or (3) of this section may not be annexed by or to a city unless the city receives consent to the annexation from the owner of the property in the form of a petition for annexation.

(2) Property for which annexation is limited by subsection (1) of this section is property:

(a) That is composed of one or more lots, parcels or tracts that:

(A) Are owned by the same individual or entity, including an affiliate or subsidiary of the entity;

(B) Are contiguous or are separated from each other only by a public right of way, a stream, a bay, a lake or another body of water; and

(C) Together comprise at least 150 acres;

(b) On which no electors reside;

(c) That was zoned for industrial, employment or transit-oriented employment uses on December 31, 2004;

(d) That has private, on-premises security services; and

(e) That has an assessed valuation, including improvements, of more than $12 million.

(3) Subsection (1) of this section applies to a lot, parcel or tract that is owned by the same individual or entity, including an affiliate or a subsidiary of the entity, that owns the property described in subsection (2)(a) of this section if the lot, parcel or tract:

(a) Is within two miles of the property described in subsection (2)(a) of this section; and

(b) Contains 10 or more acres that are contiguous or separated from each other only by a public right of way, a stream, a bay, a lake or another body of water.

(4) A city may not obtain approval of an owner for annexation under this section by requiring or requesting that the owner waive remonstrance or agree to annexation in order to receive utility service or other city services located in the city right of way at the same price the city charges an owner of similar property that is within the city. [2005 c.844 §5]

Sec. 6. An area of land within the urban growth boundary of the metropolitan service district established in the Portland metropolitan area may not be annexed under ORS 222.750 if:

(1) The area of land is larger than seven acres and is zoned for industrial use;

(2) The land is owned by an Oregon-based business entity that has been in continuous operation, either directly or through a predecessor, for at least 60 years; and

(3) The business entity employs more than 500 individuals on the land. [2005 c.844 §6]

Sec. 7. An area of land within the urban growth boundary of the metropolitan service district established in the Portland metropolitan area may not be annexed under ORS 222.750 if:

(1) The area of land is larger than 14 acres and is zoned for industrial use;

(2) The land is owned by an Oregon-based business entity that has been in continuous operation on a portion of the land for at least 40 years; and

(3) The business entity employs more than 300 individuals on the land. [2005 c.844 §7]

Sec. 9. (2) Sections 5, 6 and 7 of this 2005 Act apply to an annexation of territory approved on or after March 1, 2005, and to an annexation of territory proposed on or after the effective date of this 2005 Act. [2005 c.844 §9(2)]

Sec. 11. (1) Sections 5, 6 and 7 of this 2005 Act are repealed on June 30, 2035.

(2) Notwithstanding subsection (1) of this section, unless this section is amended, sections 5 and 6 of this 2005 Act are repealed five years after June 30, 2035. [2005 c.844 §11]

222.110 [Repealed by 1957 c.613 §1 (222.111 enacted in lieu of 222.110)]

222.111 Authority and procedure for annexation. (1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of

territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.

(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.

(6) The proposal for annexation may be voted upon by the electors of the city and of the territory simultaneously or at different times not more than 12 months apart.

(7) Two or more proposals for annexation of territory may be voted upon simultaneously; however, in the city each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot. [1957 c.613 §2 (enacted in lieu of 222.110); 1959 c.415 §1; 1967 c.624 §13; 1985 c.702 §7]

222.115 Annexation contracts; recording; effect. A contract between a city and a landowner containing the landowner's consent to eventual annexation of the landowner's property in return for extraterritorial services:

(1) Must be recorded; and

(2) When recorded, is binding on successors in interest in that property. [1991 c.637 §4; 2012 c.46 §§1,2]

222.120 Procedure without election by city electors; hearing; ordinance subject to referendum. (1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the Oregon Health Authority, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

(7) For the purpose of this section, ORS 222.125 and 222.170, "owner" or "landowner" means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land. [Amended by 1953 c.220 §2; 1955 c.51 §1; 1961 c.511 §1; 1967 c.624 §14; 1971 c.673 §2; 1985 c.702 §8; 1987 c.818 §11; 1993 c.18 §39; 2009 c.595 §180]

222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [1985 c.702 §3; 1987 c.738 §1]

Note: 222.125 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

222.130 Annexation election; notice; ballot title. (1) The statement summarizing the measure and its major effect in the ballot title for a proposal for annexation shall contain a general description of the boundaries of each territory proposed to be annexed. The description shall use streets and other generally recognized features. Notwithstanding ORS 250.035, the statement summarizing the measure and its major effect may not exceed 150 words.

(2) The notice of an annexation election shall be given as provided in ORS 254.095, except that in addition the notice shall contain a map indicating the boundaries of each territory proposed to be annexed.

(3) Whenever simultaneous elections are held in a city and the territory to be annexed, the same notice and publication shall fulfill the requirements of publication for the city election and the election held in the territory. [Amended by 1967 c.283 §1; 1979 c.317 §4; 1983 c.350 §33; 1995 c.79 §80; 1995 c.534 §10; 2007 c.154 §60]

222.140 [Repealed by 1979 c.317 §26]

222.150 Election results; proclamation of annexation. The city legislative body shall determine the results of the election from the official figures returned by the county clerk. If the city legislative body finds that the majority of all votes cast in the territory favors annexation and the city legislative body has dispensed with submitting the question to the electors of the city, the city legislative body, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [Amended by 1983 c.83 §23; 1983 c.350 §34; 1985 c.702 §9]

222.160 Procedure when annexation is submitted to city vote; proclamation. This section applies when the city legislative body has not dispensed with submitting the question of annexation to the electors of the city. If the city legislative body finds that a majority of the votes cast in the territory and a majority of the votes cast in the city favor annexation, then the legislative body, by resolution or ordinance, shall proclaim those annexations which have received a majority of the votes cast in both the city and the territory. The proclamation shall contain a legal description of each territory annexed. [Amended by 1983 c.350 §35; 1985 c.702 §10]

222.170 Effect of consent to annexation by territory; proclamation with and without city election. (1) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.

(2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.

(3) If the city legislative body has not dispensed with submitting the question to the electors of the city and a majority of the votes cast on the proposition within the city favor annexation, or if the city legislative body has previously dispensed with submitting the question to the electors of the city as provided in ORS 222.120, the legislative body, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

(4) Real property that is publicly owned, is the right of way for a public utility, telecommunications carrier as defined in ORS 133.721 or railroad or is exempt from ad valorem

taxation shall not be considered when determining the number of owners, the area of land or the assessed valuation required to grant consent to annexation under this section unless the owner of such property files a statement consenting to or opposing annexation with the legislative body of the city on or before a day described in subsection (1) of this section. [Amended by 1955 c.51 §2; 1961 c.511 §2; 1971 c.673 §1; 1973 c.434 §1; 1983 c.350 §36; 1985 c.702 §11; 1987 c.447 §117; 1987 c.737 §4; 1999 c.1093 §12]

222.173 Time limit for filing statements of consent; public records. (1) For the purpose of authorizing an annexation under ORS 222.170 or under a proceeding initiated as provided by ORS 199.490 (2), only statements of consent to annexation which are filed within any one-year period shall be effective, unless a separate written agreement waiving the one-year period or prescribing some other period of time has been entered into between an owner of land or an elector and the city.

(2) Statements of consent to annexation filed with the legislative body of the city by electors and owners of land under ORS 222.170 are public records under ORS 192.410 to 192.505. [1985 c.702 §20; 1987 c.737 §5; 1987 c.818 §8]

Note: 222.173 to 222.177 were added to and made a part of ORS chapter 222 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

222.175 City to provide information when soliciting statements of consent. If a city solicits statements of consent under ORS 222.170 from electors and owners of land in order to facilitate annexation of unincorporated territory to the city, the city shall, upon request, provide to those electors and owners information on that city's ad valorem tax levied for its current fiscal year expressed as the rate per thousand dollars of assessed valuation, a description of services the city generally provides its residents and owners of property within the city and such other information as the city considers relevant to the impact of annexation on land within the unincorporated territory within which statements of consent are being solicited. [1985 c.702 §21; 1987 c.737 §6; 1987 c.818 §9]

Note: See note under 222.173.

222.177 Filing of annexation records with Secretary of State. When a city legislative body proclaims an annexation under ORS 222.125, 222.150, 222.160 or 222.170, the recorder of the city or any other city officer or agency designated by the city legislative body to perform the duties of the recorder under this section shall transmit to the Secretary of State:

(1) A copy of the resolution or ordinance proclaiming the annexation.

(2) An abstract of the vote within the city, if votes were cast in the city, and an abstract of the vote within the annexed territory, if votes were cast in the territory. The abstract of the vote for each election shall show the whole number of electors voting on the annexation, the number of votes cast for annexation and the number of votes cast against annexation.

(3) If electors or landowners in the territory annexed consented to the annexation under ORS 222.125 or 222.170, a copy of the statement of consent.

(4) A copy of the ordinance issued under ORS 222.120 (4).

(5) An abstract of the vote upon the referendum if a referendum petition was filed with respect to the ordinance adopted under ORS 222.120 (4). [1985 c.702 §4; 1987 c.737 §7; 1987 c.818 §10]

Note: See note under 222.173.

222.179 Exempt territory. The amendments to ORS 222.210, 222.230, 222.240 and 222.270 made by chapter 702, Oregon Laws 1985, do not apply in territory subject to the jurisdiction of a local government boundary commission. [1985 c.702 §27]

Note: 222.179 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 222 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

222.180 Effective date of annexation. (1) The annexation shall be complete from the date of filing with the Secretary of State of the annexation records as provided in ORS 222.177 and 222.900. Thereafter the annexed territory shall be and remain a part of the city to which it is annexed. The date of such filing shall be the effective date of annexation.

(2) For annexation proceedings initiated by a city, the city may specify an effective date that is later than the date specified in subsection (1) of this section. If a later date is specified under this subsection, that effective date shall not be later than 10 years after the date of a proclamation of annexation described in ORS 222.177. [Amended by 1961 c.322 §1; 1967 c.624 §15; 1973 c.501 §2; 1981 c.391 §5; 1985 c.702 §12; 1991 c.637 §9]

222.183 Notice of annexation when effective date delayed for more than one year. (1) If the effective date of an annexation is more than one year after the date of a proclamation of annexation, the city, through its recorder or other city officer or agency performing the duties of recorder under this section, shall send notice to the county clerk of each county within which the city is located. The notice shall be sent not sooner than 120 days and not later than 90 days prior to the effective date of the annexation.

(2) The notice described in subsection (1) of this section shall be in addition to any other notice or filing required under ORS 222.010 to 222.750. [1995 c.607 §67]

WITHDRAWAL OF TERRITORY

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

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

(3) The resolution shall:

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

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

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

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

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

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

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

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

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

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

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

222.465 Effective date of withdrawal from domestic water supply district, water control district or sanitary district. Notwithstanding any provision of this chapter or ORS chapter 199 which provides a different effective date, when territory is withdrawn by a city from a domestic water supply district organized under ORS chapter 264, a water control district organized under ORS chapter 553 or a sanitary district organized under ORS chapter 450, if the ordinance, annexation or incorporation that results in the withdrawal is enacted or approved after March 31 in any year, the effective date of the withdrawal of territory shall be July 1 in the following year. However, if the ordinance, annexation or incorporation that results in the withdrawal is enacted or approved before April 1 in any year, the effective date of the withdrawal of territory shall be July 1 in the same year. When less than the entire area of a domestic water supply district organized under ORS chapter 264, a water control district organized under ORS chapter 553 or a sanitary district organized under ORS chapter 450 is annexed by or incorporated into a city, the district shall, for purposes of administration, operation and the collection of service charges, continue to operate that portion of the district separately until the effective date of the withdrawal of territory as determined under this section. This section does not limit any agreement between a city and a district under ORS 222.530 (5), 222.540 (4) or 222.560 (4). [1985 c.702 §4a]

PLANNING STAFF REPORT
Case File No. 2-AX-15 / 4-Z-15

A. **APPLICANT:** Gail Malcolm, Project Manager (Debra Smith, General Manager, authorized representative) (Central Lincoln People's Utility District, property owners).

B. **REQUEST:** Consideration of requests to: (1) annex approximately 0.23 acre of real property (consisting of property currently identified as Tax Lot 400 of Assessor's Tax Map 10-11-20-BB into the Newport city limits; (2) amend the City of Newport Zoning Map to establish an I-1/"Light Industrial" zoning designation for the subject property consistent with the existing Newport Comprehensive Plan designation of Industrial; and (3) withdraw said territory from the Newport Rural Fire Protection District and the Lincoln County Library District.

C. **LOCATION:** 7576 N Coast Highway (Lincoln County Assessor's Map 10-11-20-BB, Tax Lot 400).

D. **PROPERTY SIZE:** Approximately 0.23 acres.

E. **STAFF REPORT:**

1. **REPORT OF FACTS:**

a. **Plan Designation:** The subject territory is within the Newport Urban Growth Boundary, and is designated as "Industrial" on the Newport Comprehensive Plan Map.

b. **Zone Designation:** City of Newport zoning is established at time of annexation. Either the I-1/"Light-Industrial," I-2/"Medium-Industrial" or I-3/"Heavy Industrial" designations are consistent with Comprehensive Plan designation of Industrial. The applicant is requesting the I-1 zone designation.

c. **Surrounding Land Uses:** Vacant I-1/"Light Industrial" zoned property borders the site to the north, south and east. Single family residences exist across US 101 to the west in an R-1/ "Low Density Residential" zoned area.

d. **Topography and Vegetation:** The property is gradually sloped and is partially vegetated with native shrubs and trees.

e. **Existing Buildings:** A 1,350 square foot, single family residence constructed in 1948.

f. **Utilities:** The existing dwelling receives water service from the City of Newport. Sewer is likely handled via an on-site septic system.

g. **Development Constraints:** None known.

h. **Past Land Use Actions:** None.

i. **Notification:** Required notice to the Department of Land Conservation and Development was provided on November 4, 2015.

For the Planning Commission public hearing, notification in accordance with the NMC Section 14.52.060(C) requirements included mailing notice to surrounding property owners, City departments and other public agencies and utilities, and other individuals on October 28, 2015. The notice of public hearing in the Newport News-Times was published on November 13, 2015.

j. **Attachments:**

Attachment "A" – Applicant Request
Attachment "B" – Notice of Public Hearing and Map
Attachment "C"– Aerial Photo of Area to be Annexed
Attachment "D" – Newport Zoning Map
Attachment "D-1" – Uses allowed in the I-1, I-2 and I-3 zones
Attachment "D-2" – Intent of Zoning Districts
Attachment "E"– Legal Description of the Area to be Annexed
Attachment "F"– Northgate Industrial Park Subdivision Plat (reduced)
Attachment "G"– Copy of ORS 222.170 through 222.183
Attachment "G-1"– Copy of ORS 222.460 through 222.465

2. **Explanation of the Request:** Pursuant to NMC Section 14.52.030(A) (Approving Authorities), all actions that have the City Council as the approving authority (with the exception of withdrawals) shall first be referred to the Planning Commission for review and recommendation.

The applicant is asking that the subject property be brought into the city limits of Newport and rezoned for light industrial use so that it can be redeveloped in the future in conjunction with adjoining lots that they have purchased in the Northgate Industrial Park subdivision. There is a 50-foot conservation easement and 20-foot sewer and storm drainage easement that follow the west line of the Northgate Industrial Park. The easements wrap around the subject parcel. By acquiring the site and annexing it into the city, the applicant has an opportunity to straighten out the easements, freeing up land for future development. The applicant intends to demolish the existing residence, and the driveway onto US 101 will be abandoned.

As part of the annexation and as provided for in Oregon Revised Statutes (ORS) 222.524, the subject property would be withdrawn from the Newport Rural Fire Protection District and the Lincoln County Library District as the City of Newport provides these services.

3. **Evaluation of the Request:**

a.) **Comments:** Notices of the proposed annexation and Zoning Map amendments were mailed on October 28, 2015, to affected property owners and various City departments, public/private utilities and agencies within Lincoln County, and other individuals. As of November 16, 2015 no comments have been received.

b.) **Applicable Criteria:**

(1) Annexation/Withdrawal:

Newport Municipal Code (NMC) Section 14.37.040: The required consents have been filed with the City; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits.

Note: There are no specific criteria for withdrawals from a district. Withdrawals are done in conjunction with the annexation when the City becomes the service provider for the property.

(2) Zone Map Amendment:

Zone Map Amendments (as per NMC Section 14.36.010): Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.

c.) **Staff Analysis:**

(1) Annexation: Newport Municipal Code (NMC) Section 14.37.040: The required consents have been filed with the city; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits.

A. The required consents have been filed:

Pursuant to Oregon Revised Statutes (ORS) 222.170(2), the City need not hold an election on the annexation of contiguous territory if it receives the consent of more than 50 percent of the owners of land in the territory, and such owners own more than 50 percent of the land area within the territory.

The subject property was acquired by the Central Lincoln People's Utility District on September 25, 2015, as evidenced with a warranty deed recorded with the Lincoln County Clerk's Office under Instrument No. 2015-09854. Debra Smith, the District's General Manager, signed the application form requesting that the property be annexed. By signing the application form, Ms. Smith has provided the requisite consent that the territory be annexed. See Planning Staff Report Attachment "A" (Applicant Request).

B. territory to be annexed is within the acknowledged urban growth boundary (UGB);

City records show that the property is within the Urban Growth Boundary of the City of Newport.

C. territory to be annexed is contiguous to the existing city limits.

The north, east and south sides of the property are contiguous to the city limits. See Planning Staff Report Attachment "C" (Aerial Photo of Area to be Annexed).

(2) Zone Map Amendment: Zone Map Amendments (as per NMC Section 14.36.010): Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.

The Comprehensive Plan designation of Industrial is implemented by the I-1/"Light Industrial," I-2/"Medium Industrial," or I-3/"Heavy Industrial" zoning designations. The applicant intends to develop the subject property and adjoining lots into a maintenance yard that will replace an existing maintenance yard in South Beach. They have requested that an I-1/"Light Industrial" zone designation be placed on the property. Lots to the north, east, and south that are inside the city and owned by the applicant are currently under an I-1 designation. A maintenance yard for an electrical utility is permitted in the I-1/"Light Industrial" zone district as an Industrial Service Use (NMC 14.03.070(7)) or as a Community Service Use (NMC 14.03.070(14)) (See Planning Staff Report Attachment "D-1"). The intent of the I-1, I-2, and I-3 zoning districts is included as Planning Staff Report Attachment "D-2."

The Industrial Comprehensive Plan Map designation for this property provides additional land for a range of potential industrial uses consistent with the Comprehensive Plan and the City's 20-year buildable land inventory. It is logical to apply an I-1 zoning designation to the property given that it borders land under the same designation on three sides. The Planning Commission may conclude that the application of a zone designation in conformance with the Comprehensive Plan would further a public necessity and promote the general welfare.

4. **Conclusion:** If the Commission finds that the request meets the criteria, then the Commission should recommend approval of the request with any conditions for annexation as the Commission deems necessary for compliance with the criteria. Additionally, the Commission should

recommend to the City Council whether or not the zoning designation should be I-1, I-2, or I-3. If, on the other hand, the Commission finds that the request does not comply with the criteria, then the Commission should identify the portion(s) of the criteria with which the annexation request is not in compliance.

F. **STAFF RECOMMENDATION:** Based on the information received as of November 16, 2015, the applicant appears to be able to meet the applicable criteria for the annexation request and zoning map amendment.

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Derrick Tokos
Community Development Director/City of Newport

November 17, 2015

NEWPORT
OREGON

AGENDA and Notice of Town Hall Meeting of the City Council

The City Council of the City of Newport will hold a Town Hall Meeting on Monday, November 30, 2015, starting at 6:00 P.M. The Town Hall Meeting will be held at the Performing Arts Center, located at 777 West Olive Street, Newport Oregon 97365. A copy of the agenda follows. **The public is invited, and encouraged, to attend this meeting**.

A Town Hall meeting is a forum held in different geographic areas of the city. It is an opportunity for interested citizens to comment on issues affecting those neighborhoods.

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 Council 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 Town Hall meeting.

TOWN HALL MEETING AGENDA

Monday, November 30, 2015 - 6:00 P.M.

Performing Arts Center

I. 6:00 P.M. - Welcome by Mayor Roumagoux

II. City Council and Staff Introductions

III. Review of Performing Arts Center Renovation Project - Catherine Rickbone, Executive Director, Oregon Coast Council for the Arts

IV. Upcoming Offerings at the Performing Arts Center and Visual Arts Center - Catherine Rickbone, Executive Director, Oregon Coast Council for the Arts

V. Nye Beach Merchants Association - Planned Community Activities

VI. Update on the Nye Beach Design Overlay Revisions - Derrick Tokos, Community Development Director

VII. Update on Activities of the Nye Beach Parking District - Derrick Tokos, Community Development Director

VIII. Public Works Update - Projects Anticipated in Nye Beach - Tim Gross, Public Works Director

A. Rehabilitation of the Nye Beach Turnaround

B. Sixth Street

IX. Bacteria Counts at Nye Beach - Tim Gross, Public Works Director

X. Street Light and Pole Maintenance - Tim Gross, Public Works Director

XI. Public Comment on Agenda Items Above

XII. Adjournment