



**PLANNING COMMISSION REGULAR SESSION AGENDA**  
**Monday, October 28, 2019 - 7:00 PM**  
**City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365**

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The meeting location is accessible to persons with disabilities. A request for an interpreter for the DEAF AND HARD OF HEARING, 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 at 541.574.0613.

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

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**1. CALL TO ORDER AND ROLL CALL**

**2. APPROVAL OF MINUTES**

**2.A Approval of the Planning Commission Regular Session Meeting Minutes of October 14, 2019.**

[Draft PC Regular Session Minutes 10-14-19](#)

**3. CITIZENS/PUBLIC COMMENT**

*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.*

**4. ACTION ITEMS**

**4.A Final Order and Findings for File 8-NCU-19: Surfside Mobile Village Replacement of a Manufactured Home with Two Park Models.**  
[Final Order and Findings](#)

**5. PUBLIC HEARINGS**

**5.A File 6-CUP-19 (Continued): Conditional Use Permit to Remodel and Expand the Existing Oregon Coast Aquarium.**  
[Final Orders and Findings](#)  
[Attachment L](#)

**6. NEW BUSINESS**

**7. UNFINISHED BUSINESS**

**8. DIRECTOR COMMENTS**

**9. ADJOURNMENT**

**Draft MINUTES**  
**City of Newport Planning Commission**  
**Regular Session**  
**Newport City Hall Council Chambers**  
**October 14, 2019**

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

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

**City Staff Present:** Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners East, Hardy, Berman, Hanselman, Branigan, and Patrick were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Work and Regular Session Meeting Minutes of September 23, 2019.

Commissioner Berman noted minor corrections to the minutes.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Hardy to approve the Planning Commission work and regular session meeting minutes of September 23, 2019 with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** None were heard.

4. **Action Items.** None were heard.

5. **Public Hearings.** At 7:01 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Commissioner Branigan reported a site visit at the Oregon Coast Aquarium. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. **File 6-CUP-19.**

Tokos reviewed the staff report. He reported that the Aquarium was required to go through a conditional use process because the land use rules were different now from when the Aquarium was built in 1990. Tokos reviewed the locations where pedestrian improvements could be done as part of the requirements for approval. He reported the concerns the Fire Department had for ease of access of for their equipment, and noted where they wanted to see improvements done. Tokos explained that the legal public notice wasn't published by the newspaper, but a notice had been mailed out. He recommended the Commission continue the hearing for two weeks and take action at that time.

Patrick asked if only the parts of the Aquarium that was zoned C-2 were required to have a conditional use. Tokos reported the bulk of the improvements were for marine research. A conditional use was needed for this in the C-2 zone, and was also required for an entertainment use in the W-2 zone. Branigan asked if the Aquarium would need conditional use approval for the areas they owned. Tokos said this condition use covered all areas.

Berman asked if there had been any discussion about tsunami evacuation and signage. Tokos explained it had not been a part of the conditional use application discussion. Branigan asked for Fire Chief, Rob Murphy to speak on the improvements the Fire Department wanted the Aquarium to do. Murphy addressed the Commission and reported that they looked back at their files when the Aquarium was built and found that there had been discussions with the Fire Marshall and developers about access, but not much on findings and decisions. The only decision was to accept the width of the bridge from the drive to the main entrance. Murphy reported that the Fire Department had currently done a site visit and had concerns on access to the East side of the facility on the north end. Because the facility was a preexisting nonconforming, the Fire Department wanted to bring attention to this area and work with the Aquarium plans to get better access. Murphy pointed out the areas by the Passages of the Deep exhibit on the map where they wanted better access points, and reviewed the improvements the Fire Department thought they could do. He noted a second area at the north access that wouldn't allow a fire engine to get within 100 feet of the building. The Fire Department wanted to see better access at this point. Branigan asked if there needed to be improvements on 29th Street where the wooden doors were located. Murphy explained this was the area where the Aquarium needed to look at the turning radius for fire engines.

Hanselman asked if the pathway allowed vehicles to pass each other. Murphy thought it was tight and probably wouldn't. He guessed it was 14 feet wide. Berman asked if what Murphy was saying was that he was backing off on what his memo said to extend the road all the way to meet up with the other path. Murphy explained ideally he wanted this, but noted this was a starting point and he was open to some negotiations. Hanselman had concerns about how people would be moved out of the facility in a large event. He wanted to push for more in the way of access. Murphy noted the facility had many different access points for people to exit, and had a sprinkler system. Branigan reported the Aquarium had an extensive staff who could respond to emergencies. A discussion ensued regarding access for ambulances and fire trucks at the Aquarium.

Berman asked for more information on the gate Murphy wanted to have added. Murphy showed where the gate would be located and explained that the gate was not for public access but for emergency access. East thought this change should be easy because most of the area would be changed for a playground area.

**Proponents:** Carrie Lewis, with the Newport Oregon Coast Aquarium, and Steve Dangermond, architect for the project, addressed the Commission. Dangermond said they studied the Fire Department access comments. He explained that the updates to the path along the estuary would be very difficult for a fire truck to use it. He thought adding a gate and better access to the north end of the building could be something they could achieve in the design of the play area. Berman asked about the potential issue with the turning radius at the southern end. Dangermond said modifications to the plan and tree trimming could allow for this. It was clearly designed to allow truck access at one time and was rated to allow it. Dangermond noted that once a truck got close to the building there were landscape rocks that could prevent truck access. They would be doing modifications in that area as well to allow closer truck access. Dangermond reported that they would work with the Fire Department and address the areas of concern.

Branigan asked for thoughts about the request to add sidewalks. Lewis said they needed to look into this and there were improvements to do at the crossing on Ferry Slip. Their landscape architects needed to look at the formal entrance not having a lot of room for a pathway because of landscape and the grade. Patrick suggested that they find a way to add a path closer to the parking lot and add markings on the pavement to make it easier to direct people. He thought the new ticket booth would be facing the wrong way because it would place it into the prevailing winds. Dangermond said they looked at other areas to place it but it wouldn't fit. They had worked on designs to help with wind protection and weather.

Berman asked what their practices were for tsunami evacuations. Lewis explained there were signs for evacuations onsite. They ran quarterly drills to show people where to go, and there were maps on site. Lewis noted they encouraged staff to evacuation to the MSI Building and trained their staff to know the evacuation routes. Branigan asked if Phase II of their improvements was included in this request. Dangermond reported it wasn't and they would be submitted at another time. Patrick asked if Phase II would have to have a conditional use approval. Tokos would look into this. Hanselman asked if the rehab center would be open

to the public. Lewis said it was strictly rehabilitation and not open to the public. This area would also be for the Aquarium's collection, and would be used as an education center to work with OSU and students for education opportunities.

**Opponents:** None were heard.

Tokos suggested the Commission continue the hearing for two weeks and he would bring the refined conditions back to them at that time.

**MOTION** was made by Commissioner East, seconded by Commissioner Berman to keep the hearing open for two weeks for File 6-CUP-19. The motion carried in a unanimous voice vote.

**B. File 8-NCU-19.**

Tokos reviewed the staff report. He noted the applicant was in attendance and owned an undivided interest in the property along with a few other groups. Tokos believed their intent was to eventually put ownership under one LLC. He reported that the owners needed to make sure they didn't encroach on the utility easement across the property. The applicant would be required to locate the utilities and report this on their building permit documents for the Public Works Department to review.

Berman asked if Tokos had an updated diagram of setbacks. Tokos said there was ample space to meet setback requirements and they would have to provide this with the building application.

**Proponents:** Tyson Cross and Khari Gates, partial owners of the property, addressed the Commission and said they were present to answer questions. No questions were heard.

**Opponents:** None were heard.

Hearing closed at 7:49pm.

Commissioners East, Hardy, Berman, Hanselman, and Branigan had no issues with the request. Patrick didn't have any issues and asked how this decision interacted with the new ADU or duplex rules. Tokos explained that these rules weren't relevant because the property was an existing mobile home park. The rules were more for new development.

**MOTION** was made by Commissioner Branigan, seconded by Commissioner Berman to approve File 8-NCU-19 with the staff conditions. The motion carried in a unanimous voice vote.

**6. New Business.** None were heard.

**7. Unfinished Business.** None were heard.

**8. Director Comments.** Tokos gave updates to the Commission. He reported that the first Transportation System Plan Policy Advisory Committee would meet on October 16th. The City Council will hold a public hearing on the parking amendments on November 18th.

Tokos reported that Associate Planner, Rachel Cotton gave her notice and her last day would be on November 1st. They would be advertising for the position and Tokos would have to juggle things while the department transitioned. Tokos noted the schedule for the Commission would be more spread out over time due to this.

Tokos reported that he would be going to Salem on October 21st to make a presentation at the Transportation Summit. He would be talking about the OSU MSI structure and how it related to tsunami evacuation. On October 24th Tokos would be on a housing panel talking about changes the Commission made on housing in Newport. He reported that there has been eight Proud Grounds done and three were in Newport. All eight had been spoken for. Tokos noted that Habitat for Humanity was close to finishing the

duplexes on the city owned parcel. He was also hopeful the City would hear soon from OSU about their student housing project because the research building was moving along, and the demand on housing would increase.

Berman asked for an update on the Samaritan House. Tokos said they backed out of their plans and he didn't know the reason why. He thought the funding had too many strings attached to it for them to do the development.

Branigan asked where the City was with the issues on the bong sign. Tokos reported the owner was contesting and the issue would be coming up in court soon. Berman thought the City should relook at the electronic sign ordinance.

**9. Adjournment.** Having no further business, the meeting adjourned at 7:59 p.m.

Respectfully submitted,

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Sherri Marineau  
Executive Assistant

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

**IN THE MATTER OF PLANNING COMMISSION )  
FILE # 8-NCU-19, APPLICATION FOR VERIFICATION, )  
ALTERATION, & EXPANSION OF A NONCONFORMING ) FINAL  
USE, AS SUBMITTED BY CHRISTOPHER KHARI GATES ) ORDER  
(ON BEHALF OF HIMSELF, MOLLY FONNER GATES, OTIS )  
A. GATES, OAG PROPERTIES, AND WHISKEYTOWN )  
INVESTMENTS, LLC, OWNERS) )**

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**ORDER APPROVING** a request per Chapter 14.32 (“Nonconforming Uses, Lots, and Structures”) of the Newport Municipal Code (NMC) for the alteration and expansion of a nonconforming mobile home park known as Surfside Community. Specifically, the applicants are requesting approval to convert an existing mobile home space into two RV spaces for park models. The result will be a reduction in the number of permanent mobile home spaces from 24 to 23 and an increase from 8 to 10 in the number of RV spaces. The subject property is located at 392 NW 3rd St. (Lincoln County Assessor’s Tax Map 11-11-05-CD, Tax Lots 10500, 10501, 10600, 10700, and 10800. In sum, the properties total to approximately 2.22 acres in size.

**WHEREAS:**

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on October 14, 2019; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

**THEREFORE, LET IT BE RESOLVED** by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the requested nonconforming use permit.

**BASED UPON THE ABOVE**, the Planning Commission determines that the request to verify, alter, and expand a nonconforming use is in conformance with the provisions of the Comprehensive Plan and the Municipal Code of the City of Newport; and the request is, therefore, granted subject to the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The applicant shall comply with all applicable building codes, fire codes, zoning ordinance requirements, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicants are responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
3. As units are replaced within the park, the replacement units shall comply with the most current Oregon Manufactured Dwelling and Park Specialty Code, including the Fire and Life Safety Standards listed under ORS 446.100.
4. Units shall adhere to zoning setbacks unless a reduced setback had been previously established with a non-conforming unit.
5. As units are replaced within the park, the new units shall be situated in such a manner that they do not impair the City’s ability to exercise its easement rights and access its utilities. It is the owner’s responsibility to establish the location of such utilities and easements when placing new units and the presence of such utilities and easements may require reconfiguration of spaces.

Accepted and approved this 28<sup>th</sup> day of October, 2019.

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Jim Patrick, Chair  
Newport Planning Commission

Attest:

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Derrick I. Tokos, AICP  
Community Development Director



**EXHIBIT "A"**

Case File # 8-NCU-19

**FINDINGS OF FACT**

1. Christopher Khari Gates, on behalf of himself, Molly Fonner Gates, Otis A. Gates, OAG Properties, and Whiskeytown Investments, LLC ( owners) submitted an application on September 23, 2019, per Chapter 14.32/“Nonconforming Uses, Lots, and Structures” of the Newport Municipal Code, for the alteration and expansion of a nonconforming use. The property is currently being used as a mobile home park (Surfside Community). Specifically, the applicants are requesting approval to convert an existing mobile home space into two RV spaces for park models. The result will be a reduction in the number of permanent mobile home spaces from 24 to 23 and an increase from 8 to 10 in the number of RV spaces.

2. The subject property is located at 392 NW 3rd St. (Lincoln County Assessor’s Tax Map 11-11-05-CD, Tax Lots 10500, 10501, 10600, 10700, and 10800. In sum, the properties total to approximately 2.22 acres in size.

3. Staff reports the following facts in connection with the application:

- a. Plan Designation: High Density Residential.
- b. Zone Designation: R-4/“High Density Multi-Family Residential”.
- c. Surrounding Land Uses: A mix of single- and multi-family residential, commercial, and public uses.
- d. Topography and Vegetation: The subject property is generally flat except slope along the west and north sides of Tax Lot 10700. North of the mobile home park, the terrain slopes steeply up to NW 5th Street. That steeply sloped property is not a part of the park. Landscaping exists around the perimeter of the mobile home park.
- e. Existing Structures: The property contains the Surfside Mobile Village consisting of 32 sites (24 permanent residences and 8 for recreational vehicles, including park models), a restroom/laundromat, and an office/storage facility.
- f. Utilities: All are available to the site.
- g. Development Constraints: None known.
- h. Past Land Use Actions: File No. 4-CUP-73 – authorized expansion of the Glenwood Cottages and Trailer Park to 18 trailer parking spaces. Approved February 12, 1973. File No. 2-NCU-13 authorized the mobile home park and expansion to 31 units on November 25, 2018. File No. 4-NCU-18, authorized installation of an additional RV space for a park model unit, increasing the total number of spaces to 24 manufactured dwelling spaces and 8 RV spaces.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on September 24, 2019 to affected property owners required to receive such notice by the Newport Municipal Code, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m. October 14, 2019, or be submitted in person at the hearing. Comments could also be submitted during the course of the

public hearing. The notice was also published in the Newport News-Times on October 4, 2019. No comments were received in response to the notice.

5. At the October 14, 2019 public hearing, the Planning Commission received the staff report and allowed for testimony on the request. The minutes of the October 14, 2019 meeting is hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Application form
- Attachment "B" – Letter from Christopher Khari Gates, dated 9/20/19
- Attachment "C" – Application narrative
- Attachment "D" – Surfside Mobile Village approved spaces (from File 2-NCU-13)
- Attachment "E" – Layout for the park model units
- Attachment "F" – 2018 aerial image of the park
- Attachment "G" – List of photos with index
- Attachment "H" – Utility records for the property
- Attachment "I" – Map of city utilities within the park
- Attachment "J" – Oregon Secretary of State business entity data
- Attachment "K" – Deed for the subject property (Instrument No. 2019-02477)
- Attachment "L" – Public hearing notice

6. **Explanation of the Request:** Pursuant to Section 14.32.070/“Alteration, Expansion, or Replacement of Nonconforming Uses and Structures” of the Newport Municipal Code, after verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood.

Christopher Khari Gates indicates that they are seeking approval to alter and expand the non-conforming park in such a way that two park model RV units will occupy space #1 within the park as opposed to a double-wide manufactured dwelling (Attachment "B"). The city approved the park as a non-conforming use in 2013 (File No. 2-NCU-13) and later authorized its expansion by one park model unit (File No. 4-NCU-18). A diagram has been provided showing where space #1 is located within the park (Attachment "D"). A plan showing where the park model units will be placed has been submitted as well (Attachment "E"). If this request is approved, the non-conforming park will consist of 23 mobile or manufactured dwelling spaces and 10 RV spaces.

7. **Ownership Authorization:** A property owner, person with written approval of the property owner, or city manager may apply for a land use application (NMC 14.52.050). The application form lists TKO Properties I, LLC as the applicant, with Christopher Khari Gates as an agent, member, and owner (Attachment "A"). On March 20, 2019, the mobile home park was conveyed from Douglas E. Fitts and Verna L. Fitts, Trustees to several parties that were acquiring undivided interests in the property (Attachment "K"). Christopher Khari Gates, in an individual capacity, is listed as one of the parties acquiring an undivided interest. Therefore, Mr. Gates is a property owner authorized to submit the application.

**8. Verification of Status of Nonconforming Use or Structure:** Pursuant to NMC Section 14.32.060, upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

- The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and
- The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicants provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use (September 7, 1982). When determining the nature and extent of a nonconforming use, the approval authority shall consider:

- Description of the use;
- The types and quantities of goods or services provided and activities conducted;
- The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;
- The number, location, and size of physical improvements associated with the use;
- The amount of land devoted to the use; and
- Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

**9. Applicable Criteria (Section 14.32.070):** After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

- (1) The character and history of the use and of development in the surrounding area;
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood;
- (3) Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water, and streets;
- (4) The comparative numbers and kinds of vehicular trips to the site;

- (5) The comparative amount and nature of outside storage, loading, and parking;
- (6) The comparative visual appearance;
- (7) The comparative hours of operation;
- (8) The comparative effect on solar access and privacy;
- (9) Other factors that impact the character or needs of the neighborhood.

## CONCLUSIONS

In order to grant the permit, the Planning Commission must find that the applicants have provided a complete application, that there is substantial evidence that the Commission can rely upon to verify the nature and extent of the existing nonconformity, and that the expansion will not result in a greater adverse impact on the neighborhood considering the criteria listed under NMC 14.32.070.

1. The nature and extent of the existing non-conforming use was established in 2013 with the City's approval of the park on the subject property at 31 units and again in 2018 when the park was expanded to accommodate an additional park model unit. An aerial image of the park, taken in 2018, illustrates that it conformed at the time with the original approval (Attachment "F"). The applicant has provided utility records showing that the park is in active use (Attachment "H") and photographs from 2018 show that the park has been maintained (Attachment "G").

2. After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the Planning Commission may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. The applicants have provided findings addressing the criteria for a "no greater adverse impact" determination as follows:

*a. The character and history of the use and of development in the surrounding area.*

i. The applicant explains that the Surfside Mobile Village has been in existence since 1972. It is a 55 and older community where most all the residences are occupied on a full-time basis. The Planning Commission determination in File No. 2-NCU-13 and 8-NCU -18 confirmed that a valid nonconforming use had been established on the subject property. The applicant has provided photographs showing that the park has been maintained in good condition (Attachment "G"). The findings indicate that to the west of the park across Hurbert Street is a commercial office building, a vacant lot, a duplex, and a single-family residence. To the north, the terrain climbs steeply and then levels out adjacent to NW 5th Street. These undeveloped, residentially zoned lots overlook the park. A portion of the property to the east of the park is city-owned open space. The areas to the south across 3rd Street are residential. However, the south side of 3rd Street is a large hill that slopes up, with residences that are set back a fair distance from NW 3rd Street. These homes are not readily visible from the park. Generally the area west of the property can be described as the Nye Beach Commercial area. The property is about one and a half blocks west of Highway 101; and 3rd Street, which abuts the subject property to the south. To the east of the property is an apartment building, a commercial fueling station, and the former city sewer plant where the fire training tower is built.

ii. As has been previously established, the park is grade separated from adjoining residential areas. This includes the original park (Tax Lot 10500) and the expansion areas (Tax Lots 10501, 10600, 10700, and 10800). The tax lots orient to, and are accessible from, roads internal to the park. Tax Lots 10501 and 10700 are accessed from NW 3rd Street, a collector roadway that serves the primary access to the Nye Beach Commercial area.

iii. The mobile home park satisfies perimeter setbacks of the R-4 zone district. This includes the double-wide that is to be removed from space #1. The setback from 3rd Street is 15-feet. A diagram included with the application indicates that one of the park models would be placed 5-feet from the street (Attachment "E"). This would be inconsistent with the character and history of the use and of development in the surrounding area, which generally satisfy setback requirements. There is sufficient area within space #1 for the park model unit to be placed in a manner that conforms to the setback standard. A condition of approval should be imposed requiring adherence to setback requirements, unless a nonconforming unit was established with a reduced setback.

iv. Considering the above, the Planning Commission concludes that the expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the character and history of the use and of development in the surrounding area.

*b. The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood.*

i. The applicant notes that roads in the park are paved so there is little if any noise from any vehicles moving in the park. The uses do not cause dust, odor, fumes, glare, or smoke. They further note that the park model units will be placed on foundations and permanently connected to utilities.

ii. Considering the above, the Planning Commission concludes that the expansion of the use will not create noise, vibration, dust, odor, fumes, glare, or smoke in a manner that would result in a greater adverse impact on the neighborhood.

*c. Adequacy of infrastructure to accommodate the use (including sewer, water, and streets.)*

i. The applicant notes that roads in the park are paved so there is little if any noise from any vehicles moving in the park. The uses do not cause dust, odor, fumes, glare, or smoke. They further note that the park model units will be placed on foundations and permanently connected to utilities.

ii. The applicant states that the detail drawing they submitted (Attachment "E") establishes that suitable vehicle access can be provided for two park model units without impeding the City's access to a nearby utility manhole.

iii. NW 3rd and NW Hurbert Streets provide access to the park. These streets are improved and can handle traffic attributed to an additional park model unit.

iv. As documented in prior land use approvals, manufactured dwellings and appurtenant structures within the park extend over public sewer and storm drain lines and associated

easements. This makes it difficult for the City to exercise its easement rights to access the utilities for maintenance purposes or to address failures. This has a direct bearing on the near and long term adequacy of these utilities to serve the subject development and surrounding areas. Previous applicant's testified that a number of the units in the park were nearing the end of their useful life. The Commission elected to address the encroachments by requiring that, as units are replaced, they be situated in a manner that does not impair the City's ability to exercise its easement rights and access these utilities. A condition of approval was included in the 2013 and 2018 approvals addressing this issue, and it is appropriate that it be carried forward with this decision since circumstances on the ground have not changed.

v. An aerial image shows the location of the City's utilities within the park (Attachment "I"). It illustrates that sanitary sewer and storm water lines are in close proximity to the northwest corner of space #1. The location of these lines and associated easements should be identified by the applicant prior to placement of the park model units to ensure that the City has adequate access to the utilities. This may require survey work.

vi. Considering the above, the Commission concludes that expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the adequacy of infrastructure to accommodate the use.

d. The comparative numbers and kinds of vehicular trips to the site.

i. The applicant notes that an additional park model unit will add only a minor amount of traffic. Given where space #1 is located, additional traffic is likely to be from NW 3rd Street, which has been recently improved and is already a primary access to the Nye Beach Commercial area. Further, the trips to the site will be residential in nature. The placement of one additional park model on this tax lot will be still fewer units than could be allowed by an apartment building, which is an allowed use on the property.

ii. This park is a residential development, and the types and kind of trips associated with the park use are what would be expected in a residential area. Densities are slightly higher than what exists in nearby residential neighborhoods; however, this is offset somewhat by the fact that this is a park dedicated to senior living. Further, as previously noted, the park is isolated from adjoining residential neighborhoods by terrain, so none of the park elements will orient traffic onto local streets in these areas (i.e. all traffic flows to NW Hurbert or NW 3<sup>rd</sup> Street).

iii. Considering the above, the Planning Commission concludes that expansion of the use will not cause any greater adverse impact on the neighborhood relative to this criterion.

e. The comparative amount and nature of outside storage, loading, and parking.

i. Parking is provided on site. There is virtually no loading or unloading given the primary residential nature and use of the additional unit.

ii. The diagram submitted with the application shows that space #1 is large enough to provide a parking space for each park model unit, which is the City's requirement for RV spaces (NMC 14.14.030(28)).

iii. Given the above, the Planning Commission concludes that expansion of the use will not cause any greater adverse impact on the neighborhood with respect to comparative amount and nature of outside storage, loading, and parking.

f. The comparative visual appearance.

i. The applicant states that the visual appearance of the park will be enhanced because the double-wide manufactured home currently occupying the space is uninhabitable in its current state and is close to 40 years old. It will be replaced with two new park model homes similar in size, dimensions, and aesthetics to the new park model homes placed on Tax Lot 10700.

ii. Considering the above, the Planning Commission concludes that expansion of the use will not cause any greater adverse impact on the neighborhood as it relates to comparative visual appearance.

g. The comparative hours of operation.

i. The applicant notes that the hours of operation will not change. The one additional unit is a residential unit.

ii. Based on the above, the Planning Commission concludes that expansion of the use will not cause any greater adverse impact on the neighborhood as far as comparative hours of operation.

h. The comparative effect on solar access and privacy.

i. Given that the park sits lower than adjoining property, and the addition unit that is proposed is a single-story unit, solar access to adjoining property will not be affected. Similarly, since the units sit lower than the surrounding property, there will be no impact on privacy on adjoining property.

ii. Given the above, the Planning Commission concludes that expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the comparative effect on solar access and privacy.

i. Other factors which impact the character or needs of the neighborhood.

i. In their findings, the applicants list the following other factors to be considered:

- The new park model will be an enhancement to the property.
- The geographical features of the area tend to separate the property from other residential uses in the area.
- The approval of this proposal will assist in providing safe, clean, and affordable housing for those 55 and older.

ii. Given the above, the Planning Commission concludes that expansion of the use will not cause any greater adverse impact on the neighborhood, relative to other factors which impact the character or needs of the neighborhood.

*j. The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.*

- i. A condition of approval is attached requiring that new units placed within the park adhere to the provisions of the Oregon Manufactured Dwelling and Park Specialty Code, as amended and that it satisfy fire and life safety standards of ORS 446.100. This ensures that the degree to which park units do not conform to these standards will lessen over time.
- ii. Based on the above, the Planning Commission concludes that expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the purpose of the current zoning provisions that cannot be satisfied.

### **OVERALL CONCLUSION**

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for the verification, alteration and expansion of a nonconforming use found in Chapter 14.32 of the Newport Municipal Code (NMC), subject to the following:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The applicant shall comply with all applicable building codes, fire codes, zoning ordinance requirements, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicants are responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
3. As units are replaced within the park, the replacement units shall comply with the most current Oregon Manufactured Dwelling and Park Specialty Code, including the Fire and Life Safety Standards listed under ORS 446.100.
4. Units shall adhere to zoning setbacks unless a reduced setback had been previously established with a non-conforming unit.
5. As units are replaced within the park, the new units shall be situated in such a manner that they do not impair the City's ability to exercise its easement rights and access its utilities. It is the owner's responsibility to establish the location of such utilities and easements when placing new units and the presence of such utilities and easements may require reconfiguration of spaces.



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

**IN THE MATTER OF PLANNING COMMISSION )  
FILE #6-CUP-19, APPLICATION FOR A ) FINAL  
CONDITIONAL USE PERMIT AS SUBMITTED BY ) ORDER  
THE OREGON COAST AQUARIUM )**

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**ORDER APPROVING A CONDITIONAL USE PERMIT**, per Newport Municipal Code Section 14.03.070(14), for the planned remodel and expansion of the Oregon Coast Aquarium. Almost half of the 38,573 square foot main aquarium building will be remodeled, primarily in the lobby, café, and exhibit galleries. The building will be expanded by about 1,800 square feet to accommodate ticketing operations and provide additional exhibit space. Improvements to the grounds will include new wayfinding signage, new sidewalks and crosswalks, a remodeled children’s play area, and a new small amphitheater for animal presentations. The property is located at 2820 SE Ferry Slip Road, Newport, Oregon 97365. It is identified as Tax Lots 00101, 00298, 01600, and 01900 of Assessor’s Map 11-11-17. Additional parcels utilized by the Aquarium, namely for parking and support services, are not impacted by this proposal.

**WHEREAS:**

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission duly held public hearings on the request, with such hearing occurring on October 14, 2019 and October 28, 2019; and
- 3.) At the public hearings on said application, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearings, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

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

- 1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to the staff report. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.
- 2. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in

the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building in order to comply with these codes, than a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.

3. Written consent shall be obtained from the Port of Newport for the improvements described herein prior to issuance of building permits.
4. The applicant shall upgrade the path on the east side of the property for fire access use. This includes providing overhead clearance of 12 feet, and a travel surface capable of handling the load capacities identified in section 503.2.3 and Appendix D, section 102.1 of the 2014 Oregon Fire Code. Turn radiuses along the pathway shall satisfy City of Newport Public Works Department standards. A licensed engineer shall certify that the load capacity requirements have been met. The improvements and required certification shall be submit prior to issuance of occupancy permits.
5. The applicant shall install an emergency access gated entrance at the end of the service road at the north end of the property and extend the access south, as needed, to provide fire hose access to all sides of the buildings. Such improvements shall conform to the requirements of Appendix D section 103.5 of the 2014 Oregon Fire Code.
6. Pedestrian connections shall be established from the crosswalk landings along the east side of SE Ferry Slip Road to the facility entrance, and along the north driveway to SE 26th Street, including the property frontage between Marine Science Drive and the north driveway. Such improvements shall be completed prior to occupancy of the planned renovation and expansion of the exhibit galleries.

**BASED UPON THE ABOVE**, the Planning Commission determines that the request for a Conditional Use Permit to renovate and expand the Oregon Coast Aquarium is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport, and the request is therefore granted.

Accepted and approved this 28<sup>th</sup> day of October, 2019.

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James Patrick, Chair  
Newport Planning Commission

Attest:

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Derrick I. Tokos, AICP  
Community Development Director

## EXHIBIT "A"

Case File No. 6-CUP-19

### FINDINGS OF FACT

1. Oregon Coast Aquarium (Steve Dangermond, Dangermond Keane Architecture, authorized representative) submitted an application on September 24, 2019, for approval of a Conditional Use Permit to remodel almost half of the 38,573 square foot main aquarium building, primarily in the lobby, café, and exhibit galleries. The building will be expanded by about 1,800 square feet to accommodate ticketing operations and provide additional exhibit space. Improvements to the grounds will include new wayfinding signage, new sidewalks and crosswalks, a remodeled children's play area, and a new small amphitheater for animal presentations.
  
2. The subject property is located at 2820 SE Ferry Slip Road, Newport, Oregon 97365. It is identified as Tax Lots 00101, 00298, 01600, and 01900 of Assessor's Map 11-11-17. Additional parcels utilized by the Aquarium, namely for parking and support services are not impacted by this proposal. The parcel is 44.09 acres per Lincoln County Tax Assessor records.
  
3. Staff reports the following facts in connection with the application:
  - a. Plan Designation: Yaquina Bay Shoreland and Commercial.
  - b. Zone Designation: W-2/"Water-Related" and C-2/"Tourist Commercial."
  - c. Surrounding Land Uses: South Beach Marina and Hatfield Marine Science Center to the north, Yaquina Bay Estuary to the east, tourist commercial businesses, an RV Park, and hotel uses to the south and west.
  - d. Topography and Vegetation: The property is gradually sloped with mature trees and understory vegetation in areas that are not developed.
  - e. Existing Structures: A main aquarium building, passages of the deep exhibit, and associated support and administrative structures.
  - f. Utilities: All are available to the site.
  - g. Development Constraints: Wetlands and floodplain; however, neither of these constraints is present in the developed areas.
  - h. Past Land Use Actions: *File No. 1-CP-89/1-Z-89 (Ord. No. 1539)* – Amended the Newport Comprehensive Plan Map from Industrial to Shoreland and Zoning Map from I-1/"Light Industrial" to W-2/"Water-Related" for property immediately north of SE 29th Street where the "Passages of the Deep" Exhibit is now located. *File No. 6-CP-89/6-Z-89 (Ord. No. 1964)* – Amended the Newport Comprehensive Plan Map and Estuarine Management Unit provisions of the Newport Zoning Ordinance to provide

for discharge of waste seawater into Yaquina Bay. *File No. 1-PAR-90/6-PAR-90/7-PAR-90* – Land partitions associated with the reconfiguration of SE Ferry Slip Road to position the aquarium site for development. *File No. 4-TB-89/4-TBP-92* – Temporary land use permit for modular trailer associated with construction of the aquarium. *File No. 7-TSP-12/4-TSP-17* – Temporary land use permits for special events. *File No. 1-SV-17 (Ord. No. 2119)* – Vacation of a portion of undeveloped SE Ferry Slip Road right-of-way to facilitate future development of Oregon Coast Aquarium owned property immediately south of SE 29th Street.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on September 25, 2019, to affected property owners required to receive such notice by the Newport Zoning Ordinance, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., October 14, 2019, or be submitted in person at the hearing. A request was made of the Newport News-Times to publish a public notice on October 4, 2019. Unfortunately, the News-Times did not publish the notice as requested. As this is a legal requirement (NMC 14.52.060(F)), the Commission continued the hearing to October 28, 2019 so that a notice could be published in accordance with the City's requirements. The only comments received were from the Newport Fire Department (Attachment "K").

5. Public hearings were held on October 14, 2019 and October 28, 2019. At the initial hearing, the Planning Commission received the staff report and heard testimony from the applicant. The minutes of the October 14, 2019 and October 28, 2019 hearings are hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" – Application form

Attachment "B" – Applicant's narrative, maps of planned improvements, and architectural renderings

Attachment "C" – Parcel ownership map

Attachment "D" – Lincoln County Assessor Property Reports

Attachment "E" – Aquarium lease with the City of Newport

Attachment "F" – Aquarium lease with the Port of Newport

Attachment "G" – Minutes from the 8/19/19 City Council meeting

Attachment "H" – Zoning map of the property

Attachment "I" – 10/14/19 public hearing notice

Attachment "J" – Staff email to the Port of Newport, dated 10/9/19

Attachment "K" – Email from Fire Chief Rob Murphy, dated 10/10/19

Attachment "L" – 10/28/19 public hearing notice

6. **Explanation of the Request:** In response to a recent major strategic planning effort, The Oregon Coast Aquarium has launched a Capital Campaign to refresh and enhance the visitor experience of the Aquarium, and to construct a new Marine Rehabilitation Center. The Marine Rehabilitation Center is a future project located on an adjacent property. Over the next two years, this first phase of the campaign will fund a series of small projects throughout the public portions

of the buildings and grounds. This will be the first comprehensive remodel of the original aquarium building since its construction in 1990. No work is anticipated in the “Passages of the Deep” exhibit which was finished in 2000.

This request is for a Conditional Use Permit in order to construct roughly \$9 million in projects that will improve the guest experience, with a modest increase in capacity. No major addition or expansion is planned; instead, almost all of the work will take place within the aquarium building or will remodel portions of the grounds. Of the 38,573 sf of the original main aquarium building, almost half will be remodeled (totaling 17,500 sf), primarily in the lobby, café, and exhibit galleries. There are two modest additions planned, for a total of 1800 sf; an 850 sf expansion of one of the galleries and a 950 sf addition to the front of the building to better accommodate the aquarium’s ticketing operations. There will not be a change of use in any portions of the structure. Gallery improvements will include a number of new and remodeled wet exhibit tanks, all new interpretive signage, new lighting, and paint. Improvements to the grounds will include new directional/wayfinding signage, some new sidewalks and crosswalks, a remodeled children’s play area, and a new small amphitheater for animal presentations. As the original aquarium building is located in the center of the aquarium property, none of the planned improvements will be visible from surrounding public streets. Maps illustrating the location of planned improvements are included in Attachment "B."

**7. Conditional Use Permit Required:** A Conditional Use Permit was not required by the City when the original aquarium was constructed. At the time, the City determined that the aquarium use was permitted outright in both the C-2/“tourist commercial” and W-2/“Water-Related” zone districts. This is addressed specifically in the staff report associated with the rezoning of one of the parcels from “I-1/Light Industrial” to “W-2/Water-Related” in 1989 (File No. 1-CP-89/1-Z-89).

In 1989, the C-2 zone listed “non-commercial educational, scientific, and research organizations” as an outright permitted use. The W-2 zone similarly allowed “marine research and education facilities of observation, sampling, recording or experimentation on or near the water” as an outright permitted use. The aquarium property is split zoned with a portion of the facility falling in the C-2 and the balance in the W-2; therefore, the use had to be permitted outright in both zone districts. Entertainment oriented uses were allowed in 1989 in the C-2 and W-2 zones; however, it is evident the City did not view the Aquarium as such a use because that would have required a conditional use permit.

The City overhauled its zoning code for commercial/industrial uses in 2011 (Ordinance No. 2022), at which time the provision allowing “non-commercial educational, scientific, and research organizations” as an outright permitted use was eliminated. Under the current C-2 rules, a “non-profit educational and marine research facility” is categorized as an institutional or civic use, and more specifically a community service use, that requires conditional use approval (NMC 14.03.070(14)). Alternatively, the City could consider the aquarium an entertainment oriented use; however, that would similarly require conditional use review in both the C-2 and W-2 zones (ref: NMC 14.03.070(3) and 14.03.080(9)).

For these reasons, a conditional use permit is required for the proposed renovation and expansion of the Oregon Coast Aquarium facilities.

**8. Ownership Authorization:** A property owner, person with written approval of the property owner, or the city manager may apply for a land use application (NMC 14.52.050). The Oregon Coast Aquarium leases the property on a long term basis from the City of Newport and Port of Newport (Attachments "E" and "F"). Both leases are in effect through June of 2087.

The leases are almost identical. Section 7 of the documents addresses repairs and improvements and stipulates that owner consent is required for work that exceeds 5% of the value of the existing improvements on the property. The Lincoln County Assessor Reports (Attachment "D") show the market value of the existing improvements to be somewhere between \$30-\$35 million, so this \$9 million project is large enough that owner consent is required. At its August 19, 2019 meeting, the Newport City Council, by motion, granted its consent for the application to be filed (Attachment "G"). The Port of Newport similarly requires owner consent, and they have been notified of the issue (Attachment "J"). A condition of approval is included requiring the Port of Newport agree to the improvements before building permits are issued.

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

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

## CONCLUSIONS

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

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

1. Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets and electricity. All public facilities are available and serve the property. The applicant notes that the aquarium is an existing use on the property since 1990 and, as the expansion is modest, the public facilities should easily accommodate the proposed use.

2. Street access to the property is available via SE Ferry Slip Road and SE 26th Street. SE Ferry Slip Road is fully developed with a multi-use path on the west side. SE 26th Street is paved with limited pedestrian amenities. The applicant notes that sidewalk and crosswalk improvements will be made;

however, it is unclear from the materials where that work will occur. The level of investment being made to the aquarium facility is such that it is timely for pedestrian connections to be established from the crosswalk landings along the east side of SE Ferry Slip Road to the facility entrance, and along the north driveway to SE 26th Street, including the property frontage between Marine Science Drive and the north driveway. A condition of approval is included requiring this work be completed prior to occupancy of the gallery renovation and expansion.

3. City water service to the site is provided via a 12-inch main in SE Ferry Slip Road. Sewer service is provided via an 8-inch gravity line, also located in SE Ferry Slip Road. These services are adequate to serve the facility. Electrical service is also in place to serve the property.

4. Given the size of the property, public streets are not sufficient to provide adequate fire access to the facility. Fire service needs are met with internal driveways. The facility has grown and evolved over the years, including the placement and orientation of internal exhibits. This has impacted the adequacy of fire access. The City's standards have changed as well in terms of the load requirements for its equipment. An October 10, 2019 email from Fire Chief Rob Murphy (Attachment "K") lists changes they would like to see to ensure adequate fire access to the aquarium. They include structural upgrades to the existing path on the east side of the property, and improved vertical clearance and turn radiuses along the same path. They also would also like to see a gate restricted access for fire service installed at the end of the existing service road at the north side of the facility, and that the road be extended as needed to ensure hoses can reach all sides of the buildings. Given the size of the facility, and the number of people that would be at risk in the event of a fire, the Commission finds it necessary to require these fire access improvements as conditions of approval.

5. Considering the above, the Planning Commission concludes that the public facilities can adequately accommodate the remodel and expansion with the conditions noted.

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

1. This criterion addresses special requirements of the underlying or overlay zone beyond the standard zoning ordinance requirements. Each zoning district includes "intent" language. For the W-2 district, it includes "*All conditional uses in a W-2 district shall also comply with the following standard: In areas considered to be historic, unique, or scenic, the proposed use shall be designed to maintain or enhance the historic, unique, or scenic quality.*" (NMC 14.03.040)

2. The location in South Beach where the aquarium was constructed is not designated by the City as historic or particularly unique. It is generally viewed as scenic and there are sensitive natural areas along the perimeter of the property where it abuts the estuary. Care was taken to design the facility such that it complements the natural setting within which it is located. Native vegetation has been retained and hardscapes minimized internal to the site. The applicant's materials show that the planned expansion is modest and complements the existing improvements architecturally (Attachment "B"). Accordingly, the Planning Commission finds that the renovation and expansion plans complement the scenic qualities of the area and, therefore, this criterion is satisfied.

3. While portions of the property are within a 100-year floodplain, the areas where work will occur are not encumbered by the overlay. There are no other overlays or provisions of the underlying zone that are relevant to the project.

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

1. This criterion relates to the issue of whether or not the proposed use has potential "adverse impacts" greater than existing uses and whether conditions may be attached to ameliorate those "adverse impacts." Impacts are defined in the Zoning Ordinance as including, but not being limited to, the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood. Adequate off-street parking, or the lack thereof, may also be considered by the Planning Commission under this criterion.

2. The applicant indicates that they believe the proposed improvements will not have an adverse impact greater than existing uses on neighboring properties, nor will it greatly increase the impacts on surrounding streets or infrastructure. This would be a reasonable conclusion for the Commission to come to given that the main building will be expanded by only 1,800 square feet. Further, there is no reason to expect increases in noise, glare, vibration, dust, or air pollutants associated with the project.

3. The aquarium facility has a substantial amount of off-street parking and the proposed improvements are modest enough that no new parking is needed to accommodate the use.

4. Given the above, the Planning Commission concludes that the proposed use does not have an adverse impact greater than existing uses on nearby properties.

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

1. The applicant notes that the proposed improvements are consistent with the current development's size and height, and the development character of buildings potentially allowable in the area.

2. The applicant has provided conceptual drawings of the planned improvements to the main building. They may need to adjust aspects of the exterior design to comply with building codes, fire codes, and other public health and safety regulations, including accessibility requirements. It is unlikely though that such changes would materially impact size or height of the building. If that does happen, then a new conditional use permit will be required. A condition to that effect is included below.

3. Given the above, the Planning Commission concludes that the use will be consistent with the overall development character of the neighborhood with regard to building size and height.

### **OVERALL CONCLUSION**

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



1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to the staff report. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.
2. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building in order to comply with these codes, than a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.
3. Written consent shall be obtained from the Port of Newport for the improvements described herein prior to issuance of building permits.
4. The applicant shall upgrade the path on the east side of the property for fire access use. This includes providing overhead clearance of 12 feet, and a travel surface capable of handling the load capacities identified in section 503.2.3 and Appendix D, section 102.1 of the 2014 Oregon Fire Code. Turn radiuses along the pathway shall satisfy City of Newport Public Works Department standards. A licensed engineer shall certify that the load capacity requirements have been met. The improvements and required certification shall be submit prior to issuance of occupancy permits.
5. The applicant shall install an emergency access gated entrance at the end of the service road at the north end of the property and extend the access south, as needed, to provide fire hose access to all sides of the buildings. Such improvements shall conform to the requirements of Appendix D section 103.5 of the 2014 Oregon Fire Code.
6. Pedestrian connections shall be established from the crosswalk landings along the east side of SE Ferry Slip Road to the facility entrance, and along the north driveway to SE 26th Street, including the property frontage between Marine Science Drive and the north driveway. Such improvements shall be completed prior to occupancy of the planned renovation and expansion of the exhibit galleries.

**CITY OF NEWPORT  
NOTICE OF A PUBLIC HEARING**

The City of Newport Planning Commission will hold a public hearing on Monday, October 28, 2019, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 6-CUP-19, a request submitted by Oregon Coast Aquarium, 2820 SE Ferry Slip Rd, Newport, OR 97365 (Steve Dangermond, Dangermond Keane Architecture, 1921 NW Kearney St, Portland, OR 97209, authorized representative) per Section 14.03.080/"Water-Dependent and Water-Related Uses" of the Newport Zoning Ordinance, for a conditional use permit to renovate the existing Oregon Coast Aquarium which includes a 17,500 square foot remodel of the main building, primarily in the lobby, café, and exhibit galleries; a remodel of portions of the grounds; a 850 square foot expansion of one of the galleries; and a 950 square foot addition to the front of the building for ticketing operations. The request involves property that is located in a W-2/"Water-Related" and a C-2 "Tourist Commercial" zone. The property is located at 2820 SE Ferry Slip Rd, Newport, OR 97365 (Tax Map 11-11-17-00, Tax Lots 101, 298, 1600, and 1900; Tax Map 11-11-17-AC, Tax Lots 400, 500, 600, 700, 800, 900, and 1001; and Tax Map 11-11-17-DA, Tax Lots 300, 301, and 401). The applicable criteria per NMC Chapter 14.34.050 are that: 1) The public facilities can adequately accommodate the proposed use; 2) the request complies with the requirements of the underlying zone or overlay zone; 3) the proposed use does not have an adverse impact greater than existing uses on nearby properties, or impacts can be ameliorated through imposition of conditions of approval; and 4) a proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Submit testimony in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. Letters sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant and those in favor or opposed to the application, rebuttal by the applicant, 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 a copy purchased for reasonable cost at the Newport Community Development (Planning) Department (address above) seven days prior to the hearing. The application materials (including the application and all documents and evidence submitted in support of the application), the applicable criteria, and other file material are available for inspection at no cost; or copies may be purchased for reasonable cost at the above address. Contact Derrick Tokos, Community Development Director, (541) 574-0626, (address above).

***FOR PUBLICATION ONCE ON FRIDAY, OCTOBER 18, 2019.***

