

CITY OF NEWPORT

RESOLUTION NO. 3901

**A RESOLUTION AUTHORIZING THE
EXERCISE OF EMINENT DOMAIN FOR PUBLIC UTILITY EASEMENT**

WHEREAS, the City of Newport is authorized to exercise the power of eminent domain under its Charter, and under and by virtue of the laws of the State of Oregon, as provided in ORS 223.005 and 223.105 and under ORS Chapter 35, when the exercise is deemed necessary by the governing body of the City of Newport to accomplish public purposes for which the city has responsibility; and

WHEREAS the City of Newport provides stormwater collection services for more than 10,000 people and many businesses across 43 separate drainage basins, including undeveloped buildable lands within its city limits, to minimize flooding and flood related damage to public and privately-owned property and ensure streets are passable during heavy storm events; and

WHEREAS the SE 40th Street Pond is a privately-owned stormwater detention facility located on the south side of SE 40th Street just east of US 101, on undeveloped industrial property identified as Parcels 1 and 2 of Partition plat 2010-18; and

WHEREAS the SE 40th Street Pond collects storm runoff from the property upon which it is situated and a large upstream, partially developed planned development known as "Wilder" that includes the Oregon Coast Community College, Oregon State University's planned student housing project, commercial development sites, and capacity for 350 dwellings at mixed densities; and

WHEREAS the City's piped stormwater conveyance system downstream of the pond is sized such that it does not have the capacity to accept additional run-off from upstream development without the SE 40th Street Pond detaining and slowly releasing stormwater during peak rain events; and

WHEREAS upsizing the piped stormwater conveyance system downstream of the SE 40th Street Pond would be cost prohibitive given the depth of the drain lines and improved streets and properties that would be impacted, and building additional stormwater detention ponds upstream to handle run-off from new development, while possible, would diminish what is already a limited supply of buildable land; and

WHEREAS acquiring the SE 40th Street Pond allows the City of Newport to manage it as a regional stormwater detention facility, where the City can perform maintenance to prevent the pond from overflowing and flooding SE 40th Street during heavy storm events; and

WHEREAS acquiring the SE 40th Street Pond further allows the City of Newport to improve the stormwater facility so that it has capacity to handle run-off from new upstream development; and

WHEREAS the City of Newport has a documented shortage of affordable housing units, and with a significant amount of developable residential property lying upstream of the SE 40th Street Pond, it is essential that the City acquire the pond so that it can be improved to detain stormwater attributed to new housing development; and

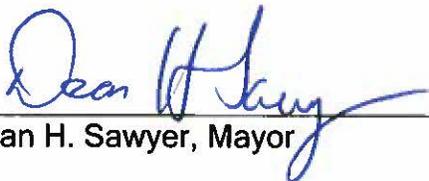
WHEREAS in order for the City of Newport to maintain and enlarge the SE 40th Street Pond as set forth above, it is necessary to acquire an easement interest in the property, the extent of which is described in Exhibit A, attached to this resolution and by this reference incorporated herein; and

WHEREAS the City of Newport has engaged the services of the law firm of Saalfeld Griggs PC, located in Salem, Oregon, to serve as legal counsel and represent the City in this matter.

THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

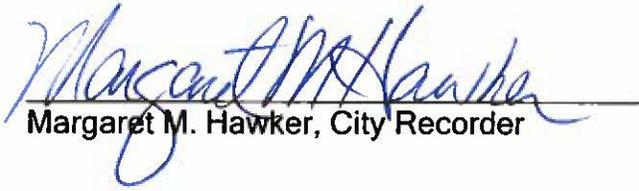
1. The foregoing statement of authority and need are, in fact, the case. Acquisition of an easement interest in the SE 40th Street Pond so that it can be maintained and enlarged as a regional stormwater detention facility is both necessary and in the public interest.
2. The power of eminent domain is hereby exercised with respect to securing said easement interest in the SE 40th Street Pond, the extent of which is described in Exhibit A, subject to payment of just compensation and procedural requirements of Oregon law.
3. The staff of the City of Newport, by and through its legal counsel and agents, is authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. The acquisition is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the City of Newport.
4. The City of Newport expressly reserves jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality or abandon any acquisition.

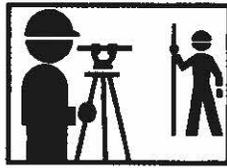
Adopted by the City Council of the City of Newport this 21st day of September, 2020.



Dean H. Sawyer, Mayor

ATTEST:


Margaret M. Hawker, City Recorder

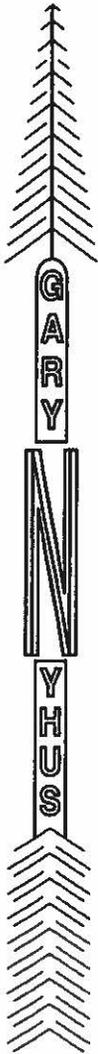


Nyhus Surveying, Inc.

Gary K. Nyhus, PLS

P.O. Box 206 / 740 E. Thissell Rd. • Tidewater, OR 97390 • 541-528-3234 • (Fax) 541-528-3234

nyhussurveying@peak.org



LEGAL DESCRIPTION PREPARED FOR THE CITY OF NEWPORT

**DESCRIPTION OF PROPOSED STORM POND EASEMENT AREA OVER PARCEL 1,
LINCOLN COUNTY PARTITION PLAT 2010-18**

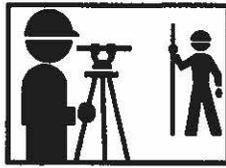
A PORTION OF PARCEL 1, LINCOLN COUNTY PARTITION PLAT 2010-18, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD ON THE SOUTHERLY RIGHT-OF-WAY OF SOUTHEAST 40TH STREET, AND THE NORTHWEST CORNER OF SAID PARCEL 1; THENCE EASTERLY ALONG THE ARC OF A 780.00 FOOT RADIUS CURVE LEFT, 66.57 FEET (LONG CHORD BEARS NORTH 84° 08' 50" EAST, 66.55 FEET) TO A 5/8 INCH IRON ROD ON SAID SOUTHERLY RIGHT-OF-WAY; THENCE CONTINUING ON SAID RIGHT-OF-WAY EASTERLY ALONG THE ARC OF A 720.00 FOOT RADIUS CURVE RIGHT, 139.24' (LONG CHORD BEARS NORTH 87° 11' 02" EAST, 139.02 FEET) TO A 5/8 INCH IRON ROD; THENCE CONTINUING EASTERLY ALONG THE AFORMENTIONED RIGHT-OF-WAY SOUTH 87° 14' 14" EAST, 96.31 FEET TO A 5/8 INCH IRON ROD AND THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID SOUTHEAST 40TH STREET, SOUTH 07° 29' 07" WEST, 37.29 FEET TO A 5/8 INCH IRON ROD; THENCE SOUTH 07° 05' 32" EAST, 49.27 FEET TO A 5/8 INCH IRON ROD; THENCE SOUTH 10° 16' 45" EAST, 70.13 FEET TO A 5/8 INCH IRON ROD; THENCE SOUTH 01° 55' 35" EAST, 146.38 FEET TO A 5/8 INCH IRON ROD; THENCE SOUTH 13° 08' 36" EAST, 35.17 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 89° 19' 31" EAST, 278.28 FEET TO A 5/8 INCH IRON ROD; THENCE SOUTH 39° 59' 05" EAST, 106.65 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 78° 44' 23", 25.00 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 00° 04' 32" EAST, 80.80 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 35° 53' 02" WEST, 141.08 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 66° 55' 19" WEST, 140.66 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 20° 28' 10" WEST, 97.54 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 04° 57' 41" EAST, 58.94 FEET TO A 5/8 INCH IRON ROD ON THE SOUTHERLY RIGHT-OF-WAY OF SOUTHEAST 40TH STREET; THENCE WESTERLY ALONG A 970.00 FOOT RADIUS CURVE LEFT, 45.50 FEET (LONG CHORD BEARS NORTH 85° 55' 12" WEST, 45.49 FEET) TO A 5/8 INCH IRON ROD ON SAID RIGHT-OF-WAY; THENCE NORTH 87° 14' 14" WEST ALONG SAID RIGHT-OF-WAY, 111.71 FEET TO THE TRUE POINT OF BEGINNING.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
SEPTEMBER 11, 2018
ERIC G. NYHUS
88911PLS

EXPIRATION DATE: 12/31/2020



Nyhus Surveying, Inc.

Gary K. Nyhus, PLS

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LEGAL DESCRIPTION PREPARED FOR THE CITY OF NEWPORT DESCRIPTION OF CENTERLINE OF PROPOSED 25 FOOT WIDE DRAINAGE EASEMENT OVER PARCEL 1 AND PARCEL 2, LINCOLN COUNTY PARTITION PLAT 2010-18

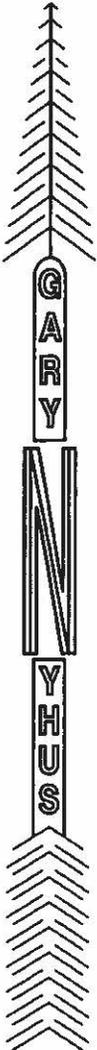
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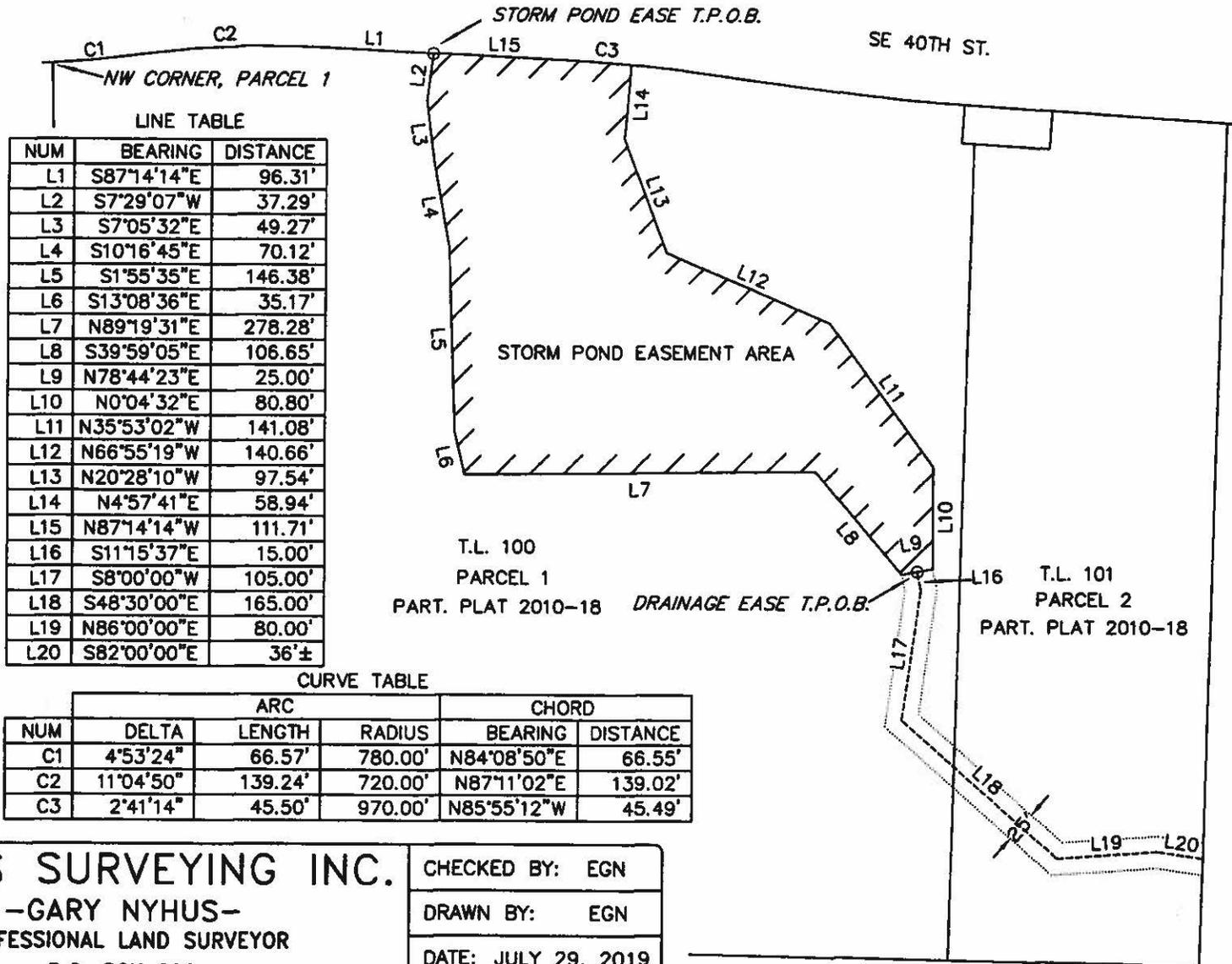
REGISTERED
PROFESSIONAL
LAND SURVEYOR

← 
OREGON
SEPTEMBER 11, 2018
ERIC G. NYHUS
88911PLS

EXPIRATION DATE: 12/31/2020



SKETCH OF PROPOSED EASEMENTS OVER 11-11-20-AB T.L.
 100 & 101 PREPARED FOR THE CITY OF NEWPORT
 LOCATED IN THE NW 1/4, NE 1/4, SEC. 20, T11S, R11W, W.M.
 IN THE CITY OF NEWPORT, LINCOLN COUNTY, OREGON

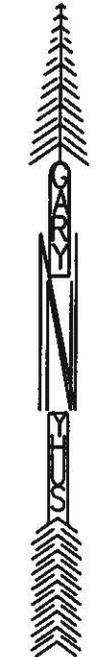


LINE TABLE

NUM	BEARING	DISTANCE
L1	S87°14'14"E	96.31'
L2	S7°29'07"W	37.29'
L3	S7°05'32"E	49.27'
L4	S10°16'45"E	70.12'
L5	S1°55'35"E	146.38'
L6	S13°08'36"E	35.17'
L7	N89°19'31"E	278.28'
L8	S39°59'05"E	106.65'
L9	N78°44'23"E	25.00'
L10	N0°04'32"E	80.80'
L11	N35°53'02"W	141.08'
L12	N66°55'19"W	140.66'
L13	N20°28'10"W	97.54'
L14	N4°57'41"E	58.94'
L15	N87°14'14"W	111.71'
L16	S11°15'37"E	15.00'
L17	S8°00'00"W	105.00'
L18	S48°30'00"E	165.00'
L19	N86°00'00"E	80.00'
L20	S82°00'00"E	36'±

CURVE TABLE

NUM	ARC			CHORD	
	DELTA	LENGTH	RADIUS	BEARING	DISTANCE
C1	4°53'24"	66.57'	780.00'	N84°08'50"E	66.55'
C2	11°04'50"	139.24'	720.00'	N87°11'02"E	139.02'
C3	2°41'14"	45.50'	970.00'	N85°55'12"W	45.49'



SCALE
 1" = 12'

NYHUS SURVEYING INC.

-GARY NYHUS-
 PROFESSIONAL LAND SURVEYOR
 P.O. BOX 206

740 E. THISSELL RD. TIDEWATER, ORE 97390
 (541) 528-3234



CHECKED BY: EGN
 DRAWN BY: EGN
 DATE: JULY 29, 2019
 SCALE: 1" = 12'
 PROJECT: 19121

LEGEND
 - - - - - DRAINAGE EASE C.L.
 - - - - - DRAINAGE EASE