



## **CITY COUNCIL WORK SESSION AGENDA**

**Monday, August 15, 2016 - 12:00 PM**

**Conference Room A - 169 SW Coast Highway, Newport, Oregon 97365**

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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 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**

### **2. DISCUSSION / ACTION ITEM**

#### **2.A. Discussion Regarding Ordinance-Housing Receivership**

[Ordinance-Housing Receivership \(Draft\)-4-19-16.docx](#)

#### **2.B. Discussion of Memorandum of Understanding with Landwaves for Acquisition of SE 50th Street and SE 62nd Street Rights-of-Ways**

[Agenda Summary](#)

[Draft Memorandum of Understanding](#)

[MOU Map Exhibit](#)

#### **2.C. Summary Report for the Work Session**

[City Manager Summary Report on Noon Work Session.pdf](#)

### **3. EXECUTIVE SESSION**

**3.A. Executive Session Pursuant to ORS 192.660(2)(e) to Discuss Real Property Transactions.**

**4. ADJOURNMENT**

# Chapter 8.12 Housing Receivership

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## **8.12.010 Purpose and Scope**

The purpose of this Chapter is to establish authority and procedures for the use of the Oregon Housing Receivership Act (ORS 105.420 to 105.455), and shall apply to all residential property.

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## **8.12.020 Authority.**

A. When the City Manager finds that any residential property is in violation of provisions of the Newport Municipal Code and believes that violation is a threat to public health, safety or welfare, the City Manager may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement. As used in this Chapter, abatement shall mean the removal or correction of any condition at a property that violates any provision of Newport Municipal Code as well as the making of other improvements or corrections as are needed to rehabilitate the property or structure.

B. In administering the provisions of this Chapter, the City Manager's authority shall include, but is not limited to:

1. The selection of properties;
  2. The selection of appropriate receivers; and
  3. The establishment of written rules and procedures as are deemed necessary for the administration of this Chapter.
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## **8.12.030 Selection of Properties.**

In identifying properties where the City may seek appointment of a receiver, the City Manager shall consider those properties that have the following characteristics:

- A. A violation of any provision of the Newport Municipal Code that threatens the public health, safety or welfare;
- B. The owner has not acted in a timely manner to correct the violations; and

C. Abatement of the violations on this property would further the Housing Policy of the City of Newport as articulated in Goal 4 of the City's Comprehensive Plan.

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### **8.12.040 Notice To Interested Parties and Application.**

A. At least 60 days prior to the filing of an application for appointment of a receiver, the City Manager shall cause a notice to be sent by regular mail to all interested parties of record in the subject property.

B. The notice shall give the date upon which the City has the right to apply to a court of competent jurisdiction for the receiver, and in addition shall:

1. State the address and legal description of the property;
2. List the code violations which give rise to the proposed application; and
3. Give the name, address and telephone number of an officer or official of the City who can provide additional information concerning the violations and their remedy.

C. If no interested party has taken any action to foreclose their security interest, or taken other significant actions to cure the identified violation(s), within 60 days of the date of the notice, the City Manager may thereafter apply for the appointment of a receiver.

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### **8.12.050 Selection of Receivers.**

In selecting specific receivers, the City Manager shall choose a Housing Authority, a City Department, an urban renewal agency, or a private not-for-profit corporation, the primary purpose of which is the improvement of housing conditions within the City. In making the selection, the City Manager shall consider, at a minimum, the following:

- A. The location of the property relative to other properties owned or managed by the receiver.
  - B. The receiver's experience in rehabilitating and managing similar type of property.
  - C. The receiver's capacity to take on additional property management responsibilities.
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### **8.12.060 Powers of a Receiver.**

A receiver appointed by the court pursuant to the Oregon Housing Receivership Act shall have all lawful authority to do any or all of the following, including without limitation, unless specifically limited by the court:

- A. Take possession and control of the property, including the right to enter, modify and terminate tenancies pursuant to ORS Chapters 90 and 105, and to charge and collect rents and apply rents collected to the costs incurred due to the receivership.

B. Negotiate contracts and pay all expenses associated with the operation and conservation of the property, including, but not limited to all utility, fuel, custodial, repair, rehabilitation, and insurance costs.

C. Pay all accrued property taxes, penalties, assessments, and other charges imposed on the property by a unit of government, as well as any charge of like nature accruing during the pendency of the receivership.

D. Dispose of all abandoned personal property found on the property pursuant to ORS Chapter 90.

E. Enter into contracts and pay for the performance of any work necessary to complete the abatement.

F. Enter into financing agreements with public or private lenders and encumber the property so as to have moneys available to correct the conditions at the property giving rise to the abatement.

G. Charge an administrative fee at an hourly rate approved by the court or at a rate of 15 percent of the total cost of abatement, whichever the court deems more appropriate.

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### **8.12.070 Plan and Estimate.**

Within 30 days after appointment by the court, a receiver shall submit to the City Manager a written plan for the abatement. The City Manager shall approve the plan before the receiver commences work on the abatement.

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### **8.12.080 Record Keeping.**

The receiver shall keep a record of all moneys received and expended and all costs and obligations incurred in performing the abatement and managing the property, including any charges as compensation for the receiver. Records shall be kept in a form as shall be agreed upon by the receiver and the City Manager, and copies shall be provided to the City Manager upon request. Periodic progress reports on the abatement shall be provided to the City Manager in a form as agreed upon by the receiver and City Manager upon request of the City Manager. In the absence of agreement as to the form of the report, the City Manager may prescribe the form.

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### **8.12.090 Purchasing.**

All abatement work done under this Chapter is exempt from the purchasing and contracting provisions of the Newport Municipal Code.

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### **8.12.100 Liens.**

A. All moneys expended and all costs and obligations incurred by the receiver in performing the abatement shall be reviewed by the court for reasonableness and their necessity in performing the abatement. To the extent that the court finds the moneys, costs, or obligations, to be reasonable and necessary, it shall issue an order reciting this fact as well as the amount found to be reasonable and necessary.

**B.** If the costs and obligations incurred due to the abatement have not been paid, the order of the court shall be filed with the county recorder within 60 days of its filing with the court and shall thereafter constitute a lien on the property.

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### **8.12.110 Foreclosure.**

In the event that the lien created pursuant to the terms of this Chapter and the Oregon Housing Receivership Act is not paid in a timely fashion, the receiver or their assignee or other successor in interest may bring a suit or action in foreclosure as provided for by law, including ORS 223.505 et. seq.

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### **8.12.120 Termination of Receivership.**

The receivership authorized pursuant to the terms of this Chapter and the Oregon Housing Receivership Act shall terminate only by an order of the court after a showing by an interested party or the receiver that:

- A. The abatement has been completed;
- B. The costs and obligations incurred due to the abatement have been paid by an interested party or a lien has been filed pursuant to 8.12.100 of this Chapter; and
- C. The interested party will manage the property in conformance with the applicable provisions of the City code, and consistent with directives of the Court.



STAFF REPORT  
CITY COUNCIL AGENDA ITEM

**Title:** Memorandum of Understanding Between the City of Newport, Newport Urban Renewal Agency, and Landwaves for acquisition of SE 50<sup>th</sup> St and SE 62<sup>nd</sup> St rights-of-way

**Prepared by:** Derrick I. Tokos, AICP, Community Development Director

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**Recommended Motion:** None. This work session offers Council members an opportunity to review the draft Memorandum of Understanding (MOU), ask questions of staff, and determine if any revisions are needed before the MOU is presented to the Agency and Council for adoption.

**Background Information:** The Newport Transportation System Plan, adopted in November of 2012 (the "Plan"), identifies the realignment of a portion of SE 50<sup>th</sup> Street and the extension of SE 62<sup>nd</sup> Street as critical elements of the City's transportation system, and the South Beach Urban Renewal Plan includes funding for the acquisition of road right-of-way associated with street projects identified in the Plan.

The "as-travelled" portion of SE 50<sup>th</sup> Street is contained within an easement acquired by the City of Newport when it constructed the wastewater treatment plant. This stretch of roadway, the portion of SE 50<sup>th</sup> that is to be realigned, and the future extension of SE 62<sup>nd</sup> Street, pass through property owned by Landwaves, Inc. At this time, Landwaves is contemplating how best to position the property for industrial development, including certification through the State's shovel ready industrial lands program. Getting the "as travelled" portion of SE 50<sup>th</sup> Street into a public road right-of-way and identifying the specific location for the realignment of SE 50<sup>th</sup> Street and the extension of SE 62<sup>nd</sup> Street provides Landwaves with needed access and a degree of certainty around which they can put together development plans. The City's buildable lands inventory, last updated in 2012, demonstrated that the City lacks an adequate supply of developable industrial sites. Inadequate infrastructure is one of the principal reasons for this deficiency, and the City established, as a matter of policy, that it would work with property owners to overcome such obstacles, with urban renewal funds being identified as a potential source of funding (ref: Policy 7, Economy Section, Newport Comprehensive Plan). Obtaining these rights-of-way is consistent with this policy direction.

Both SE 50<sup>th</sup> and SE 62<sup>nd</sup> Street are identified in the Plan as collector roadways that, when constructed, will serve the broader public and provide an alternative north-south route to US 101. They are identified as part of the off-highway street network the City

agreed to put in place as part of its negotiations with the State of Oregon to secure an alternate mobility standard for US 101. That mobility standard loosened restrictions on the amount of vehicle trips new development could load onto the highway, to the benefit of South Beach property owners. By establishing a right-of-way alignment for these future roads, the City demonstrates that it is committed to getting this local street network in place.

An airport lighting array exists at the south end of the Landwaves industrial property, in the vicinity of where right-of-way for the extension of SE 62<sup>nd</sup> Street will tie into the “as travelled” segment of SE 62<sup>nd</sup> Street. The City does not currently have an easement over the lighting array and such an easement would be obtained concurrent with the dedication of the street right-of-way.

The acquisition of SE 62<sup>nd</sup> Street right-of-way was discussed as a potential project at the Urban Renewal Agency’s April 4, 2016 meeting and funding for right-of-way/easement acquisition is included in the FY 16/17 budget.

**Fiscal Notes:** As noted, the budget for the South Beach Urban Renewal District includes funding for right-of-way acquisition.

**Alternatives:** Move forward with the MOU as drafted, proceed with a modified version of the MOU, forgo the MOU, or as directed by Council.

**Attachments:**

Draft MOU and Exhibit Map

**DRAFT**

August 5, 2016

**Memorandum of Understanding**  
**among**  
**City of Newport, Oregon (“City”),**  
**Newport Urban Renewal Agency (“Agency”)**  
**and**  
**Landwaves, Inc. (“Landwaves”)**

**Recitals**

- A. The City and Agency have established an overall infrastructure plan for the South Beach area, as depicted in Newport Transportation System Plan, adopted in November 2012 with Ordinance No. 2045 (the “Plan”). All Parties desire to work collaboratively to implement the Plan in a coordinated and equitable fashion. Except where the context otherwise indicates, when used herein the term “Parties” means City, Agency, and Landwaves.
- B. As Landwaves contemplates future development of its industrial zoned South Beach property, and potential certification of said property through the State of Oregon “shovel ready” industrial lands program, it finds that it is desirous to establish some certainty as to the location where SE 50<sup>th</sup> Street is to be realigned and SE 62<sup>nd</sup> Street extended, and to place the “as travelled” portion of SE 50<sup>th</sup> Street, which is currently contained within an easement, into a formal public street right-of-way.
- C. Similarly, the City and Agency are interested in placing the “as travelled” portion of SE 50<sup>th</sup> Street into a public street right-of-way and in securing rights-of-way to facilitate the future realignment of SE 50<sup>th</sup> Street and the future extension of SE 62<sup>nd</sup> Street in accordance with the Plan because it facilitates the establishment of needed industrial development sites and furthers the City’s plans to create an alternative north-south route to US 101 that will serve the broader public.
- D. The Parties recognize that care will need to be taken in establishing the location of a realigned SE 50<sup>th</sup> Street and SE 62<sup>nd</sup> Street given the sensitive wetlands that exist in the area, and agree that every effort should be made to establish right-of-way alignments that will minimize impacts to these resources once the roads are constructed.
- E. Agency has identified and appropriated funding for acquisition of rights-of-way for the realignment of SE 50<sup>th</sup> Street and the extension of SE 62<sup>nd</sup> Street in fiscal year 2016/2017.
- F. An airport lighting array exists at the south end of Landwaves industrial property, in the vicinity of where right-of-way for the extension of SE 62<sup>nd</sup> Street would tie into the “as travelled” segment of SE 62<sup>nd</sup> Street. The Parties agree that the array should remain in its existing location with SE 62<sup>nd</sup> Street being extended underneath the array in the future. City is prepared to

acquire, and Landwaves is willing to grant, an easement over that portion of the array that encroaches onto its property.

- G. This agreement is limited to those portions of SE 50<sup>th</sup> Street, including its future realignment, and SE 62<sup>nd</sup> Street that are on Landwaves property. The Parties understand that rights-of-way from other property owners will be needed to complete the realignment of SE 50<sup>th</sup> Street and may be needed to construct the SE 62<sup>nd</sup> Street extension.
- H. Landwaves acknowledges that the execution of this agreement does not constitute a commitment by Agency or City to obtain additional rights-of-way for the realignment of SE 50<sup>th</sup> Street or the extension of SE 62<sup>nd</sup> Street or to construct said streets or that such streets will be constructed within a specific timeframe. The Parties share the goal of determining the appropriate timing for the construction of the street improvements and an equitable distribution of those costs amongst the benefitted owners.

### **Agreement**

#### **1. SE 50<sup>th</sup> Street Property Dedication (Existing Alignment)**

- a. City shall prepare a draft right-of-way dedication document for the “as travelled” portion of SE 50<sup>th</sup> Street to establish an 80-foot wide public road right-of-way where the City currently possesses a utility and access easement to its Water Treatment Plant as described in Book 358 at Page 1086, and modified with Instrument No. 200307325, of the Lincoln County Records.
- b. City will provide Landwaves a copy of the draft right-of-way dedication document for its review and comment. Landwaves and City will collaborate on any revisions needed to the document.
- c. Once the Parties are in agreement with the language contained in the right-of-way dedication document, the dedication instrument will be executed by Landwaves and accepted by the City. City will pay for the recording costs.
- d. City agrees to release its rights to easements now encumbering the land that is to be dedicated as part of the right-of-way dedication document or by separate recorded instrument following its acceptance of the dedication.
- e. The Parties agree that there should be no monetary compensation associated with this right-of-way conveyance.

#### **2. SE 50<sup>th</sup> Street (Future Alignment) and SE 62<sup>nd</sup> Street Dedication**

- a. Agency will retain a surveyor to prepare a conceptual drawing of an 80-foot wide road right-of-way for the east-west realignment of SE 50<sup>th</sup> Street and for the extension of SE 62<sup>nd</sup> Street envisioned in the Plan (ref: Exhibit A). Landwaves will provide City with any survey records or wetland delineation reports in its possession that would inform the preparation of the concept drawing. Agency will provide a copy of the conceptual drawing to Landwaves for its review.

- b. Landwaves shall review the conceptual drawing and provide Agency feedback regarding any changes it would like to see made to the document. Agency and City are amenable to Landwaves naming the north / south segment of the new street right-of-way extending south to SE 62<sup>nd</sup> Street in accordance with the City's established street naming conventions. The east / west oriented portion of the new right-of-way, where it ties into the as-travelled portion SE 62<sup>nd</sup> Street, will be known as SE 62<sup>nd</sup> Street.
- c. Agency and Landwaves will collaborate to determine the best location for the new SE 50<sup>th</sup> Street and SE 62<sup>nd</sup> Street alignments. Once the Parties are in agreement with the conceptual alignments, Agency will have the rights-of-way appraised by an MAI designated appraiser, licensed in the State of Oregon. A copy of the appraisal report will be provided to Landwaves for its review, and any comments provided by Landwaves will be shared with the appraiser who may, at their sole discretion, elect to modify the appraisal.
- d. Landwaves agrees to dedicate rights-of-way for the realignment of SE 50<sup>th</sup> Street and extension of SE 62<sup>nd</sup> Street to the City for its fair market value. If Landwaves disagrees with the fair market value established by Agency's appraiser then it shall, at its expense, retain an MAI designated appraiser, licensed in the State of Oregon, to perform a separate appraisal with the sales price being the average of the two appraisals.
- e. Once a sales price is established, Agency shall finalize the right-of-way survey and prepare the dedication documents. A copy of the final documents shall be provided to Landwaves for its review and comment. Once Landwaves completes its review and its comments have been addressed, the proposed right-of-way dedications shall be presented to the Agency Board and Newport City Council for approval.
- f. Closing and settlement shall occur after approval by the Newport City Council at a Title Company designated by Landwaves, and Landwaves shall be responsible for its pro-rated share of the *ad valorem* taxes due as of the date of the closing.
- g. Agency shall be responsible for all costs attributed to the acquisition of the rights-of-way, unless otherwise specified above.

**3. Easement for Industrial Park sign along US 101**

- a. City is willing to grant Landwaves an easement over its property at the intersection of SE 50<sup>th</sup> Street and US 101 so that Landwaves may construct a freestanding pole or monument sign for its industrial properties.
- b. Agency will prepare a draft easement document that it will provide to Landwaves for comment. The location, size, and value of the easement will be determined as part of the process described in Section 2 of this agreement.
- c. Parties acknowledge that the City property, which is a fee owned strip of land over which SE 50<sup>th</sup> Street was constructed, is located outside of the city limits and that Landwaves construction of a sign will be subject to approval by Lincoln County.

#### **4. Airport Navigational Array Easement**

- a. City will prepare a draft airport navigational array easement and conceptual drawing of the easement area for that portion of the airport approach lighting system situated on Landwaves property and will provide Landwaves a copy of the draft easement documents for its review and comment.
- b. Landwaves and City will collaborate on any revisions needed to the easement documents. It is City's desire that the easement be exclusive and perpetual in nature, but is open to language that would provide for the release of the easement at such time as the lighting array is no longer needed. City further desires that it be given access over Landwaves property to maintain the approach lighting system. If desired by Landwaves, City is open to a provision being included in the easement to allow the lighting array to be relocated, at Landwaves expense, subject to Federal Aviation Administration approval.
- c. Once the Parties are in agreement with the language contained in the easement document, the City will have the easement appraised by an MAI designated appraiser, licensed in the State of Oregon. A copy of the appraisal report will be provided to Landwaves for its review, and any comments provided by Landwaves will be shared with the appraiser who may, at their sole discretion, elect to modify the appraisal.
- d. Landwaves agrees to dedicate the airport navigational array easement to the City for its fair market value. If Landwaves disagrees with the fair market value established by Agency's appraiser then it shall, at its expense, retain an MAI designated appraiser, licensed in the State of Oregon, to perform a separate appraisal with the sales price being the average of the two appraisals.
- e. Once a sales price is established, City shall finalize the easement and provide a copy of the final documents to Landwaves for its review and comment. Once Landwaves completes its review and its comments have been addressed, the easement shall be presented to the Newport Airport Advisory Committee and Newport City Council for approval.
- g. Closing and settlement shall occur after approval by the Newport City Council at a Title Company designated by Landwaves.
- h. City shall be responsible for all costs attributed to the acquisition of the easement, unless otherwise specified above.

#### **5. Other Easements or Rights-of-Way**

- a. The Parties understand that the rights-of-way being dedicated pursuant to this agreement may not be sufficient to contain the full extent of development required to construct the streets given existing terrain and wetland constraints. Should this occur, the parties agree to work collaboratively to modify the right-of-way or put in place temporary or permanent easements over areas proposed for street or related development at such time as the extent of the construction is known. Such changes to the location of the right-of-way or the dedication of easements would be negotiated separate from this agreement.

- b. Landwaves is interested, and the City is willing to entertain, the creation of a public access easement over city owned property east of its wastewater treatment facility to provide alternative access to Landwaves industrial properties. Landwaves agrees to take the lead in developing a conceptual alignment for such an easement and its specific location, size and value would be negotiated separate from this agreement.

**6. Schedule**

- a. The Parties will work in good faith to complete their respective responsibilities under this Memorandum of Understanding (MOU) so that the rights-of-way and easement are in place by June 30, 2017.

**7. Non-Binding MOU**

- a. It is the intent of the Parties to work together in good faith to implement the terms of this MOU such that the rights-of-way and airport navigational array easement can be established in an efficient and equitable manner. However, this agreement is non-binding on the Parties and represents only the intent of the Parties with respect to the subjects herein.

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

**City of Newport by**

**Newport Urban Renewal Agency by**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name/Title:

Printed Name/Title:

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

David Allen, Chair  
169 SW Coast Hwy  
Newport, Oregon 97365

Date: \_\_\_\_\_

Date: \_\_\_\_\_

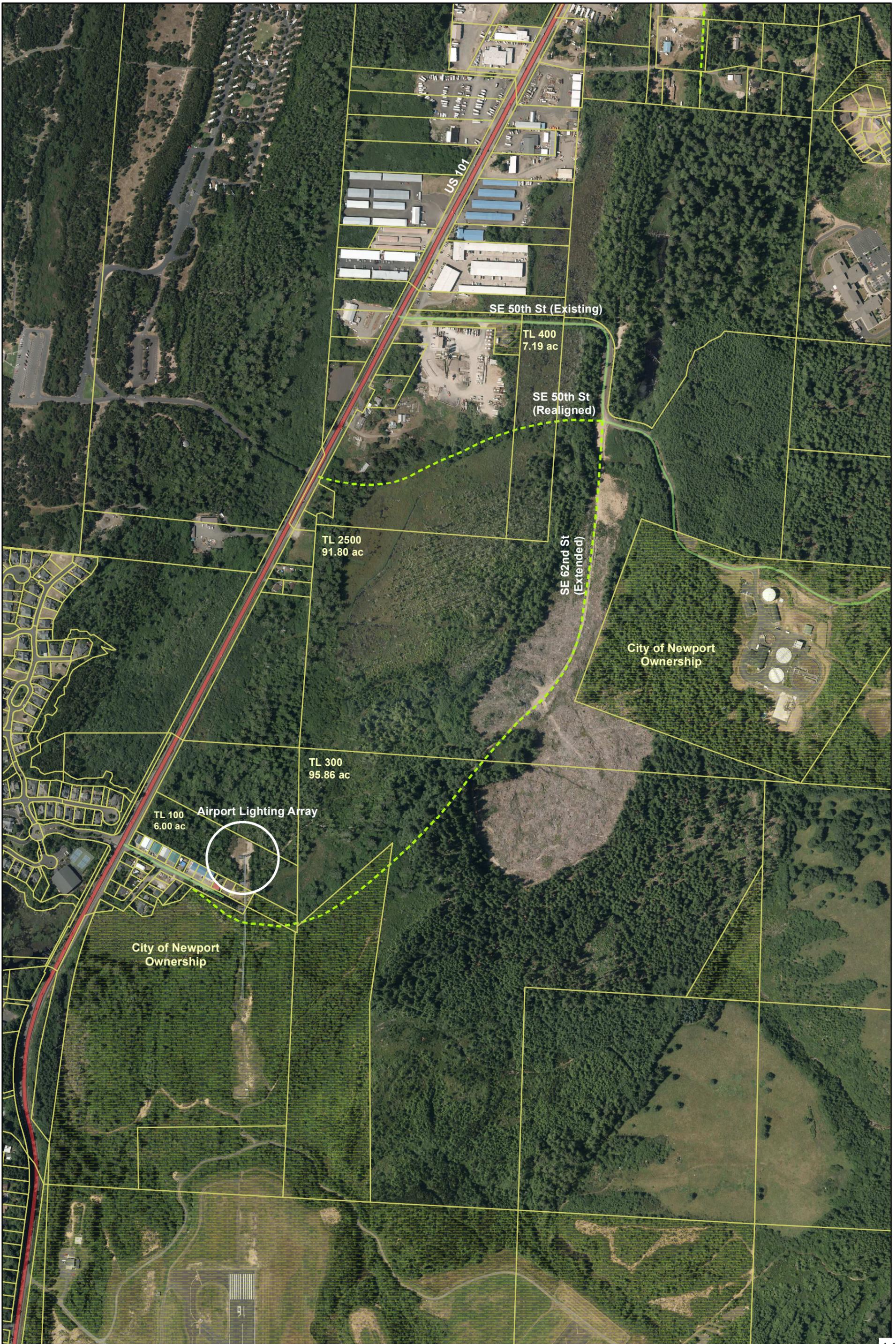
**Landwaves, Inc. by**

Signature: \_\_\_\_\_

Printed Name/Title:

Bonnie Serkin, Chief Operating Officer  
P.O. Box 12085  
Portland, Oregon 97212

Date: \_\_\_\_\_



City of Newport  
 Community Development Department  
 169 SW Coast Highway  
 Newport, OR 97365  
 Phone: 1.541.574.0629  
 Fax: 1.541.574.0644

### Exhibit A: Landwaves / City of Newport Memorandum of Understanding

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



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.

# CITY MANAGER SUMMARY REPORT ON WORK SESSION



Meeting Date: August 15, 2016  
12:00 Noon

## Agenda Item: **Summary Report on the Work Session**

### Background:

The City Council will discuss a potential implementation of an ordinance on housing receivership, and a memorandum of understanding (MOU) with Land Waves for the acquisition for rights-of-way for future development on SE 50<sup>th</sup> Street and SE 62<sup>nd</sup> Street. At the end of the work session, we will hold a brief Executive Session in accordance with ORS 192.660(2)(e) to discuss real property transaction.

City Attorney, Steve Rich, has drafted an ordinance, which would provide for the City to apply to a court for the appointment of the City as a receiver to deal with the abatement of property issues that are a threat to public health, safety or welfare. This ordinance would be used when there is a violation of municipal code, or the owner has not acted in a timely manner to correct the violations, and the abatement would further the housing policy as articulated in Goal 4 in the City's Comprehensive Plan. The ordinance outlines the process that would be utilized and states that the City would effectively take control of the property, enter into contracts to pay for performance of any work necessary to complete the abatement, and charge appropriate fees to address the public expense in dealing with the abatement. All monies expended would be issued as a lien on the property as reviewed by the court for their reasonableness. The ordinance would provide the City as the receiver, and the City could proceed with foreclosure on the property.

The receivership ends when the abatement has been completed, costs in obligations incurred have been paid, or a lien has been filed pursuant to the draft ordinance.

City Attorney, Steve Rich, believes this will expedite the process for dealing with a dangerous and abandoned properties, and provide this process under the review of an appropriate court to assure that the rights of the property owners are observed. Rich will provide an overview of the ordinance, and determine if the City Council would be interested in proceeding with this type of tool to address properties that impose a threat to the community.

In addition, Derrick Tokos, will discuss with the Council the possible acquisition of easements to create rights-of-way for future extensions of SE 62<sup>nd</sup> Street and SE 50<sup>th</sup> Street. Both of these roadways are identified in the plan as future collector routes. Following the discussion, the Council can determine if this is a priority for us to initiate discussions with property owners to proceed with this acquisition.

Finally, the City will have a brief discussion to discuss the possible acquisition of property following the two work session discussion items. Please note, we will have lunch available for the Council at this meeting.

Respectfully Submitted,

Spencer R. Nebel