



## **AGENDA and Notice of Special Meeting of the Newport City Council**

The City Council of the City of Newport will hold a Special Meeting on Monday, August 31, 2015, at noon, in Conference Room A at City Hall, 169 S.W. Coast Highway, Newport, Oregon 97365. A copy of the agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder 541.574.0613.

The City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the work session and/or meeting. Action items that do not require a public hearing may be moved up earlier in the meeting.

### **City Council Special Meeting Monday, August 31, 2015 - Noon Conference Room A**

- I. Call to Order
- II. Agate Beach Wayside Improvement Project - Discussion and Possible Action Regarding Funding
- III. Discussion Regarding Recreational Marijuana and the Possible Early Sales of Recreational Marijuana by Medical Marijuana Facilities - No Action
- IV. Executive Session Pursuant to 192.660(2)(e) Regarding Real Property Transactions
- V. Adjournment





Spencer Nebel  
 City Manager  
 CITY OF NEWPORT  
 169 S.W. Coast Hwy.  
 Newport, OR 97365  
[s.nebel@newportoregon.gov](mailto:s.nebel@newportoregon.gov)

## MEMO

DATE: August 28, 2015

TO: Mayor and City Council

FROM: Spencer Nebel, City Manager

SUBJECT: Special Meeting on Monday, August 31, 2016 at noon in Conference Room A

There are three issues that Council will be considering at the special meeting of August 31<sup>st</sup> including the appropriation of supplemental funding for the Agate Beach Wayside Project, a discussion on allowing Medical Marijuana Dispensaries to sell recreational marijuana. No decision will be made on this issue at this meeting. The Council requested a work session prior to being asked to make a decision on this matter. If the Council members feel they have adequate information to make a decision, then I will schedule a recommendation for the September 8<sup>th</sup> meeting on this item. The final session will be an executive session regarding real property transactions. I certainly appreciate the Council's willingness to come together to address these three issues at noon prior to the town meeting that will take place at 5:30 P.M. for the tour, and 6 P.M. for the actual Town Hall meeting.

### APPROPRIATION OF SUPPLEMENTAL FUNDING FOR THE AGATE BEACH WAYSIDE PROJECT

#### Background

Attached is a report from Derrick Tokos on the current funding situation with the Agate Beach Wayside Project.

In 2011, the City and County funded a series of design charrettes to develop a concept for how the Agate Beach Wayside could be improved to better serve tourists and the local community. That information was used to prepare a Federal Highway Administration (FHWA) Scenic Byways Grant Application, which was submitted later that same year. In August of 2012, the City was informed that it received grant funding for the project in the amount of \$557,696 (later increased to \$558,576). An Intergovernmental Agreement (IGA) between the City and State was eventually completed in July of 2013. Despite numerous requests from the City of Newport, the project was stalled again until we contacted our state elected officials. The earlier schedule for ODOT to proceed with this work was not met. Furthermore, the City and ODOT are now up to the final "drop dead" deadline to commit these funds. ODOT finally initiated the process of securing a design consultant in

February of 2014. In September of 2014, the consulting firm OTAK was selected to design the project and prepare the bid documents. An amendment to the IGA was adopted in January of 2015. The amendment pushed the deadline for obligating federal funds to September 30, 2015, which is the last day that this can occur before the grant funds are forfeited. The amendment also established September 15, 2016 as the deadline by which construction must be completed. With the two year delay in getting the contract initiated from the time that the grant was awarded, additional cost have been incurred by ODOT in administering this grant and the costs for construction have seen some significant increases.

The project components include construction of a restroom and showers at the wayside; reconfiguration of the parking area to increase the number of available spaces, reconfiguration of the wayside and US 101 access to improve public safety; construction of sidewalk along NW Circle Way (undeveloped) and NW Gilbert Way between the wayside and trail accessing the north end of Agate Beach; drainage improvements and repair of outfall adjacent to Agate Beach Motel; new stairs and pathway improvements to address safety problems along the beach access trail; and the extension of NW Gilbert Way through to US 101 to provide a secondary access into the neighborhood.

ODOT initiated project design on September 16, 2014 and a kickoff meeting was held September 24, 2014. Staff conducted public outreach meetings on November 18, 2014 and December 18, 2014 to inform the design and a public "open house" on the final design was held on March 11, 2015. Final design, permits, plans and specifications were completed earlier this month, with the final engineer's estimate being completed August 27, 2015.

The engineer's construction estimate and design expenses incurred by the state and its contractor's now put the total project cost at \$910,441. This puts the project at \$212,441 over the existing budget. Per the IGA, the City is responsible for the shortfall and must demonstrate that it can cover that amount plus an additional "contingency" before the project can proceed to construction. This amounts to \$255,686 of supplemental appropriations by the City.

Final design is complete and the project is ready to be submitted to the Federal Highway Administration (FHWA) so that construction funds can be obligated. Because actual design costs and the engineer's construction estimate exceed the original budget, ODOT is requiring that the City confirm that it can provide the additional funds. This must be done by September 1st in order for there to be enough time for the plans to be reviewed and signed off by FHWA prior to the September 30, 2015 deadline for construction funds to be obligated. The city will need to obligate \$345,445 to go forward with this project. That amounts to an additional \$263,021 from what is currently budgeted. We have scheduled a special council meeting on August 31<sup>st</sup> to get this authorization to go forward with the project. The Intergovernmental Agreement between the City of Newport and the State of Oregon, authorizing the State to administer this federal-aid project, requires the City to cover 100% of any cost overruns attributed to ODOT, its consultants, and contractors, even though the City has not had control over the timing and oversight of this effort. The City has not and will not charge any staff expenses to the project.

It is my opinion that this is a very important project that will eliminate neighborhood problems and enhance Newport as a tourist destination on U.S.101. While committing funding for the overages for this project is never fun, the loss of \$560,000 of Federal funding for a project that will truly address some long standing transportation and neighborhood problems in this area is not acceptable. Please note that we are working with ODOT to provide a portion of these local costs. In addition we are working with the Surfriders for project participation that would reduce the contract costs as well. They are committed to reviewing certain aspects of this project that could be done with volunteers to reduce overall costs. I do believe that we will receive some additional resources to help offset a portion of the cost overruns, but I am recommending that we commit to the necessary funding in order to have ODOT proceed with the bidding for this project prior to the September 30<sup>th</sup> deadline for initiating the bid process. If this process does not go ahead on that date the funding will be returned by ODOT to the Feds since the Federal program will expire for any uncommitted funds on that date.

### **Recommendation**

I recommend that the City Council consider the following motions:

I move that the Council appropriate \$60,000 from Street SDC contingency account to the Agate Beach Wayside Project account.

I further move that the Council \$60,000 from the Room Tax Contingency account to the Agate Beach Wayside Project account.

I move that the Council appropriate \$180,000 from the NW 6<sup>th</sup> Street Storm Sewer project account to Agate Beach Wayside Project account.

### **Fiscal Effects**

The appropriation will provide some buffer over the \$263,021 in additional funding needed. Please note that after this transfer, \$324,000 will remain in the SDC Contingency account, \$66,381 in the Room Tax Contingency account. Also, between this project and the relining the storm sewer in 6<sup>th</sup> Street West of 101 which we will be proposing at September 8<sup>th</sup> City Council meeting to utilize those funds for storm sewer living enough money to complete the design for NW 6<sup>th</sup> Street Storm Sewer Project so that work could be initiated at the being of the fiscal year during the next construction season. There is sufficient funding in this project to cover this appropriation as well as to address the relining of the storm sewer in 6<sup>th</sup> Street East of Highway 101.

### **Alternatives**

Cancel the project or as suggested by City Council

## **DISCUSSION REGARDING RECREATIONAL MARIJUANA AND POSSIBLE EARLY SALES OF RECREATIONAL MARIJUANA FACILITIES**

The City Council requested a work session discussion to better understand the issues surrounding medical marijuana dispensaries selling recreational marijuana. As you are aware this will occur on October 1<sup>st</sup> unless the Council takes action to prohibit medical dispensaries from selling recreational marijuana. In reviewing the draft rules it appears the

regulatory processes adopted by the City Council to deal with dispensaries will remain intact for those dispensaries that choose to sell recreational marijuana. The only potential change that we may want to make to the code relating to this matter would be to change the definition of medical marijuana to clearly reflect the fact that the code provisions apply equally to recreational marijuana sold at medical marijuana dispensaries. I have enclosed a copy of the Oregon Administrative Rules for your review. Please note that most of the changes affecting recreational marijuana begin on page 10 of the rules. I have also included a copy of the city's medical marijuana facilities code provisions for your review as well. Based on our internal review of these provisions I am likely to recommend that the Council not take any action to prohibit medical dispensaries from selling recreational marijuana on October 1<sup>st</sup>. This is also based on the minimal input we received at the public hearing on this issue. It will also be my intent to have this as an action item on the City Manager's report for September 8<sup>th</sup>.

### **EXECUTIVE SESSION**

We will have a brief executive session regarding real property transactions immediately following the recreational marijuana discussion.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. R. Nebel", is written over a light blue circular stamp.

Spencer R. Nebel  
City Manager



Agenda Item #

Meeting Date

August 31, 2015

**CITY COUNCIL**  
**AGENDA ITEM SUMMARY**

City of Newport, Oregon

Issue/Agenda Title Appropriation of Supplemental Funding for Agate Beach Wayside Improvements

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval:

**ISSUE BEFORE THE COUNCIL:** Consideration of whether or not it is in the public interest to appropriate an additional \$300,000 to the Agate Beach Wayside project. The appropriations are required in order for this Oregon Department of Transportation administered project to have sufficient match funds to proceed to construction.

Final design is complete and the project is ready to be submitted to the Federal Highway Administration (FHWA) so that construction funds can be obligated. Because actual design costs and the engineer's construction estimate exceed the original budget, ODOT is requiring that the City confirm that it can provide the additional funds. This must be done by September 1<sup>st</sup> in order for there to be enough time for the plans to be reviewed and signed off by FHWA prior to the September 30, 2015 deadline for construction funds to be obligated. The Intergovernmental Agreement between the City of Newport and the State of Oregon, authorizing the State to administer this federal-aid project, requires the City to cover 100% of any cost overruns attributed to ODOT, its consultants, and contractors. The City has not charged any expenses to the project.

**STAFF RECOMMENDATION:** Staff recommends the Council approve the additional funds. This project is a critical, and comprehensive package of infrastructure improvements to Agate Beach that provide much needed tourism facilities (e.g. restrooms, showers, improved beach access), address serious traffic congestion issues, improve upon an unsafe beach access, and repair a failed storm drainage system that is threatening to compromise nearby homes and a motel. Even with the additional cost, the project is substantially cheaper that it would be if the City were to pursue these same improvements without the federal funds.

**PROPOSED MOTIONS:**

**MOTION #1:** I move that the Council appropriate \$60,000 from Street SDC contingency account #253-3610-98100 to the Agate Beach Wayside Project under account #402-6110-75200, Project #13010. This will reduce funds in the Street SDCs contingency from \$384,342 to \$324,342.

**MOTION #2:** I move that the Council appropriate \$60,000 from Room Tax contingency account #230-4310-98100 to the Agate Beach Wayside Project under account #402-6110-75200, Project #13010. This will reduce funds in the Room Tax contingency from \$126,381 to \$66,381.

**MOTION #3:** I move that the Council appropriate \$180,000 from the NW 6<sup>th</sup> Street Storm Sewer project under account #402-6110-75200, Project #13002, to the Agate Beach Wayside Project under account #402-6110-75200, Project #13010.

**KEY FACTS AND INFORMATION SUMMARY:** In 2011, the City and County funded a series of design charrettes to develop a concept for how the Agate Beach Wayside could be improved to better serve tourists and the

local community. That information was used to prepare a Federal Highway Administration (FHWA) Scenic Byways Grant Application, which was submitted later that same year. In August of 2012, the City was informed that it received grant funding for the project in the amount of \$557,696 (later increased to \$558,576). The Oregon Department of Transportation (ODOT) administers federally funded projects for small communities such as Newport. An Intergovernmental Agreement (IGA) between the City and State was completed in July of 2013. ODOT began the process of securing a design consultant in February of 2014. In September of 2014, the consulting firm OTAK was selected to design the project and prepare the bid documents. An amendment to the IGA was adopted in January of 2015. The amendment pushed the deadline for obligating federal funds to September 30, 2015, which is the last day that this can occur before the grant funds are forfeited. The amendment also established September 15, 2016 as the deadline by which construction must be completed.

The project components include construction of a restroom and showers at the wayside; reconfiguration of the parking area to increase the number of available spaces, reconfiguration of the wayside and US 101 access to improve public safety; construction of sidewalk along NW Circle Way (undeveloped) and NW Gilbert Way between the wayside and trail accessing the north end of Agate Beach; drainage improvements and repair of outfall adjacent to Agate Beach Motel; new stairs and pathway improvements to address safety problems along the beach access trail; and the extension of NW Gilbert Way through to US 101 to provide a secondary access into the neighborhood.

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The engineer’s construction estimate and design expenses incurred by the state and its contractor’s put the total project cost at \$910,441. This puts the project at \$212,441 over the existing budget. Per the IGA, the City is responsible for the shortfall and must demonstrate that it can cover that amount plus an additional “contingency” before the project can proceed to construction. This amounts to \$255,686 of supplemental appropriations. Additional details regarding current and projected costs are identified on page three of this report. A total of \$300,000 of supplemental appropriations have been requested to ensure there are sufficient funds to cover any unanticipated costs.

#### SOURCE FUND JUSTIFICATION FOR ADDITIONAL APPROPRIATION

An additional \$60,000 is recommended to be appropriated out of the Street SDC contingency account. Sidewalk and pathway improvements are eligible Street SDC expenditures. The City’s 2008 SDC Methodology caps the total amount of SDC funds that can be used for sidewalk improvements at just over \$266,000. The City has appropriated approximately \$130,000 for this purpose to date. That number includes the \$46,424 in Street SDCs that were included as part of the original match. The amount of sidewalk and related work exceeds the \$106,424 of Street SDCs that would be dedicated to the project should the appropriation be granted.

An additional \$60,000 is recommended to be appropriated out of the Room Tax contingency account. Most of the planned improvements to the Agate Beach Wayside are “tourism-related facilities” eligible to be funded with room tax revenues. This includes the restrooms, showers, improved layout of the parking area and enhanced beach access. With the additional funding, the total contribution from room tax will be \$100,000. The cost to design and construct these tourism-related facilities far exceeds that amount.

A total of \$180,000 of infrastructure fees are recommended to be appropriated to the project. Infrastructure fees can be used on roads, street, sidewalk and storm drainage improvements. The extension of NW Gilbert Way, reconstruction of the areas drainage system, realignment of the US 101 approach road, curb, gutter and sidewalk work exceed this amount; therefore, the expenditure is justified.

**SUMMARY OF CURRENT AND ANTICIPATED PROJECT COSTS****COSTS BY TYPE (SOFT VS HARD)**

ORIGINAL BUDGET (FROM 2011 FHWA GRANT APPLICATION)		REVISED PROJECT BUDGET (CONSIDERING FINAL DESIGN ESTIMATE)	
ENGINEERING (PRELIMINARY/CONST):	\$174,500	ENGINEERING (PRELIMINARY/CONST):	\$395,000
CONSTRUCTION FUNDS:	\$523,500	CONSTRUCTION FUNDS:	\$515,441
TOTAL:	\$698,000	TOTAL:	\$910,441

**SOURCE OF FUNDING**

ORIGINAL BUDGET (FROM 2011 FHWA GRANT AWARD)		REVISED PROJECT BUDGET (ASSUMES SUPPLEMENTAL APPROPRIATION)	
FEDERAL:	\$558,576	FEDERAL:	\$558,576
LOCAL:	\$139,424	LOCAL:	\$351,865
TOTAL:	\$698,000	TOTAL:	\$910,441

**LOCAL MATCH BY FUNDING TYPE**

ORIGINAL BUDGET (EXISTING APPROPRIATIONS)		REVISED PROJECT BUDGET (CONSIDERING FINAL DESIGN ESTIMATE)	
STREET SDCs	\$46,424	STREET SDCs:	\$106,424
STORM SDCs	\$53,000	STORM SDCs:	\$53,000
ROOM TAX:	\$40,000	ROOM TAX:	\$100,000
TOTAL:	\$139,424	INFRASTRUCTURE FEES:	\$180,000
		TOTAL	\$439,424

**EXPENSES TO DATE:** Preliminary Engineering - Includes project management, administration, permitting, surveying, geotechnical services, hydraulic analysis, environmental services, utility coordination, public involvement, design, preparation of plans and specifications, and bid assistance. This work is substantially complete.

OTAK: \$220,000 (Firm number. OTAK is writing off additional charges until construction phase is started)  
 ODOT \$50,000 (\$45,000 billed to date, estimate \$5,000 in additional charges prior to construction)

Total Preliminary Engineering Costs: \$270,000 (Budget was \$290,000, with \$20,000 in unused contingencies.)

Funds Remaining From Original Budget: \$428,000

Engineer's Construction Estimate: \$640,441 (Inc. \$125,000 in soft costs, and \$515,441 for construction.)

**SHORTFALL:** \$212,441

Under the IGA, the City is required to deposit 110% of its share of the engineer's estimate prior to award of the construction project. ODOT will assume all \$290,000 of the preliminary engineering budget is being expended since the accounting for that phase will not be closed until after construction funds are obligated. There is \$326,400 in federal funds remaining for construction. Subtracting that figure from the engineer's construction estimate of \$640,441 results in \$314,041 being the "city share" of the construction budget. With the additional 10%, that figure increases to \$345,445. This is the amount that we will have to deposit prior to the project being bid on October 22, 2015. The city has \$82,424 of match funds remaining from the original 2011 appropriation. This means that \$263,021 of additional funding is needed. The \$300,000 in supplemental appropriations provides a cushion should actual bids exceed 110% of the engineer's estimate.

#### REASONS FOR THE SHORTFALL

- This project has taken far longer for the State of Oregon to design and has resulted in more significant administrative costs than FHWA envisioned when it solicited grant applications in the fall of 2011. For example, applicants were required to confirm that projects would meet a September 30<sup>th</sup> 2012 obligation deadline (i.e. the date FHWA obligates funds for construction). This project will actually be obligated September 30, 2015, with construction Spring 2016. This is three years late, and almost 5 years from when the grant was applied for. Additionally, the grant application stated that \$10,000 was to be specified for ODOT costs (printing plans, placing ads, reviewing bids, and awarding the contract. ODOT is billing \$50,000 for preliminary engineering, and has asked for \$20,000 for construction engineering.

ODOT has acknowledged that their Region 2 Local Program Unit lacked adequate staff resources to effectively administer the project. This same issue came up as part of the US 101 highway crosswalks grant, which was also applied for in the fall of 2011. In fact the same ODOT liaison was assigned to this project until they elected to hire contract staff to take over this project in 2013. The City had to solicit help from its state legislators in 2014 to keep the project moving so that the federal grant was not forfeited.

- Environmental requirements were more extensive than anticipated. For example, the consultant tried but could not avoid the placement of 7.3 cubic yards of fill in a 198 sq. ft. emergent wetland (i.e. a clogged catch basin). This resulted in \$33,123 in environmental permitting with ODOT, the Department of State Lands, and U.S. Army Corps of Engineers. This is not to mention associated administrative costs that ODOT charged. Further, because the consulting firm OTAK had such a tight schedule to design the project it had to take the path of least resistance (i.e. apply for the permits), because contesting requirements such as this would have put the federal funds at risk.
- Additional work is being performed that was not included in the original estimate. Realignment of the US 101 approach, including a portion of Woody Way, was not anticipated as part of the original estimate. It was identified as a needed safety improvement during the design and public outreach process.
- Excessive administrative costs. Consulting, permitting, and ODOT administrative costs exceeded assumptions the city made when it prepared the grant application in the fall of 2011. The original estimate include \$174,500, or 25% of the funding to cover soft costs. Actual soft costs will be \$395,000 or just shy of 57% of the original budget.

#### COST SAVING MEASURES THAT HAVE BEEN INSTITUTED OR ARE BEING PURSUED

City staff has worked closely with OTAK to value engineer the project. The nature of the improvements have been scaled back to the minimum required to meet the grant requirements (with the exception being the realignment of the US 101 approach). Additional cost savings measures that are being pursued include:

- Solicitation of volunteer assistance. It has always been envisioned that volunteers would have an opportunity to assist with the project. Now that the design is finished, city staff has worked with OTAK to identify how volunteers can help out without running awry of state and federal requirements. This can be labor or materials. The Surfrider Foundation is a major proponent of the project, and they are working with their membership to identify how they can help, and we expect a response from them by the end of September. This would provide us with sufficient time to modify the bid documents.
- City is asking the Region 2 Local Program unit to cover a portion of the administrative expenses that have been billed. The billings were not included with other preliminary engineering invoices that were shared with the city, and they were only disclosed to city staff within the last week. Region 2 has billed close to \$50,000 to date, and has

requested an additional \$20,000. It is likely that ODOT will provide some relief. Unlike the US 101 crosswalk project, the Agate Beach Wayside improvements received federal grant funds from the National Scenic Byway Program. That program has been discontinued, which makes it challenging to find additional funds at the state and federal level.

- City is seeking funds from ODOT Region 2, Area 4 Maintenance for the cost of reconstructing the storm drainage outfall adjacent to the Agate Beach Motel. Runoff impacting the drainage is almost exclusively attributed to US 101. Their staff has been involved in the design process. The maximum amount that we would likely receive is \$36,000. They have been noncommittal about whether or not they can provide funding but will evaluate our request.

Should the additional appropriation be granted, staff can respond to ODOT that the funding shortfall will be covered. No additional details are required until the funds have to be deposited prior to the October 22, 2015 bid date. This provides the City time to work through these cost saving opportunities.

**OTHER ALTERNATIVES CONSIDERED:** Not providing the supplemental funding. If that happens the project will not proceed and \$558,576 in federal grant money would be forfeited. The City would also be responsible for \$270,000 in design expenses. This exceeds the budgeted match, meaning the City would have to appropriate an additional \$130,576 should this alternative be pursued.

**CITY COUNCIL GOALS:** It has been a Council goal to see this project completed.

**ATTACHMENT LIST:**

- Select Sheets from the Final Design Plans for the Wayside Project
- Engineer's Estimate for the Project, dated 8/27/15
- Amendment No. 1 to Scenic Byway Program Project Agreement for Agate Beach Wayside (No. 29099)

**FISCAL NOTES:** Sufficient funding is available in the Street SDC and Room Tax contingency accounts to cover the appropriations. The amount of funding being appropriated out of the NW 6<sup>th</sup> Street Storm Sewer project would preclude that project from being constructed this fiscal year, unless it is refunded. The City Engineer has advised that it is likely the project can be refunded so that it can be completed this fiscal year and is preparing a separate memo outlining how that would occur.



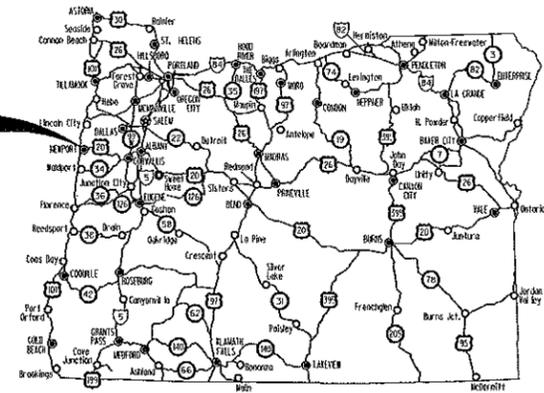
INDEX OF SHEETS	
SHEET NO.	DESCRIPTION
1	Title Sheet
1A	Index Of Sheets Cont'd. & Std. Drg. Nos.

STATE OF OREGON  
DEPARTMENT OF TRANSPORTATION

PLANS FOR PROPOSED PROJECT  
GRADING, DRAINAGE, PAVING, SIGNING,  
ROADSIDE DEVELOPMENT AND BUILDINGS

CITY OF NEWPORT  
**PACIFIC COAST NSB: AGATE BEACH WAYSIDE  
(NEWPORT)**

OREGON COAST HIGHWAY  
LINCOLN COUNTY  
OCTOBER 2015



Overall Length Of Project - 0.12 Miles

**ATTENTION!**  
Oregon Law Requires You To Follow Rules Adopted By The Oregon Utility Notification Center. Those Rules Are Set Forth In OAR 952-001-0010 Through OAR 952-001-0090. You May Obtain Copies Of The Rules By Calling The Center. (Note: The Telephone Number For The Oregon Utility Center is (503) 232-1987.)



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Portland, OR 97204  
Phone: (503) 287-6825  
Fax: (503) 415-2304  
www.otak.com

- OREGON TRANSPORTATION COMMISSION**
- Tammy Baney CHAIR
  - David Lohman COMMISSIONER
  - Susan Morgan COMMISSIONER
  - Alando Simpson COMMISSIONER
  - Sean O'Hallaren COMMISSIONER
  - Matthew L. Garrett DIRECTOR OF TRANSPORTATION

These plans were developed using AASHTO design standards. Exceptions to these standards, if any, have been submitted and approved by the ODOT Chief Engineer or their delegated

Approving Authority: \_\_\_\_\_  
Signature & date

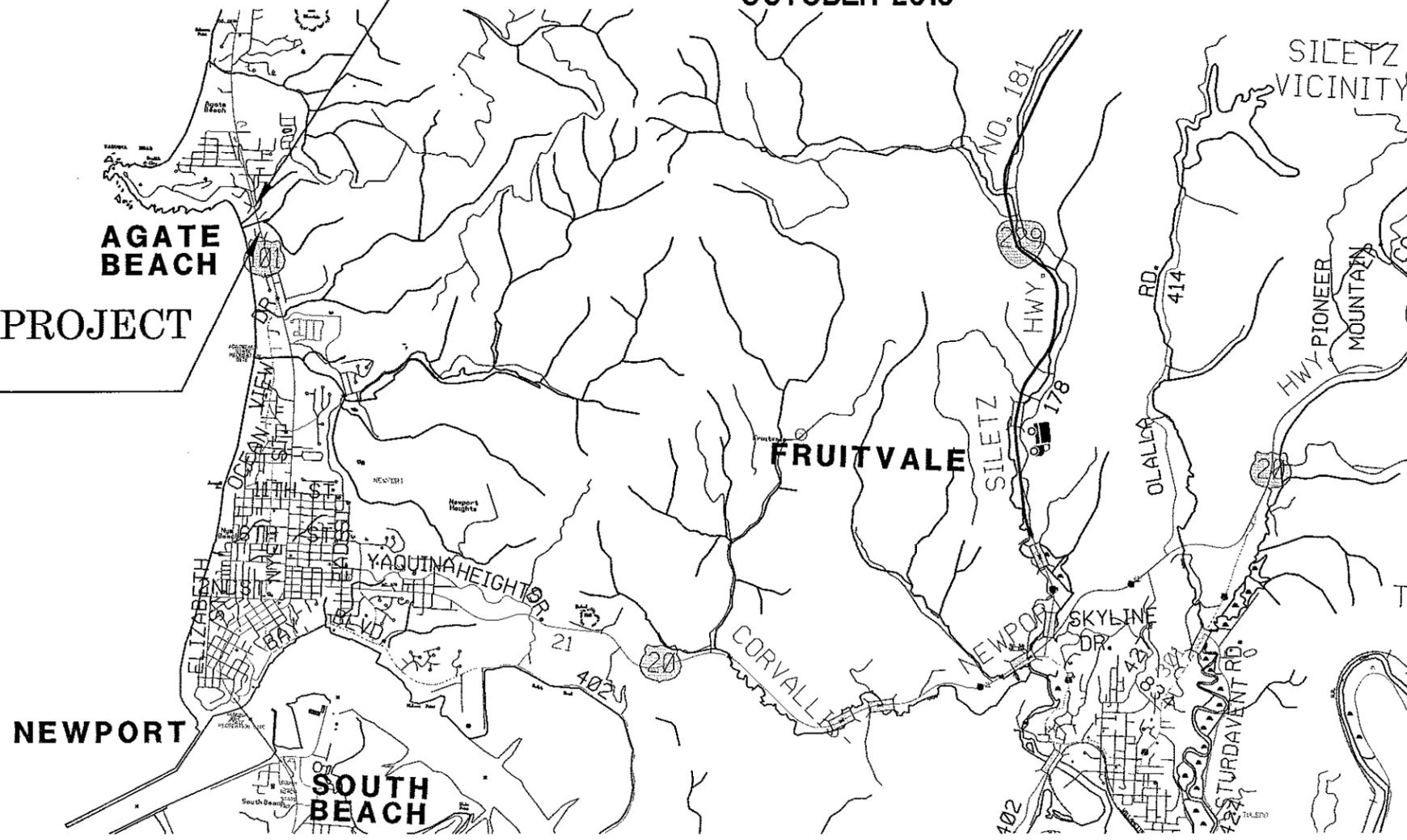
Concurrence by ODOT Chief Engineer

**PACIFIC COAST NSB: AGATE BEACH WAYSIDE  
(NEWPORT)**  
OREGON COAST HIGHWAY  
LINCOLN COUNTY

FEDERAL HIGHWAY ADMINISTRATION	PROJECT NUMBER	SHEET NO.
OREGON DIVISION	SB-5245(011)	1

END OF PROJECT SB-5245 (011)  
STA. 'R' 6+45.30

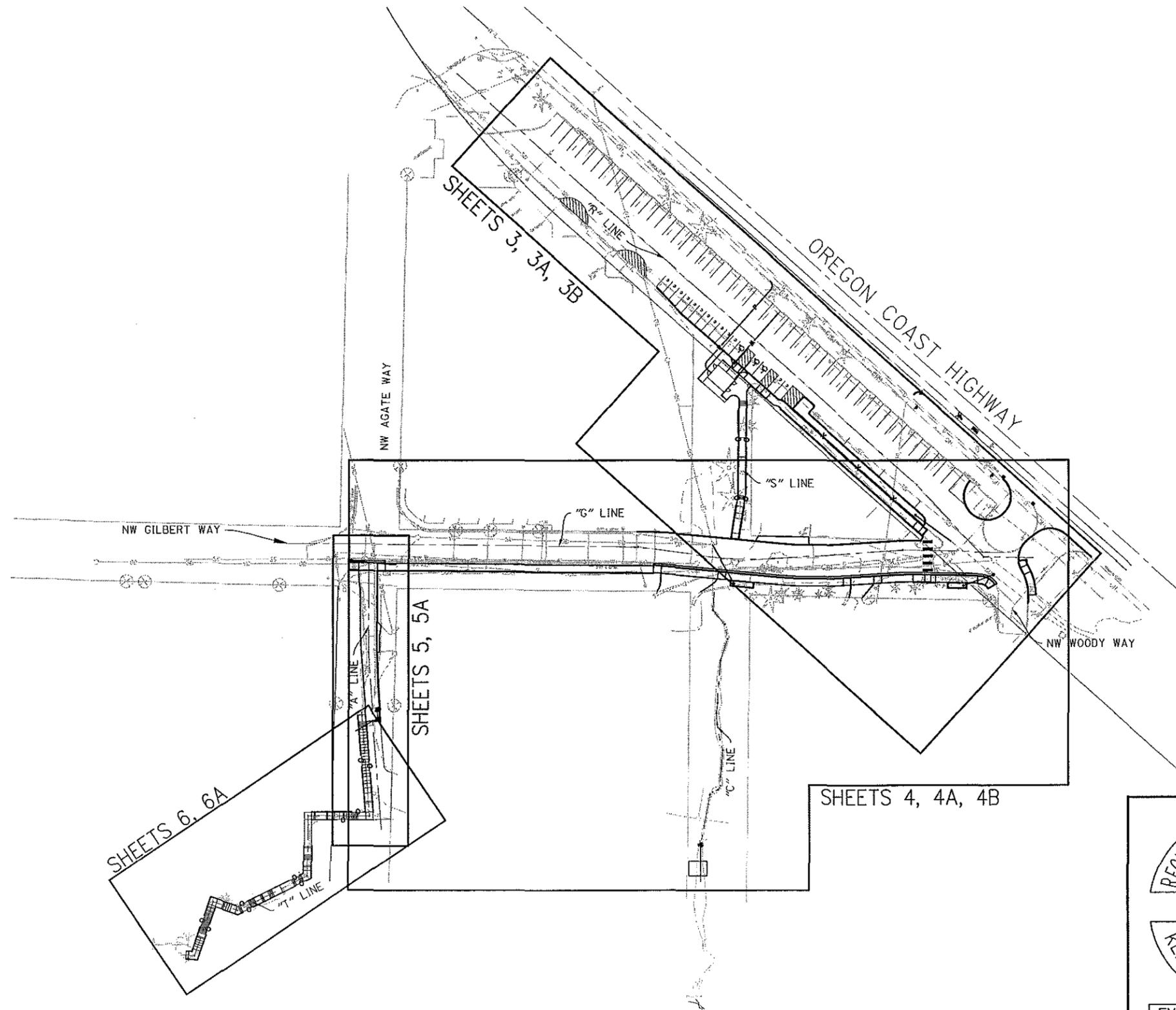
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SB-5245 (011)  
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T. 10 S., R. 11 W., W.M.



# Sec. 30, T. 10 S., R. 11 W., W.M. TILLAMOOK

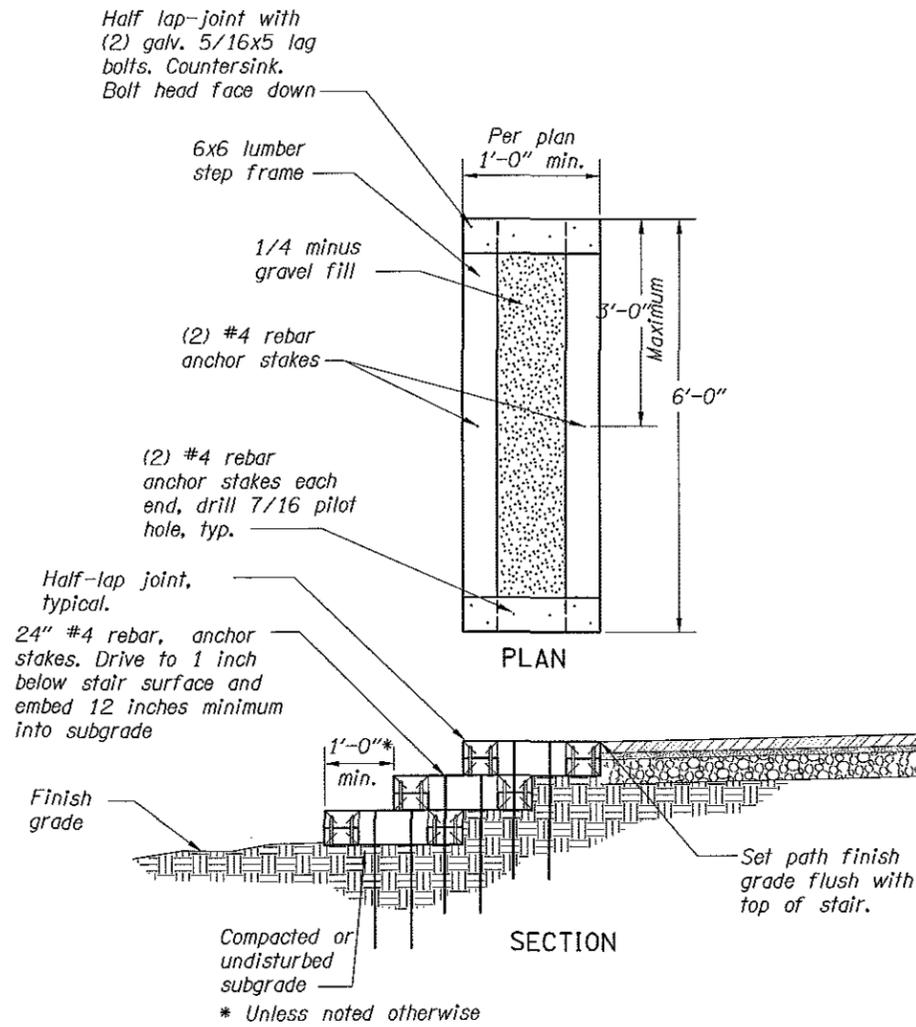


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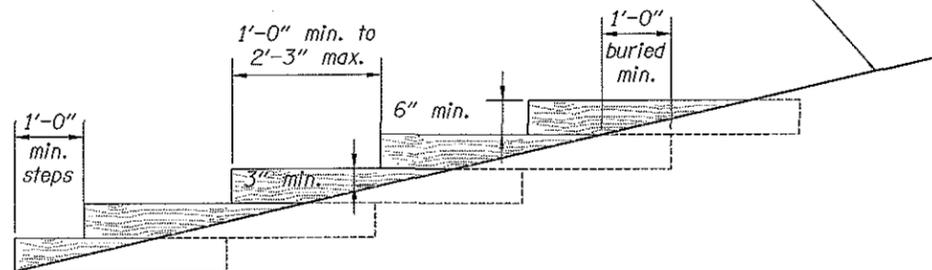
OREGON  
SEPT 16, 1997  
KENNETH M. ACKERMAN

EXPIRES: 12/31/2015

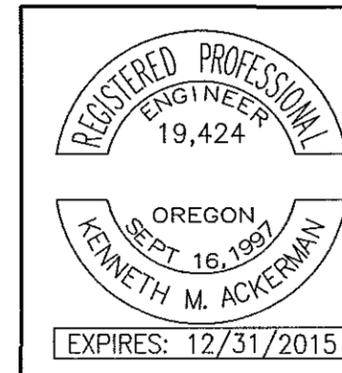
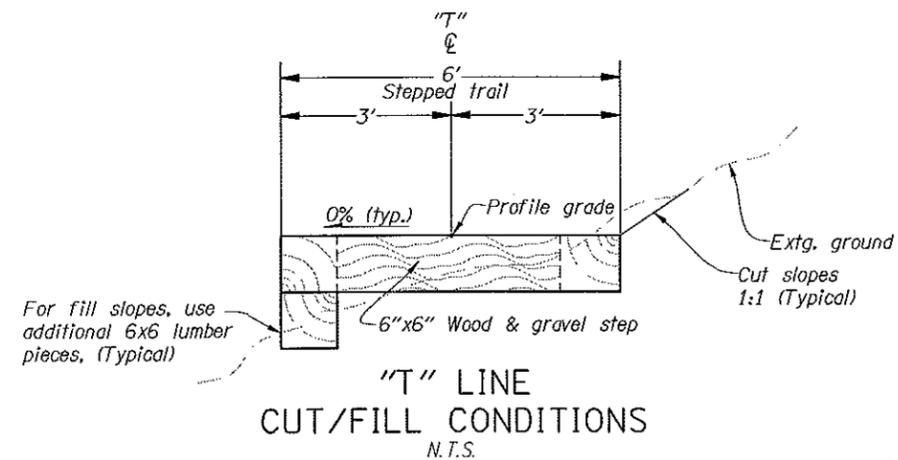
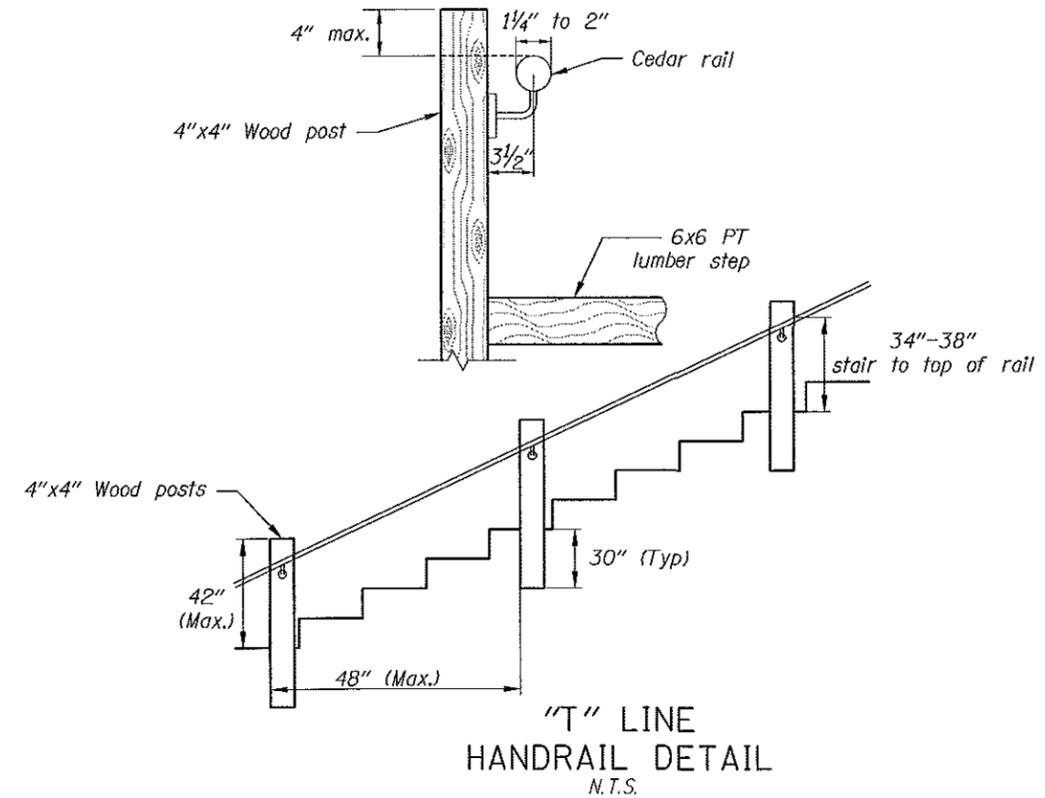
<b>OREGON DEPARTMENT OF TRANSPORTATION</b>	
otak <small>HammiGlobal Partner</small> <a href="http://www.otak.com">www.otak.com</a>	808 SW 3rd Ave., Ste. 300 Portland, OR 97204 Phone: (503) 287-6825 Fax: (503) 415-2304
<b>PACIFIC COAST NSB: AGATE BEACH WAYSIDE (NEWPORT)</b> OREGON COAST HIGHWAY LINCOLN COUNTY	
Design Team Leader - Ken Ackerman Designed By - Nick Brown Drafted By - JAG	
<b>PLAN SHEET LAYOUT</b>	SHEET NO. <b>1A-2</b>



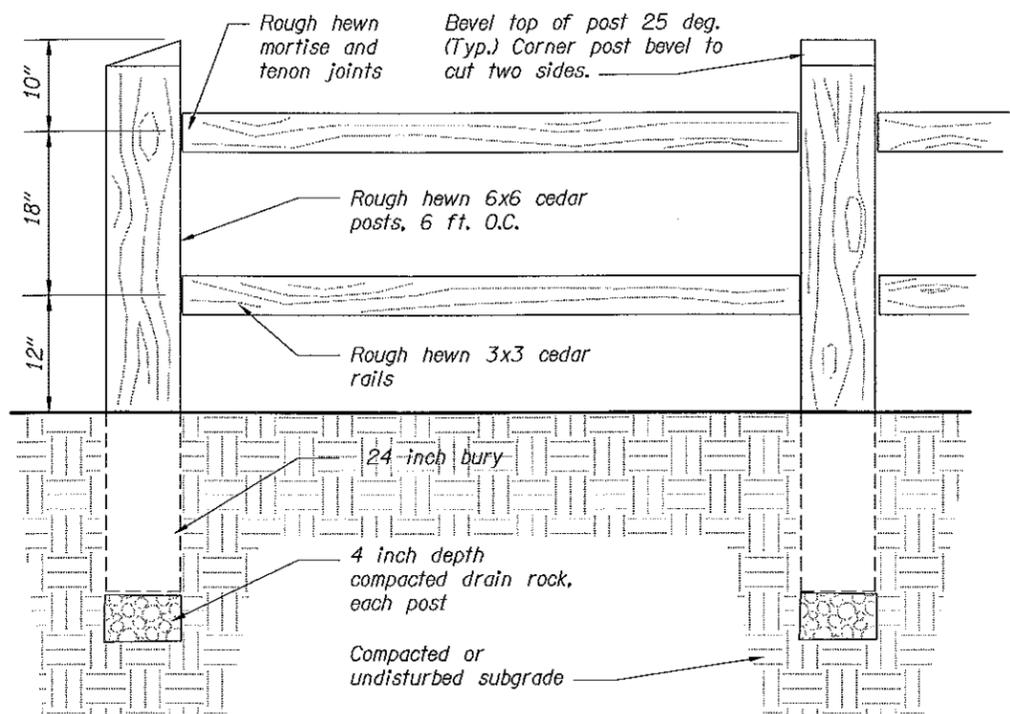
LUMBER AND GRAVEL STEPS AT "T" LINE N.T.S.



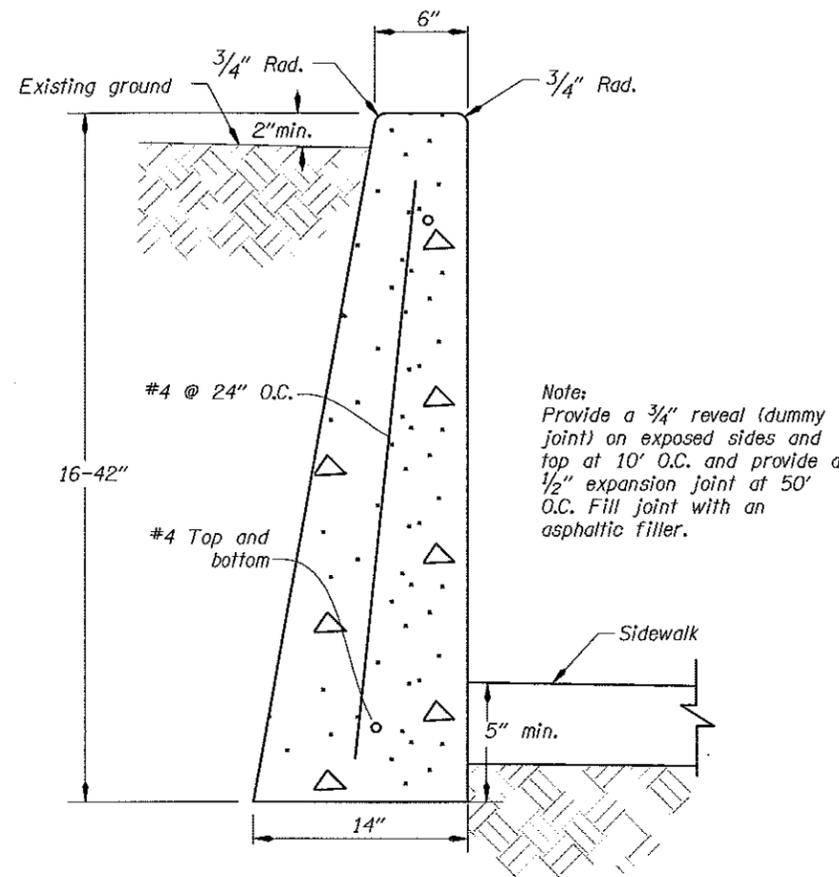
LUMBER AND GRAVEL STEPS ADJACENT TO NW AGATE WAY AT EDGE OF GRAVEL N.T.S.



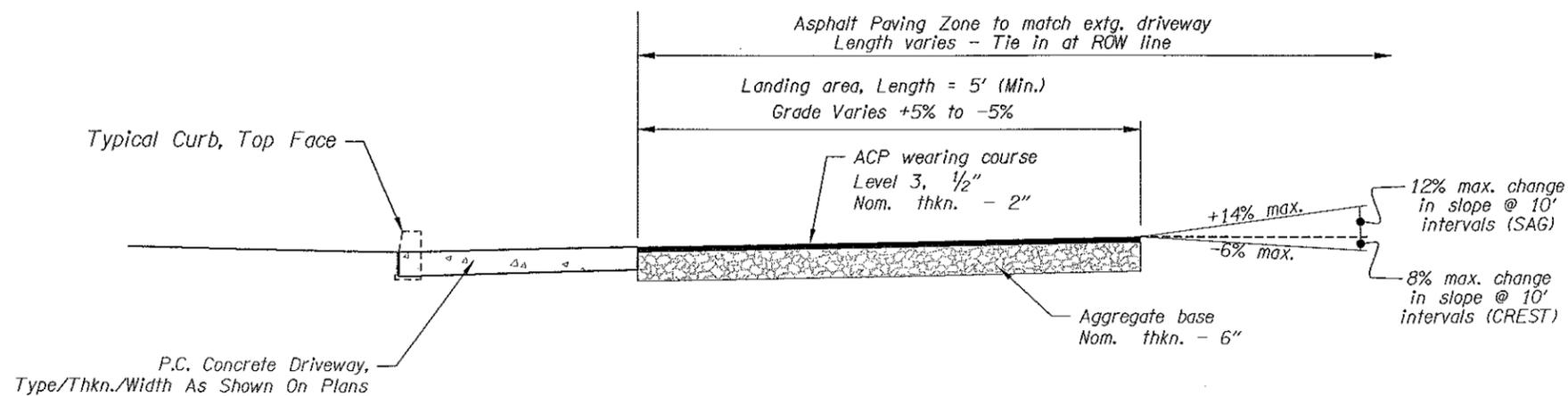
	Hanmi Global Partner 808 SW 3rd Ave., Ste. 300 Portland, OR 97204 Phone: (503) 287-6825 Fax: (503) 415-2304 www.otak.com
<b>PACIFIC COAST NSB: AGATE BEACH WAYSIDE (NEWPORT)</b> OREGON COAST HIGHWAY LINCOLN COUNTY	
Design Team Leader - Ken Ackerman Designed By - Nick Brown Drafted By - JAG	
<b>DETAILS</b>	SHEET NO. <b>2B</b>



WATER QUALITY FACILITY  
CEDAR SPLIT RAIL FENCE  
N.T.S.



CONCRETE CURBS, MODIFIED  
N.T.S.



DRIVEWAY CONNECTIONS  
N.T.S.



<p>OREGON DEPARTMENT OF TRANSPORTATION</p>	
<p>otak HanmiGlobal Partner www.otak.com</p>	<p>808 SW 3rd Ave., Ste. 300 Portland, OR 97204 Phone: (503) 287-6825 Fax: (503) 415-2304</p>
<p>PACIFIC COAST NSB: AGATE BEACH WAYSIDE (NEWPORT) OREGON COAST HIGHWAY LINCOLN COUNTY</p>	
<p>Design Team Leader - Ken Ackerman Designed By - Nick Brown Drafted By - JAG</p>	
<p>DETAILS</p>	<p>SHEET NO. 2B-2</p>

# Agate Beach Wayside

## SYMBOLS

SCALE: 12" = 1'-0"

	ASSEMBLY TAG
	WINDOW TAG
	DOOR TAG
	NORTH ARROW
	DETAIL TAGS
	EXTERIOR ELEVATION TAG
	INTERIOR ELEVATION TAG
	BUILDING SECTION TAG
	WALL SECTION TAG
	ELEVATION DATUM
	ROOM TITLE
	GRAPHIC SCALE

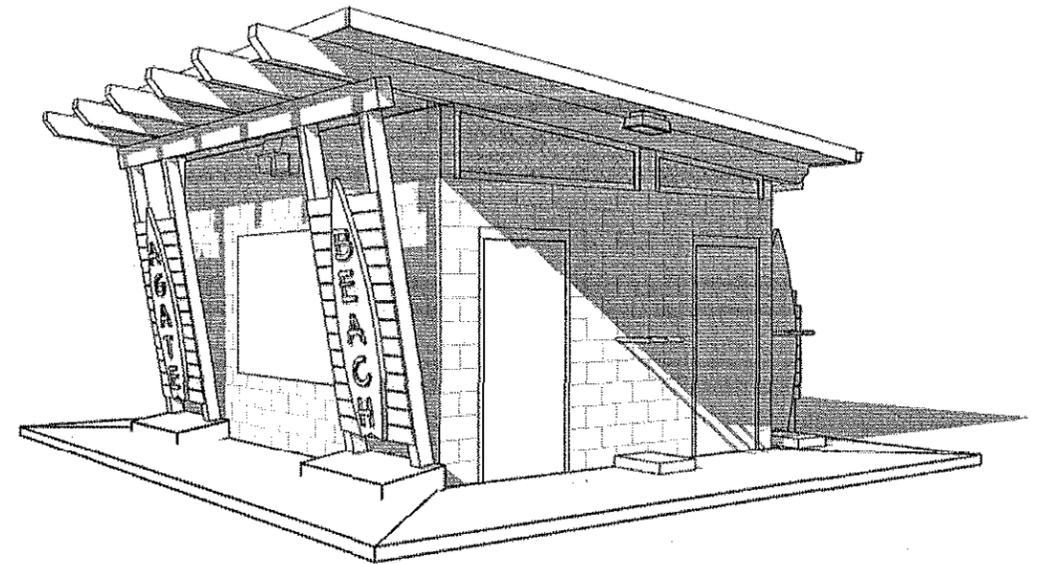
## BUILDING INFO

**BUILDING CODE**  
2014 OREGON STRUCTURAL SPECIALTY CODE & ICC A117.1-2009

OCCUPANCY GROUP: U  
CONSTRUCTION TYPE: V-B  
AREA: 261.33 SF  
HEIGHT: 12'-4 3/4"  
NO. STORIES: 1

## GENERAL NOTES

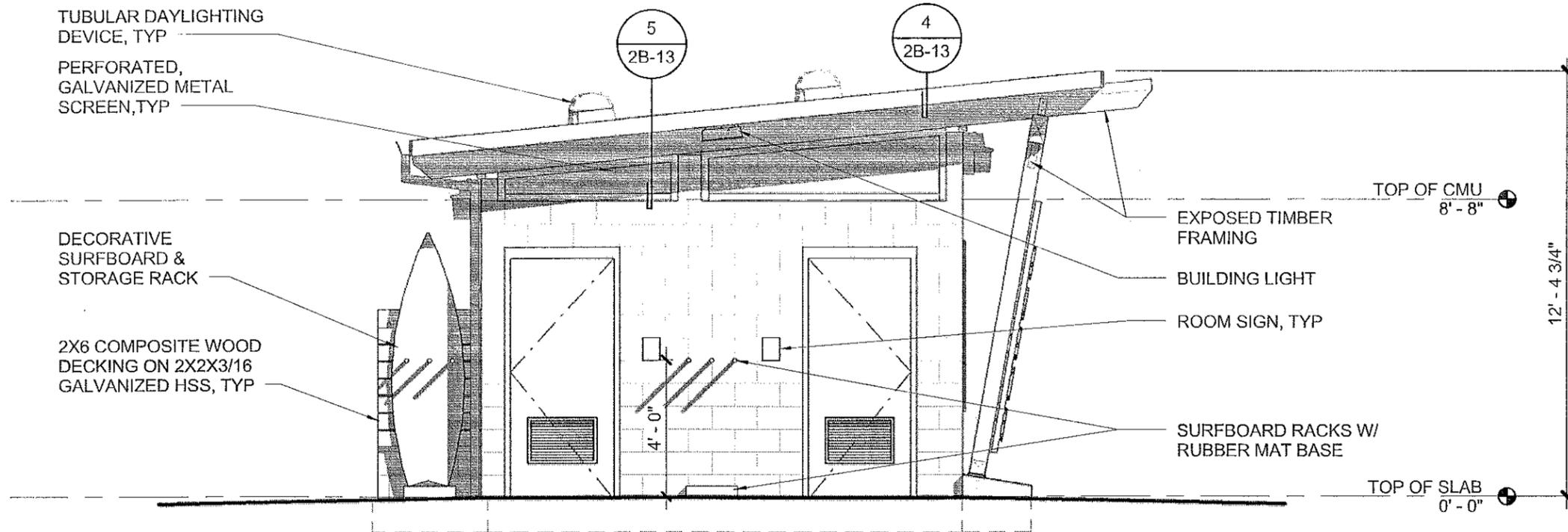
1. FIELD VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS PRIOR TO PROCEEDING WITH THE WORK.
2. IF COORDINATION OF ARCHITECTURAL, CIVIL, LANDSCAPE, STRUCTURAL, MECHANICAL, ELECTRICAL OR PLUMBING ELEMENTS RESULTS IN CONFLICTS, NOTIFY ARCHITECT IMMEDIATELY PRIOR TO COMMENCING ANY WORK OF ELEMENTS RESULTING IN CONFLICTS.
3. DIMENSIONS TAKE PRECEDENCE OVER DRAWINGS. DO NOT SCALE DRAWINGS. NOTIFY ARCHITECT OF DISCREPANCIES PRIOR TO PROCEEDING WITH THE WORK.
4. CONTRACTOR IS SOLELY RESPONSIBLE FOR CONSTRUCTION MEANS AND METHODS AND SHALL MAINTAIN THE STRUCTURAL INTEGRITY OF CONSTRUCTION UNTIL FINAL LATERAL AND VERTICAL CARRYING SYSTEMS ARE COMPLETED.
5. CONTRACTOR IS RESPONSIBLE FOR VERIFICATION AND COORDINATION OF SUBCONTRACTOR WORK, COMPLIANCE WITH DRAWINGS AND SPECIFICATIONS, AND ACCURATE LOCATION OF STRUCTURAL MEMBERS, OPENINGS FOR MECHANICAL, ELECTRICAL AND MISCELLANEOUS EQUIPMENT. CONTRACTOR SHALL VERIFY DIMENSIONS AND OPENING SIZES (CLEARANCES REQUIRED) FROM THE MANUFACTURERS PRIOR TO CONSTRUCTION OF OR INSTALLATION OF EQUIPMENT, FURNISHINGS, AND ACCESSORIES.



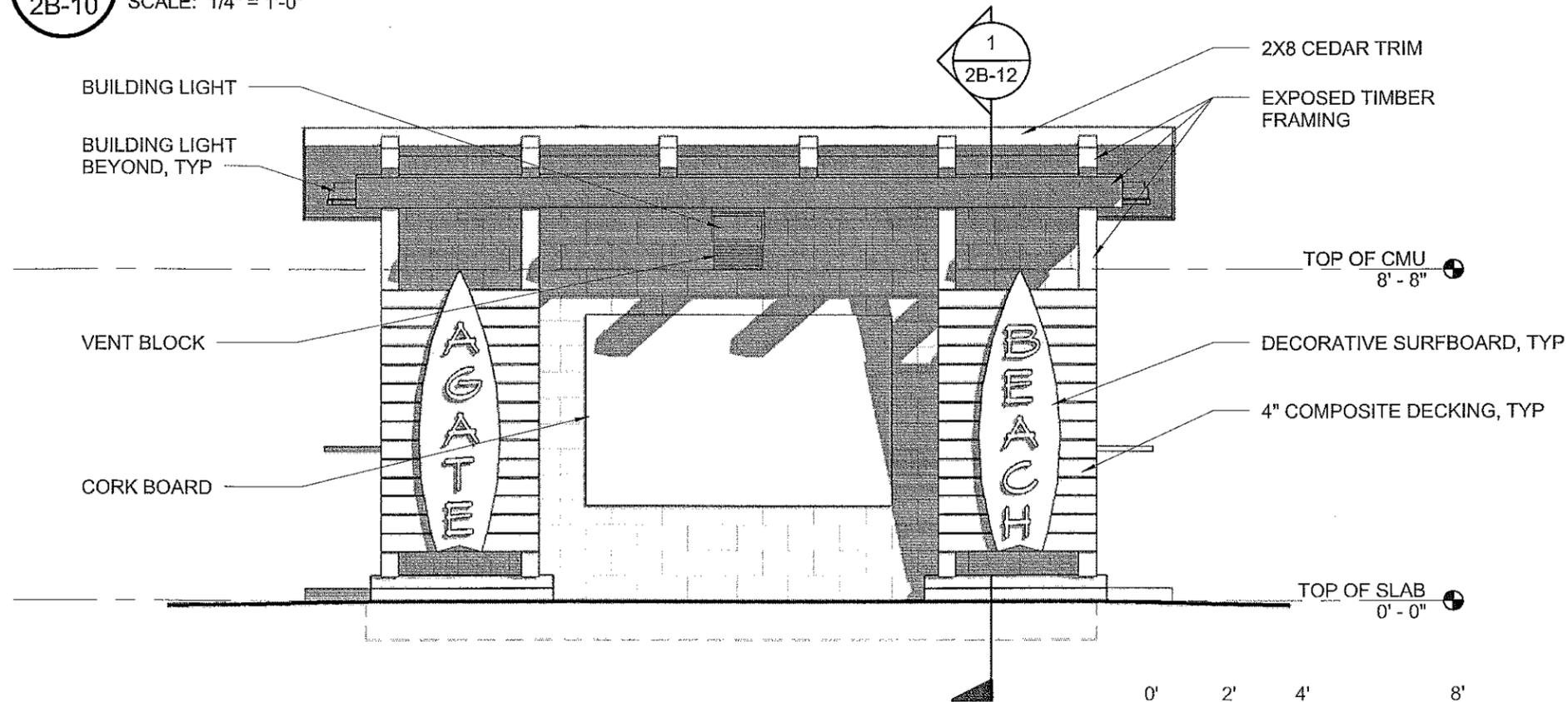
1 NE CORNER PERSPECTIVE  
2B-3 SCALE:

**FOR REVIEW ONLY**

OREGON DEPARTMENT OF TRANSPORTATION	
Otak Inc. <small>Hanmi Global Partner</small>	
<small>808 SW Third Ave, Suite 300 Portland, Oregon 97204 Phone: (503)287-6825 Fax: (503)415-2304</small>	
PACIFIC COAST NSB: AGATE BEACH WAYSIDE (NEWPORT) US HWY 101 LINCOLN COUNTY	
<small>Design Team Leader - Ken Ackerman Designed By - Dalton Gery Drafted By - Dalton Gery</small>	
Restroom Building Details	SHEET NO. <b>2B-3</b>



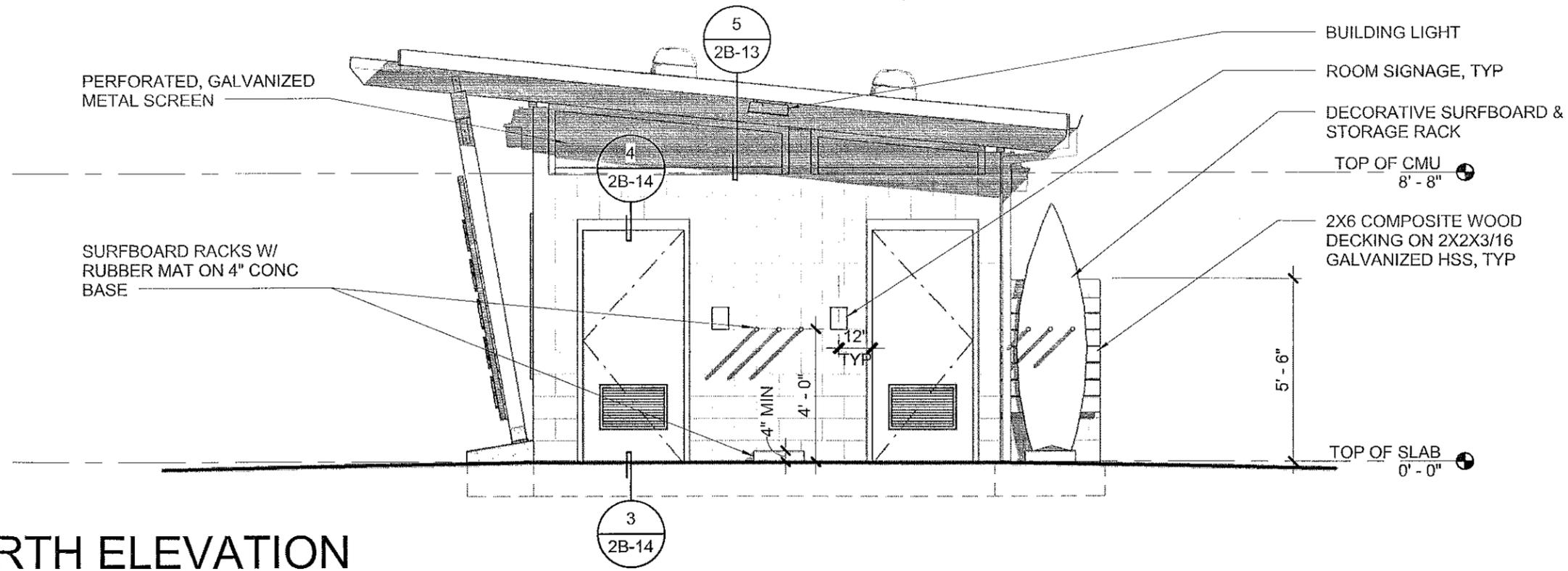
**2 SOUTH ELEVATION**  
 2B-10 SCALE: 1/4" = 1'-0"



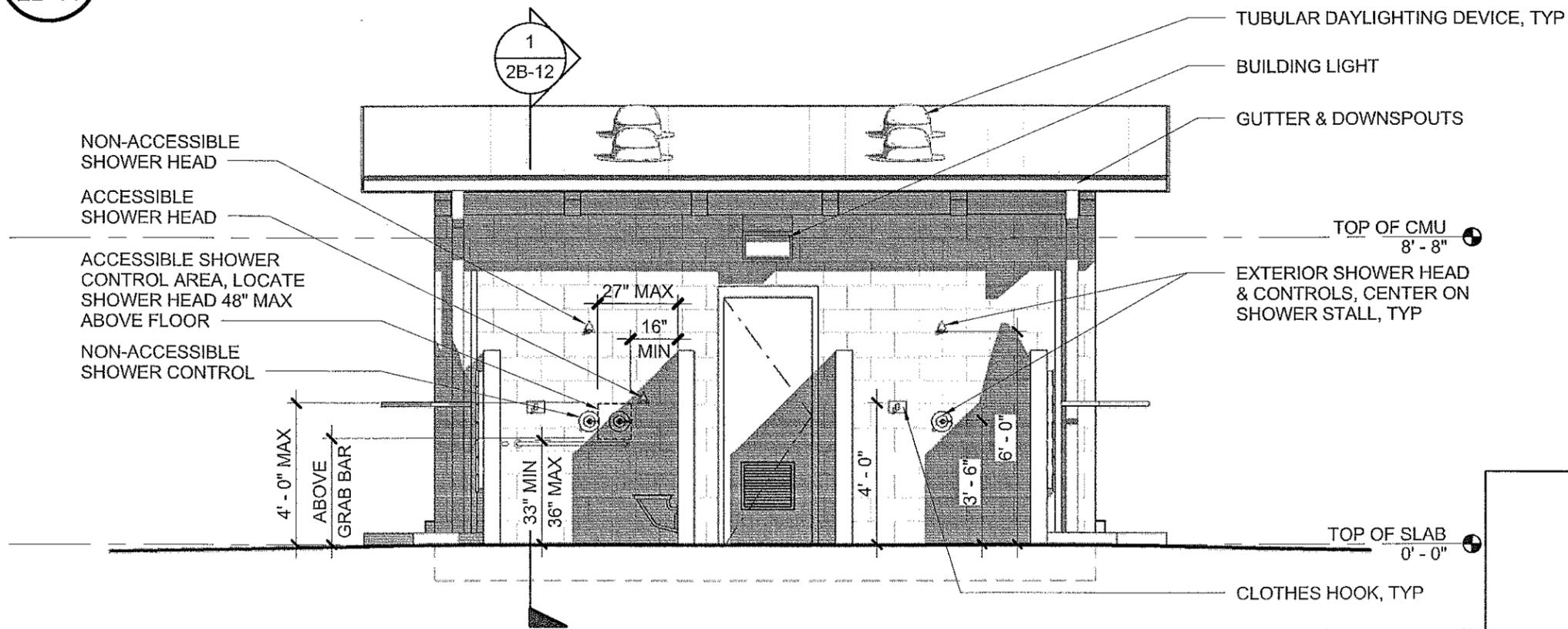
**1 EAST ELEVATION**  
 2B-10 SCALE: 1/4" = 1'-0"

**FOR REVIEW ONLY**

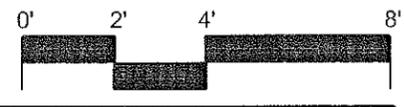
OREGON DEPARTMENT OF TRANSPORTATION 808 SW Third Ave, Suite 300 Portland, Oregon 97204 Phone: (503)287-6825 Fax: (503)415-2304	
Otak Inc. HanmiGlobal Partner Pacific Coast NSB: AGATE BEACH WAYSIDE (NEWPORT) US HWY 101 LINCOLN COUNTY	
Design Team Leader - Ken Ackerman Designed By - Dalton Geny Drafted By - Dalton Geny	
Exterior Elevations	SHEET NO. 2B-10



**2 NORTH ELEVATION**  
 2B-11 SCALE: 1/4" = 1'-0"

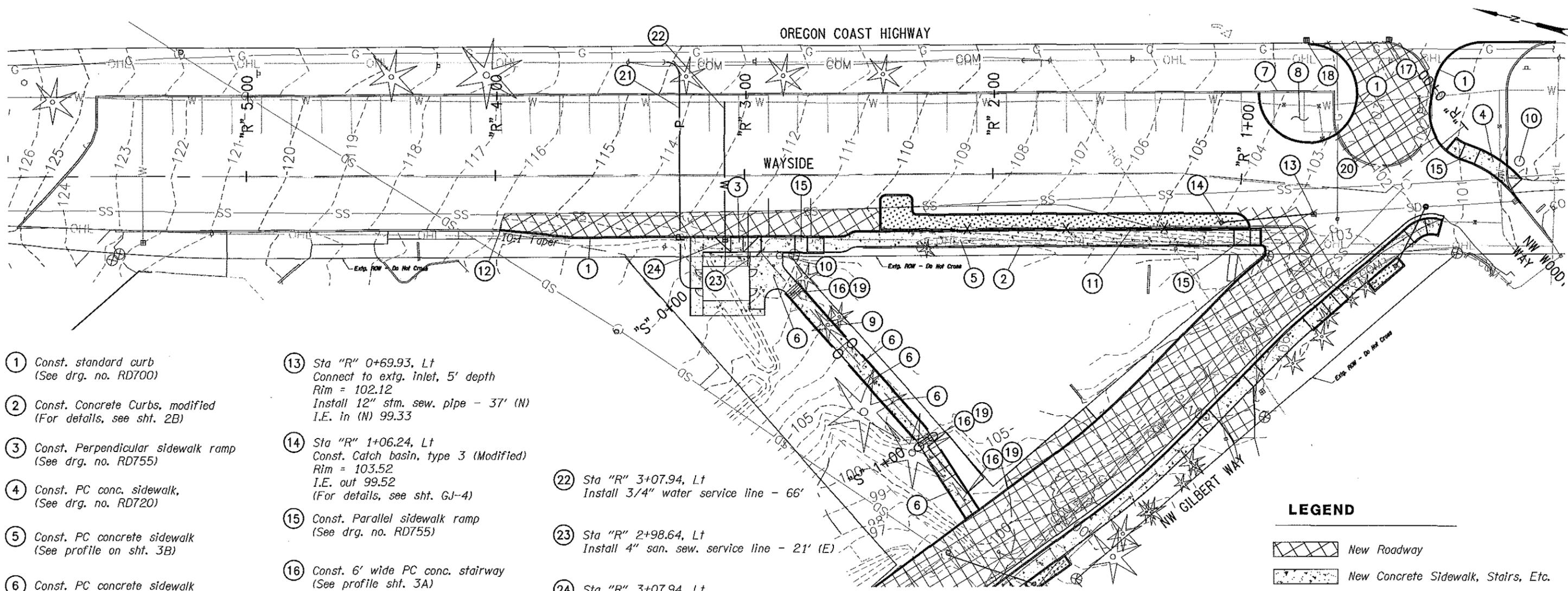


**1 WEST ELEVATION**  
 2B-11 SCALE: 1/4" = 1'-0"



**FOR REVIEW ONLY**

OREGON DEPARTMENT OF TRANSPORTATION 808 SW Third Ave, Suite 300 Portland, Oregon 97204 Phone: (503)287-6825 Fax: (503)415-2304	
Otak Inc. Hanmi Global Partner Pacific Coast NSB: AGATE BEACH WAYSIDE (NEWPORT) US HWY 101 LINCOLN COUNTY	
Design Team Leader - Ken Ackerman Designed By - Dalton Gery Drafted By - Dalton Gery	
Exterior Elevations	SHEET NO. <b>2B-11</b>



- ① Const. standard curb  
(See drg. no. RD700)
- ② Const. Concrete Curbs, modified  
(For details, see sht. 2B)
- ③ Const. Perpendicular sidewalk ramp  
(See drg. no. RD755)
- ④ Const. PC conc. sidewalk,  
(See drg. no. RD720)
- ⑤ Const. PC concrete sidewalk  
(See profile on sht. 3B)
- ⑥ Const. PC concrete sidewalk  
(See profile on sht. 3A)
- ⑦ Remove curb
- ⑧ Remove extg. pavement
- ⑨ Remove extg. tree
- ⑩ Sta "R" 2+86.06, 32.74' Lt.  
Relocate extg. in-ground trash system
- ⑪ Sta "R" 0+90.24 to Sta "R"  
2+45.23, Lt  
Const. Water Quality Swale  
(For details, see GJ shts.)
- ⑫ Connect to existing curb

- ⑬ Sta "R" 0+69.93, Lt  
Connect to extg. inlet, 5' depth  
Rim = 102.12  
Install 12" stm. sew. pipe - 37' (N)  
I.E. in (N) 99.33
- ⑭ Sta "R" 1+06.24, Lt  
Const. Catch basin, type 3 (Modified)  
Rim = 103.52  
I.E. out 99.52  
(For details, see sht. GJ-4)
- ⑮ Const. Parallel sidewalk ramp  
(See drg. no. RD755)
- ⑯ Const. 6' wide PC conc. stairway  
(See profile sht. 3A)  
(See drg. no. RD120)
- ⑰ Sta "R" 0+00.79, Rt  
Replace extg. CB grate and frame  
with Type CG-3 conc. inlet,  
Rim = 102.5 +/-  
(See drg. no. RD372)
- ⑱ Sta "R" 0+79.31, Rt  
Const. roadway inlet, type CG-3  
over extg. pipe  
(See drg. no. RD371)
- ⑲ Sta. "S" 0+16 to Sta. "S" 1+31  
Const. pedestrian handrail, 2-rail,  
at stair locations only.  
(See drg. no. RD120, RD770 and RD771)
- ⑳ Relocate fire hydrant (By others)
- ㉑ Sta "R" 3+17.94, Lt  
Install 4" power conduit - 100'

- ㉒ Sta "R" 3+07.94, Lt  
Install 3/4" water service line - 66'
- ㉓ Sta "R" 2+98.64, Lt  
Install 4" san. sew. service line - 21' (E)
- ㉔ Sta "R" 3+07.94, Lt  
Install water service meter vault

**LEGEND**

- New Roadway
- New Concrete Sidewalk, Stairs, Etc.
- New Water Quality Facility
- New Gravel Roadway

REGISTERED PROFESSIONAL  
ENGINEER  
19,424

OREGON  
SEPT 16, 1997  
KENNETH M. ACKERMAN

EXPIRES: 12/31/2015

**OREGON DEPARTMENT OF TRANSPORTATION**

**otak** HammiGlobal Partner  
www.otak.com

808 SW 3rd Ave., Ste. 300  
Portland, OR 97204  
Phone: (503) 287-6825  
Fax: (503) 415-2304

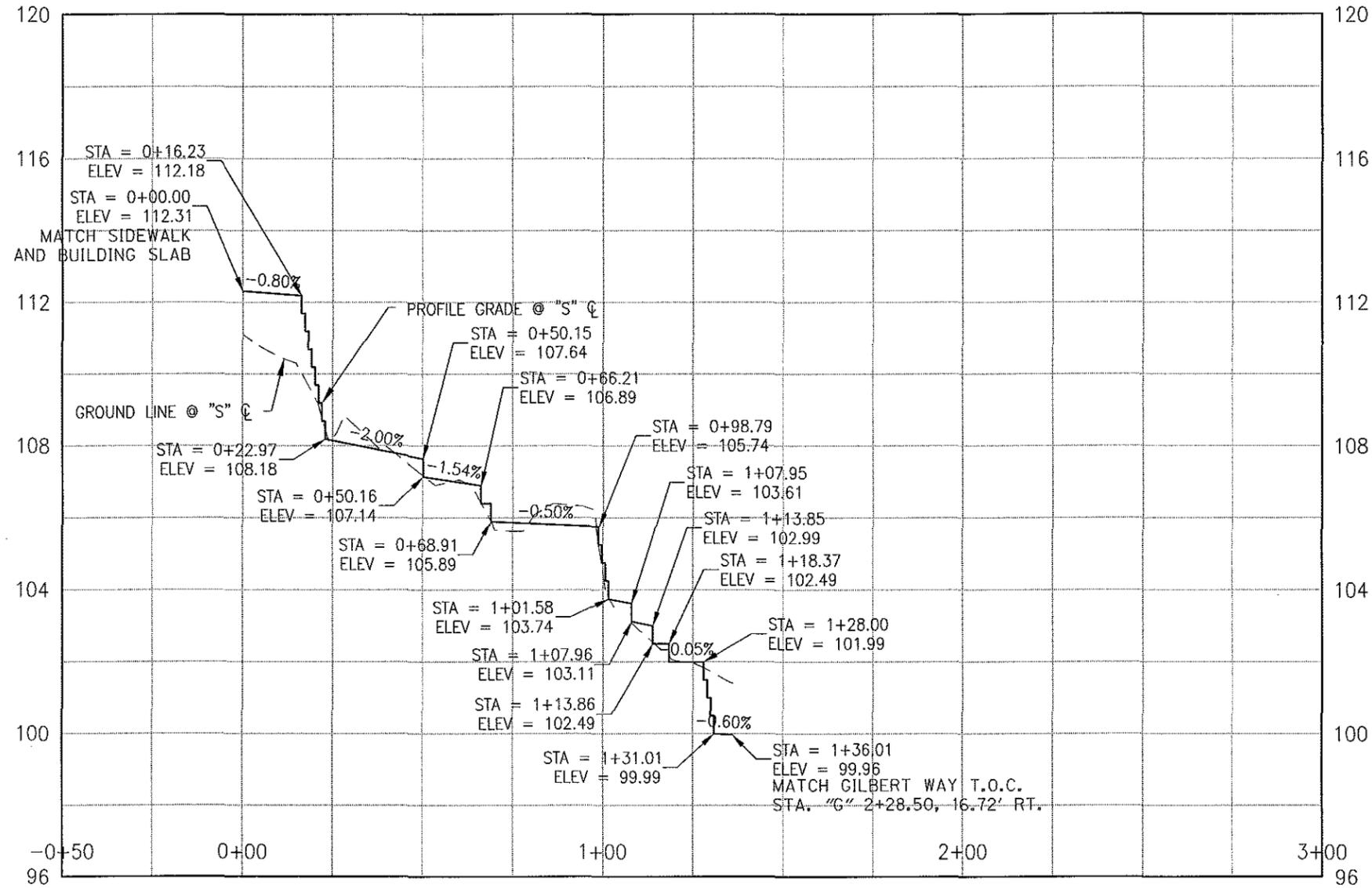
**PACIFIC COAST NSB: AGATE BEACH  
WAYSIDE (NEWPORT)**  
OREGON COAST HIGHWAY  
LINCOLN COUNTY

Design Team Leader - Ken Ackerman  
Designed By - Nick Brown  
Drafted By - JAG

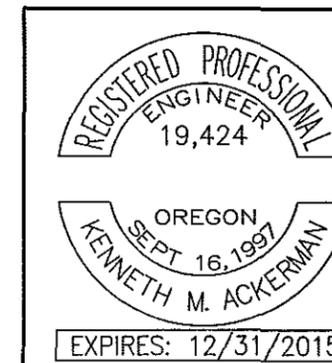
**WAYSIDE GENERAL  
CONSTRUCTION**

SHEET NO.  
**3**

"S" LINE



CONCRETE WALK PAY LIMITS		CONCRETE STAIRS PAY LIMITS	
BEGIN STATION	END STATION	BEGIN STATION	END STATION
0+0.00	0+17.76	0+17.76	0+24.47
0+24.47	0+48.65	0+48.65	0+51.66
0+51.66	0+64.71	0+64.71	0+70.41
0+70.41	0+97.29	0+97.29	1+19.88
1+19.88	1+29.50	1+29.50	1+32.60
1+32.60	1+36.01 (MATCH @ CURB)		



**OREGON DEPARTMENT OF TRANSPORTATION**

**otak** HammiGlobal Partner  
www.otak.com

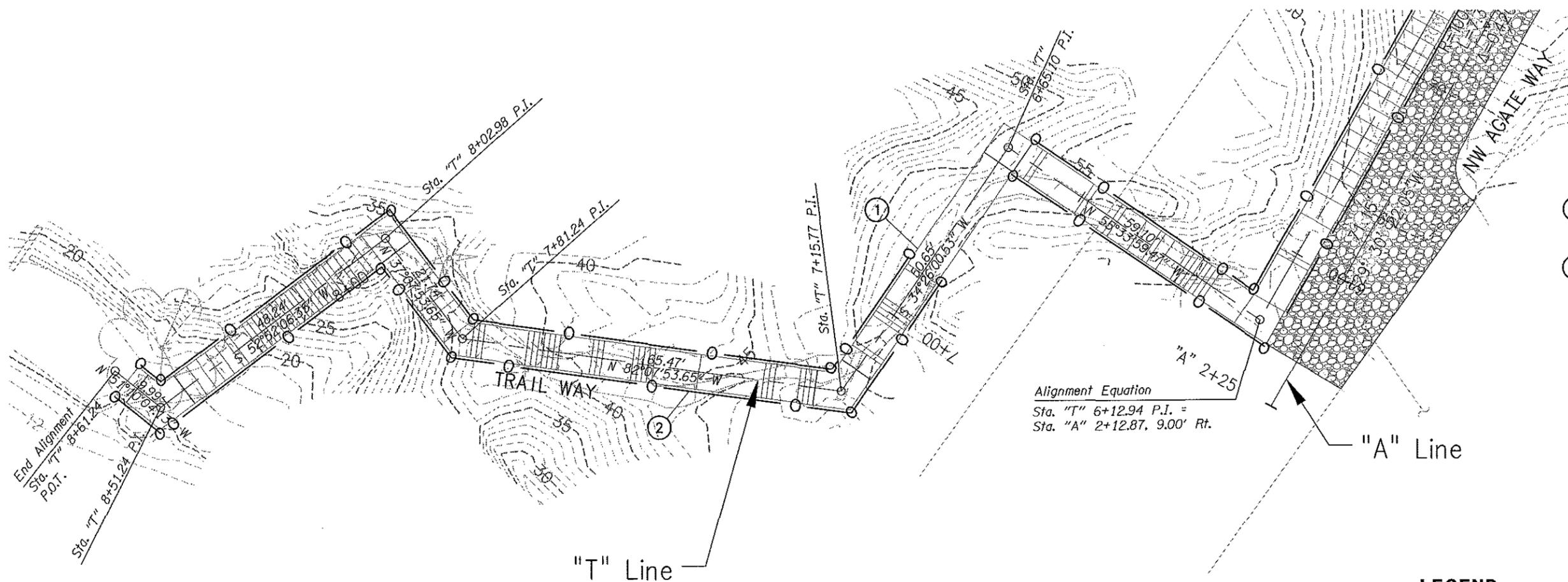
808 SW 3rd Ave., Ste. 300  
Portland, OR 97204  
Phone: (503) 287-6825  
Fax: (503) 415-2304

**PACIFIC COAST NSB: AGATE BEACH  
WAYSIDE (NEWPORT)  
OREGON COAST HIGHWAY  
LINCOLN COUNTY**

Design Team Leader - Ken Ackerman  
Designed By - Nick Brown  
Drafted By - JAG

**RESTROOM WALKWAY  
PROFILE**

SHEET NO. **3A**



- ① Const. 6' wide lumber and gravel stairway (For details, see sht. 2B)
- ② Const. handrail (For details, see sht. 2B-2)

**LEGEND**

- New Roadway
- New Concrete Sidewalk, Stairs, Etc.
- New Water Quality Feature
- New Gravel Roadway

REGISTERED PROFESSIONAL  
ENGINEER  
19,424

OREGON  
SEPT 16, 1997  
KENNETH M. ACKERMAN

EXPIRES: 12/31/2015

**OREGON DEPARTMENT OF TRANSPORTATION**

**otak** HammiGlobal Partner  
www.otak.com

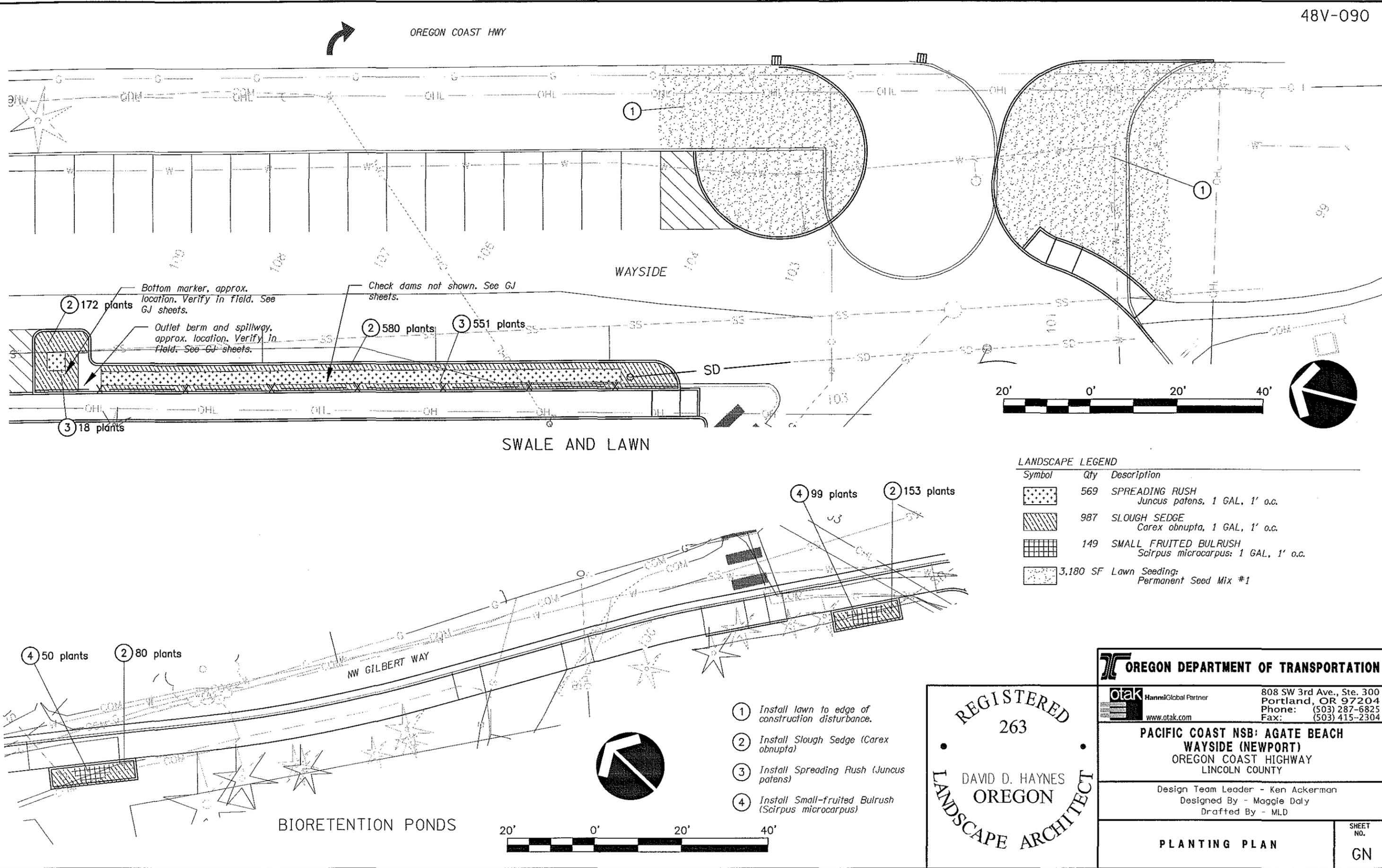
808 SW 3rd Ave., Ste. 300  
Portland, OR 97204  
Phone: (503) 287-6825  
Fax: (503) 415-2304

**PACIFIC COAST NSB: AGATE BEACH  
WAYSIDE (NEWPORT)**  
OREGON COAST HIGHWAY  
LINCOLN COUNTY

Design Team Leader - Ken Ackerman  
Designed By - Nick Brown  
Drafted By - JAG

**STAIRWAY PLAN**

SHEET NO.  
**6**



**LANDSCAPE LEGEND**

Symbol	Qty	Description
	569	SPREADING RUSH <i>Juncus patens</i> , 1 GAL, 1' o.c.
	987	SLOUGH SEDGE <i>Carex obnupta</i> , 1 GAL, 1' o.c.
	149	SMALL FRUITED BULRUSH <i>Scirpus microcarpus</i> , 1 GAL, 1' o.c.
	3,180 SF	Lawn Seeding: Permanent Seed Mix #1

- ① Install lawn to edge of construction disturbance.
- ② Install Slough Sedge (*Carex obnupta*)
- ③ Install Spreading Rush (*Juncus patens*)
- ④ Install Small-fruited Bulrush (*Scirpus microcarpus*)

REGISTERED  
263  
DAVID D. HAYNES  
OREGON  
LANDSCAPE ARCHITECT

**OREGON DEPARTMENT OF TRANSPORTATION**

**otak** HanmiGlobal Partner  
www.otak.com

808 SW 3rd Ave., Ste. 300  
Portland, OR 97204  
Phone: (503) 287-6825  
Fax: (503) 415-2304

**PACIFIC COAST NSB: AGATE BEACH  
WAYSIDE (NEWPORT)**  
OREGON COAST HIGHWAY  
LINCOLN COUNTY

Design Team Leader - Ken Ackerman  
Designed By - Maggie Daly  
Drafted By - MLD

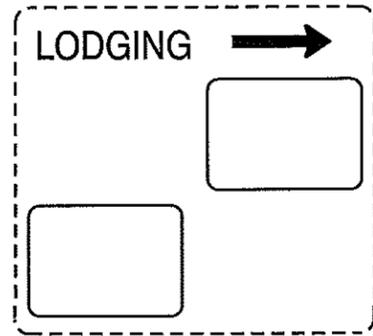
**PLANTING PLAN**

SHEET NO.  
GN





Sign No. 1



Sign No. 2



Sign No. 3



D9-6  
Sign No. 4



D9-6P  
Sign No. 5



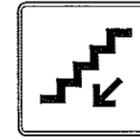
RS-059  
Sign No. 6



M6-3  
Sign No. 7



RS-068  
Sign No. 8



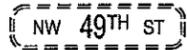
Sign No. 9



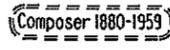
Sign No. 10



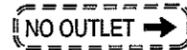
R1-1  
Sign No. 11



Sign No. 12



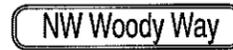
Sign No. 13



Sign No. 14



Sign No. 15



D3-1  
Sign No. 16



Sign No. 17

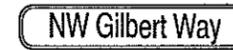


W11-2



Sign No. 18

W16-7P  
(18A)



D3-1  
Sign No. 19



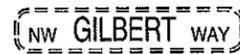
M6-1L  
Sign No. 20



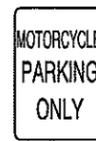
M6-1R  
Sign No. 21



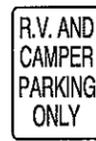
Sign No. 22



Sign No. 23



Sign No. 24



Sign No. 25



Sign No. 26

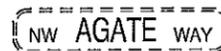


Sign No. 27

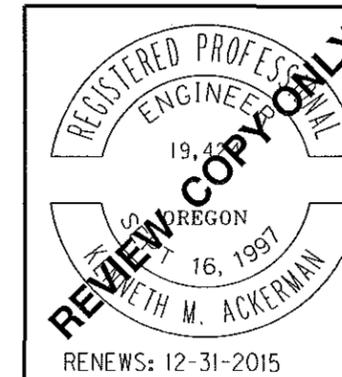
**NOTE:**  
Signs shown with broken borders are existing signs.



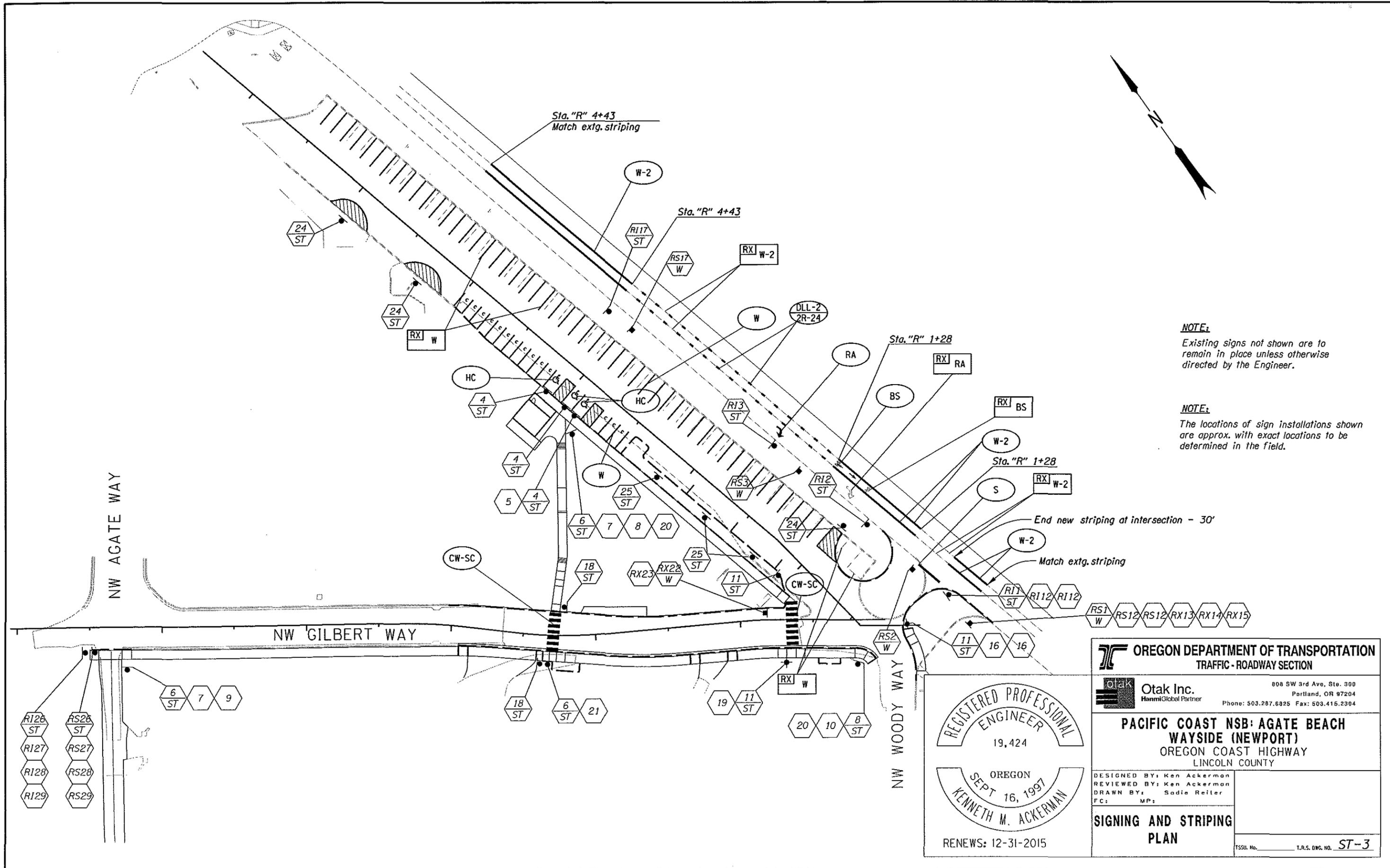
Sign No. 28



Sign No. 29



OREGON DEPARTMENT OF TRANSPORTATION	
	Otak Inc. 808 SW 3rd Ave, Ste. 300 Portland, OR 97204 Phone: 503.287.6825 Fax: 503.415.2304
PACIFIC COAST NSB: AGATE BEACH WAYSIDE (NEWPORT) OREGON COAST HIGHWAY LINCOLN COUNTY	
Reviewed By - Ken Ackerman Designed By - Ken Ackerman Drafted By - SLR	
SIGNING PLAN	SHEET NO. ST-2



**NOTE:**  
Existing signs not shown are to remain in place unless otherwise directed by the Engineer.

**NOTE:**  
The locations of sign installations shown are approx. with exact locations to be determined in the field.

**OREGON DEPARTMENT OF TRANSPORTATION**  
TRAFFIC - ROADWAY SECTION

**Otak Inc.**  
HammiGlobal Partner  
808 SW 3rd Ave, Ste. 300  
Portland, OR 97204  
Phone: 503.287.6825 Fax: 503.415.2304

**PACIFIC COAST NSB: AGATE BEACH WAYSIDE (NEWPORT)**  
OREGON COAST HIGHWAY  
LINCOLN COUNTY

**REGISTERED PROFESSIONAL ENGINEER**  
19,424  
SEPT 16, 1997  
KENNETH M. ACKERMAN  
RENEWS: 12-31-2015

DESIGNED BY: Ken Ackerman  
REVIEWED BY: Ken Ackerman  
DRAWN BY: Sadie Reiter  
FC: MP:

**SIGNING AND STRIPING PLAN**

TSSIL No. \_\_\_\_\_ T.R.S. DWG. NO. **ST-3**





**AMENDMENT NUMBER 01**  
**SCENIC BYWAY PROGRAM PROJECT AGREEMENT**  
 Pacific Coast National Scenic Byway  
 Agate Beach Wayside  
 City of Newport

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and **CITY OF NEWPORT**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on July 30, 2013. Said Agreement covers the improvement of access to Agate Beach.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the dates for time, obligation of construction funds, and for project completion. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**Exhibit B, Attachment No. 1 – Special Provisions, and Attachment No. 2 – Federal Standard Provisions shall be deleted in their entirety and replaced with the attached Revised Exhibit B, Revised Attachment No. 1 – Special Provisions, and Revised Attachment No. 2 – Federal Standard Provisions. All references to "Exhibit B," "Attachment No. 1 – Special Provisions," and "Attachment No. 2 – Federal Standard Provisions" shall hereinafter be referred to as "Revised Exhibit B," "Revised Attachment No. 1 – Special Provisions," and "Revised Attachment No. 2 – Federal Standard Provisions."**

**TERMS OF AGREEMENT, Paragraph 6, Page 2, which reads:**

6. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or three (3) calendar years following the date of final execution, whichever is sooner.

**Shall be deleted in its entirety and replaced with the following:**

6. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment, or September 30, 2016, whichever is sooner.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

City of Newport / State of Oregon – Dept. of Transportation  
Agreement No. 29099, Amendment No. 1

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key No. 17940) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

**CITY OF NEWPORT**, by and through its elected officials

By Sandra Purnagoy  
Mayor

Date 01.06.15

By [Signature]  
City Manager

Date 01-06-15

**APPROVED AS TO FORM**

By [Signature]  
City Legal Counsel

Date 01/06/15

**Agency Contact:**

Derrick Tokos  
Community Development Director  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365  
Phone: (541) 574-0626  
Email: [d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov)

**State Contact:**

Michael Starnes, Local Agency Liaison  
ODOT, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301  
Phone: (503) 986-6920  
Email: [michael.s.starnes@odot.state.or.us](mailto:michael.s.starnes@odot.state.or.us)

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By [Signature]  
Active Transportation Section Manager

Date \_\_\_\_\_

By [Signature]  
Scenic Byway Program Manager

Date \_\_\_\_\_

By [Signature]  
Region 2 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By Original signed by Kathy Lincoln  
Assistant Attorney General

Date 7/16/2013

City of Newport / State of Oregon – Dept. of Transportation  
Agreement No. 29099, Amendment No. 1

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key No. 17940) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

**CITY OF NEWPORT**, by and through its  
elected officials

By Sandra Pounagou  
Mayor

Date 01-06-15

By [Signature]  
City Manager

Date 01-06-15

**APPROVED AS TO FORM**

By [Signature]  
City Legal Counsel

Date 01/06/15

**Agency Contact:**

Derrick Tokos  
Community Development Director  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365  
Phone: (541) 574-0626  
Email: [d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov)

**State Contact:**

Michael Starnes, Local Agency Liaison  
ODOT, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301  
Phone: (503) 986-6920  
Email: [michael.s.starnes@odot.state.or.us](mailto:michael.s.starnes@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By [Signature]  
Highway Division Administrator

Date 2/17/15

**APPROVAL RECOMMENDED**

By [Signature]  
Active Transportation Section Manager

Date 02/13/15

By [Signature]  
Scenic Byway Program Manager

Date 02-09-15

By Sonny P.A. Chickering  
Region 2 Manager

Date 01-12-15

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Original signed by Kathy Lincoln  
Assistant Attorney General

Date 7/16/2013

City of Newport / State of Oregon – Dept. of Transportation  
 Agreement No. 29099, Amendment No. 1

## REVISED EXHIBIT B

### Progress Reports and Project Change Request Process

Agreement No. 29099

Key Number: 17940

**Project Name:** Pacific Coast National Scenic Byway, Agate Beach Wayside

1. **Project Description** – This Project includes, but is not limited to, improving access from the Oregon Coast Highway to Agate Beach, redesigning the wayside and parking areas, and local road improvements.
2. This Project is subject to progress reporting and project change process as stated below.
3. **Monthly Progress Reports (MPR)** – Agency shall submit monthly progress reports using MPR Form 734-2862, incorporated by reference and made a part of this Agreement. The MPR is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project's construction contract.

The fillable MPR form and instructions are available at the following web site:

[http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

**Table 1: Project Milestones – Construction Project**

	<b>Milestone Description</b>	<b>Completion Date</b>
1	Obligation (Federal Authorization) of Scenic Byway funds for the Preliminary Engineering phase of Project	07/15/2013
2	Obligation (Federal Authorization) of Scenic Byway funds for the Construction phase of Project	09/30/2015
3	Project Completion based on State Issuing Project Acceptance or "Second Note"	09/15/2016

5. **Project Change Request (PCR) Process** – Agency must obtain approval from State's contact for changes to the Project's scope, schedule, or budget as specified in Paragraphs 5a, 5b and 5c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

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- a. Scope – A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
  - b. Schedule – A PCR is required if Agency or State's contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
  - c. Budget – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement, Paragraph 2 of this Agreement.
6. **PCR Form** – Agency must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State's Scenic Byway Program Manager.

The fillable PCR form and instructions are available at the following web site:  
[http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

7. **Consequence for Non-Performance** – If Agency fails to fulfill its obligations in Paragraphs 3 through 6 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's managed funding programs; (b) withdrawing unused Project funds; and (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs No. 10a and 10b of this Agreement.

**REVISED ATTACHMENT NO. 1**  
**SPECIAL PROVISIONS**

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments.
2. The Parties agree that the delivery date for the Project's "Plans, Specifications, and Estimates" (PS&E) package is July 23, 2015. State may withdraw all National Scenic Byway Funds that are not obligated on or before September 30, 2015, and State will have no obligation to fund any remaining phases of work through the National Scenic Byways program.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, the Project cost is defined as the engineer's estimate plus 10 percent.
4. State may make available Region 2's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
5. Agency shall have a current Indirect Cost Allocation Plan and an approved indirect rate from its federal cognizant agency prior to invoicing indirect costs. A copy of the current approved rate from the federal cognizant agency or State must be attached to invoices with indirect costs. If Agency does not have a current approved rate, it can apply directly to its federal cognizant agency for an Indirect Cost Rate. If the Agency has no federal cognizant agency, it can submit an indirect Cost Rate proposal to State for review and approval for State invoices. Without an approved Indirect Cost Rate State will only pay Agency for Direct Costs.
6. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
7. Maintenance responsibilities will survive any termination of this Agreement.

## **ATTACHMENT NO. 2**

### **FEDERAL STANDARD PROVISIONS**

#### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

#### **PROJECT FUNDING REQUEST**

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

#### **FINANCE**

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in OMB CIRCULAR NO. A-133.

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6. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall follow requirements stated in the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving five hundred thousand (\$500,000) or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in

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which the local agency participates. The cost of this audit can be partially prorated to the federal program.

11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final invoices submitted after the three (3) months shall not be eligible for reimbursement. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR part 18 subpart 42).
13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
  - b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

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14. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

#### STANDARDS

16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's *A Policy on Geometric Design of Highways and Streets* (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.
18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.
19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

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20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

#### **PRELIMINARY & CONSTRUCTION ENGINEERING**

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, Title 49 CFR part 18, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.
25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

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**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF  
 TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at [http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe\\_program.aspx#plan](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe_program.aspx#plan). Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

**DISADVANTAGED BUSINESS ENTERPRISES (DBE) OBLIGATIONS**

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

29. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

30. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

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#### RIGHT OF WAY

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.
32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.
33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.
34. Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.
36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

#### RAILROADS

37. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing and at Project expense, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

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#### **UTILITIES**

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

#### **GRADE CHANGE LIABILITY**

39. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
40. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
41. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Project Agreement.

#### **MAINTENANCE RESPONSIBILITIES**

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

#### **CONTRIBUTION**

43. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

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44. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
45. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

**ALTERNATIVE DISPUTE RESOLUTION**

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

**WORKERS' COMPENSATION COVERAGE**

47. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. Agency shall ensure that each of its contractors complies with these requirements.

**LOBBYING RESTRICTIONS – pursuant to Form FHWA-1273, Required Contract Provisions**

48. Agency certifies by signing the Project Agreement that:
- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any

City of Newport / State of Oregon – Dept. of Transportation  
Agreement No. 29099, Amendment No. 1

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.



Spencer Nebel  
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## MEMO

DATE: August 25, 2015  
TO: Mark Miranda, Derrick Tokos  
FROM: Spencer Nebel, City Manager  
SUBJECT: Draft Marijuana Rules

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Attached are draft Marijuana Rules issued by O.H.A. Please review the rules for consistency with the provisions adopted by the City Council for medical marijuana dispensaries as it relates to operations and our business license rules. I will have Cindy set-up a meeting for early next week with the plan to bring a report back to the City Council on September 8<sup>th</sup>.

CC: Steve Rich



OREGON ADMINISTRATIVE RULES  
OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION  
CHAPTER 333

## DIVISION 8

## MEDICAL MARIJUANA

## 333-008-0025

## Marijuana Grow Site Registration

(1) A patient may register a marijuana grow site with the Authority. The address of a medical marijuana facility may not be listed by a patient on the ~~grow site~~ application as the location of the marijuana grow site. The Authority will register only one grow site per patient, and will only register grow sites in Oregon.

(2) To register a marijuana grow site, an applicant or patient must submit to the Authority an application, prescribed by the Authority, that includes:

(a) The name of the grower;

(b) The date of birth of the grower;

(c) The physical address of the marijuana grow site where marijuana is to be produced;

(d) The mailing address of the grower;

(e) The registry identification card number of the patient, if known, for whom the marijuana is being produced; and

(f) A non-refundable grow site registration fee of \$50 in the form of cash, bank check, money order, or personal check. If the grower is the applicant, he or she is not required to pay the grow site registration fee. The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(3) For a new patient application submitted on or after July 1, 2015, in addition to the application a patient must submit a residency form, prescribed by the Authority, and completed by the grower, along with a copy of the grower's Oregon driver's license or Oregon identification card.

(a) If a grower was first registered with the Authority as a grower on or before January 1, 2015, the grower must have been a resident of Oregon for at least one year immediately prior to the application being submitted to the Authority.

(b) If a grower was not first registered with the Authority as a grower on or before January 1, 2015, the grower must have been a resident of Oregon for at least two years immediately prior to the application being submitted to the Authority.

(c) If a grower does not have an Oregon driver's license or Oregon identification card, or the grower's Oregon driver's license or Oregon identification card was not issued one or two years prior to the date of application, as applicable, the Authority will attempt to verify whether the grower has been a resident for the required length of time and may contact the grower and require the grower to submit additional information to the Authority to prove residency.

~~(43)~~ The Authority shall conduct a criminal background check on the grower as authorized under ORS 475.304.

(a) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offense occurred on or after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(b) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offenses occurred after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(c) The Authority shall notify a patient by certified mail that the grower is ineligible and the patient will be allowed the opportunity to identify another grower.

~~(54)~~ The Authority shall issue a marijuana grow site registration card to a patient who has met the requirements of section (2) of this rule, unless the grower is disqualified under section ~~(43)~~ of this rule.

~~(65)~~ A grower must display a marijuana grow site registration card for each patient for whom marijuana is being produced, at the marijuana grow site at all times.

~~(76)~~ All usable marijuana, plants, seedlings and seeds, associated with the production of marijuana for a patient by a grower, are the property of the patient and must be provided to the patient, or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a registered medical marijuana facility, upon request.

~~(87)~~ All marijuana produced for a patient must be provided to the patient or designated primary caregiver when the grower ceases producing marijuana for the patient.

- (98) A grower must return the grow site registration card to the patient to whom the card was issued when requested to do so by the patient or when the grower ceases producing marijuana for the patient.
- (109) A patient or the designated primary caregiver of the patient may reimburse the grower for the costs of supplies and utilities associated with production of marijuana for patient. No other costs associated with the production of marijuana for the patient, including the cost of labor, may be reimbursed.
- (110) A grower may produce marijuana for no more than four patients or designated primary caregivers concurrently.
- (124) The Authority may not register a grow site if the location of the grow site is the same location as a medical marijuana facility.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

### Medical Marijuana Facilities

#### 333-008-1010

##### Definitions

For the purposes of OAR 333-008-1000 through 333-008-~~1400~~1502 the following definitions apply:

- (1) "Agricultural land" means land that is located within an exclusive farm use zone as that term is described in ORS 215.203.
- (2) "Attended primarily by minors" means that a majority of the students are minors.
- (3) "Authority" means the Oregon Health Authority.
- (4) "Batch" means a quantity of usable marijuana of a single strain or a number of immature plants transferred at one time to a facility by a person authorized by a patient to transfer usable marijuana to a registered facility.
- (5) "Business day" means Monday through Friday excluding legal holidays.
- (6) "Career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.

(7) "Conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(8)(a) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority.

(b) "Designated primary caregiver" does not include the person's attending physician.

(9) "Domicile" means the place of abode of an individual where the person intends to remain and to which, if absent, the individual intends to return.

(10) "Edible" means a product made with marijuana that is intended for ingestion.

(11) "Elementary school" means a learning institution containing any combination of grades Kindergarten through 8 or age level equivalent.

(12)(a) "Employee" means any person, including aliens, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer.

(b) "Employee" does not include a person who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as the adequate consideration for the services performed for a religious or charitable institution or a governmental entity.

(13) "Facility" means a medical marijuana facility.

(14) "Farm use" has the meaning given that term in ORS 215.203.

(15) "Finished product" means a usable marijuana product including but not limited to edible products, ointments, concentrates and tinctures. A finished product does not mean dried marijuana flowers.

(16) "Grower" has the same meaning as "person responsible for a marijuana grow site."

(17) "Grow site" means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient.

(18)(a) "Immature marijuana plant or immature plant" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter.

(b) A seedling or start that does not meet all three criteria in subsection (18)(a) is a mature plant.

(19) "Macroscopic screening" means visual observation without the aid of magnifying lens(es).

- (20) "Microscopic screening" means visual observation with a minimum magnification of 40x.
- (21) "Minor" means an individual under the age of 18.
- (22) "Oregon Medical Marijuana Program" or "OMMP" means the program operated and administered by the Authority that registers patients, designated primary caregivers, and growers.
- (23) "Patient" has the same meaning as "registry identification cardholder."
- (24) "Person" means an individual.
- (25) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose and has the same meaning as "grower".
- (26) "Person responsible for a medical marijuana facility" or "PRF" means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in these rules and has been approved by the Authority.
- (27) "Pesticide" means any substance or mixture of substances, intended to prevent, destroy, repel, or mitigate any pest.
- (28) "Premises" means a location registered by the Authority under these rules and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where individuals are permitted to be present.
- (29) "Random sample" means an amount of usable marijuana taken from a batch in which different fractions of the usable marijuana have an equal probability of being represented.
- (30) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.
- (31) "Remuneration" means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips.
- (32) "Resident" means an individual who has a domicile within this state.
- (33) "Restricted area" means a secure area where usable marijuana and immature plants are present.
- (34) "Safe" means:

DRAFT SB 460 and HB 3400 (Residency/Local Opt Out) Rules  
8.18.2015

(a) A metal receptacle with a locking mechanism capable of storing all usable marijuana at a registered facility that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds.

(b) A vault; or

(c) A refrigerator or freezer capable of being locked for storing edibles or other finished products that require cold storage that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds.

(35) "Secondary school" means a learning institution containing any combination of grades 9 through 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(36) "Secure area" means a room:

(a) With doors that are kept locked and closed at all times except when the doors are in use; and

(b) Where access is only permitted as authorized in these rules.

(37) "Single strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(38) "These rules" means OAR 333-008-1000 through 333-008-~~1400~~1502.

(39) "Usable marijuana" has the meaning given that term is ORS 475.302 and includes "finished product".

(40) "Valid testing methodology" means a scientifically valid testing methodology described in a published national or international reference and validated by the testing laboratory.

(41) "Vault" means an enclosed area that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

Stat. Auth.: ORS 475.314 & 475.338, OL 2015, ch. 784  
Stats. Implemented: ORS 475.314, OL 2015, ch. 784

### 333-008-1060

#### Denial of Application

(1) The Authority must deny an new or renewal application if:

(a) An application, supporting documentation provided by the PRF, or other information obtained by the Authority shows that the qualifications for a facility in ORS 475.314 or these rules have not been met; or

(b) The PRF has been:

(A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date the application was received by the Authority; or

(B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or

(C) Prohibited by a court from participating in the OMMP.

(c) The city or county in which the facility is located has prohibited facilities in accordance with sections 133 or 134, chapter 614, Oregon Laws 2015, unless the facility meets the criteria in chapter 614, Oregon Laws 2015, sections 133(6) or 134(6).

(2) If the PRF that is identified in the application is not qualified to be a PRF, the Authority will permit a change of PRF form to be submitted in accordance with OAR 333-008-1120, along with the applicable criminal background check fee. If the proposed PRF is not qualified to be a PRF, the Authority must deny the application in accordance with section (1) of this rule.

(3) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

### 333-008-1070

#### Expiration and Renewal of Registration

(1) A facility's registration expires one year following the date of application approval.

(2) If a PRF wishes to renew the facility's registration, the person must submit to the Authority within 60 calendar days of the registration's expiration:

(a) An application renewal form prescribed by the Authority;

(b) The required renewal fees;

(c) Forms required for the Authority to do a criminal background check on the PRF.

(3) A PRF that does not submit timely renewal documentation in accordance with section (2) of this rule may not operate the facility if the previous registration expires prior to the Authority issuing a renewed registration. The facility will remain registered until a renewal is either issued or denied, but the facility may not operate with an expired registration.

(4) If a PRF does not submit a renewal form and the required renewal fees prior to the registration's expiration, the registration is expired and is no longer valid, and the PRF may reapply for registration.

(5) Renewals will be processed in accordance with OAR 333-008-1040 to 333-008-1060.

Stat. Auth.: ORS 475.314 & 475.338, sections 133 and 134, chapter 614, OL 2015.

Stats. Implemented: ORS 475.314, sections 133 and 134, chapter 614, OL 2015.

### 333-008-1120

#### Person Responsible for a Medical Marijuana Facility (PRF)

(1) A PRF must:

(a) Be a resident of Oregon. For a new application or a change of PRF form submitted on or after July 1, 2015, a PRF must submit a residency form, prescribed by the Authority, along with a copy of the PRF's Oregon driver's license or Oregon identification card.

(A) If a PRF was first registered with the Authority as a PRF for a different facility on or before January 1, 2015, and has continuously remained a PRF, the PRF must have been a resident of Oregon for at least one year immediately prior to the application being submitted to the Authority.

(B) If a PRF was not first registered with the Authority as a PRF on or before January 1, 2015, or has not continuously remained a PRF for a dispensary since January 1, 2015, the PRF must have been a resident of Oregon for at least two years immediately prior to the application being submitted to the Authority.

(C) If a PRF does not have an Oregon driver's license or the PRF's Oregon driver's license or Oregon identification card was not issued one or two years prior to the date of application, as applicable, the Authority will attempt to verify whether the PRF has been a resident for the required length of time and may require the PRF to submit additional information to the Authority to prove residency. Residency may be proved by submitting to the Authority:

~~(A) A valid Oregon driver's license, a valid Oregon identification card that includes a photograph of the person, a valid passport, or a valid military identification card that includes a photograph of the person; and~~

~~(B) Copies of utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the domicile of the PRF.~~

(b) Have legal authority to act on behalf of the facility; and

(c) Be responsible for ensuring the facility complies with applicable laws, if registered.

(2) A PRF may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date of application; or

(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(3) A PRF is accountable for any intentional or unintentional action of its owners, officers, managers, employees or agents, with or without the knowledge of the PRF, who violate ORS 475.314 or these rules.

(4) If a PRF no longer meets the criteria of a PRF the Authority shall inform the PRF and the owner of the facility if different that:

(a) The PRF may no longer serve in that capacity;

(b) In order to remain registered, a change of PRF form must be submitted along with a criminal background check fee of \$35; and

(c) The facility may not operate until the Authority has approved a PRF.

(5) If the Authority is notified that a change of PRF is needed, the current PRF is no longer able to serve as the PRF, or the PRF has been or will be removed by the owner of a facility, the owner of the facility must submit a change of PRF form to the Authority within 10 business days of the notification or the Authority will begin proceedings to revoke the registration of the facility.

(6) If the PRF of record for the facility is no longer serving in that capacity the facility may not operate until a new PRF has been approved by the Authority.

Stat. Auth.: ORS 475.314 & 475.338, section 173, chapter 614, OL 2015  
Stats. Implemented: ORS 475.314, section 173, chapter 614, OL 2015

333-008-1400

**Moratoriums**

~~(1) For purposes of this rule, "moratorium" means an ordinance, adopted by the governing body of a city or county by May 1, 2014, that specifically suspends the operation of registered medical marijuana facilities within the area subject to the jurisdiction of the city or county, for a period of time that does not extend past May 1, 2015.~~

~~(2) If a city or county adopts a moratorium it must notify the Authority and provide a copy of the ordinance.~~

~~(3) An applicant applying for registration of a facility proposing to operate in an area subject to a moratorium may submit a request, in writing, to withdraw the application and may request a refund of the fees.~~

~~(4) A PRF of a registered facility located in an area subject to a moratorium may submit a request, in writing, to surrender its registration and request a refund of the fees.~~

~~(5) Upon receipt of a request to withdraw an application or surrender a registration under sections (3) or (4) of this rule the Authority shall determine whether the ordinance falls within the definition of moratorium and inform the applicant or PRF in writing whether:~~

~~(a) The application is considered withdrawn and the fees refunded; or~~

~~(b) The registration has been surrendered and the fees refunded.~~

~~(6) The Authority may refund all fees, including the non-refundable registration fee.~~

~~(7) Notifications or requests described in sections (2) to (4) of this rule may be submitted to the Authority:~~

~~(a) By mail at P.O. Box 14116, Portland, OR 97293; or~~

~~(b) By electronic mail to [medmj.dispensaries@state.or.us](mailto:medmj.dispensaries@state.or.us).~~

~~Stat. Auth.: 2014 OL, Ch. 79, Sec. 3~~

~~Stats. Implemented: 2014 OL, Ch. 79, Sec. 3~~

**333-008-1500****Limited Marijuana Retail Sales**

(1) For purposes of this rule, the following definitions apply:

(a) "Individual" means a person 21 years of age or older who is not a patient or designated primary caregiver.

(b) "Limited marijuana retail product" means:

(A) The seeds of marijuana;

(B) The dried leaves and flowers of marijuana; and

(C) A marijuana plant that is not flowering.

(c) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(d) "Medical marijuana dispensary" or "dispensary" means an entity registered with the Oregon Health Authority under ORS 475.314.

(e) "Photographic identification" means valid U.S. state or federal issued identification with a photograph of the individual that includes the individual's last name, first name, and date of birth.

(2) Unless the city or county in which the dispensary operates has adopted an ordinance prohibiting the sale of limited marijuana retail product, and notwithstanding any provision of ORS 475.314 or OAR 333-008-1000 to 333-008-1290 that is in conflict, on or after October 1, 2015, a medical marijuana dispensary may sell limited marijuana retail product to an individual if the dispensary:

(a) Five days prior to selling any limited marijuana retail product notifies the Authority, on a form prescribed by the Authority, that the dispensary intends to sell limited marijuana retail product.

(b) Examines the photo identification of all individuals before entering the dispensary to ensure the individual is 21 years of age or older;

(c) Verifies at the time of sale that the individual is 21 years of age or older by examining the individual's photographic identification;

(d) Sells no more than:

(A) One-quarter ounce of limited marijuana retail product in the form of dried leaves and flowers; and

(B) Four units of limited marijuana retail product in the form of marijuana plants that are not flowering.

(3) For each limited marijuana retail product sale, a dispensary must document:

(a) The limited marijuana retail product that was sold and the amount of dried leaves or flowers in metric units, amount of seeds or number of plants, as applicable;

(b) The birth date of the individual who bought the product:

(c) The sale price; and

(d) The date of sale.

(4) A dispensary is not required to maintain a record of the name of the individual to whom a limited marijuana retail product was sold but the dispensary must have a system in place that is outlined in their policies and procedures for ensuring that an individual is not sold more than one-quarter ounce of dried leaves and flowers in a day.

(5) Records of sale transactions and the documentation required in section (3) of this rule shall be maintained in accordance with OAR 333-008-1210(3) and (4).

(6) A dispensary that chooses to sell limited marijuana retail product to individuals must:

(a) Post at the point of sale, the following posters prescribed by the Authority, measuring 22 inches high by 17 inches wide that can be downloaded at \*\*\*\*\*:

(A) A Pregnancy Warning Poster; and

(B) A Poisoning Prevention Poster.

(b) Post at the point of sale a color copy of the "Educate Before You Recreate" flyer measuring 22 inches high by 17 inches wide that can be downloaded at [WHATSLEGALOREGON.COM](http://WHATSLEGALOREGON.COM).

(c) Distribute to each individual at the time of sale, a Marijuana Information Card, prescribed by the Authority, measuring 3.5 inches high by 5 inches long, that can be downloaded at \*\*\*\*\*.

(d) Comply with all rules in OAR 333-008-1000 to 333-008-1502, including but not limited to all security, testing, labeling, packaging and documentation rules except rules that:

(A) Prohibit individuals from entering or being present in a dispensary; and

(B) Prohibit a dispensary from transferring marijuana to an individual.

(e) On and after January 4, 2016:

(A) Collect a tax of 25 percent of the retail sales price of a limited marijuana retail product in the same manner that a marijuana retailer that holds a license under section 22, chapter 1, Oregon Laws 2015, collects the tax imposed under section 2, chapter 699, Oregon Laws 2015; and

(B) Comply with all requirements in sections 1 through 13, chapter 699, Oregon Laws 2015, and any applicable administrative rules adopted by the Department of Revenue.

(7) The Authority may, if it determines that a dispensary has violated OAR 333-008-1500 to 333-008-1502:

(a) Prohibit a dispensary from selling limited marijuana retail product; and

(b) Take any action authorized under OAR 333-008-1270 or 333-008-1275.

(8) A dispensary may not sell limited marijuana retail product to individuals if the dispensary is located in a city or county that has adopted an ordinance prohibiting such sales in accordance with section 3, chapter 784, Oregon Laws 2015.

(9) A dispensary that has had its registration suspended may not sell limited marijuana retail product while the registration is suspended.

Stat. Auth.: ORS 475.314 & 475.338, OL 2015, ch. 784

Stats. Implemented: ORS 475.314, OL 2015, ch. 784

### 333-008-1501

#### Dispensary Signs

(1) Between October 1, 2015 and December 31, 2016, a registered dispensary must post signs at any point of public entry that read:

(a) "Medical Marijuana Only Available Here"; or

(b) If a dispensary has properly notified the Authority that it intends to sell limited marijuana retail product, "Medical Marijuana and Retail Marijuana Sold Here"; and

(c) "NO PERSON UNDER 21 PERMITTED ON THE PREMISES WITHOUT AN OMMP CARD".

(2) The signs described in section (1) of this rule must be:

(a) In bold, 80 point Times New Roman font; and

(b) Affixed to the exterior of the dispensary in a conspicuous location that can be easily seen by the public from outside the dispensary.

Stat. Auth.: ORS 475.314 & 475.338, OL 2015, ch. 784

Stats. Implemented: ORS 475.314, OL 2015, ch. 784

### 333-008-1502

#### Effective Dates of Limited Marijuana Retail Sales Rules

OAR 333-008-1500 to 333-008-1501 are only in effect from [Insert date of filing] through December 31, 2016.

Stat. Auth.: ORS 475.314 & 475.338, OL 2015, ch. 784

Stats. Implemented: ORS 475.314, OL 2015, ch. 784

## CHAPTER 4.20 MEDICAL MARIJUANA FACILITIES

### 4.20.010 Definitions

The following definitions apply within this chapter:

**Medical Marijuana Facility:** a facility licensed by the Oregon Health Authority to:

1. Accept the transfer of usable marijuana and immature marijuana plants from a registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or
2. Transfer usable marijuana and immature marijuana plants to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

**Medical Marijuana Facility Endorsement:** a business license endorsement issued by the City of Newport to a Medical Marijuana Facility pursuant to the terms and conditions of this chapter.

**Person Responsible for a Medical Marijuana Facility:** an individual who owns, operates, or otherwise has legal responsibility for a Medical Marijuana Facility and who has been approved by the Oregon Health Authority.

**Registry Identification Card:** a document issued by the Oregon Health Authority that identifies an individual authorized to engage in the medical use of marijuana and, if the individual has a designated primary caregiver under ORS 475.312, the individual's designated primary caregiver.

**Registry Identification Cardholder:** an individual who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the individual's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

### 4.20.015 Medical Marijuana Facility Endorsement Requirement

No person shall establish, conduct, maintain, manage, or operate a Medical Marijuana Facility in the City of Newport

without a valid business license issued by the City of Newport pursuant to chapter 4.05 of this Title and a Medical Marijuana Facility Endorsement issued by the City of Newport pursuant to this chapter.

#### 4.20.020 Application Requirements

- A. The Person Responsible for a Medical Marijuana Facility must apply for a Medical Marijuana Facility Endorsement on a form provided by the city. In addition to the information required by section 4.05.030 of this Title, an applicant for a Medical Marijuana Facility Endorsement must provide the city with the following information:
- B. The name and contact information (including at least a telephone number) of the Person Responsible for the Medical Marijuana Facility;
- C. The address or location of the Medical Marijuana Facility;
- D. Proof of registration of the Medical Marijuana Facility by the Oregon Health Authority at the location indicated on the application, including the Medical Marijuana Facility's registration number;
- E. Criminal background check requests, on a form provided by the city, from the Personal Responsible for the Medical Marijuana Facility and any employees of the Medical Marijuana Facility; and
- F. The executed agreement required by section 4.20.025 of this Chapter.

#### 4.20.025 Agreement

The city will not issue a Medical Marijuana Facility Endorsement unless and until the Person Responsible for the Medical Marijuana Facility submits an executed agreement, on a form required by the city, agreeing to the following conditions:

- A. The Person Responsible for the Medical Marijuana Facility and any employees working at the Medical Marijuana Facility will cooperate with the city during an inspection authorized by section 4.20.050 of this Title;
- B. The city will have the same access to any and all video

surveillance records and recordings of the Medical Marijuana Facility as the Oregon Health Authority does pursuant to OAR 333-008-1180(2)(e);

- C. The city will have the same access to any and all documentation required to be maintained under the rules adopted by the Oregon Health Authority as the Oregon Health Authority does pursuant to OAR 333-008-1210(5);
- D. The Person Responsible for the Medical Marijuana Facility will direct the security company required by OAR 333-008-1150(4)(b) to notify the City of Newport Police Department any time the alarm system required by OAR 333-008-1150 is triggered at the Medical Marijuana Facility;
- E. The Person Responsible for the Medical Marijuana Facility understands and agrees that neither the issuance of a business license nor the issuance of a Medical Marijuana Facility Endorsement constitute a permit to engage in any activity prohibited by law or as a waiver of any other regulatory or license requirement imposed by the city or by any federal, state, or local law; and
- F. The Person Responsible for the Medical Marijuana Facility agrees to notify the city of any employees hired by the Medical Marijuana Facility after issuance of the Medical Marijuana Facility Endorsement and prior to their first day of employment, will provide the city with criminal background check requests, on a form provided by the city, from the new employees.

#### 4.20.030 Background Checks

The City of Newport Police Department will conduct background checks pursuant to this chapter to determine whether an individual has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:

- A. Once or more within the last five years; or
- B. Twice or more in the individual's lifetime.

#### 4.20.035 Fees

An applicant for a Medical Marijuana Facility Endorsement must pay a surcharge in an amount established by resolution of the City Council in addition to the business license application fee established under section 4.05.020 of this Title.

#### 4.20.040 Issuance

A. A Medical Marijuana Facility Endorsement will only be issued if:

1. The application is complete and accurate;
2. The agreement required by section 4.20.025 is fully executed;
3. The Medical Marijuana Facility has been registered by the Oregon Health Authority at the location indicated in the application;
4. The applicant is otherwise eligible for a City of Newport business license issued under Chapter 4.05 of this Title;
5. The applicant has paid all the required fees; and
6. Neither the Person Responsible for the Medical Marijuana Facility nor any employee of the Medical Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:
  - a. Once or more within the last five years; or
  - b. Twice or more in the individual's lifetime.

B. The endorsement issued by the city must include at least the address or other location of the Medical Marijuana Facility and the name of the Person Responsible for the Medical Marijuana Facility.

C. If an application for a Medical Marijuana Facility Endorsement is denied, the city will notify the applicant in

writing of the denial and the reasons for the denial as provided in section 4.05.050B of this Title.

#### 4.20.045 Endorsement Non-Transferable; Notification of Change in Person Responsible

- A. A Medical Marijuana Facility Endorsement is not assignable or transferable.
- B. A Medical Marijuana Facility Endorsement authorizes the operation of the Medical Marijuana Facility only at the location displayed on the endorsement.
- C. If the Medical Marijuana Facility notifies the Oregon Health Authority of a change in the Person Responsible for the Medical Marijuana Facility the Medical Marijuana Facility shall concurrently notify the city of the change and shall apply for a new Medical Marijuana Facility Endorsement.

#### 4.20.050 Inspection

- A. The city may conduct a complaint inspection at any time following the receipt of a complaint that alleges that a Medical Marijuana Facility is in violation of any of the terms of this chapter;
- B. The city may conduct an inspection at any time city staff have reason to believe that a Medical Marijuana Facility is in violation of any of the terms of this chapter; and
- C. If an individual at a Medical Marijuana Facility fails to permit city staff to conduct an inspection, the city may seek an administrative warrant authorizing the inspection.

#### 4.20.055 Revocation

- A. The City Manager may revoke a Medical Marijuana Facility Endorsement if:
  - 1. The Person Responsible for the Medical Marijuana Facility knowingly makes a material false statement or omission in connection with the issuance of the endorsement; or
  - 2. The Oregon Health Authority revokes the registration of the Medical Marijuana Facility to which the

endorsement has been issued; or

3. The Medical Marijuana Facility transfers usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver; or
  4. The Medical Marijuana Facility accepts a transfer of usable marijuana or immature plants without a valid authorization from the patient; or
  5. The Medical Marijuana Facility possesses a mature marijuana plant at the Medical Marijuana Facility; or
  6. The Medical Marijuana Facility fails to notify the City Manager of a change in the Person Responsible for the Medical Marijuana Facility and to apply for a new Medical Marijuana Facility Endorsement; or
  7. The Medical Marijuana Facility is in violation of any of the terms of the agreement required by section 4.20.025 of this chapter; or
  8. City staff discover that the Person Responsible for the Medical Marijuana Facility or any employee of the Medical Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:
    - a. Once or more within the last five years; or
    - b. Twice or more in the individual's lifetime.
- B. If a Medical Marijuana Facility Endorsement is revoked, the city will notify the licensee in writing of the revocation and the reasons for the revocation as provided in section 4.05.050B of this Title, except that revocation of a Medical Marijuana Facility Endorsement will take effect immediately upon revocation of the Medical Marijuana Facility's registration by the Oregon Health Authority.
- C. Notwithstanding section 4.05.050 of this Title, a business license with a Medical Marijuana Facility Endorsement will not be revoked solely for violation of federal laws regarding the manufacture, delivery, or possession of marijuana if the conduct that violates federal law is

allowed under ORS 475.300 through ORS 475.346.

#### 4.20.060 Appeal

The decision by the City Manager to deny or revoke a Medical Marijuana Facility Endorsement may be appealed to the City Council as provided in Section 4.05.060 of this Title. Appeal of the City Council's denial or revocation of a Medical Marijuana Endorsement shall be by writ of review filed in the Circuit Court of Lincoln County.

#### 4.20.065 Violation

Violation of any of the provisions of this chapter is a civil infraction with a maximum penalty of \$500.00. Each day during which a violation occurs constitutes a separate offense. Violations of separate provisions of this chapter constitute separate infractions. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the city.

*(Chapter 4.20 was added on the adoption of Ordinance No. 2069 on July 21, 2014; effective August 20, 2014.)*



## CITY MANAGER'S REPORT AND RECOMMENDATIONS



Agenda#: VI.A.  
Meeting Date: 8/17/15

**Agenda Item:**

**Public Hearing and Possible Adoption of Ordinance No. 2083 Regarding the Prohibiting of the Sale of Recreational Marijuana by Medical Marijuana Dispensaries**

**Background:**

At the August 3, 2015, City Council meeting, the Council scheduled a public hearing on an ordinance that would prohibiting the early sales of recreational marijuana by Medical Marijuana Dispensaries in accordance with SB460.

In November 2014, voters passed Measure 91 into law. This law provides for personal growing, possession of limited amounts of non-medical marijuana and directs the Oregon Liquor Control Commission (OLCC) to administer a licensing system for the production, processing, wholesale, and retail sale of non-medical marijuana. Since that time, the State legislature has approved four separate bills that provide guidance to local units of government as to what actions local governments can take in regards to the regulation of recreational marijuana. The combination of State laws recently approved by the State Legislature, along with the voter approved initiative, have the following impacts:

- On July 1, 2015, personal possession of limited amounts of commercial marijuana is allowed for those 21 and older.
- On October 1, 2015, sales of commercial marijuana from medical marijuana dispensaries can begin unless the City enacts an ordinance prohibiting early sales prior to that time.
- By January 4, 2016, the OLCC must approve or deny commercial license applications as soon as practical after this date.
- November 8, 2016, is the next Statewide General election where measures on the prohibition of marijuana activities in local taxes will be voted upon by the local voters.
- December 31, 2016, early sales of commercial marijuana from medical marijuana dispensaries end.

#### Regulatory Options

Senate Bill 460, which was recently signed into law by the Governor allows medical marijuana dispensaries to sell recreational marijuana to a person who is 21 years of age or older. Senate Bill 460 also allows cities to adopt an ordinance prohibiting the early sale of commercial marijuana from a medical marijuana dispensary within its jurisdiction without voter approval. The ordinance has to be adopted and be effective by October 1, 2015. That would mean the City Council would need to approve an ordinance prohibiting

the early sale of commercial marijuana from medical marijuana dispensaries by the end of this month without emergency effect. Emergency effect can be given to the ordinance by the Council on this issue allowing a decision in September.

The next major decision that the City Council will need to make regarding recreational marijuana is whether to prohibit any of the six types of marijuana activities regulated under House Bill 3400A, which include: medical marijuana processing, medical marijuana dispensaries, commercial marijuana processors, commercial marijuana growers, commercial marijuana wholesalers, or commercial marijuana retailers. If the City Council wishes to pursue banning any of these six activities, the City Council will have to adopt an ordinance indicating which of the six marijuana activities are prohibited within the City of Newport. Since Newport is located in Lincoln County, which approved the use of recreational marijuana on the November 13, 2014, in a State wide election, the City's ban on any of the components of recreational marijuana would remain in effect until a City voter referendum is held in November of 2016, with the voters determining whether the ban will be permanent. In order to effectively prohibit any of these six activities from occurring within the City, the City Council would need to approve an ordinance with the effective date occurring prior to the end of 2015. This would prevent the Oregon Health Authority (if prohibiting medical marijuana activities), and/or the Oregon Liquor Control Commission (if prohibiting medical marijuana activities) from registering and licensing the prohibited activities until the local voters would vote in November 2016 and either affirm the ban or allow for the activities prohibited by the City ordinance.

Finally, the City can regulate certain aspects regarding the location of the four types of commercial licenses, can create a buffer of no more than a 1,000 feet between retail licenses, regulate the manner of operation of the four types of commercial licenses, and other issues as allowed by law. It would appear to be important that the City Council have any regulations in effect prior to the end of this calendar year in order to properly regulate various aspects of recreational marijuana within the community, unless the City Council enacts an outright ban as outlined earlier.

#### Taxation

If the City does not prohibit marijuana activities through a local ban, the City can adopt an ordinance imposing a 3% tax on the sales made by those with commercial retail licenses. This provision apparently trumps the local ordinances that were approved by many cities in the State of Oregon leading up to the November 14<sup>th</sup> election, including the City of Newport's ordinance. In order to collect the 3% tax on the sales, the issue requires voter approval at the next Statewide General election (November 2016). The City Council would need to meet the appropriate election time schedules in order to have this issue on the November 2016 ballot for consideration by the voters of the City of Newport.

Please note that if the City Council prohibits any of the six types of marijuana activities described above, then it appears that the city could not implement the sales tax and would not be entitled to receive a portion of the taxes collected at the State level in accordance with the recently passed State law.

### City Options

In reviewing this issue with City Attorney, Steve Rich, and Community Development Director, Derrick Tokos, the City Council has several strategies they can pursue in regards to the implementation of House Bill 3400, House Bill 2041, Senate Bill 460 and Senate Bill 844, as it relates commercial marijuana activities within the State of Oregon. With this legislation being enacted into law in the past few weeks, local units of government and the State of Oregon have a number of potential paths to follow in implementing these laws within local units of government. Perhaps the biggest challenge relating to local regulation relates to the fact that the rules on the sale of recreational marijuana at medical marijuana facilities have not yet been issued by the Oregon Health Authority, and the rules for the growing, production, distribution, and sales of recreational marijuana have not been issued by the Oregon Liquor Control Commission and are not anticipated until the end of the calendar year at the earliest.

The options that the City Council could pursue range from an outright ban on any or all of the following activities relating to marijuana, including medical marijuana processors, medical marijuana dispensaries, commercial marijuana processors, commercial marijuana producers, commercial marijuana wholesalers, or commercial marijuana retailers. On the other hand, the City Council would have the option of not enacting any prohibition on any of these items, and not implementing any time or place regulations as allowed by State law. In this particular case, the City Council would not have to take any actions at all and allow any State regulations to govern marijuana production, sales, etc. in the City of Newport.

Another option is allowing some or all of the marijuana activities outlined in House Bill 3400A and implement appropriate and reasonable regulations on such things as hours of operations or any of the aspects of marijuana production or sales, zoning locations for the four (4) types of commercial licenses, as well as medical marijuana growth sites and implementing buffers up to a 1,000 feet between retail licenses.

Unless it is the Council's intent to allow all forms of processing, growing, wholesaling, and retailing of medical marijuana within the City of Newport, without any additional local regulations as State law would allow, then it is my recommendation that the Council consider approving the ban on the sale of recreational marijuana by medical dispensaries to give an opportunity for staff to review the rules which have yet to be adopted for the sale of recreational marijuana at medical marijuana facilities, and to initiate review of any regulatory efforts that the Planning Commission may suggest the City Council consider as it relates to all forms of activities relating to the legalization of sales, production, wholesaling and growing of medical marijuana within the City of Newport. Please note that the City Council would be able to revisit this prohibition once the various rules to be adopted by the Oregon Health Authority are implemented, and upon hearing from the City's Planning Commission on any specific recommendations that the Council may want to consider for dealing with any local regulations that are allowed by State law.

Following the public hearing, the City Council should discuss and provide direction as to whether the Council wants to allow all marijuana activities to proceed or wants to consider a ban any of the six marijuana activities outlined in House Bill 3400A. If the Council wishes to pursue a ban on these activities then there will not be the same urgency to develop time, place, and manner restrictions that are allowed under these new laws. On the other hand, if it is the Council's desire to allow any of the six types of marijuana activities outline in this bill, then the City Council should direct the Planning Commission to initiate a review of regulations that the City Council may want to implement regarding the regulations of processing, producing, wholesaling and retailing of marijuana within the City of Newport.

A copy of an ordinance prohibiting Medical Marijuana Dispensaries from selling recreational marijuana and a summary of the 2015 marijuana legislation from the League of Oregon Cities and is attached.

**Recommended Action:**

I recommend the Mayor conduct a public hearing on an ordinance that would limit medical marijuana dispensaries to selling only to registered medical card holders under the Oregon Medical Marijuana Act, as provided by Senate Bill 460 of 2015.

I further recommend after considering any comments made at the public hearing, that the City Council consider approving the following ordinance:

**I move that Ordinance No. 2083, regarding the prohibiting of the sale of recreational marijuana by medical marijuana dispensaries, be read by title only and place for final passage.**

*The Mayor will then ask for a voice vote on whether to read the ordinance by title only and place for final passage.*

*If the motion is approved, the City Recorder will read the title of the ordinance.*

*A roll call vote on the final passage of the ordinance will then be requested by the Mayor, and taken by the City Recorder.*

**I further move that the City Council direct the Planning Commission to review regulatory options as outlined in House Bill 3400A (2015), which expressly provides that the City may impose reasonable regulations on various aspects relating to hours of operation, location and manner of operations for various aspects of marijuana production and sales within the City of Newport.**

**Fiscal Effects:**

If the City prohibits the sale of marijuana, the City will not be eligible for revenue sharing as provided under the State Statutes.

**Alternatives:**

The City Council could take no action which would allow the implementation of recreational marijuana with dispensaries having the option to sell beginning October 1<sup>st</sup>, and not taking any actions to regulate other aspects of marijuana which would then rely on existing language in our zoning ordinance and codes, or take a combination of these actions as outlined within this report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. R. Nebel", is written over a light grey rectangular background.

Spencer R. Nebel  
City Manager



**CITY OF NEWPORT**  
**ORDINANCE NO. 2083**

**AN ORDINANCE PROHIBITING THE SALE  
FROM MEDICAL MARIJUANA DISPENSARIES  
OF LIMITED MARIJUANA RETAIL PRODUCTS  
PURSUANT TO OREGON SB 460  
AND DECLARING AN EMERGENCY**

**WHEREAS**, House Bill 3460 (2013) requires medical marijuana dispensaries to register with the Oregon Health authority and establishes rules for the State of Oregon's regulation of medical marijuana dispensaries; and

**WHEREAS**, Senate Bill 1531 (2014), placed additional restrictions on medical marijuana dispensaries and expressly permitted cities to impose a temporary moratorium on the operation of medical marijuana facilities, which the City elected to put in place until it had established appropriate local regulations; and

**WHEREAS**, Ballot Measure 91, which was approved by the voters of Oregon in November of 2014, allows individuals to grow limited amounts of marijuana on their property and to possess limited amounts of recreational marijuana for personal use beginning July 1, 2015.

**WHEREAS**, Ballot Measure 91 gives the Oregon Liquor Control Commission (OLCC) authority to tax, license and regulate recreational marijuana grown, sold, or processed for commercial purposes, and OLCC has indicated that they will begin accepting applications for growers, wholesalers, processors and retail outlets on January 4, 2016.

**WHEREAS**, Ballot Measure 91 has created a scenario where it is legal in the State of Oregon to use but not purchase marijuana for recreational use.

**WHEREAS**, recognizing that this scenario could lead to an increase in the illicit sale of marijuana, the Oregon legislature passed SB 460 (2015) to create a means by which recreational marijuana can be legally sold prior to the January 4, 2016 date that OLCC will begin accepting applications for this purpose.

**WHEREAS**, SB 460 permits medical marijuana dispensaries to sell "limited marijuana retail products" beginning October 1, 2015, to persons without a medical marijuana card who are 21 years of age or older; and

**WHEREAS**, SB 460 defines a "limited marijuana retail product" as marijuana seeds, dried marijuana leaves and dried marijuana flowers, and a marijuana plant that is not flowering; and

**WHEREAS**, SB 460 will permit medical marijuana dispensaries to sell limited marijuana retail products to non-card holders until recreational dispensaries are licensed and established under OLCC rules; and

**WHEREAS**, SB 460 requires the Oregon Health Authority to adopt rules for the sale of recreational marijuana at medical marijuana facilities to ensure the public health and safety; and that dispensaries comply with the provisions of the bill; and

**WHEREAS**, as of August 17, 2015 the Oregon Health Authority has not enacted rules implementing SB 460; and

**WHEREAS**, SB 460 expressly permits cities and counties to enact an ordinance prohibiting medical marijuana dispensaries from such sales; and

**WHEREAS**, the City Council finds that the public health, safety, and general welfare of its residents and visitors, necessitates and requires the adoption of this ordinance prohibiting the sale of marijuana for recreational purposes until such time as rules have been adopted by the Oregon Health Authority and/or the OLLC regulating the sale of such products; and

**WHEREAS**, adopting this ordinance prohibiting the sale of marijuana for recreational purposes will provide the City an opportunity to evaluate rules promulgated by the Oregon Health Authority and/or the OLCC so that it can make any necessary adjustments to its local regulations in order to ensure that there is a clear process in place for individuals interested in selling and purchasing marijuana for recreation purposes in accordance with State law.

The City Of Newport ordains as follows:

**Section 1.** Medical marijuana dispensaries, also known as medical marijuana facilities, may only sell limited marijuana retail products as that term is defined in Oregon SB 460 (2015) to persons who are registered cardholders under the Oregon Medical Marijuana Act. Medical marijuana dispensaries are otherwise prohibited from selling limited marijuana retail products to any other persons.

**Section 2.** Emergency. This ordinance, being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this ordinance takes effect immediately upon passage.

Adopted by the City Council of the City of Newport, Oregon on August 17, 2015.

\_\_\_\_\_  
Sandra N. Roumagoux, Mayor

ATTEST:

\_\_\_\_\_  
Margaret M. Hawker, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven Rich, City Attorney

## 2015 Marijuana Legislation: What Local Governments Need to Know

### Bills

- HB 3400: Omnibus bill that amended the Oregon Medical Marijuana Act and the Measure 91
- HB 2041: Revised the state tax structure for commercial marijuana
- SB 460: Authorized early sales of commercial marijuana by medical marijuana dispensaries
- SB 844: Miscellaneous provisions

### Home Rule

Home rule is the power of a local government to set up its own system of governance and gives that local government the authority to adopt ordinances without having to obtain permission from the state. City governments in Oregon derive home rule authority through the voters' adoption of a home rule charter as provided for in the Oregon Constitution. A home rule charter operates like a state constitution in that it vests all government power in the governing body of a municipality, except as expressly stated in that charter, or preempted by state or federal law. Where the Legislature's intent to preempt local governments is not express and where the local and state law can operate concurrently, there is no preemption. As a result, generally a negative inference that can be drawn from a statute is insufficient to preempt a local government's home rule authority.

Although this document summarizes the provisions of HB 3400A, cities may be able to impose regulations in addition to those authorized under HB 3400A under their home rule authority.

### Local Government Ban (effective June 30, 2015)

#### What Cities Can Ban (HB 3400A §§ 133(2), 134(1))

There are 7 types of marijuana activities regulated under HB 3400A. Cities can ban any of the following 6 marijuana activities:

- Medical marijuana processors (preparing edibles, skin and hair products, concentrates, and extracts)
- Medical marijuana dispensaries
- Commercial marijuana processors (preparing edibles, skin and hair products, concentrates, and extracts)
- Commercial marijuana producers (growers)
- Commercial marijuana wholesalers
- Commercial marijuana retailers

Cities cannot ban medical marijuana grow sites. However, the law places limits on the number of plants and the amount of marijuana that can be located at any one medical marijuana grow site (HB 3400A §§ 82, 82a):

- *General Rule:* 12 mature plants per grow site in residential zones; 48 mature plants per grow site in all other zones

- o **Grandfathering:** If all growers at the site had registered with the state by January 1, 2015, the grow site is limited to the number of plants at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in residential zones and 96 mature plants per grow site in other zones
- o **Usable marijuana:** A grower may possess the amount of usable marijuana harvested from the plants not to exceed 12 pounds per plant for outdoor grow sites and 6 pounds per plant for indoor grow sites.

#### How Cities Can Ban

Under HB 3400A, there are two avenues for cities to ban marijuana activities, but one of those avenues is available only to certain cities and only during a limited time period.

#### *Option 1: Voter Referral (HB 3400A § 134)*

All cities have the option of banning any of the marijuana activities listed above through the following voter referral process:

- The city council adopts an ordinance that prohibits any of the 6 marijuana activities listed above.
- The city council provides the text of the ordinance to the Oregon Health Authority (if prohibiting medical marijuana activities) and/or the Oregon Liquor Control Commission (if prohibiting commercial marijuana activities).
- The OHA and OLCC will stop registering and licensing the prohibited activities until the next statewide general election.
- The city council refers the ordinance to the voters at a statewide general election (November elections in even-numbered years).

#### *Option 2: Ban Adopted by the City Council (HB 3400A § 133)*

- A city council can adopt a ban on any of the 6 marijuana activities listed above by enacting an ordinance only if the following conditions are met:
  - o The city is located in Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, or Wheeler County;<sup>1</sup> AND
  - o The city council adopts the ordinance by December 24, 2015 (180 days after the effective date of the legislation)
- The city council must provide the text of the ordinance to the Oregon Health Authority (if prohibiting medical marijuana activities) and/or the Oregon Liquor Control Commission (if prohibiting commercial marijuana activities).
- The OHA and OLCC will stop registering and licensing the prohibited activities.

#### Effect on Existing Medical Marijuana Processors & Dispensaries (HB 3400 §§ 133(6), (7), 134(6), (7), 135)

- Dispensaries registered with the state by the time the city adopts a prohibition ordinance, or that had applied to be registered by July 1, 2015, are not subject to the prohibition if they have successfully completed a city or county land use application process.

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<sup>1</sup> HB 3400A allows a city council ban for cities located in counties that voted against Measure 91 by 55 percent or more.

- Medical marijuana processors registered with the state by the time the city adopts the prohibition ordinance are not subject to the prohibition if they have successfully completed a city or county land use application process.

**Tax Implications (HB 3400A §§ 133(5), 134(5); HB 2041 §14(4))**

- **Local Tax:** A city that adopts an ordinance prohibiting marijuana activities in its jurisdiction may not impose a local tax on marijuana. (HB 3400A §§ 133(5), 134(5))
- **State Tax:** A city that adopts an ordinance prohibiting marijuana activities is not eligible to receive state marijuana tax revenues from the 17 percent state tax imposed on commercial sales of marijuana. (HB 2041 § 14(4))
  - Collectively, cities will receive 10% of the state marijuana tax revenues, distributed as follows to cities that do not prohibit marijuana activities (HB 2041 § 14(2)):
    - Before July 1, 2017, distributed proportionately based on population
    - After July 1, 2017, distributed based on the number of licensees in the city, with 50 percent distributed based on the number of producer, processor, and wholesale licensees and 50 percent distributed based on the number of retail licensees

**Local Government Tax (HB 3400A § 34a)  
(effective June 30, 2015)**

**What Cities Can Tax**

Under HB 3400A, cities may impose up to a 3 percent tax on sales made by those with commercial retail licenses.

**How Cities Can Impose a Tax**

Cities may adopt an ordinance imposing the tax, but it must be referred to the voters at the next statewide general election (meaning a November election in an even-numbered year). However, cities may not impose a local tax if they have prohibited marijuana activities through a local ban.

**Time, Place, and Manner Restrictions  
(medical provisions operative March 1, 2016; commercial provisions operative January 1, 2016)<sup>2</sup>**

**State Law Restrictions**

- **Medical and Commercial Marijuana Processors:** Cannot locate in residential zones if processing marijuana extracts. (HB 3400 §§ 14(2)(c), 85(3)(a))
- **Medical Marijuana Dispensaries and Commercial Retail Stores**
  - Cannot locate in residential zones (HB 3400 §§ 16, 86)
  - Cannot locate within 1000 feet of certain public and private schools, unless the school is established after the marijuana facility (HB 3400 §§ 16, 17, 86, 86a)

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<sup>2</sup> Although these provisions do not take effect immediately, some of these provisions are already part of existing state law. Cities should consult their city attorney when enacting time, place, and manner restrictions.

- Medical marijuana dispensaries cannot locate within 1000 feet of another dispensary (HB 3400A § 86)
- Medical marijuana dispensaries cannot locate at a grow site (HB 3400A § 86)
- **Compliance with Zoning Requirements (HB 3400A § 34(4)):** Before issuing any license, the OLCC must request a statement from the city that the requested license is for a location where the proposed use of the land is a permitted or conditional use. If the proposed use is prohibited in the zone, the OLCC may not issue a license. A city has 21 days to act on the OLCC's request, but when that 21 days starts to run varies:
  - If the use is allowed as an outright permitted use, 21 days from receipt of the request
  - If the use is a conditional use, 21 days from the final local permit approval.

#### **What Cities Can Regulate (HB 3400A §§ 33, 89)**

Although the League believes that the Legislature has not foreclosed other regulatory options, HB 3400A expressly provides that cities may impose reasonable regulations on the following:

- The hours of operation of retail licensees and medical marijuana grow sites, processing sites, and dispensaries
- The location of all 4 types of commercial licensees, as well as medical marijuana grow sites, processing sites, and dispensaries, except that a city may not impose more than a 1,000 foot buffer between retail licensees
- The manner of operation of all 4 types of commercial licensees, as well as medical marijuana processors and dispensaries
- The public's access to the premises of all 4 types of commercial licenses, as well as medical marijuana grow sites, processing sites, and dispensaries

The law also provides that time, place, and manner regulations imposed on commercial licensees must be consistent with city and county comprehensive plans, zoning ordinances, and public health and safety laws, which would be true of any ordinance imposed by a city.

#### **Early Sales (SB 460) (awaiting the Governor's signature – effective on passage)**

#### **How Early Sales Work (SB 460 §§ 2, 3)**

- Starting October 1, 2015, medical marijuana dispensaries may sell the following amounts of commercial marijuana to a person who is 21 or older:
  - 1/4 ounce of dried marijuana leaves and flowers per person per day
  - 4 marijuana plants that are not flowering
  - Marijuana seeds
- Starting January 4, 2016, sales of commercial marijuana from medical marijuana dispensaries will be subject to a 25 percent sales tax (HB 2041 § 21a)
- Commercial sales from medical marijuana dispensaries are allowed through December 31, 2016

#### **How Cities Can Ban Early Sales (SB 460 § 2(3))**

A city can adopt an ordinance prohibiting the early sale of commercial marijuana from medical marijuana dispensaries within its jurisdiction. No voter referral is required.

### Timeline

**June 30, 2015 – HB 3400A becomes effective. However, many provisions of the law do not go into effect immediately.**

**July 1, 2015 – Personal possession of limited amounts of commercial marijuana is allowed for those 21 or older.**

**October 1, 2015 – Sales of commercial marijuana from medical marijuana dispensaries begin, unless a city has enacted an ordinance prohibiting early sales pursuant to SB 460 § 2(3).**

**December 24, 2015 – City councils that are eligible to adopt a prohibition on marijuana activities without a voter referral must have adopted the prohibition by this date.**

**January 1, 2016 – Most amendments to Measure 91 go into effect. In addition, after this date, medical marijuana growers may apply for an OLCC license to grow commercial marijuana at the same site.**

**January 4, 2016 – The OLCC must approve or deny commercial license applications as soon as practicable after this date. (HB 3400A § 171). In addition, medical marijuana dispensaries engaging in early sales of commercial marijuana must begin collecting a 25 percent state tax on those sales.**

**March 1, 2016 – Most amendments to the OMMA go into effect.**

**November 8, 2016 – Next statewide general election. Cities may refer measures on prohibition of marijuana activities and measures on local taxes at this election.**

**December 31, 2016 – Early sales of commercial marijuana from medical marijuana dispensaries end.**