



Meeting Notice

Please note that there will not be a Newport Planning Commission work session meeting held on **Monday, July 28, 2014**, and the regular session will begin at 6:00 p.m.



AGENDA & NOTICE OF PLANNING COMMISSION MEETING

The Planning Commission of the City of Newport will hold a meeting at **6:00 p.m. (notice earlier starting time) Monday, July 28, 2014**, at the Newport City Hall, Council Chambers, 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

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

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

NEWPORT PLANNING COMMISSION

Monday, July 28, 2014, **6:00 p.m.**

AGENDA

A. Roll Call.

B. Approval of Minutes.

1. Approval of the Planning Commission regular meeting minutes of July 14, 2014.

C. Citizens/Public Comment.

1. A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

D. Consent Calendar.

1. Final Order for File No. 1-SUB-13: Final Order approving a subdivision plat initiated by the Newport Urban Renewal Agency (OMSI, Investors XII, LLC, and Dick Murry, property owners) to subdivide portions of Waggoner's Addition to South Beach Subdivision, Harborton Subdivision, and certain unplatted property, as the plat of "Sunset Dunes." The Planning Commission held a public hearing on this matter on July 14, 2014.

E. Action Items.

F. Public Hearings.

G. New Business.

H. Unfinished Business.

I. Director Comments.

J. Adjournment.

Draft Minutes
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, July 14, 2014

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

Commissioners Absent: Mike Franklin and Bill Branigan (*both excused*).

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

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

B. Approval of Minutes.

1. Approval of the Planning Commission work session and regular session meeting minutes of June 23, 2014. Berman had a minor correction to the work session minutes.

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

C. Citizen/Public Comment. No comments on non-agenda items.

D. Consent Calendar. Nothing on the consent calendar

E. Action Items.

1. Approval of a letter from the Newport Planning Commission to the Newport City Council regarding Commission support of the Memorandum of Understanding (MOU) between the City of Newport, the City of Lincoln City, Lincoln County, and the Lincoln Community Land Trust forming a partnership to further the workforce housing initiative.

Tokos noted that he had corrected a minor typographical error in the copy that Patrick will sign.

MOTION was made by Commissioner Berman, seconded by Commissioner Croteau, to forward the letter from the Planning Commission to the City Council. Croteau noted that he felt the letter was well constructed and really reflects the Planning Commission's position on this issue. The motion carried unanimously in a voice vote.

F. Public Hearings.

1. **File No. 1-SV-14:** A proposed street vacation initiated by the Newport City Council to vacate portions of SW 31st Street, SW 32nd Street, SW 33rd Street, SW Coho Street, SW Brant Street, SW Abalone Street, and SW Anchor Way as road rights-of-way that are not needed for public purposes. These street vacations are being undertaken in concert with a subdivision plat that will reconfigure SW 30th Street, SW 35th Street and SW Abalone Street for future street improvements. The Planning Commission will review this matter and make a recommendation to the Newport City Council.

Patrick opened the hearing for File No. 1-SV-14 at 7:05 p.m. by reading the summary from the agenda. He read the statement of rights and relevance applying to all hearings on tonight's agenda. He asked the Commissioners for declarations of ex parte contact, bias, conflicts of interest, or site visits. Croteau and Berman both declared site visits. Patrick called for objections to any of the Commissioners or the Commission as a whole hearing this matter; and none were heard. He called for the staff report. Tokos noted for the record that there was some additional material that came in that was not included in the meeting packets. These are consents to the subdivision and street vacation from the three abutting landowners; OMSI, Investors XII, and Richard Murry. The Commissioners had copies in front of them. Tokos further explained that there is a letter from Investors XII, which effectively states that they support the subdivision and vacation specific to what is presented here and not a variation, but reserve the right to appeal in the event that it doesn't remain consistent with this. He explained that there are the signed consents from Richard Murry, Investors XII signed by Reginald Breeze, OMSI signed by Nancy Stueber, and the letter from Investors XII's representative Neathamer Surveying. Tokos noted that in the concept map for the Sunset Dunes Plat, the OMSI property is reflected as all of Block 1, all of Block 2 is Investors XII, and Richard Murry's property is reflected as Block 3. He explained that this is one of two actions tonight that are related. However, with the street vacation, the Planning Commission is making a recommendation to the City Council. They have to vacate streets by ordinance. For the subdivision plat, the Commission is the approval body.

Tokos said that with respect to the street vacation, it was initiated by the City Council. As noted in the staff report, the City Council can initiate a street vacation; but when they do, the criteria is different than a typical street vacation. Tokos read through the criteria from ORS 271.130. The first is have the owners of a majority of the affected area objected in writing? He explained that affected is different than abutting properties. Affected owners are within a specified notification area; effectively a triangle 400 feet to either side of the terminus of the street to be vacated and 200 feet perpendicular to the street. He said we ended up mapping that and making the list; and all of those property owners were sent notice. He noted that a copy of the mailing list was included in the packet. We received no objections to this proposal. The second criterion relates to the market value of abutting properties being adversely affected; and have they consented in writing to the vacation? He noted that the consents were received in writing, but not in time to be in the analysis. We now have all the consents; so this is addressed in that capacity. Also this will not adversely impact the market values; if it did, the City would be responsible for damages. For OMSI, the vacation makes their property more developable. With respect to the vacation of Anchor; which also serves as a service drive for these properties, they would still continue to have access to 101. Murry would connect at 32nd, Investors XII at 32nd and also Abalone and 35th when constructed. Regarding the third criterion specifying that notice has been duly given, notice was provided by mail and was published in the Newport News-Times. Prior to the City Council hearing, we will also post the property. The fourth criterion is whether the public interest will be prejudiced by the vacation. Tokos noted that included in the packet is fairly lengthy analysis he put together for the City Council. The Council put together a policy for when they will initiate vacation; and there are a number of standards there. Effectively the City Council found in initiating this vacation that the public interest would not be prejudiced. Tokos explained that largely these rights-of-way are being vacated in concert with reconfiguration as part of the platting process so that we can extend the streets as they have been planned in the Coho/Brant Neighborhood Plan. It is a benefit to OMSI in developing their property, for Investors XII in preparing a portion of their commercial property for development as well, and Richard Murry for what he is trying to accomplish on his developed property.

Tokos noted that Area "A" depicted on the plat map falls in the coastal gully area. Through a Memorandum of Understanding (MOU), OMSI is looking to preserve that as a natural feature. A draft Conservation Easement that is pretty close to what it will look like is included with the subdivision materials. This is to ensure that that area is preserved while providing appropriate access. The reason it is being preserved is so that there are no chances of extending a street through there. Area "B" includes portions of 32nd, 33rd, Brant, and Coho Streets, which are the ones that cross through OMSI and are an impediment to their being able to develop. We have no plans to extend those streets. There are utilities in Brant and 33rd; but with the platting, there will be utility easements dedicated so we can maintain them. Area "C" is a small portion of Abalone that ties into 35th. There are no plans to extend beyond this. The TSP notes that there are no properties to the south to extend a collector roadway. It is State Park down there, so there is no reason to plan to extend a roadway. Lastly, Area "D" is that portion of Anchor being vacated. We don't need a public street long term in that location. It offsets some of the rights-of-way we are obtaining from those joint properties so they are not taking a loss. He said Investors XII may have a small loss. In the near term to make sure there is no adverse prejudices to the public, we will be maintaining a temporary access easement until 35th and Abalone is in place. There is a private property off Anchor that does need access there until there is the alternative access at 35th and Abalone; and that will ensure that property owner retains access. For Anchor, the road as traveled is not entirely in the right-of-way; when it was constructed the road didn't fall entirely within there. When the City was working with the property owners, they wanted to know where the road was in comparison to the right-of-way; and that is what the crosshatching indicates. Tokos noted that below 35th, one structure has been built on Lot 14. There are a couple of additional buildings below that; but they are outside the plat.

Tokos noted that lastly there's a standard under State law and NMC Chapter 14.25 that prohibits vacating rights-of-way that provide beach access. 33rd Street would provide direct access from Abalone to the State Park. That access is being replaced with OMSI's dedication of 30th Street. 30th will be improved between Brant and Abalone, which will effect access north of 33rd. Tokos said it is reasonable to find that the requirements of retaining public access have been maintained. The right-of-way will be replaced in an appropriate manner. Tokos noted that he did recommend one condition that he's suggesting the Planning Commission include. That is that should the City Council proceed with vacating the rights-of-way, to make it effective upon the recordation of the Sunset Dunes Plat and the conservation easement over Lot 1, Block 1. To make sure those are in place, he thinks those should occur simultaneously.

Berman asked if the funny shaped area on the left hand side of Lot 1 is the wetland; the conservation easement. Tokos said yes, that's correct. It's the surveyed gully area. Berman asked if there are plans by the owner to actually put in public access with natural walkways and that kind of thing; or is it just something in conservation. Tokos said he would defer that to OMSI.

Proponents: Jaimie Hurd with OMSI, 1945 SE Water, Portland. Hurd said that OMSI plans to maintain that conservancy and provide the public and OMSI with access. They are working with the City on that; but that is their intent. They will have educational signs and block it to protect the natural area.

Interested Parties: Robert Hoefs, PO Box 501, owner of the candy shop on 32nd Street and a partner in Ocean Investors. Hoefs said that he has some design things in the works to enlarge the candy factory and have a restaurant with a small bar. His plans are to develop that corner so we have a restaurant in South Beach that will seat 109 people. His understanding was that ODOT's plan is that once they have the new intersection at 35th, they will block the left lane traffic turning onto 32nd Street. He said that he doesn't own any of that property at 35th; but he wondered how that is going to lay out when the light goes to 35th Street. He said they took the turn lane out of his family's land with no argument from them because they gained a light. Now the plan is to move the light. Now the City is looking to buy property from the Schones for a lot of money and will compensate Dick Murry for his property.

Hoefs said his family never put up a stink when their property was taken. They agreed so that they had a turn lane to access their property. When they put in the light, that street that runs beside the Yaquina Inn was supposed to be blocked then. Now ODOT is saying they are moving the light for better flow over the bridge. He said the speed limit across the bridge was 55; now it's 35. He talked to PUD truck drivers who turn onto the highway from Hoovers, and they can't crest the bridge at 30 miles an hour now. ODOT says it's for flow of the bridge; it has no flow because of the 35 mile-per-hour speed limit. He said if they do take away the turn lane at 32nd Street, all the people turning to go to Pirates' Plunder and the hotels, will be turning at the new intersection at the light at 35th. If that is the case, all the traffic on that street will hinder traffic tremendously. If they leave a turn lane at 32nd, maybe you take at least half of that traffic. He said that he understands that OMSI needs that intersection. But those businesses on 32nd already have one in place. The patrons of the OMSI camp will be kids aged four to eight. They don't drive; they will be bused in. There are not cars being driven in there. There won't be much traffic flow into that area right now for OMSI; those people don't drive. He said that comment came from some other local people.

Tokos explained that the whole change in the Transportation System Plan (TSP) and the whole policy discussion and language added to the City's plan and the State's Highway Plan to relocate was part of the outreach in the timeframe of 2012. He said to be clear, the signal at 35th is about traffic flow on 101. It's not needed for OMSI. Their development didn't drive that at all. It was structurally about the traffic flow on 101 and getting the signal further south so that large vehicles would have more time to get up to speed going over the bridge. Tokos said, with regard to that, the State will be handling the construction of the signal and 35th Street. They are going to be initiating the design of that later this year. They anticipate construction starting in 2017. The specifics about what 35th will look like once the signal is moved has not been haggled out. Having a raised median and losing the left turn movement you want to have stay is a possibility. There's also a possibility that a turn lane can stay there. Some details need to be put together of what that design is. There's time to work that out when they begin the design before the actual construction in 2017.

Hoefs said there are several businesses here; 101 just happens to drive through the City. He said don't let ODOT affect the business owners and shut down that intersection and land lock their properties. Berman asked Tokos what the mechanism is for getting this to ODOT. Tokos said this has already been conveyed to ODOT and will continue to be. Hoefs said because of family health, he didn't catch any of those comment periods. He asked if since 2012, the speed limit on the bridge hasn't dropped. Tokos didn't know. Again, Hoefs said when they took a large chunk of his family's property, they didn't raise a stink; it never got to that. Croteau said ODOT looked at the issue of the speed limit going from the north side. The speed limit has to be reduced in downtown; and with increasing traffic to NOAA, HMSC, the aquarium, and the brewery, they didn't want them going across the bridge at 55. It was part of the TSP. Hoefs said as far as ODOT's reasoning, you would want to put the light even south of that for those trucks leaving the PUD.

Rocky Houston of Western Beverage, PO Box 40. Houston said he's not opposing the development. He has always had the conversation if you are moving the light, you should go to 40th instead of 35th. He said Western Beverage has trucks coming and going on a daily basis from 130 SE 32nd. He said that is the issue they are concerned with; it's more with the ODOT plan. He knows what they are talking about; but 35th won't do what they want. He said they are putting it in the wrong spot. His concern is with ODOT.

Patrick closed the hearing at 7:35 p.m. for Commissioners' deliberation. East felt that the Commission should forward the action to the City Council with a recommendation for going ahead with the street vacations. Croteau said it is necessary preliminarily as the South Beach area is going to be developing. It just has to be done. There's no alternative. Berman concurred. Hardy agreed; but she thought an interesting discussion was the impact on businesses. She didn't know if there was any way to change ODOT's plan. She asked if whether the plan to vacate these streets and replace them with what we are talking about later was designed around ODOT'S location; or was the location just an unrelated event. Tokos said that losing Abalone and tying in is part of the package. The signal at 35th is an important piece with Abalone coming down and looping. It's not needed for access to the OMSI property specifically. They could be separated. The signal is not part of this proposal. The intersection construction and signal are under a STIP-funded project with ODOT. He doesn't know of any further land use actions needed at this point. It was put into the TSP; and we informed the public through public hearings at that time. The project is moving to design and is fully funded at this point. Hardy said that she sees no problem going ahead with the street vacations. Patrick said the light was getting moved to 35th whether there was a road on the west side or not. It didn't exist until this proposal came about. The change of the signaled intersection goes back quite a ways. He said we talked about it in 2008. The TSP followed after that. That is how it got there. He said that was ODOT. Berman asked when Anchor Way is vacated, how the land is allocated between the two owners. Tokos said it typically splits 50/50. However, in this case between the two owners it worked out better having Dick Murry having more and compensating Investors XII for the extra area. As part of this, we had to appraise the rights-of-way we are needing. The rest is balancing out with OMSI. Dick Murry and Investors XII didn't need to have Anchor vacated at all; but they were fine as long as they got the land. Berman asked if the access to the industrial buildings was 35th. Tokos said what will happen is when the temporary access easement ends when 35th and Anchor is finished, then Dick Murry will be relocating the "as traveled" Anchor on his property. He would have that access to those industrial properties and still have access at 32nd. It would be his road at that point; and also access at 35th. Once 35th and Abalone is in place, Anchor between 32nd will go away; but he has business access, and those three buildings will have access on 35th. The buildings are all on the same lot. Berman said that the parking is now on the west side of those three buildings. Tokos said there will be two accesses. Dick Murry will be shifting Anchor onto his property. Those three industrial buildings will have access on Anchor, just slightly to the east. There will be a curb cut onto 35th. Patrick said he is in favor of the street vacations. He said we worked back in 2008 with all of the workshops. He said this is a good idea. Patrick said he was looking for a motion to

recommend to the City Council that they approve the vacation with the two conditions; the temporary access way and the conservation easement. Tokos said that the condition is that the vacation go into effect when the subdivision plat and the conservation easement are recorded. Croteau said that there have been some legitimate issues raised that need concentration; but he feels the proposal meets the statutory criteria.

MOTION was made by Commissioner Croteau, seconded by Commissioner East, to recommend File 1-SV-14 favorably to the City Council with the provided conditions indicated in the document. The motion carried unanimously in a voice vote.

2. 1-SUB-13: A subdivision plat initiated by the Newport Urban Renewal Agency that will reconfigure properties owned by the Oregon Museum of Science and Industry (OMSI), Investors XII, LLC, and Dick Murry in order to position SW 30th Street, SW 35th Street, and SW Abalone Street rights-of-way for future street improvements. New rights-of-way need to be dedicated for this purpose, and a subdivision platting process is the most efficient method of establishing the location of the road rights-of-way.

Patrick opened the public hearing for File No. 1-SUB-13 at 7:45 p.m. by reading the summary from the agenda; and he called for the staff report. Tokos said on this action he needed to disclose that this is from the Urban Renewal Agency, and he is also staffing that agency as well as representing the Community Development Department. If he were the decision-maker, it would be a conflict issue. He is not the decision-maker; therefore it's fine. He is wearing the applicant's hat and the staff's hat at the same time on this one. He said this is a subdivision plat as noted. This reconfigures privately-owned property for positioning rights-of-way for this 33 acres that will connect 30th between Brant and Abalone and Abalone to 35th. The street alignment for Abalone and 30th were worked out as part of the Coho/Brant Refinement Plan. Tokos noted that the staff report includes a number of findings in applying the subdivision criteria. Typically with a subdivision plat, the improvements have to be constructed before final recordation. However, if the subdivision is strictly to reconfigure rights-of-way, you don't have to have the improvements in before the final plat is recorded; and that is the case here. So this meets that standard. The plat would be recorded before the street improvements are done. Funding is in place between the Urban Renewal Agency and OMSI to construct 30th and Abalone all the way down basically where Anchor comes into 35th. The State when it does 35th will construct across and tie in at that point. The plans have Abalone Street with a multi-use path along the OMSI frontage. It will be a little narrower than full build-out. Investors XII when they make their improvements will put in sidewalk and widen the road. 30th will be constructed with a multi-use path on the south side between Brant and Abalone. Funding is in place for this. This will be part of the Phase 2 borrow that Urban Renewal will be doing in the spring. There are three phases; and each has a program of projects. These are in Phase 2 at about \$5.4 million. For each project, we do the borrowing and build the projects. These projects are budgeted and are scheduled for construction for the summer of 2015. We are working on the design work for some of the elements of this already. Tokos said the owners impacted here would be OMSI, Investors XII, and Dick Murry; and he has outlined the properties in the staff report. He noted also that he had the full case record with him if anyone needed it.

Berman asked if 33rd Street is going away entirely in the vacation the Commission just did. Tokos said that will go away. That is being vacated because it is in the OMSI campus. The City will be retaining an easement over the existing water and sewer lines that are partially within 33rd and partially in Brant. Tokos said that construction of 35th will possibly be about the same time as Abalone. We have a pretty good idea how that will happen. Berman asked if SW Abalone will go around Safe Have Hill and then turn south for all access to the OMSI property. Tokos said they can access on Abalone to the north where the curved road is. Until 35th is constructed, Anchor will continue to be public. Anchor to Abalone, they will be able to tie in at the south end there. Also at the north end where the new Abalone will tie into the existing, which is essentially the Pioneer Cemetery access now.

Proponents: Jaimie Hurd with OMSI, 1945 SE Water, Portland. Hurd said they expect to start these site improvements in March 2015, which is slightly in advance of the real construction. They are working with the City to coordinate those efforts.

Interested Parties: Robert Hoefs, PO Box 501, owner of the candy shop on 32nd Street and Ocean Investors. Hoefs asked Tokos if the way this is set up, 32nd Street can be terminated on the west side of 101. Tokos said no, there will still be a stub. It's still public access to Dick Murry and Investors XII who have a large commercial piece there. Investors XII sold to OMSI the portion west of Abalone and retained the portion between Abalone and 101. What they retained is under commercial zoning. Hoefs said if they ever develop that or sell 32nd Street; when they all come down to 35th, ODOT will be back doing something to the 32nd access. Tokos said that Investors XII is comfortable with the scenario where we restrict access at 32nd but keep that stub for their personal use. It is better for them to keep that stub as a city public street as opposed to them having to ask ODOT for a private access. They were comfortable with having access to 35th via Abalone. Hoefs wondered if, from the Fire Marshal's perspective, a turn lane is needed at 32nd. If there is a fire at any of those places there, the fire trucks would have to go 15, 20, or 30 blocks to get to anything back in there if it gets blocked at 32nd. He said the City can throw that out to ODOT. Patrick said typically you get a raised median, and fire trucks just drive over it.

Patrick closed the hearing at 7:58 for Commissioners' deliberation. Hardy saw no problem with the subdivision request. Berman said that he didn't see any problem other than timing and phasing for construction vehicles getting in and out with some efficiency. He had no objections. Croteau said there are a lot of issues to be worked out; but for what he sees in front of him, the request meets the criteria. East concurred. Patrick also felt it meets the criteria. He said we will note on the record that there are some objections to how 32nd Street is being handled on the east side. He said that we will address the issues if we get the chance.

Hoefs said if ODOT is taking away the existing turn at 32nd and not allowing people to turn there any more, he has a problem. He said fire trucks will drive over the median; and so will anybody else. If they do an island there, then they made it impossible for fire trucks to get across. He said even a flashing light there so they can turn. For people coming off the bridge, it gives them a chance to be able to brake for a traffic light. Patrick reminded Hoefs that the hearing portion was closed and the Commission was now in deliberations. He recommended that Hoefs take this up at City Council to get the process started.

Croteau felt that the criteria for granting approval of this tentative subdivision plat have been met.

MOTION was made by Croteau, seconded by East, to approve File No. 1-SUB-13. The motion carried unanimously in a voice vote.

G. New Business. No new business.

H. Unfinished Business. Tokos said back to the action item with the workforce housing letter of support, he thought it would be helpful if a Planning Commission member was in attendance to present that letter to the City Council on July 21st. Croteau said that he could do that.

I. Director's Comments.

1. Tokos gave an update on the status for medical marijuana dispensaries. The City Council will consider an ordinance that puts in place some standards, many of which the Planning Commission recommended. They added in a couple of additional ones; the Police Department's request with respect to alarms is going in, as is hold harmless language that the City Attorney is putting together. The rest of the standards were recommendations made by the Planning Commission; additional background checks, Police access to the same records that OHA has, and Police access to the facilities when somebody is there. The City Council will be considering that ordinance on July 21st. It will be as a business license endorsement with supplemental standards. They will be repealing the temporary moratorium as of the date the ordinance becomes effective (30 days essentially). The moratorium will expire at that time.

2. Regarding the South Beach Town Hall meeting on June 30th, Tokos noted that there were about 120 plus people there. We had an opportunity to talk about a lot of things including a lot of these projects we've discussed tonight. He noted that Jaimie Hurd made a presentation for OMSI. HMSC had a presentation and announced that they received a substantial donation of \$20 million; so they are well on their way to securing financing for the building where they will have space for classrooms and research. Berman asked where the location was for this new building. Tokos said west of the Library in that undeveloped area. He continued that he had a chance to talk about the Urban Renewal work at that meeting. The biggest thing was that the URA entered into a purchase agreement with the Schones family who own the northeast corner at 35th and 101. It's about 2.3 acres and is a \$1.5 acquisition. The purpose of that purchase is for a couple of things. One, we will need additional right-of-way off 35th to accomplish those improvements. The Agency believes that this is a good opportunity when putting that kind of investment into infrastructure to have control over one corner so we can sell it afterward for some kind of development. Hopefully to attract service uses not currently in South Beach. That purchase agreement provides about six months for outreach for a minor amendment to the SBUR Plan. There will be some outreach. The City Council wants to hear what people feel about this; so they will give people a chance to weigh in before it's a done deal. This purchase was announced at the Town Hall meeting and we entered into the purchase agreement on the 7th. Bonnie Serkin with Wilder gave a presentation on where they are heading with their plans. They are just about sold out of lots in Phase 1 and are looking at Phase 2. One thing that they will be constructing where the dog park is now is a coffee shop; and the dog park will get relocated.

Croteau asked Tokos if there is any word on how HMSC will house their 500 students. Tokos said that they don't have a clear plan at this point. Their focus is getting funding in place for their building. As they get closer to bringing more students in, they realize that is something that needs to be addressed. Croteau asked if they have no dormitory or housing. Tokos said it's not funded. He said HMSC also recognizes that with 500 students, they won't be able to continue the housing they have now, which is in a tsunami area. If students are housed there 24/7, they don't want them in that tsunami area. It remains to be seen whether OMSI takes a proactive approach in finding housing or funding it, or lean on the community to absorb that. And we already have such a tight rental market here.

Patrick said that one thing that came up at that meeting was that a temporary batch plant was put in down there in South Beach. He said evidentially they do not need permitting. He wondered if the Planning Commission should take that up. He wondered if there is an outright ban against doing that. Is there any way to require them to get permission to do that? Tokos said he would be cautious about that. That land was brought into the City with heavy industrial zoning around the same time as Landwaves. That is an outright permitted use in the I-3 zone. He said had they been looking to do that on a permanent basis, they would have had to do a Traffic Impact Analysis (TIA), and we would be looking at the traffic they generate like Teevin Bros. had to do. It would have been only the TIA for the road uses and vehicle safety; not noise and smell. It is an outright permitted use, and we don't get into those types of issues. The City has a nuisance code that deals with noise and has with this particular issue. They had to get a business license. Croteau asked what the State had to do. Was it entirely on the operator to find a site? Tokos said DEQ primarily; the landowner through DEQ. They cleared the land. They are permitted for storm water impact and air emissions, which DEQ deals with. This particular operation has an operational permit from DEQ. The City has a temporary permitting process for temporary structures like

the cherry stands and offices such as the Port's. In this case it was a temporary batch plant for four months. They did obtain a temporary permit from the City. The TIA didn't apply because it gets to permanent improvements. We do have the capacity when they start getting dirt on the road to enforce against waste discharge on roads. That's a nuisance issue; not a land use.

3. Berman wondered if there has been any thought put into normalizing the city limits in South Beach. Tokos asked if he meant annexing those properties that are surrounded by city limits and said that is a Council goal; but they haven't gotten to that conversation. One of their goals is to sort that out. Especially getting those properties annexed where the City extended water and sewer.

4. Tokos was asked how the talks with the taxing entities regarding the north side urban renewal district are working out. He said that he had to side bar that through the budget cycle and hasn't picked it up yet. He is hoping within the next couple of months to start to move on that again.

K. Adjournment. Having no further business to discuss, the meeting adjourned at 8:15 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

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

**IN THE MATTER OF PLANNING COMMISSION)
FILE NO. 1-SUB-13, APPLICATION FOR)
TENTATIVE SUBDIVISION PLAT APPROVAL FOR)
THE PLAT OF "SUNSET DUNES", AS SUBMITTED) **FINAL**
BY NEWPORT URBAN RENEWAL AGENCY (OREGON) **ORDER**
MUSEUM OF SCIENCE AND INDUSTRY (OMSI),)
INVESTORS XII, LLC, AND RICHARD MURRY,)
PROPERTY OWNERS))**

ORDER APPROVING the request for the tentative subdivision plat of portions of Waggoner’s Addition to South Beach Subdivision, Harborton Subdivision, and certain unplatted property as the plat of “Sunset Dunes.” The new subdivision plat reconfigures privately owned property for the purpose of positioning SW 30th Street, SW 35th Street, and SW Abalone Street rights-of-way for future street improvements in a manner consistent with the August 12, 2012, Coho/Brant Infrastructure Refinement Plan. The new plat also establishes a perimeter for a coastal gully feature (Lot 1, Block 1) that OMSI intends to encumber with a conservation easement.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request for the planned development, with a public hearing a matter of record of the Planning Commission on July 14, 2014; and
- 3.) At the public hearing on said application, the Planning Commission received evidence and recommendations from the applicants, interested persons, and Community Development (Planning) Department staff; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, approved the request for the tentative subdivision plat as requested by the applicant with conditions of approval.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") are adopted in support of approval of the request for tentative subdivision plat approval with the following conditions of approval:

1. Once the final plat is recorded, the Community Development Department shall advise utility providers of the requirement that utilities may not be placed within one foot of a survey monument location noted on the recorded document.
2. A conservation easement shall be recorded over Lot 1, Block 1 of the proposed subdivision. Such easement shall carry out the intent outlined in the Memorandum of Understanding between the Agency, City, and OMSI dated March 2013, and the recording information for the easement is to be cross-referenced on the final plat.
3. Agency shall obtain letters from electrical, telephone, cable television, and natural gas utilities service providers stating the requirements for the provision of undergrounding service to the proposed lots. Further, Agency shall obtain a letter from the Public Works Department identifying (a) water main sizes and locations, and pumps needed, if any, to serve the land division; (b) sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division; (c) Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding; and (d) Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development. Such letters shall be submitted to the Community Development Department prior to the City signing off the final plat for recording.
4. The Newport Public Works Department shall include language in its construction contracts advising contractors that survey monuments are to be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines once the planned roadway improvements are completed.
5. A final plat shall be submitted within two years of the tentative plat (i.e. concept map) approval. The Agency shall finalize the survey, secure the signatures on the plat from all impacted owners, and prepare necessary conveyance documents to ensure that the lot configuration, ownership, and rights-of-way are established as illustrated on the tentative plat. The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.

BASED UPON THE ABOVE, the Planning Commission determines that the request is in conformance with the provisions of the Comprehensive Plan and the Municipal Code of the City of Newport.

Accepted and approved this 28th day of July, 2014.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director
City of Newport

EXHIBIT "A"

File No. 1-SUB-13

FINDINGS OF FACT

1. On April 7, 2014, Newport Urban Renewal Agency (Oregon Museum of Science and Industry (OMSI); Investor's XII, LLC; and Richard Murry, property owners) submitted an application for approval of a proposal to subdivide portions of Waggoner's Addition to South Beach Subdivision, Harborton Subdivision, and certain unplatted property, as the plat of "Sunset Dunes." The new subdivision plat reconfigures privately-owned property for the purpose of positioning SW 30th Street, SW 35th Street, and the SW Abalone Street rights-of-way for future street improvements in a manner consistent with the August 12, 2012, Coho/Brant Infrastructure Refinement Plan. The new plat also establishes a perimeter for a coastal gully feature (Lot 1, Block 1) that OMSI intends to encumber with a conservation easement. Street rights-of-way identified on the proposed plat as "to be vacated" are being vacated via a separate hearings process (ref: File 1-SV-14), and are depicted for reference purposes only.

2. The subject properties are located in the City's South Beach neighborhood, south of the Lincoln County Pioneer Cemetery and Safe Haven Hill tsunami evacuation assembly area, west of US 101, and north and east of the South Beach State Park. The subdivision is approximately 33.51 acres in size, excluding new rights-of-way. This figure includes rights-of-way that accrue to private properties through the street vacation process. Agency is acquiring 1.64 acres of new road rights-of-way to supplement existing rights-of-way that will remain. Specific properties subject to this subdivision proposal include:

- a. OMSI Ownership: Portions of Blocks 7, 8, 11, 15, and 20 and all of Blocks 9, 10, 16, 17, 19 and 20, Waggoner's Addition to South Beach and unplatted property identified as Tax Lots 200, 2703, 2803, 3100, 3200, 3300, 3500, 3501, 3600, 3700, 4400, 4401, 4402, 4600, 4601, 4700, and 4800 of Lincoln County Assessor's Map 11-11-17-CA.
- b. Investor's XII, LLC Ownership: Portions of Blocks 7, 9, and H, and all of Blocks 8, 10, and 11, Harborton identified as Tax Lot 1800 of Lincoln County Assessor's Map 11-11-17-DB and Tax Lot 1400 of Lincoln County Assessor's Map 11-11-17-DC.
- c. Richard Murry Ownership: Portion of Block I, Harborton identified as Tax Lots 1200, 1201, and 1300 of Lincoln County Assessor's Map 11-11-17-DB.

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

- a. Plan Designation: High Density Residential, Commercial, and Industrial.
- b. Zone Designation: R-4/"High Density Multi-Family Residential", C-/"Retail and Service Commercial," and I-1/"Light Industrial."
- c. Surrounding Land Uses: The South Beach neighborhood contains a mix of public, commercial, water-dependent and water-related, industrial, and residential uses. Land uses

in the area near the subject property include developed single-family and multi-family uses to the north along with a Pioneer Cemetery maintained by Lincoln County, and a tsunami evacuation assembly area known as “Safe Haven Hill” that is owned by ODOT. Commercial and light industrial uses border the proposed plat to the east, across US 101, and the South Beach State Park borders the plat to the west. Developed light-industrial, residential, and South Beach State Park uses border to the south.

- d. Topography and Vegetation: Property subject to the plat is gradually sloped, with much of it having been graded in the past. Disturbed areas contain beach grasses and scotch broom. A natural coastal gully exists at the far northwest corner of the site. This area includes a small wetland, and wetland features also exist in isolated pockets along the south and east borders of the plat.
- e. Existing Structures: Property owned by Richard Murry is developed with an auto dealership (d.b.a. Toby Murry Motors). The dealership includes two buildings, and there are an additional three building on the property that are leased for light-industrial uses. The property is paved. Land owned by Investors XII, LLC and OMSI is undeveloped.
- f. Utilities: City currently maintains an 8-inch water line along SW Abalone Street as currently platted. It also has a 12-inch water line within portions of SW Brant, SW 33rd, and SW 35th Streets. Sanitary sewer service is available from an 8-inch line within SW Brant, SW 33rd, and SW 35th Streets. A 60-inch storm drainage line is within SW 35th Street, a 48-inch line is further to the north at US 101, and 12-inch and 18-inch lines are at the far northeast corner of the plat. Electricity, phone, fiber, and natural gas are available to the area. The Richard Murry property (proposed Block 3) currently receive services. This proposed subdivision is positioning the OMSI and Investors XII, LLC properties for the same.
- g. Development Constraints: Isolated wetland areas as noted above.
- h. Past Land Use Actions:
File No. 1-CP-05. Proposal amended the Newport Comprehensive Plan Ocean Shorelands Map to remove an erroneous “Park and Outstanding Natural Area Boundary” designation from property identified as Tax Lot 1800, of Lincoln County Assessor’s Map 11-11-17-DB (Ordinance No. 1894).
- i. Notice: Public notice of the application and public hearing was mailed to surrounding property owners within 200 feet of the subject property and public entities and agencies on June 23, 2014. Notice of the public hearing was also published in the Newport News-Times on July 4, 2014.

4. This subdivision plat reconfigures privately owned property for the purpose of positioning SW 30th Street, SW 35th Street, and the SW Abalone Street rights-of-way for future street improvements. The 10th Amendment to the South Beach Urban Renewal Plan identifies the extension of SW Abalone Street from SW 29th Street to SW Anchor Way, and SW 30th Street from SW Brant Street to SW Abalone Street as roadways that are to be constructed during its second project phase, which covers the years 2013-2016. It is also anticipated in the Plan that SW 35th Street will be constructed during this same period of time. The conceptual alignment for these road projects were established through public outreach as part of the 2012 Agency funded Coho/Brant

Infrastructure Refinement Plan, and the most recent update to the Newport Transportation System Plan. Agency subsequently budgeted funds for survey, right-of-way acquisition and design work. The balance of the funding needed to construct SW 30th Street and SW Abalone Street will come from Agency, OMSI, and System Development Charges. Construction is anticipated to occur in the summer and fall of 2015 and will coincide with OMSI's construction of its Coastal Discovery Center. SW 35th Street, between US 101 and SW Anchor Way, will be constructed by the State when they build a new intersection at SW 35th and US 101. The State anticipates beginning preliminary design work on that intersection later this year, with construction beginning spring of 2017.

5. A subdivision platting process is an efficient method of establishing the location of the road rights-of-way. The plat will also identify the perimeter of a coastal gully feature at the northwest corner of the OMSI ownership. Agency purchased lots adjacent to the gully in 2010 and placed the lots into a conservation easement. Agency has also entered into a non-binding Memorandum of Understanding with the City and OMSI, dated March 2013, outlining an intent by all parties to preserve the gully area.

6. Agency has engaged the three impacted property owners and has revised and modified the draft subdivision plat in response to their feedback. Certain rights-of-way are labeled on the concept map as areas "to be vacated." This has been done for reference purposes as there is a separate parallel process that will accomplish the street vacations (ref: File 1-SV-14). Unlike a subdivision that will be approved by the Planning Commission, the vacation of city streets must be accomplished by ordinance adopted by the Newport City Council.

7. Notices of the requests were mailed on June 23, 2014, to affected property owners and various City departments, public/private utilities and agencies within Lincoln County, and other individuals. No comments were received in response to the notice.

8. A public hearing was held on July 14, 2014. At the public hearing, the statement of rights and relevance and applicable criteria were read. The Planning Commission disclosed any ex parte contact, conflicts of interest, and/or bias. No objections were made to any of the Planning Commissioners hearing the matter. The Planning Commission received the staff report and heard testimony from proponent, Jamie Hurd with the Oregon Museum of Science and Industry (OMSI); and from interested party, Robert Hoefs. The minutes of the July 14, 2014, meeting are hereby incorporated by reference into the findings. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" – Concept Map for the Sunset Dunes Subdivision, dated June 6, 2014

Attachment "B" – Conceptual road alignments and estimate/cross-section drawings from the 2012 Coho/Brant Infrastructure Refinement Plan

Attachment "C" – Transportation System Plan Functional Classification Map for South Beach

Attachment "D" – Memorandum of Understanding between the City of Newport, Newport Urban Renewal Agency and OMSI, dated March 2013

Attachment "E" – Draft Conservation Easement for Lot 1, Block 1 of the proposed subdivision

Attachment "F" – Public Hearing Notice

9. The request must be consistent with criteria set forth in Chapter 13.05 of the Newport Municipal Code for tentative subdivision plat approval.

10. Criteria For Tentative Subdivision Plat Approval:

NEWPORT MUNICIPAL CODE (NMC) Section 13.05.015 (A) Criteria for Consideration of Modification to Street Design. *As identified through the street standard requirements, modifications may be allowed to the standards by the approving authority. In allowing for modifications, the approving authority shall consider modifications of location, width and grade of streets in relation to existing and planned streets, to topographical or other geological/environmental conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system as modified shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain. Where location is not shown in the Transportation System Plan, the arrangement of streets shall either:*

- 1. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or*
- 2. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.*

NMC Section 13.05.015(B) Minimum Right-of-Way and Roadway Width. *Unless otherwise indicated in the Transportation System Plan, the street right-of-way and roadway widths shall not be less than the minimum width in feet shown in the following table:*

<i>Type of Street</i>	<i>Minimum Right-of-Way Width</i>	<i>Minimum Roadway Width</i>
<i>Arterial, Commercial, Industrial</i>	<i>80 feet</i>	<i>44 feet</i>
<i>Collector</i>	<i>60 feet</i>	<i>44 feet</i>
<i>Minor Street</i>	<i>50 feet</i>	<i>36 feet</i>
<i>Radius for turn-around At end of cul-de-sac</i>	<i>50 feet</i>	<i>45 feet</i>
<i>Alleys</i>	<i>25 feet</i>	<i>20 feet</i>

Modifications to this requirement may be made by the approving authority where conditions, particularly topography, geology, and/or environmental constraints, or the size and shape of the area of the subdivision or partition, make it impractical to otherwise provide buildable sites, narrower right-of-way and roadway width may be accepted. If necessary, slope easements may be required.

NMC Section 13.05.015(C) Reserve Strips. *Reserve strips giving a private property owner control of access to streets are not allowed.*

NMC Section 13.05.015 (D) Alignment. *Streets other than minor streets shall be in alignment with existing streets by continuations of their center lines. Staggered street alignment resulting in "T" intersections shall leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and, in no case, shall be less than 100 feet. If not practical to do so because of topography or other conditions, this requirement may be modified by the approving authority.*

NMC Section 13.05.015(E) Future Extensions of Streets. *Proposed streets within a land division shall be extended to the boundary of the land division. A turnaround if required by the Uniform Fire Code will be required to be provided. If the approval authority determines that it is not necessary to extend the streets to allow the future division of adjoining land in accordance with this chapter, then this requirement may be modified such that a proposed street does not have to be extended to the boundary of the land division.*

NMC Section 13.05.015(F) Intersection Angles.

1. Streets shall be laid out to intersect at right angles.
2. An arterial intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection.
3. Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection.
4. Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line.
5. No more than two streets may intersect at any one point.
6. If it is impractical due to topography or other conditions that require a lesser angle, the requirements of this section may be modified by the approval authority. In no case shall the acute angle in Subsection F.(1.) be less than 80 degrees unless there is a special intersection design.

NMC Section 13.05.015(G) Half Street. Half streets are not allowed. Modifications to this requirement may be made by the approving authority to allow half streets only where essential to the reasonable development of the land division, when in conformity with the other requirements of these regulations and when the city finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract property to be divided, the other half of the street shall be provided.

NMC Section 13.05.015(H) Sidewalks. Sidewalks in conformance with the city's adopted sidewalk design standards are required on both sides of all streets within the proposed land division and are required along any street that abuts the land division that does not have sidewalk abutting the property within the land division. The city may exempt or modify the requirement for sidewalks only upon the issuance of a variance as defined in the Zoning Ordinance.

NMC Section 13.05.015(I) Cul-de-sac. A cul-de-sac shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a circular turn-around meeting minimum Uniform Fire Code requirements. Modifications to this requirement may be made by the approving authority. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to connect from a cul-de-sac to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.

NMC Section 13.05.015(J) Street Names. Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street. Street names and numbers shall conform to the established pattern in the city, as evident in the physical landscape and described in City of Newport Ordinance No. 665, as amended.

NMC Section 13.05.015(K) Marginal Access Street. Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.

NMC Section 13.05.015(L) Alleys. Alleys shall be provided in commercial and industrial districts. If other permanent provisions for access to off-street parking and loading facilities are provided, the approving authority is authorized to modify this provision if a determination is made that the other permanent provisions for access to off-street parking and loading facilities are adequate to assure such access. The corners of alley intersections shall have a radius of not less than 12 feet.

NMC Section 13.05.020(A) Blocks General. *The length, width, and shape of blocks for non-residential subdivisions shall take into account the need for adequate building site size and street width, and shall recognize the limitations of the topography.*

NMC Section 13.05.020(B) Block Size. *No block shall be more than 1,000 feet in length between street corners. Modifications to this requirement may be made by the approving authority if the street is adjacent to an arterial street or the topography or the location of adjoining streets justifies the modification. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to allow connectivity to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a block of greater than 1,000 feet if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.*

NMC Section 13.05.025(A) Utility Lines. *Easements for sewers and water mains shall be dedicated to the city wherever a utility is proposed outside of a public right-of-way. Such easements must be in a form acceptable to the city. Easements for electrical lines, or other public utilities outside of the public right-of-way shall be dedicated when requested by the utility provider. The easements shall be at least 12 feet wide and centered on lot or parcel lines, except for utility pole tieback easements, which may be reduced to six (6) feet in width.*

NMC Section 13.05.025(B) Utility Infrastructure. *Utilities may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.*

NMC Section 13.05.025(C) Water Course. *If a tract is traversed by a water course such as a drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of the water course, and such further width as will be adequate for the purpose. Streets or parkways parallel to the major water courses may be required.*

NMC Section 13.05.030(A) Size. *The size (including minimum area and width) of lots and parcels shall be consistent with the applicable lot size provisions of the Zoning Ordinance, with the following exception:*

Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

NMC Section 13.05.030(B) Street Frontage. *Each lot and parcel shall possess at least 25 feet of frontage along a street other than an alley.*

NMC Section 13.05.030(C) Through Lots and Parcels. *Through lots and parcels are not allowed. Modifications may be made by the approving authority where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities or to overcome specific disadvantages of topography and orientation. The approving authority may require a planting screen easement at least 10 feet wide and across which there shall be no right of access. Such easement may be required along the line of building sites abutting such a traffic artery or other incompatible use.*

NMC Section 13.05.030(D) Lot and Parcel Side Lines. *The side lines of lots and parcels shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve. Modifications to this requirement may be made by the approving authority where it is impractical to do so due to topography or other conditions or when the efficient layout of the land division has the lines running as close to right angles (or radial) as practical.*

NMC Section 13.05.030(E) Special Setback Lines. *All special building setback lines, such as those proposed by the applicant or that are required by a geological report, which are to be established in a land division, shall be shown on the plat, or if temporary in nature, shall be included in the deed restrictions.*

NMC Section 13.05.030(F) Maximum Lot and Parcel Size. Proposed lots and parcels shall not contain square footage of more than 175% of the required minimum lot size for the applicable zone. Modifications to this requirement may be made by the approving authority to allow greater square footage where topography or other conditions restrict further development potential or where the layout of the land division is designed and includes restrictions to provide for extension and opening of streets at intervals which will permit a subsequent division into lots or parcels of appropriate size for the applicable zone designation.

NMC Section 13.05.030(G) Development Constraints. No lot or parcel shall be created with more than 50 % of its land area containing wetlands or lands where the city restricts development to protect significant Statewide Land Use Planning Goal 5 or Goal 17 resources, except that areas designated as open space within a land division may contain up to 100% of a protected resource. Modifications to this requirement may be made by the approval authority if the approval authority determines that the proposed lot or parcel contains sufficient land area to allow for construction on the lot or parcel without impacting the resource or that a variance or other permit has been obtained to allow for impacts on the identified resource.

NMC Section 13.05.030(H) Lots and Parcels within Geologic Hazard Areas. Each new undeveloped lot or parcel shall include a minimum 1000 square foot building footprint within which a structure could be constructed and which is located outside of active and high hazard zones and active landslide areas (See Section 2-4-7 of the Zoning Ordinance for an explanation of hazard zones). New public infrastructure serving a lot or parcel shall similarly be located outside of active and high hazard zones and active landslide areas.

NMC Section 13.05.035 Public Improvements.

NMC Section 13.05.040 Public Improvement Requirements. The following public improvements are required for all land divisions, except where a subdivision plat is reconfiguring or establishing rights-of-way for future public streets...

NMC Section 13.05.045 Adequacy of Public Facilities and Utilities. (Electric and Phone). Tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the land division as demonstrated by a written letter from the public facility provider or utility provider stating the requirements for the provision of public facilities or utilities (electric and phone) to the proposed land division. For public facilities of sewer, water, storm water, and streets, the letter must identify the:

1. Water main sizes and locations, and pumps needed, if any, to serve the land division.
2. Sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division.
3. Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding.
4. Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development.

NMC Section 13.05.050 Underground Utilities and Service Facilities. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The subdivider shall make all necessary arrangements with the serving utility to provide the underground service.

The subdivider shall secure from the non-city-owned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.

NMC Section 13.05.055 Street Lights. *Street lights are required in all land divisions where a street is proposed. The city may adopt street light standards. In the absence of adopted standards, street lights shall be placed in new land divisions to assure adequate lighting of streets and sidewalks within and adjacent to the land division.*

NMC Section 13.05.060 Street Signs. *Street name signs, traffic control signs and parking control signs shall be furnished and installed by the city.*

NMC Section 13.05.065 Monuments. *Upon completion of street improvements, monuments shall be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines.*

11. Criteria For Final Subdivision Plat Approval:

NMC 13.05.090(A) Submission of the Final Plat. *Submission of Final Plat. Within two years after tentative plan approval, such other time established at the time of tentative plan approval, or extensions granted under this chapter, the owner and/or applicant (collectively referred to as the "developer") shall cause the land division to be surveyed and a final plat prepared. If the developer elects to develop the land division in phases, final plats for each phase shall be completed within the time required (e.g. Phase I completed within two years, Phase II completed within the next two years, etc.). The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.*

NMC 13.05.090(B) Provision of Improvements. *It shall be the responsibility of the developer to install all required improvements and to repair any existing improvements damaged in the development of the property. The installation of improvements and repair of damage shall be completed prior to final plat approval. Except as provided in Subsection C., or where payment in lieu of constructing a required improvement is allowed by the city and has been paid by the developer per Chapter 14.45, the final plat will not be approved until improvements are installed to the specifications of the city and "as constructed" drawings are given to the city and approved by the city engineer. The developer shall warrant the materials and workmanship of all required public improvements for a period of one year from the date the city accepts the public improvements.*

CONCLUSIONS

If the Planning Commission finds that the criteria established in the Newport Municipal Code for granting approval of a tentative subdivision plat have been met, then the Commission can approve the application. As always, the Commission may attach any reasonable conditions of approval, which it finds are necessary to ensure that approval criteria are satisfied. Conditions of approval need to be related to the applicable criteria and request (i.e. they must have a rational nexus) and need to be roughly proportional to the impact created by the subdivision in order to be constitutionally permissible. The burden on demonstrating that conditions of approval have both a rational nexus and are roughly proportional is on the government, not the applicant. If, on the other hand, the Commission finds that the request does not comply with the criteria and cannot be made to comply through reasonable conditions of approval (as required by ORS 197.522), then the Commission should make findings for denial.

After consideration of the application material submitted, the Planning Staff Report and Attachments, and the testimony in the record, the Planning Commission concludes as follows in regard to the criteria established in Newport's Municipal Code for approving the tentative subdivision plan:

TENTATIVE SUBDIVISION PLAT APPROVAL CRITERIA

The criteria for approval of a tentative subdivision plat have been addressed as follows:

1. Regarding Newport Municipal Code (NMC) Section 13.05.015(A), Criteria for Consideration of Modification to Street Design, the rights-of-way for SW 30th Street, SW Abalone Street, and SW 35th Street have been sized to accommodate the construction of streets consistent with the cross-sections for each that were developed with the 2012 Coho/Brant Infrastructure Refinement Plan (Staff Report Attachment “B”). That Refinement Plan has been adopted into the City’s Transportation System Plan (TSP) and put in place the street standards requirements for these roadways. The street extensions are depicted graphically in the plan (ref: map 3-8, Staff Report Attachment “B”). The SW Abalone Street extension is also depicted on the TSP Functional Classification Map (Staff Report Attachment “C”).
2. Regarding NMC Section 13.05.015(B), Minimum Right-of-Way and Roadway Width, as depicted on the Concept Map for Sunset Dunes (Staff Report Attachment “A”) the rights-of-way for SW 30th Street and SW Abalone Street satisfy the minimum width requirement for local and collector streets, respectively. The roadway width for both streets will be less than what is listed in this table; however, as noted, that table is superseded if alternative standards are provided in the TSP. That is the case here, with reduced street sections for both roadways being contained in the Coho/Brant Infrastructure Refinement Plan (Staff Report Attachment “B”).
3. Regarding NMC Section 13.05.015(C), Reserve Strips, the concept map for the Sunset Dunes subdivision plat does not contain any reserve strips.
4. Regarding NMC Section 13.05.015(D), Alignment, the concept map illustrates how SW 30th Street and SW Abalone Street are to be extended. New right-of-way for SW 30th Street will allow the existing street to be extended along its existing center line alignment. Existing right-of-way for SW Abalone Street has been expanded from 30-feet to 60-feet and is off-set slightly to the west to allow the street to curve and merge with SW 35th Street. This merger with SW 35th Street, shown in the TSP, is appropriate since SW Abalone Street will not be extended further to the south into the State Park. The “T” intersections of SW 30th at SW Abalone Street, and SW Abalone Street where it ties into the existing curved section, satisfy the 200-foot centerline to centerline separation requirement.
5. Regarding NMC Section 13.05.015(E), Future Extensions of Streets, alignments for SW 30th Street, SW Abalone Street, and SW 35th Street conform to the City’s TSP. SW 30th Street need not be extended beyond SW Abalone because the only property that it would serve is a vacant commercial site that does not need additional public street access. Similarly SW 35th Street need not be extended to the west or SW Abalone to the south because the OMSI and State Park properties do not need additional public street access.
6. Regarding NMC Section 13.05.015(F), Intersection Angles, the concept map for the Sunset Dunes subdivision shows that these standards have been met.

7. Regarding NMC Section 13.05.015(G), Half Street, this subsection addresses the provision of a half-street within the proposed subdivision (such that half of a right-of-way is provided adjacent to another property which would provide the other half of the right-of-way). The proposed subdivision does not include any half-street dedications.

8. Regarding NMC Section 13.05.015(H), Sidewalks, this subsection requires sidewalks on both sides of streets within land divisions; however, it is superseded by alternate standards if they are adopted into the Newport TSP. That is the case here, whereby SW 30th Street will be constructed with a multi-use path on the south side of the street with no bike/pedestrian improvements on the north side (Staff Report Attachment "B"). SW Abalone Street will be constructed with a multi-use path on the west side, and although sidewalk is to be constructed on the east side, that improvement will be deferred until the commercial property develops. SW 35th Street will include a multi-use path to the south and sidewalk to the north.

9. Regarding NMC Section 13.05.015(I), Cul-de-sac, under this subsection, the maximum length of a cul-de-sac is 400 feet, it may not serve more than 18 dwelling units, and it must terminate with a circular turn-around. The subdivision concept map does not include any cul-de-sacs.

10. Regarding NMC Section 13.05.015(J), Street Names, street names are identified on the subdivision concept map (Staff Report Attachment "A"). They are SW 30th Street, SW Abalone Street, and SW 35th Street. All are existing streets that are being extended or widened.

11. Regarding, NMC Section 13.05.015(K), Marginal Access Street, this subsection relates to subdivisions that abut an arterial street and allows the Planning Commission to require deeper lots, non-access reservations, landscaping and the like to buffer residential uses from traffic. US 101 is an arterial street abutting the proposed subdivision. Lots that abut the highway are commercial and industrial zoned properties with sufficient depth that the buffering options outlined in this standard need not be exercised.

12. Regarding, NMC Section 13.05.015(L), Alleys, this subsection requires that alleys be provided in commercial and industrial districts unless other permanent provisions are made to access off-street parking and loading facilities. Blocks 2 and 3 of the proposed subdivision include commercial and industrial zoned land. Both are adequately sized to provide off-street parking and loading. A portion of SW Anchor Way situated between the properties is proposed to be vacated, but will continue to serve in this capacity as a private drive.

13. Regarding NMC Section 13.05.020(A), Blocks General, there are three (3) blocks in the proposed subdivision, as illustrated on the concept map. Each corresponds with the different ownerships and zoning designations. They also recognize building site needs, availability of access and topographic limitations. The OMSI property (Block 1) is within an R-4 zoning designation. The property is substantially flat and large enough to accommodate the Coastal Discovery Center that they plan to construct at this location. Access is available off of SW 30th and SW Abalone Street. Investor's XII, LLC owns the property within Block 2. This area is relatively flat and undeveloped. Given the large parcel size of 10.81 acres, it is well suited for a range of building types that can be constructed under the C-1 zoning, and access is available off of SW Abalone Street and SW 32nd

Street. Block 3, owned by Richard Murry, is developed with an automotive dealership and small manufacturing/industrial uses consistent with the I-1 zoning. The site is accessed via SW 32nd Street, US 101 and SW 35th Street.

14. Regarding NMC Section 13.05.020(B), Block Size, as illustrated on the concept map (Staff Report Attachment "A") none of the proposed blocks is more than 1,000 feet in length between street corners. It could be argued that the west line of Block 2 exceeds this requirement since SW 30th Street does not extend into the site. This property is adjacent to US 101, an arterial street, which makes it impractical to break the Block up by extending a street through the property. The existing access point at SW 30th Street and multiple points along SW Abalone Street, which will tie into a future signal at SW 35th and US 101, ensure that the site possesses adequate access for future commercial development. Planned multi-use path and sidewalk improvements along SW Abalone Street preclude the need for any bike/pedestrian easement through the property at this time.

15. Regarding NMC Section 13.05.025(A), Utility Lines, easements are shown for City of Newport water, sewer, and storm drainage mains where they extend outside of existing and/or proposed rights-of-way, as illustrated on the proposed concept map. Notice of this subdivision application was sent to NW Natural, Century Link, Central Lincoln PUD, and Charter Communications. None of these utilities have requested that easements be dedicated outside of the public rights-of-way.

16. Regarding NMC Section 13.05.025(B), Utility Infrastructure, no new utilities are proposed to be placed at this time. This requirement is intended to prevent subdivision monuments from being disturbed. It is prospective in nature and can be addressed with a condition of approval.

17. Regarding NMC Section 13.05.025(C), Water Course, the subject properties are not traversed by a watercourse such as a drainageway, channel or stream.

18. Regarding NMC Section 13.05.030(A), Size, the subject properties are zoned and planned for business or industrial use, and all three owners have been involved in reviewing and providing feedback on how the lots have been configured to ensure that they meet current and future business needs, including the provision of off-street services and parking.

19. Regarding NMC Section 13.05.030(B), Street Frontage, as depicted on the concept map (Staff Report Attachment "A"), all of the proposed lots possess at least 25-feet of street frontage.

20. Regarding NMC Section 13.05.030(C), Through Lots and Parcels, no new through lots are created with this proposed subdivision. Lot 1, Block 2, owned by Investors XII, LLC, is already a through lot with SW Abalone Street paralleling US 101. This will remain the case, and is necessary to ensure that this commercial property possesses adequate access and is separated (setback) from residential areas further to the west.

21. Regarding NMC Section 13.05.030(D), Lot and Parcel Side Lines, as illustrated on the concept map, proposed lot lines run at right angles to the street that they face where practical to do so. Given the angled alignment of the section of Anchor Way that is to be vacated, it is not possible to adhere to the right angle requirement. Similarly the line between Lots 2 and 3, Block 3, cannot be brought into SW 35th Street at a right angle given the location of the existing buildings and a requirement of

the Toyota dealership that it maintain a footprint that is at least 3 acres in size (the dealership encompasses Lots 1 and 2). Lastly, Lot 1, Block 1 is irregularly shaped because it is intended to define the boundary of a coastal gully that encompasses the area. It is the intent of the Agency, City, and OMSI to protect the gully as a natural feature as outlined in a Memorandum of Understanding, dated March 2013 (Staff Report Attachment “D”). Further, the parties intend to record a conservation easement over the newly created lot, a draft of which is enclosed (Staff Report Attachment “E”).

22. Regarding NMC Section 13.05.030(E), Special Setback Lines, there are no known special building setback requirements. The scenic vegetation easements that encumber Block 2 may serve this purpose, and the locations of those easements are depicted on the concept map (Staff Report Attachment “A”).

23. Regarding NMC Section 13.05.030(F), Maximum Lot and Parcel Size, this standard is intended to ensure that oversized parcels are not configured in such a way that they will preclude further division and a logical extension of the street network in order to achieve the density allowances in the respective zoning districts. The minimum lot size for all three zones is 5,000 sq. ft., and all of the proposed lots exceed the 175% threshold. This limitation on the maximum lot size can be exceeded if conditions exist that would hamper the development potential of the properties. That is the case here, as each of the properties has been sized to accommodate intended uses. In OMSI’s case it is a Coastal Discovery Center, which requires a large footprint and separation from other uses. Similarly, the Investors XII, LLC lot is sized to potentially accommodate larger commercial uses that cannot locate on smaller lots. Lastly, the lots owned by Richard Murry have been sized to accommodate needs of existing businesses that cannot be adequately met with smaller lots.

24. Regarding NMC Section 13.05.030(G), Development Constraints, the only proposed lot that may exceed the 50% threshold is Lot 1, Block 1; however, that area is proposed to be protected as natural “open space” with limited development potential pursuant to the Memorandum of Understanding between the Agency, City and OMSI (Staff Report Attachment “D”) and a conservation easement (Staff Report Attachment “E”).

25. Regarding NMC Section 13.05.030(H), Lots and Parcels within Geologic Hazard Areas, the subject properties are not located within a city mapped geologic hazards area.

26. Regarding NMC Section 13.05.035, Public Improvements, the Planning Commission concludes as follows:

A. This subsection outlines procedures that are to be followed by a developer to ensure that public improvements (i.e. streets, drainage, water, sewer, and sidewalk) are installed in a manner that is consistent with city construction specifications, that the city has an opportunity to review the construction plans and is notified prior to the commencement of the improvements, that underground utilities are installed prior to surfacing of streets and that the improvements are inspected by the City Engineer.

B. Agency, with financial contributions from OMSI, will be installing street, bike/pedestrian, water, sewer, storm drainage, and lighting improvements within rights-of-way and easements depicted on the concept map. That work will be performed by the City of Newport pursuant to Agency Order No. 2014-1. Accordingly, it is not necessary for the Commission to impose conditions of approval requiring a developer coordinate with the City since it is the City that will be performing the work.

27. Regarding NMC Section 13.05.040, Public Improvement Requirements, this subsection outlines public improvements (i.e. streets, drainage, water, sewer, and sidewalk) that are required for all land divisions, except where a subdivision plat is reconfiguring or establishing rights-of-way for future public streets. This subdivision proposal fits this limited exception, as the purpose of the plat is to reconfigure and/or extend SW 30th Street, SW Abalone Street, and SW 35th Street. Therefore, it is not necessary that a condition be imposed requiring that improvements to these roadways be in place prior to a final plat being recorded.

28. Regarding NMC Section 13.05.045, Adequacy of Public Facilities and Utilities (Electric and Phone), this concept map has been prepared in consultation with the City of Newport Public Works Department to ensure that the proposed lots are configured in a manner that will facilitate extension of the listed services. Additionally, all of these utilities, including electric and phone service, are currently being provided to Block 3 of the proposed subdivision and existing development to the south and north of the proposed subdivision. Given these circumstances, it is feasible that these services can be provided to each of the proposed lots. Confirmation of availability of these services can be required as a condition of approval of the tentative plat (i.e. concept map).

29. Regarding NMC Section 13.05.050, Underground Utilities and Service Facilities, as noted, given that these services are currently available to Block 3 of the proposed subdivision, and are available to established uses to the north and south of the subject site, it is feasible that the Agency can obtain written statements of this nature from the service providers. A condition of approval should be imposed to ensure that this requirement is satisfied.

30. Regarding NMC Section 13.05.055, Street Lights, street lighting is budgeted and will be installed by the City when it extends SW 30th Street and SW Abalone Street. The State of Oregon will construct SW 35th Street between Abalone (at Anchor Way) and US 101 and lighting is budgeted and will be installed as part of that project

31. Regarding NMC Section 13.05.060, Street Signs, budgets for the extension of SW 30th Street and SW Abalone Street, and the construction of SW 35th Street, include funds for the installation of street name signs, traffic control signs and parking control signs. The City will be constructing the improvements on behalf of the Agency, including the installation of these signs.

32. Regarding NMC Section 13.05.065, Monuments, this standard is prospective, and can best be addressed as a condition of approval.

FINAL PLAT REQUIREMENTS FOR SUBDIVISIONS

1. Regarding NMC 13.05.090(A), Submission of the Final Plat, this standard sets out the timeframe and steps that are to be taken to prepare a final plat for recording once the tentative plat (i.e. concept map) is approved. Agency has not proposed to phase the platting; therefore, a final plat must be recorded within two years of the date of approval. A condition of approval should be imposed to make it clear that these steps must be taken in order for the subdivision to be final.
2. Regarding NMC 13.05.090(B), Provision of Improvements, as noted in the finding establishing compliance with NMC Section 13.05.040, Public Improvement Requirements, this subdivision plat is being pursued for the purpose of reconfiguring or establishing rights-of-way for future public streets. Therefore, planned public improvements need not be installed prior to final plat approval.

TESTIMONY AT THE PUBLIC HEARING

1. Regarding testimony provided at the July 14, 2014 public hearing, proponent Jamie Hurd with the Oregon Museum of Science and Industry (OMSI) testified in support of the application. Robert Hoefs, an interested party, offered testimony relating to Agency and Oregon Department of Transportation plans to relocate the traffic signal at US 101 from 32nd Street to SE 35th Street. That project is outside the boundary of this subdivision plat and Mr. Hoefs comments, while appreciated, were unrelated to the approval criteria described herein.

OVERALL CONCLUSION

Based on the staff report, the application material, and other evidence and testimony in the record, the Planning Commission concludes that the request as presented in the application materials complies with the criteria established for approval of a tentative subdivision plan for the plat of "Sunset Dunes"; and the request is hereby **APPROVED** with the conditions listed below.

1. Once the final plat is recorded, the Community Development Department shall advise utility providers of the requirement that utilities may not be placed within one foot of a survey monument location noted on the recorded document.
2. A conservation easement shall be recorded over Lot 1, Block 1 of the proposed subdivision. Such easement shall carry out the intent outlined in the Memorandum of Understanding between the Agency, City, and OMSI dated March 2013, and the recording information for the easement is to be cross-referenced on the final plat.
3. Agency shall obtain letters from electrical, telephone, cable television, and natural gas utilities service providers stating the requirements for the provision of undergrounding service to the proposed lots. Further, Agency shall obtain a letter from the Public Works Department identifying (a) water main sizes and locations, and pumps needed, if any, to serve the land division; (b) sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division; (c) Storm drainage facilities needed, if any, to handle any

increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding; and (d) Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development. Such letters shall be submitted to the Community Development Department prior to the City signing off the final plat for recording.

4. The Newport Public Works Department shall include language in its construction contracts advising contractors that survey monuments are to be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines once the planned roadway improvements are completed.
5. A final plat shall be submitted within two years of the tentative plat (i.e. concept map) approval. The Agency shall finalize the survey, secure the signatures on the plat from all impacted owners, and prepare necessary conveyance documents to ensure that the lot configuration, ownership, and rights-of-way are established as illustrated on the tentative plat. The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.