AGENDA & Notice of Planning Commission Work Session Meeting

The Planning Commission of the City of Newport will hold a work session meeting at **6:00 p.m., Monday, January 23, 2012,** at the Newport City Hall, Conference Room "A", 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 work session.

NEWPORT PLANNING COMMISSION
Monday, January 23, 2012, 6:00 P.M.

AGENDA

A. Unfinished Business.

1. Continued discussion and amendment of the proposed ordinance for File No. 1-Z-11 involving text amendments related to Bed & Breakfast and Vacation Rental Facilities.

B. New Business.

1. Calendar Year Summary of Planning Commission Accomplishments.

2. Potential Annexation of Big Creek Reservoirs.

C. Adjournment.

City of Newport

Community Development Department

Memo

To: Planning Commission/Commission Citizen Advisory Committee

From: Derrick Tokos, Community Development Director

Date: January 20, 2012

Re: Review of public testimony on vacation Rental and B&B code update

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This work session is an opportunity for Planning Commission and Advisory Committee members to discuss the public testimony provided at the January 9th hearing and provide staff with direction for any changes it would like to see to the proposed draft. Those changes would then be prepared by staff and brought back for review and discussion at the February 13th work session. Minutes from the public hearing are included in your packet. To help facilitate the conversation, I am also attaching the letters that were submitted and the December 27, 2011 matrix containing the proposed code revisions and Ad-Hoc Work Groups rationale for the changes.

File No. 1-Z-11
Attachment "C"
Letter from Norm Ferber
1/3/12

Norm Ferber
Owner Fairhaven Vacation Rentals Established 1995
541-574-0951
Mailing Address 5726 NE Big Creek Rd Newport
Vacation Rental Address 29 SW Coast St. (3 homes) 135 SW Coast St (1 home)

Before I start addressing the problems I have with these proposed set of rules I would like all who take the time to read these to keep this in mind. On a recent trip to California, specifically San Luis Obispo I was struck with the possibility that Newport could eventually become a community similar to it. Here was a community Vibrant and flourishing with a commercial district 6 blocks deep and 9 blocks long. Restaurants, Stores of all manners, the streets were tree lined and active with visitors. I looked at a map of California and realized there were not any major cities really that close and I wondered what the basis for this obvious success was. I realized soon that they are the home to two universities and two prisons. When reading a businesses article in the local paper the author made a point of dividing business into two essential groups. The first recirculated money within the community **the second group created money and brought it into the community so that the first could flourish and exist.**
The Fishing industry brings money into the community, NOAA brings money into the community, The Lodging industry brings money into the community (Vacation Rentals and B &B's are vibrant members of the lodging industry)
The city with its property tax basis and transient room tax are major recipients of the Largess of our Lodging industry. Which one of you reading this now, who operates a business in this community, is willing to donate 10.5% off the top, nothing deducted, to the benefit of the City and State of Oregon?
With this in mind and it is an important point (My Business has created money for this community for 16 years) I want you to carefully read and regard the points I try to make. Fred Postlewaite the president of the Oregon Coast Bank told his board when they were considering one of the many loans I have secured from them over many years that I was the type of person you could build a business around. I am not stating this to brag, my point is that my business Creates money in a dependable manner, with a record of accomplishment, that allow others the security to make plans to create businesses that my customers support.
Case in point look to what Nye Beach is now (I am one among many lodging industry businesses that contribute to this success). It can be argued that there are many other mitigating factors that have played into the success of Nye Beach and I would agree. However, it cannot be argued that stifling the success and progress of Vacation Rentals as a business entity can be beneficial to any of those community members.
With this in mind Consider the onerous regulations and oversight the Community Development official has put together to regulate one of the businesses that finances community development. (I don't mean to demean Derek Tokos with this statement I meant it more as an interesting play on words)

JAN 03 2012

2-4-11.010
Section A.
Opening up the entire community to vacation rentals and B and B's.
Do we allow the outright establishment of other forms of business in r-1 neighborhoods? Bars, Taverns Grocery Stores, Retail stores how would this be beneficial to the oversight process?
In paragraph 1 one of the stated goals of this set of rules is to "protect the character of residential neighborhoods "How does allowing out right use of these areas as a commercial use protect their residential status? Once you allow the establishment of vacation rental businesses (and they are a business), can you not allow other forms of business to service them? (Is this just an arbitrary drawing of a line in the sand as regards business?)
I lived on Fall St. in Newport for 24 years. I had a corner lot. My property which I owned was surrounded on three sides by poorly managed monthly rentals (ones in which the owner actually kept an apartment for seasonal use.) During those 24 years, I was subjected to regular change of tenants and in turn their lifestyles. From closing down bars to vicious dogs. From loud parties to multi agency police actions. From un-policed garbage and abandoned vehicles. When I contacted the City in an effort to control these excesses I was met with silence and in action. We have a heck of a lot more monthly rentals that are a nuisance then Vacation Rentals. Where is the equity here?

B. Transfer of Endorsement
So here you are you have spent a lifetime building up a business, you are approaching your seventies and would like to enjoy what is left of your life. You put your business up for sale (remember it is a business) the value of this business is based on several contributing factors, the structures themselves, there location, the condition of the property and perhaps most importantly the clients who have year after year returned and used your property and have mentioned them to their friends and family. The value of your property is a multiplier based on all these factors, your bottom line.
So your property is up for sale and enters escrow. When the buyer with due diligence realizes that your business does not have any guarantee of its continued existence beyond your ownership based on the whims of the present city government.
So now, the buyer either A. discounts your value based on the unpredictability of its continued existence, or B. extends escrow basing it upon the assurance of its continued existence as a stated business use. Either scenario opens the seller up to further litigation and questions of value of the seller's property. A. I think a lawyer could make a credible argument against the city for damages due to unreasonable lose of value on the part of the seller. B. If for some reason the buyer is denied or uses it as an excuse to back out of the deal perhaps basing it on misrepresentation of value. (The Buyer could intentionally break any of your rules resulting in the denial of endorsement)

C. Continued endorsement with present owner
Same argument as above Lose of value

2-4-11.025
Standards
B. Maximum Occupancy
It is difficult for me to mount a credible argument against the Fire code if in deed this becomes the issue. With three homes side by side and a fourth on the same block, I market my homes as a plausible family reunion destination. Small business meeting location. I do not permit parties, weddings or any other large gatherings. I allow limited time occupancy based on the number of homes rented. Therefore, a party that has rented one home is permitted a gathering of nine persons, two homes 18 persons. I explain to the prospective client the real interest I have is in the preservation of my properties in their quality condition. It is not unusual that clients call and inquire if they can have additional local family members or others join them for a few hours. I take that time to explain to them the nature of my concerns so that we are all on the same page. Do I become the policing force for occupancy during there visits? Would you as a prospective client appreciate that as my role and return to my homes?

C. Parking Standards
My homes were designed and conditional uses were applied for and received based on the rules that existed at that time. Namely one on street parking space and one off street parking space for a four bedroom home.
A whole argument that off street parking on this scale has been made and rejected. When the Nye beach redesign was in its infancy the concept of high-density infill was made on both sides and I was under the impression that those in favor of higher density infill of City mixed- residential/business locations prevailed. That the argument for centralized uses of green space, parking, shopping areas and mixed residential areas had prevailed as opposed to sprawl. The entire Nye Beach area is a living reality of these decisions. The entire area is platted on sub standard lots, with existing structures. The requirement for one parking space per bedroom is entirely unrealistic for the future development of vacation rentals as business entities

D.
Waste Management
(2) Non visibility of trash receptacles
Sounds like this would be fine for the entire cities population and would be far more equitable.

H. Emergency Provisions
So I have included lists of both FEMA and Red Cross preparedness kits
Read through them, do the math, and calculate where to store these items and keep them viable and what they would cost you
Example: For a four-bedroom home with a nine-person occupancy
One gallon of water per person per day for three days = **27 gallons of water or five and**

a half five-gallon containers.

I would like the planning commission and others that consider these regulations to seriously consider the ramifications of these provisions, all of them. They have consequences. Can we really in these recessionary times make things so difficult for business entrepreneurs that they would say the bar is simply too high to even try.
Any business venture presents many major hurdles to its own success. Most, by a wide margin fail. The city and its constituents need responsible predictable growth.
Over the sixteen years of operation of my business, I have had many hard-learned experiences. Out of control parties, Weddings, Seafood and Wine Festival has long been a weekend I have come to dread. These experiences have contributed to three type written pages of policies. Occasionally my homes are abused, because there will always be that element of society that is above common sense and the law. However, do we make life so impossible for the 99.9% of law-abiding citizens that they say to themselves what the use of trying is?

I could continue to find fault with the other standards created but I would like to say that generally they appear to be created to make the creation of Vacation Rentals as an entity onerous enough to simply dissuade persons interested in doing so or to go elsewhere.
If the intention of this set of rules was to make the creation of more vacation rentals prohibitive and onerous to the point of inhibiting, there growth as a viable alternative or addition to the lodging industry as it exists now then you will probably consider them successful. I do not think this is the point of city government to inhibit business growth.
It could be argued that adding additional laws and oversight to every day life would probably be invaluable to the police in efforts to stifle criminal activity as well.
Some of you might question why I would argue in favor of additional competition for my business. The answer lies in my belief that my business as well as the entire community of Nye Beach would benefit from the influx of additional revenue created. That our business community's success lies in a healthy symbiotic relationship among all its members.

Noem Ferber

Preparedness Fast Facts

Get a kit. Make a plan. Be informed.

Get a kit.

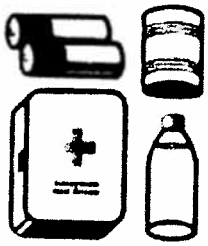
At a minimum, have the basic supplies listed below. Keep supplies in an easytocarry emergency preparedness kit that you can use at home or take with you in case you must evacuate.

Water—one gallon per person, per day (3day supply for evacuation, 2week supply for home)
Food—nonperishable, easytoprepare items (3day supply for evacuation, 2week supply for home)
Flashlight
Batterypowered or handcrank radio (NOAA Weather Radio, if possible)
Extra batteries
First aid kit
Medications (7day supply) and medical items
Multipurpose tool
Sanitation and personal hygiene items
Copies of personal documents (medication list and pertinent medical information, proof of address, deed/lease to home, passports, birth certificates, insurance policies)
Cell phone with chargers
Family and emergency contact information
Extra cash
Emergency blanket
Map(s) of the area

Consider the needs of all family members and add supplies to your kit. Suggested items to help meet additional needs are:

Medical supplies (hearing aids with extra batteries, glasses, contact lenses, syringes, cane)
Baby supplies (bottles, formula, baby food, diapers)
Games and activities for children
Pet supplies (collar, leash, ID, food, carrier, bowl)
Twoway radios

Get a kit



Be Red Cross Ready - Get a kit. Make a plan. Be informed. [PDF]

What's in Your Kit?

Item in My Preparedness Kit	Yes	No
Water	○	○
Food	○	○
Medications and Special Items	○	○
Tools and Supplies	○	○
Sanitation	○	○
Clothing and Bedding	○	○
Emergency Car Kit	○	○
Important Family Documents	○	○
First Aid Kit	○	○

Next Reset

What's in your preparedness kit?

Purchase your Preparedness Kit at the Redcross Store now!

Extra set of car keys and house keys
Manual can opener
Additional supplies to keep at home or in your kit based on the types of disasters common to your area:
Whistle
N95 or surgical masks
Matches
Rain gear
Towels
Work gloves
Tools/supplies for securing your home
Extra clothing, hat and sturdy shoes
Plastic sheeting
Duct tape
Scissors
Household liquid bleach
Entertainment items
Blankets or sleeping bags

SHARE

© Copyright 2011 The American National Red Cross

Basic Disaster Supplies Kit
Maintaining Your Kit
Kit Storage Locations
Water
Food

BASIC DISASTER SUPPLIES KIT

A basic emergency supply kit could include the following recommended items:

- Water, one gallon of water per person per day for at least three days, for drinking and sanitation
- Food, at least a three-day supply of non-perishable food
- Battery-powered or hand crank radio and a NOAA Weather Radio with tone alert and extra batteries for both
- Flashlight and extra batteries
- First aid kit
- Whistle to signal for help
- Dust mask to help filter contaminated air and plastic sheeting and duct tape to shelter in place
- Moist towelettes, garbage bags and plastic ties for personal sanitation
- Wrench or pliers to turn off utilities
- Manual can opener for food
- Local maps
- Cell phone with chargers, inverter or solar charger

Additional Emergency Supplies First Aid Kit Supplies for Unique Needs

Once you have gathered the supplies for a basic emergency kit, you may want to consider adding the following items:

- Prescription medications and glasses
- Infant formula and diapers
- Pet food and extra water for your pet
- Cash or traveler's checks and change
- Important family documents such as copies of insurance policies, identification and bank account records in a waterproof, portable container. You can use the Emergency Financial First Aid Kit (EFAK) (PDF - 977Kb) developed by Operation Hope, FEMA and Citizen Corps to help you organize your information.
- Emergency reference material such as a first aid book or free information from this web site. (See Publications)
- Sleeping bag or warm blanket for each person. Consider additional bedding if you live in a cold-weather climate.
- Complete change of clothing including a long sleeved shirt, long pants and sturdy shoes. Consider additional clothing if you live in a cold-weather climate.
- Household chlorine bleach and medicine dropper – When diluted, nine parts water to one part bleach, bleach can be used as a disinfectant. Or in an emergency, you can use it to treat water by using 16 drops of regular household liquid bleach per gallon of water. Do not use scented, color safe or bleaches with added cleaners.
- Fire extinguisher
- Matches in a waterproof container
- Feminine supplies and personal hygiene items
- Mess kits, paper cups, plates, paper towels and plastic utensils

- Paper and pencil
- Books, games, puzzles or other activities for children

File No. 1-Z-11
Attachment "D"
Email from Gary Mines
1/4/12

Derrick Tokos

From: Gary Mines [gmines@wyoming.com]
Sent: Wednesday, January 04, 2012 2:13 PM
To: Derrick Tokos
Cc: Wanda Haney
Subject: Vacation Rentals, Application Materials

Mr. Tokos,

Having received a notification letter concerning vacation rentals, I have some input I would like considered as it is germane to the vacation rental discussion.

Occasionally, those of us living next door are saddled with renters that party (loudly) most of the night. When it is time to get up in the morning to go to work, we struggle out of bed because we have been kept awake all night. Meanwhile, the revelers sleep through the day so they are ready to party again when night comes. The first night is aggravating, the second one maddening and it goes downhill from there.

Apparently there is no noise ordinance in Newport, but we feel that there should be a system in place to contain this problem. A full time neighbor would never cause such problems and hotels and motels have the authority to quell noise makers that disturb other guests, but problem guests in vacation rentals are unregulated and uncontained.

I suggest that if vacation rentals are allowed, the neighbors have the ability to call the police department and the police should have the authority to rectify the problem, much the same as in a motel. This service should be paid for by the owners of the vacation rentals. We deserve a reasonable expectation of peace and quiet in our homes. That expectation was bought and paid for when we purchased our property.

Thank you for your consideration of this matter.

Gary Mines
307-389-0602

File No. 1-Z-11
Attachment "E"
Letter from Bob Berman & Cindy Lippincott – 1/4/12

Bob Berman and Cindy Lippincott
180 NW 73rd Court
Newport, OR 97365
541-265-7736 CindyAndBob@earthlink.net

4 January 2012

To: Newport Planning Commission

Re: File No. 1-Z-11, Zoning Ordinance, Bed & Breakfast and Vacation Rental Facilities

Commissioners,

Please accept this letter as written testimony in lieu of a personal appearance at the legislative hearing to be held on 9 January 2012. I will be traveling and cannot attend that meeting in person.

I was a member of the ad hoc committee that developed the proposed language for changes to the zoning ordinance. I would like to thank the Commission for the opportunity to participate and to commend Derrick Tokos for his excellent preparation, coordination, and meeting stewardship during the life of the ad hoc committee.

The draft amendments were the result of committee deliberations but do not represent complete agreement among the members on several provisions. I would like to take this opportunity to present those opinions of mine that differ from the draft amendment language.

First, a little background. Since 2008, one property owner in my neighborhood had been renting a residence in flagrant violation of even the very limited current regulations. During 2008, 2009, and 2010, he rented the property at least 25 times each year; the statutory limit is ten rentals per year. I believe that in 2008 and 2009, he did not either collect nor remit room taxes and had no city business license (a conservative calculation indicates lost revenue to the city of at least $6,000.) The excessive rental activity was very disruptive and resulted in incidents such as: unattended trash cans blowing over and spreading trash throughout the neighborhood; vehicles parked in front of other houses and even blocking driveways; loud motorcycles racing up and down the block; loud noise from kids playing in the street; people trespassing on neighbors' property and throwing things off the bluff; and illegal fireworks. In one case, there was even a group of renters standing in the middle of the street with a shotgun clearly visible. The house is advertised as sleeping 15-16 but in one case, there were 30 people sleeping there and an additional 15 meeting there during the day.

During those three years, several of the neighbors repeatedly complained to the city, to no avail. We met with two city managers, two community development directors, and testified before the city council. Nothing was done; we were told that there was not enough evidence to initiate an enforcement action and that it would not be possible to gather such evidence. Finally, in 2010, the community development director and the city attorney negotiated an agreement with the property

owner that committed him to following the current regulations. He subsequently found a nice family to rent the house long term (except for the summer months when he continues to rent the property as a vacation rental) and we have had essentially no problems since then.

Based on these experiences, I firmly believe that it is NOT appropriate to allow vacation rentals in R-1 and R-2 zones. Period. Vacation rentals are commercial endeavors and have no place in single-family residential neighborhoods. In general, the city does not allow businesses to operate in residential areas and should not allow it now. Vacation rentals are particularly troublesome because the property owner or manager does not reside at the property and may even reside, as in our case, hundreds of miles or more from the property. The owner is not in any sense a part of the neighborhood, has not developed any relationships here, and has no sense of responsibility to those of us who live here full time. An actual quote from the *Vacation Rental By Owner* listing sums up his attitude: "He originally built the home as a spec home but missed the hot real estate market, so subsequently made it a vacation rental."

The amendments also apply to Bed and Breakfasts and, as such, actually allow them to be set up in areas *where they are currently prohibited*. Although Bed and Breakfasts are also commercial operations, they are somewhat more tolerable in residential areas because, unlike vacation rentals, the owner/operator actually lives at the residence and becomes a part of the neighborhood. Nevertheless, they are businesses, just like vacation rentals, and should not be allowed in single-family residential areas.

One stated purpose of section 2-4-11 is to "protect the character of residential neighborhoods". That purpose is not compatible with unlimited vacation rentals and bed and breakfasts in those neighborhoods. I would strongly urge you to change the wording of 2.4.11.010(A) to exclude R-1 and R-2 zones.

Other Notes and Comments, by section:

2-4-11.015(B). At the end, "shall not be issued", not "shall not issue"

2-4-11.015(D). If an approved Conditional Use Permit grants relief to one or more of the standards, it should be made clear that all of the other standards must still be met.

2-4-11.025(F). At the end of the first sentence, add the phrase "whether such tenancy is paid or not". In the circumstance in our neighborhood, the owner claimed that the excess rentals were "friends, family, and clients". This was demonstrably false but the city accepted it without question. This suggested change will clarify that *all* occupancies are subject to the requirements of this section.

Also, change "occupants" to "overnight occupants" in the second sentence. The standards primarily limit the number of overnight guests and any violations of that standard would relate to overnight occupants.

2-4-11.025(G). I feel that the "contact person" for each property should be someone who can respond *in person* if necessary to the property. Our committee struggled with inserting the word "local" here but we could not agree on a definition (in the city, in the county, within 30 minutes, etc.) Nevertheless,

there may be circumstances where the presence of an owner or designee is required at the property to handle a specific situation. Language should be added here to make sure that will happen.

2-4-11.040. It seems to me that when a complaint is received by the contact person, he or she should be required to respond to the person who initiated the complaint, explaining the action taken to fix the situation. As written, this section only requires that the person log the complaint. This is inconsistent with 2-4-11.050(E) which implies that the owner's designated contact must respond to the tenant, citizen, or city.

2-4-11.050. There should be some time period within which the violation must be corrected. If, for example, the violation relates to advertising that is not in compliance, how much time does the owner have to correct the ad before it becomes an additional violation?

Thank you for your consideration of this testimony. I will be glad to respond to any questions you may have via email, as I would if I were able to appear in person.

Bob Berman

COMMENTS AND SUGGESTIONS
REGARDING PROPOSED
ORDINANCE AMENDING NZO RELATING TO VACATION RENTALS AND
BED AND BREAKFAST FACILITIES
Submitted on behalf of Whaler Motel, Inc.

These comments are submitted to the Newport Planning Commission as part of the record at the public hearing of January 9, 2012 considering proposed amendments to the Newport Zoning Ordinance relating to vacation rentals.

Background: The Whaler Motel, Inc. (Whaler) operates a 73 room motel facility in the City of Newport, at 155 SW Elizabeth Street. In addition, Whaler own and rents on a short term basis four homes in the immediate area. Whaler has been in operation for more than 30 years. To the best of our knowledge, Whaler has never been the subject of a complaint. Paying and complying fully with the room tax ordinance. The proposed ordinance presents certain issues which we believe jeopardize the ability to continue to operate several of the rental houses. Our concerns and suggestions are set forth hereafter:

Exclude Tourist Commercial? We realize that there may be conflicts in residential neighborhoods between full-time residents and vacation rentals. However, this ordinance extends heavy regulation not only to vacation rentals operating in residential neighborhoods, but includes commercial and tourist commercial zones. We are not aware that there has been a demonstrated need for such regulation in the tourist commercial zone, and we would strongly urge that the tourist commercial zone be excluded from the application of the new ordinance, except for the business license and registration requirement.

Commercial Zone: Although Whaler is not directly affected by the application of the ordinance to the general commercial zones, we wonder if proposed Section 2-4-11.010, which provides that "vacation rental and bed and breakfast uses are permitted in all residential and commercial zone districts..." creates an unintended consequence? For many years, the City has been reluctant to permit residential construction in commercial zones. It is our understanding that residential uses still are not permitted on the ground level in a commercial zone. However, the foregoing language appears to permit the construction of vacation rentals in commercial zones. A residential vacation structure is not far from a general residential structure, and it seems likely that there will be pressure to allow residential uses, or to allow the conversion of vacation rentals to full-time residential use, wherever vacation rentals are permitted.

Comments about specific portions of the ordinance:

1. Section 2-4-11.010(B) provides that an "endorsement" for a vacation rental (by which term, as used here, we mean to include bed and breakfast use) is specific to the owner, not to the property. While we have no problem with the concept that upon sale of the property the new owner should obtain the necessary license, the use of the term "approval" suggests that the approval may not be forthcoming. The need for a *new* approval suggests that the new owner would be required to comply with building and life safety codes in effect at the time the approval

is sought. These codes are ever-changing, and that is a somewhat unusual requirement. Typically, compliance with the codes in effect at the time of construction is considered compliance, unless there is substantial remodeling.

2. Section 2-4-11.011(D) requires existing rentals to obtain approvals. Again, we do not object to the requirement that there be some kind of registration and license fee, but the possibility of denying continued use of a rental which has been in use for many years is a very great concern. We wonder if consideration has been given to the possibility that such a provision could lead to the assertion of takings claims, both under general principals of eminent domain law as well as the specific provisions of Oregon's notorious measures 37/49?

Subsection D(1) seems to provide an appropriate exception, but upon careful analysis, an exception is created only in the event an owner "previously received land use approval specifically authorizing a vacation rental or bed and breakfast facility...". That does not seem to create an exception for pre-existing uses which at a time when no specific land use approval was required to authorize a vacation rental or bed and breakfast facility. Perhaps any "grandfather" could be tied to a history of room tax compliance.

[Moreover, the exception only appears to apply to a vacation rental and bed and breakfast use in existence on the effective date of the original ordinance. If land use approval is granted after the effective date, there is no assurance that future approvals (as required in the event of a sale or transfer of the property) would be available.]

3. Section 2-4-11.025 C (Parking Standards) requires compliance with NZO Section 2-3-6 as to location and design. We believe that existing available parking for existing uses should not be required to be supplemented in order to comply with NZO Section 2-3-6.

4. Similarly, we would hope that occupancy limitations would not apply to units currently being rented successfully except to the extent such units would not comply with the building and safety codes which would apply in a similar family residence.

5. Section 2-4-11.025 H requires special emergency information and equipment in case of natural disaster, power outage or other information, and requires an emergency supply kit, and instructions for turning off water and gas. Although we recognize the desirability of emergency preparedness, we wonder if a vacation rental occupant is going to be able to make use of such a kit, we wonder what the kit should contain, and we particularly question the advisability of even a hint that a vacation guest might attempt to disconnect utilities such as water and gas.

6. Section 2-4-11.025 K requires written consent from all "affected owners" in case of shared driveway, parking or beach access. We are not certain what constitutes "shared...access," or who would qualify as an "affected owner". This could become an impossible task where there are a number of persons sharing the same private street (Woody Way, by way of example).

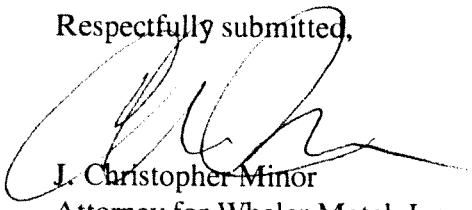
7. Section 2-4-11.030 A requires inspections by the City to make certain that existing facilities comply with building/life and safety codes. While we question whether the City really

wants to undertake that responsibility, if so, what codes will be applied? As compliance is generally predicated upon conformity with the codes which existed at the time of construction, properties are usually not required, as matter of course, to adopt and incorporate every change in standards adopted later.

8. Section 2-4-11.050 imposes penalties, which is normal in the case of ordinances such as this. However, we wonder if the penalties should be a monetary nature, rather than license suspension or termination, since license suspension or termination could very adversely affect innocent vacationers who have made reservations and planned a vacation.

We appreciate the hard work which has gone into the comprehensive draft ordinance, and we hope that our comments and suggestions may be helpful in the continuing effort to deal effectively with these issues.

Respectfully submitted,



J. Christopher Minor
Attorney for Whaler Motel, Inc.

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Draft Vacation Rental /Bed and Breakfast Code Amendments	**Ad-Hoc Work Group Rationale for Changes** *(including responses to 9/12/11 open house feedback)*
<u>Section 2-4-11</u>. BED AND BREAKFAST AND VACATION RENTAL FACILITIES **2-4-11.005. Purpose.** This section establishes the terms, criteria and procedures by which bed and breakfast and vacation rental uses may be permitted to ensure the safety and convenience of renters, owners and neighboring property owners; protect the character of residential neighborhoods; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and accumulation of refuse.	This subsection sets out the reasons why the City establishes rules for the operation of vacation rental and bed and breakfast establishments. The city's existing codes do not clearly articulate why regulations have been put in place for these uses.
2-4-11.010. General Provisions. A. Vacation rental and bed and breakfast uses are permitted in all residential and commercial zone districts subject to a business license endorsement ("endorsement") pursuant to the provisions of this section; B. An endorsement for a vacation rental or bed and breakfast use is specific to the owner of a dwelling unit. When the holder of an endorsement sells or transfers the real property, the new owner shall apply for and receive a new approval before using the dwelling unit as a vacation rental or bed and breakfast facility; C. Vacation rental or bed and breakfast endorsements shall remain in effect so long as a valid business license is maintained for the rental use and the property is not sold or transferred; D. Each vacation rental and bed and breakfast use in existence as of the effective date of this section shall be subject to the provisions of this section.	This subsection sets out general standards for vacation rental and bed and breakfast facilities. It establishes that they are a permitted use in all residential and commercial zones subject to a set of clear and objectives standards. This is more permissive than current city rules, which limit the number of vacation rental occurrences to not more than 10 per calendar year in residential districts and either prohibits bed and breakfast facilities (in the case of the R-1 and R-2 zones) or allows them subject to conditional use approval. This subsection also sets out how preexisting uses are to be treated. The subsection was amended following the 9/12/11 open house to reflect that there will only be one business license that is required. Owners will then obtain an endorsement to the license for each vacation rental that they operate. Persons that attended the open house expressed a concern about the cost and administrative challenge of tracking multiple licenses. This change responds to that concern. While the City may elect to impose a fee for endorsements to cover its administrative expenses, using an endorsement approach should still be more cost effective to a business owner then if they were required to obtain separate business licenses for each vacation rental or bed and breakfast unit that they operate.

(1) A business license endorsement shall be applied for within one hundred twenty (120) days of the effective date of the ordinance enacting this section. In the event an owner previously received land use approval specifically authorizing a vacation rental or bed and breakfast facility, even if that use fails to conform to one or more of the standards listed within subsection 2-4-11.025, below, the City shall permit the existing land use to continue without requiring compliance with the specific standard or standards; (2) A prior land use approval shall be voided and the standards of 2-4-11.025 complied with if: (a) an owner fails to apply for an endorsement within one hundred twenty (120) days of the effective date of the ordinance; or (b) a business license lapses for at least 12 consecutive months. (3) The provisions of this subsection 2-4-11.010 govern, notwithstanding NZO Section 2-5-1, governing Nonconforming Uses, Structures, and Lots. E. If one or more of the standards under subsection 2-4-11.025 cannot be met, an owner may seek approval of a vacation rental or bed and breakfast use as a Conditional Use, pursuant to Section 2-5-3 of this Ordinance. A Conditional Use Permit may allow relief from one or more of the endorsement standards of subsection 2-4-11.025, but does not excuse the general NZO Section 2-4-11 endorsement requirement.	Several comments were made at the open house related to the issue of grandfathering existing vacation rental and bed and breakfast uses. Individuals that have gone through the expense of obtaining a land use approval should be entitled to a reasonable return on their investment. However, a wholesale grandfathering of these uses creates separate classes of operators which raises fairness issues and creates processes that are more complicated and potentially expensive for all involved. The proposed language strikes an appropriate balance. Operators can rely on existing approvals where they conflict with the new standards. Existing approvals also run with the land and are transferable to new owners. Existing operators should be required to obtain endorsements, and satisfy the standards that they can meet. That way everyone is operating on close to the same playing field and important new safety standards are being met. Prior approvals should expire if an owner does not come in to obtain an endorsement within a reasonable amount of time (120 days). The City has compiled a list of operators as part of this process, and notice should be provided so that operators have time to address this requirement. Also, if a business license is allowed to lapse for 12 months, then the prior approval should be extinguished. If the activity has ceased then there is no longer that investment backed expectation and having the next person meet the current rules helps to further the objective of getting everyone on the same page. Directing existing operators into the nonconforming code adds an extra permitting step, uncertainty, and cost. This is unnecessary and should be avoided if possible. One of the problems with the current process is that there is nothing in place to ensure that new owners understand the rules. Permits are approved and subsequent owners aren't aware that they exist. Making endorsements personal to the owner resolves this issue.

	The initial draft of the code only allowed a Conditional Use Permit to be submitted if the City determined that one or more of the standards for an endorsement couldn't be met. If someone knows that they can't meet all of the standards, then they should be able to submit the application without having to first submit an endorsement request to the City. The proposed changes also clarify that a Conditional Use Permit is an alternative approach to addressing endorsement standards that cannot be met on their face. An endorsement is still required for those standards that can be met. This wasn't clear in the first draft.
2-4-11.015. <u>Approval Authority</u>. A. Upon receipt of an application for a vacation rental or bed and breakfast endorsement, the Community Development Director, or designee shall determine if the request satisfies the standards of subsection 2-4-11.025. If the request satisfies the standards, then the Director shall issue the endorsement and provide notice per subsection 2-4-11.035. Such action is ministerial and, as a non-discretionary act, is not subject to appeal. The endorsement is effective upon satisfaction of the inspection requirements of subsection 2-4-11.030. B. In the event that the Community Development Director or designee determines that an application does not meet one or more of the standards of subsection 2-4-11.025, an endorsement shall not issue. C. A Conditional Use Permit application for a vacation rental or bed and breakfast use shall be submitted to the Community Development Director, or designee, and shall be reviewed by the Planning Commission via a Type III decision making process, consistent with NZO Section 2-6-1, Procedural Requirements. D. An approved Conditional Use Permit that grants relief from, or provides alternative requirements to, one or more of the standards of subsection 2-4-11.025 shall satisfy the standards of subsection 2-4-11.025 and permit the Director to issue the endorsement.	This subsection sets out the City's procedures for approving vacation rental and bed and breakfast uses. Following the open house, clarifying language was added that the City cannot issue an endorsement if standards are not being met unless a Conditional Use Permit is approved granting the operator relief from those standards. The conditional use option is not an alternative to a person obtaining an endorsement. Rather, it is an avenue where they can obtain relief from certain standards if the Planning Commission believes that granting such relief is consistent with the approval standards for conditional uses (e.g. no greater adverse impact on the neighborhood, public facilities are adequate, etc.). An example that came up at the open house is a dwelling that lacks space for off-street parking. It may be that the dwelling is in an area where there is ample on-street parking. The conditional use process offers a forum for an applicant to make their case, and the Planning Commission to determine whether or not the alternative proposed is appropriate. The proposed changes explain that this is the purpose of the conditional use option. A Conditional Use Permit runs with the land whereas an endorsement is specific to the operator, so it is important that the City's code identify that they are different processes.

2-4-11.020. <u>Application Submittal Requirements</u>. An application for a vacation rental or bed and breakfast endorsement shall be submitted on a form provided by the Community Development Department, and shall include the following: A. Site plan, drawn to scale, showing the dimensions, property lines, existing buildings, landscaped area, and off-street parking locations; B. Lincoln County Assessor's map showing the subject property and notification area; and C. Names and addresses of property owners within 200' of the subject property (or outline of property that is held in common), as shown in the records of the County Assessor. If the property is within a Homeowners Association, then contact information for the Association shall also be provided.	This subsection describes the types of information that must be included in an application to establish a vacation rental or bed and breakfast use on a property.
2-4-11.025. Standards for Vacation Rental or Bed and Breakfast Endorsement. An application for a vacation rental or bed and breakfast use shall comply with the following standards: A. <u>Maximum Overnight Occupancy</u>. Maximum overnight occupancy shall be two (2) persons per bedroom, plus two additional persons per property; B. <u>Maximum Building Occupancy</u>. The maximum number of individuals permitted within a vacation rental or bed and breakfast are subject to the limitations of the Uniform Fire Code;	This subsection sets out the standards for obtaining an endorsement. Some persons who attended the open house felt that the fire code maximum building occupancy of one (1) person for every 200 square feet of gross floor area was unreasonable, and would make it unlawful to rent vacation rentals for family gatherings. The City has adopted the Uniform Fire Code, so the issue isn't whether or not it should be applied; rather, it is whether the City should call it out as part of this code update. As a matter of fairness to operators, many of which may not be familiar with these types of codes, it is prudent that the requirement be called out. The current fire code standard of one (1) person for every 200 square feet can be listed on the application form. Questions were raised as to why rooms in public buildings allow higher occupancies. It is because they have enhanced emergency egress (larger isle widths, double doors equipped with panic bars, illuminated exit signs, etc.). These improvements are not typically found in homes that are used as vacation rentals or bed and breakfast facilities.

C. Parking Standards. One (1) off-street parking space per bedroom that is dedicated to the vacation rental or bed and breakfast use. The location and design of parking spaces shall comply with NZO Section 2-3-6, and designated spaces shall be available at all times to guests;	Concerns were raised at the open house about situations where a home lacks the spaces to provide off-street parking spaces. If it is an existing vacation rental, the changes under General Provisions provide the owner an opportunity to continue to operate the rental without providing off-street parking. If these changes are adopted, and an individual desires to use a dwelling for a vacation rental or bed and breakfast use where there is insufficient area for off-street parking then they have an opportunity to apply for a Conditional Use Permit. The Planning Commission would then determine whether or not the use is appropriate given circumstances particular to that area. The language has also been clarified to note that spaces must be available to guests at all times. With the prior version, there was some confusion that handicapped accessible parking was being sought. Comments were made that a prohibition on the use of on-street parking by guests would be difficult to enforce, and that those individuals should have the same opportunity to use available on-street spaces as anyone else. The Ad-Hoc Work Group agreed and dropped the prohibition on use of on-street spaces.
D. Waste Management. Weekly solid waste disposal service shall be provided while the dwelling is available for vacation rental or bed and breakfast use; (1) Owner or designee shall provide for regular garbage removal from the premises; and (2) Trash receptacles shall be stored or screened out of plain view of the street.	A prohibition on dumpsters was dropped. Dumpsters are not usually found in residential areas, and support an intensity of use that is not typical to a residential structure. They are; however, common in commercial and multi-family developments. Comments were received explaining how they are effectively used where multiple homes are managed for vacation rental purposes. In this case, the utility of dumpsters as a waste management tool outweigh concerns that they facilitate an intensity of use that is out of character in residential areas.
E. Landscaping. For vacation rental and bed and breakfast uses situated on individual lots or parcels in residential zones, at least 50% of the front yard and 40% of the total area shall be landscaped. No more than 50% of the front yard landscaping may be impervious surfaces, such as patios and decks. Driveway and parking areas shall not satisfy any portion of these landscaping requirements;	The percentages of a lot or parcel to be landscaped are comparable to what other jurisdictions require of vacation rentals. They ensure that the residential appearance of a property is maintained (i.e. the entire yard isn't paved or graveled for parking to maximize income at the expense of the residential character of the neighborhood). These standards are proposed for residential areas only, so that clarification has been added.

	A concern was raised at the open house about properties in Nye Beach that are on narrow lots where they may not be able to satisfy these requirements. Many of those properties are in commercial zones where this requirement will not apply. If it is in a residential area then a conditional use option is available.
F. Guest Register. Owner or designee shall maintain a guest and vehicle register for each tenancy. The register shall include the name, home address, and phone number of the primary tenant; the total number of occupants; vehicle license plate numbers of all vehicles used by the tenants, and the date of the rental period. This information shall be provided to the City upon request;	Concerns were raised at the open house that this requirement is intrusive and unnecessary. The Ad-Hoc Work Group disagreed. Hotels and motels are required to gather this information so that it is accessible to emergency responders. Vacation rentals and bed and breakfast facilities should be held to the same standards. It is also essential for resolving complaints. Questions were raised about the need for detailed information about each occupant. Hotels and motels collect details on the primary tenant and all vehicles, and the proposed language has been amended to match.
G. Contact Information. Owner or designee shall maintain on file with the City the name, telephone number, mailing address and email address (if available) of a contact person responsible for responding to questions or concerns regarding operation of the vacation rental or bed and breakfast. The contact person or designee must accept calls on a 24 hour basis and respond to inquiries from a tenant, complainant or the City within 30 minutes;	An "in person" response isn't always necessary or appropriate, so the proposed code has been changed to essentially leave that up to the designated contact. The same holds for possession of a key. This is something that can similarly be left to the owner/operator to address.
H. Emergency Provisions. Owner or designee shall provide information and equipment within the dwelling unit to inform and assist renters in the event of a natural disaster, power outage, or other emergency. Required information and equipment includes, but is not limited to: (1) A tsunami evacuation map produced by Lincoln County Emergency Services, Oregon Department of Geology and Mineral Industries or other agency with similar authority. (2) An emergency supply kit containing items recommended by a disaster relief organization such as the American Red Cross or Federal	Persons attending the open house pointed out that the City should identify the types of information or equipment that an operator needs to provide in a dwelling unit. That information has been added. Changes in technology or our understanding of emergency preparedness may necessitate that other items be listed in the future. Therefore, it is appropriate to keep language in the proposal that provides the City Council the opportunity to update the list by resolution.

Emergency Management Agency. (3) Instructions for turning off water and gas to the dwelling unit. (4) Other information or equipment as established by resolution of the City Council;	
I. Noise. Noise levels shall conform to the requirements of Chapter 8.15 of the Newport Municipal Code;	This subsection is more or less as originally proposed.
J. Posting. A copy of the business license endorsement shall be located within the vacation rental or bed and breakfast and its location shall be posted inside the dwelling unit's primary entrance. In addition to the endorsement, such information shall include occupancy limits; a phone number and address for the designated contact; a diagram of the premises with parking locations; the maximum number of vehicles that can be parked on-site; instructions for trash pick-up, storage and recycling; emergency information; and the noise limitations of Section 8.15.015 of the Newport Municipal Code. This information shall be maintained and current at all times;	A comment was received at the open house suggesting that having information posted by the door gives a vacation rental or bed and breakfast too much of a "hotel/motel" look. The proposed language only requires that the location of the information be posted by the door. People anticipate such posting next to a door, so this requirement will help guests find the information. An operator is free to decide where they want to place the balance of the information such that it meets their needs (e.g. a binder on a table, in a cabinet drawer, etc.).
K. Shared Access. Written consent is required from affected owners for applications that rely upon shared driveway, parking or beach access;	This subsection is more or less as originally proposed.
L. Signs. Signs shall conform with applicable provisions of Title X of the Newport Municipal Code;	This subsection is more or less as originally proposed.
M. Business License Required. A business license for the rental use shall be obtained pursuant to Chapter 4.05 of the Newport Municipal Code; and	This subsection is more or less as originally proposed.
N. Room Tax. Owner or designee shall adhere to the room tax requirements of Chapter 3.05 of the Newport Municipal Code.	This subsection is more or less as originally proposed.
2-4-11.030. Inspections. A. A dwelling unit proposed for a vacation rental or bed and breakfast use	It was pointed out at the open house that existing bed and breakfast or vacation rental units should be provided reasonable time to make needed changes before they are faced with the prospect of not being able to rent

shall be inspected by the Building Official or designee to determine its conformance with the State of Oregon Residential Specialty Code and the endorsement standards of subsection 2-4-11.025. If the Building Official or designee requires alterations, the identified deficiencies must be corrected as follows: (1) In circumstances where the unit is already subject to a rental agreement the Building Official or designee may allow continued use, provided corrective action is taken to correct the deficiencies within 30 days. (2) For units undergoing an initial inspection prior to vacation rental or bed and breakfast use, corrective action shall be undertaken before the dwelling unit can be rented. B. Dwelling units with an endorsement for vacation rental or bed and breakfast use shall be subject to periodic re-inspection by the Building Official or designee at the City's discretion to ensure compliance with the provisions of this chapter. The timeframe for such inspections is subject to the City's discretion and available resources.	a unit. Language to that effect has been added. It is structured to be at the Building Official's discretion as some deficiencies, such as certain building violations, may be a significant enough issue that allowing an operator to continue to rent a unit would pose a significant health and safety risk to guests. Questions were raised about the qualifications of the Building Official's "designee" or the frequency of re-inspections. The City should have some flexibility in how it administers an inspection program. Staff turnover occurs and resources vary depending upon available budgets. It is in the City's interest to ensure that qualified individuals perform inspections and that re-inspections occur frequently enough to ensure that endorsement standards are being met and the units are safe. Pinning down the inspection schedule or qualifications to tight could put the City in a position where it could not meet its inspection obligations.
2-4-11.035. Notice Requirements. Upon issuance of an endorsement, the City shall provide notice to property owners within 200' of the subject property (or outline of property that is held in common) and a Homeowners Association, if one is established where the dwelling unit is located, advising that an endorsement for a vacation rental or bed and breakfast use has been issued. Such notice shall include the address of the dwelling unit that received the endorsement, a location where additional information can be obtained about the nature of the endorsement, and the name, phone number, mailing address, and email address (if available) of the owner or designated contact.	This subsection is more or less as originally proposed.
2-4-11.040. Complaints. The designated contact identified in subsection 2-4-11.025(G) above, is the initial point of contact for complaints regarding the use of the dwelling unit. That individual shall maintain a written log documenting the nature of all complaints, the dates they were	A comment was made that the complaint log requirement should be dropped. Having an operator's point of contact as the point person for working through complaints should help to get issues resolved more quickly. If a complainant believes that an issue is not getting resolved,

received, and efforts taken to resolve issues that have been raised. The written log shall be provided to the City upon request.	then they can ask the City to initiate enforcement. Without a complaint log it will be very difficult for the City, operator, or the complainant to know where things broke down. That is why it is important that the complaint log requirement be retained.
2-4-11.045. Violations. Penalties, as specified in subsection 2-4-11.050, may be imposed for one or more of the following violations: A. Advertising; renting; using; or offering for use, occupancy or rent; a vacation rental or bed and breakfast facility where the owner does not hold a valid endorsement issued pursuant to this section; B. Advertising; renting; using; or offering for use, occupancy or rent; a vacation rental or bed and breakfast facility in a manner that does not comply with the endorsement requirements of subsection 2-4-11.025; C. Failure to comply with the endorsement standards and operational requirements of this NZO Section 2-4-11; D. Failure by the owner to pay the transient room tax required by Chapter 3.05 of the Newport Municipal Code; or E. Failure of the owner's designated contact to respond to tenant, citizen or City complaints or inquiries. "Failure to respond" occurs if City staff is unable to reach the designated contact after three attempts, using the information that the owner or designee has on file with the City.	This subsection is more or less as originally proposed.
2-4-11.050. Penalties. Penalties for a violation of subsection 2-4-11.045.A shall be as established in NZO Section 2-6-8. Where the owner possesses a valid endorsement or land use permit, the penalties for violations of 2-4-11.045.B-E shall be as follows: A. For the first violation within a 12 month period, City shall issue a written warning to owner. B. For the second violation within a 12 month period, City shall suspend	An endorsement to a business license is personal to the owner; whereas, a Conditional Use Permit runs with the land. They are different types of authorizations made by different decision making bodies, so it is important that they be addressed separately. Clarification language was added.

owner's vacation rental or bed and breakfast endorsement for 30 days. C. For the third violation within a 12 month period: 1) City shall revoke owner's vacation rental or bed and breakfast endorsement; and 2) where an endorsement includes a Conditional Use Permit, City shall also initiate the revocation procedure as outlined under NZO Section 2-6-1.075.	
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2-1-1.101. <u>Definitions</u>. As used in this Ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean: *** <u>Bed and Breakfast Facility</u>.** An owner occupied single-family dwelling containing not more than five (5) guest rooms, where meals are provided for a fee on a daily or weekly room rental basis, not to exceed 30 consecutive days. *** <u>Hotel</u>. A building in which lodging is provided for guests for compensation and contains a common entrance and where lodging rooms do not have an entrance opening directly to the outdoors (except for emergencies), with or without cooking facilities, and where more than 50 percent of the lodging rooms are for rent to transient guests for a continuous period of less than 30 days. A bed and breakfast facility or a vacation rental conducted in a single family dwelling or individual dwelling unit is not a hotel use. ***	At the open house, questions were raised about the difference between a hotel/motel use and a vacation rental or bed and breakfast facility. The Newport Zoning Ordinance contains definitions for a variety of different temporary lodging arrangements. The City may want to consolidate them at some point. In looking at the hotel/motel definitions it is evident that a distinction needs to be made between that type of use and a vacation rental or bed and breakfast facility. The 2010 Oregon Structural Specialty Code allows *Lodging Houses* to stay under the Oregon Residential Specialty Code. It defines lodging houses as being a building or portion thereof that contains not more than five (5) guest rooms. Because most bed and breakfast facilities or vacation rentals are conducted in existing dwellings that cannot be readily retrofitted to meet commercial building codes (e.g. sprinkler system requirements, different hallway/staircase widths, etc.), it is appropriate to ensure that the uses are defined in the Newport Zoning Ordinance in a manner that allows them to qualify as a type of construction that is permitted to comply with the Residential Building Code. This is why the five (5) guest room limit should be applied. Definitions for hotel/motel uses have also been clarified to not include bed and breakfast facilities or vacation rentals. After the Ad Hoc Work Group completed its work, and city staff was preparing the code amendments, it became apparent that City definitions for "time share" interests need to be addressed with these amendments. Staff shared the issue with Ad-Hoc Work Group members, some of

Motel. A building or group of buildings in which lodging is provided for guests for compensation, containing guest units with separate entrances from the building exterior, with or without cooking facilities, and where more than 40 percent of the lodging rooms are for rent to transient guests for a continuous period of less than 30 days. A bed and breakfast facility or a vacation rental conducted in a single family dwelling or individual dwelling unit is not a motel use. *** ~~Pre-existing Time Share Project. A time share project the outstanding interests in which have already been created, or with respect to which a notice of intent (such as currently required by ORS 92.345 and/or ORS 91.602) as required by law or any administrative regulations disclosing the nature and number of the interest to be created therein has been filed with the Real Estate Division of the State of Oregon on or prior to the effective date of the adoption of this Ordinance. Such a "pre-existing time share project" shall constitute a pre-existing, non-conforming use, to the extent that the same might otherwise constitute a prohibited use. However, such status as a "pre-existing time share project" shall not authorize the creation of additional interests or the subdivision of any existing interests or the expansion of such project beyond that which existed or was so disclosed at or prior to the effective date of the adoption of this ordinance, except and unless the same shall conform and comply with all applicable requirements of this ordinance and any other applicable ordinances, regulations, or statutes.~~ *** Residential Unit. See definition of "Dwelling Unit."~~An owner- or renter-occupied room or rooms which are living quarters (excluding individual occupancy rooms in any motel or hotel), including any condominium unit, boarding house, and each unit of any apartment boarding house or similar improvement, which unit is used or designed to be used for occupancy by no more than one single family at one time (except for transient guests of occupants). If such unit is intended for or occupied by more than one family, the same shall constitute as many units as the number of families for which the same is intended to be or shall be occupied. For instance, if the unit is~~	which forwarded their thoughts with the Planning Commission, who discussed that matter at its November 26, 2011 work session. At that work session the Planning Commission determined that timeshare arrangements as a "land use" are more akin to typical property ownership than a transient rental arrangement and; therefore, should not be specifically regulated. If a timeshare is rented for periods less than 30 days, as is a common practice, then it is captured as a vacation rental and subject to the same requirements as any other vacation rental.

~~intended for or occupied by two families, the same shall constitute two units, and so forth. A structure constructed as a motel or hotel may not be used except for transient residential purposes unless the property shall conform to all zoning, density, and other requirements for the construction of such structure as a residential use as such requirements shall exist at the time residential use is sought to be established. If any residential unit shall constitute a "time share interest" or be part of a "time share project", as in this ordinance defined (except a pre-existing time share project) the same shall not constitute a residential unit for the purpose of permitting the same to be located in zones R-1, R-2, or R-3, and such "time share interests" shall be permitted only in such zones as the same shall be permitted outright or in such zones as the same shall be permitted as a conditional use, subject to application for and allowance of such a conditional use. Any unit which is rented or offered for rent upon a tenancy less than a tenancy by the month (as, for instance, by the day or by the week) shall not be considered a residential unit for the purposes of this ordinance and shall not be permitted as a residential use but only as a hotel use or weekly rental, where allowed.~~

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~~Time Share Interest. Any interest, direct or indirect, in a time share project. For the purposes of determining whether property, or any part thereof, has been divided into 11 or more undivided interests, and shall thereby constitute a time share project, there shall be included in the determination of the number of such interests outstanding every person having any form of right, contractual or otherwise, pursuant to which the holder shall have the right to the use or possession of such portion of such real property or of any improvement thereon, including any interest in any lot, parcel, condominium or leasehold, whether or not such interest shall constitute an undivided interest in real property or whether the same shall be styled a membership, lease hold, or other contractual agreement whereby a right to possession is created. For the purposes hereof, an interest held in common by more than one person or entity shall not be deemed to constitute more than one separate interest unless the holders thereof shall have the right, directly or indirectly, whether by written or oral agreement, to use, possess, or enjoy such interest at separate times, or by one of the common owners of such interests. Any interest held~~

~~solely by a husband and wife as tenants by the entirety, or which is held as joint tenants with right of survivorship solely by brothers and sisters or solely by husband and wife and their children shall be presumed to constitute but a single interest; interests held in common by other persons shall be presumed to constitute separate interests, which prescription may be rebutted by evidence that the holders of such interests have and enjoy a common right of possession, and do not have the right to possession or use of the premises at separate times or to the exclusion of other holders of such interest.~~

~~Time Share Project. Any real property and/or improvements upon real property which are subject to any plan or arrangement such that the right to the use and possession of one or more dwelling units thereof shall have been divided into 11 or more interests whereby the holder of such an interest shall have a right to the possession of all or part of one part of the premises subject to such interest, to the exclusion of persons holding other interests therein during any period, whether annually recurring or not. "Time share projects" shall include any premises any part of which shall be subject to agreements, whether written or oral, whereby 11 or more common owners shall divide the right to the use or possession of said premises such that each such owner shall have a period during which such owner shall have the right to the use of such premises to the exclusion of others, whether or not such right shall be expressly designated as a separate ownership interest, and shall also include all such real property and improvements or interests therein as any part of which may be owned or possessed by a single entity, such as a corporation or partnership, if such entity shall hold title in trust or otherwise subject to an agreement or arrangement whereby 11 or more possessory interests are created. "Time share project" shall not include a tenancy in common, as such a tenancy exists at common law, if unmodified by any restrictive covenants or other agreement whereby such common tenants have or may claim or exercise the right to exclusive use, occupancy, or possession of the premises to the exclusion of other tenants as, for instance, where such tenants in common may hold property for business or investment purposes.~~

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Vacation Rental. A dwelling unit containing not more than five (5) guest rooms that is rented for less than 30 consecutive days.

~~Weekly Rental. Any owner- or renter-occupied room or unit used as living quarters and which would constitute a permitted residential unit but for the fact that the same is offered for rent or rented by the week shall be a "weekly rental." No such residential unit may be permitted as a "weekly rental" unless the same shall be rented not more than 10 times in any calendar year and only upon condition that any sign used to announce the availability of such unit for such rental shall be attached to or suspended from such unit in accordance with all applicable codes and requirements and shall be not more than 1.5 square feet in size.~~	
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Section 2-2-1. ZONING DISTRICTS*` *** **2-2-1.025. Residential Uses.** The following list sets forth the uses allowed within the residential land use classification. Uses not identified herein are not allowed. *** D. Community Services *** (11) Bed and Breakfast Facility — R-1: P[1], R-2: P[1], R-3: P[1], R-4: P[1] *** (29) Vacation Rental — R-1: P[1], R-2: P[1], R-3: P[1], R-4: P[1] [1] Subject to endorsement requirements of Section 2-4-11	Comments were received at the open house that the City should not permit bed and breakfast facilities in R-1 and R-2 zones, where they are currently not allowed. There was also discussion about limiting vacation rentals in the R-1 and R-2, including a comment that the City should explore tenancy limits (e.g. not more than 1 rental for every 14 days). While there are a few jurisdictions that impose tenancy limits, they could be difficult to enforce and would likely require active oversight. There also does not appear to be a strong public desire to pursue this course of action (only one comment). Bed and breakfast facilities are very similar to vacation rentals, so there does not appear to be a strong rationale for prohibiting them in zones where vacation rentals are allowed. Some jurisdictions limit vacation rentals and/or bed and breakfast facilities by zone district, or they limit the number of units through spacing requirements or hard caps on the number of permits/licenses that are issued. These approaches are resource intensive, and it is not clear that they are effective. The market will dictate where these uses are viable. The Planning Commission can propose that the City Council restrict these uses in R-1 and R-2 zones, if it believes it is appropriate to do so.

City of Newport

Community Development Department

Memo

To: Planning Commission/Commission Citizen Advisory Committee

From: Derrick Tokos, Community Development Director

Date: January 20, 2012

Re: Calendar Year Summary of Planning Commission Accomplishments

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Attached is an updated work program with the status of legislative projects that the Planning Commission has been working on. I have also enclosed the December 2011 monthly update that we provided the City Council. It has annual figures in terms of permit traffic. This is a great opportunity to discuss where we are at and priorities moving forward. I am also happy to answer any questions you may have regarding these reports.

PLANNING COMMISSION WORK PROGRAM
LEGISLATIVE PROJECTS
CITY OF NEWPORT COMMUNITY DEVELOPMENT DEPARTMENT
January 2012

File	Description	Status and Target Meeting Dates
12-Z-09	Zoning Code Update: Geologic Hazards (includes Comprehensive Plan text amendments) **COMPLETED**	Map updated for identifying when site evaluations are required; vague or overly strict provisions clarified; new standards for erosion control during construction; submittal standards have been updated; and a requirement has been added that engineering geologists perform post-construction certification. **PC Work Sessions: 8/09 to 5/10 (eight sessions), on partial remand 1/24/11, 3/14/11** **PC Hearing: 3/8/10, 4/26/10, 6/14/10, 7/12/10, 2/14/11** **City Council Work Sessions: 8/9/10, 9/27/10, 11/29/10, 4/4/11** **City Council Hearings: 9/7/10, 10/18/10, 11/15/10, 12/6/10, 6/14/11** **City Council: 7/18/11**
1-Z-10	Zoning Code Update: Planned Developments **COMPLETED**	Clarified criteria that apply to preliminary and final development plans, added an allowance for neighborhood commercial uses in residential planned developments, and created an expedited process for minor final development plan changes. **PC Work Sessions: 1/28/10, 3/8/10** **PC Hearing: 5/24/10** **City Council: 6/7/10**
2-Z-10	Manufactured Dwellings, Mobile Home Parks, RV Parks, and Trailer Parks **COMPLETED**	Addressed discrepancies with state law, consolidated language, and eliminated redundant and outdated provisions. Amended Chapters 6.25 and 13.05 of the Municipal Code to include statutory rules for subdividing preexisting manufactured dwelling parks, and clarified the enforceability of requirements relating to the parking of recreational vehicles within the City. **PC Work Sessions: 6/28/10, 7/12/10, 7/26/10** **PC Hearing: 9/13/10, 10-11-10** **City Council: 11/1/10**

3-Z-10	Parking, Loading and Access Requirements **COMPLETED**	Brought the code into compliance with Americans with Disabilities Act (ADA) requirements, updated parking ratios, provided criteria for drive through facilities, added access management standards consistent with 2008 Transportation System Plan (TSP) policies, allowed shared parking arrangements outright, and updated the payment-in-lieu of parking boundaries for the City Center area. **PC Work Sessions: 6/28/10, 7/26/10, 8/23/10** **PC Hearing: 9/13/10** **City Council: 12/6/10**
4-Z-10	Accessory Uses and Home Occupations **COMPLETED**	Clarifies the process for determining when a structure is accessory to a primary use, provides for placement of accessory structures on parcels or lots adjacent to a primary use, and allows for larger structures if they meet setbacks. Updates to the home occupation rules eliminate outdated requirements, clarify standards and add revocation provisions if standards are not followed. Changes to enforcement language clarify that code enforcement staff may inspect properties at reasonable times. **PC Work Sessions: 8/23/10, 9/13/10, 10/11/10, 10/25/10** **PC Hearing: 12/13/10** **City Council: 1/18/11**
5-Z-10	Zoning District Update (Changes to SIC Code structure and consolidation of Industrial Zones) **COMPLETED**	Replaces the Standard Industrial Code (SIC) land use classification with a use category approach. Last presented to Planning Commission 2/22/10. New draft to be prepared for consideration at future work session. **PC Work Sessions: 10/09 to 3/11 (seven sessions)** **PC Hearing: 4/25/11, 6/13/11, 7/25/11, 8/8/11** **City Council: 9/19/11**
1-CP-11	Newport Housing and Buildable Lands Study **COMPLETED**	Implemented recommendations of the Housing Needs and Buildable Lands Study (conducted by EcoNorthwest). Includes programatic changes to clarify when and how the city should go about reassessing housing needs, incentives for creating workforce housing (e.g. land bank program, affordable housing fund), and regulatory changes to facilitate a range of housing options (e.g. reductions to minimum lot sizes, and allowances for Accessory Dwelling Units).

		PC Work Sessions: 3/14/11, 3/28/11, 4/25/11, 5/9/11 **PC Hearing: 5/25/11** **City Council: 6/20/11**
2-CP-11	South Beach TSP Update **PENDING**	Establishment of an alternate highway mobility standard for South Beach to allow more robust development. Requires amendments to the Transportation System Plan. **PC Work Sessions: 2/28/11, 6/27/11, 10/10/11** **PC Hearing:** **City Council:**
3-CP-11	Newport Economic Opportunity Analysis **PENDING**	Economic vision and goal setting process with implementation measures that are targeted at the city's role in helping the community achieve its desired outcomes. Products include commercial/industrial buildable lands analysis, employment forecast, employer needs assessment, and updated economic section of the Newport Comprehensive Plan. **Technical Advisory Committee to meet 12/11 through 6/12**
1-Z-11	Vacation Rental and B&B Code Update **PENDING**	Text amendment to update Newport Zoning Ordinance provisions related to vacation rentals and bed and breakfast establishments. **PC Work Sessions: 9/10 to 11/11 (nine sessions) including 9/12/11 (Open House),** **PC Hearing: 1/9/12** **City Council: 3/19/12 (tentative)**
2-Z-11	Pacific Communities Health District **COMPLETED**	MAP: 11-11-08-CA—9100 (749 SW 11th St) Change from R-3 to R-4 zoning. **PC Hearing: 8/22/11** **City Council: 9/6/11**
3-Z-11	Street Renaming and Addressing **COMPLETED**	**Amended Title IX of the Newport Municipal Code** adding Chapter 9.85 regarding naming & renaming streets and other public places and the numbering of properties. **PC Work Sessions: 6/27/11, 7/25/11** **PC Hearing: 8/8/11, 9/26/11** **City Council: 9/6/11, 10/3/11**

4-Z-11	Newport Rehabilitation **COMPLETED**	MAP: 11-11-08-CA (Block 15, Bayley & Case's Addition to Newport) Change from R-3 to R-4 zoning. **PC Hearing: 11/14/11** **City Council: 12/5/11**
5-Z-11	Tree City USA **PENDING**	Amendments to the Newport Zoning Ordinance and Newport Municipal Code to establish a program for managing the City's urban tree canopy in order to support an application to the Arbor Day Foundation for a Tree City USA designation. **PC Work Sessions: 10/10/11, 11/14/11, 11/28/11** **PC Hearing: 1/23/12** **City Council:**
6-Z-11	Codification of Zoning Ordinance **PENDING**	Miscellaneous zoning ordinance text amendments for housekeeping purposes and codification of the zoning ordinance into the Newport Municipal Code. **PC Work Sessions: 11/28/11** **PC Hearing: 2/13/12 (tentative)** **City Council:**
1-Z-12	Sign Code Amendments for Electronic Reader Boards **PENDING**	Applicant initiated text amendments to Title X of the Newport Municipal Code to allow LED reader boards in the city's C-3 zone district. **PC Work Sessions: 1/9/12, 2/13/12 (tentative)** **PC Hearing: 2/27/12 (tentative)** **City Council:**
	Local Wetlands Inventory	The City completed phase one of the project by mapping the location and identifying the quality of wetland and riparian areas within the Newport UGB. DSL is still reviewing the materials. Phase two will include the development of local land use regulations to protect significant wetlands and riparian areas. Work on this phase has been delayed pending new federal guidelines for development in riparian/wetland areas in floodplains. Those federal guidelines are likely to be released 2013/14 timeframe.
	Agate Way Transportation and Recreational Enhancement	Includes the construction of restroom and showers at the public parking area southwest of the intersection of Lighthouse Drive and Highway 101. A trail would also be constructed

		from the restrooms to the north end of Agate Beach (i.e. the surfer access), and NW Gilbert Way would be fully constructed as a one way street out of the neighborhood. A conceptual design was developed in early 2011. In December of 2011, the City applied for a National Scenic Byways Grant to complete the project.
	Highway 101 Crosswalk Enhancements	City secured $450,000 in grant funds from ODOT to improve the safety of the Highway 101 crosswalks north of the bridge. Construction will occur later this year. This implements priority projects identified in the 2008 Transportation System Plan Update
	Annexation of Big Creek Reservoirs	Process to be initiated by the Newport City Council, likely in February. Will require the adoption of Comprehensive Plan and Zoning Ordinance language calling for development of a rural holding zone for public utilities and annexation of the properties.
	Coho Brant Neighborhood Plan	Project will map out right-of-way and needed infrastructure improvements for areas west of Highway 101 from the bridge south to SE 40th street. Staff to issue RFP for consulting services in January 2012.
	Creation of a Land Bank for Workforce Housing	Top implementation priority of the Housing Study that was adopted June 2011. Staff is working with stakeholders to develop a framework for how the land bank and associated housing fund should function.
	Accessory Dwelling Units (ADUs)	Development of standards to allow ADUs in all residential zone districts. This was the second Housing Study implementation priority. No work has occurred on this item.
	Code for Park Models	Development of zoning standards to make it easier to locate park models as a year round residence in manufactured home parks. This was the third Housing Study implementation priority. No work has occurred on this item.
	Erosion Control Standards	Creating erosion control standards that apply to development "city-wide" was identified as a priority by both the Planning Commission and Council. This came about during deliberations on the geologic hazards code update. No work has occurred on this item.
	Territorial Sea Planning Process	Earlier this month, the City and County agreed that Newport should take the lead in conducting county-wide outreach on this issue. This is particularly true with respect to the impacts that wave energy devices can have on viewsheds and the interplay between in-water and upland wave energy development. The outreach will be coordinated with DLCD, and will likely occur this spring.

Memo

To: Jim Voetberg, City Manager and City Council

From: Derrick Tokos, Community Development Director

Date: December 28, 2011

Re: Department Update

MONTHLY PERMIT FIGURES

Here is a summary of December activities. For context in terms of permit volumes, in calendar year 2010 the City issued 143 building permits, totaling $46,685,750 in construction value. Building permit fees alone totaled $303,106. The City received 76 land use applications. The number of building permits issued and land use actions received for 2010 was slightly above our 10 year average.

	Building Permits	Electrical Permits	Plumbing Permits	Construction Value	Land Use Actions
Dec.	8 ($13,304.93)	18 ($1,963.36)	4 ($505.90)	$1,666,600	5 ($846)
YTD	111 ($147,623.00)	227 ($28,487.63)	73 ($18,593.68)	$18,361,373	55 ($12,712)

December building activity included permits for the new Walgreens building, conversion of a dwelling into medical offices, repair of the gangway at Port Dock 5, a commercial remodel, two residential remodels/additions, and a couple of sign permits. The land use actions include a legislative amendment (housekeeping), an adjustment of parking standards for Fred Meyers, a property line adjustment, and an estuarine use and land use compatibility review for repair of the dock at Englund Marine.

STATUS OF MAJOR CONSTRUCTION PROJECTS

Port Terminal Project: Continuing to drive pile for the new docks (should take another 45 days or so).

Wal-Mart Expansion: Recently conducted framing inspection, remodel work focused on offices and restrooms.

Water Treatment Plant: Continuing work on the mechanical systems.

Lincoln County School District: The new classrooms, band room, and shop room at the High School are framed and about half of it is drywalled. Framing inspection scheduled for 1/3/12 so that rest of drywall work can start. Plans are being reviewed for classroom additions at the Prep Academy that will replace modulars.

Nazarene Church Outreach/Community Center: Continuing work on steel framing for building.

Rogue Brewery Expansion: Plan review has been completed for a 20,000 square foot expansion to the brewery. City will release permits once the Port (as the property owner) signs off on the work. The Port and Rogue are continuing negotiations on the lease.

Walgreens: Plans have been reviewed and permits are ready to be pulled for construction of the building.

Fred Meyer: Plans are being reviewed for a 15,000+ sq. ft. second floor expansion and remodel of the store. Issuance is contingent upon Fred Meyer obtaining an adjustment to the City's minimum parking requirements. The adjustment is scheduled for Planning Commission consideration on January 9, 2012.

SIGNIFICANT PLANNING PROJECTS

Safe Haven Hill Tsunami Evacuation Improvements: ODOT Flex Fund Grant Application submitted 10/20/11, and has progressed through the first round of review. The City should hear if it was successful in early January. FEMA grant application to be submitted once Geotechnical Engineer's Final Report is prepared. Staff is still waiting on the report.

Creation of Land Bank for Work Force Housing: Top implementation priority of Housing Study adopted by the City Council on 6/20/11. Staff is working with stakeholders to develop an ordinance to provide a framework for how the "Land Bank" and "Housing Fund" should function.

Vacation Rental Code Update: The Ad-Hoc Work Group and Planning Commission have completed their work on the draft, which includes a number of changes in response to feedback received at the September Open House. The City Council will hold a work session on 1/3/12 and Planning Commission will conduct a hearing on 1/9/12.

Transportation System Plan Update: Work is progressing slowly, having been delayed as a result of ODOT contract amendments with its consultants. Two major elements are substantially complete. They are a draft trip budget zoning overlay for South Beach, and thresholds/criteria for traffic impact analysis reports (not currently required by the City). ODOT updated cost estimates for the "preferred" transportation network along with what can be reasonably funded, and a package of City Comprehensive Plan amendments is being prepared. A public open house is slated for February of next year. Local legislative adoption will follow.

Agate Beach Street and Recreation Enhancements: The National Scenic Byways grant application was submitted. The City should hear how it ranks against other State projects in January. A decision by Federal Highways is likely to occur in May or June of 2012.

Territorial Sea Planning Process: OCZMA is coordinating outreach efforts with local governments, particularly with regards to addressing the impact of wave energy devices on sensitive viewsheds and addressing the interplay between in-water and upland wave energy development. It is likely that the City will need to assist in getting the public engaged. This will likely occur in the January/February timeframe.

Coho/Brant Neighborhood Plan: This URA project will map out right-of-way and needed improvements for areas west of Highway 101 from the bridge south to SE 40th Street. RFP to be issued in January.

Newport Economic Opportunity Analysis: Kick-off meeting with the TAC held 12/15/11. Consultant is beginning the economic trend and employment forecast update. They are also reviewing past economic studies and will pull together recommendations that have and have not been implemented from those studies to inform the TAC's economic visioning discussion. Next TAC meeting to be scheduled for late January or early February.

COMMITTEE WORK

Planning Commission: A public hearing on the Vacation Rental Code update is scheduled for 1/9/12. The Fred Meyer parking adjustment request will also be considered that night. On 1/23/12 the Commission will hold a hearing on the Tree City USA amendments, targeted code revisions related to codification of the Zoning Ordinance into the Municipal Code, and sign code amendments requested by Walgreens.

Parking Districts: The Nye Beach Advisory Committee will meet on 1/10/12 to review sidewalk improvements to 3rd St and 6th St. The City Center Committee is soliciting public comments on their plans for revising timed parking and loading area requirements in the core downtown area. The Bay Front Committee hasn't met yet.

City of Newport

Community Development Department

Memo

To: Planning Commission/Commission Citizen Advisory Committee

From: Derrick Tokos, Community Development Director

Date: January 19, 2012

Re: Annexation of City Properties Adjacent to Big Creek Reservoir

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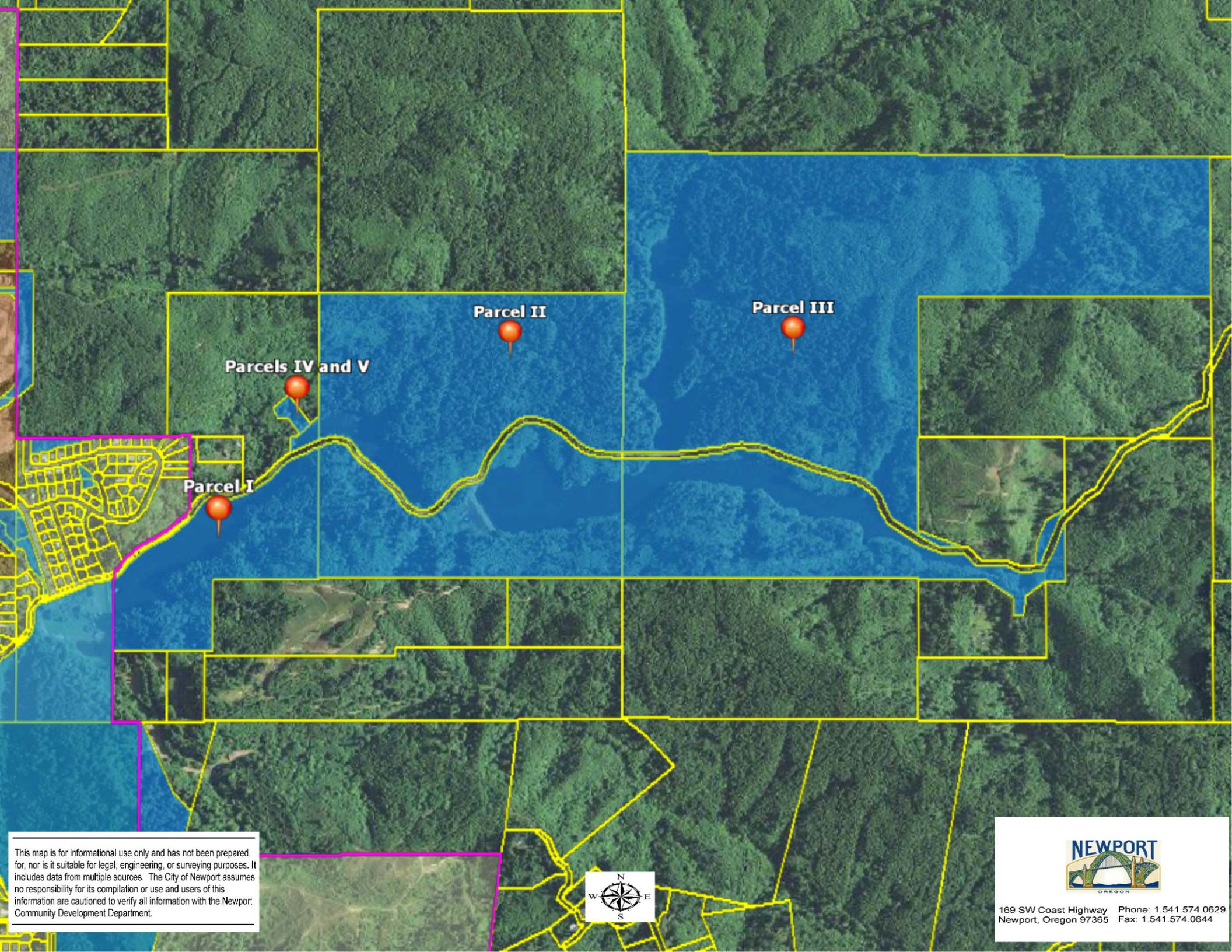
The City Council is looking at annexing city owned property adjacent to, and including, the Big Creek Reservoirs (map attached). Annexing these properties will simplify jurisdictional issues, making it easier to permit future improvements to the city's water treatment and distribution system.

Because these properties are outside of the Newport Urban Growth Boundary, the City will need to amend its Comprehensive Plan to establish policies for rural properties and adopt a rural zoning code. The reservoirs and adjoining properties are subject to Statewide Planning Goal 4 for forest lands, meaning that the list of permitted uses is limited to those outlined in OAR 660-006-0025 (attached).

Public hearings before the Planning Commission and City Council will be required for the Comprehensive Plan Amendment, Zoning Ordinance Amendment, and annexation.

For this work session, I would appreciate it if you could look over the OAR list of uses that we can allow in a rural zone and identify any that you don't think would be appropriate. Any other observations that you have regarding how the code should be structured are appreciated. The County zoning code that currently applies to the property is also enclosed for context.



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

NEWPORT OREGON

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660-006-0025

Uses Authorized in Forest Zones

(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are:

(a) Uses related to and in support of forest operations;

(b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment;

(c) Locationally dependent uses, such as communication towers, mineral and aggregate resources, etc.;

(d) Dwellings authorized by ORS 215.705 to 215.755; and

(e) Other dwellings under prescribed conditions.

(2) The following uses pursuant to the Forest Practices Act (ORS Chapter 527) and Goal 4 shall be allowed in forest zones:

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;

(b) Temporary on-site structures that are auxiliary to and used during the term of a particular forest operation;

(c) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities; and

(d) For the purposes of section (2) of this rule "auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(3) The following uses may be allowed outright on forest lands:

(a) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources;

(b) Farm use as defined in ORS 215.203;

(c) Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups;

(d) Temporary portable facility for the primary processing of forest products;

(e) Exploration for mineral and aggregate resources as defined in ORS chapter 517;

(f) Private hunting and fishing operations without any lodging accommodations;

(g) Towers and fire stations for forest fire protection;

(h) Widening of roads within existing rights-of-way in conformance with the transportation element of acknowledged comprehensive plans and public road and highway projects as described in ORS 215.213(1) and 215.283(1);

(i) Water intake facilities, canals and distribution lines for farm irrigation and ponds;

(j) Caretaker residences for public parks and public fish hatcheries;

(k) Uninhabitable structures accessory to fish and wildlife enhancement;

(l) Temporary forest labor camps;

(m) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head;

(n) Destination resorts reviewed and approved pursuant to ORS 197.435 to 197.467 and Goal 8;

(o) Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation;

(p) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structures;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling; and

(q) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this division.

(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:

(a) Permanent facility for the primary processing of forest products;

(b) Permanent logging equipment repair and storage;

(c) Log scaling and weigh stations;

(d) Disposal site for solid waste approved by the governing body of a city or county or both and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation;

(e)(A) Private parks and campgrounds. Campgrounds in private parks shall only be those allowed by this subsection. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campsites may be occupied by a tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites. Campgrounds authorized by this rule shall not

include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

(B) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by paragraph (4)(e)(C) of this rule.

(C) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(f) Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable;

(g) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS chapter 520, and not otherwise permitted under subsection (3)(m) of this rule (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS chapter 517;

(h) Television, microwave and radio communication facilities and transmission towers;

(i) Fire stations for rural fire protection;

(j) Commercial utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4;

(k) Aids to navigation and aviation;

(l) Water intake facilities, related treatment facilities, pumping stations, and distribution lines;

(m) Reservoirs and water impoundments;

(n) Firearms training facility;

(o) Cemeteries;

(p) Private seasonal accommodations for fee hunting operations may be allowed subject to section (5) of this rule, OAR 660-006-0029, and 660-006-0035 and the following requirements:

(A) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;

(B) Only minor incidental and accessory retail sales are permitted;

(C) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and

(D) A governing body may impose other appropriate conditions.

(q) New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width;

(r) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects;

(s) Home occupations as defined in ORS 215.448;

(t) A manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative as defined in ORS 215.213 and 215.283. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this subsection is not eligible for replacement under subsection (3)(p) of this rule. Governing bodies every two years shall review the permit authorizing such mobile homes. When the hardships end, governing bodies or their designate shall require the removal of such mobile homes. Oregon Department of Environmental Quality review and removal requirements also apply to such mobile homes. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons;

(u) Expansion of existing airports;

(v) Public road and highway projects as described in ORS 215.213(2)(p) through (r) and (10) and 215.283(2)(q) through (s) and (3);

(w) Private accommodations for fishing occupied on a temporary basis may be allowed subject to section (5) of this rule, OAR 600-060-0029 and 660-006-0035 and the following requirements:

(A) Accommodations limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;

(B) Only minor incidental and accessory retail sales are permitted;

(C) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;

(D) Accommodations must be located within one-quarter mile of fish bearing Class I waters; and

(E) A governing body may impose other appropriate conditions.

(x) Forest management research and experimentation facilities as described by ORS 526.215 or where accessory to forest operations; and

(y) An outdoor mass gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings are those of more than 3,000 persons that continue or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces.

(5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands:

(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

(c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.

(6) Nothing in this rule relieves governing bodies from complying with other requirement contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 8-1995, f. & cert. ef. 6-29-95; ; LCDC 3-1996, f.

& cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2011, f. & cert. ef. 2-2-11

Lincoln County Zoning that currently applies to the City of Newport's Big Creek Reservoir Properties

1.1375 Timber Conservation Zone T-C

In a T-C zone the following regulations shall apply:

(1) **Uses Permitted Outright**:

The following uses and their accessory uses are permitted outright, subject to applicable siting criteria, other applicable provisions of this section, and applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1901-1.1999:

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash.

(b) Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation. As used in this paragraph, "auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An "auxiliary structure" is located on-site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(c) Physical alterations to the land auxiliary to forest practices, including but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities.

(d) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.

(e) Farm use as defined in ORS 215.203.

(f) Local distribution lines, such as electric, telephone and natural gas, and accessory equipment, such as electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals, or equipment which provides service hookups, including water service hookups.

(g) Temporary portable facility for the primary processing of forest products. The facility shall not be placed on a permanent foundation and shall be removed at the conclusion of the forest operation requiring its use.

(h) Temporary forest labor camps limited to the duration of the forest operation requiring the use.

(i) Exploration for, and production of, geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head as defined in ORS chapters 517 and 520.

(j) Caretaker residences for public parks and fish hatcheries.

(k) Private hunting and fishing operations without any accommodations.

(L) Exploration for mineral and aggregate resources as defined in ORS chapter 517.

(m) Towers and fire stations for forest fire protection.

(n) Widening of roads within existing rights-of-way in conformance with the transportation element of acknowledged comprehensive plans, including public road and highway projects as described in ORS 215.213(1)(L) through (o) and ORS 215.283(1)(k) through (n).

(o) Water intake facilities, canals and distribution lines for farm irrigation and ponds.

(p) Uninhabitable structures accessory to fish and wildlife enhancement.

(q) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact interior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring or interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to a permitted nonresidential use within 90 days of completion of the replacement dwelling.

(2) **Conditional Uses Permitted**:

The following uses may be permitted subject to provisions of subsection (3) of this section and applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999:

(a) Permanent facility for the primary processing of forest products.

(b) Permanent logging equipment repair and storage.

(c) Log scaling and weigh stations.

(d) Disposal site for solid waste approved by the governing body of a city or county or both and for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation.

(e) Parks and campgrounds.

(f) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS chapter 520, and not otherwise permitted under paragraph (i) of subsection (1) of this section, such as compressors, separators and storage serving multiple wells, and mining and processing of aggregate and mineral resources as defined in ORS chapter 517.

(g) Television, microwave and radio communication facilities and transmission towers.

(h) Fire stations for rural fire protection.

(i) Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR 660, Division 4;

(j) Aids to navigation and aviation.

(k) Water intake facilities, related treatment facilities, pumping stations, and distribution lines.

(L) Reservoirs and water impoundments.

(m) Firearms training facility.

(n) Cemeteries.

(o) Private seasonal accommodations for fee hunting operation, subject to subsections (3), (6) and (7) of this section and the following requirements:

(A) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code.

(B) Only minor incidental and accessory retail sales are permitted.

(C) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission.

(p) New electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines, such as gas, oil and geothermal, with rights-of-way 50 feet wide or less in width.

(q) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.

(r) Home occupations.

(s) Medical hardship dwelling.

(t) Expansion of existing airports.

(u) Public road and highway projects as described in ORS 215.213(2)(p) through (r) and ORS 215.283(2)(p) through (r).

(v) Private accommodations for fishing occupied on a temporary basis, subject to subsections (3), (6) and (7) of this section, and the following requirements:

(A) Accommodations limited to no more than 15 guest rooms, as that term is defined in the Oregon Structural Specialty Code;

(B) Only minor incidental and accessory retail sales are permitted;

(C) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission; and

(D) Accommodations must be located within 1/4 mile of fish bearing Class I waters.

(w) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.

(x) One single-family dwelling on a tract meeting the following qualifications:

(A) The lot or parcel on which the dwelling is to be sited was lawfully created and was acquired by the present owner prior to January 1, 1985, or by devise or intestate succession from a person who acquired the lot or parcel prior to January 1, 1985. As used in this subparagraph, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner, or a business entity owned by any one or combination of these family members.

(B) The tract upon which the dwelling is to be sited does not include another dwelling.

(C) The tract is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species.

(D) The tract is located within 1,500 feet of a maintained public road as defined in ORS 368.001 that is either paved or surfaced with rock, but not including United States Forest Service and Bureau of Land Management roads.

(E) If the tract on which the dwelling is to be sited consists of more than one lot or parcel, all lots and parcels within the tract shall be consolidated into a single lot or parcel.

(y) Non-forest dwelling, subject to the provisions of subsections (5), (6) and (7) of this section.

(z) One single family dwelling on a tract of 160 or more contiguous acres and located on a lawfully created lot or parcel or at least 200 acres in one ownership that are not contiguous but are within Lincoln County, Lane County, Benton County, Polk County or Tillamook County and are zoned for forest use. A deed restriction shall be filed pursuant to paragraphs (h) through (k) of subsection (6) of this section for all parcels that are used to meet the acreage requirements of this subsection.

(3) **Limitations on Conditional Uses**:

The Planning Director or Commission shall determine whether a use other than a dwelling authorized by subsection (2) of this section meets the following requirements. These requirements are designed to make the use compatible with forest operations and agriculture, and to conserve values found on forest lands:

(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

(b) The proposed use will not significantly increase fire hazard, significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and

(c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and paragraphs (e), (l), (r), (s) and (v) of subsection (2) of this section.

(4) **Lot Size Standards**:

(a) The minimum lot size shall be 80 acres.

(b) Land divisions creating parcels less than 80 acres in size may be approved:

(A) For uses which have been authorized in accordance with paragraphs (a) through (n) of subsection (2) of this section. Such parcels shall be the minimum size necessary to accommodate the authorized use.

(B) To allow the establishment of a parcel for an existing dwelling, subject to the following requirements:

(i) The parcel established shall be not larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;

(ii) The dwelling was lawfully established prior to June 1, 1995;

(iii) The remaining parcel, not containing the dwelling, is 80 acres or more in size or is consolidated with another parcel, and together the parcels are 80 acres or more in size;

(iv) The remaining parcel, not containing the dwelling, is not entitled to a dwelling; and

(v) The applicant landowner agrees to record in the deed records of the county a restriction applicable to the remaining parcel not containing the dwelling which prohibits the placement of any new dwellings on the parcel, and is irrevocable unless a statement is signed by the director indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to forest land; and

(vi) The applicant landowner agrees to record in the deed records of the county a statement declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use..

(C) To allow the division of a lot or parcel if:

(i) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(ii) Each dwelling currently complies with the criteria for a replacement dwelling under LCC 1.1375(1)(q);

(iii) None of the dwellings was approved under a statute, administrative rule or land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel;

(iv) At least one dwelling is located on each lot or parcel created;

(v) Not more than one of the lots or parcels created is less than two acres or greater than five acres in size; and

(vi) The landowner of a lot or parcel created under this subparagraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded in the county deed records. A restriction imposed under this subsubparagraph shall be irrevocable unless a statement of release is signed by the director indicating that the land use regulations applicable to the subject lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use.

(c) The director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under the restrictions imposed by subsubparagraph (v) of subparagraph (B) of paragraph (b) of this subsection and of parcels that do not qualify for division under the restrictions imposed under subsubparagraph (vi) of subparagraph (C) of this subsection. The record shall be readily available to the public for inspection.

(5) **Non-Forest Dwellings**:

(a) Tracts Not Abutting a Public Road or Perennial Stream and Tracts of Less Than 60 Acres Which Abut a Perennial Stream:

A non-forest dwelling to be sited on a tract which does not abut a road or perennial stream, or which abuts a perennial stream and is less than 60 acres in size, shall meet the following qualifications:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the subject tract; and

(B) At least three dwellings existed on January 1, 1993, anywhere on the other lots or parcels described in subparagraph (A) of this paragraph.

(b) Tracts of Less Than 60 Acres Which Abut a Public Road:

A non-forest dwelling to be sited on a tract which is less than 60 acres in size and which abuts a road that existed on January 1, 1993, shall meet the following qualifications:

(A) All or part of 11 other lots or parcels that existed on January 1, 1993, are within either a 160 acre square centered on the subject tract or a 160 acre rectangle 1/4 mile wide and one mile long, centered on the subject tract and, to the maximum extent possible, aligned with the road; and

(B) At least three other dwellings existed on January 1, 1993, on the other lots or parcels described in subparagraph (A) of this paragraph.

(c) Tracts of 60 Acres or Greater Which Abut a Public Road or Perennial Stream:

A non-forest dwelling to be sited on tract which is 60 acres or greater in size and which abuts a road or perennial stream shall meet the following qualifications:

(A) All or part of 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre rectangle 1/4 mile wide and one mile long centered on the subject tract and, to the maximum extent possible, aligned with the road or stream;

(B) At least three other dwellings existed on January 1, 1993, on the other lots or parcels described in subparagraph (A) of this paragraph. At least one of the three dwellings shall be on the same side of road or stream as the subject tract, and shall be either within the 160 acre rectangle or within 1/4 mile of the edge of the subject tract but not outside the length of the 160 acre rectangle; and

(C) If a road crosses the subject tract, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.

(d) Lots or parcels within urban growth boundaries shall not be counted toward satisfying the qualification requirements for any dwelling permitted under this subsection.

(e) No dwelling may be permitted under this subsection on any tract which includes a dwelling.

(f) If the lot or parcel upon which a dwelling permitted under this subsection is to be sited is part of a tract, no additional dwellings may be permitted on any other lot or parcel within the tract. Deed restrictions shall be established pursuant to and in accordance with subsection (6) of this section.

(g) All dwellings permitted under this subsection shall be located on a lawfully created lot or parcel.

(6) **General Requirements for All Dwellings**:

In addition to the other applicable requirements of this chapter and this section, all dwellings authorized in the T-C zone shall be subject to the following conditions:

(a) The director shall notify the county assessor of any decision to approve a dwelling in the T-C zone.

(b) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.

(c) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved.

(d) The property owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor shall inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.

(e) Upon notification by the assessor the Department of Forestry shall determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

(f) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules, OAR chapter 629. For purposes of this subsection, evidence of a domestic water supply means:

(A) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;

(B) A water use permit issued by the Water Resources Department for the use described in the application; or

(C) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

(g) If road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(h) For dwellings which are approved on a tract consisting of more than one lot or parcel, the applicant shall provide copies of covenants and restrictions which:

(A) Are set forth on a form prescribed by the division and recorded in the deed records of the county;

(B) Prohibit the location of any additional dwellings on any lot or parcel which is a part of the tract; and

(C) Are irrevocable, unless a statement of release is signed by the director and the Director of the Department of Land Conservation and Development.

(i) Enforcement of the covenants and restrictions required by this section may be undertaken by the Department of Land Conservation and Development or by Lincoln County.

(j) Failure to follow the covenants and restrictions requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants and restrictions.

(k) The director shall maintain a copy of the covenants and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts which do not qualify for the siting of a dwelling under the covenants and restrictions. This map or other record shall be available to the public in the division office.

(7) **Siting and Fire Protection Standards for Dwellings**:

The following siting fire protection standards shall apply to all new dwellings:

(a) Dwellings and structures shall be sited on the subject lot or parcel so that:

(A) They have the least impact on nearby or adjoining forest lands;

(B) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

(C) The amount of forest land used to site access roads, service corridors, the dwelling and structures is minimized; and

(D) The risks associated with wildfire are minimized. The division or commission may impose conditions on any dwelling approval which are deemed necessary to ensure conformance with the standards contained in this paragraph, including, but not limited to, requiring increased setbacks from adjoining properties, siting on that portion of a property least suitable for growing trees, or clustering near existing dwellings or roads.

(b) Dwellings shall have fire retardant roofs conforming to the requirements of Section R 221.4.2.1 of the State of Oregon One and Two Family Dwelling Specialty Code, 1993 Edition.

(c) Dwellings shall be sited on slopes of 40 percent or less.

(d) A primary fire break no less than 30 feet wide shall be provided and maintained. The primary firebreak may include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.

(e) A secondary firebreak cleared of all dead fuels shall be provided and maintained. The size of the secondary firebreak shall be:

(A) On slopes of less than 10 percent, 50 feet beyond the primary firebreak.

(B) On slopes of 11 to 25 percent, 75 feet beyond the primary firebreak.

(C) On slopes of 26 to 40 percent, 100 feet beyond the primary firebreak.

(D) On slopes greater than 40 percent, 150 feet beyond the primary firebreak.

(f) All chimneys shall be equipped with a spark arrester.

(g) If a dwelling is to be located on a parcel that is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included in the nearest such district.

(h) If a dwelling is to be located on a lot or parcel that is not within a fire protection district, either:

(A) The applicant shall provide evidence that residential fire protection is provided to the property by contract and that such contracted service is comparable to that generally provided by fire protection districts in the rural areas of the county; or

(B) On site fire protection means are provided. Such means shall consist of:

(i) Fire sprinkling system or systems;

(ii) On-site water storage and pumping equipment. Such a water supply shall consist of a swimming pool, pond, lake or similar body of water and at all times contains at least 4,000 gallons or a stream with a minimum flow of one CFS. Road access shall be provided to within 15 feet of the water's edge for fire fighting equipment and shall provide a turnaround for fire fighting equipment; or

(iii) Other methods which provide at least a comparable level of protection to that contained in subsubparagraphs (i) and (ii) of this subparagraph, and which are reasonable given site conditions.

(8) **Fire Safety Design Standards for Roads**:

The following standards apply to all roads and driveways which access uses permitted under subsection (1) of this section or approved under subsection (2) of this section, except for private roads accessing only commercial forest uses:

(a) Width: Access roads serving three or fewer dwellings shall have a 12 foot improved width and a 20 foot horizontal clearance. Access roads serving more than three dwellings shall have a 16 foot improved width and a 20 foot horizontal clearance.

(b) Construction: Access roads must be improved with an all weather surface. Roads, bridges and culverts shall be designed and maintained to support a minimum gross vehicle weight (GVW) of 50,000 pounds. If bridges or culverts are involved in the construction of a road or driveway, written verification of compliance with the 50,000 pound GVW standard shall be provided by a professional engineer, registered in Oregon.

(c) Vertical Clearance: Access roads shall have an unobstructed vertical clearance of not less than 13.5 feet.

(d) Turnarounds: Dead end roads over 150 feet in length shall provide a turnaround adequate for emergency vehicles.

(e) Turnouts: Access roads greater than 400 feet in length shall have turnouts at a maximum spacing of one-half the length of the access road or 400 feet, whichever is less. Turnouts shall be required more frequently where visibility is limited. Turnouts shall be an all weather surface at least 10 feet wide and 40 feet long.

(f) Road Grade: Road grades shall not exceed 12 percent, except that a maximum of 15 percent may be permitted on pitches less than 200 feet long. Variations from these standards may be granted by the fire service having responsibility for the area when topographic conditions make these standards impractical and where the local fire protection district states that their fire fighting equipment can negotiate the proposed road grades.

(g) The applicant shall provide an as-built certification stamped by a licensed professional engineer registered in the State of Oregon verifying that road safety design standards set forth in this section have been met.

(9) **Dimensional Standards**:

(a) The front yard shall be a minimum of 20 feet.

(b) Each side yard shall be a minimum of five feet, or one foot for each three feet of building height, whichever is greater.

(c) The rear yard shall be a minimum of 10 feet, except for that on a corner lot the rear yard shall be a minimum of either five feet, or one foot for each three feet of building height, whichever is greater.

(d) No structure shall be located closer than 30 feet from the right of way of any state highway, and no structure shall be located closer than 30 feet from the right of way of any arterial or collector street which has a right of way width of less than 60 feet.

(e) No dwelling or residential accessory structure shall exceed a height of 30 feet. [1994 o.347 §4; 2000 o.397 §3; 2001 o.408 §1; 2001 o.416 §3]