



Notice of Cancellation of Planning Commission Meetings

There will be neither a 6:00 p.m. work session nor a 7:00 p.m. regular session of the City of Newport Planning Commission meetings held on the evening of **Monday, December 28, 2015**, as no agenda items are scheduled that evening.

2016 Meeting Schedule

Regular Meeting of the City Council are held at 6:00 P.M. in the Council Chambers.

Regular Meetings of the Planning Commission are held at 7:00 P.M. in the Council Chambers.

Town Hall Meetings will be at alternate locations.

January

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Furthermore, the Organizational Meeting will be scheduled for Monday, January 2, 2017, at 6:00 P.M. in the Council Chambers.

 City Council
 Planning Commission

 Holiday
 Town Hall Meeting



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, December 14, 2015**, 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 and the City Council reserve 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, December 14, 2015, 6:00 p.m.

AGENDA

A. Unfinished Business.

1. Continued review of the draft changes to the Local Improvement District (LID) code.

B. Adjournment.

Memorandum

To: Newport Planning Commission/Citizen Advisory Committee
From: Derrick Tokos, Community Development Director
Date: December 10, 2015
Re: Local Improvement District Policies and Code Amendments

Enclosed is a summary that FCS Group put together on changes the Planning Commission suggested they make to the draft Comprehensive Plan Policies and a new draft of the policies. Also, I have included in your packet a copy of the proposed Local Improvement District ordinance with comments Commission members provided on the first few sections of the document.

I am hoping that at this meeting the Commission can wrap up its initial review of the policies and provide comment on the draft code. If the policy language is close enough to initiate the process of amending the Newport Comprehensive Plan, then I would recommend the Commission make a motion to that effect at the regular meeting. That would allow me to provide the Department of Land Conservation and Development with the required notice so that a public hearing can be held on the changes early next year (likely one of your February meetings).

After this work session, we would hold a second meeting of the Technical Advisory Committee (TAC) so that it has an opportunity to provide comments on the policies and code. The TAC will also have an opportunity to review preliminary LID assessment information that the consultant has put together for the two case studies we are doing (Golf Course Drive and Coho and SW 29th in South Beach).

Attachments

To: Derrick Tokos, AICP, City of Newport

Date: December 1, 2015

From: Todd Chase and Timothy Wood, FCS GROUP

CC: David Helton, ODOT/TGM; and Carl Springer, DKS Associates

RE: Newport LID TGM Project, Task 3.1 Round 1 Stakeholder Meetings (D-5)

1. PURPOSE

This memorandum provides a summary of input received during the first round of stakeholder meetings which were conducted on November 23 and 24 to gather input regarding LID policy issues, strategies and best practices as they relate to Newport.

2. INPUT SUMMARY

To help facilitate stakeholder input, the City of Newport provided the Planning Commission and City staff with the draft and revised Newport policy/code amendments prepared by FCS GROUP in advance of small group meetings held with the Planning Commission on November 23 and with city staff on November 24, 2015. The results of the input received at these meetings are intended to help refine the policy/code recommendations and the approach used to model the two selected LID case study areas.

Input by Planning Commission

- ◆ LID Policies are needed to help City determine how to advance and prioritize future LID projects.
- ◆ City policies should be defined to advance LID by petition. LIDs with over 75% support (based on property area owners subject to a signed petition or pre-existing non-remonstrance agreements) should be the top priority. LIDs with between 50% and 75% support would be second priority. LIDs with less than 50% support (by petition) would not be considered.
- ◆ The City should only expend funds to prepare an Engineer's Report as resources permit.
- ◆ For LID projects initiated by City resolution (without petition), one set of criteria should be used to determine if the City should proceed with the LID. The potential availability of urban renewal funds should be "spelled out" as a consideration as a City policy.
- ◆ The declaration of a LID project need based on an "emergency" should be more clearly defined as a City policy.
- ◆ Policies that allow for partial improvements (rather than interim improvements) are appropriate.
- ◆ A policy that recommends creation of a local LID fund with City provided "seed money" should be established.
- ◆ A policy recommending that "full cost" of the LIDs to be included with the LID assessment is supported.

Input by City Staff

In addition to the policy suggestions identified above, the City's engineering and community development/planning staff recommended that following LID policy considerations.

- ◆ Parameters should be established for allowing the City Engineer to determine if an LID project is to be a "partial" or a "full improvement." Partial improvements may be permitted only as an exception to the City's adopted design standard if the City Engineer determines that a project's construction is inhibited by issues such as steep topography; environmental impacts; or other major construction challenges.
- ◆ The City will need to revisit and update the City/County intergovernmental agreement to allow LIDs to be assessed on properties outside city limits.
- ◆ City staff expressed concern over how much staff time the creation of new LID projects will require of him because they are very busy and understaffed. There is a concern that preliminary cost estimates for prospective LIDs will be very rough initially, which could be detrimental if there are unknown risks regarding project construction. More accurate cost estimates can only be obtained after a survey of the project is conducted, and realistic unit costs are prepared. He would like the addition of policy language which will indicate that estimates will likely vary between the initial estimate and survey-driven estimate.
- ◆ With regard to partial vs. full LID improvements, the City would never intend to allow the construction of a partial improvement, such as building a half-street, or not replacing older water, stormwater and sewer infrastructure under roads that are to be reconstructed; unless special circumstances limit the constructability of the project. Only then would the City allow a partial design or alternative design (change from city standard) to be built per the City Engineer's discretion. In general, if a roadway improvement is an identified need within an adopted local TSP (or another city-adopted plan) that road should be built up to the planned design standard. If there is no plan for a road which is being considered for an LID, the design of that road should be per the discretion of the City Engineer.
- ◆ The City staff supported the idea of an LID petition filing fee to defray administrative costs of citizen initiated LIDs and their associated Engineer's Reports. City staff would also like to have a LID petition checklist for citizen-initiated LID submissions so that citizens are not taken aback when they are told they will be paying associated LID assessments.

3. NEXT STEPS

This input will serve as guidance to the consultant team as it prepares a revised set of LID policies and template approaches to be used for the two LID case study areas.



Memorandum

To: Derrick Tokos, AICP, City of Newport **Date:** December 4, 2010
From: Todd Chase and Timothy Wood, FCS GROUP
CC: David Helton, ODOT/TGM; and Carl Springer, DKS Associates
RE: Newport LID TGM Project, Task 4.1 Revised Policy Amendments (D-4C revised)

1. PURPOSE

This memorandum provides recommended revised policy amendments that are intended to address the comments received on the draft recommendations based on stakeholder and City staff input.

2. POLICY RECOMMENDATIONS

In addition to the code amendments included in our October 21 memorandum, the following revised comprehensive plan amendments have been identified to provide consistent governance when funding and implementing public facility improvements.

Policy 6A. Initiating Local Improvement Districts (LIDs) by Petition

When considering a new LID, the City shall proceed with preparing the Engineer's Report and constructing the improvement only as resources permit. New LIDs that are being proposed by petition will be prioritized as follows:

If a new LID is proposed by petition, the City's LID administrator may request City Council approval (by adoption of a resolution) to expend City resources to formulate an Engineer's Report per Chapter 12.05 of the Newport Municipal Code if: the LID is proposed for an eligible public facility improvement; non-remonstrance agreements and/or petitions by property owners are registered with the City Recorder for over 75% of the benefit area; and the project is to be 100% financed by the LID.

When the City receives petitions for multiple LIDs, priority shall be given to prospective LIDs with the highest level of documented support, as measured by recorded non-remonstrance agreements and/or petitions in the benefit area in question.

Policy 6B. Initiating Local Improvement Districts (LIDs) by City Resolution

When considering the creation of a new LID without petition, the City shall do so in a manner that is consistent with Chapter 12.05 of the Newport Municipal Code. Consideration of a new LID may be initiated by City Council resolution after the City Engineer recommends a new LID for consideration.

Prior to recommending a new LID for consideration by City Council, the City shall consider the following parameters before initiating an Engineer's Report:

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Revised Comprehensive Plan Amendments

- ◆ Project purpose and need (consistency with adopted plans). Has this project been identified as a high priority improvement per adopted transportation plan, public facility plan, or other locally adopted capital improvement program?
- ◆ Whether the improvement will address existing deficient infrastructure that is chronically failing.
- ◆ Capital cost of the improvement (is the project considered to be a partial or full improvement).
- ◆ Project cost contingencies and related construction risk factors (need to acquire new public right-of-way, unique construction challenges, environmental issues, etc.)
- ◆ Nature of the area of benefit (local, community, state), and the potential availability of non-LID funding sources (state/federal grants, local urban renewal funds, other local funds).
- ◆ The amount of potential non-LID funding that is expected to be leveraged by the LID.
- ◆ Percentage of properties within the benefit area that have prerecorded non-remonstrance agreements or are subject to petition in favor of the LID. Preexisting non-remonstrance agreements or petitions must be in place for at least 50% or more of the area of benefit.

When considering multiple City-initiated LIDs, priority shall be given to the LID that addresses the greatest number of factors identified above.

Policy 6C. Initiating Local Improvement Districts (LIDs) in General

When considering a new LID, the City shall proceed with preparing the Engineer's Report consistent with Chapter 12.05 of the Newport Municipal Code and constructing the improvement as budgeted and as resources permit.

When considering multiple LIDs, priority shall be given to LID(s) that address an "emergency" (as defined by ORS 401.025)¹ considered by City Council to be a threat to the health and safety to Newport residents and visitors.

An LID must have a reasonable chance of being self-financing, with adequate reserves to ensure that payments are made on bonds/loans regardless of the property-owners' repayment.

The aggregate assessment amount within a prospective LID should be less than one-third the existing market value of properties within the district.

¹ **401.025 Definitions for ORS chapter 401.** As used in this chapter:

(1) "Emergency" means a human created or natural event or circumstance that causes or threatens widespread loss of life, injury to person or property, human suffering or financial loss, including but not limited to:

(a) Fire, explosion, flood, severe weather, landslides or mud slides, drought, earthquake, volcanic activity, tsunamis or other oceanic phenomena, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, sabotage, acts of terrorism and war; and

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If an LID project is considered by the City Engineer to be a partial improvement (less than ultimate planned design), the City shall require that interim improvements conform to current City standards in a manner which will allow for completion of the total facility at such time that resources are available.

The cost of completing the Engineer's Report shall be included in the total LID assessment. The City shall update its fee schedule to include a non-refundable LID Application Fee to be paid by LID petitioner(s) for petition-initiated LIDs.

The City shall establish an "LID initiation fund" within the City's budget that shall be used to prepare preliminary LID evaluation reports, and the cost of preparing Engineer's Reports that have not been allocated to specific LID assessments.

In addition to LIDs, in order to maintain public facility service levels, the city may use various means to finance, in whole or in part, improvements to public services in a manner that is consistent with public facility master plans, and adopted city goals and policies. This includes but is not limited to consideration of federal or state grants, sewer or other types of service charges, urban renewal funds, revenue or general obligation bonds, and reimbursement districts.

CHAPTER 12.05 LOCAL IMPROVEMENT DISRICTS
(10/21/15 draft)

- 12.05.005 Definitions**
- 12.05.010 Initiations of Local Improvement Districts**
- 12.05.015 Preliminary Engineer's Report**
- 12.05.020 Council's Action on Engineer's Report**
- 12.05.025 Notice of Hearing on District Formation**
- 12.05.030 Hearing on District Formation**
- 12.05.035 Final Plan and Specifications**
- 12.05.040 Construction**
- 12.05.045 Costs Included in Assessment**
- 12.05.050 Method of Assessment**
- 12.05.055 Alternative Methods of Financing**
- 12.05.060 Final Assessment**
- 12.05.065 Notice of Assessment**
- 12.05.070 Payment**
- 12.05.075 Apportionment of Liens upon Partition**
- 12.05.080 Lien and Foreclosure**
- 12.05.085 Errors in Assessment and Calculations**
- 12.05.090 Abandonment of Proceedings**
- 12.05.095 Curative Provisions**
- 12.05.100 Reassessment**
- 12.05.105 Remedies**
- 12.05.110 Interpretation and Coordination with State Law**
- 12.05.115 Confidentiality**
- 12.05.120 Appeals**

12.05.005 Definitions:

The following definitions apply unless inconsistent with the context:

"Local Improvement" has the meaning given under ORS 310.140 (9) (a) means a capital construction project or part thereof, undertaken by a local government, pursuant to ORS 223.399, or pursuant to a local ordinance or resolution prescribing the procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited by all or part of the improvement;

- 1) That provides a special benefit only to specific properties or rectifies a problem caused by specific properties; and
- 2) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and
- 3) For which the property owner may elect to make payment of the assessment plus appropriate interest over a period of at least 10 years.

Commented [DT1]: Why not allow earlier payment? Why is this in the definitions?

"Local Improvement District (LID)" means the area determined by the council to be specially benefited by a local improvement, within which properties are assessed to pay for the cost of the local improvement.

"Lot" means a lot, block or parcel of land.

"Owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment role in the office of the County Assessor.

"Remonstrance" means a written objection to the formation of an LID filed by an owner of property within a proposed LID.

"Non-Remonstrance Agreement" means a written agreement with the city, executed by an owner or the owner's predecessor in title, waiving the right of an owner to file a remonstrance.

12.05.010 Initiation of Local Improvement Districts

A. The council by motion or on petition of the owners of half the property benefited by the proposed public improvement may direct that a preliminary engineering report be prepared to assist the council in determining whether a local improvement district should be formed to pay all or part of proposed street, sewer, sidewalk, drain and/or other public improvements.

Commented [DT2]: The term "benefitted property" should be defined.

B. When initiating an LID without petition by property owners, the city council may consider one or more of the following preliminary evaluation factors:

1. The percentage of the proposed district subject to pre-existing non-remonstrance agreements. If over 25% of the property within a potential local improvement district (as measured by area or street frontage) has recorded non-remonstrance agreements on file with the city, a new district may be considered.

2. Health and safety benefits to the city. A new district may be considered if public improvements are necessary to address existing or potential health and safety benefits to city residents, businesses, employees or visitors; and such improvements enhance the value of properties within the district.

3. Ability to leverage alternative methods of funding from existing sources. A new district may be considered if

public improvements are necessary to fund capital facilities identified in an adopted city transportation system plan or public facility plan or capital improvement program; with at least 25% of the total estimated capital improvement cost to be derived from existing alternative local funding sources; and such improvements enhance the value of properties within the district.

4. Potential for non-local grant funding. A new LID may be considered if public improvements are necessary to fund capital facilities identified in an adopted city transportation system plan or public facility plan or capital improvement program; with at least 25% of the total estimated capital improvement cost to be derived from potential non-local state or federal funding sources; and such improvements enhance the value of properties within the district.

5. Overall city-wide benefits (e.g. economic, travel time, fiscal). A new LID may be considered if public improvements are necessary to fund capital facilities identified in an adopted city transportation system plan or public facility plan or capital improvement program; with at least 25% of the total benefit accruing to city residents, businesses, employees or visitors outside the potential LID; and such improvements enhance the value of properties within the district.

Commented [DT3]: Why should "broader public benefit" be a factor to allow an LID to be initiated?

6. Consistency with stated goals in city comprehensive plan. A council initiated LID should be consistent with one or more goals or objectives identified in the local jurisdiction's comprehensive plan, public facility plan or related local policies adopted by resolution or ordinance. For example, special consideration may be granted for improvements that promote safe access to schools or targeted area redevelopment plans and objectives.

7. The priority of the project per adopted public facility plans or capital improvement programs. In addition to the above factors, a council initiated LID may be considered if it can facilitate implementation of a high priority improvement that has been identified in an adopted transportation plan, public facility plan, or capital improvement program; and such improvements enhance

the value of properties within the district.

8. Potential return on investment and risk. In the consideration of any of the above mentioned factors, a council initiated LID should have a reasonable chance of being self-financing, with adequate reserves to ensure that payments are made on bonds/loans regardless of the property owners repayment. Risk mitigation considerations should consider the possibility of unknown cost or construction issues (e.g., need for additional right of way, construction in drainage areas or wetlands, and topographic challenges). It is recommended that the aggregate assessment within a prospective local improvement district be less than one-third the existing market value of properties within the district.

C. When a potential LID project is deemed by the city engineer or community development director to meet one or more of these factors, a council initiated district may be advanced by the council through a resolution requesting that a preliminary engineering report on LID formation be prepared.

12.05.015 Preliminary Engineer's Report

A. The preliminary engineer's report shall contain:

1. A full description of the project and its boundaries.
2. A description of each parcel of land specially benefited, including the name of the record owner of the parcel.
3. An estimate of the probable cost of the project (or a statement of the actual cost if the project has been completed), including property acquisition, design, construction, engineering, legal and administrative, interest or other costs.
4. A recommendation as to what portion of the total costs of the project should be paid by specifically benefited property in addition to the assessed valuation and any unpaid assessments against each lot.
5. A recommendation of a method of assessment, together with an estimate of the cost per unit to

specially benefited property.

6. A recommendation whether to proceed with formation of the local improvement district.

Commented [DT4]: How are these costs accounted for if an LID doesn't get formed? Should there be a deposit to cover the cost of preparing a report?

12.05.020 Council's Action on Engineer's Report

A. After the engineer's report has been filed with the city recorder, the council may thereafter by motion approve the report, modify the report and approve it as modified, require the engineer to supply additional or different information for such improvements, or it may abandon the improvement.

Commented [DT5]: Modifications should be made by professional staff and brought back to decision makers for their consideration. Policy makers should not have authority to modify an engineer's report.

12.05.025 Notice of Hearing on District Formation

A. Unless all owners of specially benefited property have petitioned for formation of the local improvement district and waived the right of remonstrance, the city shall mail provide notice to property owners of a council hearing on the proposed district at least ten days prior to the hearing by submitting a notice in a newspaper of general circulation within the town and by mailing notice to the owner's address listed in the county tax records. The city may provide additional notice.

B. Within ten (10) business days of the filing of the report required by NMC 12.05.15 the recorder shall cause a notice to be published twice in a newspaper of general circulation within the city setting out the following:

1. That a written project report for a proposed LID is on file and is available for examination at City Hall;
2. The date said report was filed;
3. The estimated probable cost of the proposed local improvement or the actual cost of the improvement if it has been completed;
4. A description of the proposed improvement district and that a map of the proposed district is available for examination at City Hall;
5. The time and place of the hearing required by NMC 12.05.25;
6. A statement that written and oral testimony submitted by any person will be considered at such hearing but that said testimony will not be considered as a remonstrance; and
7. That property owners wishing to remonstrate against the formation of the proposed district

should present their remonstrance in writing at the time and in the manner set forth in NMC 12.05.025 C

- B. The notice shall contain: C. Not less than ten (10) days prior to the hearing required by NMC 12.05.025, mail to each property owner designated in the written engineering report a notice stating:
1. The information set forth in Subsection B of this section;
 2. The proposed method of assessment;
 3. The estimated amount of the assessment for each lot or portion thereof owned by the owner and whether the assessments are being levied prior to construction based upon estimates of project cost or after construction based upon known costs; and
 4. The specific procedure for filing remonstrance provided by NMC 12.05.025 C

D. Post a copy of the preliminary map of the proposed improvement district at City Hall.

1. A general description of the proposed local improvement(s) and the boundaries of the district, which shall include all specially benefited properties and no properties that are not specially benefited.
2. An estimate of the total cost of the improvement.
3. The date, time and place of the public hearing.
4. A statement of the place where the preliminary engineer's report and other information on the project may be obtained.
5. A description of the proposed method of assessment and allocation of costs.
6. A statement that the purpose of the hearing is to hear comments and remonstrances and that all comments and remonstrances must be submitted prior to the close of the hearing.
7. A statement that the council may modify the proposed improvement(s) and modify the proposed boundaries of the district.

~~8. A statement that the costs, proposed allocation of costs, and proposed method of assessment are estimates or proposals only and that the actual assessment will be based on actual costs and on a method of assessment to be determined only after the construction of the local improvement(s) is completed.~~

12.05.030 Hearing on District Formation

- A. ~~After the engineer's report, as submitted or modified, has been approved or accepted by city council resolution, the council shall hold a public hearing on the proposed improvement and formation of the district and consider oral and written testimony, as well as remonstrances. Such hearing shall be held after the receipt of the engineering report described in NMC 12.05.015 but not less than fifteen (15) days after the date of the second publication of notice.~~
- B. If property owners owning two-thirds or more of the property area within the district to be specially assessed remonstrate against the improvement, the council shall suspend formation of the district for a period of not less than six (6) not proceed with forming the district and financing the improvement by special assessment. ~~This months~~ This provision shall not apply if the only improvements to be constructed are sidewalks or if the council unanimously declares the improvement to be needed because of an emergency. If a property has multiple owners, a remonstrance by an owner shall be considered a fraction of a remonstrance to the extent of the interest in the property of the person filing the remonstrance.
- C. All remonstrances must be in writing and filed with the city recorder by the end of the public hearing. Remonstrances may be withdrawn any time prior to the close of the hearing.
- D. If insufficient remonstrances are filed to prevent the formation of the local improvement district, the council shall have discretion whether or not to form the district and proceed with the public improvement.
- E. Based on testimony at the hearing, the council may modify the scope of the improvements and/or the district boundary. The council may use any reasonable method of

determining the extent of the local improvement district based on the benefits of the proposed local improvement(s). If any modifications approved by council include additional property or result in a likely increase in assessments on any property, the city shall hold another hearing and provide notice of the additional hearing in the same manner as it provided notice of the initial hearing.

- F. A decision to accept the engineer's report, form the local improvement district and proceed with making the local improvements shall be by resolution. This resolution shall at a minimum address the following:
 - 1. Create the local improvement district and establish its boundaries;
 - 2. Determine generally the time for commencing and the manner of construction;
 - 3. Establish an account for the receipt and disbursal of monies relating to the project; and
 - 4. Establish the method for allocating the costs associated with the project.

12.05.035 Final Plan and Specifications

- A. After a council decision to form the district and proceed with the local improvement(s), the city engineer shall be responsible for acquisition of necessary rights-of-way and easements and for development of a final plan and specifications prior to publishing contract solicitation documents.
- B. After developing the final plan and specifications, the city engineer shall prepare a new estimate of costs. If the new estimate significantly exceeds the original cost estimate by 10% or more available to the council at the time of its hearing or if the city engineer deems there to be there are significant changes in the project as a result of the additional unanticipated work, a supplemental engineer's report shall be prepared and submitted to the council which shall hold a hearing on the revised engineer's report. The hearing shall be noticed in the same manner as the original hearing, and property owners shall have the right to submit a remonstrance based on the revised engineer's report. The council shall follow the same procedure and standards applicable to the original hearing.

12.05.040 Construction

- A. Construction work on the local improvement(s) may be by the city, by another government agency, by contract with a private contractor, or by any combination of those entities. Any contracting shall be in accordance with the city's public contracting rules.
- B. Construction may proceed after the development of the final plan and specification if the final plan and specifications do not significantly differ from the improvements authorized by the council after the initial hearing. If an additional hearing is held, construction may proceed after a council decision accepting the revised engineer's report and directing that the local improvement(s) be constructed.

12.05.045 Costs Included in Assessment

The costs and expenses that may be assessed against specially benefited property include but are not limited to:

- A. The costs of property, right-of-way or easement acquisition, including the cost of any condemnation proceedings.
- B. Engineering and survey costs.
- C. Costs of construction and installation of improvements, including but not limited to: streets, curbs, sidewalks, gutters, catch basins, storm water improvements, driveways, accessways, lighting, traffic control devices, painting, and striping, surface water management facilities, water and sewer lines, lift stations, and fire hydrants.
- D. Costs of preliminary studies.
- E. Advertising, legal, administrative, survey, engineering, notice, supervision, materials, labor, contracts, equipment, inspection and assessment costs.
- F. Financing costs, including interest charges.
- G. Attorney fees.
- H. Any other necessary expenses.

12.05.050 Method of Assessment

A. The Council shall:

(1) Use a fair and reasonable method for determining the extent of the improvement district boundaries that is consistent with the benefits derived.

(2) Use a fair and reasonable method for apportioning the actual cost or estimated cost of the local improvement among the benefited properties.

B. The Council may:

(1) Authorize payment by the City of all or any part of the cost of such improvements; provided that the method selected creates a reasonable relation between the benefits derived by the property specially benefited and the benefits derived by the City as a whole.

(2) At any time prior to the effective date of the resolution levying the assessments for any improvement district, modify the method adopted in the resolution forming the improvement district if the Council determines that a different method is a more just and reasonable method of apportioning the cost of the project to the properties benefited.

(3) Use any other means to finance improvements, including federal or state grants-in-aid, user charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance to pay either all or any part of the cost of the improvements.

C. In establishing a fair and reasonable method for apportioning the actual or estimated cost of local improvements among benefited properties, the Council shall rely upon the following guidelines:

(1) Individual property owners shall pay for public improvements specially benefiting their property. The determination of benefit shall be made irrespective of whether the property is vacant or the owner elects to connect to the local improvements. Special costs or features of the improvement that benefit a particular parcel of property in a manner peculiar to that parcel shall, together with a share of the overhead for the improvement, be assessed separately against the parcel.

(2) Costs of the improvement to be borne by the City shall be excluded from the assessment before apportionment. The City will pay the cost of:

(i) Extra capacity improvements when the size of the public improvements required exceed the minimum standards established in the Specifications and Standards for Construction of Public

Improvements adopted in accordance with local transportation plans or public facility plans, and the project has been included in the City budget document for the fiscal year during which construction of the improvement is scheduled; or

(ii) Special and unusual costs when the Council determines that circumstances exist which warrant City payment of all or a portion of the cost of the public improvements.

D. In establishing a fair and reasonable method for apportioning actual or estimated costs of local improvements among benefited properties, the Council may, but in no way is required to, rely upon the following guidelines:

(1) Improvement Costs of Streets.

(i) Street improvement costs may include all improvements required or as established by the improvement district from right of way to right of way. Such improvements shall meet the minimum standards adopted under the Newport Transportation System Plan and may include any of the elements identified in Section 12.05.045.

(ii) Costs shall be applied on a per linear foot basis, or other method identified in the engineer's report. Where a property owner requests or requires supplemental approach construction, the costs associated with that additional construction shall be assessed to the individual property owner.

(2) Improvement Costs of Sidewalks. Parcels abutting a sidewalk shall be liable for a proportionate share of the cost of the sidewalks, based on the front footage of the parcel abutting the sidewalk. Where, however, the Council finds that construction of a sidewalk on both sides of the street is unnecessary or unfeasible, the cost of the sidewalk on one side of the street may be assessed to both the parcels abutting the sidewalk and the parcels on the opposite side of the street from the sidewalk.

(3) Improvement Costs of Surface Water Management. The cost to be assessed shall be apportioned to each parcel within the improvement district on the basis of its land area that contributes to or otherwise directly benefits from the City's drainage system.

(4) Improvement Costs of Water and Sewer Lines.

(i) The properties specially benefited by a sewer main or water pipe shall bear the cost of the system up to and including eight inches of pipe diameter. These costs shall be apportioned to each parcel on the basis of a cost per square foot of service area, determined by dividing the total system cost by the total service area.

(ii) In addition to main or pipe costs, each property benefited by a sewer main or water pipe shall be considered to have at least one service line connection point. If more than one service line connection point is provided for a benefited parcel, it shall be assessed for the actual number of service line connection points. All costs related to the service lines, including overhead costs, shall be divided by the total number of service line connection points, to determine the cost per service line connection point.

(5) Corner Lots. Corner lots may be exempted from an assessment for the first 100 feet of frontage on the side abutting a local improvement, or for the full length of the side abutting the improvement, whichever is shorter, if one or more of the following conditions exist and the City Council grants an exemption:

(i) The local improvement is required to serve a new subdivision or new development, the corner lot is located outside the subdivision or development, and the corner lot will receive no benefit from the local improvement for which the assessment is levied; or

(ii) The corner lot has two sides abutting the local improvement for which the assessment is levied and is being assessed for the full frontage of one side abutting the improvement; or

(iii) The Council determines the Corner Lot receives no benefit from the local improvement for which the assessment is levied and the property has been previously assessed for the same type of local improvement on the side not abutting the local improvement for which the assessment is levied.

The City Council need not grant a Corner Lot exemption if the Council determines the property will receive a benefit from the local improvement for which the assessment is being levied.

(6) Minimum Frontage. All lots may be assessed for an equivalent front footage of no less than 60 feet.

(7) Benefited Property. A benefited property may be defined as one which is adjacent to any street, easement or right of way on which a local improvement is installed or which reasonably is capable of connecting to, or directly benefiting from, the improvement.

(8) Assessment Alternative. Assessment alternatives that vary from those listed in this section may be identified within the engineer's report. A weighting method may be considered among multiple alternatives to determine a hybrid alternative assessment.

(9) Equal Assessments. If property owners of all or part of the benefited properties within the improvement district are in unanimous agreement, and so request, then their share of the improvement costs may be apportioned in equal amounts.

12.05.055 Alternative Methods of Financing

A. The Council may allocate a portion of the cost of such improvement from the funds of the city. The council may base this on topographic concerns, the physical layout of the improvement, unusual or excessive public use of the improvement, or other characteristics. The amount assessed against all property specially benefited will be proportionately reduced.

B. The council may use other means to finance, in whole or in part, the improvements, including federal or state grants-in-aid, sewer or other types of service charges, revenue or general obligation bonds.

12.05.060 Method of Final Assessment

- A. After final acceptance of the public improvements by the city, the city engineer shall prepare a final report that describes the completed improvement, lists the total costs with a breakdown of the components of the total cost, and proposes a method of assessment. The city engineer shall prepare the proposed assessments for each lot within the improvement district, file the assessments with the finance director, and submit a proposed assessment resolution to the city council. The city engineer shall provide an explanation of any difference in the proposed cost allocation or method of assessment previously proposed.
- B. The city council shall hold a hearing on the final engineer's report and at that hearing shall establish by resolution the method of assessment and amount to be assessed against each specially benefited property.
- C. The council in adopting a method of assessment of the costs of the improvement(s) may use any method of apportioning the sum to be assessed that the council determines to be just and reasonable among the properties in the local improvement district.

D. After the council adopts the assessment resolution, the city will schedule a council hearing and mail notice of the proposed assessments to each owner of assessed property within the district at least 10 days before the hearing. The notice shall contain:

1. The name of the owner and a description of the property to be assessed.
 2. The amount of the assessment.
 3. The proposed allocation and method of assessment.
 4. The date, time and place of the council hearing on objections to the assessment, and the deadline to submit written objections before the hearing.
 5. A statement that the assessment as stated in the notice or as modified by the council after the hearing will be levied by the council, charged against the property, and be due and payable.
- E. Any mistake, error, omission or failure relating to the notice shall not invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been provided to the property owner, or if owner cannot be located, notice is published once a week for two consecutive weeks in a newspaper of general circulation in the city.
- F. The council shall hold the public hearing and consider oral and written objections and comments. After the hearing, the council shall determine the amount of assessment to be charged against each property within the district according to the special benefits to each property from the improvement(s). The final decision spreading the assessment shall be by resolution.

G. If the initial assessment has been made on the basis of estimated cost, and, upon completion of the work, the cost is found to be greater than the estimated cost, the council may make a deficit assessment for the additional cost, provided, however, the council may not make a deficit assessment for more than ten (10) percent of the initial assessment. Proposed assessments upon the respective lots within the special improvement district for a proportionate share of the deficit shall be made.

notices shall be sent, opportunity for objections shall be given, any objections shall be considered, and a determination of the assessment against each particular lot, block, or parcel of land shall be made in the same manner as in the case of the initial assessment, and the deficit assessment shall be spread by resolution.

H. If assessments have been made on the basis of estimated cost and upon completion of the improvement project the cost is found to be less than the estimated cost, the council shall ascertain and declare the same by resolution, and when so declared the excess amounts shall be entered on the city lien record as a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or that person's legal representative or successor, shall be entitled to repayment of the excess amount. If the property owner has filed an application to pay the assessment by installment, the owner shall be entitled to such refund only when such installments, together with interest thereon, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the amount of the refund shall be deducted from such assessment, and the remainder shall remain a lien on the property until legally satisfied.

12.05.065 Notice of Assessment

Within 10 days after the effective date of the resolution levying the assessments, the finance director shall send by first-class mail to the owner of the assessed property a notice containing the following information:

- A. The date of the resolution levying the assessment, the name of the owner of the property assessed, the amount of the specific assessment and a description of the property assessed.
- B. A statement that application may be filed to pay the assessment in installments in accordance with the provisions of this chapter.
- C. A statement that the entire amount of the assessment, less any part for which application to pay in installments is made, is due within 30 days of the date of the notice and, if unpaid on that date, will accrue interest and subject the property to foreclosure.

Supplementary notice of assessment in form and content to be determined by the finance director may also be published or posted by the finance director.

12.05.070 Financing of Program

- A. The City of Newport Local Improvements Fund will be used for the payment of construction costs or for the retirement of debt incurred by the City in connection with local improvement projects on which the payment of assessments has been deferred under this Ordinance.
- B. The initial funds for the program will be taken from interest earnings accumulated in the City of Newport Capital Construction Fund in an amount not to exceed 40% of the total accumulated interest earnings as of June 30 of the preceding fiscal year. Program resources shall be replenished from time to time by interest payments on deferred accounts, payments made when deferrals are terminated and by additional interest revenue from the Capital Construction Fund.
- C. Deferments shall be granted on a pro rata or otherwise equitable basis, depending upon individual assessment amounts for applications received within the time period set under Section 12(3) for submittal, to the extent that Program funds are available.

12.05.075 Payment

- A. Unless an application is made for payment in installments as provided by this section, assessments shall be due and payable in full within 30 days after the date the notice of assessment is mailed, and if not so paid, shall bear interest at the rate of 9 percent per year. The city may proceed to foreclose or enforce collection of the assessment lien if the amount is not paid in full within 90 days of the date the notice of assessment is mailed.
- B. Any time within 10 days after the notice of assessment is mailed or within 10 days of resolution of any writ of review proceeding challenging the assessment, the owner of the property may apply to pay the any assessment in excess

of \$500 in ten equal annual installments, with the first payment to be paid within 10 days of the determination by the finance director of the amount of the annual payment. The application shall state:

1. That the applicant waives all irregularities or defects, jurisdictional or otherwise, in any way relating to the assessment.
2. State that the applicant understands the terms and conditions of the city's payment policies including the penalties for nonpayment.
- C. On receipt of an application for payment in installments, the finance director shall determine whether the city will finance the payments internally or issue bonds or obtain a loan for the amount financed. The interest rate will be set at the interest rate charged to the city, plus 2%. If the city finances the payments internally, the interest rate shall be at the interest rate payable to the city if it had invested the money in a local government pool account, plus 3%. The finance director shall then notify the property owner of the payment amounts and due dates.
- D. If any installment payment is not paid within one year of the due date, the council shall adopt a resolution declaring the entire amount of principal and interest due and payable at once.
- E. The entire amount of principal and accrued interest shall be payable on any sale of the specially assessed property or change in its boundaries.

12.05.080 Lien and Foreclosure

- A. The finance director shall enter in the city lien docket:
 1. A statement of the amounts assessed upon each particular lot, parcel of land or portion thereof;
 2. A description of the improvement;
 3. The names of the owners; and
 4. The date of the assessment resolution.
- B. On entry in the lien docket, the amount entered shall

become a lien and charge upon the properties that have been assessed for such improvement.

- C. All assessments liens of the city shall be superior and prior to all other liens or encumbrances on property.
- D. The city may collect any payment due and may foreclose the liens in any manner authorized by state law.

12.05.085 Errors in Assessment Calculations

Claimed errors in the calculation of assessments shall be called to the attention of the finance director who shall determine whether there has been an error. If the finance director determines that there has been an error, the matter shall be referred to the council for an amendment of the assessment resolution. On amendment of the resolution, the finance director shall make necessary corrections in the city lien docket and send a correct notice of assessment by certified mail.

12.05.090 Abandonment of Proceedings

The council may abandon and rescind proceedings for improvements at any time prior to the final completion of the improvements. No assessment shall be imposed if improvements are not completed.

12.05.095 Curative Provisions

No improvement assessment shall be rendered invalid by a failure of any incompleteness or other defect in any engineer's report, resolution, notice, or by any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps required by this chapter, unless the assessment is unfair or unjust. The council shall have the authority to remedy or correct any matter by suitable proceedings and action.

12.05.100 Reassessment

A. Whenever all or part of an assessment or reassessment for any local improvement is declared void, set aside for any reason, not enforced by a court or the council determines the assessments should be adjusted, the council may make a new assessment but shall not be required to repeat any portion of the procedure properly completed.

B. The reassessment procedures for making the new assessment will follow the same procedures used for the initial assessment under NMC 12.05.050 and 12.05.085. The new assessment is not limited to the amounts included in the original assessments or to the property included within the original assessment if the council finds that additional property is specially benefited and subject to assessment.

C. Credit must be allowed on the new assessment for any payments made on the original assessment as of the date of payment. Interest on the original assessments must be included in the new assessment to the extent the new assessment includes amounts also included in the original assessment. The council will include interest as part of the overall assessable project cost. The amount will be based on the construction financing interest rate in effect and applicable to the district at the time of the original proceedings on moneys paid on the construction or financing of the project.

Whenever any assessment or reassessment is set aside or its enforcement restrained by any court with jurisdiction or when the council is in doubt as to the validity of the assessment or reassessment, the council may make a reassessment in the manner provided by the state law or may follow the procedure applicable to an original assessment, but shall not be required to repeat any portion of the procedure properly completed.

12.05.105 Remedies

Actions of the council under this chapter are reviewable only by writ of review.

12.05.110 Interpretation and Coordination with State Law

The provisions of this chapter shall be interpreted consistent with state law relating to local improvement districts and Bancroft bonding. When state law authorizes local governments to adopt standards and procedures different from those specified in the statutes, the city may comply with either this chapter or state statutes. To the extent that any standard or procedure is not governed by this chapter, the city shall comply with state statutes.

12.05.115 Confidentiality

To the maximum extent possible under the law, the applications, records and other information relating to deferments shall be kept confidential by the City.

12.05.120 Appeals

Owners of property against which an assessment or reassessment for local improvements has been imposed may seek a review of any council decision under the provisions of ORS 34.010 to 34.102.



AGENDA & NOTICE OF PLANNING COMMISSION MEETING

The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m. Monday, December 14, 2015**, at the Newport City Hall, Council Chambers, 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

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

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

NEWPORT PLANNING COMMISSION Monday, December 14, 2015, 7:00 p.m.

AGENDA

A. Roll Call.

B. Approval of Minutes.

1. Approval of the Planning Commission work session and regular meeting minutes of November 23, 2015.

C. Citizens/Public Comment.

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

D. Consent Calendar.

E. Action Items.

1. Outreach meeting for the City's assumption of the mechanical permitting program for properties within city limits.
2. Initiate amendments to Public Facilities Element of the Newport Comprehensive Plan to establish policies for forming LIDs.

F. Public Hearings.

1. File No. 2-NCU-15. A request for approval of a Nonconforming Use Permit submitted by Philip Zlatnik of Northwest Natural (Mary Fierros Bower, authorized representative) for the replacement of a nonconforming office use with a new 3,893 square-foot office in the W-1 zone.
2. File No. 1-VAR-15. A request for approval of a Type III Variance submitted by Jayanti & Saroj Patel (Motel 6) (Dennis Bartoldus, authorized representative) to allow a wall sign on the north side of the motel to be placed at a height of 43 feet and a wall sign to be placed at a height of 38 feet on the south side of the building. The applicant is further requesting a variance to allow a total of five signs; four of which would be wall signs, and the fifth a freestanding sign. (*Please note that at the request of the applicant's representative, this hearing will be opened and continued to January 11, 2016.*)

G. New Business.

H. Unfinished Business.

1. Ordinance regarding business license endorsement for recreational marijuana facilities.

I. Director Comments.

1. Debrief of the December 7th City Council Work Session on Affordable and Workforce Housing.

Please Note: ORS197.763(6): "Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing." (applicable only to quasi-judicial public hearings)

J. Adjournment.

Please Note: **ORS197.763(6):** “Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing.” (applicable only to quasi-judicial public hearings)

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
November 23, 2015
6:00 P.M.

Planning Commissioners Present: Jim Patrick, Lee Hardy, Rod Croteau, Bill Branigan, and Bob Berman.

Planning Commissioners Absent: Gary East and Mike Franklin

City Staff Present: Community Development Director (CDD) Derrick Tokos, and City Recorder Peggy Hawker.

Also in attendance were Todd Chase and Tim Wood from the FCS Group.

Chair Patrick called the Planning Commission work session to order at 6:00 P.M., and turned the meeting over to CDD Tokos.

A. Unfinished Business

1. **Continued Review of the Draft Changes to the Local Improvement District (LID) Code.** Tokos reported that the packet contains a copy of the cover memo from the FCS Group dated October 21, 2015, along with the draft set of amendments to Chapter 12.05 of the Newport Municipal Code outlining the rules for forming Local Improvement Districts. He stated that he has added the comments provided by the Commission before the end of the November 9 work session. He added that at this meeting, he hopes to complete a review of the draft code so that he can get comments back to the consultant.

Tokos reported that he passed along the Commission's feedback on the draft Comprehensive Plan policies, and noted that the FCS Group was unable to get a revised draft for Commission review at this meeting. He summarized the comments:

- a. Some of the policies seem to be outside the scope of what we are trying to accomplish with the LID update. Namely, the proposed addition to Policy #4, Policy #6, and Policy #10. The first two relate to subdivisions and partitions, and the last pertains to where public improvements are to occur. He noted that the Commission would like to see the policies focused on providing decision makers and staff on how to utilize Local Improvement Districts as a funding tool.
- b. Recommended Policy #7, but why the reference to "essential" public services. Wouldn't this be applicable to public services generally?

- c. Policy #8 is good, but it might be better framed as two different goals. The first should provide policy guidance to staff and decision makers on circumstances for when the city should initiate an LID. The first sentence starts to get at this, but there should be other factors. Another, separate policy should provide decision makers guidance for deciding to proceed to form an LID. The second part of Policy #8 lists considerations. It needs to go a step further and articulate when the considerations should be viewed to be compelling enough that the city should proceed.
- d. A policy is needed for how to respond to LID petitions. When should a petition be prioritized for action, or should there be a general policy that the city will respond to a petition and begin work on a preliminary engineer's report when resources permit.
- e. What constitutes an "emergency?" There were strong feelings that policy sidebars are needed here since this is a tool that could trump a landowners' ability to remonstrate against an improvement. There was general consensus that failed or chronically failing infrastructure fits the bill. A compelling, broader public interest might fit as well, but would need to be clearly framed. Recommendations from the City Engineer, or a facility plan, might be an appropriate authority that decision makers can lean on to establish that infrastructure is chronically failing.
- f. Policy directions should be provided for LID petitions that seek to do less than full improvements. There seemed to be general consensus that a street improvement should conform to the Transportation System Plan or align with what exists on the ground to either side of the improvement.
- g. There should be fiduciary policies that provide direction on appropriate assessment methods and financing of assessments. What kind of tolerance or "risk" should the city take on up fronting costs? There was general consensus that this type of policy should be conservative and minimize risk.
- h. For LID petitions that are filed, but ultimately do not proceed, should there be a policy objective to recover costs in preparing the Preliminary Engineer's Report? It would be helpful to have a cost recovery policy.

Chase reported that the FCS Group attempted to draft a document that would provide policy direction to the City Council and future staff to utilize limited resources. He added that this is an opportunity to organize what will happen with more LID requests. He stated that the document organizes requests into three areas, including: petitions; resolutions without a petition; and the initiation of LIDs in general. Branigan asked whether there are other policies to consider. Chase noted that a consideration is when to use a reimbursement district in lieu of, or in conjunction with, an LID. He added that a reimbursement district does not constitute a lien on a property.

Chase stated that it would be beneficial for the city to have a five-year CIP so that Council can think about the highest priorities for a five-year period. Tokos noted that while the city

does not have a formal five-year CIP, it does have a rolling list of funded capital programs, some of which carry over from year to year.

Croteau asked whether there is a “how to” for citizens to initiate an LID through petition. Tokos noted that part of the plan will include a “how to” document, but that the code needs to be put in place first. He added that citizens tend to initiate LIDs when there is a need.

Hardy asked how much people understand about LIDs. Croteau noted that the city should be able to provide information on this subject. Tokos stated that part of this project is to make LIDs a viable option.

Chase reported that the city could match URA funding with an LID or a reimbursement to stretch dollars.

Tokos reported that, rather than authorizing an individual staffer to take the lead on these projects, it should be driven by circumstances. Patrick asked what happens if a homeowner wants a project that is not listed, by the city, as a high priority. Berman asked how much staff effort it takes to design a street, and Tokos noted that it takes a fair amount of time. Berman asked how a petition is evaluated without a cost estimate. Tokos noted that a key point is relative support, and questioned whether there should be a higher bar to become a priority. Patrick noted that the engineer will prepare a report. Chase stated that the costs of the report should be included in the LID and the application for the LID. Tokos suggested that a high priority project should include 75% of the property owners. Hardy noted that square footage may not mean anything, adding that she would like to the rationale more rational. Croteau asked what happens if a petition is submitted, a cost estimate is prepared, and the petitioner backs out. Chase recommended that the city consider a fee. Tokos stated that the policy will contain an expectation of a cost recovery component. Patrick asked how reliable cost estimates area, and Tokos noted that they are pretty good due to the expanse of projects. He added that the policy needs to include language that allows a fee. Patrick noted that a back-up could be “as resources permit.” Chase suggested that a proposed LID may be a priority with 75% support, and resources permitting, will prioritize those petitions that meet the following criteria: 75%; and 50% to 75%.

A discussion ensued regarding the emergency provisions in instituting an LID, and specifically the second bulleted item under Policy 6B. Chase suggested that the check list could be completed quickly, and the more check marks would equate to a higher score/priority, and if two or three of the items were met, the issue could move forward for an engineer’s report. A discussion further ensued regarding the timing of using URA funds for an LID in an emergency. Chase noted that these criteria would be used for screening, and projects that rise to the top would be moved up the priority list. Tokos suggested an override of remonstrances in the event of an emergency. It was noted that if there is no policy guidance, the emergency could be discretionary. It was suggested that policy sidebars be developed as to how power is used, even to the point of describing what an emergency might look like. Croteau noted that there are two types of emergencies; one being chronically failing; and the other being a real emergency. Tokos asked whether the City Council should have the ability to add an emergency. Hardy recommended looking at issues from a budget standpoint. Chase noted that citizens might decide that something

is an emergency. Hardy stated that there would be no dispute if the words are clearly defined. Tokos suggested language that provides the City Council with the authority to declare an emergency, and override remonstrances, in emergency situations. Hardy mentioned the nature of the area benefitted. Tokos provided an example of a benefitted area in looking for solutions to the City Center traffic issue, and noting that a change to a collector street, and pulling together to get the most funding, could justify an LID. Chase stated that if the area of benefit is broader, there would be more benefits. He suggested a checklist to determine priorities before a project is elevated to the next level for an engineer's report. Tokos stated that he would rather not have the checklist references in the policy, but noted that the first few bullets make sense. He added that anything initiated by the city must be by the City Council. Chase stated that before there is direction from Council to prepare an engineer's report, it would be good to know if the parameters apply. Tokos added that details in a city-initiated LID should be code driven, as long as it is clear what factors should be considered when initiating. Chase suggested combining the requirements into one set of parameters, with the emergency information in the general policy.

A discussion ensued regarding Policy 6C. Chase noted that the city needs to limit risk as it is financing the LID projects. He added that the engineer would make the call regarding the unknown construction risks. Tokos addressed the funding of LIDs. He noted that before the city allows a deferment, it must have a fund in place that demonstrates financial wherewithal. Chase suggested that the city would create a fund for any new LID, by seeding the fund from a variety of sources prior to deferring the cost of the project. He added that every LID should have its own fund. Chase stated that he would take a stab at reworking the fiscal policy. Tokos stated that it would be helpful to have this guidance at the policy level. Chase noted that the policies can be looked at after direction to form an LID. Patrick stated that the payer can spread LID payments over time. Tokos added that the city must have the resources to pay up front. He stated that a priority project would be 100% financed. A discussion ensued regarding how to handle, for example, an LID if someone only wanted to pave a street, and whether to perform the project based on the TSP, or align with what is on either side. It was suggested that this type of "interim" project may be approved provided the project could be upgraded to city standards without excessive costs.

Tokos stated that the next work session would be held on December 14, 2015.

B. Adjournment. Having no further business/time, the meeting adjourned at 7:05 P.M.

Margaret M. Hawker, City Recorder

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
November 23, 2015
7:05 P.M.

Planning Commissioners Present: Jim Patrick, Lee Hardy, Rod Croteau, Bill Branigan, and Bob Berman. Absent were Gary East and Mike Franklin.

City Staff Present: Community Development Director (CDD) Derrick Tokos, and City Recorder Peggy Hawker.

A. **Roll Call.** Chair Patrick called the meeting to order at 7:00 P.M. On roll call, Hardy, Berman, Croteau, Patrick, Franklin, East, and Branigan were present. Absent were Gary East and Mike Franklin.

B. **Approval of Minutes.**

1. Approval of the Planning Commission regular session and work session minutes of November 9, 2015.

MOTION was made by Commissioner Croteau, seconded by Commissioner Berman, to approve the Planning Commission work session and regular meeting minutes, of November 9, 2015, as presented. The motion carried unanimously in a voice vote.

C. **Citizens/Public Comment.** There was no public comment.

D. **Consent Calendar.** There were no items on the consent calendar.

E. **Action Items.**

1. **Adoption of Final Order for File No. 3-PAR-15-A.** Denial of an appeal filed by the applicant and property owner, Jonathan Holbrook, and upholding the Community Development Director's decision to deny this partition. The Planning Commission held a public hearing on this matter on November 9, 2015.

MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan, to adopt the Final Order for File No. 3-PAR-15-A, denying an appeal filed by the applicant and property owner, Jonathan Holbrook, and upholding the Community Development Director's decision to deny this partition. The motion carried unanimously in a voice vote.

F. **Public Hearings.** Patrick opened the public hearing portion of the meeting at 7:10 P.M. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Croteau

declared a site visit. Patrick called for objections to any member of the Planning Commission, or the Commission as a whole, hearing this matter. There were no objections.

1. **File No. 2-AX-15/4-Z-15.** Consideration of requests to: (1) annex approximately 0.23 acre of real property (consisting of property currently identified as Tax Lot 00400 of Assessor's Tax Map 10-11-20-BB and currently addressed as 7576 North Coast Highway) into the Newport city limits; (2) amend the City of Newport Zoning Map to establish an I-1/"Light Industrial" zoning designation for the subject property consistent with the existing Newport Comprehensive Plan designation of Industrial; and (3) withdraw said territory from the Newport Rural Fire Protection District and the Lincoln County Library District. The Planning Commission will make a recommendation to the City Council on this matter.

Patrick called for the staff report. Tokos reported that the application is the Central Lincoln People's Utility District. He stated that the request is for consideration to: (1) annex approximately 0.23 acre of real property (consisting of property currently identified as Tax Lot 00400 of Assessor's Tax Map 10-11-20-BB and currently addressed as 7576 North Coast Highway) into the Newport city limits; (2) amend the City of Newport Zoning Map to establish an I-1/"Light Industrial" zoning designation for the subject property consistent with the existing Newport Comprehensive Plan designation of Industrial; and (3) withdraw said territory from the Newport Rural Fire Protection District and the Lincoln County Library District.

Tokos reported that the property is located at 7576 North Coast Highway, and is designated on the Lincoln County Assessor's Map as 10-11-20-BB, Tax Lot 400, and is approximately 0.23 acres.

Tokos reported that the subject territory is within the Newport Urban Growth Boundary, and is designated as "Industrial" on the Newport Comprehensive Plan Map. He stated that zoning is established at the time of annexation, and could be either I-1/"Light-Industrial," "I-2/"Medium-Industrial, or I-3/"Heavy Industrial" as all are consistent with the Comprehensive Plan designation of Industrial. He stated that the Applicant has requested the I-1 zone designation for this property. He noted that there is vacant I-1/"Light Industrial" zoned property bordering the site to the north, south, and east. He added that single family residences exist across Highway 101 to the west in an R-1/"Low Density Residential" zoned area.

Tokos reported that the property is gradually sloped and is partially vegetated with native shrubs and trees. He stated that the property contains a 1,350 square foot, single family residence constructed in 1948. He added that the dwelling receives water service from the city, and sewer is likely handled via an on-site septic system. Tokos reported that he is unaware of any development constraints or past land use actions.

Tokos reported that required notice was provided to the Department of Land Conservation and Development on November 4, 2015. He added that for this public hearing, notification in accordance with NMC Section 14.52.060(C) requirements included mailing notice to surrounding property owners, city departments and other public agencies and utilities, and other individuals. He stated that this notice was provided on October 28, 2015. He noted that the notice of public hearing was published in the November 13, 2015 edition of the Newport News-Times. He stated that as of November 16, 2015, no comments had been received.

Tokos reported that the packet contains various attachments, including: A - Applicant request; B - notice of public hearing and map; C - aerial photo of area to be annexed; D - Newport Zoning Map; D-1 - uses allowed in the I-1, I-2, and I-3 zones; D-2 - Intent of zoning districts; E - legal description of the area to be annexed; F - Northgate Industrial Park Subdivision Plat (reduced); G - Copy of ORS 222.170 through 222.183; G-1 - Copy of ORS 222.460 through 222.465.

Tokos explained the request noting that pursuant to 14.52.030(A) of the Newport Municipal Code, all actions that have the City Council as the approving authority (with the exception of withdrawals) shall first be referred to the Planning Commission for review and recommendation.

Tokos reported that the applicant is asking that the property be brought into the city limits and rezoned for light industrial use so that it can be redeveloped in the future in conjunction with adjoining lots that they have purchased in the Northgate Industrial Park subdivision. He stated that there is a 50-foot conservation easement and a 20-foot sewer and storm drainage easement that follow the west line of the Northgate Industrial Park, and that the easements wrap around the subject parcel. He added that by acquiring the site and annexing it into the city, the applicant has an opportunity to straighten out the easements, freeing up land for future development. He noted that the applicant intends to demolish the existing residence, and the driveway onto Highway 101 will be abandoned. He stated that as part of the annexation, and as provided for in ORS 222.524, the property would be withdrawn from the Newport Rural Fire Protection District and the Lincoln County Library District because the city provides these services.

Tokos reported on applicable criteria: (1) - Annexation/Withdrawal: Newport Municipal Code Section 14.37.040 - The required consents have been filed with the city; the territory to be annexed is within the acknowledged URG; and the territory to be annexed is contiguous to the existing city limits. He stated that there are no specific criteria for withdrawals from a district, as they are done in conjunction with the annexation when the city becomes the service provider for the property. (2) Zone Map Amendment pursuant to NMC 14.36.010 - Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.

Tokos presented the staff analysis. He reported that (1) Annexation: NMC 14.37.040 - The required consents have been filed with the city; the territory to be annexed is within the acknowledged UGB; and the territory to be annexed is contiguous to the existing city limits. He noted that pursuant to ORS 222.170(2), the city need not hold an election on the annexation of contiguous territory if it receives the consent of more than 50 percent of the owners of land in the territory, and such owners own more than 50 percent of the land area within the territory. He stated that the subject property was acquired by the Central Lincoln People's Utility District on September 25, 2015, as evidenced with a warranty deed recorded with the Lincoln County Clerk's Office under Instrument No. 2015-09854. He added that Debra Smith, the District's General Manager, signed the application form requesting the property be annexed. He noted that by signing the application form, Smith has provided the requisite consent that the territory be annexed.

Tokos reported that city records show that the property to be annexed is within the UGB of the city.

Tokos reported that the north, east, and south sides of the property are contiguous to the existing city limits.

Tokos reported that (2) Zone Map Amendment: NMC 14.36.010 - Findings are required showing that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.

Tokos reported that the Comprehensive Plan designation of Industrial is implemented by the I-1/"Light Industrial," I-2/"Medium Industrial," or I-3/"Heavy Industrial" zoning designations. He stated that the applicant intends to develop the property and adjoining lots into a maintenance yard that will replace an existing maintenance yard in South Beach. He added that the applicant has requested that an I-1/"Light Industrial" zone designation be placed on the property, as the lots to the north, east, and south, that are inside the city and owned by the applicant, are currently under an I-1 designation. He noted that a maintenance yard for an electrical utility is permitted in the I-1/"Light Industrial" zone district as an Industrial Service Use (NMC 14..03.070(7)) or as a Community Service Use (NMC 14.03.070(14)).

Tokos reported that the Industrial Comprehensive Plan Map designation for this property provides additional land for a range of potential industrial uses consistent with the Comprehensive Plan and the city's 20-year buildable land inventory. He stated that it is logical to apply an I-1 zoning designation to the property give that it borders land under the same designation on three sides. He noted that the Planning Commission may conclude that the application of a zone designation in conformance with the Comprehensive Plan would further a public necessity and promote the general welfare.

Tokos reported, in conclusion, that if the Commission finds that the request meets the criteria, it should recommend approval of the request with any conditions for annexation as deemed necessary compliance with the criteria. He added that the Commission should recommend to the City Council whether the zoning designation should be I-1, I-2, or I-3. He stated that if the Commission finds that the request does not comply with the criteria, then the Commission should identify the portion(s) of the criteria with which the annexation request is not in compliance.

Tokos stated that, based on the information received as of November 16, 2015, the applicant appears to be able to meet the applicable criteria for the annexation request and zoning map amendment.

Berman asked whether any thought had been given to annexing everything up to where the city limit goes east and west at this location. Tokos noted that this would involve picking up highway right-of-way, and this would need to be considered comprehensively since the same situation exists on Highway 20. Berman noted that it might be opportune to look at in this case. Tokos stated that this would bring ODOT into this case. Patrick suggested addressing this issue at a later date. Berman noted that one of the goals was to effect inclusions when necessary.

Branigan stated that 73rd Street is terribly narrow, and asked whether the city has considered improvements to that road which is used by trash trucks, and will be used by utility trucks. Tokos reported that this is the first of several steps that the PUD will take in order to position the property for redevelopment. He added that there will be

future discussions at which these conversations will occur. He noted that other processes will come into play, down the road, beyond the immediate question.

Proponents Testimony. Gail Malcom, representing Lincoln County PUD, stated that the intention is to build a warehouse/operations center.

Opponents Testimony. None.

Patrick closed the public hearing at 7:17 P.M., for Commission deliberation.

Branigan stated that the request is straightforward, and that Tokos did a good job, and that the applicant met all criteria. He recommended going forward with the proposal of annexing that small site and utilizing I-1 zoning.

Croteau agreed with Branigan.

Berman asked whether the county has taken a position on this request. Tokos stated that the county has no role in an annexation. Berman agreed with Branigan.

Hardy agreed with Branigan.

Patrick stated that the request meets all the criteria, and agreed with Branigan.

MOTION was made by Croteau, seconded by Berman, to forward a favorable recommendation on File No. 2-AX-15/4-Z-15, with approval of the annexation request with the I-1 zoning as requested, to the City Council for final determination. The motion carried unanimously in a voice vote.

G. **New Business.** There was no new business.

H. **Unfinished Business.**

1. **Update on City Council's steps to update the Newport Business license code for recreational marijuana facilities.**

Tokos reported that the City Council did not act on the business license code update at its last meeting. He noted that Council asked that staff look at including daycares and pre-schools in the 1,000 school setback factor. He added that some Councilors looked at recreational marijuana stores differently than medical marijuana outlets. He stated that he would be bringing a map and optional language to the December 7 City Council meeting. Tokos reported that Council is aware of the Planning Commission recommendation. Berman asked whether this means that after a structure is in place, no one can open a daycare within 1,000 feet of it. Tokos reported that one of the four medical marijuana dispensaries is within 1,000 feet of a daycare, and all the medical dispensaries are also selling recreational marijuana. He added that existing medical dispensaries were given the first chance to sell recreational marijuana under the OLCC rules. It was noted that if a retail establishment was there first, permitted by the city, it is fine, even if daycare or preschool locates there later, but if a preschool opened up, and someone wanted to get a retail license, the city would not issue a business license. Berman asked what happens if the ownership of a marijuana business transfers, and Tokos noted that the business is protected. Tokos reported that a discussion will be held regarding the difficulty of knowing when daycares and preschools open. It was asked how much property, with the expanded maps, would be wiped out on day one. Croteau asked whether there are spacing prohibitions regarding liquor stores, pawn shops, bordellos, etc. It was asked whether preschools have

been singled out for this, or established that preschools are impacted other establishments. Tokos noted that the regulations probably stop at elementary and secondary schools, but that OLCC is trying to set a regulatory framework addressing the issue of exposure to children. Patrick stated that staff probably does not know where all the preschools are, and Tokos stated that the city knows the locations of all the elementary and secondary schools, but would have a hard time determining others. He added that anything regulated by the state is subject to a city business license. He noted that he would keep the Planning Commission posted on this issue.

I. **Director Comments.**

1. **November 30 City Council Town Hall Meeting.**

Tokos reported that the packet contains a copy of the draft agenda for the upcoming Town Hall meeting, and reminded the Commission that they are invited to attend.

2. **Update on ePermitting Implementation.**

Tokos reported that staff is making good progress on the e-permitting implementation. He noted that the target is mid-January or early February. He added that a public hearing will be held, before the Planning Commission, regarding the transfer of the mechanical program. He stated that the comment period has closed and no comments were received, and the County did not contest the issue so far. He added that this matter will be on the December agenda.

J. **Adjournment.**

Having no further business, the meeting adjourned at 7:28 P.M.

Respectfully submitted,

Margaret M. Hawker, City Recorder

Memorandum

To: Newport Planning Commission/Citizen Advisory Committee
From: Derrick Tokos, Community Development Director *DT*
Date: December 10, 2015
Re: Public Comment on Transfer of Mechanical Program

On October 1, 2015 the City of Newport filed paperwork with the Oregon Building Codes Division asking that it transfer the Mechanical Permitting Program from Lincoln County to the City of Newport for properties that are located within the city limits. If the request is approved, the transfer will be effective July 1, 2016.

As part of this process, the City is required to provide opportunities for the public to comment on the proposal. That is the purpose of this meeting. Attached is a copy of the cover letter provided to the state indicating our intent to assume the mechanical program. It includes the arguments for why we believe that it is important that the city take this step. Also attached is a copy of the notice that was sent out, namely to local contractors that will be impacted by the change. The County also received notice.

A complete copy of the City's request is available on the Oregon Building Codes Division website at: http://www.bcd.oregon.gov/jurisdictions/program_assumptions.html.

Newport Building Official Joseph Lease will be in attendance to field questions. This is the first of two outreach meetings. The second is tentatively scheduled for the Commission's January 11, 2016 regular meeting date.

Attachments

CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

COAST GUARD CITY, USA



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fax: 541.574.0644

<http://newportoregon.gov>

mombetsu, japan, sister city

October 1, 2015

Mark Long, Administrator
Oregon Building Codes Division
1535 Edgewater Street NW
P.O. Box 14470
Salem, Oregon 97309-0404

RE: Notice of Intent to Assume Mechanical Program within the City of Newport

Dear Mr. Long,

The City of Newport is interested in assuming mechanical permitting, plan review, and inspection responsibilities from Lincoln County as it pertains to property that is inside the corporate limits of the City of Newport. The Mechanical Program is the only common permitting function not currently administered by the City of Newport, and we believe that significant customer service and administrative efficiencies will be achieved as a result of this program assumption, including:

- Creates the ability for the City to offer a complete combination permit (Structural, Electrical, Plumbing, and Mechanical) for 1 & 2 family dwellings, simplifying the permit issuance process for builders, owner/builders, and city staff. This option will be available through the ePermitting process which the City of Newport and the Oregon Building Codes Division are in the process of implementing and expect to have operational by January 1, 2016.
- Allows for increased efficiencies in the inspection process since underground, underfloor, rough, and final inspections could be combined for the multiple disciplines and performed by one inspector, reducing the number of inspection requests and site visits.
- Provides one jurisdictional point of contact for customers on all required building related permits for a project.
- Increases the depth of mechanical permitting expertise in our geographic area, which will enhance the City of Newport and Lincoln County's ability to ensure continuity of service in the event staffing levels are disrupted. The City and County have an Intergovernmental Agreement in place where the Building Official for each jurisdiction will assist the other with 1 & 2 family plan reviews and inspections for structural work in the event the other is unavailable. The City is open to expanding that agreement to include mutual support for mechanical, electrical, and plumbing responsibilities. This could include plumbing and electrical plan reviews, and inspections for plumbing and electrical work on projects that are beyond the scope of the City Building Official's Specialized Plumbing and Specialized Electrical Inspector Certifications. Such an amendment to the Intergovernmental Agreement would likely off-set any financial impact to the County attributed to the transfer of the Mechanical Program.

In the past, the City did not have a Building Official on staff capable taking on these responsibilities. Its current Building Official, employed with the City since January 2, 2015, possesses the necessary certifications.

For the purpose of compliance with ORS 455.148, please consider this letter as our formal Notice of Intent to Assume the Mechanical Program as of July 1, 2016. Over the next three months, the City of Newport will seek input from residents, contractors, and city and county officials. We have selected two dates for taking public comment.

To comply with the requirements associated with submission of the Notice of Intent, we submit the attached Program Administration Request form and updated Building Operations Plan.

As per OAR 918-020-0095, the City of Newport intends to:

1. Administer the program for a minimum of four (4) years. City of Newport has a proven track record of effectively and efficiently administering structural, electrical, and plumbing permitting responsibilities within its city limits, having done so for several decades, and its program is in good standing with the Oregon Building Codes Division.
2. Maintain and improve upon service levels presently provided, with staffing adequate to meet all requirements. Efficiencies the City will achieve in bundling inspections should result in only a modest increase in workload for our Building Official. Should the Building Official be unavailable, the City has a contract in place with Clair Company Inc. to perform the work and is open to amending its Intergovernmental Agreement with the County so that they may perform these same backup functions at an equivalent hourly rate.
3. Operate a financially feasible and sustainable program. The financial condition of the City of Newport's Building program is documented in the updated Building Operations Plan and attached financial analysis. Revenues and reserves are sufficient to support the program over the long term. Impacts to customers will be negligible as the City is prepared to put in place a fee structure that mirrors that which is currently in place at the County.
4. In the coming months, the City is prepared to work in partnership with Lincoln County to develop a transition plan that accounts for any open mechanical reviews and inspections, the transfer of records, revenues to complete outstanding work, and any pending enforcement actions. Additionally, City is prepared to put together and distribute informational materials (e.g. public meeting notices, direct mailings to contractors, and posted notices) so that contractors and members of the public are adequately apprised of the jurisdictional change effective July 1, 2016. Given the modest impact that the change will have on the County budget, particularly considering potential offsets discussed above, the City does not anticipate there to be a need to transfer affected employees.
5. City is prepared to adopt a fee resolution, and make revisions to its Building Code ordinances, as needed, to ensure that it adequately incorporates all relevant language needed to implement the Mechanical Specialty Code referenced in Division 440, Chapter 918 of the Oregon Administrative Rules, effective July 1, 2016.

City of Newport Building Official, Joseph Lease, and I met with Lincoln County Planning Director Onno Husing and Lincoln County Building Official Al Eames on September 10, 2015 to formally notify them of the City's intent to assume the mechanical program. At that meeting, we discussed impacts to their program and options for resolving those impacts, in an attempt to reach agreement and the City and County are continuing that dialogue (relevant emails attached).

We look forward to working with Lincoln County and State of Oregon Building Codes Division staff in the coming months to implement these changes efficiently and seamlessly, so that the jurisdictional transfer is as transparent as possible to contractors and members of the general public. The City is also happy to provide any additional information that may be needed to help facilitate this program assumption request.

Sincerely,



Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
d.tokos@newportoregon.gov

cc: Onno Husing, Lincoln County Planning Director
Wayne Belmont, Lincoln County Counsel
Spencer Nebel, Newport City Manager
Steve Rich, Newport City Attorney

Exhibits

- A.1 - Program Administration Request form
- A.2 - Updated Building Operations Plan
- A.3 - City of Newport boundary map
- A.4 - Dates for public outreach meetings
- A.5 - September 2015 emails between County and City staff related mechanical program assumption request
- A.6 - Financial analysis addressing OAR 918-020-0095
- A.7 - Lincoln County Mechanical Permit Application forms
- A.8 - Lincoln County Local Government Surcharge Fee Reports 2012 – 2014

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NOTICE OF A PUBLIC OUTREACH MEETING

The City of Newport has filed documentation with the State of Oregon Building Codes Division regarding its intent to assume mechanical permitting, plan review, and inspection responsibilities from Lincoln County for properties that are within the corporate limits of the City of Newport. The program transfer would be effective July 1, 2016.

The mechanical program is the only common permitting function not currently administered by the City of Newport. Assuming this program creates the ability for the City to offer a complete combination permit (Structural, Electrical, Plumbing, and Mechanical) for 1 & 2 family dwellings, simplifying the permit issuance process for builders, owner/builders, and city staff. It allows for increased efficiencies in the inspection process since underground, underfloor, rough, and final inspections could be combined for the multiple disciplines and performed by one inspector, reducing the number of inspection requests and site visits. It provides one jurisdictional point of contact for customers on all required building-related permits for a project. In the past, the City did not have a Building Official on staff capable of taking on these responsibilities. Its current Building Official, employed with the City since January 2, 2015, possesses the necessary certifications.

An outreach meeting will be held before the Newport Planning Commission at 7:00 p.m. on December 14, 2015, in the Council Chambers of the Newport City Hall at 169 SW Coast Street to receive public comment regarding the City's proposal to assume these responsibilities. The City Building Official, Joseph Lease, and the Community Development Director, Derrick Tokos, will be available at the meeting to answer questions.

For more information, contact Derrick Tokos, Community Development Director, City of Newport ,169 Coast Highway, d.tokos@newportoregon.gov 541.574.0626.

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ONNO HUSING
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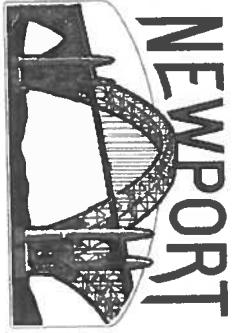
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PLANNING STAFF REPORT Case File No. 2-NCU-15

- A. **APPLICANT:** NW Natural Gas Company (Philip Zlatnik and Wayne Pipes) (Mary Fierros Bower, authorized representative).
- B. **REQUEST:** Approval of a request per Section 14.32/“Nonconforming Uses, Lots, and Structures” of the Newport Municipal Code, for the replacement of a non-conforming office building (a.k.a. “Control Building”). The new office will be 3,893 square feet in size.
- C. **LOCATION:** 1702 SE Bay Blvd.
- D. **LEGAL DESCRIPTION:** Lincoln County Assessor’s Tax Map 11-11-09, Tax Lot 1600 in the City of Newport, County of Lincoln, Oregon.
- E. **LOT SIZE:** Approximately 21.62 acres.
- F. **STAFF REPORT**

1. **REPORT OF FACT**

- a. **Plan Designation:** Shoreland.
- b. **Zone Designation:** W-1/“Water Dependent.”
- c. **Surrounding Land Uses:** An estuary to the south and east. Water dependent and industrial zoned land border the property to the north and west. Property to the north is proposed to be developed with a log yard. A disposal site for dredge materials is situated to the west.
- d. **Topography and Vegetation:** The subject property is flat and elevated just above the adjoining estuary. Riprap embankments exist along the perimeter of the site. Upland areas are vegetated with grass.
- e. **Existing Structures:** A large natural gas tank, control building, process building and other small buildings surrounded by a security fence.
- f. **Utilities:** All are available to the site.
- g. **Development Constraints:** Portions of the property, namely along the perimeter of the site, are within the 100 year floodplain.
- h. **Past Land Use Actions:** None of record.

- i. **Notification:** Notification to surrounding property owners and to city departments/public agencies was mailed on November 13, 2015; and the notice of public hearing was published in the Newport News-Times on December 4, 2015.

- j. **Attachments:**

- Attachment "A" – Application Form
- Attachment "A-1" – Applicant's Narrative
- Attachment "A-2" – Site Photograph
- Attachment "A-3" – County Assessor Information
- Attachment "A-4" – Summary of Establishment and Maintenance of the Facility
- Attachment "A-5" – Site Plan (Sheets 1 and 2)
- Attachment "A-6" – Floor Plan (Sheet 3)
- Attachment "A-7" – Architectural Elevations (Sheets 4 through 7)
- Attachment "B" – Public Hearing Notice and Map
- Attachment "C" – Zoning Map of Area

2. **Explanation of the Request:** Pursuant to Section 14.32.070/“Alteration, Expansion, or Replacement of Nonconforming Uses and Structures” of the Newport Municipal Code, after verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood.

The applicant owns property identified as Tax Lot 1600 on Tax Map 11-11-09. The property contains a Liquefied Natural Gas (LNG) storage tank, process buildings and a control building. The property appears to have been acquired by NW Natural in 1974 and the plant was commissioned in 1977. A summary of maintenance activities provided by the applicant illustrates steps they have taken to maintain and upgrade the plant since it was opened (Attachment “A-4”)

In their written narrative, the applicant states that they are seeking approval to construct a 3,893 square foot, single-story office building including associated parking, trash / recycling enclosure, earth berm and landscaping. The new Control Building will replace an existing, non-code compliant, 2,500 square foot Control Building located on the same site (Attachment “A-5”).

3. **Evaluation of the Request:**

- a. **Comments:** All surrounding property owners and affected city departments and public utilities were notified on November 13, 2015. The notice was published in the Newport News-Times on December 4, 2015. No comments were received in response to the notice.
 - b. **Application Submittal Requirements:** Pursuant to NMC 14.32.040, applications must include a completed application form, scaled site plan, names and addresses of property owners within the notification area, survey work if structures will not satisfy setback requirements and exterior architectural elevations if structures will exceed building height limitations.

c. **Verification of Status of Nonconforming Use or Structure:** Pursuant to NMC Section 14.32.060, upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

- The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and
- The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicant provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings

The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use (September 7, 1982). When determining the nature and extent of a nonconforming use, the approval authority shall consider:

- Description of the use;
- The types and quantities of goods or services provided and activities conducted;
- The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;
- The number, location, and size of physical improvements associated with the use;
- The amount of land devoted to the use; and
- Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

d. **Applicable Criteria (Section 14.32.070):** After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

- (1) The character and history of the use and of development in the surrounding area;

- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood;
- (3) Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water, and streets;
- (4) The comparative numbers and kinds of vehicular trips to the site;
- (5) The comparative amount and nature of outside storage, loading, and parking;
- (6) The comparative visual appearance;
- (7) The comparative hours of operation;
- (8) The comparative effect on solar access and privacy;
- (9) Other factors that impact the character or needs of the neighborhood.

The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.

To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, and alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to:

- (1) Surfacing or parking areas and landscaping;
- (2) Exterior design of structures;
- (3) Outdoor displays, storage, and signage.

e. **Staff Analysis:**

In order to grant the permit, the Planning Commission must find that the applicant has provided a complete application, that there is substantial evidence that the Commission can rely upon to verify the nature and extent of the existing nonconformity, and that the expansion will not result in a greater adverse impact on the neighborhood considering the criteria listed under NMC 14.32.070. With that in mind, staff offers the following analysis:

- (1) The applicant's property is located in a W-1/"Water-Dependent" zoning district (Attachment "C"). Utility facilities, such as the LNG Plant, are not permitted uses in this district (NMC 14.03.080).
- (2) Consistent with NMC 14.32.040, the applicant submitted a completed application form, narrative, names and addresses of property owners within the notification area, site plan, floor plan, and architectural elevations. In sum, this constitutes substantial evidence upon which the Planning Commission can make a decision as to whether or not the addition of a 3,893 square foot Control Building satisfies the City's standards for the alteration and expansion of a non-conforming use.
- (3) With respect to NMC 14.32.060, regarding the non-conforming status of the LNG Plant, the applicant provided assessment information indicating that the

property was acquired in 1974. The application materials further note that the plant was commissioned in 1977 and list maintenance activities and upgrades made to the facility from 1978 to 2013 (Attachment "A-4"). Per the Newport Zoning Ordinance, the LNG Plant is non-conforming if it is established that the facility existed and has been continuously maintained since September 7, 1982. Considering the above, it would be reasonable for the Planning Commission to find that there is substantial evidence in the records that the LNG plant qualifies as non-conforming.

(4) After verification of the status of a non-conforming use, pursuant to NMC 14.32.070, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding the Planning Commission should consider the following factors:

a. The character and history of the use and of development in the surrounding area.

- i. The applicant notes that the property has been utilized continuously as an LNG Plant since its inception in June of 1977.
- ii. The applicant further states that replacement of the LNG Plant Control Building is in keeping with the character of the other existing buildings on the site and surrounding neighborhood in terms of its appearance. They note that existing buildings on the site consist of metal paneling exterior walls and standing seam metal gabled roofs. The proposed architecture for the new Control Building consists of a standing seam metal roof, concrete block walls, cladded steel columns and beams and metal paneling integrated with storefront systems.
- iii. The applicant explains that the architecture is modern and simple in form, consisting of a simple shed roof sloping up towards the building's west façade to maximize window area, light and views into the building. The building's square footage is proposed to be slightly larger in footprint than the existing building for better functionality (Attachments "A-6" and "A-7"). The existing Control Building's size is approximately 2,500 sf and the proposed new building's size is approximately 3,893 sf.
- iv. The surrounding properties are largely undeveloped. A log yard is proposed for property north of the LNG facility and other lands to the north and west will likely develop in an industrial manner at some point, to complement the Port of Newport's International Terminal. This would be consistent with the water dependent and heavy industrial zoning that is in place. These types of uses would orient toward Bay Boulevard for the transport of goods and materials by truck or toward the bay for barge or shipping out of the terminal site. In either case, the properties would orient away from the LNG facility.

v. The alteration to the non-conforming use is the addition of a Control Building. The tank itself will remain as it is currently constructed; therefore, there does not appear to be any increased risk to neighboring properties from additional quantities of volatile liquids being stored onsite.

vi. The applicant provides community access to the estuary and portions of its property for recreational purposes. They are not required to do so, and the addition of the Control Building does not impact these areas as it is located within the perimeter of an existing security fence.

vii. Considering the above, it is reasonable for the Planning Commission to conclude that the addition of a new Control Building is consistent with the character and history of development in the area given that the change will not further exacerbate the nonconforming situation.

b. The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood.

i. The applicant notes that the proposed Control Building is not anticipated to create additional noise, vibration, dust, odor, fumes, glare, or smoke since the building will be utilized as an office use similar in size to the existing building use.

ii. Nearby water-dependent and heavy industrial properties are envisioned to develop with uses that generate noise, vibration, dust, odor, fumes, glare, or smoke far in excess of anything that could be attributed to the LNG plant.

iii. Considering the above, it is reasonable for the Planning Commission to conclude that the addition of a Control Building will not create noise, vibration, dust, odor, fumes, glare, or smoke in a manner that would result in a greater adverse impact on the neighborhood.

c. Adequacy of infrastructure to accommodate the use (including sewer, water, and streets.

i. The applicant explains that the new Control Building will be connected to a septic system because the LNG Plant property does not currently have sewer infrastructure in place. The existing water line on site is proposed to be extended to the new building. The existing roadway to the site from SE Bay Blvd. is owned by the applicant and is adequate to meet their needs. The existing paved roadway will be extended to the new building.

ii. Connection to city sewer service is required for structures that are within 250 feet of a public sewer line (NMC 5.15.020). The closest city sewer infrastructure is at the intersection of Running Springs and Bay Boulevard, which is far more than 250 feet from the applicant's property.

iii. Considering the above, it is reasonable for the Planning Commission to conclude that the addition of the proposed Control Building will not cause any greater adverse impact on the neighborhood as it relates to the adequacy of infrastructure to serve the use.

d. The comparative numbers and kinds of vehicular trips to the site.

- i. The applicant states that the Control Building's occupancy will be similar to the existing Control Building. The existing building's occupants will be relocated to the new building. The new building will have a total of 9 occupants. The former Control Building will be remodeled at a later date to house electrical equipment.
- ii. The applicant further notes that no additional vehicular trips to the site are anticipated.
- iii. Considering the above, it is reasonable for the Planning Commission to conclude that the addition Control Building will not cause any greater adverse impact on the neighborhood relative to this criterion.

e. The comparative amount and nature of outside storage, loading, and parking.

- i. The applicant indicates that the City of Newport zoning ordinance does not include a minimum / maximum threshold for the number of off-street parking spaces required for a utility facility. They further note that the project proposes to provide 7 motor vehicle parking spaces to serve the new building including 2 accessible parking spaces and a trash / recycle enclosure. A loading area is not required.
- ii. While the zoning ordinance does not have parking standards for a utility facility, it does for an office building. One parking space is required for every 600 square feet of floor area (NMC 14.14.030(1)). This equates to a requirement that 7 spaces be provided. The spaces must also be paved (NMC 14.14090(C)). The applicant's site plan illustrates that off-street spaces are being provided as required by current codes (Attachment "A-5").
- iii. Given the above, it is reasonable for the Planning Commission to conclude that the proposed Control Building will not cause any greater adverse impact on the neighborhood with respect to the comparative amount and nature of outside storage, loading, and parking.

f. The comparative visual appearance.

- i. The applicant believes that the design of the new building is consistent with the character and image of the surrounding area and the existing Control Building because it incorporates materials and detailing that is prevalent in this area and on the existing building. The proposed building draws from the palette of materials

used in the immediate surrounding and existing building utilizing concrete masonry walls, vertical metal siding, smooth metal panel system above and standing seam metal roof. A modernist interpretation of architectural design incorporating storefront windows is carried through at the proposed building's "public façade". A main entrance and a generous focal multi-purpose space allows for interaction opportunities among the users as do the outdoor gathering spaces outside the lobby at the outdoor patio off the multi-purpose space. Catering to the bay views, high storefront windows are proposed along the west side and north sides of the building (Attachment "A-7").

ii. Considering the above, it is reasonable for the Planning Commission to conclude that the proposed Control Building will not cause any greater adverse impact on the neighborhood as it relates to comparative visual appearance.

g. The comparative hours of operation.

i. The applicant notes that the existing Control Building is manned 24/7 and work shifts consist of 3-8 hour shifts. The new Control Building is anticipated to be manned in the same manner.

ii. Based on the above, it is reasonable for the Planning Commission to conclude that the proposed Control Building will not cause any greater adverse impact on the neighborhood as far as comparative hours of operation.

h. The comparative effect on solar access and privacy.

i. The applicant notes that the building is set along the northwest side of the property, which is a considerable distance from the adjacent neighbors and other on-site buildings.

ii. Given the above, it is reasonable for the Planning Commission to conclude that the Proposed Control Building satisfies this criterion.

i. Other factors which impact the character or needs of the neighborhood.

i. There are no other apparent factors.

j. The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.

i. The LNG plant is in a W-1 zoning district and is nonconforming because utility facilities are not permitted in this zone district. The purpose of the W-1 zone is to protect Yaquina Bay shoreland areas for uses that need contact with or use water for water-borne transportation, recreation, energy production or water supply (NMC 14.03.040). The LNG facility is not dependent upon the bay for any of the factors listed.

- ii. The LNG plant was constructed before the W-1 zoning was in place, and most of the applicant's property is dedicated to this use. In fact, it appears that the confines of the secure facility have remained more or less static. The new Control Building is being placed within the fence line, in close proximity to existing buildings. Therefore, the addition of the building will not reduce the amount of land available for water-dependent development.
 - iii. Based on the above, it is reasonable for the Planning Commission to conclude that the proposed Control Building will not result in a greater adverse impact on the neighborhood relative to the objectives of the current zoning provisions.
4. **Conclusion:** If the Planning Commission finds that the alteration/expansion of the nonconforming use will not result in a greater adverse impact on the neighborhood, and the applicant has met the criteria established in the Zoning Ordinance for authorizing alteration/expansion of a nonconforming use, then the Commission should approve the request. The Commission can attach reasonable conditions that are necessary to carry out the purposes of the Zoning Ordinance and the Comprehensive Plan. If the Commission finds that the request does not comply with the criteria, then the Commission should deny the application.

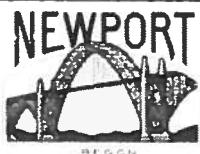
G. **STAFF RECOMMENDATION:** As outlined in this report, this application to construct a new, 3,893 square foot Control Building can satisfy the approval criteria provided conditions are imposed as outlined below. Accordingly, the Commission should approve this request, subject to the following:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.



Derrick I. Tokos AICP
Community Development Director
City of Newport

December 10, 2015



**City of Newport
Land Use Application**

RECEIVED

Applicant Name(s):	Property Owner Name(s)
Philip Zlatnik	Wayne Pipes
Applicant Mailing Address:	Property Owner Mailing Address:
220 NW Second Ave., Portland OR 97201	220 NW Second Ave., Portland OR 97201
Applicant Phone No.	Property Owner Phone No.
503.226.4211 x 3520	503.721.2496
Applicant Email	Property Owner Email
Philip.Zlatnik@nwnatural.com	Wayne.Pipes@nwnatural.com
Authorized Representative(s): <i>Person authorized to submit and act on this</i>	
Mary Fierros Bower	
Authorized Representative Mailing Address:	
720 NW Davis Street, Suite 300, Portland OR 97209	
Authorized Representative Telephone No.	
503.265.1572	
Authorized Representative Email.	mfierrosbower@lrsarchitects.com

Project Information

Property Location	1702 SE Bay Blvd.		
Tax Assessor's Map No.:	11s11w09 (R500726)	Tax Lot(s):	11-11-09-00-01 600-00
Zone Designation:	W-1 Water Dependent	Legal Description:	
Comp. Plan Designation:			
Brief description of Land Use Request(s):	<p>+ implies</p> <ol style="list-style-type: none"> 1. Move north property line 20 ft back from front yard setback 2. Variance of 2 feet from front yard setback <p>See attached narrative for Land Use Request</p>		

Existing Structures: if any

NW Natural LNG Plant including Control Building, Process Buildings and LNG Tank

Topography and Vegetation:

Flairly flat vacant site area with no vegetation

Application Type (please check all that apply)

- | | | |
|---|---|--|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Interpretation | <input type="checkbox"/> UGB Amendment |
| <input type="checkbox"/> Appeal | <input type="checkbox"/> Minor Replat | <input type="checkbox"/> Vacation |
| <input type="checkbox"/> Comp Plan/Map Amendment | <input type="checkbox"/> Partition | <input type="checkbox"/> Variance/Adjustment |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Planned Development | <input type="checkbox"/> PC |
| <input type="checkbox"/> <input type="checkbox"/> PC | <input type="checkbox"/> Property Line Adjustment | <input type="checkbox"/> Staff |
| <input type="checkbox"/> <input type="checkbox"/> Staff | <input type="checkbox"/> Shoreland Impact | <input type="checkbox"/> Zone Ord/Map |
| <input checked="" type="checkbox"/> Design Review | <input type="checkbox"/> Subdivision | <input type="checkbox"/> Amendment |
| <input type="checkbox"/> Geologic Permit | <input type="checkbox"/> Temporary Use Permit | <input checked="" type="checkbox"/> Other |

FOR OFFICE USE ONLY

File No. Assigned:

Date Received:	11/2/15	Fee Amount:	768.00	Date Accepted as Complete:
Received By:	<i>Loh</i>	Receipt No.		Accepted By:

City Hall
169, SW Coast Hwy
Newport, OR 97365
541.574.0629



City of Newport Land Use Application

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development and Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

Mary Fierros Brown

Applicant Signature(s)

11/12/15

Date

Property Owner Signature(s) (if other than applicant)

Date

Philip Foster

Authorized representative Signature(s) (if other than
applicant)

11/12/15

Date

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

NW NATURAL
NEWPORT CONTROL BUILDING PROJECT

1702 SE Bay Blvd.
Newport, Oregon 97365

CITY OF NEWPORT
NOV 12 2015
RECEIVED

Type III Design Review Submittal

Project Number: 215256
November 12, 2015

The City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365



720 NW Davis Suite 300 Portland, Oregon 97209
503.221.1121 503.221.2077

CONTACT INFORMATION

Applicant:

NW Natural

Contact: Philip Zlatnik
Philip.Zlatnik@nwnatural.com
220 NW Second Avenue
Portland, OR 97209
503.226.4211x3520

Applicant's Representatives

Architect:

LRS Architects

Contact: Paul Boundy
pbounty@lrsarchitects.com
503.265.1561
Contact: Mary Fierros Bower
mfierrosbower@lrsarchitects.com
503.256.1572
720 NW Davis Street, Suite 300
Portland, OR 97209

Property Owner:

NW Natural Gas Co

Contact: Wayne Pipes
Wayne.Pipes@nwnatural.com
220 NW Second Avenue
Portland, OR 97209
503.721.2496

NARRATIVE AND CODE CONFORMANCE

EXISTING CONDITIONS

The subject site is located on a property between Yaquina Bay Road and SE Bay Blvd. and bordered by Yaquina Bay in the City of Newport. The site is approximately 21.62 acres in size and carries the Water Dependent base zone.

Site Information	NW Natural Newport Control Building Site
Location	1702 SE Bay Blvd.
Property ID	R500726
Tax Lots	Tax Lot 11-11-09-00-01600-00
Site Size	21.62 Acres
Land Use	
Jurisdiction	City of Newport
Comprehensive Plan	
Base Zone	W-1 Water Dependent
Overlay Zones	
Plan District	
Adjacent Base Zones	W-1 Water Dependent, I-3 Heavy
Existing Use	NW Natural Gas Co Control Building, Process Buildings and LNG Tank
Neighborhood District	
Surrounding Areas	Designation / Use
North	I-3 / Industrial, W-1
East	Yaquina Bay
South	Yaquina Bay
West	Yaquina Bay

PROJECT DESCRIPTION

The proposed development will consist of 3,893 SF of office use to replace the existing Control Building non-conforming office use. The existing Control Building has become outdated and non-code compliant and will be repurposed to house electrical equipment under a separate project. The new single-story building will be a blast resistant architecture. It is articulated and accented with vertical metal paneling and large storefront windows at the prominent building elements. The roof consists of concrete planks covered with a standing seam metal roof. The roof will be supported by exposed steel posts and beams cladded with marine environment suitable materials. The east side of the building is articulated with a concrete masonry wall and a full height earth berm for blast resistance protection from the process equipment. The building is set along the northwest side of the property away a considerable distance from the process equipment. The architecture maximizes windows along the west façade to allow light to permeate throughout the building and to maximize views of the bay.

The building architecture draws cues from existing buildings in the neighborhood while incorporating a variety of modern design elements. The single-story building features compelling vertical and horizontal elements, which extend horizontally beyond the façade plan - commanding building presence, drawing attention to the primary building entrance, and creating a prominent sense of entry for the pedestrians. A generous roof overhang along with exposed cladded steel beams and posts provides additional visual articulation along the façade, protection from the elements, and adds an overall sense of enclosure for the users.

The colors, materials, large windows and metal siding are intricately detailed and are recurring elements featured throughout the building facades unifying the building architecture and the site in general.

PROPOSAL SUMMARY

The applicant proposes to build on a vacant portion of the property. The project consists of a single-story office building. The office building will be oriented north-south. On-site parking is proposed to the front of the building (to the north) in the vicinity of the existing surface parking lot and site entrance.

Land Use Request

The applicant is requesting approval of a Type III Land Use Review application for a non-conforming use to allow construction of a new single-story office building including associated parking, trash / recycling enclosure, earth berm and landscaping to be located off of NE Bay Boulevard. This new 3,893 sf Control Building will replace the existing non-code compliant 2,500 sf Control Building located on the same site. The new building will create a safer and healthier user environment.

The Applicant is proposing to mitigate the proposed non-conforming use through providing an enhanced building architecture of comparable nature.

The proposed design is comparable to the existing non-confirmed use in regard to the following:

- The character is of similar development in the surrounding neighborhood and the history of the use is well documented since its occupancy in 1977
- The degree of noise, vibration, dust, odor, fumes, glare, or smoke is consistent with the existing office use
- There is adequate infrastructure to accommodate the use
- The numbers and kinds of vehicular trips to the site will remain unchanged
- The amount and nature of outside storage, loading and parking are similar to the existing use
- The building's visual appearance is comparable or better
- The building will maintain the same hours of operation

- The building will not have an adverse effect on solar access and privacy

Since an official name is yet to be determined, for the purposes of this application this project will be referred to as 'NW Natural Newport Control Building.

The proposed stormwater disposal will be handled by collecting all stormwater from the impervious areas and conveying it to a water quality system prior to infiltrating into the ground. Water quality will consist of pervious asphalt in the parking area, dependent on the final design. Roof drains will collect stormwater.

WRITTEN FINDINGS OF FACT NARRATIVE

(a) The Character and history of the use and of development in the surrounding neighborhood.

The property has been utilized in continuous use as the Newport LNG Plant Control Building since its inception in June of 1977.

The replacement of the LNG Plant Control Building is in keeping with the character of the other existing buildings on the site and surrounding neighborhood. The existing buildings on the site consist of metal paneling exterior walls and standing seam metal gabled roofs. The proposed architecture for the new Control Building consists of a standing seam metal roof, concrete block walls, cladded steel columns and beams and metal paneling integrated with storefront systems.

The architecture is modern and simple in form, consisting of a simple shed roof sloping up towards the building's west façade to maximize window area, light and views into the building. The building's square footage is proposed to be slightly larger in footprint than the existing building for better functionality. The existing Control Building's size is approximately 2,500 sf and the proposed new building's size is approximately 3,893 sf.

(b) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood.

The proposed new Control Building is not anticipated to create additional noise, vibration, dust, odor, fumes, glare, or smoke since the building will be utilized as an office use similar in size to the existing building use.

(c) Adequacy of infrastructure (sewer, water, and streets) to accommodate the use.

The proposed new Control Building is proposed to be on a septic system as the LNG Plant property does not currently have sewer infrastructure in place. The existing water line on site is proposed to be extended to the new building. The existing roadway to the site from SE Bay Blvd. is adequate. The existing paved roadway will be extended to the new building.

(d) The comparative numbers and kinds of vehicular trips to the site.

The proposed new Control Building's occupants will be similar to the existing Control Building. The existing building's occupants will be relocated from the existing building to the new building. The new building will have a total of 9 occupants. The former Control Building will be remodeled at a later date to house electrical equipment. No additional vehicular trips to the site are anticipated.

(e) The comparative amount and nature of outside storage, loading and parking.

Per the zoning ordinance standard there is no minimum / maximum number of parking spaces required for this development. The project proposes to provide 7 motor vehicle parking spaces to serve the new building including 2 accessible parking spaces and a trash / recycle enclosure. A loading area is not required.

(f) The comparative visual appearance.

The design of the new building is consistent with the character and image of the surrounding area and existing Control Building by recalling materials and detailing that is prevalent in this area and on the existing building. The proposed building draws from the palette of materials used in the immediate surrounding and existing building – utilizing concrete masonry walls, vertical metal siding, smooth metal panel system above and standing seam metal roof. A modernist interpretation of architectural design incorporating storefront windows is carried through at the proposed building's "public façade". A main entrance and a generous focal multi-purpose space allows for interaction opportunities among the users as do the outdoor gathering spaces outside the lobby at the outdoor patio off the multi-purpose space. Catering to the bay views, high storefront windows are proposed along the west side and north sides of the building.

(g) The comparative hours of operation.

The existing Control Building is manned 24/7 and work shifts consist of 3-8 hour shifts. The new Control Building is anticipated to be manned in the same manner.

(h) The comparative effect on solar access and privacy.

The building is set along the northwest side of the property away a considerable distance from the adjacent neighbors and other on-site buildings.

(i) Other factors which impact the character or needs of the neighborhood.

The applicant does not see other factors which will impact the character or needs of the neighborhood.

Conclusion

The above narrative and the attached exhibits set forth evidence meeting all applicable standards and requirements set forth in The City of Newport Community Design Guidelines. Approval of this application will allow the Applicant to construct a well-designed single-story office building project. The Applicant therefore respectfully requests approval of the subject application.

ATTACHMENT "A-2"
File No. 2-NCU-15
Site Photograph



**LIST OF NAMES AND ADDRESSES OF PROPERTY OWNERS
WITHIN THE NOTIFICATION AREA**

Owner Rondys & Associates Inc

Mailing Address Port of Newport Lease
600 SE Bay Blvd
Newport, OR 97365

Site Address 1430 SE Bay Blvd

Lincoln County Property Report

Account # & Prop. Info		Account Details			Owner & Address		
Account #:	R517416	Neighborhood:	N277	Owner and	RONDYS & ASSOCIATES INC		
Map Taxlot:	11-11-09-D0-00100-00	Property Class:	991	Mailing Address:	% PORT OF NEWPORT LEASE 600 SE BAY BLVD NEWPORT, OR 97365		
Tax Map:	11S11W09D			Site Address(es):	1430 SE BAY BLVD		
Web Map:	View Map						
Info:	TWNNSHP 11, RNG 11, ACRES 39.84, M-6379						
Tax Code:	104						
Acres:	39.84						
Improvements							
Description	Area	Yr Built	Found	Heat	Plumb	BDMS	Value
OTHER IMPROVEMENTS	0 sq ft						\$15,670
Foundation Code List	Heating/AC Code List	Plumbing Code List					
Value History							
	Year Imp.	Land	Total Market	Total Assessed			
	2014	15,670	4,462,080	4,477,750	0		
	2013	15,670	4,462,080	4,477,750	0		
	2012	15,670	4,462,080	4,477,750	0		
	2011	15,670	4,462,080	4,477,750	0		
	2010	15,670	4,462,080	4,477,750	0		
	2009	15,670	4,452,000	4,467,670	0		
Sales History							
No Sales Data							
Related Accounts							
Land	Description	Acres	Market Value	Special Use Value			
	IND DEV BAYFRONT SITE	39.84	4,462,080				
Disclaimer							
This report was produced using the Lincoln County assessment information. This information is maintained by the county to support its governmental activities. The County is not responsible for errors, omissions, misuse or misinterpretation. Tax data exported 10/2014.							
Today's Date: 11/03/2015							

Map

1
11
10
9
8
7
6
5
4
3
2
1

US LOT 1
US LOT 1

1997-2

ESTATES

PP

101

60

198

23

100

S3^a34^b30^cE 1344.02

1500
26.23 AC

N3^a34^b30^cW 1350.45

ACCOUNT #: R517416
MAP TAX LOT: 11-11-09-DO-00100-00
SITE ADDRESS: 1430 SE BAY BLVD
OWNER: RONDYS & ASSOCIATES INC.

199
0.54 AC

1600
21.62 AC

318.17

PER CS 5618
"ORDINARY WATER"
N 44° 15' 30" E
S 74° 9' W
M 13' 54" S
M 23' 46" E
MF 193-0489

16
16

PER CS 5618
APPR 1A

9
9
9

S8^a49^b55^cE 519.44

E 00^a27^b00^cS
95.6

16

0 66 132 198 264 ft

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ATTACHMENT "A-4"
File No. 2-NCU-15
Summary of Establishment &
Maintenance of the Facility

Subset of Upgrades/Maintenance of Newport LNG Plant

Date
7/1/1978
Newport LNG Fencing & Lighting System
Newport LNG Guard Headquarters & Gate Lighting
Newport LNG Protective Cover for Interior Insulation
7/1/1982
Newport LNG Storage Tank Modifications
7/1/1984
Newport LNG C-3 Compressor Repair
7/1/1986
Newport LNG Fabricated Sand Blasting Booth
Newport LNG Gas Detection System in Control Room
Newport LNG Rebuilt Septic System Drain field
7/1/1987
Newport LNG Liquefaction Improvements
7/1/1988
Newport LNG Measuring & Regulating Equipment
7/1/1989
Newport LNG Air Compressor
Newport LNG Liquefaction Improvements
7/1/1990
Newport LNG Mixed Refrigerant Loop Heat Exchanger
Newport LNG P-2 Internal Vibration Monitoring
Newport LNG T-1 Storage Tank Level Gauge Replacement
7/1/1991
Newport LNG Concrete Cable Tray Support
Newport LNG Insulation Repair Work
Newport LNG Precast Concrete Vault / Trench
Newport LNG Underground Improvements
7/1/1993
Newport LNG Liquefaction Improvements
REPLACEMENT AND UPGRADE OF MISC EQUIP.
7/1/1995
Newport LNG Storage Vessel
7/1/1996
Newport LNG Process Alarm Modules
7/1/1997
Newport LNG Culver Improvements
NEWPORT LNG PLANT IMPROVMTS-Pneumatic
NEWPORT LNG PLANT IMPROVMTS-Reliability
Newport LNG Safety & Security Equipment
Newport LNG Vinyl Flooring Installation

7/1/1998
Newport LNG Foam / Fire System
Newport LNG Miscellaneous Structure Improvements
NEWPORT LNG PLANT IMPROVMTS - Pneumatic
7/1/1999
Newport LNG DTEX Odorant Detection System
Newport LNG Kitchen Remodel
Newport LNG Siding & Roof Repair
7/1/2000
Newport LNG Carpet Installation
Newport LNG Odorant Roof Repair
Newport LNG Perimeter Lighting
7/1/2001
Newport LNG Data Feedback System
Newport LNG Liquefaction Improvements
7/1/2002
Newport LNG Code Improvements
Newport LNG Diagnostics & Controls System
7/1/2003
Newport LNG Air Compressor Replacement
Newport LNG Generator Installation
SPIRAL STAIRCASE - NEWPORT LNG
4/1/2004
Newport LNG V-2 Glycol Tube Replacement
4/1/2007
Newport LNG Sulfur Chromatograph
9/1/2008
Newport LNG Det-Tronics Fire / Gas Detection System
1/31/2009
Newport LNG Purple-K Chemical Fire Suppression Sys
3/31/2013
Newport LNG Vaporizer
4/30/2013
Newport LNG CCTV
Newport LNG Fire Suppression System
Newport LNG Lighting System
Newport LNG Process Build Ventilation
Newport LNG Security System Replacement
Newport LNG Transformer
Newport LNG Video and Fence Intrusion Upgrade
10/31/2013
Newport LNG Liquefaction Improvements

Mary Fierros-Bower

From: Zlatnik, Philip <Philip.Zlatnik@nwnatural.com>
Sent: Tuesday, November 10, 2015 5:22 PM
To: Derrick Tokos
Cc: Mary Fierros-Bower
Subject: RE: [External]RE: Records for Newport LNG Plant
Attachments: Newport LNG Plant Upgrades.docx

Mr. Tokos,

Thank you for your response. The plant was commissioned in 1977 and I've attached a word document that summarizes at a high level some of the various upgrades/maintenance work that has been done on the plant since it was commissioned. This was taken from our accounting/asset mgmt. system so it's a little cryptic but you can see that over the years investments have been made to maintain the plant. Will you please review and confirm that what I have supplied will be sufficient?

Thanks,

Philip "Ebb" Zlatnik, PMP
Senior Project Manager
Project Management Office

NW Natural | 220 NW Second Avenue | Portland, OR 97209
office: (503) 226-4211 x 3520
mobile: (503) 519-9985
p1z@nwnatural.com



From: Derrick Tokos [mailto:D.Tokos@NewportOregon.gov]
Sent: Thursday, November 05, 2015 2:23 PM
To: Zlatnik, Philip
Cc: Mary Fierros Bower (mfierrosbower@lrsarchitects.com)
Subject: [External]RE: Records for Newport LNG Plant

Mr. Zlatnik,

This information is helpful. I would appreciate it if you could include in the application a brief narrative explaining when the LNG facility was constructed and how it has been maintained and upgraded over the years. I can pull other relevant information from our building records and older aerial photography that we have here at the City. In sum, that should be enough.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

From: Zlatnik, Philip [mailto:Philip.Zlatnik@nwnatural.com]
Sent: Thursday, November 05, 2015 2:03 PM
To: Derrick Tokos <D..Tokos@NewportOregon.gov>
Cc: Mary Fierros Bower (mfierrosbower@lrsarchitects.com) <mfierrosbower@lrsarchitects.com>
Subject: Records for Newport LNG Plant

Hi Derrick,

My name is Philip "Ebb" Zlatnik, I'm the project manager for the new control building that we're proposing to build at the NW Natural LNG facility. As I mentioned in my vm, Mary and I are planning on meeting with you at 11am on Thurs 11/12 and in preparation for that meeting, I wanted to confirm that the attached property "classification memorandum" and tax report (see below) will be sufficient to demonstrate:

5. Evidence that the use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

Thanks and I look forward to meeting you next Thursday.

Regards,

Philip "Ebb" Zlatnik, PMP
Senior Project Manager
Project Management Office

NW Natural | 220 NW Second Avenue | Portland, OR 97209
office: (503) 226-4211 x 3520
mobile: (503) 519-9985
p1z@nwnatural.com



From: Borgerson, Sean
Sent: Thursday, November 05, 2015 9:21 AM
To: Zlatnik, Philip
Cc: Heaps, David
Subject: Hello Ebb - FW: Records for Newport LNG Plant

Hello Ebb,

I was able to get a copy of the original "property classification memorandum" issued by the Oregon Department of Revenue (see attached) to the Lincoln County assessor in 1974 for the Newport LNG property. A PCM is issued when property within the State of Oregon is utilized by a utility in its operations. The PCM stays in place as long as the property continues to be used by the utility. When a PCM is issued, the county no longer directly assesses the underlying property for property tax purposes. The assessment function moves to the state level and is performed by the Department of Revenue.

The attached PCM was effective as of January 1, 1975 and is still in effect. Lincoln County's records agree with this. Below is a copy/paste of their record on this property (you can see in references the attached PCM under 'info'). The picture/report is from <http://propinfo.co.lincoln.or.us/property/R500726>

Let us know if we can provide any further assistance.

Lincoln County Property Report

From: Zlatnik, Philip
Sent: Wednesday, November 04, 2015 7:18 PM
To: Durig, Lana
Cc: Borgerson, Sean
Subject: FW: Hi Steve - FW: Records for Newport LNG Plant

Hi Lana,

While Steve is out...I thought I'd forward you this email from Sean

Thanks.

Philip "Ebb" Zlatnik, PMP
Senior Project Manager
Project Management Office

NW Natural | 220 NW Second Avenue | Portland, OR 97209
office: (503) 226-4211 x 3520
mobile: (503) 519-9985
p1z@nwnatural.com



From: Borgerson, Sean
Sent: Wednesday, November 04, 2015 7:16 PM
To: Walti, Steven
Cc: Zlatnik, Philip
Subject: Hi Steve - FW: Records for Newport LNG Plant

Hi Steve,

Do you know if we file any quarterly or annual paperwork on Newport LNG with the State or Lincoln County? Something that might support that the plant has been in continuous use - like tank certificates or operation permits? Trying to help Ebb track down what might be available to help him on his quest.

Thank you.

Sean B.
Sent via mobile

From: Zlatnik, Philip
Sent: 11/4/2015 7:08 PM
To: Borgerson, Sean
Cc: Heaps, David
Subject: RE: Tax Records for Newport LNG Plant

Hi Sean and David,

Thanks for the follow up. I look forward to hearing if the Oregon agency is able to provide us with a PCM that demonstrates our usage. That would be terrific but in the meantime I'll try to round up one or more of the other items that the planning office said they would accept e.g. utility bills. They also indicated that they would accept a business license but I'm not sure if or how that would apply to the plant in Newport. Let me know if you have any thoughts on that. Lea Anne might be able to point in the right direction to hunt that down, if something like that exists.

Regards,

Philip "Ebb" Zlatnik, PMP
Senior Project Manager
Project Management Office

NW Natural | 220 NW Second Avenue | Portland, OR 97209
office: (503) 226-4211 x 3520
mobile: (503) 519-9985
p1z@nwnatural.com



From: Borgerson, Sean
Sent: Wednesday, November 04, 2015 5:58 PM
To: Zlatnik, Philip
Cc: Heaps, David
Subject: RE: Tax Records for Newport LNG Plant

Hi Ebb,

We can try and help out with some property tax records, but it may not be as neat and clean as they would like. As a utility, we don't pay property taxes on specific pieces of property (like Newport LNG). The State of Oregon determines the value of our Company and then allocates that value to all the places we have property in the state, including Lincoln County where Newport is located. What this means is that we have pretty high property taxes in Newport, but the actual property tax bill does not have the LNG plant address on it.

I sent a note to one of the Oregon agencies we work with to see if I can get you a copy of what's called a "Property Classification Memorandum." Apparently there were two PCMs issued in 1974 from the State of Oregon – to Lincoln County – that specifically reference the LNG property address and let the County know that that property will be assessed for property tax purposes by the State for all future years (as long as it is used by the utility). If we could get copies of those PCMs that would likely be a good way to demonstrate continuous usage of the property as a utility since 1974.

- NW Natural is consistently one of the largest property tax taxpayers in Lincoln County. See historical taxes paid and ranking here: <http://www.co.lincoln.or.us/assessor/page/top-10-largest-taxpayers-lincoln-county>

Feel free to give me a call if you would like to discuss further.

Sincerely,

Sean B.
Sean R. Borgerson, CPA

Tax Director | NW Natural | 220 NW Second Avenue | Portland, Oregon 97209
☎ : 503.226.4211 Ext. 5866 | ✉ : 503.721.2516 | 📩 : sean.borgerson@nwnatural.com

From: Heaps, David
Sent: Wednesday, November 04, 2015 3:58 PM
To: Borgerson, Sean
Subject: Fwd: Tax Records for Newport LNG Plant

Sent from Outlook

----- Forwarded message -----

From: "Zlatnik, Philip" <Philip.Zlatnik@nwnatural.com>
Date: Wed, Nov 4, 2015 at 2:59 PM -0800
Subject: Tax Records for Newport LNG Plant
To: "Heaps, David" <d2h@nwnatural.com>

Hi David,

Following up on my vm, we're putting together a building permit application to build the new Control building at the Newport LNG plant and the planning office requires us demonstrate continuous usage of the site. One of the things they'll accept that demonstrates this are property taxes. Assuming we pay property taxes for the Newport LNG plant, would you have access to these records?

Thanks,

Philip "Ebb" Zlatnik, PMP
Senior Project Manager
Project Management Office

NW Natural | 220 NW Second Avenue | Portland, OR 97209

office (503) 226-4211 x 3520

mobile (503) 519-9085

p1z@nwnatural.com



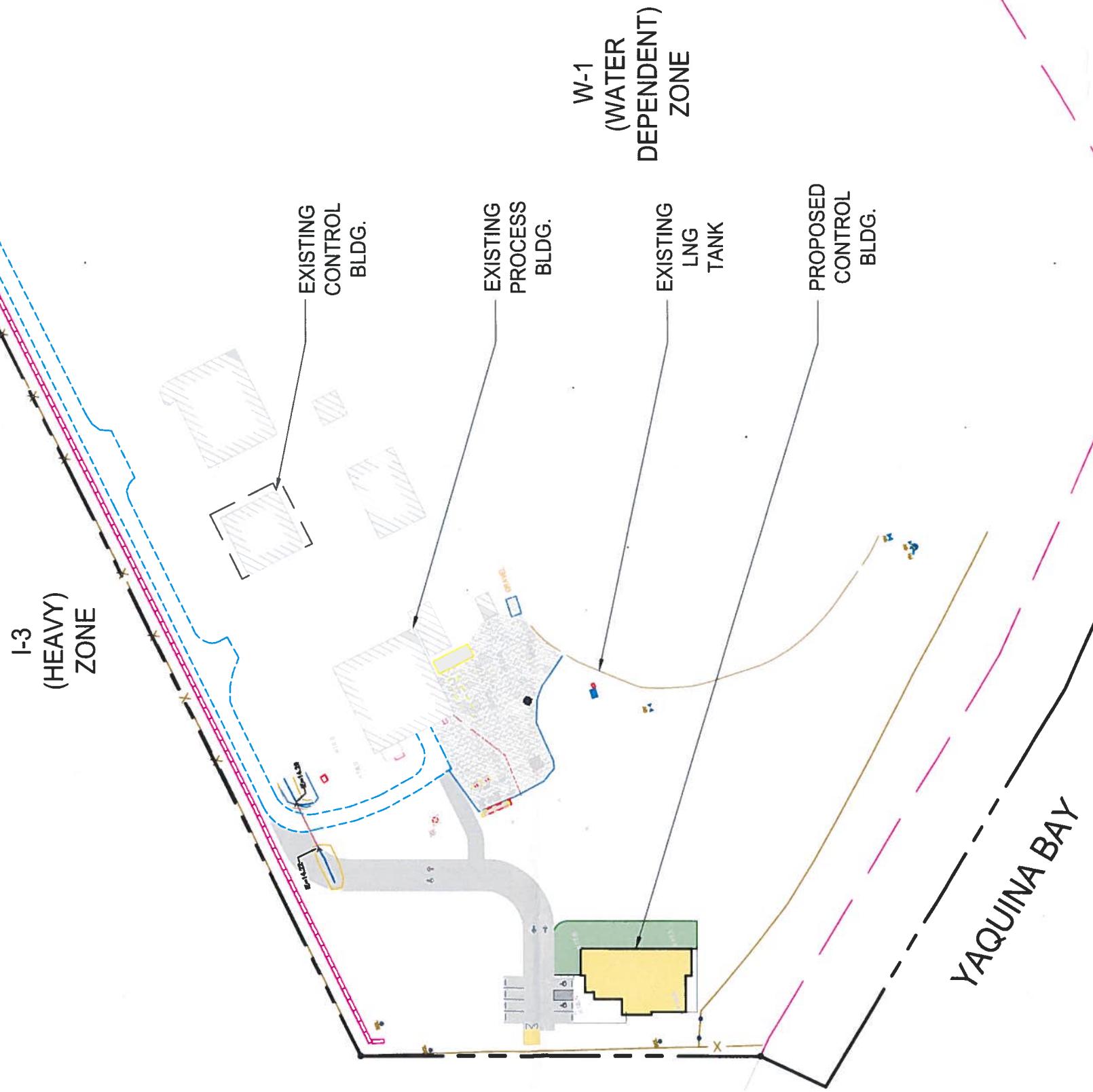
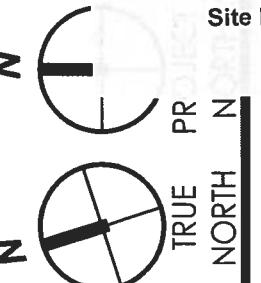
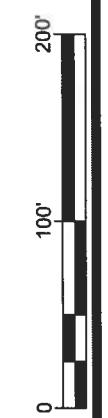
!SIG:56429882319111970674858!

**NWN NEWPORT
CONTROL BUILDING
SCHEMATIC SITE PLAN**
NEWPORT, OREGON

720 NW Davis
Suite 300
Portland OR 97209
503.221.1121
503.221.2077

LRS
ARCHITECTS
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PROJECT NAME: NWN NEWPORT CONTRC
PROJECT NUMBER: 215256
DATE ISSUED: November 12, 2015
REVISION:



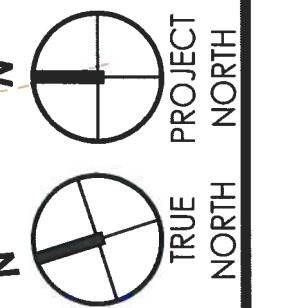
NWN NEWPORT CONTROL BUILDING SCHEMATIC SITE PLAN

NEWPORT, OREGON

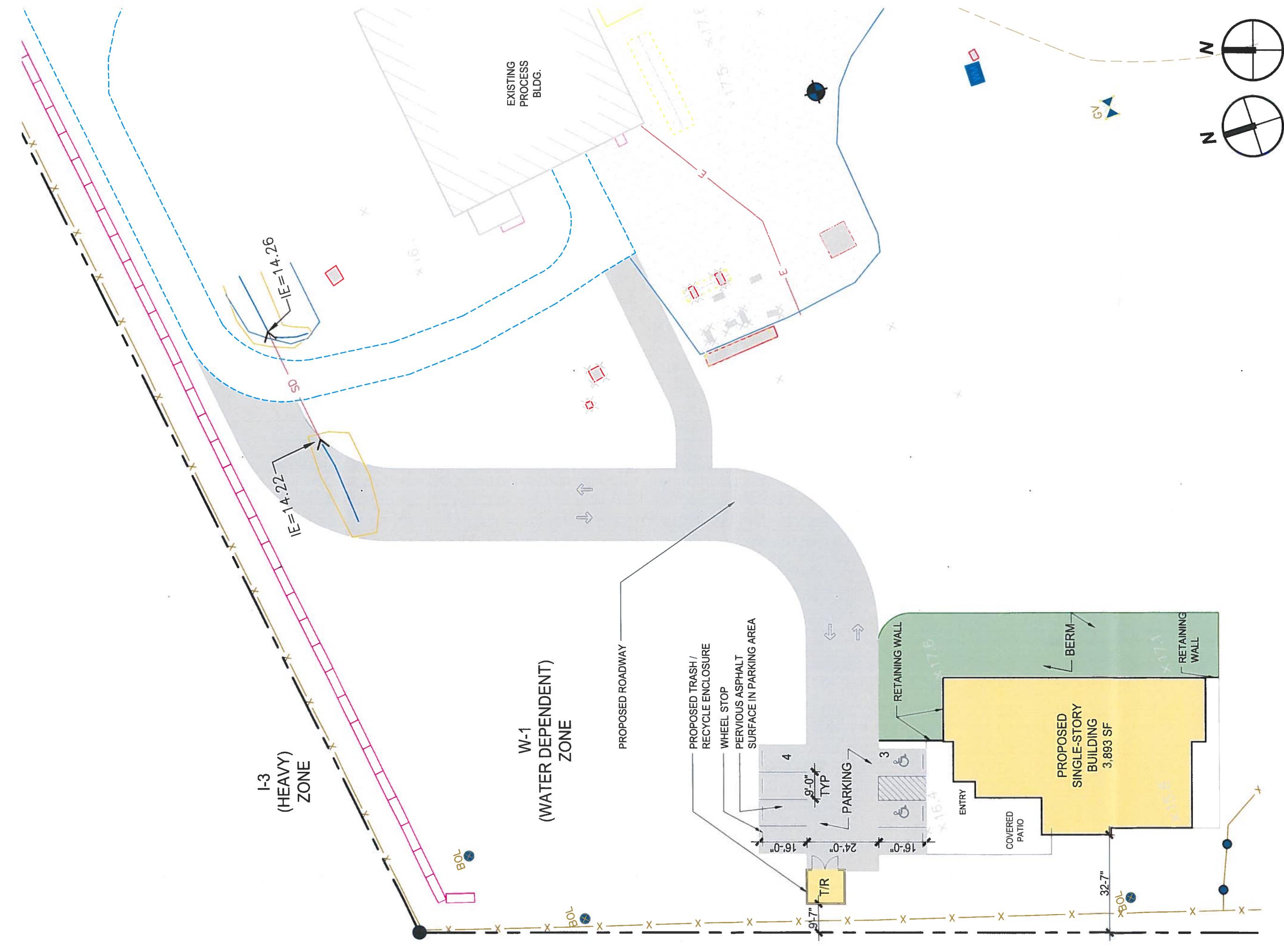
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PROJECT NUMBER: 215256
DATE ISSUED: November 12, 2015
REVISION:

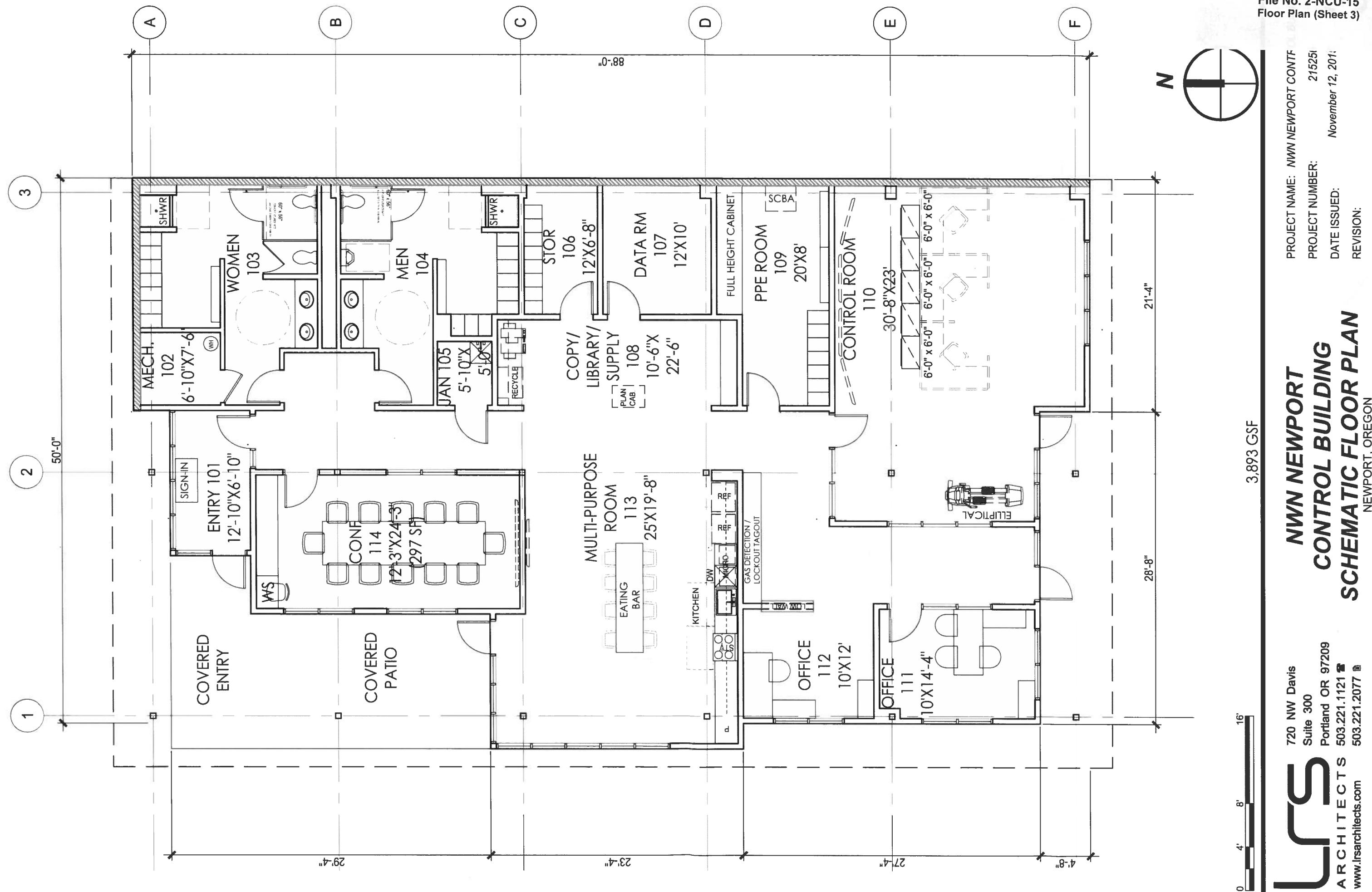
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0' 30' 60'

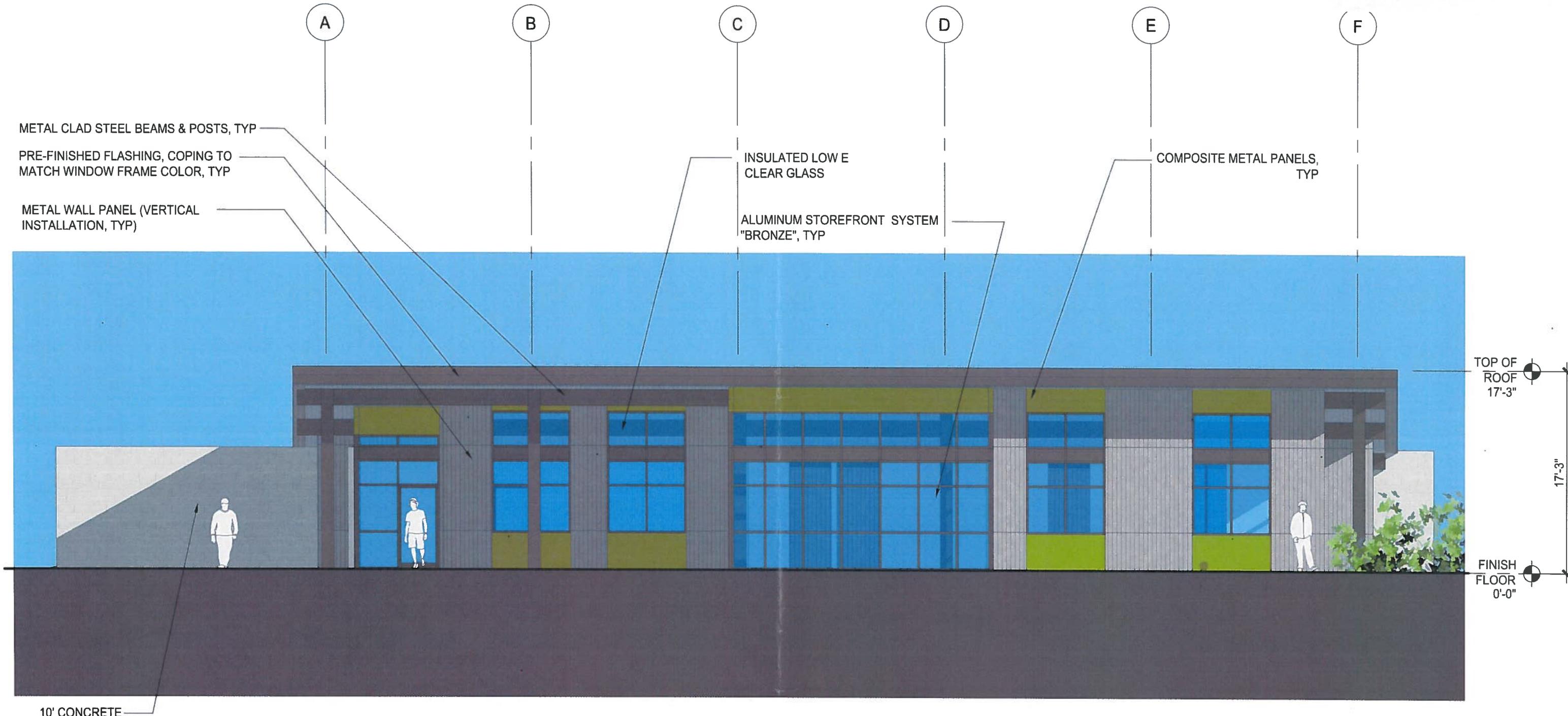




**NWN NEWPORT
CONTROL BUILDING
SCHEMATIC FLOOR PLAN**

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503.221.1121
503.221.2077
www.lrsarchitects.com

PROJECT NAME: NWN NEWPORT CONTF
PROJECT NUMBER: 215251
DATE ISSUED: November 12, 2011
REVISION:



WEST ELEVATION

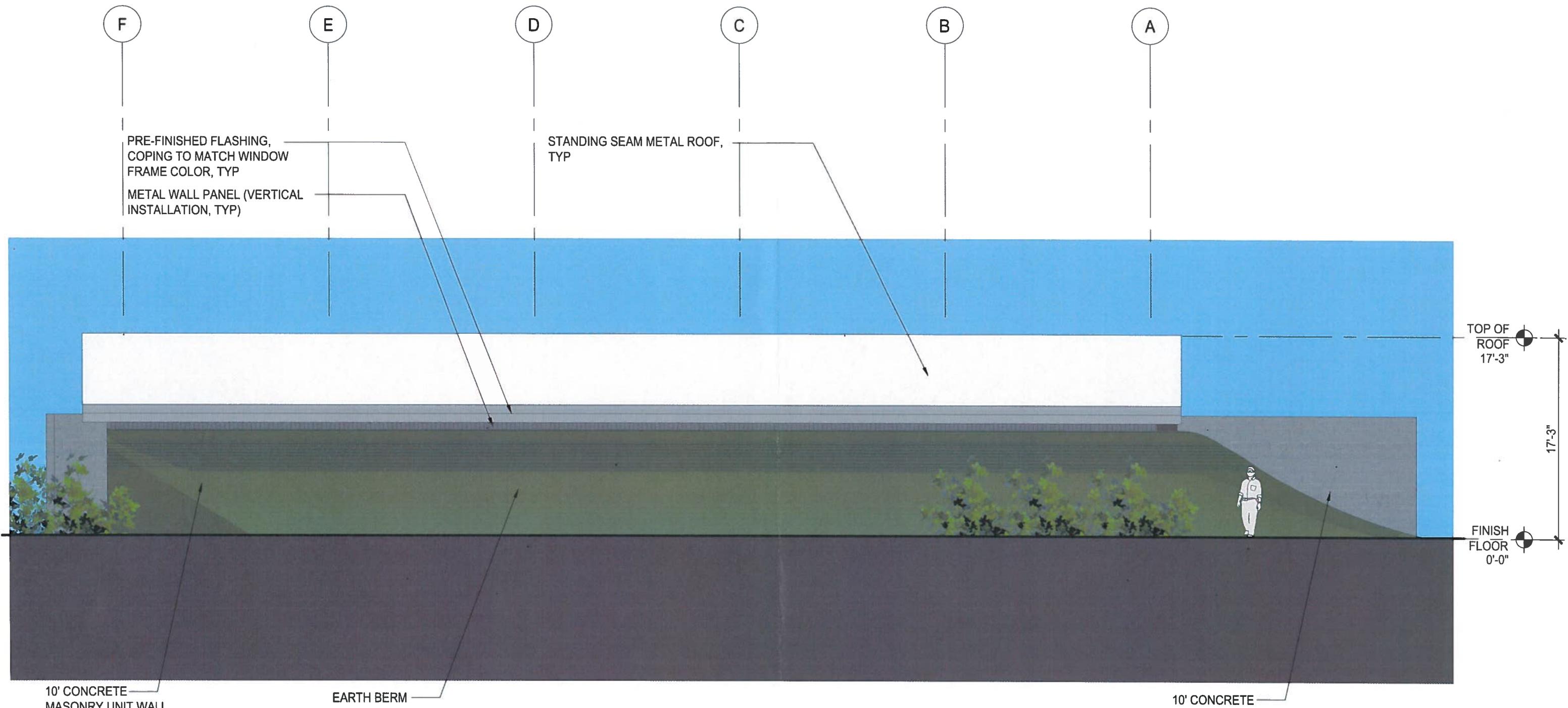
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**NWN NEWPORT
CONTROL BUILDING
SCHEMATIC ELEVATIONS**
NEWPORT, OREGON

PROJECT NAME: NWN NEWPORT CONTROL BUILDING
PROJECT NUMBER: 215256
DATE ISSUED: November 12, 2015
REVISION:

SHEET
4



EAST ELEVATION



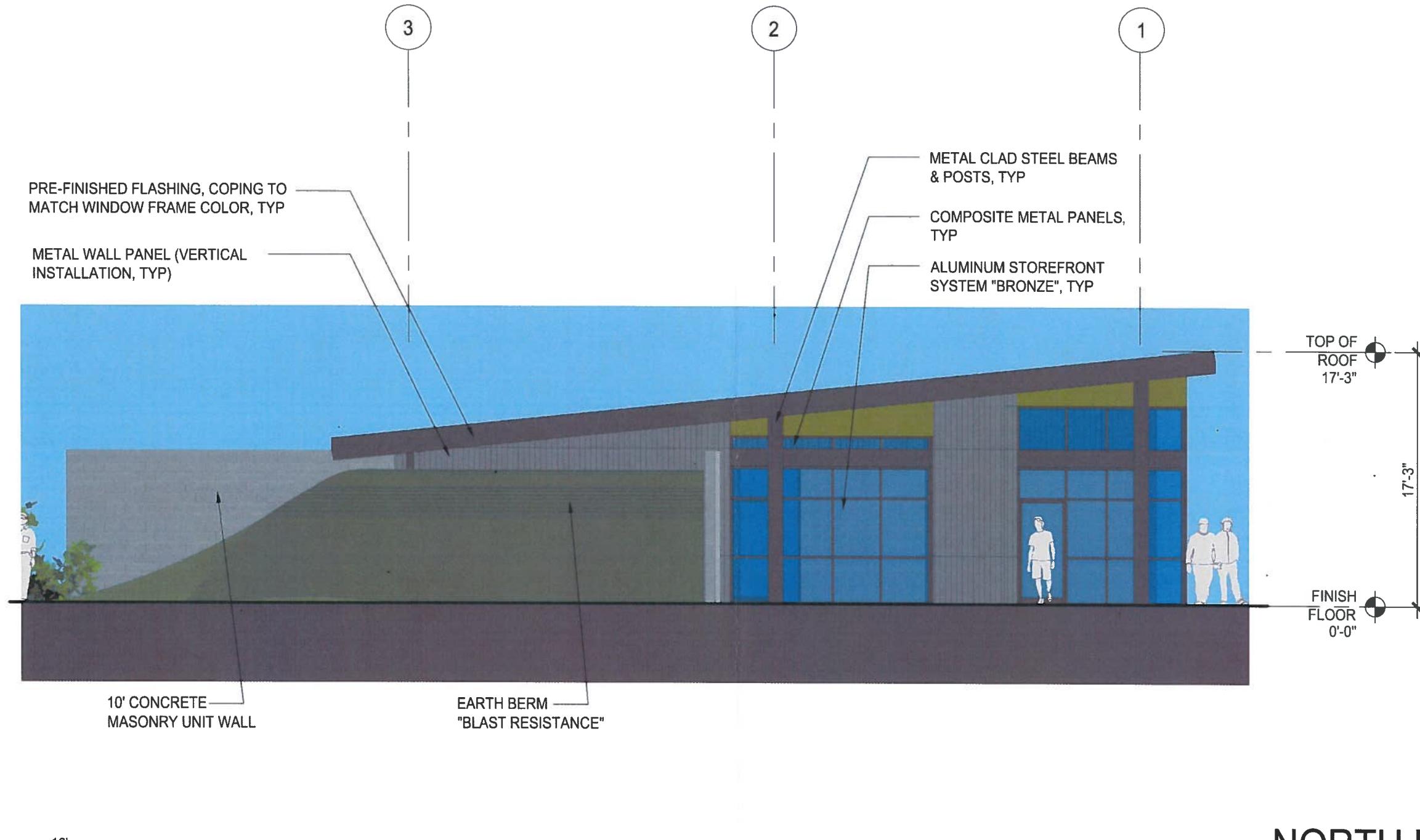
720 NW Davis
Suite 300
Portland OR 97209
503.221.1121
503.221.2077
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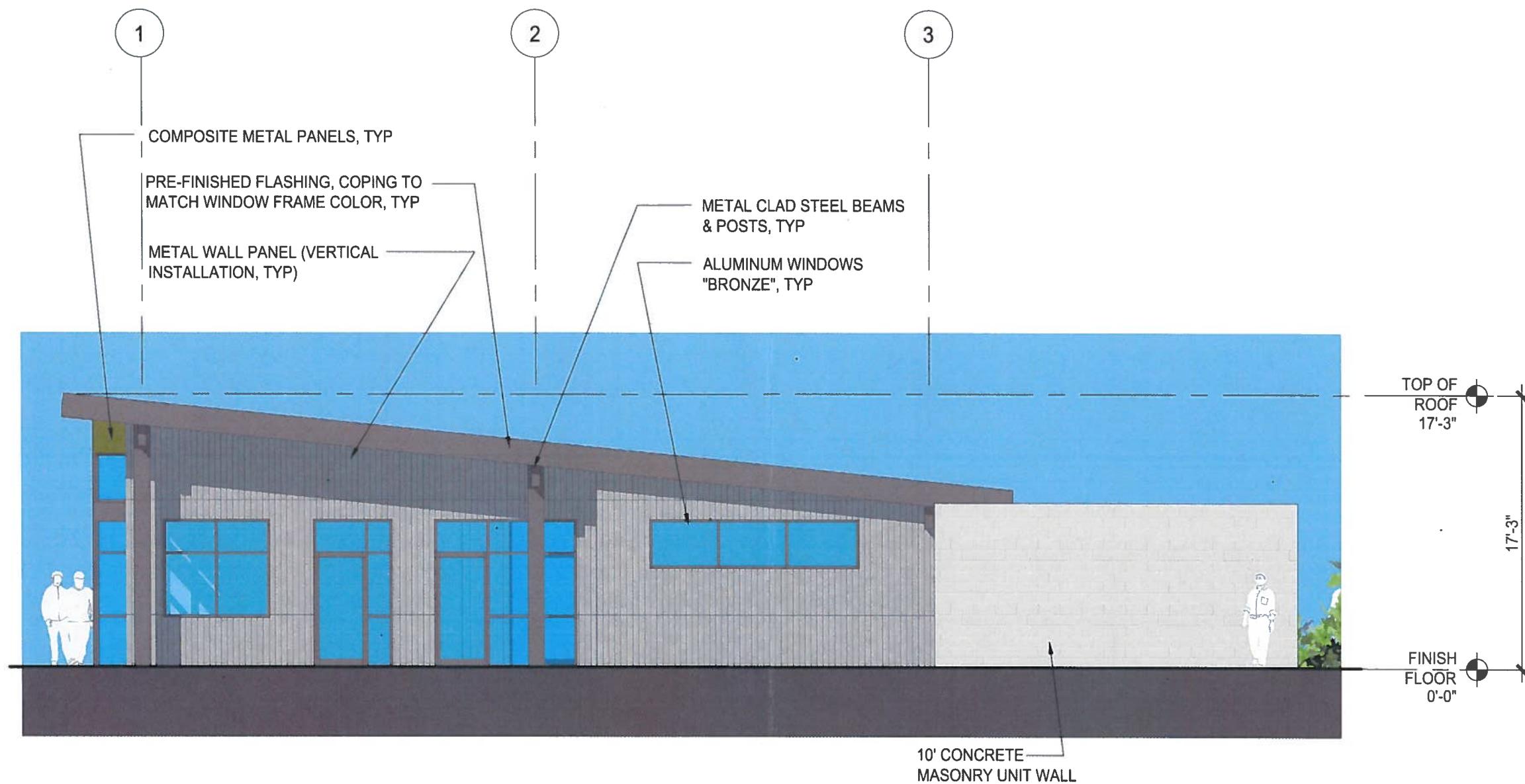
**NWN NEWPORT
CONTROL BUILDING
SCHEMATIC ELEVATIONS**
NEWPORT, OREGON

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PROJECT NAME: NWN NEWPORT CONTROL BUILDING
PROJECT NUMBER: 215256
DATE ISSUED: November 12, 2015
REVISION:

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5





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NWN NEWPORT CONTROL BUILDING SCHEMATIC ELEVATIONS

NEWPORT, OREGON

PROJECT NAME: NWN NEWPORT CONTROL BUILDING
PROJECT NUMBER: 215256
DATE ISSUED: November 12, 2015
REVISION:

SHEET
7

CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING

The City of Newport Planning Commission will hold a public hearing on Monday, December 14, 2015, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 2-NCU-15. The request submitted by Northwest Natural (Philip Zlatnik and Wayne Pipes) (Mary Fierros Bower, authorized representative) is for approval of a request per Section 14.32/“Nonconforming Uses, Lots, and Structures” of the Newport Municipal Code, for the replacement of a nonconforming office use with a new 3,893 square-foot office in the W-1 zone. The subject property is located at 1702 SE Bay Blvd (Lincoln County Assessor’s Map 11-11-09-00; Tax Lot 01600). Pursuant to NMC Section 14.32.060(A), the approval authority shall determine that the structure was legally established at the time the Zoning Ordinance was enacted or amended, and that the use has not been discontinued for a continuous 12 month period. The approval authority must also verify the nature and extent of the nonconforming use, considering (1) a description of the use; (2) The types and quantities of goods or services provided and the activities conducted; (3) The scope of the use (volume, intensity, frequency, etc.) including fluctuations in the level of activity; (4) The number, location and size of physical improvements associated with the use; (5) The amount of land devoted to the use; and (6) Other factors the approval authority may determine appropriate to identify the nature and extent of a particular use (NMC Section 14.32.060(B)). Pursuant to NMC Section 14.32.070, after verification of the status of a nonconforming use pursuant to subsection 14.32.030, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood when considering the following factors: (A) (1) The character and history of the use and of development in the surrounding area; (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood; (3) Adequacy of infrastructure, including sewer, water, and streets, to accommodate the use; (4) The comparative numbers and kinds of vehicular trips to the site; (5) The comparative amount and nature of outside storage, loading, and parking; (6) The comparative visual appearance; (7) The comparative hours of operation; (8) The comparative effect on solar access and privacy; (9) Other factors which impact the character or needs of the neighborhood. (B) The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood. (C) To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, an alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to: (1) Surfacing of parking areas and landscaping; (2) Exterior design of structures; and (3) Outdoor displays, storage, and signage. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances that the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. Letters sent to the Newport Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant and those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased for reasonable cost at the Newport Community Development Department (address above) seven days prior to the hearing. The application materials, the applicable criteria, and other file material are available for inspection at no cost; or copies may be purchased for reasonable cost at this address as well. Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above).

(FOR PUBLICATION ONCE ON FRIDAY, DECEMBER 4, 2015)

**CITY OF NEWPORT
PUBLIC NOTICE¹**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing to consider the following Nonconforming Use Permit request:

File No. 2-NCU-15:

Applicant: Philip Zlatnik, Northwest Natural, 220 NW Second Ave, Portland, OR 97209 (Wayne Pipes, at same address, property owner) (Mary Fierros Bower, 720 NW Davis Street Ste 300, Portland, OR 97209, authorized representative).

Request: Approval of a request per Section 14.32/“Nonconforming Uses, Lots, and Structures” of the Newport Municipal Code, for the replacement of a nonconforming office use with a new 3,893 square-foot office in a W-1 zone.

Location: Lincoln County Assessor’s Map 11-11-09-00; Tax Lot 01600 (1702 SE Bay Blvd).

Applicable Criteria: Pursuant to NMC Section 14.32.060(A), the approval authority shall determine that the structure was legally established at the time the Zoning Ordinance was enacted or amended, and that the use has not been discontinued for a continuous 12 month period. The approval authority must also verify the nature and extent of the nonconforming use, considering (1) a description of the use; (2) The types and quantities of goods or services provided and the activities conducted; (3) The scope of the use (volume, intensity, frequency, etc.) including fluctuations in the level of activity; (4) The number, location and size of physical improvements associated with the use; (5) The amount of land devoted to the use; and (6) Other factors the approval authority may determine appropriate to identify the nature and extent of a particular use (NMC Section 14.32.060(B)). Pursuant to NMC Section 14.32.070, after verification of the status of a nonconforming use pursuant to subsection 14.32.030, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood when considering the following factors: (A) (1) The character and history of the use and of development in the surrounding area; (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood; (3) Adequacy of infrastructure, including sewer, water, and streets, to accommodate the use; (4) The comparative numbers and kinds of vehicular trips to the site; (5) The comparative amount and nature of outside storage, loading, and parking; (6) The comparative visual appearance; (7) The comparative hours of operation; (8) The comparative effect on solar access and privacy; (9) Other factors which impact the character or needs of the neighborhood. (B) The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood. (C) To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, an alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to: (1) Surfacing of parking areas and landscaping; (2) Exterior design of structures; and (3) Outdoor displays, storage, and signage.

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances that the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. Letters sent to the Newport Community Development (Planning) Department (address below under “Reports/Application Material”) must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant and those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

Reports/Application Material: The staff report may be reviewed or a copy purchased for reasonable cost at the Newport

¹Notice of this action is being sent to the following: (1) Affected property owners within 200 feet of the subject property (according to Lincoln County tax records); (2) affected public/private utilities/agencies within Lincoln County; and (3) affected city departments.

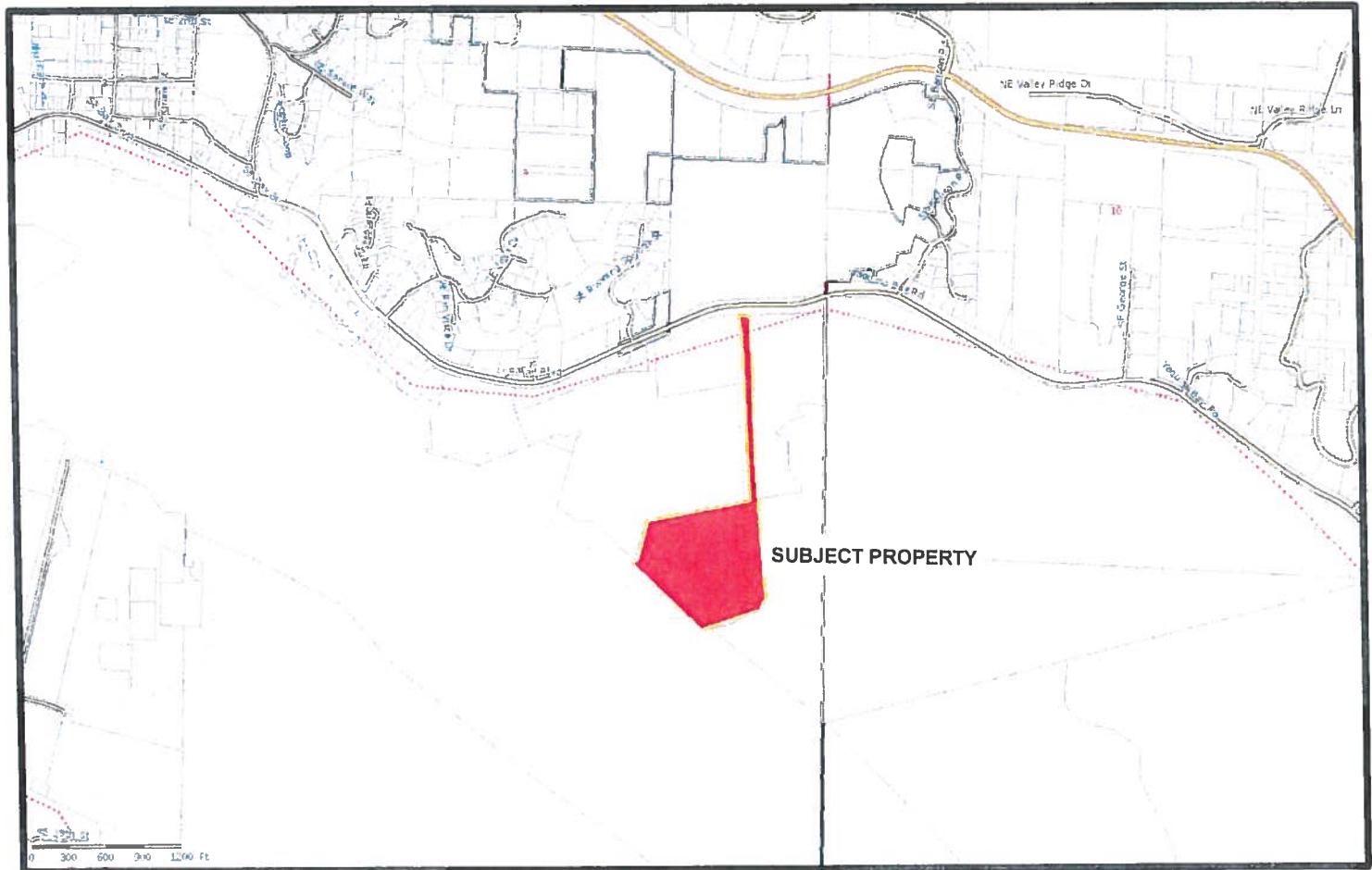
Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, Oregon 97365, seven days prior to the hearing. The application material (including the application and all documents and evidence submitted in support of the application), the applicable criteria, and other file material are available for inspection at no cost; or copies may be purchased for reasonable cost at this address.

Contact: Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above under "Reports/Application Material").

Time/Place of Hearing: Monday, December 14, 2015; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Application Material").

MAILED: November 13, 2015.

PUBLISHED: December 4, 2015/News-Times.



ATTACHMENT "C"
File No. 2-NCU-15
Zoning Map of Area

N 



**NW Natural LNG Plant
1702 SE Bay Boulevard**

Image Taken July 2013

4-inch, 4-band Digital Orthophotos
David Smith & Associates, Inc. Portland, OR



City of Newport
Community Development Department
168 SW Coast Highway
Newport, OR 97365
Phone: 541.774.0629
Fax: 541.574.0844

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, use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.

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

**IN THE MATTER OF PLANNING COMMISSION)
FILE # 2-NCU-15, APPLICATION FOR ALTERATION)
AND EXPANSION OF A NONCONFORMING USE,) FINAL
AS SUBMITTED BY NW NATURAL GAS COMPANY) ORDER
(PHILIP ZLATNIK AND WAYNE PIPES, AUTHORIZED)
REPRESENTATIVES))**

ORDER APPROVING a request per Chapter 14.32 ("Nonconforming Uses, Lots, and Structures") of the Newport Municipal Code (NMC) for the alteration and expansion of a nonconforming utility facility to allow the replacement of an existing office building (a.k.a. "Control Building") with a new, 3,893 sq. ft., single story office building. The subject property is located at 1702 SE Bay Boulevard and is identified as Tax Lot1600 of Lincoln County Tax Assessor's Map 11-11-09.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on December 14, 2015; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the requested nonconforming use permit.

BASED UPON THE ABOVE, the Planning Commission determines that the request to alter and expand a nonconforming use is in conformance with the provisions of the Comprehensive Plan and the Municipal Code of the City of Newport; and the request is, therefore, granted subject to the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plans contained in the case record and referenced as attachments herein. No work shall occur under this permit other than that which is specified within these documents and it shall be the responsibility of the property owner to comply with these documents.

Accepted and approved this 14th day of December, 2015.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File # 2-NCU-15

FINDINGS OF FACT

1. NW Natural Gas Company (Philip Zlatnik and Wayne Pipes) (Mary Fierros Bower, authorized representative) submitted an application on November 12, 2015, per Chapter 14.32 ("Nonconforming Uses, Lots, and Structures") of the Newport Municipal Code, for the replacement of a non-conforming office building (a.k.a. "Control Building"). The new office will be 3,893 square feet in size.
2. The subject property is located at 1702 SE Bay Boulevard (Lincoln County Assessor's Tax Map 11-11-09, Tax Lots 1600). The property is approximately 21.62 acres in size.
3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: Shoreland.
 - b. Zone Designation: W-1/"Water Dependent."
 - c. Surrounding Land Uses: An estuary to the south and east. Water dependent and industrial zoned land border the property to the north and west. Property to the north is proposed to be developed with a log yard. A disposal site for dredge materials is situated to the west.
 - d. Topography and Vegetation: The subject property is flat and elevated just above the adjoining estuary. Riprap embankments exist along the perimeter of the site. Upland areas are vegetated with grass.
 - e. Existing Structures: A large natural gas tank, control building, process building and other small buildings surrounded by a security fence.
 - f. Utilities: All are available to the site.
 - g. Development Constraints: Portions of the property, namely along the perimeter of the site, are within the 100 year floodplain.
 - h. Past Land Use Actions: None of record.
4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on November 13, 2015, to affected property owners required to receive such notice by the Newport Municipal Code, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m. December 14, 2015, or be submitted in person at the hearing. The notice was also published in the Newport News-Times on December 4, 2015.
5. A public hearing was held on December 14, 2015, at which the Planning Commission received the staff report and allowed for testimony on the request. The minutes of the December 14, 2015 meeting are hereby incorporated by reference. The Planning Staff Report with Attachments is hereby

incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Application Form
- Attachment "A-1" – Applicant's Narrative
- Attachment "A-2" – Site Photograph
- Attachment "A-3" – County Assessor Information
- Attachment "A-4" – Summary of Establishment and Maintenance of the Facility
- Attachment "A-5" – Site Plan (Sheets 1 and 2)
- Attachment "A-6" – Floor Plan (Sheet 3)
- Attachment "A-7" – Architectural Elevations (Sheets 4 through 7)
- Attachment "B" – Public Hearing Notice and Map
- Attachment "C" – Zoning Map of Area

7. Pursuant to NMC 14.32.040, applications must include a completed application form, scaled site plan, names and addresses of property owners within the notification area, survey work if structures will not satisfy setback requirements and exterior architectural elevations if structures will exceed building height limitations.
8. Pursuant to Section 14.32.070/“Alteration, Expansion, or Replacement of Nonconforming Uses and Structures” of the Newport Municipal Code, after verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood.

9. **Verification of Status of Nonconforming Use or Structure:** Pursuant to NMC Section 14.32.060, upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

- The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and
- The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicants provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use (September 7, 1982). When determining the nature and extent of a nonconforming use, the approval authority shall consider:

- Description of the use;
- The types and quantities of goods or services provided and activities conducted;
- The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

- The number, location, and size of physical improvements associated with the use;
- The amount of land devoted to the use; and
- Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

10. Applicable Criteria (Section 14.32.070): After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

- (1) The character and history of the use and of development in the surrounding area;
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood;
- (3) Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water, and streets;
- (4) The comparative numbers and kinds of vehicular trips to the site;
- (5) The comparative amount and nature of outside storage, loading, and parking;
- (6) The comparative visual appearance;
- (7) The comparative hours of operation;
- (8) The comparative effect on solar access and privacy;
- (9) Other factors that impact the character or needs of the neighborhood.

CONCLUSIONS

In order to grant the permit, the Planning Commission must find that the applicant has provided a complete application, that there is substantial evidence that the Commission can rely upon to verify the nature and extent of the existing nonconformity, and that the expansion will not result in a greater adverse impact on the neighborhood considering the criteria listed under NMC 14.32.070.

1. The applicant's property is located in a W-1/"Water-Dependent" zoning district (Attachment "C"). Utility facilities, such as the LNG Plant, are not permitted uses in this district (NMC 14.03.080).
2. Consistent with NMC 14.32.040, the applicant submitted a completed application form, narrative, names and addresses of property owners within the notification area, site plan, floor plan, and architectural elevations. In sum, the Planning Commission finds that this constitutes substantial evidence upon which it can make a decision as to whether or not the addition of a 3,893 square foot Control Building satisfies the City's standards for the alteration and expansion of a non-conforming use.

3. With respect to NMC 14.32.060, regarding the non-conforming status of the LNG Plant, the applicant provided assessment information indicating that the property was acquired in 1974. The application materials further note that the plant was commissioned in 1977 and list maintenance activities and upgrades made to the facility from 1978 to 2013 (Attachment "A-4"). Per the Newport Zoning Ordinance, the LNG Plant is non-conforming if it is established that the facility existed and has been continuously maintained since September 7, 1982. Considering the above, the Planning Commission finds that there is substantial evidence in the records that the LNG plant qualifies as non-conforming.

4. After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the Planning Commission may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Commission shall consider the factors listed below.

a. The character and history of the use and of development in the surrounding area.

- i. The applicant notes that the property has been utilized continuously as an LNG Plant since its inception in June of 1977.
- ii. The applicant further states that replacement of the LNG Plant Control Building is in keeping with the character of the other existing buildings on the site and surrounding neighborhood in terms of its appearance. They note that existing buildings on the site consist of metal paneling exterior walls and standing seam metal gabled roofs. The proposed architecture for the new Control Building consists of a standing seam metal roof, concrete block walls, cladded steel columns and beams and metal paneling integrated with storefront systems.
- iii. The applicant explains that the architecture is modern and simple in form, consisting of a simple shed roof sloping up towards the building's west façade to maximize window area, light and views into the building. The building's square footage is proposed to be slightly larger in footprint than the existing building for better functionality (Attachments "A-6" and "A-7"). The existing Control Building's size is approximately 2,500 sf and the proposed new building's size is approximately 3,893 sf.
- iv. The surrounding properties are largely undeveloped. A log yard is proposed for property north of the LNG facility and other lands to the north and west will likely develop in an industrial manner at some point, to complement the Port of Newport's International Terminal. This would be consistent with the water dependent and heavy industrial zoning that is in place. These types of uses would orient toward Bay Boulevard for the transport of goods and materials by truck or toward the bay for barge or shipping out of the terminal site. In either case, the properties would orient away from the LNG facility.
- v. The alteration to the non-conforming use is the addition of a Control Building. The tank itself will remain as it is currently constructed; therefore, there does not appear to be any increased risk to neighboring properties from additional quantities of volatile liquids being stored onsite.

vi. The applicant provides community access to the estuary and portions of its property for recreational purposes. They are not required to do so, and the addition of the Control Building does not impact these areas as it is located within the perimeter of an existing security fence.

vii. Considering the above, the Planning Commission concludes that the addition of a new Control Building is consistent with the character and history of development in the area given that the change will not further exacerbate the nonconforming situation.

b. The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood.

i. The applicant notes that the proposed Control Building is not anticipated to create additional noise, vibration, dust, odor, fumes, glare, or smoke since the building will be utilized as an office use similar in size to the existing building use.

ii. Nearby water-dependent and heavy industrial properties are envisioned to develop with uses that generate noise, vibration, dust, odor, fumes, glare, or smoke far in excess of anything that could be attributed to the LNG plant.

iii. Considering the above, the Planning Commission concludes that the addition of a Control Building will not create noise, vibration, dust, odor, fumes, glare, or smoke in a manner that would result in a greater adverse impact on the neighborhood.

c. Adequacy of infrastructure to accommodate the use (including sewer, water, and streets.)

i. The applicant explains that the new Control Building will be connected to a septic system because the LNG Plant property does not currently have sewer infrastructure in place. The existing water line on site is proposed to be extended to the new building. The existing roadway to the site from SE Bay Blvd. is owned by the applicant and is adequate to meet their needs. The existing paved roadway will be extended to the new building.

ii. Connection to city sewer service is required for structures that are within 250 feet of a public sewer line (NMC 5.15.020). The closest city sewer infrastructure is at the intersection of Running Springs and Bay Boulevard, which is far more than 250 feet from the applicant's property.

iii. Considering the above, the Planning Commission concludes that the addition of the proposed Control Building will not cause any greater adverse impact on the neighborhood as it relates to the adequacy of infrastructure to serve the use.

d. The comparative numbers and kinds of vehicular trips to the site.

i. The applicant states that the Control Building's occupancy will be similar to the existing Control Building. The existing building's occupants will be relocated to the new building. The new building will have a total of nine (9) occupants. The former Control Building will be remodeled at a later date to house electrical equipment.

- ii. The applicant further notes that no additional vehicular trips to the site are anticipated.
- iii. Considering the above, the Planning Commission concludes that the proposed Control Building will not cause any greater adverse impact on the neighborhood relative to this criterion.

e. The comparative amount and nature of outside storage, loading, and parking.

- i. The applicant indicates that the City of Newport zoning ordinance does not include a minimum / maximum threshold for the number of off-street parking spaces required for a utility facility. They further note that the project proposes to provide 7 motor vehicle parking spaces to serve the new building including 2 accessible parking spaces and a trash / recycle enclosure. A loading area is not required.
- ii. While the zoning ordinance does not have parking standards for a utility facility, it does for an office building. One parking space is required for every 600 square feet of floor area (NMC 14.14.030(1)). This equates to a requirement that 7 spaces be provided. The spaces must also be paved (NMC 14.14090(C)). The applicant's site plan illustrates that off-street spaces are being provided as required by current codes (Attachment "A-5").
- iii. Given the above, the Planning Commission concludes that the proposed Control Building will not cause any greater adverse impact on the neighborhood with respect to the comparative amount and nature of outside storage, loading, and parking.

f. The comparative visual appearance.

- i. The applicant believes that the design of the new building is consistent with the character and image of the surrounding area and the existing Control Building because it incorporates materials and detailing that is prevalent in this area and on the existing building. The proposed building draws from the palette of materials used in the immediate surrounding and existing building utilizing concrete masonry walls, vertical metal siding, smooth metal panel system above and standing seam metal roof. A modernist interpretation of architectural design incorporating storefront windows is carried through at the proposed building's "public façade". A main entrance and a generous focal multi-purpose space allows for interaction opportunities among the users as do the outdoor gathering spaces outside the lobby at the outdoor patio off the multi-purpose space. Catering to the bay views, high storefront windows are proposed along the west side and north sides of the building (Attachment "A-7").
- ii. Considering the above, the Planning Commission concludes that the proposed Control Building will not cause any greater adverse impact on the neighborhood as it relates to comparative visual appearance.

g. The comparative hours of operation.

- i. The applicant notes that the existing Control Building is manned 24/7 and work shifts consist of 3-8 hour shifts. The new Control Building is anticipated to be manned in the same manner.

ii. Based on the above, the Planning Commission concludes that the proposed Control Building will not cause any greater adverse impact on the neighborhood as far as comparative hours of operation.

h. The comparative effect on solar access and privacy.

- i. The applicant notes that the building is set along the northwest side of the property, which is a considerable distance from the adjacent neighbors and other on-site buildings.
- ii. Given the above, the Planning Commission concludes that the proposed Control Building satisfies this criterion.

i. Other factors which impact the character or needs of the neighborhood.

- i. There are no other apparent factors.

j. The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.

- i. The LNG plant is in a W-1 zoning district and is nonconforming because utility facilities are not permitted in this zone district. The purpose of the W-1 zone is to protect Yaquina Bay shoreland areas for uses that need contact with or use water for water-borne transportation, recreation, energy production or water supply (NMC 14.03.040). The LNG facility is not dependent upon the bay for any of the factors listed.
- ii. The LNG plant was constructed before the W-1 zoning was in place, and most of the applicant's property is dedicated to this use. In fact, it appears that the confines of the secure facility have remained more or less static. The new Control Building is being placed within the fence line, in close proximity to existing buildings. Therefore, the addition of the building will not reduce the amount of land available for water-dependent development.
- iii. Based on the above, the Planning Commission concludes that the proposed Control Building will not result in a greater adverse impact on the neighborhood relative to the objectives of the current zoning provisions.

OVERALL CONCLUSION

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for the expansion of a nonconforming use found in Chapter 14.32 of the Newport Municipal Code (NMC); and, therefore, the requested alteration and expansion of a nonconforming use as described in the applicant's findings and supporting documents as submitted, is hereby approved with the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plans contained in the case record and referenced as attachments herein. No work shall occur under this permit other than that which is specified within these documents and it shall be the responsibility of the property owner to comply with these documents.

Memorandum

To: Newport Planning Commission

From: Derrick Tokos, Community Development Director 

Date: December 10, 2015

Re: Continuance of Public Hearing for Motel 6 Sign Variance Request

Staff concurs with the applicant that this hearing should be continued to January 11, 2016 at 7:00 pm or soon thereafter. By that time the applicant should have the property survey information they need to provide the Planning Commission with a clear understanding of the nature and extent of the variance that is being requesting.

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December 10, 2015

Derrick Tokos
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365

RE: Continuation of Motel 6 Hearing – Patel

Dear Derrick:

This will formalize the applicant's request to continue the hearing on the sign variance until January 11, 2016.

We will hopefully have the surveying information soon and I will get it to you as soon as I have it.

Thank you.

Very truly yours,

Dennis L. Bartoldus

DENNIS L. BARTOLDUS

DLB/ms
Cc: clients