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MEMO

DATE: February 10, 2015
TO: Mayor and City Council
FROM: Spencer Nebel, City Manager
SUBJECT: Status Report for the time period of January 26, 2015 – February 6, 2015

HIGHLIGHTS OF ACTIVITIES:

Highlights and activities over the past two weeks include the following:

- Tim Gross, Melissa Román, Lance Vanderbeck and I met to discuss ways to address the roof and wall leaking issues at the airport FBO building. As you may recall the city had hired an architect this past summer to design the necessary changes in order to address the roof leaking issue. As part of this effort the architect retained engineering services to evaluate structural issues related to the problems leading to the leaking issue. While we had confidence in the engineering report that was done, we were very disappointed with the effort put forth by the architect to bring this project to a conclusion. We initiated a call for bids prior to having the documents completed with the anticipation that they would be completed within a couple days of the bid announcement. We ended up terminating the bidding process and also sent notice to the architect that we were closing out the contract with them on this project. As part of our plan to go forward, city staff met with a local roofing contractor and conducted an inspection of the roof (which was not done by the architect) there are a number of things that could be done in order to buy additional time to replace the roof. The general consensus is that it would make sense to replace the metal roof with a shingled roof. It will need to be determined whether the structure is capable of supporting the additional weight of a shingled roof. We hope to sort this out to determine whether or not there are sufficient funds appropriated in order to complete this project during the 2015 construction season.
- Mike Murzynsky and I met to review the VAC financial reports. Over the years a very convoluted and confusing responsibility for costs for operating the VAC has evolved. After a number of discussions, I believe that Mike and I both now have an understanding of who has supported what functions of the VAC in the past. We will be developing the financial aspects of the report that will be coming to the City Council in March. Please note that it is my intent to have that report come before the City Council at the second

meeting in March, since my attendance at the first meeting in March has been excused. Hopefully by that time we will have a comprehensive report ready for the Council. This report will explain where we are currently with the VAC, plus the plan and goals for the future operation of the facility.

- Steve Rich, Mark Miranda, Jim Folmar (our new Community Resource Officer), Derrick Tokos, Joseph Lease (our new Building Official), and I met to review our process for dealing with dilapidated buildings within Newport and especially in regards to the Azar property. It is my goal to have a cleaner more streamlined process for dealing with these types of issues in the future. Our Municipal Judge has been less willing to address issues regarding the Azar property relating to the demolition of the structure. In reviewing this with Steve Rich, its Steve's opinion that this issue should be in the state circuit court since property is, in effect, being taken through demolition by the local government. This is consistent with some of the concerns that had been expressed by Speer Hoyt late last year regarding our processes. We do want to sort out the Azar situation so that we have a clear pathway in which we can proceed legally with the remaining steps to address this hazard within the community. We also hope to have a process cleaned up between code enforcement and the building official to move these items along in a shorter time period. Based on our conversations, I think we can improve this process to clearly address any property owners rights, as well as dealing with hazardous situations within the community in a more timely, transparent, and predictable manner.
- Participated in our staff Emergency Management meeting. We are continuing to pick away at the priorities established by the committee last fall.
- Held a routine Airport staff meeting. Lance Vanderbeck indicated that he has been contacted by the Oregon Pilots Association to hold there Fun and Sun Convention at the Newport Municipal Airport on Saturday June 20, 2015. This will be a daylong event.
- Mike Murzynsky, Peggy Hawker, Steve Rich, and I met regarding the city's retirement boards and plans. There has been a fair amount of confusion organizationally on this issue. After several days of searching by Mike, Linda, Peggy, and Cheryl Atkinson, I believe we have all the pieces together relating to the pension system. This information was compiled in a report to the Retirement Board Committee, which they reviewed and I have attached for your review. At the suggestion of Councilor Allen, the liaison to the Retirement Board, we are going to develop an operational guide to the documents that we have pulled together. I think this will be very useful to anyone trying to understand the various roles and responsibilities for the pension system that includes administration, investment, and policy making roles of the Retirement Trust, Finance Director and the City Council.
- Barb James, Tim Gross, and I met on a transition plan to move Melissa from the airport back to engineering in order to meet various needs that Tim has going forward in engineering for Melissa. As part of this transition plan, Melissa will continue working on several projects impacting the airport, but it will be under the direction of City Engineer Tim Gross in conjunction with the overall responsibilities he needs to work through. This will undoubtedly include several projects out at the airport but in my opinion the need is greater in engineering at this particular time. Melissa did a great job on completing the \$9 million runway reconstruction project serving as the project manager for the city. In addition, a number of smaller projects have been completed under her supervision at the Airport location during this time span.

- Councilor Swanson, Mark McConnell, Ted Dewitt, and I met regarding the up-coming 50th Anniversary of the Sister City Relations between the City of Newport and Mombetsu. This is a significant anniversary that both cities will want to recognize. Mombetsu has indicated that they might send two groups, an adult group, and a student group, to Newport in 2016. We will minimally have one group (and perhaps two groups) to visit Mombetsu in 2016 as well. We have discussed building up a reserve in funds so that the 50th Anniversary can be properly recognized with some sort of more permanent marker in Mombetsu, (from Newport and vice versa). Please note that participants from Newport visiting Mombetsu are responsible for their own travel expenses. Once our delegation arrives in Mombetsu our sister city virtually pays for all expenses for our delegation. Therefore, the most expensive part of the trip for participants is the flight, and any time spent before or after Mombetsu in Japan. I would certainly encourage members of the City Council or staff to consider participating in this visit. Angela and I are discussing the possibility of participating in the 2016 Sister City Visit in Mombetsu. Although the planning process is a bit out there yet, it is important that we get the ball rolling on this effort.
- Along with Barb James and Rob Murphy, I participated in negotiations with the Fire Fighters. We provided an update to the Council at the executive session last week.
- Met with Gary Lahman and Bill Wiist regarding fluoride in the City's water system. Mr. Lahman and Mr. Wiist are members of the Lincoln County Public Health Advisory Board. They relayed concerns that the City has not resumed adding fluoride to the City's water system, since it was discontinued prior to the construction of the new water treatment plant. It was indicated that fluoride was discontinued due to the processes and labor that was required at the City's former water treatment plant. While provisions were included in the initial design for the new water treatment plant, they were cut out as part of the cost savings during the bidding process. Mr. Wiist provided me with the history of fluoridation in the City of Newport, which I have attached to this report for your review. Please note that fluoridation was provided following a November 8, 1960, election on this measure which was approved with 1070 voting yes, and 1049 voting no. In December, the City Council passed Resolution No. 1165, providing fluoride supplement for the public water supply. In January of 1961, Jack Capri headed a delegation that wanted a re-election on the matter of fluoridation of the City's water system. Apparently a petition was later filed and a second vote occurred in the community. This vote reaffirmed the communities desire to go ahead with fluoridation. In June of 1962, the City Council readopted Resolution No. 1165, calling it Resolution No. 1165a. This readopted resolution was to provide fluoride supplementation of the public water supply, and did so up until a couple of years prior to the construction of the new water treatment plant. It is my understanding that this decision was made administratively, not by the City Council. Both Mr. Wiist and Mr. Lahman strongly believe the City should take steps to appropriate the necessary funds so that fluoride can be added back into the municipal water system. As was evident by the two votes on the issue in the 1960's, and periodically rising in other communities from time to time, fluoride can be a publicly controversial issue. From my perspective, based on the action taken previously by the City over 50 years ago (including actions by city voters) it appears we should discuss the purchase of equipment to provide fluoride to the water as part of the up-coming budget process. I have attached some of the information that was provided to me for your review. I would certainly be curious as to your thoughts on this matter.

- Mayor Roumagoux and I attended a YBEF meeting. At this meeting, a number of issues were discussed including the August 21, 2017, solar eclipse. This eclipse will be the first total solar eclipse visible from the continental United States since 1979. The area that will see the total eclipse is a narrow band on the coast stretching from the Sand Lake Recreational area (between Lincoln City and Tillamook) south to Waldport. The area receiving the longest eclipse period will be located between Newport and Lincoln City. On some of the eclipse websites, Newport is being singled out as a place for people to come and see the eclipse. Please note that the band of the total eclipse is relatively narrow, with Portland being north of the area that would see the total eclipse, and Eugene being south of this area. The Chamber of Commerce is already receiving some bookings from Europe for the celestial event that will occur in 2017. This could be a big deal for Lincoln County. We will have to start hoping for no rain or fog on August 21, 2017! In addition, Bob Cowen gave a presentation on the OSU Marine Studies Initiative, with a request that the Yaquina Bay Economic Foundation consider a financial contribution to the fundraising efforts for this facility. I have attached information provided by Bob Cowen at the YBEF meeting for your review.
- Along with Councilor Allen and Mike Murzynsky, I participated in a Retirement Board meeting. The board was pleased to have the information that was compiled regarding the retirement system. The Retirement Board will formally act on a number of recommendations for the City Council following their next meeting. This will give Mike and me an opportunity to prepare a summary of responsibilities for the overall management and operation of the City's retirement system. This summary will be incorporated into the document, and will ultimately be forwarded to the City Council for their review and action.
- Along with Mayor Roumagoux, Tim Gross, Derrick Tokos, Mark Miranda, and I participated in a meeting with the ODOT Regional Office. A number of items were reviewed as part of our quarterly meeting. ODOT continues to be very limited in funding for various maintenance activities. One issue that will affect cities, such as Newport, is a requirement that any minimal resurfacing of State highways within urban areas will be required to meet ADA standards. This will have a substantial impact on the cost to conduct this type of work within urban areas. This is an item that would be worth seeking some clarification from our legislative delegation if, in fact, it is appropriate to meet ADA standards when a reconstruction of a roadway is done. I think it is a bad policy to require ADA compliance for preservation projects when milling and resurfacing a state highway. ODOT said this means rural projects will have a higher priority for resurfacing roads to extend the limited dollars they have for resurfacing, rather than trying to tackle a resurfacing project in an urban area.
- Met with Rob Murphy as part of our regular status meetings.
- Met with Barb James on various HR issues within the city.
- Met with Bill Bain regarding the Loyalty Days and Sea Fair Festival. While a number individuals that have been influential in conducting this parade over the years have decided to retire from these efforts, Bill Bain and a group of people have stepped up to the plate to keep the organization alive that sponsors this annual event.
- Met with Mark Miranda to discuss departmental issues.
- Participated in a meeting with Derrick Tokos with various representatives from Oregon State University to review property options for student housing in Newport. There seems

to be a general consensus from OSU that student housing should be located somewhere in the Wilder Subdivision area. The land specialist for OSU asked Derrick a number of very specific questions regarding our planned unit development zoning for Wilder property, and other regulatory issues they will need to deal with in sighting this facility. It is good to know that OSU continues to work aggressively on the Newport campus project.

- I worked through the weekend catching-up on various issues in preparation for going on vacation at the end of this month. I am trying to get things cleared up in preparation for the time I am away. I will be spending quality time on the budget as soon as I am back from vacation in March, as well as getting things prepared for the Council goal setting session and the orientation/ethics session. Please note that I will be swapping a few of these weekend days that I worked, for the vacation time that I will be taking in late February and March.
- Prepared agenda items for the February 2 Council meeting.
- Held a routine Department Head meeting.
- Met with Mayor Roumagoux and Councilor Busby on developing the task force to explore regionalization of the city's airport. As you will recall, the Mayor had some difficulty in getting commitments from local elected officials to participate in this task force with the fall election. A decision was made to wait until after the first of the year to move this effort forward. This, coupled with the upcoming budget preparation efforts, has led us to initiate this process at the end of April. This will allow me to provide some level of support to the task force, as they initiate their review of the regional role that the airport should be playing, and evaluating potential models on how the airport could be operated in the future. Once we have a full slate of people appointed to the task force, it will be presented back to the Council for confirmation. The Council will also be reviewing a revision to the time period for the task force to complete this task.
- Met with Mayor Roumagoux to review the agenda for the February 2 City Council meeting.
- Derrick Tokos, Melissa Román, Lance Vanderbeck and I met to discuss the need to acquire property at the south end of the Newport Municipal Airport. A property owner approached us to indicate that he is considering listing his property for sale. Prior to listing the property, he wanted to know if the city would be interested in acquiring this property as part of the airport. Part of the approach area for the airport extends onto this parcel. There is a more direct parcel, immediately to the south of the runway that is part of the holdings of Will Emery. This parcel is included in the Destination Resort Zoning District. There was some suggestion that perhaps land could be swapped, although there are issues. One parcel is located within the city limits, and the other adjacent parcel is located outside the city limits. We will be contacting Mr. Emery, as well as the FAA, regarding potential funding to acquire additional property to protect the approach area of the airport.
- Held a routine airport staff meeting.
- Met with Kevin Greenwood, Wayne Belmont, Ginny Goblirsch, Michele Eder, and Jennifer Stevenson regarding the US Coast Guard Air Station. I am enclosing a copy of the defendant's motion to dismiss the complaint on behalf of the US Coast Guard. On page 4 of this document, they indicated that before entering a final decision they notified stakeholders, and held town hall meetings on October 15 and October 20 to allow for public input into this process. They indicated: "a final decision to cease operations at

AIRFAC Newport – which can only be made at Coast Guard Headquarters – thus was never made.” To me, and certainly to the Fisherman’s Wives, these are out and out lies, and an effort to change history on this decision. I have also included for your reference Admiral Gromlich’s comments that were made at the October 20th Town Hall meeting, which the Coast Guard attended only after the entire Oregon Delegation beat them into submission to have them participate. Now they say they held that meeting! Admiral Gromlich stated that “... the final decision to close those air facilities was made by the Commandant of the US Coast Guard. The air facility here in Newport will close on the 30th of November, and, even at my level in the Coast Guard, as the congressman eluded to, I can’t do anything about that as far as that closure date, or offer to delay the closing in any way. I have got to carry that out. I know that many of you probably came here hoping that you would hear something different and I am sorry that I can’t tell you anything different.” To me it was very clear that the decision was made by the Commandant prior to sending notification letters, and participating in any local meeting on this issue. Also public input was not truly being sought by the US Coast Guard on a decision that had already been made. Attorney Mike Haglund will be submitting a response to the Coast Guard motion to dismiss the complaint on February 9.

- Steve Rich, Tim Gross, and I met with Bob Wienert and Scott Hoeft of Road and Driveway regarding their concerns that the city is not following ORS.279. This ordinance places various reporting, and other requirements, on construction projects in excess of \$125,000 that are done by local units of government. On a number of City street projects, our Public Works Department has been doing the clearing, grading, and rough preparation for the installation of curbs prior to paving several of our graveled streets within Newport. ORS.279(c) requires local governments to construct public improvements at the least cost to the contracting agency. It has certain requirements for local units of government on calculating and presenting expenses on projects costing more than \$125,000. The City adopted the purchasing guidelines, as prepared by Speer Hoyt, and through Resolution No. 3609, the City opted out of the Attorney General’s model for public contracting rules. As I have indicated to the City Council before, the documents prepared by Speer Hoyt require an attorney to interpret what we are supposed to do or not do. One of my goals for this next year is to review purchasing rules and guidelines. I would then prepare, for Council’s consideration, a more simplified set of guidelines that the Council, Department Heads and staff could read and understand. The guidelines would explain the level at which various items needed to be approved, and the level of comparative prices needed to be obtained for purchases. We indicated to Bob Wienert and Scott Hoeft that we will be reviewing these issues to determine whether or not we are following our policies, and State law in regards to the way we handle these projects. Furthermore, I indicated that it is my goal to work on our purchasing policies as a city in order to make it clear and more understandable at all levels within the organization and the community. I think there are a lot of things we can do to improve the overall fairness and equality to ensure we get the best value for the purchases that we make as a city in the future.
- Participated in my monthly interview with Cheryl Haro of KCUP radio.
- Met with Councilor Swanson on various City Center issues. Laura is the new liaison to the City Center group. One of the City Center’s big concerns is making some headway on the clean-up of the southeast corner of Hurbert and 101 and the message sign. As you may recall, one thought was to relocate the message sign to the corner of 2nd Street and Highway 101. The clock could then be relocated to the corner of Hurbert and 101 where

it would not get lost in the landscape. It certainly would be more fitting for downtown. One of the problems we have encountered is that the triangle where the clock is located is actually ODOT right-of-way. Derrick is pursuing with ODOT the possibility to surplus this triangle, so that the city would control this site. We would want to do this since ODOT will not allow a community message sign to be placed on ODOT right-of-way. The other issue we need to address is carving out time for our engineering staff to facilitate this type of a project. While the project is relatively small, it takes time and effort in order to proceed with these types of projects.

- Met in a weekly meeting with Mark Miranda to review various departmental issues. One of the issues that we are currently reviewing is our policy for officers wearing body cameras. I am a big advocate of body cameras, in that they can help defuse situations when complaints have been made as to how an officer has handled a situation. I have often found that the complaining party will drop their concerns once they have seen the video. Often times they do not remember exactly how they were acting at the time of their interaction with the officer. It is also important that we use the cameras in a consistent fashion. It is problematic when something should be recorded, and as a result of a subsequent complaint we do not have a recording of that issue. We will be working through those issues with the development of this policy.
- Along with Councilors Allen and Swanson, participated in the Audit Committee meeting. The city has received both the City and URA audits and will be holding a joint Council/URA/Audit Committee meeting at 5 P.M. on Tuesday, February 17, 2015, to review the audit with the Council and URA.
- Met with Tim Gross regarding communications he is having with the Seal Rock Water District regarding their project to connect to the City's water system. This project will interconnect the City and Seal Rock water systems allowing water to be provided from Seal Rock Water District to the City and from the City to Seal Rock Water District. Costs came in substantially over the estimated amount during the bidding process. Seal Rock apparently has awarded the project. They have asked the City to participate in additional costs necessary for this interconnection, including costs for the up-sizing of an 8-inch line to a 12-inch line as part of this connection project. While Tim has agreed in concept to participate in the cost for several improvements in this project, as these improvements are of primary benefit to the City's water system, it is Tim's opinion the City should not participate in the up-sizing of the 8-inch water main to a 12 inch water main. The reason being is that this is specifically for the interconnect project that is being conducted by the Seal Rock Water District, and an 8-inch water main is sufficient for the City's future needs in this area. I have suggested to Tim that a meeting be set-up with Adam Denlinger and the Seal Rock Attorney with Steve Rich, myself and Tim to review this request before making any recommendation to the City Council. Tim was going to offer to meet with Adam. Please note this request from Seal Rock would be a contribution of approximately \$152,000 from the City of Newport to Seal Rock if we honored their specific request. See attached memo.
- Met with Rob Murphy to review various issues in the Fire Department.
- Barb James, Rob Murphy, Steve Rich, and I met to review our positions on the contract changes for Fire negotiations. We hope to have one more meeting that will focus primarily on non-economic issues before we get into the issues of wages and health insurance.
- I spent several hours reading emails and compiling information relating to the US Coast Guard Newport Air Facility closure announcement and the October 15th and October 20th

meetings that the Coast Guard is now characterizing as the meetings they held to help inform the community. This is for the response that Attorney Mike Haglund is making on behalf of the Fishermen's Wives and the City, Port, and County as co-plaintiffs. I have enclosed a copy of my response to Mike for your review.

- Steve Rich, Barb James, Rob Murphy, and I participated in Fire negotiations with the Fire Fighters Association. We are narrowing down a number of the issues of disagreement on the non-economic issues.

UPCOMING EVENTS:

- I will be participating in a daylong session of Leadership Lincoln on Wednesday February 11.
- I will be attending a budget update provided by the Department of Revenue in Eugene, OR on Thursday, February 12.
- On Tuesday, February 17, a work session has been schedule at 11:30 A.M. in conference room A to interview Budget Committee applicants.
- Tuesday, February 17, Congressman Schrader and Senator Merkley will be holding a Local Leader meeting at the Recreation Center in Room #105 at 1:30 P.M. and a Town Hall meeting at 2 P.M. Council members are invited to participate in both of these meetings.
- Tuesday, February 17 at 5 P.M. will be a Joint meeting with City Council, Urban Renewal Agency & Audit Committee to review the audit reports.
- I am attending a Senior Official's Emergency Management Course that is being put on by FEMA, at Gleneden Beach Fire Station, all day on Tuesday, February 17. This is a Council meeting day due to President's Day being on Monday, so we will be scheduling our staff meetings and my meeting with the Mayor for Friday, February 13.
- On Monday, February 23, beginning at 9 A.M. and running until approximately 3 P.M., the City Council will conduct its annual goal setting session. This will be formatted similarly to last year's session, with presentations by the departments in the morning. Council will then determine Council goals during the afternoon. Lunch will be provided.
- As a reminder, the Council has excused me from attending the March 2 City Council meeting. I will be on vacation from February 25 through March 12. During this time I will designate an acting City Manager. I will prepare the agenda items for the March 2 meeting prior to going on vacation.
- On Thursday, February 26, 2015, "City Day at the Capital", will be presented by the League of Oregon Cities, and the Mayors Association. Mayor Roumagoux, Councilor Allen and Councilor Swanson are currently registered and plan to participate in this event. If any others plan to attend, please contact Peggy.
- Wednesday, March 18, 2015, Preliminary Meeting of the Budget Committee
- On Friday, March 20, 2015, the City Council will be participating in an ethics training session at 10:30 A.M. and an orientation training following in the afternoon. Lunch will be provided
- Wednesday, April 29, 2015, First Budget Committee Meeting
- Wednesday, May 13, 2015, Second Budget Committee Meeting
- Wednesday, May 20, 2015, Third Budget Committee Meeting
- Monday, June 15, 2015, Budget Public Hearing

ATTACHMENTS:

- Notice of the Oregon Pilots Association Fun-N-Sun Convention to be held at the Newport Airport.
- Attached is the report to the Retirement Board outlining various responsibilities for the administration, investment, and policy making regarding the cities retirement system.
- Attached is information regarding fluoridation of the City of Newport water for your review.
- Attached is information shared by Bob Cowen with the Yaquina Bay Foundation on the fund raising efforts for the OSU Marine Studies Initiative.
- Attached is the US Coast Guard motion to dismiss the complaint filed by the Fishermen's Wives, the City, the County, and the Port and a direct transcript of Admiral Gromlich's statement from the October 20 meeting.
- Attached is a memo from Adam Denlinger to Tim Gross, regarding a request for additional participation from the City on an Intertie Project between the Newport and Seal Rock Water systems.
- Attached is a summary of specific events that I was involved with starting on October 2 and extending through the October 20th Town Hall meeting demonstrating that the US Coast Guard had made a decision to close the Newport Air Station; and that the meetings of October 15 and October 20 were not meetings set-up by the Coast Guard to hear public input prior to a decision being made to close these facilities. It is interesting, with this process, to review the involvement of the City, Port, County, and the Fishermen's Wives, since these processes started out very individualized, but soon came together in a collaborative way as the process unfolded. I tried to tie in each of these occurrences with specific emails to assure as accurate of a recounting of my involvement in this issue as is possible. "It gets a little tricky remembering these details four months down the road!"
- Attached is a series of emails and letters between Tim Gross and Steve Ferraro. Steve is representing a number of home owners that live in the condos who are requesting that SW 29th Street and SW Coho Street be given a higher priority than streets that are included in the current Urban Renewal Plan for paving at this time. Tim outlined the process in which a determination was made by the URA and the City to proceed with certain streets as part of this next phase of improvements. The design process has been initiated and the priorities were established through an extensive interaction with the Coho/Brant community. Changing direction at this point would not be a good use of City resources, and would not honor the process that was initially implemented to identify those priorities. Tim Gross suggests that they initiate a petition for a local improvement district that would then begin the process to look at additional projects within the Coho/Brant community.
- Attached is a communication from Charter indicating several channel lineup changes
- Attached is a letter from Joseph Slack of HGE Inc. Architects Engineers Surveyors Planners. This is the contract we terminated for repairs to the Fixed Based Operator Building and hangers. We have responded back to Mr. Slack confirming our desire not to continue with his firm to complete this work.

- Attached is an article from the Albany “Democrat-Herald” indicating that the City is contracting out our Fixed Based Operator Services to a private FBO. The City has been running this since December 2010.
- Attached are two documents with strategies in dealing with homelessness in our communities. Councilor Busby has indicated his growing concern with this community problem. Councilor Busby may be placing this matter on a future Council agenda to determine whether a regional effort in discussing various strategies should be convened on a countywide basis with involvement by the cities, the county and other organizations.
- Attached is an article from oregonlive.com on the marijuana issues that Oregon cities will be facing.
- Attached is an article from oregonlive.com regarding West Linn city computer attacked by virus-infected emails. We also had virus problems with our city computers as well.
- Attached is a summary of a report issued by Lincoln County that was prepared by the Economic Development Alliance summarizing key trends in the county for your review.
- Attached is an email from Senator Merkley’s Office sent to Mayor Roumagoux and City Councilors on the upcoming Local Leaders Meeting on February 17, at 1:30 P.M. at the Rec. Center in room #105.
- Attached is the response filed by attorney, Mike Haglund, to the USCG’s motion to dismiss.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. R. Nebel".

Spencer R. Nebel, City Manager
Newport, Oregon

Oregon Pilots Association

Fun-N-Sun Convention

20 June 2015

Newport Oregon KONP

9:00-12:00 Shuttles into "Old Town Newport" where you'll find shops, an aquarium, entertainment & food.

9:00-12:00 Shuttle to the The Hatfield Marine Science Center / Oregon State University's marine research facility - Shuttle to the beach.

11:00-12:00 Tour Coast Guard Helicopter Station

12:00-1:00 Bar-B-Q

1:00-2:00 Seminar presented by SAFE

Society of Aviation and Flight Educators

2:00-3:00 Seminar presented by SAFE

Society of Aviation and Flight Educators

3:00-4:30 OPA Annual Board Meeting

City of Newport Retirement System

Prior to 1983, the city retirement plan was funded through a group annuity contract issued by an insurance company. In 1983, the city and trustee established a trust effective January 1, 1983 to hold title to all assets of the plan. At the same time, the 1983 Restatement of the Retirement Plan transferred police and fire employees, and a portion of the related retirement assets, from the city plan to the Public Employees Retirement System of Oregon, with the remainder of the city employees being provided retirement benefits through the City of Newport Retirement System.

City of Newport Retirement Trust

As part of the 1993 Restatement of the City of Newport Retirement Trust, the City of Newport designated Vicki Spencer, Ken Doerfler, Sr., and Marvin Uhlenhake as trustees for the City of Newport Retirement Trust. Section 1.02-1 of the Trust provides: "The trust is maintained for the exclusive benefit of eligible employees and is intended to comply with section 501 and related provisions of the internal revenue code and applicable regulations." Section 3.01-1 provides: "The trustee shall have general ability for administering this trust, appointing investment managers, and directing investments. The board has responsibility for administering the plan". Section 3.06 provides: "Trustee may employ one or more banks or other suitable institutions to serve as custodian for all or part of the trust assets. The trust document divides the responsibilities for the retirement system as follows in section 3.01-1: "The trustee shall have general responsibilities for administering this trust, appointing an investment manager and directing investments". The [retirement] board has responsibility for administering the plan. Furthermore, section 3.01-2 indicates that "... instructions to the trustee shall be signed by the [retirement] board Chair or such other person as the board may designate.

Section 6.01-1 indicates that the trustee initially consists of the persons named in this trust agreement and in section 6.01-2 the city may enlarge or reduce the number of separate trustees at any time by appointment or removal under this article.

Section 2.05.020 of the Newport Municipal Code provides further guidance as to the structure of the retirement trustee responsible for the investment of retirement funds for the City of Newport. Section B of the ordinance provides "that the retirement trustee shall be comprised of five members. One member of the retirement trustee shall be a city employee in the position below a department head." Under the general city code provisions section 2.05.002 boards, committees, and commissions, paragraph G. provides: "that board, committee, or commission vacancies are filled by appointment of the Mayor with confirmation by the Council. A council confirmation shall be by approval by a motion. Appointments are made in terms not to exceed 4 years and will expired that last day of the calendar year, if a replacement appointment has been made. " ... If no replacement is appointed to replacement a member whose term is expiring, the member shall remain in office until replace is appointed." The current five members of the board were appointed in 2007. The city's listing of committee members incorrectly indicates that the members were appointed for indefinite terms. Under the general provisions of

the municipal code for boards and commissions, it appears that the appropriate length of term for appointments to the City of Newport Retirement Trust would be for four year terms.

The City of Newport Employees' Retirement Plan

Significant changes were made to the Employees' Retirement Plan from the 1993 Restatement to the 2009 Restatement. Article 8 of the 1993 Restatement provided that: "the plan shall be administered by a retirement board (the board) of three persons appointed by the city." The board is charged with interpreting and administering the plan. The board was charged with retaining the enrolled actuary and appointing any independent public accountant required for the plan. The plan provided that the City Council shall have no administrative or investment authority for these functions. The 2009 Restatement of the City of Newport Employees' Retirement Plan significantly changed the administration of the retirement plan. Article 9 Plan Administration provides: 'the city's Finance Director shall be the administrator of the plan. The administrator shall interpret the plan and decide any questions about rights of participants and the beneficiaries. The administrator's decision shall be final and binding on all parties. The administrator shall retain the enrolled actuary and appoint any independent public account required for the plan.

Section 10.03 Trust Fund states: "the plan shall be funded through the City of Newport Retirement Trust, which is administered by a trustee appointed by the City Council. The trustee shall receive employer contributions, hold the fund in accordance with the trust agreement, and distribute the benefits under this plan as directed by the administrator. Benefits under the trust shall be paid solely from the trust fund to the extent the fund is sufficient. If the fund are not sufficient, the trustee shall not be liable for the unfunded benefits."

The 2009 Restatement of the Employee's Retirement Plan eliminates any reference to a Retirement Board with the Finance Director now being designated as the administrator for the retirement system. The city currently maintains a Retirement Board on the boards and committee roster based on the 1993 Restatement of Employees' Retirement Plan. With the 2009 Restatement this board no longer exists.

Amendment No. 2 to the City of Newport Employees' Retirement Plan

Amendment No. 2 to the City of Newport Employees' Retirement Plan made significant changes to the benefits provided to employees hired after March 5, 2012. In order to control future retirement costs, the City Council approved Resolution No. 3580 which was characterized as a "soft freeze" of the cities defined benefit plan for non-collectively bargained employees hired after March 5, 2012. Employees hired prior to the date continue to receive both a money purchase contribution of 6% compensation as well as a defined benefit equal to benefit years times 1.2% of average monthly earnings in the three consecutive plan years of highest compensation. Employees hired after March 5, 2012, receive the money purchase contribution of 6% in lieu of the defined benefit provision. The employee can participate in an additional contribution of 3% of the employees qualified elective deferrals. The 3% bump is not available for employee hired

prior to this date. Please note that we are not aware of an Amendment No. 1 to the City of Newport Employees' Retirement Plan.

Conclusions

1. The members of the Retirement Trustee are properly administering the trust through appointing investment managers and directing investments.
2. The members of the Retirement Trustee are currently serving indefinite terms. The City Code section 2.05.002 specifically creates four year terms for various boards, committees and commissions. This appears to include the retirement trustee under section 2.05.002 of the municipal code and does not outline any other terms within the specific provisions for the Retirement Trustee.
3. The Retirement Board created by the 1983 Restatement Employees Retirement Plan no longer exists and should be removed from the city's list of boards and committees.
4. References in the 1993 Restatement of the City of Newport Employees Retirement Trust to the Retirement Board would now refer to the Finance Director, since the Board no longer exists based on the 2009 Restatement of the Retirement Plan.

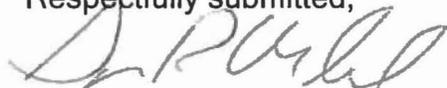
The findings in this report are a compilation of information from City Finance Director Mike Murzynsky, City Recorder Peggy Hawker, and Assistant Finance Director Linda Brown.

The various documents and this report, have been reviewed by the City Recorder, Finance Director, and City Attorney. Based on this review, this report represents the opinion of city administration and the City Attorney as to the status of the retirement trust and employees retirement plan for the City of Newport.

Attachments

- 1993 Restatement of the City of Newport Trust
- 2009 Restatement of the City of Newport Employees' Retirement Plan
- Amendment No. 2 to the City of Newport Employees' Retirement Plan
- Ordinance No. 1951
- Current Membership List

Respectfully submitted,



Spencer R. Nebel,

City Manager

**CITY OF NEWPORT
RETIREMENT TRUST
1993 RESTATEMENT**

October 1, 1993

**City of Newport
City Hall
810 SW Alder Street
Newport, Oregon 97365**

City

**Vickie Spencer
Ken Doerfler, Sr.
Marvin Uhlenhake
810 SW Alder Street
Newport, Oregon 97365**

Trustee

**STOEL RIVES BOLEY
JONES & GREY
ATTORNEYS AT LAW
SUITE 2300
STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1268
Telephone (503) 224-3380**

SIGNATURE COPY

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**CITY OF NEWPORT
RETIREMENT TRUST
1993 RESTATEMENT**

October 1, 1993

**City of Newport
City Hall
810 SW Alder Street
Newport, Oregon 97365**

City

**Vickie Spencer
Ken Doerfler, Sr.
Marvin Uhlenhake
810 SW Alder Street
Newport, Oregon 97365**

Trustee

The City has adopted the City of Newport Employees' Retirement Plan (the plan) for the benefit of its employees and employees of adopting employers (Employers). The City restated the plan effective October 1, 1983 (the 1983 Restatement) and effective October 1, 1993 (the 1993 Restatement). The plan is for the exclusive benefit of eligible employees and is intended to qualify under Section 401(a) of the Internal Revenue Code. The plan is administered by a Retirement Board appointed by the City.

Prior to 1983, the plan had been funded through a group annuity contract issued by an insurance company. The City and Trustee established this trust effective January 1, 1983 to hold title to all assets of the plan, including insurance company contracts. The trust is intended to qualify as a tax exempt trust under Section 501(a) of the Internal Revenue Code.

The parties now restate the trust on the following terms:

ARTICLE I

Effective Date; Qualification

1.01 Effective Date; Trust Year

1.01-1 This Restatement shall be effective October 1, 1993.

1.01-2 The trust year shall be a fiscal year ending June 30.

1.01-3 The last day of each trust year shall be the regular valuation date. Each other date on which the fund is valued at the request of the Retirement Board appointed under the plan (the Board) shall be a special valuation date.

1.02 Qualification

1.02-1 The trust is maintained for the exclusive benefit of eligible employees and is intended to comply with section 501 and related provisions of the Internal Revenue Code and applicable regulations.

1.02-2 If the Commissioner of Internal Revenue rules that this trust as restated is not exempt under section 501 of the Internal Revenue Code, the City may retroactively amend it to satisfy the requirements for exemption.

ARTICLE II

Trust Fund

2.01 Payments to Trustee

All rights under any insurance contracts used to fund the plan shall be assigned to the Trustee. Contributions under the plan shall be paid to the Trustee. The Trustee shall accept the sums paid and need not determine the required amount of contributions or collect any contribution not voluntarily paid.

2.02 Pooling of Funds

The Trustee shall pool plan assets for investment in one or more pooled investment funds. The Trustee shall have no regard for the separate interests of individual participants and shall rely completely on the Board in paying benefits.

ARTICLE III

Investment and Administration

3.01 Administration by Trustee

3.01-1 The Trustee shall have general responsibility for administering this trust, appointing investment managers and directing investments. The Board has responsibility for administering the plan.

3.01-2 The Trustee shall be given the names and specimen signatures of the Chair, secretary and members of the Board. The Trustee shall accept and rely upon the names and signatures until notified of change. Instructions to the Trustee shall be signed for the Board by the Chair or such other person as the Board may designate.

3.02 Investment Standards

3.02-1 The trust assets shall be invested in securities and other property in accordance with applicable law. Permissible investments shall include but not be limited to the following:

(a) Preferred or common stock, notes, debentures, bonds or other securities.

(b) Mutual funds, money market funds, savings and loan accounts, commercial paper, certificates of deposit and savings accounts, including deposits bearing a reasonable rate or interest in the savings department of any bank that is a fiduciary of this trust or the plan.

(c) Real estate or mortgages.

3.02-2 The pooled fund may be held in cash to the extent considered advisable by the Trustee without liability for interest.

3.02-3 Any portion of the trust assets may be invested in any collective investment fund maintained by a trustee or an investment manager under 3.04 exclusively for the investment of assets held in qualified employee benefit trusts. The instrument creating such fund, as amended, is incorporated as part of this trust and shall control the administration of any assets invested in the fund. Assets of this trust may be commingled with assets of other qualified trusts in the fund.

3.03 Investment with Insurance Company

3.03-1 The Trustee may deposit all or part of the assets for investment with one or more insurance companies under a group annuity, deposit administration, guaranteed income or other annuity or investment contract. Any insurance company shall, subject to the contract, have exclusive responsibility for and control over all assets deposited with it. This section does not permit earmarked insurance on the lives of individual participants.

3.03-2 If an insurance company holds assets in a separate pooled account, the following shall apply:

(a) The insurance company shall be an investment manager under 3.04.

(b) The insurance company shall invest the funds in accordance with 3.02, shall have all of the powers given to the Trustee under 3.07 and shall not be subject to any state laws limiting investments.

(c) The assets may be commingled with assets of other qualified plans in the pooled account for investment in accordance with the investment contract.

3.04 Investment Managers

3.04-1 The Trustee may appoint one or more investment managers, who may be an insurance company holding assets under 3.03, for all or part of the trust assets. Subject to 3.02, 3.04-2 and 3.04-4, any such manager shall have exclusive responsibility for and control over the investment of the assets for which responsibility is allocated to the manager by the Trustee.

3.04-2 The Trustee may, as to any investment manager except an insurance company, reserve any or all of the following rights:

(a) To fix investment objectives and guidelines.

(b) To fix permissible investments.

(c) To require consultation by the investment manager at regular intervals or with respect to certain kinds of transactions.

(d) To receive notification of all transactions before or after consummation.

(e) To have proposed transactions submitted in advance and not consummated if disapproved by notice given within 15 days after submission.

3.04-3 The investment manager shall act in a fiduciary capacity and the Trustee or Custodian, if one is employed under 3.05, shall act only as an administrative agent in carrying out directed investment transactions. The Trustee or Custodian shall have no duty to investigate any directed transaction and shall not be responsible for the investment decision. If a directed transaction violates the duty to diversify, to maintain liquidity or to meet any other investment standard under this trust or applicable law, the entire responsibility and liability, if any, shall rest upon the investment manager giving the direction.

3.04-4 Each investment manager shall submit the following to the Trustee in writing:

(a) Verification that the manager is a registered investment advisor under the Investment Advisers Act of 1940, a bank as defined in that Act or a qualified insurance company.

(b) Verification that the manager is bonded for the protection of the trust in conformance with applicable law.

(c) Acknowledgment that the manager is a fiduciary with respect to this trust.

3.04-5 The Trustee shall notify the Custodian, if one is employed under 3.06, of the appointment, removal or resignation of any investment manager. The Custodian may rely upon the continued authority of an appointed manager until notified of resignation or removal. Each investment manager shall, on request, give the Trustee and the Custodian the names and specimen signatures of persons authorized to act for the manager.

3.04-6 The Trustee shall have authority to do the following even though assets are being managed by an investment manager:

(a) Dispose of fractional shares.

(b) Roll over Treasury obligations, commercial paper and similar investments.

(c) Make short-term investments in highly liquid, low-risk, interest-bearing deposits or securities.

3.04-7 The investment manager shall be exclusively responsible for deciding whether to exercise any right relating to a security purchased at its direction. The Trustee or Custodian shall have no responsibility to exercise any such right unless instructed to do so within a reasonable time before the right expires.

3.05 Investment of Unallocated Assets

The Trustee shall have responsibility for and control over the investment of assets not deposited with an insurance company or allocated to an investment manager. The Trustee shall act as an investment manager as to such assets and be subject to 3.04.

3.06 Custodian

The Trustee may employ one or more banks or other suitable institutions to serve as Custodian for all or part of the trust assets. A Custodian shall have exclusive responsibility for the custody of all assets entrusted to it and for carrying out the investment directions of the investment manager or the Trustee. No Custodian shall have any trustee powers or responsibilities. The provisions of 3.04-3 shall apply to any investment directions from the investment manager or the Trustee to a Custodian.

3.07 Powers of Trustee

3.07-1 The Trustee shall have all necessary powers to discharge its duties under this trust, including without limitation the powers to do the following, subject to authority allocated to an insurance company or an investment manager:

(a) Own and hold all assets and retain and exercise all incidents of such ownership, subject to the terms of this trust, either directly or through nominees, with or without disclosing the trust.

(b) Deal in any way with any assets through a public or private transaction and receive all proceeds from the assets.

(c) As the holder of any security in the trust fund, exercise any right or power or take any action that could be exercised or taken by a beneficial owner holding the security of record.

(d) Write covered call options on securities in the fund and deal in other options directly related to an outstanding covered call option.

3.07-2 The Trustee's reasonable cost in any litigation relating to the trust assets shall be an administrative expense. The Trustee may decline to start or respond to any legal action unless the City or another Employer furnishes satisfactory indemnification from any reasonable expense not covered by the trust fund. The Trustee may compromise claims on terms approved by the City, which shall be binding on all parties.

3.07-3 The Trustee may borrow money for trust purposes on the security of trust assets.

3.08 Distributions; Conflicting Claims

3.08-1 The Trustee may pay a participant, contingent annuitant or beneficiary's benefits directly to the participant, contingent annuitant or beneficiary or to one or more of the following as directed by the Board or chosen by the Trustee in the absence of direction:

(a) A spouse or parent or to a child of legal age.

(b) A legal guardian or a person or entity having actual custody of the person.

(c) A provider of maintenance, support or hospitalization.

3.08-2 A receipt from the recipient or canceled check shall be a sufficient voucher for the Trustee. No accounting for the payment need be obtained by Employer, the Trustee or the Board.

3.08-3 If a dispute arises over a distribution, the Trustee may withhold payment until a court of competent jurisdiction has ruled on the dispute or it is settled by the parties concerned.

3.09 Expenses and Fees

3.09-1 The Trustee shall be reimbursed for all expenses approved by the Board. Any separate trustee that is not employed by the City or an affiliate may be paid a reasonable fee approved from time to time by the Board. The Trustee shall notify the Board and the City periodically of expenses and fees.

3.09-2 The City may elect to pay any administrative fees or expenses and may allocate the cost among the Employers. Otherwise the expenses and fees shall be paid from the trust fund.

3.10 Manner of Acting

3.10-1 If there are individual trustees, the Trustee shall act by majority decision of the separate trustees evidenced by a writing signed by the majority with or without a meeting. No action shall be taken without notice to all trustees unless a trustee is reasonably considered unavailable. If one or more of the trustee positions is vacant, those remaining shall have full powers to act though less than a majority. Any trustee may sign on behalf of the other trustees to carry out the Trustee's functions unless the trustees decide otherwise.

3.10-2 The Trustee may delegate all or part of its administrative duties to one or more agents, including the Board, or may retain advisors for assistance. The Trustee may consult and rely upon the advice of counsel, who may be counsel for an Employer.

ARTICLE IV

Records; Valuation; Accountings

4.01 Records; Information for Retirement Board

4.01-1 The Trustee shall keep complete records of the trust open to inspection by the City and the Board at all reasonable times. The form and content of the records shall be sufficient for the Board to comply with reporting and disclosure requirements under applicable law.

4.01-2 In addition to reports required below, the Trustee shall furnish to the Board any information about the trust fund that it requests.

4.02 Valuation

4.02-1 As of each regular or special valuation date, the Trustee shall value the trust fund in accordance with applicable law and report the value to the Board.

4.02-2 The Board may call for a special valuation whenever it finds it desirable to avoid a material distortion or otherwise to administer the plan properly.

4.03 Accountings

4.03-1 The Trustee shall furnish the City with a complete statement of account within 60 days after the end of each trust year showing assets and liabilities, and income and expenses for the year.

4.03-2 The City may object to an accounting within 60 days after it is furnished and require that it be settled by audit by a qualified independent certified public accountant. The auditor shall be chosen by the Trustee from a list of at least five such accountants furnished by the City at the time the audit is requested. Either the City or the Trustee may require that the account be settled by a court of competent jurisdiction in lieu of or in conjunction with the audit. The cost of any audit or court proceedings shall be paid from the trust fund as an administrative expense.

4.03-3 If no objections to an accounting are filed within the time provided, the account shall be settled for the period covered by it.

4.03-4 When an account is settled, it shall be final and binding on all parties including all participants and persons claiming through them.

ARTICLE V

Protection of Fiduciaries

5.01 Indemnity

5.01-1 Subject to 5.01-2, all Employers, jointly and severally, shall indemnify and defend any fiduciary who is an officer, director, or employee of the City or an affiliate under plan section 2.01-2 from any claim or liability that arises from any action or inaction in connection with the plan.

5.01-2 The following rules shall apply to indemnification under 5.01-1:

(a) Coverage shall be limited to actions taken in good faith that the fiduciary reasonably believed were not opposed to the best interest of the plan.

(b) Negligence by the fiduciary shall be covered to the fullest extent permitted by law.

(c) Coverage shall be reduced to the extent of any insurance coverage.

5.01-3 The City shall indemnify and defend any plan fiduciary not covered by 5.01-1 from any claim or liability arising from any action or inaction based on information or direction from the Board or an Employer absent willful misconduct, gross negligence or bad faith.

5.02 Bonding

The Trustee and other plan fiduciaries shall be bonded to the extent required by applicable law for the protection of the trust. The cost shall be an administrative expense covered by 3.09.

ARTICLE VI

Trustees

6.01 Appointment; Number

6.01-1 The Trustee initially consists of the persons named in this trust agreement.

6.01-2 The City may enlarge or reduce the number of separate trustees at any time by appointment or removal under this Article.

6.02 Resignation and Removal

6.02-1 Any individual trustee may resign at any time by notice to the City, which shall be effective in 60 days unless the City and the resigning trustee agree otherwise.

6.02-2 The Trustee, including any individual trustee, may be removed by the City upon 60 days' notice or shorter notice accepted by the removed trustee.

6.02-3 When resignation or removal is effective, the Trustee shall begin transfer of assets to the successor Trustee or the remaining individual trustees immediately. The transfer shall be completed within 60 days, unless the City extends the time limit.

6.02-4 If the Trustee, including any individual trustee, resigns or is removed, the City shall appoint a successor or an alternative funding medium shall be established by the effective date of resignation or removal under 6.02-1 or 6.02-2. If neither has occurred, the Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. All expenses of the Trustee in connection with the proceedings shall be allowed as administrative expenses of the trust.

6.03 Appointment of Successor

6.03-1 The City may appoint an individual or any national or state bank or trust company as a general additional trustee or as a successor to replace the Trustee, including any individual trustee, upon death, resignation or removal. The appointment shall be effective when accepted in writing by the new trustee who shall share with any

remaining individual trustees all the rights and powers of the Trustee including ownership of the trust assets. Any former trustee shall execute any instrument necessary or reasonably requested by the City, the Board, any remaining trustee or the new trustee to evidence the transfer.

6.03-2 A new trustee need not examine the records and acts of any prior trustee and may retain or dispose of existing trust assets. A new trustee shall not be responsible for, and the City shall indemnify and defend the new trustee from, any claim or liability because of any action or inaction of any prior trustee or any other past event, any existing condition or any existing assets.

6.04 Accountings; Continuity

6.04-1 If the Trustee, including any individual trustee or any special additional trustee under 6.05, resigns, dies or is removed, any remaining trustee or the City may call for an accounting and shall do so if requested by the Board, or the resigning or removed trustee, or the representative of a deceased trustee. The accounting shall be received and settled as provided in 4.03 for regular accountings.

6.04-2 No resignation, death or removal of the Trustee or of any or all individual trustees, nor any change in identity of the Trustee for any reason, shall terminate the plan or this trust.

6.05 Special Additional Trustee

6.05-1 The City may appoint one or more national or state banks or trust companies as special additional trustees. A special additional trustee shall be included in the term Trustee for purposes of asset management powers but not for purposes of signing amendments.

6.05-2 The City shall specify the responsibilities of a special additional trustee, which may be general or limited. A special additional trustee shall have no powers, responsibility or liability for anything outside of its specified responsibilities and shall not be liable for any action or inaction of any other trustee with respect to other matters.

6.05-3 The City's statement of appointment of a special additional trustee shall become part of this trust.

ARTICLE VII

Amendment and Termination

7.01 Amendment

7.01-1 The City may amend this trust agreement at any time by written instrument executed and delivered to the Trustee, with the following limitations:

(a) All amendments shall be signed by the Trustee.

(b) No amendment shall revert any of the trust fund in any Employer or otherwise modify the trust so that it would not be for the exclusive benefit of eligible employees except as required or permitted by applicable law and regulations.

7.01-2 Amendments may be made effective retroactively to the extent permitted by applicable law and regulations.

7.02 Termination

7.02-1 The City may terminate this trust at any time and fund the plan entirely through a group annuity insurance contract under 3.03 of this trust agreement. Any group annuity contract held by the trust at the time of termination shall be assigned to the City.

7.02-2 The City may terminate the plan at any time. In such event, the City may request a ruling from the Internal Revenue Service on the effect of termination on the qualification of the plan and this trust. The Trustee may decline to distribute under 7.02-3 or 7.02-4 until an appropriate ruling has been issued.

7.02-3 Upon termination of the plan, the City may continue the trust to pay benefits as they mature or liquidate and distribute the applicable portion of the trust fund. If the trust fund is liquidated, it shall be allocated as directed by the Board among participants and beneficiaries in accordance with the plan.

7.02-4 In no event shall any part of the contributions or the principal or income of this trust be paid to or revested in an Employer or be used other than for the exclusive benefit of the participants and their beneficiaries, except for recovery of an actuarial surplus as provided in the plan.

ARTICLE VIII

General Provisions

8.01 Applicable Law

This trust agreement shall be construed according to the laws of Oregon except as preempted by federal law.

8.02 Agreement Binding on All Parties

This agreement shall be binding upon the heirs, personal representatives, successors and assigns of any and all present and future parties.

8.03 Notices and Directions

Except as otherwise required or permitted under the plan or this trust agreement or applicable law, any notice or direction under this trust agreement shall be in writing and shall be effective when actually delivered or when deposited postpaid as first-class mail. Mail shall be directed to the address stated in this trust agreement or in a statement of adoption or to such other address as a party may specify by notice to the other parties.

8.04 No Implied Duties

The duties of the Trustee shall be those stated in this trust, and no other duties shall be implied.

8.05 Information from Employer or Board

The Trustee may accept as correct and rely on any information furnished by Employer or the Board. The Trustee may not require an audit or disclosure of the records of an Employer or the Board.

8.06 City Functions

8.06-1 Except as provided in 8.06-2, all functions or responsibilities of the City shall be exercised by the City Manager, who may delegate all or any part of those functions.

8.06-2 The power to amend or terminate the trust may be exercised only as follows:

- (a) The City Council shall have general power to amend or terminate the trust.

(b) The City Manager may amend the trust without Council action to conform the trust with applicable law, to clarify the trust terms or to change administrative procedures.

8.06-3 Members of the City Council shall have no administrative or investment authority or function. Membership on the Council shall not, by itself, make a person a plan fiduciary.

City

CITY OF NEWPORT

By *Sam Charles, City Manager*
Executed: 12/10, 1993

Trustee

Vickie D. Spencer
Vickie Spencer

Executed: 12-22-93, 1993

Ken Doerfler, Sr.
Ken Doerfler, Sr.

Executed: 12-23, 1993

Marvin Uhlenhake
Marvin Uhlenhake

Executed: 12/27, 1993

AMENDMENT NO. 1
TO
CITY OF NEWPORT
EMPLOYEES' RETIREMENT PLAN
1993 RESTATEMENT

City of Newport
City Hall
810 SW Alder Street
Newport, Oregon 97365

City

The Plan, as most recently amended by the 1993 Restatement, is further amend as follows, with deleted language shown lined out and new language shown double underlined:

1. **Mandatory Contributions**

In order to document the City's compliance with an amendment to Article IX of the Oregon Constitution made by Measure 8 in 1994, which was later struck down by the Oregon Supreme Court, the 1993 Restatement of the Plan is amended as shown below.

* * *

4.01 Compensation

4.01-1 "Compensation" means the following subject to the limits in
4.01-2:

* * *

(b) For allocation of the Money Purchase contributions under 4.02-1, allocation of Mandatory contributions under 4.02-2, the limit on voluntary contributions under 4.06-1, the CP test under 4.06-4 and the determination of Average Monthly Earnings under 5.02-3, compensation means the amount under (a), adjusted as follows:

* * *

4.02 Money Purchase Contributions; Mandatory Contributions

4.02-1 Subject to 4.03, for each plan year Employer shall make a Money Purchase contribution of 6 percent of compensation as a Qualified Employee for such year for each participant.

4.02-2 Subject to 4.03, for the period beginning December 8, 1994 and ending May 27, 1996 a Mandatory contribution of 6 percent of compensation as a Qualified Employee shall be made for each participant. Mandatory contributions shall be made by Employer as a pick-up under Section 414(h) of the Internal Revenue Code of contributions required by Section 10(1) of Article IX of the Oregon Constitution before such Section was struck down by the Oregon Supreme Court.

4.02-23 "Compensation" shall be as defined in 4.01-1(b). For a new participant, the contribution shall be based on compensation for the partial plan year after participation starts.

4.03 Limit on Annual Additions

* * *

4.03-3 "Annual addition" means for any limitation year the sum of Money Purchase contributions, Mandatory contributions, and voluntary contributions for the year. In applying the limitations on annual additions, all employers that are statutory affiliates as described under 2.01-2, with the adjustment provided in section 415(h) of the Internal Revenue Code, shall be considered a single employer.

* * *

4.04 Adjustments to Satisfy Limits

4.04-1 If an annual addition for a participant would exceed the limit in 4.03, contributions shall be reduced pursuant to Treasury Regulation section 1.415-1(d) as necessary to eliminate the excess, in the following order:

- (a) Voluntary contributions.
- (b) Money Purchase contributions.
- (c) Mandatory contributions.

4.04-2 If an annual addition for a participant would exceed the limit in 4.03 because of the defined benefit portion of the basic benefit in 5.02-1(a) or because of any other tax qualified retirement plan of an Employer, the contributions and benefits under the plans shall be reduced as necessary to meet the limit, in the following order:

* * *

(e) Mandatory contributions under this plan.

4.05 Time of Payment

Employer shall make payments to the Trustee to cover all contributions as follows:

* * *

(b) Employer may pay Money Purchase contributions and Mandatory contributions in one sum or in installments.

* * *

4.08 Participants' Accounts

4.08-1 The Board shall keep separate accounts for the following contributions, and such additional separate accounts for each participant as may be necessary to administer the plan properly:

* * *

(d) Mandatory contributions.

(de) Voluntary contributions.

* * *

5.02 Normal Retirement Basic Benefit

5.02-1 Subject to 5.02-2, 5.05 and 5.08-6, the basic benefit on normal retirement is a monthly pension for life equal to the sum of the following:

* * *

(c) An annuity equal in value to the balance of the participant's Mandatory contribution account, if not withdrawn under 7.02-2.

(ed) An annuity equal in value to the balance of the participant's voluntary contribution account, if not withdrawn under 4.07 or 7.02-2.

* * *

6.01 Preretirement Death Benefits

6.01-1 On death of a participant before starting benefits the participant's beneficiary under 6.01-3 shall receive in a lump sum the total of the following:

* * *

(b) The balance of the participant's Mandatory contribution account.

(bc) The balance of the participant's voluntary contribution account.

(ed) An amount attributable to the participant's defined benefit as determined under 6.01-2.

* * *

6.02 Disability Retirement Benefits

6.02-1 A participant whose employment terminates due to disability shall be paid in a lump sum the total of the following:

* * *

(b) The balance of the participant's Mandatory contribution account.

(bc) The balance of the participant's voluntary contribution account.

(ed) An amount attributable to the participant's defined benefit as determined under 6.02-2.

* * *

7.01 Accrued Benefits; Vesting

* * *

7.01-2 A Participant's accrued benefit on termination shall be the sum of:

(a) The participant's Money Purchase contribution accounts, Mandatory contribution account and voluntary contribution accounts.

* * *

7.01-3 For a participant hired before October 1, 1993, the Money Purchase accounts and the voluntary contribution account shall be fully vested at all times.

~~7.01-4~~ For a participant hired after September 30, 1993, the voluntary contribution account shall be fully vested at all times and the Money Purchase account shall vest in accordance with the schedule in 7.01-5(b). For all participants the Mandatory contribution account shall be fully vested at all times.

~~7.01-5~~ A participant's defined benefit accrued under 5.02-1(a) shall be vested as follows:

* * *

7.02 Payment

7.02-1 A participant may elect within 60 days after termination to withdraw the vested portion of the Money Purchase contribution accounts and all of the Mandatory contribution accounts and voluntary contribution accounts. If the election is made, the vested portion of the accounts shall be paid to the participant in a lump sum and the participant's defined benefit and any unvested Money Purchase account shall be forfeited under 7.03. The Retirement Board may delay payment of the accounts for a valuation of the fund.

7.02-2 A participant may elect at any time after termination to withdraw either or both of the participant's voluntary contribution account and Mandatory contribution account. Such a withdrawal shall have no effect on the participant's defined benefit and Money Purchase account.

~~7.02-3~~ A terminated participant who does not elect to withdraw all amounts available under 7.02-1 and 7.02-2 shall normally start receiving vested accrued benefits at normal retirement age. A participant with 10 or more Years of Service may elect to start receiving, on the first day of any month after age 55, the accrued benefit adjusted under 5.03-1. If a terminated participant dies before benefits are to start, benefits shall be limited to those payable under 6.01.

~~7.02-34~~ A vested terminated participant entitled to benefits must apply for benefits under 5.06 and elect a distribution option between 30 and 90 days before benefits are to start subject to 5.06-3. If an application is not filed by the Benefit Starting Date for normal retirement, 5.07-2 shall apply. The form of benefit shall be determined under 5.08.

* * *

10.03 Allocation of Assets on Termination

10.03-1 That portion of the plan assets attributable to voluntary contribution accounts, Mandatory contribution accounts and Money Purchase contribution accounts shall be allocated in proportion to account balances.

* * *

2. Compliance with '96 Act

In order to comply with provisions in the '96 Act with respect to family aggregation rules, the following sections are amended as shown below:

4.01 Compensation

4.01-2 Compensation counted under 4.01-1(b) for any participant for a year shall be limited to ~~as follows~~:

~~(a) The limit for any participant for a year shall be \$150,000 plus any adjustment authorized by applicable law, except as follows: The limit for anyone who first becomes a participant in the plan before July 1, 1996 shall be \$235,840.~~

~~(b) Compensation of a highly compensated employee who is one of the 10 highest paid employees shall be aggregated with compensation from Employer to the spouse or a lineal descendant under age 19 to determine the limit.~~

~~(c) If the limit is exceeded because of aggregation under (b) above, pay counted for each aggregated employee shall be reduced pro rata to stay within the limit.~~

~~4.01-3 "Highly compensated employee" is defined in section 414(q) of the Internal Revenue Code and related Treasury regulations. In determining which employees are highly compensated employees, the following shall apply:~~

~~(a) Subject to (b) through (d) below, a highly compensated employee for a plan year is an employee who has performed services for Employer during the year or the prior plan year and is one of the following:~~

~~(1) A person paid over \$75,000 for either year.~~

~~(2) A person paid over \$50,000 for either year who is among the highest paid 20 percent of employees Employer for either year, aggregating employees of all statutory affiliates under 2.01-2 and excluding employees to the extent provided by applicable regulations.~~

~~(4) An officer of Employer paid over \$45,000 for either year, or the highest paid officer if no officer is paid over \$45,000 for a year. The number of officers counted in any year under this provision shall not exceed either 50 or the greater of 3 or 10 percent of the employees of Employer.~~

~~(5) A family member in either year of a highly compensated employee who is a 5 percent owner or is one of the 10 highest paid employees for the year. For this purpose, family members include the spouse, lineal ancestors, lineal descendants, and spouses of lineal ancestors and descendants.~~

~~(b) The dollar amounts in (a) above shall be adjusted in accordance with Treasury regulations for changes in cost of living.~~

~~(c) Former employees shall be taken into account in accordance with applicable regulations.~~

~~(d) Pay for this purpose shall mean compensation under 4.01-1(a), adjusted to include any amounts set aside under a deferred compensation plan under section 457 of the Internal Revenue Code.~~

* * *

4.06 Voluntary Contributions

4.06-1 Subject to 4.03 and 4.06-5, Qualified Employees may make voluntary contributions to the plan each year. The amount shall be a whole number percentage of compensation for the year as defined in 4.01-1(b). The maximum shall be 10 percent. The Board may fix lower maximums for participants who are highly compensated employees under Section 414(q) of the Internal Revenue Code to satisfy the requirements of 4.06-5.

* * *

5.10 Benefit Limits for Restricted Employees

5.10-1 Payments to restricted employees shall be limited as follows:

* * *

(d) "Restricted employee" means one of the highest-paid 25 of the current and former highly compensated employees, as defined in Section 414 of the Internal Revenue Code, with benefits under the plan.

3. Effective Dates

3.1 The changes made by section 1 of this amendment shall be effective December 8, 1994.

3.2 The changes made by section 2 of this amendment shall be effective July 1, 1997.

City

CITY OF NEWPORT

By: 
Sam I. Sasaki, City Manager

Executed: July 28, 1997

CITY OF NEWPORT

EMPLOYEES' RETIREMENT PLAN

2009 RESTATEMENT

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CITY OF NEWPORT EMPLOYEES' RETIREMENT PLAN

EFFECTIVE DATE

The City of Newport (the "City"), an Oregon municipal corporation, has adopted and maintains the City of Newport Employees' Retirement Plan (the "Plan"). Effective January 1, 2009 (except for those specific provisions that have an earlier effective date), the City hereby amends and restates the Plan. The City adopts this restatement to update plan language ensure continued compliance with applicable law, delegate responsibility for the approval of Plan amendments, amend responsibility for plan administration, and make other clarifying and administrative changes.

PREAMBLE

The Plan is funded through a trust. The Plan and its related trust exist for the exclusive benefit of eligible employees of the City and other adopting Employers and are intended to comply with sections 401 and 501 of the Internal Revenue Code and related Treasury Department Regulations.

Before January 1, 1983, the Plan included benefits for police and fire employees of the City. Effective January 1, 1983 retirement benefits for such employees were provided through the Public Employee Retirement System of the State of Oregon (PERS) and a portion of the Plan's funding was transferred to PERS.

ARTICLE 1 RELEVANT DATES; QUALIFICATION

1.01 Plan Year; Limitation Year

1.01-1 The plan year and limitation year shall be a fiscal year ending June 30.

1.01-2 June 30 of each year shall be the regular valuation date. Each other date on which the Plan assets are valued at the request of the Administrator shall be a special valuation date.

1.02 Qualification

1.02-1 The Plan is maintained for the exclusive benefit of eligible employees and is intended to comply with section 401 of the Internal Revenue Code and applicable regulations.

1.02-2 If the Commissioner of the Internal Revenue Service rules in response to a timely filed determination letter request that this Restatement does not qualify under section 401(a) of the Internal Revenue Code, the Administrator may amend it retroactively to qualify.

ARTICLE 2
APPLICATION TO THE CITY AND AFFILIATES

2.01 Eligible Employers

2.01-1 The City has adopted this Plan, and any Affiliate approved by the City may adopt this Plan for its employees.

2.01-2 "Affiliate" means a corporation, person or other entity that is a member, with an Employer, of any of the following:

(a) A controlled group under section 414(b) of the Internal Revenue Code.

(b) A group of trades or businesses under common control under section 414(c) of the Internal Revenue Code.

(c) An affiliated service group under section 414(m) of the Internal Revenue Code.

(d) A group of employers required to be aggregated under section 414(o) of the Internal Revenue Code.

2.01-3 "Employer" means the City and any adopting Affiliate. This Plan is a single plan which is or may be maintained by multiple employers and in which all of the Plan assets are available to pay benefits for all participants.

2.02 Service for Affiliates

2.02-1 Transfer of employment from an adopting Affiliate to a nonadopting affiliate shall cause a termination of employment.

2.02-2 Subject to Article 3, Service for any adopting Affiliate shall be counted as Service for eligibility and vesting after the organization becomes an adopting Affiliate or upon such earlier date fixed in the statement of adoption. Service for an adopting Affiliate may be Benefit Service as provided in this Plan or in the statement of adoption.

2.02-3 If an employee is employed by two or more adopting Affiliates during the same plan year, Service for both Affiliates shall count to determine periods of Service and Benefit Service. If a participant has Benefit Service for more than one adopting Affiliate in a plan year, the pension liability shall be allocated among the Affiliates in accordance with appropriate actuarial principles and Compensation from both Affiliates shall be aggregated to determine the participant's Compensation for the year.

2.02-4 If an organization is acquired by the City or an adopting Affiliate and not continued as a separate affiliate, Service for employees of the acquired organization who become employees of the City or the acquiring affiliate shall be counted from their date of hire by the City or the Affiliate. Past service for the acquired organization may be counted for eligibility, vesting or benefits from dates fixed by the Administrator and the Administrator shall give notice to all affected employees.

2.03 Adoption Procedure

An Affiliate may adopt this Plan by a written statement signed by the Affiliate, approved by the City Council and filed with the Trustee. The statement shall include the effective date of adoption, the starting date for Service and any special provisions that are to be applicable only to employees of the adopting Affiliate.

ARTICLE 3 PARTICIPATION AND SERVICE

3.01 Participation

3.01-1 Participation shall start on the first day of the month on or next after the date the employee satisfies the following requirements:

- (a) The employee is at least age 18.
- (b) The employee has been employed by Employer for six continuous months.
- (c) The employee is a Qualified Employee.

3.01-2 "Qualified Employee" means any employee of Employer except the following:

- (a) An employee covered by a collective bargaining agreement that does not provide for participation in this Plan.
- (b) A police officer or a fire fighter.
- (c) A part-time employee regularly scheduled to work fewer than 30 hours per week.
- (d) A temporary employee hired for a specified period or an unspecified period of limited duration.
- (e) A worker classified by Employer as an independent contractor or as an employee of a nonaffiliated entity.

3.01-3 If a worker previously classified by Employer as an independent contractor or as an employee of a nonaffiliated entity is reclassified as an employee of Employer, the exclusion of such worker from the definition of Qualified Employee shall apply to all periods affected by the reclassification. As a result, the worker shall be entitled to Years of Service under the rules in 3.02 for the reclassification period, but shall not be eligible to participate in the Plan and shall not be entitled to Years of Benefit Service for such period.

3.01-4 Every person who has an account under this Plan or has an accrued benefit shall be known as a participant. The Administrator shall furnish each participant with information about the Plan and benefits under it.

3.01-5 A police officer or fire fighter for whom an account containing Money Purchase contributions made before July 1, 1973 was held under the Plan, as restated effective January 1, 1983 and amended through Amendment No. 3, is a limited participant in the Plan after October 1, 1993 solely for purposes of investment and administration of the account and distribution under Articles 6, 7 or 8.

3.02 Service

3.02-1 The term "Year of Service" means a 12-consecutive month compensation period during which an employee is employed by the Employer as a Qualified Employee. In determining a Participant's Vested Interest under Article 8, a Year of Service is the Plan Year.

3.02-2 A participant shall be credited with Benefit Years for Years of Service after July 1, 1963 during the following periods:

- (a) Periods of employment as a Qualified Employee.
- (b) Periods of paid leave of absence under 3.03.
- (c) Periods of unpaid leave of absence for military service under 3.03-2(c).

3.02-3 Service shall accumulate until there is a termination of employment. If a termination occurs and the former employee is later rehired, Service before the termination shall be counted and the employee shall immediately participate in the Plan only if the employee had at least three Years of Service before the termination and did not withdraw the Money Purchase contribution accounts under 8.02-1. All other rehired former employees shall be treated as new employees and shall participate in the Plan upon satisfaction of the requirements of 3.01-1.

3.03 Leaves of Absence

3.03-1 An employee on paid or unpaid leave of absence shall not be treated as having terminated employment.

3.03-2 Leave of absence under 3.03-1 means the following:

- (a) Leave of absence authorized by Employer if the employee returns or retires within the time prescribed by Employer and otherwise fulfills all conditions imposed by Employer;
- (b) Leave of absence in accordance with Employer policies because of illness or accident, including disability that does not result in retirement, if the employee returns promptly after recovery;
- (c) Periods of military service if the employee returns with employment rights protected by law; and
- (d) Periods of leave covered by the Family and Medical Leave Act of 1993 (FMLA leave).

3.03-3 In authorizing leaves of absence, Employer shall treat all employees similarly situated alike as much as possible.

3.03-4 If a person on leave fails to meet the conditions of the leave or fails to return to work when required, the following shall apply:

(a) Employment shall be terminated and accrual of Service shall stop when the failure occurs if either of the following applies:

(1) The leave is not for military service and the failure is because of death, disability under 7.02 or retirement.

(2) The leave is not FMLA leave.

(b) If (a) does not apply, employment shall be terminated and accrual of Service shall stop as of the date the leave began.

(c) No previous allocation of contributions shall be changed.

(d) Any resulting forfeiture shall occur at the end of the plan year in which the failure occurs.

ARTICLE 4 COMPENSATION; MONEY PURCHASE AND VOLUNTARY CONTRIBUTIONS

4.01 Compensation

4.01-1 "Compensation" means the following, subject to 4.01-3 and to the limits in 4.01-2:

(a) For the Annual Addition limit under 4.03-2 and the limit on benefits under 6.05-1, Compensation means taxable pay reportable on IRS Form W-2 under Internal Revenue Code section 401(a), disregarding limitations based on the nature or location of the employment, plus, for limitation years beginning after December 31, 1998, amounts described in (b)(1) below.

(b) For allocation of Money Purchase contributions under 4.02-1, the limit on voluntary contributions under 4.06-1, and the determination of Average Monthly Earnings under 6.02-3, Compensation means the amount under (a) above, adjusted as follows:

(1) Any amounts set aside by the participant from otherwise taxable income under an Employer's deferred compensation plan under section 457 of the Internal Revenue Code or a cafeteria plan under section 125 of the Internal Revenue Code or under a transportation fringe benefit plan qualified under section 132(f) of the Internal Revenue Code shall be included.

(2) Any reimbursements or other expense allowances, fringe benefits, moving expenses, severance or disability pay and other deferred compensation and welfare benefits shall be excluded.

(3) Overtime pay shall be excluded.

4.01-2 Compensation counted under 4.01-1(b) for any participant for a year shall be limited to \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the determination period that begins with or within such calendar year. The limit for anyone who first became a participant in the Plan before July 1, 1996 shall be \$235,840.

4.01-3 During any leave of absence for military service under 3.03-2(c), Compensation shall be imputed at the rate the participant would have been paid if not absent. If this amount is not reasonably certain, Compensation shall be based on the participant's average Compensation during the 12 months immediately before the leave began, or all such months if fewer than 12.

4.02 Money Purchase Contributions

4.02-1 Subject to 4.03, for each plan year Employer shall make a Money Purchase contribution of 6 percent of Compensation as a Qualified Employee for such year for each participant.

4.02-2 Compensation shall be as defined in 4.01-1(b). For a new participant, the contribution shall be based on Compensation for the partial plan year after participation starts.

4.02-3 Employer shall make additional Money Purchase contributions as follows for a participant who returns from military leave under 3.03-2(c):

(a) The additional Money Purchase contribution shall be determined separately with respect to each plan year during which the participant was absent on military leave.

(b) The additional Money Purchase contribution with respect to a year during any period of absence for military leave shall equal the amount of additional Money Purchase contribution that would have been made on behalf of the participant for the plan year if the Compensation imputed under 4.01-3 had been paid during the period of absence.

(c) The additional Money Purchase contribution shall be subject to the limit in 4.03 that applied to the plan year for which the additional contribution is made.

4.03 Limit on Annual Additions

4.03-1 Contributions under this Article 4 shall be considered a separate defined contribution plan and limited in accordance with the following rules as provided in Internal Revenue Code section 415 and related regulations. The following provisions shall be

applied in a manner consistent with the Code and regulations, which are incorporated by this reference, including considering benefits under Article 6 as a separate defined benefit plan.

4.03-2 The "Annual Addition" that may be contributed or allocated to a participant's account under the Plan for any limitation year will not exceed the lesser of (a) \$40,000, as adjusted for increases in the cost-of-living under Code §415(d), or (b) 100 percent of the participant's Compensation, within the meaning of Code §415(c)(3), for the limitation year. The Compensation limit referred to in (b) will not apply to any contribution for medical benefits after separation from service (within the meaning of Code §401(h) or Code §419A(f)(2)) which is otherwise treated as an Annual Addition.

4.03-3 Annual Addition means for any limitation year the sum of Money Purchase contributions and voluntary contributions for the year. In applying the limitations on Annual Additions, all employers that are Affiliates as described under 2.01-2, with the adjustment provided in section 415(h) of the Internal Revenue Code, shall be considered a single employer.

4.03-4 If Employer maintains one or more defined contribution plans at any time, the Annual Additions under all such plans shall be combined for purposes of applying the above limitations.

4.04 Adjustments to Satisfy Limits

If an Annual Addition for a participant would exceed the limit in 4.03-2, contributions shall be reduced pursuant to Department of Treasury Regulation 1.415-1(d) as necessary to eliminate the excess, in the following order: (1) Voluntary contributions, and then (2) Money Purchase contributions.

4.05 Time of Payment

Employer shall make payments to the Trustee to cover all contributions as follows:

- (a) Payment of employee voluntary contributions shall be paid as soon as the amounts can reasonably be identified and separated from Employer's other assets. Subject to (c), such contribution shall in any event be made not later than 30 days after the participant would otherwise have received the amount deducted from pay on account of the voluntary contributions.
- (b) Employer may pay Money Purchase contributions in one sum or in installments.
- (c) All contributions for a plan year must be paid no later than 12 months after the end of the plan year.

4.06 Voluntary Contributions

4.06-1 For each plan year Qualified Employees may make voluntary contributions as follows:

- (a) Subject to 4.03 and the limits stated below, the contribution for a participant shall be a whole number percentage of Compensation for the year, as defined under 4.01-1(b), elected by the participant.

(b) The maximum percentage of Compensation that a participant may contribute under (a) shall be 10 percent. In the first year of participation, Compensation shall be counted for the part year after the employee is first eligible to participate.

4.06-2 Employee voluntary contributions shall be made by payroll deduction. Voluntary contributions shall be accounted for as the Administrator may decide and credited at such intervals as the Administrator may fix. Contributions shall be credited not later than the next regular or special valuation date after payment to the Trustee.

4.06-3 A participant who returns from military leave under 3.03-2(c) may make voluntary contributions on account of the period of leave as follows:

(a) Subject to (c), make-up voluntary contributions may be made during the contribution make-up period under (b) out of Compensation payable during such make-up period.

(b) The contribution make-up period begins on the date the participant is reemployed and ends on the earlier of the following:

(1) The fifth anniversary of reemployment.

(2) The last day of a period that is three times the period of military leave.

(c) To the extent permitted by applicable regulations, make-up contributions may be made out of funds other than Compensation. Each such contribution shall be considered made when the participant delivers funds to the Plan equal to the contribution amount.

(d) The participant shall file an election with the Administrator designating the plan year during military leave to which make-up voluntary contributions under (a) and (c) relate.

ARTICLE 5 PARTICIPANTS' ACCOUNTS

5.01 Participants' Accounts

5.01-1 The Administrator shall keep separate accounts for the following contributions, and such additional separate accounts for each participant as may be necessary to administer the Plan properly:

(a) Money Purchase contributions made by the participant prior to July 1, 1973.

(b) Money Purchase contributions made by the participant between July 1, 1973 and July 1, 1980.

(c) Money Purchase contributions made by Employer after July 1, 1980.

(d) Mandatory contributions. For the period beginning December 8, 1994 and ending May 27, 1996, a Mandatory contribution of 6 percent of Compensation as a Qualified Employee was made for each participant. Mandatory contributions were made by Employer as a pick-up under Section 414(h) of the Internal Revenue Code of contributions required by Section 10(1) of Article IX of the Oregon Constitution before such section was struck down by the Oregon Supreme Court.

(e) Voluntary contributions.

5.01-2 The Administrator shall furnish each participant annually a statement showing contributions, vesting and account balances.

5.02 Valuations and Adjustments

5.02-1 As of each regular or special valuation date, the relevant portion of the trust funds shall be valued and the values allocated as follows:

(a) The Trustee shall value the pooled investment funds at their fair market values and report the values to the Administrator.

(b) The Administrator shall allocate the pooled fund values to accounts as of the valuation date as follows:

(1) The allocation to accounts shall be in proportion to account balances on the valuation date before adding any allocations or subtracting any withdrawals or other distributions made as of that date.

(2) Appropriate adjustments shall be made for any interim contributions or distributions since the last valuation date.

5.02-2 Whenever the Administrator finds it desirable to avoid a material distortion in benefits or otherwise, to administer the Plan properly it may do either of the following:

(a) Call for a special valuation.

(b) Defer pending distributions until after the next regular valuation date.

5.03 Rollovers

5.03-1 The Administrator may approve rollover of funds from a tax qualified retirement plan or Individual Retirement Account (IRA) if all of the following criteria are met:

(a) The individual rolling over the funds is a Qualified Employee of Employer or adopting Affiliate at the time the rollover is made.

(b) If the rollover occurred on or before January 1, 2004, the funds come from either of the following:

(1) An IRA that holds only amounts rolled over from one or more total distributions or eligible rollover distributions from other qualified plans and related earnings.

(2) An eligible rollover distribution from a qualified plan.

(c) If the rollover occurred after January 1, 2004, the funds come from either of the following:

(1) An eligible rollover distribution or a Participant contribution of an eligible rollover distribution from the following plans: (A) a qualified Plan described in IRC Section 401(a) or 403(a); (B) an annuity contract described in IRC Section 403(b); and (C) an eligible Plan under IRC Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(2) A portion of a distribution from an individual retirement account or annuity described in Code §408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income.

(d) The funds are paid to this Plan within 60 days after distribution from the other plan or IRA.

(e) The funds do not include any employee contributions.

(f) The Administrator finds that the rollover will not impair the qualified status of this Plan.

5.03-2 A rollover shall be accounted for in such manner as the Administrator shall decide.

5.04 Transfers Between Plans

5.04-1 The Administrator may approve a transfer from this Plan directly into another qualified plan if all of the following conditions are met:

(a) The account is vested and currently distributable under this Plan.

(b) The individual involved requests that the account be distributed directly to the other plan in which the individual is a participant.

(c) The plan administrator or trustee of the receiving plan has agreed to accept the funds and has affirmed that the receiving plan is authorized to accept the transfer.

5.04-2 The Administrator may direct the Trustee to accept funds transferred directly to this Plan from another qualified plan if the following conditions are met:

(a) The individual involved has requested the transfer and is a Qualified Employee of Employer at the time the transfer is made.

(b) The Administrator determines that the transfer will not impair the qualified status of this Plan.

(c) Subject to (d) below, none of the amount transferred is subject to any distribution requirement that is inconsistent with the distribution options in this Plan.

(d) The transfer would not satisfy (c) above except that it is an elective transfer under Treasury Regulation section 1.411(d)-4 Q&A-3 and all the requirements of the regulation are met.

5.04-3 An amount received by direct transfer shall be accounted for in such manner as the Administrator shall decide.

5.05 Withdrawals of Voluntary Contributions

5.05-1 A participant may withdraw all or part of the voluntary contribution account before or at retirement. Withdrawals shall be charged in the following order:

(a) Against contributions made before 1987.

(b) Against contributions made after 1986 and a proportionate share of related earnings.

(c) Against earnings related to contributions before 1987.

5.05-2 The withdrawal date shall be fixed by the Administrator after application by the participant under procedures fixed by the Administrator. The Administrator may require a minimum advance notice and may delay payment of a withdrawal to permit a special valuation of the fund, to permit liquidation of necessary assets or for other pertinent reasons.

ARTICLE 6 BENEFITS ON RETIREMENT

6.01 Entitlement; Retirement Dates; Participation After Mandatory Benefit Starting Date

6.01-1 A participant shall be entitled to benefits on retirement.

6.01-2 Retirement shall occur on termination of employment after reaching one of the following dates:

(a) Normal retirement date, which shall be the first day of the month on or after age 62.

(b) Early retirement, which date shall be the first day of any month on or after age 55 and 10 years of Service.

(c) Deferred retirement date, which shall be the first day of any month after normal retirement date.

6.01-3 A person shall be considered retired after termination under 6.01-2 as a Qualified Employee and rehire as a non-Qualified Employee.

6.02 Normal Retirement Basic Benefit

6.02-1 Subject to 6.02-2 and 6.05, the basic benefit on normal retirement is a monthly pension for life equal to the sum of the following:

(a) A defined benefit equal to Benefit Years (BY) times 1.2 percent of Average Monthly Earnings (AME) as follows:

$$\text{BY} \times 1.2\% \times \text{AME}$$

(b) An annuity equal in value to the combined balances of the participant's employee and Employer Money Purchase contribution accounts.

(c) An annuity equal in value to the balance of the participant's Mandatory contribution account, if not withdrawn under 8.02-2.

(d) An annuity equal in value to the balance of the participant's voluntary contribution account, if not withdrawn under 5.05 or 8.02-2.

6.02-2 The defined benefit portion of a participant's normal retirement basic benefit shall not be less than either of the following:

(a) The participant's accrued benefit as of September 30, 1993.

(b) The greatest early retirement benefit the participant could have received under 6.03.

6.02-3 "Average Monthly Earnings" means the average of the participant's Monthly Earnings in the three consecutive plan years of highest Compensation as follows:

(a) "Monthly Earnings" for a plan year means one-twelfth of the participant's Compensation for the plan year.

(b) Compensation shall be as defined in 4.01-1(b).

(c) Compensation shall be considered only during the last 10 plan years of employment by Employer.

(d) Years separated by a period when the participant is not employed by Employer shall be treated as consecutive.

(e) For a participant with fewer than three plan years of Compensation, all years shall be used.

(f) During periods of reduced Compensation because of such causes as illness, disability, leave of absence or layoff, Compensation shall be figured at the last regular rate before the start of the period.

6.02-4 Conversion to annuities under 6.02-1(b) and (c) shall be based on actuarial equivalency under 12.09.

6.02-5 Benefits shall start on the Benefit Starting Date after the retirement date and be paid as soon as practicable.

6.03 Early Retirement Basic Benefit

6.03-1 Subject to 6.05, on early retirement the basic benefit shall be the same as on normal retirement, adjusted as follows:

(a) For a participant with 25 or more Years of Service who starts benefits at age 60 or over, no reduction in the benefit shall be made.

(b) For a participant with 30 or more Years of Service who starts benefits at age 55 or over, no reduction in the benefit shall be made.

(c) For any participant not covered by (a) or (b) the defined benefit portion under 6.02-1(a) shall be reduced by .6 percent for each month by which the Benefit Starting Date precedes age 62.

6.03-2 Benefits after early retirement date shall be paid as follows:

(a) Benefits shall start on the participant's normal retirement date unless the participant elects to start benefits earlier under (b).

(b) The participant may elect to start benefits on the first day of any month after early retirement by applying for benefits under 6.06.

(c) If the participant has not applied under (b) and dies before the Benefit Starting Date, benefits shall be limited to the amounts provided by 7.01.

(d) The participant must apply for benefits under 6.06. The benefit shall be paid at the time provided in 6.07 and in a form determined under 6.08.

6.04 Deferred Retirement Basic Benefit

6.04-1 Subject to 6.04-2 and 6.05, on deferred retirement, the basic benefit shall be the participant's benefit determined as for normal retirement based on Benefit Years and Average Monthly Earnings as of the end of the Plan Year of deferred retirement. In calculating the basic benefit, such amount shall be offset by the actuarial value of any distributions received from the Plan prior to the close of the Plan Year.

6.04-2 For participants who retire after age 65, the defined benefit portion of the participant's basic benefit on deferred retirement shall be actuarially adjusted under 12.09.

6.05 Limit on Benefits

6.05-1 The defined benefit portion of the basic benefit in 6.02-1(a) shall be considered a separate defined benefit plan and limited in accordance with the following rules as

6.05-2 Subject to 6.05-3, the actuarially equivalent straight life annuity defined benefit under 6.02-1(a) on normal, early or deferred retirement expressed as an annual benefit shall not be more than \$160,000 plus any cost-of-living adjustment authorized by applicable regulations for that year. A limitation as adjusted under Code section 415(d) will apply to Limitation Years ending with or within the calendar year for which the adjustment applies.

6.05-3 The maximum permissible benefit in 6.05-2 shall be adjusted in accordance with the following rules:

(a) If the participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the Plan and (ii) the denominator of which is 10. In the case of a participant who has fewer than 10 years of service with the Employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the Employer and (ii) the denominator of which is 10.

(b) The limitation in 6.05-2 shall not be lower for any participant than the participant's accrued benefit under the Plan on either of the following dates:

(1) June 30, 1983.

(2) June 30, 1987.

(c) If the benefit of a participant begins prior to age 62, the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant at age 62 (adjusted under (a) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table as defined for purposes of benefits payable in a form subject to Code §417(e). Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant.

(d) If the benefit of a participant begins after the participant attains age 65, the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is Actuarially Equivalent to the defined benefit

dollar limitation applicable to the participant at age 65 (adjusted under (a) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined for purposes of benefits payable in a form subject to Code §417(e). For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

(e) Actuarial equivalencies shall be based on the assumptions set forth in 12.09, except as otherwise indicated in this section.

(f) The Plan provides either the option to commence benefits at normal retirement date regardless of continued employment, or an actuarial increase in benefits commenced after normal retirement age.

(g) The Plan provides for suspension of benefits in accordance with Code §411(a)(3)(B).

6.05-4 If the benefit is paid in the form of a contingent annuity under 6.08-3 with payments continued to the participant's spouse, the limitations in 6.05-2 shall be applied to the participant's actual benefit rather than the actuarially equivalent single life annuity.

6.05-5 In applying the limitations on Annual Additions, all employers that are Affiliates as described under 2.01-2, with the adjustment provided in section 415(h) of the Internal Revenue Code, shall be considered a single employer.

6.05-6 If benefits under another defined benefit pension plan maintained by Employer, when combined with the benefits under this Plan, exceed the above limitations, the benefits under this Plan shall be reduced to the extent of the excess and the benefits under the other Plan shall stand.

6.06 Application for Benefits

6.06-1 A participant, spouse or beneficiary eligible for benefits must apply in writing on a form prescribed by the Administrator. If an application is not filed by the Benefit Starting Date or the participant specifies a starting date later than that in 6.07-1, then 6.07-2 shall apply.

6.06-2 Subject to 6.06-3, application shall be made within 180 days (90 days for Plan Years beginning before January 1, 2007) after receiving the explanation in 6.06-3.

6.06-3 A participant shall receive a general explanation of annuity benefits in accordance with the following rules:

(a) On or before 180 days (90 days for Plan Years beginning before January 1, 2007) prior to the Benefit Starting Date, the Administrator shall give the participant or other eligible recipient an explanation of the following:

(1) The right to defer payment until normal retirement age, if applicable, and of the benefit options in 6.08-3 and their financial effect.

(2) The form of benefit election under 6.08-2 and of the effect of failure to elect.

(3) The right to elect to have a direct rollover under 6.06-4 if applicable.

(4) The applicability of mandatory withholding if a direct rollover could be elected under 6.06-4 and is not.

(5) The applicable rules on rollover and taxation of the distribution as required by section 402(f) of the Internal Revenue Code.

(b) The participant may make or revoke an election under 6.08-2 at any time within the period starting 180 days (90 days for Plan Years beginning before January 1, 2007) before the Benefit Starting Date and ending with the later of the following:

(1) 180 days (90 days for Plan Years beginning before January 1, 2007) after the participant has received the information in (a).

(2) The Benefit Starting Date.

(c) A participant entitled to the information (a) is also entitled to a specific written explanation of the benefit options under 6.08-3 and the financial effect on the participant of receiving a contingent annuity or electing not to do so. The information shall be furnished by the Administrator after request by the participant.

6.06-4 An eligible recipient of an eligible rollover distribution may elect before the benefit is paid to have the benefit distributed by a direct rollover into an eligible retirement plan and the following shall apply:

(a) The recipient shall furnish the Administrator sufficient information to identify the eligible retirement plan or IRA and the fund holder to whom the direct rollover shall be paid.

(b) "Eligible retirement plan" means an individual retirement account or annuity, an employer-sponsored qualified retirement trust, an employer-sponsored qualified annuity plan, an annuity contract described in section 403(b) of the Internal Revenue Code, an eligible plan under section 457(b) of the Internal Revenue Code which is maintained by a political subdivision of a state or any agency or instrumentality of a state or political subdivision which agrees to separately account for amounts transferred into such plan from the Plan, and to a distribution to an alternate payee under a qualified

domestic relations order, as defined in section 414(p) of the Internal Revenue Code.

(c) "Eligible rollover distribution" means any distribution from the Plan other than the following:

(1) One of a series of substantially equal periodic payments over life, or life expectancy, or a period of 10 years or more.

(2) A payment required under section 401(a)(9) of the Internal Revenue Code.

(3) Any amount withdrawn or distributed on account of hardship under section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code.

(4) Return of post-tax contributions.

(d) "Eligible recipient" means the participant, the spouse of a deceased participant or a spouse or former spouse who is an alternate payee under a qualified domestic relations order.

6.07 Time of Payment

6.07-1 Benefits shall be paid at a time determined as follows:

(a) The "Benefit Starting Date" means the first day of the first Benefit Month under (b). If payments are delayed under 6.07-2, the Benefit Starting Date shall not change.

(b) "Benefit Month" means a calendar month for which a participant or contingent annuitant or other death beneficiary is entitled to receive a monthly benefit.

(c) The first Benefit Month is the earliest of the following:

(1) The first month starting on or after the normal, deferred or disability retirement date.

(2) The month selected for the start of benefits after an early retirement date.

(3) The mandatory Benefit Starting Date under 6.09-2(a).

(d) The last Benefit Month is the month in which the participant or other life annuitant dies or the last payment is made under a term certain annuity.

6.07-2 If application or the explanation under 6.06-3(a) is delayed beyond the Benefit Starting Date, the following shall apply:

(a) Payment shall be made or commence as soon as practicable after the Benefit Starting Date, and in any event within 60 days after application is made.

(b) Back installments from the Benefit Starting Date shall be paid in a single sum with the first payment. No interest shall be paid on back installments.

6.08 Form of Retirement Benefit

6.08-1 The basic benefit on normal, early or deferred retirement is based on the following:

(a) The normal form for the basic benefit is a single life annuity.

(b) The benefit shall be paid in equal monthly payments on the first day of each Benefit Month.

6.08-2 A participant shall elect the actual form of distribution from those in 6.08-3 as follows:

(a) Regardless of form, the value of the benefit shall be the actuarial equivalent of the basic benefit the participant would receive under 6.02, 6.03 or 6.04.

(b) The election shall be made and any contingent annuitant or other beneficiary named in the application under 6.06.

(c) If the contingent annuitant or other beneficiary dies before the participant's Benefit Starting Date, the election shall be void.

6.08-3 The optional forms of benefit shall be the following:

(a) Single life annuity.

(b) Contingent annuity with payments continued to the contingent annuitant in full.

(c) Contingent annuity with payments continued to the contingent annuitant at one-half.

(d) On early retirement, a level income option under which the monthly payments before first eligibility for Social Security retirement benefits are greater than the remaining payments so as to provide approximately equal payments throughout the payment period, including Social Security.

(e) Any other form of distribution approved by the Administrator.

6.08-4 The benefit shall be provided from the fund by one of the following ways as determined by the Administrator:

(a) Purchasing and delivering a single premium nontransferable annuity in a form and from an insurance company approved by the Administrator.

(b) Paying the benefit directly from the fund.

6.08-5 Annuities under 6.08-4 shall have terms that comply with the requirements of this Plan. Annuity purchase rates for any plan year shall be the same for males and females.

6.09 Required Minimum Distributions

6.09-1 All distributions from the Plan will be determined and made in compliance with a reasonable good faith interpretation of the final and temporary Regulations under Code §401(a)(9), effective as of April 17, 2002. Pursuant to those Regulations, all distributions will be determined in accordance with the following provisions:

(a) The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(b) The requirements of this Section will take precedence over any inconsistent provisions of the Plan and any prior Plan amendments.

(c) Notwithstanding the other provisions of this Section, distributions may be made under a designation made before January 1, 1984, in accordance with Tax Equity and Fiscal Responsibility Act (TEFRA) §242(b)(2) and the provisions of the Plan that relate to TEFRA §242(b)(2).

6.09-2 All required minimum distributions will be made from the Plan in the following time and in the following manner:

(a) The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date. The term "Required Beginning Date" means April 1st of the calendar year following the later of the calendar year in which the Participant reaches Age 70½ or the calendar year in which the Participant actually retires. Notwithstanding the foregoing to the contrary, if a Participant made a distribution election prior to January 1, 1984 pursuant to §242(b) of TEFRA, such Participant's benefit will be distributed at the time and in the manner set forth in the election provided such election has not been revoked, and further provided that the election sets forth a method of distribution of benefits which satisfies the provisions of Code §401(a)(9) as in effect prior to enactment of TEFRA.

(b) If the Participant dies before distributions begin and there is a Designated Beneficiary, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31st of the calendar year containing the fifth anniversary of the Participant's death. If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to either the Participant or the surviving Spouse begin, this subparagraph will apply as if the surviving Spouse were the Participant. This subparagraph also applies to all distributions.

6.09-3 The amount of required minimum distributions during a Participant's lifetime will be determined as follows:

(a) During the Participant's lifetime, the minimum amount that will be distributed each Distribution Calendar Year is the lesser of (A) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Regulation §1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or (B) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's Spouse, then the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Regulation §1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.

(b) Required minimum distributions will be determined under this paragraph beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

6.09-4 Required minimum distributions will be made after a Participant's death in accordance with the following provisions:

(a) If a Participant dies on or after the date distribution begins, then the amount of a required minimum distribution will be determined as follows:

(1) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, then the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Designated Beneficiary, determined in accordance with the following provisions:

(i) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, then the remaining Life Expectancy of the surviving Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that Distribution Calendar Year. For Distribution Calendar Years after the year of the surviving Spouse's death, the remaining Life Expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, then the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent calendar year.

(b) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, then the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one each subsequent year.

6.10 Mandatory Cash-Out of Benefits

Mandatory cash-outs prior to the first date that the automatic rollover provisions of Code Section 401(a)(31) first apply will be governed by the terms of the Plan (including amendments) as in effect prior to such date. Effective on or after such date, mandatory cash-outs to a terminated Participant are not permitted.

6.11 Reemployment After Retirement

6.11-1 Subject to 6.09, benefit payments to a retired participant receiving an annuity form of benefit shall be withheld and accrual of benefits shall resume when all of the following have occurred:

- (a) The participant has been rehired by Employer as a Qualified Employee.
- (b) The participant has elected to resume participation in the Plan.

6.11-2 A participant whose benefits have been withheld under 6.10-1 shall receive benefits on a later retirement determined as follows:

- (a) The participant shall apply for benefits under 6.06 and select a form of benefit under 6.08 for the benefits attributable to Service after rehire. The benefits attributable to Service before rehire shall be in the form that applied during the prior period of retirement.
- (b) On later retirement the participant's benefit shall be calculated under 6.02, 6.03 or 6.04 as applicable, based on Service and Compensation to the later retirement date and then reduced by the actuarial value of benefits previously received. The monthly benefit shall not be less than that payable on the earlier retirement for the same form of benefit.

6.11-3 If a person receiving an annuity form of benefit is rehired and does not elect to resume participation, benefits shall not be withheld and no additional benefit shall accrue based on the new period of Service. If a person who has received a lump sum benefit upon retirement is rehired, no additional benefit shall accrue based on the new period of Service.

ARTICLE 7
BENEFITS ON DEATH OR DISABILITY

7.01 Pre-retirement Death Benefits

7.01-1 On death of a participant before starting retirement benefits, the participant's beneficiary under 7.01-3 shall receive in a lump sum the total of the following:

- (a) The balance of the participant's Money Purchase contribution accounts.
- (b) The balance of the participant's Mandatory contribution account.
- (c) The balance of the participant's voluntary contribution account.
- (d) An amount attributable to the participant's defined benefit as determined under 7.01-2.

7.01-2 The amount attributable to the participant's defined benefit shall be the greatest of the following:

- (a) 50 times the participant's projected monthly pension under 6.02-1(a) assuming continued full-time service to normal retirement date and no change in Average Monthly Earnings.
- (b) The actuarial present value of the participant's accrued defined benefit on the date of death.
- (c) The amount determined for the participant under this subsection 7.01-2 as in effect on September 30, 1993.

7.01-3 Each participant shall file with the Administrator a designation of beneficiaries and may change it from time to time. If no beneficiary has been named or no named beneficiary is living when the participant dies, the benefit shall be paid to the following in order of priority:

- (a) The participant's surviving spouse.
- (b) The participant's surviving children in equal shares.
- (c) The participant's surviving parents in equal shares.
- (d) The participant's estate.

7.02 Disability Retirement Benefits

7.02-1 A participant whose employment terminates due to disability shall be paid in a lump sum the total of the following:

- (a) The balance of the participant's Money Purchase contribution accounts.
- (b) The balance of the participant's Mandatory contribution account.
- (c) The balance of the participant's voluntary contribution account.
- (d) An amount attributable to the participant's defined benefit as determined under 7.02-02.

7.02-2 The amount attributable to the participant's defined benefit shall be the greatest of the following:

- (a) 50 times the participant's projected monthly pension under 6.02-1(a) assuming continued full-time service to normal retirement date and no change in Average Monthly Earnings.
- (b) The actuarial present value of the participant's accrued benefit on the date disability arises.
- (c) The amount determined for the participant under 7.02-1(c) as in effect on September 30, 1993.

7.02-3 A disabled participant is one who as a result of illness or injury suffers from a condition of mind or body that permanently prevents full-time employment by Employer. The Administrator shall determine disability and may rely on advice from a medical examiner satisfactory to the Administrator.

7.02-4 If benefits after disability would be offset against any other disability benefit, the Retirement Administrator may defer the start of payments until age 65 and adjust the benefit actuarially for the later start unless the participant elects to waive disability and receive benefits under 6.02, 6.03, 6.04 or Article 8.

ARTICLE 8 ACCRUED BENEFITS; VESTING

8.01 Accrued Benefits; Vesting

8.01-1 A participant who terminates employment for any reason other than retirement, death or disability shall be entitled only to vested accrued benefits.

8.01-2 A Participant's accrued benefit on termination shall be the sum of:

(a) The participant's Money Purchase contribution accounts, Mandatory contribution account and voluntary contribution accounts.

(b) The defined benefit determined under 6.02-1(a) based on Benefit Years and Average Monthly Earnings at the time of termination.

8.01-3 For a participant hired before October 1, 1993, the Money Purchase accounts and the voluntary contribution account shall be fully vested at all times. For a participant hired after September 30, 1993, the voluntary contribution account shall be fully vested at all times and the Money Purchase account shall vest in accordance with the schedule in 8.01-4(b). For all participants the Mandatory contribution account shall be fully vested at all times.

8.01-4 A participant's defined benefit accrued under 6.02-1(a) shall be vested as follows:

(a) If the participant withdraws the Money Purchase contribution accounts under 8.02-1 the defined benefit shall be entirely unvested.

(b) If (a) does not apply, the defined benefit shall be vested under the following table:

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 3	0%
3	50%
4	62%
5	75%
6	87 ½%
7 or more	100%

8.02 Payment

8.02-1 A participant may elect on or before 60 days after termination to withdraw the vested portion of the Money Purchase contribution accounts and all of the Mandatory contribution accounts and voluntary contribution accounts. If the election is made, the vested portion of the accounts shall be paid to the participant in a lump sum and the participant's defined benefit and any unvested Money Purchase account shall be forfeited under 8.03. The Administrator may delay payment of the accounts for a valuation of the fund.

8.02-2 A participant may elect at any time after termination to withdraw either or both of the participant's voluntary contribution account and Mandatory contribution account. Such a withdrawal shall have no effect on the participant's defined benefit and Money Purchase account.

8.02-3 A terminated participant who does not elect to withdraw all amounts available under 8.02-1 and 8.02-2 shall normally start receiving vested accrued benefits at normal retirement age. A participant with 10 or more Years of Service may elect to start receiving, on the first day of any month after age 55, the accrued benefit adjusted under 6.03-1. If a terminated participant dies before benefits are to start, benefits shall be limited to those payable under 7.01.

8.02-4 A vested terminated participant entitled to benefits must apply for benefits under 6.06 and elect a distribution option between 30 and 180 days before benefits are to start subject to 6.06-3. If an application is not filed by the Benefit Starting Date for normal retirement, 6.07-2 shall apply. The form of benefit shall be determined under 6.08.

8.03 Forfeiture of Unvested Benefits

8.03-1 A participant who terminates employment before retirement shall forfeit all unvested defined benefits and all of the unvested Money Purchase account. The forfeited defined benefits shall be taken into account in establishing the funding policy.

8.03-2 The unvested portion of a participant's Money Purchase account shall be forfeited at the first plan year-end at which both of the following are true:

(a) The participant has no vested interest or the participant's vested interest has been distributed fully.

(b) The participant is not then a Qualified Employee.

8.03-3 Money Purchase forfeitures shall be accounted for as follows:

(a) The amount forfeited shall be based on the balance in the account as of the end of the plan year in which forfeiture occurs.

(b) Forfeitures shall be applied to reduce future Money Purchase contributions or to pay plan expenses.

8.03-4 A zero vested balance of a participant shall be treated as though it were distributed immediately when employment terminates.

ARTICLE 9 PLAN ADMINISTRATION

9.01 Retirement Plan Administrator

9.01-1 The Plan shall be administered by the City's Finance Director ("Administrator").

9.02 Administrator Powers and Duties

9.02-1 The Administrator shall interpret the Plan, shall decide any questions about the rights of participants and their beneficiaries and in general shall administer the Plan. Any decision by the Administrator shall be final and bind all parties. The Administrator shall have absolute discretion to carry out its responsibilities in administering the Plan.

9.02-2 The Administrator shall be the Plan administrator under federal laws and regulations applicable to plan administration and shall comply with such laws and regulations. The Administrator shall be an agent for service of process on the Plan at the City's address.

9.02-3 The Administrator shall keep records of all relevant data about the rights of all persons under the Plan. The Administrator shall determine eligibility to participate and the time, manner, amount and recipient of payment of benefits and the Service of any employee and give instructions on distributions. Any person having an interest under the Plan may consult the Administrator at any reasonable time.

9.02-4 The Administrator may delegate all or part of its administrative duties to one or more agents and may retain advisors for assistance. The Administrator may consult with and rely upon the advice of counsel, who may be counsel for the City. The Administrator shall retain the enrolled actuary and appoint any independent public accountant required for the Plan.

9.02-5 Each Employer shall furnish the Administrator any information reasonably requested by it for Plan administration.

9.03 Claims Procedure

9.03-1 Any person claiming a benefit or requesting information, an interpretation or a ruling under the Plan shall present the request in writing to the Administrator, who shall respond in writing as soon as practicable.

9.03-2 If the claim or request is denied, the written notice of denial shall state the following:

- (a) The reasons for denial, with specific reference to the Plan provisions on which the denial is based.
- (b) A description of any additional material or information required for review of the claim and an explanation of why it is necessary.
- (c) An explanation of the plan's claim review procedure.

9.03-3 Any person whose claim or request is denied or who has not received a response within 90 days may request review by notice given in writing to the Administrator. On receipt of the request for review, the administrator shall reconsider the decision. The Administrator shall either affirm the original decision or issue a new decision in writing. The person who filed the required for review may appeal the decision on review to the Trustee by filing an appeal form with the Administrator. The claimant may have representation, examine pertinent documents and submit issues and comments in writing during the review and appeal stages.

9.03-4 The decision on review shall normally be made within 60 days of the request for review, and the decision on appeal shall be made within 60 days of the filing of the appeal. All decisions on review or appeal shall be in writing and shall state the reasons and relevant plan provisions. Decisions on review shall be final and binding unless an appeal is timely filed, and decisions on appeal are final and binding.

9.04 Distributions; Conflicting Claims

9.04-1 On receipt of appropriate documentation to justify payment to the recipient, the Administrator may provide for payment of a participant's, spouse's contingent annuitant's or other beneficiary's benefits directly to the participant, contingent annuitant or beneficiary or to one or more of the following:

- (a) A spouse or parent or to a child of legal age.
- (b) A legal guardian or a person or entity having actual custody of the person.
- (c) A provider of maintenance, support or hospitalization.

9.04-2 If a dispute arises over a distribution, the Administrator may withhold payment until a court of competent jurisdiction has ruled on the dispute or it is settled by the parties concerned.

9.05 City and Employer Functions

9.05-1 Except as provided in 9.05-2, all City and Employer functions or responsibilities shall be exercised by the City Manager, who may delegate all or any part of those functions.

9.05-2 The City Manager or delegate may amend the Plan to make technical, administrative or editorial changes on advice of counsel to comply with applicable law or to clarify Plan terms. All other amendments to the Plan must be approved by the City Council.

9.05-3 The City Council shall have no administrative or investment authority or functions. Membership on the Council shall not, by itself, cause a person to be considered a plan fiduciary.

9.06 Expenses

The City may elect to pay any administrative fees or expenses and may allocate the cost among the Employers. Otherwise the expenses and fees shall be paid from the plan assets.

9.07 Correcting Administrative Errors

The Administrator may take such steps as it considers necessary and appropriate in its discretion to remedy administrative or operational errors. Such steps may include, but will not be limited to the following: (a) taking any action required under the employee plans compliance resolution system of the Internal Revenue Service, any asset management or fiduciary conduct error correction program available through the Internal Revenue Service, United States Department of Labor or other governmental administrative agency; (b) a reallocation of Plan assets; (c) adjustments in amounts of future payments to Participants, Beneficiaries or Alternate Payees; and (d) institution and prosecution of actions to recover benefit payments made in error or on the basis of incorrect or incomplete information.

ARTICLE 10 FUNDING

10.01 Funding Policy

The City shall establish the funding policy on the advice of the plan actuary and be responsible for management of the fund. The funding policy shall fix the minimum and maximum Employer contribution for each year.

10.02 Contributions

10.02-1 Each Employer shall make contributions to fund the benefits for its eligible employees. The amount and time of payment shall be determined in conformance with the funding policy established by the Administrator and the rules of this Plan.

10.02-2 An Employer may suspend or reduce contributions in any year so long as the minimum requirements of the funding policy are satisfied.

10.03 Trust Fund

The Plan shall be funded through the City of Newport Retirement Trust, which is administered by a Trustee appointed by the City Council. The Trustee shall receive Employer contributions, hold the fund in accordance with the trust agreement and distribute the benefits under this Plan as directed by the Administrator. Benefits under the Trust shall be paid solely from the trust fund to the extent the fund is sufficient. If the fund is not sufficient, the Trustee shall not be liable for the unfunded benefits. Notice to the Trustee shall be sent to the City's address.

ARTICLE 11 AMENDMENT; TERMINATION; MERGER

11.01 Amendment

11.01-1 The City may amend this Plan at any time by written instrument, subject to the following:

(a) No amendment shall revest any of the plan assets in any Employer or otherwise modify the Plan so that it would not be for the exclusive benefit of eligible employees, except as required or permitted by applicable law and regulations.

(b) No amendment shall reduce any participant's accrued benefit, or the vested percentage of that accrued benefit, as of the date the amendment is adopted or is effective, whichever is later. Notwithstanding the preceding sentence, a participant's accrued benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under IRC § 412(c)(8) (for plan years beginning on or before December 31, 2007) or IRC § 412(d)(2) (for plan years beginning after December 31, 2007), or to the extent permitted under §§ 1.411(d)-3 and 1.411(d)-4 of the regulations.

(c) No amendment shall increase the Years of Eligibility Service required for vesting without providing that each participant with at least three Years of Eligibility Service on the date the amendment is adopted shall have the prior vesting schedule continue to apply to future benefits under the Plan until the participant either has a greater vesting percentage under the new schedule or has become 100 percent vested under the prior schedule.

11.01-2 Amendments may be made effective retroactively to the extent permitted by applicable law and regulations.

11.01-3 Except as authorized in Section 9.05-2, Plan amendments must be approved by the City Council.

11.02 Termination

11.02-1 The City intends this Plan to be permanent but may wholly or partly terminate the Plan at any time. In such event, the rights of all affected participants to the benefits then accrued and funded shall be fully vested and nonforfeitable. The City may request a ruling from the Internal Revenue Service on the effect of termination on the qualification of the Plan. The Trustee may decline to distribute under the following paragraph until notice has been filed and appropriate rulings issued.

11.02-2 Upon termination, the City may continue the trust to pay benefits as they mature or liquidate and distribute the fund. In any event, the available funds shall be allocated by the Administrator as provided below based on actuarial valuation of accrued retirement benefits as of the date of termination using nondiscriminatory formulas established by the Administrator. The time and method of payment shall be determined by the Administrator in accordance with the Plan and applicable law. Benefits already distributed in cash or by purchase and delivery of an annuity contract shall not be affected.

11.03 Allocation of Assets on Termination

11.03-1 That portion of the plan assets attributable to voluntary contribution accounts, Mandatory contribution accounts and Money Purchase contribution accounts shall be allocated in proportion to account balances.

11.03-2 The portion of the trust fund remaining after allocation under 11.03-1 shall be allocated to provide defined benefits under 6.02-1(a). If the funds are insufficient to pay all of the benefits, the amount available shall be allocated among the participants in proportion to their interests.

11.03-3 In no event shall any part of the contributions or principal or income of the trust be paid to or revested in an Employer or be used for any purpose other than for the exclusive benefit of the employees and their beneficiaries, except that an Employer shall recover any actuarial surplus remaining after satisfaction of all plan liabilities under 11.03-1 and -2.

11.04 Treatment of Employers

11.04-1 All employees of all Employers, including the City, shall be treated as though employed by one Employer for purposes of determining total or partial termination. For this purpose, this Plan shall be treated as one plan and not as a collection of separate plans of the Employers. If some or all of the employees of an Employer terminate employment, this shall be viewed in the context of the whole plan to determine whether there has been a partial termination or curtailment and whether accelerated vesting is required.

11.04-2 An Employer may be excluded from the Plan with respect to its employees at any time by the Administrator. Such exclusion shall not automatically constitute a termination or partial termination of the Plan. Employees of the excluded Affiliate shall be treated as having terminated employment if the Affiliate ceases to maintain its affiliated status. Unless the Internal Revenue Service rules that the exclusion constitutes a partial termination of the Plan, the rights of employees of the excluded Affiliate shall not become fully vested and

nonforfeitable as a result of the exclusion. If the excluded Affiliate retains its affiliated status with the City, its employees shall continue to accrue Service for the purposes of vesting and eligibility, but shall not accrue Benefit Service and shall not be eligible to participate in Money Purchase contributions or elect voluntary contributions without respect to pay after the effective date of the exclusion.

11.05 Merger

If this Plan is merged or consolidated with, or the assets or liabilities are transferred to, any other plan or trust, the benefit that each participant would receive if the Plan terminated just afterwards shall be at least as much as if it terminated just before.

ARTICLE 12 General Provisions

12.01 Information for Retirement Administrator

12.01-1 The Administrator may accept as correct and rely on any information furnished by any department or agency of the City or an Employer.

12.01-2 The Administrator may require satisfactory proof of age, marital status or other data from a participant, spouse, contingent annuitant or other beneficiary. Pursuant to 9.07, the Administrator may adjust any retirement benefit if an error in relevant data or in calculation of benefits is discovered.

12.02 Indemnity and Bonding

12.02-1 The City shall indemnify and defend any plan fiduciary who is an official or employee of an Employer from any claim or liability that arises from any action or inaction in connection with the Plan subject to the following rules:

(a) Coverage shall be limited to actions taken in good faith that the fiduciary reasonably believed were not opposed to the best interests of the Plan.

(b) Negligence by the fiduciary shall be covered to the fullest extent permitted by law.

(c) Coverage shall be reduced to the extent of any insurance coverage.

12.02-2 Plan fiduciaries shall be bonded to the extent required by applicable law for the protection of plan assets.

12.03 Applicable Law

This Plan shall be construed according to the laws of Oregon except as preempted by federal law.

12.04 Plan Binding on All Parties

This Plan shall be binding upon the heirs, personal representatives, successors and assigns of all present and future parties.

12.05 Not Contract of Employment

This Plan shall not be a contract of employment between an Employer and any employee. No employee may object to any amendment or termination of the Plan. The Plan shall not prevent an Employer from discharging any employee at any time.

12.06 Notices

Except as otherwise required or permitted under this Plan or applicable law, any notice or direction under this Plan shall be in writing and shall be effective when actually delivered or when deposited postpaid as first-class mail. Mail shall be directed to the address stated in this Plan or in a statement of adoption or to such other address as a party may specify by notice to the other parties. Notice to the Administrator shall be sent to the City's address.

12.07 Benefits Not Assignable; Qualified Domestic Relations Order

12.07-1 This Plan is for the personal protection of the participants. No interest of any participant or beneficiary may be assigned, alienated, seized by legal process, transferred or subjected to the claims of creditors in any way, except as provided in 12.07-2.

12.07-2 Benefits may be paid in accordance with a qualified domestic relations order under section 414(p) of the Internal Revenue Code pursuant to procedures established by the Administrator.

12.08 Nondiscrimination

The City, the Employers, the Trustee and the Administrator shall to the fullest extent possible treat all persons who may be similarly situated alike under this Plan.

12.09 Actuarial Equivalency

12.09-1 Actuarial equivalency shall be determined by the enrolled actuary retained for the Plan. In accordance with IRC § 401(a)(25) the actuarial assumptions used to calculate participants' benefits are based on the following assumptions:

(a) Post-retirement: an interest rate of 6 percent and the 1984 Unisex Pension Mortality Table set back 5 years.

(b) Pre-retirement: an interest rate of 6 percent and no mortality assumption.

12.09-2 If the actuarial factors for determining equivalent benefits are changed by a plan amendment, the benefit actually paid in any form shall not be less than the amount determined for the same form by applying the prior factors to the participant's accrued benefit as of the date the change in factors was effective or adopted, whichever is later.

12.10 Nonreversion of Assets

12.10-1 Subject to 12.10-2 and 12.10-3, no part of the contributions or the principal or income of this Plan shall be paid to or revested in Employer or be used other than for the exclusive benefit of the participants and their beneficiaries.

12.10-2 If the Plan is terminated, any actuarial surplus remaining after satisfaction of all pension liabilities under 11.03 shall be returned to Employer.

12.10-3 A contribution may be returned to Employer to the extent that the contribution was made by mistake of fact.

12.10-4 Return of contributions under 12.10-3 shall be subject to the following:

(a) Any return must occur within one year of the mistaken payment.

(b) The returnable amount shall be reduced by a pro rata share of any investment losses attributable to the contribution.

(c) If an employee voluntary contribution is reduced, Employer shall promptly return the amount to the employee.

12.10-5 If a mistaken contribution cannot be returned because of the one-year limit in 12.10-4(a), the amount shall be applied as soon as practicable to pay plan expenses or future contributions.

Approved by a unanimous vote of the Newport City Council on January 20, 2009. Executed by the City of Newport as Employer on January 21, 2009.

CITY OF NEWPORT

Dale Shaddox, City Manager

Approved as to Form:

Gary Firestone, City Attorney



Agenda Item # IX. A.
Meeting Date March 5, 2012

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Resolution No. 3580 - "Soft Freeze" of The City's Defined Benefit Plan and Change to the Money Purchase Pension portion of the Plan for Non-Collectively Bargained Employees

Prepared By: Ol' Dawg Dept Head Approval: City Manager Approval:

Issue Before the Council: The issue before Council is consideration of the adoption of Resolution No. 3580 which would implement a soft freeze of the city's defined benefit plan, and modify the money purchase pension portion (Defined Contribution) of the plan for non-collectively bargained employees hired after March 5, 2012.

Staff Recommendation: Staff recommends adoption of Resolution No. 3580.

Proposed Motion: I move to adopt Resolution No. 3580 which institutes a soft freeze of the Defined Benefit portion of the city's retirement plan and implements an additional matching contribution to the Money Purchase portion of the plan for non-collectively bargained employees hired after March 5, 2012.

Key Facts and Information Summary: On August 27, 2010, city representatives first met with Dave Dougherty, an actuary specializing in retirement plans, who was recommended to us by the trustees of the city's retirement plan.

From that meeting and two others with Mr. Dougherty, the prevailing thought of city administration and the City Council has been that the city's Defined Benefit plan was no longer affordable. In that thinking, the city conforms to the trends in both the private and public sectors, in which many organizations are "opting out" of Defined Benefit plans because, in the words of Mr. Dougherty, they are "dinosaurs." This action tonight formalizes over 18 months of discussion and analyses of the city's retirement plan.

The first issue that had to be resolved was the choice between a "soft freeze," and a "hard freeze." In a hard freeze, existing employees cannot accrue additional benefits, and the plan, in the words of the attorneys who administer the plan, "becomes a "wasting asset." But "... the bleeding stops." No additional liabilities are incurred. In a soft freeze, present employees remain active in the plan as it is written and administered, but new employees cannot participate in the Defined Benefit portion of the plan. No serious consideration was ever given to a hard freeze.

The next issue that had to be resolved was one of timing: When did we want this to happen? After speaking with the city's attorneys, the city's actuary, and with city staff, we chose to execute a soft freeze immediately, or at least as quickly as the plan could be formally amended and forwarded to the Council for action.

Another equally important issue was the relative difficulty of implementing a plan that would affect both “represented” and “non-represented” employees. This issue was solved by the expedient of addressing changes to the plan in a series of amendments - certainly two, and perhaps more. Thus, Amendment 2, before you tonight, amends the plan only for non-collectively bargained employees. After negotiations with the NEA and the NPA are concluded, there may be another amendment.

A final issue that had to be resolved was one of alternatives: if the city was no longer going to offer a Defined Benefit plan to new (hired on or after March 5, 2012) non-collectively bargained employees, what was it going to offer? We recommend that to hire and retain employees of the caliber we require, the city does the following:

- Retain the six percent contribution the city contributes to employees' retirement
- Match 100% of an employee's deferrals/voluntary contributions up to 3% of the employee's compensation (that is, the match is capped at 3% of compensation).
- Retain the ability of employees to contribute another 7% (to a total of 10%) to their own retirement; this amount is *not* matched by the city.

Other Alternatives Considered: Do nothing
Implement a “hard freeze”

City Council Goals: None

Attachment List: Notice of Amendment to the City of Newport Employees' Retirement Plan
Resolution No. 3580 Amending the City of Newport Employees' Retirement Plan
Amendment No. 2 to the City of Newport Employees' Retirement Plan
A Presentation Chock Full of Enticing Facts

Fiscal Notes: They are part of the presentation.

**AMENDMENT NO. 2 TO THE
CITY OF NEWPORT
EMPLOYEES' RETIREMENT PLAN**

The City of Newport, hereinafter "the City," sponsors the City of Newport Employees' Retirement Plan, hereinafter "the Plan." Article 11.01 of the Plan permits the City to make amendments to the Plan from time to time. Accordingly, effective March 5, 2012, the City hereby amends the Plan to provide as follows:

1. Section Number 4.02 (Money Purchase Contributions) is amended by revising the Section to read as follows:

4.02-1 Subject to Section 4.03, the Employer shall make a Money Purchase contribution of 6 percent of Compensation earned as a Qualified Employee for each Allocation Period. For purposes of this Section, the term Allocation Period shall mean a period of 12 consecutive months or less for which an Employer contribution is made and allocated under the terms of the Plan.

4.02-2 Subject to Section 4.03, the Employer shall make an additional matching Money Purchase contribution, as follows, for each non-collectively bargained Qualified Employee hired on or after March 5, 2012. Such contributions shall be matching contributions and made to this Plan only on account of a Qualified Employee's Elective Deferrals and/or Voluntary Employee Contributions made by such Participant to this Plan or the City of Newport 457(b) Plan.

- (a) **Contribution Formula.** Except as otherwise provided in this Section, the Employer will make a matching contribution for any Allocation Period equal to 100 percent of each Qualified Employee's Elective Deferrals and/or Voluntary Employee Contributions, not to exceed, for any Allocation Period, 3 percent of his or her Compensation.
- (b) **True-ups.** If (1) the Allocation Period for matching contributions is a computation period that is less than the Plan Year, and (2) on the last day of any Plan Year, the dollar amount of the matching contributions made on behalf of a Qualified Employee is less than the dollar amount that would have been made had the matching contributions been contributed for an Allocation Period of a Plan Year, then the Employer may elect, pursuant to the Employer's discretion, for any Plan Year to make an additional matching contribution so that the matching contribution contributed for a Qualified Employee is equal to the matching contribution that would have been made had the matching contribution been contributed for an Allocation Period of the Plan Year.
- (c) **Excess Elective Deferrals and Excess Contributions Not Required to Be Matched.** Notwithstanding the above, to the extent matching contributions are contributed on an annual basis, no matching contributions will be required with respect to that portion of an Elective Deferral which for that Plan Year is determined to be either an Excess Elective Deferral or an Excess Contribution.

4.02-3 Compensation shall be as defined in 4.01-1(b). For a new participant, the contribution shall be based on Compensation for the partial plan year after participation starts.

4.02-4 Employer shall make additional Money Purchase contributions as follows for a Participant who returns from military leave under 3.03-2(c):

- (a) The additional Money Purchase contribution shall be determined separately with respect to each plan year during which the participant was absent on military leave.
- (b) The additional Money Purchase contribution with respect to a year during any period of absence for military leave shall equal the amount of additional Money Purchase contribution that would have

been made on behalf of the participant for the plan year if the Compensation imputed under 4.01-3 had been paid during the period of absence.

(c) The additional Money Purchase contribution shall be subject to the limit in 4.03 that applied to the plan year for which the additional contribution is made.

2. Section Number 6.01 (Entitlement; Retirement Dates; Participation After Mandatory Benefit Starting Date) is amended by revising section 6.01-1 to read as follows:

6.01-1 Qualified Employees hired before March 5, 2012 shall be entitled to benefits on retirement under this Section 6. Effective March 5, 2012, all non-collectively bargained employees hired on or after March 5, 2012 shall not be entitled to benefits on retirement under this Section 6. Such employees shall continue to be Qualified Employees for the purpose of receiving benefits under Section 4 of this Plan if they meet all other eligibility and participation requirements of the Plan.

3. Section Number 4.01-1(b) is amended to read as follows:

4.01-1(b) For allocation of Money Purchase contributions under 4.02-1 and 4.02-2, the limit on voluntary contributions under 4.06-1, and the determination of Average Monthly Earnings under 6.02-3, Compensation means the amount under (a) above, adjusted as follows:

IN WITNESS WHEREOF, the Employer has caused this Amendment No. 2 to be executed this _____ day of _____, 2012.

CITY OF NEWPORT

By: _____
Mark McConnell, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

CITY OF NEWPORT

RESOLUTION NO. 3580

A RESOLUTION AMENDING THE
CITY OF NEWPORT EMPLOYEES' RETIREMENT PLAN

The City of Newport resolves as follows:

Section 1. Non-collectively bargained employees hired on or after March 5, 2012, shall be entitled to receive an additional matching Money Purchase contribution under Section 4 of the City of Newport Employees' Retirement Plan (the Plan) as set forth in the attached Amendment #2 (the Amendment); and

Section 2. Non-collectively bargained employees hired on or after March 5, 2012, shall not accrue benefits under Section 6 of the Plan; and

Section 3. The Amendment, as attached, is hereby approved and adopted and an authorized representative of the City of Newport is hereby authorized and directed to execute and deliver the Amendment to the Administrator of the Plan; and

Section 4. The undersigned authorized representative of the City of Newport (the Employer) hereby certifies that the following resolution was duly adopted by the City of Newport effective March 5, 2012, and that such resolution has not been modified or rescinded as of the date hereof; and

Section 5. The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted by this resolution.

Adopted by the Newport City Council on March 5, 2012.

CITY OF NEWPORT

Mark McConnell, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

March 5, 2012

**NOTICE OF AMENDMENT TO THE
CITY OF NEWPORT EMPLOYEES' RETIREMENT PLAN**

This notice is to inform you that the City of Newport Employees' Retirement Plan (the "Plan") has been amended, effective March 5, 2012. The Plan has been amended to provide that certain employees hired on or after March 5, 2012, will not be eligible to participate in the Defined Benefit portion of the Plan.

Please be assured that the Plan amendment described above only affects employees hired on or after March 5, 2012. If you were hired before March 5, 2012, and are currently accruing benefits under the Defined Benefit portion of the Plan, you will continue to accrue these benefits. If you were hired before March 5, 2012, and you are not currently accruing benefits under the Defined Benefit portion of the Plan because you have not met the Plan's eligibility requirements, you will enter the Defined Benefit portion of the Plan as a participant once you have met the eligibility requirements of the Plan and will begin accruing benefits at that time.

If you have any questions concerning this notice, please contact David Marshall, Finance Director at 541.574.0610. In the event of any discrepancy between this notice and the Plan document, the Plan document will govern. In addition, the City of Newport reserves the right to amend, curtail or terminate any portion or portions of the Plan at any time.

Plan Number: 001

Plan Sponsor: City of Newport

Employer Identification Number: 93-602222

Plan Administrator: City Finance Director
169 SW Coast Hwy
Newport, Oregon 97365
541-574-0603

CITY OF NEWPORT

ORDINANCE NO. 1951

An Ordinance Amending the Municipal Code by Adding New Sections to Chapter 2.05 Boards and Commissions and Adding A New Chapter 5.20 Stormwater Drainage Utility

Findings

1. The city is in the process of codifying its existing ordinance of general application.
2. The provisions added by this ordinance include primarily adoption of new provisions. The council has determined that the provisions added to the code by this ordinance are appropriate for inclusion in the municipal code and that addition of the new provisions is in the public interest.

Based on these findings,

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

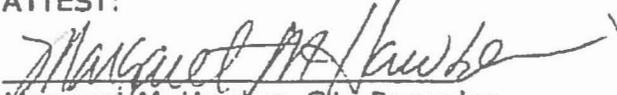
- Section 1. Newport Municipal Code Chapter 2.05 Boards and Commissions is amended by adding the new provisions shown in the attached Exhibit A. All existing provisions in Chapter 2.05 shall remain in effect.
- Section 2. The Newport Municipal Code is amended by adding a new Chapter 5.20 Stormwater Drainage Utility to read as shown in the attached Exhibit B.
- Section 3. This ordinance shall take effect 30 days after passage.

First Reading: 6-0-March 3, 2008
 Second Reading:
 Adopted by Roll Call Vote: 6-0-March 3, 2008

Signed by the Mayor on March 3, 2008.



 William D. Bain, Mayor

ATTEST:


 Margaret M. Hawker, City Recorder

ORDINANCE NO. 1951
 Page 1 of 1

EXHIBIT A

CHAPTER 2.05 BOARDS AND COMMISSIONS

Boards and Commissions Generally

2.05.001 Applicability and Authority

A. **Applicability.** Sections 2.05.001 through 2.05.003 apply to all city boards, commissions and committees, including temporary or *ad hoc* committees unless mandated otherwise by state statute or city ordinance. Provisions applicable to specific boards, commissions or committees shall prevail over inconsistent provisions in these general provisions.

B. **Authority.** Unless explicitly authorized by statute, ordinance, or other formal action of the city council, the authority of boards, committees and commissions is limited to making recommendations to the city council. No board, committee, or commission, as a whole, or any member or members individually or collectively, may bind the city, its officers or agents to financial commitments or obligations. The decision-making authority of boards, committees and commissions is limited to the authority expressly granted by state law or city ordinance.

2.05.002 Board, committee, and commission appointments and service

A. Any individual or group is encouraged to submit names for consideration for appointments to city boards, commissions and committees to the city.

B. Appointments must comply with any ordinances, bylaws, Charter provisions, or state or federal laws concerning the board or commission.

C. In order to become more familiar with the applicants' qualifications, the council may interview applicants for a vacancy.

D. Reappointments to a board, committee, or commission shall be considered in accordance with the guidelines listed in this section, together with the type of service the individual has already given to the board, committee, or commission and his/her stated willingness to continue. To avoid unfair burdens on some citizens, service of more than eight consecutive years on the same board, committee or commission without an interval of one term is not encouraged, but may occur if mutually agreed.

E. Consideration should be given to non-city residents when the board, committee, or commission serves persons outside city boundaries.

F. No individual should be considered for appointment to a position on any board, committee, or commission where a conflict of interest is likely to interfere with the individual's participation. Board, committee, or commission members shall not participate in any proceeding or action in which any of the following has a direct

or substantial financial interest: the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member; any business in which the member is serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential conflict of interest shall be disclosed at the meeting of the board or commission where the action is being taken.

G. Board, committee, or commission vacancies are filled by appointment of the mayor with confirmation by the council. Council confirmation shall be by approval of a motion. Appointments are made for terms not to exceed four years and will expire the last day of the calendar year if a replacement appointment has been made unless mandated otherwise by state statute. All board, commission, and committee members shall serve without compensation, but shall be reimbursed for expenses incurred. If no replacement is appointed to replace a member whose term is expiring, the member shall remain in office until a replacement is appointed. When the provisions governing membership or terms are amended, the term of existing members shall not be affected unless expressly stated in the ordinance.

H. To avoid imposition on certain citizens, persons are not expected to participate in more than one permanent commission, board or committee at a time, although board, commission and committee members may serve as members of *ad hoc* or temporary committees.

I. Members of a board, committee, or commission serve at the pleasure of the Council and may be replaced at any time.

J. Vacancies shall be filled in the same manner as an initial appointment, but the appointment shall be for the unexpired term.

2.05.003 Organization and operation

A. Bylaws. Unless the council determines that bylaws are not needed for a particular permanent board, committee or commission, the council shall adopt bylaws for permanent boards, committees, and commissions to govern their meetings process and the performance of their duties. The board, commission or committee may propose, review and make recommendations regarding their bylaws. No bylaw adoption or amendment shall be effective without council approval. In the absence of bylaws, each committee shall elect a chair and vice-chair by motion annually at the first meeting in each calendar year.

B. Staff Support. The city will provide necessary staff support for boards, commissions and committees, including postage, meeting place, secretarial service and new member orientation and training.

C. Meetings. All meetings shall be subject to the requirements of Oregon public meeting law. A majority of the voting members shall constitute a quorum for the

conduct of business and the concurrence of a majority of those members present and voting shall be required to decide any matter. These meetings shall be an opportunity for public involvement in the discussion of issues relating to that particular board, committee, or commission.

D. Annual Reports and Minutes. Each board or commission shall report on its activities at least annually. The written minutes for each board or commission shall be submitted to council for information.

E. State Law. Boards, commissions and committees of the City are subject to state public meeting and public records statutes. Board, committee, and commission members appointed by the city are considered "public officials." As such, they are expected to abide by state statutes governing conflicts of interest and other applicable provisions of state law.

F. Comments. Boards, committees, and commissions may be asked to provide comments to other advisory bodies and staff when matters under consideration relate to their functional area of expertise.

G. Establishment of Permanent Board, Commissions and Committees. Permanent boards, commissions and committees shall be established by ordinance, except that boards, commissions and committees may be established by other means if required or expressly authorized by state law.

2.05.004 Task Forces

The council may establish task forces by resolution to address specific issues or to engage in specific tasks. The scope of the authority and responsibilities of the task force shall be established in the resolution creating the task force. By-laws are not required for task forces.

2.05.010 Budget Committees

A. The city and the Urban Renewal Agency shall each have a budget committee formed in accordance with state law.

B. Budget committees shall have the rights, responsibilities and authority provided by state law.

C. A City Budget Committee member may also serve on the Urban Renewal Budget Committee.

2.05.020 Retirement Trustee

A. The Retirement Trustee is responsible for investment of the retirement funds for the City of Newport Employee Retirement Plan, according to the trust document adopted by the Council. The Retirement Trustee has authority to make decisions relating to the investment of funds held in trust and to invest retirement funds.

B. The Retirement Trustee shall be comprised of five members. One member of the Retirement Trustee shall be a City employee in a position below department head.

C. The Retirement Trustee shall have all authority, rights, responsibilities and authorities provided by the trust document or the retirement plan.

D. The Retirement Trustee may adopt investment strategies or similar policies to govern its investments.

E. The Retirement Trustee may recommend changes to the retirement plan or the trust document to the City Council.

F. The Retirement Trustee shall meet at least quarterly.

2.05.025 Airport Committee

A. The Airport Committee shall include five full members. The mayor, the city manager and the airport director shall serve as non-voting *ex officio* members of the Airport Committee, but are not required to attend all meetings. One member may be a non-resident. Only full members shall be counted for quorum purposes.

B. The Airport Committee shall have the authority and responsibility to:

1. Recommend rules and regulations for the Newport Municipal Airport.
2. Recommend policies governing the use of airport property.
3. Review and report to the council on matters referred to it by the council.
4. Make studies or reports relating to the Newport Municipal Airport.
5. Promote the Newport Municipal Airport.

2.05.030 Library Board

A. The Library Board shall consist of five members. The Library Director shall serve *ex officio* and may participate in all discussions but shall have no vote.

B. The Library Board shall have the following duties and functions:

1. Prepare policies on library operation and service, including general library operation; acquisition, use and disposition of library property; and coordination of library service with other local governments.
2. Make recommendations to the city council regarding the appointment of the library director, the library budget, and library facilities.

2.05.035 Urban Renewal Advisory Committee

- A. The Urban Renewal Advisory Committee shall consist of five members.
- B. The Urban Renewal Advisory Committee shall advise the council regarding major policy issues relating to urban renewal and administration of the urban renewal plans.

2.05.040 Parks and Recreation Committee

- A. The Parks and Recreation Committee shall consist of five members and shall serve two year terms. The parks director shall serve *ex officio* and shall act as secretary for the committee.
- B. The Parks and Recreation Committee shall have the following rights, responsibilities and authority:
 - 1. To make recommendations to the council concerning city parks and recreation facilities, including the authority to make studies as necessary to assist their recommendations. Recommendations may include recommendations relating to acquisition, development, use, operation and disposition of parks and recreation facilities.
 - 2. To make recommendations concerning playground recreational facilities.
 - 3. To make recommendations concerning financial and budgetary matters relating to parks and recreation.
 - 4. To recommend rules and regulations relating to parks and recreation.

2.05.045 Destination Newport Committee

- A. The Destination Newport Committee shall have seven members serving one year terms. Of the seven members, three shall be owners or managers of hotels or motels, and two shall be owners or operators of retail establishments.
- B. The Destination Newport Committee shall advise the city council regarding the preparation of the advertising budget funded by the city's room tax.
- C. The Destination Newport Committee may make recommendations regarding the placement of advertising, the hiring of advertising consultants, and all other matters relating to advertising the city as a tourist destination.

2.05.050 Senior Citizen Advisory Committee

- A. The Senior Citizen Advisory Committee shall consist of seven members who serve two year terms.

B. The city manager shall designate a staff member to attend all Senior Citizen Advisory Committee meetings. The staff member may participate in discussions and shall act as secretary for the committee, but shall have no vote.

C. The Senior Citizen Advisory Committee shall have the following rights, responsibilities and authority:

- 1. To study and make recommendations to council regarding the economics, physical condition, operation, maintenance, development, use, regulation and expansion of the Senior Citizen Center.**
- 2. To acquire and promote programs for seniors in the city.**

2.05.055 Bicycle and Pedestrian Committee

A. The Bicycle and Pedestrian Committee shall consist of five members serving three year terms.

B. The Bicycle and Pedestrian Committee shall make recommendations to council regarding bicycles and pedestrian transportation in the city, and promote bicycle and pedestrian transportation.

EXHIBIT B

Chapter 5.20 STORMWATER DRAINAGE UTILITY

5.20.010 Purpose

The city finds that absent effective maintenance, operation, regulation and control, existing stormwater drainage conditions in all drainage basins and subbasins within the city constitute a potential hazard to the health, safety and general welfare of the city. The city council further finds that natural and man-made stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the city, of a stormwater utility.

5.20.020 Definitions

- A. “Equivalent service unit (ESU)” means a configuration of development or impervious surface estimated to contribute an amount of runoff to the city’s stormwater system which is approximately equal to that created by the average developed single-family residence. One ESU is equal to 2,700 square feet of impervious surface area. All single family residences will be deemed to be one ESU, regardless of impervious surface area.
- B. “Impervious surface” means an artificially created hard-surfaced area that either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions. Impervious surfaces may include, but are not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots or storage areas, trafficked gravel, and oiled, macadam or other surfaces which similarly impede the natural infiltration or runoff of stormwater. However, not all driveways or concrete are impervious, and the city will determine whether a particular surface is impervious.
- C. “Improved premises” means any area that the public works director determines has been altered such that the runoff from the site is greater than that which could historically have been expected. “Improved premises” do not include public roads under the jurisdiction of the city, county, state or federal government.
- D. “On-site mitigation control system” means a stormwater drainage facility that the public works director has determined prevents the discharge or substantially reduces or slows the discharge of stormwater into a receiving water or public stormwater system facility.
- E. “Person responsible” means the occupant, lessee, tenant, contract purchaser, owner, agent or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

F. "Stormwater" means water from precipitation, surface or subterranean water from any source, drainage and nonseptic waste water.

G. "Stormwater system" means any structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including but not limited to pipes, sewers, curbs, gutters, manholes, catchbasins, ponds, creeks, open drainageways, ditches and their appurtenances. "Stormwater system" does not include the Yaquina River, Yaquina Bay, or the Pacific Ocean.

1. "City stormwater system" means the portions of the stormwater system in public rights of way, within easements in favor of the city, or on city property.
2. "Private stormwater facility" means any portion of the stormwater system on private property and not within an easement in favor of the city.

H. "Stormwater service" means the operations of the city's stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the city's service area.

5.20.030 Provision of Service

Except as otherwise provided in this chapter, the city provides stormwater services to all properties within the city that have impervious surfaces that result in discharge or runoff into the city stormwater system.

5.20.040 Charges for stormwater service

A. Unless another person responsible has agreed in writing to pay for stormwater service and a copy of that writing is filed with the city, the person receiving the city's water bill shall pay the stormwater charges as set by city council resolution. The fee shall be based on ESUs. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges shall be paid by the person responsible for the property. The person required to pay the charge is hereafter referred to as the "customer."

B. The city council may by resolution establish fees and charges necessary to provide and operate a stormwater system and service.

C. A customer may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that an on-site mitigation control system limits stormwater discharges or improve the water quality of discharges. Any reduction given shall continue until the condition of the property is changed or until the public works director determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a responsible person.

D. A customer may request waiver of the service charge. A waiver will be granted if the customer demonstrates that there will be no effective discharge to the city stormwater system beyond that which would occur in the property's natural state. The customer must demonstrate through hydrologic/hydraulic analysis that the site receives no stormwater service from the city stormwater system; and proof that any stormwater facilities are constructed and maintained to city standards.

E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the city's ground water resources.

5.20.050 Stormwater charges — Billing

A. Charges for stormwater service supplied by the city to any customer shall be charged for and billed to each such customer in accordance with rates established by council resolution. The council shall hold a public hearing before the initial adoption of a rate, and shall publish notice in a newspaper of general circulation in the city at least 30 days before the adoption.

B. The customer shall be responsible for all stormwater service fees and charges, except as allowed by Section 5.20.040.

C. Billings may be prorated. The proration shall be a daily rate determined by dividing the annual minimum billing by three hundred sixty-five days times the number of days of occupancy from last meter reading and/or billing date.

D. All money collected through stormwater fees and charges shall be used for the improvement, maintenance and repair of the city's stormwater system

5.20.060 Stormwater charges— When delinquent

A. The city shall bill stormwater fees and charges in the same manner and at the same times as it bills for water service, and shall combine the Stormwater bill with the water and/or sewer bill.

B. A delinquent fee, in an amount established by resolution of the city council, shall be added to all delinquent accounts.

C. The finance director (or designee) is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B and D of this section in de minimis or extenuating circumstances.

D. In addition to other lawful remedies, the finance director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for non-payment of water bills as provided in Chapter 5.10. However, the finance

director shall not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

5.20.080 Appeal

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the city manager by filing with the city a written request for review no later than ten days after receiving the decision. The city manager's decision shall be subject to review by the city council upon filing of an appeal within fifteen days of the notice of decision.

5.20.090 Right of access

Employees of the city shall be provided access during regular business hours to all parts of the premises which include portions of the city stormwater system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant or their agent that arrangements must be made to allow the inspection.

5.20.100 Tampering with System/Prohibited Discharges

A. No unauthorized person shall damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance or equipment that is part of the city stormwater system. No person may alter any conduit, structure or equipment that is part of the city stormwater system except as authorized by the city. No person may fill or divert any open portion of the city stormwater drainage system except as authorized by the city.

B. No person shall discharge or cause to discharge directly or indirectly to the stormwater system anything that could not be discharged to the sewage system under Section 5.15.060C.

C. No person shall discharge any sewage into the stormwater system.

D. No person shall discharge any hazardous materials into the stormwater system. Application of normal amounts of garden and lawn fertilizer and pesticides to lawns and gardens shall not be considered a discharge of a hazardous material under this section.

E. The city manager may adopt such rules and regulations as are necessary to protect the city stormwater system and the public health, safety and welfare. Violation of the rules or regulations are a violation of this chapter.

5.20.110 Responsibility for Private Stormwater Facilities

The owner of property where a private stormwater facility is located shall maintain the private stormwater facility in a properly functioning condition and shall operate the private stormwater facility to avoid flooding or erosion in excess of what would occur under natural conditions. An improperly maintained or operated private stormwater facility that results in flooding or erosion in excess of what would occur in natural conditions is a nuisance and may be abated as provided in Chapter 8.10.

5.20.120 Violation—Penalty

A violation of any provision of this chapter is a civil infraction with a maximum civil penalty of \$1,000. Each day during or on which a violation occurs or continues is a separate civil infraction.

Patricia Patrick-Joling	4/15/13	4/15/13	12/31/14
Don Davis	3/17/14	3/18/14	12/31/14
Janet Webster	2/16/10	1/7/13	12/31/15
Don Huster	4/21/08	1/7/12	12/31/15
Chuck Forinash	1/20/04	1/16/12	12/31/15
Laura Swanson	11/6/12	1/7/12	12/31/16
Ralph Busby	11/6/12	1/7/13	12/31/16
Dean Sawyer	11/6/12	1/7/13	12/31/16
Mark Saelens	1/7/13	1/7/13	12/31/14
Richard Beemer	1/3/11	1/3/11	12/31/14
David Allen	1/3/11	1/3/11	12/31/14
Sandy Roumagoux	11/6/12	1/7/13	12/31/14

Audit Committee (2-Year Terms) 3 Members

Position	Member	Elected/Appointed	Term Begins	Term Expires
	Fred Springsteen	2/20/11	2/21/14	12/31/15
	David Allen			
	Laura Swanson	3/18/14	3/18/14	

X Retirement Board (Indefinite Term), 3 or more Members, 1983 Restatement of Employees' Retirement Plan

Position	Member	Elected/Appointed	Term Begins	Term Expires
	Don Rowley	2/1/99	2/1/99	Indefinite
	Julie Hanrahan	4/7/03	4/7/03	Indefinite
	Louise Waarvick	3/1/99	3/1/99	Indefinite

X Retirement Board of Trustees (Indefinite Term) 3 or more Members

5 4

Position	Member	Elected/Appointed	Term Begins	Term Expires
	Michael Schultz	1/16/07	1/16/07	Indefinite
	John Baker	6/4/07	6/4/07	Indefinite

	Tim Johnson	1/16/07	1/16/07	Indefinite
Employee Rep.	Rebecca Cohen	6/4/07	6/4/07	Indefinite
	Rick Wright	6/18/07	6/18/07	Indefinite
Council Liason	David Allen, Mark Saelens			

Airport Committee (2 Year Terms), 5 Members, Ord.No.1515

Position	Member	Elected/Appointed	Term Begins	Term Expires
Mayor	Sandra Roumagoux			Indefinite
City Manager	Spencer Nebel			Indefinite
	Mark Watkins	10/5/09	10/5/09	12/31/15
	Susan Reese Painter	9/2/14	9/2/14	12/31/16
	Debra Smith	9/2/14	9/2/14	12/31/16
non-resident	Ralph Grutzmacher	6/16/14	6/17/14	12/31/16
non-resident	Thomas Knott	2/19/13	2/19/13	12/31/15
	Ken Brown	6/16/14	6/17/14	12/31/16
	Jeff Bertuleit	2/19/13	2/19/13	12/31/15
Council Liason	Ralph Busby			

Library Board (4 Year Terms), 5 Members, Res.No.1841, as amended by Res.No.2606

Position	Member	Elected/Appointed	Term Begins	Term Expires
	Autumn Belloni	1/22/13	1/22/13	12/31/15
	Carol Ruggeri	2/1/10	2/1/10	12/31/17
	Evonne Mochon-Collura	4/7/14	4/7/14	12/31/14
	Sharon Beardsley	12/1/08	12/1/08	12/31/16
	Gretchen Havner	3/17/14	3/17/14	12/31/17
Council Liason	Laura Swanson			

Parks & Recreation Committee (2 Year Terms), 11 Members, Res.No.2052

Position	Member	Elected/Appointed	Term Begins	Term Expires
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The Marine Studies Initiative

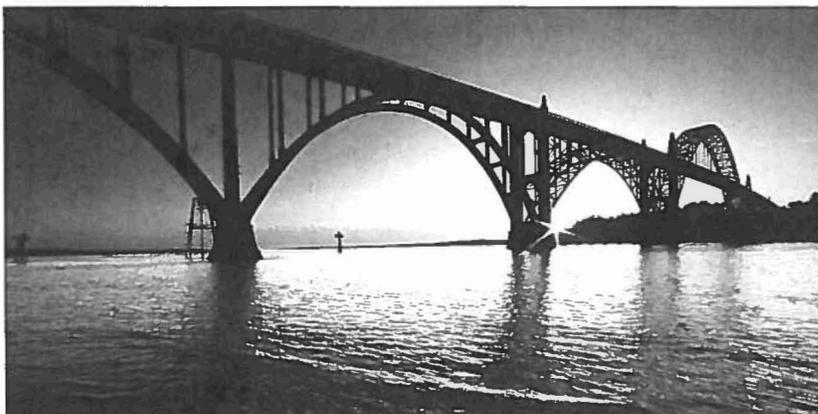
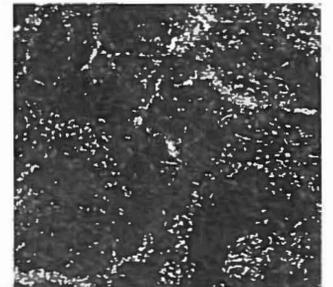
OREGON STATE UNIVERSITY

THE PLANET'S LIFE-SUPPORT SYSTEM

All life on Earth is ultimately dependent on the ocean. It covers more than 70 percent of earth's surface, contains 97 percent of its water, and drives the planet's entire life-support system. The ocean's health impacts everything from severe weather patterns and whale migration to inland agriculture, fresh water aquifers, public health, seafood security, and the economic vitality of communities along the coast and inland.

But the ocean's health is currently being undermined by climate change, acidification, pollution, and more. And the effects are being felt not only along coastlines but across continents and throughout economies.

Now, more than any other time in human history, it is critical that we quickly innovate **bold, new approaches to managing the ocean's resources wisely.** Equally imperative is to develop next-generation leaders in marine studies who can bridge the social and natural sciences to create multi-pronged solutions to sustain a healthy ocean and ensure health and prosperity for future generations.



First floor of the proposed Marine Studies Building



A Distinct Vision. An Unprecedented Opportunity.

Oregon State University is uniquely positioned to become a visionary, high-impact, international leader in marine studies by creating a holistic, outreach-oriented program unlike any other in the U.S.—the Marine Studies Initiative.

The university will achieve this **distinct vision by bridging key faculty resources across its eleven colleges**, tapping its institutes and centers throughout the state, and engaging in new collaborative outreach through our vast outreach and extension network. This comprehensive mix of people, programs, and facilities will not only connect students and faculty to communities along the Pacific Coast and inland, it will also deliver unprecedented impact and opportunity for the planet's ocean.



The OSU Marine Studies Initiative will take a unique transdisciplinary approach to discovering solutions to societal challenges and coastal economies, while creating exceptional learning opportunities for students. By engaging so many disciplines, the initiative will increase our understanding of ocean systems and innovate vital new methods of resilience in the face of a climate in crisis, addressing such issues as ocean acidification, food security and safety, ocean-related diseases, and rising sea levels.

The initiative will discover and implement **economically effective solutions that sustain coastal resources**, generate renewable energy, protect from tsunamis, innovate new clean technology products, and advance sound public policy and sustainable natural resource management.

Using ocean resources for bioscience research, the initiative will enhance not only human health, but the health of all marine life—from the ocean's massive whales and microscopic phytoplankton, to the salmon that swim hundreds of miles inland.

A recent \$20 million grant for marine studies from an anonymous donor gives OSU a tremendous opportunity to make the Marine Studies Initiative a reality. The grant will help build a facility in Newport, Ore., for teaching, research, and outreach. However, the grant is strictly contingent on OSU raising an additional \$20 million from philanthropic sources by June 30, 2017, of which \$5 million will support construction of the facility and \$15 million will support faculty and programs. In addition, OSU has requested \$25 million in matching bonds from the state of Oregon for the construction of the facility.

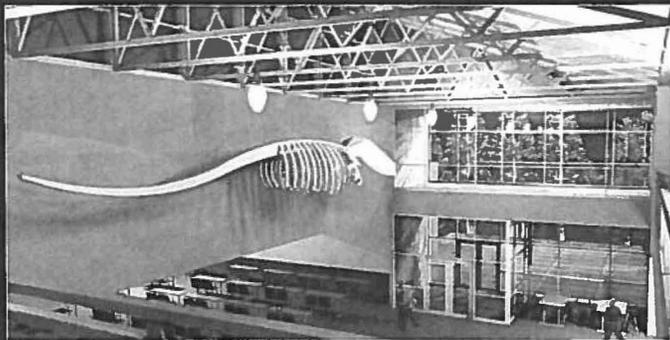
WHY OREGON STATE?

Long recognized for its **unique location, leadership, and ranked programs** in fields including marine science, oceanography, fisheries and wildlife, engineering, agriculture, and forestry, Oregon State will draw on this deep transdisciplinary expertise to create an international Marine Studies Initiative unequalled in scope, capability, and capacity.

The initiative will tap Oregon State's **track record of groundbreaking research across its eleven colleges**, its statewide network of outreach programs and research facilities, its relationships with federal and state agencies, and its world-leading faculty in science, oceanography, economics, agriculture, engineering, sociology, writing, and more.

The ocean touches all these disciplines, and the state of Oregon offers an unparalleled living-learning laboratory with diverse microclimates, including a 300-mile coastline (featuring some of the world's most pristine marine water), estuaries and rivers, mountain snowpack, and arid high desert—all impacted by the ocean.

OSU's main campus in Corvallis is just an hour from the Oregon coast, where the university's renowned **Hatfield Marine Science Center** sits on Yaquina Bay. A new 100,000-sq.-ft. building is planned at HMSC to house this initiative's cutting-edge research and learning facilities, bringing hundreds of new students, faculty, and support staff to the Oregon coast. The Marine Studies Initiative at Oregon State will offer highly experiential and immersive teaching-learning-research opportunities that will benefit the people of Oregon and the world.



Preliminary design concept

OSU'S GLOBAL LEADERSHIP, PROGRAMS, & FACILITIES

- OSU is one of only two U.S. universities to have Land Grant, Sea Grant, Space Grant, and Sun Grant designations
- OSU's faculty include:
 - Two presidentially-appointed Administrators of the National Oceanic and Atmospheric Agency
 - Chief Scientist at NOAA
 - Two recipients of a MacArthur "Genius" Fellowship
 - Member of the National Science Board
 - Head of the Earth Sciences Division at NASA
 - Director of the Ocean Observatories Initiative
 - Recipient of a Pew Fellowship in Marine Conservation
 - Director of the Oregon Climate Change Research Institute and the Oregon Climate Service
- OSU's 50-acre Hatfield Marine Science Center on the coast has hosted collaborative research and education programs from seven OSU colleges and six state and federal agencies for almost 50 years
- OSU's Marine Mammal Institute is world-renowned for its research on whales and marine mammal ecology
- OSU is a world leader in wave energy research and home to the U.S. Dept. of Energy's Northwest National Marine Renewable Energy Center at OSU's Hatfield Marine Science Center
- OSU is the lead institution for the Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO), a long-term ecosystem research and monitoring program established in 1999
- OSU's graduate programs in Fisheries Science and Wildlife Science were each ranked in the top ten for their respective disciplines on measures of faculty productivity among all land grant institutions using Academic Analytics 2012 database (Copyright © 2014, Academic Analytics, LLC)
- OSU's program in Conservation Biology was ranked No. 1 in the nation by the leading professional journal *Conservation Biology* in 2007
- OSU is leading the design and construction of a fleet of three new research vessels for the National Science Foundation valued at \$290 million
- NOAA recently relocated its Pacific Fleet operations from Seattle to Newport adjacent to OSU's Hatfield Marine Science Center
- OSU's new School of Public Policy is focused on educating tomorrow's leaders with a special emphasis on marine policy
- OSU faculty and staff from the College of Earth, Ocean, and Atmospheric Sciences are leading the design and installation of underwater platforms and sensors offshore of Oregon as part of the Ocean Observatories Initiative, the largest civilian investment in ocean infrastructure ever.

Your Investment

The ocean—our planet's life-support system—needs our help, now more than ever in human history. We invite you to become a partner in this exciting and very important initiative by making a gift today that will have a profound impact on Oregon State and the future of the earth's ocean.

Oregon State is assembling a core group of supporters to meet the \$20 million philanthropic goal—**\$5 million for the Marine Studies building** and **\$15 million for related research and programmatic support**. We will seek \$25 million in matching bonds from the state of Oregon. Join us.

GIFT LEVEL	GIFTS REQUIRED
\$500,000	4-8
\$250,000	4-8
\$100,000	10-15
\$50,000	20-25
\$25,000	40-50

Donors giving \$25,000 or more to the new facility at HMSC will be recognized with a room or other architectural space inside the building named in their honor, in accordance with university naming policies.



CONTACT US

To make a gift or to learn more, please contact:

Kevin Heaney
 Vice President for Constituent and
 Central Development Programs • OSU Foundation
 541-737-5495 • Kevin.Heaney@oregonstate.edu

Marine Studies Building Fund Coastal Community Challenge



"The Marine Studies Initiative needs your help to become a reality. A resounding show of support from the coastal community is key to enabling \$20 million in matching philanthropic funds."

Bob Cowen, Director
OSU Hatfield Marine Science Center



"OSU's Coastal Community Challenge speaks to the power of our community to effect change. The Marine Studies Initiative will bring to the coast new educational opportunities, economic growth, and collaborative solutions to the real-world challenges of our ocean community."

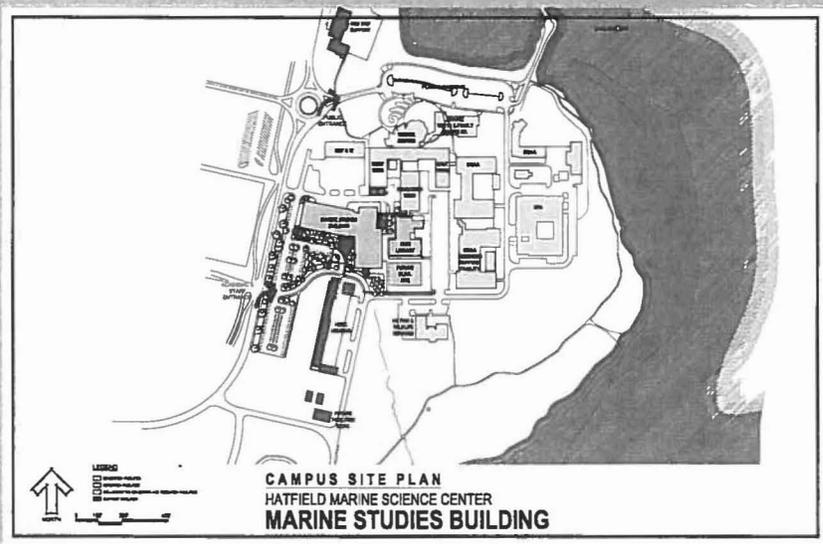
Michele Longo Eder
Co-Owner, F/V Timmy Boy
Member, OSU Board of Trustees

The Marine Studies Building

Challenged by a \$20 million matching pledge, OSU has a tremendous opportunity to launch the Marine Studies Initiative with a state-of-the-art coastal facility for

- **Teaching** - Classroom space will support up to 500 undergraduate and graduate students, featuring "collaboratories" for students from diverse disciplines to solve real-world problems through collaboration and teamwork
- **Research** - The building will house the Marine Mammal Institute, Marine Genomics Program, and an interdisciplinary research and teaching faculty from across OSU's eleven colleges. An "incubator" for business start-up ventures will enhance OSU-industry collaboration.

Now, we are asking for your support. OSU aims to raise \$1 million from the coastal community toward this dramatic expansion of OSU's Hatfield Marine Science Center. Your investment in our shared future will help make the Marine Studies Building a reality.



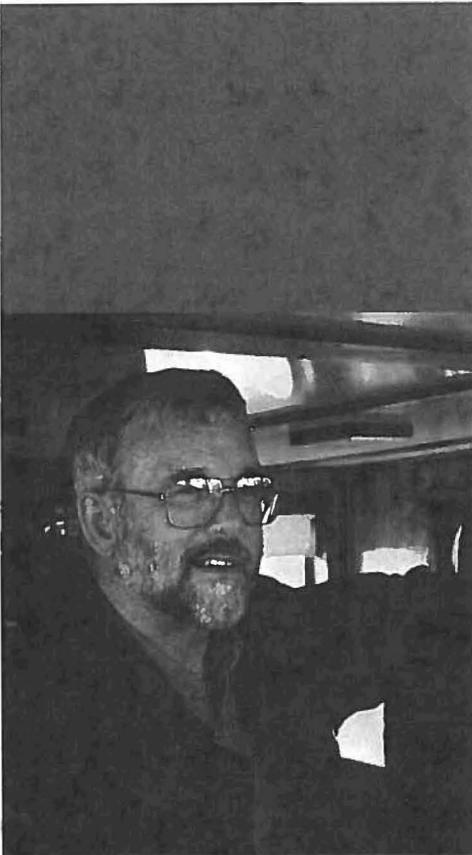
To invest in the Marine Studies Initiative, contact Hatfield Marine Science Center, Director's Office at 541-867-0212 or the OSU Foundation at 541-737-5495.

hmsc.oregonstate.edu | julie.matthies@oregonstate.edu

Oregon State
UNIVERSITY

The Challenge

Marine Studies Building Fund Coastal Community Challenge



"The Marine Studies Building will enable a dramatic expansion of HMSC's world-class research and provide even more undergraduate research opportunities to ensure a pipeline of highly qualified professionals for the future."

Bruce Mate, Director
OSU Marine Mammal Institute

The Vision

Our Future is Bright!

Marine science and education on the Oregon Coast has blossomed into one of the fastest growing sectors in the state and region.

Contributing to this success are years of proactive, forward-thinking economic development centered on the Oregon Coast's strengths -

- Vibrant fishing and maritime industries
- Ocean and coastal stewardship
- Strong synergy in marine science and education among diverse partners
- A long-standing, collaborative can-do spirit that grows with each success

Oregon State University - with Hatfield Marine Science Center as its coastal marine lab for almost 50 years - has earned global distinction in marine science, including:

- Marine mammal conservation science
- Fisheries science and sustainable coasts
- Renewable ocean energy

Now, OSU's plans to expand its marine programs on the coast are at the leading edge of an extraordinary university initiative championed by OSU President Ed Ray. The Marine Studies Initiative positions OSU, and Hatfield Marine Science Center, to increase our stature as a premiere institution in transdisciplinary research and education in marine studies ranging from science and engineering to arts and humanities.

Central to the new Marine Studies Initiative is the Marine Studies Building in Newport - a 100,000 square foot facility for teaching and research at Hatfield Marine Science Center supporting 500 students and associated faculty and staff. The promise of the Marine Studies Initiative has inspired a \$20 million matching pledge from an anonymous donor. The future is bright, indeed!

To invest in the Marine Studies Initiative,
contact Hatfield Marine Science Center,
Director's Office at 541-867-0212
or the OSU Foundation at 541-737-5495.
hmsc.oregonstate.edu | julie.matthies@oregonstate.edu

Oregon State
UNIVERSITY

HISTORY OF FLUORIDATION

City of Newport, Oregon

August 23, 1960--City Council passed Resolution No. 1154, calling for submission to voters the question of using Fluorine in the public water supply. We do not seem to have a copy of this resolution in the file, but City Council minutes show its passage.

November 21, 1960--Council reviewed votes cast at the November 8, 1960 election on the Fluoridation measure: Yes, 1070; No, 1049.

December 5, 1960--Council passed Resolution No. 1165, providing for Fluoride supplementation of the public water supply for Newport, Oregon.

January 16, 1961--Jack Capri headed a delegation that came before the City Council inquiring about the procedure necessary for a re-election on the matter of fluoridation. He was told the group should retain an attorney to advise them.

March 6, 1961--Council received a letter from the Pure Water Committee announcing that committee's preparation of a petition for signatures for a special election in the matter of fluoridating the public water supply. Letter was placed on file.

May 1, 1961--Bids were opened for purchase of fluoridation equipment. Wallace & Tiernan, Inc., was sole bidder, with quote of \$2,424.64, not including loss of weight recorder at \$715.00. City Council handed the bid to the Water Committee and City Engineer for study.

August 21, 1961--("City Attorney Hollen) stated that fluoridation petitions as drawn were unlawful and suggested to Mrs. Schneider that she have the fluoridation committee lawyer get in contact with him to determine if a new reworded petition was needed."

January 15, 1962--"Ted Warren of the J C's requested information as to what was being done in the fluoridation matter. It was moved by Allen seconded by Updenkelder bids be called for fluoridation equipment." Motion passed unanimously.

February 5, 1962--Council heard a letter read from Letha Love, secretary of the Newport Pure Water Committee, stating that the committee would present a new anti-fluoridation petition to the city.

Council then opened bids on fluoridation equipment. Again, only one bid was submitted, from Wallace & Tiernan, Inc., for \$2,510.35 for the base equipment and an alternate bid of \$810 for a loss of weight recorder in addition, if desired. Council voted to purchase the equipment, including the loss of weight recorder, for a total of \$3320.35, with an acceptance date of June 28,

1962, and the right by the City to cancel the purchase order any time prior to May 29, 1962. Motion passed with one negative vote.

February 19, 1962--Representatives of the J C's asked the Council about the delay in delivery date of the fluoridation equipment. "After much discussion....it was moved and seconded that the equipment be ordered delivered at the earliest possible date, that it be installed, and if fluoridation is voted out at the next election the machinery be shut off." Motion passed with one member abstaining. The City Recorder was instructed to call Wallace & Tiernan and inform them of this Council action.

Mid-March, 1962--Citizens signed numerous petitions against fluoridation and presented the petitions asking for a charter amendment to the City. They are on file in the archives.

March 19, 19762--City Attorney Hollen read the ballot title he wrote for the fluoridation matter to be voted upon in the May primary election.

May 21, 1962--At this meeting students from the 8th grade class at Lincoln School (now Newport Middle School) were chosen to be "acting" Mayor, Councilmen and other city officials. The students opened the meeting, and conducted some business, including "a short discussion on fluoridation." After the short discussion, they turned the meeting over to the regular Mayor and Council.

Note: The Council minutes show no record of the votes cast on the fluoridation question at the May election. It must have passed, since they took additional action as follows:

June 25, 1962--Council re-adopted Resolution No. 1165, calling it Resolution No. 1165-A, providing for fluoride supplementation of the public water supply.

Presumably, the City began to fluoridate the Newport water supply shortly after this. Could find no further references in the Council minutes.

Moved by Bennett, seconded by Allen that the claims be allowed and warrants be drawn on their respective funds. Roll was called, all members present voted in the affirmative and the motion carried.

In discussing the completion of the Armory site, it was requested that the City Engineer re-check footages to determine the amount of paving required, and his findings will be reported at the next regular meeting.

Charles Thompson, representing Western Ditching, was present to request permission to pioneer the extension of SE Second Street across Easley Street Canyon to join School District property. Inasmuch as no grade has been established on that street, it was Bennett's recommendation that no such permission be granted at this time, and that the City Engineer be instructed to prepare a profile on that portion of SE Second Street from Baird Street to the easterly City Limits. Moved by Bennett, seconded by Badertscher to adopt the recommendation. Roll was called, all members present voted in the affirmative and the motion carried.

There being no further business, the meeting was adjourned.

ATTEST: Lawrence Gearin RECORDER O. B. Williams MAYOR

Newport, Oregon
August 23, 1960

The Common Council of the City of Newport met in special session in the Council Chambers of the Newport City Hall at 5:30 PM on the above date, Acting Mayor Hudson presiding. On roll being called, all members reported present except Wiberg.

City Engineer Hall presented a preliminary draft of the proposed grade to be established on SE Second Street extending from the center line of Baird Street to the easterly City Limits. After some discussion there was read a Resolution #1153, declaring the intent to establish a grade on that portion of SE Second Street extending from the center line of Baird Street to the easterly City Limits. Moved by Bennett, seconded by Gearin that the Resolution be adopted as read. Roll was called, all members present voted in the affirmative and the motion carried.

Lincoln County School Supt. Huff spoke from the floor about the possibility of arranging a finance plan to take care of the black-topping of certain street areas in this aforementioned area to provide all-weather access to and from the school, and was advised by Street Commissioner Bennett that steps should be taken by the School Board to provide such access, as the City was not able financially to assist the School Board in such a project.

City Attorney Hollen presented a Resolution #1154, calling for the submission to the voters at the next regular election the question of using Flourine in the public water supply. Motion was made by Allen, seconded by Gearin that the Resolution be adopted as read. Roll was called, all members present voted in the affirmative and the motion carried.

There being no further business, the meeting was declared adjourned

ATTEST: Lawrence Gearin RECORDER O. B. Williams

R E S O L U T I O N 11 116-3

A RESOLUTION PROVIDING FOR THE FLUORIDE SUPPLEMENTATION OF PUBLIC WATER SUPPLY FOR THE CITY OF NEWPORT, OREGON.

WHEREAS, there was submitted to the voters of the City of Newport the question of supplementing the said City's water supply by the addition of fluoride thereto and the said voters did at said election approve said fluoride supplementation of said water supply;

NOW THEREFORE, BE IT RESOLVED:

That the Water Department of the City of Newport is hereby authorized and directed to provide for the fluoride supplementation of the public water supply of the City of Newport, Oregon.

That the regulations of the Oregon State Board of Health for fluoride supplementation of public water supplies shall be followed and complied with by the Newport Water Department in its fluoride supplementation of the public water supply of said City of Newport.

That all future recommendations by the Oregon State Board of Health for fluoride supplementation of public water supplies shall be followed and complied with by the Newport Water Department in its fluoride supplementation of the public water supply of the City of Newport.

Dated at Newport, Oregon, this 13th day of December, 1960.

W. J. ...
City Recorder

A. B. Williams
Mayor

Upon motion duly made and seconded, the foregoing resolution was adopted and the Mayor thereupon declared said resolution to be adopted.

RESOLUTION NO. 1165-A

A RESOLUTION PROVIDING FOR THE FLUORIDE SUPPLEMENTATION OF PUBLIC WATER SUPPLY FOR THE CITY OF NEWPORT, OREGON

WHEREAS, these was submitted to the voters of the City of Newport the question of supplementing the said City's water supply by the addition of fluoride thereto and the said voters did at said election approve said fluoride supplementation of said water supply;

NOW, THEREFORE, BE IT RESOLVED:

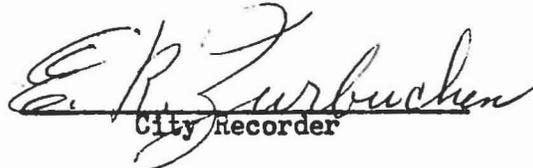
That the Water Department of the City of Newport is hereby authorized and directed to provide for the fluoride supplementation of the public water supply of the City of Newport, Oregon.

That the regulations of the Oregon State Board of Health for fluoride supplementation of public water supplies shall be followed and complied with by the Newport Water Department in its fluoride supplementation of the public water supply of said City of Newport.

That all future recommendations by the Oregon State Board of Health for fluoride supplementation of public water supplies shall be followed and complied with by the Newport Water Department in its fluoride supplementation of the public water supply of the City of Newport.

Dated at Newport, Oregon this th 25 day of June, 1962.

Yeas: 6
Nays: 0


City Recorder


Mayor

RESOLUTION NO. 1165-A

A RESOLUTION PROVIDING FOR THE FLUORIDE SUPPLEMENTATION OF PUBLIC WATER SUPPLY FOR THE CITY OF NEWPORT, OREGON

WHEREAS, these was submitted to the voters of the City of Newport the question of supplementing the said City's water supply by the addition of fluoride thereto and the said voters did at said election approve said fluoride supplementation of said water supply;

NOW, THEREFORE, BE IT RESOLVED:

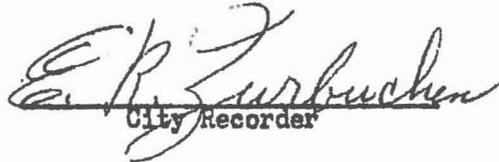
That the water Department of the City of Newport is hereby authorized and directed to provide for the fluoride supplementation of the public water supply of the City of Newport, Oregon.

That the regulations of the Oregon State Board of Health for fluoride supplementation of public water supplies shall be followed and complied with by the Newport Water Department in its fluoride supplementation of the public water supply of said City of Newport.

That all future recommendations by the Oregon State Board of Health for fluoride supplementation of public water supplies shall be followed and complied with by the Newport Water Department in its fluoride supplementation of the public water supply of the City of Newport.

Dated at Newport, Oregon this ²⁵25 day of June, 1962.

Yeas: 6
Nays: 0


City Recorder


Mayor

Oregon Smile Survey 2012 Report. Oregon Health Authority, Public Health Division. May 6, 2013
<https://public.health.oregon.gov/PreventionWellness/oralhealth/Documents/smile-survey2012.pdf>

More than one in two children (52%) between 6-9 years of age have had a cavity, representing about 66,000 Oregon school children.

Children from lower-income households had substantially higher cavity rates compared to children from higher-income households (63% vs. 38%), almost twice the rate of untreated decay (25% vs. 13%), and more than twice the rate of rampant decay (19% vs. 8%).

After communities fluoridate their water supplies, the percentage of children in the population with at least one cavity decreases by about 15%, on average, compared to before water fluoridation.⁷ The average number of cavities experienced by children in the population also is reduced when community water fluoridation is initiated.⁷ Water fluoridation is a valuable tool in addressing oral health disparities, since everyone benefits from it regardless of age, income level, or race or ethnicity.

Cost Savings of Community Water Fluoridation

<http://www.cdc.gov/fluoridation/factsheets/cost.htm>

...the annual per-person cost savings in fluoridated communities ranged from \$16 in very small communities (<5,000) to nearly \$19 for larger communities (>20,000). The analysis takes into account the costs of installing and maintaining necessary equipment and operating water plants, the expected effectiveness of fluoridation, estimates of expected cavities in non-fluoridated communities, treatment of cavities, and time lost visiting the dentist for treatment.

...12-year-old children living in states where more than half of the communities have fluoridated water have 26% fewer decayed tooth surfaces per year than 12-year-old children living in states where less than one-quarter of the communities are fluoridated.

...a 12-year-old child who has lived in a non-fluoridated community in a highly fluoridated state would typically have one fewer cavity than a child in a low-fluoridated state."

Community Water Fluoridation in the United States. American Public Health Association Policy #20087

<http://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/24/13/36/community-water-fluoridation-in-the-united-states>

annual incremental mean benefit of fluoridation is 0.19 tooth surfaces, equating to average of 1.9 tooth surfaces every decade. Preventing 10 tooth surfaces from decay prevents the need for 10 fillings or perhaps two molars from needing crowns (a molar has five tooth surfaces).

2010 Demographic Profile Data Newport, Oregon

<http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

Subject	Number	Percent
SEX AND AGE		
Total population	9,989	100.0
Under 5 years	631	6.3
5 to 9 years	527	5.3
10 to 14 years	525	5.3

HHS and EPA announce new scientific assessments and actions on fluoride

Agencies working together to maintain benefits of preventing tooth decay while preventing excessive exposure

WASHINGTON – The U.S. Department of Health and Human Services (HHS) and the U.S. Environmental Protection Agency (EPA) today are announcing important steps to ensure that standards and guidelines on fluoride in drinking water continue to provide the maximum protection to the American people to support good dental health, especially in children. HHS is proposing that the recommended level of fluoride in drinking water can be set at the lowest end of the current optimal range to prevent tooth decay, and EPA is initiating review of the maximum amount of fluoride allowed in drinking water.

These actions will maximize the health benefits of water fluoridation, an important tool in the prevention of tooth decay while reducing the possibility of children receiving too much fluoride. The Centers for Disease Control and Prevention named the fluoridation of drinking water one of the ten great public health achievements of the 20th century.

"One of water fluoridation's biggest advantages is that it benefits all residents of a community—at home, work, school, or play," said HHS Assistant Secretary for Health Howard K. Koh, MD, MPH. "Today's announcement is part of our ongoing support of appropriate fluoridation for community water systems, and its effectiveness in preventing tooth decay throughout one's lifetime."

"Today both HHS and EPA are making announcements on fluoride based on the most up to date scientific data," said EPA Assistant Administrator for the Office of Water, Peter Silva. "EPA's new analysis will help us make sure that people benefit from tooth decay prevention while at the same time avoiding the unwanted health effects from too much fluoride."

HHS and EPA reached an understanding of the latest science on fluoride and its effect on tooth decay prevention and the development of dental fluorosis that may occur with excess fluoride consumption during the tooth forming years, age 8 and younger. Dental fluorosis in the United States appears mostly in the very mild or mild form – as barely visible lacy white markings or spots on the enamel. The severe form of dental fluorosis, with staining and pitting of the tooth surface, is rare in the United States.

There are several reasons for the changes seen over time, including that Americans have access to more sources of fluoride than they did when water fluoridation was first introduced in the United States in the 1940s. Water is now one of several sources of fluoride. Other common sources include dental products such as toothpaste and mouth rinses, prescription fluoride supplements, and fluoride applied by dental professionals. Water fluoridation and fluoride toothpaste are largely responsible for the significant decline in tooth decay in the U.S. over the past several decades.

HHS' proposed recommendation of 0.7 milligrams of fluoride per liter of water replaces the current recommended range of 0.7 to 1.2 milligrams. This updated recommendation is based on recent EPA and HHS scientific assessments to balance the benefits of preventing tooth decay while limiting any unwanted health effects. These scientific assessments will also guide EPA in making a determination of whether to lower the maximum amount of fluoride allowed in drinking water, which is set to prevent adverse health effects.

The new EPA assessments of fluoride were undertaken in response to findings of the National Academies of Science (NAS). At EPA's request, in 2006 NAS reviewed new data on fluoride and issued a report recommending that EPA update its health and exposure assessments to take into account bone and dental effects and to consider all sources of fluoride. In addition to EPA's new assessments and the NAS report, HHS also considered current levels of tooth decay and dental fluorosis and fluid consumption across the United States.

UPDATE: The notice of the proposed recommendation published in the Federal Register on January 13 and HHS will accept comments from the public and stakeholders on the proposed recommendation for 30 days at CWFcomments@cdc.gov. HHS is expecting to publish final guidance for community water fluoridation by spring 2011. The proposed recommendation is available at <http://frwebgate2.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=W0YUwI/0/1/0&WAISaction=retrieve>. Comments regarding the EPA documents, *Fluoride: Dose-Response Analysis For Non-cancer Effects and Fluoride: Exposure and Relative Source Contribution Analysis* should be sent to EPA at FluorideScience@epa.gov. The documents can be found at http://water.epa.gov/action/advisories/drinking/fluoride_index.cfm

For more information about community water fluoridation, as well as information for health care providers and individuals on how to prevent tooth decay and reduce the chance of children developing dental fluorosis,

visit <http://www.cdc.gov/fluoridation>. For information about the national drinking water regulations for fluoride, visit: <http://water.epa.gov/drink/contaminants/basicinformation/fluoride.cfm>

###

Note: All HHS news releases, fact sheets and other press materials are available at <http://www.hhs.gov/news>.

Like HHS on Facebook [↗](#), follow HHS on Twitter @HHSgov [↗](#), and sign up for HHS Email Updates.

Follow HHS Secretary Kathleen Sebelius on Twitter @Sebelius [↗](#).

Last revised: May 7, 2011

Important Drinking Water Definitions	
Term	Definition
MCLG	MCLG: Maximum Contaminant Level Goal: The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.
MCL	MCL: Maximum Contaminant Level: The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.
TT	TT: Treatment Technique: Required process intended to reduce the level of a contaminant in drinking water.
AL	AL: Action Level: The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.
Variances and Exemptions	Variances and Exemptions: State or EPA permission not to meet an MCL or a treatment technique under certain conditions.
MRDLG	MRDLG: Maximum residual disinfection level goal. The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.
MRDL	MRDL: Maximum residual disinfectant level. The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.
MNR	MNR: Monitored Not Regulated
MPL	MPL: State Assigned Maximum Permissible Level

Water Quality Data Table

The table below lists all of the drinking water contaminants that were detected in the City of Newport's water during the calendar year 2009. The presence of contaminants in the water does not necessarily indicate that the water poses a health risk. Unless otherwise noted, the data presented in this table are from testing done in the calendar year 2009. The EPA or the State requires us to monitor for certain contaminants less than once per year because the concentrations of these contaminants do not change frequently, in those cases, the most recent test data are presented.

<u>Contaminants</u>	<u>MCLG</u>	<u>MCL, or, TT</u>	<u>Your Water</u>	<u>Range Low</u>	<u>High</u>	<u>Sample Date</u>	<u>Violation</u>	<u>Typical Source</u>
Disinfectants & Disinfection By-Products								
(There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.)								
Chlorine (as Cl2) (ppm)	4	4	1.4	NA	1.4	2009	No	Water additive used as a disinfection.
Haloacetic Acids (HAA5) (ppb)	NA	60	24	20	24	2009	No	By-product of drinking water chlorination
TTHMs [Total Trihalomethanes] (ppb)	NA	80	71	38	71	2009	No	By-product of drinking water disinfection
Inorganic Contaminants								
Fluoride (ppm)	4	4	1	NA		2005	No	Water additive which promotes strong teeth.
Microbiological Contaminants								
Total Coliform (positive samples/month)	0	1	0	NA		2009	No	Naturally present in the environment
Turbidity (NTU)	100% of the samples were below the TT value of 0.3. A value less than 95% constitutes a TT violation.					2009	No	Soil runoff
The highest single measurement was 0.19. Any measurement in excess of 1 is a violation unless otherwise approved by the state.								

<u>Contaminants</u>	<u>MCLG</u>	<u>AL</u>	<u>Your Water</u>	<u>Sample Date</u>	<u># Samples Exceeding AL</u>	<u>Exceeds AL</u>	<u>Typical Source</u>
Inorganic Contaminants							
Copper - action level at consumer taps (ppm)	1.3	1.3	0.32	2007	0	No	Corrosion of household plumbing systems; Erosion of natural deposits
Lead - action level at consumer taps (ppb)	0	15	0	2007	0	No	Corrosion of household plumbing systems; Erosion of natural deposits

Yaquina Bay Economic Foundation

2014-2015 Priority Item

Responsible Board Member: Bob Cowen

Title: OSU Marine Studies Initiative

Description of Issue:

Does the project have a potential for real economic impact in our community (both good paying jobs and the potential to demonstrate the "ripple effect," i.e., other members of the business community benefit in significant ways)?

Yes – the impact should be significant: Just considering rent & grocery for 500 students, we can estimate \$3-6M/yr economic impact. Further, Hatfield's current operating budget is \$23-24M/yr, much of it driven by research. This has potential to be tripled with the addition of 20-25 faculty, plus 2-3 people on staff per faculty member. These are just some early estimates, and there will be secondary impacts tied to research products, spin-off business, etc.

What type of YBEF support (guidance, legwork, seed funds) is needed to help make the project go forward?

Frankly -- all of them; this will benefit from a community effort. Legwork to help get the message out. Funding to demonstrate broad community support. Guidance on who we need to include in the conversation, so people can have input. Given the significance of this project, it may be desirable to form an YBEF subcommittee to provide greater focus.

What is the depth of support from the community, government, and local organizations for this project?

We are currently working with City of Newport, local developers and property owners, elected officials, OCCC president, county commissioners.

Provide information about the availability of financial data, feasibility studies, marketing analysis and the location of the project.

Two studies being done. (1) Newport City Council on student and low-income housing (complete). (2) Economic assessment study for impact to local communities and coast (underway).

Is this project a part of an already identified economic development plan/policy document - or is this a project of a specific interest group?

No

Describe the management of the project.

Led by two co-leads for program development. Bob Cowen, Director, Hatfield Marine Science Center and Jack Barth, OSU College of Earth, Ocean and Atmospheric Sciences. Also OSU's President, Provost and VP for Research are significantly engaged.

Is the project one that will enhance quality of life for the Yaquina Bay Area?

We believe it will in that it will enhance access to higher education; intellectual benefits through work that is done through public meetings and presentations (scientific and cultural); impacts to maritime sector (e.g., fishing and fishing technology innovations, tourism, marine technology), workforce development, etc.

Opportunities and Benefits:

- reach will focus on environmental sciences and natural resources (fisheries, forestry, renewable energy), marine engineering
- innovations will spawn businesses and products
- other areas of focus include marketing and marine policy and politics
- humanities and social sciences – cultural and social structures of coastal communities, how environmental solutions will affect them; inspiration in the arts (visual, literature, music).

Define the timeline and critical actions required.

- Challenge pledge – 3 years to meet the overall challenge; shooting for 2015-2017 state budget to get bond from legislature. **Immediate need is initial \$5M funding to meet building match – target date of May of 2015.**

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Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION**

NEWPORT FISHERMEN'S WIVES, INC.,
an Oregon nonprofit corporation, **CITY OF
NEWPORT, LINCOLN COUNTY, PORT
OF NEWPORT, and MIDWATER
TRAWLERS COOPRATIVE,** an Oregon
Cooperative,

Plaintiffs,

v.

UNITED STATES COAST GUARD,
Defendant.

Case No. 6:14-cv-01890-MC

**DEFENDANT'S MOTION
TO DISMISS THE COMPLAINT
AND MEMORANDUM IN
SUPPORT THEREOF**

DEF'S MOTION TO DISMISS

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant United States Coast Guard hereby moves this Court to dismiss Plaintiffs' Complaint in its entirety. The bases for this motion, as set forth in the accompanying memorandum, are that: (1) due to a change in circumstances, Plaintiffs' claims under the National Environmental Policy Act and Homeland Security Act are now moot, (2) any claims that Plaintiffs may raise with regard to future conduct are not ripe for review, and (3) even if the Court finds otherwise, Plaintiffs also lack standing. The Defendant's Motion to Dismiss should therefore be granted as to all claims.¹

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION

In light of the Howard Coble Coast Guard Maritime Transportation Act of 2014 (the "Coast Guard Act"), Pub. L. No. 113-281, 128 Stat. 3022 (2014), which was signed into law on December 18, 2014, the Coast Guard will not cease operations at the Newport Air Facility ("AIRFAC Newport") as previously planned. *See* Dec. 11, 2014 Minutes of Proceedings, ECF No. 33. The above-captioned litigation has been rendered moot by intervening legislative action and any possible future claims are not ripe. Even if the Court finds otherwise, Plaintiffs do not have standing. For these reasons, Defendant hereby moves this Court to dismiss the Complaint for lack of subject matter jurisdiction.²

As this Court is aware, section 225 of the Coast Guard Act contains the following prohibition:

(b) Prohibition.—

¹ In compliance with Local Rule 7-1, the parties discussed and attempted to resolve the issues raised in this motion but were unable to do so.

² Plaintiffs filed their complaint on November 25, 2014. ECF No. 1. Plaintiffs filed an amended complaint on December 9, 2014 ("Compl."). ECF No. 21. References to the complaint in this brief are to the amended complaint.

- (1) In general.—The Coast Guard may not—
 - (A) close a Coast Guard air facility that was in operation on November 30, 2014; or
 - (B) retire, transfer, relocate, or deploy an aviation asset from an air facility described in subparagraph (A) for the purpose of closing such facility.
- (2) Sunset.—This subsection is repealed effective January 1, 2016.

The Coast Guard Act thus prohibits the Coast Guard from taking the action that forms the basis of Plaintiffs' claims – “decommission[ing] Newport Air Station and eliminate[ing] the helicopter air rescue capability serving Oregon’s central coast on December 15, 2014.” Compl. ¶¶ 24, 34. In light of this prohibition, the Coast Guard will not cease helicopter operations at AIRFAC Newport as originally proposed. Currently, the Coast Guard has no intention to close the air facility and it will continue to operate an MH-65 helicopter from the air facility as it is currently operating. Declaration of Captain Christopher Martino in Support of Defendant’s Motion to Dismiss (“Martino MTD Decl.”) ¶ 3. The Coast Guard Act’s prohibition on ceasing operations at AIRFAC Newport for the remainder of 2015 renders Plaintiffs’ claims moot.

Notwithstanding the mootness of Plaintiffs’ claims, the Coast Guard anticipates that Plaintiffs will contend that the claims are not moot because of the possibility that the Coast Guard may, after the legislation sunsets on January 1, 2016, decide to cease helicopter operations at Newport and in doing so, will rely upon the same Categorical Exclusion Determination that it relied upon in anticipation of ceasing operations last December. The Coast Guard has no current plan to cease helicopter operations at AIRFAC Newport. Any claim based on the premise that the Coast Guard may cease operations at AIRFAC Newport is not ripe for review and therefore cannot be maintained.

In the alternative, even if the Court were to disagree that Plaintiffs’ claims are moot and future claims are unripe, the Coast Guard maintains, as it has throughout, that Plaintiffs do not

DEF’S MOTION TO DISMISS -- 2

have standing to bring these claims. *See* Defendant's Brief in Opposition to Plaintiffs' Motion for a Preliminary Injunction ("Def.'s Br.") at 10 – 13. Because Plaintiffs have not met their burden to demonstrate that they have suffered an injury that was caused by the actions of the Coast Guard, they lack standing.

For all of the foregoing reasons – mootness, the lack of ripeness, the absence of standing – the Court does not have subject matter jurisdiction. It should accordingly dismiss the Complaint.

II. FACTUAL BACKGROUND

The Coast Guard established AIRFAC Newport in 1987 as a base of operations for a single Coast Guard helicopter to operate primarily in search and rescue efforts along the Oregon coastline. Declaration of Captain Christopher A. Martino (Martino Decl.) ¶ 2, ECF No. 19. Due to numerous upgrades in the capabilities of vessels and helicopters, and improvements in communications capabilities, any search and rescue operations for the area presently served by AIRFAC Newport can now be addressed within the Coast Guard's national two-hour response standard from Air Station Astoria, or Air Station North Bend. *Id.* ¶¶ 6-16, Exhibit 2.

Beginning in February 2012, the Coast Guard began to explore the possibility of relocating helicopters operating out of Newport and Charleston, South Carolina, which it determined were providing redundant search and rescue coverage, to locations with critical resource gaps. *Id.* ¶ 23. As part of its FY 2014 budget request, which was passed in January 2014, the Coast Guard proposed to cease operations at these air facilities. Beginning in October 2014, the Coast Guard conducted an environmental review of the proposal pursuant to the National Environmental Policy Act ("NEPA"). It concluded that the proposed actions fell within categorical exclusions so that preparation of an Environmental Assessment or Environmental Impact Statement was not required. *See id.*, Exhibit 3.

DEF'S MOTION TO DISMISS -- 3

Before entering a final decision to cease operations at AIRFAC Newport, the Coast Guard notified numerous stakeholders, including state and federal government officials, tribal officials, municipal officials, and members of the public, to inform them of its proposal. Martino MTD Decl. ¶ 7. In addition, the Coast Guard held town hall meetings on October 15 and October 20, 2014 during which it informed relevant stakeholders and members of the public of the planned closure and allowed for their input. *Id.* ¶ 8, Exhibit 1. The Coast Guard subsequently moved back the proposed closure date of AIRFAC Newport from November 30 to December 15, 2014. Martino Decl. ¶ 32.

On December 10, 2014 Congress intervened, with both houses passing the Coast Guard Act, section 225 of which prohibits the Coast Guard from closing AIRFAC Newport in 2015. Because of this development, on December 11, 2014 the Coast Guard agreed that it would not cease operations at AIRFAC Newport on December 15, 2014 as originally planned, and would continue to operate an MH-65 helicopter under the same conditions as it was then operating. ECF No. 33. A final decision to cease operations at AIRFAC Newport – which can only be made at Coast Guard headquarters – thus was never made. *See* Martino Decl. ¶ 32; 14 U.S.C. § 93(a)(3). On December 18, 2014, the President signed the Coast Guard Act. The prohibition within that Act is now law. The Coast Guard is prohibited from ceasing helicopter operations at AIRFAC Newport before January 2016 and it has no current plans to do so after that date. Martino MTD Decl. ¶¶ 2-3.

III. ARGUMENT

If the Court determines that it lacks subject matter jurisdiction at any time, it must dismiss the action. Fed. R. Civ. P. 12(h)(3). In resolving a motion under Rule 12(b)(1), the Court is not limited to the allegations in the pleadings if the “jurisdictional issue is separable from the merits of the case[.]” *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).

DEF’S MOTION TO DISMISS -- 4

A. Plaintiffs' Claims Must be Dismissed as Moot

Under Article III of the Constitution, “the exercise of judicial power depends upon the existence of a case or controversy.” *Liner v. Jafco, Inc.*, 375 U.S. 301, 306 n.3 (1964). A federal court does not have jurisdiction “to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (citations and quotation marks omitted); *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003) (“Mootness is a jurisdictional issue.”). A “live controversy must persist throughout all stages of the litigation.” *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1128-29 (9th Cir. 2005) (en banc) (citation omitted). In cases like this, the central question is “whether changes in the circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief.” *Id.* (quoting *West v. Sec’y of the Dep’t of Transp.*, 206 F.3d 920, 925 n.4 (9th Cir. 2000)).

A plaintiff bears the burden of demonstrating that a case or controversy exists at all stages of the litigation. If an actual, or threatened injury from a challenged government action no longer exists, or a change in circumstances deprives a court of the ability to provide any meaningful or effective relief for the alleged violation, the matter is moot and must be dismissed for lack of jurisdiction. *See Mills v. Green*, 159 U.S. 651, 653 (1895); *Feldman v. Bomar*, 518 F.3d 637, 642-43 (9th Cir. 2008).

In their Complaint, Plaintiffs allege that the removal of the rescue helicopter and decommissioning of AIRFAC Newport would reduce the Coast Guard’s search and rescue mission in violation of the Homeland Security Act. Compl. ¶ 22. Plaintiffs further allege that in determining to remove the rescue helicopter and decommission AIRFAC Newport, the Coast Guard failed to conduct a proper environmental review in violation of NEPA. *Id.* ¶¶ 31-33. Both of these claims have been rendered moot by the Coast Guard’s decision not to cease

DEF’S MOTION TO DISMISS -- 5

operations at AIRFAC Newport and to continue to operate the helicopter at that facility under the same conditions, and further by the enactment of the Coast Guard Act, which prohibits the Coast Guard from closing AIRFAC Newport or retiring, transferring, relocating, or deploying the helicopter. Taken together, the Coast Guard's action and the enactment of the Coast Guard Act ensure that the Coast Guard will not remove the rescue helicopter, or decommission AIRFAC Newport, on December 15, 2014, as originally planned, or indeed at any time in 2015.

In its prior brief the Coast Guard offered numerous reasons why Plaintiffs' claims are likely to fail. The Coast Guard showed that Plaintiffs lack standing to bring claims under NEPA or the Homeland Security Act, Def.'s Br. at 10–13, and that Plaintiffs do not fall within the zone of interests of either statute, Def.'s Br. at 14–16. The Coast Guard further showed that it conducted an appropriate environmental review and properly concluded that the proposed action was subject to a categorical exclusion and that no extraordinary circumstances required further environmental analysis,³ Def.'s Br. at 16–20, and that the proposed action did not violate the Homeland Security Act. Def.'s Br. at 20–22.

The Plaintiffs' claims and the Coast Guard's response to those claims are premised on the possibility that Coast Guard would remove the helicopter from AIRFAC Newport on December 15, 2014. Not only has the Coast Guard not decided to follow through on that plan, it is no longer possible: December 15, 2014 has come and gone and the Coast Guard is now statutorily prohibited from closing AIRFAC Newport. *See Consejo de Desarrollo Economico de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1169 (9th Cir. 2007) (holding that NEPA and other

³ In the amended complaint, Plaintiffs continue to allege, upon information and belief, that the Coast Guard has not prepared the checklist that it produces as part of the categorical exclusion determination process. Compl. ¶ 31. Not only is this allegation incorrect, the Coast Guard provided the categorical exclusion determination and checklist. Martino Decl., Exhibit 3. In the event the Court does not dismiss the Complaint, Defendant asks that the Court strike the first sentence in paragraph 31 of the Complaint. *See Fed. R. Civ. P. 12(f)*.

statutory challenges to an agency's proposed action were rendered moot following enactment of a new statute that superseded the proposed action); *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 79 (D.C. Cir. 2011) (finding environmental claims moot when agency's subsequent action superseded the Record of Decision). Here the challenged action cannot occur, and therefore considering the claims on the merits would require the Court "to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology*, 506 U.S. at 12 (citations and quotation marks omitted). And to do so would be improper as Article III courts lack the authority to issue advisory opinions. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971).

At this juncture, the Court would also be unable to provide Plaintiffs with any meaningful relief from the potential injuries they allege. Plaintiffs allege potential injuries to public safety and the environment due to the loss of the helicopter. Compl. ¶¶ 11, 32. But the potential injuries that Plaintiffs allege can only occur if helicopter operations at AIRFAC Newport cease. Because any threat of injury no longer exists, the Court can no longer provide any meaningful or effective relief for the alleged violations. *See Mills*, 159 U.S. at 653.

The Court no longer has subject matter jurisdiction over this matter. The Coast Guard decided not to take the action Plaintiffs complain of, and the Coast Guard Act forbids it from doing so. Plaintiffs' claims have been rendered moot. Therefore, the Complaint should be dismissed.

B. To the Extent that Plaintiffs Claims Are Based on Potential Future Conduct, Such Claims are Not Ripe

Plaintiffs contend that because the prohibition in the Coast Guard Act contains a sunset provision, absent a formal commitment that AIRFAC Newport will remain in place for a substantial multi-year period, the Court should stay proceedings in this case. Jan. 12, 2015 Joint Status Report, ECF No. 34 at 2. The Coast Guard anticipates that Plaintiffs will claim that this

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case is not moot because the Coast Guard may, at some future time, decide to cease operations at AIRFAC Newport. Such a claim, should Plaintiffs raise it, is unripe.

The ripeness doctrine, like the mootness doctrine, is closely related to standing because it “originate[s] from the same Article III limitation.” *Susan B. Anthony List v. Driehaus*, 134 S.Ct. 2334, 2341 n.5 (2014) (internal quotation marks omitted); *Mont. Envtl. Info. Ctr. v. Stone-Manning*, 766 F.3d 1184, 1188 n.3 (9th Cir. 2014). But whereas “standing is primarily concerned with who is a proper party to litigate a particular matter, ripeness addresses when that litigation may occur.” *Lee v. Oregon*, 107 F.3d 1382, 1387 (9th Cir. 1997) (emphasis in original omitted). The basic rationale of the ripeness requirement is “to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements[.]” *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967).

The “Constitution mandates that prior to our exercise of jurisdiction there exist a constitutional ‘case or controversy,’ that the issues presented are ‘definite and concrete, not hypothetical or abstract.’” *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc) (citation omitted). A dispute is ripe in the constitutional sense if it “present[s] concrete legal issues, presented in actual cases, not abstractions.” *Colwell v. HHS*, 558 F.3d 1112, 1123 (9th Cir. 2009) (internal quotation marks and citation omitted). “A claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” *Texas v. United States*, 523 U.S. 296, 300 (1998) (citations and quotation marks omitted); *Alcoa, Inc. v. Bonneville Power Admin.*, 698 F.3d 774, 739 (9th Cir. 2012). This is because, “if the contingent events do not occur, the plaintiff likely will not have suffered an injury that is concrete and particularized enough to establish the first element of standing.” *Bova v. City of Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009) (citation omitted).

Here, any potential activities that Plaintiffs may complain of have not occurred and are not planned. Therefore there is no injury to Plaintiffs, much less an injury that is traceable to the Coast Guard or redressable by a favorable decision. The Coast Guard does not have any plan in

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place to close AIRFAC Newport. Even if it were someday to develop such a plan, it would begin a new environmental review at that time and the final decision based on that new environmental analysis would be subject to a new challenge and judicial review. Martino MTD Decl. ¶ 9. Any claims that Plaintiffs may have are contingent upon events that have not occurred. *See Alcoa*, 698 F.3d at 793 (holding that claims based on harms that may occur, but which “have not occurred and are not reasonably likely to occur in the future” are “too contingent and speculative” to satisfy the standing and ripeness test).

Any claims that Plaintiffs may have with respect to the Coast Guard plans for AIRFAC Newport are based entirely on speculation about plans that do not currently exist and decisions that have not been made.⁴ They are not ripe for review and fall outside the Court’s subject matter jurisdiction. Accordingly, Plaintiffs’ Complaint should be dismissed.

C. Plaintiffs’ Claims Must be Dismissed Because Plaintiffs Lack Standing

“No principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) (internal quotation marks and citation omitted). Thus, “those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (citation omitted). The law of Article III standing, “serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Clapper v. Amnesty Int’l USA*, 133 S.Ct. 1138, 1146 (2013) (citation omitted). “To establish Article III standing, a plaintiff must show (1) an ‘injury in fact,’ (2) a sufficient ‘causal connection between the injury and the conduct complained of,’ and (3) a ‘likel[ihood]’ that the injury ‘will be redressed by a favorable

⁴ Further, as the Coast Guard explained in its previous brief, because there has been no final agency action, Plaintiffs may not avail themselves of the APA’s waiver of sovereign immunity, and hence there is no jurisdiction for the suit. *See* Def.’s Br. at 20 n.5.

decision.” *Susan B. Anthony List* 134 S.Ct. at 2341 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). The injury that the plaintiffs must show it has suffered is one that is “(a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 180-81 (2000); *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011).

As the Coast Guard noted in its opposition to Plaintiffs’ motion for a preliminary junction, Plaintiffs have failed to meet (1) their burden of demonstrating that they have suffered a concrete, particularized injury that is actual or imminent, and (2) their burden of demonstrating a sufficient causal connection between their alleged injuries and Coast Guard’s then-planned conduct. Def.’s Br. at 10–13. The Coast Guard briefly summarizes its argument here. With respect to alleged injuries, Plaintiffs express a generalized interest in how Coast Guard search and rescue operations are conducted, but this is not sufficient to establish the concrete and non-conjectural injury that is required for standing purposes. See *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972). To establish an “actual or imminent injury,” the alleged injury must be tied to the challenged action, identify a particular site at issue and relate to an imminent future injury as opposed to a past injury. *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009).

Plaintiffs allege two types of potential injuries in their Complaint – potential bodily injuries to persons who may experience boating accidents or otherwise be swept out to sea, and potential environmental degradation from oil spills. None of these allegations of possible future injury – whether the result of an oil spill, high seas, a rip-current, or (most improbably) a rogue wave, all of which are raised in declarations that Plaintiffs have submitted – are more than mere conjecture. See *Lyons* 461 U.S. at 108 (declining to accept the possibility that the plaintiff would be stopped and subjected to a chokehold as a sufficient injury for standing purposes).

More problematic for Plaintiffs is their inability to show that the potential injuries from these speculative events would be traceable to the Coast Guard. Oil spills, capsized ships, and rip-currents are events that are traceable to the actions of numerous third parties – e.g. ship operators or equipment manufacturers – as well as the forces of nature and are wholly outside the

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control of the Coast Guard. For purposes of standing it is insufficient “if the injury complained of is the result of the independent action of some third party not before the court[.]” *Bennet v. Spear*, 520 U.S. 154, 169 (1997) (internal quotation marks, punctuation, alterations, emphasis in original and citation omitted).

Even if the court concludes that this case is not moot, because the Plaintiffs have not met their burden to demonstrate that they have suffered an injury in fact caused by actions of the Coast Guard, they lack standing and the Court does not have subject matter jurisdiction. Accordingly, for this reason also the Complaint should be dismissed.

IV. CONCLUSION

For the foregoing reasons, the Court should grant Defendant’s motion to dismiss the Complaint.

Dated: January 26, 2015

Respectfully submitted,

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s/ Sean C. Duffy
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Attorneys for Defendant

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Certificate of Service

I hereby certify that on January 26, 2015, I electronically filed the foregoing Defendant's Motion to Dismiss with the Clerk of the Court via the CM/ECF system, which will provide service to counsel for Plaintiffs.

s/ Sean C. Duffy
Sean C. Duffy
Attorney for Defendant

DEF'S MOTION TO DISMISS -- 12

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

NEWPORT FISHERMEN'S WIVES, INC.,
an Oregon nonprofit corporation, **CITY OF**
NEWPORT, LINCOLN COUNTY and
PORT OF NEWPORT,

Plaintiffs,

vs.

UNITED STATES COAST GUARD,

Defendant.

Case No.: 6:14-cv-01890-MC

**DECLARATION OF CAPTAIN
CHRISTOPHER MARTINO IN SUPPORT
OF DEFENDANT'S MOTION TO DISMISS**

Page 1 – **DECLARATION OF CAPTAIN CHRISTOPHER MARTINO IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

I, Christopher A. Martino, Captain, United States Coast Guard, make the following Declaration in lieu of an affidavit as permitted by 28 USC Section 1746. I understand that this Declaration will be filed in this action with the United States District Court for the District of Oregon and is the legal equivalent of a statement made under oath.

1. I am a Captain in the United States Coast Guard presently assigned to Coast Guard Headquarters in Washington, DC. I have served in the Coast Guard for 29 years. I currently serve as the Chief of Coast Guard Aviation Forces. Coast Guard Aviation Forces mission is to provide Coast Guard aviation with capability in the form of resources, doctrine, oversight, and training programs to support safe and effective execution of Coast Guard missions. Specifically, with regard to this lawsuit, after the passage of the Fiscal Year 2014 Appropriations Act, my office oversaw the planning associated with the removal of resources from Air Facility Newport for further distribution to gaps within the fleet. I am a helicopter pilot with over 4,000 flight hours and have served as the Operations Officer of Air Station North Bend as well as the Commanding Officer of Air Station Humboldt Bay, California.

2. Pursuant to the Howard Coble Coast Guard and Maritime Transportation Act of 2014, Pub. L. 113-281, December 18, 2014, § 225: "The Coast Guard may not - (A) close a Coast Guard air facility that was in operation on November 30, 2014; or (B) retire, transfer, relocate, or deploy an aviation asset from an air facility described in subparagraph (A) for the purpose of closing such facility. (2) Sunset.—This subsection is repealed effective January 1, 2016."

3. In compliance with the above provision, the Coast Guard presently has no intention to close the Air Facility or relocate the MH-65 helicopter operating there, and will

Page 2 – DECLARATION OF CAPTAIN CHRISTOPHER MARTINO IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

continue to operate an MH-65 helicopter from the Air Facility under the same conditions as it is currently operating.

4. Before the passage of § 225, the Coast Guard had considered ceasing operations for the sole MH-65 helicopter at Air Facility Newport, and thereby halting the daily flights between Newport and Air Station North Bend, but the Commandant never officially took this action.

5. Under the National Environmental Policy Act (“NEPA”) and the Council on Environmental Quality’s regulations, categories of agency action that neither individually nor cumulatively have a significant impact on the environment are subject to categorical exclusions from the general requirement to prepare an environmental impact statement or environmental assessment.

6. Pursuant to NEPA and Coast Guard regulations, in considering the now-abandoned proposal to cease operations, the Coast Guard prepared a document which determined that ceasing operations at Air Facility Newport, and halting the daily flights between Newport and Air Station North Bend, fell under applicable categorical exclusions.

7. Notwithstanding its determination that ceasing operations at Air Facility Newport was within the purview of categorical exclusions, and that no further environmental analysis was required, the Coast Guard notified stakeholders and community members of its proposal to cease helicopter operations at Air Facility Newport. Specifically, on October 2, 2014, Coast Guard District 13 staff notified the following individuals and entities regarding the proposed cessation of operations: Governor John Kitzhaber, State Senators Jeff Kruse and Arnie Roblan, State Representatives Wayne Kreiger, Caddy McKeown and David Gomberg, Mayors Rick Wetherell, Crystal Shoji and Sandra Roumagoux, the Coquille Tribe, the Confederated Tribes of the Coos,

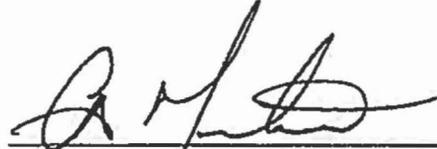
Lower Umpqua, and Siuslaw Indians, and the Confederated Tribes of Siletz Indians. The Coast Guard also notified various municipal officials and a representative of the Newport Fisherman's Wives Association on that day. Plaintiffs attached a notice letter as Exhibit A to their Complaint. ECF No. 1. The Coast Guard sent identical letters to the other stakeholders.

8. Further, on October 15, Coast Guard personnel hosted a stakeholder's meeting comprised of many representatives from the officials listed above. On October 20, the Coast Guard hosted a town hall meeting for Newport residents and stakeholders. During these meetings, the Coast Guard informed the relevant stakeholders and members of the public of its proposal and received feedback. An announcement for the town hall meeting is attached as Exhibit 1 to this Declaration. Subsequently, the Coast Guard agreed to delay the proposed date for cessation of operations at Air Facility Newport from November 30, 2014 to December 15, 2014.

9. Going forward, if the Coast Guard were to consider actions such as closing or ceasing operations at Air Facility Newport, following the expiration of § 225, the Coast Guard would evaluate the nature of the proposed action in accordance with established procedure. The Coast Guard previously issued a Categorical Exclusion Determination that was finalized on November 10, 2014, associated with the previously proposed cessation of operations at the Air Facility. Whereas that proposed action became, by virtue of the subsequent legislation, a nonviable proposal, the Categorical Exclusion Determination associated with it is null and void. Whereas each and every proposed action must be reviewed separately under NEPA, should the Coast Guard decide to take an action with regard to the future operation of the facility, the Coast Guard would conduct a new inquiry into the environmental impact of such proposed action.

The facts, circumstances, applicable laws, Coast Guard regulations and operating procedure at the time of the action will be reviewed at that time.

DATED this 23rd day of January, 2015



Captain Christopher A. Martino
United States Coast Guard

**Page 5 – DECLARATION OF CAPTAIN CHRISTOPHER MARTINO IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

EXHIBIT 1

Public can weigh in on USCG air facility closure

SOURCE: Newport News Times

DATE: Oct. 9, 2014

SITE:

http://www.newportnewstimes.com/v2_news_articles.php?heading=0&story_id=45501&page=86

Public can weigh in on USCG air facility closure

Posted: Thursday, Oct 9th, 2014

SOUTH BEACH — The city of Newport, Port of Newport, and Lincoln County, with support from the Oregon Coastal Caucus, will facilitate a joint meeting to allow for input from the public regarding the closure of the U.S. Coast Guard's air facility located at the Newport Municipal Airport.

The meeting will be held on Monday, Oct. 20, from 5:30 p.m. to 7:30 p.m. at the Oregon Coast Community College Central County Campus, 400 SE College Way, South Beach.

Representatives of the Coast Guard 13th District in Seattle; Captain Todd Trimpert, commander of Coast Guard Station North Bend; and Chief Warrant Officer Ryan O'Meara, commanding officer of the Coast Guard Station Yaquina Bay have been invited to participate.

In addition, Congressman Kurt Schrader and representatives from the offices of Sen. Jeff Merkley and Sen. Ron Wyden are expected to attend.

The Coast Guard representatives and federal officials will be available to respond to questions and concerns from members of the public.

Admiral Gromlich's Statement at
the October 20, 2014 Town Hall meeting

Admiral Richard Gromlich thanked the Congressman. "First I want to extend thanks to the Oregon congressional delegation; your state and local elected officials; members of the City of Newport; the County; and the Port, for offering a personal invitation to me to come and join you here this evening. I also wanted to thank you all for your continued support of our Coast Guard men and women in blue. It is obvious that you care deeply. Your attendance here tonight is just one example of that. The passion that you have demonstrated when word officially got out that the air facility here in Newport was going to close is another example of how much you care for the Coast Guard and what it means. I also want to thank, particularly, the City of Newport for being a Coast Guard City - one of only 16 in the country. I believe you were the fifth one to be designated as a Coast Guard City back in 2005. Again, it shows the support that you have for our military members and their families, and I appreciate how much that means in communities along the Oregon and Washington coasts. As the Congressman said, I was fortunate to be stationed at Air Station North Bend from 1990 to 1994. For a lot of folks in this room; they weren't even born yet. I was there when we first, at least when I reported to North Bend, we were standing the duty at the air facility here in Newport out of an "old, beat up trailer." Some of you may remember that. We would leave North Bend in the morning and we would return just about dark, and then we would come back the next day. And, we'd either fly patrols or training flights, or hang out in the trailer just waiting to see if something happened. And, I was here still in 1994 when that beautiful new facility was built and we started to stand 24-hour watches seven days a week. I lived in the community of North Bend; my oldest daughter was born there. I served there. I understand what it means to live on the Oregon coast; I understand about storms that come through the area, where on the east coast, we refer to those as hurricanes, and here in the northwest, we call them winter storms. I understand about sneaker waves that rip people from the beach; I understand about rogue waves that capsize boats offshore. I understand the environment we all live in along the Oregon and Washington coasts and am committed to ensure that the Coast Guard, whatever happens, is able to respond and do what it is that we do best. The decision to close the air facility here in Newport, Oregon, as well as the air facility in Charleston, South Carolina, was actually part of the budget submission for fiscal year '14 that was submitted by the President as many of you know. The Coast Guard is authorized to close the two facilities as a part of its appropriations bill for fiscal year 14 - last year. It's a tough environment that we're living in right now. And, I know that many of you - it's just a tough, tough thing to understand when we're talking about things like sequestration, continuing resolutions like we're under right now, and declining budgets. The Coast Guard constantly has to make very, very difficult decisions, and I can tell you that in my former jobs, back in Washington, D.C., and my last job in Norfolk, that I was involved in a lot of those decisions. And, it is hard and it is personal, and rightly so; it's personal. But those decisions are tough ones and they're made at the highest levels of our organization, and in this case, the final decision to close those air facilities was made by the Commandant of the Coast Guard. The air facility here in Newport will close on the thirtieth of November, and, even at my level of the Coast Guard, as the Congressman alluded to, I can't do anything about that as far as that closure date or offer to delay the closing in any way. I've got to carry that out. I know that many of you probably came hear hoping that you would hear something different, and I'm sorry that I can't tell you anything different. But I will say that in making that decision, the Coast Guard followed a process. I think particularly when it comes to dealing with our state and local citizens, we didn't do a very good job; that

process broke down. For that I personally and truly regret the anxiety this has caused for the local citizens along the Oregon coast. But, there is a process that we followed, and there is a process that you're involved in right now to make your concerns heard so that officials higher up the chain understand the impacts of the decisions that have been made. But that's why we're here tonight as well. As you heard, there are quite honestly, there are some that don't feel that I should be standing up here. But, I think I'm the one that needs to stand up here. I need to be able to talk to; I need to hear what conditions are; I need to hear your concerns; I need to hear your comments, and I can assure you that we will listen. We have been listening. Since the decision was announced, I have listened to the news reports; I've read the newspaper articles - hundreds of them; we've monitored the websites; looked at the blogs; looked at the petition on-line and seen the comments that were made; we attended the stakeholders meeting last week that was held. We are listening. We will continue to listen." He introduced the local Coast Guard officers in attendance, including: Todd Trimpet of U.S. Coast Guard Station North Bend; Ryan O'Meara of U.S. Coast Guard Station Yaquina Bay; and Carlos Hessler of U.S. Coast Guard Station Depoe Bay. Gromlich stated that regardless of what happens, these Coast Guard members will continue to serve, and the Coast Guard will be there to answer the call.

Tim Gross

From: Adam Denlinger <ADenlinger@srwd.org>
Sent: Tuesday, February 03, 2015 10:22 AM
To: Tim Gross
Cc: 'Ralph Wenziger'; Joy King; Adam Denlinger
Subject: SRWD- Newport Intertie Project
Attachments: SKMBT_C22015012107510.pdf

Greetings Tim hope your day is going well,

Thanks for sending Melisa and Olaf to the SRWD/Newport intertie Pre-con meeting yesterday. We had a good discussion with the contractor and I believe we covered everyone's mutual concerns successfully, and the project is tentatively scheduled to begin March 1, 2014.

I apologies in advance for the long email, however, I feel compelled to revisit the cost share for this project one more time. Upon further reflection of cost benefit for the two agencies I believe it's only fair that we consider the benefit to Newport as you described it in the meeting that we had with Ralph on Jan-21st. During the meeting I understood you to say that the City would only need an 8-inch line to serve this area, and that the 12-inch was oversized, which I agree is only fair. As such, I asked the engineer to provide a cost breakdown based on the contractors cost for installation of the pipeline taking into consideration the city's need for an 8-inch line.

If the city only benefit from an 8-inch line to provide service to the airport than I believe it would be appropriate to expect the city to fund a proportionate share of the cost to install an 8-inch line from the intertie north to the city's system as described in the cost breakdown below.

SRWD/Newport Intertie Project				Jan-30-2015
Description:	Est.	Unit.	Unit Cost	Total
8-Inch PVC C900 w/Class B backfill	2100	Lf	\$45.00	\$94,500.00
8-Inch Fusible C900 Pipe HDD Placement	625	Lf	\$95.00	\$59,375.00
8-Inch Gate Valve	1	Ea	\$1,200.00	\$1,200.00
8 X 6 Tee	1	Ea	\$550.00	\$550.00
8-Inch 90 Degree elbow	1	Ea	\$350.00	\$350.00
8-Inch 45 degree elbow	2	Ea	\$350.00	\$600.00
Construction Subtotal:				\$156,575.00
Equal shared 8-inch cost Subtotal:				\$78,287.50
*Additional cost per engineers 01/20/15 est.				\$74,588.00
Total Newport contribution.				\$152,875.50

*Jan 20, 2015 Updated estimate for Newport piping cost: 62nd to 66th, 68th crossing, and 77th services attached:

I believe further justification to support this project comes from a presentation to city council on January 20th providing a condition assessment of the Newport Big Creek Dams. One of the comments made during this presentation indicated that...*the dams will not survive a Cascadia Subduction Zone earthquake. Maybe not even a moderate one. If that happens both dams are very likely to fail. In addition to the horrendous damage inflicted from Big Creek Road down to Agate Beach, it'll mean that Newport's water supply will be literally gone*."

I agree with your assessment Tim, all of us will be struggling to bring systems back online in the event of something catastrophic occurring. However, I would like to suggest that in the event of a moderate seismic event that might limit

Newport's availability to source water; with the intertie in place Newport will still have access to source water. This seems like an affordable solution to ensure that the city has an improved connection to a secondary source of water.

Additional consideration for return on investment includes savings the city will receive from paying the District for providing water to the Airport. With the exception of last year the city will save approximately 12K to 15K annually.

Please let me know what your thoughts are, and if you can budget for this cost share amount as provided above. I am happy to meet with you to discuss further at your convenience, and even willing to provide/discuss this detail with the CM, Budget Committee, or City Council if you think it would be helpful.

Thanks in advance for your consideration, I look forward to hearing from you soon,

Regards

Adam

Adam Denlinger, General Manager
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Seal Rock Water District strives to be a high performance organization that provides exceptional customer service, promoting healthy lifestyles, enriching Seal Rocks unique character at responsible rates.

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Seal Rock Water District		Cost Estimate			
Seal Rock/Newport Water Intertie		20-Jan-15			
Water System Improvements					
Pacific Excavation Bid Results		RRW			
Description	Est.	Unit	Unit	SRWD Piping & Pump Station costs: 66th -73rd & Pump Station	Newport piping costs: 62nd to 66th, 68th x-ing, & 77th Service
	Quantity		Amount		
Water					
6" Gate Valve	1	ea	\$ 800		\$ 800
12"x6" tapping tee w/ 6" Gate Valve	1	ea	\$ 1,750		\$ 1,750
6" PVC C900 Waterline w/Class B Backfill	20	lf	\$ 59		\$ 1,180
6" Coupling Adaptor	1	ea	\$ 400	\$ 400	
8" PVC C900 Waterline w/ Class B Backfill	10	lf	\$ 175		\$ 1,750
8" C900 Pipe Jack & Bore Placement	0.5	ls	\$ 37,500		\$ 18,750
8" C900 Pipe Jack & Bore Placement	0.5	ls	\$ 37,500		\$ 18,750
8" Cap	1	ea	\$ 150		\$ 150
8" Gate Valve	2	ea	\$ 1,200		\$ 2,400
8"x6" Tee	1	ea	\$ 550		\$ 550
8" - 90 Elbow	1	ea	\$ 350		\$ 350
8" Coupling Adaptor	1	ea	\$ 300		\$ 300
12" PVC C900 Waterline Class B Backfill	2427	lf	\$ 46	\$ 111,642	
12" PVC C900 Waterline Class B Backfill	123	lf	\$ 46		\$ 5,658
12" Fusible C900 Pipe HDD Placement	625	lf	\$ 140	\$ 87,500	
12" Restrained Coupling	1	ea	\$ 650	\$ 650	
12" Restrained Coupling	2	ea	\$ 650		\$ 1,300
12" Gate Valve	3	ea	\$ 2,000		\$ 6,000
12" Gate Valve	4	ea	\$ 2,000	\$ 8,000	
12"x8" Tee	2	ea	\$ 900		\$ 1,800
12"x6" Tee	1	ea	\$ 800		\$ 800
12" Tee	1	ea	\$ 1,900		\$ 1,900
12" Tee	2	ea	\$ 1,900	\$ 3,800	
12" - 90 Elbow	3	ea	\$ 750	\$ 2,250	
12" - 22 1/2 Elbow	1	ea	\$ 600	\$ 600	
12" - 22 1/2 Elbow	1	ea	\$ 600		\$ 600
12" - 45 Elbow	2	ea	\$ 650		\$ 1,300
Fire Hydrant Assembly	2	ea	\$ 4,250		\$ 8,500
AC Pavement - Trench Patch	12	ton	\$ 200	\$ 2,400	
Pump Station					
8" Check Valve	1	ea	\$ 2,000	\$ 2,000	
8" Flange Coupling Adapter	2	ea	\$ 500	\$ 1,000	
8" Ductile Iron Pipe	1	ls	\$ 600	\$ 600	
12' Ductile Iron Pipe	1	ls	\$ 15,000	\$ 15,000	
12" - 90 Elbow	1	ea	\$ 1,500	\$ 1,500	
12" Mag Meter, Forward & Reverse Data	1	ea	\$ 12,000	\$ 12,000	
12"x8" Reducer	2	ea	\$ 1,000	\$ 2,000	
12" Flange Coupling Adapter	2	ea	\$ 1,100	\$ 2,200	
12" Gate Valve	1	ea	\$ 1,950	\$ 1,950	
Excavation - Import and Compaction	30	cy	\$ 55	\$ 1,650	
570 GPM Pump Skid and Controls	1	ls	\$ 50,000	\$ 50,000	
Concrete Footing for Pump Station Building	1	ls	\$ 9,000	\$ 9,000	
Split Face CMU Building with Metal Roof	396	sf	\$ 325	\$ 128,700	
Generator Complete with Controls	1	ls	\$ 30,000	\$ 30,000	
Electrical - New Pole (Lincoln PUD)	1	ls	\$ 20,000	\$ 20,000	
Electrical - Conduit and Connection - Pole to Building	1	ls	\$ 10,000	\$ 10,000	
Electrical - SCADA and pump controls	1	ls	\$ 55,000	\$ 55,000	
Block Retaining Wall - Geogrid and Perf Pipe Drain	343	sf	\$ 30	\$ 10,290	
Landscape Restoration	1	ls	\$ 1,000	\$ 1,000	
Construction Subtotal				\$ 571,132	\$ 74,588
Subtotal Project 1 + 2				\$	645,720
General					
Mobilization - Bonds and Insurance	1	ls	\$ 30,000	\$	30,000
Construction Facilities and Temporary Controls	1	ls	\$ 15,000	\$	15,000
Demolition and Site Preparation	1	ls	\$ 5,000	\$	5,000
Contingency					
Total Project Cost				\$	695,720

Spencer Nebel

From: Spencer Nebel
Sent: Friday, February 06, 2015 2:10 PM
To: Mike Haglund (haglund@hk-law.com)
Cc: Wayne Belmont (wbelmont@co.lincoln.or.us); 'kgreenwood@portofnewport.com'; 'Ginny Goblirsch'; Michele Longo-Eder; Jennifer Schock Stevenson
Subject: USCG Air Station Timeline

Hi Mike: I don't know how important this may be, but I went back over past emails to make sure that I have a clear recollection of events leading to the USCG's participation on the meetings on the 15th and 20th in Newport. I have referenced specific emails that tie to specific facts in the evolution of this issue.

Thursday October 2, 2014 11:56 am – Lance Vanderbeck notified by Captain Trimpert via email that the Coast Guard will close its air facility in Newport on December 1, 2014

Friday October 3, 2014 - Spoke with the Mayor who also received the notification and we made the decision to call the Congressional offices of Senator Merkley, Senator Wyden and Congressman Schrader to indicate that notice had been received and seeking their assistance.

Friday October 3, 2014 10:33am – Katie Gauthier from Senator Merkley's Office emails a response and wanted to know how the City was notified of the closure.

Monday October 6, 2014 10:42am – Katie asks about setting up a meeting with the USCG at City Hall

Monday October 6, 2014 3:46pm – Katie indicates that Kevin Greenwood and Rosie Shatkin, from State Senator Roblin's office, are working on a meeting at OCCC for this purpose, so they will join with this effort.

At this point I started working jointly with Kevin on various aspects of our local response to the USCG announcement including a meeting with the USCG and stakeholders. Kevin took the lead on hosting and coordinating the stakeholders meeting with Rosie Shatkin and the federal staff representatives.

Monday October 6, 2014 4:11pm – Captain Trimpert indicated to Rosie that they are not ready to announce their participation in the meetings. There is discussion about holding two meetings, one with stakeholders in the afternoon and one with the public in the evening.

Tuesday October 7, 2014 4:22pm – Fritz Graham request a copy of the letter received by the City from the USCG announcing the closure.

At this point, I agreed to take the lead on putting together the press releases and agenda for the Town Meeting, working with Kevin. We had several meetings during this time to work out details. Worked with Wayne Belmont and others on the development of resolutions from local units of government in Lincoln County with Wayne and Kevin working with their Coastal counterparts.

Wednesday October 8, 2014 7:17am - I informed the City Council that due to Congressman Schrader's and the USCG schedules the town meeting is moving to Monday October 20th and I polled the City Council members about moving the City Council meeting to facilitate this date.

Wednesday October 8, 2014 1:29pm – Fritz Graham emails Press Release for the Congressional Delegation urging the Air Station to remain open.

Wednesday October 8, 2014 3:03pm – The City provides a draft of the Public Notice to Kevin Greenwood for the October 20th town meeting sponsored by the City and the Port.

Wednesday October 8, 2014 – In a conversation with City Councilor David Allen, David indicated that the County should be included as a sponsor of the meeting as well. I spoke with Wayne Belmont and he indicated that the County would be willing to be a co-sponsor of the Town Meeting.

Thursday October 9, 2014 8:03am – A Final Press release is issued and released by City Recorder Peggy Hawker indicating sponsorship by the Port, City and County.

Thursday October 9, 2014 4:34pm – An email from me to Rosie indicating the City's concern over the town meeting being usurped by the USCG, reflecting concerns from Michele Longo Eder, Kevin and Wayne.

This was about the time that I started having involvement with the Newport Fishermen's Wives. Kevin, Wayne, County Commissioner Terry Thompson and I started meeting regularly to work through the details of the town meeting. Terry and Wayne suggest that Bob Jacobson would be an excellent moderator for the Town Meeting.

Monday October 13, 2014 11:48pm – Kevin sends out the agenda for the October 15th stakeholders meeting. Part of the agenda is laying out the agenda for the October 20th town meeting.

Wednesday October 15, 2014 8:15pm – In an email to the City Council, I discuss the results of the eventful October 15th stakeholders meeting where the USCG announces it will not participate in the town meeting.

Thursday October 16, 2014 9:24am – Joint Congressional letter requesting for the USCG to participate in the October 20th town meeting.

Thursday October 16, 2014 2:11pm – Peggy Hawker releases agenda for the October joint town meeting.

Thursday October 16, 2014 1:03pm – Peggy Hawker forwards a moderators agenda to Bob Jacobson for the Town Meeting

This was initially a slightly chaotic effort where a number of stakeholders were working individually on efforts that eventually brought the community together to mount a more coordinated effort to reverse this decision. This is my recollection of the role that I played in this effort and the interaction I had with the USCG, elected officials and the Port and the County and the Newport Fishermen's Wives up to the October 20th Town Meeting.

The USCG reversed their decision not to participate in the town meeting due to the pressure placed on the USCG to participate by the Oregon Congressional Delegation. A conference call was held (with I believe Kevin, Wayne and myself) and Congressman Schrader's office. Congressman Schrader staff indicated that as a condition of participation by the USCG, that Congressman Schrader would moderate the town meeting. We indicated that this was a local meeting and we needed to have a local flavor to the Town Meeting and we wanted Bob Jacobson to play a role in moderating this meeting in accordance with our original plans. We worked through a compromise in which Bob would call the meeting to order, make introductory comments, introduce dignitaries and then turn the meeting over to Congressman Schrader to moderate the session. They indicated that the meeting would need to end by 7:00 p.m. We indicated that the meeting would need to go on as long as people wanted to address the issue. When the Admiral had to depart, we would continue the meeting with Bob moderating the session. We indicated that there would be several presentations by the Fishermen's wives at the beginning of the meeting. There was general agreement with the format.

At OCCC on the day of the meeting, Congressman Schrader's Chief of Staff wanted to rewrite the agenda, eliminating a number of the Fishermen Wives presentation in order to give certain other groups an opportunity to appear. I had the

opportunity to “negotiate” a spirited discussion with Michele and Congressman Schrader’s staff person. I indicated that the agenda was finalized and we needed to go forward with this process.

Overall, I had very little interaction with the USCG in my role in setting up these meetings and I find it ridiculous that the USCG are now taking credit for these two meetings to gain public input on a “possible closure of the USCG air facility in Newport”. In fact, the October 20th meeting the USCG only came after being beat up by the Oregon Congressional delegation! The first meeting was clearly set up by Rosie Shaklin, with support for staff members in conjunction with Kevin at the Port. While the USCG was a willing participant, their purpose was to justify a decision already made to close the air facility on December 1st. The second meeting was clearly a local effort to give the community a chance to speak out on this decision. The USCG didn’t agree to participate until four days before the event was held and apparently only if the meeting was moderated by Congressman Schrader. These meetings were a collaboration between the Port, the City and the County, with the active participation of the Fishermen’s Wives along with the various stakeholders.

If You need any specific emails referred to (Where a date and time is indicated) please let me know and I will be happy to forward them to you.

Spencer R. Nebel

City Manager
City of Newport, Oregon 97365
541-574-0601
s.nebel@newportoregon.gov

Spencer Nebel

From: Tim Gross
Sent: Tuesday, February 03, 2015 2:41 PM
To: 'Steve'
Cc: Spencer Nebel; Derrick Tokos; Mayor City of Newport
Subject: RE: SW Abalone/Brant Street Plan

Mr. Ferraro,

The studies that I mentioned and referenced in my letter served as the framework for the neighbors in the Coho/Brant community to establish priorities. The vast majority of the residents, through comprehensive public engagement exercises, chose to build these streets before the others. Based upon those priorities, the City has invested approximately \$200,000 in design services. The public input we are soliciting now is to shape what the details of the design looks like, not which streets to include in the design. The input we are looking for now are specific things like: what driveway width should be use on a specific driveway, what tree stays and which one goes, how to deal with an existing fence, etc.

SW 27th Street was included in the design because it provides a primary access route from Abalone to the Coho/Brant neighborhood. Storm water management was not a consideration in the selection of this street to be included in the design.

It is unfortunate that we cannot afford to pave all of the streets in the Coho/Brant neighborhood immediately, but there is a plan and funding mechanism set in place to complete these improvements in the near future.

Timothy Gross, PE
Public Works Director/City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
P 541-574-3369
F 541-265-3301
C 541-961-5313

From: Steve [mailto:steveferraro@peak.org]
Sent: Monday, February 02, 2015 4:52 PM
To: Tim Gross
Subject: SW Abalone/Brant Street Plan

DATE: February 2, 2015

TO: Timothy Gross, Public Works Director, City of Newport, t.gross@newportoregon.gov

CC: Sandra Roumagoux, Mayor, City of Newport, and City Council
<http://thecityofnewport.net/citygov/mayorcouncil.asp>

FROM: Steve Ferraro, 370 SW 29th Street, Apt. C, Newport, OR 97365 steveferraro@peak.org

RE: Response to Letter Dated January 28, 2015; SW Abalone and Brant Street Improvements

Thank for your response to my comment letters dated 1/6/2015 and 1/27/2015 regarding the SW Abalone/Brant Street Improvement Plan. Following your lead, I will be sending copies of this letter to those cced in your 1/28/2015 letter.

As I understand it, the Coho-Brant Plan and the South Beach Urban Renewal District (SBURD) Plan that you cite in 1/28/2015 letter are “working plans,” to be amended, revised and used as seen fit by the Newport City Mayor and City Council. Just because the Coho-Brant Plan was approved in August 2012 doesn’t mean it can’t be changed. Why did the City of Newport seek public comments on this plan after 2012 and why is the City of Newport still seeking further public comments on the SW Abalone/Brant Street Improvement Plan on Newport.mindmixer.com if, as you suggest, the final decisions have been made?

I’m a scientist. Perhaps I can better explain my concerns and reasoning to you with a scientific analogy. A good scientific model must include all the critical factors. Leave out a critical factor and the model will not work as intended. A fundamental problem with the SW Abalone/Brant Street Plan is that, quoting your letter, “the priority of which streets get paved first is based upon volume of both vehicles and pedestrians.” In my opinion, this is an incomplete model. I agree that the volume of vehicle and pedestrian traffic should be a major criterion. But it should not be the only one. Due consideration should also be given to the general publics’ safety and welfare.

Many streets in the South Beach area are “blighted” (South Beach Urban Renewal Plan, Amendment V). As I explained in my letter dated 1/27/2015, the danger threat of these blighted conditions to vehicles and pedestrians can be augmented as a result of the natural terrain and other factors. These danger threats are not addressed in the Plans nor are they a factor in setting priorities. Some streets in the SW Abalone/Brant Street Improvement Plan will be vastly improved while others, that are less traveled but are dangerous, are ignored. Furthermore, there are exceptions in the SW Abalone/Brant Street Plan to the “vehicle and pedestrian volume priority rule.” SW 27th Street, a street with probably less traffic than SW 29th, is being paved for better handling of storm water efficiency. If this rule can be waived for infrastructure concerns—which, by the way, I agree with—why can’t it be waived for vehicle and pedestrian safety concerns?

CC:

Derrick Tokas, Community Development Director, City of Newport

Spencer Nebel, City Manager, City of Newport

Dick Brim, 370 SW 29th Street, Apt. D, Newport, OR 97365, 541-867-7051

Judy Brim, 370 SW 29th Street, Apt. D, Newport, OR 97365, 541-867-7051

Gary Cook, 370 SW 29th Street, Apt. E, Newport, OR 97365, 541-867-7591

Linda Cook, 370 SW 29th Street, Apt. E, Newport OR 97365, 541-867-7591

Jim Stecklein, 370 SW 29th Street, Apt. F, Newport, OR 97365, 562-693-7102

Ann Stecklein, 370 SW 29th Street, Apt. F, Newport, OR 97365, 562-693-7102

Jackie Hafen, 370 SW 29th Street, Apt. A, Newport, OR 97365, 775-209-3174

Phyllis Erisman, 355 SW 29th Street, Newport, OR 97365, 541-867-3960

Evan Dwlard, 315 SW 29th Street, Newport, OR 97365, 541-961-9087

Elliott Crowder, 312 SW 29th Street, Newport, OR 97365, 541-265-9917

Daniella Crowder, 312 SW 29th Street, Newport, OR 97365, 541-265-9917

Terry Hill, 370 SW 29th Street, Apt. B, Newport, OR 97365, 541-867-3205

Judy Hill, 370 SW 29th Street, Apt. B, Newport, OR 97365, 541-867-3205, cell: 541-979-9155

169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA



www.thecityofnewport.net

MONBETSU, JAPAN, SISTER CITY

January 28, 2015

Steve Ferraro
370 SW 29th Street, Apt. C
Newport, OR 97365

RE: Response to Letter Dated January 6, 2015
SW Abalone and Brant Street Improvements

Dear Mr. Ferraro:

Thank you for your letter from January 6th and your follow up correspondence dated January 27th with your suggested changes to the scope of the SW Abalone/Brant Street Improvement Project. I have attached copies of your correspondence to this letter so the attached parties can understand the context of this response.

The scope of this project was established based upon the Tier 1 priorities defined in the Coho-Brant Infrastructure Refinement Plan which was approved in August of 2012. This plan was developed with significant input from the Coho-Brant community resulting in very specific street cross-sections and improvement priorities. Following is a link at which the Coho-Brant plan can be accessed:

http://www.thecityofnewport.net/dept/pln/SouthBeachTransportationRefinementPlanProcess_001.asp

The current design implements the street cross sections identified in the plan, and includes the streets that were identified as needing improvements first (Tier 1). These improvements are being funded entirely through contributions from the OMSI development and the South Beach Urban Renewal District (SBURD). The SBURD plan specifically identifies SW Abalone, SW Brant, SW 30th Street, and SW 27th Street as being improvements to be funded in the Phase 2 group of projects slated for the 2013-2016 timeframe. Following is a link at which the SBURD plan can be accessed:

<http://www.thecityofnewport.net/dept/pln/UrbanRenewal.asp>

The improvements on the rest of the streets in the Coho/Brant neighborhood were identified as Tier 2 and 3 projects. The funding mechanism for these projects will be partially SBURD funds used as a match to contributions provided by a Local Improvement District (LID) comprised of benefiting property owners in the neighborhood. These projects are part of the SBURD Phase 3 project group slated for the 2017 to 2020 timeframe.

The City appreciates your concerns regarding the need to pave the gravel streets in the neighborhood, however the priority of which streets get paved first is based upon volume of both vehicles and pedestrians. This is the criteria by which the Tier 1, 2 and 3 projects within the

EST.

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Coho/Brant plan were established, and it is the criteria that the City uses when paving other gravel streets in the City. The plan also placed a priority on narrow streets and pedestrian accessibility, which creates the necessity for sidewalks and pedestrian paths for pedestrian safety. Furthermore, curb and gutter is necessary for handling the storm water efficiently and preventing local flooding. I am forwarding your letter from the 27th to the design engineer to see if any of the sight-distance issues you identified on SW Brant Street can be addressed within the design.

I am pleased to see the support in the neighborhood to complete the rest of the improvements in the Coho/Brant neighborhood. I would encourage you to petition to City Council to develop a Local Improvement District (LID) so that the City can begin the process of design and be prepared to implement the improvements in a couple of years when the Phase 3 portion of the SBURD is ready to be implemented. If you need guidance regarding the process of initiating an LID, please contact Derrick Tokos, Community Development Director, at the City Of Newport for support.

I am sorry that the City is unable to support changing the design at this time. Please let me know if you have further questions or concerns. Thank you.

Sincerely,


Timothy Gross, PE
Director of Public Works/City Engineer
t.gross@newportoregon.gov
P| 541-574-3369
F| 541-265-3301

Encl. Letter dated January 6, 2015 from Like-minded citizens of South Beach, Newport
Letter dated January 27, 2015 from Steve Ferraro, 370 SW 29th Street, Apt. C, Newport

CC: Sandra Roumagoux, Mayor, City of Newport
Derrick Tokos, Community Development Director, City of Newport
Spencer Nebel, City Manager, City of Newport
Steve Ferraro, 370 SW 29th Street, Apt. C, Newport, OR 97365, 541-867-4192;
Dick Brim, 370 SW 29th Street, Apt. D, Newport, OR 97365, 541-867-7051
Judy Brim, 370 SW 29th Street, Apt. D, Newport, OR 97365, 541-867-7051
Gary Cook, 370 SW 29th Street, Apt. E, Newport, OR 97365, 541-867-7591
Linda Cook, 370 SW 29th Street, Apt. E, Newport OR 97365, 541-867-7591
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Jackie Hafen, 370 SW 29th Street, Apt. A, Newport, OR 97365, 775-209-3174
Phyllis Erisman, 355 SW 29th Street, Newport, OR 97365, 541-867-3960
Evan Dwlard, 315 SW 29th Street, Newport, OR 97365, 541-961-9087
Elliott Crowder, 312 SW 29th Street, Newport, OR 97365, 541-265-9917
Daniella Crowder, 312 SW 29th Street, Newport, OR 97365, 541-265-9917
Terry Hill, 370 SW 29th Street, Apt. B, Newport, OR 97365, 541-867-3205
Judy Hill, 370 SW 29th Street, Apt. B, Newport, OR 97365, 541-867-3205



DATE: January 6, 2015

TO: Timothy Gross, Public Works Director, City of Newport,
t.gross@newportoregon.gov

CC: Sandra Roumagoux, Mayor, City of Newport,
<http://thecityofnewport.net/citygov/mayorcouncil.asp>

FROM: Like-minded citizens of South Beach, Newport; see undersigned

RE: SW Abalone and Brant Street Improvements

We wish to thank you and the City of Newport for hosting a public meeting at the Town Hall on December 9, 2014 to inform the affected citizens of Newport about planned improvements to public streets in the South Beach area of Newport. At a prior meeting held at the Hatfield Marine Science Center Newport City Engineers solicited public comments on what street improvements the citizens living in the area considered most important. Unfortunately, we believe that several things most important to the well-being and public safety of a significant portion of the residents were not included in the plan presented at the December 9th meeting.

We believe that, as a general principle, road improvements, specifically, paving gravel streets, especially those that present a risk of harm to people and property should have priority over other improvements in the plan such as curbs, sidewalks, multiuse trails and sidewalk and trail improvements. Thus, we support the plan to pave SW Brant Street and SW 27th Street. These gravel streets are treacherous due to the unstable footing on their steep grades and their many deep ruts and potholes. For the same reasons, SW 29th Street and SW Coho Street present a safety hazard. Consequently, their paving should be given higher priority in the street improvement plan. Our proposition to prioritize the paving of these gravel streets is consistent with the City of Newport's mission: "...to effectively manage essential community services for the wellbeing and public safety of residents and visitors" and its infrastructure goal: "2.2 Continue emphasis on paving gravel streets within the City of Newport." (http://thecityofnewport.net/citygov/documents/City_of_Newport_2014-2015_Goals.pdf).

Signees names, addresses and telephone numbers (* = contact person):

*Steve Ferraro, 370 SW 29th Street, Apt. C, Newport, OR 97365, 541-867-4192;

e-mail address: stevferraro@peak.org

Dick Brim, 370 SW 29th Street, Apt. D, Newport, OR 97365, 541-867-7051

Judy Brim, 370 SW 29th Street, Apt. D, Newport, OR 97365, 541-867-7051

Gary Cook, 370 SW 29th Street, Apt. E, Newport, OR 97365, 541-867-7591
Linda Cook, 370 SW 29th Street, Apt. E, Newport OR 97365, 541-867-7591
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Terry Hill, 370 SW 29th Street, Apt. B, Newport, OR 97365, 541-867-3205
Judy Hill, 370 SW 29th Street, Apt. B, Newport, OR 97365, 541-867-3205, cell: 541-979-9155

DATE: January 27, 2015

TO: Timothy Gross, Public Works Director, City of Newport,
t.gross@newportoregon.gov

CC: Sandra Roumagoux, Mayor, City of Newport,
<http://thecityofnewport.net/citygov/mayorcouncil.asp>

FROM: Steve Ferraro, 370 SW 29th Street, Apt. C, Newport, OR,
steveferraro@peak.org

RE: South Beach Street Improvement Plan

This letter is a follow-up to the letter I submitted to you on 1/6/2015 regarding the South Beach Street Improvement Plan. In the previous comment letter the fourteen signers proposed a general guiding principle for the plan: "road improvements, specifically, paving gravel streets, especially those that present a risk of harm to people and property should have priority over other improvements in the plan such as curbs, sidewalks, multiuse trails and sidewalk and trail improvements." Herein, for clarity, I briefly explain what I consider to be some of the major risks that SW 29th Street and SW Coho Street currently pose to residents and visitors.

Vehicle-on-vehicle and vehicle-on-person accidents are, in my opinion, major risks. Loose gravel roads, if flat, properly maintained, and otherwise safe may not be risky. But loose gravel roads when combined with blind curves, steep downhill slopes, multiple driveways entering the roads along the downhill slopes and potholes and ruts can be very dangerous. All these conditions exist on SW 29th Street. On SW Coho there are no blind curves or driveway entrances, but the other dangerous conditions exist.

The turn from Brant Street onto SW 29th is a blind curve; you can't see if anyone is in the road until after you turn. There is a downhill (~30°) slope on SW 29th beginning at its intersection with Brant Street. Five driveways intersect SW 29th within ~20 yards from its intersection with Brant. After turning onto SW 29th there is little time to apply brakes if other vehicles happen to be pulling out of any of the five driveways or people are walking on the road. Furthermore, braking does not insure stopping the vehicle in time as the vehicle continues sliding downhill on the loose gravel. Making driving conditions even worse and more accident-prone, SW 29th and SW Coho are typically rutted and heavily potholed. Even after grading, typically done once a year, ruts and potholes quickly reappear due to traffic and rain runoff.

The conditions described above make driving conditions even more hazardous for bicyclists and motorcyclists. A minor collision between a car and a bicycle, motorcycle or pedestrian can be life threatening. Unlike drivers of four-wheeled vehicles, bicyclists

and motorcyclists are required to balance the vehicles they operate. Ruts and potholes can make it impossible to maintain the delicate balance required resulting in falls and personal injuries. I am a careful and accomplished motorcyclist. Even so, last fall I had to put my motorcycle down to avoid a more serious accident with a car near the intersection of Brant and SW 29th. Navigating my motorcycle down the loose gravel slopes and past the ruts and potholes on SW 29th and SW Coho is a continuing, nerve-wracking challenge. Several people, I'm told, have had bad falls off their bicycles on SW 29th.

Another major risk of loose gravel streets is the health effects of street dust on residents and visitors. Among other things, street dust has been linked to asthma, allergies, and lung cancer (information obtained from a Google search on the words "street dust human health," e.g., <http://en.wikipedia.org/wiki/Dust>). Clouds of street dust are kicked up by every passing vehicle on SW 29th and SW Coho. Street dust clouds are especially bad during the dry season.

I hope these comments help you better understand why SW 29th and SW Coho warrant higher priority consideration in the South Beach Street Improvement Plan.

Spencer Nebel

From: Trautmann, Cara <Cara.Trautmann@charter.com>
Sent: Thursday, January 29, 2015 11:29 AM
Subject: Notice from Charter Communications - Programming Changes



Charter's video lineup is continually evolving to meet the changing needs of its customers. Recently we increased our total high-definition lineup and boosted our video on demand offering and increased our broadband speeds following our move to an All Digital platform.

From time-to-time Charter makes adjustments to its channel lineup designed to enhance and improve our video product. Effective March 3, 2015, some channels will be removed from our lineup while others will move between video packages Charter offers in your community.

The following networks will be removed from our lineup:

Channel Name	Channel #
The Sportsman Channel, The Sportsman Channel HD	417, 831
UP, UP HD	169, 867
World Fishing Network, World Fishing Network HD	420, 829
Pivot	170, 852

The following networks will move into new programming tiers:

Channel Name	Current Tier	New Tier
MLB Network	Charter Digital Home/Charter Select	Digital View Plus/Digi Tier 1
Disney Jr.	Charter Select	Digi Tier 1

Customers with questions are encouraged to call **1-888-GET CHARTER**. To review the complete channel lineup visit: www.charter.com/channellineup. Please contact me with any questions or comments you may have at cara.trautmann@charter.com.

Sincerely,

Cara



Cara Trautmann | Government Affairs | 360.258.5104
222 NE Park Plaza Drive, Suite 231 | Vancouver, WA 98684

Lineup: Astoria, OR (Rebuild), Dallas/Monmouth, OR (Digital), Lincoln City/Tillamook, OR (VOD), Newport/Toledo, OR, Red Bluff, CA(Rebuilding, CA(Rebuild)) (B/O), Redding, CA(Rebuild), The Dalles, OR



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Richard D. Nored, P.E.
Joseph A. Slack, A.I.A.
Russ Dodge, P.L.S.
Stephen R. Cox

January 23, 2015

City of Newport
169 SW Coast Highway
Newport, Oregon 97365

Attn: Spencer Nebel, City Manager

Re: Newport Municipal Airport Building Repair
Project # 14.17

Dear Spencer:

I really enjoyed working on your project and would wholeheartedly like to edit/wrap up/finalize the construction and bidding documents for this project and get this project bid for the City of Newport. We were complete on the FBO Building and could easily get this project out to bid in the near future to take advantage of good bidding climate for bidders getting their work lined up for the summer. We missed this opening last summer, and as you know we were out to bid trying to get in before fall/winter weather. We could easily regroup and get it back on track.

The City has paid us to prepare these construction and bidding documents and could take advantage of this work being in a good spot to reissue. Whatever changes Melissa has we can make at no cost to the City. Also, our existing fee rates for Bidding and Construction Administration that were part of our original agreement would remain.

The FBO Building is a very unique structural repair project and we explored many different methods and ideas of strengthening the building. We arrived at a final solution that makes a lot of sense from a constructability standpoint, keeping disruption to a minimum, while still making the superstructure improvements. The end result is a building that exceeds code requirements and meets the City's design criteria (exposure D, 110 mph/exposure C, 120 mph). We received input from contractors during the bidding process to further this direction of improvement that we would incorporate in the drawings prior to bidding.

I would sincerely hope the City will consider having HGE wrap it up and "take it to the hoop". Thank you for your consideration.

Very truly yours,

**HGE INC., Architects, Engineers,
Surveyors & Planners**


Joseph A. Slack, AIA, LEED AP
Principal Architect

c: Tim Gross, Public Works Director
Melissa Román, Engineering Technician

ALBANY
Democrat-Herald**City to vote on new airport operator**

19 HOURS AGO • JENNIFER MOODY ALBANY
DEMOCRAT-HERALD

The city of Albany is a step away from hiring a new person to operate the Albany Municipal Airport.

Members of the Albany City Council are scheduled to vote Wednesday on a five-year contract with a Wilsonville resident, Tony Hann, as the airport's new fixed-base operator.

The airport last had an FBO in December 2010. The city has leased the hangars and managed the fueling system since, with volunteer help for general building maintenance.

A 2011 request for proposals came back with just two applicants, neither of which met the city's criteria, according to a memo from Jon Goldman, transportation superintendent.

Goldman said Hann approached the city last summer about becoming the fixed-base operator.

Chris Bailey, assistant public works director and operations manager, said Hann's offer closely matched the city's original proposal request.

If approved, Hann's contract calls for him to provide aircraft storage, aircraft maintenance, aircraft rental, flight instruction, radio assistance to pilots, a courtesy car for visiting pilots, access to a 24-hour pilot lounge with restrooms, access to computer stations for flight planning, and management of the aviation fuel system.

Hann will lease the north portion of the main aviation building, with the hangars, for his business, Bailey said. The other buildings have separate tenants.

The proposal essentially is a financial wash for Albany, which has been paying for fuel and maintenance, but also received revenue from fuel sales and leasing hangars.

The city will receive a monthly lease payment of \$1,500 from Hann, plus a payment for whatever fuel is still at the site, Bailey said. Estimated overall impact to the city is a gain of about \$1,300.

Hann calls his business Infinite Air Center, and said he will be open at the Albany Municipal Airport as of Monday, Feb. 2.

A private pilot and a former senior network administrator for Routh Crabtree Olsen, Hann, 41, said he has always loved aviation. He was looking for a way to pursue that passion anyway when the company downsized and he lost his job.

"I just saw the opportunity and the potential for that airport, that business, and it was just perfect for me," he said.

He said he plans to specialize in the light sport category of aircraft.

Bailey said the city is excited about the prospect of having a new operator.

"The Albany airport, if you look at it from a business standpoint, is in a really good location, and I think it has potential for a really good business investment for an FBO," she said. "That airport is busy."



Opening Doors

Federal Strategic Plan to Prevent and End Homelessness :: 2010

OVERVIEW

Background

Our nation has made significant progress over the last decade reducing homelessness in specific communities and with specific populations. Communities across the United States—from rural Mankato, Minnesota, to urban San Francisco—have organized partnerships between local and state agencies and with the private and nonprofit sectors to implement plans to prevent, reduce, and end homelessness. These communities, in partnership with the federal government, have used a targeted pipeline of resources to combine housing and supportive services to deliver permanent supportive housing for people who have been homeless the longest and are the frailest. The results have been significant.

In many respects, this current period of economic hardship mirrors the early 1980s when widespread homelessness reappeared for the first time since the Great Depression. Communities will need all of the tools in our grasp to meet the needs of those experiencing homelessness, including families and far too many of our nation's Veterans. In particular, we are concerned that recent national data shows a significant rise in family homelessness from 2008 to 2009.

This is the right time to align our collective resources toward eradicating homelessness. There is a legislative mandate from the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 and bi-partisan support to adopt a collaborative approach. Most importantly, we now know how to address this important issue on a large scale. Over the past five years, the public and private sectors have made remarkable progress in reducing chronic homelessness. By developing the "technology" of combining permanent housing and a pipeline of support services, there has been a reduction of chronically ill, long-term homeless individuals by one-third in the last five years.

Key Elements of the Plan

This Plan outlines an interagency collaboration that aligns mainstream housing, health, education, and human services to prevent Americans from experiencing homelessness. As the most far-reaching and ambitious plan to end homelessness in our history, this Plan will both strengthen existing partnerships—such as the combined effort of HUD and the Veterans Affairs to help homeless Veterans—and forge new partnerships between agencies like HUD, HHS, and the Department of Labor.

HUD Secretary Shaun Donovan, HHS Secretary Kathleen Sebelius, VA Secretary Eric K. Shinseki, and Labor Secretary Hilda Solis declared the vision of the Plan to be centered on the belief that "no one should experience homelessness—no one should be without a safe, stable place to call home." The Plan is focused on four key goals:

- Finish the job of ending chronic homelessness in five years;
- Prevent and end homelessness among Veterans in five years;
- Prevent and end homelessness for families, youth, and children in ten years; and
- Set a path to ending all types of homelessness.

This Plan is a roadmap for joint action by the 19 United States Interagency Council on Homelessness member agencies along with local and state partners in the public and private sectors. It will provide a reference framework for the allocation of resources and the alignment of programs to achieve our goal to prevent and end homelessness in America. We will take action in partnership with Congress, states, localities, philanthropy, and communities around the country.

From years of practice and research, we know what works to prevent and end homelessness. Evidence points to the role housing plays as an essential platform for human and community development. Stable housing is the foundation upon which people build their lives—absent a safe, decent, affordable place to live, it is next to impossible to achieve good health, positive educational outcomes, or reach one's economic potential. Indeed, for many persons living in poverty, the lack of stable housing leads to costly cycling through crisis-driven systems like foster care, emergency rooms, psychiatric hospitals, emergency domestic violence shelters, detox centers, and jails. By the same token, stable housing provides an ideal launching pad for the delivery of health care and other social services focused on improving life outcomes for individuals and families. More recently, researchers have focused on housing stability as an important ingredient for the success of children and youth in school. When children have a stable home, they are more likely to succeed socially, emotionally, and academically.

Capitalizing on this evidence, this Plan builds on the significant reforms of the last decade and the commitment by the Obama administration to directly address homelessness through inter-governmental collaboration. Successful implementation of this Plan will devote critical resources to advance stability and permanency for the more than 640,000 men, women, and children who are homeless on a single day in America. At the same time, its execution will produce approaches to homelessness that are cost-effective for local, state, and federal government. The Plan's content presents initial goals, themes, objectives, and strategies and was generated through the collaboration and consensus of the 19 USICH member agencies. Since the HEARTH Act requires USICH to update the Plan annually, the substance of this Plan represents the beginning of a process toward our goal of preventing and ending homelessness.

The Affordable Care Act, a landmark initiative of the Obama Administration, will further the Plan's goals by helping numerous families and individuals experiencing homelessness to get the health care they need. Medicaid will be expanded to nearly all individuals under the age of 65 with incomes up to 133 percent of the federal poverty level (currently about \$15,000 for a single individual). This significant expansion will allow more families and adults without dependent children to enroll in Medicaid in 2014. In addition, Health Reform will support demonstrations to improve the ability of psychiatric facilities to provide emergency services. It will also expand the availability of medical homes for individuals with chronic conditions, including severe and persistent mental illness. Expansion of community health centers is another major change that will serve many vulnerable populations, including those who are homeless or at risk of being homeless.

In this economic climate, principles of fiscal discipline must be applied to any work that we undertake. Thus, the federal government's ability to address these issues will be dictated, in part, by the state of the economy, and decisions about incremental funding will need to be made on an annual basis through the regular budgeting process. A fiscally prudent government response is imperative—local, state, and federal governments cannot afford to invest in anything but the most evidence-based, cost-effective strategies. The Plan is based on a body of high quality research that demonstrates how targeted comprehensive solutions are far more effective and cost-efficient than temporary fixes.

Focus and Structure

The Plan proposes a set of strategies that call upon the federal government to work in partnership with state and local governments, as well as the private sector to employ cost effective, comprehensive solutions to end homelessness. The Plan recognizes that the Federal government needs to be smarter and more targeted in its response and role, which also includes supporting the work that is being done on the ground. The Federal government's partners at the local level have already made tremendous strides, with communities across the nation – including over 1,000 mayors and county executives across the country – having developed plans to end homelessness. The Plan highlights that by collaborating at all levels of government, the nation can harness public resources and build on the innovations that have been demonstrated at the local level and in cities nationwide to provide everyone—from the most capable to the most vulnerable—the opportunity to reach their full potential.

The Plan includes 10 objectives and 52 strategies. These objectives and strategies contribute to accomplishing all four goals of the Plan.

The first section details the development of this first-ever comprehensive federal plan to prevent and end homelessness. This section sets out the core values reflected in the Plan and the key principles that guided the process. It also describes the opportunities for public comment offered during the development of the Plan.

The second section of the Plan provides an overview of homelessness in America. Since homelessness takes many different forms by population or geographic area, we provide a synopsis of the issues facing these varying groups experiencing homelessness. The section also addresses the sources of data used throughout the Plan.

The third section represents the core of the Plan including the objectives and strategies to prevent and end homelessness. It provides the logic behind each objective, the departments and agencies involved, the key partners, and strategies to achieve the respective objectives.

The Plan concludes with a section that defines the steps USICH partners will take next, providing a framework for action. This includes the impact we aspire to have that will require active work from many partners at all levels of government and across the private sector. This section provides a brief summary about the context in which we move forward in terms of the economic, policy, and political challenges and opportunities. There is a discussion of the measures that will be used to track progress over time toward the Plan goals. Initiatives currently under way that help advance the Plan goals are summarized. Finally, the section lays out the documents USICH will produce to provide information and transparency to the public, Congress, and our partners going forward.

Next Steps

“Ending homelessness” requires improved systems and programs at all levels. This Plan calls for a fundamental shift in how the federal government and communities across the country respond to homelessness. To prevent and end homelessness, targeted programs must be fully integrated with mainstream programs that provide housing, health, education, and human services. The Plan calls on all relevant mainstream programs to prioritize housing stability for people experiencing or at risk of homelessness. If someone does experience homelessness, well orchestrated systems should be in place to rapidly return people to housing. People experiencing homelessness should have affordable housing and the support they need to keep it.

Simultaneously, while homelessness has grown, our knowledge about what can be done to prevent and end homelessness has also increased. This first ever comprehensive Federal Strategic Plan to Prevent and End Homelessness is a roadmap for what we must all do to change the landscape of homelessness in America.

By setting the goals of ending Veteran and chronic homelessness within five years, and family, youth and child homelessness in ten, *Opening Doors* sets targets to which the country should aspire. The Council believes it is important to set goals, even if aspirational, for true progress to be made. Working together, we can connect public and private resources—consistent with principles of fiscal discipline—to finish the effort started by mayors, governors, legislatures, nonprofits, faith-based and community organizations, and business leaders across our country to end homelessness. The Federal Strategic Plan provides a clear path to get there.

Federal Strategic Plan to Prevent and End Homelessness :: 2010

VISION *No one should experience homelessness—no one should be without a safe, stable place to call home.*

- GOALS**
- ▶ *Finish the job of ending chronic homelessness in 5 years*
 - ▶ *Prevent and end homelessness among Veterans in 5 years*
 - ▶ *Prevent and end homelessness for families, youth, and children in 10 years*
 - ▶ *Set a path to ending all types of homelessness*

THEME: INCREASE LEADERSHIP, COLLABORATION, AND CIVIC ENGAGEMENT

OBJECTIVE	STRATEGIES
<p>ONE Provide and promote collaborative leadership at all levels of government and across all sectors to inspire and energize Americans to commit to preventing and ending homelessness</p>	<p>a. Educate the public on the scope, causes, and costs of homelessness, the Federal Strategic Plan to Prevent and End Homelessness, and the reasons for taking action.</p> <p>b. Engage state, local, and tribal leaders in a renewed commitment to prevent and end homelessness in their communities.</p> <p>c. Get states and localities to update and implement plans to end homelessness to reflect local conditions and the comprehensiveness of this Federal Plan, as well as to develop mechanisms for effective implementation.</p> <p>d. Involve citizens—including people with firsthand experience with homelessness—and the private sector—businesses, nonprofits, faith-based organizations, foundations, and volunteers—in efforts to prevent and end homelessness.</p> <p>e. Test, model, and learn more about interagency collaboration.</p> <p>f. Seek opportunities to reward communities that are collaborating to make significant progress preventing and ending homelessness.</p> <p>g. Review budget processes to determine avenues for recognizing savings across partners resulting from interventions to prevent and end homelessness.</p> <p>h. Seek opportunities for engaging Congressional committees collaboratively on issues related to preventing and ending homelessness.</p>
<p>TWO Strengthen the capacity of public and private organizations by increasing knowledge about collaboration, homelessness, and successful interventions to prevent and end homelessness</p>	<p>a. Collaborate on and compile research to better understand best practices, the cost-effectiveness of various intervention, metrics to measure outcomes, and the gaps in research. Identify and fill gaps in the body of knowledge.</p> <p>b. Coordinate federal technical assistance resources related to preventing and ending homelessness and provide information to states, tribes, and local communities on how to access the support they need.</p> <p>c. Make information more readily available on best practices and strategies to finance them at scale.</p> <p>d. Make information more readily available on working effectively with special populations, and the overlap between and among groups.</p> <p>e. Attend to the unique needs of rural and tribal communities to respond to homelessness and develop effective strategies and programs that use best practices that contribute to housing stability and prevent and end homelessness on American Indian lands, in rural/frontier areas, and urban centers.</p> <p>f. Develop and maintain an inventory of federal emergency response programs to help communities identify what is being funded in their community with federal resources and which resources are available to them.</p> <p>g. Continue to increase use of the Homeless Management Information System by local communities and encourage its use by additional programs targeted at homelessness. Develop standards that permit data inter-operability between data systems while protecting the confidentiality of all individuals.</p> <p>h. Create a common data standard and uniform performance measures if feasible, especially related to housing stability, across all targeted and mainstream federal programs. This will facilitate data exchanges and comparisons between both targeted programs and mainstream systems in order to improve identification of people experiencing or at risk of homelessness. Encourage the dynamic use of state and local data warehouses.</p>

THEME: INCREASE ACCESS TO STABLE AND AFFORDABLE HOUSING

OBJECTIVE	STRATEGIES
<p>THREE Provide affordable housing to people experiencing or most at risk of homelessness</p>	<p>a. Support rental housing subsidies through federal, state, local, and private resources to individuals and families experiencing or most at risk of homelessness. The rent subsidies should be structured so that households pay no more than 30 percent of their income for housing.</p> <p>b. Expand the supply of affordable rental homes where they are most needed through federal, state, and local efforts. To provide affordable housing to people experiencing or most at risk of homelessness, rental subsidies should better target households earning significantly less than 30 percent of the Area Median Income so that residents pay no more than 30 percent of their income for housing. The supply will need to include units that are accessible to persons with mobility needs.</p> <p>c. Improve access to federally-funded housing assistance by eliminating administrative barriers and encouraging prioritization of people experiencing or most at risk of homelessness.</p> <p>d. Increase service-enriched housing by co-locating or connecting services with affordable housing.</p>

INCREASE ACCESS TO STABLE AND AFFORDABLE HOUSING (cont'd)

OBJECTIVE	STRATEGIES
<p>FOUR Provide permanent supportive housing to prevent and end chronic homelessness</p>	<p>a. Improve access to and use of supportive housing by encouraging prioritization and targeting for people who need this level of support to prevent or escape homelessness.</p> <p>b. Create protocols and consider incentives to help people who have achieved stability in supportive housing—who no longer need and desire to live there—to move into affordable housing to free units for others who need it.</p> <p>c. Expand the supply of permanent supportive housing, in partnership with state and local governments and the private sector.</p> <p>d. Assess options for more coordinated, sustainable, dependable sources of supportive housing service funding. This should include consideration of incentives for local communities to develop supportive housing and how best to coordinate service funding with housing funding.</p>

THEME: INCREASE ECONOMIC SECURITY

OBJECTIVE	STRATEGIES
<p>FIVE Increase meaningful and sustainable employment for people experiencing or most at risk of homelessness</p>	<p>a. Collaborate with economic recovery and jobs programs to ensure that job development and training strategies focus attention on people who are experiencing or most at risk of homelessness.</p> <p>b. Review federal program policies, procedures, and regulations to identify educational, administrative, or regulatory mechanisms that could be used to improve access to work support.</p> <p>c. Develop and disseminate best practices on helping people with histories of homelessness and barriers to employment enter the workforce, including strategies that take into consideration transportation, child care, child support, domestic violence, criminal justice history, disabling conditions, and age appropriateness.</p> <p>d. Improve coordination and integration of employment programs with homelessness assistance programs, victim assistance programs, and housing and permanent supportive housing programs.</p> <p>e. Increase opportunities for work and support recovery for Veterans with barriers to employment, especially Veterans returning from active duty, Veterans with disabilities, and Veterans in permanent supportive housing.</p>
<p>SIX Improve access to mainstream programs and services to reduce people's financial vulnerability to homelessness</p>	<p>a. Document, disseminate, and promote the use of best practices in expedited access to income and work supports for people experiencing or at risk of homelessness. This includes improved outreach to homeless assistance providers and collaborations across government and with community nonprofits, online consolidated application processing, and electronic submission. Consider lessons learned from the SSI/SSDI Outreach, Access and Recovery Initiative (SOAR), and the Homeless Outreach and Projects and Evaluation Initiative (HOPE).</p> <p>b. Review federal program policies, procedures, and regulations to identify administrative or regulatory mechanisms that could be used to remove barriers and improve access to income supports.</p> <p>c. Enhance public information, targeted communications, and a national toll-free homeless call center to ensure that all Veterans and their families know they can obtain homelessness prevention assistance from the VA or other places in their community.</p> <p>d. Create clear pathways to greater financial independence. Collaborate to review program eligibility and termination criteria across the range of programs which people experiencing or at risk of homelessness may access. Identify changes that should be made to create incentives for work, earning and retaining income while maintaining access to health coverage, housing assistance, child care, etc. until a household is earning enough through employment to be financially stable.</p> <p>e. Prepare for Medicaid expansion to effectively enroll people who experience or are most at risk of experiencing homelessness. This should include systems to reach out to, engage, and enroll newly eligible people in health care insurance benefits.</p>

THEME: IMPROVE HEALTH AND STABILITY

OBJECTIVE	STRATEGIES
<p>SEVEN Integrate primary and behavioral health care services with homeless assistance programs and housing to reduce people's vulnerability to and the impacts of homelessness</p>	<p>a. Encourage partnerships between housing providers and health and behavioral health care providers to co-locate or coordinate health, behavioral health, safety, and wellness services with housing and create better resources for providers to connect patients to housing resources.</p> <p>b. Build upon successful service delivery models to provide services in the homes of people who have experienced homelessness including using Medicaid-funded Assertive Community Treatment Teams for those with behavioral health needs.</p> <p>c. Seek opportunities to establish and evaluate the effectiveness of a "medical home" model to provide integrated care for medical and behavioral health, and to improve health and reduce health care costs in communities with the largest number of people experiencing homelessness.</p> <p>d. Seek opportunities to establish medical respite programs in communities with the largest number of people experiencing homelessness to allow hospitals to discharge people experiencing homelessness with complex health needs to medical respite programs that will help them transition to supportive housing.</p> <p>e. Increase availability of behavioral health services, including community mental health centers, to people experiencing or at risk of homelessness.</p> <p>f. Improve access to child and family services that improve early child development, educational stability, youth development, and quality of life for families—including expectant families, children, and youth experiencing or most at risk of homelessness.</p>

THEME: IMPROVE HEALTH AND STABILITY (cont'd)

OBJECTIVE	STRATEGIES
<p>EIGHT Advance health and housing stability for youth aging out of systems such as foster care and juvenile justice</p>	<p>a. Improve discharge planning from foster care and juvenile justice to connect youth to education, housing, health and behavioral health support, income supports, and health coverage prior to discharge.</p> <p>b. Review federal program policies, procedures, and regulations to identify administrative or regulatory mechanisms that could be used to remove barriers and improve access to stable health care, housing, and housing supports for youth.</p> <p>c. Promote targeted outreach strategies to identify youth experiencing homelessness who are most likely to end up in an emergency room, hospital, jail, or prison, and connect them to the housing and support they need.</p>
<p>NINE Advance health and housing stability for people experiencing homelessness who have frequent contact with hospitals and criminal justice</p>	<p>a. Improve discharge planning from hospitals, VA medical centers, psychiatric facilities, jails, and prisons to connect people to housing, health and behavioral health support, income and work supports, and health coverage prior to discharge.</p> <p>b. Promote targeted outreach strategies to identify people experiencing homelessness who are most likely to end up in an emergency room, hospital, jail, or prison, and connect them to the housing and support they need.</p> <p>c. Increase the number of jail diversion courts at the state and local levels that are linked to housing and support, including those specifically for Veterans, those experiencing homelessness, or people with mental health issues or drug abuse problems.</p> <p>d. Reduce criminalization of homelessness by defining constructive approaches to street homelessness and considering incentives to urge cities to adopt these practices.</p>

THEME: RETOOL THE HOMELESS CRISIS RESPONSE SYSTEM

OBJECTIVE	STRATEGIES
<p>TEN Transform homeless services to crisis response systems that prevent homelessness and rapidly return people who experience homelessness to stable housing</p>	<p>a. Develop and promote best practices for crisis response programs and increase their adoption by agencies receiving federal funds.</p> <p>b. Determine opportunities to utilize mainstream resources to provide housing stabilization assistance to clients who are homeless or at high risk of homelessness.</p> <p>c. Develop implementation strategies for the HEARTH Act—especially the new Emergency Solutions Grant—that sustain best practices learned from the Homelessness Prevention and Rapid Re-Housing Program and the Rapid Re-Housing Demonstration.</p> <p>d. Ensure continuity in the provision of homeless prevention and rapid re-housing services to families, youth, and individuals—including Veterans and their families—through HUD’s Homelessness Prevention and Rapid Re-Housing Program.</p> <p>e. Ensure that homelessness prevention and rapid re-housing strategies are coordinated with Education for Homeless Children and Youth, and incorporated within federal place-based strategies to improve neighborhoods and schools, including Promise Neighborhoods and Choice Neighborhoods.</p>

VER. 06/13/10



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Or visit: www.usich.gov

2012

Introductory Guide to the Continuum of Care (CoC) Program

Understanding the CoC Program and the requirements of
the CoC Program Interim Rule

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1. THE CONTINUUM OF CARE (CoC) PROGRAM

The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) amended the McKinney-Vento Homeless Assistance Act. Among other changes, the HEARTH Act consolidated the three separate McKinney-Vento homeless assistance programs (Supportive Housing program, Shelter Plus Care program, and Section 8 Moderate Rehabilitation SRO program) into a single grant program known as the Continuum of Care (CoC) Program.

HUD will publish the Continuum of Care Program interim rule in the *Federal Register*. The rule was posted on HUD's web site and now governs the CoC Program.

The CoC Program is designed to assist individuals (including unaccompanied youth) and families experiencing homelessness and to provide the services needed to help such individuals move into transitional and permanent housing, with the goal of long-term stability. More broadly, the program is designed to promote community-wide planning and strategic use of resources to address homelessness; improve coordination and integration with mainstream resources and other programs targeted to people experiencing homelessness; improve data collection and performance measurement; and allow each community to tailor its program to the particular strengths and challenges within that community.

Each year, HUD awards CoC Program funding competitively to nonprofit organizations, States, and/or units of general purpose local governments, collectively known as **recipients**. In turn, recipients may contract or subgrant with other organizations or government entities, known as **subrecipients**, to carry out the grant's day-to-day program operations.

1.1 Overview of CoC Program User Guide Series

A series of user guides is being developed to help CoCs, recipients, and subrecipients administer CoC Program funds (see box on next page). Recipients and subrecipients are the primary audience for the user guide series. All user guides will be accessible on the Homelessness Resource Exchange when they are available.

This user guide provides an introduction to the CoC Program and the requirements found in the CoC Program interim rule.

Overview of Forthcoming CoC User Guide Series

Establishing and Operating a CoC: This user guide outlines how to create an effective and representative Continuum of Care in order to fulfill the roles and responsibilities set out in the CoC Program interim rule.

Introduction to Unified Funding Agencies (UFA): This user guide discusses the process for becoming a UFA and the roles and responsibilities that accompany it.

Determining and Documenting Homeless and At Risk Status, Income, and Disability: This user guide discusses the criteria used to define homelessness and at risk of homelessness, including income, disability, and associated recordkeeping requirements.

CoC Program Components and Eligible Costs: This user guide reviews the five CoC program components and the costs that recipients and subrecipients may incur in administering and operating CoC projects.

CoC Program Funding for Homeless Management Information System (HMIS): This user guide reviews the role of the HMIS within the CoC and the differences between eligible HMIS costs incurred by recipients as part of a project and eligible costs incurred by the HMIS lead in establishing, operating, and overseeing the use of the CoC's HMIS.

CoC Program's High-Performing Community: This user guide discusses how CoCs may become a high-performing community (HPC) and provide homelessness prevention assistance. It also outlines the populations that may be served, the specific activities that may be funded, and the additional requirements associated with administering the activities.

Project Administration and General Program Requirements: This user guide describes project administrative costs and general program requirements applicable to the CoC Program—regardless of which components are carried out—such as match, calculating rents and occupancy charges, timeliness standards, and terminations.

Grant Administration: This user guide reviews the standards for administering a CoC grant, including recordkeeping requirements and how to make project changes.

1.2 Citations within the Guides

Throughout this guide, you will see references to specific provisions of the McKinney-Vento Homeless Assistance Act as well as references to the Code of Federal Regulations (CFR). You may locate the relevant areas in the Act by visiting www.hudhre.info/documents/HomelessAssistanceActAmendedbyHEARTH.pdf.

To locate particular regulations, visit ecfr.gpo.gov/ and select Title 24 for the HUD regulations. You may then select the particular part by number that you want to read.

2. OVERVIEW OF THE CONTINUUM OF CARE PROGRAM INTERIM RULE

2.1 Purpose of the CoC Program

The Continuum of Care program is designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability.

Specifically, 24 CFR part 578.1 of the CoC Program interim rule states that the primary purpose of the CoC Program is to:

1. Promote community-wide commitment to the goal of ending homelessness
2. Provide funding for efforts by nonprofit providers, States, and local governments to re-house homeless individuals and families rapidly while minimizing the trauma and dislocation caused to homeless individuals, families, and communities as a consequence of homelessness
3. Promote access to and effective use of mainstream programs by homeless individuals and families
4. Optimize self-sufficiency among individuals and families experiencing homelessness

2.2 Key Changes for CoCs

The CoC Program interim rule expands and codifies into law the existing community-wide planning and application efforts of the Continuum of Care. Since 1995, HUD has requested that communities submit a single application for homeless assistance funding through a locally established CoC. Over the years, CoCs have been encouraged to undertake several additional planning and administrative tasks, but without codified definitions of the associated responsibilities. The CoC Program interim rule clearly defines the CoC's responsibilities and allows collaborative applicants to apply to HUD for planning funds on behalf of CoCs to support existing and new responsibilities. The interim rule also requires increased collaboration between recipients of Emergency Solutions Grant (ESG) funding and CoCs to ensure a community-wide coordinated plan for homeless housing and services and homelessness prevention assistance.

Further, the CoC Program interim rule seeks to promote some of the best practices that have emerged since passage of the HEARTH Act. It is important for CoCs, recipients, and subrecipients to understand and integrate into their work these practices related to centralized or coordinated intake, rapid re-housing, performance measurement, and increased access to mainstream services. The CoC Program interim rule defines these activities and the requirements for their implementation at the CoC and recipient/subrecipient levels. Section 3 of this user guide details these CoC responsibilities.

2.3 Key Changes for Programs

The CoC Program interim rule consolidates the Supportive Housing Program (SHP) and the Shelter Plus Care (S+C) program and the Section 8 Moderate Rehabilitation SRO program into a single program, the CoC Program. HUD expects that the change will streamline administration of the programs, thereby increasing the efficiency and effectiveness with which clients are housed and receive services.

To accomplish CoC Program goals, funds may support activities under five primary **program components**: permanent housing (permanent supportive housing and rapid re-housing), transitional housing, supportive services only, HMIS and, for HUD-designated high-performing communities, homelessness prevention. These five program components are briefly described in section 4.3 of this user guide.

While implementing the CoC Program interim rule, HUD intends to ensure existing housing for homeless persons is maintained to the extent desired by the CoC and that program participants do not become homeless because funding is withdrawn. All current SHP and S+C recipients and subrecipients are eligible for renewal under the CoC Program as long as recipients are compliant with grant requirements and conditions and maintain the same scope as the current grant. More guidance will be provided in the CoC Program NOFA and related application materials.

3. ESTABLISHING AND OPERATING THE CoC

In 1995, HUD established the competitive CoC funding application process to provide resources to communities to implement community-wide, coordinated efforts for assessing and addressing the housing and service needs of individuals and families that were homeless or at risk of homelessness. The CoC is the group that takes on coordination of homeless services and homelessness prevention activities across a specified geographic area. Through the CoC application process, communities were able to submit to HUD a consolidated application to fund homelessness assistance programs.

Since the CoC application's inception, CoCs have operated under guidance published each year in HUD's annual Notice of Funding Availability. The CoC Program interim rule provides formal regulations to guide the establishment and operation of CoCs.

3.1 Establishing the CoC

To carry out the primary purpose of the CoC Program, HUD requires representatives of relevant organizations¹ (e.g., nonprofit organizations, victim services providers, local governments) to form a Continuum of Care to serve a specific geographic area.

In addition, each CoC must establish a board to act on its behalf, and the CoC may appoint additional committees or workgroups to fulfill its responsibilities. The CoC must develop a governance charter to document all groups created to support the CoC and each group's relative responsibilities.

CoCs have two years from the effective date of the CoC Program interim rule to establish a board, which is required to meet the governance requirements detailed in the regulations.

¹ The CoC Program interim rule states that the organizations include nonprofit homeless providers, victim services providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless individuals.

The CoC Program interim rule requires that CoC boards must:

- Include at least one homeless or formerly homeless individual
- Represent the relevant organizations and projects serving homeless subpopulations (such as persons with substance use disorders; persons with HIV/AIDS; veterans; the chronically homeless; families with children; unaccompanied youth; the seriously mentally ill; and victims of domestic violence, dating violence, sexual assault, and stalking) within the CoC's geographic area.

Many CoCs may already have satisfied the CoC Program interim rule's requirements; however all CoCs need to review their current structure, membership, and representation to ensure that that every aspect of the CoC and the CoC board complies with each regulatory condition outlined by HUD.

3.2 CoC Responsibilities

A CoC's three primary responsibilities under the CoC Program interim rule include the following:

1. Operating the CoC
2. Designating and operating an HMIS
3. CoC planning

A brief summary of each responsibility is presented below.

Operating a CoC

To operate successfully, a CoC must fulfill the following responsibilities specified in the CoC Program interim rule:

- Conduct semi-annual meetings of the full membership
- Issue a public invitation for new members, at least annually
- Adopt and follow a written process to select a board
- Appoint additional committees, subcommittees, or work groups
- Develop and follow a governance charter detailing the responsibilities of all parties
- Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor the performance of recipients and subrecipients, evaluate outcomes, and take action against poor performers
- Evaluate and report to HUD outcomes of ESG and CoC projects
- Establish and operate a centralized or coordinated assessment system
- Establish and follow written standards for providing CoC assistance

Designating and Operating a Homeless Management Information System

While most communities have operated an HMIS for several years, the CoC Program interim rule defines the responsibilities of the CoC with respect to operation of the HMIS. A community may already be fulfilling many responsibilities associated with its HMIS, but the

CoC Program interim rule places greater emphasis on the CoC's role in monitoring HMIS implementation and compliance with applicable HMIS regulations and Notices. The CoC HMIS must:

- Designate a single HMIS
- Select an eligible applicant to manage the CoC's HMIS
- Monitor recipient and subrecipient participation in the HMIS
- Review and approve privacy, security, and data quality plans

CoC Planning

With respect to planning responsibilities, the CoC must:

- Coordinate the implementation of a housing and service system within its geographic area
- Conduct a Point-in-Time count of homeless persons, at least biennially
- Conduct an annual gaps analysis
- Provide information required to complete the Consolidated Plan(s)
- Consult with ESG recipients regarding the allocation of ESG funds and the evaluation of the performance of ESG recipients and subrecipients

3.3 Application and Grant Award

CoCs are responsible for reviewing and approving the funding application and response to HUD's annual CoC Program NOFA for homelessness assistance resources.

Each year, HUD releases a CoC Program NOFA for its homeless assistance programs. According to the CoC Program interim rule, in response the CoC must:

- Design, operate, and follow a collaborative process for developing applications and approving the submission of applications
- Establish priorities for funding projects in its geographic area
- Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area
 - If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself.
 - If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities.

The collaborative applicant is the *only* applicant permitted to apply for CoC planning funds.

It is important to note that, regardless of the number of applications submitted or the entity designated as the collaborative applicant, the CoC remains the entity accountable for approval

of the CoC Program application and for fulfilling the responsibilities listed in Section 3.2 of this guide.

3.4 New Funding for CoC Planning and Financial Activities

The CoC Program interim rule allows for funding for collaborative applicants to carry out the CoC's planning responsibilities. For collaborative applicants that are designated Unified Funding Agencies (UFA), additional funding is allowed to carry out financial activities.

Planning Funds

The collaborative applicant, and only the collaborative applicant, may apply for up to 3 percent of the CoC's Final Pro Rata Need (FPRN) amount or the maximum amount established by the CoC Program NOFA, whichever is less, to fund CoC planning activities.

Only the collaborative applicant may apply for and receive planning funds, which may be used for:

- Designing and carrying out the collaborative process for the application to HUD
- Preparing and submitting the CoC's application for CoC Program funds
- Determining the geographic area the CoC will serve
- Evaluating outcomes of projects funded through CoC and ESG program grants within the geographic area
- Participating in the Consolidated Plan(s) process of the jurisdictions within the geographic area
- Developing a CoC system
- Conducting sheltered and unsheltered Point-in-Time counts
- Monitoring recipients and subrecipients and enforcing compliance with program requirements

Unified Funding Agency Costs

UFAs are a new aspect of the CoC Program. A collaborative applicant that submits one funding application to HUD on behalf of the CoC may request UFA designation. If approved, the UFA may then apply for the CoC planning funds as well as additional UFA costs. Like CoC planning costs, UFA costs may be up to 3 percent of the CoC's FPRN or the maximum amount established through the CoC Program NOFA. These costs are intended to support the additional responsibilities associated with centrally administering the CoC grant.

To qualify, an applicant must have the capacity to carry out the duties delegated to a UFA by HUD listed in 24 CFR part 578.11 of the CoC Program interim rule. If HUD approves a UFA, then that UFA becomes the responsible organization and may use funds for UFA costs, including:

- Arranging for an annual survey, audit, or evaluation of the financial records of each project
- Monitoring all subrecipients
- Establishing fiscal control and accounting procedures to ensure the proper dispersal of and accounting for Federal funds awarded to recipients

3.5 High-Performing Communities

Each year, HUD will specify in the CoC Program NOFA whether and how CoCs may apply for designation as a high-performing community (HPC), which will provide the designated CoCs with flexibility to use CoC funds to support homelessness prevention costs. HUD will select up to 10 HPCs based on their ability to meet specified performance criteria. If selected, the HPC designation lasts only for that specific year and CoCs will have to reapply to be considered an HPC in subsequent years.

HUD anticipates providing additional guidance before designating any HPCs.

4. PROGRAM COMPONENTS AND ELIGIBLE COSTS

4.1 Program Components and Eligible Costs Overview

The program components and eligible costs under SHP and S+C have undergone revision as part of their consolidation into the CoC Program. Activities that were eligible under the Section 8 Moderate Rehabilitation SRO program are eligible under the CoC Program (rental assistance and rehabilitation). An overview of changes to eligible components and related costs is provided in Exhibit 1 below.

Exhibit 1: CoC Program Components and Costs and HUD's Legacy Homeless Programs			
	CoC Program	SHP	S+C
Eligible Components	<ul style="list-style-type: none"> • Permanent housing <ul style="list-style-type: none"> ➢ Permanent supportive housing (PSH) ➢ Rapid re-housing (RRH) • Transitional housing • Supportive services only • HMIS • Prevention (limited to HPCs) 	<ul style="list-style-type: none"> • Permanent housing (PSH only) • Transitional housing • Supportive services only • Innovative supportive housing • HMIS 	<ul style="list-style-type: none"> • Permanent housing (PSH only) <ul style="list-style-type: none"> ➢ Tenant-based ➢ Sponsor-based ➢ Project-based ➢ SRO-based
Eligible Costs	<ul style="list-style-type: none"> • CoC planning costs • UFA costs • Acquisition • Rehabilitation • New construction • Leasing • Rental assistance <ul style="list-style-type: none"> ➢ Type <ul style="list-style-type: none"> • Tenant-based • Sponsor-based • Project-based ➢ Length <ul style="list-style-type: none"> • Short-term • Medium-term • Long-term • Operating • Supportive services • HMIS • Project administration 	<ul style="list-style-type: none"> • Acquisition • Rehabilitation • New construction • Leasing • Operating • Supportive services • HMIS • Project administration 	<ul style="list-style-type: none"> • Rental assistance <ul style="list-style-type: none"> ➢ Type <ul style="list-style-type: none"> • Tenant-based • Sponsor-based • Project-based • SRO ➢ Length <ul style="list-style-type: none"> • Long-term

4.2 Definition of Homeless and Serving Category 3

The definition from the [Final Rule on the Definition of Homeless](#) that went into effect on January 4, 2012, was incorporated into the CoC Program interim rule.

CoC projects may serve unaccompanied youth and families with children defined as **homeless under other Federal laws** (Category 3 of the homeless definition) only if the CoC applies to its appropriate HUD Field Office to serve such populations and HUD approves the request. If the request is approved, no more than 10 percent of the total amount of funds awarded to all recipients within a CoC may be used to serve the Category 3 population (unless the rate of homelessness, as calculated in the most recent Point-in-Time count, is less than one-tenth of 1 percent of the total population).

CoC funds cannot be used to assist persons who are at risk of homelessness, unless the CoC is designated as an HPC and is therefore approved to fund homelessness prevention.

4.3 Program Components

Five program components can be funded through the CoC Program.

Permanent Housing

Permanent housing (PH) is defined as community-based housing without a designated length of stay in which formerly homeless individuals and families live as independently as possible. The CoC Program may fund two types of permanent housing: (1) permanent supportive housing (PSH), which is permanent housing with indefinite leasing or rental assistance paired with services to help homeless people with disabilities achieve housing stability; and (b) rapid re-housing (RRH), a model that emphasizes housing search and relocation services and short- and medium-term rental assistance to move homeless people as rapidly as possible into permanent housing (see Exhibit 2).

Transitional Housing

The transitional housing (TH) project component may be used to cover the costs of up to 24 months of housing with accompanying support services, providing a period of stability to enable homeless people to transition successfully to and maintain permanent housing within 24 months of program entry. Program participants must have a lease or occupancy agreement in place when residing in transitional housing. The provisions of the CoC Program's TH program component have not changed significantly from the TH provisions under SHP.

Supportive Services Only

The supportive services only (SSO) program component is limited to recipients and subrecipients providing services to individuals and families not residing in housing operated by the recipient. SSO recipients and subrecipients may use the funds to conduct outreach to sheltered and unsheltered homeless persons, link clients with housing or other necessary services, and provide ongoing support. SSO projects may be offered in a structure or structures at one central site, or in multiple buildings at scattered sites where services are delivered. Projects may also be operated independent of a building (e.g., street outreach) and in a variety of community-based settings, including in homeless programs operated by other agencies.

Homeless Management Information System

Funds under this component may be used only by HMIS leads for leasing a structure in which the HMIS operates, for operating the structure in which the HMIS is housed, and/or for covering other costs related to establishing, operating, and customizing a CoC's HMIS. Other recipients and subrecipients may not apply for funds under the HMIS program component, but may include costs associated with contributing data to the CoC's HMIS within their project under another program component (PH, TH, SSO, or HP).

Homelessness Prevention

Programs within CoCs that have applied for and been designated by HUD as an HPC may use CoC funds to fund homelessness prevention (HP) assistance for individuals and families at risk of homelessness. The services under this component may include housing relocation and stabilization services as well as short- and medium-term rental assistance to prevent an individual or family from becoming homeless. Through this component, recipients and subrecipients may help individuals and families at-risk of homelessness to maintain their existing housing or transition to new permanent housing. Homelessness prevention must be administered in accordance with 24 CFR part 576.

Safe Havens

The Safe Haven program component is no longer eligible under the CoC Program. No **new** Safe Haven projects will be funded, but the CoC Program interim rule explicitly states that all projects eligible under the McKinney-Vento Act before passage of the HEARTH Act, including Safe Havens, may be renewed in order to continue ongoing leasing, operations, supportive services, rental assistance, HMIS operation, and administrative functions beyond the initial funding period. The CoC Program NOFA will provide additional details.

Section 8 Moderate Rehabilitation SRO

The Section 8 Moderate Rehabilitation SRO program component is no longer eligible under the CoC Program. No **new** SRO projects will be funded. Current SRO projects will continue to be renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997.

4.4 Eligible Costs

CoC Program funding can only be used to support eligible costs, illustrated in Exhibit 1. Not all costs are eligible in each program component, and in some cases, certain costs cannot be combined in a structure. The eligible costs are summarized below.

Acquisition

Acquisition of real property is an eligible cost category under the PH, TH, and SSO program components. Grant funds may be used for up to 100 percent of the cost of purchasing property for the purpose of providing permanent Housing, transitional housing, and supportive services only activities.

Rehabilitation

Rehabilitation of structures is an eligible cost category under the PH, TH, and SSO program components. Eligible rehabilitation costs include installing cost-saving energy measures and bringing a structure up to health and safety standards. Rehabilitation on leased properties is ineligible.

New Construction

New construction of structures is eligible under the PH and TH program components. New construction may include building entirely new facilities, constructing an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land for construction.

Projects must demonstrate that construction is more cost-effective than rehabilitation. Unlike the previous regulations, the CoC Program interim rule establishes no maximum grant limits for rehabilitation or new construction, and grant funds may be used for up to 100 percent of costs (as long as the match requirement is met through other means (see Section 5.1 of this guide). New construction on leased properties is ineligible.

Leasing Costs

Leasing is an eligible cost category under the PH, TH, SSO, and HMIS program components. Funds may be used to lease individual units or all or part of structures. Rents must be reasonable and, in the case of individual units, the rent paid may not exceed HUD-determined fair market rents. Leasing funds may not be used for units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership where the partnership owns the structure without a HUD-authorized exception. When leasing funds are used to pay rent on units, the lease must be between the recipient or the subrecipient and the landowner, with a sublease or occupancy agreement with the program participant. The recipient may, but is not required to, charge the program participant an occupancy charge, consistent with the parameters specified in the interim rule.

Rental Assistance Costs

Rental assistance is an eligible cost category under the PH and TH program components and may be tenant-based (TBRA), sponsor-based (SBRA), or project-based (PBRA), depending upon the component type.

Rental assistance may be short-term for up to 3 months; medium-term for 4 to 24 months; or long-term for more than 24 months. The length of assistance depends upon the component type under which the cost is funded. Recipients must serve as many program participants as shown in their funding application to HUD, but, if the amount reserved for the term of the grant exceeds the amount needed to pay actual costs, the excess funds may be used to cover property damage, rent increases, or the rental needs of a greater number of program participants.

- **TBRA.** Tenants select any appropriately sized unit within the CoC's geographic area, although recipients or subrecipients may restrict the location under certain circumstances to ensure the availability of the appropriate supportive services. Except for victims of domestic violence, program participants may not retain their rental assistance if they relocate to a unit outside the CoC's geographic area.
- **SBRA.** Tenants must reside in housing owned or leased by a sponsor organization and arranged through a contract between the recipient and the sponsor organization.
- **PBRA.** Tenants must reside in housing provided through a contract with the owner of an existing structure whereby the owner agrees to lease subsidized units to program participants. Tenants may not retain their rental assistance if they relocate to a unit outside the project.

Rental assistance for a unit vacated by a program participant before the end of the lease may continue for a maximum of 30 days from the end of the month in which the unit was vacated. No additional rental assistance may be paid until the unit is occupied by another eligible person. Property damage costs may be provided only once per program participant per unit and only at exit from a housing unit (i.e., not during tenancy).

When rental assistance funds are used to pay rent on units, the lease must be between the program participant and the landowner. Each program participant, on whose behalf rental assistance payments are made, must pay a contribution toward rent consistent with the requirements of the interim rule.

Supportive Services Costs

Supportive services are eligible costs under the PH, TH, and SSO program components. The CoC Program interim rule specifies all eligible services (listed in the box below) and clarifies that any cost not listed in the rule is ineligible. As in the past, services must be offered to residents of PSH and TH for the full period of their residence. RRH programs must require program participants to meet with a case manager at least monthly.

Services may be provided to formerly homeless individuals for up to six months after their exit from homelessness, including the six months following exit from a transitional housing project. Recipients and subrecipients continue to be required to perform an annual assessment of the service needs of their program participants and to adjust services accordingly. Eligible costs include the cost of providing services, the salary and benefits of staff providing services, and materials and supplies used in providing services.

Supportive Services: Eligible Types of Services

- Annual assessment of service needs
- Assistance with moving costs
- Case management
- Child care operations or vouchers
- Education services
- Employment assistance and job training
- Food (meals or groceries for program participants)
- Housing search and counseling
- Legal services
- Life skills training
- Outpatient mental health services
- Outpatient health services
- Outreach services
- Outpatient substance abuse treatment services
- Transportation
- Utility deposits

Operating Costs

Operating costs are eligible under the PH, TH, and HMIS program components. Funds may be used to pay the day-to-day operating costs in a single structure or individual housing units, including maintenance (such as scheduled replacement of major systems), repair, building security (when CoC Program funds pay for more than 50 percent of the facility by unit or area), electricity, gas, water, furniture, equipment, property insurance, and taxes. These costs may not be combined with rental assistance costs within the same structure, and operating costs are not eligible under the SSO program component.

HMIS Costs

Costs related to contributing client data to or maintaining data in the CoC's HMIS or a comparable database for victim services providers or legal services providers are eligible costs under the PH, TH, SSO, and HMIS program components. Eligible HMIS costs include hardware, equipment and software costs; training and overhead; and staffing costs associated with contributing data to the HMIS designated by the CoC for its geographic area.

Project Administration

Recipients and subrecipient may use up to 10 percent of any grant, excluding the amount for CoC planning and UFA costs established through the CoC Program NOFA for project administrative costs. These costs include expenses related to the overall administration of the grant (24 CFR part 578.59), such as management, coordination, monitoring, and evaluation activities and environmental review. Costs for staff and other overhead expenses directly associated with carrying out activities under any of the five CoC program components are not considered administrative costs. Instead, they are considered eligible costs under the applicable CoC program component. Recipients that are not UFAs must share at least 50 percent of project administrative funds with subrecipients. UFAs that carry out projects may keep up to 10 percent of their project amount, and must share all remaining project administration funds with subrecipients.

Match Requirements

All eligible funding costs except leasing must be matched with no less than a 25 percent cash or in-kind match.

Project administration must be matched.

5. PROGRAM REQUIREMENTS

5.1 Highlights of Critical Changes

The sections below summarize critical changes from the SHP and the S+C programs.

Match

The match requirements under the CoC Program interim rule are simplified from the SHP and the S+C program. All eligible funding costs, except leasing, must be matched with no less than a **25 percent cash or in-kind contribution**. No match is required for leasing. The match requirements apply to project administration funds, CoC planning costs, and UFA costs, along with the traditional expenses—operations, rental assistance, supportive services, and HMIS. Match must be met on an annual basis.

For an in-kind match, the recipient or subrecipient may use the value of property, equipment, goods, or services contributed to the project, provided that, if the recipient or subrecipient had to pay for such items with grant funds, the costs would have been eligible. If third-party services are to be used as a match, the recipient or subrecipient and the third-party service provider that will deliver the services must enter into a memorandum of understanding (MOU)—**before the grant is executed**—documenting that the third party will provide such services and value towards the project.

Lease and Occupancy Agreement Requirements

Under the CoC Program interim rule, recipients and subrecipients must sign occupancy agreements or leases (or subleases) with all program participants residing in housing, including TH. For permanent housing, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The lease must be automatically renewable upon expiration for a minimum term of one month.

Program participants in transitional housing must enter into an agreement for a term of at least one month. The agreement must be automatically renewable upon expiration, except on prior notice by either party, for up to 24 months.

Housing Quality Standards

All housing leased with CoC Program funds or where rental assistance payments are made with CoC Program funds must meet applicable Housing Quality Standards.

5.2 Summary of Additional Program Requirements

In addition to the CoC Program requirements described above, the following program requirements should be noted:

Additional Program Requirements	
Supportive Services Agreement	<p>In housing programs, recipients and subrecipients may require program participants to take part in supportive services provided through the project as a condition of continued program participation, as long as the services are not disability-related (e.g., mental health, outpatient health services).</p> <p>Only projects whose primary purpose is to provide substance abuse treatment services may require program participants to take part in substance abuse treatment services as a condition of continued program participation.</p>
Program Fees	<p>Programs are no longer permitted to impose program fees on program participants.</p>
Timeliness	<p>Construction must begin within 9 months of signing the grant agreement and must be completed within 24 months of signing the agreement; activities in the facility must begin within 3 months of completing construction.</p> <p>Recipients must distribute funds to subrecipients (in advance) no later than 45 days after a request and draw down funds at least once per quarter.</p>

Additional Program Requirements	
Termination	Termination is expected to be limited to only the most severe cases. Projects providing PSH to "hard-to-house" populations should exercise judgment and examine all extenuating circumstances when determining if violations are serious enough to warrant termination.
Retention of Assistance	Non-disabled household members of a qualifying (i.e., disabled) PSH resident may retain assistance until the end of the lease term in the event of the qualifying resident's death, long-term incarceration, or long-term institutionalization.
Recordkeeping	The CoC Program interim rule requires recordkeeping by the CoC to demonstrate compliance with the CoC Program interim rule. The documentation and recordkeeping requirements are specified for each CoC responsibility. In addition, the CoC Program interim rule specifies client and project records that have long been required for monitoring.

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On marijuana, Oregon cities ask for big rewrite of voter-approved legalization law



A clerk in a Colorado marijuana store handles a sale with a customer. Oregon cities want the legislature to remove Oregon's ban on local pot taxes and make it easier for localities to prohibit retail sales altogether. (AP Photo/Brennan Linsley, File)

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Mapes on Politics

About Jeff Mapes
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Email Jeff Mapes
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(<http://twitter.com/jeffmapes>)

marijuana sales, something now prohibited under **Measure 91**

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<http://www.oregon.gov/olcc/marijuana/Documents/Measure91.pdf>

The measure, **Senate Bill 542** (<http://gov.oregonlive.com/bill/2015/SB542/>), would also allow city and county governing bodies to ban retail sales within their borders altogether. In contrast, Measure 91 allows a ban on sales only if citizens place a measure on the ballot and win over a majority of the voters.

The bill, sponsored by Sen. Jackie Winters, R-Salem, is one of the **most sweeping changes to Measure 91**

http://www.oregonlive.com/mapes/index.ssf/2015/01/a_gusher_of_marijuana_bills_--.html

proposed so far and it comes with the **strong backing of at least 70 cities**

http://www.oregonlive.com/mapes/index.ssf/2014/11/marijuana_legalization_oregon.html

that have passed ordinances seeking local taxes on recreational marijuana sales.

Measure 91, which levies a \$35-an-ounce state tax on the potent parts of a marijuana plant, banned local taxes because sponsors said they wanted to ensure that taxes wouldn't be so high that consumers would continue to go to the black market.

Scott Winkels, a lobbyist for the League of Oregon Cities, argued that for the most part, cities are proposing relatively modest taxes -- of 10 to 15 percent on the retail price of the drug -- to help recoup their local costs of enforcement.

Anthony Johnson, Measure 91's chief sponsor, countered that local governments already get a share of state taxes and that it's too soon to start rewriting the measure.

"Until we let the implementation of Measure 91 play out, major changes are really premature," said Johnson, noting that retail sales probably won't start until the latter half of 2016.

Cities are also pushing hard for changes to the opt-out procedures in Measure 91. In essence, they want to go from requiring a majority of voters to allowing a majority of a city council or county commission to ban pot sales.

Winkels, noting that Measure 91 "didn't pass everywhere" in Oregon, said many local communities simply don't want to retail marijuana shops. "These communities need to have some say in what is appropriate for them," he said, arguing that the elected officials should be able to act on the matter.

Johnson said he and the other authors of Measure 91 modeled the opt-out provisions on the statutes dealing with alcohol sales, which give voters the say over whether to have a dry city or county.

The League of Cities bill is likely to represent an opening bid in legislative deliberations over the issues of local taxes and local opt-outs.

For example, Winkels said at a minimum, cities would like to have some way to prohibit sales before the states start issuing licenses. Under Measure 91, the earliest that a locality could opt out of marijuana sales is at the November, 2016 election. Meanwhile, Measure 91 allows the Oregon Liquor Control Commission to start accepting license applications by retailers in January of that year, although it could take several months before the OLCC allows pot sales to actually begin.

There are also several more limited changes to the tax provisions that could take place. Rob Bovett, legal counsel for the Association of Oregon Counties, suggested in a memo that local taxes only be allowed at a level that would keep retail prices "at or below the legalized black market."

Another alternative, he said, would be to give localities a bigger share of the cut of state tax proceeds. Measure 91 calls for 10 percent to go to cities and 10 percent to counties.

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Bovett supported allowing local government leaders to ban marijuana sales. But he said a potential alternative would be to allow city and county leaders to refer a measure to the ballot asking voters if they wanted to ban local sales.

Johnson said legislators should be deferential to the 56 percent of voters who passed Measure 91 and at least at the start should stick with the same opt-out and tax provisions used in alcohol sales.

"Voters have really spoken that they want to see marijuana treated similarly to alcohol," he said.

--Jeff Mapes

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 GOP Tea Party is trying to tax tea. Those people's ideology is so hypocritical. Taxation and overturning the will of the voters.
 All to feed their ideology.
 Voters voted. The GOP crazies can go away as the ballot language was very clear. State is the only taxation.
 Of course "real" conservatives would applaud "LOWER TAXES" but that GOP Tea Party

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West Linn city computers attacked, sending virus-infected emails to contacts

Rick Bella | The Oregonian/OregonLive By Rick Bella | The Oregonian/OregonLive

Email the author | Follow on Twitter

on January 14, 2015 at 1:26 PM, updated January 14, 2015 at 1:27 PM

West Linn police are warning that a fast-spreading virus had attacked the city's email system, sending out potentially dangerous messages to email contacts.

"If you have received an email with the subject line, 'Payment from you receive,' do not open the email and delete it," said Lori Hall, **West Linn government** spokeswoman. "If you received the email and did open it, turn off your contacts, close your email and contact your anti-virus company."

Hall said the problem was discovered at 9:30 a.m., when city employees noticed that the email was spreading to internal users and then to contacts outside city government.

The city's Information Technology Department then analyzed the virus, determining that it was released a few hours before it hit city computers. They determined that most anti-virus companies already were developing strategies for head it off.

Within 30 minutes, the city successfully contained the virus to a few infected computers. No additional infected emails are flowing out of the city's system.

Hall said the virus was traced to an **HSBC Bank** email that contained an online link that automatically downloaded the virus and touched off the chain reaction.

Hall said a full cleanup of the city's computer system is in progress. Meanwhile, the city's IT Department has established rules preventing the virus-infected email from being sent to city staff members or outside contacts.

-- Rick Bella

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@southnewshound

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LINCOLN COUNTY'S ECONOMY

KEY TAKEAWAYS FROM THE "TEN YEAR UPDATE ON LINCOLN COUNTY, OREGON'S ECONOMY"



ECONOMIC DEVELOPMENT ALLIANCE
OF LINCOLN COUNTY, 2014

Ten Year Update on Lincoln County, Oregon's Economy – Summary

- The study compares Lincoln County's economy in 2003 and 2013. Since these two points in time bookend The Great Recession, true economic growth over the decade in question is difficult to accurately assess; there have been many ups and downs over the period of study. However, the latest economic data from Lincoln County show promise, particularly following a recession.
- Traded sector companies are those that sell their goods and services outside of Oregon, thus bringing money into the state. The major traded sectors of Lincoln County's economy include commercial fishing, timber, agriculture, tourism, and "other identified industries." The "other identified industries" sector includes marine science and education, paper and paperboard mills, water transportation, marine cargo handling, boat and ship building, steel fabrication, government, special education, and military. A more detailed breakdown of the degree to which each of these sectors contributes to the county's economy is available on page 3 of this document.
- All of the traded sectors of Lincoln County's economy showed growth between 2003 and 2012.
- Though it represents the smallest traded sector overall, contributing to just 0.3 percent of personal income in Lincoln County in 2012, agriculture showed the strongest percent growth between 2003 and 2012, followed by "other identified industries." The weakest growth over the same period was seen in the tourism sector.
- Historically, Lincoln County's economy has been dependent on a combination of natural resource based industries and tourism. The growth of the "other identified industries" sector between 2003 and 2012 indicates a diversification of the local economy to encompass not only natural resource and tourism-based employment but also these "other identified industries."
- With the exception of paper and paperboard mills and miscellaneous industries (including government and military), the "other identified industries" sector largely consists of firms that can be considered part of the maritime economy. The siting of NOAA's MOC-P facility in Newport, the upcoming buildout construction of the Toledo Boatyard, and the planned OSU expansion are just some examples of the expected future growth of maritime-related industry in Lincoln County.
- While inflation adjusted wages showed significant growth as well as post-recession recovery over the past decade, income in Lincoln County has remained relatively flat over the same period. Adjusted for inflation, average earnings per job were approximately the same in 2012 as they were in 2003 at \$36,000. A more in depth analysis of median income in Lincoln County, including a look at variations in median income between cities, is included on page 5 of this document.
- Though its population grew modestly (4 percent) over the past decade, as a trend Lincoln County experiences an out-migration of young adults who leave the coast in search of educational and employment opportunities. This is observable as a shift in demographics as well as a shift in sources of personal income. Both will be explored more in depth on pages 2-4 of this document.
- The source of all of the data and figures that follow is the Ten Year Update on Lincoln County, Oregon's Economy released by the Lincoln County Board of Commissioners in 2014.

Lincoln County's Sources of Total Personal Income

Personal income is broken down into the three categories of net earnings, transfer payments, and investment income. Net earnings include wage, salary, and proprietorship earnings. Transfer payments consist of payments to individuals by businesses as well as federal, state, and local governments. Unlike net earnings, transfer payments are not made to individuals for work or services performed. Transfer payments include retirement payments such as Social Security, unemployment insurance, and income maintenance such as the SNAP program. Investments include income from private investments such as rent, interest, and dividends. Private pension payments are also classified as investment payments.

Figure 1: Sources of Total Personal Income, Lincoln County, 2003

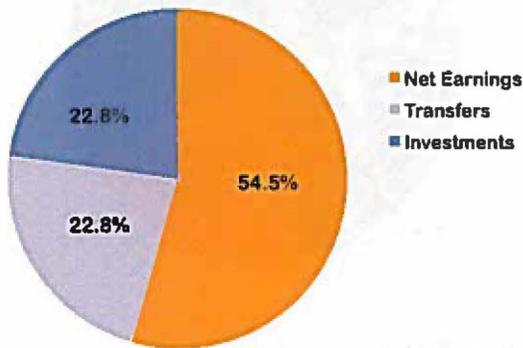
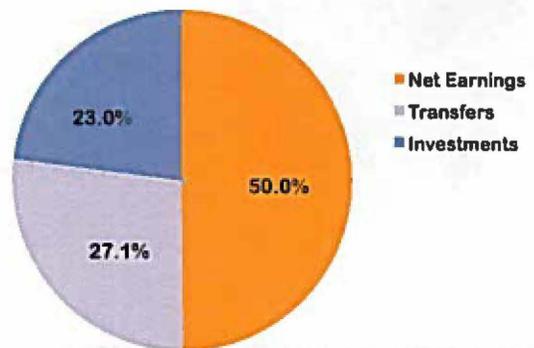


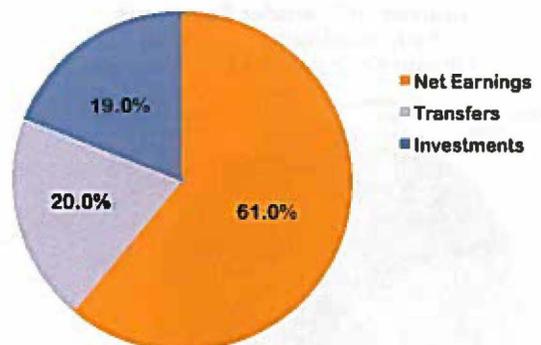
Figure 2: Sources of Total Personal Income, Lincoln County, 2012



What the Data Show: In 2012 a larger percentage of personal income in Lincoln County could be attributed to transfer payments than in 2003 (Fig. 1 and 2). In fact, between 2003 and 2012, transfer payments accounted for 62 percent of total personal income increases in Lincoln County. This is largely explained by the in-migration of retirees.

As of 2012, just 50 percent of total personal income in Lincoln County was derived from net earnings, compared to 61 percent statewide (Fig. 2 and 3). Though in some senses a disproportionate reliance on transfer and investment income provides a stabilizing force for the local economy, it also raises equity concerns. For example, if local housing is priced to meet the demands of retirees rather than the local workforce, this may induce housing cost burdens for Lincoln County's workforce and detract from the county's overall livability.

Figure 3: Sources of Total Personal Income, Oregon, 2012



Lincoln County's Sources of Net Earnings, 2012

In 2012, fifty percent of Lincoln County's income was derived from net earnings, including wage, salary, and proprietorship earnings (Fig. 4). The sources of those net earnings have been broken down below. Of the identified sources, commercial fishing, tourism, timber, and marine science were the largest contributors to net earnings in the county in 2012, in that order (Fig. 5).

Figure 4: Sources of Total Personal Income, Lincoln County, 2012

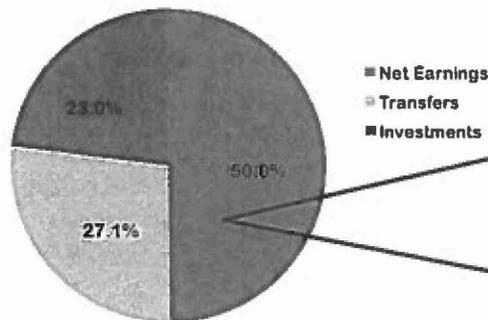
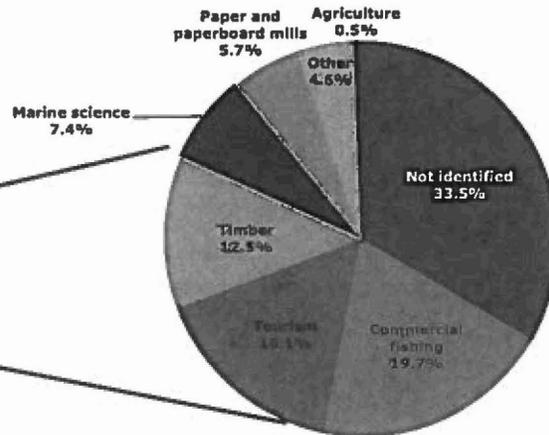


Figure 5: Sources of Net Earnings, Lincoln County, 2012



Lincoln County's Sources of Transfer Payments to Individuals, 2012

In 2012, twenty-seven percent of Lincoln County's income was derived from transfer payments (Fig. 6). The sources of transfer payments to individuals have been broken down below. Of the identified sources, retirement and disability insurance and medical benefits—including medicare, public assistance medical care, and military medical insurance benefits—were the largest contributors to transfer payments in the county in 2012 (Fig 7).

Figure 7: Sources of Transfer Payments to Individuals, Lincoln County, 2012

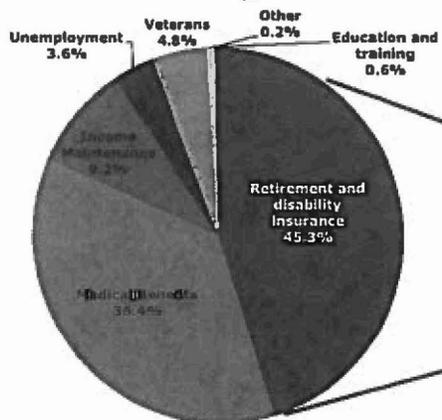
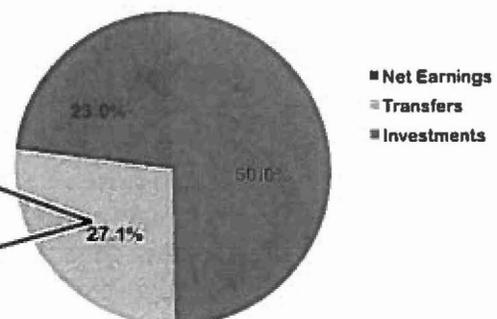


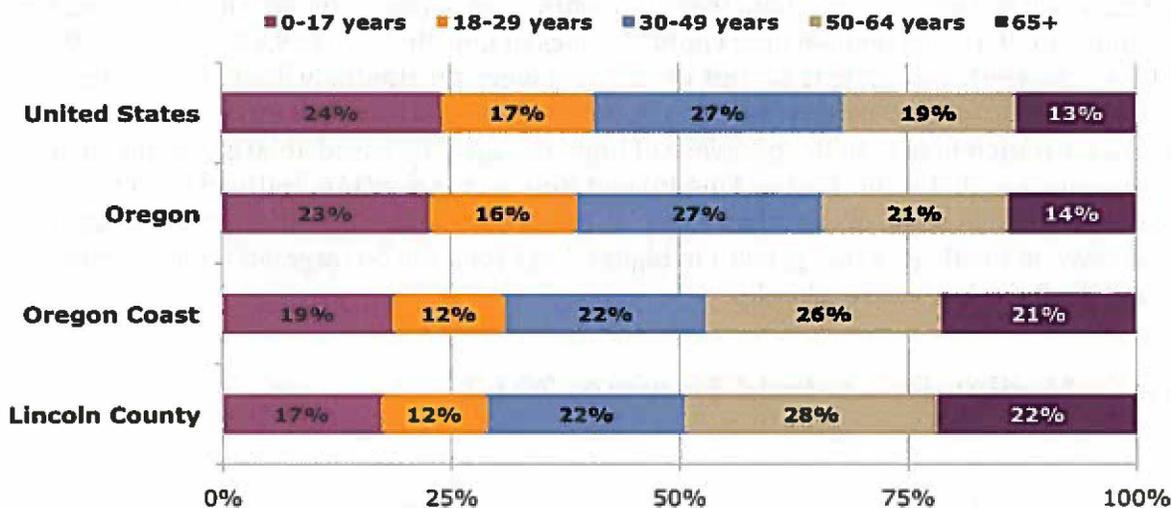
Figure 6: Sources of Total Personal Income, Lincoln County, 2012



Age of Lincoln County's Population

In 2012, 50 percent of Lincoln County's population was 50 years or older, and the county's median age was 49.6. The median age in Oregon was 38.4. Lincoln County has higher shares of the 50-64 and 65+ cohorts and lower shares of cohorts under 50, both youth and workforce age, as compared to Oregon and the US as a whole (Fig. 8). More research is needed to determine the implications on the aging retiree population on local issues such as education, employment, and healthcare.

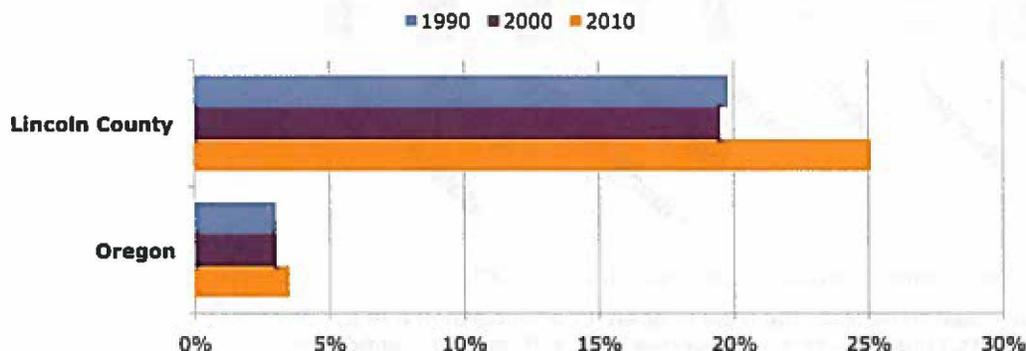
Figure 8: Share of Population by Age Group, Lincoln County, 2012



Housing in Lincoln County

Data indicate a growing share of second homes in Lincoln County. In 2010, over a quarter of Lincoln County's housing stock was comprised of second homes, as compared to about 3 percent statewide (Fig. 9). This figure is up from the previous two decades, where just under 20 percent of housing in Lincoln County consisted of second homes. While tourism and retirees are both large and important contributors to the county's economy, the prevalence of second homes in the area may contribute to housing affordability concerns for the local workforce. For this reason, the supply and affordability of the local housing stock should be tracked carefully by the county and its municipalities in coming years.

Figure 9: Second Homes as a Percent of Total Housing Units, 1990, 2000, 2010

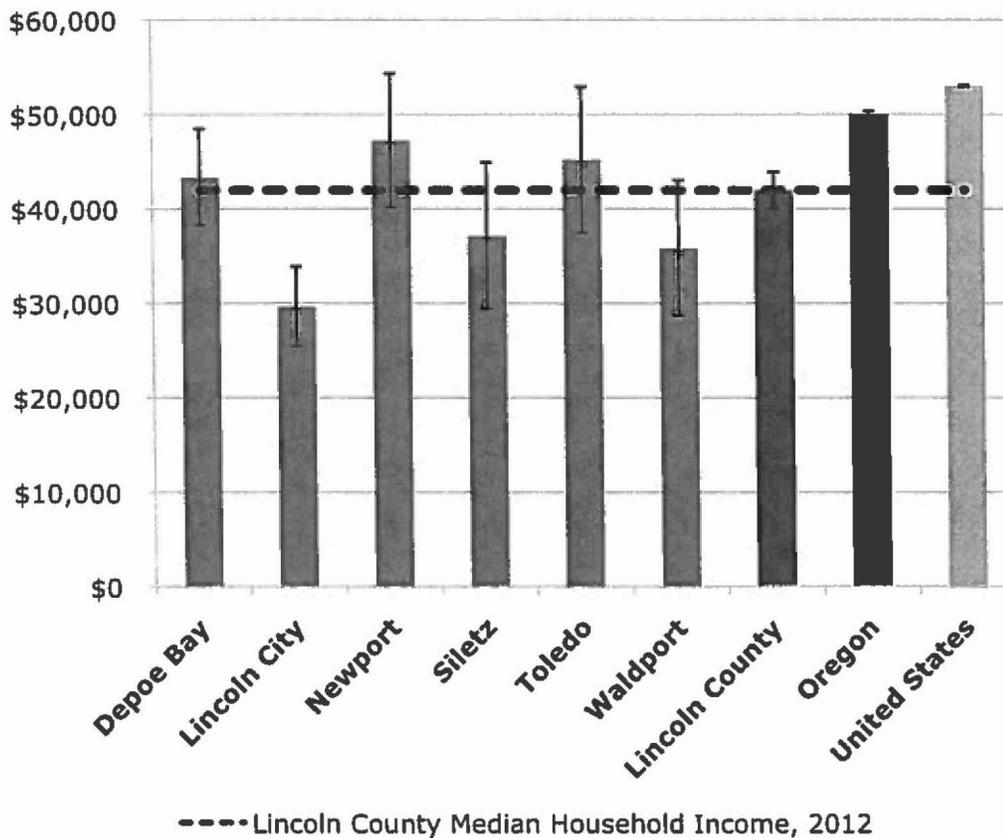


Median Household Income and Income Inequality in Lincoln County

Wages in Lincoln County have shown stronger growth than employment over the past decade, indicating employment growth in higher paying occupations following the recession. Nevertheless, after adjusting for inflation, median household income in Lincoln County was slightly lower in 2012 (\$41,996) than it was in 2000 (\$45,159). Although the gap has decreased from previous decades, the county's median household income continues to lag behind the state's. While incomes in Lincoln County have remained relatively stagnant over the period of analysis, it should be noted that this trend mirrors those that have occurred at the state and nationwide levels over the same period.

Though the median represents the midpoint of a dataset, and so it stands that half the data will be above and half the data will be below the median, there is a marked variation in income levels among the cities in Lincoln County. In 2012, the median household incomes in Lincoln City (\$29,686 +/- \$4,219), Waldport (\$35,889 +/- \$6,459), and Siletz (\$37,188 +/- \$7,727) were substantially lower than cities such as Newport (\$47,270 +/- \$7,100) and Toledo (\$45,230 +/- \$7,718) (Fig. 9). Income inequality among the county's cities can be attributed in part to the presence of higher-wage jobs based at large, established employers in Toledo (e.g. Georgia Pacific, Port of Toledo) and Newport (e.g. NOAA, Hatfield Marine Science Center, fisheries) than in some of the other cities. As the County plans for and strategizes about the future of its economy, to the degree that growth in higher wage jobs can be targeted toward cities experiencing low and declining incomes it should.

Figure 9: Median Household Income, 2012



Note: Error bars are used to indicate the margin of error, or uncertainty, in a reported measurement. Figures have been reported with a 90 percent confidence interval.

Items for Consideration and Future Action

Sector Strategies

- The **marine science and education** sector in particular shows potential for job and wage growth that is less susceptible to seasonal or annual variations in the same manner as the county's other basic, natural resource and tourism based sectors experience. Targeted workforce training, recruitment, and expansion efforts related to businesses in the marine science and education sector should be prioritized by the County for this reason in particular. To the degree that these opportunities can be spread throughout the county to benefit lower income areas such as Lincoln City, Waldport, and Siletz they should.
- As Lincoln County works to achieve recognition for its **maritime cluster**, and pursues state and regional funding to attract and expand maritime related businesses and training locally, the presence of maritime-related industries that have shown strong growth over the past decade, as well as the planned expansions of existing maritime-related facilities, can serve to qualify funding solicitation efforts.
- Oregon leads the nation in the number of **fisheries** certified as sustainable by the Marine Stewardship Council. Opportunities for Lincoln County to enter new markets for value added seafood products, and particularly to strengthen the fishing industry value chain to benefit more local businesses and serve local tourists and consumers, should be explored and capitalized upon in coming years.

Education

- In 2012 Lincoln County had the highest rate of persons over 25 with a bachelor's education (24 percent) of all coastal counties. However, this figure was still below the state of Oregon overall (29 percent). Because there is a known correlation between educational attainment and income, to the degree that the County can support efforts to increase educational attainment among its population it should. An example might be helping to connect local students with seamless pathways between regional educational institutions and careers in marine science and education.
- Good schools are essential for recruiting a talented workforce. A concerted effort needs to be made to establish, inventory, and raise awareness about special programs and opportunities, such as the Oregon Coast STEM Hub, available through local schools. Such programs should exist throughout the county, and information about them should be made readily available to local employers to be used for workforce recruitment purposes.

Infrastructure

- Data show that workers commute into and throughout Lincoln County for employment purposes. National trends indicate that many companies are now allowing flexible schedules and telecommuting. Additionally, there is a strong through largely unstudied presence of

microenterprise and sole proprietorships in Lincoln County. Future investments in strengthened telecom infrastructure might be one option for increasing incomes throughout the county. This may serve to aid cities that do not stand to benefit as much from anticipated growth of the maritime economy due to factors such as absence of a port.

Further Research Needed

- There is a need for more research related to the small business climate in Lincoln County, particularly about services, opportunities, and infrastructure businesses lack at present that could contribute to their future success.
- There is a need for more research on the “retiree effect” on Lincoln County’s economy. Knowledge gaps exist regarding the manner in which retiree income contributes to Lincoln County’s economy. There is also a need for further research around the implications of an aging population on workforce trends and local services and infrastructure, including healthcare, housing, transportation, and even potential competition for part-time employment with young workers seeking their first jobs.
- In 2010, a quarter of Lincoln County’s housing stock was second home housing units, up from just below 20 percent in 2000. The implications of these trends on the overall affordability of housing, and rental housing in particular, must be carefully tracked.
- Other rural regions in Oregon have facilitated successful pairings of local angel investors and fledgling startups seeking capital. Given a known presence of affluent retirees in Lincoln County, there is perhaps some potential to be explored in terms of pairing retirees who want to invest in the local economy and fledgling startups—or even real estate developments—seeking capital.

Conclusions

- Lincoln County’s economy has diversified in recent years to incorporate a growing sector of “other identified industries,” including marine science and education and other maritime related firms. In addition, retirees are contributing a growing share to the county’s population and its sources of local income. As Lincoln County’s population grows and ages, its workforce will need to be replaced over time. The trend in out-migration of young adults will exacerbate demand for workers in many industries. Investment in amenities including quality, affordable housing, transportation, affordable childcare, arts and culture, and good schools should be prioritized by the county in coming years to attract a competitive workforce as the existing population continues to age.

Cindy Breves

From: Gauthier, Katie (Merkley) <Katie_Gauthier@merkley.senate.gov>
Sent: Monday, February 09, 2015 4:27 PM
To: Cindy Breves
Subject: RE: Local Officials Meeting on Feb 17.

Yes, we have sent emails to all the city councilors and the Mayor. Mayor Roumagoux will be introducing Senator Merkley and Congressman Schrader at the town hall.

Below is the e-mail we sent to the City Councilors.

Thanks,
Katie

Senator Merkley and Congressman Schrader will be in Newport on Tuesday, February 17. We wanted to invite you to meet with them prior to our joint public town hall. This will be an opportunity for community leaders in Lincoln county to talk with Senator Merkley and Congressman Schrader about any local issue.

Following this meeting, we will have a public town hall at the Rec Center. The town hall will begin at 2 PM. We are not yet ready to announce the town hall publically, so please don't share this email.

Local Leaders Meeting with Senator Merkley and Congressman Schrader

Location: Newport Rec Center, Room #105
225 SE Avery St.
Newport, OR

Date: Tuesday, February 17th

Time: 1:30 PM- 2 PM

Please RSVP by February 12th
to megan.mckibben@mail.house.gov or katie_gauthier@merkley.senate.gov if you are able to attend the meeting.

From: Cindy Breves [mailto:C.Breves@NewportOregon.gov]
Sent: Monday, February 09, 2015 10:28 AM
To: Gauthier, Katie (Merkley)
Subject: Local Officials Meeting on Feb 17.

Katie,

Would you be inviting our Newport Councilors to this meeting?

Cindy Breves

Executive Assistant to the City Manager/Court Clerk
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
(Eugene Division)

NEWPORT FISHERMEN'S WIVES, INC.,
an Oregon nonprofit corporation, **CITY OF
NEWPORT, LINCOLN COUNTY, PORT
OF NEWPORT** and **MIDWATER
TRAWLERS COOPERATIVE**, an Oregon
cooperative,

Plaintiffs,

v.

UNITED STATES COAST GUARD, an
agency of the United States Department of
Homeland Security,

Defendant.

Case No. 6:14-cv-1890-MC

**PLAINTIFFS' MOTION TO STAY AND
MEMORANDUM IN SUPPORT
THEREOF**

(Oral Argument Requested)

PLAINTIFF'S MOTION TO STAY

Plaintiffs hereby move this Court for a stay of proceedings in this case through December 31, 2015, subject to the right of any party to petition the Court to return the case to the active docket if conditions warrant. In support of this motion, plaintiffs rely upon the record herein, the

Page 1 - **PLAINTIFFS' MOTION TO STAY AND
MEMORANDUM IN SUPPORT THEREOF**

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0000031399H073PI.21

authorities discussed below, Plaintiffs' Memorandum in Opposition to Motion to Dismiss and the Third Declaration of Ginny Goblirsch.

MEMORANDUM IN SUPPORT OF MOTION TO STAY

With the enactment of the Howard Coble Coast Guard Maritime Transportation Act of 2014 on December 18, 2014, the Coast Guard is prohibited from terminating the operations of its air rescue helicopter at the Newport Air Station through the balance of this calendar year. For the reasons set out in Plaintiffs' Memorandum in Opposition to the Coast Guard's Motion to Dismiss, this case is not moot and should not be dismissed on that or any other ground. Rather, this Court should exercise its broad discretionary authority to control its docket and impose a stay of proceedings for the approximately 10 months between the time that the pending motions are argued and the sunset of the statutory disruption of the Coast Guard's October 2014 decision to close the Newport Air Station. Given the short period of time between now and the effective date of that sunset provision, the entry of a stay imposes no prejudice on the government and, most significantly, both this Court and the parties will save considerable time and expense if the Coast Guard attempts to close the Newport Air Station in early 2016 based upon the same or a similar *post hoc* illegal categorical exclusion process.

There is abundant authority both in this district and the Ninth Circuit holding that a district court has broad discretion to control its docket as the Court sees fit. *See, e.g., Am. Rivers, Inc. v. NOAA Fisheries*, No. CV-04-0061, 2004 WL 2075032, at *3 (D. Or. Sept. 14, 2004) ("Federal courts possess the inherent broad, although not unlimited, discretion to manage their dockets and stay proceedings in the interests of economy and fairness.") (citing *Yong v. INS*, 208 F.3d 1116, 1119 (9th Cir. 2000)); *Sequoia Forestkeeper v. U.S. Forest Serv.*, No. CV F 07-1690

LJO DLB, 2008 WL 2131557, at *4 (E.D. Cal. May 21, 2008) ("This Court 'has broad discretion' to stay proceedings as an incident to its power to control its own docket.") (quoting *Clinton v. Jones*, 520 U.S. 681, 707 (1997)).

This case is less than three months old, having been filed on November 25, 2014. Plaintiffs seek a stay only through December 31, 2015, at which time the parties should be required to confer as to next steps and contact the Court regarding scheduling a status conference. The duration of plaintiffs' requested stay thus is less than 11 months calculated from the date of this filing, and less than 10 months calculated from the date of the final brief under the Court's scheduling order found at Docket No. 35. If the case is then fully and finally resolved in the first quarter of 2016, it will have been concluded within just over 16 months, which is significantly less than the 22.8-month average time from filing to trial in this district. In the meantime, in the event developments involving the status of the Newport Air Station develop during the balance of 2015, the parties may petition to reactivate case proceedings.

Given the irreparable nature of the likely injuries that will befall plaintiffs and the public in the event of the Coast Guard seeks to repeat its challenged conduct, which were detailed in plaintiffs' prior filings, a stay of moderate duration is in the interests of justice and should be granted. The Coast Guard, in contrast, can point to no harm as a consequence of a stay, particularly given its representations that it "presently has no intention to close the Air Facility or relocate the MH-65 helicopter operating there." Second Martino Decl. ¶ 3. Plaintiffs sincerely hope the Coast Guard's present intention evolves into a concrete solution that is appropriately

///

protective of both human life and the environment. But given the current posture of this case, a stay is appropriate and warranted.

DATED this 9th day of February, 2015.

HAGLUND KELLEY LLP

By: /s/ Michael E. Haglund

Michael E. Haglund, OSB No. 772030

Julie A. Weis, OSB No. 974320

Sara Ghafouri, OSB No. 111021

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2015, I served the foregoing
PLAINTIFFS' MOTION TO STAY AND MEMORANDUM IN SUPPORT THEREOF, on
the following:

Sean C. Duffy
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

by the following indicated method(s):

- by **mail** with the United States Post Office at Portland, Oregon in a sealed first-class postage prepaid envelope.
- by **email**.
- by **hand delivery**.
- by overnight mail.
- by **facsimile**.
- by the court's Cm/ECF system.

Lawyer

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
(Eugene Division)

NEWPORT FISHERMEN'S WIVES, INC.,
an Oregon nonprofit corporation, **CITY OF
NEWPORT, LINCOLN COUNTY, PORT
OF NEWPORT and MIDWATER
TRAWLERS COOPERATIVE**, an Oregon
cooperative,

Plaintiffs,

v.

UNITED STATES COAST GUARD, an
agency of the United States Department of
Homeland Security,

Defendant.

Case No. 6:14-cv-1890-MC

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO MOTION TO DISMISS**

(Oral Argument Requested)

I. INTRODUCTION AND RELEVANT FACTUAL BACKGROUND.

The Court is familiar with the facts in this case, which will not be repeated at length in this brief. From plaintiffs' vantage point, the facts reflect poorly on an agency that historically has benefitted the Newport community greatly through the functioning of its Newport Air Station's search and rescue (SAR) capability. Without involving stakeholders, and with blinders

Page 1 - **PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO MOTION TO DISMISS**

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0000030438H073PL19

on to the realities of the dangers of the cold waters off Oregon's central coast, the Coast Guard skipped required National Environmental Policy Act (NEPA) procedures before making a decision to decommission a rescue helicopter that has consistently saved lives throughout its 27 years of service. While the agency steadfastly defended its conduct, in part by attempting to rewrite historical facts, congressional action in the form of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, Public Law No. 113-281 (the Act), brought the Newport community a brief reprieve, specifically by preventing the Coast Guard from closing the Newport Air Station for the remainder of the current calendar year.

Aside from the brief respite allowed by the Act, the Coast Guard continues to defend its conduct while now attesting it has changed course of its own volition and "presently has no intention to close the Air Facility or relocate the [SAR] helicopter operating there" Second Declaration of Captain Christopher Martino (Second Martino Decl.) ¶ 3. The Coast Guard also attests that although it had "considered" closing the Newport Air Station in 2014, it never really made a final decision to do so, despite strong evidence in the case to the contrary. *Id.* ¶ 4. The Coast Guard further maintains that it complied fully with NEPA before it announced the closure of the Newport Air Station in early October 2014, which decision the agency again characterizes as "the now-abandoned *proposal* to cease operations" at Newport. *Id.* ¶ 6 (emphasis added). Yet at the same time, the Coast Guard acknowledges that the agency's NEPA decision, which took the form of a categorical exclusion determination, was finalized after the fact "on November 10, 2014." *Id.* ¶ 9.

Captain Martino's characterizations of the Coast Guard's October 2, 2014 decision to close the Newport Air Station as only a "proposal," a "now-abandoned proposal" and a

"proposed cessation of operations" are clearly false. This is made abundantly clear by the testimony of Admiral Richard Gromlich at the October 20, 2014 town hall meeting organized by the City of Newport, Port of Newport and Lincoln County. A transcript of that testimony includes the following statement:

But those decisions are tough ones and they're made at the highest levels of our organization, and in this case, the final decision to close those air facilities was made by the Commandant of the Coast Guard. The air facility here in Newport will close on the thirtieth of November, and, even at my level of the Coast Guard, as the Congressman alluded to, I can't do anything about that as far as the closure date or offer to delay the closing in any way. I've got to carry that out.

Third Declaration of Ginny Goblirsch ("Third Goblirsch Decl."), ¶ 8 (emphasis added).

The Coast Guard also makes the surprising and false representations that it was the *agency* that in mid-October 2014 "hosted a stakeholder's meeting" and "hosted a town hall meeting" to discuss the Newport Air Station's closure with the affected community. Second Martino Decl. ¶ 8. Yet as Ginny Goblirsch testifies in her declaration, not only was it the three public body plaintiffs to this case that organized the stakeholders and town hall meetings, but the Coast Guard was a reluctant meeting participant, one that repeated the mantra that its decision to close the Newport Air Station was final and would not be reversed regardless of community input. Third Goblirsch Decl. ¶¶ 4-7 & Ex. D.

This is the atmosphere in which the Coast Guard urges the Court to dismiss plaintiffs' case primarily on mootness grounds as well as ripeness and standing. As demonstrated below, the Coast Guard's motion should be denied. Instead, pursuant to a separate motion filed herewith, the plaintiffs seek only to stay the case until January 1, 2016, at which time the parties should be required to confer as to next steps and schedule a status conference with the Court.

II. **DISMISSAL IS NOT WARRANTED.**

The Coast Guard's motion to dismiss rests largely on mootness grounds, with ripeness and standing assertions thrown in for good measure. Each is discussed in turn below.

A. **Defendant's Mootness Argument Falls Far Short of the Legal Standard.**

Given the factual record in this case, which must be evaluated in the light favorable to plaintiffs, the Coast Guard's mootness argument is greatly overstated. As Judge Haggerty recently emphasized, a party asserting mootness "has a heavy burden to meet." *Am. Humanist Ass'n v. United States*, ___ F.Supp.3d ____, No. 3:14-cv-00565-HA, 2014 WL 5500495, at *4 (D. Or. Oct. 30, 2014) (so stating in a case rejecting defendants' motion to dismiss an inmate's lawsuit that alleged a deprivation of constitutional rights due to the prison's refusal to recognize Humanism as a religion, even though the prison accommodated the inmate's religious beliefs after the lawsuit was filed). Indeed, where a defendant asserts mootness based on its voluntarily cessation of challenged conduct, that burden is increased. *Id.* More specifically, the "voluntary cessation of challenged conduct moots a claim only if 'subsequent events [make] it absolutely clear that the alleged wrongful behavior could not reasonably be expected to recur.'" *Id.* (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180 (2000), which in turn relied on prior Supreme Court precedent). The reason a defendant's voluntary cessation does not generally render a case moot is "because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed." *Knox v. Serv. Emps. Int'l Union, Local 1000*, ___ U.S. ___, 132 S.Ct. 2277, 2287 (2012).

Here, the Coast Guard not only continues to deny that it ever decided to close the Newport Air Station but it also claims its voluntary conduct after the filing of this lawsuit has

mooted plaintiffs' claims. Docket No. 36 at 6 (stating that plaintiffs' "claims have been rendered moot by the Coast Guard's decision not to cease operations at AIRFAC Newport and to continue to operate the helicopter at the facility under the same conditions"). To be sure, the Coast Guard acknowledges that the Act also puts sideboards around the agency's conduct for the time being, *id.*, until it sunsets in less than 11 months. But the central theme in the Coast Guard's brief is the notion that the agency "decided [not] to follow through on that plan" to close the Newport Air Station, *id.*, which is a quintessential example of a defendant relying on its voluntary cessation of challenged conduct in an effort to avoid judicial review.

The Coast Guard continues to defend the legality of its currently reversed decision to remove the SAR helicopter from Newport, and for that matter refuses to even admit that it made such a decision in the first instance despite compelling evidence to the contrary. On this record, the clear and unambiguous statement of Admiral Gromlich that "the final decision to close those air facilities was made by the Commandant" must trump the *post hoc* rationalization of Captain Martino, a declarant with no personal knowledge of the agency's decision-making process in this case, that the Coast Guard was only floating a "proposal" that has now been voluntarily withdrawn.

Two Ninth Circuit cases are instructive here. In *Headwaters, Inc. v. Bureau of Land Mgmt.*, 893 F.2d 1012 (9th Cir. 1990), the court noted that claims for declaratory relief remain alive only when "the challenged government activity . . . is not contingent, has not evaporated or disappeared, and, by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the petitioning parties." *Id.* at 1015 (quoting *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 122 (1974)). In *Headwaters*, following the

termination of the timber sale originally challenged in that case, the Ninth Circuit found that the possibility of future timber sales that could possibly impact the plaintiff was "too uncertain, and too contingent upon the BLM's discretion, to permit declaratory adjudication predicated on prejudice to [plaintiff's] 'existing interests.'" *Id.* (footnote omitted). In this case, we have a situation where the Coast Guard has, pursuant to a statutory directive, suspended its decision to close the Newport Air Station. According to Captain Marino, the Coast Guard "presently has no intention to close the air facility or relocate the MH-65 helicopter operating there," but at the same time, the agency has no doubt provided input to the administration that has resulted in the President's recently released budget request seeking language authorizing defendant to close the air stations in Newport and Charleston, South Carolina. Third Goblirsch Decl. Ex. D. Clearly, the threat of closure has not "evaporated or disappeared" and the competing positions of plaintiffs and the Coast Guard that will collide in Congress this year constitutes the type of "continuing and brooding presence" that makes this case far from moot.

The Ninth Circuit's decision in *Oregon Natural Resources Council, Inc. v. Grossarth*, 979 F.2d 1377 (9th Cir. 1992), is also instructive with respect to the "voluntary cessation" exception to the mootness doctrine. In *Grossarth*, which involved a cancelled timber sale, the Ninth Circuit found that the agency's cancellation of that timber sale, and announcement that it would comply with NEPA for any future sales, did not invoke the "voluntary cessation" exception to the mootness doctrine. *Id.* at 1379. In contrast to the facts in *Grossarth*, the record in this case strongly supports plaintiffs' contention that there is a "reasonable expectation" of a recurrence of "the same allegedly unlawful conduct by the [agency] in the future." *Id.* In this case, the Coast Guard has made no commitment regarding the future of the Newport Air Station

beyond the legally mandated twelve and one-half months between the stipulated injunction of December 11, 2014 and the January 1, 2016 sunseting of legislation that was signed into law on December 18, 2014. Given the pending budget request from the Coast Guard, there is much more than a reasonable expectation that the Coast Guard will simply implement a now-disrupted decision with a new and equally illegal categorical exclusion, all the while attempting to claim that the so-called new decision and the NEPA compliance question must rest on a new pre-decision categorical exclusion rather than the one that clearly postdated the decision that was announced on October 2, 2014.

In short, on the facts of this case, the Coast Guard's mootness argument should be rejected.

B. Plaintiffs Have Previously Demonstrated Both Ripeness and Standing.

Regarding ripeness, the Coast Guard fails to acknowledge that ripeness "is an element of jurisdiction [that] is measured at the time an action is instituted; ripeness is not a moving target affected by a defendant's action." *Malama Makua v. Rumsfeld*, 136 F.Supp.2d 1155, 1161 (D. Hawai'i 2001) (rejecting Army's argument that its withdrawal of challenged NEPA documents, namely a supplemental environmental assessment and finding of no significant impact, did not render the case unripe) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189-91 (2000)). See also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (so holding as to jurisdictional issues generally, and expressly rejecting the argument that events subsequent to filing a lawsuit can retroactively confer jurisdiction where jurisdiction did not exist at the time of filing); *Sierra Club v. U.S. Army Corps of Eng'rs*, 446 F.3d 808, 814 (8th Cir.

2006) ("Jurisdictional issues such as standing and ripeness are determined at the time the lawsuit was filed . . .").

The Coast Guard did not seriously challenge the ripeness of plaintiffs' action when opposing plaintiffs' motion for a preliminary injunction – nor should it have done so. As plaintiffs pointed out in prior briefing, the Coast Guard half-heartedly implied (in a footnote) that plaintiffs' action was not ripe for review because there was no final agency action. Docket No. 18 at 27 n.5. Plaintiffs explained why the Coast Guard was wrong:

Setting aside the Coast Guard's decision to close the Newport Air Station well in advance of the November 10, 2014 categorical exclusion decision, it is black letter law that a categorical exclusion issued in the absence of an EA or EIS is a final agency action subject to judicial review. *See, e.g., Friedman Brothers Inv. Co. v. Lewis*, 676 F.2d 1317, 1319 (9th Cir.1982) (determining that a federal agency's decision that a bus yard qualified for a categorical exclusion from NEPA was a reviewable final agency action even though the federal agency had "not made a final commitment to fund the construction of the bus depot").

Docket No. 22 at 24 n.3. The Coast Guard's argument fares no better now.

Regarding standing, the Coast Guard's position rests on assertions previously made in opposing plaintiffs' motion for a preliminary injunction. Docket No. 36 at 10 ("The Coast Guard briefly summarizes its argument [made in its opposition to plaintiffs' motion for a preliminary injunction] here."). This makes sense given that "[j]urisdictional issues such as standing . . . are determined" at the outset of a case. *Sierra Club*, 446 F.3d at 814. Yet the Coast Guard ignores the fact that plaintiffs met the agency's standing argument *head on* by aggressively establishing all of the elements for Article III and prudential standing under NEPA, an argument to which the Court is respectfully referred rather than repeating it here. Docket No. 22 at 10-21.

Again, the standing inquiry focuses on whether the particular plaintiffs before the Court have alleged a sufficiently personal stake in the outcome of the controversy to warrant the Court's exercise of federal jurisdiction. If not these plaintiffs, then whom? The plaintiffs in this case are by no means strangers to the serious issues before the Court, all of which implicate the public interest. Rather, the plaintiff coalition – comprised of the Newport Fisherman's Wives, Inc., City of Newport, Lincoln County, Port of Newport and the Midwater Trawlers Cooperative – has demonstrated highly personal stakes in the outcome of this case for purposes of standing. Keep in mind too that the plaintiff coalition need only establish the standing of one of its members. *Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981) (where one of three groups of plaintiffs was found to have standing, the Court did not "consider the standing of the other plaintiffs"). The Coast Guard's standing argument thus is without merit.

III. CONCLUSION.

For the reasons set forth above and as supported by the record in this case, the Court should deny the Coast Guard's motion to dismiss and grant plaintiffs' motion to stay the case through December 31, 2015.

DATED this 9th day of February, 2014.

HAGLUND KELLEY LLP

By: /s/ Michael E. Haglund

Michael E. Haglund, OSB No. 772030

Julie A. Weis, OSB No. 974320

Sara Ghafouri, OSB No. 111021

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2015, I served the foregoing
PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS on the
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/s/Michael E. Haglund
Michael E. Haglund

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
(Eugene Division)

NEWPORT FISHERMEN'S WIVES, INC.,
an Oregon nonprofit corporation, **CITY OF
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OF NEWPORT and MIDWATER
TRAWLERS COOPERATIVE**, an Oregon
cooperative,

Plaintiffs,

v.

UNITED STATES COAST GUARD, an
agency of the United States Department of
Homeland Security,

Defendant.

Case No. 6:14-cv-1890-MC

**THIRD DECLARATION OF GINNY
GOBLIRSCH IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

I, Ginny Goblirsch, being sworn, say:

1. This declaration is based upon my own personal knowledge and supplements my prior declarations on file in this case (at Docket Nos. 7 and 23).

2. Quite frankly, I was shocked to see the declaration of Captain Christopher Martino in support of the Coast Guard's Motion to Dismiss in which he attempts to blatantly

**Page 1 – THIRD DECLARATION OF GINNY
GOBLIRSCH**

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rewrite the history of the Coast Guard's decision last fall to close the Newport Air Station. In his declaration (Dkt. No. 37), Captain Martino states that, before the passage of federal legislation on December 18, 2014, the Coast Guard had only "considered ceasing operations" of the rescue helicopter, but that the Commandant never officially took this action. He also repeatedly refers to the Coast Guard action as only a "proposal," characterizing it as "the now-abandoned proposal" and a "proposed cessation of operations." It is important to point out that Captain Martino does not claim to have been involved in any of the actual decision-making or the communications with the Newport Fishermen's Wives or any of the other stakeholder organizations in Newport. He also makes his multiple statements about the Coast Guard's decision-making process despite having no personal involvement other than heading up the office that "oversaw the planning associated with the removal of resources" following the passage of the Fiscal Year 2014 Appropriations Act. As demonstrated below, none of Captain Martino's claims about the "proposed" character of the Coast Guard decision or its effort to discuss a so-called proposal with stakeholders in Oregon is accurate.

3. I previously testified that when the Coast Guard first raised the possibility of closing its Newport Air Station in testimony before Congress in March 2013, our concerned Oregon congressional delegation – which understands the need for timely search and rescue (SAR) capability for our cold water emergencies – followed up and received assurances that the Newport Air Station would remain open through 2015.

4. The first point in time when our organization or anyone within the greater Newport community learned that the Coast Guard had decided to close the Newport Air Station was on October 2, 2014 when Newport Fishermen's Wives, Inc. received the email that is

attached as Exhibit A. That email attached the letter of the same date that is Exhibit B. The email notes that the Coast Guard "will close its Air Facility in Newport" on December 1, 2014 and the attached letter states unequivocally that "the Coast Guard has decided to close our air facility in Newport, Oregon on November 30, 2014." There is nothing about either of these communications that remotely suggests that the Coast Guard is making a "proposal to cease helicopter operations" on which it seeks local stakeholder input.

5. After the Coast Guard issued the October 2, 2014 email and letter notices, our community took action and organized meetings of local stakeholders that Coast Guard representatives attended only reluctantly and after making clear that the decision to close the Newport Air Station had been made, was final and was out of their hands. The statements in Captain Martino's declaration that the Coast Guard "hosted a stakeholders meeting" on October 15, 2014, and that the Coast Guard "hosted a town hall meeting" on October 20, 2014 are just not true.

6. The stakeholders meeting that was held on October 15, 2014 in Newport was organized by the City of Newport, the Port of Newport and Lincoln County. I attended the meeting, at which the Coast Guard – which had been invited to attend and was represented by U.S. Sector North Bend Commander Todd Trimpert – told us the Coast Guard would not be attending the town hall meeting on October 20, 2014.

7. The town hall meeting on October 20, 2014, which I also attended, was organized by the City of Newport, the Port of Newport and Lincoln County, not by the Coast Guard. A copy of the press release issued by the City, the County and the Port is attached as Exhibit C.

The Coast Guard reversed course and showed up, but only after it was pressured to do so by representatives of the Oregon congressional delegation.

8. The Coast Guard was represented at the October 20, 2014 town hall meeting by Admiral Richard Gromlich. At the meeting, Admiral Gromlich stated that the closure of the air station was authorized by the 2014 appropriations bill and he emphasized that it was a final decision that had been made by the Commandant of the Coast Guard. His testimony was taped and transcribed by personnel at the City of Newport. Regarding the finality of the Coast Guard decision, Admiral Gromlich did not mince words:

But those decisions are tough ones and they're made at the highest levels of our organization, and in this case, the final decision to close those air facilities was made by the Commandant of the Coast Guard. The air facility here in Newport will close on the thirtieth of November, and, even at my level of the Coast Guard, as the Congressman alluded to, I can't do anything about that as far as the closure date or offer to delay the closing in any way. I've got to carry that out.

A copy of the transcript of Admiral Gromlich's testimony is attached as Exhibit D with the quoted material highlighted.

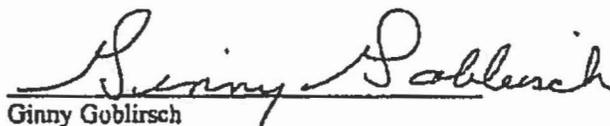
9. Given the Coast Guard's continuing effort to reshape the facts in this case to its benefit, I fear the Coast Guard will again, in the foreseeable future, seek to close the Newport Air Station based on a categorical exclusion decision that ignores the likely presence of extraordinary circumstances and is therefore illegal. This fear has only been heightened by recent input we have received from Congressman Kurt Schrader's staff.

10. As noted in the email attached as Exhibit E, the budget recently submitted by President Obama continues to list the Fiscal Year 2014 reduction of 28 personnel from Newport and Charleston as continuing through both Fiscal Years 2015 and 2016. If the budget request for

the Coast Guard passes as requested, there will not be any funding for the Newport Air Station in the final nine months of Fiscal Year 2016, which covers the period of January 1 through September 30 of 2016. As Exhibits A and B state, the Coast Guard tied its decision to close the Newport Air Station in its October 2, 2014 communications to the Fiscal Year 2014 Appropriations Act. If the Coast Guard is successful in securing language in the 2015 appropriations bill reauthorizing closure of the Newport Air Station, I have every expectation that the Coast Guard will simply implement the same decision with what the agency claims is a new categorical exclusion. Our organization and others on Oregon's central coast will be working hard to convince Congress not to adopt language authorizing closure of the Newport Air Station in this year's appropriations bill, but the outcome of that legislative process is hard to predict.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 9 day of February, 2015.


Ginny Goblirsch

**Page 5 – THIRD DECLARATION OF GINNY
GOBLIRSCH**

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2015, I served the foregoing **THIRD**

DECLARATION OF GINNY GOBLIRSCH on the following:

Sean C. Duffy
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

by the following indicated method(s):

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- by **email**.
- by **hand delivery**.
- by **overnight mail**.
- by **facsimile**.
- by the court's **Cm/ECF system**.

/s/Michael E. Haglund
Michael E. Haglund

-----Original Message-----

From: Trimpert, Michael T CAPT
Sent: Thursday, October 02, 2014 11:13 AM
To: newportfishermenswives@gmail.com
Cc: Trimpert, Michael T CAPT
Subject: USCG Air Facility Newport Closure

Good Morning Ma'am -

I am writing this morning to notify you that on December 1, 2014, the US Coast Guard will close its Air Facility in Newport. As part of this closure, the Coast Guard will consolidate aviation response operations for Search and Rescue and other missions in North Bend and no longer have an aircraft at the Newport airport full time.

I have attached a letter from the Commander of the Coast Guard's Thirteenth District, RADM Gromlich, that explains the Coast Guard's basis for closure in greater detail. While you will receive a hard copy of this letter shortly, the Coast Guard is planning to release this information to the press tomorrow and I wanted to ensure that we had an opportunity to communicate prior to media notification.

The Coast Guard has had a long and distinguished relationship with your organization. With full realization that you and your members may have many concerns, I am available at your convenience, via phone or in person, to discuss this issue further.

Very Sincerely,

CAPT Todd Trimpert
Sector Commander
USCG Sector North Bend
2000 Connecticut Ave
North Bend, OR 97459
[541-756-9253](tel:541-756-9253) (Desk)
[541-991-0007](tel:541-991-0007) (Cell)
[541-756-9210](tel:541-756-9210) (Command Center)



5730

OCT 02 2014

Mr. Lance Vanderbeck
Newport Airport Operations Manager
135 SE 84th St.
South Beach, OR 97366

Dear Mr. Vanderbeck:

I am writing to notify you, as authorized in the Consolidated Appropriations Act of 2014, the Coast Guard has decided to close our Air Facility in Newport, Oregon on November 30, 2014. This facility is a detachment of Coast Guard Sector North Bend. Aircraft and crews from North Bend deploy to Newport for Search and Rescue (SAR) and other operations.

Through targeted investment in vital recapitalization projects, the Coast Guard has significantly improved our SAR response posture. Specifically, we have deployed the Coast Guard's Rescue 21 communications and distress calling system, which provides us with significantly improved detection capability, as well as the ability to use radio signals to more efficiently locate mariners in distress. In addition, there have been improvements in safety and survival equipment that greatly increase the chance of survival and detection for imperiled mariners. Given these improvements in the overall SAR system, the Coast Guard will consolidate air operations in Southern Oregon at our Air Station in North Bend while continuing to meet all national SAR response standards.

If you have any questions regarding this matter, please feel free to contact Captain Todd Trimpert, Sector North Bend Commander, (541) 756-9253 or Commander Eric Belleque, District Thirteen Chief of External Affairs, (206) 220-7236.

Sincerely,

A handwritten signature in black ink, appearing to read "R. T. Gromlich".

R. T. GROMLICH
Rear Admiral, U.S. Coast Guard
Commander, Thirteenth Coast Guard District

EXHIBIT A
PAGE 1 of 1

EXHIBIT B
Page 1 of 1

FOR IMMEDIATE RELEASE

**CITY OF NEWPORT, THE PORT OF NEWPORT, AND LINCOLN COUNTY
WILL HOLD A JOINT MEETING
REGARDING THE ANNOUNCED CLOSURE OF THE
UNITED STATES COAST GUARD AIR FACILITY
AT THE NEWPORT MUNICIPAL AIRPORT**

The City of Newport, Port of Newport, and Lincoln County, with support from the Oregon Coastal Caucus, will facilitate a joint meeting to allow for input from the public regarding the closure of the Coast Guard's Air Facility located at the Newport Municipal Airport. The meeting will be held on Monday, October 20, from 5:30 - 7:30 P.M., at the Oregon Coast Community College Commons, 400 SE College Way, Newport.

Representatives of the Coast Guard 13th District in Seattle, Washington; Captain Todd Trimpert, Commander of the U.S. Coast Guard Station North Bend; and Chief Warrant Officer Ryan O'Meara, Commanding Officer of the Coast Guard Station Yaquina Bay, have been invited to participate.

In addition, Congressman Kurt Schrader, and representatives from Senator Merkley's and Senator Wyden's offices are expected to participate.

The U.S. Coast Guard representatives and federal officials will be available to respond to questions and concerns expressed at the meeting. The public is invited to make comments and ask questions relating to the Air Facility at the Newport Municipal Airport.

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For media questions related to this press release, please contact: Kevin Greenwood, Port Manager, Port of Newport, at kgreenwood@portofnewport.com, or 541.265.7758, or Spencer Nebel, City Manager, City of Newport, at s.nebel@newportoregon.gov or 541.574.0603, or Casey Miller, Public Information Officer, Lincoln County, at cmiller@co.lincoln.or.us or 541.265.4100.

Admiral Richard Gromlich thanked the Congressman. "First I want to extend thanks to the Oregon congressional delegation; your state and local elected officials; members of the City of Newport; the County; and the Port, for offering a personal invitation to me to come and join you here this evening. I also wanted to thank you all for your continued support of our Coast Guard men and women in blue. It is obvious that you care deeply. Your attendance here tonight is just one example of that. The passion that you have demonstrated when word officially got out that the air facility here in Newport was going to close is another example of how much you care for the Coast Guard and what it means. I also want to thank, particularly, the City of Newport for being a Coast Guard City - one of only 16 in the country. I believe you were the fifth one to be designated as a Coast Guard City back in 2005. Again, it shows the support that you have for our military members and their families, and I appreciate how much that means in communities along the Oregon and Washington coasts. As the Congressman said, I was fortunate to be stationed at Air Station North Bend from 1990 to 1994. For a lot of folks in this room; they weren't even born yet. I was there when we first, at least when I reported to North Bend, we were standing the duty at the air facility here in Newport out of an "old, beat up trailer." Some of you may remember that. We would leave North Bend in the morning and we would return just about dark, and then we would come back the next day. And, we'd either fly patrols or training flights, or hang out in the trailer just waiting to see if something happened. And, I was here still in 1994 when that beautiful new facility was built and we started to stand 24-hour watches seven days a week. I lived in the community of North Bend; my oldest daughter was born there. I served there. I understand what it means to live on the Oregon coast; I understand about storms that come through the area, where on the east coast, we refer to those as hurricanes, and here in the northwest, we call them winter storms. I understand about sneaker waves that rip people from the beach; I understand about rogue waves that capsize boats offshore. I understand the environment we all live in along the Oregon and Washington coasts and am committed to ensure that the Coast Guard, whatever happens, is able to respond and do what it is that we do best. The decision to close the air facility here in Newport, Oregon, as well as the air facility in Charleston, South Carolina, was actually part of the budget submission for fiscal year '14 that was submitted by the President as many of you know. The Coast Guard is authorized to close the two facilities as a part of its appropriations bill for fiscal year 14 - last year. It's a tough environment that we're living in right now. And, I know that many of you - it's just a tough, tough thing to understand when we're talking about things like sequestration, continuing resolutions like we're under right now, and declining budgets. The Coast Guard constantly has to make very, very difficult decisions, and I can tell you that in my former jobs, back in Washington, D.C., and my last job in Norfolk, that I was involved in a lot of those decisions. And, it is hard and it is personal, and rightly so; it's personal. But those decisions are tough ones and they're made at the highest levels of our organization, and in this case, the final decision to close those air facilities was made by the Commandant of the Coast Guard. The air facility here in Newport will close on the thirteenth of November, and, even at my level of the Coast Guard, as the Congressman alluded to, I can't do anything about that as far as that closure date or offer to delay the closing in any way. I've got to carry that out. I know that many of you probably came here hoping that you would hear something different, and I'm sorry that I can't tell you anything different. But I will say that in making that decision, the Coast Guard followed a process. I think particularly when it comes to dealing with our state and local citizens, we didn't do a very good job; that

process broke down. For that I personally and truly regret the anxiety this has caused for the local citizens along the Oregon coast. But, there is a process that we followed, and there is a process that you're involved in right now to make your concerns heard so that officials higher up the chain understand the impacts of the decisions that have been made. But that's why we're here tonight as well. As you heard, there are quite honestly, there are some that don't feel that I should be standing up here. But, I think I'm the one that needs to stand up here. I need to be able to talk to; I need to hear what conditions are; I need to hear your concerns; I need to hear your comments, and I can assure you that we will listen. We have been listening. Since the decision was announced, I have listened to the news reports; I've read the newspaper articles - hundreds of them; we've monitored the websites; looked at the blogs; looked at the petition on-line and seen the comments that were made; we attended the stakeholders meeting last week that was held. We are listening. We will continue to listen." He introduced the local Coast Guard officers in attendance, including: **Todd Trimpet of U.S. Coast Guard Station North Bend; Ryan O'Meara of U.S. Coast Guard Station Yaquina Bay; and Carlos Hessler of U.S. Coast Guard Station Depoe Bay.** Gromlich stated that regardless of what happens, these Coast Guard members will continue to serve, and the Coast Guard will be there to answer the call.

-----Original Message-----

From: Kevin Greenwood
Sent: Thursday, February 05, 2015 4:18 PM
To: 'McKibben, Megan'
Cc: 'Ray Bucheger'
Subject: RE: President's Budget

Great. Thanks Megan.

Kevin Greenwood
(541) 265-7758
(541) 961-9517 Cell

-----Original Message-----

From: McKibben, Megan (<mailto:Megan.McKibben@mail.house.gov>)
Sent: Thursday, February 05, 2015 4:16 PM
To: Kevin Greenwood
Subject: RE: President's Budget

Hi Kevin,
Here is the response to your question from our D.C. office:

The authorization requires the USCG to keep the Newport AIRFAC open to January 1, 2016. The cost of doing this is something they have to figure out whether or not it is accounted for in their planning reflected in the budget.

As far as I can tell, USCG is still planning on closing the Newport AIRFAC. The President's budget does have \$40 million for the helicopter fleet, up from \$30 million, for recapitalization. However, it appears that the budget continues to list the FY2014 reduction of 28 personnel from Newport and Charleston as originally planned as continuing through FY2015 and FY2016. Based on that it does not appear they have budgeted for continued operations at the Newport AIRFAC in the final 9 months of FY2016.

Thanks
Megan