

CITY OF NEWPORT

ORDINANCE NO. 2041

AN ORDINANCE AMENDING THE ZONING MAP AND ZONING CODE TEXT OF THE CITY OF NEWPORT, NMC 14.03.080, RELATED TO WATER-DEPENDANT AND WATER-RELATED ZONING DISTRICTS

Summary of Findings:

1. A request by the Port of Newport (Don Mann, authorized representative) was filed on March 21, 2012 for amendments to the Zoning Map of the City of Newport Zoning Ordinance (Ordinance No. 1308, as amended). The application also requested a text amendment to Section 2-2-1.040 of the Newport Zoning Ordinance (now codified at, and hereafter referred to as §14.03.080 Newport Municipal Code (NMC)).
2. The subject property roughly 11.7 acres in size, consisting of land located north of the South Beach Marina parking lot and south of the National Oceanographic and Atmospheric Administration (NOAA) Pacific Marine Operations Center, west of SE Marine Science Drive. The property is a portion of a larger 62.76 acre parcel owned by the Port of Newport and identified as Tax Lot 111 of Assessor's Tax Map 11-11-17.
3. Existing improvements include the Yaquina Bay Fruit Processing (YBFP) facility, the Port of Newport's upland dredge disposal site and portions of the South Beach Marina.
4. The Comprehensive Plan Map designation for the property is "Shoreland" and the Zoning Map designations are W-1/"Water Dependent" and W-2/"Water Related."
5. With this amendment, the Zoning Map designation for approximately 5.7 acres of the subject property, located between the Port of Newport's upland dredge disposal site and SE Marine Science Drive, south of the NOAA Pacific Marine Operations Center, will be changed from W-1/"Water Dependent" to W-2/"Water Related" zoning. Zoning designations for the remaining 6.0 acres, consisting of the Port's upland dredge disposal site, and portions of the South Beach Marina situated west of the dredge disposal site and north of the marina parking lot, will be changed from W-2/"Water Related" to W-1/"Water Dependent."
6. The Port of Newport's upland dredge disposal site and the subject portions of the South Beach Marina adjoin the bay and are uses that depend upon access to the water. It is appropriate that these lands be placed into a W-1 zone, so that they are protected and reserved for water dependent uses. Such action is consistent with Policies 5 and 8 of the of the Yaquina Bay and Estuary Section of the Newport Comprehensive Plan, which calls for the protection of dredge material disposal sites from conflicting uses and for the W-1 zoning designation to be placed on lands especially suited for water dependent development.
7. Similarly, it is appropriate that the 5.7 acres that is partially occupied by the YBFP facility be placed into a W-2 zone in that this property does not depend upon or possess direct access to the bay. This makes the property suitable for the expanded range of commercial and industrial activities permitted in this district. The change is also consistent with Policies 6 and 7 of the Yaquina Bay and Estuary Section of the Newport Comprehensive Plan, which encourages a mix of uses along the bay front with nonwater-dependent uses being encouraged to locate on upland properties.

8. A text amendment to Section 2-2-1.040 of the Newport Zoning Ordinance, codified as Chapter 14.03.080 of the Newport Municipal Code, to allow "Manufacturing in Conjunction with Uses Permitted Outright in a C-2 District" as a conditional use in the W-2 zone, furthers a public necessity and promotes the general welfare by providing for a mix of uses on upland areas adjacent to the bay. Similar uses, such as Rogue Brewery, already exist in the area and have demonstrated that they can successfully coexist with nearby water dependent uses. This change also affords YBFP an opportunity to add retail, tourist-oriented elements to its business model through a conditional use process creating an avenue for it to resolve documented land use compliance issues inherent to the current manufacturing operation.
9. The amount of W-1 zoned land within the city increases as a result of this Zoning Map amendment. This is consistent with Policy 3 of the Yaquina Bay and Estuary Section of the Newport Comprehensive Plan, which prioritizes W-1/"Water Dependent" zoning over W-2/"Water Related" zoning.
10. The Newport Planning Commission reviewed the proposed revisions to the Zoning Map and Zoning Ordinance (Newport File No. 2-Z-11) at a public hearing on March 21, 2012, and voted unanimously to recommend adoption of the amendments as furthering a public necessity and promoting the general welfare for the following reasons:
 - a. The requested zoning map amendments allow for more appropriate zoning classifications for the affected property. The close proximity of the Port of Newport's upland dredge disposal site to the bay is important to the ongoing maintenance dredging of the Port's recreational marina. Further, the marina itself is a water dependent use that relies upon direct access to the bay. It is, therefore, appropriate that W-1/"Water Dependent" zoning be put in place to preclude conflicting uses from being established.
 - b. Property occupied by YBFP is isolated from and not dependent upon water access. It is, therefore, appropriate that it be placed into a W-2/"Water Related" zoning designation which is more permissive in terms of the range of commercial and industrial uses that can be permitted.
 - c. Text amendments to NMC 14.03.080 to allow "Manufacturing in Conjunction with Uses Permitted Outright in a C-2 District" are consistent with the established development pattern in the area and affords YBFP an opportunity to alter its business model to include a meaningful tourist-oriented retail element that would allow it to continue to operate at its present location in a manner that is complementary to nearby, tourist-oriented water-dependent and water-related uses.
 - d. Consistent with OAR 660-012-0060(1) this zone change will not significantly affect existing or planned transportation facilities. W-2 zoning allows a broader range of uses than the W-1 district. This means that there is the potential for more vehicle trips being generated from W-2 zoned areas. Considering that the proposed map amendment reduces the amount of W-2 zoned land, there should be fewer anticipated vehicle trips, meaning that the map change will have a negligible impact on existing or planned transportation facilities. The proposed text change clarifies that manufacturing in conjunction with tourist-oriented retail uses can be permitted in the W-2 district subject to conditional use approval. Similar uses already exist in the area (i.e. Rogue Brewery) and the South Beach Peninsula experiences significant tourist and industrial/manufacturing related traffic. Area roads and bike/pedestrian facilities such as SE Marine Science Drive, SE Pacific Way, SE Ferry Slip Road and Hwy 101 have been designed to accommodate this level of use.

11. The City Council held a public hearing on June 18, 2012 regarding the question of the proposed revisions, and voted to accept the Planning Commission's recommendation after considering evidence and argument in the record.

12. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the Council's following amendments.

Section 2. The City Council further adopts the analysis and recommendation contained in the Planning Staff Report as supplemental findings in support of approval of the requested Zoning Map amendment, attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 3. Chapter 14.02.020.A of the Newport Municipal Code is hereby amended to rezone lands south of the NOAA Pacific Marine Operations Center, north of the South Beach Marina parking lot, east of the Port of Newport's upland dredge disposal site, and west of SE Marine Science Drive, including the YBFP facility, from "W-1/Water Dependent" to W-2/"Water Related," as illustrated on Exhibit "B", and more specifically described in Exhibit "C" attached hereto and incorporated herein by this reference.

Section 4. Chapter 14.02.020.A is hereby amended to rezone the Port of Newport's upland dredge disposal site and portions of the South Beach Marina situated north of the marina parking lot and west of the dredge disposal site, from W-2/"Water Related" to "W-1/Water Dependent," as illustrated on Exhibit "B", and more specifically described in Exhibit "D" attached hereto and incorporated herein by this reference.

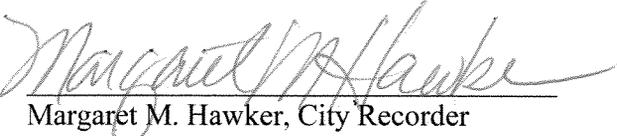
Section 5. Chapter 14.03.080 of the Newport Municipal Code is hereby amended to insert "Manufacturing in Conjunction with Uses Permitted Outright in a C-2 District" as subsection 19, with existing subsections 19 and 20 being renumbered appropriately.

Section 6. This ordinance shall take effect 30 days after adoption.

Date adopted: July 16, 2012


Mark McConnell, Mayor

ATTEST:


Margaret M. Hawker, City Recorder

PLANNING STAFF REPORT
File No. 2-Z-12

- A. **APPLICANT & OWNER:** Port of Newport (Don Mann, authorized representative).
- B. **REQUEST:** The request involves a proposed zoning map amendment to rezone approximately 6.10 acres of the Port of Newport's South Beach Marina and dredge disposal site from a W-2 ("Water Related") to a W-1 ("Water Dependent") designation. Roughly 5.0 acres to the interior of the Port's property will be rezoned from W-1 to W-2, including the Yaquina Bay Fruit Processors' site. The request also involves a legislative text amendment to Newport Zoning Ordinance Section 2-2-1.040 to include "Manufacturing in Conjunction with Uses Permitted Outright in a C-2 District" as a conditional use in the W-2 district.
- C. **LOCATION:** The subject property consists of portions of Tax Lot 111 of Assessor's Tax Map 11-11-17. See map in Planning Staff Report Attachment "B".
- D. **LOT SIZE:** Approximately 62.76 acres per the Assessor's map.
- E. **PLANNING COMMISSION ACTION:** The Planning Commission reviews this request and makes a recommendation to the City Council.
- F. **STAFF REPORT:**
1. **Report of Fact**
 - a. **Existing Plan Designation:** "Yaquina Bay Shoreland".
 - b. **Existing Zone Designation:** W-2/"Water Related" for the Port of Newport's South Beach Marina and dredge disposal site, and W-1/"Water Dependent" for the interior Port property that includes the Yaquina Bay Fruit Processors' site.
 - c. **Surrounding Land Uses:** The Port property is surrounded by other water-related and water-dependent uses.
 - d. **Topography and Vegetation:**
 - e. **Existing Structures:** The Port of Newport's South Beach Marina and the Yaquina Bay Fruit Processors' buildings.
 - f. **Utilities:** All city services are available to the Port site.
 - g. **Development Constraints:** None known.
 - h. **Past Land Use Actions:**

File No. 3-CUP-03. Approval of a Conditional Use Permit for a water-dependent use (fruit (cherry) processing facility requiring the use of the adjacent water for water supply through an existing salt water intake pump).

i. **Attachments:**

Attachment "A"	Applicant's Letter of Application
Attachment "A-1"	Aerial Zoning Map showing area of proposed zoning designation change
Attachment "A-2"	Markup copy of NZO Section 2-2-1.040 showing addition of "Manufacturing in Conjunction with Uses Permitted Outright in a C-2 District" as conditional in W-2
Attachment "B"	Notice of Public Hearing and Map
Attachment "C"	Final Order for File No. 3-CUP-03
Attachment "D"	Letter from Pete Dale, Port of Newport, dated October 12, 2009
Attachment "E"	Letter from Derrick Tokos, City of Newport, dated October 22, 2009
Attachment "F"	Letter from Don Mann, Port of Newport, dated December 3, 2009
Attachment "G"	Letter from Derrick Tokos, City of Newport, dated December 29, 2009

- j. **Notification.** The Department of Land Conservation & Development was mailed notification of the proposed amendments on March 23, 2012. Applicable city departments, public agencies, and affected property owners within 300 feet of the subject property were notified on April 9, 2012, for the Planning Commission hearing. Notification of the Planning Commission hearing was published in the Newport News-Times on May 4, 2012.

2. **Explanation of the Request:**

The Port of Newport is proposing a Zoning Ordinance map amendment to rezone approximately 6.10 acres of the Port of Newport's South Beach Marina and dredge disposal site from a W-2 ("Water Related") to a W-1 ("Water Dependent") designation and approximately 5.0 acres to the interior of the Port's property from W-1 to W-2, which includes the Yaquina Bay Fruit Processors' (YBFP) site. This is depicted on Attachment "A-1". The Port of Newport leased its property to YBFP in 2003. At the time, YBFP obtained a conditional use permit because its manufacturing process involved the use of salt water (Attachment "C"). The process has since changed, and the YBFP facility is no longer compliant with its conditional use approval. In December of 2009, the Port of Newport and City of Newport agreed to an arrangement where the YBFP operation would be relocated onto Port property

outside of the area now occupied by the NOAA Pacific Marine Operations Center. The Port would then work to resolve the land use compliance issue, which at that time was assumed to be the relocation of the YBFP operation to an appropriately zoned property within three years (Attachments "D" through "G").

This application has been filed by the Port of Newport as a step towards resolving the YBFP land use compliance problem, by getting the facility out of the W-1 ("Water Dependent") district where it is not permitted. The YBFP operation would be placed within a W-2 ("Water Related") zone. The Port is proposing to change the text of the City's zoning code to allow "Manufacturing in Conjunction with Uses Permitted Outright in a C-2 District" as a conditional use in this district (NZO Section 2-2-1.040). Staff understands that YBFP is interested in introducing a meaningful retail/tourist oriented element to their maraschino cherry manufacturing operation and this text amendment, if adopted, would provide them an opportunity to pursue the concept through a conditional use application.

Proposed zoning map and text changes also align with how properties are configured and used in the area. The Port of Newport's upland dredge disposal site and a portion of the South Beach Marina will be rezoned from W-2 to W-1. The Port notes in their application that these areas adjoin the bay and are used in a manner that is consistent with the intent of the W-1 district. The Port also indicates that the YBFP site is isolated from and not dependent upon water access. This makes it more appropriate for a W-2 designation than the dredge disposal site. The text change is consistent with Rogue Brewery's manufacturing and retail operation on the southern portion of the subject parcel. That area is also within a W-2 zoning district (Attachment "A-1").

The Port of Newport notes that there are only five companies that actually produce maraschino cherries. Three companies, including YBFP, grow and process the cherries. YBFP has a potential to grow even more by focusing on upgrading stemless cherries as a separate product; and the manufacturing aspect of the business has tremendous tourist potential in its busy South Beach location. The Port of Newport's Board of Commissioners feel that a recommendation for this proposed zone change is suitable, will allow for more appropriate zone classifications, and will retain a long-standing and valuable local business.

The Port of Newport's application refers to 1.3 acres being rezoned from W-1 to W-2 and 4.0 acres being rezoned from W-2 to W-1. After careful evaluation of the City's zoning maps those figures were changed to 5.0 acres and 6.10 acres respectively.

3. **Evaluation of the Request:**

- a. **Comments:** DLCD was provided notification on March 23, 2012. All applicable property owners, city departments, affected public/private utilities/agencies were notified on April 9, 2012, of the Planning Commission hearing. As of May 9, 2012, no written comments were received by the Community Development Department.

b. **Applicable Criteria:**

Criteria for the Proposed Zoning Map Amendments (Section 2-5-5.005) of the Newport Zoning Ordinance (No. 1308, as amended):

1. The change furthers a public necessity.
2. The change promotes the general welfare.

c. **Staff Analysis:**

The proposed findings submitted by the applicant, and articulated herein, address the criteria established in the Comprehensive Plan and Zoning Ordinance for approving the request.

In regard to the applicable criteria for the proposed Zoning Map amendment:

The change furthers a public necessity and promotes the general welfare.

The requested zoning map amendments would allow for more appropriate zone classifications for the affected property. The close proximity of the upland dredge disposal site to the bay is important to the ongoing maintenance dredging of the Port's recreational marina, and is; therefore, an activity accessory to and in conjunction with water-dependent uses. The property YBFP occupies is isolated from and not dependent upon water access. YBFP has the capacity to add retail, tourist-oriented, and manufacturing aspects to their operation, and the proposed text amendment to NZO Section 2-2-1.040 to include "Manufacturing in Conjunction with Uses Permitted Outright in a C-2 District" as a conditional use in the W-2 zone would afford YBFP the opportunity to submit for conditional use approval on the property they lease from the Port.

Also, the applicant's findings indicate that the zone change would increase the number of acres in the W-1 designation.

For these reasons, the Planning Commission can find the proposed zoning change to be a public necessity that promotes the general welfare.

In regard to applicable Oregon Administrative Rules:

OAR 660-012-0060(1) requires that the Planning Commission establish that the proposed zone change will not significantly affect existing or planned transportation facilities. W-2 zoning allows a broader range of uses than the W-1 district. This means that there is the potential for more vehicle trips being generated from W-2 zoned areas. Considering that the proposed map

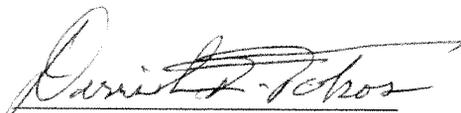
amendment reduces the amount of W-2 zoned land, there should be fewer anticipated vehicle trips, meaning that the map change will have a negligible impact on existing or planned transportation facilities. The proposed text change clarifies that manufacturing in conjunction with tourist oriented retail uses can be permitted in the W-2 district subject to conditional use approval. Similar uses already exist in the area (i.e. Rogue Brewery) and the South Beach Peninsula experiences significant tourist and industrial/manufacturing related traffic. Area roads and bike/pedestrian facilities such as SE Marine Science Drive, SE Pacific Way, SE Ferry Slip Road and Hwy 101 have been designed to accommodate this level of use. Accordingly, the text amendment will not create the potential for vehicle trips at a scale that would significantly affect existing or planned transportation facilities.

4. **Conclusion:**

The applicant requests the zone change in order to more appropriately designate the affected portions of their property and the text amendment to provide an avenue for YBFP to obtain conditional use approval so they can continue to operate at their present location. For those reasons, the Port's Board of Commissioners feels that a favorable recommendation on the proposed amendments is justified.

G. **STAFF RECOMMENDATION:**

The Planning Commission should review the proposed changes to the Zoning Ordinance map and text and the application materials as well as other documentation and testimony that may be submitted during the course of the hearing. The Planning Commission should recommend approval of the request as being in compliance with the applicable criteria if the Commission finds that the criteria have been met. The Commission should identify how the request does not comply with the criteria, or should identify conditions necessary in order to make the request comply with the criteria, if the Commission finds that the criteria have not been met.

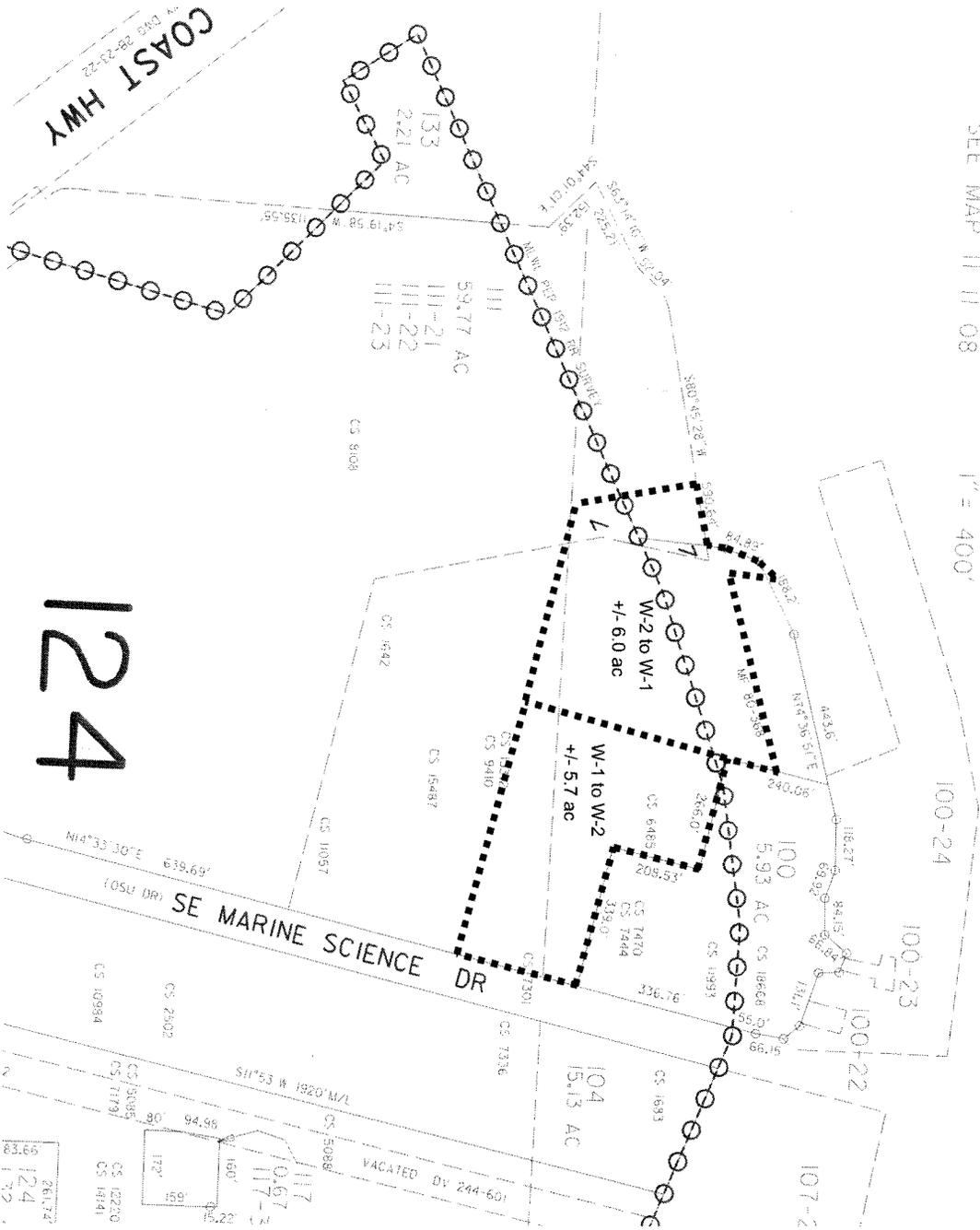


Derrick I. Tokos, AICP
Community Development Director
City of Newport

May 9, 2012

SEE MAP 11 11 08 1" = 400'

LINCOLN COUNTY



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Exhibit C
Ordinance No. 2041
Zoning Map Amendment
(File No. 2-Z-12)

Denison Surveying, Inc.
720 SW Angle St.
Newport, Or. 97365
(541) 265-9308

**LAND DESCRIPTION FOR THE EXTERIOR
BOUNDARIES OF A PROPOSED LEASE
AREA AROUND THE
“YAQUINA BAY FRUIT PROCESSORS”**

A tract of land located in the north ½ of Section 17 and the south 1/2 of Section 8, Township 11 South, Range 11 West, Willamette Meridian in Lincoln County, Oregon, more particularly described as follows:

Commencing at a found Brass Cap stamped “SBP-10”, located at the southerly end of the Yaquina Bay Bridge, said point bears North 02°18'47” East, a distance of 3426.99 feet from the South ¼ corner of said Section 17; thence North 19°11'14” East, a distance of 1884.75 feet; thence South 75°27'18” East, a distance of 368.65 feet to the True Point of Beginning; thence North 14°32'42” East to the most southwesterly corner of a tract of land as described in Document No. 2010-02172, Lincoln County Film Records, a distance of 528.51 feet; thence South 75°27'18” East, along the southwesterly boundary of said tract, a distance of 266.00 feet; thence South 14°32'42” West, along said southwesterly boundary, a distance of 208.53 feet; thence South 75°27'18” East, along the southerly boundary of said tract to the westerly Right of Way of SE Marine Science Drive, a distance of 339.00 feet; thence South 14°32'42” West, along said westerly Right of Way to a point that is South 75°27'18” East from the point of beginning, a distance of 319.98 feet; thence North 75°27'18” West, a distance of 605.00 feet to the point of beginning.

Said tract contains 5.7 acres more or less.

The basis of bearing for this description is grid and was held between found monuments that are labeled “SBP-10” and “YB-32”, on the south and north ends of the Yaquina Bay Bridge (N 35°43'28” W, 2776.56').

End of Description

Denison Surveying, Inc.
720 SW Angle St.
Newport, Or. 97365
(541) 265-9308

**LAND DESCRIPTION FOR THE EXTERIOR
BOUNDARIES OF A PROPOSED LEASE
AREA AROUND THE DREDGE SITE AND
A PORTION OF THE SOUTH BEACH MARINA**

A tract of land located in the north ½ of Section 17 and the south 1/2 of Section 8, Township 11 South, Range 11 West, Willamette Meridian in Lincoln County, Oregon, more particularly described as follows:

Commencing at a found Brass Cap stamped "SBP-10", located at the southerly end of the Yaquina Bay Bridge, said point bears North 02°18'47" East, a distance of 3426.99 feet from the South ¼ corner of said Section 17; thence North 19°11'14" East, a distance of 1884.75 feet to the True Point of Beginning of the herein described tract; thence North 77°27'18" West to the top of the rip-rap above the South Beach Marina, a distance of 75 feet more or less; thence Northwesterly along the top of said rip-rap and continuing Northwesterly, along the same alignment to its intersection with the High Water Line of Yaquina Bay; thence Northeasterly, along said High Water Line to the westerly line of a tract of land as described in Document No. 2010-02172, Lincoln County Film Records; thence South 14°32'42" West, along the westerly boundary of said tract and continuing along its extension to a point that is South 75°27'18" East from the point of beginning; thence North 75°27'18" West, a distance of 368.65 feet to the point of beginning.

Said tract contains 6 acres more or less.

The basis of bearing for this description is grid and was held between found monuments that are labeled "SBP-10" and "YB-32", on the south and north ends of the Yaquina Bay Bridge (N 35°43'28" W, 2776.56').

End of Description

This description is intended to include all the areas zoned W-2 located north and west of the tract of land described in Document No. 2010-02172.