



**PLANNING COMMISSION REGULAR SESSION AGENDA**  
**Monday, October 14, 2019 - 7:00 PM**  
**City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365**

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The meeting location is accessible to persons with disabilities. A request for an interpreter for the DEAF AND HARD OF HEARING, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

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**1. CALL TO ORDER AND ROLL CALL**

**2. APPROVAL OF MINUTES**

**2.A Approval of the Planning Commission Work Session Meeting Minutes of September 23, 2019.**

[Draft PC Work Session Minutes 09-23-19](#)

**2.B Approval of the Planning Commission Regular Session Meeting Minutes of September 23, 2019.**

[Draft PC Regular Session Minutes 09-23-19](#)

**3. CITIZENS/PUBLIC COMMENT**

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

**4. ACTION ITEMS**

**5. PUBLIC HEARINGS**

**5.A File 6-CUP-19: Conditional Use Permit to Remodel and Expand the Existing Oregon Coast Aquarium.**

[Staff Report](#)  
[Attachment A](#)  
[Attachment B](#)  
[Attachment C](#)  
[Attachment D](#)  
[Attachment E](#)  
[Attachment F](#)  
[Attachment G](#)  
[Attachment H](#)  
[Attachment I](#)  
[Attachment J](#)  
[Attachment K](#)

**5.B File 8-NCU-19: Surfside Mobile Village Replacement of a Manufactured Home with Two Park Models.**

[Staff Report](#)  
[Attachment A](#)  
[Attachment B](#)  
[Attachment C](#)  
[Attachment D](#)  
[Attachment E](#)  
[Attachment F](#)  
[Attachment G](#)  
[Attachment H.](#)  
[Attachment I](#)  
[Attachment J](#)  
[Attachment K](#)  
[Attachment L](#)

**6. NEW BUSINESS**

**7. UNFINISHED BUSINESS**

8. DIRECTOR COMMENTS

9. ADJOURNMENT

**Draft MINUTES**  
**City of Newport Planning Commission**  
**Work Session**  
**Newport City Hall Conference Room A**  
**September 9, 2019**  
**6:00 p.m.**

**Planning Commissioners Present:** Jim Patrick, Lee Hardy, Bob Berman, Jim Hanselman, and Mike Franklin.

**Planning Commissioners Absent:** Bill Branigan, and Gary East.

**PC Citizens Advisory Committee Members Present:** Greg Sutton, and Braulio Escobar.

**PC Citizens Advisory Committee Members Absent:** Dustin Capri.

**Public Members Present:** Mona Linstromberg.

**City Staff Present:** Community Development Director (CDD) Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.
2. **Unfinished Business.** None were heard.
3. **New Business.**
  - A. **Welcome Greg Sutton as a New Planning Commission Advisory Committee Member.** Patrick welcomed Greg Sutton and Braulio Escobar to the meeting. Sutton introduced himself and said he worked with the Assessor's office and joined to get involved. Escobar introduced himself and said he had missed attending previous Advisory Committee meetings but would now be participating.
  - B. **Update on the Transportation System Planning Process.** Tokos reviewed his staff memorandum and noted that the Transportation System Plan (TSP) would be part of the City Town hall happening on September 31, 2019. He asked the Commission to let him know who was attending to see if there needed to be notice sent out.

Tokos reported that the roster for the policy advisory committee was set and the first meeting would be held in mid-October. Public outreach would happen around February and March 2020. Tokos noted the number of traffic counts had been limited to 20 locations and the counts had been done in July. Hardy asked for clarification on acronyms being used and thought they needed to be defined. Tokos didn't expect the document to be widely distributed and was more technical. He thought a running list of acronyms was important. Tokos explained that the TAZ acronym was for the transportation analysis zones.

Tokos noted that the existing conditions analysis has been done and the staff was currently reviewing growth projections to come up with TAZs for current and future conditions. Hardy asked what the end results would be for the model. Tokos said the model would spell out the underlined parameters and assumptions and would be used to test different scenarios. Hardy felt they needed clarification for the basis of the analysis. A discussion ensued on how different designs would affect signaling along Highway 101. Tokos said as part of the City's goals they would define what they wanted out of the plan. He reported that the new Northside Urban Renewal District had funds that were dedicated to transportation projects. A discussion ensued regarding plans on a bypass through Newport and where the bridge would be placed in the future.

Tokos reviewed the method and assumption memorandum. A discussion ensued regarding what would be covered at the Town Hall meeting on September 30, 2019. Tokos said there would be an introduction of what

the TSP was and why the City wanted to do it. There wouldn't be too many details shared. Berman asked if the goals would be a part of the meeting. Tokos said they would have a fact sheet but didn't know if the goals and objectives would be shared. Berman thought it was a big part of this process and the community input would be advantageous. Patrick suggested providing just the goal headings and not the details. Hardy was concerned that maintenance was a separate thing and needed to be addressed. Tokos noted that the City was only looking at pavement conditions and funding resources. Franklin asked if there was any County funding for improvements. Tokos reported there was almost none. He explained that outside of Urban Renewal funds, there was State and local gas taxes that would help fund. Franklin asked how much gas tax funds the City had. Tokos would look into this. Franklin asked how many lottery dollars were available. Tokos said there were grant opportunities for lottery dollars, but they were for urban and economic development.

Franklin asked if the reason the streets in the City that weren't paved currently was because the improvements along the streets weren't up to City standards yet, or because of a lack of funds. Tokos explained that some streets were like this due to what was in place when the area was annexed into the area. Other areas were because there wasn't a catalyst for paving in the area. Tokos explained the City needed to figure out the abutting public improvement requirements were, and they would be working more on this as part of the process.

Patrick suggested bicycles be routed off of Highway 101 and the bridge. Tokos explained they could be routed off of Highway 101, but not off the bridge. A discussion ensued regarding projects that had been on the TSP list for years that needed to be prioritized, such as the Abbey Street signaling on Highway 101. Tokos said the hospital did a traffic analysis but they couldn't meet ODOT requirements. He noted that there has been considerations to implement a roundabout on South 40th Street.

Tokos asked which Commissioners were interested in attending the Town Hall meeting. Berman and Patrick expressed interest.

- C. **Discussion on Planning Commission Approach to the October 7, 2019 City Council Meeting on Parking Advisory Committee Recommendations.** Tokos reviewed his memorandum. He explained that the Commission couldn't redirect the recommendation to a new committee because they were limited to a recommendation. The Commission's motion would be presented to the City Council as a recommendation to not pass as drafted. He reviewed the options the City Council could then take.

Tokos thought it might benefit the Commission to have some members attend the hearing. Branigan and Berman expressed interest. Tokos reported that the Port Commission was considering this at their meeting and he believed their staff would be making a recommendation that the Port send a letter to the City Council asking that they hold a hearing.

Tokos asked if any of the Commissioners would have prepared comments they wanted to share with the City Council. Berman said he would provide comments.

Adjourned at 6:45 p.m.

Respectfully submitted,

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Sherri Marineau,  
Executive Assistant

**Draft MINUTES**  
**City of Newport Planning Commission**  
**Regular Session**  
**Newport City Hall Council Chambers**  
**September 23, 2019**

**Planning Commissioners Present:** Gary East, Lee Hardy, Bob Berman, Mike Franklin, Jim Hanselman, and Jim Patrick.

**Planning Commissioners Absent:** Bill Branigan.

**City Staff Present:** Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Hardy, Berman, Franklin, Hanselman, and Patrick were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Work and Regular Session Meeting Minutes of September 9, 2019.

Commissioners Patrick and Berman noted corrections to the minutes.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Franklin to approve the Planning Commission work and regular session meeting minutes of September 9, 2019 with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** None were heard.

4. **Action Items.**

A. **Appointment of a New Planning Commission Advisory Committee Member.**

**MOTION** was made by Commissioner Berman, seconded by Commissioner Franklin to appoint Greg Sutton as a Planning Commission Advisory Committee Member. The motion carried unanimously in a voice vote.

Commissioner East entered the meeting and 7:02 p.m.

5. **Public Hearings.** At 7:02 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. None were heard. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. **File 4-Z-16.**

Tokos reviewed his staff report. He noted that the maps presented were much more accurate than the 2009 maps. Tokos noted the FEMA did an audit on August 28th and gave changes to the City, which were part of the new code. He noted that if the City didn't adopt the amendments, FEMA would revoke and properties

in the City would not have the ability to have Federally subsidized flood insurance. Tokos reported that the maps would go into effect on October 18, 2019.

Berman asked since the FEMA changes were based on the DLCD model ordinance, would the codes be different in Washington state or would they be universal. Tokos thought it was most likely a universal code. There would be minor differences in different states. Berman asked why there was a change to drop notification to Lincoln County. He thought they should be notified. Tokos said the City was directed to make this change by FEMA. The City would still provide notification to Lincoln County because it was an adjacent community.

Public Testimony:

Mike Fielding address the Commission. He questioned the major change to the maps in the South Shore development that made changes in the areas with the new concrete wall barriers. He asked how they handled any changes in elevations for the flood zone. Tokos said as far as the new mapping that related to this subdivision, the boundary of the earthwork was outside of the flood zone.

Hearing closed at 7:20pm

East asked if everything had been addressed that was noted on the FEMA audit. Tokos said he believed it had. He noted there might be some minimal changes that would be done with the City Council. Tokos noted that one change he requested was to use the City's definition on water dependent uses. FEMA hadn't indicated yet if the City could do this.

Hardy spoke about a specific unit in a multi-unit complex that needed to be redeveloped. She asked if this would be clearly presented in the ordinance or would the City rely on interpretation. Tokos thought the ordinance would be clear and was exactly what needed to be done with this particular unit. When dealing with damage to an attached housing unit in a multi-unit complex the options for the specific unit become more limited with map changes. This would be because they would be dealing with existing development on either side of the unit that the City had not control over. Tokos explained this was flagged as part of the audit and they would be looking at it as part of changes to substantial damage. He explained it might be a no issue item, but the rules would be clear.

Berman agreed that FEMA was being a little unreasonable but couldn't run the risk for properties not being able to get flood insurance. Franklin didn't have concerns. Hanselman was glad Tokos wanted to expand the water usage appendix. The City needed to make sure people were protected with flood insurance.

Patrick questioned if there could be a parallel definition and add the City's own language. Tokos said he would look into what could be done.

**MOTION** was made by Commissioner Franklin, seconded by Commissioner Berman to approve File No. 4-Z-16 and forward a favorable recommendation to the City Council for amendments to NMC Chapter 14.20, Flood Hazard Area. The motion carried in a unanimous voice vote.

**B. File 4-Z-19.**

Tokos reviewed his staff report. He noted that there had been a change since the Commission reviewed this discussion in their work session meeting. The change was to exempt ADUs located entirely in an existing structure from the design standards in the Nye Beach Design Review District. Tokos noted the City was obligated to make the changes to the code by the end of the year.

Berman asked why the City wouldn't change the Nye Beach Overlay to add an exception for ADUs rather than doing it in this chapter of the code. Tokos reported the change was in the Nye Beach Overlay. Berman asked what else would be coming to the Commission as far other House Bills. Tokos reported that the

provision that obligated the City allow a minimum amount of duplexes in single family zones would be coming forward. There was an option to allow more than duplexes in single family areas and go up to fourplexes. If they did this it would exempt the City from certain analysis. Tokos noted that there was a question on how to apply this in planned developments such as Wilder and would be on the list on how to apply it to the rules. Patrick noted this would be more difficult for the substandard lots in Nye Beach as well.

Hardy asked if the new rules could be imposed on subdivisions with their own pre-existing CC&Rs. Tokos said there was a whole section in the House Bill that addressed that. If preexisting CC&Rs prohibited anything other than single family detached or fine prospectively it would prohibit CC&Rs from being put into place for new CC&Rs. Patrick asked if the City had records of CC&Rs. Tokos said no, CC&Rs were private and it was up to the property owner to know what the covenants were for their property and how to apply them.

Berman asked for an explanation on what an ADU "attached to garage" was in Section 14.16.050(E). Tokos explained this was when an ADU was attached to a "detached" garage. He noted that ADUs could be attached to a primary dwelling or detached from them. Berman requested this be clarified. Franklin thought the garage was acceptable in this section. Patrick requested a clarification on an ADU taking up the whole floor of a building and a whole floor of a garage. Tokos said this was structured to the model ordinance and the allowance to go over 800 feet was specific to the primary dwelling. Patrick felt this made sense. Tokos noted that the current ADU rules allowed one ADU for every dwelling unit and it would be changed to "per property". Hardy asked if an ADU could be added to a planned unit development for a townhome. Tokos said if it was a conventional townhouse, yes. In planned developments, it would be a question for the State on what they could do.

Public Testimony: None were heard.

Hearing closed at 7:42 p.m.

Hanselman thought they were being lead through the process by the State and the changes were required. He was happy to limit one ADU per parcel. Franklin had not comments. Berman thought the changes were well planned and thought out. Hardy felt the City was going to be forced to do something they shouldn't. East didn't have any problems. Patrick thought the discussion on fourplexes would be interesting and was concerned about splitting the utilities for ADUs. He was willing to forward it to the City Council.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Franklin to approve File No. 4-Z-19 and forward a favorable recommendation to the City Council for amendments to NMC Chapter 14.16.050 and 14.30.050, Accessory Uses and Structures. The motion carried in a voice vote. Hardy abstained.

6. **New Business.** None were heard.
7. **Unfinished Business.** None were heard.
8. **Director Comments.** None were heard.
9. **Adjournment.** Having no further business, the meeting adjourned at 9:45 p.m.

Respectfully submitted,

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Sherri Marineau  
Executive Assistant



## PLANNING STAFF REPORT

### Case File No. 6-CUP-19

- A. **APPLICANT:** Oregon Coast Aquarium (Steve Dangermond, Dangermond Keane Architecture, authorized representative). The Oregon Coast Aquarium leases the property from the City of Newport and Port of Newport.
- B. **REQUEST:** Application for approval of a Conditional Use Permit to remodel almost half of the 38,573 square foot main aquarium building, primarily in the lobby, café, and exhibit galleries. The building will be expanded by about 1,800 square feet to accommodate ticketing operations and provide additional exhibit space. Improvements to the grounds will include new wayfinding signage, new sidewalks and crosswalks, a remodeled children's play area, and a new small amphitheater for animal presentations.
- C. **LOCATION:** 2820 SE Ferry Slip Road.
- D. **LEGAL DESCRIPTION:** Improvements will occur on property identified as Tax Lots 00101, 00298, 01600, and 01900 of Assessor's Map 11-11-17. Additional parcels utilized by the Aquarium, namely for parking and support services are not impacted by this proposal.
- E. **LOT SIZE:** Approximately 44.09 acres per Lincoln County Tax Assessor records.
- F. **STAFF REPORT**
1. **REPORT OF FACT**
    - a. **Plan Designation:** Yaquina Bay Shoreland and Commercial.
    - b. **Zone Designation:** W-2/"Water-Related" and C-2/"Tourist Commercial."
    - c. **Surrounding Land Uses:** South Beach Marina and Hatfield Marine Science Center to the north, Yaquina Bay Estuary to the east, tourist commercial businesses, an RV Park, and hotel uses to the south and west.
    - d. **Topography and Vegetation:** The property is gradually sloped with mature trees and understory vegetation in areas that are not developed.
    - e. **Existing Structures:** A main aquarium building, passages of the deep exhibit, and associated support and administrative structures.
    - f. **Utilities:** All are available to the site.
    - g. **Development Constraints:** Wetlands and floodplain; however, neither of these constraints is present in the developed areas.

h. **Past Land Use Actions:**

File No. 1-CP-89/1-Z-89 (Ord. No. 1539) – Amended the Newport Comprehensive Plan Map from Industrial to Shoreland and Zoning Map from I-1/“Light Industrial” to W-2/“Water-Related” for property immediately north of SE 29<sup>th</sup> Street where the “Passages of the Deep” Exhibit is now located.

File No. 6-CP-89/6-Z-89 (Ord. No. 1964) – Amended the Newport Comprehensive Plan Map and Estuarine Management Unit provisions of the Newport Zoning Ordinance to provide for discharge of waste seawater into Yaquina Bay.

File No. 1-PAR-90/6-PAR-90/7-PAR-90 – Land partitions associated with the reconfiguration of SE Ferry Slip Road to position the aquarium site for development.

File No. 4-TB-89/4-TBP-92 – Temporary land use permit for modular trailer associated with construction of the aquarium.

File No. 7-TSP-12/4-TSP-17 – Temporary land use permits for special events.

File No. 1-SV-17 (Ord. No. 2119) – Vacation of a portion of undeveloped SE Ferry Slip Road right-of-way to facilitate future development of Oregon Coast Aquarium owned property immediately south of SE 29<sup>th</sup> Street.

- i. **Notification:** Notification to surrounding property owners and to city departments/public agencies was mailed on September 25, 2019; and a request was made of the Newport News-Times to publish a public notice on October 4, 2019. Unfortunately, the News-Times did not publish the notice as requested. As this is a legal requirement (NMC 14.52.060(F)), the Commission will need to continue the hearing to October 28, 2019 so that a notice can be published in accordance with the City’s requirements. A final order and findings will be available for the Commission to consider that same evening, the same as if the notice had published on the date requested; therefore, the length of time it will take for a decision to become final will not be impacted.

j. **Attachments:**

Attachment "A" – Application form

Attachment "B" – Applicant’s narrative, maps of planned improvements, and architectural renderings

Attachment "C" – Parcel ownership map

Attachment "D" – Lincoln County Assessor Property Reports

- Attachment "E" – Aquarium lease with the City of Newport
- Attachment "F" – Aquarium lease with the Port of Newport
- Attachment "G" – Minutes from the 8/19/19 City Council meeting
- Attachment "H" – Zoning map of the property
- Attachment "I" – Public hearing notice
- Attachment "J" – Staff email to the Port of Newport, dated 10/9/19
- Attachment "K" – Email from Fire Chief Rob Murphy, dated 10/10/19

2. **Explanation of the Request:**

In response to a recent major strategic planning effort, The Oregon Coast Aquarium has launched a Capital Campaign to refresh and enhance the visitor experience of the Aquarium, and to construct a new Marine Rehabilitation Center. The Marine Rehabilitation Center is a future project located on an adjacent property. Over the next two years, this first phase of the campaign will fund a series of small projects throughout the public portions of the buildings and grounds. This will be the first comprehensive remodel of the original aquarium building since its construction in 1990. No work is anticipated in the “Passages of the Deep” exhibit which was finished in 2000.

This request is for a Conditional Use Permit in order to construct roughly \$9 million in projects that will improve the guest experience, with a modest increase in capacity. No major addition or expansion is planned; instead, almost all of the work will take place within the aquarium building or will remodel portions of the grounds. Of the 38,573 sf of the original main aquarium building, almost half will be remodeled (totaling 17,500 sf), primarily in the lobby, café, and exhibit galleries. There are two modest additions planned, for a total of 1800 sf; an 850 sf expansion of one of the galleries and a 950 sf addition to the front of the building to better accommodate the aquarium’s ticketing operations. There will not be a change of use in any portions of the structure. Gallery improvements will include a number of new and remodeled wet exhibit tanks, all new interpretive signage, new lighting, and paint. Improvements to the grounds will include new directional/wayfinding signage, some new sidewalks and crosswalks, a remodeled children’s play area, and a new small amphitheater for animal presentations. As the original aquarium building is located in the center of the aquarium property, none of the planned improvements will be visible from surrounding public streets. Maps illustrating the location of planned improvements are included in Attachment "B."

3. **Conditional Use Permit Required:**

A Conditional Use Permit was not required by the City when the original aquarium was constructed. At the time, the City determined that the aquarium use was permitted outright in both the C-2/“tourist commercial” and W-2/“Water-Related” zone districts. This is addressed specifically in the staff report associated with the rezoning of one of the parcels from “I-1/Light Industrial” to “W-2/Water-Related” in 1989 (File No. 1-CP-89/1-Z-89).

In 1989, the C-2 zone listed “*non-commercial educational, scientific, and research organizations*” as an outright permitted use. The W-2 zone similarly allowed

*“marine research and education facilities of observation, sampling, recording or experimentation on or near the water”* as an outright permitted use. The aquarium property is split zoned with a portion of the facility falling in the C-2 and the balance in the W-2; therefore, the use had to be permitted outright in both zone districts. Entertainment oriented uses were allowed in 1989 in the C-2 and W-2 zones; however, it is evident the City did not view the Aquarium as such a use because that would have required a conditional use permit.

The City overhauled its zoning code for commercial/industrial uses in 2011 (Ordinance No. 2022), at which time the provision allowing “non-commercial educational, scientific, and research organizations” as an outright permitted use was eliminated. Under the current C-2 rules, a “non-profit educational and marine research facility” is categorized as an institutional or civic use, and more specifically a community service use, that requires conditional use approval (NMC 14.03.070(14)). Alternatively, the City could consider the aquarium an entertainment oriented use; however, that would similarly require conditional use review in both the C-2 and W-2 zones (ref: NMC 14.03.070(3) and 14.03.080(9)).

For these reasons, a conditional use permit is required for the proposed renovation and expansion of the Oregon Coast Aquarium facilities.

4. **Ownership Authorization:**

A property owner, person with written approval of the property owner, or the city manager may apply for a land use application (NMC 14.52.050). The Oregon Coast Aquarium leases the property on a long term basis from the City of Newport and Port of Newport (Attachments "E" and "F"). Both leases are in effect through June of 2087.

The leases are almost identical. Section 7 of the documents addresses repairs and improvements and stipulates that owner consent is required for work that exceeds 5% of the value of the existing improvements on the property. The Lincoln County Assessor Reports (Attachment "D") show the market value of the existing improvements to be somewhere between \$30-\$35 million, so this \$9 million project is large enough that owner consent is required. At its August 19, 2019 meeting, the Newport City Council, by motion, granted its consent for the application to be filed (Attachment "G"). The Port of Newport similarly requires owner consent, and they have been notified of the issue (Attachment "J"). The Commission should impose a condition requiring Port of Newport agree to the improvements before building permits are issued.

5. **Evaluation of the Request:**

- a. **Comments:** All surrounding property owners and affected city departments and public utilities were notified on September 25, 2019. The only comments received were from the Newport Fire Department (Attachment "K").

b. **Conditional Use Criteria (NMC Chapter 14.34.050):**

- (1) The public facilities can adequately accommodate the proposed use.
- (2) The request complies with the requirements of the underlying zone or overlay zone.
- (3) The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.
- (4) A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

c. **Staff Analysis:**

NMC 14.34.030 indicates that a Type III decision-making procedure, with review and approval by the Planning Commission, is required for property that is over one (1) acre in size. Lincoln County Assessor records indicate that the portion of the property where development is to occur is over 40 acres in size.

In order to grant the permit, the Planning Commission must find that the applicant's proposal meets the following criteria.

(1) **The public facilities can adequately accommodate the proposed use.**

Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets and electricity. All public facilities are available and serve the property. The applicant notes that the aquarium is an existing use on the property since 1990 and, as the expansion is modest, the public facilities should easily accommodate the proposed use.

Street access to the property is available via SE Ferry Slip Road and SE 26<sup>th</sup> Street. SE Ferry Slip Road is fully developed with a multi-use path on the west side. SE 26<sup>th</sup> Street is paved with limited pedestrian amenities. The applicant notes that sidewalk and crosswalk improvements will be made; however, it is unclear from the materials where that work will occur. The level of investment being made to the aquarium facility is such that it would be timely for pedestrian connections to be established along the west driveway from SE Ferry Slip Road to the facility entrance and along the north driveway to SE 26<sup>th</sup> Street, including the property frontage between Marine Science Drive and the north driveway. This is something the Planning Commission may want to consider, along with seeking some clarity on the Oregon Coast Aquarium's plans to install new sidewalk and crosswalks.

City water service to the site is provided via a 12-inch main in SE Ferry Slip Road. Sewer service is provided via an 8-inch gravity line, also located in SE Ferry Slip Road. These services are adequate to serve the facility. Electrical service is also in place to serve the property.

Given the size of the property, public streets are not sufficient to provide adequate fire access to the facility. Fire service needs are met with internal driveways. The facility has grown and evolved over the years, including the placement and orientation of internal exhibits. This has impacted the adequacy of fire access. The City's standards have changed as well in terms of the load requirements for its equipment. An October 10, 2019 email from Fire Chief Rob Murphy (Attachment "K") lists changes they would like to see to ensure adequate fire access to the aquarium. They include structural upgrades to the existing path on the east side of the property, and improved vertical clearance and turn radiuses along the same path. They also would also like to see a gate restricted access for fire service installed at the end of the existing service road at the north side of the facility, and that the road be extended to the south to connect with the above mentioned pathway. Given the size of the facility, and the number of people that would be at risk in the event of a fire, it would be appropriate for the Commission to require these fire access improvements as conditions of approval.

Given the above, it is reasonable for the Planning Commission to find that the public facilities can adequately accommodate the remodel and expansion with the conditions noted.

(2) The request complies with the requirements of the underlying zone or overlay zone.

This criterion addresses special requirements of the underlying or overlay zone beyond the standard zoning ordinance requirements. Each zoning district includes "intent" language. For the W-2 district, it includes the following:

*"All conditional uses in a W-2 district shall also comply with the following standard: In areas considered to be historic, unique, or scenic, the proposed use shall be designed to maintain or enhance the historic, unique, or scenic quality." (NMC 14.03.040)*

The location in South Beach where the aquarium was constructed is not designated by the City as historic or particularly unique. It is generally viewed as scenic and there are sensitive natural areas along the perimeter of the property where it abuts the estuary. Care was taken to design the facility such that it complements the natural setting within which it is located. Native vegetation has been retained and hardscapes minimized internal to the site. The applicant's materials show that the planned expansion is modest and complements the existing improvements architecturally (Attachment "B"). It would be reasonable for the Planning Commission to

find that the renovation and expansion plans complement the scenic qualities of the area and, therefore, this criterion is satisfied. This is a subjective approval standard, and if Commission members feel that there are aspects of the design that are out of place, then it would be appropriate to point them out so that the applicant may respond.

While portions of the property are within a 100-year floodplain, the areas where work will occur are not encumbered by the overlay. There are no other overlays or provisions of the underlying zone that are relevant to the project.

- (3) The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.

This criterion relates to the issue of whether or not the proposed use has potential "adverse impacts" greater than existing uses and whether conditions may be attached to ameliorate those "adverse impacts." Impacts are defined in the Zoning Ordinance as including, but not being limited to, the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood. Adequate off-street parking, or the lack thereof, may also be considered by the Planning Commission under this criterion.

The applicant indicates that they believe the proposed improvements will not have an adverse impact greater than existing uses on neighboring properties, nor will it greatly increase the impacts on surrounding streets or infrastructure. This would be a reasonable conclusion for the Commission to come to given that the main building will be expanded by only 1,800 square feet. Further, there is no reason to expect increases in noise, glare, vibration, dust, or air pollutants associated with the project.

The aquarium facility has a substantial amount of off-street parking and the proposed improvements are modest enough that no new parking is needed to accommodate the use.

Given the above, it is reasonable for the Planning Commission to find that the proposed use does not have an adverse impact greater than existing uses on nearby properties.

- (4) A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

The applicant notes that the proposed improvements are consistent with the current development's size and height, and the development character of buildings potentially allowable in the area.

The applicant has provided conceptual drawings of the planned improvements to the main building. They may need to adjust aspects of the exterior design to comply with building codes, fire codes, and other public health and safety regulations, including accessibility requirements. It is unlikely though that such changes would materially impact size or height of the building. If that does happen, then it would be appropriate for the Commission to require a new conditional use permit, and a condition to that effect is included below.

Given the above, it is reasonable for the Planning Commission to find that the use will be consistent with the overall development character of the neighborhood with regard to building size and height.

4. **Conclusion:** If the Planning Commission finds that the applicant has met the criteria established in the Zoning Ordinance for granting a conditional use permit, then the Commission should approve the request. The Commission can attach reasonable conditions that are necessary to carry out the purposes of the Zoning Ordinance and the Comprehensive Plan. If the Commission finds that the request does not comply with the criteria, then the Commission should deny the application.

G. **STAFF RECOMMENDATION:** As outlined in this report, this application to renovate and expand facilities at the Oregon Coast Aquarium, within the C-2 and W-2 zoning districts, can satisfy the approval criteria for a conditional use. The Planning Commission may want to consider requiring pedestrian access improvements along the west driveway from SE Ferry Slip Road to the aquarium entrance and along the north driveway up to the intersection of ES 26<sup>th</sup> Street and Marine Science Drive. Recommended conditions of approval, as discussed in the report, are outlined below. Because newspaper notice was not provided as required, the Commission will need to continue the hearing to October 28, 2019. It may also direct staff to prepare a draft set of findings and final order for the Planning Commission's consideration that evening in a manner that is in line with this reports recommendations, or as amended by the Commission.

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to the staff report. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.
2. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building in order to comply with these codes, than a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.
3. Written consent shall be obtained from the Port of Newport for the improvements described herein prior to issuance of building permits.



4. The applicant shall upgrade the path on the east side of the property for fire access use. This includes providing overhead clearance of 12 feet, and a travel surface capable of handling the load capacities identified in section 503.2.3 and Appendix D, section 102.1 of the 2014 Oregon Fire Code. Turn radiuses along the pathway shall satisfy City of Newport Public Works Department standards. A licensed engineer shall certify that the load capacity requirements have been met. The improvements and required certification shall be submit prior to issuance of occupancy permits.
5. The applicant shall install an emergency access gated entrance at the end of the service road at the north end of the property and extend the access south to connect with the existing east side pathway. Such improvements shall conform to the requirements of Appendix D section 103.5 of the 2014 Oregon Fire Code.



Derrick I. Tokos AICP  
Community Development Director  
City of Newport

October 10, 2019



City of Newport  
Land Use Application

Applicant Name(s):	Property Owner Name(s) if other than applicant
Carrie Lewis, Oregon Coast Aquarium	City and Port of Newport
Applicant Mailing Address:	Property Owner Mailing Address:
2820 SE Ferry Slip Rd, Newport OR 97131	169 SW Coast Hwy, Newport OR 97365
Applicant Phone No.	Property Owner Phone No.
541-867-3474	541-574-0603
Applicant Email	Property Owner Email
carrie.lewis@aquarium.org	City and Port of Newport
Authorized Representative(s): Person authorized to submit and act on this application on applicant's behalf	
Steve Dangermond, Dangermond Keane Architecture	
Authorized Representative Mailing Address:	
1921 NW Kearney Street, Portland OR 97209	
Authorized Representative Telephone No.	
503-487-0211	
Authorized Representative Email. steve@dangermondkeane.com	

Project Information

Property Location: Street name if address # not assigned		
2820 SE Ferry Slip Rd, Newport, OR 97365		
Tax Assessor's Map No.: 11s11w17	Tax Lot(s): See attached parcel reports	
Zone Designation: W-2 and C-2	Legal Description: Add additional sheets if necessary	
Comp. Plan Designation: Bay Area	See attached Lease for description	
Brief description of Land Use Request(s):		
Examples:		
1. Move north property line 5 feet south	Expand and remodel existing aquarium building	
2. Variance of 2 feet from the required 15-foot front yard setback		
Existing Structures: if any		
Existing 38,500 sf aquarium, assorted exhibit structures		
Topography and Vegetation:		
Relatively flat, planted coastal landscape		
Application Type (please check all that apply)		
<input type="checkbox"/> Annexation <input type="checkbox"/> Appeal <input type="checkbox"/> Comp Plan/Map Amendment <input checked="" type="checkbox"/> Conditional Use Permit <input checked="" type="checkbox"/> PC <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Design Review <input type="checkbox"/> Geologic Permit	<input type="checkbox"/> Interpretation <input type="checkbox"/> Minor Replat <input type="checkbox"/> Partition <input type="checkbox"/> Planned Development <input type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Shoreland Impact <input type="checkbox"/> Subdivision <input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> UGB Amendment <input type="checkbox"/> Vacation <input type="checkbox"/> Variance/Adjustment <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Zone Ord/Map <input type="checkbox"/> Amendment <input type="checkbox"/> Other

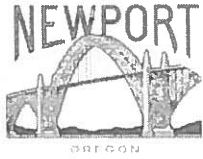
FOR OFFICE USE ONLY

File No. Assigned: 6-cup-19

Date Received: 9/24/19	Fee Amount: 802-	Date Accepted as Complete:
Received By: DT/sm	Receipt No. 3556	Accepted By:

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

625-19-000091-PLNG



# City of Newport Land Use Application

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

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

Applicant Signature(s)

9/24/19  
Date

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

Date

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

Date

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

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

**Project Description and Nature of the Request:**

In response to a recent major Strategic Planning effort, The Oregon Coast Aquarium has launched a Capital Campaign to refresh and enhance the visitor experience of the Aquarium, and to construct a new Marine Rehabilitation Center. The Marine Rehabilitation Center is a future project located on an adjacent property. Over the next two years, this first phase of the campaign will fund a series of small projects throughout the public portions of the buildings and grounds. This will be the first comprehensive remodel of the original aquarium building since its construction in 1990. No work is anticipated in the "Passages of the Deep" exhibit which was finished in 2000.

This request is for a Conditional Use Permit in order to construct roughly \$9 Million in projects that will improve the guest experience, with a modest increase in capacity. No major addition or expansion is planned; instead, almost all of the work will take place within the aquarium building or will remodel portions of the grounds. Of the 38,573 sf of the original main aquarium building, almost half will be remodeled (totaling 17,500 sf), primarily in the lobby, café, and exhibit galleries. There are two modest additions planned, for a total of 1800 sf; an 850 sf expansion of one of the galleries and a 950 sf addition to the front of the building to re-accommodate the aquarium's ticketing operations. There will not be a change of use in any portions of the structure. Gallery improvements will include a number of new and remodeled wet exhibit tanks, all new interpretive signage, new lighting, and paint. Improvements to the grounds will include new directional/wayfinding signage, some new sidewalks and crosswalks, a remodeled children's play area, and a new small amphitheater for animal presentations. As the original aquarium building is located in the center of the aquarium property, none of the planned improvements will be visible from surrounding public streets.

**Findings:**

- A) The Aquarium has been an existing use on this property since 1990. As this expansion is modest, the public facilities can easily accommodate the proposed use.
- B) The proposed projects will not change the existing use; the request complies with the requirements of the underlying zone(s).
- C) The proposed improvements will not have an adverse impact greater than existing uses on neighboring properties, nor will it greatly increase the impacts on surrounding streets or infrastructure. It is consistent with the current use that was previously allowed.
- D) The proposed improvements are consistent with the current development's size and height, development character, of what would be permitted as a use allowed outright.



Main Aquarium Building

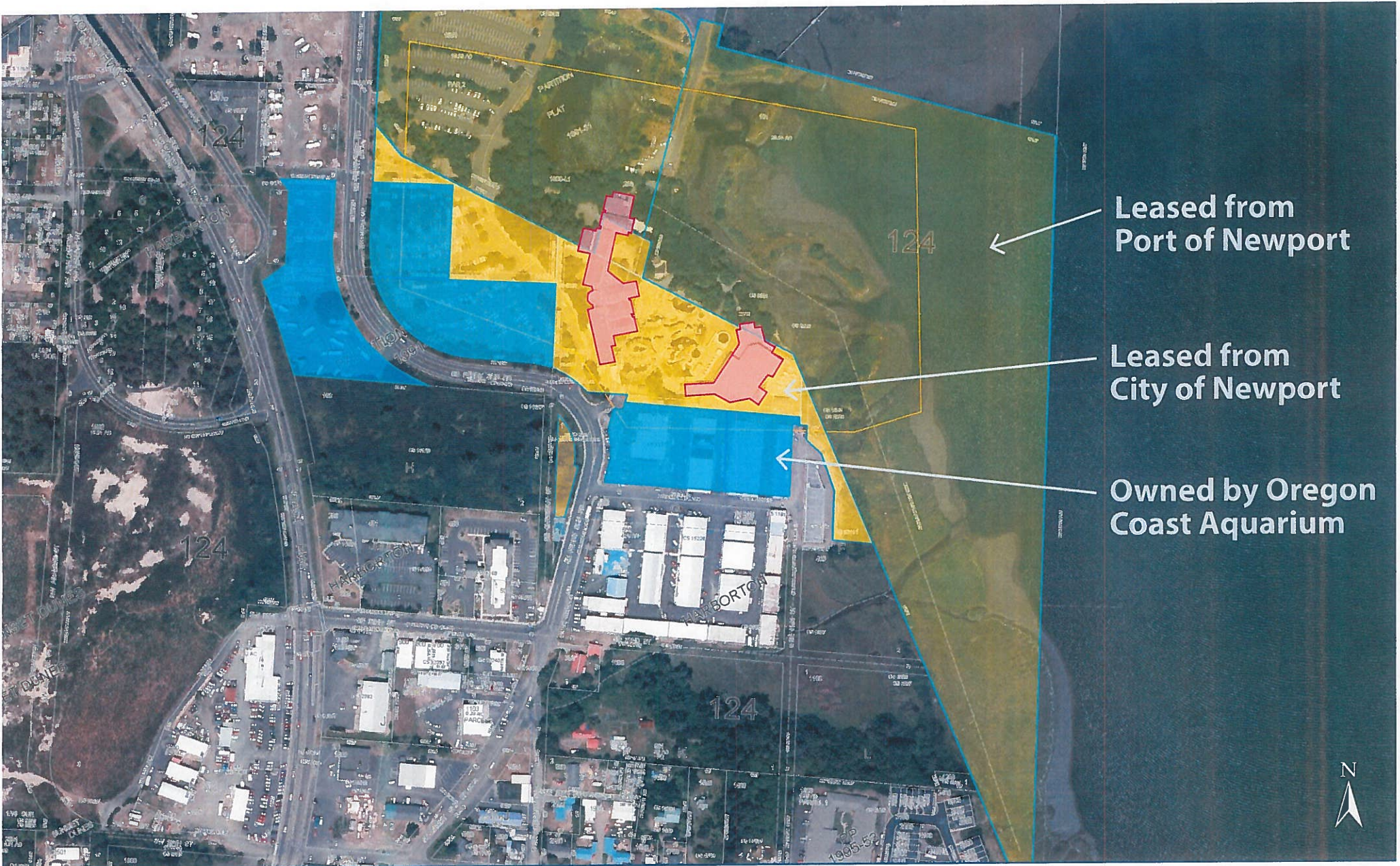
Passages of the Deep (Former Keiko Tank)











Leased from  
Port of Newport

Leased from  
City of Newport

Owned by Oregon  
Coast Aquarium

# Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R484318	Neighborhood:	S116	Owner and	CITY OF NEWPORT
Map Taxlot:	11-11-17-00-01900-00	Property Class:	981	Mailing Address:	% OREGON COAST AQUARIUM INC LEASE PO BOX 2000 NEWPORT, OR 97365
Tax Map:	11s11w17			Site Address(es):	2820 SE FERRY SLIP RD
Web Map:	View Map				
Info:	HARBORTON, BLOCK E PTN OF & PTN VAC ST, ACRES 4.27, DOC200900787 LESS DOC201800741				
Tax Code:	124				
Acres:	4.27				

Improvements								Value History			
Description	Area	Yr Built	Found	Heat	Plumb	BDMS	Value	YearImp.	Land	Total Market	Total Assessed
MAIN AREA	0 sq ft						\$25,432,110				
Foundation Code List Heating/AC Code List Plumbing Code List								2018	25,432,110	26,358,500	0
								2017	26,518,950	27,453,880	0
								2016	28,910,000	29,924,920	0
								2015	28,910,000	29,927,240	0
								2014	28,910,000	29,927,240	0
								2013	29,996,850	31,014,090	0
								2012	33,326,610	34,468,680	0
								Sales History			
No Sales Data											

Land				Related Accounts	Disclaimer
Description	Acres	Market Value	Special Use Value	R530586	For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information. <b>Tax data exported 10/2018.</b>
COM DEV BAYVIEW SITE	4.27	911,390			
IND SITE DEVELOPMENT		15,000			
Today's Date: 10/09/2019					

# Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R432511	Neighborhood:	S112	Owner and	CITY OF NEWPORT
Map Taxlot:	11-11-17-00-00298-00	Property Class:	981	Mailing Address:	% OREGON COAST AQUARIUM INC LEASE PO BOX 2000 NEWPORT, OR 97365
Tax Map:	11s11w17			Site Address(es):	2820 SE FERRY SLIP RD
Web Map:	View Map				
Info:	P.P. 1991-31, PARCEL 2,PTN OF & VAC ST, ACRES 0.34, DOC200900787				
Tax Code:	124				
Acres:	0.34				

Improvements	Value History			
	Year Imp.	Land	Total Market	Total Assessed
No Inventory	2018	0 158,170	158,170	0
	2017	0 158,170	158,170	0
	2016	0 171,800	171,800	0
	2015	0 171,800	171,800	0
	2014	0 171,800	171,800	0
	2013	0 177,720	177,720	0
	2012	0 181,890	181,890	0
	Sales History			
	No Sales Data			

Land				Related Accounts	Disclaimer
Description	Acres	Market Value	Special Use Value		
COMMERCIAL DEV SITE	0.34	158,170			For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information. <b>Tax data exported 10/2018.</b>
Today's Date: 10/09/2019					

# Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R413555	Neighborhood:	S132	Owner and	PORT OF NEWPORT
Map Taxlot:	11-11-17-00-00101-00	Property Class:	980	Mailing Address:	% OREGON COAST AQUARIUM INC LEASE PO BOX 2000 NEWPORT, OR 97365
Tax Map:	11s11w17			Site Address(es):	
Web Map:	View Map				
Info:	TWNShp 11, RNg 11, TRACT PLUS PTN OF VAC ST, ACRES 29.10, MF228-1757				
Tax Code:	124				
Acres:	29.10				

Improvements	Value History		
No Inventory	Year Imp. Land	Total Market	Total Assessed
	2018 0	2,730,740	0
	2017 0	2,730,740	0
	2016 0	2,968,200	0
	2015 0	2,968,200	0
	2014 0	2,968,200	0
	2013 0	2,968,200	0
	2012 0	3,891,930	0
<b>Sales History</b>			
No Sales Data			

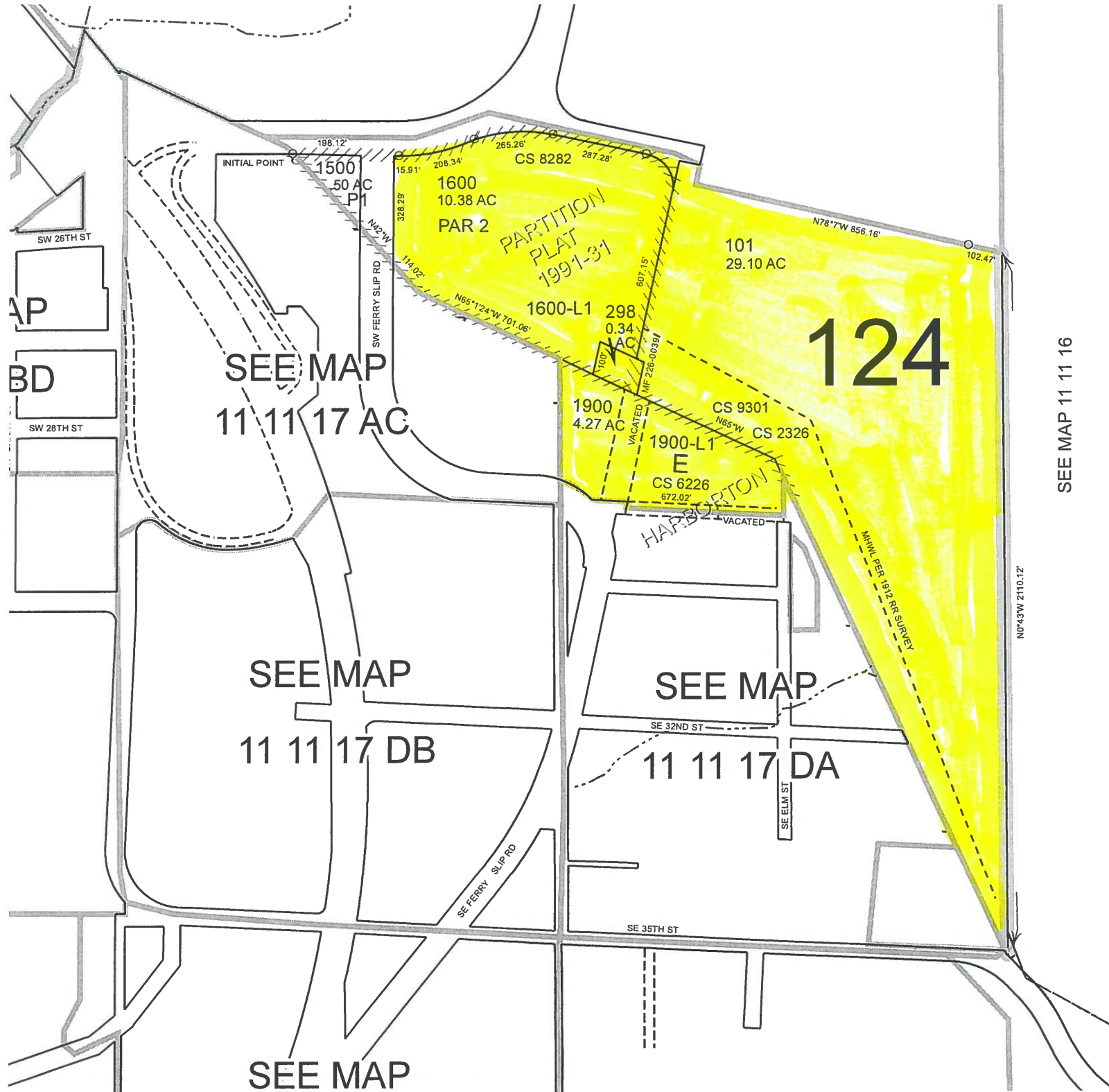
Land				Related Accounts	Disclaimer
Description	Acres	Market Value	Special Use Value		For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information. Tax data exported 10/2018.
COM UNDEV SITE	29.1	2,730,740			
Today's Date: 10/09/2019					

# Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R501925	Neighborhood:	S136	Owner and	PORT OF NEWPORT
Map Taxlot:	11-11-17-00-01600-00	Property Class:	981	Mailing Address:	% OREGON COAST AQUARIUM THE INC, LEASE 2820 SE FERRY SLIP RD NEWPORT, OR 97365
Tax Map:	11s11w17			Site Address(es):	2820 SE FERRY SLIP RD
Web Map:	View Map				
Info:	P.P. 1991-31, PARCEL 2,PTN OF,LEASE ONLY, ACRES 10.38, DV67-433 & MF209- 1991				
Tax Code:	124				
Acres:	10.38				

Improvements								Value History			
Description	Area	Yr Built	Found	Heat	Plumb	BDMS	Value	YearImp.	Land	Total Market	Total Assessed
MAIN AREA	0 sq ft						\$5,528,550				
Foundation Code List Heating/AC Code List Plumbing Code List								20185,528,550	2,200,890	7,729,440	0
								20175,764,820	2,200,890	9,965,710	0
								20166,284,600	2,391,320	8,675,920	0
								20156,284,600	2,393,640	8,678,240	0
								20146,284,600	2,393,640	8,678,240	0
								20136,520,860	2,393,640	9,914,500	0
								20127,324,150	2,010,640	9,334,790	0
								Sales History			
								No Sales Data			

Land				Related Accounts	Disclaimer
Description	Acres	Market Value	Special Use Value	R519742	For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information. <b>Tax data exported 10/2018.</b>
COM DEV BAYVIEW SITE	10.26	2,189,890			
IND SITE DEVELOPMENT		11,000			
Today's Date: 10/09/2019					



SEE MAP 11 11 16

SEE MAP  
11 11 17 AC

SEE MAP  
11 11 17 DB

SEE MAP  
11 11 17 DA

SEE MAP

AGREEMENT FOR LEASE OF BUSINESS PREMISES

THIS AGREEMENT, made and entered into as of the 1st day of July, 1988, by and between the NEWPORT URBAN RENEWAL AGENCY, a public body corporate and politic, of the State of Oregon, organized under ORS Chapter 457, hereinafter called "Lessor", and THE OREGON COAST AQUARIUM, INC., an Oregon non-profit corporation qualified to do business in the State of Oregon, hereinafter called "Lessee",

W I T N E S S E T H:

In consideration of the covenants, agreements and stipulations herein contained on the part of the Lessee to be paid, kept and faithfully performed, the Lessor does hereby lease, demise and let unto the said Lessee those certain premises, AS IS, situated in the County of Lincoln, State of Oregon, more particularly described as follows:

Parcel 1: Beginning at an iron rod set on the North line of Harborton (an addition in Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon), said iron rod being South 65°00' East 580.54 feet from angle point in the North line of Block C, Harborton; thence North 11°38' East 100 feet, to an iron rod; thence South 65°00' East 120 feet, more or less, to the West right-of-way of the County Road; thence Southerly along said road line to a point that is South 65°00' East from the point of beginning; thence North 65°00' West 120 feet to the point of beginning.

Parcel 2: Lot 1, Block G, Harborton, lying westerly and northerly of Ferry Slip County Road No. 559, in Lincoln County, Oregon.

Parcel 3: Block E, Harborton, in Lincoln County, Oregon, excepting therefrom that portion lying within Ferry Slip Road No. 559.

Parcel 4: Blocks C and D, Harborton, in Lincoln County, Oregon.

Parcel 5: Lot 1, Block F, Harborton, in Lincoln County, Oregon, excepting therefrom that portion lying in the tract known as South Bay Industrial Condominium, as shown in Book 1, Page 49, filed October 14, 1981, Book of Condominiums, Lincoln County, Oregon.

EXCEPTIONS:

1. The rights of the public in and to that portion lying within the limits of roads, streets and highways, if any.
2. Any adverse claim based upon the assertion that some portion of said land is tide, submerged or submersible lands, or has been created by artificial means or has accreted to such portion so created.
3. That certain condition contained in special warranty deed from the Port of Newport to the Newport Urban Renewal Agency, dated June 19, 1987, recorded April 26, 1988 in Book 191, Page 2053, providing as follows:

"This property is conveyed by the Grantor to the Grantee for the purpose and on condition that Grantee, or Grantee's successors in interest, shall develop and use the property for a public facility for the exhibition and display of marine and estuarine plants and animals, for purposes of education relating to marine and estuarine conditions and environment, related purposes and purposes incidental thereto. Such use shall be commenced within ten years from the date of this conveyance, and shall continue thereafter. In the event such use shall not be substantially established within ten years of the date of this conveyance, or in the event that such use shall be established and subsequently abandoned for a period of two years or more, Grantor may terminate the estate hereby conveyed, and enter into possession and ownership of the said land as if this conveyance had never been made."

"Although the parties intend that this condition subsequent and the Grantor's right of reentry for condition broken should be perpetual, the parties recognize that pursuant to the provisions of ORS 105.772, such condition subsequent and right of reentry shall be extinguished upon the expiration of 30 years from the date of this conveyance, unless the Grantor shall record in the deed records of Lincoln County, Oregon a notice of intention to preserve such notice not less than 28 years nor more than 30 years after the date of this conveyance, and within a like time period after each subsequent renewal. So long as such statute shall so require, or should any additional condition or requirement be imposed by statute, Grantor may so renew condition subsequent and the Grantor's right of reentry."



4. An easement reserved in the aforementioned deed, as follows:

"A permanent, exclusive easement upon all of the above described property, hereby retained by the Grantor, to allow the Grantor to receive, have and have credited to it any mitigation credits which may be generated as a result of any subsequent activity on any of the described property as a result of the development of the property. However, this easement shall not allow the Grantor to use or occupy any portion of the said premises, nor shall Grantor control the manner in which the property is developed. Grantee shall be free to develop the property as Grantee shall see fit, subject only to the provision that if any mitigation credits shall be so generated, the same shall accrue to the benefit of the Grantor."

5. Any right, title, interest, claim or encroachment as might be disclosed by an inspection or survey of the premises, or reasonable inquiry of persons in possession thereof.

6. Right of the public and of governmental bodies in and to any portion of the premises hereindescribed lying below the high water mark of Yaquina Bay, including any ownership rights which may be claimed by the State of Oregon below the high water mark.

7. Rights of the public and of the State of Oregon in the ocean shore and dry sands are defined as lying between the mean high tide and visible line of vegetation or as defined in ORS 390.605-770, or any other applicable statute.

8. Any rights, interests or easements in favor of the State of Oregon, United States of America or the public which exists or are claimed to exist in and over the past and present, banks and waters of Yaquina Bay.

9. An easement, including the terms and provisions thereof, created by instrument recorded October 14, 1981 In Volume 127, Page 2484, Film Records, in favor of adjacent property for ingress and egress. (Affects Parcel 2.)

10. Contracts of sale, including the terms and provisions thereof, dated December 4, 1987, recorded December 18, 1978 in Volume 95, Page 1394, Film Records and dated January 7, 1978, recorded May 17, 1979 in Volume 100, Page 1321, the vendee's interests in which were assigned to the Port of Newport by assignment contained in supplementary agreement, including the terms and provisions thereof, recorded June 18, 1985 in Volume 171, Page 2189, Film Records (affects Parcels 2, 3, 4 and 5).

11. Unrecorded contract of sale, including the terms and provisions thereof, between the Bank of Newport, vendor, and the Port of Newport, vendee, as disclosed by memorandum of lane sale contract dated December 30, 1985, recorded June 18, 1986 in Volume 171, Page 2183, Film Records.

The interest of the vendees thereunder was assigned to the Newport Urban Renewal Agency by assignment recorded April 26, 1988 in Volume 191, Page 2057, Film Records.

12. Unrecorded contract of sale, including the terms and provisions thereof, between Harold H. Arnold, vendor, and the Port of Newport, vendee, as disclosed by memorandum of land sale contract dated December 15, 1985, recorded June 18, 1985 in Volume 171, Page 2186, Film Records.

The interest of the vendees thereunder was assigned to the Newport Urban Renewal Agency by assignment recorded April 26, 1988, in Volume 191, Page 2057, Film Records. (Affects Parcels 2, 3, 4 and 5).

13. Easement including the terms and provisions thereof, from the Port of Newport to the City of Newport recorded August 26, 1944, in Book 100, Page 161, Deed Records.

14. Terms and provisions, and easements, all as set forth in and reserved in the vendee's assignment of contract executed by the Port of Newport, assignor, in favor of Newport Urban Renewal Agency, recorded April 26, 1988 in Volume 191, Page 2057, Film Records. (Affects Parcels 2, 3, 4 and 5).

TO HAVE AND TO HOLD the said described premises unto the said Lessee from July 1, 1988, to and including 12:01 a.m., June 30, 2087, at and for a rental of one dollar. The Lessor finds and determines that the facilities to be constructed upon the property, and the operation of the facility, will be of substantial economic, educational and other benefit to the community and to the Urban Renewal District, and will substantially contribute to the elimination of blight and deterioration in the South Beach Urban Renewal Project Area, and that the rental hereunder reserved is the fair reuse value of the property, giving due consideration to the obligations and

requirements on the part of the Lessee herein to be performed, and the cost to be incurred by Lessee in the development, use and maintenance of the improvements to be constructed on the property hereby leased.

In consideration of the leasing of said premises and of the mutual agreements herein contained, each party expressly covenants and agrees to and with the other as follows:

1. ACCEPTANCE OF LEASE/TITLE:

Lessee accepts said lease and agrees to pay to the order of Lessor the rental above stated for the full term of this lease at the times and in the manner aforesaid. It is understood that the Lessee takes the premises "AS IS," subject to all faults, defects and hazards. Lessee assumes all risks associated with the use of the premises in any manner.

Lessor warrants that it has good and sufficient title to the premises, in fee simple, subject to such matters as may be set forth above. It shall be the responsibility of Lessee to obtain a leasehold policy of title insurance upon the above premises, and the attorneys for Lessor shall not provide any title opinion with respect to such property except in reliance upon such policy or a preliminary report therefor. In the event that the Lessee believes that the right or encumbrance revealed by such report or policy shall render the premises unfit for the uses intended and contemplated hereby, or shall be in violation of the above warranty of title, Lessee may give notice thereof to the Lessor within twenty (20) days after receipt of the preliminarily title report and may terminate this lease agreement and all obligations

hereunder unless the Lessor shall, within thirty (30) days after the receipt of such notice, cure or remove such clouds upon the title or commence to cure or remove the same and proceed with due diligence to such cure or removal. The Lessee's right to terminate this lease agreement as aforesaid shall be the sole remedy with respect to any such title cloud or defect.

2. USE:

The subject property shall be used primarily for an Aquarium project, to comprise elements of public exhibition and scientific research (the latter to be carried out on a cooperative basis with the Oregon State University Marine Science Center and other governmental research facilities, to the greatest extent feasible), and for no other purpose, without the express, written consent of Lessor in advance obtained. It is understood that this lease is entered into in recognition of the economic, scientific and other benefits to be realized from the development of such a facility, and such use of the property shall be a condition hereof.

Lessee will not make any unlawful, improper or offensive use of said premises; it will not suffer any strip or waste thereof; it will not permit any objectionable noise or odor (other than such odors as are normal and incidental to an aquarium facility and/or tidal flats) to escape or to be emitted from said premises or do anything or permit anything to be done upon or about said premises in any way tending to create a nuisance.

It is expressly understood, as above mentioned, that the Port of Newport has reserved an easement respecting the right to

preserve, have and utilize mitigation credits which may accrue or which may be realized in the course of the development of the property, whether under federal, state, local or other law. It is further understood that the Port of Newport and the Lessee have entered into a lease similar to this, setting forth certain conditions and agreements with respect to the use and preservation of mitigation rights with respect to the property subject of that lease, and such provisions are hereby adopted and made a part of this lease, for the benefit of the Port of Newport and for the purpose of carrying out its easement, with respect to such portions of the hereinabove described property as may be subject to such easement rights.

3. IMPROVEMENTS:

As part of the consideration for this lease, the Lessee agrees to construct valuable improvements upon the premises, the plans and architectural design thereof to be subject to reasonable approval by the Lessor, and said improvements to be constructed in substantial conformance with such plans and architectural design, as approved, to be constructed and operated in a first class manner, and to consist of a marine and scientific exhibition facility on the above described real property, in a campus-style layout, consisting of the following structures:

(a) Entry building, which will provide for ticket sale, orientation and basic services, including but not necessarily limited to a bookstore, restrooms and snack bar or restaurant.

(b) The Freshwater Center, a building which will house exhibits illustrative of Oregon Freshwater Wildlife and Eco-Systems.

(c) The Estuary Center, a building which will house exhibits illustrative of Oregon Estuarian Wildlife and Eco-Systems.

(d) The Sea Center, a building which will house exhibits illustrative of Oregon Marine Wildlife and Eco-Systems.

(e) The Ocean Science Center/Resource Education Center, both housed in the same structure. The former will include exhibits relating to issues and processes of a current nature, and the latter will provide a classroom environment and laboratory for educational purposes.

The foregoing comprise the initial facilities to be constructed, commonly referred to as Phase I of the project, and represent the minimum facilities which shall be constructed to comprise the project. Phase I will include not less than 25,000 square feet of indoor, heated space and will additionally comprise outdoor exhibits grouped around and about the indoor facilities, and related thereto. The Lessee shall have the right, subject to any other conditions or agreements in this agreement, to construct additional improvements as may be appropriate to the purposes of this lease. The project shall include proper and attractive landscaping, and the project shall be generally carried out in a manner that shall be aesthetically pleasing and attractive.

It is understood that the Lessee is in the process of obtaining financing for the project (primarily by governmental

grants, contributions and from private foundations), and planning and designing the project, and this lease agreement shall be conditional upon the Lessee completing the project as hereafter provided.

Upon the execution of this agreement, Lessee shall proceed with all diligence to make every reasonable effort to complete all architectural, engineering and design work, to obtain financing and to construct and complete the project, and open the same for operation. Such work shall be completed as follows (and timely completion shall be a condition of this lease):

a. Project engineering, design and planning shall be completed not later than March 1, 1990.

b. All building permits and other necessary approvals shall be obtained and a construction contract shall be awarded not later than March 1, 1991, or within twelve months after the steps described in Subsection a., above, have been completed, whichever is sooner.

c. The project shall be substantially completed and open for business not later than March 1, 1993, or within two years after the steps described in Subsection b., above, have been completed, whichever is sooner.

d. In connection with the foregoing, the parties recognize that developments beyond the control of the Lessee may require that the project be scaled down, i.e., that the size of the project be reduced due to funding or for other reasons. The Lessor agrees to give reasonable consideration to any request of the Lessee to reduce the initial scope of the project, upon

condition that such project, as so reduced in scope, will nonetheless serve the purposes for which this lease agreement is made and entered into, is reasonably expected to be economically viable and beneficial to the community and attractive and aesthetically pleasing.

4. COMPLIANCE WITH LAW:

Lessee shall comply at Lessee's own expense with all laws and regulations of any municipal, county, state, federal or other public authority respecting the use of said lease premises.

It is understood that the Lessor, being a public body, is subject to certain statutes and requirements of law, and this lease is made subject to the provisions of all state, federal, and other laws, to the extent applicable, which are by this reference incorporated herein as though set forth in full.

5. TAXES, UTILITIES & OTHER FEES:

Lessee shall promptly pay for all water, heat, light, power and other services or utilities used in the leased premises during the term of this lease and all personal property taxes on all personal property located on the premises during the Lessee's occupancy thereof.

Lessee shall also pay all taxes, assessments, licenses, permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind or nature, which now or hereafter may be levied upon the real property or improvements during the term of the lease or as a consequence of the Lessee's occupancy thereof,



promptly when the same are levied and assessed and before the same shall become delinquent.

If by law, any charge, levy, or other such imposition is payable or, at the option of the taxpayer, may be paid in installments, Lessee may pay the same, together with any interest accruing on the unpaid balance, in installments, and shall be required to pay only such installments as may become due, provided, however, that any unpaid balance shall be paid in full on or before the expiration of this lease agreement.

If it is determined that any of the adjacent submerged or submersible lands are the property of the State of Oregon, and if a lease is entered into with the State of Oregon, Division of State Lands, to allow the use of such adjacent lands, the Lessee shall pay all sums due to the State of Oregon for such purpose, promptly and before the same shall be past due.

Lessee will promptly deliver to Lessor receipts or other satisfactory evidence of all payments required hereunder.

6. FIRE AND CASUALTY INSURANCE:

Lessee agrees to insure any improvements erected upon the premises against loss by fire, vandalism or other casualty, with extended coverage, and for such other hazards and in such amounts as Lessor may reasonably require, in a company or companies satisfactory to the Lessor, for the maximum insurable value thereof, and both the Lessor and the Lessee shall appear as named insureds under such policy, as their respective interests shall appear. Any such policy shall provide that Lessor shall receive not less than fifteen (15) days notice prior to any cancellation

or amendment of the policy. Lessee shall provide to Lessor a copy of the policy and a certificate evidencing that such insurance is in effect.

Lessee shall be responsible to provide insurance upon the fixtures, appurtenances and personal property located upon the premises against loss by fire, vandalism or other casualty. Lessor shall be a named insured with respect to any of the personal property on the premises belonging to the Lessor, and shall receive the same notices and evidence of insurance with respect to the personal property owned by Lessor as is required with respect to the real property, as above.

Lessee shall provide to Lessor a copy of any policies of insurance required under the foregoing, or any other, provision of this lease agreement, together with a certificate showing that such insurance is in full force and effect, and at least fifteen (15) days prior to the expiration date of any policy the Lessees shall provide to Lessor a copy of the renewal policy, a certificate of renewal, and satisfactory evidence of payment of the premiums. Such policies shall provide that (a) any loss shall be payable to Lessor, to Lessee, and to the holder of any permitted mortgage on the leasehold, as their interests may appear, and notwithstanding any act or negligence of Lessee which might otherwise result in forfeiture of said insurance; (b) that such policy shall not be cancelled or amended except upon notice as provided above, and; (c) that the coverage afforded by the policy shall not be affected by the performance of any work in or about the premises.

7. REPAIRS AND IMPROVEMENTS:

Lessee hereby agrees to maintain and keep the premises and all improvements thereon in good order and repair during the entire term of this lease at Lessee's own cost and expense and to replace all glass which may be broken or cracked during the term hereof. Lessee further agrees that it will make no alterations, additions or improvements to or upon said premises without the written consent of the Lessor first being obtained. However, such written consent shall not be unreasonably withheld by the Lessor. Inasmuch as the improvements upon the premises are constructed by the Lessee, and this is a long-term lease, this shall not be construed to require the consent of the Lessor with respect to any improvement which (1) does not materially diminish the value of the improvements, (2) does not materially alter the structure or external appearance of the improvements, and (3) do not represent a cost greater than five percent (5%) of the sound value of the improvements on the property. In any event, whether or not such consent shall be required, Lessee shall notify Lessor of any repairs or improvements other than ordinary and customary maintenance and, if requested, shall provide satisfactory evidence that such alterations, additions, or improvements comply with the foregoing conditions, if Lessee believes that the Lessor's consent is not required under the foregoing.

The Lessor shall not be required to make any repairs whatsoever. However, if the Lessor shall determine that any repairs are required, Lessor may, at Lessor's option and in Lessor's discretion, make or cause such repairs to be made, at the

expense of the Lessee, and the amount due therefor shall be an obligation from the Lessee to the Lessor, under this lease, immediately due and payable.

All repairs, alterations, additions, and improvements shall be carried out and completed in a good and workmanlike manner, in compliance with all applicable laws, including the obtaining of all permits, inspections, and improvements of all governmental agencies, and of the fire underwriters, (to the extent required). These provisions shall be applicable to the initial improvements under Section 3, as well as to subsequent repairs, alterations, additions and improvements.

8. INSPECTION:

The Lessor, its agents and representatives, at any reasonable time may enter upon or into said premises for the purpose of examining the condition thereof and for any other lawful purpose.

9. TRANSFER OR SUBLEASE:

Lessee will not assign, transfer, pledge, hypothecate, surrender or dispose of this lease, or any interest therein, or permit any other person or persons whomsoever to occupy the premises, without the written consent of the Lessor first being obtained in writing. Lessor will not unreasonably withhold consent to sublease or license a reasonable amount of space for a restaurant/snack bar operation, a bookstore or gift shop, or other similar concession, all of which are to be only incidental to the operations of the aquarium and consistent with the purposes and intentions expressed in this agreement. Permission for any such

transfer shall not serve to release Lessee with respect to any obligation hereunder.

10. LIENS:

Lessee shall keep the demised premises free from all liens of every kind and description caused, incurred, permitted or suffered by any act or omission of Lessee, and Lessee shall not have the right or authority to incur any mechanic's, laborer's, materialmen's or any other liens.

However, in the event that the Lessee shall desire to contest any lien which may be asserted against the premises, Lessee shall have the right to do so, upon condition that Lessee shall provide a commercial surety bond to the Lessor in an amount equal to 150% of the amount of the lien claim, indemnifying Lessor against any loss, liability for damages on account of such claim, and upon further condition that the Lessee shall promptly and fully pay any amount which is finally adjudicated to be due upon such claim.

11. OBSTACLES:

At all times Lessee shall keep the sidewalks in front of the demised premises free and clear of ice, snow, rubbish and obstruction of every sort.

12. LIABILITY:

Lessor shall not be responsible or liable in any way for the injury or death of any person or damage to any property caused in or about the premises, nor shall Lessor be liable for any damage or loss suffered by the business or occupation of Lessee arising or resulting from any such accident or injury to goods or persons happening in or about the premises. Lessee does hereby covenant

to save, hold and defend Lessor harmless from any claim, loss, damage or liability resulting from or arising out of any such accident or injury, or in any manner arising from or as a result of the Lessee's use or occupancy of the premises, or that of any employee, representative or invitee of Lessee, and in the event of any suit or action for damages, claim or penalties being brought by any person whomsoever, Lessee agrees at its own cost and expense to defend Lessor against any such suit or action and any and all appeals thereof and to satisfy and discharge any judgment which may be awarded against Lessor on account thereof. Lessee will at all times indemnify and hold harmless the Lessor, its agents and employees, against any and all actions or causes of action, claims, demands, liabilities, losses, damages or expenses of any kind or nature which Lessor shall or may at any time sustain or incur by reason of Lessee's operations hereunder. However, Lessor represents to Lessee that upon execution hereof Lessor has no notice from any person of intent to assert such a claim.

13. LIABILITY INSURANCE:

Lessee further agrees at all times during the term hereof, at its own expense, to maintain, keep in effect, furnish and deliver to the Lessor liability insurance policies in form and with an insurer satisfactory to the Lessor insuring both the Lessor and the Lessee against all liability for damages caused by the negligence of the Lessee, its employees or agents, to persons or property in or about said leased premises; the policy of liability insurance shall have a single aggregate policy limit of not less

than \$1,000,000.00. Lessee agrees to and shall indemnify and hold Lessor harmless against any and all claims and demands arising from acts or omissions of the Lessee, its officers, agents, invitees and/or employees, as well as those arising from Lessee's use of the leased premises, or Lessee's failure to comply with any covenant of this lease upon its part to be performed and shall, at its own expense, defend the Lessor against any and all suits or actions arising out of such negligence, actual or alleged, and all appeals thereof, and shall satisfy and discharge any judgments which may be awarded against Lessor in any such suit or action.

Lessee shall provide to Lessor copies of the policy of liability insurance required hereunder, together with a certificate or other satisfactory proof that such policy or policies are in full force and effect. Such policy or policies shall provide that the coverage thereunder shall not be cancelled or amended without at least fifteen (15) days notice to Lessor.

The parties recognize that the aforementioned policy limits are relatively low, considering the intended use of the premises, and Lessor shall have the right, from time to time, to request reasonable increases in the liability limits of the aforementioned policy of liability insurance.

14. OWNERSHIP OF IMPROVEMENTS:

All improvements and any partitions, plumbing, wiring, fixtures, mechanical systems and other additions to or upon said leased premises, whether installed by the Lessor or the Lessee, shall be and become part of the premises as soon as installed and

are the property of the Lessor unless otherwise expressly agreed by the parties in writing.

However, the Lessee shall retain ownership of the EDA-funded improvements for a period of twenty-five years, except and unless the EDA shall consent to such improvements becoming the property of the Lessor at an earlier date. If Lessee shall remove any such EDAD-funded improvements, Lessee shall repair all damage caused by the severance.

15. DESTRUCTION OF PREMISES:

In the event of the destruction of the leased premises by fire or other casualty, Lessee shall rebuild and restore the premises to their condition prior to such loss, and any proceeds of insurance shall be applied to that purpose. If the Lessee shall fail so to do within 365 days following such loss, such proceeds of insurance shall be paid to the Lessor, and applied as follows (which shall not, however, waive the Lessee's failure to do so):

a. To pay or discharge any obligations which may exist by reason of the terms and conditions of any grant, loan or other financing used to finance the construction of the improvements on the subject real property.

b. The remainder, if any, shall be the property of the Lessor.

c. Lessee shall not be considered to have failed to rebuild and restore the premises to their condition prior to such loss, as required above, notwithstanding that Lessee may not have restored the premises to exactly the same condition as the same



existed prior to the loss, if Lessee shall have constructed improvements having a replacement value substantially equal to the replacement value of those improvements existing prior to the loss, and shall have constructed the same in a manner consistent with the terms and provisions of this lease and appropriate to the needs and activities of the Lessee at the time of such loss, and if such replacement premises will provide for carrying out substantially the same activities as existed prior to such loss.

The Lessor does not hereby assume any obligation with respect to any of Lessee's financing, or any obligation or encumbrance on the subject property.

16. WAIVER OF LIABILITY:

Neither the Lessor nor the Lessee shall be liable to the other for losses arising out of damage to or destruction of the leased premises, or the building or improvements of which the leased premises are a part or with which they are connected, or the contents of any thereof, when such losses are caused by any of the perils which are insured against, to the extent of available insurance proceeds. All such claims for any and all losses, however caused, hereby are waived, to the extent of such proceeds. However, nothing herein contained shall be deemed to exculpate the Lessee for liability for such losses to the extent that Lessee fails to obtain and keep in effect insurance against such losses as herein required, nor anything herein contained be deemed to exculpate the Lessee for liability for such losses should such exculpation have the effect of voiding or nullifying any insurance

coverage for such loss which might otherwise exist for the benefit of the Lessor.

17. CONDEMNATION:

In case of the condemnation of appropriation of all or any substantial part of the said demised premises by any public or private corporation under the laws of eminent domain, this lease shall continue in full force and effect as to such portion of the premises, if any, as may remain after such taking, if the premises shall not thereby be rendered unsuitable for the purposes contemplated under this lease agreement. In the event that the premises shall be rendered unsuitable for such purposes, this lease agreement shall terminate. In any event, this lease agreement shall terminate as to the portion of the premises as may be taken.

The proceeds of any condemnation award appertaining to the taking of the land shall belong to the Lessor; the proceeds of any condemnation award appertaining to the taking of the improvements shall be applied as follows:

a. To alter the remaining improvements so that the same may be used, to the fullest extent possible, for the purposes originally intended under this lease. If the remaining premises cannot be altered to the extent necessary, then no alteration shall be made to such improvements, and such proceeds shall be applied as hereafter provided.

b. To establish a similar facility at another location, if the facility cannot continue to be used for the

purposes intended, and cannot reasonably be altered to accomplish such purpose.

c. If the proceeds are not applied as provided in Section a. or b., or if there shall be any excess, the same shall be applied toward any obligation existing by reason of any grant or loan obtained by the Lessee to construct the improvements, with the remainder to be paid to the Lessor and Lessee, as their interests may appear.

18. HOLDING OVER:

In the event the Lessee shall for any reason hold over after the expiration of this lease, other than pursuant to a valid renewal or extension hereof, such holding over shall not be deemed to operate as a renewal or extension of this lease but shall create a tenancy from month-to-month which may be terminated at will at any time by the Lessor.

19. NOTICES:

Any notices required by the terms of this lease to be given by one party to the other, or desired so to be given, shall be sufficient if the writing is in a sealed envelope, deposited in the United States registered or certified mail with return receipt requested and with postage fully prepaid and addressed to the other party at the following address, or such other address as to which either party may have properly notified the other:

LESSOR:

NEWPORT URBAN RENEWAL AGENCY  
C/O CITY RECORDER  
CITY OF NEWPORT  
810 S. W. Alder St.  
Newport, Oregon 97365

LESSEE:

OREGON COAST AQUARIUM, INC.  
1 FERRY SLIP ROAD  
SOUTH BEACH, OR 97366

20. STRICT PERFORMANCE:

Lessee's full, strict, complete and literal performance, and the time thereof, are of the essence of this agreement; any waiver by the Lessor of any breach of any covenant or agreement herein contained to be kept and performed by the Lessee shall not be deemed or considered a continuing waiver and shall not operate to bar or prevent Lessor from any right or remedy for that breach or for any succeeding breach, either of the same condition, covenant or agreement, or of any other.

21. ATTORNEY'S FEES:

In the event either party shall be required to retain the services of an attorney to enforce any obligation under this lease agreement, including any proceedings under the Federal Bankruptcy Code, or similar legislative enactment, such party shall be entitled to recover from the other such reasonable attorney's fees so incurred, whether or not any suit or action shall be commenced. In the event either party shall commence any suit or action to enforce any obligation hereunder, the prevailing party shall be entitled to recover from the other such party's reasonable attorney's fees so incurred, including any appeal.

22. RIGHT TO ADVERTISE:

During the period of sixty (60) days prior to the date fixed for the termination of said lease, unless the parties have reached agreement and have renewed the same as provided herein, the Lessor may post on said premises or in the windows thereof signs of

reasonable size notifying the public that the premises are "For Sale" or "For Rent" or "For Lease."

23. SURRENDER OF PREMISES:

At the expiration of said term or upon any sooner termination of this lease, or upon the termination of any extension hereof, or upon the termination of any month-to-month tenancy created hereafter, the Lessee will quit and deliver up said leased premises and all future erections or additions to or upon the same, broom clean to the Lessor, or those having Lessor's estate in the premises, peaceably, quietly and in good order and condition, reasonable use and wear thereof, damage by fire, unavoidable casualty and the elements, to the extent covered by insurance, alone excepted, as the same are now in, or such better condition as the premises hereafter may be put in, or may be required, by terms of this lease, to be put in.

24. SUCCESSORS:

All rights, remedies and liabilities herein given to or imposed upon either of the parties hereto shall extend and inure to the benefit of and bind, as the circumstances may require, the heirs, executors, administrators, successors and assigns of such parties. However, this provision shall not be construed to permit any transfer of the rights of the Lessee in derogation of any term or provision of this lease agreement requiring the consent of the Lessor.

25. NEAT AND PRESENTABLE CONDITION:

Lessee agrees at all times during the term of this lease to maintain the leased premises in a clean, neat, orderly and presentable condition.

26. INTEGRATION:

This is the complete and entire agreement between the parties, and supersedes any other or prior agreement. Any modification hereof shall be effective only if reduced to writing and subscribed by the parties sought to be bound thereby.

27. DEFAULT:

The Lessee's failure to pay the rent provided hereunder, or any portion thereof, or to keep and observe any other requirement of this lease after notice of failure so to do (as hereafter provided) shall be a default and shall operate to terminate the tenancy of the Lessee hereunder without waiver of any right of Lessor, including the right to be compensated for Lessor's damages, including but not limited to the rent and other performance due to Lessor hereunder. Acceptance by Lessor of payment of arrearage of rent, or a portion thereof, or any partial performance, shall not reinstate the lease unless the Lessee shall pay or perform all sums the payment of which is in arrears and cure all other defaults then existing.

The Lessee shall not be considered in default hereunder, and this lease shall not terminate, by reason or any act or omission of the Lessee in breach of any requirement hereof, until and unless Lessor shall give to the Lessee notice of such act or omission in breach of this lease agreement, and Lessee shall fail

to cure the same within twenty (20) days after such notice. However, whenever such breach shall relate to the provision of insurance or to the payment of any taxes, assessment, rent to the Division of State Lands or any other sum due to a third party, the same shall constitute a default upon expiration of five (5) days after such notice without cure of the breach. At Lessor's option, and without waiving such breach, Lessor may itself pay any such sum, in whole or in part, for the account of Lessee, and such amount shall thereupon be immediately due from Lessee to Lessor, as additional rent hereunder.

With respect to all matters relating to the condition of the premises, if the act or omission complained of by Lessor is of a type which may not reasonably be cured within twenty (20) days, the Lessee shall nonetheless not be deemed in default hereunder if the Lessee shall commence the cure of such breach within ten (10) days following receipt of such notice and shall diligently prosecute such cure to completion, such cure in any event to be completed within ninety (90) days after receipt of such notice.

28. REMEDIES:

In the event the lease shall terminate for default, as aforesaid, or by reason of any other default as a matter of law, or for any other reason, and if the Lessee shall fail to immediately surrender possession of the leased premises, in any of such cases, the Lessor or those having Lessor's estate in the premises, lawfully and at the option of the Lessor, immediately or at any time thereafter, without demand or notice, may enter into and upon the demised premises and every part thereof and repossess

the same as of Lessor's former estate and expel Lessee's effects at the expense of Lessee, forcibly if necessary, and store the same and/or lock the demised premises, all without being deemed guilty of trespass or other wrongful act, and as a remedy pursuant hereto and not in derogation hereof, and without prejudice to any other right or remedy which otherwise might be used for arrears of rent, breach of this agreement, or otherwise.

In addition, if the Lessor shall retake possession of the premises, Lessee shall pay to Lessor all of the reasonable costs of reentry and reletting, including but not limited to the cost of any cleanup, refurbishing, removal and storage of Lessee's personal property and fixtures and any other expense occasioned by Lessee's failure to quit the demised premises upon termination or to leave them in the required condition, any cost of repair to the building, attorneys' fees, court costs, brokers' commissions and advertising costs.

All of the Lessor's rights and remedies hereunder shall be cumulative, one with the other, and with any other right or remedy as may now or later exist by force and effect of law or otherwise.

Lessor, at any time Lessee has failed to perform a provision hereof, can provide such performance at Lessee's cost, and such costs or amounts paid shall be a debt due immediately from Lessee to Lessor.

All rent and other sums due to Lessor from Lessee shall bear interest at the highest rate permitted by law or, if there be no limitation, at a rate which is 5% (5 points) above the prime



rate for preferred large borrowers as quoted in the West Coast Edition of the Wall Street Journal at the time of the award.

29. SPECIAL NON-CANCELLATION PROVISION:

It is understood by the parties that, as a condition of certain federal grants anticipated by the Lessee to be obtained for the construction of improvements upon the subject premises, this lease agreement must not be subject to cancellation by the Lessor, for breach or otherwise, at any time prior to January 1, 2020. Accordingly, the Lessor agrees and stipulates that it hereby waives any right to cancel this lease agreement and terminate the use and possession of the leased premises prior to such date, notwithstanding any breach of any term or provision hereof.

However, Lessor shall nonetheless have the right to enforce any obligation of this lease agreement by a suit for specific performance or otherwise, to obtain a judgment for any loss, injury or damages incurred by Lessor on account of any breach hereof, and to exercise any other right or remedy as may exist under this lease agreement or by force and effect of law, except only the right to terminate the lease agreement.

It is further understood that the Lessor shall have the right to terminate the lease agreement at any time after the date mentioned above, and also may terminate the lease agreement prior thereto under certain circumstances, as follows:

a. In the event that any such federal agency as for the benefit of which this provision shall exist shall consent thereto.

b. In the event that the Lessor shall be willing to pay to such agency the amount of the original grant, or such portion thereof as by law may be required to be paid.

c. If the Lessor shall be willing to assume the obligations of such grant, and to continue to operate the facility for the same purposes and in the same manner as required of Lessee, for such period time as may be required.

d. In the event that the Lessor is willing to place the facility in the hands of another, non-profit organization which will assume the obligations of Lessee and operate the facility in the same manner as required of Lessee.

It is a condition of this lease agreement that the Lessee shall maintain its status as a tax-exempt non-profit corporation in good standing. If, owing to changes to the tax laws or the non-profit corporation laws, Lessee may no longer exist as such a corporation, Lessee shall not be deemed in violation hereof so long as Lessee continues to maintain its corporate existence in a form legally recognized as most like the present tax-exempt non-profit corporation status.

30. RECEIVERSHIP:

As an additional remedy in the event of default on the part of the Lessee, so long as Lessor shall not have elected a remedy inconsistent herewith, the Lessor shall have the right, on its own or by court appointment of a receiver, to take possession of the property and operate the same in accordance with the Lessee's obligations under this lease agreement until such time as any default shall be cured and the Lessee shall demonstrate the

ability to comply with the terms and obligations of this lease agreement. This shall not constitute a termination of the lease agreement, such as is restricted under Section 27 above, but shall be considered only a temporary interruption of the Lessee's right to possession.

Such receiver shall have a right, not only to take possession of the real property and to operate the same as contemplated, and to receive the rents, profits, and other income from the business and property, and to apply the same in an appropriate manner, including the payment of expenses and the costs of the receivership, to charge any deficiency to the account of the Lessee, but also to take possession of any of the Lessee's personal property located on the premises which may be necessary or convenient to such operations.

31. OWNERSHIP OF IMPROVEMENTS/REMOVAL:

All structures, installations or improvements of any kind placed on the leased premises by the Lessee shall be and become a part of the leased premises. Upon the termination of this lease by expiration or otherwise, all structures, installations, improvements, machines, appliances, and trade fixtures of any kind placed on the premises by the Lessee shall be the property of the Lessor unless, at the option of the Lessor, the Lessor shall require the Lessee to remove some or all thereof, in which case the Lessee shall remove the same, or such part thereof as shall be required, within thirty (30) days after Lessor shall give notice. If Lessor exercises such option to require removal, and Lessee shall fail to do so and in the time limited, Lessor shall have the

right to remove or cause the removal of such structures, installations, improvements, machines, appliances, or trade fixtures to the extent required of Lessee, at the expense of Lessee.

Upon such termination, Lessee shall also deliver to Lessor all files, plans, records, registers and other papers and documents which may be necessary appropriate or convenient for the proper use, operation, management, and enjoyment of the premises.

32. SPECIAL REQUIREMENTS:

a. Conduct of Lessee's Activities:

Lessee agrees, upon completion of construction and continuously thereafter during the entire term hereof, to conduct and carry on its aquarium (public exhibit) and marine research activities on the leased premises, and to keep such premises open for business and to cause such business to be conducted thereon during each and every day of the entire term of this lease, subject only to conditions beyond the control of the Lessee and such reasonable periods of closure as are normal and customary for such facilities. Lessee shall conduct its activities and operations in a businesslike and efficient manner, beneficial to the Lessee and its facility, the community and the public generally. Lessee shall not discriminate or permit discrimination against any person or groups of persons in any manner on the grounds of race, color, religion, national origin, or otherwise in any manner prohibited by law and shall furnish services in a fair, equal and not unjustly or unlawfully discriminatory basis to all the users thereof, and in compliance

with all applicable laws, statutes, regulations and government requirements.

b. Security Interest:

Lessor shall have a security interest in all personal property upon the leased premises, tangible or intangible, including future acquisitions, substitutions and additions, and in all contracts relating to the operation of the premises or any activity thereon, to secure unto Lessor full and complete performance of all of the terms, conditions, obligations, and requirements hereof. In connection therewith, Lessee agrees to execute all additional documents necessary to carry out the intent hereof and to perfect such security interest, including but not necessarily limited to forms UCC-1 and UCC-2. However, such security interest shall be subordinate to any purchase money security interest in any goods granted to the supplier of such goods. It is expressly understood that the security interest hereby created is in addition to, and not in lieu of, any landlord's lien which Lessor may have.

c. Warranties, Guarantees, and Integration:

Lessor makes no warranty, guarantee, or representation of any nature whatsoever concerning the condition of the leased premises, and it is agreed that Lessor will not be responsible for any loss, damage or cost which may be incurred by Lessee by reason of any physical condition of the premises. This agreement waives and supercedes any other agrees, understandings, negotiations or representations of the parties, whether verbal or in writing. Lessee certifies, acknowledges and agrees that this lease is

accepted and executed on the basis of the Lessee's own examination and personal knowledge of the premises, the nature of the project, related projects, and generally all matters which are a matter of public record or which may be ascertained upon reasonable inquiry. All prior negotiations, representations of fact or opinion or agreements relating to this agreement or the subject property or the project thereon to be constructed as may have been made by the Lessor or any agent or any representative thereof upon which Lessee may have relied have been reduced to writing and are included in this agreement, and if not so reduced to writing and included herein, are expressly waived, which waiver is a material part of the consideration to the Lessor for this lease agreement.

(d) Cross Default Clause:

It is understood that a portion of the project to be constructed in accordance with this lease agreement will also be constructed upon property belonging to the Port of Newport and leased by said agency to Lessee. Inasmuch as it would be impracticable to properly utilize the said properties for the purposes hereunder intended except in conjunction with one another, it is therefore agreed that any default under the Port of Newport Lease shall be a default under this lease, and if the Port of Newport shall, for any reason, be terminated, this lease may likewise be terminated by Lessor, ipso facto, without regard to any other provision herein contained.

33. SUCCESSION:

All rights, remedies and liabilities herein given to or imposed upon either of the parties shall extent and inure to the

benefit of, and bind, as the circumstances may require, the successors and assigns of such parties, subject to the limits and restrictions on transfer as are herein and hereby imposed.

34. GRAMMATICAL CONSTRUCTION:

In construing this lease, it is understood that the Lessor or the Lessee may be more than one person, and if the context so requires, the singular pronoun may be taken to mean and include the plural, the masculine may include the feminine and the neuter, and vice versa, and generally all grammatical changes shall be made, assumed, and implied as are necessary to carry out the intent hereof and to make the provisions of this agreement apply equally to corporations as to individuals.

IN WITNESS WHEREOF, the parties have executed this instrument in duplicate to be effective as of the day and year above set forth, and any corporate signature is affixed hereto only pursuant to the authority of the board of directors or other governing body thereof.

LESSOR:

NEWPORT URBAN RENEWAL AGENCY

BY: [Signature]  
CHAIRMAN

ATTEST:

[Signature]  
SECRETARY

LESSEE:

OREGON COAST AQUARIUM, INC.

BY: [Signature]  
PRESIDENT

BY: [Signature]  
SECRETARY

## ADDENDUM TO LEASE AGREEMENT

This addendum made and entered into as of the 1st day of July, 1989, by and between the Newport Urban Renewal Agency, a public body corporation and politic, of the State of Oregon, hereinafter called "Lessor", and the Oregon Coast Aquarium, Inc., an Oregon non-profit corporation qualified to do business in the state of Oregon, hereinafter called "Lessee". This addendum amends and supplements that certain agreement for lease of business premises made and entered into as of the 1st day of July, 1989 between the two parties listed above.

1. The real property leased hereunder includes the parcels described in the lease together with the vacated portion of any streets vacated on or after July 1, 1989, inuring to the benefit of the real property described in the lease.

2. The Lessor agrees to continue paying the installments of the purchase price due under the contracts listed under exceptions 10, 11 and 12 listed on pages 2 and 3 of the lease, and Lessee, Oregon Coast Aquarium, shall not be required to make any payments on those contracts, but shall keep, observe and abide by all other requirements of said contracts.

3. It is understood and agreed between the parties that in the event the Lessee is unable to proceed with the



project proposed in Section 3 of the lease, or a revised project which meets with the reasonable approval of Lessor, Lessor's sole remedy for such failure to proceed shall be termination of the lease and Lessee shall have no further obligation hereunder after such termination. However, this shall not be construed to preclude Lessor from asserting claims for loss or damage arising from other breach or fault of Lessee (as for example, commission of waste or failure to pay taxes or other liens which may be the obligation of Lessee).

LESSOR:

LESSEE:

NEWPORT URBAN RENEWAL AGENCY

OREGON COAST AQUARIUM, INC.

By: *[Signature]*  
President

By: *John B. Clark*  
President

ATTEST:  
*Donald A. Davis*  
Secretary

By: *Matthew Secretary*  
Secretary

ADDENDUM TO LEASE AGREEMENT

THIS ADDENDUM made and entered into as of the 10<sup>th</sup> day of OCTOBER, 1991, by and between the Newport Urban Renewal Agency, a public body corporation of politic, of the State of Oregon, herein called "Lessor", and the Oregon Coast Aquarium, Inc., an Oregon non-profit corporation qualified to do business in the State of Oregon, hereinafter called "Lessee". This addendum amends and supplements that certain agreement for lease of business premises made and entered into as of the 2nd day of July, 1990 between the two parties listed above.

1. In order for Lessee to obtain certain funding from the Economic Development Administration, it is necessary for the underlying contracts on some of the parcels being leased by Lessee from the Lessor to be paid in full. The Lessee is willing to pay as additional consideration the amounts necessary to pay off these underlying contracts.

2. Lessee agrees to pay as additional consideration hereunder the sum of \$ 150,493.89. Lessee and Lessor agree that the funds will not be paid through Lessor, but will be paid directly to the underlying contract vendors, the Bank of Newport, Howard Arnold, and the Estate of Kenneth Dodd, in order that the following described property will be owned free and clear of these contracts by the Lessor hereunder.

3. The description of the property on which the contracts will be paid is described as follows:

PARCEL I:

Lot 1, Block G, HARBORTON, in the City of Newport, County of Lincoln and State of Oregon lying Westerly and Northerly of Ferry Slip County Road No. 559.

EXCEPTING portion lying within relocated Ferry Slip Road as shown on Major Partitions #31-1991 and #32-1991.

PARCEL II:

Block E, HARBORTON, in the City of Newport, County of Lincoln and State of Oregon.

TOGETHER with that portion of vacated S.E. Elm Street and Chestnut Street adjoining that would attach thereto

by Ordinance/Order No. 1572, recorded June 13, 1990 in Book 218, page 271, Lincoln County Records.

TOGETHER WITH that portion of vacated Ferry Slip Road adjoining that would inure thereto by Ordinance No. 1582, recorded January 30, 1991, in Book 226, page 39, Microfilm Records for Lincoln County, Oregon.

PARCEL III:

Blocks C and D, HARBORTON, in the City of Newport, County of Lincoln and State of Oregon.

TOGETHER WITH that portion of vacated S.E. Chestnut Street, S.E. 27th Street, S.E. 28th Street, S.E. Birch Street adjoining that would attach thereto by Ordinance/Order No. 1572, recorded June 13, 1990 in Book 218, page 271, Lincoln County Records.

EXCEPTING THEREFROM that portion lying within relocated Ferry Slip Road as shown in Major Partitions #31-1991 and #32-1991.

PARCEL IV:

Lot 1, Block F, HARBORTON, in the City of Newport, County of Lincoln and State of Oregon.

EXCEPTING THEREFROM that portion lying in the tract known as SOUTH BAY INDUSTRIAL CONDOMINIUM, as shown in Book 1, page 49, filed October 14, 1981, Book of Condominiums, Lincoln County, Oregon, in the City of Newport, County of Lincoln and State of Oregon.

TOGETHER WITH that portion of vacated S.E. Elm Street adjoining that would attach thereto by Ordinance/Order No. 1572, recorded June 13, 1990 in Book 218, page 271, Lincoln County Records.

TOGETHER with the portions of any vacated streets inuring to any of the property described above.

LESSOR:

NEWPORT URBAN RENEWAL AGENCY

By: [Signature]  
Chairman

ATTEST:

By: [Signature]  
Secretary

LESSEE:

OREGON COAST AQUARIUM, INC.

By: [Signature]  
President

By: [Signature]  
Secretary

## SECOND ADDENDUM TO LEASE AGREEMENT

This Addendum, made and entered into as of the 14<sup>th</sup> day of January, 2002, by and between the Newport Urban Renewal Agency, a public body of the State of Oregon, hereinafter "Lessor," and the Oregon Coast Aquarium, Inc., an Oregon non-profit corporation qualified to do business in the State of Oregon, hereinafter called "Lessee,"

### WITNESSETH:

#### RECITALS:

1. On or about July 1, 1988, Lessor and Lessee entered into an Agreement for Lease of Business Premises (the "Lease"), respecting certain property as therein described, and on October 10, 1991, entered into an Addendum to Lease Agreement, modifying the provisions of said Lease.
2. There has been under discussion between the Lessor and the Lessee ("the Parties") the matter of certain payments made by Lessee to third parties, including but not limited to the State of Oregon, which Lessee believes to have been the obligation of the Lessor.
3. Although there exists only limited documentation regarding the original agreements and understandings of the Parties in this regard, Lessor and Lessee believe that it was the original intent of the Parties that Lessor would be responsible for, and would make and pay such amounts, in order to render the property suitable for development by Lessee, notwithstanding any other provisions of the Lease.
4. Lessee paid such obligations in full in order to facilitate Lessee's own financing needs, in anticipation and in the belief that Lessor would reimburse it for such payments, and has and does consider that such payments by Lessee created a debt owed to it by Lessor, which debt would bear, and include, interest as provided by law, and the payment hereunder to be made constitutes the repayment of that debt from Lessor to Lessee.
5. Lessor now has funds on hand, and Lessor considers, has treated and continues to treat the Lessee's aquarium development as a project contemplated by the South Beach Urban Renewal Plan, and Lessee has need for additional funds to continue the development of its facilities.
6. Due to current economic conditions, changes in circumstances, and the need to pay indebtedness incurred for past renovations to the facilities located on the premises, and to make further renovations in the future, in order to continue to provide the economic, educational, scientific and other benefits which have been and which the Parties anticipate will continue to be, realized from the facilities operated by the Lessee on the premises, and to carry out the provisions of the South Beach Urban Renewal Area Plan, and in the interest of resolving and settling the claims of Lessee, Lessor is willing to assist Lessee by repaying to it a substantial part of the aforementioned payments, in order that Lessee may continue its operation and to develop and improve the property and further expand its operations thereon.

7. Lessee's financial projections indicate that Lessee's cash flow will improve in the future, by reason of certain obligations which it will have fulfilled, and by reason of income from additional facilities to be constructed by Lessee, and Lessee is willing to agree herein to modify the Lease to make provision for substantial rental payments, which are promised to Lessor as part of this transaction, which Lessor may later use for purposes consistent with the South Beach Urban Renewal Plan.

NOW, THEREFORE, the Parties, each in consideration of the other, agree as follows:

1. The provisions of this amendment shall be binding upon the Parties, but shall not otherwise be binding upon any other party with respect to any interest acquired by such other party, to the extent that any prior agreement of Lessor prohibits, limits or restricts the right and ability of the Parties to modify the Lease prior to the payment of any indebtedness owed to such party. This agreement is entered into in the interest of compromise, and no recital contained herein shall be used as an admission by Lessor or Lessee for any purpose other than the enforcement of the terms of this Addendum, or by any person other than Lessee or the Lessor.

2. Lessor acknowledges that Lessee has made payments upon local improvement district assessments affecting said property, and in fact has paid the same in full, and additionally has made for Lessor certain payments to the State of Oregon, Economic Development Department, on a loan made by the said Economic Development Department, thereby creating an aggregate indebtedness for reimbursement from Lessor to the Lessee which, with interest on such indebtedness, substantially exceeds the sum of \$500,000, to be paid to Lessee promptly upon execution hereof.

3. In consideration of such payments, and all indebtedness of Lessor to Lessee on account of such payments or otherwise, and in full settlement and compromise thereof, Lessor agrees to pay to Lessee the sum of \$500,000 on January 15, 2002.

4. The Parties agree that, in addition to the other consideration (by the way of performance) required under the terms of the Lease, Lessee shall additionally pay to Lessor, for a period of five (5) years, annual rent in the amount of \$100,000, the first such annual rent payment to be due on September 5, 2003, with a like payment due on or before the fifth day of September of each year thereafter, until five successive payments (in the aggregate total amount of \$500,000 shall have been paid to Lessor.

5. The parties modify Section 10 of the Lease by the addition of the following paragraph to be a part of said Section 10:

Lessee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of Lessor or on any interest of Lessor in the Premises. Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Lessor, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the

furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Lessor's interest in the Premises or against Lessor's interest, if any, in the Improvements. Lessee is not an agent of Lessor for the construction of Improvements on the Premises. Lessor shall have the right to post and keep posted at all reasonable times on the Premises and on the Improvements any notices that Lessor shall be required to post for the protection of Lessor and of the Premises and of the Improvements from any such lien. The foregoing shall not be construed to diminish any right expressly granted to Lessee elsewhere in this Lease to construct, alter, or add to the Improvements, but such right shall be exercised subject to the foregoing, and Lessee shall not commence the construction or alteration of any improvements except and unless Lessee shall have available prior to such commencement the funds, or a commitment for the availability of such funds, to pay the costs thereof when due. In the event of any construction or other work carried out on the premises by Lessee, Lessor wishes to have posted upon the property a notice that the owner will not be responsible for any such improvement, as authorized under the provisions of ORS 87.030, and, in the event that Lessee shall intend to carry out any such improvements, Lessee agrees to post, for and on behalf of Lessor, and prior to commencing any improvement, a notice that the Lessor, as owner of the Premises, will not be responsible for any such improvements, such notice to be posted in some conspicuous place upon the land or the improvement situated thereon, and in such manner as is now or hereafter may be required pursuant to the provisions of law.

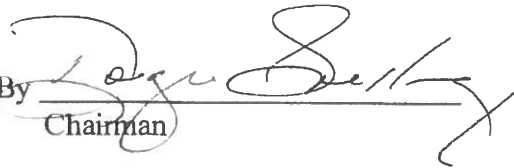
IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate, to be effective as of the day and year above set forth, and any corporate signature affixed hereto only pursuant to the authority of the Board of Directors or other applicable governing body thereof.

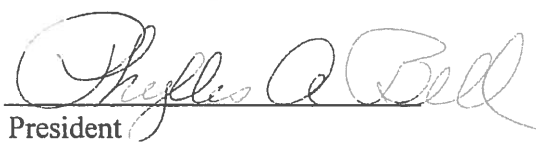
LESSOR:

LESSEE:

NEWPORT URBAN RENEWAL AGENCY

OREGON COAST AQUARIUM, INC.

By   
Chairman

By   
President

ATTEST:

  
Secretary

By   
Secretary

### THIRD ADDENDUM TO LEASE AGREEMENT

This Addendum, made and entered into effective as of September 5, 2003, by and between the Newport Urban Renewal Agency, a public body of the State of Oregon, hereinafter "Lessor," and the Oregon Coast Aquarium, Inc., an Oregon non-profit corporation qualified to do business in the State of Oregon, hereinafter called "Lessee,"

WITNESSETH:

#### RECITALS:

1. On or about July 1988, Lessor and Lessee entered into an Agreement for Lease of Business Premises (the "Lease"), respecting certain property as therein described, and on October 10, 1991, entered into an Addendum to Lease Agreement, modifying the provisions of said Lease.

2. On or about January 14, 2002, the parties entered into a Second Addendum to the Lease Agreement, providing, *inter alia*, for Lessee to pay to Lessor annual rent installments of \$100,000 each, for the first five years, with the first such rent installment to be due on September 5, 2003, with a like payment due on or before the 5<sup>th</sup> day of September of each year thereafter, until 5 successive payments in the aggregate amount of \$500,000 shall have been paid to Lessor, and

WHEREAS, Lessee has requested the opportunity to make such rent installments on a monthly basis in regular monthly installments of \$8333.33 each, and

WHEREAS, Lessor is agreeable, and Lessee has previously tendered and paid to Lessor two such installments (for August 10, 2003 and September 10, 2003), and has requested that the parties enter into a written memorandum evidencing the modification of the Lease terms,

NOW, THEREFORE, the Parties, each in consideration of the other, and of the payment previously tendered and made to Lessor, agree as follows:

1. Paragraph 4 of the Second Addendum to said Lease Agreement is modified to read as follows:

4. The Parties agree that, in addition to the other consideration (by the way of performance) required under the terms of the Lease, Lessee shall additionally pay to Lessor rental payments of \$500,000, payable over a period of five years, in monthly rental installments of \$8333.33 each, the first such monthly rent payment to be due on August 10, 2003, with a like payment due on or before the tenth day of each month thereafter, until 59 such successive payments shall have been made, and a 60<sup>th</sup> final payment in the amount of \$833.53, in the aggregate total amount of \$500,000.

2. Notwithstanding the modification of the foregoing to provide for payments commencing August 10, 2003, the Parties acknowledge that this Agreement is executed after the stated due date for certain of the monthly installments and, further, that Lessee has paid the installments for the months of August and September, 2003, and such payments are deemed timely. The payment otherwise due October 10, 2003 will be deemed timely if received within 10 days following the date of execution of this Agreement.

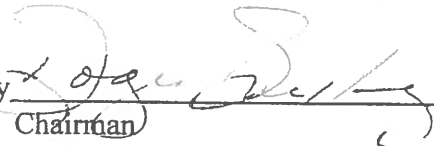
IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate, to be effective as of the day and year above set forth, and any corporate signature affixed hereto only pursuant to the authority of the Board of Directors or other applicable governing body thereof.

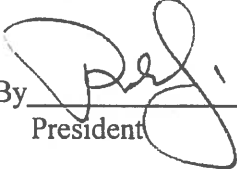
LESSOR:

LESSEE:

NEWPORT URBAN RENEWAL AGENCY

OREGON COAST AQUARIUM, INC.

By  \_\_\_\_\_  
Chairman

By  \_\_\_\_\_  
President

ATTEST:

 \_\_\_\_\_  
Secretary

By  \_\_\_\_\_  
Secretary



AGREEMENT REGARDING ASSIGNMENT OF LESSOR'S INTEREST

This agreement is among the Newport Urban Renewal Agency (NURA), the City of Newport (City), and Oregon Coast Aquarium, Inc. (Aquarium).

RECITALS

A. NURA and Aquarium entered into an "Agreement for Lease of Business Premises" effective July 1, 1988 (the Lease Agreement) by which NURA leases five parcels of land to Aquarium. NURA and Aquarium have since entered into three addenda to the Lease Agreement.

B. NURA, as an urban renewal agency, has a finite period of time to operate. When an urban renewal agency completes its projects and pays its debts, its ceases to function and its assets are transferred to the municipality that formed it. NURA has the right to acquire property in its own name or on behalf of the municipality that organized it.

C NURA is transferring all its property to the City of Newport to avoid complications that may arise if it continues to hold property until its dissolution. Transferring property to the City also eases administration because the City has staff to administer property and NURA lacks staff.


TERMS OF AGREEMENT

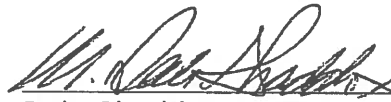
1. NURA transfers all its rights, duties and obligations under the Lease Agreement to City, and Aquarium consents to the transfer. Aquarium accepts that its obligations and duties under the Lease Agreement are to and from the City and not NURA.

2. Except for the assignment of Lessor's interest from NURA to City, no changes are made to any provision of the Lease Agreement or any addendum.

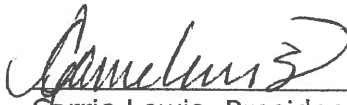
CITY OF NEWPORT

NEWPORT URBAN RENEWAL AGENCY

  
Dale Shaddox, City Manager  
Date: 2/19/09

  
Dale Shaddox, Executive Director  
Date: 2/19/09

OREGON COAST AQUARIUM, INC.

  
Carrie Lewis, President  
Date: 2/23/09



COPY

AGREEMENT FOR LEASE OF BUSINESS PREMISES

THIS AGREEMENT, made and entered into as of the 1st day of July, 1989, by and between the PORT OF NEWPORT, a port district organized under ORS Chapter 777, hereinafter called "Lessor", and THE OREGON COAST AQUARIUM, INC., an Oregon non-profit corporation qualified to do business in the State of Oregon, hereinafter called "Lessee",

W I T N E S S E T H:

In consideration of the covenants, agreements and stipulations herein contained on the part of the Lessee to be paid, kept and faithfully performed, the Lessor does hereby lease, demise and let unto the said Lessee those certain premises, AS IS, situated in the County of Lincoln, State of Oregon, more particularly described as follows:

Commencing at the intersection of the North line of Harborton Addition to South Beach and the Easterly line of Naomi Street, said point being the true point of beginning of the following described tract: thence southeasterly along said North line of Harborton and the extension of said North line to the intersection of such extension with the Mean High Water Line of Yaquina Bay; thence northerly along said Mean High Water Line to the intersection of the South Line of the Oregon State University tract, leased from the Port of Newport as described in Book 225, Page 305, Lincoln County Deed Records; thence westerly along said O.S.U. tract to its intersection with the easterly right of way of the Ferryslip Road; thence westerly across said Ferryslip Road to the southerly right of way of the Ferryslip tie road; thence along said southerly right of way and the southerly right of way of O.S.U. Drive to the intersection of O.S.U. Drive with the extension of the easterly right of way of Naomi Street; thence southerly along said extension and easterly right of way of Naomi Street to the True Point of Beginning.

Excepting any portions that may fall in any public streets or roadways.

## EXCEPTIONS:

1. The rights of the public in and to that portion lying within the limits of roads, streets and highways, if any.
2. Any adverse claim based upon the assertion that some portion of said land is tide, submerged or submersible lands, or has been created by artificial means or has accreted to such portion so created.
3. An easement hereby reserved in favor of the Lessor, as follows:  

"A permanent, exclusive easement upon all of the above described property, hereby retained by the Lessor, to allow the Lessor to receive, have and have credited to it any mitigation credits which may be generated as a result of any subsequent activity on any of the described property as a result of the development of the property. However, this easement shall not allow the Lessor to use or occupy any portion of the said premises, nor shall Lessor control the manner in which the property is developed. Lessee shall be free to develop the property as Lessee shall see fit, so long as reasonable effort is made to produce mitigation credits in the course of development and to preserve the same to Lessor.
4. Any right, title, interest, claim or encroachment as might be disclosed by an inspection or survey of the premises, or reasonable inquiry of persons in possession thereof.
5. Rights of the public and of governmental bodies in and to any portion of the premises hereindescribed lying below the high water mark of Yaquina Bay, including any ownership rights which may be claimed by the State of Oregon below the high water mark.
6. Rights of the public and of the State of Oregon in the ocean shore and dry sands are defined as lying between the mean high tide and visible line of vegetation or as defined in ORS 390.605-770, or any other applicable statute.
7. Any rights, interests or easements in favor of the State of Oregon, United States of America or the public which exists or are claimed to exist in and over the past and present, banks and waters of Yaquina Bay.
8. Any easement, title, right, interest or encumbrance of record.

TO HAVE AND TO HOLD the said described premises unto the said Lessee from July 1, 1989, to and including 12:01 a.m., June 30, 2087, at and for a rental of one dollar. The Lessor makes the following findings of fact:

a. That the facilities to be constructed upon the property, and the operation of the facility, will be of substantial economic, educational and other benefit to the Port District and its inhabitants;

b. That the mitigation credits to be accrued to the Lessor by reason of the development of the property by the Lessee are of substantial benefit to the Lessor;

c. That the Legislative Assembly of the State of Oregon, through the enactment of ORS 777.003, has declared it to be a policy of the Legislative Assembly that the Ports of this State be directly and actively involved in creating and carrying out at the local level the economic development objectives and programs of the State of Oregon;

d. That the project to be constructed upon the leased property by the Lessee will serve and implement the economic development objectives and programs of the State of Oregon, as illustrated by the fact that the Lessee is receiving substantial support from the State of Oregon through its Special Public Works Fund and its Economic Development Fund;

e. That ORS 777.003 also indicates it to be the policy of the Legislative Assembly that Ports provide effective local assistance to State economic development efforts;

f. That the Newport Urban Renewal Agency has determined that the development of the project contemplated herein will be of substantial economic, educational and other benefit to the community and to the Urban Renewal District, and will substantially contribute to the elimination of blight and deterioration in the South Beach Urban Renewal project area, and Lessor should support the redevelopment efforts of the Newport Urban Renewal Agency;

g. That the contemplated project will provide facilities for scientific research and local and tourist recreation; will contribute substantially to scientific knowledge respecting the Yaquina Bay estuary; and will provide needed recreational facilities for local residents and will promote tourism and economic development within the Port District, the promotion of such facilities being expressly authorized under ORS 777.132(2), ORS 777.240 and ORS 777.250(1) and 777.250(3);

h. That the Lessee is generally authorized under ORS 777.258 to do such acts and things as tend to promote the commercial interests of the Port, and this facility will materially promote the commercial interests of the Port;

i. That the rental hereunder reserved is a fair value of the property, giving due consideration to the obligations and requirements on the part of the Lessee herein to be performed, the costs to be incurred by Lessee in the development, use and maintenance of the improvements to be constructed on the property hereby leased, and the benefits therefrom accruing to the Port and its inhabitants.

In consideration of the leasing of said premises and of the mutual agreements herein contained, each party expressly covenants and agrees to and with the other as follows:

1. ACCEPTANCE OF LEASE/TITLE:

Lessee accepts said lease and agrees to pay to the order of Lessor the rental above stated for the full term of this lease at the times and in the manner aforesaid. It is understood that the Lessee takes the premises "AS IS," subject to all faults, defects and hazards. Lessee assumes all risks associated with the use of the premises in any manner.

Lessor warrants that it has good and sufficient title to the premises, in fee simple, subject to such matters as may be set forth above. It shall be the responsibility of Lessee to obtain a leasehold policy of title insurance upon the above premises, and the attorneys for Lessor shall not provide any title opinion with respect to such property except in reliance upon such policy or a preliminary report therefor. In the event that the Lessee believes that the matters revealed by such report or policy shall render the premises unfit for the uses intended and contemplated hereby, or shall be in violation of the above warranty of title, Lessee may give notice thereof to the Lessor within twenty (20) days after receipt of the preliminarily title report and may terminate this lease agreement and all obligations hereunder unless the Lessor shall, within thirty (30) days after the receipt of such notice, cure or remove such clouds upon the title or commence to cure or remove the same and proceed with due diligence to such cure or removal. The Lessee's right to terminate this

lease agreement as aforesaid shall be the sole remedy with respect to any such title cloud or defect.

2. USE:

The subject property shall be used primarily for an Aquarium project, to comprise elements of public exhibition, education and scientific research (the latter to be carried out on a cooperative basis with the Oregon State University Marine Science Center and other governmental research facilities, to the greatest extent feasible) respecting marine and estuarine plants and animals, and related purposes incidental thereto, and for no other purpose, without the express, written consent of Lessor in advance obtained. It is understood that this lease is entered into in recognition of the economic, educational, scientific and other benefits to be realized from the development of such a facility, and such use of the property shall be a condition hereof.

Lessee will not make any unlawful, improper or offensive use of said premises; it will not suffer any strip or waste thereof; it will not permit any objectionable noise or odor to escape or to be emitted from said premises (other than such odors as are normal and incidental to an aquarium facility and/or tidal flats) or do anything or permit anything to be done upon or about said premises in any way tending to create a nuisance.

It is expressly understood that the Lessor has hereby reserved the right to the use, preservation and credit for any mitigation rights which may accrue or which may be obtained as a result of the improvements which are intended to be carried out on the leased property. In addition, Lessee has entered into a lease



agreement with the Newport Urban Renewal Agency, as Lessor, affecting other and additional property which the Newport Urban Renewal Agency obtained, in whole or in part, from the Port of Newport, subject to a similar right to preserve, retain, have and utilize any such mitigation rights. The provisions of this lease agreement relating to mitigation rights shall likewise apply with respect to the Urban Renewal Agency Property which is subject to the rights of the Lessor hereunder respecting mitigation rights.

It is the understanding of the parties that Lessee will be constructing a marine facility on the subject properties, and that some or all of such activities and improvements to be constructed by Lessee in the course thereof will be beneficial to the Yaquina Bay Estuary, and may result in what constitutes "mitigation" under federal, state, local or other law, and that such credits may be accrued to the benefit of the Lessor, in order that such "mitigation credits" will be deemed to offset other activities of the Lessor which are of substantial public benefit but which may have some adverse environmental impact.

It is understood by the parties that the federal government and the State of Oregon, by and through the division of State Lands, are developing a program whereby such mitigation credits may be accrued and "banked," to be drawn upon at a later date by the party to whom the same have been credited. However, such programs are in a developing state, and it is unclear to the Lessor and the Lessee as to how the "banking" and preservation of such credits is to be accomplished. Accordingly, the parties agree that each will cooperate with the other and do everything

reasonably possible to insure that all governmental requirements are complied with so as to insure that the activities of the Lessee will generate the maximum amount of mitigation credit, that such credits will be credited to the Lessor, and that such credits will be "banked" in such a manner as to comply with all legal requirements so as to be available to the Lessor for use with respect to future projects which it may have. The parties expressly recognize that this process will require the creation of a mitigation plan, in accordance with applicable law, and the planning and coordination of the activities of Lessee with the applicable governmental agencies and the Lessor. Lessee shall not be obligated to incur any expenses to create a mitigation plan, nor shall Lessee be required to construct any improvements merely to obtain mitigation credit. However, Lessee does agree to plan, execute and utilize its intended improvements in such a manner as to produce the maximum mitigation credits as are reasonably possible, to inform Lessor (and keep Lessor informed) of its plans and activities, and generally cooperate with Lessor in every reasonable manner possible to obtain the benefit of such mitigation credits for Lessor and, in particular, to cooperate with lessor in setting up such plans and programs as may be required in advance of the construction of improvements so as to comply with applicable regulations and requirements as necessary to preserve and protect such mitigation credits.

3. IMPROVEMENTS:

As part of the consideration for this lease, the Lessee agrees to construct valuable improvements upon the premises, the

plans and architectural design thereof to be subject to reasonable approval by the Lessor, and said improvements to be constructed in substantial conformance with such plans and architectural design, as approved, to be constructed and operated in a first class manner, and to consist of a marine and scientific exhibition facility on the above described real property, in a campus-style layout, consisting of the following structures:

(a) Entry building, which will provide for ticket sale, orientation and basic services, including but not necessarily limited to a bookstore, restrooms and snack bar or restaurant.

(b) The Freshwater Center, a building which will house exhibits illustrative of Oregon Freshwater Wildlife and Eco-Systems.

(c) The Estuary Center, a building which will house exhibits illustrative of Oregon Estuarian Wildlife and Eco-Systems.

(d) The Sea Center, a building which will house exhibits illustrative of Oregon Marine Wildlife and Eco-Systems.

(e) The Ocean Science Center/Resource Education Center, both housed in the same structure. The former will include exhibits relating to issues and processes of a current nature, and the latter will provide a classroom environment and laboratory for educational purposes.

The foregoing comprise the initial facilities to be constructed, commonly referred to as Phase I of the project, and represent the minimum facilities which shall be constructed to comprise the project. Phase I will include not less than 25,000 square feet of indoor, heated space and will additionally comprise

outdoor exhibits grouped around and about the indoor facilities, and related thereto. It is understood that the foregoing represent the improvements which are to be constructed as part of the overall project. However, it is also understood that a portion of said improvement shall be constructed upon additional land which Lessee is leasing from the Newport Urban Renewal Agency, pursuant to a lease similar to this lease agreement. Accordingly, this requirement shall nonetheless be deemed fulfilled if a part of such improvement shall be constructed on the property thus leased from the Newport Urban Renewal Agency. The Lessee shall have the right, subject to any other conditions or agreements in this agreement, to construct additional improvements as may be appropriate to the purposes of this lease. The project shall include proper and attractive landscaping, and the project shall be generally carried out in a manner that shall be aesthetically pleasing and attractive. It is expressly understood that Lessee shall undertake development of the property in such a manner that the estuarine marine wildlife will be enhanced, and in particular, Lessee agrees to make such improvements to and upon an old log pond located on the premises. The parties believe that such improvements will enhance the estuarine system of the Yaquina Bay in such a manner and to such an extent as to give rise to what are referred to as "mitigation credits" compensating for other actions and developments which Lessor may undertake at other locations on the Yaquina Bay, and the parties agree that the development of the property, subject to the needs of purposes of Lessee, shall be carried out in such a

manner as to enhance the realization of all available mitigation credit and to preserve the benefits of such mitigation credit, and all such mitigation credit shall be considered to be generated to the credit and for the benefit of Lessor.

It is understood that the Lessee is in the process of obtaining financing for the project (primarily by governmental grants, contributions and from private foundations), and planning and designing the project, and this lease agreement shall be conditional upon the Lessee completing the project as hereafter provided.

Upon the execution of this agreement, Lessee shall proceed with all diligence to make every reasonable effort to complete all architectural, engineering and design work, to obtain financing and to construct and complete the project, and open the same for operation. Such work shall be completed as follows (and timely completion shall be a condition of this lease):

a. Project engineering, design and planning shall be completed not later than March 1, 1990.

b. All building permits and other necessary approvals shall be obtained and a construction contract shall be awarded not later than March 1, 1991, or within twelve months after the steps described in Subsection a., above, have been completed, whichever is sooner.

c. The project shall be substantially completed and open for business not later than March 1, 1993, or within two years after the steps described in Subsection b., above, have been completed, whichever is sooner.

d. In connection with the foregoing, the parties recognize that circumstances beyond the control of the Lessee may require that the project be scaled down, i.e., that the size of the project be reduced due to funding or for other reasons. The Lessor agrees to give reasonable consideration to any request of the Lessee to reduce the initial scope of the project, upon condition that such project, as so reduced in scope, will nonetheless serve the purposes for which this lease agreement is made and entered into, is reasonably expected to be economically viable and beneficial to the community and attractive and aesthetically pleasing.

It is expressly understood that a part of the project will be constructed on the above-described lands of the Lessor, and a substantial portion of the project will also be constructed upon certain land owned by the Newport Urban Renewal Agency, and leased by the Lessee from said Agency, and any parts of the project constructed on Agency land shall be deemed equally to fulfill the foregoing conditions as such parts of the project as are constructed on the land which is subject to this lease agreement. The right to approve plans and designs, and the restrictions herein set forth upon the project, shall be deemed applicable only to the property subject to this lease agreement. However, the foregoing provision is not intended to waive or diminish the right to enforce deed restrictions, conditions or easements reserved unto the Lessor in certain previous deeds of conveyance from the Lessor to the Newport Urban Renewal Agency, to which the lease between Agency and Lessee is subject.

4. COMPLIANCE WITH LAW:

Lessee shall comply at Lessee's own expense with all laws and regulations of any municipal, county, state, federal or other public authority respecting the use of said lease premises.

It is understood that the Lessor, being a public body, is subject to certain statutes and requirements of law, and this lease is made subject to the provisions of all state, federal, and other laws, to the extent applicable, which are by this reference incorporated herein as though set forth in full.

5. TAXES, UTILITIES & OTHER FEES:

Lessee shall promptly pay for all water, heat, light, power and other services or utilities used in the leased premises during the term of this lease and all personal property taxes on all personal property located on the premises during the Lessee's occupancy thereof.

Lessee shall also pay all taxes, assessments, licenses, permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind or nature, which now or hereafter may be levied upon the real property or improvements during the term of the lease or as a consequence of the Lessee's occupancy thereof, promptly when the same are levied and assessed and before the same shall become delinquent.

If by law any charge, levy, or other such imposition is payable or, at the option of the taxpayer, may be paid in installments, Lessee may pay the same, together with any interest accruing on the unpaid balance, in installments, and shall be

required to pay only such installments as may become due, provided, however, that any unpaid balance shall be paid in full on or before the expiration of this lease agreement.

If it is determined that any of the adjacent submerged or submersible lands are the property of the State of Oregon, and if a lease is entered into with the State of Oregon, Division of State Lands, to allow the use of such adjacent lands, the Lessee shall pay all sums due to the State of Oregon for such purpose, promptly and before the same shall be past due, but the rights to enter into such a lease with the Division of State Lands shall be deemed appurtenant to these uplands, and to the Lessor's interest herein, and the rights to such leasehold shall revert to the Lessor if this lease be terminated.

Lessee will promptly deliver to Lessor receipts or other satisfactory evidence of all payments required hereunder.

6. FIRE AND CASUALTY INSURANCE:

Lessee agrees to insure any improvements erected upon the premises against loss by fire, vandalism or other casualty, with extended coverage, and for such other hazards and in such amounts as Lessor may reasonably require, in a company or companies satisfactory to the Lessor, for the maximum insurable value thereof, and both the Lessor and the Lessee shall appear as named insureds under such policy, as their respective interests shall appear. Any such policy shall provide that Lessor shall receive not less than fifteen (15) days notice prior to any cancellation or amendment of the policy. Lessee shall provide to Lessor a copy



of the policy and a certificate evidencing that such insurance is in effect.

Lessee shall be responsible to provide insurance upon the fixtures, appurtenances and personal property located upon the premises against loss by fire, vandalism or other casualty. Lessor shall be a named insured with respect to any of the personal property on the premises belonging to the Lessor, and shall receive the same notices and evidence of insurance with respect to the personal property owned by Lessor as is required with respect to the real property, as above.

Lessee shall provide to Lessor a copy of any policies of insurance required under the foregoing, or any other, provision of this lease agreement, together with a certificate showing that such insurance is in full force and effect, and at least fifteen (15) days prior to the expiration date of any policy the Lessees shall provide to Lessor a copy of the renewal policy, a certificate of renewal, and satisfactory evidence of payment of the premiums. Such policies shall provide that (a) any loss shall be payable to Lessor, to Lessee, and to the holder of any permitted mortgage on the leasehold, as their interests may appear, and notwithstanding any act or negligence of Lessee which might otherwise result in forfeiture of said insurance; (b) that such policy shall not be cancelled or amended except upon notice as provided above, and; (c) that the coverage afforded by the policy shall not be affected by the performance of any work in or about the premises.

7. REPAIRS AND IMPROVEMENTS:

Lessee hereby agrees to maintain and keep the premises and all improvements thereon in good order and repair during the entire term of this lease at Lessee's own cost and expense and to replace all glass which may be broken or cracked during the term hereof. Lessee further agrees that it will make no alterations, additions or improvements to or upon said premises without the written consent of the Lessor first being obtained. However, such written consent shall not be unreasonably withheld by the Lessor. Inasmuch as the improvements upon the premises are constructed by the Lessee, and this is a long-term lease, this shall not be construed to require the consent of the Lessor with respect to any improvement which (1) does not materially diminish the value of the improvements, (2) does not materially alter the structure or external appearance of the improvements, and (3) does not represent a cost greater than five percent (5%) of the sound value of the improvements on the property. In any event, whether or not such consent shall be required, Lessee shall notify Lessor of any repairs or improvements other than ordinary and customary maintenance and, if requested, shall provide satisfactory evidence that such alterations, additions, or improvements comply with the foregoing conditions, if Lessee believes that the Lessor's consent is not required under the foregoing.

The Lessor shall not be required to make any repairs whatsoever. However, if the Lessor shall determine that any repairs are required, Lessor may, at Lessor's option and in Lessor's discretion, make or cause such repairs to be made, at the

expense of the Lessee, and the amount due therefor shall be an obligation from the Lessee to the Lessor, under this lease, immediately due and payable.

All repairs, alterations, additions, and improvements shall be carried out and completed in a good and workmanlike manner, in compliance with all applicable laws, including the obtaining of all permits, inspections, and improvements of all governmental agencies, and of the fire underwriters, (to the extent required). These provisions shall be applicable to the initial improvements under Section 3, as well as to subsequent repairs, alterations, additions and improvements.

8. INSPECTION:

The Lessor, its agents and representatives, at any reasonable time may enter upon or into said premises for the purpose of examining the condition thereof and for any other lawful purpose.

9. TRANSFER OR SUBLEASE:

Lessee will not assign, transfer, pledge, hypothecate, surrender or dispose of this lease, or any interest therein, or permit any other person or persons whomsoever to occupy the premises, without the written consent of the Lessor first being obtained in writing. Lessor will not unreasonably withhold consent to sublease or license a reasonable amount of space for a restaurant/snack bar operation, a bookstore or gift shop, or other similar concession, all of which are to be only incidental to the operations of the aquarium and consistent with the purposes and intentions expressed in this agreement. Permission for any such

transfer shall not serve to release Lessee with respect to any obligation hereunder.

10. LIENS:

Lessee shall keep the demised premises free from all liens of every kind and description caused, incurred, permitted or suffered by any act or omission of Lessee, and Lessee shall not have the right or authority to incur any mechanic's, laborer's, materialmen's or any other liens.

However, in the event that the Lessee shall desire to contest any lien which may be asserted against the premises, Lessee shall have the right to do so, upon condition that Lessee shall provide a commercial surety bond to the Lessor in an amount equal to 150% of the amount of the lien claim, indemnifying Lessor against any loss, liability for damages on account of such claim, and upon further condition that the Lessee shall promptly and fully pay any amount which is finally adjudicated to be due upon such claim.

11. OBSTACLES:

At all times Lessee shall keep the sidewalks in front of the demised premises free and clear of ice, snow, rubbish and obstruction of every sort.

12. LIABILITY:

Lessor shall not be responsible or liable in any way for the injury or death of any person or damage to any property caused in or about the premises, nor shall Lessor be liable for any damage or loss suffered by the business or occupation of Lessee arising or resulting from any such accident or injury to goods or persons happening in or about the premises. Lessee does hereby covenant

to save, hold and defend Lessor, its officers, agents and representatives, harmless from any claim, loss, damage or liability resulting from or arising out of any such accident or injury, or in any manner arising from or as a result of the Lessee's use or occupancy of the premises, or that of any employee, representative or invitee of Lessee, and in the event of any suit or action for damages, claim or penalties being brought by any person whomsoever, Lessee agrees at its own cost and expense to defend Lessor against any such suit or action and any and all appeals thereof and to satisfy and discharge any judgment which may be awarded against Lessor on account thereof. Lessee will at all times indemnify and hold harmless the Lessor, its agents and employees, against any and all actions or causes of action, claims, demands, liabilities, losses, damages or expenses of any kind or nature which Lessor shall or may at any time sustain or incur by reason of Lessee's operations hereunder.

Lessee shall also defend, indemnify and hold Lessor, its officers, agents and representatives harmless from any loss, liability or claim arising out of its execution and approval of this lease. However, Lessor represents to Lessee that upon execution hereof Lessor has no notice from any person of intent to assert such a claim.

13. LIABILITY INSURANCE:

Lessee further agrees at all times during the term hereof, at its own expense, to maintain, keep in effect, furnish and deliver to the Lessor liability insurance policies in form and with an insurer satisfactory to the Lessor insuring both the Lessor and

the Lessee against all liability for damages caused by the negligence of the Lessee, its employees or agents, to persons or property in or about said leased premises; the policy of liability insurance shall have a single aggregate policy limit of not less than \$1,000,000.00. Lessee agrees to and shall indemnify and hold Lessor harmless against any and all claims and demands arising from acts or omissions of the Lessee, its officers, agents, invitees and/or employees, as well as those arising from Lessee's use of the leased premises, or Lessee's failure to comply with any covenant of this lease upon its part to be performed and shall, at its own expense, defend the Lessor against any and all suits or actions arising out of such negligence, actual or alleged, and all appeals thereof, and shall satisfy and discharge any judgments which may be awarded against Lessor in any such suit or action.

Lessee shall provide to Lessor copies of the policy of liability insurance required hereunder, together with a certificate or other satisfactory proof that such policy or policies are in full force and effect. Such policy or policies shall provide that the coverage thereunder shall not be cancelled or amended without at least fifteen (15) days notice to Lessor.

The parties recognize that the aforementioned policy limits are relatively low, considering the intended use of the premises, and Lessor shall have the right, from time to time, to request reasonable increases in the liability limits of the aforementioned policy of liability insurance.

14. OWNERSHIP OF IMPROVEMENTS:

All improvements and any partitions, plumbing, wiring, fixtures, mechanical systems and other additions to or upon said leased premises, whether installed by the Lessor or the Lessee, shall be and become part of the premises as soon as installed and are the property of the Lessor unless otherwise expressly agreed by the parties in writing.

However, the Lessee shall retain ownership of the EDA-funded improvements for a period of twenty-five years, except and unless the EDA shall consent to such improvements becoming the property of the Lessor at an earlier date. If Lessee shall remove any such EDA-funded improvements, Lessee shall repair all damage caused by the severance.

15. DESTRUCTION OF PREMISES:

In the event of the destruction of the leased premises by fire or other casualty, Lessee shall rebuild and restore the premises to their condition prior to such loss, and any proceeds of insurance shall be applied to that purpose. If the Lessee shall fail so to do within 365 days following such loss, such proceeds of insurance shall be paid to the Lessor, and applied as follows (which shall not, however, waive the Lessee's failure to reconstruct the improvements):

a. To pay or discharge any obligations which may exist by reason of the terms and conditions of any grant, loan or other financing used to finance the construction of the improvements on the subject real property.

b. The remainder, if any, shall be the property of the Lessor.

c. Lessee shall not be considered to have failed to rebuild and restore the premises to their condition prior to such loss, as required above, notwithstanding that Lessee may not have restored the premises to exactly the same condition as the same existed prior to the loss, if Lessee shall have constructed improvements having a replacement value substantially equal to the replacement value of those improvements existing prior to the loss, and shall have constructed the same in a manner consistent with the terms and provisions of this lease and appropriate to the needs and activities of the Lessee at the time of such loss, and if such replacement premises will provide for carrying out substantially the same activities as existed prior to such loss.

The Lessor does not assume any obligation with respect to any of Lessee's financing, or any obligation or encumbrance on the subject property.

16. WAIVER OF LIABILITY:

Neither the Lessor nor the Lessee shall be liable to the other for losses arising out of damage to or destruction of the leased premises, or the building or improvements of which the leased premises are a part or with which they are connected, or the contents of any thereof, when such losses are caused by any of the perils which are insured against, to the extent of available insurance proceeds. All such claims for any and all losses, however caused, hereby are waived, to the extent of such proceeds. However, nothing herein contained shall be deemed to exculpate the



Lessee for liability for such losses to the extent that Lessee fails to obtain and keep in effect insurance against such losses as herein required, nor anything herein contained be deemed to exculpate the Lessee for liability for such losses should such exculpation have the effect of voiding or nullifying any insurance coverage for such loss which might otherwise exist for the benefit of the Lessor.

17. CONDEMNATION:

In case of the condemnation of appropriation of all or any substantial part of the said demised premises by any public or private corporation under the laws of eminent domain, this lease shall continue in full force and effect as to such portion of the premises, if any, as may remain after such taking, if the premises shall not thereby be rendered unsuitable for the purposes contemplated under this lease agreement. In the event that the premises shall be rendered unsuitable for such purposes, this lease agreement shall terminate. In any event, this lease agreement shall terminate as to the portion of the premises as may be taken.

The proceeds of any condemnation award appertaining to the taking of the land shall belong to the Lessor; the proceeds of any condemnation award appertaining to the taking of the improvements shall be applied as follows:

a. To alter the remaining improvements so that the same may be used, to the fullest extent possible, for the purposes originally intended under this lease. If the remaining premises cannot be altered to the extent necessary, then no alteration

shall be made to such improvements, and such proceeds shall be applied as hereafter provided.

b. To establish a similar facility at another location, if the facility cannot continue to be used for the purposes intended, and cannot reasonably be altered to accomplish such purpose.

c. If the proceeds are not applied as provided in Section a. or b., or if there shall be any excess, the same shall be applied toward any obligation existing by reason of any grant or loan obtained by the Lessee to construct the improvements, with the remainder to be paid to the Lessor and Lessee, as their interests may appear.

18. HOLDING OVER:

In the event the Lessee shall for any reason hold over after the expiration of this lease, other than pursuant to a valid renewal or extension hereof, such holding over shall not be deemed to operate as a renewal or extension of this lease but shall create a tenancy from month-to-month which may be terminated at will at any time by the Lessor.

19. NOTICES:

Any notices required by the terms of this lease to be given by one party to the other, or desired so to be given, shall be sufficient if the writing is in a sealed envelope, deposited in the United States registered or certified mail with return receipt requested and with postage fully prepaid and addressed to the

other party at the following address, or such other address as to which either party may have properly notified the other:

LESSOR:

LESSEE:

PORT OF NEWPORT  
600 SE BAY BLVD.  
NEWPORT, OR 97365

OREGON COAST AQUARIUM, INC.  
1 FERRY SLIP ROAD  
SOUTH BEACH, OR 97366

20. STRICT PERFORMANCE:

Lessee's full, strict, complete and literal performance, and the time thereof, are of the essence of this agreement; any waiver by the Lessor of any breach of any covenant or agreement herein contained to be kept and performed by the Lessee shall not be deemed or considered a continuing waiver and shall not operate to bar or prevent Lessor from any right or remedy for that breach or for any succeeding breach, either of the same condition, covenant or agreement, or of any other.

21. ATTORNEY'S FEES:

In the event either party shall be required to retain the services of an attorney to enforce any obligation under this lease agreement, including any proceedings under the Federal Bankruptcy Code, or similar legislative enactment, such party shall be entitled to recover from the other such reasonable attorney's fees so incurred, whether or not any suit or action shall be commenced. In the event either party shall commence any suit or action to enforce any obligation hereunder, the prevailing party shall be entitled to recover from the other such party's reasonable attorney's fees so incurred, including any appeal.

22. RIGHT TO ADVERTISE:

During the period of sixty (60) days prior to the date fixed for the termination of said lease, unless the parties have reached agreement and have renewed the same as provided herein, the Lessor may post on said premises or in the windows thereof signs of reasonable size notifying the public that the premises are "For Sale" or "For Rent" or "For Lease."

23. SURRENDER OF PREMISES:

At the expiration of said term or upon any sooner termination of this lease, or upon the termination of any extension hereof, or upon the termination of any month-to-month tenancy created hereafter, the Lessee will quit and deliver up said leased premises and all future erections or additions to or upon the same, broom clean to the Lessor, or those having Lessor's estate in the premises, peaceably, quietly and in good order and condition, reasonable use and wear thereof, damage by fire, unavoidable casualty and the elements, to the extent covered by insurance, alone excepted, as the same are now in, or such better condition as the premises hereafter may be put in, or may be required, by terms of this lease, to be put in.

24. SUCCESSORS:

All rights, remedies and liabilities herein given to or imposed upon either of the parties hereto shall extend and inure to the benefit of and bind, as the circumstances may require, the heirs, executors, administrators, successors and assigns of such parties. However, this provision shall not be construed to permit any transfer of the rights of the Lessee in derogation of any term

or provision of this lease agreement requiring the consent of the Lessor.

25. NEAT AND PRESENTABLE CONDITION:

Lessee agrees at all times during the term of this lease to maintain the leased premises in a clean, neat, orderly and presentable condition.

26. INTEGRATION:

This is the complete and entire agreement between the parties, and supersedes any other or prior agreement. Any modification hereof shall be effective only if reduced to writing and subscribed by the parties sought to be bound thereby.

27. DEFAULT:

The Lessee's failure to pay the rent provided hereunder, or any portion thereof, or to keep and observe any other requirement of this lease after notice of failure so to do (as hereafter provided) shall be a default and shall operate to terminate the tenancy of the Lessee hereunder without waiver of any right of Lessor, including the right to be compensated for Lessor's damages, including but not limited to the rent and other performance due to Lessor hereunder. Acceptance by Lessor of payment of arrearage of rent, or a portion thereof, or any partial performance, shall not reinstate the lease unless the Lessee shall pay or perform all sums the payment of which is in arrears and cure all other defaults then existing.

The Lessee shall not be considered in default hereunder, and this lease shall not terminate, by reason or any act or omission of the Lessee in breach of any requirement hereof, until and

unless Lessor shall give to the Lessee notice of such act or omission in breach of this lease agreement; shall fail to cure the same within twenty (20) days after notice. However, whenever such breach shall relate to the provision of insurance or to the payment of any taxes, assessment, rent to the Division of State Lands or any other sum due to a third party, the same shall constitute a default upon expiration of five (5) days after such notice without cure of the breach. At Lessor's option, and without waiving such breach, Lessor may itself pay any such sum, in whole or in part, for the account of Lessee, and such amount shall thereupon be immediately due from Lessee to Lessor, as additional rent hereunder.

With respect to all matters relating to the condition of the premises, if the act or omission complained of by Lessor is of a type which may not reasonably be cured within twenty (20) days, the Lessee shall nonetheless not be deemed in default hereunder if the Lessee shall commence the cure of such breach within ten (10) days following receipt of such notice and shall diligently prosecute such cure to completion, such cure in any event to be completed within ninety (90) days after receipt of such notice.

28. REMEDIES:

In the event the lease shall terminate for default, as aforesaid, or by reason of any other default as a matter of law, or for any other reason, and if the Lessee shall fail to immediately surrender possession of the leased premises, in any of such cases, the Lessor or those having Lessor's estate in the premises, lawfully and at the option of the Lessor, immediately or

at any time thereafter, without demand or notice, may enter into and upon the demised premises and every part thereof and repossess the same as of Lessor's former estate and expel Lessee's effects at the expense of Lessee, forcibly if necessary, and store the same and/or lock the demised premises, all without being deemed guilty of trespass or other wrongful act, and as a remedy pursuant hereto and not in derogation hereof, and without prejudice to any other right or remedy which otherwise might be used for arrears of rent, breach of this agreement, or otherwise.

In addition, if the Lessor shall retake possession of the premises, Lessee shall pay to Lessor all of the reasonable costs of reentry and reletting, including but not limited to the cost of any cleanup, refurbishing, removal and storage of Lessee's personal property and fixtures and any other expense occasioned by Lessee's failure to quit the demised premises upon termination or to leave them in the required condition, any cost of repair to the building, attorneys' fees, court costs, brokers' commissions and advertising costs.

All of the Lessor's rights and remedies hereunder shall be cumulative, one with the other, and with any other right or remedy as may now or later exist by force and effect of law or otherwise.

Lessor, at any time Lessee has failed to perform a provision hereof, can provide such performance at Lessee's cost, and such costs or amounts paid shall be a debt due immediately from Lessee to Lessor, and shall not waive such non-performance.

All rent and other sums due to Lessor from Lessee shall bear interest at the highest rate permitted by law or, if there be no limitation, at a rate which is 5% (5 points) above the prime rate for preferred large borrowers as quoted in the West Coast Edition of the Wall Street Journal at the time such amount first becomes due.

29. SPECIAL NON-CANCELLATION PROVISION:

It is understood by the parties that, as a condition of certain federal grants anticipated by the Lessee to be obtained for the construction of improvements upon the subject premises, this lease agreement must not be subject to cancellation by the Lessor, for breach or otherwise, at any time prior to January 1, 2020. Accordingly, the Lessor agrees and stipulates that it hereby waives any right to cancel this lease agreement and terminate the use and possession of the leased premises prior to such date, notwithstanding any breach of any term or provision hereof.

However, Lessor shall nonetheless have the right to enforce any obligation of this lease agreement by a suit for specific performance or otherwise, to obtain a judgment for any loss, injury or damages incurred by Lessor on account of any breach hereof, and to exercise any other right or remedy as may exist under this lease agreement or by force and effect of law, except only the right to terminate the lease agreement.

It is further understood that the Lessor shall have the right to terminate the lease agreement at any time after the date



mentioned above, and also may terminate the lease agreement prior thereto under certain circumstances, as follows:

a. In the event that any such federal agency as for the benefit of which this provision shall exist shall consent thereto.

b. In the event that the Lessor shall be willing to pay to such agency the amount of the original grant, or such portion thereof as by law may be required to be paid.

c. If the Lessor shall be willing to assume the obligations of such grant, and to continue to operate the facility for the same purposes and in the same manner as required of Lessee, for such period time as may be required.

d. In the event that the Lessor is willing to place the facility in the hands of another, non-profit organization which will assume the obligations of Lessee and operate the facility in the same manner as required of Lessee.

It is a condition of this lease agreement that the Lessee shall maintain its status as a tax-exempt non-profit corporation in good standing. If, owing to changes to the tax laws or the non-profit corporation laws, Lessee may no longer exist as such a corporation, Lessee shall not be deemed in violation hereof so long as Lessee continues to maintain its corporate existence in a form legally recognized as most like the present tax-exempt non-profit corporation status.

30. RECEIVERSHIP:

As an additional remedy in the event of default on the part of the Lessee, so long as Lessor shall not have elected a remedy

inconsistent herewith, the Lessor shall have the right, on its own or by court appointment of a receiver, to take possession of the property and operate the same in accordance with the Lessee's obligations under this lease agreement until such time as any default shall be cured and the Lessee shall demonstrate the ability to comply with the terms and obligations of this lease agreement. This shall not constitute a termination of the lease agreement, such as is provided under Section 27 above, but shall be considered only a temporary interruption of the Lessee's right to possession.

Such receiver shall have a right, not only to take possession of the real property and to operate the same as contemplated, and to receive the rents, profits, and other income from the business and property, and to apply the same in an appropriate manner, including the payment of expenses and the costs of the receivership, to charge any deficiency to the account of the Lessee, but also to take possession of any of the Lessee's personal property located on the premises which may be necessary or convenient to such operations.

31. OWNERSHIP OF IMPROVEMENTS/REMOVAL:

All structures, installations or improvements of any kind placed on the leased premises by the Lessee shall be and become a part of the leased premises. Upon the termination of this lease by expiration or otherwise, all structures, installations, improvements, machines, appliances, and trade fixtures of any kind placed on the premises by the Lessee shall be the property of the Lessor unless, at the option of the Lessor, the Lessor shall

require the Lessee to remove some or all thereof, in which case the Lessee shall remove the same, or such part thereof as shall be required, within thirty (30) days after Lessor shall give notice. If Lessor exercises such option to require removal, and Lessee shall fail to do so and in the time limited, Lessor shall have the right to remove or cause the removal of such structures, installations, improvements, machines, appliances, or trade fixtures to the extent required of Lessee, at the expense of Lessee.

Upon such termination, Lessee shall also deliver to Lessor all files, plans, records, registers and other papers and documents which may be necessary appropriate or convenient for the proper use, operation, management, and enjoyment of the premises.

32. SPECIAL REQUIREMENTS:

a. Conduct of Lessee's Activities:

Lessee agrees, upon completion of construction and continuously thereafter during the entire term hereof, to conduct and carry on its aquarium (public exhibit) and marine research activities on the leased premises (including those leased by the Newport Urban Renewal Agency to Lessee), and to keep such premises open for business and to cause such business to be conducted thereon during each and every day of the entire term of this lease, subject only to conditions beyond the control of the Lessee and such reasonable periods of closure as are normal and customary for such facilities. Lessee shall conduct its activities and operations in a businesslike and efficient manner, beneficial to the Lessee and its facility, the community and the

public generally. Lessee shall not discriminate or permit discrimination against any person or groups of persons in any manner on the grounds of race, color, religion, national origin, or otherwise in any manner prohibited by law and shall furnish services in a fair, equal and not unjustly or unlawfully discriminatory basis to all the users thereof, and in compliance with all applicable laws, statutes, regulations and government requirements.

b. Security Interest:

Lessor shall have a security interest in all personal property upon the leased premises, tangible or intangible, including future acquisitions, substitutions and additions, and in all contracts relating to the operation of the premises or any activity thereon, to secure unto Lessor full and complete performance of all of the terms, conditions, obligations, and requirements hereof. In connection therewith, Lessee agrees to execute all additional documents necessary to carry out the intent hereof and to perfect such security interest, including but not necessarily limited to forms UCC-1 and UCC-2. However, such security interest shall be subordinate to any purchase money security interest in any goods granted to the supplier of such goods. It is expressly understood that the security interest hereby created is in addition to, and not in lieu of, any landlord's lien which Lessor may have.

c. Warranties, Guarantees, and Integration:

Lessor makes no warranty, guarantee, or representation of any nature whatsoever concerning the condition of the leased

premises, and it is agreed that Lessor will not be responsible for any loss, damage or cost which may be incurred by Lessee by reason of any physical condition of the premises. This agreement waives and supercedes any other agrees, understandings, negotiations or representations of the parties, whether verbal or in writing. Lessee certifies, acknowledges and agrees that this lease is accepted and executed on the basis of the Lessee's own examination and personal knowledge of the premises, the nature of the project, related projects, and generally all matters which are a matter of public record or which may be ascertained upon reasonable inquiry. All prior negotiations, representations of fact or opinion or agreements relating to this agreement or the subject property or the project thereon to be constructed as may have been made by the Lessor or any agent or any representative thereof upon which Lessee may have relied have been reduced to writing and are included in this agreement, and if not so reduced to writing and included herein, are expressly waived, which waiver is a material part of the consideration to the Lessor for this lease agreement.

(d) Cross Default Clause:

It is understood that a portion of the project to be constructed in accordance with this lease agreement will also be constructed upon property belonging to the Newport Urban Renewal Agency and leased by said agency to Lessee. Inasmuch as it would be impracticable to properly utilize the said properties for the purposes hereunder intended except in conjunction with one another, it is therefore agreed that any default under the Urban Renewal Agency Lease shall be a default under this lease, and if

the Urban Renewal Agency Lease shall, for any reason, be terminated, this lease may likewise be terminated by Lessor, ipso facto, without regard to any other provision herein contained.

33. SUCCESSION:

All rights, remedies and liabilities herein given to or imposed upon either of the parties shall extent and inure to the benefit of, and bind, as the circumstances may require, the successors and assigns of such parties, subject to the limits and restrictions on transfer as are herein and hereby imposed.

34. GRAMMATICAL CONSTRUCTION:

In construing this lease, it is understood that the Lessor or the Lessee may be more than one person, and if the context so requires, the singular pronoun may be taken to mean and include the plural, the masculine may include the feminine and the neuter, and vice versa, and generally all grammatical changes shall be made, assumed, and implied as are necessary to carry out the intent hereof and to make the provisions of this agreement apply equally to corporations as to individuals.

IN WITNESS WHEREOF, the parties have executed this instrument in duplicate to be effective as of the day and year above set forth, and any corporate signature is affixed hereto only pursuant

to the authority of the board of directors or other governing body thereof.

LESSOR:

PORT OF NEWPORT

BY: Thomas Ruffield  
PRESIDENT

ATTEST:

M. S. Green  
SECRETARY

LESSEE:

OREGON COAST AQUARIUM, INC.

BY: John B. Clark  
PRESIDENT

BY: [Signature]  
SECRETARY

August 19, 2019  
6:0 P.M.  
Newport, Oregon

CITY COUNCIL MEETING

CALL TO ORDER AND ROLL CALL

The Newport City Council met on the above date and time in the Council Chambers of the Newport City Hall. On roll call, Allen, Goebel, Hall, Jacobi, Sawyer, and Parker were present. Botello was excused.

Staff in attendance was Spencer Nebel, City Manager; Peggy Hawker, City Recorder/Special Projects Director; Derrick Tokos, Community Development Director; Tim Gross Public Works Director; Mike Murzynsky, Finance Director; Rob Murphy, Fire Chief; and Jason Malloy, Police Chief.

PLEDGE OF ALLEGIANCE

Council, staff, and the audience participated in the Pledge of Allegiance.

PUBLIC COMMENT

Michael Wallace expressed concern regarding "urban blight." He referenced two properties on Highway 101, including the ABnR Laundry, and the dog grooming business near the News-Times. He suggested that these properties, and others falling into blight, need to be addressed immediately. Nebel reported that a discussion regarding the building maintenance code would be held at the October 7 work session.

Mona Linstromberg stated that on July 22, the Planning Commission approved amendments to the geological hazard overlay zone requiring an independent peer review. She noted that there is apparently some difficulty in finding someone to perform the peer review, which has resulted in applications not being advanced. She added that without a continuing process, residents will continue to be exposed to development proposals that will not have the scrutiny that peer review provides. She suggested that a moratorium on applications in active landslide area might be appropriate at this time.

Kayleen Davis, a Logsdon farmer, requested that the city cease the application of biosolids near the Siletz River. Nebel reported that biosolids will be discussed at the September 3 work session, and encouraged Davis to participate in that meeting.

Allen Davis, a Logsdon farmer, reiterated his wife's request that the city cease the application of biosolids near the Siletz River. He stated that he would try to get this item on an upcoming ballot if things do not change.

Allen reported that the Mid-Coast Water Planning Partnership is meeting on September 19, adding that the coordinator may be able to assist.

Allen asked that Nebel or Tokos provide an update on the geological hazard overlay zone issues at the next meeting. Tokos reported that the challenge has been getting a geotechnical engineer or engineering geologist on board to conduct peer reviews. He stated that the hope is that this will be sorted out in next week or so, and brought to the second Council meeting in September. He stated that if this does not happen, staff will



document specific issues preventing getting someone on board to do peer reviews. He noted that if necessary, the issue could be returned to the Planning Commission for suggested modifications. Allen noted that reports to Council, or the Planning Commission, should include timelines, and requirements under state law.

Goebel asked about the peer review. Tokos reported that the peer review would only apply to developments in active landslide areas, and anyone wishing to develop in an active landslide area would have to retain someone to review the plan, during the completeness period, to determine whether all relevant issues are addressed. Goebel asked whether active slide areas have been inventoried, and Tokos responded that they have been inventoried.

Jacobi asked who would pay for the peer review. Tokos noted that these costs would be borne by the applicant.

Hall noted that she had not seen the information referenced by the speakers on biosolids.

Allen asked staff to ensure that Lincoln County and DEQ have representation during the biosolids discussion at the upcoming work session.

## **PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS**

**Oregon Coast Council for the Arts 2018/2019 Business Honor Roll.** Sawyer reported that the city had been awarded the 2018/2019 business honor roll by the Oregon Coast Council for the Arts.

**Presentation by Traci Flowers, from Grace Wins Haven, Regarding Obtaining the Mobile Shower Truck.** Hawker introduced the agenda item. Traci Flowers and Betty Kamikawa, representing Grace Wins Haven, distributed a handout, and reviewed the activities and services provided by this organization. Flowers reported that Grace Wins has permanent possession of a portable shower truck. She stated that the water bill has doubled, and might triple, and requested financial assistance with the water bill and also garbage service.

Nebel reported that Council accepted the final report from the Homelessness Task Force at the last meeting. He stated that at the September 3 meeting, a discussion will be held on identifying priorities to the use of city funds.

## **CONSENT CALENDAR**

The consent calendar consisted of the following items:

- A. Approval of the minutes of the work session of August 5, 2019;
- B. Approval of the minutes of the regular session of August 5, 2019;
- C. Approval of minutes of the executive session of August 5, 2019;
- D. Recommendation to the Oregon Liquor Control Commission for approval of a third Brewery-Public House location for Oregon Brewing Company at 748 SW Bay Boulevard;
- E. Ratification of the Mayor's appointments, to the Bicycle/Pedestrian Advisory Committee, of Jacob Osburne for a term expiring on December 31, 2021; Minda

Stiles for a term expiring on December 31, 2019; and Nicholas Graves, as an alternate member, for a term expiring on December 31, 2021;  
 F. Receipt of approved Committee minutes.

Council removed 5.D. from the consent calendar.

MOTION was made by Allen, seconded by Goebel, to approve the consent calendar, as presented, except for item 5.D., which was removed from the consent calendar. The motion carried unanimously in a voice vote.

**Recommendation to the Oregon Liquor Control Commission for Approval of a Third Brewery-Public House Location for Oregon Brewing Company at 748 SW Bay Boulevard.**

Hawker introduced the agenda item. Nebel reported that the Oregon Brewing Company (Rogue Ales) is requesting approval of a recommendation to the OLCC for a third brewery-public house location. He stated that under this license, Oregon Brewing Company is eligible to obtain a second and third location to do all licensed privileges under a brewing-public house, except for manufacturing, at the second and third locations. He added that the application is due to the corporate restructure of Oregon Brewing, and identification of the current Rogue Ales Public House at 748 SW Bay Boulevard, as the third of three locations under the brewery-public house license type. He stated that this license will not impact current operations of Rogue Ales in Newport.

Linstromberg recommended factoring in infractions and unresolved issues in making this decision. She suggested Council consider raising fines for non-compliance. She recommended Council deny this request.

Hall stated that she believed the city had been working with the Rogue to resolve the various issues. Nebel reported that he and Murzynsky have been working on the resolution of unpaid transient room tax issues. He stated that Murzynsky would audit receipts to bring this investigation to a conclusion. He added that he would likely have a report at the September 16 Council meeting.

Goebel asked whether the issue of the pre-treatment of discharges would also be discussed in September. Nebel reported that staff could provide an update as this is an ongoing investigation. He added that Rogue is a large generator of solids.

Gross reported that the Rogue discharge is considered high industrial strength waste. He stated that the city is working with Rogue to develop a special permit for them based on measurable quantities that the Wastewater Treatment Facility can support from the Rogue Brewery. He added that with the last expansion, Rogue installed a monitoring system, and as a result, the city requested that Rogue come into compliance with the existing city code. He noted that additional letters were sent to Rogue, and fining began for violations of the wastewater code. He stated that the Rogue is working in good faith to come into compliance, and that city staff has been working closely with them on this issue.

Allen noted that it was his understanding that Rogue was paying the state transient room tax while not paying the city's transient room tax. Nebel stated that Rogue had indicated that it was paying the state transient room tax.

Jim Cline, representing the Oregon Brewing Company, reported that the Rogue paid the state transient room taxes. He stated that the company is working closely with the city to become compliant with the wastewater discharge regulations. He added that this

request is to get the local Rogue businesses under one license for administrative simplicity.

Goebel asked how long it would take for the Rogue to become compliant with wastewater regulations. Gross reported that it will take months for the Rogue to become compliant, adding that it outgrew the city's ability to take their waste.

MOTION was made by Allen, seconded by Goebel, to approve a recommendation to the OLCC on the issuance of a third brewery-public house location for Oregon Brewing Company at 748 SW Bay Boulevard. The motion carried unanimously in a voice vote.

## **LOCAL CONTRACT REVIEW BOARD CONSENT CALENDAR**

The City Council, acting as the Local Contract Review Board, began its meeting at 7:11 P.M.

The Local Contract Review Board consent calendar consisted of the following items:

- A. Authorize the purchase of replacement carbon for the granular activated carbon vessel at the Water Treatment Plant, in the amount of \$59,700, from Calgon Carbon Corporation.
- B. Approve a goods and services agreement with The Automation Group (TAG) for the supervisory control and data acquisition (SCADA) integration of the Yaquina Heights Pump Station, in the amount of \$51,573, and authorize the City Manager to execute the contract.

MOTION was made by Allen, seconded by Parker, to approve the Local Contract Review Board consent calendar as presented. The motion carried unanimously in a voice vote.

## **LOCAL CONTRACT REVIEW BOARD**

**Authorization to Issue a Notice of Award for the Agate Beach Stairway Improvements to Oregon Woods, Inc., in the Amount of \$86,199.97, and Direct the City Manager to Execute the Contract on Behalf of the City of Newport, if There are No Protests Related to the Award.** Hawker introduced the agenda item. Nebel reported that on August 8, three bids were received for the construction of the Agate Beach Stairway Improvement project. He stated that this project would include the installation of a staircase to improve pedestrian access to Agate Beach State Park from Highway 101, at the entrance to the Agate Beach Best Western. He added that this will allow individuals to use the sidewalk, adjacent to Walmart and the Agate Beach Best Western, to access the Agate Beach Wayside and the boardwalk trail system under the highway. He noted that the low bid for this project was from Oregon Woods. He stated that Oregon Woods is the contractor that built the surfer access stairway to the beach at the Ernest Bloch Memorial. He added that the stairway would include a bicycle trough to allow bikes to be walked up/down the stairway. He noted that this project exceeds appropriation amounts by \$10,000, including engineering and contingency needed to complete this work.

MOTION was made by Hall, seconded by Goebel, to transfer \$10,000 from Project 14007, Sidewalk and Bicycle Improvements, to cover contingency and project costs, with

this budget amendment being reflected in the next supplemental budget resolution, and to authorize a Notice of Award to be issued for the Agate Beach Stairway Improvement project to Oregon Woods, Inc., in the amount of \$86,199.97, and authorize the City Manager to execute the contract on behalf of the City of Newport, if no protests are made within the seven-day contested period. The motion carried unanimously in a voice vote.

### RETURN TO CITY COUNCIL MEETING

Having no further business as the Local Contract Review Board, Council returned to its regular meeting at 7:20 P.M.

### PUBLIC HEARINGS

Public Hearing and Potential Adoption of Resolution No. 3868 Providing for a Supplemental Budget and Making Appropriation/Total Requirement Changes for the 2019/2020 Fiscal Year. Hawker introduced the agenda item. Nebel reported that at the beginning of the new fiscal year, there are a number of budget adjustments included in Resolution No.3868. He stated that some of the more significant changes are several general types of adjustments, and the first is shifting costs for general liability from the Facilities Fund 711 to the General Fund 101 for Police, Fire, and Library, and establishing a cost center for insurance in the new Storm Water Fund. He noted that while it is appropriate to have the casualty and loss insurance paid by the Facilities Fund, the general liability should be borne by the funds that house those accounts.

Nebel reported that funds are also being shifted from the Room Tax Fund to the General Fund administration for the part-time wages for the landscape specialist. He noted that this position reports to Hawker, and will be accounted for in the administrative cost center for purposes of payroll, with the funds coming from the beautification line item in the Room Tax Fund. He added that funding, in the amount of \$5,000, which was unspent last year, for the Sister City program, is being shifted to the next fiscal year in the Room Tax Fund. He stated that also being carried over are the unspent funds, of \$3,440, from the skate park project, into the next fiscal year.

Nebel reported that on July 15, Council authorized a transfer of \$100,000 from the Street Overlay Improvement project to the SW 9<sup>th</sup> and 10<sup>th</sup> Streets Improvement project, with this change being reflected in this resolution. He stated that the Deco District Park project was moved to Fund 402. He noted that it is more appropriate that these be housed in the Capital Improvement Fund, so \$112,042 is being transferred from one fund to the other to clean this up.

Nebel reported that \$25,000 is being transferred from the Fire Reserve Fund to complete work on outfitting the heavy duty brush apparatus that was acquired last year.

Sawyer opened the public hearing on Resolution No. 3868 at 7:22 P.M. He called for public comment. There was none, and he closed the public hearing for Council deliberation at 7:23 P.M.

MOTION was made by Goebel, seconded by Hall, to adopt Resolution No. 3868, a resolution adopting a supplemental budget for the 2019-2020 fiscal year, making appropriation increases and changes for the fiscal year 2019-2020, and incorporates Attachment A as part of the resolution. The motion carried unanimously in a voice vote.

**Public Hearing on Ordinance No. 2154, and Resolution No. 3869, Regarding the Pruning and Removal of Trees, and Adoption of the City's Tree Plan.** Hawker introduced the agenda item. Nebel reported that since these documents had not been reviewed by the City Attorney, he recommended either a work session or continuation of the public hearing until September 3 at which time action could be taken on both items.

Sawyer opened the public hearing at 7:28 P.M. on Ordinance No. 2154 and Resolution No. 3869 regarding the pruning and removal of trees, and adoption of the city's Tree plan. Marletta Noe stated that she thought the plan was well developed.

Parker thanked the Parks and Recreation Advisory Committee for their work on this project. He stated that having a tree board would provide good oversight and backup. He added that he appreciates the species by species list for both the east and west sides of Highway 101.

Hall asked whether there is a provision related to memorial trees. Nebel noted that once the memorial bench issue is resolved, staff can move onto memorial trees.

After a brief discussion, MOTION was made by Jacobi, seconded by Parker, to continue the public hearing until September 3, and consider adoption at that time if a legal review has been performed. The motion carried unanimously in a voice vote.

## **COMMUNICATIONS**

**From Paula Miranda and Sara Skamser of the Port of Newport - Introductions.** Hawker introduced the agenda item. Sara Skamser, Chair of the Port of Newport Commission, and Paula Miranda, General Manager of the Port of Newport, introduced themselves and gave brief biographies.

Allen asked about the timeline for filling Stewart Lamerdin's vacancy. He also asked whether there is anything that addresses revenues in the strategic plan. Miranda and Skamser responded to questions.

Allen asked when the next joint work session of the Council and Port Commission would be scheduled.

**From Carrie Lewis and Steve Dangermond of the Oregon Coast Aquarium - Request for Consent from the City Council to Proceed with the Renovation and Expansion Plans of the Oregon Coast Aquarium.** Hawker introduced the agenda item. Nebel reported that the Oregon Coast Aquarium (OCA) conducted a major strategic planning effort and instituted a capital campaign focused on refreshing and enhancing the visitor experience. He stated that the OCA proposes to construct a new marine rehabilitation center.

Nebel reported that the OCA is located on port, city, and OCA-owned property. He stated that much of the proposed work would occur on property that is leased by the city to the OCA. He noted that this lease was initiated by the Urban Renewal Agency, and then assigned to the city in 2009 when the property was conveyed to the city. He added that the lease contains language authorizing the OCA to make alterations, additions, or improvements to the premises, however, approval from the city is required when the changes are substantial in nature. He stated that the OCA is requesting concurrence from the city to move forward with the project, which had a major boost with a \$5 million appropriation from the state legislature to proceed with the new marine rehabilitation center. He noted that Carrie Lewis and Steve Dangermond would make a presentation on the scope of the renovation and expansion plans.

Nebel reported that, as City Manager he serves as an ex officio member of the Oregon Coast Aquarium Board of Directors without compensation.

Lewis and Dangermond showed a presentation depicting the renovations that the project would encompass. They responded to Council questions and noted Council suggestions and recommendations.

MOTION was made by Hall, seconded by Parker, to grant its consent to the Oregon Coast Aquarium, Inc., to proceed with its renovation and expansion plans, and authorize the City Manager to execute any permits that may be required on behalf of the City of Newport, as land owner, to construct the improvements proposed by the Oregon Coast Aquarium. The motion carried unanimously in a voice vote.

### CITY MANAGER'S REPORT

**Consideration and Potential Adoption of Resolution No. 3867 Authorizing the Use of Eminent Domain for Rights-of-Way Associated with the Highway 101/35<sup>th</sup> Street Signalization Project by ODOT.** Hawker introduced the agenda item. Nebel reported that the preliminary design has been completed by ODOT on the Highway 101/35<sup>th</sup> Street signal relocation project, which includes installation of a signal at the intersection of Highway 101 and 35<sup>th</sup> Street, elimination of the signal, and channelization of the Highway 101 and SE 32<sup>nd</sup> Street intersection, construction of 35<sup>th</sup> Street between Anchor Way and Ferry Slip Road, closure of the SE Ferry Slip Road and Highway 101 intersection, resurfacing of Highway 101 from the Yaquina Bay Bridge to South of 35<sup>th</sup> Street, and the installation of bike and pedestrian facilities along Highway 101, between the Yaquina Bay Bridge and SE 35<sup>th</sup> Street. He stated that this project is being paid for by federal, state, and URA funding. He noted that the state and city have entered into intergovernmental agreements to proceed with this project, and ODOT is in the process of securing permanent rights-of-way for construction easements needed for the project. He added that the city's right-of-way services agreement with ODOT stipulates that the state will perform the full scope of right-of-way services, including, if necessary, condemnation. He stated that the resolution contained in the packet indicates that the city supports ODOT's use of a condemnation process for acquiring the rights-of-way that will eventually be turned over to the city. He added that the other right-of-way acquisitions will be kept and maintained by ODOT.

Nebel reported that throughout this process ODOT will take the lead in contacting property owners, conducting the required appraisals, negotiating with property owners, and acquiring the property which would then be transferred to the city. He stated that this resolution gives the city's consent for ODOT to act on behalf of the city, with these acquisitions, including authorization to exercise eminent domain, if necessary, for the construction and permanent easements needed for this project.

MOTION was made by Parker, seconded by Hall, to adopt Resolution No. 3867, a resolution determining that the acquisition of property is necessary and is in the public interest, and authorizes ODOT to negotiate on the City's behalf for those right-of-ways and easements that will be turned over to the City of Newport at the conclusion of the project. The motion carried unanimously in a voice vote.

**Consideration and Potential Approval of an Intergovernmental Agreement between the Department of Land Conservation and Development and the City of Newport to**

**Update the Lincoln County Multi-Jurisdictional Natural Hazards Mitigation Plan.** Hawker introduced the agenda item. Nebel reported that in order to be eligible for funding from the FEMA, each local government is required to approve a mitigation plan satisfying federal requirements for this type of funding. He stated that the mitigation plans are in effect for a five-year period, and the city's mitigation plan will expire on September 14, 2020. He added that the plan has been done on a Lincoln County basis, by the county, and all the cities in Lincoln County, and that the plans for each city show up as addendums to the overall mitigation plan. He noted that Newport's current priorities include securing the domestic water supply, seismically retrofitting vulnerable structures and critical facilities, completing a storm water master plan, implementing priority projects identified in the plan, continued compliance with the national insurance program, educating residents and visitors about tsunami risks and evacuation routes, and other similar type of activities.

Nebel reported that the DLCD secured a grant to update the Lincoln County mitigation plan, and contracted with the University of Oregon's Partnership for Disaster Resilience to assist with this effort. He stated that according to this agreement, the city would participate as a project partner.

Nebel responded to Council questions.

MOTION was made by Hall, seconded by Parker, to approve an intergovernmental agreement with the Department of Land Conservation to update the Lincoln County multi-jurisdictional natural hazards mitigation plan, and authorize the City Manager to execute this agreement. The motion carried unanimously in a voice vote.

**Authorization for the City Manager to Contract for Legal Services During the Absence of the City Attorney.** Hawker introduced the agenda item. Nebel reported that City Attorney, Steve Rich, is out of the office on medical leave. He stated that Rich anticipated this leave time could be one or two weeks, but it is undetermined at this point. He noted that since the hiring of an in-house city attorney, the City Attorney has been responsible for making decisions regarding when outside legal services should be utilized. He added that with this absence, it may be appropriate, during this interim period, for Council to authorize the City Manager to contract for specific legal services that would be required prior to Rich's return. He stated that the city has had an agreement with Speer Hoyt for municipal legal services, but with the hiring of Rich, the use of Speer Hoyt has been minimal. He added that he does not anticipate an extensive use of legal services during Rich's absence, but this action would clearly authorize the City Manager to act in this capacity with the absence of the City Attorney.

Allen noted that when the city first initiated services with LGLG, there was an engagement letter that included certain parameters and hourly rates. He recommended this be updated with current information. Nebel reported that LGLG provides an annual rate sheet to the city.

MOTION was made by Allen, seconded by Hall, that in the absence of the City Attorney, the City Manager is authorized to utilize outside legal services when timely review of an issue is required. The motion carried unanimously in a voice vote.

## **REPORTS FROM MAYOR AND COUNCIL**

Goebel reported that he attended a recent meeting of the Destination Newport Committee at which he received a copy of the Newport Lodging and Doing Business Guide. He noted that he would leave the copy in the Council office.

Hall thanked Malloy and Ballentine for organizing a successful National Night Out.

Parker reported that the Wolf Tree Brewery offers corn hole as a recreational activity outside its café. Nebel noted that there was a corn hole contest between the Oregon and Washington City Manager's Associations, at Oregon won.

Allen asked whether there was going to be a corn hole game at the city barbecue.

### ADJOURNMENT

Having no further business, the meeting adjourned at 8:42 P.M.

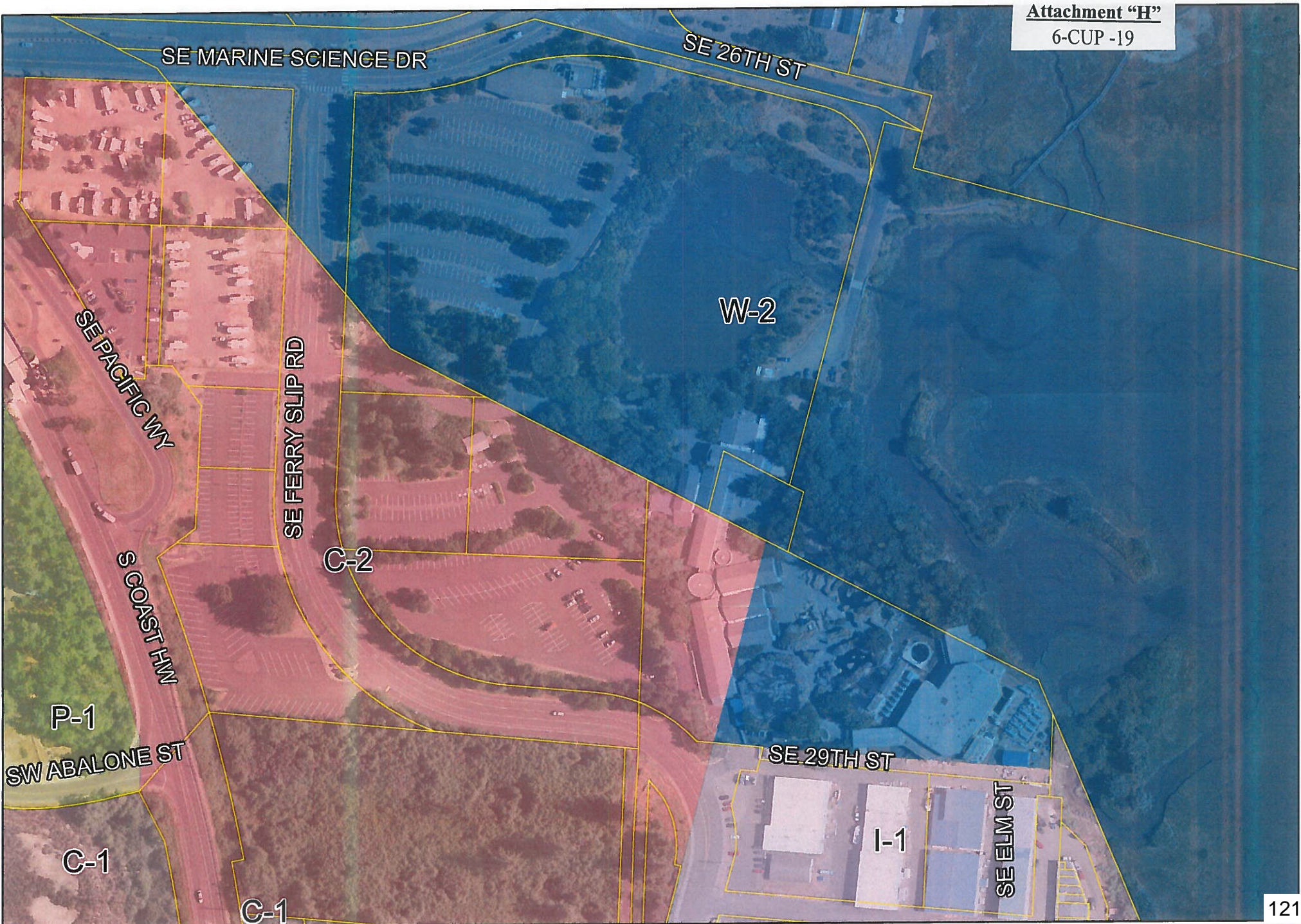
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Margaret M. Hawker, City Recorder

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Dean H. Sawyer, Mayor





This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this

**CITY OF NEWPORT  
NOTICE OF A PUBLIC HEARING**

The City of Newport Planning Commission will hold a public hearing on Monday, October 14, 2019, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 6-CUP-19, a request submitted by Oregon Coast Aquarium, 2820 SE Ferry Slip Rd, Newport, OR 97365 (Steve Dangermond, Dangermond Keane Architecture, 1921 NW Kearney St, Portland, OR 97209, authorized representative) per Section 14.03.080/"Water-Dependent and Water-Related Uses" of the Newport Zoning Ordinance, for a conditional use permit to renovate the existing Oregon Coast Aquarium which includes a 17,500 square foot remodel of the main building, primarily in the lobby, café, and exhibit galleries; a remodel of portions of the grounds; a 850 square foot expansion of one of the galleries; and a 950 square foot addition to the front of the building for ticketing operations. The request involves property that is located in a W-2/"Water-Related" and a C-2 "Tourist Commercial" zone. The property is located at 2820 SE Ferry Slip Rd, Newport, OR 97365 (Tax Map 11-11-17-00, Tax Lots 101, 298, 1600, and 1900; Tax Map 11-11-17-AC, Tax Lots 400, 500, 600, 700, 800, 900, and 1001; and Tax Map 11-11-17-DA, Tax Lots 300, 301, and 401). The applicable criteria per NMC Chapter 14.34.050 are that: 1) The public facilities can adequately accommodate the proposed use; 2) the request complies with the requirements of the underlying zone or overlay zone; 3) the proposed use does not have an adverse impact greater than existing uses on nearby properties, or impacts can be ameliorated through imposition of conditions of approval; and 4) a proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Submit testimony in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. Letters sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant and those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased for reasonable cost at the Newport Community Development (Planning) Department (address above) seven days prior to the hearing. The application materials (including the application and all documents and evidence submitted in support of the application), the applicable criteria, and other file material are available for inspection at no cost; or copies may be purchased for reasonable cost at the above address. Contact Derrick Tokos, Community Development Director, (541) 574-0626, (address above).

***FOR PUBLICATION ONCE ON FRIDAY, OCTOBER 4, 2019.***

**CITY OF NEWPORT  
PUBLIC NOTICE<sup>1</sup>**

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

**File No. 6-CUP-19:**

**Applicants & Representatives:** Oregon Coast Aquarium, 2820 SE Ferry Slip Rd, Newport, OR 97365 (Steve Dangermond, Dangermond Keane Architecture, 1921 NW Kearney St, Portland, OR 97209, authorized representative).

**Request:** Approval of a request per Section 14.03.080/“Water-Dependent and Water-Related Uses” of the Newport Zoning Ordinance, for a conditional use permit to renovate the existing Oregon Coast Aquarium which includes a 17,500 square foot remodel of the main building, primarily in the lobby, café, and exhibit galleries; a remodel of portions of the grounds; a 850 square foot expansion of one of the galleries; and a 950 square foot addition to the front of the building for ticketing operations. The subject property is located in a W-2/“Water-Related” and a C-2 “Tourist Commercial” zone.

**Location/Subject Property:** 2820 SE Ferry Slip Rd, Newport, OR 97365 (Tax Map 11-11-17-00, Tax Lots 101, 298, 1600, and 1900; Tax Map 11-11-17-AC, Tax Lots 400, 500, 600, 700, 800, 900, and 1001; and Tax Map 11-11-17-DA, Tax Lots 300, 301, and 401).

**Applicable Criteria:** NMC Chapter 14.34.050: (1) The public facilities can adequately accommodate the proposed use; 2) the request complies with the requirements of the underlying zone or overlay zone; 3) the proposed use does not have an adverse impact greater than existing uses on nearby properties, or impacts can be ameliorated through imposition of conditions of approval; and 4) a proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

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

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

**Contact:** Derrick Tokos, Community Development Director, (541) 574-0626 (address above in “Reports/Application Material”).

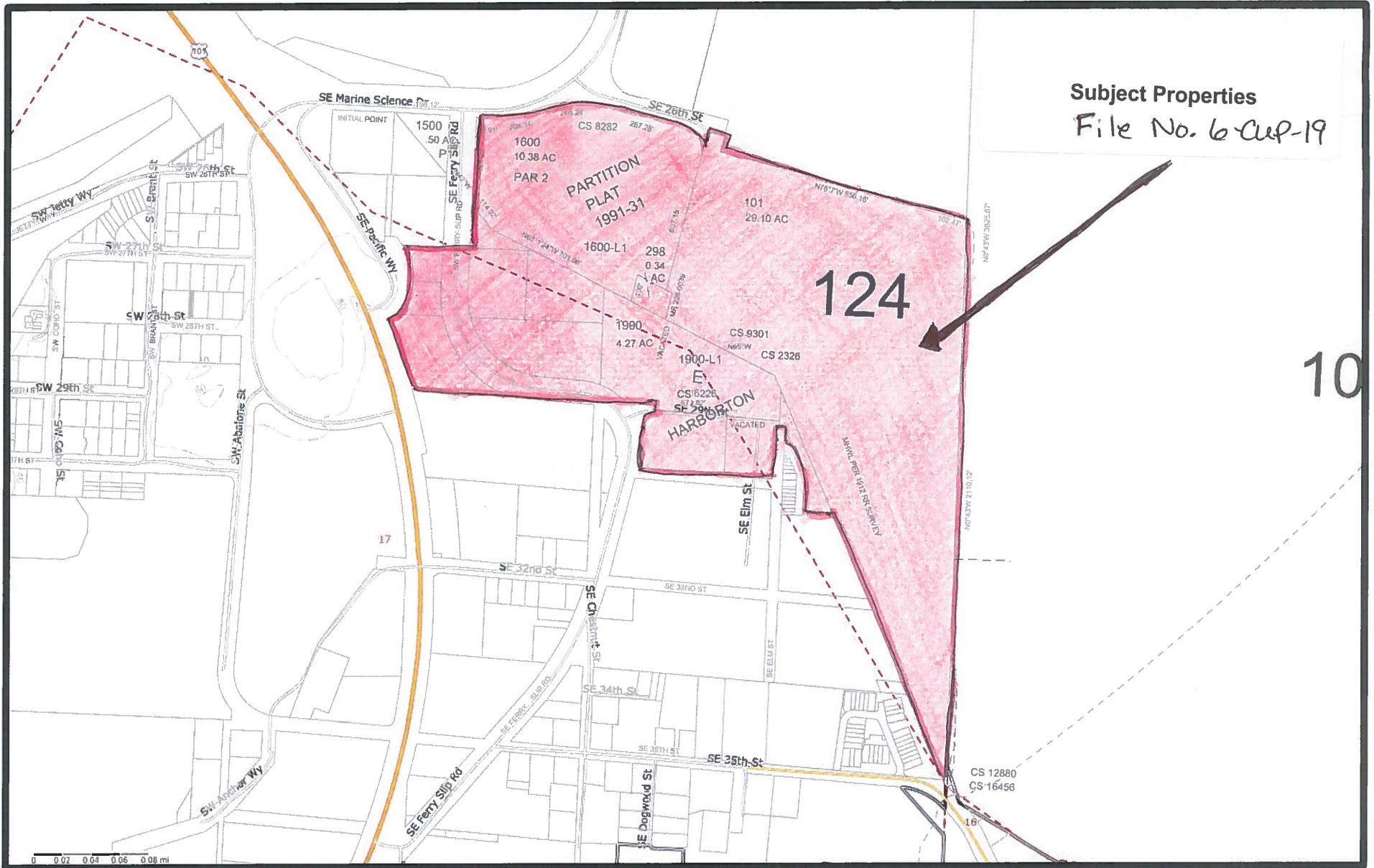
**Time/Place of Hearing:** Monday, October 14, 2019; 7:00 p.m.; City Hall Council Chambers (address above in “Reports/Application Material”).

**MAILED:** September 25, 2019.

**PUBLISHED:** October 4, 2019/News-Times.

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



Subject Properties  
File No. 6-CUP-19

124

10



# MEMO

City of Newport  
Community Development Department



**\*\*Distributed Via Email\*\***

**Date:** September 25, 2019

**To:** Spencer Nebel, City Manager  
Tim Gross, Public Works  
Rob Murphy, Fire  
Jason Malloy, Police  
Mike Murzynksy, Finance  
Judy Mayhew, Parks & Rec.  
Laura Kimberly, Library  
Rachel Cotton, Associate Planner  
Joseph Lease, Building Official  
Public Utilities

**From:** Sherri Marineau, Executive Assistant

**RE:** Conditional Use Permit # 6-CUP-19

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I have attached a copy of a public notice concerning a land use request. The notice contains a brief explanation of the request, a property description and map, and a date for a public hearing. You may want to review this information to determine if there are any effects to your department and if you would like to make comments.

We must have your comments at least 10 days prior to the hearing period in order for them to be considered. **Should no response be received, a “no comment” will be assumed.**

sm

Attachment

BARTOW PROPERTIES LLC  
PO BOX 88  
COLTON, OR 97017

BEARD DUANE G TRUSTEE &  
BEARD SHEIRY T TRUSTEE  
2342 TUSCANA AVE S  
SALEM, OR 97306

BERGIN WILLIAM J  
475 SE 35TH ST  
UNIT B-12  
SOUTH BEACH, OR 97366

BUCHKO GERALD  
PO BOX 697  
SOUTH BEACH, OR 97366

CAYO NOEL ESTATE  
ATTN SHAWN CAYO  
1519 18TH ST  
OREGON CITY, OR 97045

CITY OF NEWPORT  
% OREGON COAST AQUARIUM INC  
LEASE  
PO BOX 2000  
NEWPORT, OR 97365

CLARK PAT M  
DBA P C CONSTRUCTION  
PO BOX 172  
SOUTH BEACH, OR 97366

CLARK PATRICK M  
PO BOX 172  
SOUTH BEACH, OR 97366

CRAYK DAVID K &  
CRAYK JANICE I  
34360 NE COLORADO LAKE DR  
UNIT 960  
CORVALLIS, OR 97333

DONOVAN ANTHONY  
475 SE 35TH ST C17  
NEWPORT, OR 97365

DUNLOP WILLIAM P &  
DUNLOP KAREN W  
2750 SW COHO ST  
#A  
NEWPORT, OR 97365

GOLD MICHAEL R &  
GOLD KRISTINE A  
1240 CINNAMON TEAL DR  
REDMOND, OR 97756

HARGIS ELWIN E &  
HARGIS JUDITH L  
PO BOX 253  
NEWPORT, OR 97365

HARTOG PHILIP  
PO BOX 686  
SOUTH BEACH, OR 97366

HULSEY JOSHUA D  
475 SE 35TH CT  
UNIT A7  
NEWPORT, OR 97365

KAPLAN KENNETH &  
MOSSBERG JULIE  
20511 DEFOREST  
WOODLAND HILLS, CA 91364

KINGZETT ROBERT P  
6419 FIESTA CT  
KLAMATH FALLS, OR 97603

LINCOLN COUNTY  
ATTN PROPERTY MANAGEMENT  
880 NE 7TH ST  
NEWPORT, OR 97365

LIVELY PAULA S  
475 SE 35TH ST  
UNIT D-21  
NEWPORT, OR 97365

MAN XIUTING C &  
MAN TONY T  
PO BOX 92432  
AUSTIN, TX 78709

MARIAS WILLIAM A  
475 SE 35TH ST #D19  
NEWPORT, OR 97365

MCPHERSON MELISSA ADRIENNE  
475 SE 35TH ST  
UNIT C-18  
SOUTH BEACH, OR 97366

MINOR JOHN CHRISTOPHER &  
MINOR MARY C  
517 SW MINNIE ST  
NEWPORT, OR 97365

MORTENSEN RONAL L &  
CAROLLO JAMES &  
MORTENSEN SIGNE  
91000 COMMERCIAL ST  
JUNCTION CITY, OR 97448

NEOLHA POINT HOA INC  
ATTN YAQUINA BAY PROP MGMT INC  
146 SE FIRST ST  
NEWPORT, OR 97365

OFFICER CASEY W &  
OFFICER DONNA M  
238 NW 24TH ST  
NEWPORT, OR 97365

OMALLEY MARTIN JAMES TSTEE  
475 SE 35TH ST  
UNIT B-9  
SOUTH BEACH, OR 97366

OREGON COAST AQUARIUM INC  
ATTN GOULETTE RICK  
2820 SE FERRY SLIP RD  
NEWPORT, OR 97365

OREGON COAST AQUARIUM INC  
PO BOX 2000  
NEWPORT, OR 97365

OREGON STATE UNIVERSITY  
306 KERR ADMINISTRATION BLDG  
CORVALLIS, OR 97331

PORT OF NEWPORT  
% OREGON STATE UNIVERSITY  
LEASE  
ADMIN SVC BLDG A 524  
CORVALLIS, OR 97331

REED MARY BETH  
41642 FISH HATCHERY DR  
SCIO, OR 97374

ROGERS JOHN R &  
ROGERS DEANNA K  
412 SE FOGARTY ST  
NEWPORT, OR 97365

SCONCE JOHN &  
SCONCE KATHLEEN  
5405 NW PACIFIC COAST HWY  
#44  
WALDPORT, OR 97394

SCOTT LORNA AVERY TSTEE  
1182 NW CHARLEMAGNE PL  
CORVALLIS, OR 97330

SMITH MICHAEL VALENTINE &  
SMITH LYNN MCNEILL  
393 N STOCKTON AVE  
OTIS, OR 97368

SOUTH BAY INDUSTRIAL CONDO  
ASSOCIATION OF UNIT OWNERS  
ATTN MINOR CHRISTOPHER  
PO BOX 510  
NEWPORT, OR 97365

STATE OF OREGON  
% BOARD OF HIGHER EDUCATION  
PO BOX 3175  
EUGENE, OR 97403

STOUT DIANE  
475 SE 35TH ST  
UNIT A-8  
NEWPORT, OR 97365

TENDERELLA LARRY &  
TENDERELLA KIMBERLY  
475 SE 35TH ST; C-16  
NEWPORT, OR 97365

VORONAEFF KENT D  
3795 DONALD ST  
EUGENE, OR 97405

WALLIS CURTIS L &  
SCOTT PHILLIS A  
PO BOX 331  
LINCOLN CITY, OR 97367

XU HEQIN  
2498 NW MASER DR  
CORVALLIS, OR 97330

YANG JRMING J &  
WANG TINGYU  
4445 NW SNOWBRUSH DR  
CORVALLIS, OR 97330

YAQUINA BAY DEVELOPMENT  
CORPORATION  
ATTN ALAN WELLS  
202 NW 6TH  
CORVALLIS, OR 97330

YECK FRED ARTHUR TRUSTEE  
PO BOX 352  
NEWPORT, OR 97365

STEVE DANGERMOND  
DANGERMOND KEANE ARCHITECTURE  
1921 NW KEARNEY ST  
PORTLAND, OR 97209

Adjacent Property Owners Within 200  
Feet

File No. 6-CUP-19

NW Natural  
ATTN: Dave Sanders  
1405 SW Hwy 101  
Lincoln City, OR 97367

Charter Communications  
ATTN: Keith Kaminski  
355 NE 1<sup>st</sup> St  
Newport OR 97365

CenturyLink  
ATTN: Corky Fallin  
740 State St  
Salem OR 97301

Central Lincoln PUD  
ATTN: Randy Grove  
PO Box 1126  
Newport OR 97365

*Email: Lisa Phillips*  
*DLCD Coastal Services Center*  
*lisa.phillips@state.or.us*

\*\*EMAIL\*\*  
odotr2planmgr@odot.state.or.us

Joseph Lease  
Building Official

Rob Murphy  
Fire Chief

Tim Gross  
Public Works

Rachel Cotton  
Associate Planner

Jason Malloy  
Police Chief

Mike Murzynsky  
Finance Director

Laura Kimberly  
Library

Judy Mayhew  
Interim Parks & Rec

Spencer Nebel  
City Manager



**Derrick Tokos**

---

**From:** Derrick Tokos  
**Sent:** Wednesday, October 09, 2019 12:49 PM  
**To:** 'pmiranda@portofnewport.com'  
**Cc:** 'Aaron Bretz'; 'steve dangermondkeane.com'; 'khewitt@portofnewport.com'; Carrie Lewis  
**Subject:** FW: Aquarium Lease  
**Attachments:** 1989.07.01 OCA lease.pdf; City Council Authorization.pdf; Aquarium Improvement Project.pdf

Hi Paula,

The Oregon Coast Aquarium is moving forward with plans to renovate and enhance the Aquarium facility. It is about a \$9 million investment across the various planned projects. A description of the planned improvements is enclosed. The work will occur on property that is leased from the City of Newport and Port of Newport.

The Port of Newport lease that Karen shared is almost identical to the lease the Aquarium has with the City of Newport. Section 7 of the document addresses repairs and improvements and stipulates that owner consent is required for work that exceeds 5% of the value of the existing improvements on the property. We addressed this requirement on our end via a presentation that the Aquarium made to the Newport City Council. At the close of the presentation, our Council made a motion granting its consent. Attached is a copy of that motion.

City approval of a conditional use permit is required for the project. Our Planning Commission is holding a public hearing on the application on Monday, October 14, 2019. It will be at 7:00 pm in City Hall Council Chambers and you are welcome to attend. We are recommending the Commission approve the permit with a condition that the Aquarium obtain consent from the Port before building permits are issued for any of the improvements.

I am copying Carrie Lewis with the Aquarium and her architect Steve Dangermond and hope that you can collectively put in motion whatever steps are needed to obtain the Port's approval.

Thanks,

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

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**From:** Karen Hewitt [mailto:khewitt@portofnewport.com]  
**Sent:** Wednesday, October 09, 2019 11:38 AM  
**To:** Derrick Tokos <D.Tokos@NewportOregon.gov>  
**Cc:** Paula Miranda <pmiranda@portofnewport.com>; Aaron Bretz <abretz@portofnewport.com>  
**Subject:** Aquarium Lease

Derrick,

Attached is the Aquarium's lease with the Port of Newport, as requested.

*Karen Hewitt*

Administrative Supervisor

Port of Newport

541-265-7758

[www.portofnewport.com](http://www.portofnewport.com)

[www.facebook.com/PortofNewport/](https://www.facebook.com/PortofNewport/)

*DISCLAIMER: This e-mail may be a public record of the Port of Newport and may be subject to the State of Oregon Retention Schedule and may be subject to public disclosure under the Oregon Public Records Law. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.*

**Derrick Tokos**

---

**From:** Robert Murphy  
**Sent:** Thursday, October 10, 2019 11:14 AM  
**To:** Derrick Tokos  
**Cc:** Mark Ragan; Robert Murphy  
**Subject:** Fire Department access concerns regarding Oregon Coast Aquarium's Conditional Use Permit - 6-CUP-19

Hi Derrick,

FPO Mark Ragan and I conducted a site visit yesterday with Aquarium staff. We walked the site and viewed all existing access points and roads. Here is what we would like to happen with the approval of this CUP. We kept our requirements simple and our goal is to use this as a starting point to have further discussions with Aquarium staff and their consulting architects and/or engineers. I plan to be at the Planning Commission meeting on Monday, October 14 at 7:00 pm to answer any questions they may have. Please let me know if you have any concerns or if you would like this in a different form:

Here are the needs to meet today's fire code requirement for fire department access and water supply.

1. **Fire Department Access Roads:** The 2014 Oregon Fire Code requires access roads to be within 150 feet of all portions of the building as noted in section 503 of the 2014 Oregon Fire Code. The access roads must also meet overhead clearance and surface and load capacities, as well as minimum turning Radius. Provide upgrades to the existing path on the east side of the property meeting the overhead clearance of 12 feet and the surface and load capacities noted in section 503.2.3 and Appendix D section 102.1. approved by a certified engineer as well as the requirements for the turning radius that can be obtained from the City of Newport Public Works Department.
2. **North Access Gate:** Provide a gate meeting the requirements in the 2014 Oregon Fire Code Appendix D section 103.5 that provides access from the north side of the property that would tie into the east side path connecting to the existing fire department access road that enters from the south off of 29<sup>th</sup> St. via the "elephant gate". This need is due to the fact that fire apparatus currently have to pass through part of the structure to gain access to the current access road and the existing fire hydrant and F.D.C. that serves the Passages of the Deep building.

*Rob Murphy*

Fire Chief

Newport Fire Department

245 NW 10th St.

Newport, OR 97365

541-265-9461

[r.murphy@newportoregon.gov](mailto:r.murphy@newportoregon.gov)



Case File: # 8-NCU-19  
 Date Filed: September 23, 2019  
 Hearing Date: October 14, 2019/Planning Commission

**PLANNING STAFF REPORT**  
**Case File No. 8-NCU-19**

- A. **APPLICANT:** Christopher Khari Gates, member/owner TKO Properties I, LLC (formerly Surfside Mobile Village, now Surfside Community).
- B. **REQUEST:** Approval of a request per Section 14.32/“Nonconforming Uses, Lots, and Structures” of the Newport Municipal Code, for the alteration and expansion of a nonconforming use. The property is currently being used as a mobile home park (Surfside Community). Specifically, the applicants are requesting approval to convert an existing mobile home space into two RV spaces for park models. The result will be a reduction in the number of permanent mobile home spaces from 24 to 23 and an increase from 8 to 10 in the number of RV spaces.
- C. **LOCATION:** 392 NW 3<sup>rd</sup> St.
- D. **LEGAL DESCRIPTION:** Lincoln County Assessor’s Tax Map 11-11-05-CD, Tax Lots 10500, 10501, 10600, 10700, and 10800 in the City of Newport, County of Lincoln, Oregon.
- E. **LOT SIZE:** Approximately 2.22 acres.
- F. **STAFF REPORT**
1. **REPORT OF FACT**
- a. **Plan Designation:** High Density Residential.
- b. **Zone Designation:** R-4/“High Density Multi-Family Residential”.
- c. **Surrounding Land Uses:** A mix of single- and multi-family residential, commercial, and public uses.
- d. **Topography and Vegetation:** The subject property is generally flat except slope along the west and north sides of Tax Lot 10700. North of the mobile home park, the terrain slopes steeply up to NW 5<sup>th</sup> Street. That steeply sloped property is not a part of the park. Landscaping exists around the perimeter of the mobile home park.
- e. **Existing Structures:** The property contains the Surfside Mobile Village consisting of 32 sites (24 permanent residences and 8 for recreational vehicles, including park models), a restroom/laundromat, and an office/storage facility.
- f. **Utilities:** All are available to the site.

- g. **Development Constraints:** None known.
- h. **Past Land Use Actions:** File No. 4-CUP-73 – authorized expansion of the Glenwood Cottages and Trailer Park to 18 trailer parking spaces. Approved February 12, 1973. File No. 2-NCU-13 authorized the mobile home park and expansion to 31 units on November 25, 2018. File No. 4-NCU-18, authorized installation of an additional RV space for a park model unit, increasing the total number of spaces to 24 manufactured dwelling spaces and 8 RV spaces.
- i. **Notification:** Notification to surrounding property owners and to city departments/public agencies was mailed on September 24, 2019; and the notice of public hearing was published in the Newport News-Times on October 4, 2019.
- j. **Attachments:**
- Attachment "A" – Application form
  - Attachment "B" – Letter from Christopher Khari Gates, dated 9/20/19
  - Attachment "C" – Application narrative
  - Attachment "D" – Surfside Mobile Village approved spaces (from File 2-NCU-13)
  - Attachment "E" – Layout for the park model units
  - Attachment "F" – 2018 aerial image of the park
  - Attachment "G" – List of photos with index
  - Attachment "H" – Utility records for the property
  - Attachment "I" – Map of city utilities within the park
  - Attachment "J" – Oregon Secretary of State business entity data
  - Attachment "K" – Deed for the subject property (Instrument No. 2019-02477)
  - Attachment "L" – Public hearing notice
2. **Explanation of the Request:** Pursuant to Section 14.32.070/“Alteration, Expansion, or Replacement of Nonconforming Uses and Structures” of the Newport Municipal Code, after verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood.

Christopher Khari Gates, member/owner of TKO Properties I, LLC, indicates that they are seeking approval to alter and expand the non-conforming park in such a way that two park model RV units will occupy space #1 within the park as opposed to a double-wide manufactured dwelling (Attachment "B"). The city approved the park as a non-conforming use in 2013 (File No. 2-NCU-13) and later authorized its expansion by one park model unit (File No. 4-NCU-18). A diagram has been provided showing where space #1 is located within the park (Attachment "D"). A plan showing where the park model units will be placed has been submitted as well (Attachment "E"). If this request is approved, the non-conforming park will consist of 23 mobile or manufactured dwelling spaces and 10 RV spaces.

3. **Ownership Authorization:**

A property owner, person with written approval of the property owner, or city manager may apply for a land use application (NMC 14.52.050). The application form lists TKO Properties I, LLC as the applicant, with Christopher Khari Gates as an agent, member, and owner (Attachment "A"). On March 20, 2019, the mobile home park was conveyed from Douglas E. Fitts and Verna L. Fitts, Trustees to several parties that were acquiring undivided interests in the property (Attachment "K"). Christopher Khari Gates, in an individual capacity, is listed as one of the parties acquiring an undivided interest. Therefore, Mr. Gates is a property owner authorized to submit the application. The Oregon Secretary of State's Business Registry lists Mr. Gates as the registered agent for TKO Properties I, LLC (Attachment "J"); however, no evidence has been submitted showing that the LLC holds a possessory interest in the property. Such evidence needs to be provided if TKO Properties I, LLC is now an owner.

4. **Evaluation of the Request:**

- a. **Comments:** All surrounding property owners and affected city departments and public utilities were notified on September 24, 2019. The notice was published in the Newport News-Times on October 4, 2019. No comments were received in response to the notice.
- b. **Application Submittal Requirements:** Pursuant to NMC 14.32.040, applications must include a completed application form, scaled site plan, names and addresses of property owners within the notification area, survey work if structures will not satisfy setback requirements and exterior architectural elevations if structures will exceed building height limitations.
- c. **Verification of Status of Nonconforming Use or Structure:** Pursuant to NMC Section 14.32.060, upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:
  - The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and
  - The use has not been discontinued for a continuous 12-month period.

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

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

authority shall consider:

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

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

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

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

The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the

alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.

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

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

e. **Staff Analysis:**

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

(1) The nature and extent of the existing non-conforming use was established in 2013 with the City's approval of the park on the subject property at 31 units and again in 2018 when the park was expanded to accommodate an additional park model unit. An aerial image of the park, taken in 2018, illustrates that it conformed at the time with the original approval (Attachment "F"). The applicant has provided utility records showing that the park is in active use (Attachment "H") and photographs from 2018 show that the park has been maintained (Attachment "G").

(2) The Planning Commission must find that alteration and expansion of the nonconforming trailer park will not result in a greater adverse impact on the neighborhood. Assuming the Commission can verify the nonconforming trailer park to be essentially what exists today, the applicants have provided findings addressing the criteria for a "no greater adverse impact" determination:

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

(i) The applicant explains that the Surfside Mobile Village has been in existence since 1972. It is a 55 and older community where most all the residences are occupied on a full-time basis. The Planning Commission determination in File No. 2-NCU-13 and 8-NCU -18 confirmed that a valid nonconforming use had been established on the subject property. The applicant has provided photographs showing that the park has been maintained in good condition (Attachment "G"). The findings indicate that to the west of the park across Hurbert Street is a commercial office



building, a vacant lot, a duplex, and a single-family residence. To the north, the terrain climbs steeply and then levels out adjacent to NW 5<sup>th</sup> Street. These undeveloped, residentially zoned lots overlook the park. A portion of the property to the east of the park is city-owned open space. The areas to the south across 3<sup>rd</sup> Street are residential. However, the south side of 3<sup>rd</sup> Street is a large hill that slopes up, with residences that are set back a fair distance from NW 3<sup>rd</sup> Street. These homes are not readily visible from the park. Generally the area west of the property can be described as the Nye Beach Commercial area. The property is about one and a half blocks west of Highway 101; and 3<sup>rd</sup> Street, which abuts the subject property to the south. To the east of the property is an apartment building, a commercial fueling station, and the former city sewer plant where the fire training tower is built.

- (ii) As has been previously established, the park is grade separated from adjoining residential areas. This includes the original park (Tax Lot 10500) and the expansion areas (Tax Lots 10501, 10600, 10700, and 10800). The tax lots orient to, and are accessible from, roads internal to the park. Tax Lots 10501 and 10700 are accessed from NW 3<sup>rd</sup> Street, a collector roadway that serves the primary access to the Nye Beach Commercial area.
- (iii) The mobile home park satisfies perimeter setbacks of the R-4 zone district. This includes the double-wide that is to be removed from space #1. The setback from 3<sup>rd</sup> Street is 15-feet. A diagram included with the application indicates that one of the park models would be placed 5-feet from the street (Attachment "E"). This would be inconsistent with the character and history of the use and of development in the surrounding area, which generally satisfy setback requirements. There is sufficient area within space #1 for the park model unit to be placed in a manner that conforms to the setback standard. A condition of approval should be imposed requiring adherence to setback requirements, unless a nonconforming unit was established with a reduced setback.
- (iv) Given the above, it is reasonable for the Planning Commission to find that the expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the character and history of the use and of development in the surrounding area.

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

- (i) The applicant notes that roads in the park are paved so there is little if any noise from any vehicles moving in the park. The uses do not cause dust, odor, fumes, glare, or smoke. They further note that the park model units will be placed on foundations and permanently connected to utilities.
- (ii) Given the above, it is reasonable for the Planning Commission to find that the expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood.

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

- (i) The applicant states that all sewer and water services are in place at the park. The units on space #1 will be served by existing utilities.
- (ii) The applicant states that the detail drawing they submitted (Attachment "E") establishes that suitable vehicle access can be provided for two park model units without impeding the City's access to a nearby utility manhole.
- (iii) NW 3<sup>rd</sup> and NW Hurbert Streets provide access to the park. These streets are improved and can handle traffic attributed to an additional park model unit.
- (iv) As documented in prior land use approvals, manufactured dwellings and appurtenant structures within the park extend over public sewer and storm drain lines and associated easements. This makes it difficult for the City to exercise its easement rights to access the utilities for maintenance purposes or to address failures. This has a direct bearing on the near and long term adequacy of these utilities to serve the subject development and surrounding areas. Previous applicant's testified that a number of the units in the park were nearing the end of their useful life. The Commission elected to address the encroachments by requiring that, as units are replaced, they be situated in a manner that does not impair the City's ability to exercise its easement rights and access these utilities. A condition of approval was included in the 2013 and 2018 approvals addressing this issue, and it is appropriate that it be carried forward with this decision since circumstances on the ground have not changed.
- (v) An aerial image shows the location of the City's utilities within the park (Attachment "I"). It illustrates that sanitary sewer and storm water lines are in close proximity to the northwest corner of

space #1. The location of these lines and associated easements should be identified by the applicant prior to placement of the park model units to ensure that the City has adequate access to the utilities. This may require survey work.

- (vi) Given the above, it is reasonable for the Planning Commission to find that expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the adequacy of infrastructure to accommodate the use.

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

- (i) The applicant notes that an additional park model unit will add only a minor amount of traffic. Given where space #1 is located, additional traffic is likely to be from NW 3<sup>rd</sup> Street, which has been recently improved and is already a primary access to the Nye Beach Commercial area. Further, the trips to the site will be residential in nature. The placement of one additional park model on this tax lot will be still fewer units than could be allowed by an apartment building, which is an allowed use on the property.
- (ii) This park is a residential development, and the types and kind of trips associated with the park use are what would be expected in a residential area. Densities are slightly higher than what exists in nearby residential neighborhoods; however, this is offset somewhat by the fact that this is a park dedicated to senior living. Further, as previously noted, the park is isolated from adjoining residential neighborhoods by terrain, so none of the park elements will orient traffic onto local streets in these areas (i.e. all traffic flows to NW Hurbert or NW 3<sup>rd</sup> Street).
- (iii) Given the above, it is reasonable for the Planning Commission to find that the expansion of the use will not cause any greater adverse impact on the neighborhood relative to the comparative numbers and kinds of vehicular trips to the site.

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

- (i) Parking is provided on site. There is virtually no loading or unloading given the primary residential nature and use of the additional unit.
- (ii) The diagram submitted with the application shows that space #1 is large enough to provide a parking space for each park model unit, which is the City's requirement for RV spaces (NMC 14.14.030(28)).

- (iii) Given the above, it is reasonable for the Planning Commission to find that the expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the comparative amount and nature of outside storage, loading, and parking.

(f) The comparative visual appearance.

- (i) The applicant states that the visual appearance of the park will be enhanced because the double-wide manufactured home currently occupying the space is uninhabitable in its current state and is close to 40 years old. It will be replaced with two new park model homes similar in size, dimensions, and aesthetics to the new park model homes placed on Tax Lot 10700.
- (ii) Given the above, it is reasonable for the Planning Commission to find that the expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the comparative visual appearance of the park.

(g) The comparative hours of operation.

- (i) The applicant notes that the hours of operation will not change. The one additional unit is a residential unit.
- (ii) Given the above, it is reasonable for the Planning Commission to find that the expansion of the use will not cause any greater adverse impact on the neighborhood, relative to comparative hours of operation.

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

- (i) Given that the park sits lower than adjoining property, and the addition unit that is proposed is a single-story unit, solar access to adjoining property will not be affected. Similarly, since the units sit lower than the surrounding property, there will be no impact on privacy on adjoining property.
- (ii) Given the above, it is reasonable for the Planning Commission to find that the expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the comparative effect on solar access and privacy.

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

In their findings, the applicants list the following other factors to be considered:

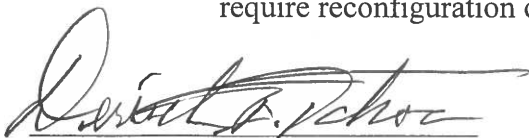
- (i) The new park model will be an enhancement to the property.
  - (ii) The geographical features of the area tend to separate the property from other residential uses in the area.
  - (iii) The approval of this proposal will assist in providing safe, clean, and affordable housing for those 55 and older.
  - (iv) Given the above, it is reasonable for the Planning Commission to find that the expansion of the use will not cause any greater adverse impact on the neighborhood, relative to other factors which impact the character or needs of the neighborhood.
- (j) The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.
- (i) A condition of approval is attached requiring that new units placed within the park adhere to the provisions of the Oregon Manufactured Dwelling and Park Specialty Code, as amended and that it satisfy fire and life safety standards of ORS 446.100. This ensures that the degree to which park units do not conform to these standards will lessen over time.
  - (ii) Given the above, it is reasonable for the Planning Commission to find that the expansion of the use will not cause any greater adverse impact on the neighborhood, relative to the purpose of the current zoning provisions that cannot be satisfied.
- (k) To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, and alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to:
- (1) Surfacing or parking areas and landscaping;
  - (2) Exterior design of structures;
  - (3) Outdoor displays, storage, and signage.
- (i) There is no evidence that improvements are needed or justified for the conversion of a manufactured dwelling space to an RV space, and the expansion of the park by one additional RV space.
4. **Conclusion:** If the Planning Commission finds that the alteration/expansion of the nonconforming use will not result in a greater adverse impact on the neighborhood, and the applicant has met the criteria established in the Zoning Ordinance for authorizing alteration/expansion of a nonconforming use, then the Commission should approve the

request. The Commission can attach reasonable conditions that are necessary to carry out the purposes of the Zoning Ordinance and the Comprehensive Plan. If the Commission finds that the request does not comply with the criteria, then the Commission should deny the application.

- G. **STAFF RECOMMENDATION:** As outlined in this report, this application to expand the non-conforming mobile home park to convert an existing manufactured dwelling space to an RV space, and to add one additional RV space, can satisfy the approval criteria provided conditions are imposed as outlined below. The Commission should ask the applicant to clarify the extent to which TKO Properties I, LLC possesses an ownership interest in the property, so that ownership information is accurately reflected in any final order or findings that are adopted.

Considering the above, staff recommends the Planning Commission approve this request, subject to the following:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The applicant shall comply with all applicable building codes, fire codes, zoning ordinance requirements, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicants are responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
3. As units are replaced within the park, the replacement units shall comply with the most current Oregon Manufactured Dwelling and Park Specialty Code, including the Fire and Life Safety Standards listed under ORS 446.100.
4. Units shall adhere to zoning setbacks unless a reduced setback had been previously established with a non-conforming unit.
5. As units are replaced within the park, the new units shall be situated in such a manner that they do not impair the City's ability to exercise its easement rights and access its utilities. It is the owner's responsibility to establish the location of such utilities and easements when placing new units and the presence of such utilities and easements may require reconfiguration of spaces.



Derrick I. Tokos AICP  
Community Development Director  
City of Newport

October 11, 2019



## City of Newport Land Use Application

<b>Applicant Name(s):</b>	<b>Property Owner Name(s) if different:</b>	
TKO Properties I LLC DBA Surfside Community		
<b>Applicant Mailing Address:</b>	<b>Property Owner Mailing Address:</b>	
7308 N Macrum Avenue, Portland OR 97203	Same as Applicant Mailing Address	
<b>Applicant Phone No.</b>	<b>Property Owner Phone No.</b>	
503-830-1118	Same as Applicant Phone	
<b>Applicant Email</b>	<b>Property Owner Email</b>	
operations@surfsidecommunity.com		
<b>Authorized Representative(s):</b> <i>Person authorized to submit and act on this application on applicant's behalf</i>		
Christopher Khari Gates, Registered Agent, Member, Owner		
<b>Authorized Representative Mailing Address:</b>		
Same as Applicant Mailing Address		
<b>Authorized Representative Telephone No.</b>		
Same as Applicant Phone Number		
<b>Authorized Representative Email.</b> Same as Applicant Email		
<b>Project Information</b>		
<b>Property Location:</b> <i>Street name if address # not assigned</i> 392 NW 3rd Street, Newport, OR 97365		
<b>Tax Assessor's Map No.:</b> 11-11-5-CD	<b>Tax Lot(s):</b> 10500,10501,10600,10700,10800	
<b>Zone Designation:</b> R-4	<b>Legal Description:</b> <i>Add additional sheets if necessary</i>	
<b>Comp. Plan Designation:</b> High Density Residential		
<b>Brief description of Land Use Request(s):</b>		
Alteration of a non-conforming use to add one space to manufactured home park.		
<i>Examples:</i>		
1. Move north property line 5 feet south		
2. Variance of 2 feet from the required 15-foot front yard setback		
<b>Existing Structures:</b> if any Double -Wide Home that will be removed because it is beyond it's useful life.		
<b>Topography and Vegetation:</b> See Attached		
<b>Application Type (please check all that apply)</b>		
<input type="checkbox"/> Annexation <input type="checkbox"/> Appeal <input type="checkbox"/> Comp Plan/Map Amendment <input type="checkbox"/> Conditional Use Permit <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Design Review <input type="checkbox"/> Geologic Permit	<input type="checkbox"/> Interpretation <input type="checkbox"/> Minor Replat <input type="checkbox"/> Partition <input type="checkbox"/> Planned Development <input type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Shoreland Impact <input type="checkbox"/> Subdivision <input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> UGB Amendment <input type="checkbox"/> Vacation <input type="checkbox"/> Variance/Adjustment <input type="checkbox"/> PC <input type="checkbox"/> Staff <input type="checkbox"/> Zone Ord/Map Amendment <input checked="" type="checkbox"/> Other
FOR OFFICE USE ONLY		
<b>File No. Assigned:</b> 8-NCU-19		
<b>Date Received:</b> 9/23/19	<b>Fee Amount:</b> 4802-	<b>Date Accepted as Complete:</b>
<b>Received By:</b> sm	<b>Receipt No.:</b> 3552	<b>Accepted By:</b>
City Hall 169, SW Coast Hwy Newport, OR 97365 541.574.0629		



# City of Newport Land Use Application

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

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

*Christopher Jones*  
Applicant Signature(s)

9/20/19  
Date

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

Date

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

Date

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

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



TKO Properties I LLC | 7308 N Macrum Avenue | Portland, OR 97203

Derrick Tokos  
Planning & Community Development Director  
City of Newport  
169 SW Coast Hwy.  
Newport, OR 97365

September 20, 2019

RE: Application submitted on behalf of TKO Properties I, LLC

Dear Derrick:

With this letter, I am enclosing an Application submitted on behalf of TKO Properties I LLC.

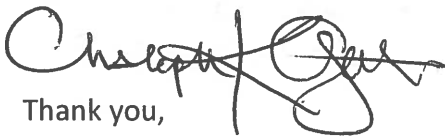
The application is for alteration of a non-conforming use. TKO Properties plans to remove the double-wide park home currently occupying space #1 in Tax Lot 10500 with a park model home. There is space to add one additional park model home to space #1 without causing greater adverse impact the neighborhood, the park or the easement with the City of Newport.

TKO Properties is seeking approval to add one additional "park model" home to space #1 so that in total there will be two park model homes in the area (space #1) that once occupied one double-wide park home. The change only impacts Tax Lot 10500 and space #1.

As you may recall, the Doug and Verna Fitts were granted approval for alteration and expansion of a non-conforming use in 2018 under Case File 4-NCU-18. Rather than reinvent the wheel on this application, we are relying heavily on the Planning Commission Findings made in that approval. We are submitting a layout of the park based on the 2018 application and are also submitting a revision to Tax Lot 10500 and 10600 which shows the modification to the layout in that area to place two park model homes which will replace the double-wide currently occupying space #1. The dimensions of that area are shown on the drawings which were prepared for TKO Properties I LLC by Mr. Doug Fitts the former owner.

Also submitted with this application are proposed findings, photographs, and a utility layout for the area being modified. The utility drawing was done taking into consideration the easement that requires the City to have direct access to the storm water drain.

Please contact me if you have any immediate questions or concerns.

  
Thank you,

Christopher Khari Gates  
TKO Properties I LLC  
Registered Agent, Member, Owner

Written findings of fact that the expansion or replacement will not result in a greater adverse impact on the neighborhood in regard to the following:

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

Located at 392 NW 3<sup>rd</sup> Street, Newport, OR, Surfside Mobile Village has been in existence since 1972. It is a 55 and older community where most all the residences are occupied on a full-time basis. In March 2019 TKO Properties I LLC purchased the park and the land North of the park from Doug and Verna Fitts.

At the time of purchase, the park was renamed Surfside Community, in an effort, to reinforce that Surfside is more than a place where people live, it is a COMMUNITY where residents are part of a fellowship, have a voice and a sense of pride. It is our intent to continue to build on the foundation that Doug and Verna built by making the necessary tangible and intangible improvements to the Community that align with this goal.

Specifically, we are requesting 33 spaces, consisting of 24 permanent spaces and 7 RV spaces. This is an increase of one manufactured dwelling space to accommodate an additional "park model" home on the property.

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

- i. The roads in the park are paved so there is little if any noise from any vehicles moving in the park. The uses do not cause dust, odor, fumes, glare, or smoke.
- ii. The park model unit planned for this property will be placed on a foundation and will be permanently connected to utilities.

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

- i. All sewer and water services are in place at the park. The units on ***Tax Lot 10500 (Space 1)*** will be served by utilities already existing on the lot.
- ii. Attached is a detail drawing (Attachment 'D'), which establishes that suitable vehicle access can be provided to park two model recreational vehicle units on ***Tax Lot 10500 (Space 1)*** *without impeding the City's access to the storm/sewer manhole in the park.*
- iii. NW 3rd Street provides access to all units on ***Tax Lot 10500 and 10600*** in the park except the four park home models on ***Tax Lot 10700***. Tax Lot 10500 (Space 1) is the only area affected by removing the double-wide and replacing it with two *Park Model Homes*. (This public street is improved with a paved surface and sidewalk).

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

- i. The addition of two spaces on what is now ***Tax Lot 10500 Space #1*** will add only a minor amount of traffic. Any additional traffic will be on NW 3rd Street, which has been recently improved and is already a primary access to the Nye Beach Commercial area. Further, the trips to the site will be residential in nature. The placement of one model on this tax lot will be still fewer units than could be allowed by an apartment building, which is an allowed use on the property.

ii. This park is a residential development, and the types and kind of trips associated with the park use are what would be expected in a residential area. Densities are slightly higher than what exists in nearby residential neighborhoods; however, this is offset somewhat by the fact that this is a park dedicated to senior living. Further, as previously noted, the park is isolated from adjoining residential neighborhoods by terrain, so none of the park elements will orient traffic onto local streets in these areas (i.e. all traffic flows to NW 3rd Street).

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

i. Parking is provided on site. There is virtually no loading or unloading given the primary residential nature and use of the additional unit.

**f. The comparative visual appearance.**

i. The visual appearance of the park will be enhanced because the double-wide park home currently occupying space one is uninhabitable in its current state and close to 40 years old. It will be replaced by two brand new park model homes similar in size, dimension, and aesthetic to the new park homes that were brought in on Tax Lot. Both units will be for full-time residents.

**g. The comparative hours of operation.**

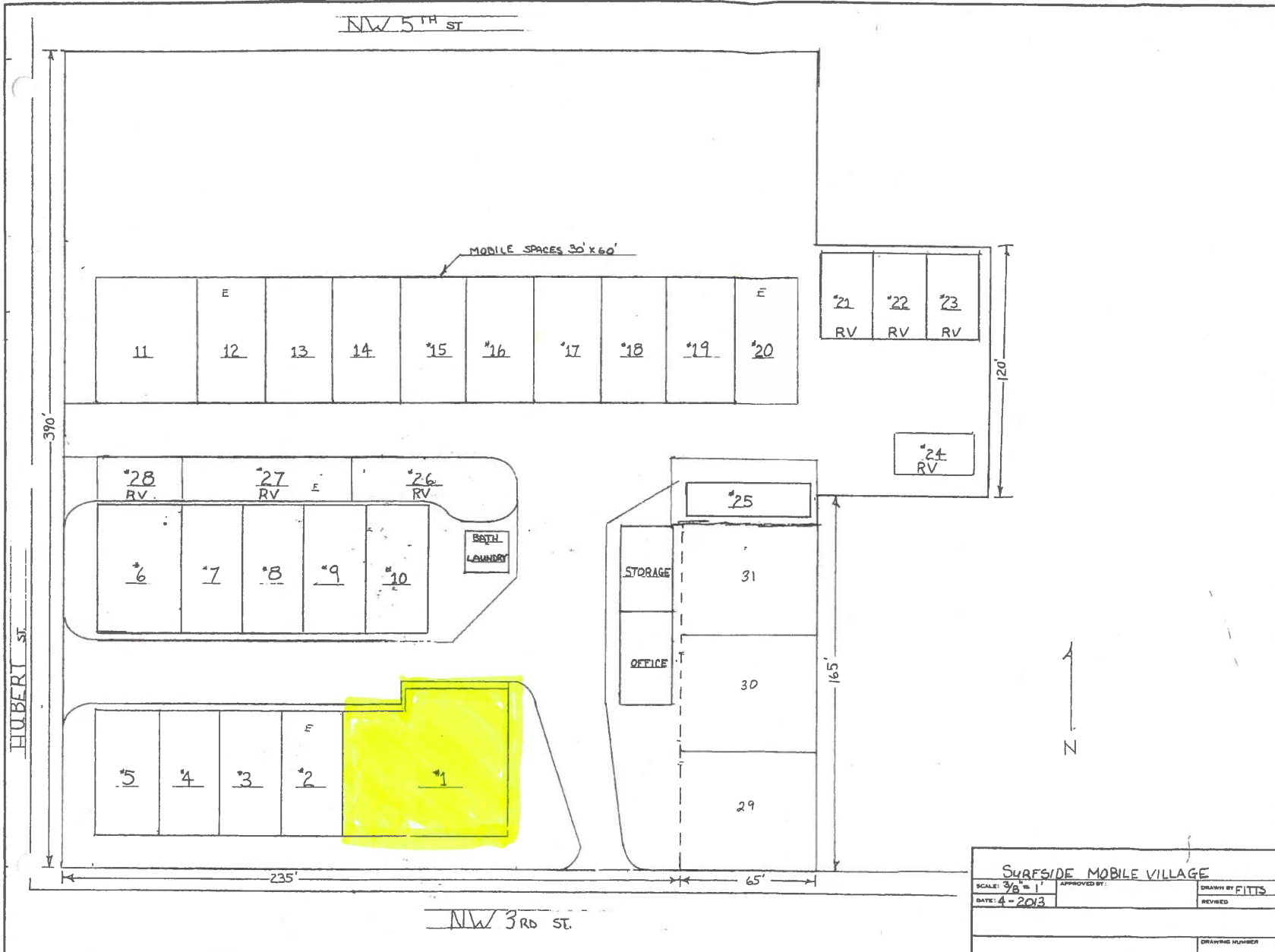
i. The applicant notes that the hours of operation will not change. The one additional unit is a residential unit.

**h. The comparative effect on solar access and privacy.**

- i. Given that the park sits lower than adjoining property, and the addition unit that is proposed is a single-story unit, solar access to adjoining property will not be affected.
- ii. The unit sits lower than the surrounding property, there will be no impact on privacy on adjoining property.

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

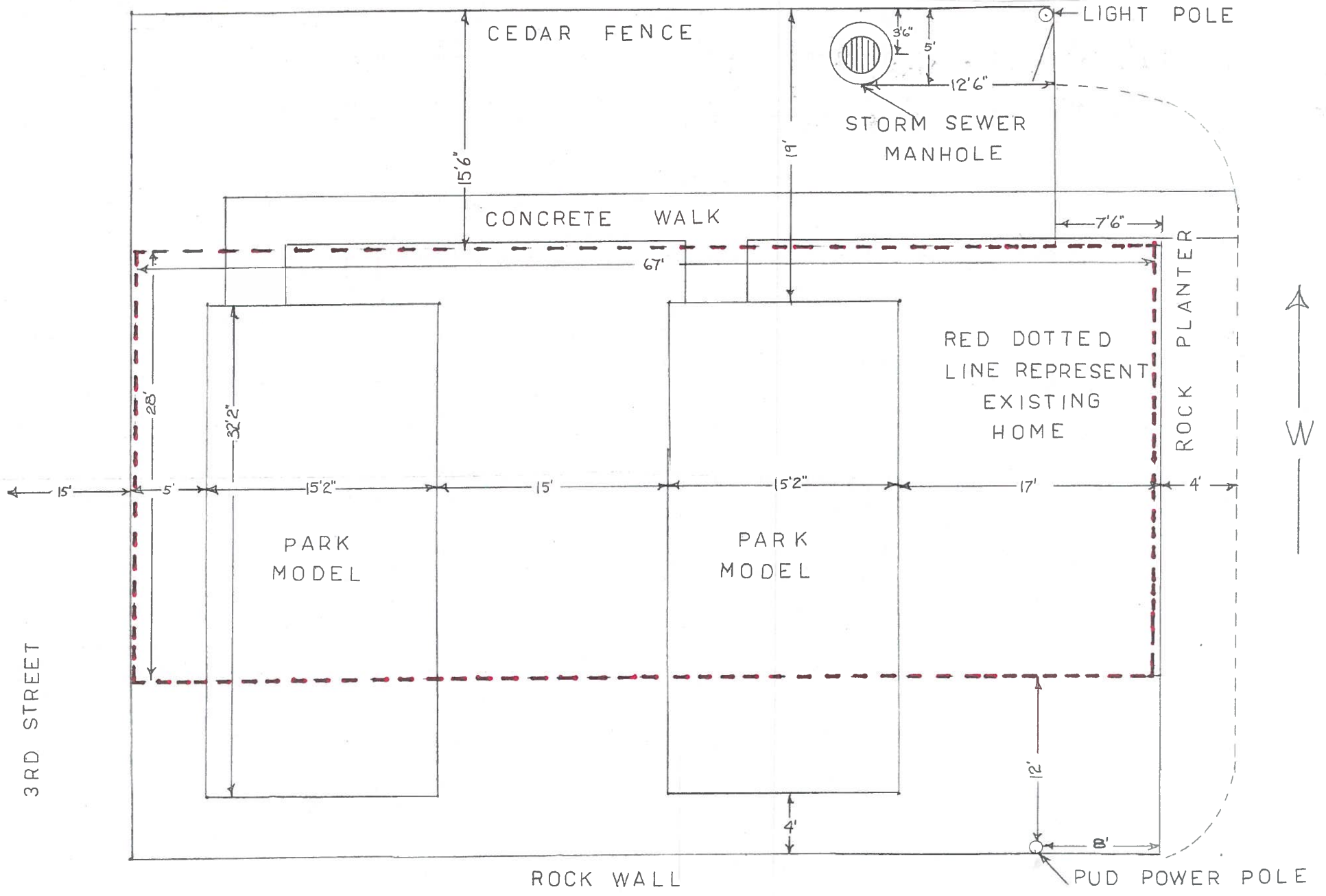
- i. The new park model will be an enhancement to the property.
- ii. The geographical features of the area tend to separate the property from other residential uses in the area.
- iii. The approval of this proposal will assist in providing safe, clean, and affordable housing for those 55 and older.



SURFSIDE MOBILE VILLAGE		
SCALE: 3/8" = 1'	APPROVED BY:	DRAWN BY: FITTS
DATE: 4-2013		REVISED:
DRAWING NUMBER		

**Attachment "E"**

8-NCU-19





This map is for informational use only and has not been prepared for nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its completion or use and users of this

## PHOTO LIST

No.	Description
1	Photo at corner of SW 3 <sup>rd</sup> and Nye
2	Photo looking east on SW 3 <sup>rd</sup>
3	Photo looking north on Nye from 3 <sup>rd</sup> and Nye
4	Area where 4 park model homes are being installed. The two shown are the two most southerly units
5	Another photo of 2 park models recently installed
6	Photo from SW 3 <sup>rd</sup> showing new park model and topography of area
7	Third Street entrance to park
8	Street scene in park
9	Street scene in park
10	Street scene in park
11	Photo showing new park models taken from West side of park
12	Photo showing park models and relative elevations

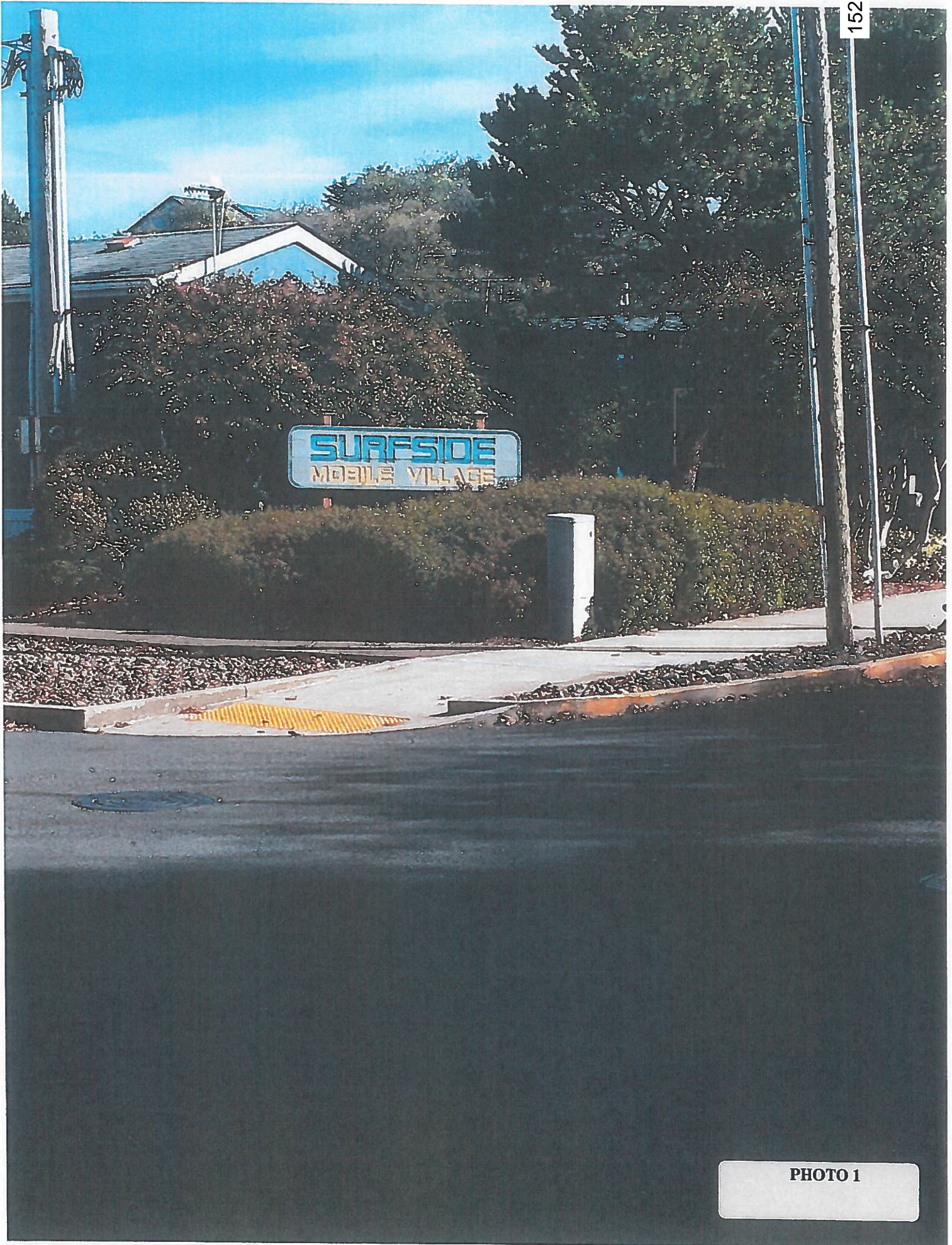


PHOTO 1



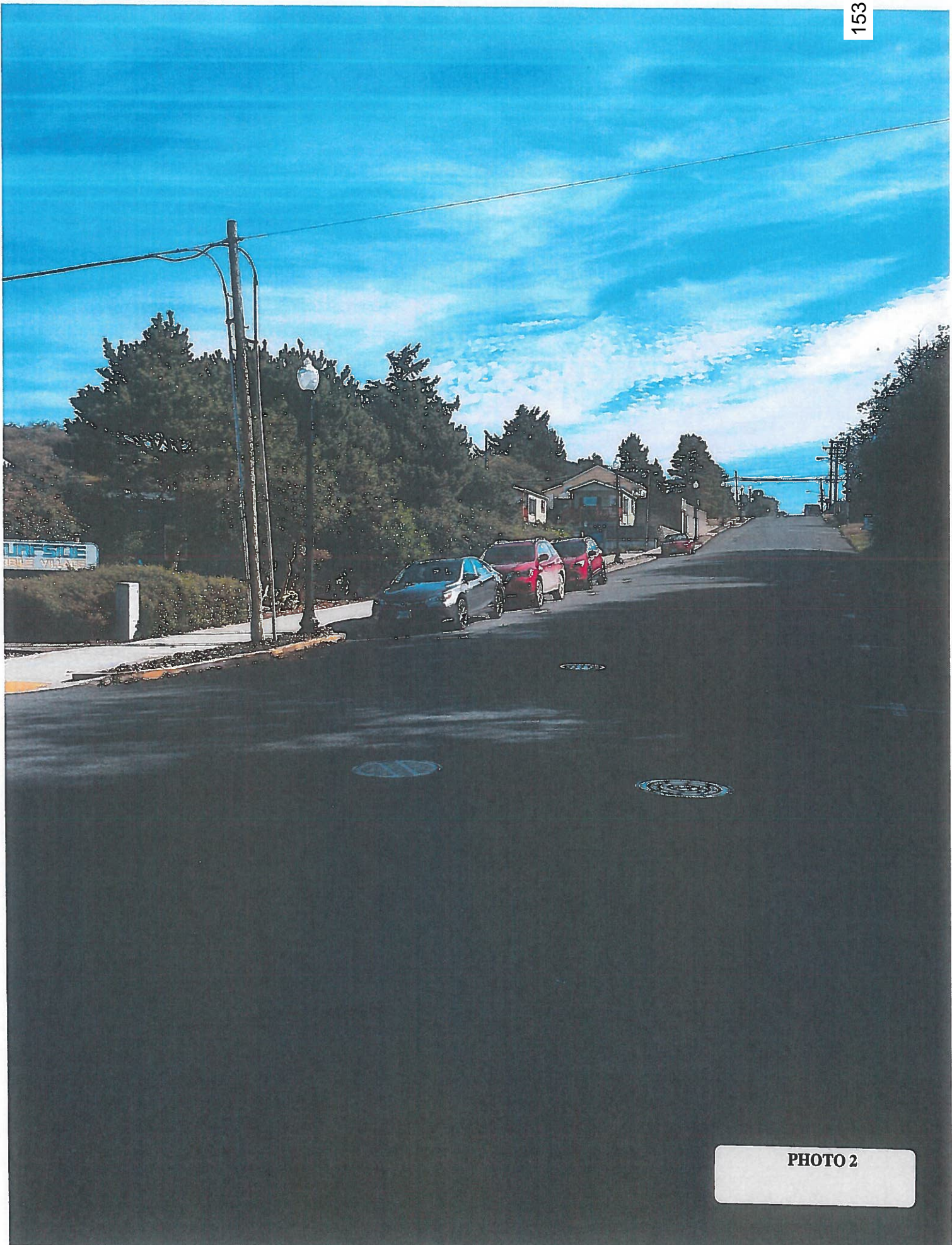


PHOTO 2

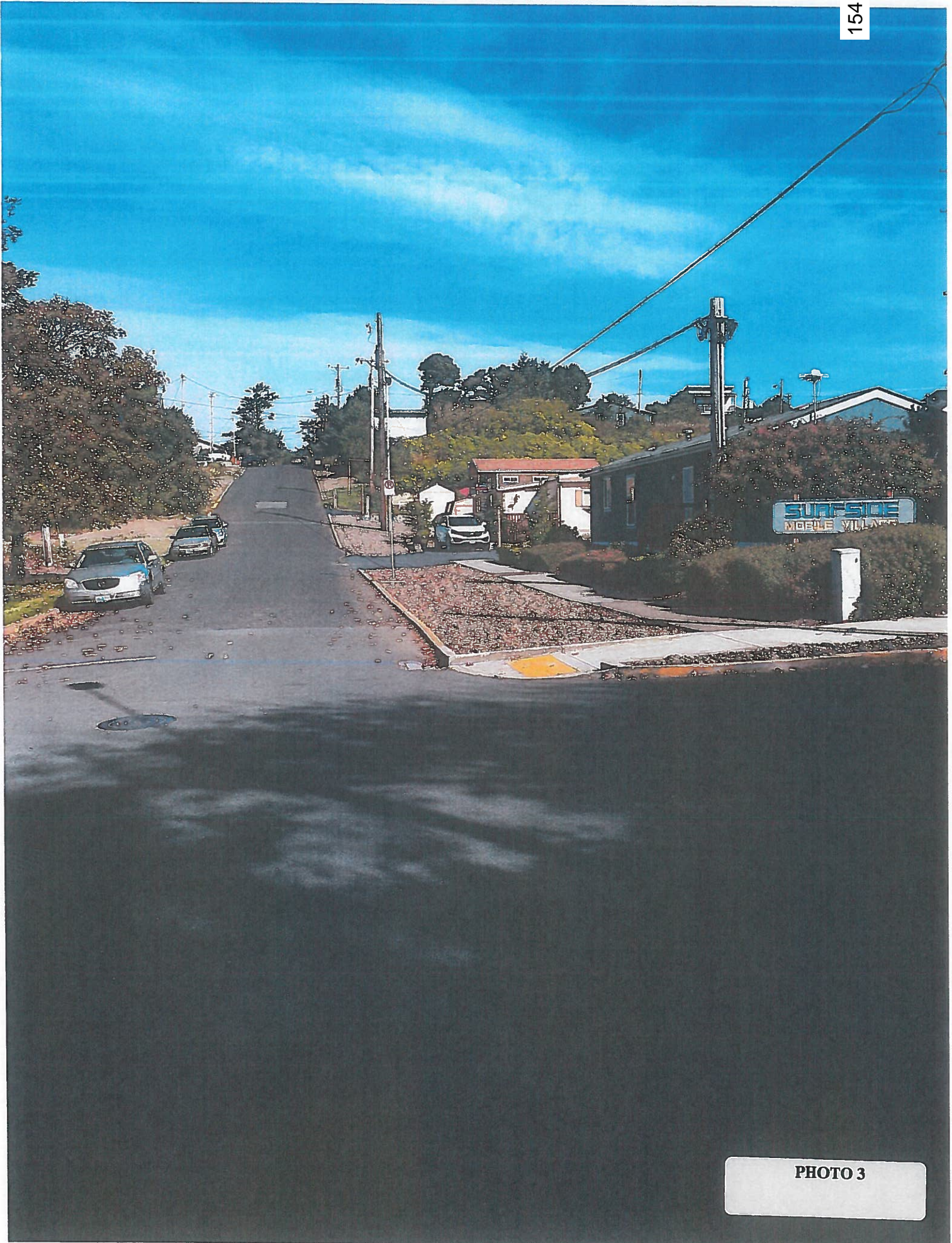


PHOTO 3



PHOTO 4



PHOTO 5

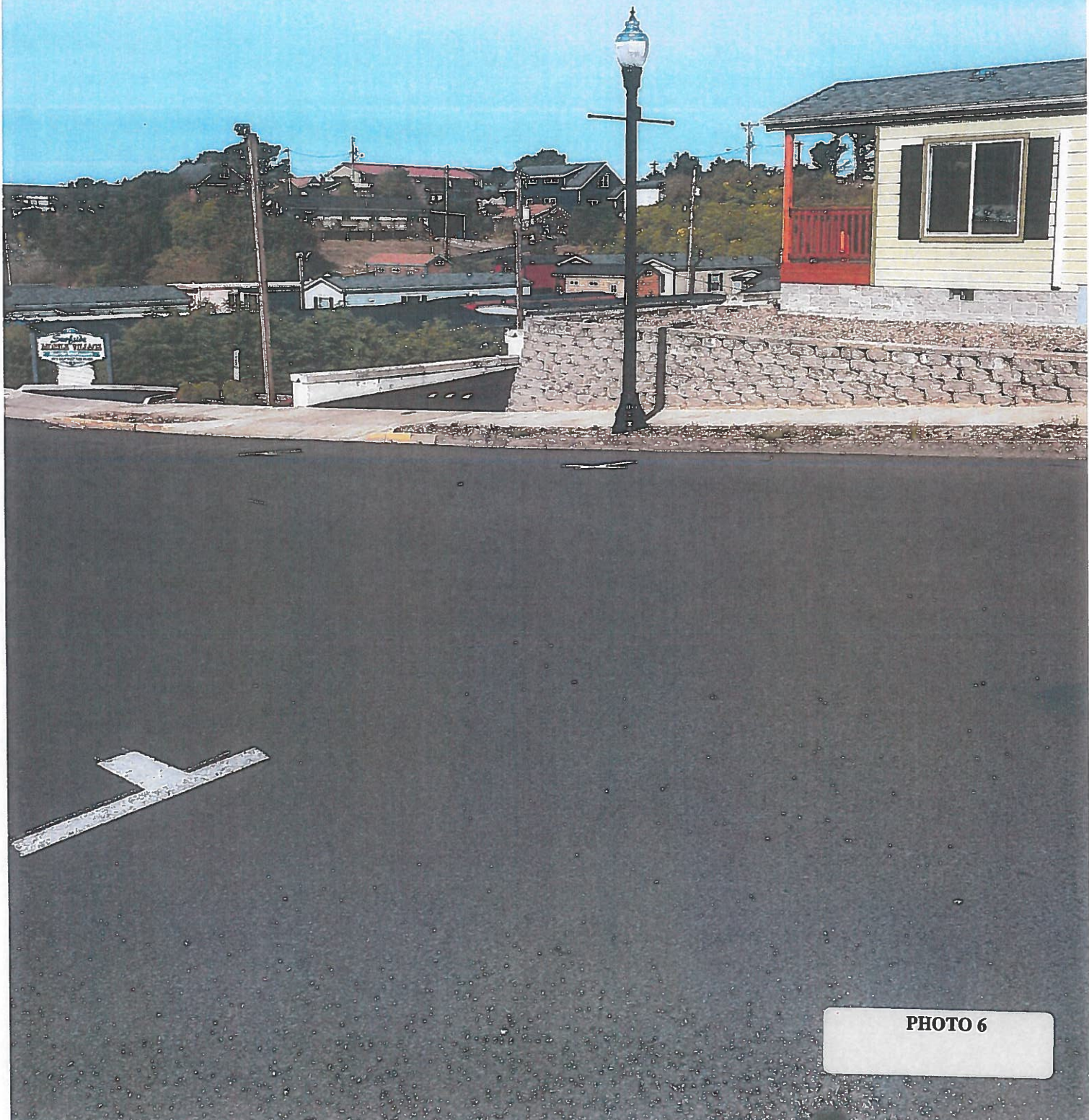


PHOTO 6

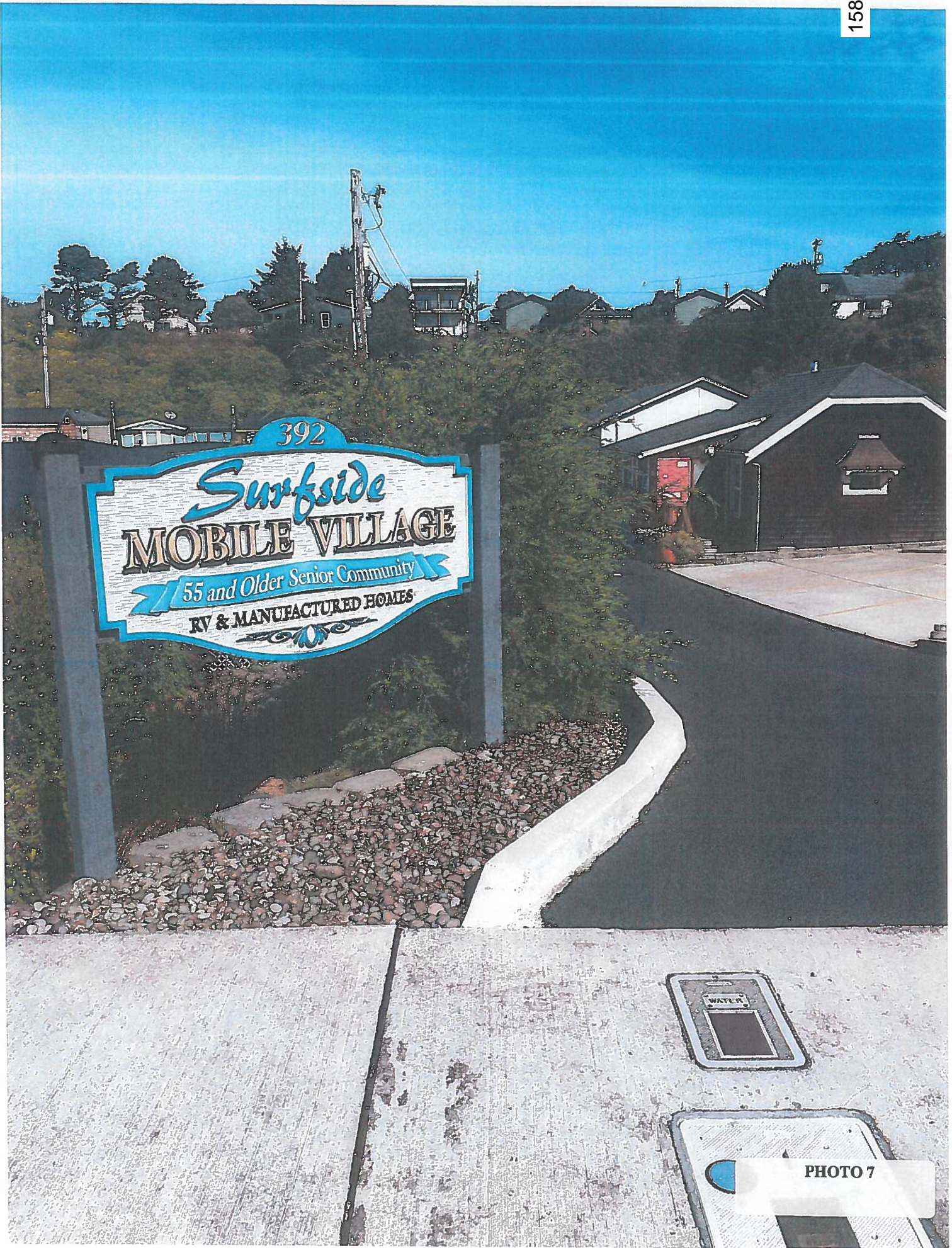


PHOTO 7



PHOTO 8

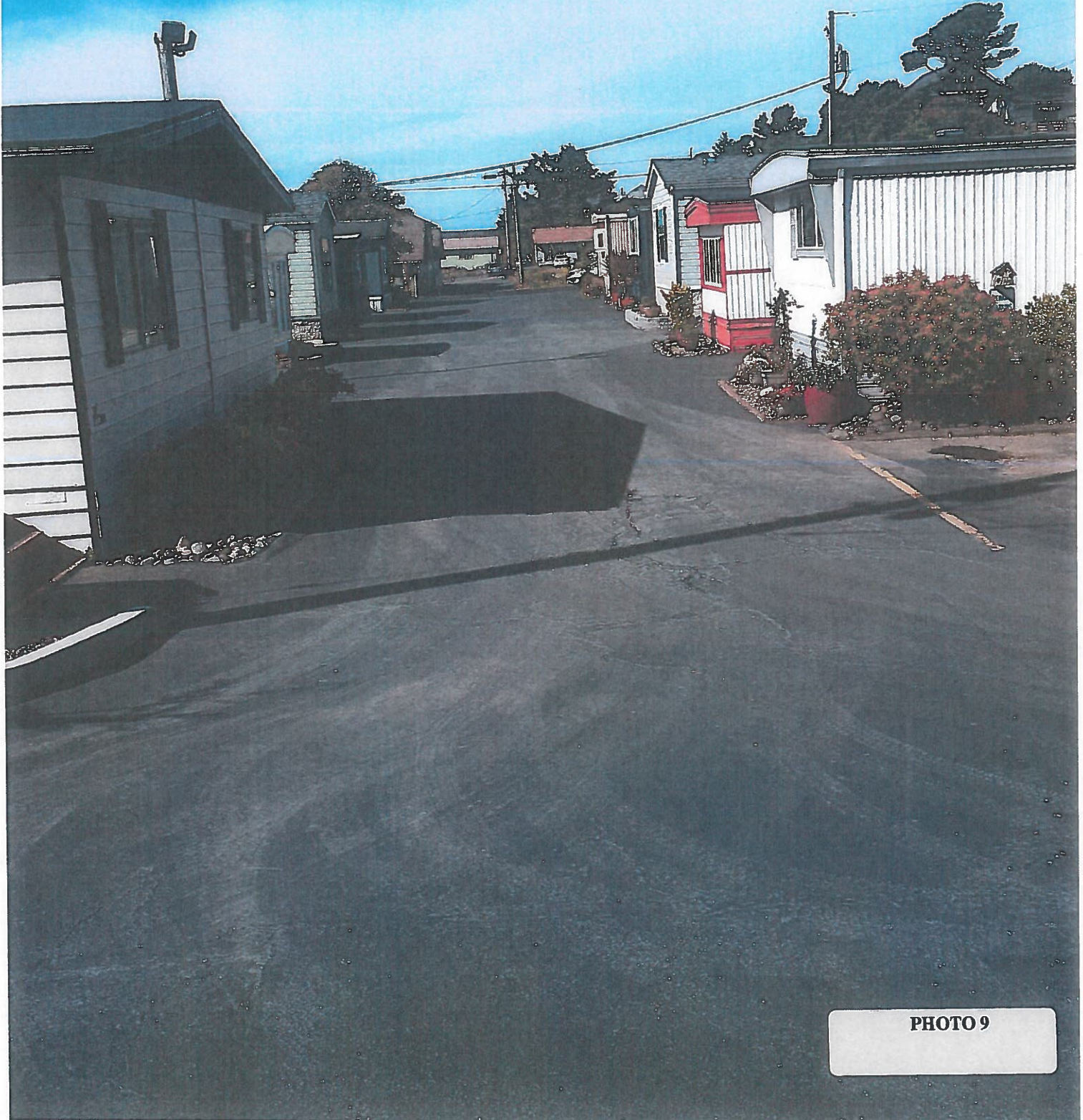


PHOTO 9



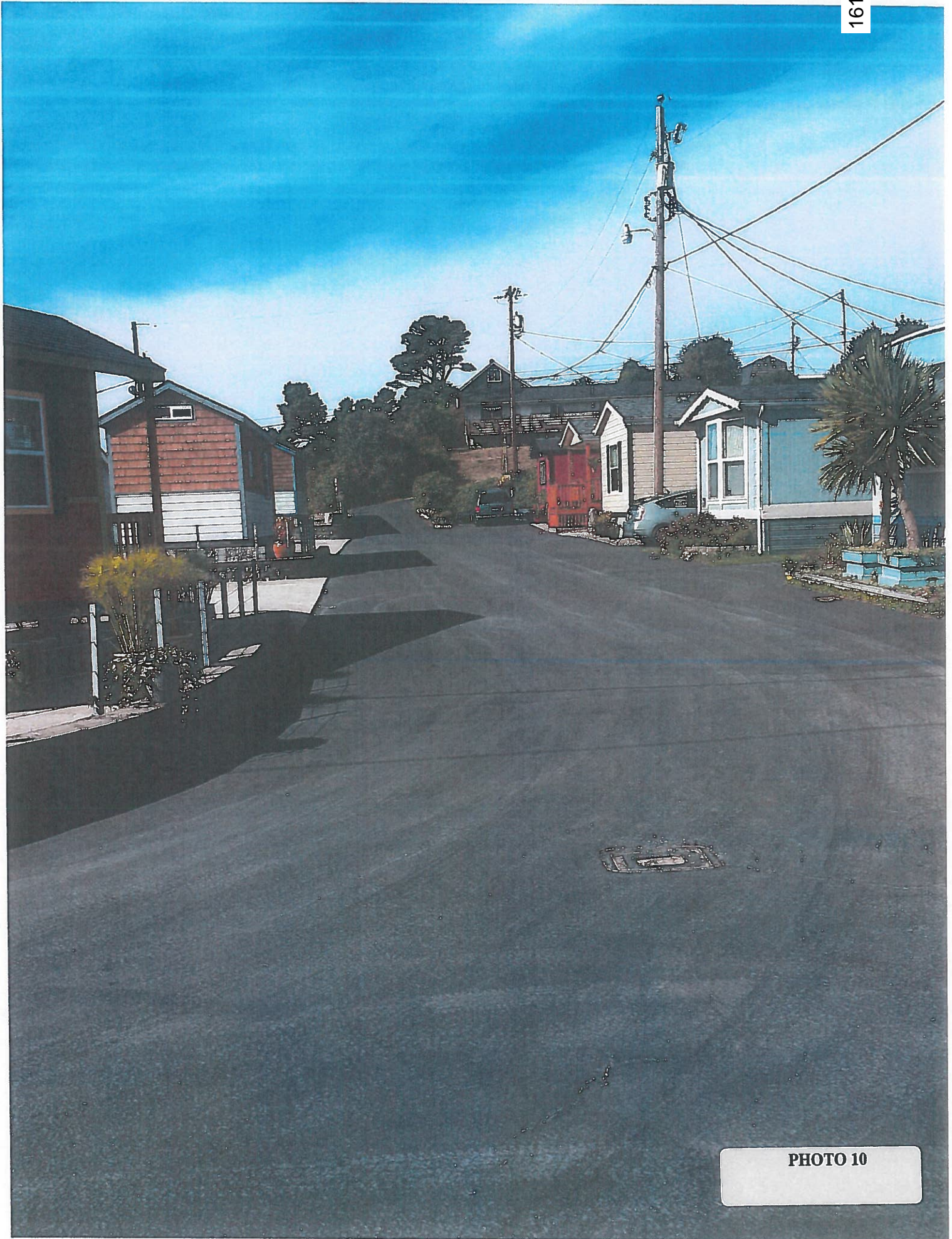


PHOTO 10

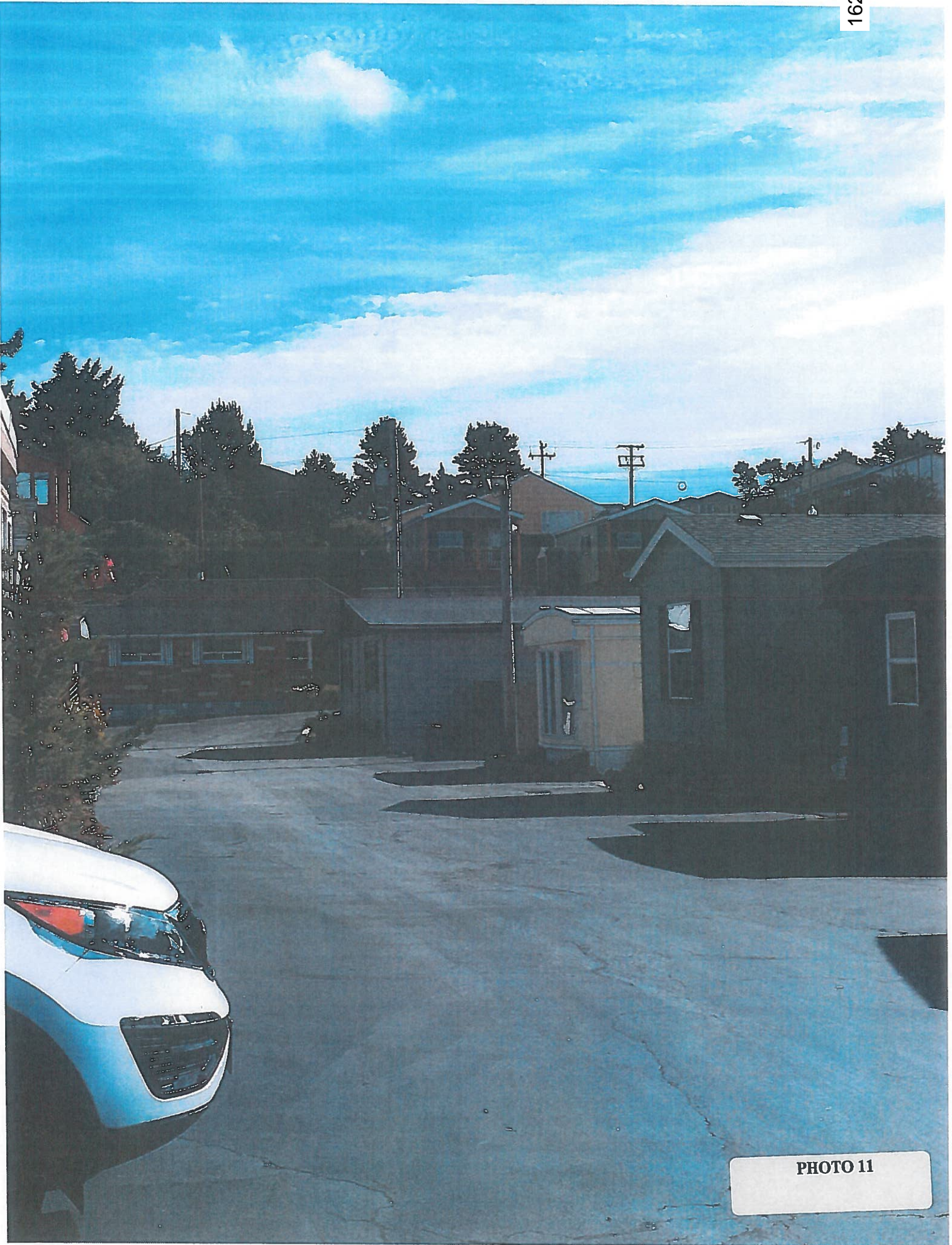


PHOTO 11

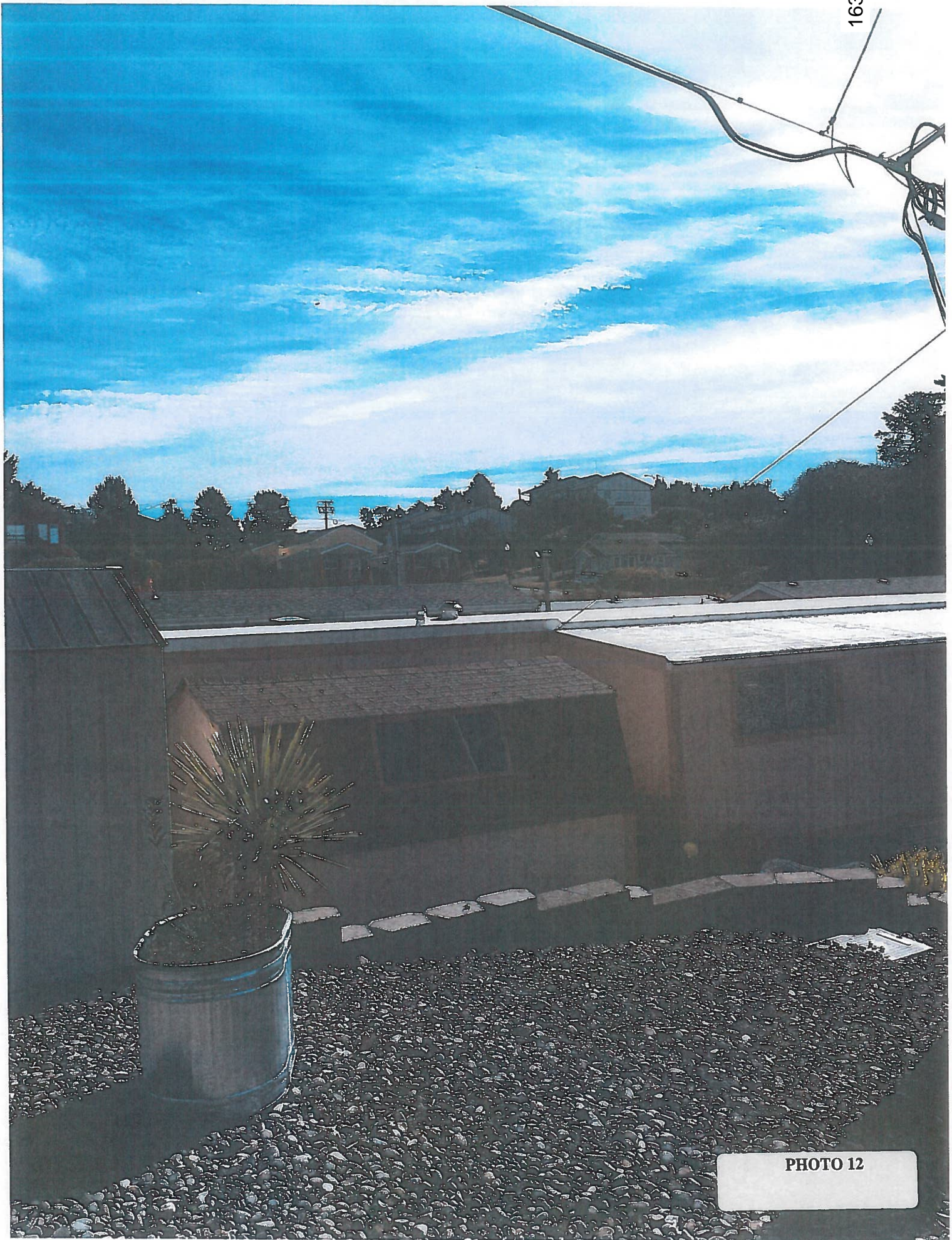


PHOTO 12



NW Hurbert St

NW Hurbert St

NW Hurbert St

NW 3rd St

NW 3rd St

NW 3rd St

NW Lee St

392 Northwest 3rd Street

**Attachment "H"**  
8-NCU-19



**City of Newport**

169 SW Coast Hwy  
Newport, OR 97365

541-574-0611  
City Hall is open Monday-Friday 8am-5pm  
apart from Holidays.

Remove Account

Have your bill paid automatically each month with Xpress Bill Pay's hassle-free Auto Pay feature.

**Billing Address**

SURFSIDE COMMUNITY  
TKO PROPERTIES I LLC  
7308 N MACRUM AVE  
PORTLAND, OR 97203

**Service Address**

392 NW 3RD ST  
NEWPORT OR 97365

**Account Information**

Account Number: 10651.01  
Account Type: Utility  
Due Date: 9/16/2019  
Billing Period End: 8/31/2019

Description	Read Date	Prev Reading	Present Reading	Total Usage
WTQ	8/8/2019	96	104	8
WTQ	8/8/2019	530	585	55
WTQ	8/8/2019	58	69	11

**Total Charges**

Water Flat Rate	\$142.04
Water Qty	\$352.98
Sewer Qty	\$726.68
Sewer Flat Rate	\$29.76
Infrastructure	\$63.03
Storm Water Fee	\$16.50
<b>Statement Charges</b>	<b>\$1,330.99</b>
Payment on 9/17/2019	-\$1,330.99
<b>Total Amount Due</b>	<b>\$0.00</b>

Previous Payment Date: 8/19/2019  
Previous Payment Amount: \$1,039.19

The information displayed here is provided by City of Newport. If there is a discrepancy, please contact City of Newport. Please note that model bill is only displaying payments made on or after 08/30/2019. Payments made directly to Newport may or may not be displayed here.

PROPERTIES I LLC

**electric**

Account 401529000, Auto Pay  
7308 N MACRUM AVE, PORTLAND, OR

[Billing History »](#)

**There are no scheduled payments.**

**Past Payments**

Service	Payment Date	Amount	Type
electric	09/03/2019	\$111.86	Recurring Ach
electric	08/06/2019	\$113.85	Recurring Ach
electric	07/05/2019	\$129.93	Recurring Ach
electric	06/04/2019	\$131.84	Recurring Ach
electric	05/02/2019	\$105.22	Recurring Ach
electric	04/08/2019	\$300.00	Ebill Credit Card



- Billing & Payments
- Billing History
- Payment History**
- Auto Pay Program
- Round Up

**TKO PROPERTIES LLC**

**electric**  
Account 401529000, Auto Pay  
7333 N MACRUM AVE, PORTLAND, OR  
[Billing History >](#)

Select Account  
401529000 - 392 NW 3RD ST UNIT 21

**There are no scheduled payments.**

**Past Payments**

Service	Payment Date	Amount	Type	Status
electric	09/03/2019	\$111.86	Recurring Ach	Posted
electric	08/06/2019	\$113.85	Recurring Ach	Posted
electric	07/05/2019	\$129.93	Recurring Ach	Posted
electric	06/04/2019	\$131.84	Recurring Ach	Posted
electric	05/02/2019	\$105.22	Recurring Ach	Posted
electric	04/08/2019	\$300.00	Ebill Credit Card	Posted

« < 1-6 of 6 > »



NW HURBERT ST

NW LEE ST

NW 3RD ST

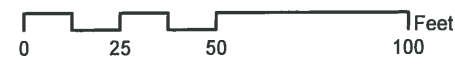
168



City of Newport  
 Community Development Department  
 169 SW Coast Highway Phone: 1.541.574.0629  
 Newport, OR 97365 Fax: 1.541.574.0644

**City Utilities at Surfside Mobile Village  
 (water - blue, sewer - green, storm - orange)**

Image Taken July 2018  
 4-inch, 4-band Digital Orthophotos  
 Quantum Spatial, Inc. Corvallis, OR



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its completion or use and users of this



## Business Registry Business Name Search

New Search

### Business Entity Data

10-11-2019  
09:08

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
1531614-93	DLLC	ACT	OREGON	03-01-2019	03-01-2020	
<b>Entity Name</b> TKO PROPERTIES I, LLC						
<b>Foreign Name</b>						

New Search

### Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS			
<b>Addr 1</b>	7308 N MACRUM ST				
<b>Addr 2</b>					
<b>CSZ</b>	PORTLAND	OR	97203	<b>Country</b>	UNITED STATES OF AMERICA

*Please click [here](#) for general information about registered agents and service of process.*

Type	AGT	REGISTERED AGENT	Start Date	03-01-2019	Resign Date
<b>Name</b>	KHARI GATES				
<b>Addr 1</b>	7308 N MACRUM ST				
<b>Addr 2</b>					
<b>CSZ</b>	PORTLAND	OR	97203	<b>Country</b>	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS			
<b>Name</b>	KHARI GATES				
<b>Addr 1</b>	7308 N MACRUM ST				
<b>Addr 2</b>					
<b>CSZ</b>	PORTLAND	OR	97203	<b>Country</b>	UNITED STATES OF AMERICA

Type	MEM	MEMBER			Resign Date
<b>Name</b>	OTIS A GATES				
<b>Addr 1</b>	D/B/A OAG PROPERTIES				
<b>Addr 2</b>	69 MAIN ST				
<b>CSZ</b>	FRAMINGHAM	MA	01702	<b>Country</b>	UNITED STATES OF AMERICA

Type	MEM	MEMBER			Resign Date
<b>Not of Record</b>	BOTTLEROCKET PROPERTIES LLC				
<b>Addr 1</b>	7308 N MACRUM ST				
<b>Addr 2</b>					
<b>CSZ</b>	PORTLAND	OR	97203	<b>Country</b>	UNITED STATES OF AMERICA

<b>Type</b>	MEMBER			<b>Resign Date</b>	
<b>Of Record</b>	115525-98	WHISKEYTOWN INVESTMENTS, LLC			
<b>Addr 1</b>	2424 SE 11TH AVE				
<b>Addr 2</b>					
<b>CSZ</b>	PORTLAND	OR	97214	<b>Country</b>	UNITED STATES OF AMERICA

New Search


Name History

<b>Business Entity Name</b>	<b>Name Type</b>	<b>Name Status</b>	<b>Start Date</b>	<b>End Date</b>
TKO PROPERTIES I, LLC	EN	CUR	03-01-2019	

Please read before ordering Copies.

New Search

Summary History

<b>Image Available</b>	<b>Action</b>	<b>Transaction Date</b>	<b>Effective Date</b>	<b>Status</b>	<b>Name/Agent Change</b>	<b>Dissolved By</b>
	ARTICLES OF ORGANIZATION	03-01-2019		FI	Agent	

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WTO165547-LMD  
RECORDING REQUESTED BY:



255 SW Coast Highway, Suite 100  
Newport, OR 97365

**AFTER RECORDING RETURN TO:**

Christopher Khari Gates and Molly Fonner Gates  
~~Multiple~~ **6220 SW Spruce Ave**  
~~Newport, OR 97365~~ **Beaverton, OR 97005**

**SEND TAX STATEMENTS TO:**

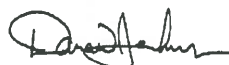

Whiskeytown Investments, LLC  
**6220 SW Spruce Ave**  
**Beaverton, OR 97005**  
R338472, R333737, R336057, R340750, R343150,  
11-11-05-CD-10600, 11-11-05-CD-10500, 11-11-05-CD-10501,  
11-11-05-CD-10700 and 11-11-05-CD-10800  
Multiple, Newport, OR 97365  
Consideration: \$1,395,000.00

**Attachment "K"**

8-NCU-19

171

Lincoln County, Oregon  
**03/20/2019 01:17:30 PM**  
 DOC-WD Cnt=1 Pgs=5 Stn=20  
 \$25.00 \$11.00 \$10.00 \$60.00 \$7.00 \$113.00  
 I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

  
 Dana W. Jenkins, Lincoln County Clerk
 

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SPECIAL WARRANTY DEED - STATUTORY FORM**  
(INDIVIDUAL or CORPORATION)

**Douglas E. Fitts and Verna L. Fitts, Trustees of the Fitts Family Trust, U.A.D. December 6, 1991, Grantor,** conveys and specially warrants to **Whiskeytown Investments, LLC** as to an undivided 10% interest and **Christopher Khari Gates and Molly Fonner Gates, as tenants by the entirety,** as to an undivided 40% interest and **Otis A. Gates, Ildba OAG Properties,** as to an undivided 50% interest, all as tenants in common, Grantee, the following described real property free and clear of encumbrances created or suffered by the grantor except as specifically set forth below:

**PARCEL I:**

That portion of Lot 2, Block 10, NYE AND THOMPSON'S ADDITION TO THE CITY OF NEWPORT, in Lincoln County, Oregon, described as follows: BEGINNING at the Southwest corner of said Lot 2, said point of beginning being the intersection of the North line of Agnes Street and the East line of Thompson Street; thence North along the East line of Thompson Street 85 feet to the Southwest corner of the Seits tract described in deed recorded June 6, 1924 in Book 46, Page 172, Deed Records; thence along the South line of the Seits tract, East 125 feet to the West line of the tract described in deed to Seits recorded in Book 46, Page 338, Deed Records on August 11, 1924; thence South along the West line of the Seits tract hereinabove last referred to, 85 feet to the North line of Agnes Street; thence West 125 feet to the point of beginning in Lincoln County, Oregon.

**PARCEL II:**

Beginning at the Northeast corner of Lot 2, Block 10, NYE AND THOMPSON'S ADDITION TO THE CITY OF NEWPORT, in Lincoln County, Oregon; thence South along the East line of said Lot 2, 139 feet to a point 161 feet North of the Southeast corner of said lot; thence West 65 feet; thence South 161 feet, more or less, to the North line of Northwest Third formerly Agnes Street; thence West 110 feet along the North line of said Agnes Street to the Southeast corner of the tract sold to M. L. Seitz and spouse by deed recorded in Book 48, Page 31, Deed Records; thence North along the East line of the said Seitz tract 85 feet to the Northeast corner of the said Seitz tract; thence West 125 feet along the North line of the Seitz tract to the West line of Lot 2, Block 10, NYE AND THOMPSON'S ADDITION; thence North along the West line of said Lot 2, 215 feet to the Northwest corner of the said Lot 2; thence East along the North line of said Lot 2, 300 feet to the point of beginning, all in Lincoln County, Oregon.

**SPECIAL WARRANTY DEED - STATUTORY FORM**  
(continued)

PARCEL III:

Beginning at the Southeast corner of Lot 2, Block 10, NYE AND THOMPSON'S ADDITION TO THE CITY OF NEWPORT; thence North 165 feet; thence West 65 feet; thence South 165 feet; thence East 65 feet to the point of beginning, all being in Lot 2, Block 10, NYE AND THOMPSON'S ADDITION TO NEWPORT, in Lincoln County, Oregon; EXCEPTING THEREFROM the North 4 feet as described in deed from Wilson et ux, to Hursh et ux, recorded May 30, 1972 in Book 33, Page 1308, Film Records.

PARCEL IV:

Lots 7 and 8, Block 2 of RHODODENDRON PARK in Lincoln County, Oregon.

The true consideration for this conveyance is One Million Three Hundred Ninety-Five Thousand And No/100 Dollars (**\$1,395,000.00**).

**Subject to:**

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

**BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.**

**SPECIAL WARRANTY DEED - STATUTORY FORM**  
(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: 3-18-2019

Fitts Family Trust, U.A.D. December 6, 1991

BY: *[Signature]* TRUSTEE  
Douglas E. Fitts

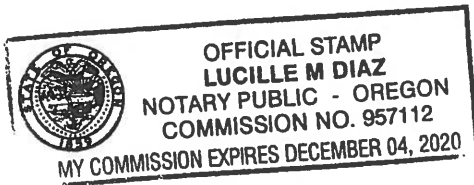
BY: *[Signature]* TRUSTEE  
Verna L. Fitts

State of OR  
County of Lincoln

This instrument was acknowledged before me on 3-18-19 by Douglas E. Fitts and Verna L. Fitts, Trustees of the Fitts Family Trust, U.A.D. December 6, 1991.

*[Signature]*  
Notary Public - State of Oregon

My Commission Expires: 12-4-20



## EXHIBIT "A"

### Exceptions

**Subject to:**

Rights of the public to any portion of the Land lying within the area commonly known as roads and highways.  
Affects: Parcel II

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of Newport  
Purpose: pipe line  
Recording Date: September 22, 1953  
Recording No: Book 160, page 278  
Affects: Tax Lot 10500

Easement(s) for the purpose(s) shown therein and rights incidental thereto, as granted in a documents:

Granted to: City of Newport  
Recording Date: June 26, 1963  
Recording No: Book 235, pages 557 and 593  
Affects: Tax Lot 10500

Terms, provisions and conditions, including, but not limited to, maintenance provisions, and a covenant to share the costs of maintenance, contained in Sewerline Easement

Recording Date: May 30, 1972  
Recording No.: Book 33, page 1309  
Affects: Tax Lot 10500

Agreement Land Use Action Waiver of Remonstrance, including the terms and provisions thereof,

Between: Douglas E. & Verna L. Fitts, Trustees  
And: City of Newport  
Recording Date: December 2, 2013  
Recording No.: 2013-11559  
(Covers Additional Property)

Affidavit of Compliance with ORS Chapter 89 of the 2014 Act relating to manufactured dwelling park purchase by tenants, including the terms and provisions thereof,

Recording Date: October 14, 2015  
Recording No.: 2015-10374  
(Covers Additional Property)

Affidavit of Compliance with ORS Chapter 89 of the 2014 Act relating to manufactured dwelling park purchase by tenants, including the terms and provisions thereof,

Recording Date: September 7, 2017  
Recording No.: 2017-08700  
(Covers Additional Property)

**EXHIBIT "A"**  
Exceptions

Affidavit of Compliance with ORS Chapter 89 of the 2014 Act relating to manufactured dwelling park purchase by tenants, including the terms and provisions thereof,

Recording Date: October 2, 2018  
Recording No.: 2018-09833  
(Covers Additional Property)

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Entitled: instrument  
In favor of: City of Newport  
Purpose: underground sewer pipelines  
Recording Date: June 5, 1981  
Recording No: Book 124, page 1511  
Affects: Parcel IV





**CITY OF NEWPORT  
PUBLIC NOTICE<sup>1</sup>**

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

**File No. 8-NCU-19:**

**Applicant:** TKO Properties I LLC, 7308 N Macrum Avenue, Portland, OR 97203 (Christopher Khari Gates, agent).

**Request:** Approval of a request per Section 14.32/"Nonconforming Uses, Lots, and Structures" of the Newport Municipal Code, for the alteration and expansion of a nonconforming use. The property is currently being used as a mobile home park (Surfside Mobile Village). Specifically, the applicants are requesting to be allowed to replace a manufactured home on one permanent space with two park models that would change it to two permanent spaces in the mobile home park.

**Location:** Lincoln County Assessor's Map 11-11-05-CD; Tax Lots 10500, 10501, 10600, 10700 & 10800 (392 NW 3rd Street).

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

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

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



AASTED NEIL ALLAN &  
 AASTED ROBIN L WEATHERLY  
 504 NW BROOK ST  
 NEWPORT, OR 97365

ADAMS E CAROL  
 427 NW 6TH ST  
 NEWPORT, OR 97365

BALDUFF HANNAH R &  
 MCNEILUS MERIC I  
 513 NW HURBERT ST  
 NEWPORT, OR 97365

BARNACLE INVESTMENTS LLC  
 2140 NORWOOD ST  
 EUGENE, OR 97401

BROSTOWITZ LINDA L TRUSTEE &  
 BROSTOWITZ JAMES G TRUSTEE  
 392 NW 3RD ST #5  
 NEWPORT, OR 97365

BURCH PAUL &  
 BURCH ROBERTA  
 441 NW HURBERT ST  
 NEWPORT, OR 97365

CALKINS PAUL B &  
 MARTIN CALKINS MARILYN  
 503 NW HURBERT ST  
 NEWPORT, OR 97365

CAPSHAW BRADLEY L &  
 SCHNEIDER CAPSHAW LINDA  
 353 NW 5TH ST  
 NEWPORT, OR 97365

CHAN KARL K &  
 CHAN LIN C  
 4062 NE FAIRVIEW LAKE WAY  
 FAIRVIEW, OR 97024

CHIPMAN ENTERPRISES  
 PO BOX 9  
 SILETZ, OR 97380

CITY OF NEWPORT  
 CITY MANAGER  
 169 SW COAST HWY  
 NEWPORT, OR 97365

COMMUNITY SERVICES CONSORTIUM  
 250 BROADALBIN ST SW  
 #2A  
 ALBANY, OR 97321

DRIEBERGEN ELIZABETH A &  
 DRIEBERGEN JEREMY A  
 PO BOX 275  
 NEWPORT, OR 97365

EDWARDS JACQUELYN L &  
 EDWARDS MICHAEL C  
 16413 S WINDY CITY  
 MULINO, OR 97042

FITTS DOUGLAS E TRUSTEE &  
 FITTS VERNA L TRUSTEE  
 PO BOX 172  
 TIDEWATER, OR 97390

FRITZ CRISTI  
 PO BOX 112  
 NEWPORT, OR 97365

FRY DENNIS W &  
 FRY RHONDA K  
 126 NW COTTAGE ST  
 NEWPORT, OR 97365

HEIMLICH SARA L  
 511 NW LEE ST  
 NEWPORT, OR 97365

HERNANDEZ GENARO SANTOS &  
 HERNANDEZ ROCIO SANTOS  
 PO BOX 312  
 NEWPORT, OR 97365

HOLEN H J TRUST THE &  
 HOLEN H J TRUSTEE  
 PO BOX 29  
 NEWPORT, OR 97365

HOWELL JONATHAN G &  
 HOWELL SUSAN B  
 13436 SW 62ND AVE  
 PORTLAND, OR 97219

HYDE JARED &  
 EAGER ELLEN  
 502 NW BROOK ST  
 NEWPORT, OR 97365

KELLEY SUE ANN  
 PO BOX 1466  
 NEWPORT, OR 97365

KISS RICHARD J &  
 KISS MARICELA  
 3840 EVERGREEN AVE  
 DEPOE BAY, OR 97341

LAVIN MARK &  
 LAVIN SALLY  
 355 NW 3RD ST  
 NEWPORT, OR 97365

LIEDTKE SUSAN E  
 433 NW HURBERT ST  
 NEWPORT, OR 97365

LOGAN DONALD &  
 LOGAN DOROTHY  
 2088 CATALINA DR  
 NEWPORT, OR 97365

LYNCH JON  
 169 SE VIEW DR  
 NEWPORT, OR 97365

NYE VILLAGE ASSOCIATES  
 PO BOX 1930  
 NEWPORT, OR 97365

NYE VILLAGE OFFICE CONDO  
 ASSOCIATION OF UNIT OWNERS  
 530 NW 3RD ST  
 NEWPORT, OR 97365

RASKE JAMES  
406 NW 5TH ST  
NEWPORT, OR 97365

SAKHINA AWAL LLC  
1982 KODIAK ST SW  
ALBANY, OR 97321

THORNBLAD RICHARD  
6545 S 1580E  
SALT LAKE CITY, UT 84121

WARREN JAMES RAYMOND &  
WARREN DIANA CAROL  
323 NW LEE ST  
NEWPORT, OR 97365

WORDEN MARK R  
363 NW 3RD ST  
NEWPORT, OR 97365

TKO PROPERTIES I LLC  
ATTN: CHRISTOPHER KHARI GATES  
7308 N MACRUM AVE  
PORTLAND, OR 97203

Property Owners Within 200 Feet

File No. 8-NCU-19

NW Natural  
ATTN: Dave Sanders  
1405 SW Hwy 101  
Lincoln City, OR 97367

Charter Communications  
ATTN: Keith Kaminski  
355 NE 1<sup>st</sup> St  
Newport OR 97365

CenturyLink  
ATTN: Corky Fallin  
740 State St  
Salem OR 97301

Central Lincoln PUD  
ATTN: Randy Grove  
PO Box 1126  
Newport OR 97365

\*\*EMAIL\*\*  
Lisa Phillips  
lisa.phipps@state.or.us  
DLCD NORTH COAST REGIONAL  
SOLUTIONS CTR

\*\*EMAIL\*\*  
odotr2planmgr@odot.state.or.us

Joseph Lease  
Building Official

Rob Murphy  
Fire Chief

Tim Gross  
Public Works

Rachel Cotton  
Associate Planner

Jason Malloy  
Police Chief

Mike Murzynsky  
Finance Director

Laura Kimberly  
Library

Judy Mayhew  
Interim Parks & Rec

Spencer Nebel  
City Manager

# MEMO

City of Newport  
Community Development Department



***(delivered via email)***

**Date:** September 24, 2019

**To:** Spencer Nebel, City Manager  
Tim Gross, Public Works  
Rob Murphy, Fire  
Jason Malloy, Police  
Mike Murzynsky, Finance  
Judy Mayhew, Parks & Rec.  
Laura Kimberly, Library  
Rachel Cotton, Associate Planner  
Joseph Lease, Building Official  
Public Utilities

**From:** Sherri Marineau, Executive Assistant

**RE:** Nonconforming Use Permit (File # 8-NCU-19)

---

Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a date for the public hearing. Please review this information to see if you would like to make any comments.

We must receive your comments at least 10 days prior to the hearing in order for them to be considered. **Should no response be received, a “no comment” response will be assumed.**

sm

Attachment

**Sherri Marineau**

---

**From:** Sherri Marineau  
**Sent:** Tuesday, September 24, 2019 11:57 AM  
**To:** 'odotr2planmgr@odot.state.or.us'; 'lisa.phipps@state.or.us'  
**Subject:** Nonconforming Use Permit - 8-NCU-19  
**Attachments:** File 8-NCU-19 Notice.pdf

Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a date for the public hearing. Please review this information to see if you would like to make any comments. We must receive your comments at least 10 days prior to the hearing in order for them to be considered. **Should no response be received, a “no comment” response will be assumed.**

Sherri Marineau  
City of Newport  
Community Development Department  
169 SW Coast Highway  
Newport, OR 97365  
ph: 541.574.0629 fax: 541.574.0644  
[s.marineau@newportoregon.gov](mailto:s.marineau@newportoregon.gov)



**Sherri Marineau**

---

**From:** Sherri Marineau  
**Sent:** Tuesday, September 24, 2019 11:57 AM  
**To:** Derrick Tokos; Spencer Nebel; Tim Gross; Robert Murphy; Michael Murzynsky; Joseph Lease; Jason Malloy; Rachel Cotton; Laura Kimberly; Judy Mayhew  
**Subject:** Nonconforming Use Permit - 8-NCU-19  
**Attachments:** City Dept & Utilities Notification 8-NCU-19.pdf; File 8-NCU-19 Notice.pdf

Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a date for the public hearing. Please review this information to see if you would like to make any comments. We must receive your comments at least 10 days prior to the hearing in order for them to be considered. **Should no response be received, a "no comment" response will be assumed.**

Sherri Marineau  
City of Newport  
Community Development Department  
169 SW Coast Highway  
Newport, OR 97365  
ph: 541.574.0629 fax: 541.574.0644  
[s.marineau@newportoregon.gov](mailto:s.marineau@newportoregon.gov)





**Sherri Marineau**

---

**From:** Sherri Marineau  
**Sent:** Tuesday, September 24, 2019 11:52 AM  
**To:** 'legals@newportnewstimes.com'  
**Subject:** Notice of Public Hearing-Publish on Friday, October 4, 2019 File No. 8-NCU-19  
**Attachments:** File 8-NCU-19 Notice-Publish.docx

Seora,

Here is a Notice of Public Hearing that I need to have published in your **Friday, October 4, 2019** publication. Please let me know if you can accommodate this publication date and if you need anything further.

Regards,

Sherri Marineau  
City of Newport  
Community Development Department  
169 SW Coast Highway  
Newport, OR 97365  
ph: 541.574.0629 fax: 541.574.0644  
[s.marineau@newportoregon.gov](mailto:s.marineau@newportoregon.gov)



**CITY OF NEWPORT  
NOTICE OF A PUBLIC HEARING**

The City of Newport Planning Commission will hold a public hearing on Monday, October 14, 2019, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 8-NCU-19. The request submitted by TKO Properties I LLC (Christopher Khari Gates, agent) is for approval of a request per Section 14.32/“Nonconforming Uses, Lots, and Structures” of the Newport Municipal Code, for the alteration and expansion of a nonconforming use. The property is currently being used as a mobile home park (Surfside Mobile Village). Specifically, the applicants are requesting to be allowed to replace a manufactured home on one permanent space with two park models that would change it to two permanent spaces in the mobile home park. The subject property is located at 392 NW 3rd Street (Lincoln County Assessor’s Map 11-11-05-CD; Tax Lots 10500, 10501, 10600, 10700 & 10800). Pursuant to NMC Section 14.32.060(A), the approval authority shall determine that the structure was legally established at the time the Zoning Ordinance was enacted or amended, and that the use has not been discontinued for a continuous 12 month period. The approval authority must also verify the nature and extent of the nonconforming use, considering (1) a description of the use; (2) The types and quantities of goods or services provided and the activities conducted; (3) The scope of the use (volume, intensity, frequency, etc.) including fluctuations in the level of activity; (4) The number, location and size of physical improvements associated with the use; (5) The amount of land devoted to the use; and (6) Other factors the approval authority may determine appropriate to identify the nature and extent of a particular use (NMC Section 14.32.060(B)). Pursuant to NMC Section 14.32.070, after verification of the status of a nonconforming use pursuant to subsection 14.32.030, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood when considering the following factors: (A) (1) The character and history of the use and of development in the surrounding area; (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood; (3) Adequacy of infrastructure, including sewer, water, and streets, to accommodate the use; (4) The comparative numbers and kinds of vehicular trips to the site; (5) The comparative amount and nature of outside storage, loading, and parking; (6) The comparative visual appearance; (7) The comparative hours of operation; (8) The comparative effect on solar access and privacy; (9) Other factors which impact the character or needs of the neighborhood. (B) The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood. (C) To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, an alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to: (1) Surfacing of parking areas and landscaping; (2) Exterior design of structures; and (3) Outdoor displays, storage, and signage. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances that the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. Letters sent to the Newport Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant and those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased for reasonable cost at the Newport Community Development Department (address above) seven days prior to the hearing. The application materials, the applicable criteria, and other file material are available for inspection at no cost; or copies may be purchased for reasonable cost at this address as well. Contact Derrick Tokos, Community Development Director, (541) 574-0626, [d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov) (mailing address above).

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