



PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, October 22, 2018 - 7:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

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.

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF MINUTES

2.A Approval of the Planning Commission Work Session Meeting Minutes of October 08, 2018

[Draft PC Work Session 10-8-18.pdf](#)

2.B Approval of the Planning Commission Regular Session Meeting Minutes of October 08, 2018

[Draft PC Minutes 10-8-18.pdf](#)

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

4.A Final Order for File 3-VAR-18: Sign Variance for Pacific Communities Health District.

[File 3-VAR-18.pdf](#)

4.B Final Order for File 1-SUB-18 / 2-VAR-18 / 3-GP-18: Fisherman's Wharf Estates Tentative Subdivision.

[File 1-SUB-18 -- 2-VAR-18 -- 3-GP-18.pdf](#)

5. PUBLIC HEARINGS

5.A File No. 2-SUB-18/4-GP-18: Four Lot Townhouse Subdivision.

[File 2-SUB-18 -- 4-GP-18.pdf](#)

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
October 8, 2018
6:00 p.m.

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

PC Citizens Advisory Committee Members Present: Dustin Capri.

Public Members Present: Carla Perry, Cathey Briggs, Frank DeFilippis, Norm Ferber, Jamie Michel, Wendy Engler, and Jamie Michel.

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. **Review Draft VRD Code Amendments.** Tokos reviewed the materials that were handed out to the PC at the meeting and reviewed the amendments and rationale of the changes to the VRD code. Croteau asked if the purpose was to discuss and question what was in the draft ordinance. Tokos said because they couldn't take up in hearing until Nov 12th, and because there needed to be a full City notification, there would be a couple of work sessions to discuss the amendments. Croteau asked about the requirements for notification and asked if it was for just zone changes or any ordinance that affects use. Tokos said if any change affected the use on a property, we would be required to send out notices. Croteau as worried about the substantial change in 2012. Tokos said this didn't restrict the use in a manner that would trigger this. Croteau asked what the total housing stock in Newport was. Tokos said the last census was 5,500.

Branigan asked if the VRD Ad-Hoc Committee (AC) members present could comment. Patrick said previous practice was that if they were in the room they could participate. Berman asked what the schedule represented. Tokos said the City Council (CC) requested that they had an opportunity to act on the amendments before the new CC was structured. In order make this happen it was what needed to happen to make this happen. There would be a couple of opportunities for the PC to have work session meetings on this.

Tokos reviewed the Chapter 4.25 amendments, the purpose statement and definition. Patrick asked how accessory dwelling units were considered. Tokos said they would a vacation rentals and explained a homeshare was when you had a primary dwelling with one or two rooms made available for rental. Croteau thought they might want to define occupant. He said on page 24, maximum occupancy should have "premises" added. He thought this portion should be given more prominence in the statute. Berman questioned eliminating the word "overnight" for occupancy and what it meant to the fire code occupancy. Tokos said it was relevant because the fire code occupancy would be far greater than what the limitation would be. Berman felt that having "other than a bed and breakfast or homeshare" was redundant in the definition of vacation rental. Tokos said it was put in to just make things clear. Berman questioned the definition of a bedroom size of 72 feet and asked if anything under this size could be a bedroom. Tokos said no. Berman thought the "as to take the need for a fire exit into account" was different than a fire exit. Patrick explained that an egress was an exit to outside. Berman suggested changing it to "has a fire exit". Patrick suggested saying "primarily for sleeping purposes". Tokos said it could be tied into other statutes with similar terms.

Tokos reviewed the annual short-term rental business license, application information, and filing fees next. He explained how the city business licenses application worked and compared it to the VRD endorsement license. Branigan asked if it should be mileage from the VRD for response time or if it should be 30 minutes. Berman said the AC wanted 30 minutes. Hardy asked if the representative would act in lieu of a compliance officer. Tokos said the representative was someone who resided within 30 minutes in this context. How complaints were handled would be part of a later discussion. Patrick asked if they should add that the insurance had to be in place before the units were rented. Tokos said they could look at this in the "ongoing" section. Tokos noted that applicants could show photos for the an annual renewal to show that the units are still available for rent. Berman asked that the "dated photos" be changed to "dated within the last 90 days". Tokos to change this.

Tokos reviewed the proof of residence for home shares and bed and breakfasts. He noted the fire department wanted to try to do annual fire inspections but didn't want to commit to this due to staffing restrictions. Tokos said that the fees would cover the cost of a third party vendor to assist with a centralized complaint system, and dispatch system. The cost for the vendor would be around \$30,000 a year and annual license fees would cover this cost. Croteau asked where the third party was in the ordinance. Tokos said the motion was captured in the minutes but it couldn't be written into the code. Hanselman said much of what was done here was in the context that the third party would happen. He noted how the police said they couldn't get to all the complaints as it was. Tokos said what a third party vendor would do would be to help with compliance. They would share with the City who wasn't in compliance and would provide a 24 hour dispatch to the designated contact. The police would continue to dispatch to deal with nuisances. Hanselman said that the thought was that the third party would help determine the infractions of VRDs and noted that they sold different types of packages to cities. Tokos said their enforcement would be a letter to notify the owner that the VRD wasn't in compliance and then the PD would do the day to day enforcement. Franklin asked if the license fee covered the third party costs. Tokos said the city never had full cost recovery and the city had to balance the general public benefit compared to the applicant benefit. The general public benefit shouldn't be totally on the applicant and there needed to be a balance. Franklin asked what the value of a license transfer would be for a property. Tokos said this hadn't been discussed and explained that there had been a lot of different concepts coming through. When they determine how the alternatives mash up, that will give us some answers for this. Berman asked why the third party vendor couldn't be put in the code. Tokos said it wasn't included because you couldn't codify that you were going with a third party vendor which was a private entity. He didn't feel it was a major issue and there was consensus with the City Manager to go with a third party vendor. Berman asked if they would specify how often the vendor would review for compliance. Tokos said they would put this into the contract. Hanselman said there would still be issues with enforcement with a third party vendor. Patrick asked why the renewal would happen on July 1st. Tokos said it was the end of the fiscal year.

Tokos reviewed the transferability alternatives next. Capri asked if transferability mattered if they had to renew every year. Tokos said if caps were not in place, no. Franklin said they would have to have proof a use of 30 days per year. Croteau said on B.3 "across the street" was too restrictive and should be changed to "is transferable in most cases where the property is within a commercial zone or proximate to a commercial zone where such uses are proved". Tokos asked what proximate was. Croteau said this might be a good example of where you would want a conditional use and there needed to be some flexibility. Tokos said you would have to change the transferability provisions into the Chapter 14 provisions because that was the only place you could have a condition use outlet. Tokos explained the AC's thought process was trying to find a way to define it in a clear an objective manner. A discussion ensued regarding how to measure the distance. Tokos said it would have to put in Chapter 14 provisions if they wanted flexibility. Berman asked how Tokos envisioned whittling down the policy alternatives. Tokos encouraged the PC to think about how they wanted to whittle these down now and said that the PC needed to take public testimony before they could make a decision. The concept was that it would be nice to give the CC a recommended road map with instances of where there wasn't consensus. Norm Ferber addressed the PC and said the intent for transferability was to create a business entity. The ability to sell as a business and transfer it wasn't any different than any other business in town.

Tokos covered the business license endorsement and endorsement renewal next. Tokos noted that once the new code went into place all VRDs would be non-compliant. They would have to reapply with all the criteria. Croteau asked they were prohibited in an area they were not allowed, would that make them automatically nonconforming. Tokos said yes and there were some provision that we would have to talk about on how that might happen. Berman asked what the rationale was to not send notices beforehand. Tokos explained that they didn't want payments coming in for a future fiscal year before the end of the existing fiscal year. Carla Perry addressed the PC and asked if VRDs continued to operate after the date would there be a fine. Tokos said it would be a civil infraction. They would get a ticket by the Police Department and would have to go to court. Perry asked if additional language needed to be added for this. Tokos said the language included that the ability to operate shall be conclusively presumed to be discontinued with no further action by the city. Their endorsement is gone and meant they were operating without an endorsement license. Capri said instead of saying renewing endorsement it should say applied for a new endorsement. A discussion ensued regarding what the city would do to get the VRDs compliant. Tokos explained this only applied to renewals and owners would have 45 days to renew. He said anything could be structured administratively so it wasn't a burden for renewal.

Wendy Engler addressed the PC and asked for the new alternative map and asked what the timeframe for the DLCD application was. Tokos said they couldn't do an initial hearing before 35 days and the earliest the PC could hold a hearing was November 12th. He noted the PC could meet earlier at the next work session meeting to have more time to discuss. Berman preferred to reconvene after the regular session.

Tokos reviewed the approval standards next. Perry asked if the contact didn't show up without a response, what would happen. Tokos said this didn't fit within the approval section and would be part of a different section.

Tokos reviewed the VRD schedule with the PC and how the proceedings would go. He suggested pushing the November 26th meeting out to an off day because of the holiday.

4. **Director's Comments.** No Director comments.
5. **Adjournment.** Having no further discussion, the meeting adjourned at 6:57 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
October 8, 2018

Planning Commissioners Present: Lee Hardy, Bob Berman, Rod Croteau, Jim Patrick, Mike Franklin, Jim Hanselman, and 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, Croteau, Franklin, Hanselman, and Branigan were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission work session meeting minutes of September 24, 2018.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve the Planning Commission work session meeting minutes of September 24, 2018 with minor corrections. The motion carried unanimously in a voice vote.

B. Approval of the Planning Commission regular session meeting minutes of September 24, 2018.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve the Planning Commission regular session meeting minutes of September 24, 2018 as presented. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** No public comments.

4. **Action Items.** No Action Items.

A. **File No. 1-CUP-18.**

Tokos reviewed the applicant's request to add seven additional windows and four man doors to the original approved conditional use permit for the Sylvia Beach Hotel.

Hanselman asked if the four man doors would match the look of the existing historical design. Justin Luckini addressed the PC and said the additions would fit the form of the historical details. Branigan asked if there would be more doors added after this hearing. Luckini explained the first approval was for decks and windows. They completed the decks and had moved on to working on the windows when they discovered there were more windows that needed to be fixed. Luckini explained that the owner gave him a list of more minor repairs that would need permitting. Tokos said what was presented to the PC today was under consideration and encouraged the applicant to bundle the other improvements together and reapply for a conditional use permit for a broader range of improvements. Tokos noted with the PC's motion approval the city would be sending a notice out to neighbors stating the PC made an interpretation.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve the interpretation of the scope of approval for File 1-CUP-17 modifications to the Historic Sylvia Beach Hotel. The motion carried unanimously in a voice vote.

Berman wanted to point out that the final paragraph from the final order stated that the PC determined that the request to a conditional use permit to remodel the exterior of the Sylvia Beach Hotel was in conformance with the provisions of the comprehensive plan. He said this implied to him that it wasn't just limited to the original five windows and he was in favor of the decision. Luckini said they weren't opposed to getting more permits but had missed adding the

permitting for the window on the deck permits. When they got the call that there was no permit for the windows, they came right into the city to get the permits.

B. File No. 1-SUB-18 / 2-VAR-18 / 3-GP-18.

Tokos gave his staff report. Branigan and Berman asked to recuse themselves from the decision due to them not being present at the previous hearing and not listening to the audio tape. Croteau stated he wasn't at the last meeting but had reviewed the materials, listened to the audio, and made a site visit so he would take part in the decision.

Hanselman noted that the applicants stated that work wouldn't happen within 10 feet from the heavily sloped eastern boundary, and wondered if it would be measured from the slope or horizontally because it would mean different measurements. He was also concerned about the appropriateness of the onsite back fill. Franklin said he didn't have questions or statements. Croteau felt there had been expert testimony given and said there was no contrary expert evidence given against the proposal. He noted the city Planning Department accepted the report with the updates and he didn't see any choice but to accept the findings presented in the technical report. Hardy said at the last hearing she recommended specific deed restrictions on future construction because ongoing monitoring was a vague term. This hearing was appropriate to the subdivisions, not individual construction. She felt deed restrictions would be very important. She wasn't inclined one way or the other in the validity of the opinions given. Hardy was familiar with the location and the Bayfront having frequent landslides. She was familiar engineers who thought they could computer model everything, so she wanted to see proof of firsthand experience, more research and deed restrictions based on accurate physical reality. Patrick said that the 10 feet was plan feed and on a typical set of plans it was horizontal. He understood that the fill was done in a manner that met engineering standards and supported the loads that would be put on it. Tokos said this was correct and explained how the use of fill worked. Patrick said he was ok with the 2:1 slope. He thought the time to protect the slopes was when the individual units went in. Patrick was concerned that he didn't see a plan to take care of the water management for the lower lots. This could be done by covenants and deeds and he didn't know if it should be addressed at this level or the next.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve File 1-SUB-18 / 2-VAR-18 / 3-GP-18: Fisherman's Wharf Estates Tentative Subdivision with any conditions. The motion carried in a voice vote. Hardy was a nay. Branigan and Berman abstained.

5. **Unfinished Business.** No Unfinished Business.

6. **Public Notices.** At 7:24 p.m. Chair Patrick opened the public hearing portion of the meeting.

C. File No. 1-GP-18-A.

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. Franklin, Croteau, Patrick, Hardy, and Hanselman reported drive bys. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard. Branigan and Berman asked to recuse themselves due to them not being present at the previous hearing and not listening to the audio tape. Tokos said these two PC members would have an option to review audio before an action was taken and could participate in this hearing. Patrick gave a statement for public testimony and criteria for continuation of public hearing.

Tokos gave the staff report and reminded the PC the hearing had been carried over because of a flaw in the newspaper notice for the hearing. He noted that a letter from the Oregon Shores Conservation Coalition, an email from Bill Lund, an email from Mona Linstromberg, another email from Mona Linstromberg with attached letter, and an email from Elaine Karnes with attachments were handed out to the PC for the record. Tokos encouraged the PC to take additional testimony at the hearing and gave them criteria on how to consider approval.

Proponents: Bill Lund and Michael Rembolt addressed the PC. Lund wanted to make sure that the neighbors knew he was committing to putting in a new safe beach access. He noted the springs on the property that trickled from June until October. Lund said he had monitored the property since the previous year and took photographs periodically. He said in this timeframe he saw limited erosion happening. Lund said he had been told by the City that Spring Street had been built in the 1950's and there had been changes. Lund said the boring design had to be changed because of the discovery of the county street.

Rembolt addressed the PC and said he was there to answer any additional questions. Hardy asked since they said there needed to be further study, were they saying the application wasn't complete. Rembolt said they were saying it was complete but wanted the flexibility to make two more confirmation borings because of the road right of way that was found, and to have solid design parameters for the micro piles to support the structures. Hardy asked why a geological permit would be permitted when the investigation wasn't complete. Tokos said if they wanted to impose the requirement for them to do additional borings and have it was confirmed by K&A, it was in line with the expectations outlined in the geologic report they submitted to the city. Hardy thought it would be a good idea and asked if they looked up an up slope slippage and how it would impact construction. Rembolt said they did two borings on the west edge of Spring St. The engineering geologist, Gary Sandstrom, had done some reconnaissance and looked at aerial photography, consulted all the published geology in the area, and didn't see any direct evidence of current active landslides east of Spring Street. Rembolt noted their borings were limited to Lund's property.

Patrick said they called out the 20 degree slope on the mudstone. He asked if it was a cut surface bench into the mudstone. Rembolt said they didn't know when this had happened and Sandstrom had the best input on what happened. He said the overall topography was consistent with what you would typically expect to find on the eastern slope. There had been some confusion on terms between bedding and the condition of the slopes. Rembolt gave an explanation of the difference. He said what they were talking about was the surface of the slope, not the bedding and said that mudstone bedding varied. Franklin asked if Rembolt considered the ground from Spring Street up less stable than Lund's. Rembolt wouldn't say it was less stable and couldn't speculate on this. On Lund's property they didn't see any evidence of any slides prior to drilling the road. Rembolt said the natural species did a great job of stabilizing. He did say that this area was within a large landslide area that had experienced a lot of land sliding.

Opponents: Rob Earle addressed the PC. He read a letter into the record. Earle asked the PC to deny the request.

Teresa Amen addressed the PC. She read a letter for the record. She noted changes in the surrounding areas due to erosion and earth movement. Amen noted repairs to different dwelling foundations in the area in the previous years. She requested the PC reverse the Director's decision.

Sean Malone, attorney for the appellants, addressed the PC and passed out testimony and evidence. He said there was an issue on the erosion on Lund's property. Malone referenced HG Schlicker's report in 2016 and thought the PC should look at this report as unbiased because it was done before Lund owned the property. He noted this report was within 5 years and stated there had been critical erosion. Malone was confused on why the PC was entertaining a geological report that had borings in areas that wouldn't be used. He felt the report shouldn't be deemed complete. He also said that the issues raised by Tokos about imposing a reasonable condition by having future borings would be a reversible error by Land Use Board of Appeals because the geologic study was the criteria. The standard practices of a geologic report set forth the criteria for the guidelines for standard practices and was what was at issue here, and the notion that they could apply conditions was misplaced. Malone said the report was incomplete and was a work in progress. He was surprised that Rembolt stated that he didn't know why other properties in the area were moving. Malone felt they weren't at a stage to consider a land use hearing. He noted the both Ms. Wilmoth of Columbia Geotechnical, and Mr. Gless of HG Schlicker, had reported there were active landslides. Gless had also thought that building permits would be difficult to obtain for the property. He noted that NMC 14.21.060 stated it required a specific report be prepared for oceanfront property and said it hadn't been done. Malone also noted that Gless had disowned the 1991 report.

Malone stated that testimony from the last hearing showed that Rembolt didn't know what was going to happen on this property. This questioned the ability of the report to have a legitimate rationale on whether this property was developable or not. Malone said that Columbia Geotechnical thought that long term monitoring needed to be done on this site but Rembolt thought long term monitoring was ridiculous and not common practice. Also, Gless and Wilmoth said it was an active land slide area when Rembolt said it wasn't. Malone reported the report never said it "shall" do things, it only said they "should" and felt this was a basis for a denial. He thought the Director's decision should be reversed and Malone was happy to prepare the findings in support of a denial or reversal. He requested that the preliminary incomplete geo report be rejected.

Rebuttal: Bill Lund addressed the PC. He said the home north of Lund's property had no borings. He said if foundations were done with deep pilings, how could it be a bad thing. Lund explained that he had done two borings and information given to city staff showed no movement. He didn't think they would find any other information if they went another 50 feet. Lund noted that Rembolt did know about the duplexes being built. He said HG Schlicker always said there were issues at the coast and was why they did borings.

Patrick closed the hearing at 8:28 p.m. He asked the PC for their ideas on how to continued. Tokos recommended setting a seven day open record, with a seven day rebuttal, and another seven days for final arguments.

Malone said usually the record was only kept open if requested. He was concerned that the government had 120 days to complete the decision, including an appeal to the City Council. Typically the applicant signed a 120 day waiver so the local government met its statutory obligations to complete in 120 days. Malone noted there might be an appeal to the City Council and this would take time. Tokos said in this case Lund had been clear that he had more than one proceeding going through that would take time, such as the street vacation that needed to be done through the County. He wasn't concerned about the 120 days because he was trying to resolve three other issues. Malone said he was only concerned about this application and asked what the 120 days was for this application. Tokos said it would be in early November. Berman asked what were the implications on not meeting the early November timeline. Tokos explained that Lund may have cause to open this up in circuit court if he felt a jurisdiction was stonewalling him. Tokos didn't see it was relevant here because there were a number of things Lund needed to do before he went to development. Malone said the applicant could seek a circuit court mandamus and the city could be liable for attorney fees. Tokos wasn't certain the decision would be within 120 days and to the City Council before the 120 day, but it would be resolved before the right of way was resolved.

Patrick asked Lund to give comment on if he had concerns on leaving the record open another seven days. Lund said that was fine and he was there to do what was fair and right. He noted that the County wouldn't be starting the street vacation until December.

MOTION was made by Commissioner Hardy, seconded by Commissioner Branigan to keep the hearing open for File 1-GP-18-A: Appeal of Geologic Permit (File 1-GP-18) West of NW Spring St (Lincoln County Assessor's Tax Map 11-11-05-BC, Tax Lots 1800, 1900 & 1903) for a seven day open record, with a seven day rebuttal period, and another seven days for final arguments. The motion carried unanimously in a voice vote.

Tokos said the record would be held open for the first seven days and would end at the close of business at 5 p.m. on October 15th, the rebuttal period would close on October 22nd at 5 p.m., and there would then be a one week final argument period that would end on October 29th at 5 p.m. The public hearing would be continued at the November 12th PC meeting.

7. **New Business.** None were heard.

8. **Unfinished Business.** None were heard.

9. **Director Comments.** Tokos asked if the PC wanted to have the next work session early or have a continuation after the regular session meeting for the vacation rental discussion. Branigan wanted to start at 5:30 p.m. then stay if they couldn't get it done they stay after the regular meeting. The PC was in agreement with starting at 5:30 p.m. and continuing the work session if needed.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to initiate the legislative process for the Vacation Rental Code Amendments. The motion carried unanimously in a voice vote.

10. **Adjournment.** Having no further business, the meeting adjourned at 8:42 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

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

**IN THE MATTER OF PLANNING COMMISSION)
FILE NO. 3-VAR-18, APPLICATION FOR A)
VARIANCE, AS SUBMITTED BY SAMARITAN) FINAL
PACIFIC COMMUNITIES HOSPITAL (MATTHEW) ORDER
BROWN, INNERFACE ARCHITECTURAL SIGNAGE,)
AUTHORIZED REPRESENTATIVE))**

ORDER APPROVING A VARIANCE pursuant to Section 10.10.130 of the Newport Municipal Code (NMC) to allow a wall sign to be placed at a height that exceeds the 30-foot height limitation requirement. Section 10.10.095(J) of the Newport Municipal Code limits sign height to 30 feet from grade to the top of the sign. The applicant is further requesting a variance to allow a total of five signs, two of which would be wall signs and three of which will be freestanding signs along SW 9th Street. Section 10.10.095(C) of the Newport Municipal Code limits the total number of signs at this location to three, one of which may be other than a wall sign. Lastly, the applicant seeks a variance to the 200 sq. ft. sign area limitation per street frontage listed in Section 10.10.095(G) for that portion of the campus facing SW 9th Street. The wall signs by themselves will be 312.5 sq. ft. in size. The property is located at 930 SW Abbey Street (Blocks 18, 19, 21 and 22 Bayley and Case’s Addition to Newport, together with that portion of vacated SW Case Street and that portion of SW 10th Street inuring thereto.)

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (No. 1308, as amended); and
- 2.) The Planning Commission has duly held public hearings on the request for a variance, with the public hearings a matter of record of the Planning Commission on September 10, 2018 and September 24, 2018; and
- 3.) At the public hearings on said application, the Planning Commission received testimony and evidence, including testimony and evidence from the applicant, and from Community Development Department staff; and
- 4.) At the conclusion of said public hearings, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, **APPROVED** the request for the variance.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the variance as requested by the applicant with the following condition(s):

1. Wall mounted and freestanding signs for the Samaritan Pacific Communities Hospital campus shall conform to the schematic drawings prepared by Innerface Architectural Signage Inc., dated August 21, 2018 (Exhibit B).
2. Placement of freestanding signs may be adjusted to address final site design and vehicle line of site considerations.

BASED UPON THE ABOVE, the Planning Commission determines that the request for a variance is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 22nd day of October, 2018.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 3-VAR-18

FINDINGS OF FACT

1. Samaritan Pacific Communities Hospital (Matthew Brown, Innerface Architectural Signage, authorized representative) submitted a request on August 21, 2018, for approval of a Type III variance pursuant to Section 10.10.130 of the Newport Municipal Code (NMC) to allow a wall sign to be placed at a height that exceeds the 30-foot height limitation requirement. Section 10.10.095(J) of the Newport Municipal Code limits sign height to 30 feet from grade to the top of the sign. The applicant is further requesting a variance to allow a total of five signs, two of which would be wall signs and three of which will be freestanding signs along SW 9th Street. Section 10.10.095(C) of the Newport Municipal Code limits the total number of signs at this location to three, one of which may be other than a wall sign. Lastly, the applicant seeks a variance to the 200 sq. ft. sign area limitation per street frontage listed in Section 10.10.095(G) for that portion of the campus facing SW 9th Street. The wall signs by themselves will be 312.5 sq. ft. in size.

2. The property subject to the variance application is located at 930 SW Abbey Street (Blocks 18, 19, 21 and 22 Bayley and Case's Addition to Newport, together with that portion of vacated SW Case Street and that portion of SW 10th Street inuring thereto.). It is roughly 7.5 acres in size per County assessment records.

3. Staff reports the following facts in connection with the application:

- a. Plan Designation: Public.
- b. Zone Designation: P-1/"Public Structures."
- c. Surrounding Land Uses: Surrounding uses include a mixture of medical and commercial uses to the west and south, medical and residential to the east and residential to the north.
- d. Topography: The property is s is gradually sloped and the developed areas are landscaped.
- e. Existing Structures: Hospital, medical office buildings, helipad and parking.
- f. Utilities: All are available to the subject property.
- g. Past Land Use Actions:

File No. 1-VAR-18. Authorized the mechanical penthouse on their three-story hospital addition to be expanded from 3,530 square feet to 3,770 square feet. The change allowed a 240 square foot awning to be placed on the air handling unit.

File No. 1-VAR-17. Authorized a 10-foot height variance for the mechanical penthouse on a three-story addition to an existing hospital. The size of the mechanical penthouse was approved at 3,530 square feet.

File No. 1-SV-15. A street vacation initiated by the City Council, at the request of Samaritan Pacific Health Services, Inc. on behalf of Pacific Communities Health District, for portions of SW 10th Street from SW Bay Street north to SW Case Street; SW Case Street from SW 10th Street east to SW 11th Street; and an alley between and parallel to SW 10th and 11th Streets from SW Bay Street north to SW Case Street. The street vacation was approved by the City Council on November 2, 2015 (Ord. No. 2087). File No. 3-CP-16/5-Z-16. Amendments to the Newport Comprehensive Plan Map from High Density Residential to Public and the Newport Zoning Map from R-4/"High Density Multi-Family Residential" to P-1/"Public Structures" in order to facilitate a hospital expansion. The application was filed by the Pacific Communities Health District (Minor, Bandonis & Haggerty PC, agent) and was approved by the City Council on February 7, 2017 (Ord. No. 2109).

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on August 21, 2018, to property owners within 200 feet required to receive such notice by the Newport Zoning Ordinance, and to various City departments and other agencies. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., September 10, 2018. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on August 31, 2018. The Community Development Department received no comments from any of the affected parties.

5. A public public hearing was held on September 10, 2018. At the hearing, the Planning Commission received the staff report and received oral testimony from the applicant's representative. The minutes of the September 10, 2018, meeting are hereby incorporated by reference into the findings. The Planning Staff Report with attachments is hereby incorporated by reference into the findings. The Planning Staff Report attachments included the following:

- Attachment "A" – Application form
- Attachment "B" – Applicant's narrative
- Attachment "C" – Schematic drawing of the existing monument sign
- Attachment "D" – Public hearing notice
- Attachment "E" – Municipal Code Chapter 10.10 (Sign Regulations)

6. At the close of the September 10, 2018 hearing, the Planning Commission advised the applicant that it was concerned that their application did not included sufficient justification for the wall mounted hospital identification sign, as that sign by itself was 297.5 sq. ft. in size. The applicant asked that the hearing be continued so that they could submit additional materials, and the Commission granted the request. The hearing was continued to September 24, 2018.

7. For the September 24, 2018 hearing, the applicant submitted a slideshow that included renderings of what the wall mounted sign would look like from vantage points along US 101, examples of

similar signage at other medical facilities, dimensions of the hospital's existing freestanding signage, and a chart listing industry standards for letter height relative to readable distance. This information, along with an accompanying staff cover memo and the minutes from the September 24, 2018 Commission meeting, are incorporated by reference into the findings.

8. In their application, the applicant notes that the variance requests support a sign plan that uses a hierarchy of sign types to promote clearer and more efficient wayfinding within the Samaritan Pacific Communities Hospital campus. They assert that these signs cannot be looked at independently, but must be viewed as a holistic wayfinding system that takes into consideration the distressed nature of the visitor, site constraints and challenges, and applicable sign guidelines. The applicant notes that all signs have been placed at critical decision making points for both drivers and pedestrians, with the primary focus on ensuring visitors are effectively directed to the Emergency Department and to the appropriate medical entries. Samaritan Pacific Communities Hospital has changed organically over many years. For many visitors it is confusing. The applicant indicates that the layout of the campus combined with topography of the campus has driven both the quantity and placement of signs. None of the signs shown in our plans have been placed arbitrarily or unnecessarily. They further emphasize that the ability to find a location on a hospital campus can be a life or death situation.

9. Pursuant to Section 10.10.130 (Variance Requirements) of the Newport Municipal Code, the applicant may seek a variance to the numerical provisions of the code. The Planning Commission is the designated approval authority.

10. The applicable criteria for a variance are found in Newport Municipal Code (NMC) Section 10.10.130, which states that: *"approval of the request is the minimum necessary to alleviate special hardships or practical difficulties faced by the applicant and that are beyond the control of the applicant."*

CONCLUSIONS

1. In order to grant the variance, the Planning Commission must review the application to determine whether it meets the criteria. With regard to those criteria, the following analysis could be made:

Approval of the request is the minimum necessary to alleviate special hardships or practical difficulties faced by the applicant and that are beyond the control of the applicant.

2. The applicant argues a variance to City standards related to the maximum height and size of wall mounted signs is necessary in order for the public to find the hospital, which may be a life or death situation. Similarly, with respect to standards that limit the total number of signs, the applicant points to the array of specialized medical services performed at modern medical facilities and the hardship they would face if, in complying with the code, they cannot provide adequate wayfinding to persons in need of such services. The chart the applicant submitted listing industry standards for sizing signs identifies a letter height of 30" inches as the ideal

height for maximum readable impact at 300-feet. A schematic drawing provided by the applicant shows that the wall mounted hospital identification sign will be visible from US 101 at this distance. The applicant's proposal lists the letter height for this sign at 42-inches. The applicant did not provide a clear explanation as to why the 30-inch letter height, recommended by standards they submitted, would not be sufficient at this location. This was a cause of concern for some Commission members. A majority of the Commission; however, found that the hospital is in the business of saving lives and that they are in the best position to know what is needed in terms of wayfinding signage to ensure that patrons, many of whom may not be familiar with Newport, can get to critical medical services in a timely manner. The life safety nature of this land use coupled with the array of specialized medical services performed at the facility constitutes a special hardship beyond the control of the applicant, and the Commission concluded that the signage proposal provided by the applicant is the minimum needed to alleviate the hardship.

OVERALL CONCLUSION

Based on the staff report, the application material, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate that the applicant has demonstrated compliance with the criteria for granting a variance, and, therefore, the request is **APPROVED** with the following conditions of approval:

1. Wall mounted and freestanding signs for the Samaritan Pacific Communities Hospital campus shall conform to the schematic drawings prepared by Innerface Architectural Signage Inc., dated August 21, 2018 (Exhibit B).
2. Placement of freestanding signs may be adjusted to address final site design and vehicle line of site considerations.

Exterior Design Development & Wayfinding

Regional Map: Lincoln County

Draft (1) 08.21.18



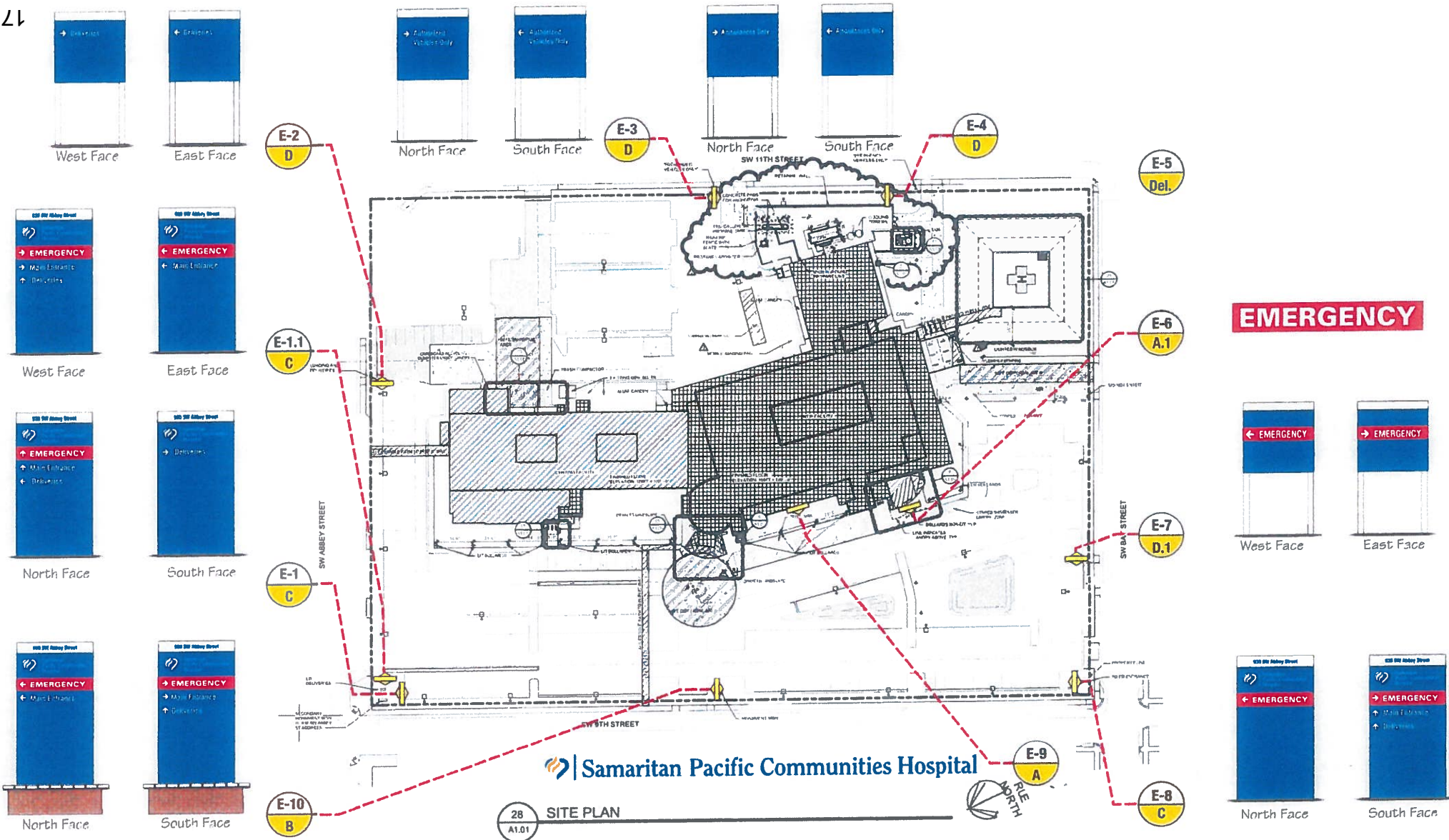
Samaritan
Pacific Communities
Hospital

INNERFACE

ARCHITECTURAL
SIGNAGE, INC.

5849 PEACHTREE ROAD
ATLANTA, GEORGIA 30341
T 770 921 5566
TF 800 445 4796
F 770 279 1327
INNERFACESIGN.COM

21



Samaritan Pacific Communities Hospital

28 SITE PLAN
A1.01

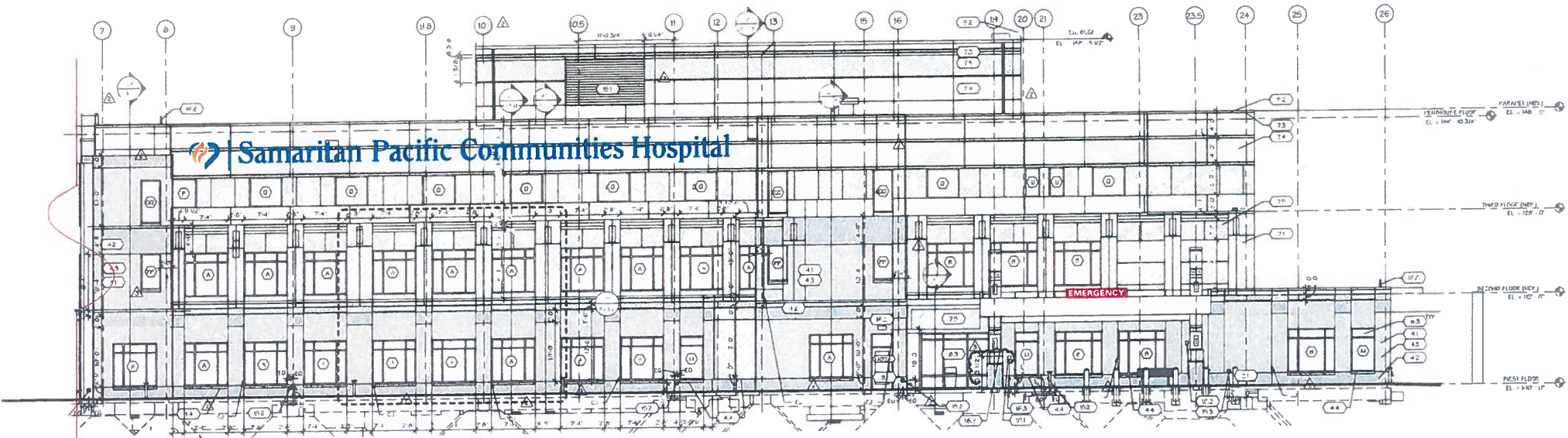




Detail View
Scale: 1/8" = 1'-0"

Campus Identification:

- Internally illuminated individual pan channel letters/logo w/ translucent acrylic faces and LED illumination.
- Self-contained units with internal power packs
- 42" cap Letters
- 63" x 8" Accent Bar
- 66" x 63" Logomark



Partial West Elevation

Scale: 1/16" = 1'-0"

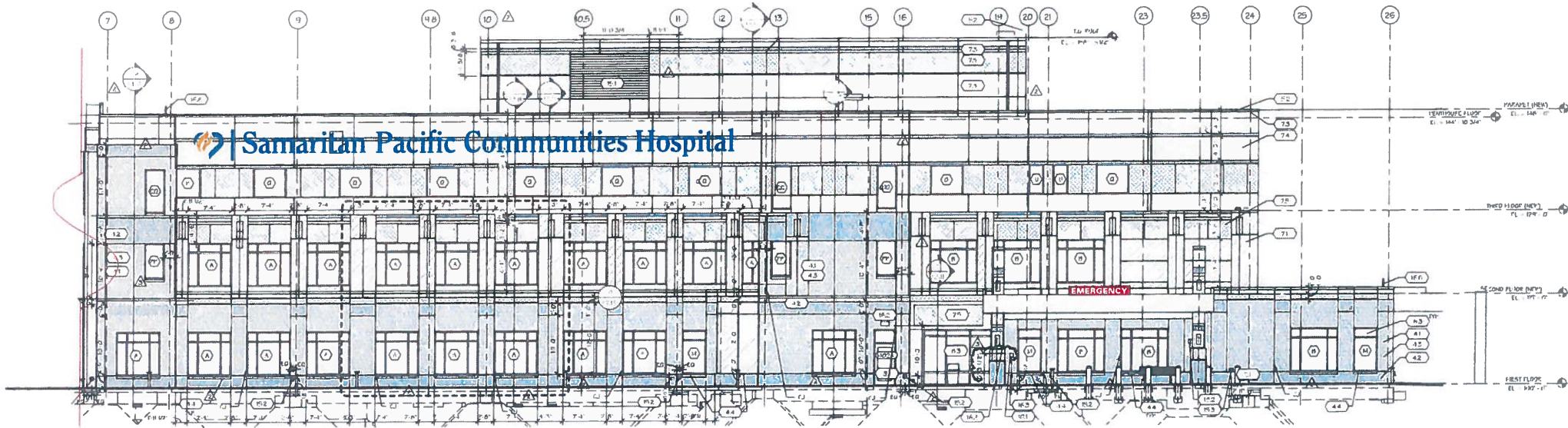


Detail View
Scale: 1/2" = 1'-0"

Entry Identification:

Internally illuminated cabinet
w/ translucent acrylic face and LED illumination.
Translucent red vinyl background w/ reversed white copy
Base mount to top of building canopy.

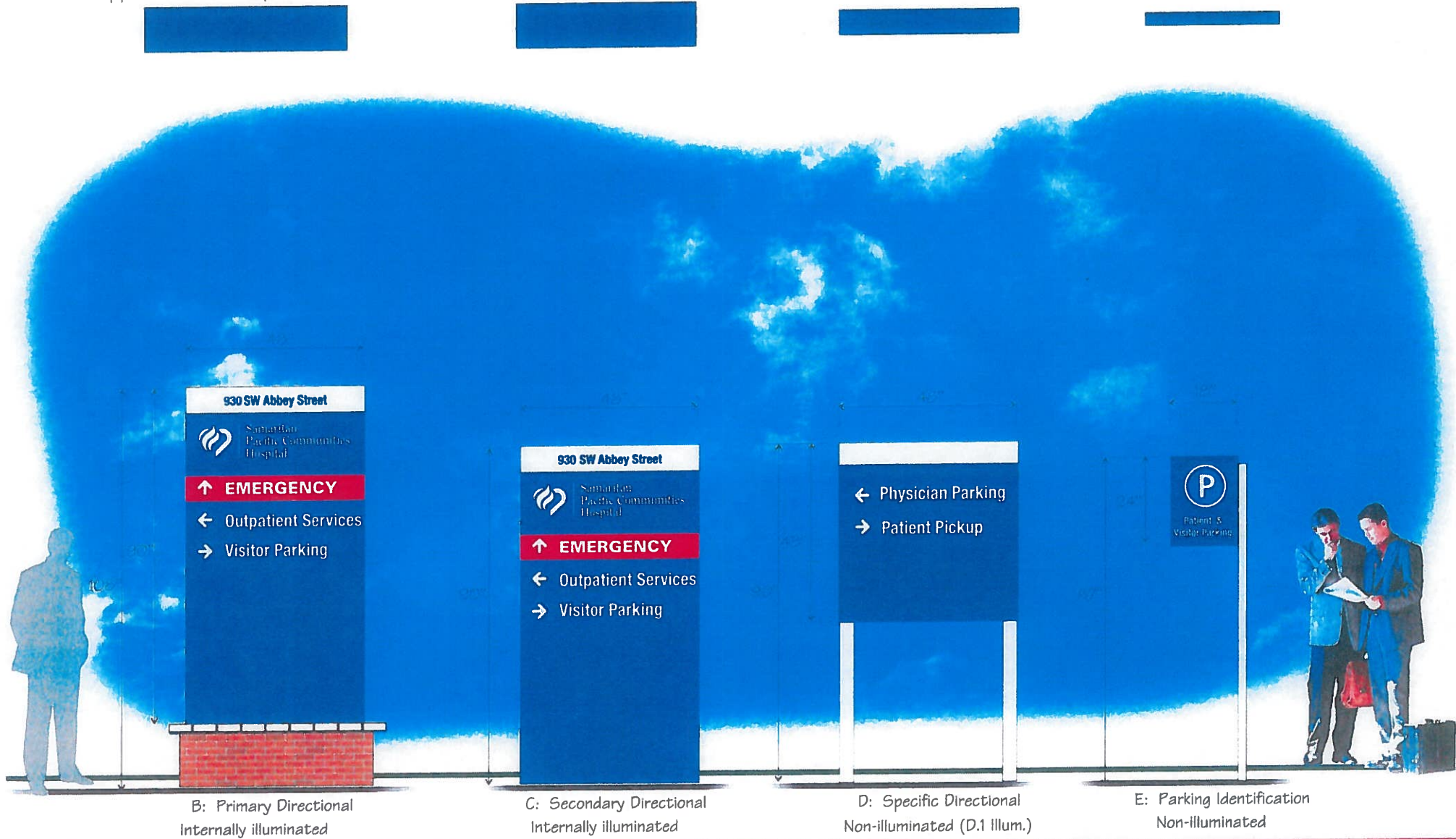
- 12" cap Letters
- 18" x 10'-0" Cabinet



Partial West Elevation

Scale: 1/16" = 1'-0"

Appearance Concept 1



B: Primary Directional Internally illuminated

C: Secondary Directional Internally illuminated

D: Specific Directional Non-illuminated (D.1 Illum.)

E: Parking Identification Non-illuminated

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

IN THE MATTER OF PLANNING COMMISSION)	
FILE NO. 1-SUB-18/2-VAR-18/3-GP-18, APPLICATION)	
FOR TENTATIVE SUBDIVISION PLAT, VARIANCE,)	
AND GEOLOGIC PERMIT APPROVAL FOR THE AN)	FINAL
11 LOT SUBDIVISION IDENTIFIED AS “FISHERMAN’S)	ORDER
WHARF ESTATES, AS SUBMITTED BY GREYSON)	
FINANCIAL SERVICES, INC))	

ORDER APPROVING the request for the tentative subdivision plat, geologic permit, and variance for the eleven lot residential subdivision identified as “Fisherman’s Wharf Estates.” The property is located at 1005 SE Bay Boulevard, between the Harbor Village RV Park and Harbor Crescent residential subdivision (Tax Lot 400 of Lincoln County Assessor’s Tax Map (11-11-09-CB). It is approximately 1.72 acres in size per Lincoln County Assessor’s records.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request for the planned development, with a public hearing a matter of record of the Planning Commission on September 10, 2018; and
- 3.) At the public hearing on said application, and subsequent open record period, the Planning Commission received evidence and recommendations from the applicants, interested persons, and Community Development (Planning) Department staff; and
- 4.) At the conclusion of said public hearing and open record period, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, approved the request for the tentative subdivision plat, geologic permit, and variance with conditions of approval.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") are adopted in support of approval of the request for a tentative subdivision plat, geologic permit, and variance with the following conditions of approval:

1. It shall be the responsibility of the property owner to adhere to the recommendations contained in the Geotechnical Investigation for Fisherman’s Wharf Estates, prepared by Foundation Engineering Inc., dated October 19, 2007, as updated by letters dated June 12, 2018 and September 13, 2018 (collectively “Geologic Reports”). These Geologic Reports are only valid for the preliminary subdivision plat addressed in the report.

2. Certification of land division compliance with the Geologic Reports (e.g. site grading, street and utility installations, etc.) is required prior to approval of the final plat. NMC 14.21.130 states that no development requiring a Geologic Report shall receive final approval until the city receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. If mitigation measures involve engineering solutions prepared by a licensed professional engineer, then the city must also receive an additional written statement of compliance by the design engineer.
3. Any sedimentation caused by stripping vegetation, grading, or other development, shall be removed from all adjoining surfaces and drainage systems and the affected areas returned to their original or equal condition prior to final plat approval.
4. The applicant shall perform hydraulic modelling of the public storm drainage system at SE Bay Blvd to confirm it has capacity to accept run-off from the subdivision attributed to a 25-year, 24-hour storm event. In the event the public system lacks capacity, then the analysis shall include recommendations for upsizing the system or detaining stormwater onsite in a manner sufficient to accommodate anticipated run-off.
5. Water, sewer, street and storm drainage infrastructure shall be installed in a manner consistent with the letter from City Engineer, Tim Gross, dated June 4, 2018, and the June 12, 2018 and September 13, 2018 letters by Foundation Engineering, including dedication of appurtenant easements. All public improvements shall be accepted by the Public Works Department prior to approval of the final plat.
6. All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, improvements shall conform to any existing published set of standards designated by the City Engineer for the type of improvement. The City Engineer may approve designs that differ from the applicable standard if the City Engineer determines that the design is adequate.
7. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The subdivider shall make all necessary arrangements with the serving utility to provide the underground service.
8. Fire hydrants are to be installed as required by the 2014 Oregon Fire Code. Such hydrants shall be located within public rights-of-way or public utility easements.
9. The applicant shall confirm the location of survey monuments for the Harbor Crescent Subdivision, where it borders the subject property, and shall ensure that site utilities are placed more than one foot away from said monuments.

10. Upon completion of street improvements, the applicant shall ensure that monuments are reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines.
11. Installation of public improvements, including excavation in the excess of 100 cubic yards, shall not occur until plans have been checked for adequacy and approved by the City, and shall not be commenced until after the city is notified.
12. All public improvements shall be constructed under the inspection and to the satisfaction of the City Engineer. The city may require change in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.
13. Underground utilities, sanitary sewers, and storm drains installed in streets shall be constructed prior to the surfacing of the streets. Stubs for service connection for underground utilities and sanitary sewers shall be placed to allow future connections without disturbing the street improvements.
14. A map showing public improvements “as-builts” shall be filed with the city upon completion of the improvements.
15. A final plat shall be submitted within two years of the tentative plat (i.e. concept map) approval. The Agency shall finalize the survey, secure the signatures on the plat from all impacted owners, and prepare necessary conveyance documents to ensure that the lot configuration, ownership, and rights-of-way are established as illustrated on the tentative plat. The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.

BASED UPON THE ABOVE, the Planning Commission determines that the request is in conformance with the provisions of the Comprehensive Plan and the Municipal Code of the City of Newport.

Accepted and approved this 22nd day of October, 2018.

James Patrick, Chair
Newport Planning Commission

Attest:

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

EXHIBIT "A"

File No. 1-SUB-18/2-VAR-18/3-GP-18

FINDINGS OF FACT

1. On July 30, 2018, Greyson Financial Services, Inc. (William Ekman, owner, Rhonda Meisenburg, AKS Engineering & Forestry, LLC, authorized representative) submitted an application for approval of an eleven lot residential subdivision identified as "Fisherman's Wharf Estates." A Type III variance is requested to allow the hammerhead portion of the proposed street to be built without sidewalk. Additionally, a geologic hazard report has been submitted outlining measures that will be taken to safeguard against existing hazards given that the subject property is within a mapped geologic hazard area.

2. The property is located at 1005 SE Bay Boulevard, between the Harbor Village RV Park and Harbor Crescent residential subdivision (Tax Lot 400 of Lincoln County Assessor's Tax Map (11-11-09-CB)). It is approximately 1.72 acres in size per Lincoln County Assessor's records.

3. Staff reports the following facts in connection with the application:

- a. Plan Designation: Low Density Residential
- b. Zone Designation: R-2/"Medium Density Single-Family Residential."
- c. Surrounding Land Uses: Harbor Village RV Park to the north and west, Harbor Crescent residential subdivision to the east, and the Embarcadero Resort to the south (across SE Bay Blvd).
- d. Topography and Vegetation: There are a few scattered trees, shrubs and other low lying vegetation on the property. The site is moderately sloped, dropping in elevation from east to west, with steeper terrain along the east, north and western perimeter of the property.
- e. Existing Structures: None.
- f. Utilities: All utilities are available to the site.
- g. Development Constraints: The property is within a mapped geologic hazards area.
- h. Past Land Use Actions:

File No. 3-PD-07/6-SUB-07. Approval of a planned development for 19 single family detached residences.

File No. 1-PD-01. Approval of a planned development for 22 units (single family and duplexes).

File No. 1-PD-97. Approval of a planned development for 18 single-family residences and two duplexes.
- i. Notice: Public notice of the application and public hearing was mailed to surrounding property owners within 200 feet of the subject property and public entities and agencies on August 6, 2018. Notice of the public hearing was also published in the Newport News-

Times on August 31, 2018. No written comments were received in response to the notice prior to, or at the public hearing.

4. The applicant, Greyson Financial Services, Inc., is seeking approval of an 11 lot, residential subdivision to accommodate single family homes and/or duplexes (18 units max.). The subdivision will be served by a new public street with 36-feet of pavement, sidewalks, curbs, gutters and street lights. A hammerhead will be constructed at the end of the street, and a variance has been requested to allow this portion of the street to be built without sidewalk. A geologic permit outlines measures that will be taken to safeguard against existing hazards, since the property is within the City of Newport's Geologic Hazards Overlay.

5. The applicant notes that the project covers the entirety of Tax Lot 400 (Lincoln County Assessor's Map 11S11W09CB) located at 1005 SE Bay Boulevard. They indicate that the site is slightly larger than what is indicated in the Assessor's records at ± 1.81 acres, and is within the City's R-2 zone district. SE Bay Boulevard along the frontage of the property is fully improved with two vehicular travel lanes, curbs, gutters, sidewalks, bike lanes, and has a curb cut for access to the lot with truncated domes installed in the curb ramps.

6. A public hearing was held on September 10, 2018. At the public hearing, the statement of rights and relevance and applicable criteria were read. The Planning Commission disclosed any ex parte contact, conflicts of interest, and/or bias. No objections were made to any of the Planning Commissioners hearing the matter. The Planning Commission received the staff report and heard testimony from proponents and opponents of the proposal. The minutes of the September 10, 2018, meeting are hereby incorporated by reference into the findings. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" – Application by AKS Engineering & Forestry, dated 6/27/18

Exhibit "A" – Application Forms and Checklists

Exhibit "B" – Preliminary Subdivision Plans, dated 7/23/18

Exhibit "C" – Lincoln County Assessor's Maps

Exhibit "D" – 200-Foot Notification List

Exhibit "E" – Service Provider Letters

Exhibit "F" – Subdivision Guarantee Report

Exhibit "G" – Geotechnical Consultation, Foundation Engineering, dated 6/12/18

Attachment "B" – 11x17 Copy of Preliminary Subdivision Plans, dated 7/23/18 (scales to 1-inch = 60-feet)

Attachment "C" – Zoning Map

Attachment "D" – Notice of Public Hearing and Map

7. After taking public testimony, the Planning Commission closed the hearing and elected to leave the record open for seven days for the submittal of new testimony. That period of time was followed by a seven day window within which interested parties could respond to the new evidence, and an additional seven day period where the applicant could submit final arguments. The following documents were submitted over the course of the 21 days and this information, along with an accompanying staff cover memo, is incorporated by reference into the findings.

Attachment "E" – Letter from William Chadwick, dated 9/16/18

Attachment "F" – Letter from Brenadette Solano, dated 9/17/18

Attachment "G" – Letter from Stan Shell, submitted 9/17/18

Attachment "H" – Letter and photographs from Eric Knutson, submitted 9/17/18

Attachment "I" – Letter from Laura Seager, dated 9/17/18

Attachment "J" – Letter and attached articles from Teresa Atwill, submitted 9/17/18

Attachment "K" – Email from Curt Fisher, AKS Engineering and Forestry, dated 9/17/18, with supplemental report from Foundation Engineering, Inc. dated 9/13/18 and grading section drawing sheet 8

Attachment "L" – Applicant's final argument from Curt Fisher and David Karr, PE, PLS, dated 10/1/18.

8. The application must be consistent with the approval criteria set forth in City of Newport Municipal Code (NMC) Chapter 13.05, for tentative subdivision plat approval, NMC Chapter 14.21, geologic hazards, and NMC Chapter 14.33, adjustments and variances.

CONCLUSIONS

After consideration of the application materials, staff report and the testimony in the record, the Planning Commission concludes as follows in regard to the criteria established in Newport's Municipal Code for approving the requested tentative subdivision plan, geologic report, and variance for the eleven lot residential subdivision identified as "Fisherman's Wharf Estates":

9. Compliance with NMC Chapter 13.05, Criteria for Approval of the Tentative Subdivision Plat. The criteria for a tentative subdivision plat have been addressed as follows:

(a) *NMC Section 13.05.015(A), Criteria for Consideration of Modification to Street Design. As identified throughout the street standard requirements, modifications may be allowed to the standards by the approving authority. In allowing for modifications, the approving authority shall consider modifications of location, width, and grade of streets in relation to existing and planned streets, to topographical or other geological/environmental conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system as modified shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain. Where location is not shown in the Transportation System Plan, the arrangement of streets shall either:*

- (a) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
- (b) Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

The applicant's tentative subdivision plat (Sheet C5 of Exhibit B to Attachment "A"), identifies the portion of the new street, less the hammerhead, as "Street A" and the hammerhead portion of the street as "Street B." The applicant notes that Street A is planned to meet all applicable City standards for a minor street. The street utilizes the existing approach onto SE Bay Boulevard and will conform to the topographical constraints of the site. With respect to Street B, the applicant indicates that it is planned to provide access to Lots 5 through 9 with ± 26 feet of pavement width within ± 30 feet of right-of-way. At this size, the street does not meet the City's standard for a minor (local) street. The applicant notes that the modification is justified due to the relation of the street to the existing and planned streets, the topographical conditions on site, public safety, and the proposed use of the land to be served by the street. These factors are more specifically discussed as follows:

Relation of the street to existing and planned streets: Street B will not be a typical through street that will connect to the surrounding street network, and will not carry through traffic volumes or speed typical of a minor street. The future homes on Lots 5 through 9 will be the only uses served by the street. Because surrounding development precludes through connections and linking to other streets and/or uses, Street B is designed to allow vehicles to maneuver in and out of the driveways at slow speed, which will be its one function. Therefore, the full width of pavement and right-of-way is not necessary.

Topographical conditions: As shown in the Existing Conditions on Sheet C1 of Exhibit B, the site slopes moderately downhill from east to west, with steep slopes along the perimeter of the site. The Preliminary Street Profiles on Sheet C6 of Exhibit B show the finished grade of the street in relation to existing grade.

The drawings show the depth of cuts required to construct the street with a finished grade and pitch that meet applicable standards for fire access and conform to accepted engineering guidelines. A standard width minor street would increase the cutting, filling, and grading required to meet these standards without providing additional benefit given the use of the street.

Public Safety: Fire access requirements specify a maximum grade of 5%. Reducing the width of Street B will allow this standard to be met with minimal cutting, filling, and grading. The width of the right of way was reviewed by the Fire Department at a pre-application conference held on March 1, 2018.

Proposed use of the land served by the street: The land served by the street will be used for detached homes and/or duplexes. The street will be used by the residents to maneuver at slow speed in and out of the driveways serving the homes on the new lots. The street will not connect to the surrounding street network, other than the connection to Street A as shown on the plans in Exhibit B.

The street will not serve other uses outside the subject property. Therefore, the planned use will not generate traffic volumes that would warrant a wider street or additional pavement width. This standard is met.

(b) *NMC Section 13.05.015(B), Minimum Right-of-Way and Roadway Width. Unless otherwise indicated on the development plan, the street right-of-way and roadway widths shall not be less than the minimum width in feet shown in the following table:*

<i>Type of Street</i>	<i>Minimum Right-of-Way Width</i>	<i>Minimum Roadway Width</i>
<i>Arterial, Commercial and Industrial</i>	<i>80 feet</i>	<i>44 feet</i>
<i>Collector</i>	<i>60 feet</i>	<i>44 feet</i>
<i>Minor Street</i>	<i>50 feet</i>	<i>36 feet</i>
<i>Radius for turn-around at end of cul-de-sac</i>	<i>50 feet</i>	<i>45 feet</i>
<i>Alleys</i>	<i>25 feet</i>	<i>20 feet</i>

Modifications to this requirement may be made by the approving authority where conditions, particularly topography, geology, and/or environmental constraints, or the size and shape of the area of the subdivision or partition, make it impractical to otherwise provide buildable sites, narrower right-of-way and roadway width may be accepted. If necessary, slope easements may be required.

The applicant points out that the Preliminary Subdivision Plans in Exhibit B, illustrate that Street A will meet the standard for a minor street with ± 36 feet of roadway width within ± 50 feet of right-of-way. They note that Street B is planned to provide access to Lots 5 through 9 with ± 26 feet of pavement width within ± 30 feet of right-of-way. With this request, the applicant seeks approval to reduce the overall width of this street from the standard for a minor street. They note that the modification is justified due to the relation of the street to the existing and planned streets, the topographical conditions on site, public safety, and the proposed use of the land to be served by the street.

As shown in the Existing Conditions on Sheet C1 of Exhibit B, the site slopes moderately downhill from east to west, with steeper slopes along the perimeter of the property. The Preliminary Street Profiles on Sheet C6 of Exhibit B show the finished grade of the street in relation to existing grade. The drawings show the depth of cuts required to construct the street with a finished grade and pitch that meet applicable standards for fire access and conform to accepted engineering guidelines. A standard width minor street would increase the cutting, filling, and grading required to meet these standards without providing additional benefit given the use of the street.

The land served by the street will be used for detached homes and/or duplexes. The street will be used by the residents to maneuver at slow speed in and out of the driveways serving the homes on the new lots. The street will not connect to the surrounding street network, other than the connection to Street A as shown on the plans in Exhibit B. The street will not serve other uses outside the subject property. Therefore, the planned use will not generate traffic volumes that would warrant a wider street or additional pavement width.

The applicant notes that the size and shape of the property also make it impractical to provide buildable sites if Street B were built to full minor street width. The subject property is an irregularly shaped lot with a skewed orientation to SE Bay Boulevard. The hammerhead configuration enables a logical and efficient plat layout with buildable lots that are as close to rectangular in shape as possible, with side lot lines that run at approximately right angles to the streets they face, while meeting the dimensional standards in the R-2 Zone. A full width minor street would restrict the buildable sites that would otherwise be permitted on the property that meet the dimensional standards of the R-2 Zone. With the requested modification these standards are met.

(c) *NMC Section 13.05.015(C), Reserve Strips. Reserve strips giving a private property owner control of access to streets are not allowed.*

No reserve strips are planned. This standard is met.

(d) *NMC Section 13.05.015 (D), Alignment. Streets other than minor streets shall be in alignment with existing streets by continuations of their center lines. Staggered street alignment resulting in "T" intersections shall leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and, in no case, shall be less than 100 feet. If not practical to do so because of topography or other conditions, this requirement may be modified by the approving authority.*

A new minor street is planned to provide access to the new lots as shown on the Preliminary Plat on Sheet C2 in Exhibit B. This standard applies to streets other than minor streets. Therefore, this standard does not apply.

(e) *NMC Section 13.05.015(E), Future Extensions of Streets. Proposed streets within a land division shall be extended to the boundary of the land division. A turnaround if required by the Uniform Fire Code will be required to be provided. If the approval authority determines that it is not necessary to extend the streets to allow the future division of adjoining land in accordance with this chapter, then this requirement may be modified such that a proposed street does not have to be extended to the boundary of the land division.*

A minor street is planned in a hammerhead configuration that meets the fire access requirement. This preliminary layout was reviewed by the City of Newport Fire Chief at the pre-application conference on March 1, 2018. The surrounding properties are fully developed and extending the street to the property boundary is not necessary to provide access for future development. This standard is met.

(f) *NMC Section 13.05.015(F), Intersection Angles.*

1. *Streets shall be laid out to intersect at right angles.*
2. *An arterial intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection.*
3. *Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection.*

4. *Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line.*
5. *No more than two streets may intersect at any one point.*
6. *If it is impractical due to topography or other conditions that require a lesser angle, the requirements of this section may be modified by the approval authority. In no case shall the acute angle in Subsection F.1. be less than 80 degrees unless there is a special intersection design.*

As shown on the Preliminary Subdivision Plat in Exhibit B, the new streets will create an intersection that meet the above requirements. These standards are met.

(g) NMC Section 13.05.015(G), Half Street. Half streets are not allowed. Modifications to this requirement may be made by the approving authority to allow half streets only where essential to the reasonable development of the land division, when in conformity with the other requirements of these regulations and when the city finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract property to be divided, the other half of the street shall be provided.

Full street improvements will be provided as shown in the Preliminary Subdivision Plat in Exhibit B. The boundary frontage along SE Bay Boulevard is fully improved. This standard is met.

(h) NMC Section 13.05.015(H), Sidewalks. Sidewalks in conformance with the city's adopted sidewalk design standards are required on both sides of all streets within the proposed land division and are required along any street that abuts the land division that does not have sidewalk abutting the property within the land division. The city may exempt or modify the requirement for sidewalks only upon the issuance of a variance as defined in the Zoning Ordinance.

The applicant notes that sidewalks are planned on both sides of Street A as shown in Exhibit B. SE Bay Boulevard is already improved with sidewalks and no additional improvements are necessary. A variance is included with this application to exempt Street B from the sidewalk requirement. Responses to the applicable variance criteria are provided below. This standard is met with the included variance.

(i) NMC Section 13.05.015(I), Cul-de-sac. A cul-de-sac shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a circular turn-around meeting minimum Uniform Fire Code requirements. Modifications to this requirement may be made by the approving authority. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to connect from a cul-de-sac to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.

A cul-de-sac is not planned for this project. In the alternative, a hammerhead turnaround is planned at the northern terminus of Street A. Said street will be less than 400 feet in length, and the 11 lots are planned to be developed with single family homes and/or duplexes with no more than 18 total units. This configuration was reviewed by the Fire Chief at the pre-application conference on March 1, 2018.

(j) *NMC Section 13.05.015(J), Street Names. Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street. Street names and numbers shall conform to the established pattern in the city, as evident in the physical landscape and described in City of Newport Ordinance No. 665, as amended.*

The new streets will be given names that do not duplicate an existing street name in the City of Newport. This standard can be met.

(k) *NMC Section 13.05.015(K), Marginal Access Street. Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting constrained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.*

Marginal access streets are not planned. The new streets will not provide through access to adjacent properties.

(l) *NMC Section 13.05.015(L), Alleys. Alleys shall be provided in commercial and industrial districts. If other permanent provisions for access to off-street parking and loading facilities are provided, the approving authority is authorized to modify this provision if a determination is made that the other permanent provisions for access to off-street parking and loading facilities are adequate to assure such access. The corners of alley intersections shall have a radius of not less than 12 feet.*

The project is not in a commercial or industrial district. This standard does not apply.

(m) *NMC Section 13.05.020(A), Blocks General. The length, width, and shape of blocks for non-residential subdivisions shall take into account the need for adequate building site size and street width, and shall recognize the limitations of the topography.*

This project involves a residential subdivision. This standard does not apply.

(n) *NMC Section 13.05.020(B), Block Size. No block shall be more than 1,000 feet in length between street corners. Modifications to this requirement may be made by the approving authority if the street is adjacent to an arterial street or the topography or the location of adjoining streets justifies the modification. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to allow connectivity to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a block of greater than 1,000 feet if a modification is approved and the requested easement or dedication has a*

rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.

As shown in Exhibit B, the preliminary subdivision plat will not create a block more than 1,000 feet in length between street corners. This standard does not apply.

(o) NMC Section 13.05.025(A), Utility lines. Easements for sewers and water mains shall be dedicated to the city wherever a utility is proposed outside of a public right-of-way. Such easements must be in a form acceptable to the city. Easements for electrical lines, or other public utilities outside of the public right-of-way shall be dedicated when requested by the utility provider. The easements shall be at least 12 feet wide and centered on lot or parcel lines, except for utility pole tieback easements, which may be reduced to six (6) feet in width.

The Preliminary Composite Utility Plan on Sheet C7 of Exhibit B shows a conceptual layout for utilities. City Engineer, Tim Gross, in a letter included with Exhibit E, notes the existing 2-inch PVC water line along SE Bay Blvd, between the project site and SE Harbor Crescent Drive, will need to be replaced with a 6-inch main (or larger). The main serving the proposed subdivision would tie into this replacement line and loop to an existing 8-inch main in SE Harbor Crescent Drive. Easements will be needed to achieve this layout, given the lot configuration shown. Additionally, the geotechnical consultation by Foundation Engineering, Inc., dated June 12, 2018, recommends that storm runoff be discharged only to a piped drainage system, as opposed to discharging into a natural drainage. The utility layout on Sheet C7 of Exhibit B shows stormwater discharging into a stream on the property to the west, which is inconsistent with the Foundation Engineering, Inc. recommendation. These modifications to the utility layout shouldn't materially impact the lotting pattern, and can be addressed prior to final plat approval. A condition of approval is included to address this issue. This standard is met, as conditioned.

(p) NMC Section 13.05.025(B), Utility Infrastructure. Utilities may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.

The subject property borders the Harbor Crescent Subdivision, and there may be monuments related to this subdivision in the vicinity of planned infrastructure work. Preservation of monuments can be addressed with a condition of approval. As conditioned, this standard is met.

(q) NMC Section 13.05.025(C), Water Course. If a tract is traversed by a water course such as a drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of the water course, and such further width as will be adequate for the purpose. Streets or parkways parallel to the major water courses may be required.

The subject property is not traversed by a water course. As shown on the Existing Conditions Plan in Exhibit B, there is a recorded storm drainage easement (Doc. No. 2006-05053) along the front portion of the lot. To the extent this standard applies, it is met.

(r) *NMC Section 13.05.030(A), The size (including minimum area and width) of lots and parcels shall be consistent with the applicable lot size provisions of the Zoning Ordinance, with the following exception:*

Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

The Preliminary Plat on Sheet C2 of Exhibit B illustrates that each new lot meets the applicable dimensional requirements in the R-2 Zone. The subject property is not zoned or planned for business or industrial use. This standard is met.

(s) *NMC Section 13.05.030(B), Each lot and parcel shall possess at least 25 feet of frontage along a street other than an alley.*

As shown on Sheet C2 in Exhibit B, each lot has at least 25 feet of frontage on the new streets. This standard is met.

(t) *NMC Section 13.05.030(C), Through lots and parcels are not allowed. Modifications may be made by the approving authority where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities or to overcome specific disadvantages of topography and orientation. The approving authority may require a planting screen easement at least 10 feet wide and across which there shall be no right of access. Such easement may be required along the line of building sites abutting such a traffic artery or other incompatible use.*

The rear lot lines on Lots 1 through 4 abut SE Harbor Crescent Drive; a private street. As shown on the Existing Conditions on Sheet C1 in Exhibit B, the lot drops steeply from the edge of SE Harbor Crescent Drive to the rear of these lots creating natural separation from this street. Functionally, these are not planned as through lots. Therefore, a modification to this standard is necessary and justified, given site topography and parcel orientation with a private street abutting the east property line. This standard, as modified, is met.

(u) *NMC Section 13.05.030(D) The side lines of lots and parcels shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve. Modifications to this requirement may be made by the approving authority where it is impractical to do so due to topography or other conditions or when the efficient layout of the land division has the lines running as close to right angles (or radial) as practical.*

All lot runs at approximate right angles to the new streets as shown on Sheet C2 in Exhibit B. This standard is met.

(v) *NMC Section 13.05.030(E), Special Setback Lines. All special building setback lines, such as those proposed by the applicant or that are required by a geological report, which are to be*

established in a land division, shall be shown on the plat, or if temporary in nature, shall be included in the deed restrictions.

All applicable setback lines are shown on Sheet C2 in Exhibit B. This standard is met.

(w) NMC Section 13.05.030(F), Maximum Lot and Parcel Size. Proposed lots and parcels shall not contain square footage of more than 175% of the required minimum lot size for the applicable zone. Modifications to this requirement may be made by the approving authority to allow greater square footage where topography or other conditions restrict further development potential or where the layout of the land division is designed and includes restrictions to provide for extension and opening of streets at intervals which will permit a subsequent division into lots or parcels of appropriate size for the applicable zone designation.

The minimum lot area in the R-2 Zone is 5,000 square feet. As shown on Sheet C2 of Exhibit B, the largest lot planned is ±7,533 square feet, and does not exceed 175% of the required minimum (8,750 square feet). This standard is met.

(x) NMC Section 13.05.030(G), Development Constraints. No lot of parcel shall be created with more than 50% of its land area containing wetlands or lands where the city restricts development to protect significant Statewide Land Use Planning Goal 5 or Goal 17 resources, except that areas designated as open space within a land division may contain up to 100% of a protected resource.

No wetlands or other Goal 5 or Goal 17 resources have been identified on the subject site. This standard is met.

(y) NMC Section 13.05.030(H), Lots and Parcels within Geological Hazard Areas. Each new undeveloped lot of parcel shall include a minimum 1,000 square foot building footprint within which a structure could be constructed and which is located outside of active and high hazard zones and active landslide areas (See Section 2-4-7 of the Zoning Ordinance for an explanation of hazard zones). New public infrastructure serving a lot or parcel shall similarly be located outside of active and high hazard zones and active landslide areas.

The subject property is within a Geologic Hazard Area. However, the site does not contain any active landslide areas or active and high hazard zones, as documented in the Geotechnical Report in Exhibit G. This standard is met.

(z) NMC Section 13.05.035(A). Improvement work, including excavation in the excess of 100 cubic yards, shall not be commenced until plans have been checked for adequacy and approved by the city. To the extent necessary for evaluation of the proposal, the plans shall be required before approval of the tentative plan of a subdivision or partition.

This requirement is advisory and can be reasonably addressed with a condition of approval.

(aa) *NMC Section 13.05.035(B). Improvement work shall not commence until after the city is notified, and, if work is discontinued for any reason, it shall not be resumed until after the city is notified.*

This requirement is advisory and can be reasonably addressed with a condition of approval.

(bb) *NMC Section 13.05.035(C). Public improvements shall be constructed under the inspection and to the satisfaction of the city engineer. The city may require change in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.*

This requirement is advisory and can be reasonably addressed with a condition of approval.

(cc) *NMC Section 13.05.035(D). Underground utilities, sanitary sewers, and storm drains installed in streets shall be constructed prior to the surfacing of the streets. Stubs for service connection for underground utilities and sanitary sewers shall be placed to allow future connections without disturbing the street improvements.*

This requirement is advisory and can be reasonably addressed with a condition of approval.

(dd) *NMC Section 13.05.035(E). A map showing public improvements as built shall be filed with the city upon completion of the improvements.*

This requirement is advisory and can be reasonably addressed with a condition of approval.

(ee) *NMC Section 13.05.035(F). Public improvements shall not be commenced until any appeals of the subdivision approval are resolved.*

The City can ensure that this does not occur through its review of the civil drawings for the public improvements. This standard is met.

(ff) *NMC Section 13.05.040(A)(1), Streets. All streets, including alleys, within the land division, streets adjacent but only partially within the land divisions, and the extension of land division streets to the intersecting paving line of existing streets with which the land division streets intersect, shall be graded for the full right-of-way width. The roadway shall be improved to a width of 36 feet or other width as approved by the approval authority by excavating to the street grade, construction of concrete curbs and drainage structures, placing a minimum of six inches of compacted gravel base, placement of asphaltic pavement 36 feet in width or other width as approved by the approval authority and approximately two inches in depth, and doing such other improvements as may be necessary to make an appropriate and completed improvement. Street width standards may be adjusted as part of the tentative plan approval to protect natural features and to take into account topographic constraints and geologic risks.*

The new streets are planned to be graded and constructed to the full right-of-way width. This standard will be met.

(gg) NMC Section 13.05.040(A)(2) Surface Drainage and Storm Sewer System. Drainage facilities shall be provided within the land division and to connect the land division drainage to drainage ways or storm sewers outside the land division. Design of drainage within the land division shall take into account the capacity and grade necessary to maintain unrestricted flow from areas draining through the land division and to allow extension of the system to serve such areas.

A conceptual design for stormwater management is depicted on Sheet C7 in Exhibit B. It shows storm drainage from the hammerhead being directed through proposed Lots 9 and 10, to a stream west of the property. That design will need to be modified to conform to Foundation Engineering's recommendation that run-off be directed to a structured (piped) system as opposed to a natural drainage (ref: page 4, June 12, 2018 letter). In a letter dated June 4, 2018, City Engineer Tim Gross indicates that an 8-inch line public storm drain line in SE Bay Blvd, which discharges to the bay by the Embarcadero, could potentially accept run-off from the development. He further notes that hydraulic analysis is needed to confirm that the piped system has capacity, and that if it lacks capacity the line may need to be upsized or provision made for on-site detention (Exhibit E). There is area on the property to detain run-off, if necessary, without materially impacting the layout of the plat; therefore, it is feasible to defer the analysis to a condition of approval. This standard is met, as conditioned.

(hh) NMC Section 13.05.040(A)(3), Sanitary Sewers. Sanitary sewers shall be installed to serve each lot or parcel in accordance with standards adopted by the City, and sewer mains shall be installed in streets as necessary to connect each lot or parcel to the city's sewer system.

A conceptual design for extending sanitary sewer service to each lot is shown on the Preliminary Composite Utility Plan on Sheet C7 in Exhibit B. This standard is met.

(ii) NMC Section 13.05.040(A)(4), Water. Water mains shall be installed to allow service to each lot or parcel and to allow for connection to the city system, and service lines or stubs to each lot shall be provided. Fire hydrants shall be installed as required by the Uniform Fire Code. The city may require that mains be extended to the boundary of the land division to provide for future extension or looping.

A conceptual design for providing water connections to each lot is shown on the Preliminary Composite Utility Plan on Sheet C7 in Exhibit B. As noted in a June 4, 2018 letter, the City Engineer has indicated that the public portion of the water system serving this subdivision will need to be looped between SE Bay Blvd and Harbor Crescent Drive and the 2-inch line along SE Bay Blvd replaced, in order for there to be adequate service to the lots. This can be accomplished without materially impacting the subdivision layout, so it is reasonable to defer the design details to a condition of approval. A fire hydrant is shown on the plans; however, the Fire Department will need to confirm that its placement conforms to fire code requirements. There is ample area along the proposed street to locate hydrants; therefore, it is feasible to defer exact placement to a condition of approval. This standard is met, as conditioned.

(jj) NMC Section 13.05.040(A)(5), Sidewalks. Required sidewalks shall be constructed in conjunction with the street improvements except as specified below:

a. Delayed Sidewalk Construction. If sidewalks are designed contiguous with the curb, the subdivider may delay the placement of concrete for the sidewalks by depositing with the city a cash bond equal to 115 percent of the estimated cost of the sidewalk. In such areas, sections of sidewalk shall be constructed by the owner of each lot as building permits are issued. Upon installation and acceptance by the city engineer, the land owner shall be reimbursed for the construction of the sidewalk from the bond. The amount of the reimbursement shall be in proportion to the footage of sidewalks installed compared with the cash bond deposited and any interest earned on the deposit.

b. Commencing three (3) years after filing of the final plat, or a date otherwise specified by the city, the city engineer shall cause all remaining sections of sidewalk to be constructed, using the remaining funds from the aforementioned cash bond. Any surplus funds shall be deposited in the city's general fund to cover administrative costs. Any shortfall will be paid from the general fund.

c. Notwithstanding the above, a developer may guarantee installation of required sidewalks in an Improvement Agreement as provided in Section 13.05.090(C).

Sidewalks are planned as shown on the Preliminary Street Plan and Typical Sections provided on Sheet C5 in Exhibit B. The Applicant does not anticipate delaying sidewalk construction. This standard is met.

(kk) NMC Section 13.05.040(B). All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, public works shall be built to standards in any existing published set of standards designated by the city engineer for the type of improvement. The city engineer may approve designs that differ from the applicable standard if the city engineer determines that the design is adequate.

The applicant acknowledges that they intend to comply with applicable City standards and a condition of approval is included noting this requirement. This standard is met.

(ll) NMC Section 13.05.040(C). Public improvements are subject to inspection and acceptance by the city. The city may condition building or occupancy within the land division on completion and acceptance of required public improvements.

The Applicant acknowledges the inspection requirements, intends to cooperate with inspectors, and can comply with reasonable conditions for building permits. This standard can be met.

(mm) NMC Section 13.05.045(A). Tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the land division as demonstrated by a written letter from the public facility provider or utility provider stating the requirements for the provision of public facilities or utilities (electric and phone) to the proposed land division.

Service provider letters with the required information are included in Exhibit E. Modifications will be needed to the conceptual layout of utility services depicted on Sheet C7 of Exhibit 5, as outlined in the service provider letters. This can be accomplished without materially impacting the design of the subdivision, and has been addressed with conditions of approval.

(nn) *NMC Section 13.05.045(B). For public facilities of sewer, water, storm water, and streets, the letter must identify the:*

- 1. Water main sizes and locations, and pumps needed, if any, to serve the land division.*
- 2. Sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division.*
- 3. Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding.*
- 4. Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development.*

This information was provided by the City Engineer in a letter included in Exhibit E.

(oo) *NMC Section 13.05.050(A), Underground Utilities and Service Facilities, Undergrounding. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The subdivider shall make all necessary arrangements with the serving utility to provide the underground service.*

The Applicant has indicated that they intend to coordinate with service providers to underground utilities as necessary, and a condition of approval is included noting this requirement. This standard can be met.

(pp) *NMC Section 13.05.050(B), Underground Utilities and Service Facilities, Non-City-Owned Utilities. As part of the application for tentative land division approval, the applicant shall submit a copy of the preliminary plat to all non-city-owned utilities that will serve the proposed subdivision. The subdivider shall secure from the non-city-owned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.*

Service provider letters from non-city-owned utilities are included in Exhibit E. The preliminary layout for the subdivision was shared with these providers. This standard is met.

(qq) *NMC Section 13.05.055, Street Lights. Street lights are required in all land divisions where a street is proposed. The city may adopt street light standards. In the absence of adopted standards,*

street lights shall be place in new land divisions to assure adequate lighting of streets and sidewalks within and adjacent to the land division.

Street lights are planned as shown on the Preliminary Composite Utility Plan on Sheet C7 of Exhibit B. This standard is met.

(rr) NMC Section 13.05.060, Street Signs. Street name signs, traffic control signs and parking control signs shall be furnished and installed by the city.

The Applicant acknowledges this standard and it can be met.

(ss) NMC Section 13.05.065, Monuments. Upon completion of street improvements, monuments shall be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines.

The Applicant has indicated that they understand that this standard must be met and intend to comply with it. The standard is advisory and has been included as a condition of approval.

(tt) NMC Section 13.05.085(A). The proposed land division will comply with the requirements of this chapter or can be made to comply by the attachment of reasonable conditions of approval. For the purposes of this section, a land division complies with this chapter if it meets the standard provided herein or if a modification or variance is approved by the approving agency to the standard.

Responses to the applicable standards and criteria are provided in this report and Attachment "A," and reasonable conditions are being recommended to ensure that they are met. This standard is satisfied.

(uu) NMC Section 13.05.085(B). Any requited submitted geological hazard report must conclude that the property can be developed in the manner proposed by the land division. The land division must comply with any recommendations contained in the report. Approval of the land division by the Planning Commission pursuant to a submitted geological hazard report includes approval of the geological report recommendations. Based on the geological hazard report, the Planning Commission shall establish when compliance with the geological report recommendations must be demonstrated. The geological hazard report shall be in the form of a written certification prepared by an engineering geologist or other equivalent certified professional, establishing that the report requirements have been satisfied, and should be noted as a condition of approval.

A Geotechnical Report for the property is included in Exhibit G. This report is stamped by both a licensed Geotechnical Engineer and a licensed Engineering Geologist and includes the information required by the City for a Geologic Report. A condition of approval is recommended requiring an Engineering Geologist, and Geotechnical Engineer, as appropriate, certify compliance with the Report's recommendations prior to final plat approval. This criterion is met, as conditioned.

(vv) *NMC Section 13.05.090(A), Final Plat Requirements for Land Divisions Other than Minor Replats or Partitions, Submission of Final Plat. Within two years after tentative plan approval, such other time established at the time of tentative plan approval, or extensions granted under this chapter, the owner and/or applicant (collectively referred to as the “developer”) shall cause the land division to be surveyed and a final plat prepared. If the developer elects to develop the land division in phases, final plats for each phase shall be completed within the time required (e.g. Phase I completed within two years, Phase II completed within the next two years, etc.). The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.*

The applicant indicates that they understand this limitation, and a condition of approval is recommended noting this requirement.

10. Compliance with NMC Chapter 14.21, Criteria for Approval of a Tentative Subdivision Plat within a Geologic Hazard Overlay. The criteria for approval of a tentative subdivision plat in an area of known geologic hazards has been addressed as follows:

(a) *NMC Section 14.21.020(A). The following are areas of known geologic hazards or are potentially hazardous and are therefore subject to the requirements of Chapter 14.21:*

1. *Bluff or dune backed shoreline areas within high or active hazard zones identified in the Department of Geology and Mineral Industries (DOGAMI) Open File Report 0-04-09 Evaluation of Coastal Erosion Hazard Zones along Dune and Bluff Backed Shorelines in Lincoln County, Oregon: Cascade Head to Seal Rock, Technical Report to Lincoln County, dated 2004.*
2. *Active or potential landslide areas, prehistoric landslides, or other landslide risk areas identified in the DOGAMI Open File Report 0-04-09.*
3. *Any other documented geologic hazard area on file, at the time of inquiry, in the office of the City of Newport Community Development Department.*

City of Newport zoning maps show that the subject property is in the Geologic Hazard Area. These regulations apply.

(b) *NMC Section 14.21.020(B). The DOGAMI Open File Report 0-04-09 is not intended as a site specific analysis tool. The City will use DOGAMI Open File Report 0-04-09 to identify when a Geologic Report is needed on property prior to development. A Geologic Report that applies to a specific property and that identifies a proposed development on the property as being in a different hazard zone than that identified in DOGAMI Open File Report 0-04-09, shall control over DOGAMI Open File Report 0-04-09 and shall establish the bluff or dune-backed shoreline hazard zone or landslide risk area that applies to that specific property. The time restriction set forth in subsection 14.21.030 shall not apply to such determinations.*

A Geotechnical Report for the property is included in Exhibit G. This report is stamped by both a licensed Geotechnical Engineer and a licensed Engineering Geologist and confirms that the site is within a geologic hazard area.

(c) NMC Section 14.21.020(C). In circumstances where a property owner establishes or a Geologic Report identifies that development, construction, or site clearing (including tree removal) will occur outside of a bluff or dune-backed shoreline hazard zone or landslide risk areas, as defined above, no further review is required under this Chapter 14.21.

A Geotechnical Report for the subject property is included in Exhibit G. The report confirms that the property is within a landslide risk area and concludes that the site is suitable for development provided recommendations contained in the document are followed.

(d) NMC Section 14.21.020(D). If the results of a Geologic Report are substantially different than the hazard designations contained in DOGAMI Open File Report 0-04-09 then the city shall provide notice to the Department of Geology and Mineral Industries (DOGAMI) and Department of Land Conservation and Development (DLCD). The agencies will have 14 days to provide comments and the city shall consider agency comments and determine whether or not it is appropriate to issue a Geologic Permit.

The findings in the Geotechnical Report in Exhibit G do not appear to conflict with the DOGAMI Open File Report. This standard is met.

(e) NMC Section 14.21.030, Geologic Permit Required. All persons proposing development, construction, or site clearing (including tree removal) within a geologic hazard area as defined in 14.21.010 shall obtain a Geologic Permit. The Geologic Permit may be applied for prior to or in conjunction with a building permit, grading permit, or any other permit required by the city. Unless otherwise provided by city ordinance or other provision of law, any Geologic Permit so issued shall be valid for the same period of time as a building permit issued under the Uniform Building Code then in effect.

A Geologic Permit application is included in this submittal. This requirement can be met.

(f) NMC Section 14.21.050(A), Application Submittal Requirements. A site plan that illustrates areas of disturbance, ground topography (contours), roads and driveways, an outline of wooded or naturally vegetated areas, watercourses, erosion control measures, and trees with a diameter of at least 8-inches dbh (diameter breast height) proposed for removal; and

The Preliminary Subdivision Plans in Exhibit B include the required information. The Existing Conditions Plan on Sheet C1 shows site plan contours and existing vegetation. The Preliminary Demolition Plan on Sheet C3 illustrates the area of disturbance and proposed tree removal. The Preliminary Grading and Erosion Control Plan on Sheet C4 shows erosion control measures. These requirements are met.

(g) *NMC Section 14.21.050(B), Application Submittal Requirements. An estimate of depths and the extent of all proposed excavation and fill work; and*

The existing and finished grade contour information shown on Sheet C4 of Exhibit B shows the estimated depths and extent of planned excavation and fill work. This requirement is met.

(h) *NMC Section 14.21.050(C), Application Submittal Requirements. Identification of the bluff or dune-backed hazard zone or landslide hazard zone for the parcel or lot upon which development is to occur. In cases where properties are mapped with more than one hazard zone, a certified engineering geologist shall identify the hazard zone(s) within which development is proposed; and*

A Geotechnical Report for the property is included in Exhibit G. The Geotechnical Report identifies the nature and extent of landslide risk areas on the property. This requirement is met.

(i) *NMC Section 14.21.050(D), Application Submittal Requirements. A Geologic Report prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; and*

A Geotechnical Report for the property is included in Exhibit G. This report is stamped by both a licensed Geotechnical Engineer and a licensed Engineering Geologist and concludes that the site is suitable for the proposed subdivision provided recommendations contained in the document are followed. A condition of approval is recommended requiring a licensed Engineering Geologist and Geotechnical Engineer, as appropriate, certify the recommendations were followed prior to approval of the final plat. This requirement is met, as conditioned.

(j) *NMC Section 14.21.050(E), Application Submittal Requirements. An engineering report, prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to the extent qualified), must be provided if engineering remediation is anticipated to make the site suitable for the proposed development.*

A Geotechnical Report for the property is included in Exhibit G. This report is stamped by both a licensed Geotechnical Engineer and a licensed Engineering Geologist and includes the information required by the City for a Geologic Report. The Report concludes that the site is suitable for the planned project. This requirement is met.

(k) *NMC Section 14.21.070, Construction Limitations within Geologic Hazard Areas.*

A. New construction shall be limited to the recommendations, if any, contained in the Geologic Report; and

1. Property owners should consider use of construction techniques that will render new buildings readily moveable in the event they need to be relocated; and

2. Properties shall possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site.

The Preliminary Subdivision Plat (Exhibit B) is intended to comply with the recommendations in the Geotechnical Report (Exhibit G) and the new street will provide sufficient access in the event there is a need to relocate structures in the future. This requirement can be met.

(l) *NMC Section 14.21.090, Erosion Control Measures.*

In addition to completing a Geologic Report, a certified engineering geologist shall address the following standards.

A. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;

B. Development plans shall minimize cut or fill operations so as to prevent off-site impacts;

C. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

D. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

E. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;

F. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;

G. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure.

H. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;

I. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control limited to:

1. Energy absorbing devices to reduce runoff water velocity;

2. *Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;*

3. *Dispersal of water runoff from developed areas over large undisturbed areas;*

J. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and

K. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

The Preliminary Grading and Erosion Control Plan on Sheet C4 in Exhibit B includes appropriate grading and erosion control measures for the project and was prepared according to the recommendations in the Geotechnical Report in Exhibit G. In the event the identified erosion control measures are not maintained or are otherwise unable to prevent sedimentation from impacting adjoining surfaces, then NMC 14.21.140 requires the developer return the surfaces to their original or equal condition. A condition of approval is included noting this requirement.

(m) NMC Section 14.21.050(E), Stormwater Retention Facilities Required. For structures, driveways, parking areas, or other impervious surfaces in areas of 12% slope or greater, the release rate and sedimentation of storm water shall be controlled by the use of retention facilities as specified by the City Engineer. The retention facilities shall be designed for storms having a 20-year recurrence frequency. Storm waters shall be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.

Sheets C5 and C6 of Exhibit B illustrate that impervious surfaces established with this subdivision, namely the street and sidewalks, will not exceed a 12 percent slope. This standard is not applicable.

11. Compliance with NMC Chapter 14.33, Criteria for Approval of a Variance. The criteria for a variance to the requirement that sidewalk be installed along the hammerhead portion of the street (labeled "Street B") have been addressed as follows:

(a) NMC Section 14.33.020(A). Application for an Adjustment or Variance from a numerical standard including, but not limited to, size, height, or setback distance may be processed and authorized under a Type I or Type III decision making procedure as provided by Section 14.52, Procedural Requirements, in addition to the provisions of this section.

A variance to Section 13.05.015.H. is included in this application to allow Street B to be constructed without sidewalks. This Section authorizes the City to exempt this standard with a variance. A variance is included in the application. This standard is met.

(b) *NMC Section 14.33.020(B). No Adjustment or Variance from a numerical standard shall be allowed that would result in a use that is not allowed in the zoning district in which the property is located, or to increase densities in any residential zone.*

The variance will not change the planned use of the property. The planned residential use is permitted in the R-2 Zone and density standards are met. The standard is met.

(c) *NMC Section 14.33.020(C). In granting an Adjustment or Variance, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.*

The variance is not anticipated to create any adverse impacts. Street B will not be a typical through street that will connect to the surrounding street network and will not carry through traffic at speeds typical of a local street. Street B is designed to allow vehicles to maneuver in and out of the driveways serving the future homes on Lots 5 through 9 at slow speeds. Therefore, sidewalks are not needed to provide separation from faster moving vehicular traffic. As described in Section 13.05.015, the planned width of Street B is narrower than the standard width for a minor street. Therefore, the crossing distances between the new sidewalks on Street A to the new lots on Street B will be similar to the distance required to cross a minor street and pedestrians will not need to negotiate cross traffic typical of a minor street.

(d) *NMC Section 14.33.030, Approval Authority. Upon receipt of an application, the Community Development Director or designate shall determine if the request is to be processed as an Adjustment or as a Variance based on the standards established in this subsection. There shall be no appeal of the Director's determination as to the type of application and decision-making process, but the issue may be raised in any appeal from the final decision on the application.*

A. A deviation of less than or equal to 10% of a numerical standard shall satisfy criteria for an Adjustment as determined by the Community Development Director using a Type I decision-making procedure.

B. A deviation of greater than 10%, but less than or equal to 40%, of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision-making procedure.

C. Deviations of greater than 40% from a numerical standard shall satisfy criteria for a Variance as determined by the Planning Commission using a Type III decision-making procedure.

The variance is combined with an application for a subdivision and is being processed as a Type III procedure. This standard is met.

(e) *NMC Section 14.33.060(A). The approval authority may grant a Variance using a Type III decision-making process when it finds that the application complies with the following criteria:*

A. A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to:

- 1. The size, shape, natural features, and topography of the property, or*
- 2. The location or size of existing physical improvements on the site, or*
- 3. The nature of the use compared to surrounding uses, or*
- 4. The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district, or*
- 5. A circumstance or condition that was not anticipated at the time the Code requirement was adopted.*
- 6. The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.*

The circumstances and conditions 1, 3, and 4 apply to the property, as described below.

1. The size, shape, natural features, and topography of the property: The hammerhead street configuration shown in the Preliminary Subdivision Plans is planned to provide the best practical access to the new lots. The subject property is an irregularly shaped lot with a skewed orientation to SE Bay Boulevard which poses challenges in creating buildable lots that are as close to rectangular in shape as possible with side lots lines that are, to the maximum extent possible, perpendicular to the boundaries of the property and run at right angles to the streets they front. Adding sidewalks to Street B would require additional street width which would result in lots that would not meet the dimensional standards or restrict the number of lots that otherwise be allowed elsewhere in the R-2 Zone. As described in the Executive Summary, this subdivision is a “needed housing” application under Oregon Revised Statute (ORS) 197.303(1)(a). It is in the public interest to allow the property to be developed to a reasonable density allowed in the R-2 Zone.

The topographical conditions of the property make it impractical to include sidewalks on Street B. As shown in the Existing Conditions on Sheet C1 of Exhibit B, the site slopes moderately downhill from east to west with areas of steep slopes along the perimeter of the site. The Preliminary Street Profiles on Sheet C6 of Exhibit B show the finished grade of the street in relation to existing grade. The drawings show the depth of cuts required to construct the street with a finished grade and pitch that meet applicable standards for fire access and conform to accepted engineering guidelines. Including sidewalks will increase the cutting, filling, and grading needed to construct the street while providing minimal benefits to pedestrian safety and comfort.

3. The nature of the use compared to surrounding uses: Street B is not a typical street because it will not connect to other streets outside the subdivision. It will not carry traffic volumes at speeds typical of a standard minor street and will have minimal cross traffic that pedestrians will need to cross to access Lot 5 through 9 from the new sidewalk on Street A. Therefore, sidewalks are not

necessary on Street B for safety. Most of the streets in other subdivisions in the area do not have sidewalks and the planned street network will be improved to a higher standard than the streets that serve surrounding uses.

4. The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district: As discussed under circumstance 1 above, including sidewalks on Street B would require either reducing the size of the lots below the minimum dimensional standard in the R-2 Zone or reducing the number of lots for the planned use below what would otherwise be possible on a more regularly shaped lot with flatter topography elsewhere in the R-2 Zone. Most of the streets in other subdivisions in the area do not have sidewalks and the planned street network will be improved to a higher standard than the streets that serve surrounding uses. The circumstances and conditions 1, 3, and 4 apply to the property. Therefore, this criterion is met.

(f) NMC Section 14.33.060(B). The circumstance or condition in “A” above is not of the applicant’s or present property owner’s making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

The circumstances and conditions are discussed in the response to Section 14.33.060.A above. These circumstances and conditions are not the result of the personal circumstance of the owner. Therefore, this criterion is met.

(g) NMC Section 14.33.060(C). There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

The practical difficulty and unnecessary hardship with including sidewalks on Street B are discussed in the response to Section 14.33.060.A above. Requiring sidewalks on Street B would restrict the property from being developed to its fullest potential. Furthermore, sidewalks would not improve access for pedestrians. This criterion is met.

(h) NMC Section 14.33.060(D). Authorization of the Variance will not result insubstantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.

The variance will not create any adverse impact to surrounding properties. Street B will not be a typical through street and will not connect to the surrounding street network. The future homes on Lots 5 through 9 will be the only uses served by the street that will generate traffic. Therefore, only the subject property is impacted by the variance. Furthermore, streets in the vicinity such as SE Harbor Crescent Drive that serve development on adjoining properties do not have sidewalks. With the variance, the proposed streets will be improved to a higher level than what is typical of other streets in the vicinity.

(i) *NMC Section 14.33.060(E). The Variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.*

A conceptual plan for the extension of utilities is shown on Sheet C7 of Exhibit B. A variance to allow the hammerhead portion of the street to be constructed without sidewalks will not impact the provision of access to utilities since those utilities will be stubbed from the street or located in public utility easements adjacent to the street. Fire access will be available from the street. This criterion is met.

(j) *NMC Section 14.33.060(F). Any impacts resulting from the Variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.*

The variance will not result in any impacts requiring mitigation. This criterion does not apply.

12. Response to testimony provided at the public hearing and during the open record period.

(a) Testimony received during the open record period was consistent with commentary provided at the September 10, 2018 public hearing where individuals, many of which own property in the adjoining Harbor Crescent Subdivision, expressed concerns that the site development plans were not adequately assessed by the certified engineering geologist with Foundation Engineering. Concerns relate to whether or not structural solutions would be needed to shore up planned cut and fill slopes on the east and west sides of the subdivision, whether or not the full extent of unconsolidated fill would be removed, and a discrepancy between the grading plan and engineering geologist recommendation that unsupported finished grades be at or below a 2:1 slope. Articles were submitted related to the developers past business practices; however, such information is not relevant to the approval criteria and; therefore, cannot be factored into the decision.

(b) The applicant provided a supplemental report from Foundation Engineering, Inc., dated September 13, 2018, confirming that they had reviewed the plans prepared by AKS Engineering and Forestry, and that they believe finish grades at or below a 2:1 slope can be achieved without the need for structural solutions. Additionally, Foundation Engineering concluded that, provided their recommendations are followed, site grading will not increase the risk of slope instability within or adjacent to the property. AKS Engineering and Forestry submitted a corrected grading plan (Sheet C8) to address the discrepancy noted in the public testimony. Lastly, with regard to fill, Foundation Engineering, Inc. provides specific recommendations for the removal and reprocessing of unconsolidated fill material. Conditions of approval recommended in the planning staff report for the September 10, 2018 hearing require Foundation Engineering certify that site grading conformed to their recommendations. This is sufficient to address the concerns raised related to the finished slopes and fill.

(c) Considering the above, the Planning Commission finds that the applicant has reasonably addressed concerns with the project that came to light as a result of public testimony.

OVERALL CONCLUSION

Based on the staff report, the application material, and other evidence and testimony in the record, the Planning Commission concludes that the request as presented in the application materials complies with the criteria established for approval of a tentative subdivision plan, geologic permit, and variance; and the request is hereby **APPROVED** with the conditions listed below.

1. It shall be the responsibility of the property owner to adhere to the recommendations contained in the Geotechnical Investigation for Fisherman's Wharf Estates, prepared by Foundation Engineering Inc., dated October 19, 2007, as updated by letters dated June 12, 2018 and September 13, 2018 (collectively "Geologic Reports"). These Geologic Reports are only valid for the preliminary subdivision plat addressed in the report.
2. Certification of land division compliance with the Geologic Reports (e.g. site grading, street and utility installations, etc.) is required prior to approval of the final plat. NMC 14.21.130 states that no development requiring a Geologic Report shall receive final approval until the city receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. If mitigation measures involve engineering solutions prepared by a licensed professional engineer, then the city must also receive an additional written statement of compliance by the design engineer.
3. Any sedimentation caused by stripping vegetation, grading, or other development, shall be removed from all adjoining surfaces and drainage systems and the affected areas returned to their original or equal condition prior to final plat approval.
4. The applicant shall perform hydraulic modelling of the public storm drainage system at SE Bay Blvd to confirm it has capacity to accept run-off from the subdivision attributed to a 25-year, 24-hour storm event. In the event the public system lacks capacity, then the analysis shall include recommendations for upsizing the system or detaining stormwater onsite in a manner sufficient to accommodate anticipated run-off.
5. Water, sewer, street and storm drainage infrastructure shall be installed in a manner consistent with the letter from City Engineer, Tim Gross, dated June 4, 2018, and the June 12, 2018 and September 13, 2018 letters by Foundation Engineering, including dedication of appurtenant easements. All public improvements shall be accepted by the Public Works Department prior to approval of the final plat.
6. All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, improvements shall conform to any existing published set of standards designated by the City Engineer for the type of improvement. The

City Engineer may approve designs that differ from the applicable standard if the City Engineer determines that the design is adequate.

7. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The subdivider shall make all necessary arrangements with the serving utility to provide the underground service.

8. Fire hydrants are to be installed as required by the 2014 Oregon Fire Code. Such hydrants shall be located within public rights-of-way or public utility easements.

9. The applicant shall confirm the location of survey monuments for the Harbor Crescent Subdivision, where it borders the subject property, and shall ensure that site utilities are placed more than one foot away from said monuments.

10. Upon completion of street improvements, the applicant shall ensure that monuments are reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines.

11. Installation of public improvements, including excavation in the excess of 100 cubic yards, shall not occur until plans have been checked for adequacy and approved by the City, and shall not be commenced until after the city is notified.


12. All public improvements shall be constructed under the inspection and to the satisfaction of the City Engineer. The city may require change in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.

13. Underground utilities, sanitary sewers, and storm drains installed in streets shall be constructed prior to the surfacing of the streets. Stubs for service connection for underground utilities and sanitary sewers shall be placed to allow future connections without disturbing the street improvements.

14. A map showing public improvements “as-builts” shall be filed with the city upon completion of the improvements.

15. A final plat shall be submitted within two years of the tentative plat (i.e. concept map) approval. The Agency shall finalize the survey, secure the signatures on the plat from all impacted owners, and prepare necessary conveyance documents to ensure that the lot configuration, ownership, and rights-of-way are established as illustrated on the tentative plat. The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.

Memorandum

To: Newport Planning Commission
From: Derrick Tokos, Community Development Director 
Date: September 17, 2018
Re: Hearing Continuance for Four Lot Townhouse Subdivision (File No. 2-SUB-18/4-GP-18)

Attached is a notice for public hearing of an application for tentative subdivision and geologic permit approval of a four lot townhouse project at 847 SE 5th Street. The applicant and property owners are Celeste and Dylan McEntee.

This application was scheduled for public hearing with the understanding that the geologic report would be submitted in time for city staff to review the document in advance of preparing a staff report for the hearing. This has not occurred, and in fact a report has yet to be submitted. H.G. Schlicker & Associates is drafting the report, and they have indicated that it will be ready within the next week. The delay appears to have occurred because of a miscommunication between the owners and consultant regarding the scope of work, not because of any issues they discovered at the property.

The subject lot is in a geologic hazards area and, consequently, a report is a required component of a subdivision application (NMC 13.05.070(10)). Consequently, it would be inappropriate for the Commission to take formal action on the application at this time.

I would recommend the Commission open the hearing, take testimony from anyone in attendance that wishes to speak on the matter, and then continue the hearing to November 12, 2018. That should provide sufficient time for the geologic report to be submitted and reviewed. A complete staff report would be prepared for the November 12th hearing addressing relevant approval criteria.

The attached notice includes a reduced size copy of the subdivision concept.

Attachment

**CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING¹**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, October 22, 2018, to consider the following request:

File No. 2-SUB-18 / 4-GP-18.

Applicant & Owner: Celeste & Dylan McEntee.

Requests

2-SUB-18: Approval for the Tentative Subdivision Plan to subdivide a parcel of land into four townhouse lots.

4-GP-18: Approval for a Geological Permit to allow future development, construction, and site clearing within a known geologic hazard area.

Location: Tax Lot 3100 of Lincoln County Assessor's Tax Map 11-11-09-BC (847 SE 5th Street).

Applicable Criteria: Must be consistent with those approval criteria as set forth in Section 13.05.085 (for tentative subdivision plan approval) of the City of Newport's Municipal Code (NMC); and NMC Chapter 14.21 (for geological permit approval).

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances that a person believes applies 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 and written testimony will be taken during the course of the public hearing. Letters 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 or submitted to the Planning Commission during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor (including the applicant) 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 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 22, 2018, 7:00 p.m. in the Newport City Hall Council Chambers (address above in "Reports/Application Materials").

MAILED: October 2, 2018.

PUBLISHED: October 12, 2018/Newport News-Times.

¹ This notice is being sent to affected property owners within 200 feet of the subject property (according to Lincoln County tax records), affected public/private utilities/agencies within Lincoln County, and affected city departments.

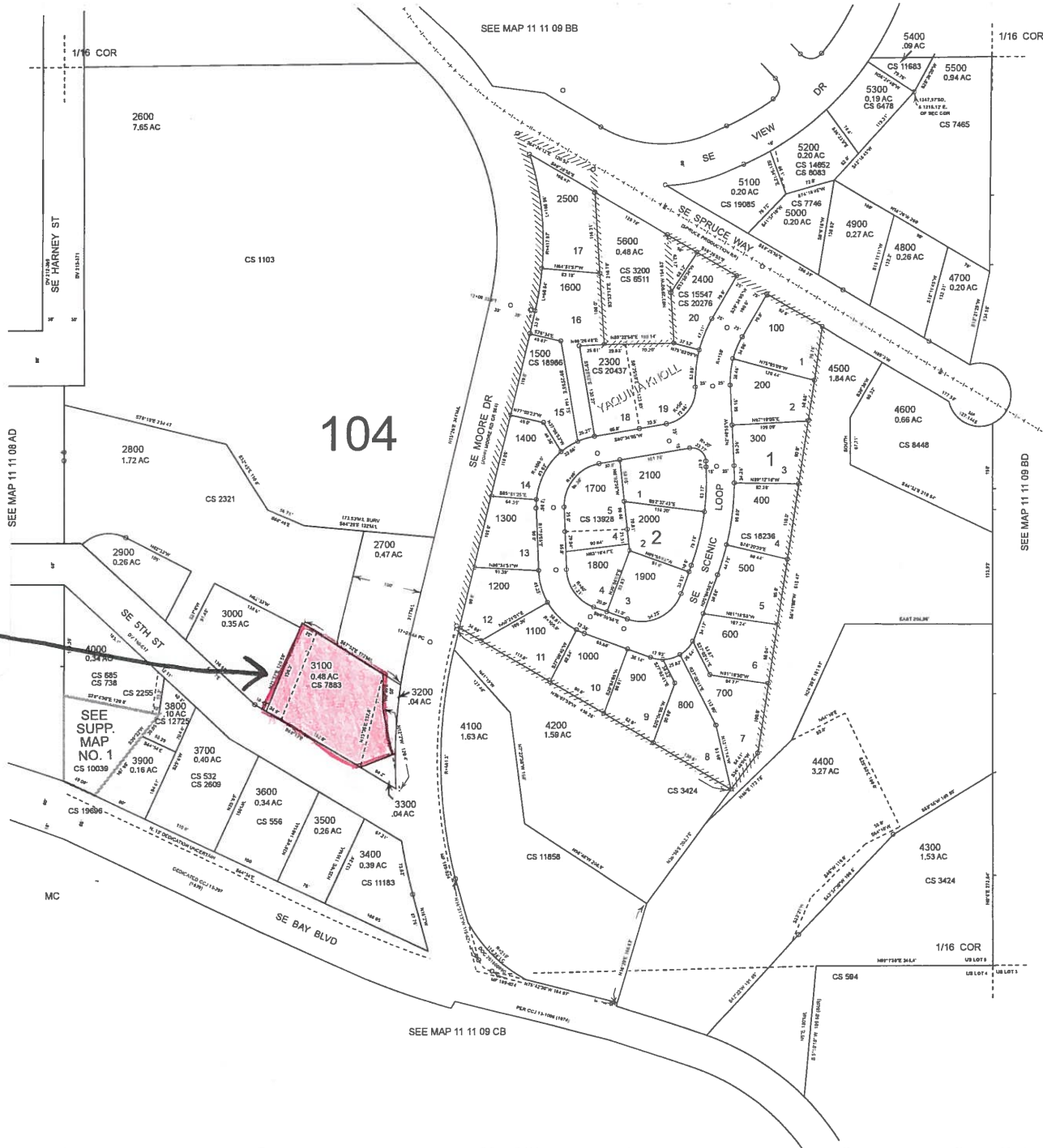
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY



S.W.1/4 N.W.1/4 SEC.9 T.11S. R.11W. W.M.
LINCOLN COUNTY
1" = 100'

11 11 09 BC
NEWPORT

Cancelled
2200
4401



Subject Property
File 2-54B-18/4-GP-18

Revised: 54
01/31/2

NEWPORT
11 11 09 BC

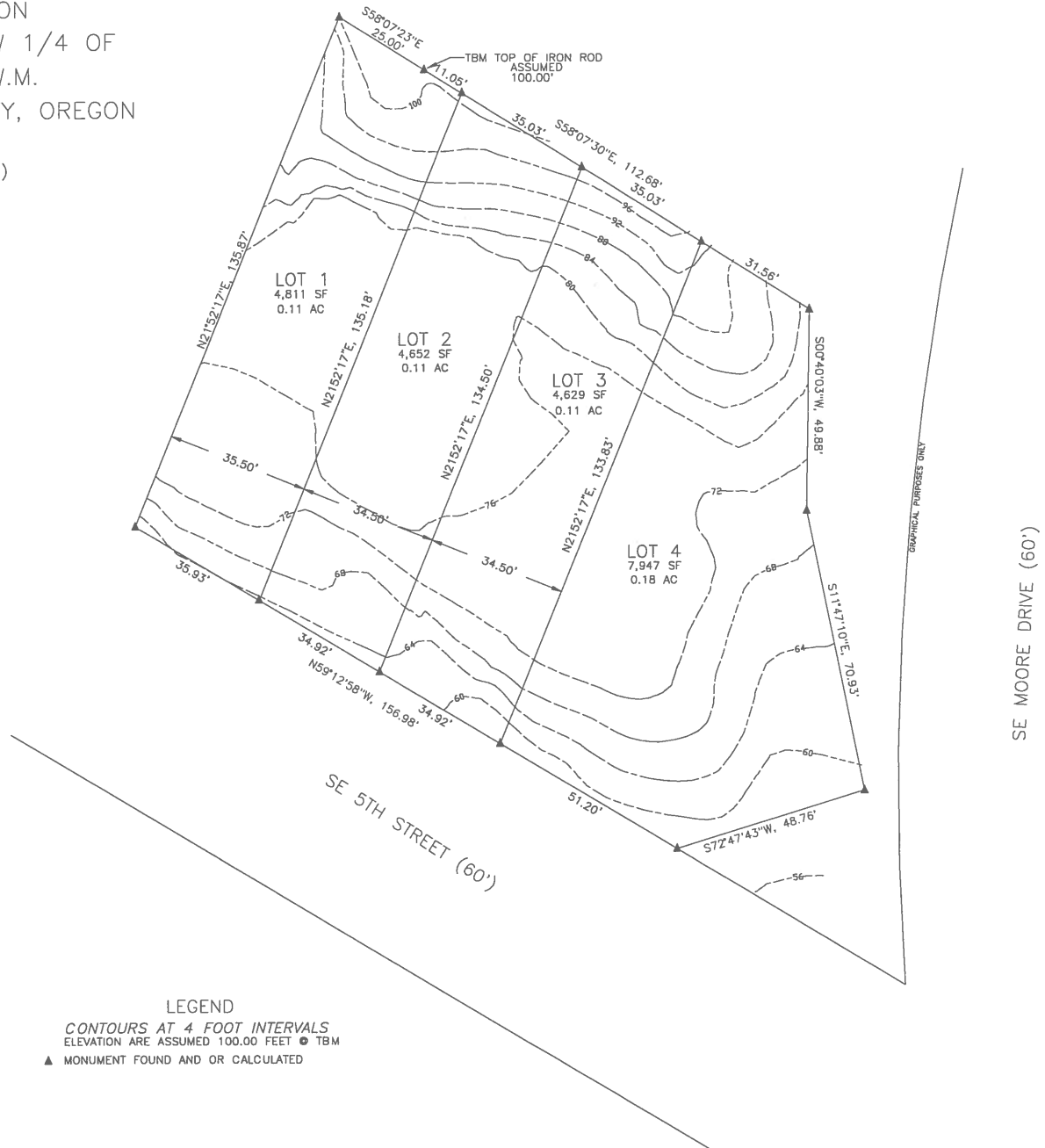
5TH STREET LOFTS

A TOWNHOMES SUBDIVISION
 LOCATED IN THE SW 1/4 - NW 1/4 OF
 SECTION 9, T11S, R11W, W.M.
 CITY OF NEWPORT, LINCOLN COUNTY, OREGON

SEPTEMBER 11, 2018
 (11-11-09-BC TAX LOT 3100)



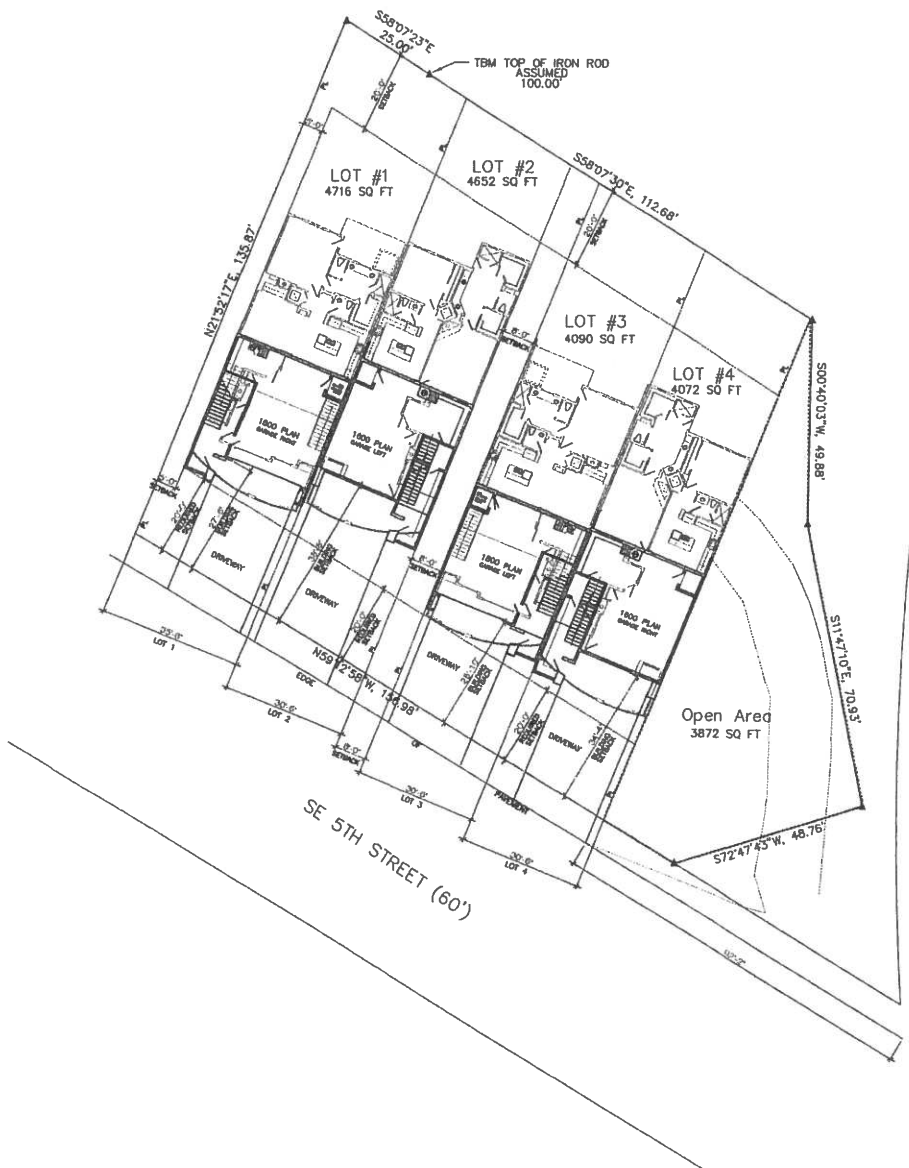
SCALE
 1"=20'



LEGEND

CONTOURS AT 4 FOOT INTERVALS
 ELEVATION ARE ASSUMED 100.00 FEET @ TBM
 ▲ MONUMENT FOUND AND OR CALCULATED

<p>NYHUS SURVEYING INC. -GARY NYHUS- PROFESSIONAL LAND SURVEYOR P.O. BOX 206 740 E. THISSELL RD. TIDEWATER, ORE 97390 (541) 528-3234</p>	CHECKED BY: GKN
	DRAWN BY: GAM
	DATE: 9-11-2018
	SCALE: 1" = 20'
	PROJECT: 16082C
DRAWN BY: GM MAPPING -GREG MURRY- (541) 528-7062 / 78ZPRO	



AREA CALCULATIONS
22,077- LOT SQ. FT.

FLOOD INSURANCE RATE MAP (FIRM) INFORMATION			
COMMITMENT PERIOD	MAP NUMBER	DATED	DATE OF FIRM EXPIRY

LEGAL DESCRIPTION

Situs: 847 SE 5TH ST
 LEGAL: TWNShP 11, RNg 11
 DOC201600136
 ACCT # R418216
 TAX LOT 3100

SITE PLAN



1" = 30'-0"

- REV #1
- REV#
- REV#
- DESIGN BY: [NAME] ALL RIGHTS RESERVED
- PROJECT
- FLOOR PLAN

Oceanquest Design
 DESIGN • BUILD
 CCB# 198518

PROJECT
 5TH STREET LOFTS
 NEWPORT, OREGON