



PLANNING COMMISSION REGULAR SESSION AGENDA
Tuesday, November 13, 2018 - 5:00 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 22, 2018

[Draft PC Work Session 10-22-18.pdf](#)

2.B Approval of the Planning Commission Regular Session Meeting Minutes of October 22, 2018

[Draft PC Minutes 10-22-18.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 File 1-GP-18-A (Continued): 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)**
[File 1-GP-18-A.pdf](#)

5. PUBLIC HEARINGS

- 5.A File No. 2-SUB-18/4-GP-18 (Continued): Four Lot Townhouse Subdivision. (NOTICED FOR A 6:00 PM START)**
[File 2-SUB-18 -- 4-GP-18.pdf](#)

- 5.B File No. 5-Z-17: Newport Short-Term Rental Ordinance Amendments (Draft Ordinance No. 2144). (NOTICED FOR A 6:00 PM START)**
[File 5-Z-17.pdf](#)

6. NEW BUSINESS

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

- 8.A Updated Planning Commission Work Program**
[PC Work Program_11-5-18.pdf](#)

9. ADJOURNMENT

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
October 22, 2018
5:30 p.m.

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

Planning Commissioners Absent: Mike Franklin (*excused*)

PC Citizens Advisory Committee Members Present: Dustin Capri.

Public Members Present: Carla Perry, Pam McElroy, Jamie Michel, Frank DeFilippis, Wendy Engler, and Janet Webster.

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 5:35 p.m.
2. **Unfinished Business.**
- A. **Continued Review Draft VRD Code Amendments.** Tokos reviewed the notice for the public hearing and told the PC that the hearing on November 13th because of the holiday. The PC was in agreement to start the regular session meeting at 6 p.m. without a work session meeting. Tokos said the notices for the hearing would be mailed out on Wednesday, October 24, 2018.

Tokos reviewed the markup language and the changes that the City Council (CC) suggested. Croteau thought the B&B definition needed to be looked at and asked if owner occupied had to be just the owner or if it could be an authorized agent. Berman thought this deserved a change. Tokos would update. He noted the definitions of sale or transfer would be tightened up if a cap was in place and noted it was what constituted a sale of transfer with a corporation. Hardy asked how a change could happen. Tokos said it would be the original licensed holder. Hardy suggested saying “name of owner” doing business as.

Croteau said the exemption should be added on Page 3 of 27. Tokos said it would be going from an individual to a spouse. Hanselman asked if homeshares would need an endorsement license. Tokos said yes. Hardy asked if the city changed its agreement with Airbnb on how they reported who paid room taxes. Tokos said the City did away with the agreement because the State passed a law that did away with agreements with intermediaries.

Tokos noted that under parking there was a change to say that photos of off-street parking needed to be within 30 days of time of application. Croteau said there needed to be some sort of proof/certificate under liability. Tokos said this was the certificate for renewals. Hanselman suggested requiring a letter of intent at application, then before they picked up the endorsement license they had to have proof. Croteau said to take off “listing” from the number on residential proof.

Tokos reviewed the transferability provisions. Croteau asked what would happen if the license went with the sale and there was someone waiting in line for another license if caps were in place. Tokos said if there was a cap, then these wouldn't free up for residential. As licenses were given up for sale they would open up spots. A discussion ensued regarding the three options for transferability. Croteau asked why the AC didn't want transferability in residential. Tokos said the thought was that people in residential areas didn't want the feeling that once a VRD, always a VRD. There was more of an expectation of this in a commercial area. Croteau asked where this was located in the language. Tokos said it was implied.

Capri asked how the voting on the amendments would happen. Tokos explained that there would be two public hearings, and on the second hearing the PC would take vote and provide recommendations to the CC on where they thought they should go. Capri was concerned about the PC taking testimony and then voting that same night. Tokos said the public testimony would allow the PC to hear input on the options and then they would be able to make a recommendation to the CC. A discussion ensued regarding how to take testimony and voting on recommendations. Tokos reminded the PC that the schedule was tentative. The first hearing was noticed and the PC could gauge the testimony and decide what they want to do next after public testimony. The PC was in general agreement with this. Janet Webster addressed the PC and questioned if the public would understand the public notice and what the criteria was. Tokos said these were the

standards for legislative changes. Wester thought this was important and suggested looking at it again to make sure it was easy to understand. Patrick noted that there was a lot of changes that were dependent on other changes and until everything was reviewed the PC couldn't make decisions.

A discussion ensued regarding how the PC would do vetting. Tokos suggested taking testimony and having a work session before another hearing to vote. He noted that all licensed VRDs would be nonconforming once the amendments were in place. Hardy asked if all VRDs would be noticed. Tokos confirmed they would.

Tokos explained that the endorsement renewal would happen during the normal business license renewal at the beginning of the fiscal year. Owners would have between July 1st and August 15th before the license would be presumed to be discontinued without any further action. Hanselman asked if the 45 day grace period was a State requirement. Tokos said it was a city requirement. Berman asked if it would be a two-step renewal process every year. Tokos confirmed it was.

Tokos reviewed approval standards next. He noted that the noticing for new VRDs to neighbors would be shifted away from a mailing notice to requiring a posted sign. Berman asked if the primary contact had been defined. Tokos said it wasn't defined but they would need to be able to respond within 30 minutes. Tokos said the Ad-hoc Work Group (AC) was in pretty much consensus that the 3.1/Frank Peters was the way to go. Hardy was concerned that a sign would have the potential of notifying residents that the unit was not occupied full time. Tokos said the AC had discussed this. Croteau asked about the thought to expand the 500 feet notice. Tokos said the AC was good with a sign posting as a replacement for mailing notices. Branigan wondered if there should be a color requirement for the signs. Croteau thought the sign should be required to be in English. Hanselman thought it should be Spanish as well. Patrick asked if there had been thoughts to numbering endorsement licensing. Tokos said this was already required to be posted. Capri asked if a condition use option for parking was granted for a VRD, would they have to reapply every year for it. Tokos said if it was a conditional use authorization, it ran with the property. Berman asked what "1-2" meant for the size of the sign. Tokos said it needed to be between one and two square feet. Berman thought the sign should be reflective if not illuminated.

Tokos covered fire/structural inspections. Capri asked if the Building Official was okay with the structural safety element. Tokos said yes, it was the Building Official's recommendation.

Tokos covered proof of use next. Croteau suggested taking out "must" show proof of use. Tokos would take it out. He reviewed the two year cooling off period next. Hanselman noted he had asked for information on how many days each VRD unit was used but the city didn't have this data. Hardy said the current report form didn't include the number of days rented. Hanselman thought there needed to be a proper data form in order for this information to be collected. Tokos thought this could be put on forms. Carla Perry addressed the PC and asked if the AC would see these forms and if they would reassemble to see if the information was actually covered in the form. Tokos said the administrative documents would be put together after the ordinance was passed. Perry asked that the AC be included and notified when those forms were ready.

Hanselman asked to add on the building inspection that the laundry room be required to have a GFCI if there was a sink by the receptacle. Patrick said they left this up to the Building Official to call out on his inspections.

Tokos reviewed the complaints next. Perry suggested there needed to be some mention of fines in this section. She said the AC was in agreement with enforcement but it wasn't in the document. Tokos said there were provisions but on this particular one they should consider defining what "timely manner" was. Branigan suggested one hour to respond. Jamie Michel addressed the PC and reported that if they were talking about the concern of the neighbors, her management company would reach out to the guest by phone or come to the unit. She said they would then respond to the neighbor and let them know how the concern was responded to. Hanselman stated they had to rely on the owner/manager to respond to concerns because the police couldn't respond. Michel thought an hour was reasonable for response time. Pam McElroy addressed the PC and asked how this would work with a central complaint reporting. Tokos said they planned on going with a third party vendor which would create the complaint system with a 24 hour dispatch. He noted that they couldn't control who chose to use that service and who the public contacted. If the public went through the central complain service, it would be dispatched to whomever was the designated contact. Berman asked if the third party complaint contact information needed to be on the sign. Hardy thought it should if it existed. The PC was in general agreement to say that timely manner was within one hour. Tokos said that "respond" meant getting back to the owner.

Tokos reviewed the guest registry next. Berman thought it was important to have the log available to the city so they could review the rental log. Croteau agreed and thought under 2.B is should say "emergency responders and the city" should have the rental log made available to them for a disaster. Hanselman suggested changing 3.B from "or" to "and"

so the owners couldn't hide behind the manager's name. Perry suggested changing D to add "off-street" to the number of approved parking spaces.

Berman asked if it was a violation if tenants parked on the street. Tokos said it wasn't a violation for on-street parking, it would be a violation that they didn't use the designated off-street parking. Berman was concerned about RVs parking on the streets for rentals. Tokos said the language by the AC said the renters had to use the designated off-street parking first. If there were more vehicles than this, they could use the on-street parking.

Croteau suggested changing "while occupied" to "while the dwelling was used". Tokos would change this. Croteau asked if it should say that liability was required. Hanselman suggested saying "required liability insurance". A discussion ensued regarding on the premises occupancy. McElroy said it should say that occupancy was "at any time". Perry said the AC agreed to add that statement at the end. A discussion ensued regarding occupancy limits. Tokos said the CC asked for clarification on appeals and it was added.

Berman said on Sections 45 and 50 there were three different ways the Municipal Code was referred and suggested that it be made consistent throughout to say "NMC". Tokos would change this. Branigan suggested putting in definitions that NMC meant Newport Municipal Code.

Tokos covered penalties next and the three strikes you're out language. Croteau asked if there would be language on fines included. Tokos said there wouldn't be if they had an endorsement because it would be the three strikes you're out risk. Berman asked if a violation went on for three days, would it be considered one or three violations. He thought it was an issue and needed to be defined. Tokos said they could run into issues when counting each day towards a three strikes rule. Frank DeFilippis addressed the PC and suggested defining duration. Tokos explained that owners would get one notice and if they didn't change things, it would be a citation.

Tokos reviewed the land use authorizations next. Croteau said under "purpose", he didn't like it saying "housing for a business". Tokos would change to "housing for employees of businesses".

Tokos reviewed the conditional use language and clarifying language for blocks that were long. Hanselman thought long streets might create an issue but didn't think a street with five houses should be considered a long street. A discussion ensued regarding standard blocks and street segments and how to factor them. They also discussed conventional blocks versus non-conventional blocks. Perry said that the AC agreed that the long blocks could be addressed in this way but there was never a number. She wanted to see long blocks be 20 houses.

The PC took a break to hold their scheduled regular session meeting at 7:02 p.m. and reconvened at 7:15 p.m.

Patrick asked if CC&Rs were checked for parking restrictions. Tokos said they would be private agreements that had to be enforced. All they were looking at for the shared parking was that the covenants included something that said the space they were claiming was reserved for them. Berman asked if water zones were considered commercial. Tokos said yes.

Tokos reviewed the cap alternative and how it would work. Croteau said anytime there was a percentage there needed to be a number. Tokos said that 200 to 300 was this range. Hanselman said that the AC had requested that it not be 220 to 300 and noted there was not a vote on this. He thought a lower number of 163 to 200 should be a number that could be used, but there wasn't consensus. Hanselman was concerned that he heard Tokos say this number range could be used but it wasn't included. He used 163 because that was the number of VRDs when the moratorium was in question. Tokos said there were two policy options with a top end and the PC could decide what the number should be. A discussion ensued regarding the maximum number of consensus. Hanselman didn't want the number to be listed on the right hand column. He felt it should be a percentage of the zone count, not a number. Tokos reminded the PC they would be adjusting the language as they whittled down the other areas. Hanselman was concerned that the AC had no consensus on the number or percentage. Croteau said most of the language would be determined on what map alternative was chosen. There was a discussion on what number was agreed upon at the AC meetings. Hanselman said there was no consensus on percentage but wanted the range to go from 163 to 275. Tokos reminded the PC that the way the code was structured was to give the percentage top end for the CC and by resolution. He thought the most efficient way was to move these forward and make a recommendation on what the numbers should be once they knew what map alternative to go with. Croteau and Patrick suggested having another alternative to be three percent. Capri noted that if the constraints were on street segments, this wouldn't matter. Tokos said they could use the spacing and cap together as well. He reminded the PC that the choice of alternative maps would give direction on what other things would go away. Hanselman said they were failing to recognize that a nerve was hit at 163 VRDs and wanted it to be recognized. Berman didn't feel 163 was a relevant number, but the percentage in a neighborhood was more relevant. Hanselman thought they couldn't put a number range when they didn't know where VRDs were going to be allowed. He was concerned

that that the AC was tasked with goals to protect the housing and neighborhoods and didn't feel that was included in the document. Tokos read the responsibilities the AC agreed to when they signed on. Capri was concerned there weren't options that showed how things were contingent on other things and felt it needed to be figured out because it was so confusing. Tokos noted they would go through policy option by policy option to find out where there was consensus, and give a recommendation to the CC. Croteau said after the public hearing the PC would have to sift through and provide a road map that was mixed in terms of options to the CC. He said he would be calling for a recorded vote on different alternatives to tell the CC on why they agreed or disagreed on things. This could be discussed in a work session then voted on in a regular session. Croteau said that the document needed to reflect what the PC wanted. Berman asked if it would show what the PC voted down. Tokos said it would.

Croteau asked what the best way to review was. Tokos suggested holding a public hearing to narrow the options, do another public hearing with the narrowed options, and then go to a vote. A discussion ensued regarding how the PC could narrow the options and how to come to consensus on decisions without a vote. Hanselman asked if the CC could ask for a moratorium on VRDs. Berman said the CC had already voted it down. Hanselman said that was then and it might be a more appropriate time to consider this. Tokos said there was a time and a place to look at either a moratorium or way to address additional applications and they needed to look at what the package should look like.

Perry asked about the language saying VRDs were permitted in all zones. Tokos said this was language for if there was a cap in place. Capri asked how many VRDs there would be if there was one per street. Tokos said they would get into problems when talking about areas where there were condos. Berman asked if there should be something about a frequency on how often the CC should review the ordinance. Tokos said things could be reviewed when the CC wanted to see it happen.

Tokos reviewed the spacing requirements next. Berman asked for clarification on the statement about only one VRD being allowed if it abutted a corner lot. Tokos would clean up the language. He reviewed the concept of treating a condominium unit as one unit and said there were challenges on townhouses in South Beach. Tokos reviewed occupancy next. The PC was in general agreement to go with "children 3 and under".

Tokos reviewed the parking standards next. Berman thought that if the VRD couldn't meet the parking standards, they should reduce their occupancy. He was concerned that there wasn't any language saying anything about this. Hanselman said the AC talked about occupancy being set on number of rooms and parking. Tokos said it would be one off-street parking space, per bedroom for use. Berman wanted this included in the language. Tokos would review the language. Berman suggested adding it to D.1 saying "maximum of five bedrooms, not to exceed the number of off-street parking spaces". Tokos said E.1 had a conditional use and E.2 was saying that they fell in a parking district and could use public parking to meet requirements.

Tokos reviewed non-conforming short term rentals next and the alternatives. Croteau thought they should do three to five years for amortization. Tokos said the City Attorney advised not to go below five years for legal defensibility. A discussion ensued regarding taking public testimony and how to use it to make decisions on policy options. Hardy suggested that the PC take a harder look at the premise they were working under because the idea of protecting housing and the character of neighborhoods was prejudicial and inaccurate. She said the character of neighborhoods and the problems from VRDs were things that were common across Newport.

Tokos reminded the PC that the notice would be mailed out by October 24th for the November Planning Commission public hearing.

3. **New Business.**
4. **Director's Comments.** No Director comments.
5. **Adjournment.** Having no further discussion, the meeting adjourned at 8:15 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
October 22, 2018

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

Planning Commissioners Absent: Mike Franklin (excused)

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 7:03 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 October 8, 2018.

MOTION was made by Commissioner Croteau, seconded by Commissioner Berman to approve the Planning Commission work session meeting minutes of October 8, 2018 with minor corrections. The motion carried unanimously in a voice vote.

B. Approval of the Planning Commission regular session meeting minutes of October 8, 2018.

MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan to approve the Planning Commission regular session meeting minutes of October 8, 2018 with corrections. The motion carried unanimously in a voice vote.

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

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

A. **File No. 3-VAR-18.**

MOTION made by Commissioner Croteau, seconded by Commissioner Hardy to approve the Final Order and Findings for File 3-VAR-18 as presented. Berman abstained. The motion carried in a voice vote.

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

MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan to approve the Final Order and Findings for File 1-SUB-18/2-VAR-18/3-GP-18 as presented. Hardy was a nay. Berman abstained. The motion carried in a voice vote.

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

6. **Public Notices.** At 7:08 p.m. Chair Patrick opened the public hearing portion of the meeting.

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

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. Croteau, and Patrick reported site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

Tokos gave his staff report. He recommended continuing hearing until next meeting because the geological report wasn't available. It would be continued to the November 13, 2018 meeting.

Berman asked what element of the application required a hearing. Tokos said the subdivision was the reason it had to go before the PC.


MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan to continue File No. 2-SUB-18/4-GP-18: Four Lot Townhouse Subdivision to the November 13, 2018 Planning Commission meeting. The motion carried unanimously in a voice vote.

7. **New Business.** None were heard.
8. **Unfinished Business.** None were heard.
9. **Director Comments.** None were heard.
10. **Adjournment.** Having no further business, the meeting adjourned at 7:11 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

Memorandum

To: Newport Planning Commission
From: Derrick Tokos, Community Development Director 
Date: November 6, 2018
Re: Record for Appeal of Geologic Permit (File No. 1-GP-18)

Below is the exhibit list for the entire record. With this memorandum, I have attached testimony submitted after the Planning Commission packets were posted for the 10/8/18 public hearing. They are the Exhibit "G" documents. In the interest of not inundating you with paper, I am not reattaching exhibits that were included with your 9/24/18 and 10/8/18 hearing packets. Those documents can be downloaded from the City of Newport website at: <http://newportoregon.gov/citygov/comm/pc.asp>.

The case record for this appeal is now closed, and the Planning Commission is scheduled to deliberate and render an oral decision on the appeal on 11/13/18, with written findings and final order to be prepared in line with that decision for consideration at the 11/26/18 meeting.

Exhibits

Testimony provided at the 10/8/18 hearing and during the open record period.

Exhibit #	Description
G-1	Letter from Mike Reeder, Attorney, dated 10/29/18, with the applicant's final written argument
G-2	Email from Sean Malone, Attorney, dated 10/22/18, containing rebuttal testimony submitted on behalf of the appellant
G-3	Email from Mike Reeder, Attorney, dated 10/22/18, with the applicant's rebuttal testimony and attached letter of the same date from K&A Engineering regarding their recommendation that additional borings be performed
G-4	Email from Mona Linstromberg, dated 10/22/18, and attached letter of the same date, containing rebuttal testimony
G-5	Memo from Newport Community Development Director Derrick Tokos and City Attorney Steve Rich, dated 10/22/18 responding to Mike Reeder's 10/15/18 testimony
G-6	Email from Mona Linstromberg, dated 10/18/18, offering Mr. Malone's services to prepare findings for denial

G-7	Letter from Mike Reeder, dated 10/15/18, with attachments, arguing that a geologic permit cannot be required because housing projects are entitled to approval under clear and objective standards and the city geologic code is not clear and objective
G-8	Email from Sean Malone, Attorney, dated 10/15/18, and attachments, submitted on behalf of appellant, responding to issues raised at the hearing and summarizing their arguments as to why the permit should be denied. He further expresses concerns about the need for the open record period and ramifications related to the city's failure to render a final decision within 120 days
G-9	Letter from Derrick Tokos, Community Development Director, dated 10/15/18, responding to issues raised in the letter Mr. Malone submitted at the 10/8/18 hearing
G-10	Email from Elaine Karnes, dated 10/15/18, with attached permit records, letters and photographs
G-11	Email from Elaine Karnes, dated 10/13/18, with attached report from the Lincoln County Surveyors Office regarding the Jump Off Joe Road right-of-way
G-12	Email and letter with attachments from Mona Linstromberg, dated 10/13/18, raising concerns with the process and asking that the application be denied
G-13	Email from Janice Wickham, dated 10/13/18, objecting to the project and asking that beach access be restored
G-14	Email from Carol Reinhard to Teresa Amen, dated 10/2/18 and submitted 10/9/18 by Ms. Amen, with attached letter, speaking to drainage and slide issues in the area
G-15	Letter from Sean Malone, Attorney, dated 10/8/18, submitted at the public hearing that same evening outlining reasons why the appellant believes the application should be denied
G-16	Letter from the Oregon Shores Conservation Coalition, dated 10/8/18, responding to testimony provided by Michael Remboldt, P.E., G.E. with K&A Engineering
G-17	Email from Elaine Karnes, dated 10/7/18, with select pages from DOGAMI Bulletin 81
G-18	Pages from LinkedIn.com with J. Douglas Gless, MSc, RG, CEG, LHG professional qualifications, printed 10/7/18
G-19	Email and letter from Mona Linstromberg, dated 10/6/18, responding to K&A Engineering's analysis
G-20	Email from Mona Linstromberg, dated 10/5/18, responding to testimony provided by Tim Roth
G-21	Staff Memorandum for the 10/8/18 public hearing, prepared by Derrick Tokos, Newport Community Development Director
G-22	Staff Memorandum for the 9/24/18 public hearing, prepared by Derrick Tokos, Newport Community Development Director

Testimony submitted between the 9/24/18 and 10/8/18 hearing

Exhibit #	Description
F-1	Letter from Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., with K&A Engineering, dated 10/4/18, responding to testimony submitted on or after the 9/24/18 hearing
F-2	Letter from Elaine and Robin Karnes, submitted by email on 10/2/18, expressing concerns with the K&A Engineering analysis
F-3	Email from Bill Lund, dated 10/1/18, arguing that there has been no recent erosion or slope movement on the property, with attached photographs
F-4	Letter from Ruth Wilmoth to Mona Lindstromberg, dated 9/28/18, stating reasons why she believes the report wasn't prepared in accordance with "Guidelines for Preparing Engineering Reports in Oregon." Submitted via 10/5/18 email from Ms. Linstromberg
F-5	"Guidelines for Preparing Engineering Geologic Reports in Oregon," adopted by the Oregon State Board of Geologist Examiners, dated 5/30/14
F-6	Public notice of the October 8, 2018 hearing, published in the News-Times on 9/28/18
F-7	Letter from Lisa Thomas, dated 9/26/18, requesting the Commission carefully evaluate Mr. Lund's plans and potentially bring in outside help from Oregon State University
F-8	Email from Tim Roth, dated 9/25/18, outlining reasons why he believes the approval of Mr. Lund's geologic permit should be approved
F-9	Email submitted by Mona Linstromberg at the 9/24/18 hearing. The email. From 9/19/18 notes a deficiency in the newspaper notice for the 9/24/18 hearing
F-10	Photographs of the beach in the vicinity of the subject property, submitted at the 9/24/18 hearing
F-11	Email and letter from the Oregon Shores Conservation Coalition, dated 9/21/18, explaining why they believe the application should be denied
F-12	Email from Elaine Karnes, dated 9/19/18, with attached News-Times newspaper article from 6/16/93 related to what at that time was a proposed development in the vicinity of Jump-off Joe

Materials submitted after the appeal but prior to staff report for 9/24/18 hearing

Exhibit #	Description
E-1	Email from Elaine Karnes, dated 9/17/18, expressing concern with the geologic report and slope stability, with attached photographs
E-2	Letter from Chris Schneller, dated 9/16/18, expressing that they believe the applicant has failed to establish the site is suitable for the proposed development
E-3	Letter from Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., dated 9/12/18, responding to the peer review by Columbia Geotechnical

E-4	Email from Carol Reinhard, dated 9/11/18, expressing her opinion that the analysis by K&A Engineering was incomplete and faulty
E-5	Letter from Mona Linstromberg, dated 9/10/18, with comments on the conceptual site plan prepared by K&D Engineering, revised 7/2/18. Attached are full size copies of the plan to be distributed to the Commission members (plan to be distributed separately)
E-6	Geotechnical Peer Review by Ruth Wilmoth, C.E.G., P.E., with Columbia Geotechnical, dated 8/15/18 (submitted 8/29/18)
E-7	Email from Mona Linstromberg, dated 8/29/18, with chapter from a book by Paul Komar, titled Jump-off Joe Fiasco
E-8	Email from staff to Mona Linstromberg, dated 8/8/18, regarding issues with the notice of decision on the geologic permit
E-9	Email from Mona Linstromberg, dated 8/7/18, asking that a letter from the Oregon Shores Conservation Coalition related to the applicant's shoreland resource impact review application be included in the record (letter attached)
E-10	Email from Mona Linstromberg, dated 8/7/18, asking that a letter from Lisa Potter Thomas, related to the applicant's shoreland resource impact review application, be included in the record (letter attached)
E-11	Email from Mona Linstromberg, dated 8/7/18, asking that a letter she submitted related to the applicant's shoreland resource impact review application, be included in the record (letter attached)
E-12	Email from Mona Linstromberg, dated 8/7/18, asking that a letter she submitted with additional testimony related to the applicant's shoreland resource impact review application, be included in the record (letter attached)
E-13	Email from Mona Linstromberg, dated 8/7/18, asking that Tim Cross's credentials be included in the record. Includes enclosed resume
E-14	Email from Mona Linstromberg, dated 8/7/18, asking that Tim Cross's letter (Exhibit B-10) be included in the record
E-15	Email from Chris Schneller, dated 7/31/18, taking issue with Gary Sandstrom's conclusions related to the "design life of the structure"
E-16	Email from Chris Schneller, dated 7/31/18, expressing concerns with the design of the drainage system for the proposed development
E-17	Email from Ann Sigleo, dated 7/31/18, indicating that she believes the applicant's geologic report was thorough, but that additional details are needed for the beach access plan

Notice of the Appeal Hearing

Exhibit #	Description
D-1	Email from staff, dated 9/12/18, sent to persons on an email distribution list that asked to be kept apprised of land use matters involving the property. The email included the appeal hearing notice as an attachment
D-2	Notice of appeal hearing mailed to appellants, property owners within 200-feet of the subject property, and affected agencies. Notice was mailed on 8/31/18 and includes map and mailing list
D-3	Notice of the appeal hearing published in the Newport News-Times on 9/14/18

Appeal Documents

Exhibit #	Description
C-1	Email from Sean Malone, Attorney, dated 7/31/18, indicating that he is representing appellants in the appeal of the geologic permit
C-2	Email from Leslie Hogan advising of Pat Linstromberg's interest in signing on to the appeal. The email is dated 7/31/18
C-3	Email from Teresa Amen, dated 7/31/18 confirming that they own property on Spring Street
C-4	Appeal from Mona Linstromberg, Elaine Karnes, Christine Schneller, Robert Earle, Teresa, and Leslie Hogan (Power of Attorney for Pat Linstromberg), filed 7/31/18

Documents Submitted After Decision and Prior to Appeal

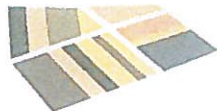
Exhibit #	Description
B-1	Email from Teresa Amen, dated 7/29/18, with attached letter from Robert Earle and Teresa Amen, Mary Bauman, and Nancy Luther opposing the proposed development
B-2	Email from Brent Bunker, dated 7/27/18, expressing concerns with the geologic stability of the subject property
B-3	Email from Ann Howell, dated 7/27/18 with an article about a house in Maryland that she views as an example of "just because you can do it, doesn't mean you should"
B-4	Email from staff to Chris Schneller, dated 7/27/18 related to road access permits the applicant will need to obtain if and when the geologic report becomes final
B-5	Email from Mona Linstromberg suggesting that K&A Engineering might want to revisit aspects of their report. The email is dated 7/26/18
B-6	Email from Mona Linstromberg, dated asking if the applicant might consider accepting an extension to the appeal period

B-7	Letter from Wayne Belmont, Attorney, Roy Kinion (Road Official) and Steve Hodge, P.E. with Lincoln County. The letter, dated 7/26/18, indicates that earthwork supported by an approved Geologic Permit can occur within County road right-of-way subject to an access permit. County Engineer comments relate to his conclusion that the geologic report is consistent with the 2014 Oregon Structural Specialty Code
B-8	Email from staff to the applicant, dated 7/26/18, with the letter from Mr. Cross regarding K&A Engineering's analysis
B-9	Email from Doug Gless, R.G., C.E.G, L.H.G., with H.G. Schlicker and Associates, dated 7/25/18, advising as to the relative weight readers should give to three reports that they prepared involving the subject property and adjacent parcels. Referenced reports are included with this exhibit
B-10	Letter from Tim Cross, dated 7/23/18, expressing concern with K&A Engineering's analysis
B-11	Email from Elaine Karnes, dated 7/20/18, summarizing issues discussed with staff

Record up to Issuance of City Decision

Exhibit #	Description
A-1	Email from staff, dated 7/16/18, to individuals that requested notice of the decision
A-2	Written notice and mailing list of individuals and agencies that received notice of the decision via first-class mail. Notice is dated 7/16/18
A-3	Notice of decision approving the geologic permit, dated 7/16/18
A-4	Email from Michael Remboldt, P.E., G.E., dated 7/6/18, transmitting the 6/29/18 report
A-5	Conceptual site plan for the subject property, prepared by K&D Engineering, Inc., dated 7/2/18 (11x17 reduced copy)
A-6	Geotechnical Engineering Report and Geologic Hazard Assessment, by Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., R.P.G, dated 6/29/18 and received by the City on 7/6/18
A-7	Email from staff advising the applicant that the transmitted report, which was intended to be an update, was in fact an older version. Email is dated 7/5/18
A-8	Email from staff indicating that the application was incomplete, dated 6/21/18
A-9	Geotechnical Engineering Report and Geologic Hazard Assessment, by Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., R.P.G, dated 6/12/18
A-10	Email from Bill Lund dated 5/4/18 requesting a meeting to discuss outstanding issues with the application
A-11	Email from Derrick Tokos, Newport Community Development Director (staff) to Mr. Lund, dated 5/4/18, advising that the application was incomplete

A-12	Email from Bill Lund seeking confirmation that the application is being processed. Email is dated 5/4/18
A-13	Copy of Newport Municipal Code (NMC) Chapter 14.21, Geologic Hazards Overlay
A-14	Geotechnical Engineering Report for property identified as Tax Lots 1800, 1900 and 1903, Tax Map 11-11—05-BC, by Michael Remboldt, dated 11/30/17
A-15	Letter from Michael Remboldt, P.E., G.E. related to the impact of the 60-foot Jump-off Joe road right-of-way on their 11/30/17 Geotechnical engineering Report
A-16	Land use application by William Lund, property owner, submitted 5/3/18



Law Office of Mike Reeder
Oregon Land Use Law



October 29, 2018

Via Email Only

d.tokos@newportoregon.gov

s.marineau@newportoregon.gov

Newport Planning Commission
c/o Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365

**Re: Applicant's Final Written Argument to Planning Commission
William Lund | Geological Permit Application | #1-GP-18-A**

Dear Planning Commissioners:

Please accept this letter as the Applicant's final written argument for the Geological Permit, City File #1-GP-18-A. For the reasons stated herein, the appeal should be denied and the Application should be approved.

Preliminary Matters

Before providing you with a final argument on the substantive issues it may be helpful to the Planning Commission to address some tangential matters first.

Response to Opponents' Claim of Bias

In his October 22, 2018 post-hearing responsive testimony letter, Mr. Malone, on behalf of the opponent-appellants, makes an unusual attack on your Community Development Director, Mr. Tokos by claiming that the Director is "biased."

First, whether Mr. Tokos is "biased" as claimed by Mr. Malone is entirely irrelevant to this proceeding. Mr. Tokos is not the decision-maker in this appeal; the Planning Commission is the hearings authority and therefore any claim of bias by the Planning Director, even if true, is of no legal significance. Claiming that the Director is "biased" is simply white noise to distract from the real issues and the merits of this appeal. LUBA has held that when planning staff are alleged to be bias, and staff is not the final decision-maker, even if true, that is not

sufficient to demonstrate that the final decision-maker was also biased. *Hoskinson v. City of Corvallis*, 60 Or LUBA 93 (2009).

Second, it is clear that the reason Mr. Malone is claiming bias is because Mr. Malone disagrees with the advice that Mr. Tokos has provided to you. Contrary to Mr. Malone's claim, that *is* the job of the Director. I do not know Mr. Tokos, but there is nothing in the record that suggests that he is doing anything other than providing to you his objective, professional opinion based on his independent review of the facts and law. It is unnecessary to doubt the professionalism of the Director simply because one disagrees with his professional opinion and advice. *See generally, Rosenzweig v. City of McMinnville*, 64 Or LUBA 402 (2011).

Response to Opponents' Issue regarding ORS 227.178 – "120-Day Rule"

State statute, ORS 227.178 (the "120-day rule") requires a city to make a "final decision" on a permit or limited land use decision within 120 days of the application being deemed complete except when an applicant requests an extension pursuant to ORS 227.178(5). ORS 227.178(10) prohibits cities from compelling the applicant to waive the 120-day rule. Should the city not make a final decision within the 120-day rule timeframe, ORS 227.178 provides that the city must refund a portion of the application fee to the applicant upon the applicant's request.

Furthermore, ORS 227.179 provides the applicant with the *option* to seek legal remedy in circuit court under a writ of mandamus action under ORS 34.130. However, the applicant is not *required* to seek such remedy. *Davis v. Polk*, 58 Or LUBA 1 (2008). Should the applicant choose to seek remedy with circuit court after the expiration of the 120-day rule, the applicant must provide written notice of the writ to those entitled to notice. To wit, if, in this case, the City failed to comply with the 120-day rule, and if the applicant chose to file a writ of mandamus in circuit court, Mr. Malone and his clients would receive notice and they would have the opportunity to participate in the mandamus action in circuit court. By extending the evidentiary record after the close of the public hearing, the Planning Commission allowed all parties the opportunity to further argue and support their respective cases. It is only when the local government truncates the review process such that a party's ability to present their case is thwarted, that a party's substantial right impaired. *See Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 472 (2005).

While it cannot be determined at this time whether a writ of mandamus action will be initiated if the City misses the 120-day rule, even if these proceedings resulted in a mandamus action, in no way would the City's extension of the evidentiary record "prejudice [his] clients' substantial rights" as Mr. Malone claims. He provides no legal authority for such a proposition, nor does he attempt to explain what rights would be prejudiced. While a mandamus action is clearly not his clients' preferred venue, it is not his clients' call to make. Whether the 120-day rule will be implicated has no bearing on this appeal.

Merits of the Geological Permit Application

The Applicant has met all requirements and criteria for the Geological Permit application and for that reason the appeal should be denied and the Director's decision to approve the permit should be affirmed.

The opponents have challenged the applicant's Geotechnical Report prepared by a certified engineering geologist, Gary Sandstrom and a registered professional geotechnical engineer, Michael Remboldt of K & A Engineering.

However, as pointed out by Mr. Rembolt, the opponents' "expert" is not an Oregon registered professional geotechnical engineer. This statement was unrebutted by the opposition. It is important to understand that the experts who stamp and sign a geotechnical report such as the one in this application have much more to lose if they are wrong in their analysis.

In this case we have not one, but two experts, who have stamped and signed the Applicant's Geotechnical Report. In addition they both signed and stamped the September 22, 2018 Response to Ms. Wilmoth's "peer review" of the Geotechnical Report.

Absolute Right to Have Clear & Objective Rules & the Needed Housing Statute

As I discussed at length in the Applicant's Post-hearing Open Record Letter dated October 15, 2018, my client has an absolute right to obtain building permits for the construction of his proposed single-family dwelling and two duplexes without obtaining a Geological Permit pursuant to ORS 197.307(4), ORS 227.173(2), and ORS 227.175(4)(b)(A). To be clear, the standards for the Geological Permit found at NMC 14.21.050, .060 and .090 are not clear and objective. Specifically, the NMC 14.21.050(D) requirement that a Geologic Report "...establishing that the site is suitable for the proposed development..." is not clear and objective. Who determines whether the site is "suitable" other than the Applicant's certified engineering geologist? Additionally, the appeal procedures are also not clear and objective because it is unclear how the Planning Commission is supposed to evaluate the Geologic Permit in the context of an appeal. See NMC 14.21.120. The question is: what standards does the Planning Commission use to resolve the appeal? If there are no standards then the NMC violates state law that requires clear and objective standards and that requires procedures that do not have the effect of discouraging the establishment of needed housing through unreasonable cost and delay. To require an applicant to provide a Geologic Report that has no standards or clear appeal procedures violates this requirement.

Mr. Malone, in his October 22, 2018 letter grossly mischaracterizes the law in regards to the City's legal obligation to only apply clear and objective standards, conditions and procedures.

Mr. Malone conflates the various statutes regarding such an obligation and characterizing these statutes as the "Needed Housing statute." In reality, these separate statutes are more expansive than the pre-2017 "Needed Housing Statute."

Mr. Malone also claims that the "new issue" is "misplaced and a distraction from the substantive errors committed by the applicant." He then insists that "the subject property falls within [an] exception to the needed housing statute."

It cannot be emphasized enough that Mr. Malone is wrong on all counts.

Amazingly he posits that "[t]he law is clear that housing proposed for development within an area identified under Goal 7 is not on 'buildable land' and the **pre-2017 version of ORS 197.307(4) required** that local governments 'adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing *on buildable land[.]*'" (Emphasis in *italics* by Mr. Malone, emphasis in **bold**, mine).

What is simply amazing is that Mr. Malone relies on a prior statute that is no longer in effect and therefore not applicable (pre-2017 ORS 197.307(4)) instead of the current law – ORS 197.307(4) (2017) as amended in 2017 by Senate Bill 1051 (2017).

His error is so obvious that it is difficult to take anything else in his letter seriously.¹ He simply asserts (albeit in a sly, round about way) that the pre-2017 ORS 197.307(4) controls and that the applicant must show that the subject property is in the buildable lands inventory and is needed housing as defined by the statute and administrative rules.

So, to be clear, the thrust of Mr. Malone's argument is that since the subject property is located within the City's natural hazards overlay zone, and that overlay implements state-wide Goal 7, that the subject property is not within the City's buildable lands inventory and the City is therefore exempted from the current state laws that require the City to impose only clear and objective standards, conditions and procedures on property within the buildable lands inventory.

Not only does that theory directly contradict the plain text of the current statutes, but it ignores the fundamental fact and legal consequence that Senate Bill 1051 (2017) was amended specifically to impose the clear and objective requirement on **all housing within the UGBs** regardless of whether the development site is in the buildable lands inventory or not.

¹ Mr. Malone also asserts: "The applicant's [October 15th] letter is riddled with threats that amount to nothing more than hollow allegations unsupported by an applicable legal framework." Mr. Malone's hyperbole is over the top; my October 15th letter makes no explicit or veiled threats of any kind. The legal framework is articulated throughout my October 15th letter.

On page 2 of my October 15th letter I quote verbatim the text of current ORS 197.307(4) that imposes a requirement on cities to adopt and apply only clear and objective standards, conditions and procedures (i.e. “clear and objective rules”) regulating the development of housing, including needed housing.

For clarity I cite the legislative format text of Section 5 of Senate Bill 1051 that shows the changes to ORS 197.307(4) that were adopted in 2017. The relevant text reads as follows, with the **bold** text signifying an addition of text and the text in *italics* signifying a deletion.

“ORS 197.307 is amended to read: * * * (4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of **housing, including** needed housing [*on buildable land described in subsection (3) of this section*].* * *” (Note: The **bold** text and *italics* comes from the text of SB 1051 and are not mine.)

It is beyond any reasonable argument that the current ORS 197.307 requires that all housing development, not just “needed housing” benefits from the requirement that only clear and objective rules may be applied.

To be sure, only housing that is defined as “needed housing” benefits from the state statute that prohibits local governments from adopting and applying standards, conditions and procedures that have the effect of “discouraging needed housing through unreasonable cost or delay.” ORS 197.307(4)(b). Regardless of whether it is relevant in this case, it should be understood that the proposed housing development is in fact “needed housing” as defined by ORS 197.303(1). Mr. Malone suggests that the proposed development is not needed housing because, according to Mr. Malone, my October 15th letter “...does not demonstrate that the proposed development meets the second part of the definition of ‘needed housing’ – housing that has been ‘determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes, and extremely low incomes, as those terms are defined by [U.S. HUD].”

To the extent that it is necessary to show that the proposed development is “needed housing” (perhaps in the event that ORS 197.307(4)(b) is invoked), the proposed development is “needed housing” because it meets a need for housing, and the City of Newport needs more housing for a variety of price ranges and rent levels. To the extent that Mr. Malone is arguing that in order to be “needed housing” the applicant must prove that the housing will be affordable to low income households, he is simply wrong. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998), *aff'd*, 158 Or App 1 (1999) (high-cost housing or luxury housing as “needed housing”).

It should also be noted that the OAR 660-008-0005(2) definition for "buildable land" cited by Mr. Malone, that would have exempted land subject to natural hazards or on slopes of 25 percent or more is not applicable because Senate Bill 1051 removed the "buildable land" issue from consideration. In other words, the issue of whether a property is located within the City's buildable land inventory is no longer relevant under current, applicable law.

If the standards (i.e. criteria), conditions or procedures imposed on the proposed housing development are not clear and objective – i.e. ambiguous, subjective, and/or value-laden they cannot be applied to the development of the housing. *Rogue Valley Assoc. of Realtors*, 35 Or LUBA at 158; *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014); *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74, 80-81 (2015). There is no exception for property subject to the hazards overlay zone or any other state-wide planning goal.

I have provided you in the record examples from Eugene and Corvallis where these two cities have not applied subjective, ambiguous or value-laden standards and procedures for housing based on the clear and objective rules found in state law. Mr. Malone, in response included into the record the Eugene Planning Commission decision on the "Lombard Apartments" Willamette Greenway Permit application that I had initially briefly discussed. As I mentioned before, the Eugene Planning Commission reversed the Eugene Hearings Official who had determined that the Willamette Greenway planning Goal, 15 and ORS 390.314 "take precedence over the requirement for clear and objective standards for housing." The Eugene Planning Commission approved the Willamette Greenway permit application on its merits, but reversed the Eugene Hearings Official's determination that the City was precluded from applying its subjective, value-laden standards on the application for the multiple-family housing proposal.

As I indicated in my October 15th letter, the Eugene Planning Commission's decision has been appealed to the state Land Use Board of Appeals but has not yet been heard by LUBA. The argument that Goal 15 (and in this case Goal 7 and its local implementing ordinances) takes precedent over the specific commands of ORS 197.307(4), ORS 227.173(2), and ORS 227.175(4)(b)(A) is simply wrong.

Conclusion

As discussed above, the City cannot require my client to obtain a Geologic Permit in order to develop the subject property with housing.

However, since the Geologic Permit application has already been submitted and approved by City staff, and since the Planning Commission has already held a public hearing and received testimony, the applicant respectfully requests that the Planning Commission determine the following: (1) that the Geologic Permit application meets the criteria for approval, and (2) that notwithstanding the code provision that a Geologic Permit be obtained prior to any development for housing, that ORS 197.307(4), ORS 227.173(2), and ORS

Applicant's Final Written Argument
to Planning Commission
October 29, 2018

227.175(4)(b)(A) preclude the City from imposing such as a precondition to developing the property for housing.

Thank you for your consideration on this matter and your service to the community as volunteers on the Planning Commission.

Respectfully,



Micheal M. Reeder
Attorney for Applicant

cc (via email): Steven E. Rich, City Attorney
William Lund, client
Sean T. Malone, attorney for appellants
Sherri Marineau, City of Newport



Derrick Tokos

From: Sean Malone <seanmalone8@hotmail.com>
Sent: Monday, October 22, 2018 4:44 PM
To: Derrick Tokos; Elaine Karnes; Mona Linstromberg
Subject: Responsive Testimony - 1-GP-18 (Lund Application)
Attachments: Lombard - PC Final Decision.pdf; Malone to Newport re Geo Appeal 10.22.18.pdf

Mr. Tokos,

Please find attached responsive testimony and an additional attachment (City of Eugene's Lombard Apartment Planning Commission decision). Please also share this email with the Planning Commission, in which I am volunteering to write the findings in support of a denial of the application and in support of the appeal.

Please add the attachments and the email to the record.

Thank you,

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October 22, 2018

Via Email

City of Newport
 Planning Commission
 169 SW Coast Hwy
 Newport OR 97365
 (541) 574-0629

Re: Post-Hearing Responsive Testimony in Support of Appeal of
 Geologic Permit (File No. 1-GP-18) (Lund) and in Opposition to the
 Application, Continued Hearing

On behalf of Mona Linstromberg, Elaine Karnes, Teresa Amen, and Robert Earle, please accept this testimony regarding the appeal of Geologic Permit, File No. 1-GP-18. For the following reason, the appeal should be granted and the application denied.

The applicant argues that it has the absolute right to construct residences on the subject property under the needed housing statute, despite the fact that the property falls within the natural hazards overlay zone that implements Goal 7. The Needed Housing statute does not affect the subject property, however, because the subject property has been identified as “constrained” land by both the comprehensive plan and state law. For that basic reason, the applicant’s open-record submission widely misses the mark but a more detailed analysis is set forth below.

The applicant’s attorney alleges that the needed housing statute applies to the geologic permit at issue here. The applicant is wrong. Both the City of Newport’s comprehensive plan and state law exempt the subject property from the needed housing statute’s requirement that only clear and objective criteria can be applied to the application. In other words, the new issue that has been raised by the applicant is misplaced and a distraction from the substantive errors committed by the applicant.

Prior to the passage of Senate Bill 1051, ORS 197.307(4) and Goal 7 were written to work in concert. The law is clear that housing proposed for development within an

area identified under Goal 7 is not on “buildable land” and the pre-2017 version of ORS 197.307(4) required that local governments “adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing *on buildable land*[.]” (emphasis added). OAR 660-008-0005(2) defines “buildable land” as

“residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses and is generally considered ‘suitable and available’ unless it:

- (a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;
- (b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18;
- (c) Has slopes of 25 percent or more;
- (d) Is within the 100-year flood plain; or
- (e) Cannot be provided with public facilities.

Under state law, the subject property is residentially zoned land but is severely constrained by natural hazards as determined under statewide planning goal 7. The Newport inventory includes GIS datasets that map Goal 7 hazards including “land constrained by natural hazards,” which are defined as

“The City provided three GIS datasets that map the extent of Goal 7 hazards:

- Active hazard zone region
- Active landslide hazards
- Bluff erosion hazard zones
- Dune hazard zones.”

Comp Plan, Page 96. The above areas have been identified as “high risk” and “constrained (unbuildable).”¹ The subject property falls within this exception to the needed housing statute. The City also excluded from the protections of the needed housing statute those lands with slopes over 25% and the applicant’s reports – as well as

¹ On page 94 of the city’s comprehensive plan, it identifies “development constraints” as “floodways, wetlands identified in the Local Wetlands Inventory (LWI), landslide and shoreline erosion hazards, and land identified for future public facilities as constrained or committed lands. These areas were deducted from lands that were identified as vacant or partially vacant.”

other reports – note that the subject property includes slopes of up to 35% slope. Again, because of the inherent hazards of the property, the property is not subject to the needed housing statute and, according to the City’s comprehensive plan, these lands were “deducted from the residential lands inventory.” The maps included in the comprehensive plan show the applicant’s property as “constrained” and therefore not part of the residential buildable lands. The applicant is attempting to wield the needed housing statute as a club to bully the City into accepting an inadequate and incomplete geologic report. Not only is that dangerous and unsupported by the law, but, unfortunately for the applicant, the subject property is not subject to the needed housing statute’s protections against discretion-free criteria.

The applicant cites to *Walter v. City of Eugene*, 73 Or LUBA 356, 359 (2016), but that case is not one that addressed “constrained” land, and, therefore, the applicant has fallen short in its reliance on case law. Indeed, the applicant has not cited to a single case or instruction from the legislature that constrained lands are now open to residential development, which would be an irresponsible and controversial relinquishment of local authority. The applicant’s argument is bold but lacks any actual legal foundation. It appears to ignore that constrained lands exist at all, which is a significant shortcoming.

Moreover, the letter does not demonstrate that the proposed development meets the second part of the definition of “needed housing” – housing that has been “determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes, and extremely low incomes, as those terms are defined by [U.S. HUD].” The applicant’s letter is riddled with threats that amount to nothing more than hollow allegations unsupported by an applicable legal framework.

The applicant also cites to three decisions by local governments in an attempt to further its point. The three decisions do not control the issue here. The Corvallis Conditional Development Permit with the Willamette Greenway Overlay and the Eugene Lombard Apartments Site Review are inconsistent. In the first, apparently the City of Corvallis did not require the greenway provisions be applied and that matter was never appealed. In the City of Eugene (Lombard Apartments) case, the Eugene Planning Commission issued a final decision determining that the applicant had to comply with the greenway provisions, consistent with OAR 660-008-0005(2)(b)’s exception for Goal 15 (the Goal providing for the Willamette Greenway protections). The applicant there did not appeal the matter, only the opponents, and, therefore, the applicant accepted that greenway provisions apply, despite the needed housing statute, just as the natural hazards overlay applies here, despite the needed housing statute. The Lombard case does not support the applicant’s case and in fact hurts the applicant’s case here.

I have attached the Lombard final decision. For the same reasons the City of Eugene found that its greenway provisions applied in that case to prevent the needed housing application from applying, the City of Newport Planning Commission should find that its constrained lands apply here. Specifically, on Page 4 of the Planning Commission's decision, the Planning Commission determined as follows:

“The Planning Commission disagrees with the conclusion of the Hearings Official concerning the applicability of Willamette Greenway Permit approval criteria. The Planning Commission finds that Willamette Greenway Permit approval criteria located in the Eugene Code (EC 9.8815) can and should be applied to the subject application. ORS 390.314 and Goal 15 require the City to adopt and apply specific subjective regulations within the Greenway (including regulations to ensure the “best possible appearance, landscaping and public access’ and requiring findings that ‘to the greatest possible degree ... the intensification, change of use or development will provide the maximum possible landscaped area, open space or vegetation between the activity and the river.’). The City has complied with these state laws regulating the Greenway by adopting and applying EC 9.8815.

Separately, ORS 197.307(4) requires that the City offer all housing applicants the option to proceed under clear and objective approval standards. The competing requirements of ORS 390.314 and Goal 15 on one hand, and ORS 197.307(4) on the other, have created a legal conundrum for cities with land located within the Greenway.

The Planning Commission finds that for housing developments within the Greenway, ORS 390.314 and Goal 15 must take precedence over ORS 197.307. ORS 174.020(2) provides that when a general statutory provision and a particular statutory provision are inconsistent, the particular intent controls. Goal 15 and ORS 390.314 speak to a specific concern – preservation of the Willamette Greenway, while ORS 197.307(4) appears to apply to all lands and all housing in the state. The Planning Commission finds that within the Greenway, as the more particular statutory provision, the requirements of ORS 390.314 (and by extension Goal 15) must take precedence over the requirement for clear and objective standards for housing.

Based on the available information in the record, the Planning Commission finds that the Hearings Official erred with respect to this appeal issue. Therefore, the Planning Commission modifies the Hearings Official's decision and finds that the criteria in EC 9.8815 are applicable to this application.”

See Attachment, Page 4. The City of Newport should come to the same conclusion here.

The third case cited by the Applicant (“Eugene: Delta Ridge PUD – No TIA Required”) has to do with transportation impacts, which is governed by goal 12. As noted above, OAR 660-008-0005(2)(b) does not list goal 12, and but -0005(1) addresses Goal 7 and -0005(2)(b) addresses Goal 15 (Willamette Greenway). Because Goal 12 is not listed, it is not surprising that the needed housing statute applies. The applicant’s argument with regard to the Delta Ridge development does not even address similar circumstances, and the applicant’s reliance on it here is dubious at best. That case adds nothing to the discussion and it is questionable why the applicant cited it here, except as an idle threat.

The Community Development Director submitted a memorandum dated October 15, 2018. Below is a response to arguments contained therein. However, I must repeat that the open record period was unilaterally requested at the behest of the Director and will result in the violation of the 120-day time limit on completing a local land use application. As stated elsewhere, this prejudices my clients’ substantial rights. I also find that the Director’s influence over this proceeding to be unnecessarily biased in support of the applicant.

As to the Director’s first argument, the Newport Municipal Code itself identifies the Guidelines for Preparing Engineering Geologic Reports as criteria for the preparation for geologic reports. The planning commission has discretion in accepting or rejecting a geologic report. Because it is unlikely that most local government decision-makers have expertise in identifying a deficient geologic report, the code provided for the Guidelines as a template to utilize. The Director also makes a patently false statement that indicates a lack of understanding about how local codes are interpreted. For example, the Director – in exceeding his authority – alleges that “[f]ailure of the applicant to address a particular provision of the guidelines is not a proper basis for denial.” The City Planning Commission is well within its authority to interpret the particular provision of the code to require any requirement that is contained within the Guidelines. The Director’s statement to the contrary is patently false, demonstrates bias, and should be disregarded. The Director is going far beyond what is appropriate for a Director to be doing in these circumstances – especially after the Director’s actions have compromised the 120-day requirement.

With regard to the Director’s second argument, the Director is again attempting to interpret the code and pass that off as some sort of absolute fact. It is not the Director’s job to interpret the code – that is for the planning commission and city council – yet the Director continues to act as if his interpretation sets forth some immutable statement. The City Planning Commission is in no way required to defer to the Director’s interpretation and can make its own interpretation. Indeed, the City Planning Commission is obligated to make its own interpretation, free from the interference and

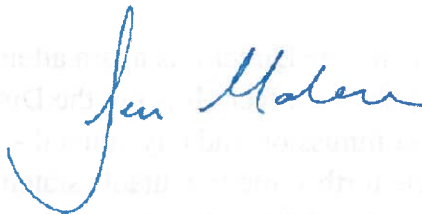
apparent bias of the Director. What is being presented here is far beyond what I have seen from a typical Director. The fact that the Director is advocating for reliance on a 27-year old report that was disowned by the firm that prepared it is remarkable, to the say the least. Again, I find the Director's insistent influence on this application to be a disturbing trend that questions the independence of the Director and the process.

The Director has doubled-down on further borings as a condition of approval, despite the fact that at the hearing I indicated that to do so would be reversible error. To require an applicant to take further borings would prevent opponents from challenging whatever information would be gleaned from those borings. The Director is essentially deferring compliance with the relevant criteria to a time in which the opponents could not challenge the findings. I finding it rather astounding that the Director is making allegations such as "[b]orings are not always taken exactly where a foundation will be constructed." Statements by the Director to this effect are simply unprecedented. Again, the Director's third argument continues to put on display the Director's apparent bias in this matter, as well as the fact that the Director is untethered to any actual law in the arguments he presents.

As to the Director's fourth point, the Director is actively doing the applicant's job, instead of acting as an impartial entity. The Director alleges that "[t]he Commission can rely upon the applicant's site plan as establishing [that "[e]ither NW Spring Street or the Jump-off Joe road right-of-way are of sufficient width to allow the proposed homes to be removed]." Regardless, the code requires more than the applicant – or the Director – has demonstrated here. A site plan is insufficient to demonstrate satisfaction of this criterion.

For the foregoing reasons, I find it extremely disturbing to have been witness to the interference and bias of the Director in this case. Regardless of that, the applicant is clearly misplaced in attempting to seek refuge under the needed housing statute because the subject property is constrained by its slopes and the fact that it falls within constrained lands, pursuant to Goal 7. Therefore, the application must be denied and the appeal granted.

Sincerely,



Sean T. Malone

Attorney for Mona Linstromberg, Elaine Karnes, Teresa Amen, and Robert Earle

Cc:
Clients



Eugene Planning Commission

FINAL ORDER OF THE EUGENE PLANNING COMMISSION ON APPEAL OF THE HEARINGS OFFICIAL'S TENTATIVE APPROVAL FOR LOMBARD APARTMENTS WILLAMETTE GREENWAY PERMIT, SITE REVIEW, AND ADJUSTMENT REVIEW (WG 18-3/SR 18-3/ARA 18-8)

I. INTRODUCTION

This final order concerns an appeal of a decision by the Eugene Hearings Official approving a Willamette Greenway Permit, Site Review and Adjustment Review to construct 94 market-rate residential apartment units. The subject property is an approximately 3.59-acre, undeveloped site in an area of residential uses located between River Road and the Willamette River. The site is located at the northern terminus of Lombard Street, with frontage along River Road to the west. The entire site is zoned R-2 Medium-Density Residential with /ND Nodal Development overlay. The southern portion of the site has a /SR Site Review overlay. The entire property is located within the bounds of the Willamette Greenway.

Lombard Apartments, LCC (Applicant) filed applications for a Willamette Greenway Permit, a Needed Housing Site Review and an Adjustment Review to construct 94 apartments in four buildings, as well as a leasing office, maintenance building, and associated site improvements such as parking areas. The main entrance would be from River Road. The proposal would also extend Lombard Street to the northern boundary of the subject property.

The Eugene Hearings Official held the initial public hearing on this request on June 27, 2018. Following the hearing and extended open record period, on August 7, 2018 the Hearings Official approved the Needed Housing Site Review and Adjustment Review, and Willamette Greenway Permit applications. However, the Hearings Official also determined that that the Willamette River Greenway Permit criteria are not clear and objective and therefore cannot be applied to the Applicant's proposed housing). Following the decision, Rob Handy, Julie Hulme, H. M. Sustaita, and Loren Schein (Appellants) filed a timely appeal of the applications, with the River Road Community Organization joining the appeal for the purpose of assisting neighbors in exercising their Oregon Land Use Goal One citizen involvement right. The appeal includes eleven (11) appeal issues.

City staff issued written notice of the appeal hearing on August 24, 2018, consistent with land use code requirements. The Planning Commission held the public hearing on the appeal on September 5, 2018. At the public hearing, Andrew Brand, Hans Christiansen, and attorneys Michael Reeder and Bill Kloos provided testimony in support of the application and the Hearings Official's approval. Appellants Julie Hulme, Rob Handy, H. M. Sustaita, Loren Schein, Glen Mandzak and attorney Charles Woodward IV provided testimony in opposition as Appellants. One individual provided neutral testimony on behalf of the River Road Community

Organization, and a number of other individuals testified in opposition. The applicant's legal counsel, Michael Reeder, and Andrew Brand, followed with final rebuttal testimony. Written testimony was also submitted by several individuals.

The Planning Commission closed the public hearing on September 5, 2018. The Planning Commission deliberated on the appeal issues at its meetings on September 6, 2018, and reached its final decision on September 6, 2018. The Planning Commission affirmed with modifications the Hearings Official's approval of the Willamette Greenway Permit, Site Review, and Adjustment Review as set forth in Section IV, below.

As described below, with this September 6, 2018 Final Order, the Planning Commission affirms the Hearings Official's August 7, 2018 decision with modifications. The Planning Commission's decision is detailed below with respect to each assignment of error.

II. RECORD BEFORE THE PLANNING COMMISSION

The record before the Planning Commission consists of all the items that were placed before, and not rejected by, the Planning Commission prior to its final decision on this appeal. The record in this appeal was physically placed before the Planning Commission at the hearing and also provided electronically to each of the commissioners. Under EC 9.7655, appeals to the Planning Commission are "on the record," that is, the Planning Commission is limited to consideration of the evidence before the Hearings Official. In addition, appeals to the Planning Commission are "limited to issues raised in the record that are set out in the filed statement of issues." The Planning Commission's decision on the appeal is based upon consideration of all relevant evidence and argument within the record.

III. PROCEDURAL ISSUES

Bias/Ex Parte Contacts

At the Planning Commission hearing on September 5, 2018, Commissioner Fragala declared an ex parte contact and confirmed that she can make an unbiased decision based solely on the evidence and argument in the record. No other Commissioners announced any ex parte contacts related to the application on appeal.

A written challenge to the impartiality of Commissioner Randall was also made and introduced to the record before the Planning Commission. Staff advised that, irrespective of the challenge, Commissioner Randall was not in attendance at the hearing and would not be participating in any aspect of the decision-making process due to his unavailability resulting from prior personal commitments. As such, the Planning Commission need not address the challenge any further.

The Planning Commission Chair stated that any person in the audience had the right to rebut the substance of any ex parte communications, and asked whether anyone in the audience wished to challenge the qualifications of any of the Planning Commissioners. There were no other challenges to qualifications or impartiality.

Rejection of Testimony

At the Planning Commission meeting held on September 6, 2018, the Planning Commission rejected the following portions of written testimony submitted prior to the close of the September 5, 2018 public hearing.

1. Four maps included with written testimony submitted by Micheal Reeder on behalf of the Applicant.
2. A portion of written testimony submitted at the September 5, 2018 public hearing by Christopher Gadsby.
3. Three photographs and one graph submitted at the September 5, 2018 public hearing by Dennis Sandow.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the applicable law and all argument and evidence in the record, the Planning Commission finds that the subject application meets all applicable Willamette Greenway, Site Review, and Adjustment Review criteria from Eugene Code as specified by the Hearings Official, with the additional findings described below. In the event of any conflict between the Hearings Official's decision and this Final Order, this Final Order shall prevail. The Hearings Official's decision is adopted by reference except as modified by this Final Order and is included as Attachment A.

As noted above, the Planning Commission was presented with an appeal filed by Rob Handy, Julie Hulme, H. M. Sustaita, and Loren Schein (Appellants), with concurrent participation by the River Road Community Organization. Each assignment of error in the appeal is set forth below, followed by the Planning Commission's findings of fact and conclusions of law. The Planning Commission's deliberations supporting this decision took place on September 6, 2018.

Appeal

The appeal submitted includes eleven (11) issues identifying alleged errors in the Hearings Official's decision approving the Lombard Apartments applications. The appeal makes the case that the Hearings Official's decision should be reversed (and the application should be denied). The Planning Commission's findings and conclusions related to each appeal issue are provided below.

With the exception of the first appeal issue below, all of the issues are addressed in the order presented in the Appeal Statement.

Appeal Issue #1: The Hearings Official erred in finding that the Willamette River Greenway approval criteria do not apply to the subject application.

Hearings Official's Decision

On page 13 of the decision document, the Hearings Official opines that the Willamette Greenway approval criteria located in EC 9.8815 are not clear and objective and therefore the City may not apply them to the Applicant's needed housing application.

Summary of Appellants' Argument

On pages 2 and 3 of the appeal statement, Appellants argue that the Hearings Official erred in his interpretation of applicable Oregon Revised Statutes (ORS) and Oregon Statewide Planning Goal provisions. First, the Appellants argue that the newly amended version of ORS 197.307(4) does not include the reference to "buildable land" because, according to the Appellants, such reference would be redundant "because all residentially designated land *is buildable land.*" [emphasis in original]. Appellants believe the reference to buildable land is important because the original ORS definition included an exception for those lands within the Willamette Greenway. Secondly, the Appellants state that Statewide Planning Goal 15, through the Willamette Greenway Permit, should control because it only applies to development in the greenway while ORS 197.307 applies to all lands and housing in the state.

Planning Commission's Determination

The Planning Commission disagrees with the conclusion of the Hearings Official concerning the applicability of Willamette Greenway Permit approval criteria. The Planning Commission finds that Willamette Greenway Permit approval criteria located in the Eugene Code (EC 9.8815) can and should be applied to the subject application. ORS 390.314 and Goal 15 require the City to adopt and apply specific subjective regulations within the Greenway (including regulations to ensure the "best possible appearance, landscaping and public access" and requiring findings that "to the greatest possible degree...the intensification, change of use or development will provide the maximum possible landscaped area, open space or vegetation between the activity and the river."). The City has complied with these state laws regulating the Greenway by adopting and applying EC 9.8815.

Separately, ORS 197.307(4) requires that the City offer all housing applicants the option to proceed under clear and objective approval standards. The competing requirements of ORS 390.314 and Goal 15 on one hand, and ORS 197.307(4) on the other, have created a legal conundrum for cities with land located within the Greenway.

The Planning Commission finds that for housing developments within the Greenway, ORS 390.314 and Goal 15 must take precedence over ORS 197.307. ORS 174.020(2) provides that when a general statutory provision and a particular statutory provision are inconsistent, the particular intent controls. Goal 15 and ORS 390.314 speak to a specific concern – preservation of the Willamette River Greenway, while ORS 197.307(4) appears to apply to all lands and all housing in the state. The Planning Commission finds that within the Greenway, as the more particular statutory provision, the requirements of ORS 390.314 (and by extension Goal 15) must take precedence over the requirement for clear and objective standards for housing.

Based on the available information in the record, the Planning Commission finds that the Hearings Official erred with respect to this appeal issue. Therefore, the Planning Commission modifies the Hearing Official's decision and finds that the criteria in EC 9.8815 are applicable to this application.

Appeal Issue #2: The Hearings Official misconstrued applicable law and made findings not based on substantial evidence with regard to EC 9.8815(1).

Hearings Official's Decision

EC 9.8815(1) states:

Willamette Greenway Permit Approval Criteria and Standards. Willamette Greenway permit approval may be granted only if the proposal conforms to all the criteria in subsections (1) through (4), and the applicable standards of subsection (5) as follows:

- (1) *To the greatest possible degree, the intensification, change of use, or development will provide the maximum possible landscaped area, open space, or vegetation between the activity and the river.*

On page 6 of the decision, the Hearings Official opines that if “to the greatest possible degree” meant the theoretical maximum then no development could ever occur. The Hearings Official cites EC 9.8815(5) which explains, “greatest possible degree” language cannot be used to preclude the requested use. The Hearings Official determined that the requested use, a 94-unit multi-family apartment complex, is a permitted use in the R-2 zone and that no requirement to reduce the density in order to preserve open space exists. Furthermore, the Hearings Official determined that the Applicant has placed all of the development in the western portion of the property – away from the river. The Hearings Official could not determine how the Applicant could have configured the proposed development in an alternative layout that retains 94 units and the associated requirements in a way that would provide more open space closer to the river. Thus, the Hearings Official determined that EC 9.8815(1) is satisfied.

Summary of Appellants' Argument

The Appellants' argument concerns absence of evidence demonstrating that the proposal provides the maximum possible landscaped area, open space, or vegetation between the activity and the river. Appellants claim that the Hearings Official failed to provide the required specific explanation for how his findings demonstrate the required “balancing of factors;” therefore, they believe the Hearings Official's findings misconstrue applicable approval criteria.

Planning Commission's Determination

The Planning Commission agrees with the conclusion of the Hearings Official that EC 9.8815(2) is satisfied. An alternative proposal which retains the permitted density while balancing, to a greater extent, required open space does not seem readily apparent. The configuration of the lot, with the majority of its area on its eastern half, restricts substantial design alternatives, particularly alternatives which retain 94 total dwelling units.

Based on the available information in the record, the Planning Commission finds that the Hearings Official did not err with respect to this appeal issue.

Appeal Issue #3: The Hearings Official misconstrued applicable law and made findings not based on substantial evidence with regard to EC 9.8815(2).

Hearings Official's Decision

EC 9.8815(2) states:

- (2) *To the greatest possible degree, necessary and adequate public access will be provided along the Willamette River by appropriate legal means.*

In addition to clarifying that the standard concerns access *along* the river, not *to* the river, the Hearings Official found that the existing riverfront path system provides “more than adequate public access along the river” (page 7). Furthermore, the Hearings Official relies on the fact that the subject property does not directly front the Willamette River to find that EC 9.8815(2) is satisfied.

Summary of Appellants’ Argument

The Appellants state on page 1 and 2 of the appeal statement that the subject proposal provides no direct access to the Willamette River—neither private access for future residents nor open access for the general public. According to the Appellants, the property is adjacent to the river and the proposal restricts access.

Planning Commission’s Determination

The Planning Commission agrees with the conclusion of the Hearings Official that EC 9.8812(2) does not require access to the Willamette River. The proposal includes no changes or impacts to the existing riverfront path, a public park which provides adequate public access along the river.

Based on the available information in the record, the Planning Commission finds that the Hearings Official did not err with respect to this appeal issue.

Appeal Issue #4: The Hearings Official misconstrued applicable law and made findings not based on substantial evidence with regard to 9.8815(3).

Hearings Official’s Decision

EC 9.8815(3) states:

- (3) *The intensification, change of use, or development will conform with applicable Willamette Greenway policies as set forth in the Metro Plan.*

On page 7 of his decision, the Hearings Official found that the only applicable Metro Plan policy is Section III-D, Policy D.5, which provides:

New development that locates along the river corridors and waterways shall be limited to uses that are compatible with the natural, scenic, and environmental qualities of those water features.

In this case, the applicable R-2 zoning allows multiple-family residential development. The Hearings Official found that the City believed R-2 uses to be compatible with the Willamette River Greenway by designating the lot R-2. Furthermore, the Hearings Official finds that the portions of the proposal which meet the 35-foot building height maximum are not incompatible with the natural, scenic, and environmental qualities of the Willamette River. Lastly, in response to LandWatch Lane

County's argument involving Metro Plan Section III-C Environmental Resources Element, the Hearings Official found that the policies are neither relevant nor applicable approval criteria (page 8). Therefore, the proposal satisfies all of the Willamette Greenway approval criteria.

Summary of Appellants' Argument

The Appellants argue that explicit evidence demonstrating compliance with Metro Plan Section III-D, Policy D.5 is not provided. Therefore, without evidence demonstrating the opposite, they believe the proposed 35-foot height of portions of the proposal are incompatible with the natural, scenic, and environmental qualities of the Willamette River.

Planning Commission's Determination

The Planning Commission finds that the Hearings Official did not err in determining that existing R-2 zoning permits multi-family residential development and that the 35-foot building height proposed by the applicant is not incompatible with the natural, scenic, and environmental qualities of the Willamette River.

Based on the available information in the record, the Planning Commission finds that the Hearings Official did not err with respect to this appeal issue.

Appeal Issue #5: The Hearings Official misconstrued applicable law and made inadequate findings not based on substantial evidence with regard to the density calculations for the subject development.

Hearings Official's Decision

EC 9.2751 states:

- (1) Density
 - (a) *****
 - (b) *For purposes of this section, 'net density' is the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of the residents in the development, such as common open space or recreation facilities.*
 - (c) *For the purposes of calculating net density:*
 - (1) *The acreage of land considered part of the residential use shall exclude public and private streets and alleys, public parks, and other public facilities.*

EC 9.0500 defines "street":

An improved or unimproved public or private way, other than an alley, that is created to provide ingress or egress for vehicular traffic to one or more lots or parcels, excluding a private way that is created to provide ingress or egress to land in conjunction with the use of land for forestry, mining, or agricultural purposes. A 'street' includes the land between right-of-way lines within the ingress/egress easement areas serving multiple residential lots but excluding 'flagpole' portions of flag lots.

EC 9.5500 defines “driveway”:

The area located outside of the public right-of-way that abuts the access connection and allows for vehicles to move to or from a development site.

EC 9.5500(11)(b) defines “parking drive”:

Parking drives are driveways lined with head-in parking spaces, diagonal parking spaces, garages, or any combination thereof along a significant portion of their length. Parking drives for multiple-family developments with more than 20 units shall be designed so as to emit no through motor vehicle movements.

On pages 13-14 of the decision document, the Hearings Official agrees with the Applicant’s net density calculation. The staff findings on page 22 of the report to the Hearings Official, adopted by the Hearings Official to address EC 9.2750, were as follows:

The minimum density for the subject site is 15 units per acre as established by the /ND Nodal Development Overlay Zone at EC 9.4290 * * *. The R-2 base zone of the subject site provides that a maximum density of 28 units per acre is allowed * * *.

The applicant also provides a calculation on sheet A1 of the May 11, 2018 application materials. The calculation identifies the entire site area as being 3.59 acres, subtracts the .21 acres to be dedicated for Lombard Street, and concludes that 94 units is the maximum density considering 28 units per net acre is allowed.

Concerning whether the internal vehicular circulation areas meet the definition of “street” and, therefore, should be excluded from total acreage for the purpose of calculating density; the Hearings Official concludes that Eugene Code treats driveways and parking drives as separate and distinct from streets. Thus, the parking drives do not have to be subtracted from the net density calculation.

The Hearings Official also reasons that the leasing office and maintenance buildings are not public facilities that must be excluded from the net density calculation.

Lastly, the Hearings Official concludes that the open space area along the east side of the subject property is not open to the public and therefore, would qualify as common open space for the exclusive use of the residents.

Summary of Appellants’ Argument

Appellants argue that the Hearings Official erred in his inclusion of “paved circulation areas”, the leasing office, maintenance building, and open space on the eastern portion of the property as part of the acreage of land considered part of the residential use of the subject lot. According to the Appellants, the “circulation areas” meet the EC definition of “streets”. Additionally, the leasing office, maintenance building, and open space areas should be excluded as they are not “for the exclusive use of the residents of the development.” Instead, the Appellants argue that

these areas are open to the public and not for the exclusive use of the residents. Lastly, the Appellants argue that the “Greenway area” designated as open space is also open and not exclusive to the residents.

Planning Commission’s Determination

The Planning Commission finds that the Hearings Official did not err in determining that the application properly applies the net density calculation and that EC 9.2751 is satisfied.

In regards to “parking drives,” the Planning Commission agrees with the Hearings Official’s findings. The Applicant’s proposal includes two through-motor vehicle parking drives. The Applicant requests an adjustment to the parking drives standard, which is allowed, subject to review under the criteria listed at EC 9.8030(8)(e). Even though the Applicant requests an adjustment to parking drive standards, the adjustment does not change the features’ designation from “parking drives” to “streets.” Therefore, the Planning Commission finds that none of the area identified as parking or parking drives must be excluded from the net density calculation.

In regards to the leasing office, maintenance building, and required open space, the Planning Commission notes that EC 9.2751(1)(c) provides the applicable instrument for calculating density and excludes any reference to resident-only exclusivity. The leasing office and maintenance building are accessory to the residential use, specifically serving current and future residents as well as employees carrying out functions directly related to maintenance and operations of the residential use. In no way do either structures constitute a public park or public facilities for the purpose of calculating density.

The Planning Commission confirms the Applicant’s residential density calculations and agrees with the Hearings Official that the standards at EC 9.2751 are met.

Appeal Issue #6: The Hearings Official misconstrued applicable law and made findings not based on substantial evidence with regard to EC 9.8445(4)(f)(2), EC 7.420(3)(i), and EC 9.6780.

Hearings Official’s Decision

The Hearings Official comes to the conclusion that the intersections in question are not part of, nor adjacent to, the subject property. On page 16 of the decision document, he finds that the Applicant will provide adequate vision clearance for the access points at River Road and Lombard Street, and also concludes that the development does not propose any new intersections. Thus, the Hearings Official finds no basis by which to deny the application based on opponents’ vision clearance arguments.

Summary of Appellants’ Argument

Appellants argue, on page 4 of the appeal statement, that the proposal does not provide “triangular visual clearance on the corners of Lombard and Fir Lane.”

Planning Commission’s Determination

The Planning Commission finds that the Hearings Official did not err in determining that

proposed development site is neither adjacent to, nor responsible for, any vision clearance areas at the intersection of Lombard Street and Fir Lane. The Planning Commission also finds that the Hearings Official did not err in determining that “development site” does not include off-site intersections, nor is the development creating any new intersections. Therefore, EC 9.8670 is not applicable to the application.

Based on the available information in the record, the Planning Commission finds that the Hearings Official did not err with respect to this appeal issue.

Appeal Issue #7: The Hearings Official misconstrued applicable law and made inadequate findings not based on substantial evidence with regard to EC 9.6815(2)(f).

Hearings Official’s Decision

EC 9.6815(2)(f) states:

- EC 9.6815 Connectivity for Streets.
 (2) Street Connectivity Standards
 (f) *In cases where a required street connection would result in the extension of an existing street that is not improved to city standards and the street has an inadequate driving surface, the developer shall construct a temporary barrier at the entrance to the unimproved street section with provision for bicycle, pedestrian, and emergency vehicle access. The barrier shall be removed by the city at the time the existing street is improved to city standards or to an acceptable standard adopted by the public works director. In making a determination of an inadequate driving surface, the public works director shall consider the street rating according to Eugene’s Paving Management System and the anticipated traffic volume.*

On page 17, the Hearings Official agrees with the Applicant’s traffic engineer and City Public Works staff that, while Lombard Street is not in perfect condition or improved to City standards, it does not appear to be “inadequate.” As such, EC 9.6815(2)(f) does not apply and a temporary barrier is not required.

Summary of Appellants’ Argument

Appellants state that the Hearings Official erred in applying EC 9.6815(2)(f)—the Applicant should be required to install a temporary barrier at the entrance to Lombard Street from the development’s southern edge. On page 4 and 5 of the appeal statement, Appellants argue that Lombard Street shows “significant deteriorations of the surface and pavement distress, crumbling, and lack of drainage facilities.” Accordingly, the surface must be declared “inadequate” for the purposes of EC 9.6815(2)(f), and furthermore, no evidence in the record establishes the “adequacy” of the street.

Planning Commission’s Determination

The Planning Commission finds that the Hearings Official did not err in determining that the

existing driving surface of Lombard Street does not appear “inadequate.” In this context, inadequate driving surface means nearly impassable, such as would exist at the proposed northern terminus of the Lombard Street extension. Furthermore, in regards to EC 9.6815(2)(f), “where a required street connection would result in the extension of an existing street that is not improved to city standards and the street has an inadequate diving surface, the developer shall construct a temporary barrier.” In the “Staff Response to Public Comments,” an attachment to the June 20, 2018 Staff Report to the Hearings Official and included in the application file for reference, City of Eugene Public Works Engineering staff explain that “inadequate” would equate to nearly impassable or dangerous conditions.

The Planning Commission also notes that temporary bollards on Lombard Street would prohibit access, and are not consistent with EC 9.6815 Connectivity for Streets. The street connectivity standards are established to ensure that streets can accommodate emergency vehicles and create interconnections to reduce travel distance, promote the use of alternative modes, provide for efficient utility and emergency services, and provide for more even dispersal of traffic.

Based on the available information in the record, the Planning Commission finds that the Hearings Official did not err with respect to this appeal issue.

Appeal Issue #8: The Hearings Official misconstrued applicable law and made inadequate findings not based on substantial evidence with regard to EC 9.5500(7), (13), and (14).

Hearings Official’s Decision

The Needed Housing Site Review criterion at EC 9.8445(2) states:

For a proposal for multiple family developments, the proposal complies with the standards contained in EC 9.5500 Multiple Family Standards.

On pages 17-18, the Hearings Official found that the subject standards concerning building articulation (EC 9.5500(7)), on-site pedestrian circulation (EC 9.5500(13)), and recycling and garbage areas (EC 9.5500(14)) are satisfied or can be satisfied through the proposed conditions of approval (Decision of the Hearings Official, Conditions 1 and 2).

Summary of Appellants’ Argument

Appellants state that the Hearings Official’s allegations of adequacy concerning the multiple-family development standards at EC 9.5500(7), (13), and (14) are generalized and fail to explain how compliance with the subject criteria is feasible.

Planning Commission’s Determination

The Planning Commission finds that the Hearings Official did not err in determining that EC 9.5500(7), (13), and (14) standards are satisfied or can be satisfied through the proposed conditions of approval. Concerning EC 9.5500(7) Building Articulation, the Planning Commission believes that the Applicant’s site plans demonstrate conceptual compliance with the standard above, but understands that future design changes may occur due to conditions assuming the application is approved. To allow some flexibility in design, and to ensure that the Applicant complies with the standard above, the Hearings Official correctly included the following

condition of approval in his decision:

- Prior to issuance of a development permit, the applicant shall provide details that identify which features are being used to comply with EC 9.5500(7); and the following note will be added to the Final Site Plan: “Buildings shall comply with the building articulation requirements at EC 9.5500(7).”

In regards to EC 9.5500(13) On-Site Pedestrian Circulation, the Planning Commission notes that the Applicant does not create a connection to the public accessway directly to the east: the Ruth Bascom path. However, the Planning Commission also notes that the standards are intended to provide connections on-site, and to adjacent public or private street right of way lines only. As the standard does not require that connections to adjacent paths be provided, the Applicant’s proposal complies with this standard.

Lastly, with reference to EC 9.5500(14) Recycling and Garbage Areas, while conceptually acceptable, no graphics of the structures are provided and further review to ensure the structures comply with the criterion above will be necessary at the time of building permit. To ensure this occurs, the Hearings Official correctly included the following condition of approval in his decision:

- Prior to issuance of a development permit, the applicant shall revise the site plan to demonstrate compliance with EC 9.5650 Recycling - Small Collection Facility Standards and EC 9.6740 Recycling and Garbage Screening. The following note shall also be added to the applicant’s site plan: “Recycling and Garbage areas shall comply with EC 9.5650 and EC 9.6740.”

Based on the available information in the record, the Planning Commission finds that the Hearings Official did not err with respect to this appeal issue.

Appeal Issue #9: The Hearings Official misconstrued applicable law and made inadequate findings not based on substantial evidence with regard to EC 9.5500(6).

Hearings Official’s Decision

The Multiple Family Development Standards at EC 9.5500(6) state:

- (6) *Building Mass and Facade.*
 - (a) *Maximum Building Dimension. Neither the maximum length nor width of any building within 40 feet of a front lot line can exceed 100 feet in the R-1 and R-2 zones and 150 feet in all other zones.*

The criteria for adjustment to this standard states the following:

EC 9.8030(8):

- (a) *Maximum Building Dimension. The requirements set forth in EC 9.5500(6)(a) may be adjusted if the proposal creates building massing and/or facades that:*

1. *Create a vibrant street facade with visual detail.*
2. *Provide multiple entrances to building or yards.*

The Hearings Official found that the proposed adjustment, which includes vertical articulation, horizontal massing variations in the form of decks, patios, and large window, and siding treatment creates a vibrant street façade (page 19). The Hearings Official agreed with staff that the proposed building provides sufficient means by which an adjustment is warranted.

Summary of Appellants' Argument

Appellants argue that the Hearings Official relies on generalities in his findings. The proposed architectural design and finishings, the Appellants argue, are not yet established and therefore do not warrant adjustment under EC 9.5500(6).

Planning Commission's Determination

The Planning Commission finds that the Hearings Official did not err in determining that an adjustment to EC 9.4290(2) is warranted for proposed Building 2 and that the adjustment approval criteria at EC 9.8030(8) are satisfied. The Applicant requests an adjustment to the standard at EC 9.5500(6) for Building 2, which exceeds the maximum allowable building length by approximately 31 feet. The Applicant's proposal provides evidence of articulation, multiple building entrances, private patios, and decks.

Based on the available information in the record, the Planning Commission finds that the Hearings Official did not err with respect to this appeal issue.

Appeal Issue #10: The Hearings Official misconstrued applicable law and made inadequate findings not based on substantial evidence with regard to EC 9.6735(2).

Hearings Official's Decision

EC 9.6735 states:

9.6735 Public Access Required.

- (1) *Except as otherwise provided in this land use code, no building or structure shall be erected or altered except on a lot fronting or abutting on a public street or having access to a public street over a private street or easement of record approved in accordance with provisions contained in this land use code.*
- (2) *Access from a public street to a development site shall be located in accordance with EC 7.420 Access Connections – Location. If a development will increase the development site's peak hour trip generation by less than 50% and will generate less than 20 additional peak hour trips, the development site's existing access connections are exempt from this standard.*

The related adjustment review criteria at EC 9.8030(28) states:

- (28) *Public Access Required. The public access requirement of 9.6735(2) may be adjusted if the site developer demonstrates any of the following:*
- (a) *Physical conditions preclude compliance with EC 7.420. Such conditions may include, but are not limited to, topography, trees, existing buildings or other existing development on the subject property or adjacent property.*
 - (b) *The proposed adjustments to the standards will provide safe ingress and egress to the development site, will not negatively impact the efficiency of the public right-of-way, and will not result in a hazard to the bicycle, pedestrian or vehicular traffic using the right-of-way.*
 - (c) *The proposed development will not impact one or more of the existing access connections to the development site. Impact to an existing access connection includes, but is not limited to, increasing the number of vehicles, either directly or indirectly, that will utilize an existing access connection for ingress or egress to the development site.*
 - (d) *Compliance with EC 7.420(1)(c) will result in traffic patterns inconsistent with the character of the property located within a quarter mile radius of the development site or will increase the number of vehicular trips using the street with the lower classification above the typical daily trip range for that street's classification.*

The Hearings Official relied on the June 20, 2018 staff report and report of the Applicant's traffic engineer (Kelly Sandow P.E., Sandow Engineering, "Tech Memo" dated May 9, 2018 as part of application materials and included in the application file for reference) to find that an adjustment to EC. 9.6735(2) is warranted.

Summary of Appellants' Argument

The Appellants state that the Hearings Official's findings are conclusory and, therefore, not based on substantial evidence.

Planning Commission's Determination

The Planning Commission finds that the Hearings Official did not err in determining that the Applicant satisfies the approval criteria at EC 9.8030(28) and that the adjustment to EC 9.6735 Public Access Required is satisfied. Public Works Engineering referral comments (June 13, 2018) state that the analysis provided by the Applicant's traffic engineer, Kelly Sandow, P.E. of Sandow Engineering, conclude that the proposed access to River Road will provide safe ingress and egress, will not negatively impact the efficiency of the public right-of-way, and will not result in a hazard to bicycle, pedestrian, or vehicular traffic using River Road. Based on this evidence from a qualified traffic engineer, and agreement from the City's Public Works staff, the Planning Commission finds that the adjustment standard at EC 9.8030(28) is met and the adjustment is warranted.

Based on the available information in the record, the Planning Commission finds that the Hearings Official did not err with respect to this appeal issue.

Appeal Issue #11: Appellants incorporate by reference all arguments made by Sean T.

Malone, Greenlight Engineering, Rob Handy, Julie Hulme, H.M. Sustaita, Loren Schein, the City Attorney, and LandWatch Lane County.

Hearings Official's Decision

The Hearings Official's decision addresses the arguments previously raised by opponents as part of the initial hearing process and, as such, his findings are included herein by reference.

Summary of Appellants' Argument

Appellants conclude their appeal statement incorporating by reference all arguments by the identified parties.

Planning Commission's Determination

This appeal issue does not provide a clear argument or specific assignment of error, and therefore lacks sufficient specificity for the Planning Commission to respond any further.

V. CONCLUSION

The Eugene Planning Commission reviewed the record and the assignments of error in the appeals, and hereby affirms with modification the Decision of the Hearings Official to conditionally approve the Willamette Greenway Permit, Site Review, and Adjustment Review for Lombard Apartments (WG 18-3/SR 18-3/ARA 18-8). The conditions of approval imposed by the Hearings Official and adopted by the Planning Commission are included below for ease of reference.

1. Prior to the issuance of a development permit the applicant shall provide details that identify which features are being used to comply with EC 9.5500(7); and the following note will be added to the Final Site Plan: "Buildings shall comply with the building articulation requirements at EC 9.5500(7)."
2. Prior to issuance of a development permit, the applicant shall revise the site plan to demonstrate compliance with EC 9.5650 Recycling – Small Collection Facility Standards and EC 9.6740 Recycling and Garbage Screening. The following note shall also be added to the applicant's site plan: "Recycling and Garbage areas shall comply with EC 9.5650 and EC 9.6740."
3. The following restriction shall be required to be shown on the Final Site Plan in accordance with EC 9.6500(3): "No building, structure, tree or other obstruction shall be placed or located on or in a Public Utility Easement."
4. The proposed Public Utility Easement shall be conveyed by a separate document meeting City standards in conjunction with the Privately Engineered Public Improvements (PEPI) permitting process.
5. Prior to issuance of a building permit, the applicant shall obtain approval of a PEPI permit for the construction of Lombard Street and any associated infrastructure that will be public including the proposed public wastewater line.

6. During the PEPI process, the applicant shall provide a street deed to convey the right-of-way for Lombard Street to the City.
7. In conjunction with the PEPI process, the applicant shall submit a street tree agreement application with a street tree plan to the City Urban Forester for review. Approval of the agreement will be required prior to PEPI approval.
8. Prior to the issuance of a development permit, the applicant shall demonstrate compliance with EC 9.6791 through EC 9.6797.
9. The applicant shall add the following note onto its Final Site Plans: "Parking areas shall comply with the standards at EC 9.6420."
10. The entire stall depth of the northern-most and western-most parking stall, adjacent to the north property line and near River Road access, shall be a minimum of 15 feet in depth from each corner and marked "compact", eliminated, or otherwise revised to meet EC 9.6420.
11. Final site plans shall be revised to require L-3 High Screen Landscaping along the south property line of the western-most parking area.

The Planning Commission modifies the Hearing Official's decision and finds that the criteria in EC 9.8815 are applicable to this application. The Willamette Greenway Permit, Site Review, and Adjustment Review applications are hereby approved with conditions. The foregoing findings and conclusions are adopted as the Final Order of the Eugene Planning Commission on Appeal of the Hearings Official's Conditional Approval for Lombard Apartments Willamette Greenway Permit, Site Review, and Adjustment Review (WG 18-3/SR 18-3/ARA 18-8), on this 6th day of September, 2018.



Kristen Taylor, Chair
Eugene Planning Commission

Attachment A: Hearings Official's Decision, dated August 7, 2018.

Derrick Tokos

From: Mike Reeder <mreeder@oregonlanduse.com>
Sent: Monday, October 22, 2018 3:54 PM
To: Derrick Tokos; Sherri Marineau; Steven Rich
Cc: wlund_albany; michael@kaengineers.com; Sean Malone
Subject: Applicant's Response to Post-hearing Open Record Submittals - 1-GP-18-A
Attachments: K&A Additional Borings Clarification Letter 10 22 18.pdf

Dear Mr. Tokos:

Thank you for your October 15th, 2018 memorandum into the record on this matter. The Applicant agrees with almost everything in it. One notable exception is where you suggest the Planning Commission may condition approval of the Geologic Report Permit to require the applicant to perform a “few more borings.”

The Applicant does not believe that it is necessary nor appropriate to condition approval of the Geologic Report permit on the Applicant doing additional boring. As the attached letter from Michael Remboldt, P.E., G.E. of K & A Engineering, Inc. explains, the subject site can be developed as proposed in a safe and stable manner. Specifically, Mr. Remboldt concludes that “...*the site is suitable for the proposed development.*” No additional boring is required in order to determine whether the site is suitable for the proposal. Therefore, no condition for more boring is required. While the Applicant is free to do more boring after approval, for the purpose of confirming the depth of the bedrock and designing and building an economical pile-supported foundation system for the dwellings, no additional boring is required in order to satisfy the criterion of NMC 14.21.050(D). Please submit this email and the attached letter from Mr. Remboldt into the record for the Planning Commission’s consideration. Please confirm timely receipt.

Respectfully,

Mike



Law Office of Mike Reeder
Oregon Land Use Law

Office: (458) 210-2845 | oregonlanduse.com
375 W. 4th Ave., Suite 205, Eugene, OR 97401

NOTICE: This email is for the sole use of the intended recipient(s) and may contain confidential or privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you received this message in error, please contact the sender by reply email and destroy all copies of the message.

K & A ENGINEERING, INC.
 91051 S. WILLAMETTE STREET
 P. O. BOX 8486, COBURG, OR 97408
 (541) 684-9399 · KAENGINEERS.COM



October 22, 2018

Project: 17056

Bill Lund
 P. O. Box 22
 Seal Rock, OR 97376

Subject: Clarification – Additional Geotechnical Borings
 Proposed Residential Development
 Tax Lots 1800, 1900, 1903; Tax Map 11-11-05-BC;
 NW Spring St., Newport, Oregon

Dear Mr. Lund,

Our geotechnical report for the subject development, dated June 29, 2018, recommended that the subject site can be developed as proposed in a manner that will provide the stability and safety normally expected, provided that the recommendations in our geotechnical report are implemented. The data obtained in our original investigation is more than adequate to provide the basis for our competent geological hazard evaluation for the subject project site. *As such, we have deemed that the site is suitable for the proposed development.*

From a practical development and design standpoint, we have recommended that, depending on the final locations of the proposed structures, several additional borings or probes be made. These additional borings or probes are NOT needed to characterize overall site suitability or stability, but are desired for the purpose of:

- Confirming the depth of bedrock and
- Designing and building the most economical pile-supported foundation system for the structures.

Thank you for the opportunity to be of service. Please call me if you have further questions.

Sincerely,



EXPIRES: DECEMBER 31, 2018

Michael Remboldt, P.E., G.E.
 K & A Engineering, Inc.



Derrick Tokos

From: Mona Linstromberg <lindym@peak.org>
Sent: Monday, October 22, 2018 11:39 AM
To: Derrick Tokos
Subject: Spring St comment needed housing/clear and objective standards
Attachments: Spring St comment needed housing with attachment.pdf

Please enter the attached in the record 1-GP-18-A and acknowledge receipt.

Thank you,

Mona Linstromberg
Sent via my totally safe HARD WIRED internet connection

October 22, 2018

1-GP-18-A

Applicant: Lund

Tax Lots: 1900, 1903, & 1800

Comment: Needed housing, a fallback position

From personal experience, attorneys representing developers use the “needed” housing argument when all else fails.

In 2004, Neighbors for Responsible Growth opposed intrusion into wetlands proposed by a local Veneta developer. Karen Wickham and I challenged those two proposed developments and appealed to LUBA the City’s approval (see attached Linstromberg and Wickham vs City of Veneta, LUBA No. 2004-030/031).

On pages 9 and 10 there is an Intervenor’s Cross Assignment of Error ¹:
“(i)ntervenor argues that even if the city’s findings that the disputed variances should be approved are insufficient, the city’s decision should nevertheless be affirmed because the city improperly applied its variance criteria to this application for **needed housing**.” (highlight added).

Our attorney in that case made a strong argument regarding the focus of our appeal, City code and the intrusive nature of the proposal into the wetlands. This first assignment of error was sustained. The developer’s attorney, Mr. Kloos, threw in a needed housing argument which was rejected.² LUBA remanded the City’s approval decision.

See Mr. Reeder’s discussion on “needed” housing and reliance on “clear and objective” standards. As in the Veneta case, Newport code when considering development in a geologic hazard zone relies on clear and objective standards because it clearly enumerates the objective technical requirements, including peer reviewed technical information on appeal, needed to meet code (see

¹ Attorney Bill Kloos filed the response brief (instead of the City) and argued on behalf of the developer, intervenor-respondent.

² Although need housing provisions have evolved over time, the logic here still holds and this argument would again be rejected.

NMC 14.21). It is for the planning commission to decide if the applicant's geotechnical engineering report is complete or inadequate. Has it provided the technical data needed to support its conclusions? The answer is no it has not and the record supports that. The housing argument is Mr. Reeder's fallback position and is not compelling in the case of development in a geologic hazard zone.

Thank you for your attention:

Mona Linstromberg
831 E. Buck Creek Rd.
Tidewater, OR 97390

Family home
1442 NW Spring St.
Newport, OR 97365

Comment – Needed Housing/Clear and Objective Standards

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

MONA LINSTROMBERG and KAREN WICKHAM,
Petitioners,

vs.

CITY OF VENETA,
Respondent,

and

ROSS INVESTMENTS, INC.,
Intervenor-Respondent.

LUBA No. 2004-030/031

FINAL OPINION
AND ORDER

Appeal from City of Veneta.

Jannett Wilson, Eugene, filed the petition for review and argued on behalf of petitioner.

No appearance by respondent.

Bill Kloos, Eugene, filed the response brief and argued on behalf of the intervenor-respondent.

HOLSTUN, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED 06/04/2004

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal two city decisions that grant variances to allow construction of portions of several new roads within wetlands in two subdivisions.

MOTION TO INTERVENE

Ross Investments, Inc. (intervenor), the applicant in this matter, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

A map that was prepared from other maps in the record and attached to the petition for review shows the general location of Hunter Heights and Trinity Terrace, the two subdivisions that are at issue in this appeal. That map is a composite of maps from the city's Transportation System Plan (TSP) showing planned road extensions and existing wetlands. We have added to the legend and added some street names and attached that map as an appendix to this opinion.¹ Hunter Heights is the smaller of the two subdivisions and is located in the center of the map. Trinity Terrace is the larger subdivision located to the southeast of Hunter Heights. As relevant in this appeal, the disputed variances allow construction of new roadways across wetlands.²

As the attached map shows, a large area of braided wetlands exists in this part of the city. Some of the existing roads have been built across wetlands. Other existing dead-end roads extend into the wetlands to provide access to upland areas. However, the existing road system generally passes around this large area of braided wetlands. The challenged decision finds that the disputed

¹ That map also shows a third subdivision that is not at issue in this appeal, Coven Estates. Other more detailed maps in the record show Pine Street, Trinity Street, Erdman Way and Jake Street crossing wetlands in different locations than indicated on the attached map and show additional proposed roads. Those more detailed maps show that the map we attach as an appendix is somewhat inaccurate in a number of other respects. However, we do not include those maps because a more precise and accurate understanding of the details of the proposed subdivisions is not necessary to understand the legal issues presented in this appeal.

² Both subdivisions were previously granted preliminary subdivision approval with a condition that the applicant seek and receive variances to construct the approved roads in the locations that the city prefers, which requires that wetlands be crossed in a number of circumstances.

1 variances are needed to allow construction of subdivision streets that will improve east-west and
 2 north-south street and utility connectivity and provide a second emergency access for the Trinity
 3 Terrace subdivision and internal lot access for that subdivision.³

4 We list and briefly describe the disputed roads that are authorized by the challenged
 5 variances. As previously noted, because these roads are aligned such that they cross wetlands, the
 6 disputed variances are required.

- 7 1. **Pine Street.** A portion of Pine Street, which is a new north-south road,
 8 would be constructed to connect Hunter Heights with Hunter Road to the
 9 north. When completed, Pine Street would provide a new north-south
 10 connection between two existing major east-west roads in the city of
 11 Venetia—Hunter Road to the north and East Bolton Road to the South.
- 12 2. **Trinity Street.** East Bolton Road would be extended eastward, in the
 13 location where it now turns south, and would be renamed Trinity Street. If
 14 other improvements shown on the city’s Transportation System Plan are
 15 ultimately constructed, Trinity Street and East Bolton Road would provide a
 16 new east-west route through this part of the city.
- 17 3. **Erdman Way.** A portion of Erdman Way, a new north-south road, would
 18 be constructed in Trinity Terrace. If completed as shown on the city’s TSP,
 19 Erdman Way would provide a new north-south route through this part of
 20 the city connecting East Bolton Road to the south and Hunter Way to the
 21 north.
- 22 4. **Crosswood Lane** (not shown on the attached map). Crosswood Lane
 23 would be a new short north-south internal subdivision road within Trinity
 24 Terrace, running between Trinity Street on the north and Jake Street on the
 25 south. It would be located west of Erdman Way and east of the north-
 26 south portion of East Bolton Road. Other internal north-south roads are
 27 proposed between Trinity Street and Jake Street, but they do not cross
 28 wetlands.
- 29 5. **Jake Street.** A portion of a new east-west street would be constructed
 30 from a point east of East Bolton Road to a point east of Erdman Way. If
 31 Jake Street is completed as shown on the TSP it would provide a new east-
 32 west roadway through this part of the city connecting a planned southward

³ We use the term “connectivity” in this decision as roughly translating to the ability to travel over a more or less direct route from one point to another, *i.e.*, without a requirement for excessive out-of-direction travel.

1 extension of Baker Street on the east with an unnamed planned north-south
2 road immediately west of the north-south section of East Bolton Road.⁴

3 6. **Heavenly Lane** (not shown on the attached map). Heavenly Lane would
4 be a short new east-west internal subdivision road within Trinity Terrace
5 connecting Crosswood Lane with the north-south portion of East Bolton
6 Road.

7 The TSP generally calls for an extension of the adjoining grid system of roads into this
8 wetland area of the city (which could necessitate a significant number of wetland crossings) to
9 improve connectivity. However, the TSP also recognizes that wetland protection requirements in
10 the Veneta Municipal Code (VMC) prohibit new development within wetlands and may require
11 modification of the alignment shown for the proposed street system shown in the TSP.⁵

12 VMC Chapter 18.10 is entitled “Wetland Protection.” Since constructing a new road
13 through a locally significant wetland destroys at least some wetland functions and values, such
14 construction qualifies as “[n]ew development or expansion of existing development” and is
15 prohibited by VMC 18.10.040(3). Exceptions to the prohibition in VMC 18.10.040(3) are

⁴ Based on the map that appears at Record 123, it does not appear that Jake Street would connect with East Bolton Road at this time. It would be accessed from Trinity Street and Heavenly Lane to the north via the subdivisions new internal north-south roads.

⁵ The discussion of “New Streets” at page 3-10 of the TSP recognizes that there is some tension between the city’s goals of achieving improved connectivity and protecting wetlands:

“Map 9 shows general locations of where streets will go as those areas are developed. *The exact alignment of streets will be determined at the time of development.* Design and traffic issues will be addressed at the time of development. *Natural or cultural resources may require that streets be realigned, and in some cases, may prevent construction.* Where possible, the new streets will provide more connections to the existing street system. More connections mean that public safety is increased because emergency vehicles have more options for getting to a crisis location. More connections also mean shorter travel distances and less congestion because people will have choices about where to drive or walk and not be restricted to a particular street. The street plan focuses on connectivity. It also provides alternative routes to the state highways which will alleviate some of the burden on Territorial Highway and Highway 126 for local trips.” (Emphases added).

Map 10 from the TSP (attached as an appendix to this opinion), like Map 9 referenced in the above-quoted language from the TSP, includes a legend that largely repeats the TSP language emphasized above, which makes it clear that the proposed alignments for new roads in the TSP are conceptual and subject to change to avoid wetlands and more effectively serve development.

1 possible under the wetland protection variance provisions at VMC 18.10.060. VMC 18.10.060
 2 authorizes a variance to allow development that would otherwise be prohibited in three
 3 circumstances. As relevant here, VMC 18.10.060(3) provides:

4 “A variance may be granted in those instances where the planning commission and
 5 city council jointly determine that the public need outweighs the potential adverse
 6 impacts of development in or near a locally significant wetland resource site.”

7 The city at one point considered resolving the tension between the TSP proposal to improve
 8 connectivity by extending a new road system grid through the wetlands and the VMC 18.10.040(3)
 9 requirement for protection of wetlands from new development by granting a blanket variance for all
 10 new roads proposed in the TSP. That more ambitious solution apparently has not yet been
 11 adopted. To allow Hunter Heights and Trinity Terrace to proceed, variances were granted for the
 12 roadways proposed in the disputed subdivisions. This appeal concerns those variances.

13 **FIRST ASSIGNMENT OF ERROR**

14 The city adopted the following findings to explain why it concluded that “the public need
 15 outweighs the potential adverse impacts of development in or near a locally significant wetland
 16 resource site” under VMC 18.10.060(3), with regard to the proposed extension of Pine Street
 17 south from Hunter Road through Hunter Heights subdivision:

18 “The proposal is consistent with this criterion because the public need is for
 19 connected street and public utility systems to serve the residents of the Hunter
 20 Heights subdivision, surrounding areas, and City as a whole; and, potential adverse
 21 impacts of development in or near a locally significant wetland resource site shall be
 22 mitigated through the condition of approval that any activity in locally significant
 23 wetlands shall conform to Division of State Lands (DSL) and Army Corps of
 24 Engineers (ACE) permitting processes, standards and conditions which shall require
 25 minimum impact to wetlands and where impact is unavoidable shall require
 26 mitigation of any adverse impacts.

27 “There are approximately 0.76 acres of wetlands identified on the Hunter Heights
 28 site. The subdivision will impact approximately 0.074 acres of an existing wetland
 29 drainage way for the extension of Pine Street as required by the City of Venetia
 30 Transportation Plan (TSP). The east half of the City, where Hunter Heights
 31 subdivision is located, has extremely limited north-south connectivity. Improvement

1 of Pine Street in its entirety as shown on Map 9 of the TSP is necessary to provide
2 north-south connectivity to the east half of the City.” Record 33.

3 With regard to Trinity Terrace subdivision, the other challenged decision adopts a finding
4 that is substantively identical to the first paragraph of the Hunter Heights subdivision findings quoted
5 above. Record 21. The following additional Trinity Terrace subdivision findings follow that
6 paragraph:

7 “There are approximately 2.2 acres of wetlands identified on the Trinity Terrace
8 site. The subdivision will impact a total of approximately 0.19 acres of an existing
9 wetland drainage way for the extension of Trinity Street and Erdman Way and
10 associate public utilities as required by the City of Veneta [TSP] as shown on Map
11 9 of the TSP. Trinity Street is designated as a minor collector. Erdman Way is
12 designated as a local street which provides much need[ed] north-south connectivity
13 for the City.

14 “The Installation of Heavenly Lane is necessary to comply with the City of Veneta
15 Land Division Ordinance Section 4.03(6) which requires the development to
16 provide for the future development of adjacent properties. The installation of
17 Crosswood Lane is necessary to provide a second access for emergency vehicles in
18 order to serve an 81 lot subdivision.” Record 21.

19 The city adopts additional findings that further explain its position that the proposed roads will
20 increase connectivity and further other city policies. Record 21-29; 33-41.

21 Petitioners argue first that the “potential adverse impacts of development,” which under the
22 VMC must be outweighed by the identified public need, “are not even listed, let alone compared
23 with or weighed against the asserted public needs.” Petition for Review 5. Petitioners go on to
24 argue:

25 “Despite all the recognized benefits of wetlands, the potential destruction of either
26 wetlands in general or these wetlands in particular is not even analyzed in the city’s
27 findings in support of the variances. Such an omission is a fatal flaw, given that
28 weighing of the potential impacts of development is required by the variance
29 criterion.” *Id.*

30 With regard to the adequacy of the city’s public need findings, petitioners argue:

31 “As Petitioners pointed out in public testimony, the city made no showing that a
32 connected street and utility system requires crossing and destruction of the
33 significant wetlands areas. Rec 77-78, 85-86, 91. Petitioners do not dispute that a

1 connected street and utility system is desirable, but the findings do not go beyond
 2 that generalization to indicate why these particular alignments and locations,
 3 requiring destruction of these particular wetlands, are so unique and necessary as to
 4 constitute a public need outweighing the impacts of the development.” Petition for
 5 Review 6.

6 While VMC 18.10.060(3) does not necessarily require that the city approach the “public
 7 need” and “potential adverse impacts of [wetland] development” questions in precisely the way
 8 petitioners argue in the above-quoted paragraphs, we agree with petitioners that the city’s findings
 9 are inadequate. As petitioners correctly point out, some of the roads for which the challenged
 10 decisions approve variances are not included in the TSP and are not needed to improve
 11 connectivity.⁶ For at least some of the roads that are justified on a need to improve connectivity,
 12 petitioners identified alternative alignments that would not require crossing wetlands or would have
 13 fewer impacts on wetlands. While VMC 18.10.060(3) does not expressly or directly impose a
 14 requirement that impacts on wetlands be minimized, it does require a finding that “public need
 15 outweighs the potential adverse impacts of development in or near a locally significant wetland
 16 resource site.” It is hard to see how that finding can be made if there is an alternative alignment that
 17 will both address a connectivity shortcoming and avoid crossing wetlands. If such alternatives exist,
 18 as petitioners argue, it is hard to see how there could be a public need that outweighs the potential
 19 adverse impacts of requiring that roads be aligned so that they cross wetlands.⁷ Without expressing
 20 any view concerning whether adequate findings could be adopted to justify the approved
 21 alignments, we agree with petitioners that the findings that the city adopted in support of the
 22 challenged variances are inadequate to do so.

⁶ Crosswood Lane and Heavenly Lane are not shown as planned new roads in the TSP. They also do not appear to be justified based on a need for connectivity. Looking at the map that appears at Record 123, we do not understand why those roads are necessary to serve the public needs that are identified in the challenged decision (future development for adjacent properties and a second emergency access). Even if new roads are necessary to serve those public needs, it is not apparent why those new roads must cross wetlands to serve those public purposes.

⁷ Petitioners argue that alternatives that would avoid wetlands and meet public need exist for several of the alignments approved by the challenged decisions. Record 77-78, 85-86.

1 In summary, the city's first error was in not explaining, in light of the evidence and argument
2 provided by petitioners, why the approved roads could not be realigned to avoid the need to cross
3 wetlands and thereby avoid adversely impacting those wetlands. Assuming there is a connectivity
4 public need that cannot be met without crossing wetlands, the city's second error was in not
5 explaining why that public need outweighs the resulting adverse impacts to the wetland.

6 The first assignment of error is sustained.

7 **SECOND ASSIGNMENT OF ERROR**

8 Under their second assignment of error, petitioners allege that the first of the Hunter Heights
9 findings quoted above and the identical finding adopted by the city for the Trinity Terrace
10 subdivision improperly delegated the decision the city must make under VMC 18.10.060(3) to
11 DSL and ACE in their subsequent required permit approval of the disputed wetland development.

12 It is possible to read the city's decision as improperly delegating its decision making
13 responsibility under 18.10.060(3) to determine whether public need outweighs the adverse impacts
14 of developing wetlands. However, it is also possible to read the city's findings as relying on the
15 DSL and ACE permitting process to minimize the impacts of wetland development and to require
16 mitigation of adverse impacts. We read the city's findings to take the latter approach. As we
17 explained in sustaining the city's first assignment of error, the city's error was in inadequately
18 explaining why, even if all proposed roads meet a public need why they must cross wetlands to
19 satisfy the public need. And for proposed roads that must cross wetlands to satisfy the identified
20 public need, the city also erred by not adequately explaining why that public need outweighs the
21 potential adverse impacts to wetlands. If the city elects to attempt to correct these deficiencies on
22 remand, we see no reason why the city cannot recognize that DSL and the ACE will require
23 minimization of impacts to wetlands and require mitigation of any adverse impacts in determining
24 whether the public need that a road will serve outweighs the potential adverse impacts to affected
25 wetlands.

26 The second assignment of error is denied.

1 **INTERVENORS CROSS ASSIGNMENT OF ERROR**

2 Intervenor argues that even if the city’s findings that the disputed variances should be
 3 approved are insufficient, the city’s decision should nevertheless be affirmed because the city
 4 improperly applied its variance criteria to this application for needed housing. We treat this
 5 argument as a cross assignment of error. *Copeland Sand & Gravel v. Jackson County*, ___ Or
 6 LUBA ___ (LUBA No. 2003-193, April 1, 2004), slip op 14-15.

7 ORS 197.307(6) requires that “[a]ny approval standards * * * adopted by a local
 8 government shall be clear and objective and may not have the effect, either in themselves or
 9 cumulatively, of discouraging needed housing through unreasonable cost or delay.” For purposes of
 10 this opinion, we assume that the housing that would be provided by Hunter Heights and Trinity
 11 Terrace qualifies as “needed housing,” as that term is broadly defined by ORS 197.303. *See*
 12 *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 147-49, *aff’d* 158 Or
 13 App 1, 970 P2d 685, *rev den* 328 Or 594 (1999). We also assume that the variance standard at
 14 VMC 18.10.060(3) is not “clear and objective” “approval standard[]” as ORS 197.307(6) uses
 15 those terms. *Id.* at 153-58. However, even with those assumptions, intervenor’s argument is
 16 unpersuasive. First, the “approval standard” that governed approval of intervenor’s application was
 17 VMC 18.10.040(3), which prohibits new development in significant wetlands. There is nothing
 18 unclear or subjective about that approval standard. Intervenor seeks a variance to the clear and
 19 objective VMC 18.10.040(3) approval standard rather than have the city apply that standard.

20 If the city required that intervenor give up its right to propose a subdivision with roads that
 21 avoid wetlands and thereby avoid any need to seek variances under unclear and subjective approval
 22 standards, it is possible that the city committed legal error in doing so. However, even if the
 23 preliminary subdivision approval decisions improperly imposed conditions that required that the
 24 applicant seek the variances that are at issue in this appeal, those preliminary subdivision approval

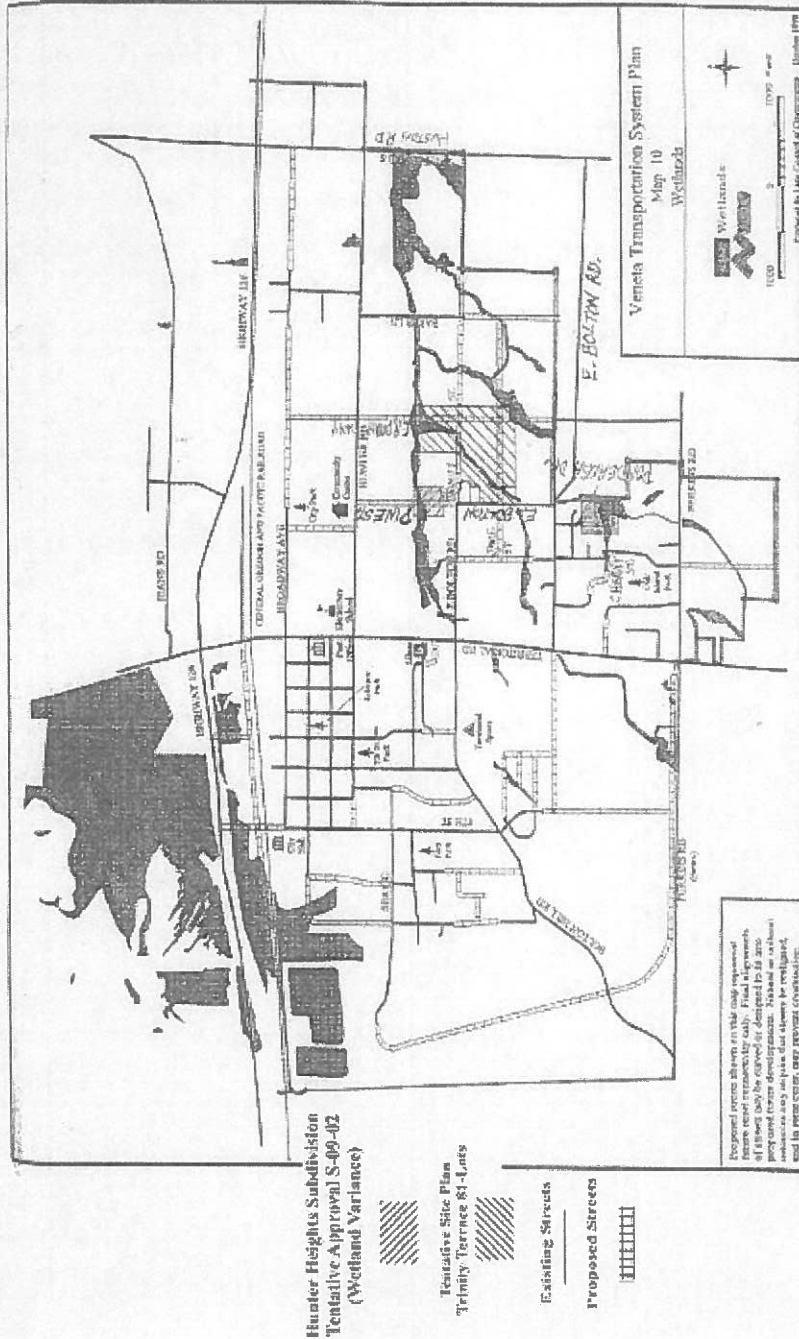
1 decisions are not before us in this appeal. Those preliminary subdivision approval decisions cannot
2 be collaterally attacked in this appeal.⁸

3 For the reasons set out above, we reject intervenor’s cross-assignment of error.

4 The city’s decision is remanded.

⁸ We recognize the practical dilemma an applicant may face in appealing a local decision that approves a subdivision application with conditions that are objectionable. *But see* ORS 197.796 (applicant for land use decision, limited land use decision, expedited land use decision or permit may accept condition and later challenge the condition under that section of the statutes). Even if ORS 197.796 does not apply, it may be possible to file a precautionary appeal with LUBA and suspend the appeal while the applicant attempts satisfy the condition or to have the city remove the condition.

Appendix 1



CITY OF NEWPORT

OCT 22 2018

RECEIVED

Memorandum

To: Newport Planning Commission

From: Derrick Tokos, Community Development Director 

Steve Rich, City Attorney 

Date: ~~October 4, 2018~~

Re: 10/15/18 Testimony by Mike Reeder - Geologic Permit (File No. 1-GP-18)

Regarding the subject testimony, we offer the following observations to assist the Planning Commission in rendering a decision on the appeal. The Municipal Code provisions for developing in geologically hazardous areas were drafted for the express purpose of ensuring that construction can occur in a manner that minimizes public and private losses due to earth movement hazards and limiting erosion and related environmental damage (NMC 14.21.010). Newport accomplishes this by requiring that persons seeking to build within mapped hazard areas retain the services of licensed engineering geologists to document that the properties in question are suitable for the proposed development (NMC 14.21.050(D)). These documents, or "geologic reports" are often supplemented with engineering reports prepared by licensed civil engineers, geotechnical engineers, or engineering geologists (to the extent qualified) if engineering remediation is anticipated to make sites suitable for proposed development (NMC 14.21.050(E)).

In reviewing geologic reports, city staff focuses its attention on ensuring that a site plan and related reports have been submitted pursuant to NMC 14.21.050/"Application Submittal Requirements" and that the certified engineering geologists, licensed civil engineers, or geotechnical engineers (collectively "licensed professionals") have considered the factors listed in NMC 14.21.060/"Geologic Report Guidelines," NMC 14.21.070/"Construction Limitations within Geologic hazards Areas," NMC 14.21.080/"Prohibited Development on Beaches and Foredues," and NMC 14.21.090/"Erosion Control Measures." Mr. Reeder points out that a number of the factors listed under NMC 14.21.070 and NMC 14.21.090 are subjective, value laden or immeasurable. The same can be said for much of what is contained in the "Guidelines for Preparing Engineering Geologic Reports in Oregon" authored by the Oregon State Board of Geologist Examiners and the "Geologic Report Guidelines for New Development on Oceanfront Properties" authored by the Department of Land Conservation and Development, both of which must be considered by licensed professionals when preparing geologic reports (NMC 14.21.060). Mr. Reeder argues that because these factors are not "clear and objective" approval criteria they run afoul of state law that requires local jurisdictions provide a set of clear and objective approval standards for needed housing. Our response is that to the extent these factors are approval criteria

they are akin to a checklist that the licensed professionals must acknowledge that they have considered when preparing their reports and, as such, are clear and objective. City staff does not weigh the relative significance a licensed professional may give to a particular factor, and looks only to ensure that the factors have been considered. This approach is consistent with the manner in which the code is structured and the fact that such reviews are Type 1 land use actions, where the City's decisions involve limited administrative discretion (NMC 14.52.020(A)).

Where there is a limited amount of discretion in the City's geologic hazards code, it is in cases, such as this, where an approved geologic report has been appealed. The City intentionally structured its code for development in geologically hazardous areas to be dependent upon licensed professionals that possess specialized knowledge of construction techniques appropriate to these areas. In doing so, the City recognized that there may be times where the approach recommended by a licensed professional(s) would be challenged by neighboring property owners out of a concern over the stability of their own properties. In these circumstances, appellants are required to retain the services of their own licensed professional(s) to peer review the geologic report and the Planning Commission is charged with determining whether or not the original decision should be modified based upon the peer review evidence (NMC 14.21.120). That is where things stand with the subject application, and we would emphasize that the Commission should limit the scope of its review to issues raised by the respective licensed professionals.

Derrick Tokos



From: Mona Linstromberg <lindym@peak.org>
Sent: Thursday, October 18, 2018 9:27 PM
To: Derrick Tokos
Cc: Elaine Karnes; Sean Malone
Subject: Spring St - 1-GP-18, prevailing attorney

At the October 8, 2018 public hearing, our attorney, Sean Malone, made the offer to write the findings if the planning commission upheld our appeal and denied the approved geologic permit. It seemed as if this was somewhat of a surprise to the planning commission, though I may have been mistaken. I have taken two land use issues to LUBA (Linstromberg vs City of Veneta and Linstromberg vs Lane County) and been involved in others. This is, apparently, common procedure though somewhat disconcerting if you are on the other side (as I always have been, but I was successful in both cases). There is a certain logic to it as it would be the prevailing attorney that writes the findings and then intervenes on behalf of the local jurisdiction before LUBA. This has been my experience.

Thank you again for your attention.

Mona Linstromberg

Please enter in the record and acknowledge receipt.



Law Office of Mike Reeder
Oregon Land Use Law



October 15, 2018

Via Email Only

d.tokos@newportoregon.gov
s.marineau@newportoregon.gov

Newport Planning Commission
c/o Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365

**Re: Applicant's Post-hearing Open Record Letter to Planning Commission
William Lund | Geological Permit Application | #1-GP-18-A**

Dear Planning Commission:

I represent William Lund, the applicant for the Geological Permit, City File #1-GP-18-A that you are reviewing on appeal by Mona Linstromberg, Elaine Karnes, Teresa Amen and Robert Earle, represented by attorney, Sean T. Malone.

Much ink has been spilled regarding the Geological Permit application and the evidence provided to you that is in the record regarding how the application meets the criteria for approval. This letter does not address the evidence that is in the record that clearly supports approval based on the approval criteria. This letter introduces a new matter that makes the question of whether the applicant's testimony and evidence merits approval of the Geological Permit application moot.

I. Legal Argument Presented

My client has an absolute right to obtain building permits for the construction of his proposed single-family dwelling and two duplexes without obtaining a Geological Permit pursuant to ORS 197.307(4), ORS 227.173(2), and ORS 227.175(4)(b)(A).

II. Legal Framework

In 2017, the Oregon Legislative Assembly amended ORS 227.175(4) in Senate Bill 1051 to provide that *all* housing development applications located within the urban growth

Applicant's Post-hearing Open Record Letter
to Planning Commission
October 15, 2018

boundary are subject only to clear and objective standards contained in the city's comprehensive plan or land use regulations. Current ORS 227.175(4)(b)(A) states as follows:

“A city may not deny an application for housing development located within the urban growth boundary if the development complies with clear and objective standards, including but not limited to clear and objective design standards contained in the city’s comprehensive plan or land use regulations.”

Relatedly, ORS 197.307(4) attaches greater restrictions on the local government's ability to impose subjective standards, conditions and procedures regulating the development of housing as follows:

“Except as provided in subsection (6) of this section [not applicable here], a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing [as defined by ORS 197.303(1)]. The standards, conditions and procedures: (a) May include, but are not limited to, one or more provisions regulating the density or height of a development, (b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

“Needed Housing” is defined by ORS 197.303(1) as follows:

“As used in ORS 197.307, ‘needed housing’ means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. ‘Needed housing includes the following housing types: (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;...”

My client's proposed housing development is “needed housing” as defined by ORS 197.303(1) since it is housing on land zoned for residential use and is composed of a single-family dwelling and two duplexes. This proposal fits squarely within the ambit of ORS 197.303(1) “needed housing” and thus is subject to ORS 227.175(4)(b)(A) and ORS 197.307(4).

Applicant's Post-hearing Open Record Letter
to Planning Commission
October 15, 2018

In addition to ORS 227.175(4)(b)(A) and ORS 197.307(4), ORS 227.173(2) further imposes upon a local government the obligation to adopt clear and objective standards for housing development. ORS 227.173(2) states thusly:

“When an ordinance establishing approval standards is required under ORS 197.307 (Effect of need for certain housing in urban growth areas) to provide clear and objective standards, the standards must be clear and objective on the face of the ordinance.”

The City must follow the commands of ORS 227.175(4)(b)(A); ORS 227.173(2) and ORS 197.307(4) to adopt and apply only clear and objective standards, conditions and procedures for housing development (such as the one proposed) and further, to follow the commands of ORS 197.307(4)(b) to not impose standards, conditions or procedures that have the effect either individually, or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Furthermore, ORS 197.831 “places the burden on the local government to demonstrate, before LUBA, that standards and conditions imposed on needed housing that are required to be clear and objective ‘are capable of being imposed only in a clear and objective manner.’” *Walter v. City of Eugene*, 73 Or LUBA 356, 359 (2016).

III. Analysis in this Case

My client wishes to develop his property for housing. The property is designated and zoned for housing. Therefore, ORS 227.175(4)(b)(A), ORS 227.173(2) and ORS 197.307(4)(b) apply. *See generally, Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998), *aff'd*, 158 Or App 1 (1999).

The question is often asked: Do we as the city not have an obligation to adhere to the local code? In this case, the Newport Municipal Code requires a Geological Permit pursuant to NMC, Chapter 14.21, Geologic Hazards Overlay Zone. Specifically, NMC 14.21.030 requires a Geologic permit prior to obtaining a building permit. Unsurprisingly, the NMC does not expressly permit an exception for “housing” pursuant to ORS 227.175(4)(b)(A) and ORS 197.307(4). Newport is not unique in this regard. Most local governments have not updated their land use regulations to recognize the need to comply with these statutes. However, in such cases where the local code has not caught up with the state statutes, the state statutes apply directly and the local code provisions, when they conflict, must be set aside. Examples where such local code regulations have been set aside in other jurisdictions are listed in Part IV below as are attached to this letter.

The Geologic Hazards Overlay Zone criteria for approval found at NMC 14.21.070 to .090 are riddled with “subjective, value-laden analysis that are designed to balance or mitigate impact of the development” are therefore not clear and objective. Since the standards for a

Applicant's Post-hearing Open Record Letter
to Planning Commission
October 15, 2018

Geological Permit are not clear and objective they cannot be applied to the subject property's proposal for housing. *See Rogue Valley Assoc. of Realtors, supra*, 35 Or LUBA at 158.

Examples of subjective, value-laden, undefined, ambiguous and immeasurable standards in the Geologic Hazards Overlay Zone criteria include, but are not limited to, the following, with the subjective and/or ambiguous portions of the standards identified in *bold italics*:

- "Property owners *should consider* use of construction techniques that will render new buildings *readily moveable* in the event that they *need* to be relocated." NMC 14.21.070.A.1.
- "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;..." NMC 14.21.090.A.
- "Development plans shall *minimize* cut or fill operations so as to *prevent* off-site *impacts*;..." NMC 14.21.090.B.
- "Temporary vegetation and/mulching shall be used to protect exposed *critical areas* during development." NMC 14.21.090.C.
- "Permanent plantings and any required structural erosion control and drainage measures shall be installed *as soon as practical*;..." NMC 14.21.090.D.
- "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." NMC 14.21.090.G.

These NMC provisions are ambiguous on their face, are subjective and/or otherwise ambiguous and therefore cannot be imposed on the development of the subject property for housing. *See Walter, supra*, 73 Or at 356.

IV. Other Local Government Decisions

Other local governments throughout Oregon have dealt with the issue of when the local code does not comply with the commands of ORS 197.307(4), ORS 227.173(2), and

Applicant’s Post-hearing Open Record Letter
to Planning Commission
October 15, 2018

ORS 227.175(4)(b)(A). I will summarize a few below and attach the referenced local cases to this letter.

Corvallis: Conditional Development Permit within the Willamette Greenway Overlay

In this case, a developer proposed the replacement of an existing single-family dwelling with a new single-family dwelling within the Willamette River Greenway (WRG) Overlay. City staff and the City Attorney recognized that the proposal was for housing and that ORS 197.307 applied – only clear and objective standards could be imposed on this housing development – even though it was subject to the local code provision that protects the Willamette River through the WRG overlay zone. The staff report (on pages 4-5) states:

“The proposed residential development constitutes ‘needed housing’ as defined by Section 197.307.303 of the Oregon Revised Statutes...As such, certain review criteria that are typically applicable to development within the WRG Overlay cannot be applied to needed housing projects such as this one. Inapplicable criteria include many of the compatibility criteria for Conditional Development applications that require discretionary judgement, and review criteria for development in the WRG that include discretion and imprecise language such as ‘to the maximum extent practicable.’ Consequently, compliance with review criteria that are not clear and objective may not be considered in this decision.”

The Corvallis Planning Commission agreed with City staff and the City Attorney and determined that the WRG and Conditional Development criteria could not be applied to the housing proposal. See attached September 6, 2018 “Planning Commission Notice of Disposition”, Order 2018-052. This decision was not appealed.

Eugene: Delta Ridge PUD – No TIA Required

In this attached case (“Delta Ridge PUD” File number PDT 17-3/ARB 17-2/TIA 17-2), the Eugene Hearings Official determined that a 360-unit apartment complex was not required to comply with the city code’s requirement that all developments that are expected to generate more than 100 peak hour trips apply for a Traffic Impact Analysis Review application.

The Eugene Hearings Official determined that the TIA Review standards were not clear and objective and that the city could not impose its code requirement on the developer to apply for a TIA in order to proceed with the proposed housing development. This decision was not appealed.

Eugene: Lombard Apartments Site Review

Applicant's Post-hearing Open Record Letter
to Planning Commission
October 15, 2018

In this case, the Eugene Hearings Official determined that the Willamette Greenway Permit ("WG Permit") was not required for the proposed housing development. See the attached Hearings Official Decision "Lombard Apartments LLC" File Number WG 18-3/SR 18-3/ARA 18-8). See pages 8-13 wherein the Hearings Official analyzes the local code and determines that the criteria for the WG Permit are not clear and objective and cannot therefore be applied to the housing proposal. He rejected the opponents' and Assistant City Attorney's argument that somehow statewide planning Goal 15 and ORS 390.314 took precedence over the commands of ORS 19.307(4).

The opponents appealed the Hearings Official's decision to the Eugene Planning Commission which approved the application on the WG Permit criteria but reversed the Hearings Official on the issue of whether the WG Permit was subservient to ORS 197.307(4). The Planning Commission's approval has been appealed to the state Land Use Board of Appeals but has not yet been heard by LUBA.

V. Conclusion

As discussed above, the City cannot require my client to obtain a Geologic Permit in order to develop the subject property with housing.

However, since the Geologic Permit application has already been submitted and approved by City staff, and since the Planning Commission has already held a public hearing and received testimony, the applicant respectfully requests that the Planning Commission determine the following: (1) that the Geologic Permit application meets the criteria for approval, and (2) that notwithstanding the code provision that a Geologic Permit be obtained prior to any development for housing, that ORS 197.307(4), ORS 227.173(2), and ORS 227.175(4)(b)(A) preclude the City from imposing such as a precondition to developing the property for housing.

Thank you for your consideration on this matter and your service to the community as volunteers on the Planning Commission.

Respectfully,



Micheal M. Reeder
Attorney for Applicant

Attachments 1-3

cc (via email): Steven E. Rich, City Attorney
William Lund, client
Sean T. Malone, attorney for appellants
Sherri Marineau, City of Newport

ATTACHMENT 1

Corvallis Planning Commission Order and Staff Report



Community Development
 Planning Division
 501 SW Madison Avenue
 PO Box 1083
 Corvallis, OR 97339-1083
 (541) 766-6908
 planning@corvallisoregon.gov

**PLANNING COMMISSION
 NOTICE OF DISPOSITION**

ORDER 2018-052

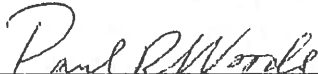
- CASES:** 1180 NE 2nd Street (CDP-2018-01/WRG-2018-01)
- REQUEST:** The applicant seeks approval to replace the existing single family dwelling with a new single family dwelling. The property is located within the Willamette River Greenway (WRG) Overlay.
- APPLICANT/
 OWNER:** Craig Christensen
 1180 NE 2nd Street
 Corvallis, OR 97330
- LOCATION:** The 0.19 acre site is located at 1180 NE 2nd Street, and is identified on Benton County Assessor's Map 11535AA as Tax Lot 03000.
- BACKGROUND:** The Planning Commission conducted a public hearing on September 5, 2018, to consider the request. The public hearing was closed on September 5, 2018 and the applicant waived his right to seven (7) additional days to provide a final written argument.
- DECISION:** The Planning Commission deliberated and approved the request on September 5, 2018. The Planning Commission finds that the request for a Conditional Development Permit within the WRG Overlay satisfies the applicable criteria and approves the request subject to nine (9) conditions of approval. The Planning Commission adopts the findings in support of the application presented in the September 5, 2018, staff report to the Commission, and findings in support of the application made by the Commission during deliberations on the request.

If you are an affected party and wish to appeal the Planning Commission's decision, appeals must be filed, in writing, with the City Recorder within 12 days from the date that the order is signed. The following information must be included:

1. Name and address of the appellant(s).

2. Reference the subject development and case number, if any.
3. A statement of the specific grounds for appeal.
4. A statement as to how you are an affected party.
5. Filing fee of \$746.40 (\$373.20 if appealed by a recognized Neighborhood Association).

Appeals must be filed by 5:00 p.m. on the final day of the appeal period. When the final day of an appeal period falls on a weekend or holiday, the appeal period shall be extended to 5:00 p.m. on the subsequent work day. The City Recorder is located in the City Manager's Office, City Hall, 501 SW Madison Avenue, Corvallis, Oregon.



 Paul Woods, Chair
 Corvallis Planning Commission

Signed this 6th day of September 2018.
 Appeal Deadline: Tuesday, September 18, at 5 p.m.

Attachments:

- Exhibit A: Site Plan
- Exhibit B:

CONDITIONS OF APPROVAL

General Requirements

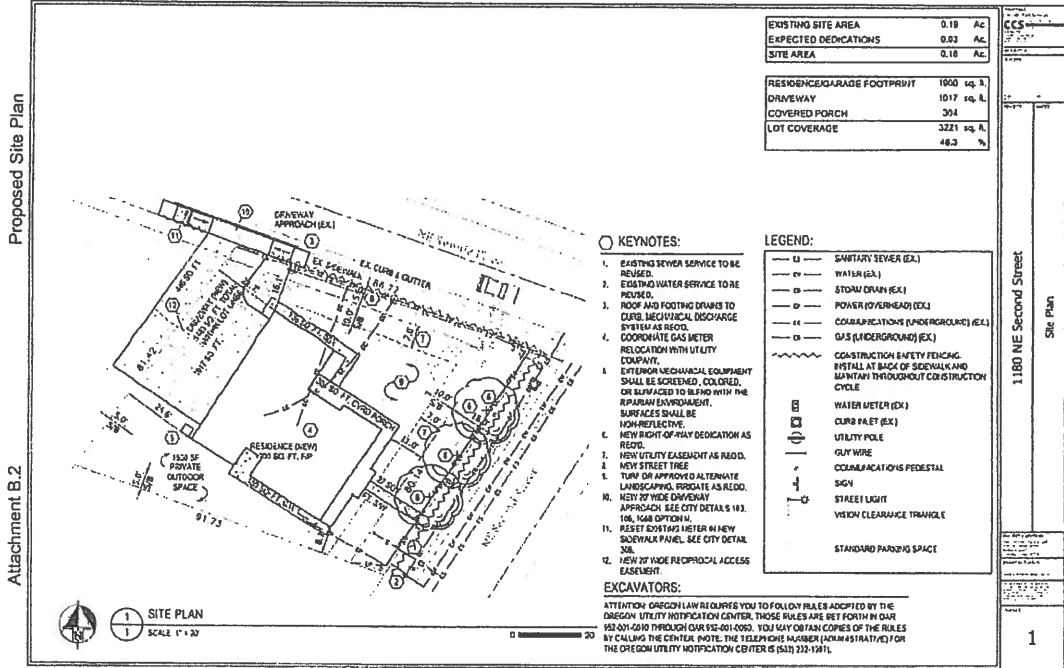
1. Consistency with Plans – Development shall be in substantial compliance (see LDC § 2.3.30.10) with the narrative and plans, as described in Attachment PC-A to the September 5, 2018, staff report to the Planning Commission, except as modified by the conditions of approval noted below.
2. Adherence to Land Development Code Standards – All development shall comply with applicable LDC standards. Compliance shall be demonstrated at the time of submittal for any permits for on and off-site improvements.

Requirements Prior to Issuance of Building Permits

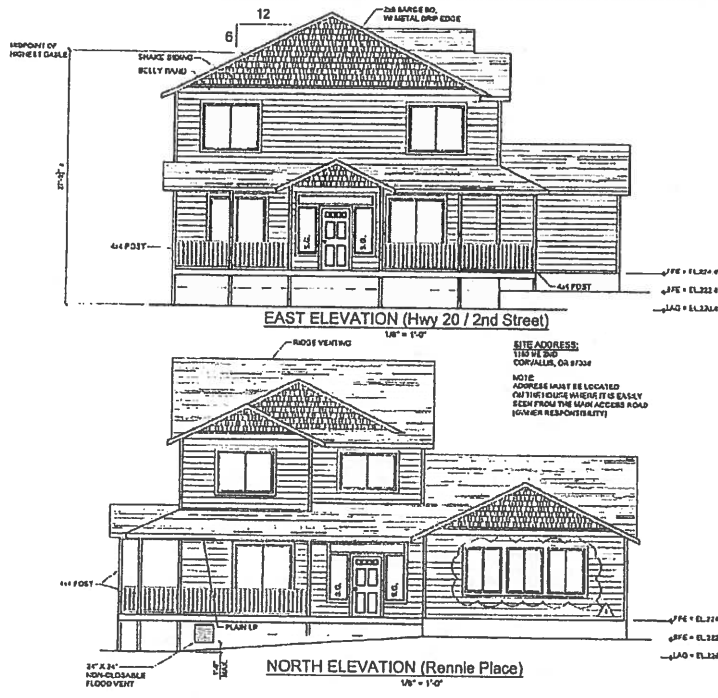
3. Installation or Security Required for Public Improvements – In accordance with LDC § 4.0.20.a.2, the site shall have required public and franchise improvements installed or secured in accordance with the provisions of LDC § 2.4.40.12.
4. NE 2nd Street ROW – Additional right of way shall be dedicated along NE 2nd Street in order to provide 18 feet of right of way from the face of the western curb to accommodate the future landscape strip and multi-use path. An environmental assessment for all land to be dedicated along NE 2nd Street must be completed in accordance with LDC Section 4.0.100.g.
5. NE 2nd Street Irrevocable Petition – Due to the uncertainty of improvements along this section of NE 2nd Street, the applicant shall sign an irrevocable petition in lieu of constructing or pre-paying for street improvements along NE 2nd Street per LDC § 4.1.40.b.2.b. The irrevocable petition shall be recorded prior to issuance of building permits.
6. NE Rennie Place ROW – Additional right of way shall be dedicated along NE Rennie Place in order to provide 25-feet of right of way from the original right of way centerline. An environmental assessment for all land to be dedicated must be completed in accordance with LDC Section 4.0.100.g.
7. NE Rennie Place Irrevocable Petition – Per LDC § 4.0.30.a.3.c, the existing curbside sidewalk may remain in place as long as subsections 1 through 6 of that code section are met. Subsections 1 through 3 have been met with this proposal. Subsections 4 through 6 will require an irrevocable petition per LDC § 4.1.40.b.2 recorded with Benton County, and compliance with ADA standards (replace the driveway apron with a new apron of less than 2% cross slope).
8. Franchise Utility Easement – A 7 foot wide Franchise Utility Easement adjacent to all street rights of way (after dedications required herein) shall be recorded in accordance with LDC § 4.0.100.b.
9. Floodplain Development Permit – A Floodplain Development Permit shall be obtained consistent with Chapter 2.11 - Floodplain Development Permit, prior to initiating Development activities. This permit is administered by the Development Services Division.

DEVELOPMENT RELATED CONCERNS

- A. Pervious Paving – Consider pervious materials for the driveway, to the extent allowed by City standards. The Development Services Division may be consulted to discuss allowable driveway materials.



Proposed Building Elevations
Attachment C.1



EAST ELEVATION (Hwy 20 / 2nd Street)

NORTH ELEVATION (Rennie Place)

SITE ADDRESS:
1180 NE 2ND ST
CORVALLIS, OR 97330

NOTE:
ADDRESS MUST BE LOCATED
ON THE CURB, WHERE IT IS EASILY
SEEN FROM THE MAIN ACCESS ROAD
(OWNER RESPONSIBILITY)

CLIENT:
CRAIG & LISA
CHRISTENSEN
1180 NE 2ND ST
CORVALLIS, OR 97330
(503) 838-1111
(503) 838-1111

EXTERIOR ELEVATIONS

HILINE HOMES
1100 N. HANCOCK
PO BOX 1000
CORVALLIS, OR 97330

PLAN: 2302R
DATE: 2/28/17
JOB#: 2001-1007

NOTE:
EXTERIOR APPEARANCE WILL VARY BY
SIZING CHOICE, MATERIAL AVAILABILITY
AND SUDLER DISCRETION

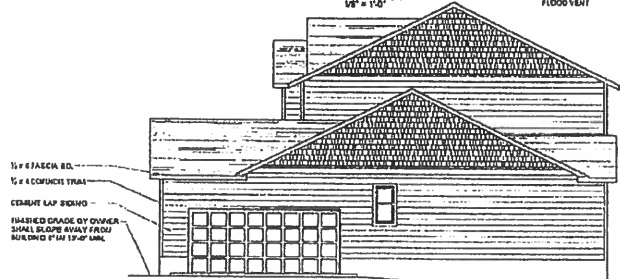
A3

Proposed Building Elevations

Attachment C.2



SOUTH ELEVATION
1/8" = 1'-0"



WEST ELEVATION
1/8" = 1'-0"

NOTE:
EXTERIOR APPEARANCE WILL VARY BY
SIZING CHANGES, MATERIAL AVAILABILITY
AND SUBMITTAL DESCRIPTION



SITE ADDRESS:
 1115 S. 21ST ST.
 CHARLIS, OK 77338
 PROJECT:
 2001-1007
 CLIENT:
 CRAIG & LISA CHRISTENSEN
 1115 S. 21ST ST.
 CHARLIS, OK 77338
 (541) 243-3753
 WWW.HILINEHOMES.COM

EXETERNA
CRAIG & LISA CHRISTENSEN
 1115 S. 21ST ST.
 CHARLIS, OK 77338
 (541) 243-3753

EXTERIOR ELEVATIONS

HILINE HOMES
 1115 S. 21ST ST.
 CHARLIS, OK 77338
 (541) 243-3753

PLAN: 2301R
 DATE: 2/28/17
 JOB#: 2001-1007

(A3-1)



Corvallis Planning Division
 Report to the Planning Commission
 Planning Commission Hearing: September 5, 2018
 Staff Contact: Rian Amiton, (541) 766-6573
 rian.amiton@corvallisoregon.gov

TOPIC: Conditional Development Permit for development within the Willamette River Greenway (WRG) Overlay

CASE: 1180 NE 2nd Street (CDP-2018-01/WRG-2018-01)

REQUEST: The applicant requests approval to replace the existing single family dwelling with a new single family dwelling within the WRG Overlay.

APPLICANT / OWNER: Craig Christensen
 1180 NE 2nd Street
 Corvallis, OR 97330

LOCATION: The subject site is located at 1180 NE 2nd St. It is identified on Benton County Assessor's Map 11-5-35 AA as Tax Lot 3000.

SITE AREA: Approximately 0.19 acres

COMPREHENSIVE PLAN DESIGNATION: Residential – Medium Density

ZONING: Medium Density Residential (RS-9) with a Willamette River Greenway (WRG) Overlay

PUBLIC OUTREACH: According to the application materials, a neighborhood meeting was held by the applicant on February 23, 2018. These materials are not included with this staff report but are available upon request at the City's Planning Division offices and online (see **Attachments** section, below).

A pre-notification of this hearing was sent to abutting property owners, neighborhood associations, concerned citizens, and groups on record to receive such notices on March 26, 2018.

Public notices were mailed or emailed, and the site was posted by August 14, 2018. As of August 27, 2018, no written testimony has been submitted.

ATTACHMENTS

PC-A Application Form, Narrative, and Supporting Materials

- Application Form (received February 27, 2018)
- Narrative and Graphics (received July 23, 2018)

Application Reports & Other Supporting Materials

Additional information provided by the applicant that is part of the record but not attached to the staff report includes:

- Neighborhood Meeting Materials

These documents are available upon request at the City's Planning Division offices and online at: <https://apps.corvallisoregon.gov/webdocs/showdoc.aspx?docID=983084>

APPLICANT'S PROPOSAL

The applicant proposes to demolish an existing house and detached garage at 1180 NE 2nd Street, and construct a larger house with an attached garage. The Proposed Site Plan is included as Figure 1, below.

The subject site is within the Willamette River Greenway ("WRG") Overlay. In accordance with LDC § 3.30.20, development within the WRG Overlay, regardless of the classification in the underlying zone, requires Conditional Development approval in accordance with the provisions of Chapter 2.3 - Conditional Development. In addition to the Conditional Development Permit review criteria, development within the WRG Overlay is also subject review criteria in LDC § 3.30.40.

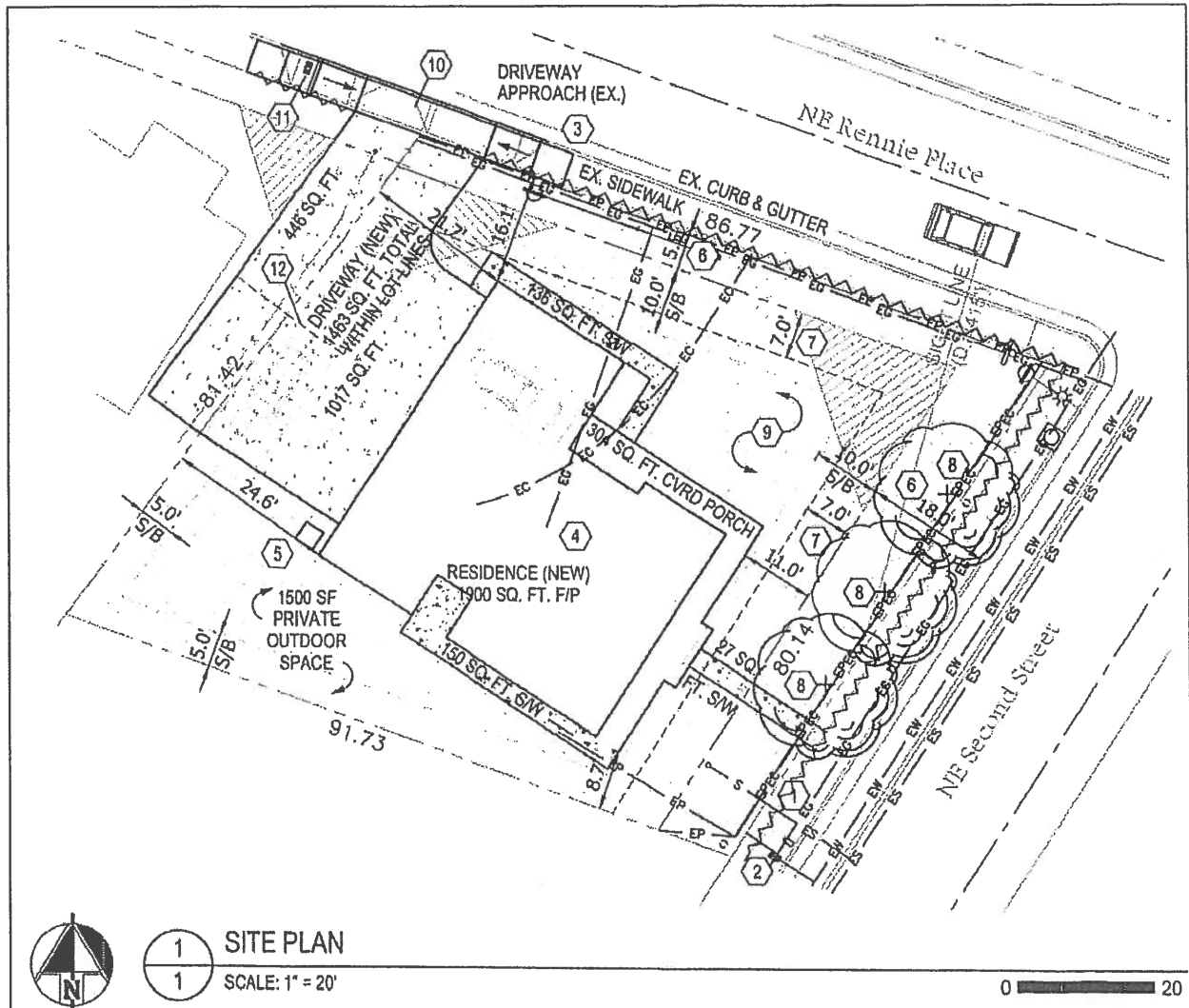
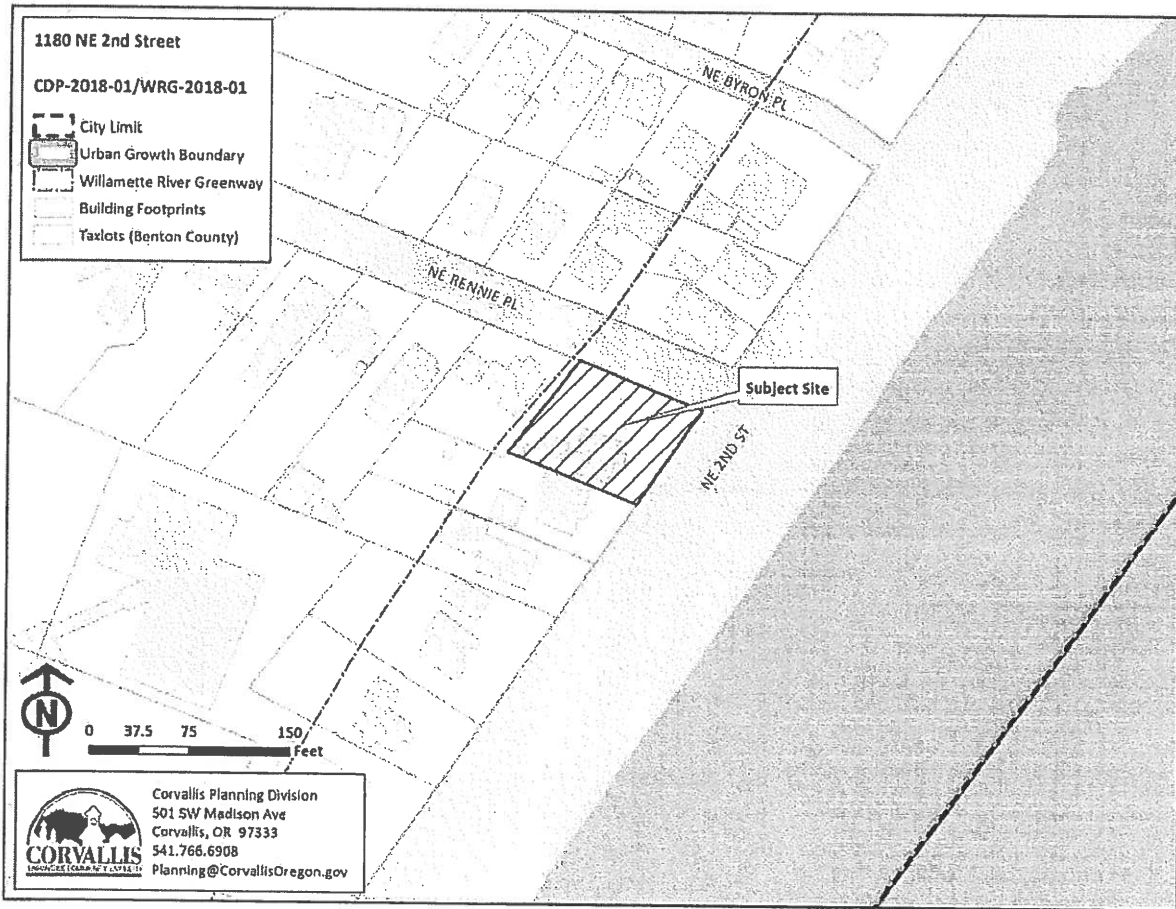


Figure 1 - Proposed Site Plan (Attachment PC-A, page 19)

SITE AND VICINITY

The subject 0.19 acre site is located at 1180 NE 2nd Street (Highway 20), at the intersection with NE Rennie Place. The site is currently developed with a 774 SF house with a 410 SF garage, a gravel driveway connecting to NE Rennie Place, and sparse landscaping.

The Comprehensive Plan designates the site as Residential - Medium Density. Consistent with the Comprehensive Plan land use designations, the site is zoned Medium Density Residential (RS-9). It is bordered by properties with the same Comprehensive Plan and zoning designations. The site is located entirely within the WRG Overlay. It is also within a Special Flood Hazard Area (a partial protection 100 year floodplain), and the majority of the site is within a mapped Partially Protected Riparian Corridor.



LEGAL FRAMEWORK

The proposed residential development constitutes “needed housing” as defined by Section 197.303 of the Oregon Revised Statutes. In accordance with ORS 197.307, “a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing.” As such, certain review criteria that are typically applicable to development within the WRG Overlay cannot be applied to needed housing

projects such as this one. Inapplicable criteria include many of the compatibility criteria for Conditional Development applications that require discretionary judgement, and review criteria for development in the WRG that include discretion and imprecise language such as “to the maximum extent practicable.” Consequently, compliance with review criteria that are not clear and objective may not be considered in this decision. Specific staff findings regarding the applicability of standard review criteria are included in this staff report.

STAFF REPORT FORMAT

This report contains staff analysis of the request’s consistency with applicable Land Development Code (“LDC”) development standards and Conditional Development Permit review criteria. The adoption of the 2006 LDC, as amended, fully implements the Comprehensive Plan, as acknowledged by the Department of Land Conservation and Development (“DLCD”). Comprehensive Plan Policies will be addressed in this report only where they aid in consideration of Conditional Development Permit review criteria. As noted above, much of the Conditional Development Permit and WRG review criteria are not applicable to residential development, due to their subjectivity.

This report is organized into three parts. **Part I** addresses the request’s consistency with applicable LDC development standards other than those established in Chapter 2.3 – Conditional Development and Chapter 3.30 – Willamette River Greenway. **Part II** addresses LDC Chapter 2.3 – Conditional Development Permit review criteria. **Part III** addresses the additional LDC Chapter 3.30 – Willamette River Greenway (“WRG”) Overlay review criteria.

All findings rely on the assumption that the development will be in substantial compliance with the narrative and plans, as described in Attachment PC-A to the September 5, 2018, staff report to the Planning Commission, except as modified by the conditions of approval noted below (**Condition 1**).

PART I – LAND DEVELOPMENT CODE DEVELOPMENT STANDARDS

Both the CDP and WRG review criteria require consistency with “applicable policies and standards adopted by the City Council,” including the LDC. This section addresses the proposed development’s consistency with applicable LDC development standards, other than those established in Chapter 2.3 – Conditional Development and Chapter 3.30 – Willamette River Greenway, which are discussed in Parts II and III. Each provision listed is followed by staff’s analysis. The following chapters of the LDC include applicable standards, which are evaluated below:

- Chapter 3.4 – Medium Density Residential (RS-9) Zone
- Chapter 4.0 – Improvements Required with Development
- Chapter 4.1 – Parking, Loading, and Access Requirements
- Chapter 4.2 – Landscaping, Buffering, Screening, and Lighting
- Chapter 4.5 – Floodplain Provisions
- Chapter 4.10 – Pedestrian Oriented Design Standards (“PODS”)
- Chapter 4.13 – Riparian Corridor and Wetland Provisions

The applicant addresses the project’s consistency with applicable standards within **Attachment**

PC-A, pages 5-13.**LDC CHAPTER 3.4 – RS-9 ZONE DEVELOPMENT STANDARDS**

The proposed Use Type is Family Residential, and the proposed Building Type is Single Detached Residential. The proposed Use Type and Building Type are both permitted by right in the RS-9 Zone.

The applicant provided a Proposed Site Plan (**Attachment PC-A, page 19**) and Proposed Building Elevations (**Attachment PC-A, pages 21-22**). These exhibits are also included in the building permit application package that has already been submitted to the Development Services Division (BLD18-00171). Consistency with applicable Development Standards established in LDC Table 3.4-1 is evaluated in **Table 1** below.

Table 1 - Consistency with Applicable Standards in LDC Table 3.4-1

	Standard	As Proposed*	Staff Finding
Minimum Lot Area	3,630 SF per dwelling unit	Approx. 6,959 SF	Complies
Minimum Lot Width (Single Detached with street access to garage)	50 ft.	Approx. 82 ft.	Complies
Front Setback	10 ft. min., 25 ft. max.; Unenclosed porches may encroach into front yards, provided that a min. front yard of 5 ft. is maintained.	11 ft.	Complies
Rear Setback	5 ft. min.	24.6 ft.	Complies
Interior Side Yard Setback – Single Detached	5 ft. min.	8.7 ft.	Complies
Exterior Side Yard Setback abutting a street	10 ft. min.	10.6 ft.	Complies
Garage/carport entrance sideways/perpendicular to street	10 ft. min.	10.6 ft.	Complies
Min. Structure Height	30 ft.	27 ft., 5 ¾ in.	Complies
Max. Lot Coverage	70% of the lot area	46% of the lot area	Complies
Off-Street Parking per LDC Chapter 4.1 (Single Detached)	Two spaces per dwelling unit	Two spaces	Complies

*After dedication of required right-of-way along NE Rennie Place and NE 2nd Street.

Section 3.4.40 - GREEN AREA REQUIREMENTS

- a. A minimum of 30 percent of the gross lot area, and a minimum of 20 percent for center-unit townhouses on interior lots, shall be retained and improved or maintained as permanent Green Area to ensure that the 70 percent maximum lot/site coverage standard of Section 3.4.30 is met. A minimum of 15 percent of the gross lot area and a minimum of 10 percent for center-unit townhouses on interior lots shall consist of vegetation consisting of landscaping or naturally preserved vegetation.

Staff Findings

The definition of Green Area (LDC 1.6.30) is as follows:

Includes a site's landscaping, private preservation areas, and/or pedestrian amenities such as sidewalks, plazas, multi-use paths, unenclosed patios, and decks. Does not include areas covered by buildings, covered structures enclosed on one or more sides, parking areas, or vehicle circulation areas.

The proposed enclosed building footprint (1,900 SF), enclosed porch (304 SF), and parking/vehicle circulation area (1,017 SF) total 3,221 SF, or 46% of the site area. The remainder of the site, or 54%, fits the LDC definition of Green Area. Staff finds that, as proposed, the development complies with LDC § 3.4.40.a.

- b. Landscaping within the required Green Area shall be permanently maintained in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting. Landscaping shall primarily consist of ground cover, ferns, trees, shrubs, or other living plants with sufficient irrigation to properly maintain all vegetation. Drought-tolerant plant materials are encouraged. Design elements such as internal sidewalks, pedestrian seating areas, fountains, pools, sculptures, planters, and similar amenities may also be placed within the permanent Green Areas.

Staff Findings

Consistency with the requirements of LDC Chapter 4.2 is discussed later in Part I of this staff report. In summary, staff finds that, as proposed and conditioned, the development complies with the clear and objective standards in LDC Chapter 4.2. Accordingly, staff finds that the development complies with LDC § 3.4.40.b.

- c. Within the required Green Area for single-family dwellings (attached and detached) and duplexes, a Private Outdoor Space equal to at least 10 percent of the total lot area per dwelling unit shall be designed to be viewable and accessed by the interior space via doors and windows. Within the required Green Area for multi-dwellings, a Private Outdoor Space equal to at least 48 sq. ft. per dwelling unit shall be designed to be viewable and accessed by the interior space via doors and windows. These Private Outdoor Space requirements may be met by providing private side or rear yard areas, patios, and/or balconies for dwelling units

Staff Findings

Ten percent of the total site area (6,959 SF) is 695 SF. As shown on the Proposed Site Plan (**Attachment PC-A, page 19**), the development will provide 1,500 SF of private outdoor space. As shown on the South Elevation (**Attachment PC-A, page 22**), this space is viewable via windows and directly accessible via a door. Staff finds that, as proposed, the development complies with LDC § 3.4.40.c.

Section 3.4.90 - COMPLIANCE WITH CHAPTER 4.10 - PEDESTRIAN ORIENTED DESIGN STANDARDS

The requirements in Chapter 4.10 - Pedestrian Oriented Design Standards shall apply to the following types of development in the RS-9 Zone:

- a. All new buildings or structures for which a valid permit application has been submitted after December 31, 2006;
- b. Developments subject to Conditional Development and/or Planned Development approval, as

required by a Condition(s) of Approval(s);

Staff Findings

Compliance with LDC Chapter 4.10 standards is discussed later in Part I. In summary, Staff finds that, as proposed, the development complies with LDC Chapter 4.10 standards.

Overall Conclusion on LDC Chapter 3.4 – RS-9 Zone Development Standards

Staff finds that, as proposed and conditioned, the development is consistent with all applicable standards established in LDC Chapter 3.4. Consistency with the applicable development standards will be assured with Development Services review of the building permit submittal (**Condition 2**).

CHAPTER 4.0 – IMPROVEMENTS REQUIRED WITH DEVELOPMENT

In accordance with LDC § 4.0.20.a. the site shall have required public and franchise utility improvements installed or secured prior to issuance of building permits (**Condition 3**). Consistency with these requirements is evaluated below.

Public Improvements – NE 2nd Street

NE 2nd Street is an arterial highway under ODOT's jurisdiction according to the Transportation Plan. Per LDC Table 4.0-1, arterial streets consist of two travel lanes at least 11 feet wide, a center turn lane at least 11 feet wide, 6 foot wide bike lanes, 12 foot wide landscape strips, and 6 foot wide setback sidewalks. The Transportation Plan and the 2015 Parks and Recreation Master Plan identify a multi-use path along this segment of NE 2nd Street. In accordance with the Parks and Recreation Master Plan, this path is expected to be 10 to 12 feet in width; the precise width will be determined with a future capital project to construct the path, and is not known at this time. Extra width for the path beyond the standard 6 foot wide sidewalk would be accommodated within the landscape strip. Existing improvements consist of 12.5 foot wide travel lanes, an 11 foot wide center turn lane, 6 foot wide bike lanes, and a 5 foot wide curbside sidewalk. The Proposed Site Plan (**Attachment PC-A, page 19**) appears to be consistent with these requirements.

Prior to issuance of building permits, dedication of additional right of way from the face of the western curb is necessary in order to provide the 18 feet necessary to accommodate the future landscape strip and multi-use path. An environmental assessment for all land to be dedicated should be completed in accordance with LDC Section 4.0.100.g (**Condition 4**).

Due to the uncertainty of improvements along this section of NE 2nd Street, the applicant will be allowed to sign an irrevocable petition in lieu of constructing or pre-paying for street improvements along NE 2nd Street per LDC § 4.1.40.b.2.b. This irrevocable petition must be recorded prior to issuance of building permits (**Condition 5**).

Corvallis Transit System Route C2 provide service along NE 2nd Street. No additional transit improvements are required with this development.

Public Improvements – NE Rennie Place

NE Rennie Place is a local street according to the Transportation Plan. Per LDC Table 4.0-1, local streets consist of a 50 foot wide of right of way to accommodate a 28 foot wide roadway, 6 foot wide landscape strips, and 5 foot wide setback sidewalks. The existing conditions for NE Rennie Place

are a 39 foot wide right of way with a 27 foot wide roadway, no landscape strips, and 5 foot wide curbside sidewalk on the south side.

Prior to issuance of building permits, additional right of way should be dedicated along NE Rennie Place in order to provide 25 feet of right of way from the original right of way centerline. An environmental assessment for all land to be dedicated must be completed in accordance with LDC Section 4.0.100.g (**Condition 6**).

Per LDC § 4.0.30.a.3.c, the existing curbside sidewalk may remain in place as long as subsections 1 through 6 of that code section are met. Subsections 1 through 3 have been met with this proposal. Subsections 4 through 6 will require an irrevocable petition per LDC § 4.1.40.b.2, and compliance with ADA standards (replace the driveway apron with a new apron of less than 2% cross slope) (**Condition 7**).

Traffic Impact Analysis

LDC § 4.0.60.a.1 requires a Traffic Impact Analysis (TIA) for proposals generating 30 or more peak hour trips to an intersection/access. The proposed development is replacing one single family home with one single family home. As there is no additional traffic generated with this proposal, a TIA is not required.

Water Service

There is an existing 12-inch public water line located in NE 2nd Street and a 6-inch public waterline located in NE Rennie Place along the site's frontage. This is sufficient to serve the proposed development. No public water service improvements are required with this development.

Sanitary Sewer Service

There are existing 8-inch public sewer lines in NE 2nd Street and NE Rennie Place. This is sufficient to serve the proposed development. No public sanitary sewer improvements are required with this development.

Storm Drainage

There is an existing public storm drainage system under ODOT's jurisdiction in NE 2nd Street along the site's frontage. This is sufficient to serve the proposed development. No public storm drainage improvements are required with this development.

Street Lights

Section 4.2.80 - SITE AND STREET LIGHTING

Pursuant to City Council Policy 91-9.04, "The City of Corvallis is interested in well shielded, energy efficient street lighting sources that direct the light source downward where it is needed, not up or sideways where it is wasted and causes glare, light trespass, and bright skies."

All developers shall submit a proposed lighting plan for approval that meets the functional security needs of the proposed land use without adversely affecting adjacent properties or the community. This criteria is satisfied upon compliance with the provisions listed below and shall be substantiated by the applicant's submittal of the necessary information to demonstrate compliance, such as information including but not limited to manufacturers' specifications:

- e. All new Subdivision street lights and future street-light luminaire replacements within the existing street-light system shall be flat-lens fully shielded luminaires.
- f. Standard placement of street lights shall be at intersections, in the middle of long blocks, and in dead end streets and long Cul-de-sacs.

There is an existing street light directly adjacent to the site at the intersection of NE 2nd Street and NE Rennie Place, satisfying LDC § 4.2.80.f. No additional street lights are required with this development.

Franchise Utilities

A 7 foot wide Utility Easement (UE) is required adjacent to all street rights of way according to LDC § 4.0.100.b. The applicant shall grant these easements prior to issuance of building permits (**Condition 8**).

Staff Findings: Chapter 4.0 –Improvements Required With Development

Staff finds that, as proposed and conditioned, the development complies with the clear and objective development standards provided in LDC Chapter 4.0.

LDC CHAPTER 4.1 – PARKING, LOADING, AND ACCESS REQUIREMENTS

Off-Street Parking Requirement

Per LDC § 4.1.30.a.1, two off-street parking spaces are required. As shown on the Proposed Site Plan (**Attachment PC-A, page 19**), the development will provide one parking space in the garage and a second parking space in the driveway.

Vision Clearance

LDC § 4.1.40.c.1 requires Vision Clearance Areas at street and driveway intersections in accordance with the standards adopted by the City Engineer. The adopted standards are found in the City of Corvallis Off-Street Parking and Access Standards (found online at www.corvallisoregon.gov/cd-publications). Vision clearance triangles shown on the Proposed Site Plan (**Attachment PC-A, page 19**) are consistent with those required by the Off-Street Parking and Access Standards.

Staff Findings: Chapter 4.1 –Parking, Loading and Access Requirements

Staff finds that, as proposed, the development complies with the clear and objective development standards in LDC Chapter 4.1, which outlines requirements for parking, loading, and access.

LDC CHAPTER 4.2 – LANDSCAPING, BUFFERING, SCREENING, AND LIGHTING

Section 4.2.30 – Required Tree Plantings and Maintenance

a. Tree Plantings -

Tree plantings in accordance with this Section are required for all landscape areas, including but not limited to parking lots for four or more cars, public street frontages, private streets, multi-use paths, sidewalks that are not located along streets, alleys, and along private drives more than 150 ft. long.

1. Street Trees -

a) Along streets, trees shall be planted in designated landscape planting strips or within areas specified in a City-adopted street tree plan. If street trees are required and City-standard planting strips are not provided, the applicant shall utilize the “Tree for a Fee” program in order to satisfy the street tree requirements of this Code. If City-standard planting strips are not available for tree planting due to tree / utility spacing conflicts as identified in LDC Section 4.2.30.b, the applicant may utilize the “Tree for a Fee” program in order to satisfy the street tree requirements of this Code. Alternatively, the applicant can relocate the utility line and/or other features identified in LDC Section 4.2.30.b, in order to install the required street trees consistent with the spacing standards in LDC Section 4.2.30.b.

An exception to street tree requirements applies in cases where planting strips have been eliminated from a street due to a protected Natural Features area(s), as required in Chapter 4.0 of this Code, in which case no street trees are required for the segment of street crossing the protected Natural Features area(s).

b) Along all streets with planting strips in excess of six ft. wide and where power lines are located underground, a minimum of 80 percent of the street trees shall be large canopy trees. This standard shall not apply to alleys located within the Central Business (CB) and Riverfront (RF) Zones; and

c) Planting strips on Local Connector and Local Streets shall be planted with medium canopy trees.

Table 4.2-1 - Street Trees

Medium-canopy trees: trees that normally reach 30-50 ft. in height within 30 years	Maximum 30 ft. on-center spacing
Large-canopy trees: trees that normally reach 30-50 ft. in height within 30 years, but exceed 50 ft. in height at maturity	Maximum 50 ft. on-center spacing

Per LDC § 4.2.30.a.1.a, trees shall be planted in designated landscape planting strips along streets. On NE Rennie Place, medium canopy trees spaced a maximum 30 feet on center, and on NE 2nd Street large canopy trees spaced 50 feet on center are required. As discussed earlier in this staff report, in accordance with **Condition 5**, the applicant shall sign an irrevocable petition in lieu of constructing or pre-paying for street improvements along NE 2nd Street, including the otherwise required

landscape strip. For this reason, the development will be required to participate in the City's "tree for a fee" program, per LDC § 4.2.20.j for the NE 2nd Street frontage. In addition, in accordance with **Condition 7**, the applicant may also sign an irrevocable petition in lieu of constructing or pre-paying for street improvements along NE Rennie Place, including the otherwise required landscape strip. If an irrevocable petition is signed for NE Rennie Place, the development will also be required to participate in the City's "tree for a fee" program, per LDC § 4.2.20.j, for the NE Rennie Place frontage. Compliance with street tree requirements will be assured with review of building permits.

Staff Findings: LDC Chapter 4.2 – Landscaping, Buffering, Screening, and Lighting

Staff finds that, as proposed and conditioned, the development complies with the clear and objective standards in LDC Chapter 4.2 – Landscaping, Buffering, Screening, and Lighting.

LDC CHAPTER 4.5 – FLOODPLAIN PROVISIONS

The site is within a Special Flood Hazard Area (a partial protection 100 year floodplain). Per LDC § 4.5.50.01, a Floodplain Development Permit shall be obtained consistent with Chapter 2.11 - Floodplain Development Permit, prior to initiating development activities in any Special Flood Hazard Area. The Floodplain Development Permit process will ensure full compliance with LDC Chapter 4.5. This permit is administered by the Development Services Division (**Condition 9**).

Staff Findings: Chapter 4.5 – Floodplain Provisions

Staff finds that, as proposed and conditioned, the development complies with the clear and objective standards in LDC Chapter 4.5 – Floodplain Provisions.

LDC CHAPTER 4.10 – PEDESTRIAN ORIENTED DESIGN STANDARDS

Section 4.10.50 - STANDARDS FOR DETACHED SINGLE-FAMILY, TWO-UNIT ATTACHED SINGLE-FAMILY, AND DUPLEX RESIDENTIAL BUILDING TYPES

4.10.50.01 - Building Orientation, Privacy, and Facades Adjacent to Pedestrian Areas

- a. **Orientation of Dwellings - All dwellings shall be oriented to existing or proposed public or private streets, as outlined in this provision and in Chapter 4.4 - Land Division Standards, with the exception that Accessory Dwelling Units constructed in accordance with Chapter 4.9 - Additional Provisions may be accessed from an alley. Private streets used to meet this standard must include the elements in Chapter 4.0 - Improvements Required with Development. See Chapter 4.0 for public and private street standards.**

The orientation standard of this Section is satisfied when the provisions in "1," or "2," below, are met. See Figure 4.10-1 - Allowed Access to Single-family Development When Lots Do Not Front Directly on a Street.

1. **Primary building entrances face the streets or are directly accessed from a public street right-of-way or private street tract by a sidewalk or multi-use path less than 100 ft. long (distance measured along the centerline of the path from a public street right-of-way or private street tract), and primary dwelling unit entrances open directly to the outside and do not require passage through a garage or carport to gain access to the dwelling;**

As shown on the Proposed Site Plan (**Attachment PC-A, page 19**), the primary entrance facing NW 2nd Street will be approximately 15 feet from the NW 2nd Street right of way. Staff finds that, as

proposed, the development complies with LDC § 4.10.50.01.a.

- c. **Windows and Doors** - Any facade facing streets, sidewalks, or multi-use paths shall contain a minimum area of 15 percent windows and/or doors. Facades referenced in this provision include garage facades. Garage doors shall not be included as a door for purposes of this requirement. However, windows provided within a garage door can be included when calculating the window percentage requirement. Gabled areas need not be included in the base wall calculation when determining this minimum 15 percent requirement.

The east and north elevations face streets, and are therefore subject to the Windows and Doors provisions above. These elevations and associated window/door coverage calculations are shown on **Attachment PC-A, page 25**. There is 21% window and door coverage on the east elevation, and 27% window and door coverage on the north elevation. Staff finds that, as proposed, the development complies with LDC § 4.10.50.01.c.

4.10.50.02 - Maximum Widths of Street-facing Garages/Carports, Placement, and Materials

- b. **Garage and Carport Placement** - Garages and carports shall be placed only as indicated in the options below. The applicant shall indicate the proposed option(s) on plans submitted for building permits. Additionally, measurements may be taken from the second floor of homes, provided the second floor spans across the entire garage/carport.
4. **Garage Entrance Perpendicular to Street** - Vehicular entrances are perpendicular to the street, as shown in Figure 4.10-7 - Garages Perpendicular to the Street, below. This option pertains to the situation where the garage/carport is sideways. The garage wall facing the street shall provide a minimum area of 15 percent windows and/or doors.

The proposed garage is perpendicular to NE Rennie Place, and therefore subject to the 15 percent window requirement established by LDC § 4.10.50.02.b.4 above. This elevation is shown on **Attachment PC-A, page 25**. There is 25% window coverage on the garage wall. Staff finds that, as proposed, the development complies with LDC § 4.10.50.02.b.4.

Staff Findings: Chapter 4.10 – Parking, Loading and Access Requirements

Staff finds that, as proposed and conditioned, the development complies with the clear and objective standards in LDC Chapter 4.10 - Pedestrian Oriented Design Standards.

LDC CHAPTER 4.13 – RIPARIAN CORRIDOR AND WETLAND PROVISIONS

The majority of the site is within a mapped Partially Protected Riparian Corridor. In accordance with LDC § 4.13.60, Partially Protected Riparian Corridor protections apply within 25 feet of the top-of-bank of the identified riparian feature. In this case, the top-of-bank of the riparian feature – the Willamette River – is across NE 2nd Street, more than 60 feet from the site and well outside the 25 foot range of protections. Therefore, the Partially Protected Riparian Corridor protections do not apply to the site.

Staff Findings: Chapter 4.13 – Riparian Corridor and Wetland Provisions

Staff finds that, as proposed, the development complies with the clear and objective standards of LDC Chapter 4.13 – Riparian Corridor and Wetland Provisions.

CONCLUSION ON LAND DEVELOPMENT CODE STANDARDS

Staff finds that, as proposed and conditioned, the development complies with all applicable clear and objective development standards established by the LDC other than those in Chapters 2.3 and 3.30, which are discussed in Parts II and III.

PART II – CONDITIONAL DEVELOPMENT PERMIT

2.3.30.04 - Review Criteria

Requests for Conditional Developments shall be reviewed to ensure consistency with the policies of the Comprehensive Plan, and any other applicable policies and standards adopted by the City Council. The application shall demonstrate compatibility in the following areas, as applicable:

- a. Basic site design (the organization of Uses on a site and the Uses' relationships to neighboring properties);
- b. Visual elements (scale, structural design and form, materials, etc.);
- c. Noise attenuation;
- d. Odors and emissions;
- e. Lighting;
- f. Signage;
- g. Landscaping for buffering and screening;
- h. Transportation facilities;
- i. Traffic and off-site parking impacts;
- j. Utility infrastructure;
- k. Effects on air and water quality (note: a DEQ permit is not sufficient to meet this criterion);
- l. Consistency with the applicable development standards, including the applicable Pedestrian Oriented Design Standards; and
- m. Preservation and/or protection of Significant Natural Features, consistent with Chapter 2.11 - Floodplain Development Permit, 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions. Streets shall also be designed along contours, and structures shall be designed to fit the topography of the site to ensure compliance with these Code standards.

Any Conditional Development request on residentially designated property shall also result in a clear and objective set of development standards, between the Conditional Development proposal, required adherence to this Code, and Conditions of Approval.

As the proposed residential development constitutes “needed housing” as defined by ORS 197.303, compliance with review criteria that are not clear and objective may not be considered in this decision. Staff finds that no Comprehensive Plan Policies directly establish clear and objective standards for development within the WRG Overlay. Staff additionally finds that clear and objective development standards that relate to “a” through “m,” above, are discussed in Part I of this staff report. In summary, staff finds that, as proposed and conditioned, the development complies with all applicable clear and objective standards.

CONCLUSION ON THE CONDITIONAL DEVELOPMENT PERMIT REVIEW CRITERIA

Staff finds that, as proposed and conditioned, the development complies with all applicable clear

and objective criteria established by LDC Chapter 2.3 – Conditional Development Permit.

PART III – WILLAMETTE RIVER GREENWAY REQUIREMENTS

Section 3.30.40 - REVIEW CRITERIA

Conditional Development within the Willamette Greenway Overlay may be approved only when the Planning Commission, after considering cumulative effects within the City's Greenway, finds that the development standards in Section 3.30.50 and the following criteria are met:

- a. Public access to and along the river shall be provided to the maximum extent practicable and to the extent that public access does not interfere with established Uses on the property.**

Staff Finding

The subject site is located on the west side of NE 2nd Street, and its development will have no effect on public access to the river. Further, staff finds that the term “maximum extent practicable” is not clear and objective; therefore, criteria that rely on this language are not applicable to Needed Housing applications.

- b. Significant Natural Hazards and Natural Resources shall be protected consistent with the requirements of Chapter 2.11 - Floodplain Development Permit, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, the Natural Resource provisions of Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions.**

Staff Finding

As discussed in Part I of this staff report, the site is within a mapped Special Flood Hazard Area subject to LDC Chapter 4.5 – Floodplain Provisions, and a mapped Partially Protected Riparian Corridor subject to LDC § 4.13 – Riparian Corridor and Wetland Provisions. In summary, staff finds that, as proposed and conditioned, the development complies with the clear and objective standards established in both of these LDC chapters.

- c. Significant natural and scenic areas, viewpoints, and vistas shall be preserved.**

Staff Finding

Staff finds that no clear and objective standards are established to determine whether significant natural and scenic areas, viewpoints, and vistas are preserved; therefore, this criterion is not clear and objective, and cannot be applied to Needed Housing applications. Moreover, the proposed development does not include the destruction of significant natural and scenic areas, viewpoints, and vistas; accordingly, to the extent applicable, this criterion is satisfied.

- d. The quality of air, water, and land resources in the Greenway shall be protected to the maximum extent practicable.**

Staff Finding

The proposed development is substantially similar to the existing condition, and is expected to have minimal impacts on the quality of air, water, and land resources. Further, staff finds that the term “maximum extent practicable” is not clear and objective; therefore, criteria that rely on this language are not applicable to Needed Housing applications. Alternatively, because the substantial similarity of the proposed development to the prior development, no destruction or injury of air, water or land resources is evidenced; accordingly, to the extent applicable, this criterion is satisfied.

- e. **The Minimum Assured Development Area (MADA) shall be consistent with Chapter 4.11 - Minimum Assured Development Area (MADA).**

Staff Finding

As mentioned in Part I of this staff report, the site is within a Special Flood Hazard Area (a partial protection 100 year floodplain) established by LDC § 4.5.20.01.b. Development within this floodplain is permitted in accordance with an approved Floodplain Development Permit (**Condition 9**), and the site is not constrained to the point that MADA would apply to development. This is consistent with the clear and objective standards of LDC Chapter 4.11 – Minimum Assured Development Area.

- f. **The natural vegetative fringe along the river shall be protected and enhanced to the maximum extent practicable to ensure scenic quality, protection of wildlife, protection from erosion, and screening of Uses from the river.**

Staff Finding

The site is not located within the vegetative fringe along the river; consequently, the fringe is protected and this criterion is met.

- g. **Any public Recreational Use or facility shall not substantially interfere with established Uses on adjoining property.**

Staff Finding

The development is not a public Recreational Use or facility. This criterion is not applicable.

- h. **Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

Staff Finding

Staff finds that the term “maximum extent practicable” is not clear and objective; therefore, that part of the criterion should be disregarded. To the extent applicable, the proposed development maintains the same level of safety and protection provided by the current development.

- i. **Extraction of aggregate deposits shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, and safety, and to guarantee necessary reclamation.**

Staff Finding

The proposed Use does not involve extraction of aggregate deposits. This criterion is not applicable.

- j. **Development, change, or intensification of Use shall provide the maximum possible landscaped area, open space, or vegetation between the activity and the river.**

Staff Finding

The proposed Use, Family Residential, is the same as the existing Use. A single family residence currently exists and a single family residence is proposed; accordingly, no intensification or change in use is proposed.

- k. **Development shall be sited to maximize distance from the river to the greatest extent practicable.**

Staff Finding

The proposed development does not propose re-site the development to a new location. Accordingly, this criterion is not applicable. Additionally, Staff finds that the term “greatest extent practicable” is not clear and objective; therefore, that subjective part of this criterion is not applicable to this Needed Housing application. To the extent applicable, maximum distance from the river is substantially maintained.

- l. **In applying "a," through "k," above, to development proposals within the Willamette River Greenway, consideration should be given to the provisions of this Code, Corvallis 2020 Vision Statement, Comprehensive Plan, Downtown Streetscape Plan, Riverfront Commemorative Park Plan, and other applicable City documents. However, where conflicts arise, direction must be taken from the Corvallis Comprehensive Plan and this Code.**

Staff Finding

Staff finds that, with the exception of “b” and “e”, these criteria are not fully clear and objective and therefore are not applicable to Needed Housing applications. Satisfaction of “b” and “e” refer explicitly to consistency with specific LDC provisions; therefore, it is not necessary consider the other documents listed in “l” above.

CONCLUSION ON THE WRG OVERLAY REVIEW CRITERIA

Staff finds that, as proposed and conditioned, the development complies with all applicable clear and objective criteria established by LDC Chapter 3.30 – Willamette River Greenway Overlay.

SUMMARY AND CONCLUSIONS

Because the underlying Zone and proposed use is residential, the project constitutes "Needed Housing" as defined by Section 197.303 of the Oregon Revised Statutes. In accordance with ORS 197.307, a local government may only apply clear and objective standards, conditions, and procedures to needed housing applications. As presented in the analysis above, staff finds that many of the discretionary review criteria that are typically applicable to development within the WRG Overlay cannot be applied to Needed Housing applications. Staff further finds that, as proposed and conditioned, the development is consistent with all clear and objective review criteria and applicable development standards. Compliance for consistency with clear and objective development standards will be further assured with review of development applications, including building permits (**Condition 2**).

Based on the criteria, findings and conclusions above, it is recommended that the Planning Commission **APPROVE** the proposed Conditional Development Permit subject to the recommended Conditions of Approval. A motion to approve would be based upon the criteria, discussions, and conclusions contained within the September 5, 2018, staff report to the Planning Commission, and upon the reasons given by Commissioners during deliberations on this application. A recommended motion is provided below.

RECOMMENDED MOTION

Motion to Approve

I move to approve the Conditional Development Permit request (CDP-2018-01/WRG-2018-01) as described in Attachment PC-A and as conditioned in the September 5, 2018, staff report to the Planning Commission. This motion is based on findings in support of the application presented in the September 5, 2018, staff report to the Commission, and findings in support of the application made by the Commission during deliberations on the request.

ALTERNATIVE MOTION

Motion to Deny

I move to deny the Conditional Development Permit request (CDP-2018-01/WRG-2018-01). This motion is based on findings made by the Planning Commission during deliberations on the request.

CONDITIONS OF APPROVAL

General Requirements

1. Consistency with Plans – Development shall be in substantial compliance (see LDC § 2.3.30.10) with the narrative and plans, as described in Attachment PC-A to the September 5, 2018, staff report to the Planning Commission, except as modified by the conditions of approval noted below.
2. Adherence to Land Development Code Standards – All development shall comply with applicable LDC standards. Compliance shall be demonstrated at the time of submittal for any permits for on and off-site improvements.

Requirements Prior to Issuance of Building Permits

3. Installation or Security Required for Public Improvements – In accordance with LDC § 4.0.20.a.2, the site shall have required public and franchise improvements installed or secured in accordance with the provisions of LDC § 2.4.40.12.
4. NE 2nd Street ROW – Additional right of way shall be dedicated along NE 2nd Street in order to provide 18 feet of right of way from the face of the western curb to accommodate the future landscape strip and multi-use path. An environmental assessment for all land to be dedicated along NE 2nd Street must be completed in accordance with LDC Section 4.0.100.g.
5. NE 2nd Street Irrevocable Petition – Due to the uncertainty of improvements along this section of NE 2nd Street, the applicant shall sign an irrevocable petition in lieu of constructing or pre-paying for street improvements along NE 2nd Street per LDC § 4.1.40.b.2.b. The irrevocable petition shall be recorded prior to issuance of building permits.
6. NE Rennie Place ROW – Additional right of way shall be dedicated along NE Rennie Place in order to provide 25-feet of right of way from the original right of way centerline. An environmental assessment for all land to be dedicated must be completed in accordance with LDC Section 4.0.100.g.
7. NE Rennie Place Irrevocable Petition – Per LDC § 4.0.30.a.3.c, the existing curbside sidewalk may remain in place as long as subsections 1 through 6 of that code section are met. Subsections 1 through 3 have been met with this proposal. Subsections 4 through 6 will require an irrevocable petition per LDC § 4.1.40.b.2 recorded with Benton County, and compliance with ADA standards (replace the driveway apron with a new apron of less than 2% cross slope).
8. Franchise Utility Easement – A 7 foot wide Franchise Utility Easement adjacent to all street rights of way (after dedications required herein) shall be recorded in accordance with LDC § 4.0.100.b.
9. Floodplain Development Permit – A Floodplain Development Permit shall be obtained consistent with Chapter 2.11 - Floodplain Development Permit, prior to initiating Development activities. This permit is administered by the Development Services Division.

ATTACHMENT 2

Eugene Delta Ridge PUD Hearings Official Decision

**DECISION OF THE HEARINGS OFFICIAL
FOR THE CITY OF EUGENE, OREGON**

**PLANNED UNIT DEVELOPMENT, ADJUSTMENT REVIEW, AND
TRAFFIC IMPACT ANALYSIS APPLICATIONS**

INTRODUCTION

Application File Name (Number):

Delta Ridge PUD (PDT 17-3/ ARB 17-2/ TIA 17-2)

Applicant's Request:

Tentative Planned Unit Development for a 360-Unit Needed Housing Apartment Complex with Adjustment Review and a Traffic Impact Analysis Application.

Subject Property/Location:

Located on the west side of North Delta Highway, north of Ayres Road. Assessor's Map: 17-03-07-00 Tax Lot 306.

Relevant Dates:

Applications submitted on May 3, 2017; application deemed complete on July 11, 2017; public hearing held on August 30, 2017.

Applicant's Representative:

Micheal Reeder.

Lead City Staff:

Erik Berg-Johansen, Associate Planner, Eugene Planning Division.

Summary of the Public Hearing

The Hearings Official held a public hearing on this application on August 30, 2017. The Hearings Official stated he had no conflicts of interests, was not biased, and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing. Erik Berg-Johansen (Berg-Johansen), Associate Planner, and Gabe Flock, Senior Planner, were present for the hearing. Berg-Johansen presented the staff report, recommending approval of the applications. Micheal Reeder, the applicant's representative, stated that he agreed with the staff report except for some conditions of approval. A number of opponents testified in opposition to the applications, based on concerns about traffic. At the conclusion of the public hearing, the Hearings Official left the record open seven days for the

submission of new evidence and argument, seven additional days for responses to the new evidence and argument, and an additional seven days for the applicant's final legal argument.

FACTS

The property is located on the west side of North Delta Highway, north of Ayres Road. The property is currently developed with a portion of the River Ridge golf course. The golf course is located to the north and west of the property. The property is zoned R-1 – Low-Density Residential and is surrounded by R-1 zoned properties to the north, south, and west, with a mix of R-1 and R-2 – Medium-Density Residential zoned properties to the east. Lakeridge Retirement Center (LRC), where most of the opponents live, is located on the east side of North Delta Highway south of the Ayres Road intersection. The proposal is to develop the 27.74-acre site with apartments and associated site improvements. The project includes three phases with up to 144 units to be developed in each phase. While the southern portion of the golf course will be developed, the club house, driving range, and front nine will be retained. The proposed development is needed housing under the applicable City and State provisions. The applicant seeks approval of tentative planned unit development and adjustment review for the proposed development. The applicant also submitted a Traffic Impact Analysis (TIA) application at the request of the City, but as explained later, the applicant does not believe the City can require it to obtain TIA approval.

ANALYSIS

A. PUD Application

Tentative planned unit developments (PUDs) may proceed under the general approval criteria for PUDs at Eugene Code (EC) 9.8320 or the needed housing PUD approval criteria at EC 9.8325. The applicant has chosen to proceed under the needed housing approval criteria. EC 9.8325(1) requires that the "applicant has demonstrated that the proposed housing is needed housing as defined by State statutes." The staff report does an excellent job of explaining why the application meets the definition of needed housing. Although some opponents questioned whether such housing is really "needed," the staff report explains that "an applicant proposing a particular needed housing development [need not] demonstrate, in a quasi-judicial proceeding (such as the subject land use application), that there is a specific need for the dwelling type and price range being proposed." PUD Staff Report 5. The staff report is correct. I agree with the staff report that the proposed housing is needed housing as defined by the EC and State statutes.

The remainder of the staff report does an excellent job of explaining how all of the needed housing PUD approval criteria are satisfied. Opponents do not challenge any of the findings in the PUD staff report. It would be a waste of the City's money and resources to review and repeat all of the unchallenged findings in the PUD staff report. I have reviewed the staff report findings, and I agree with those findings. Therefore, I adopt and incorporate the findings in the PUD staff report in this decision.¹

Opponents do not challenge any of the specific findings in the PUD staff report. Opponent John Faville of the Northeast Neighbors neighborhood Association argues that the application does not comply with EC 9.8320(11), which provides that the "proposed development shall have minimal off-site impacts, including such impacts as traffic, noise, stormwater runoff and environmental quality." EC 9.8320(11), however, is an approval criterion under the general PUD approval criteria – not the needed housing PUD approval criteria of EC 9.8325. Therefore, EC 9.8320(11) is not applicable to the present application and does not provide a basis to deny the application.

Opponents argue that the proposed development would be dangerous for bicyclists. Although these arguments are directed at the TIA application, EC 9.8325(6) does provide:

"The PUD provides safe and adequate transportation systems through compliance with all of the following:

"* * * * *

- "(b) Provision of pedestrian, bicycle and transit circulation among buildings located within the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. 'Nearby' means uses within ¼ mile that can be reasonably be expected to be used by pedestrians, and uses within two miles that can be reasonably be expected to be used by bicyclists."

Opponents argue that North Delta Highway is a dangerous area for bicyclists. The applicant is being required to improve to make street improvements along its frontage. As EC 9.8325(6)(b) alludes to, it would not be constitutional permissible to make the applicant make improvements to

¹ The City agrees with the applicant that proposed condition of approval 1 is not necessary to ensure that the property remain in needed housing. Therefore, that proposed condition of approval is removed.

other portions of North Delta Highway to fix existing dangers to bicyclists. The staff report explains that the provision is complied with:

“The proposal includes a network of pedestrian sidewalks that connect buildings within the PUD, and bicycles can utilize the proposed low-volume access lanes to navigate throughout the site. The on-site circulation system connects to North Delta Highway and Ayres Road, and both of these streets will be fully improved to City standards along the site’s frontage. * * *

“There are additional amenities within 2 miles, including transit stops and a large commercial center on Green Acres Road. Existing shoulders on Ayres Road and North Delta Highway allow bicycles to access these amenities.” PUD Staff Report 11.

Opponents also raise issues that do not pertain to any applicable approval criteria, such as impacts on osprey or other wildlife. Opponents do not point to any applicable approval criteria regarding wildlife, and I am not aware of any. These arguments do not provide a basis to deny the application.

The applicant has complied with all of the needed housing PUD approval criteria of EC 9.8325.

B. Adjustment Review Application

The applicant also applied for adjustment review to a number of the Multiple-Family Standards and Bicycle Parking Standards. There was no opposition to the adjustment review application. It would be a waste of the City’s money and resources to review and repeat all of the unchallenged findings in the staff report. I have reviewed the staff report findings, and I agree with those findings. Therefore, I adopt and incorporate the findings in the Adjustment Review Staff Report in this decision.

The applicant also included additional adjustment review approvals in its August 30, 2017 memorandum. Again, there is no opposition to these requests. I have reviewed the proposed findings in the August 30, 2017, and I agree with those findings. Therefore, I adopt and incorporate those findings in this decision.

The only adjustment review request where the applicant and the City disagree is with respect to the applicant’s request for a modification to the requirement for windows on the street floor façade pursuant to EC 9.5500(6)(b). The applicant does not wish to have windows for the bike storage areas. I agree with the applicant that bike theft is a major problem in the City and that windows would make bike theft more likely. Furthermore, windows displaying bike lockers is hardly an aesthetically pleasing feature.

The applicant has satisfied all of the applicable approval criteria for adjustment review.

C. Traffic Impact Analysis Application

Virtually all of the opposition to the proposed development concerns the traffic impact analysis (TIA) application. Most of the opponents live in Lakeridge Retirement Center (LRC), which is located on North Delta Highway south of the Ayres Road intersection. LRC is a large retirement center with only one ingress and egress point – on North Delta Highway. The residents testified very persuasively about their concerns with additional traffic impacts where they enter and exit LRC. In addition to the proposed development, another large development, The Nines, was approved on the other side of North Delta Highway from the proposed property. LRC residents testified that existing traffic is already very heavy and that the proposed developments would make an already bad situation worse. Although the applicant provided a TIA from a traffic engineer showing that the intersections in the area would not operate below required levels of service, LRC residents argue that making a left turn onto North Delta Highway from LRC would be extremely dangerous.² Almost all of opponents' arguments concern the results of the TIA involving this area.

According to the applicant, the TIA application was only provided because the City indicated that it was required. Traffic impact analysis review is a separate section of the Eugene Code (EC) located at EC 9.8650-9.8680. EC 9.8670 sets out when TIA review is required:

“Applicability. Traffic Impact Analysis Review is required when one of the following conditions exist:

- “(1) The development will generate 100 or more vehicle trips during any peak hour as determined by using the most recent edition of the Institute of Transportation Engineer’s Trip Generation Manual. In developments involving a land division, the peak hour trips shall be based on the likely development that will occur on all lots resulting from the land division.
- “(2) The increased traffic resulting from the development will contribute to traffic problems in the areas based on current accident rates, traffic volumes or speeds that warrant action under the city’s traffic calming program, and identified locations where pedestrian and/or bicyclist safety is a concern by the city that is documented.
- “(3) The city has performed or reviewed traffic engineering analyses that indicate approval of the development will result in levels of service of the roadway system in the vicinity of the development that do not meet adopted level of service standards.

² Although the scoping provisions do not require the applicant to consider the entrance/exit to LRC because it does not meet the definition of “intersection” under the TIA provisions, the applicant nonetheless analyzed the impact on the LRC entrance/exit and found it would meet all required levels of service.

- “(4) For development sites that abut a street in the jurisdiction of Lane County. A Traffic Impact Analysis Review is required if the proposed development will generate or receive traffic by vehicles of heavy weight in their daily operations.

“For purposes of EC 9.8650 through EC 9.8680, ‘daily operations’ does not include routine services provided to the site by others, such as mail delivery, garbage pickup, or bus service. ‘Daily operations’ does include, but is not limited to, delivery (to or from the site) of material or products processes or sold by the business occupying the site. For purposes of EC 9.8650 through EC 9.8680, ‘heavy vehicles’ are as a single vehicle or vehicle combination greater than 26,000 pounds gross vehicle weight or combined gross vehicle weight respectively.”

All the parties agree that the development will generate 100 or more vehicle trips during a peak hour as determined by the most recent addition of the Institute of Transportation Engineer’s Trip Generation Manual (ITE Trip Generation Manual). Therefore, under EC 9.8670(1) TIA approval is required, absent some other provision.

The applicant argues that the City may not require TIA approval in order to proceed with the proposed development because the proposed development is needed housing. The applicant has established that the proposed development is needed housing. ORS 197.307(4) provides:

“Except as provided [in subsections that do not apply in the present case], a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable lands described in subsection (3) of this section. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”

The TIA standards are certainly not clear and objective. EC 9.8680 provides the approval criteria for TIA review:

“Approval Criteria. The planning director shall approve, conditionally approve, or deny an application for Traffic Impact Analysis Review following a Type II process, or as part of a Type III process when in conjunction with a CUP or PUD. Approval or conditional approval shall be based upon compliance with the following criteria:

- “(1) Traffic control devices and public or private improvements as necessary to achieve the purposes listed in this section will be implemented. These improvements may include, but are not limited to, street and intersection improvements, sidewalks, bike lanes, traffic control signs and signals, parking regulations, parking regulations, driveway location, and street lighting.

- “(2) Public improvements shall be designed and constructed to the standards specified in EC 9.6505 Improvements – Specifications. The requirement of improvements based on traffic impact analysis does not negate the ability of the city traffic engineer to require improvements by other means specified in this code or rules or regulations adopted thereunder.
- “(3) In addition to the above criteria, if the Traffic Impact Analysis Review was required based on EC 9.8670(4), the improvements shall also address the structural capacity of the street in the County’s jurisdiction and address identified structural deficiencies, or reduction in the useful life of existing street structures related to the proposed development. Improvements may be needed to eliminate the identified structural deficiencies and to accommodate vehicle impacts to structures.
- “(4) In addition to the above criteria, if the development is located within the S-WS Walnut Station Special Area Zone, and increased traffic the development would generate on streets within the Fairmount neighborhood to the south of the Walnut Station Special Area Zone shall be mitigated through the use of traffic calming strategies or other mechanisms designed to discourage such traffic.”

The key portion the TIA approval criteria is EC 9.8680(1) which provides that “[t]raffic control devices and public or private improvements as necessary to achieve the purposes listed in this section will be implemented.” EC 9.8650 provides “the purposes listed in this section”:

“Purpose of Traffic Impact Analysis Review. The purpose of Traffic Impact Analysis Review is to ensure that developments which generate a significant amount of traffic, cause an increase in traffic that will contribute to traffic problems in the area, or result in levels of service of the roadway system in the vicinity of the development that do not meet adopted level of service standards *provide the facilities necessary to accommodate the traffic of the proposed development*. In addition, any Traffic Impact Analysis Review addressing streets in the jurisdiction of Lane County is also designed to ensure that cross sectional elements of streets, such as the wearing coarse or pavement, base material, soils, or storm water structures (bridges or culverts) have the adequate capacity to accommodate developments that utilize vehicles or heavy weight and associated traffic as part of their capacity.” (Emphasis added.)

In a recent decision (Amazon Corner LLC – TIA 16-7) involving a TIA application, I stated, “[w]hile the meaning of ‘provide the facilities necessary’ is relatively straightforward, the meaning of ‘accommodate the traffic of the proposed development’ is less clear.” Amazon Corner LLC 6. In addition, the standards for determining the scope of the TIA are not clear and objective either, as evidenced by the arguments in Amazon Corner LLC and in the present case about whether the TIA was required to consider LRC’s access to North Delta Highway. Therefore, we apparently have a situation where we have needed housing, needed housing cannot be subject to

standards that are not clear and objective, and the TIA standards are not clear and objective. The applicant argues that under this analysis the City cannot require a TIA permit to proceed with the proposed development.

The applicant has a strong argument. Unfortunately, neither the City nor opponents have responded to the applicant's argument. The closest the City comes to responding is in its September 13, 2017 memorandum, which states:

"With respect to the issues [regarding whether the City may require the applicant to obtain TIA approval], the City recognizes that compliance with EC 9.8650 through 9.8680 (Traffic Impact Analysis Review) is not a criterion of approval included in EC 9.8325 (Tentative Planned Unit Development Approval Criteria – Needed Housing). Therefore, approval of the applicant's needed housing tentative PUD application is independent of the City's consideration of the TIA application."

As the applicant states, the City's memorandum does not really address the applicant's argument that the TIA standards cannot be applied to needed housing. The City's memorandum seems to be suggesting that the PUD and adjustment review applications can be approved without considering the TIA standards, and that the TIA standards may or may not be applied in the future. Even if this is theoretically possible if the applicant had only filed a PUD and adjustment review application, in this case the applicant did file a TIA application – with the argument that it was not required – so the issue is squarely before the Hearings Officer.³

Unfortunately, I only have one side of the argument. There is no response from opponents or the City (other than the question can be decided at some other unspecified time). As I stated, the applicant has a strong argument. As a Hearings Official, I am an impartial decision maker. I cannot make up legal arguments for the City on my own. Perhaps if there were an obvious answer that would defeat the applicant's argument that would be a different situation, but if there is an obvious rebuttal of the applicant's argument it is not obvious to me. The application is for needed housing, needed housing must be subject to only clear and objective standards, the TIA standards are not clear and objective. Therefore, I have no choice but to agree with the applicant that it is not required to obtain TIA approval to proceed with the proposed development.

CONCLUSION

³ Furthermore, ORS 227.175(2) provides that: "The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project." Thus, an applicant can apply for all the necessary permits for a proposed development, including, as in this case, whether a TIA permit is required.

For all the reasons set forth above, the Hearings Official **APPROVES** the applications for tentative PUD approval and for Adjustment Review, with the following conditions of approval. The TIA provisions cannot be applied to the proposed development.

CONDITIONS OF APPROVAL

1. The Final Site Plans shall include the following note: "No building, structure, tree or other obstruction shall be placed or located on or in a Public Utility Easement, consistent with EC 9.6500(3)."
2. The Final Site Plans shall include the following note: "Prior to development, a Privately Engineered Public Improvement permit shall be issued for the construction of public improvements."
3. Prior to submission of an application for a Privately Engineered Public Improvement permit for the construction of the public wastewater system, the permit to construct the public system proposed with The Nines Subdivision must be bonded and issued. Alternatively, the applicant shall be responsible for construction of the public wastewater system, and the permit shall be bonded and issued prior to Final PUD approval.
4. The Final Site Plans shall show access connections to the new local street (currently shown as Siuslaw Drive), to Ayres Road, and to North Delta Highway, consistent with Standard Drawing RD 740.
5. Prior to Final PUD approval, an analysis consistent with EC 9.6791(3)(b) shall be submitted and approved by the Public Works staff, demonstrating the existing downstream public system has the capacity to accommodate runoff from the development or that post-development runoff levels do not exceed pre-development levels.
6. The Final Site Plans shall ensure and not that maximum lot coverage will not exceed 50%.
7. The Final Site Plans shall include the following note: "No structure shall exceed 30 feet in height."
8. The Final Site Plans shall be modified so that all buildings are setback a minimum of 10 feet from the front property lines adjacent to Siuslaw Drive and Ayres Road.
9. The following note shall be added to the PUD plans: "Building elevations are conceptual only. Compliance with Building Articulation standards at EC 9.5500(7) will be confirmed at the time of building permit review."
10. The Final Site Plans shall indicate L-1 landscaping adjacent to Siuslaw Drive and Ayres Road within all 10-foot setback areas.

11. The Final Site Plans shall be modified to provide a canopy tree (rather than an understory tree) and living plant material covering 70% of required planting area in each of the required interior planting islands, consistent with EC 9.6420(3)(e)(3).
12. The Final Site Plans shall be modified to provide an interior planting island(s) so that all parallel parking spaces that are proposed north of Siuslaw Drive are within 45 feet of a planting island, consistent with EC 9.6420(3)(e)(3).
13. The Final Site Plans shall note that vehicle bumpers will be provided consistent with EC 9.6420(6)(c).
14. The Final Site Plans shall include the following note: "Landscaping plans are conceptual only. Landscape plans will be reviewed for compliance with the landscape standards during the building permit process."
15. The Final Site Plans shall include the following note: "Prior to planting street trees, the applicant shall obtain a Street Tree Planting Permit from the Urban Forestry Department."
16. The Final Site Plans shall include the following note: "Compliance with the Common Open Space standards at EC 9.5500(9)(a) will be ensured at time of building permit."
17. The Final Site Plans shall be modified to clearly delineate pedestrian paths leading to the entrances of all bicycle storage facilities and trash enclosures, consistent with EC 9.6730(2)(c).
18. Prior to the issuance of any occupancy permit for the proposed development, the applicant shall provide information which demonstrates that recycling and garbage areas comply with EC 9.6740 Recycling and Garbage Screening.
19. Required street improvements to North Delta Highway shall be completed as part of Phase I of the development.
20. The Final Site Plans shall be modified to provide a pedestrian connection between the parking area directly north of Building #59 and Ayres Road (the connection to Ayres Road shall be located east of Building #59).
21. The Final Site Plans shall be modified to: 1) include additional pedestrian space (minimum width of 10 feet) along Siuslaw Drive between Buildings #1 and #2; OR 2) meet EC 9.95500(4)(b) along Siuslaw Drive.
22. The Final Site Plans shall be modified to provide a main entrance on all building facades facing a front lot line (i.e. a public right-of-way), consistent with EC 9.5500(5)(b).

23. The Final Site Plans shall be modified to ensure that all on-site pedestrian paths intersected by drive aisles are marked with striping or constructed with a contrasting paving material to indicate a pedestrian crossing area, consistent with EC 9.6730(3)(d).
24. The Final Site Plans shall be modified to include additional pedestrian crossings between the path leading from Building #58 to the path located between Buildings #42 and #43, and between the path leading from Building #22 to the path between Buildings #25 and #60.
25. The Final Site Plans shall be modified to ensure that each bicycle storage building incorporates a maximum of 50% of required long term bicycle spaces as vertical racks.
26. The Final Site Plans shall include a table that lists all approved adjustments and non-compliances, and the location on the site where each adjustment/non-compliance applies shall be identified on the site plan.
27. Prior to completion of Phase 1 of the PUD, the applicant shall construct a 4-way stop at the intersection of Ayres Road and North Delta Highway. Improvements shall include new stop signs in conformance with City of Eugene Privately Engineered Public Improvement standards.⁴



Fred Wilson

Hearings Official

Dated this 5th day of October 2017.

Mailed this 6th day of October 2017.

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS

⁴ Although the applicant is not required to comply with the TIA standards, the applicant voluntarily agreed to comply with this modified TIA proposed condition of approval.

ATTACHMENT 3

Eugene Lombard Apartments LLC Hearings Official Decision

**DECISION OF THE HEARINGS OFFICIAL
FOR THE CITY OF EUGENE, OREGON**

WILLAMETTE GREENWAY, SITE REVIEW, AND ADJUSTMENT REVIEW

INTRODUCTION

Application File Name (Number):

Lombard Apartment LLC (WG 18-3/ SR 18-3/ ARA 18-8)

Applicant's Request:

Approval of a Willamette Greenway Permit, Site Review, and Adjustment Review to construct 94 residential apartment units.

Subject Property/Location:

Located on the east side of River Road north of Lombard Street. Assessor's Map: 17-04-25-12 Tax Lot 1000.

Relevant Dates:

Applications submitted on April 6, 2018; supplemental materials submitted and application deemed complete at applicant's request on May 11, 2018; public hearing held on June 27, 2018.

Applicant's Representative:

Micheal Reeder.

Lead City Staff:

Rodney Bohner, Assistant Planner, Eugene Planning Division.

Summary of the Public Hearing

The Hearings Official held a public hearing on this application on June 27, 2018. The Hearings Official stated he had no conflicts of interests, was not biased, and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing. Rodney Bohner (Bohner), Assistant Planner, and Alissa Hansen, Principal Planner, were present for the hearing. Bohner presented the staff report, recommending approval of the application. Micheal Reeder, the applicant's representative, testified in favor of the application. Bill Kloos argued that the Willamette Greenway provisions could not be applied under the relevant needed housing statutes. A number of opponents testified in opposition to

the applications, primarily based on concerns about traffic, effects on the Willamette Greenway, and the sale of the property by a public entity. At the conclusion of the public hearing, the Hearings Official left the record open twelve days for the submission of new evidence and argument, seven additional days for responses to the new evidence and argument, and an additional seven days for the applicant's final legal argument.

FACTS

The property is a 3.59-acre undeveloped property located at the northern terminus of Lombard Street, with frontage along River Road to the west. To the east sits the City's Riverfront bike path, and then the Willamette River. To the southeast is Maurie Jacobs Park which is a City park that includes parking, a sports field, and other park amenities. The entire site is zoned Medium-Density Residential (R-2) with Nodal Development (ND) overlay. The southern portion of the site has a Site Review (SR) overlay. The entire property is located within the bounds of the Willamette Greenway. The property is an area of residential uses sandwiched between River Road and the Willamette River. Lombard Street currently ends at the southern boundary of the property. The proposal would extend Lombard Street to the northern boundary. The proposal is to construct 94 apartments in four buildings, as well as a leasing office and maintenance building. The main entrance would be from River Road.

ANALYSIS

A. Preliminary Issues

Initially, Dennis Sandow (Sandow) requests that the open record period be extended. Sandow argues that more time is needed to respond to the numerous issues, in particular because of the July 4th holiday. The open record period was actually five days longer than the standard 21-day period for precisely the July 4th reason Sandow raises. The 120-day deadline for making the decision would be in jeopardy if the open record period were extended for any additional time. In any event, the open record period complies with the requirements of ORS 197.763. Sandow's request to extend the open record is denied.

During the second open record period (to respond to evidence submitted during the first open record period), Julie Hulme (Hulme) submitted an email in opposition to the application stating that the opposition was being provided "[o]n behalf of the River Road Community Organization." July 16, 2018 E-mail. On July 22, 2018 (during the open record period for the applicant's final legal argument), Jon Belcher (Belcher) – who is apparently a co-chair of the River Road

Community Organization (RRCO) – submitted an e-mail stating that Hulme was not authorized to speak for the RRCO and that the RRCO did not have any position on the merits of the application. Belcher asks that Hulme’s e-mail be stricken from the record or that his email be included in the record. Hulme’s e-mail raises the issue of the applicability of the Willamette Greenway provisions and the proposal’s density calculations. Those issues are raised (and in greater detail) by numerous other parties, so I have to address those issues. I do not see that whether Hulme is speaking for the RRCO or not would affect my decision, but I appreciate the clarification from the RRCO and it is duly noted that Hulme does not speak for the RRCO. The e-mail from Belcher should be included in the record to clarify this point.

B. Willamette Greenway

1. Willamette Greenway Approval Criteria

The property is located within the Willamette River Greenway. Therefore, under the Eugene Code (EC), the application is required to comply with the Willamette Greenway provisions of EC 9.8815.¹ The staff report explains how the application meets all of the approval criteria. There are numerous approval criteria, and opponents do not challenge most of the findings in the staff report. Therefore, I adopt and incorporate the findings in the staff report in this decision, except as discussed further.²

EC 9.8815 provides:

“Willamette Greenway Permit Approval Criteria and Standards. Willamette Greenway permit approval may be granted only if the proposal conforms to all the criteria in subsections (1) through (4), and the applicable standards of subsection (5) as follows:

- “(1) To the greatest possible degree, the intensification, change of use, or development will provide the maximum possible landscaped area, open space, or vegetation between the activity and the river.
- “(2) To the greatest possible degree, necessary and adequate public access will be provided along the Willamette River by appropriate legal means.

¹ As discussed later, the applicant argues that the provisions of EC 9.8815 are not applicable to the application due to recently enacted housing statutes.

² This includes the clarifications to the staff report as explained in staff’s July 8, 2018 Memorandum.

- “(3) The intensification, change of use, or development will conform with applicable Willamette Greenway policies as set forth in the Metro Plan.
- “(4) In areas subject to the Willakenzie Area Plan, the intensification, change of use, or development will conform with that plan’s use management considerations.
- “(5) In areas not covered by subsection (4) of this section, the intensification, change of use, or development shall conform with the following applicable standards:
- “(a) Establishment of adequate setback lines to keep structures separated from the Willamette River to protect, maintain, preserve, and enhance the natural, scenic, historic, and recreational qualities of the Willamette Greenway. Setback lines need not apply to water related or water dependent activities as defined in the Oregon Statewide Planning Goals and Guidelines (OAR 660-15-000 et seq.).
 - “(b) Protection of significant fish and wildlife habitats as identified in the Metropolitan Plan Natural Assets and Constraints Working Paper. Sites subsequently determined to be significant by the Oregon Department of Fish and Wildlife shall also be protected.
 - “(c) Protection and enhancement of the natural vegetative fringe along the Willamette River to the maximum extent practicable.
 - “(d) Preservation of scenic qualities and viewpoints as identified in the Metropolitan Plan Natural Assets and Constraints Working Paper.
 - “(e) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass in both rural and urban areas to the maximum extent practicable.
 - “(f) Compatibility of aggregate extraction with the purposes of the Willamette River Greenway and when economically feasible, applicable sections of state law pertaining to Reclamation of Mining Lands (ORS Chapter 517) and Removal of Material; Filling (ORS Chapter 541) designed to minimize adverse effects to water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.

- “(g) Compatibility with recreational lands currently devoted to metropolitan recreational needs, used for parks or open space and owned and controlled by a general purpose government and regulation of such lands so that their use will not interfere with adjacent uses.

“As used in this section, the words ‘the greatest possible degree’ are drawn from Oregon Statewide Planning Goal 15 (F.3.b.) and are intended to require a balancing of factors so that each of the identified Willamette Greenway criteria is met to the greatest extent possible without precluding the requested use.

- “(6) When site review approval is required, the proposed development will be consistent with the applicable site review criteria.
- “(7) The proposal complies with all applicable standards explicitly addressed in the application. An approved adjustment to a standard pursuant to provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard.”

Opponents argue that the proposal does not satisfy EC 9.8815(1), which requires that “[t]o the greatest possible degree, the * * * development will provide the maximum possible landscaped area, open space, or vegetation between the activity and the river.” The proposal includes a 100-foot setback from the river, although only approximately 70 feet of that is on the applicant’s property. The rest of the setback is provided by City owned property that includes the river trail and bike path. The open space proposed by the development is approximately 15% of the property. According to opponents, only preserving 15% of the property in open space fails to satisfy EC 9.8815(1). The staff report found:

“The applicant’s response under this criterion does not provide much information, but clearly the applicant chose to locate the development at least 100 feet from the river, and to retain that open space area along the bike path and river. Staff believes the applicant’s site plan and other available information showing ample distance and existing riparian vegetation between the development and the river is sufficient to demonstrate compliance with this criterion.” Staff Report 4.

Opponents argue that this does not provide the maximum possible open space to the greatest degree possible. Theoretically, the applicant could not develop the property at all and have the entire site be open space. If “to the greatest possible degree” meant the theoretical maximum

then no development could ever occur. EC 9.8815(5) explains that “to the greatest possible degree” means:

“As used in this section, the words ‘the greatest possible degree’ are drawn from Oregon Statewide Planning Goal 15 (F.3.b.) and are intended to require a balancing of factors so that each of the identified Willamette Greenway criteria is met to the greatest extent possible without precluding the requested use.

As EC 9.8815(5) explains, “the greatest possible degree” language cannot be used to preclude the requested use. The requested use is a 94-unit multi-family apartment complex – that is a permitted use in the R-2 zone. The applicant has placed all of the development in the western portion of the property – as far away from the river as possible. Opponents have not argued, and I do not see, that the applicant could have configured the proposed development in a way that retains 94 units and the associated requirements in a way that would provide more open space closer to the river. I also do not see that the applicant is required to reduce the requested density in order to preserve more open space. EC 9.8815(1) is satisfied.

Opponents argue that the proposal does not satisfy EC 9.8815(2), which requires that “[t]o the greatest possible degree, necessary and adequate public access will be provided along the Willamette River by appropriate legal means.” According to opponents, because the proposal does not provide public access from the property to the river and a proposed fence would prevent residents from accessing the river, the proposal does not provide adequate public access. The staff report found:

“The applicant further states that there is a public bike path on the west side of the greenbelt between the river and this site that provides adequate public access to the river. The applicant also states that the extension of Lombard Drive (Street) will also allow future development to the north of the site to gain access to Marie Jacobs Park by travel southbound through the site along public roadways to the park.

“Staff believes that the above criterion requires access to be provided *along* the river, and in this case the applicant benefits from the existence of the City’s Riverfront Path System. This existing system provides a path that is paved, and runs along the river from Springfield to the Beltline Highway, providing access *along* the Willamette River. The applicant has proposed a 42” fence along the 100 foot setback that will block access from the site to the Riverbank Path System.

“While it is unfortunate that the applicant has not proposed a direct access to that path, the above criterion does not necessarily require that access be provided

directly from the development site in all cases. Based on the available evidence, and the specific wording of the criterion above, staff believes this criterion is met.” Staff Report 4-5 (emphasis in original).

I agree with the staff report. EC 9.8815(2) addresses adequate public access “along the river.” There is more than adequate public access along the river. The City’s renowned Riverfront Path System runs to the east of the property along the river. If the property was adjacent to the river and proposed to restrict access along the river then opponents would likely be correct that the criterion is not satisfied. But that is not the scenario in the present case. EC 9.8815(2) is satisfied.

Opponents argue that the proposal does not satisfy EC 9.8815(3), which requires that the proposed development “conform with applicable Willamette Greenway policies as set forth in the Metro Plan.” According to opponents, the proposal does not conform with a number of applicable plan policies. The only applicable plan policy identified in the staff report is Metro Plan Section III-D, Policy D.5, which provides:

“New development that locates along the river corridors and waterways shall be limited to uses that are compatible with the natural, scenic, and environmental qualities of those water features.”

According to opponents, a “towering” 35-foot apartment complex is not compatible with the natural, scenic, and environmental qualities of the Willamette Greenway. The staff report found:

“* * * staff believes this policy is met to the extent that the proposed development of multi-family residential uses is allowed in the applicable R-2 zone, and otherwise found to be consistent with the natural resource protections afforded through the Willamette Greenway Permit criteria. Those requirements in EC 9.8815 are locally adopted regulations that implement Statewide Planning Goal 15 in the context of this policy.

“Based on the available information, staff believes this criterion is met.” Staff Report 5.

I agree with the staff report. The policy talks about “uses” that are compatible with the applicable water feature. The applicable R-2 zoning allows multi-family residential – that is the use. By adopting R-2 zoning for the property the City obviously envisioned multi-family residential use as a potential use for the property. The City clearly thought such a use was compatible with the Willamette River Greenway or it would not have zoned the property R-2. I do not see that the plan policy allows micro-management of the building layout or design of a

permitted use. Even if it did, the proposal locates the development as far away from the river as possible. I do not see that merely because the proposed development uses the full 35-foot height maximum allowed under R-2 zoning that it somehow renders the proposal incompatible with the natural, scenic, and environmental qualities of the greenway.

LandWatch Lane County also argues that there are numerous other Metro Plan policies that the proposal does not comply with. Those alleged applicable policies involve Goal 3 Agricultural policies and Goal 5 Open Space policies. I do not see that those policies have any particular relevance to the proposed development. Even if they did, however, they would still not be applicable approval criteria because EC 9.8815(3) specifically requires conformance with “applicable *Willamette Greenway* policies as set forth in the Metro Plan.” (Emphasis added.) The Willamette Greenway policies are specifically provided in section III D of the Metro Plan. There are eleven specific policies listed in this section – of which Policy D 5 is one. The Metro Plan policies cited by LandWatch Lane County are not found under section III D and are not Willamette Greenway policies. Therefore, they are irrelevant for purposes of this decision. EC 9.8815(3) is satisfied.

All of the Willamette Greenway approval criteria are satisfied.

2. Whether the Willamette Greenway Approval Criteria Apply

Although the applicant submitted an application for a Willamette Greenway permit, the applicant also argues that under the recently enacted state needed housing statutes that the City may not apply the Willamette Greenway approval criteria because they are not clear and objective approval standards.³

The proposed development is needed housing, and the applicant proceeded under the clear and objective site review approval criteria of EC 9.8445 rather than the general site review approval criteria (which are not clear and objective) of EC 9.8440. State statutes regarding housing and needed housing require a local government to provide clear and objective standards for such housing. ORS 197.307 provides, in pertinent part:

“(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

³ The Home Builders Association of Lane County also makes this argument.

- “(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.
- “(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

“* * * * *

- “(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:
 - “(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;
 - “(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and
 - “(c) The approval criteria for the alternative process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.”

The applicant and the Homebuilders Association of Lane County argue that the Willamette Greenway approval criteria are not clear and objective standards and therefore the City may not apply them to the needed housing application.⁴ There does not seem to be much doubt that the Willamette Greenway standards of EC 9.8815 are not clear and objective. For instance, EC 9.8815(1) and (2) both require a proposal to provide attributes to “the greatest possible degree.” This is an inherently unclear and subjective standard. I agree with the applicant’s analysis in its July 23, 2018 memorandum explaining why the EC 9.8815 approval criteria are not clear and objective. The real issue is not so much whether the Willamette Greenway approval criteria are clear and objective but whether they must be applied despite not being clear and objective.

Initially, the Assistant City Attorney (ACA) argues that a Hearings Officer does not have the authority to determine that the City may not apply approval criteria to a proposed needed housing application. According to the ACA:

⁴ The applicant and the Homebuilders Association of Lane County make complementary arguments regarding whether the Willamette Greenway approval criteria may be applied to the application. For convenience and brevity I will just refer to these arguments as the being made by the applicant.

“The City has consistently maintained the position that once the City Council adopts a code provision only the Council (through a code amendment) or an authority hierarchically above it (LUBA or a court), can void or choose not to apply that code provision. Neither city staff, the planning commission, nor the hearings officer have the legal authority to choose to ignore or override land use approval criteria adopted by the City Council.” ACA July 16, 2018 Memorandum 3-4 fn 1.

The ACA memorandum does not explain the basis for this assertion, but it appears to be based on the reasoning in a memorandum from another ACA in the Chamotee Trails PUD (PDT 15-1) case (Chamotee Trails Memorandum).⁵ The Chamotee Trails Memorandum states that the Planning Commission (and now extended to the Hearings Official) “does not have the authority to determine a provision is not clear and objective.” *Id.* at 1. The Chamotee Trails Memorandum explains the basis for this conclusion:

“The City Council adopted the 19-lot rule and the remainder of the needed housing PUD criteria by ordinance. Section 48 of the Eugene Charter provides that ‘all acts by the city or any of its officers, employees or agencies shall be presumed valid * * * Any action by this charter committed to the discretion of the council, when taken, shall be final and shall not be reviewed or called into question elsewhere.’ At the time the 19-lot rule was adopted into the new land use code, the statutory ‘clear and objective’ requirement was in effect. The council is presumed to have known of this requirement and adopted a provision that was in compliance with it.”

I tend to agree with this analysis. If the City Council (or the Planning Commission in my case) has determined that a particular provision is clear and objective, absent some extraordinary circumstances that I cannot think of, I should be bound by that determination unless and until a higher body determines differently. The situation described in the Chamotee Trails Memorandum, however, is not the situation in the present case. The City Council has adopted clear and objective standards for different housing applications – the Needed Housing Track. The City Council has also adopted standards involving discretion for those housing applications – the General Track. The 19-lot rule was adopted under the clear and objective standards of the Needed Housing Track. I agree with the other ACA that the City Council had determined that the 19-lot rule was clear and objective so the Planning Commission and Hearings Official should defer to the City Council. If for instance, the applicant were arguing that any of the Needed Housing Track site review approval

⁵ The memorandum was submitted into the record by the Homebuilders Association of Lane County.

criteria were not clear and objective, I would almost certainly agree with the ACA that I should not find otherwise.

In the present case, however, the Willamette Greenway approval criteria were adopted long before the 2017 statutes requiring clear and objective approval standards for all housing (and even before the statutes requiring clear and objective standards for needed housing). Unlike the Chamotee Trails case, the City Council (as far as I am aware) has never determined that the approval standards of EC 9.8815 are clear and objective. In fact it seems odd that the ACA would argue that I could not determine that the EC 9.8815 approval criteria are not clear and objective when she admits as much in her memorandum:

“It is not possible to draft clear and objective approval criteria that also require an applicant to comply with phrases like ‘the best possible,’ ‘the greatest possible degree,’ and ‘the maximum possible,’ as required by Goal 15. The City cannot comply with the requirements of ORS 390.314 and Goal 15 and also be limited to the application of clear and objective standards for proposed housing developments within the Greenway.” ACA Memorandum 4.

Again, the question is not so much whether the EC 9.8815 approval criteria are clear and objective (they are not), but whether they trump the needed housing statutes because the proposed development is in the Willamette Greenway. If the City Council or Planning Commission has expressed an opinion on that issue no one has brought it to my attention and I am not aware of any such opinion. The question of what approval criteria apply to a land use application is squarely within the universe of questions a hearings official is required to answer. I do not see that I am precluded from considering the issue.

The applicant has persuasively explained why the EC 9.8815 approval criteria are not clear and objective. Under ORS 197.307(4), this at least establishes a *prima facie* case that the approval criteria may not be applied to the proposal. Absent some argument that explains why the EC 9.8815 approval criteria nonetheless apply, I have no choice but to agree with the applicant that the approval criteria do not apply. Initially, many of the opponents argue that the Goals have to trump state statutes. These opponents essentially argue that the Goals are akin to a land use constitution or super-precedent that the legislature cannot undue. While the Statewide Planning Goals certainly have a ring of authority to them, they are still just statutorily created goals which can be undone just as easily through other statutory enactments. Furthermore, not applying the EC 9.8815 approval criteria to needed housing applications would hardly overturn or invalidate the goal, the

goal would still apply to all other proposed development in the greenway. This argument does not provide a basis to trump the needed housing statutes.

The ACA first argues that prior to the 2017 amendments to the needed housing statutes, the clear and objective standards requirement only applied to the development of needed housing on buildable lands. The ACA further argues that the subject property was not considered buildable lands because it is in the greenway. The 2017 amendments to the needed housing statute eliminated the restriction of the clear and objective standards to buildable lands and applied them to not only all needed housing but all housing period. According to the ACA, “[t]here is no indication that the legislature intended to change this [that the application was not entitled to clear and objective standards] when it passed * * * a revised version of ORS 197.307(4) that does not include the reference to ‘buildable land.’” ACA Memorandum 3. On the contrary, I agree with the applicant that if anything the opposite conclusion should be drawn:

“It is difficult to conceive of any other intent of the legislature than to rub out the issue of whether the clear and objective standards of ORS 197.307(4) applies to land outside of the buildable lands inventory than the text of the new statute. Whatever it meant before, it is now crystal clear that ORS 197.307(4) applies to all housing – not just housing in the [buildable lands inventory].” Applicant’s July 23, 2018 Memorandum 10-11.⁶

Next, the ACA argues ORS 309.314 and Goal 15 must take precedence over ORS 197.307.⁷ According to the ACA, when a general statutory provision and a particular statutory provision are inconsistent, the particular intent controls.⁸ The ACA argues that Goal 15 and ORS 309.314 speak to a particular concern – preservation of the Willamette River Greenway – while ORS 197.307(4) applies to all lands and housing in the state. I agree with the applicant that the opposite argument is more persuasive – that ORS 197.307(4) has the more narrow particular intent – housing development – while Goal 15 applies to all development in the greenway. Furthermore, as the applicant explains, ORS 197.307(4) was the later enacted statute. ORS 174.010 requires

⁶ Although I do not see that it affects my analysis, the applicant persuasively explains that although there is a presumption that lands such as those in the greenway would not be on the buildable lands inventory that local governments could include them if they wished and that the City did include the subject property on the buildable lands inventory.

⁷ ORS 390.314 provides the legislative findings and policy to establish the Willamette Greenway. Goal 15 expounds on those policies, and the City implemented Goal 15 through EC 9.8815.

⁸ ORS 174.020(2) provides: “When a general provision and a particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.”

seemingly inconsistent statutes to be reconciled to give effect to both, if possible.⁹ It is possible to give effect to all provisions by not applying the non-clear and objective standards of EC 9.8815 to needed housing developments but still imposing such requirements on future non-residential development.

In conclusion, the needed housing statutes provide that only clear and objective standards may be applied to needed housing applications such as the present case (and now all housing applications). The Willamette Greenway approval criteria of EC 9.8115 are not clear and objective. Absent some argument that the needed housing statutes do not apply to housing in the Willamette Greenway, the approval criteria of EC 9.8815 cannot be applied. While there may be a winning argument as to why the Willamette Greenway approval criteria trump the needed housing statutes, I do not see that that argument has been made in this case. As this case will likely end up before the Planning Commission, perhaps the legal arguments may be more fully developed. Given the legal arguments before me, I agree with the applicant that the approval criteria of EC 9.8815 cannot be applied to the application because they are not clear and objective.

C. Site Review

As discussed earlier, the applicant is proceeding under the clear and objective Needed Housing Track site review approval criteria of EC 9.8445. The applicant is also seeking adjustments to a number of the site review approval criteria. The staff report explains how the site review approval criteria are satisfied. There are numerous approval criteria, and opponents do not challenge most of the findings in the staff report. Therefore, I adopt and incorporate the findings in the staff report in this decision, except as discussed further.¹⁰

EC 9.8445(4)(a) requires that the proposal comply with the EC 9.2000 through 9.3980 lot dimension and density requirements. The staff report explains the density calculations:

“The minimum density for the subject site is 15 units per acre as established by the /ND Nodal Development Overlay Zone at EC 9.4290 * * *. The R-2 base zone of the subject site provides that a maximum density of 28 units per acre is allowed * * *.

⁹ ORS 174.010 provides: “In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.”

¹⁰ This includes the clarifications to the staff report as explained in staff’s July 9, 2018 Memorandum.

“The applicant also provides a calculation on sheet A1 of the May 11, 2018 application materials. The calculation identifies the entire site area as being 3.59 acres, subtracts the .21 acres to be dedicated for Lombard Street, and concludes that 94 units is the maximum density considering 28 units per net acre is allowed.” Staff Report 22.

Opponents argue that the applicant and the City improperly calculated the amount of acreage to be subtracted from the 3.59 total acreage of the property. EC 9.2751 sets forth the rules for calculating net density:

“(1) Density

“* * * * *

“(b) For purposes of this section, ‘net density’ is the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of the residents in the development, such as common open space or recreation facilities.

“(c) For the purposes of calculating net density:

“* * * * *

“(1) The acreage of land considered part of the residential use shall exclude public and private streets and alleys, public parks and other public facilities.”

The applicant only subtracted the area proposed for the extension of Lombard Street – which is .21 acres. Opponents argue the applicant should also have subtracted the areas proposed for access from River Road – in essence all of the paved area – as well as the leasing office and maintenance building, and the open space proposed for the eastern portion of the property.

Initially, opponents argue that the access from River Road and internal paved circulation are streets and therefore must be subtracted for purposes of calculating net density. EC 9.0500 defines “street” as:

“An improved or unimproved public or private way, other than an alley, that is created to provide ingress or egress for vehicular traffic to one or more lots or parcels, excluding a private way that is created to provide ingress or egress to land in conjunction with the use of land for forestry, mining, or agricultural purposes. A ‘street’ includes the land between right-of-way lines within the ingress/egress easement areas serving multiple residential lots but excluding ‘flagpole’ portions of flag lots.”

According to opponents, the access from River Road and the internal circulation area is a way that allows for ingress and egress of vehicular traffic. The applicant responds that the areas are not streets but driveways. EC 9.0500 defines “driveway” as:

“The area located outside of the public right-of-way that abuts the access connection and allows for vehicles to move to or from a development site.* * *”

The staff memorandum of July 9, 2018 explains that the areas are “parking drives.” EC 9.550(11)(b) provides that “[d]riveways and parking drives are private roadways for projects or portions of projects not served by streets.” The EC clearly treats driveways and parking drives as separate and distinct things from streets. I agree with the applicant and staff that the parking drives do not have to be subtracted from the net density calculation.

Opponents also argue that the leasing office and maintenance building must be subtracted from the net density calculation because they are “other public facilities” that are not “reserved the exclusive use of the residents in the development.” The staff memorandum of July 9, 2018 explains that:

“Both the EC definition, and EC 9.2751(1)(c)(1), use the specific language ‘public facilities.’ The provision does not include ‘leasing offices.’ ‘Public facilities’ are not defined in EC 9.0500. However, ‘public facility projects’ are defined in the Metro Plan. Those definitions contemplate above-ground physical structures such as water reservoirs, pump stations, and drainage or detention ponds. The leasing office does not become a public facility simply because it might be used by public entities, and therefore need not be excluded from the calculation. Staff also believes it is reasonable to expect that the leasing office will be for the use of residents who wish to reside at the development, therefore meeting the requirements of EC 9.2751 to be included as part of the net density calculation.” *Id.* at 4-5.

I agree with staff that the leasing office is not a public facility that must be excluded from the net density calculation. The same reasoning is applicable to the maintenance building – it is hardly something that would be open to the public.

Finally, opponents argue that the open space area proposed for the eastern area of the property must be excluded from the net density calculation. This argument is difficult to follow. Apparently, opponents believe that areas within the Willamette Greenway must be excluded, but the entire site is within the Willamette Greenway. Furthermore, the open space area is not open to the public so it would seem to fall squarely within the category of common open space for the exclusive use of the residents in EC 9.2751(1)(b). The application complies with EC 9.8445(4)(a).

EC 9.8445(4)(f)(2) requires that access from a public street to a development shall be located in accordance with EC 7.420 Access Connections. EC 7.420(3)(i) provides that the proposal must comply with EC 9.6780, which provides:

“Vision Clearance Area. *Development sites* shall have triangular vision clearance areas on all street corners to provide for unobstructed vision consistent with American Association of State Highway and Transportation Officials (AASHTO) standards. (See Figure 9.0500 Vision Clearance Area). Vision clearance areas shall be kept free of all visual obstructions from 2 ½ feet to 9 feet above the curb line. Where curbs are absent, the crown of adjacent streets shall be used as the reference point. These vision clearance requirements may be adjusted if consistent with the criteria of EC 9.8030(11) of this land use code.” (Emphasis added).

Opponents argue that the triangular vision clearance areas on the corners of Lombard Street and Fir Lane are inadequate. The intersections opponents complain about are not part of or adjacent to the subject property – they are a block or more away from the property. EC 9.0500 defines “development site” as:

“A tract of land under common ownership or control, either undivided or consisting of two or more contiguous lots of record. For the purpose of land use applications, development site shall also include property under common ownership or control that is bisected by a street or alley.”

As the applicant’s traffic engineer explains, “development site” does not include off-site intersections. As the July 12, 2018 memorandum from Public Works further explains, EC 9.0500 defines “vision clearance area” as:

“A triangular area within a lot immediately adjacent to the intersection of streets to provide a clear area for viewing approaching traffic for public safety purposes. For the intersection of 2 improved public rights-of-way, the vision clearance area is the triangular area of the lot at the intersection of two lot lines. At the intersection of a public street and a private street, the vision clearance area is the triangular area of the lot at the intersection of the lot line and each edge of the street. For all vision clearance areas, the apex is located at the intersection of the two 35 foot legs, extended if necessary. The base of the triangle extends diagonally across the lot intersecting the two legs an equal distance from the apex.”

The development will be creating an access point on River Road and the Lombard Street extension, but it will not be creating any new intersections. Therefore, EC 9.8670 is not applicable to the application. The applicant will provide adequate vision clearance area for the access points

at River Road and Lombard Street. Opponents' arguments do not provide a basis to deny the application.

EC 9.8445(2) requires that the proposal comply with the multi-family standards of EC 9.5500. EC 9.5500(11)(a) requires that street standards and connectivity requirements for local residential streets shall be applied to public and private streets within multi-family developments and states "[r]efer to EC 9.8615 Connectivity for Streets." Opponents argue the proposal does not satisfy EC 9.6815(2)(f), which provides:

"In cases where a required street connection would result in the extension of an existing street that is not improved to city standards and the street has an inadequate driving surface, the developer shall construct a temporary barrier at the entrance to the unimproved street section with provision for bicycle, pedestrian, and emergency vehicle access. The barrier shall be removed by the city at the time the existing street is improved to city standards or to an acceptable standard adopted by the public works director. In making a determination of an inadequate driving surface, the public works director shall consider the street rating according to Eugene's Paving Management System and the anticipated traffic volume."

Opponents argue that Lombard Street is not improved to City standards and that it has an inadequate driving surface. According to opponents, the applicant should be required to install a temporary barrier at the entrance to Lombard Street from the development. While Lombard Street is not developed to City standards, the applicant and the City contend that it does not have an inadequate driving surface. According to the applicant's traffic expert, while the street is narrow, the roadway pavement is in generally good condition with no potholes or other significant deterioration on the driving surface. While Lombard Street is not in perfect condition, it does not appear to be "inadequate." The July 12, 2018 memorandum from public works states:

"EC 9.8615(2)(f) provides for the construction of temporary barriers where there is an inadequate driving surface. It is noted that road surfaces that are less than full improvement to city standards are not necessarily considered to be 'inadequate' in this context. The applicant has proposed a suitable transition surface between the new and existing segments of Lombard Street."

I agree with the applicant's traffic engineer and public works that Lombard Street is not inadequate and therefore temporary barriers are not required.

Opponents argue that the applicant has not demonstrated compliance with EC 9.5500(7), (13), or (14). These arguments are not particularly developed – opponents merely argue the

standards are not satisfied or there is no finding of feasibility. The staff report explains that these standards are satisfied or can be satisfied through the proposed conditions of approval. I agree with the staff report and I find that it is feasible to comply with the articulation requirements of EC 9.5500(7) with the proposed condition of approval. As discussed later, there is a long list of building articulation features involved in the proposal.

All of the site review approval criteria are satisfied.

D. Adjustment Review

The applicant applied for a number of adjustments to the site review approval criteria. The staff report explains that all of the requested adjustments satisfy the applicable approval criteria.¹¹ The staff report explains how the adjustment review approval criteria are satisfied. There are numerous approval criteria, and opponents do not challenge most of the findings in the staff report. Therefore, I adopt and incorporate the findings in the staff report in this decision, except as discussed further.¹²

After the staff report had been issued, staff determined that the applicant needed to either amend the site plan or seek an adjustment to the Nodal Development Overlay setback requirements. In its July 16, 2018 memorandum, the applicant addressed this issue by requesting an adjustment to EC 9.4290(2). The applicant provided a thorough analysis explaining why an adjustment is warranted. Opponents have not challenged the applicant's request for this adjustment. I have reviewed the applicant's findings and conclusions regarding an adjustment to EC 9.4290(2), and I agree with those findings and conclusions. Therefore, I adopt and incorporate those findings and conclusion in this decision. Applicant's July 16, 2018 Memorandum 1-5.

Opponents argue that the applicant's proposed adjustment for EC 9.5500(6) is not satisfied. EC 9.5500(6) provides:

“Building Mass and Facade.

“(a) Maximum Building Dimension. Neither the maximum length nor width of any building within 40 feet of a front lot line can exceed 100 feet in the R-1 and R-2 zones and 150 feet in all other zones.

¹¹ As discussed later, staff indicated that one additional adjustment would be required for Nodal Development setback requirements. That adjustment is addressed later.

¹² This includes the clarifications to the staff report as explained in staff's July 9, 2018 Memorandum.

“(b) Windows. Street facades shall contain windows covering a minimum of 15% of the facade on each floor level.

“(c) Criteria for Adjustment. Adjustments to the standards in this subsection may be made, based on criteria of EC 9.8030(8)(a).”

The applicant seeks an adjustment to allow a building more than 100 feet in length. Under EC 9.8030(8)(a), the requirements set forth in EC 9.5500(6)(a) may be adjusted if the proposal will “create a vibrant street façade with visual detail” and “provide multiple entrances to buildings or yards.” Opponents argue that the applicant has not demonstrated how the proposed building “creates a vibrant street façade.” The applicant responds that the proposed building will create a vibrant street façade with visual detail by incorporating visual details such as modulation, architectural articulation, and finish material selection. The building will also include an exaggerated offset at the midpoint to visually break the building massing into two distinct segments. Each segment also has multiple offsets and projections across the façade to break up the massing even further. Vertical articulation is provided in addition to the horizontal massing variations in the form of decks, patios, and large windows to enhance the “eyes on the street” and connection between the interior and exterior. The siding treatment is broken up vertically in alternating locations with changes in materials and color placement.

The standard of whether a proposed building creates a vibrant street façade with visual detail is a particularly subjective standard. The applicant has provided a long list of items designed to create a vibrant street façade through visual detail. I agree with the applicant and staff that the proposed building provides a sufficient vibrant street façade with visual detail to warrant an adjustment.

Finally, opponents’ traffic engineer argues that an adjustment to EC 9.6735(2) is not warranted to allow access from River Road rather than Lombard Street. I agree with the applicant that this is an odd argument since much of the opposition to the proposal concerns opposition to additional traffic on Lombard Street. In any event I agree with the staff report and the applicant’s engineer that the adjustment is warranted.

E. Other Issues

Opponents raise a number of issues that do not specifically relate to any applicable approval criteria. Sandow argues that the application does not comply with Goal 1 (Citizen Involvement) or

Goal 12 (Transportation). Neither Goal 1 nor Goal 12, however, is an applicable approval criterion for the application. Therefore, Sandow's arguments provide no basis to deny the application.

Numerous opponents argue that the property should have never been sold to a private entity – the property was previously owned by a public entity. While I understand opponents' concerns about disposition of public property, that disposition has already occurred. The only issues involved in this case are the applicable approval criteria. There is nothing that I can consider that places any relevance on whether the property should be sold to a private entity – or this particular private entity. Opponents' arguments do not provide a basis to deny the decision.

Opponents argue that the application should be denied because the applicant has not established that the property is a legal lot. The basis for this argument is somewhat unclear. Opponents cite an approval criterion – EC 9.8325(7)(a) – which is an approval criterion for planned unit developments not for site review. Opponents then cite another Hearings Official decision regarding a lot verification request. While the EC certainly provides a process for verifying legal lots that hardly means that that is a requirement for every application. Opponents argue that the property was reduced in size in the past and therefore might not be a legal lot. The mere fact that a property has changed sizes hardly suggests that it is a not a legal lot. As the July 9, 2018 staff memorandum states:

“Staff note that the subject proposal is not subject to PUD approval criteria nor PUD application requirements. Staff further add that the Willamette Greenway Permit, Site Review, and Adjustment Review applications do not require the applicant to provide evidence of legal lot status.” *Id.* at 6.

Finally, opponents argue that a Traffic Impact Analysis (TIA) should have been performed. Under EC 9.8670 there are triggers for when a TIA must be performed. EC 9.8670 provides:

“Traffic Impact Analysis Review is required when one of the conditions in subsections (1) – (4) of this section exist unless the development is within an area (a) shown on Map 9.8670 Downtown Traffic Impact Analysis Exempt Area, or (b) subject to a prior approved Traffic Impact Analysis and is consistent with the impacts analyzed.

- (1) The development will generate 100 or more vehicle trips during any peak hour as determined by using the most recent edition of the Institute of Transportation Engineer's Trip Generation. In developments involving a land division, the peak hour trips shall be calculated based on the likely development that will occur on all lots resulting from the land division.

- (2) The increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action under the city's traffic calming program, and identified locations where pedestrian and/or bicyclist safety is a concern by the city that is documented.
- (3) The city has performed or reviewed traffic engineering analyses that indicate approval of the development will result in levels of service of the roadway system in the vicinity of the development that do not meet adopted level of service standards.
- (4) For development sites that abut a street in the jurisdiction of Lane County, a Traffic Impact Analysis Review is required if the proposed development will generate or receive traffic by vehicles of heavy weight in their daily operations.

"For purposes of EC 9.8650 through EC 9.8680, 'daily operations' does not include routine services provided to the site by others, such as mail delivery, garbage pickup, or bus service. 'Daily operations' does include, but is not limited to, delivery (to or from the site) of materials or products processed or sold by the business occupying the site. For purposes of EC 9.8650 through EC 9.8680, 'heavy vehicles' are defined as a single vehicle or vehicle combination greater than 26,000 pounds gross vehicle weight or combined gross vehicle weight respectively."

The primary trigger for a TIA is a development that will generate 100 or more vehicle trips during any peak hour. The applicant's traffic engineer calculated that the proposed use would generate 50 trips during the AM peak hour, 69 trips during the PM peak hour, and 49 trips during the weekend peak hour. This is below the thresholds for requiring a TIA under EC 9.8670(1). Although opponents argue that a TIA is required under EC 9.8670(2) and (3), there is nothing that would require action based on current accident rates, traffic volumes or speeds that warrant action under the city's traffic calming program, and identified locations where pedestrian and/or bicyclist safety is a concern by the city that is documented or city performed or reviewed traffic engineering analyses that indicate approval of the development will result in levels of service of the roadway system in the vicinity of the development that do not meet adopted level of service standards.¹³ In any event, as explained by the applicant, in recent cases involving needed housing and the TIA provisions I concluded that the TIA standards were not clear and objective and could not be applied

¹³ Although opponents claim EC 9.8670(4) was not addressed, it is clearly not applicable.

to needed housing applications under ORS 197.307(4).¹⁴ Therefore, opponents' TIA arguments do not provide a basis to deny the application.

All of the approval criteria are satisfied.

CONCLUSION

For all the reasons set forth above, the Hearings Official **APPROVES** the applications for a Willamette Greenway Permit, Site Review Approval, and Adjustment Review Approval, with the following conditions of approval.

CONDITIONS OF APPROVAL

1. Prior to the issuance of a development permit the applicant shall provide details that identify which features are being used to comply with EC 9.5500(7); and the following note will be added to the Final Site Plan: "Buildings shall comply with the building articulation requirements at EC 9.5500(7)."
2. Prior to issuance of a development permit, the applicant shall revise the site plan to demonstrate compliance with EC 9.5650 Recycling – Small Collection Facility Standards and EC 9.6740 Recycling and Garbage Screening. The following note shall also be added to the applicant's site plan: "Recycling and Garbage areas shall comply with EC 9.5650 and EC 9.6740."
3. The following restriction shall be required to be shown on the Final Site Plan in accordance with EC 9.6500(3): "No building, structure, tree or other obstruction shall be placed or located on or in a Public Utility Easement."
4. The proposed Public Utility Easement shall be conveyed by a separate document meeting City standards in conjunction with the Privately Engineered Public Improvements (PEPI) permitting process.
5. Prior to issuance of a building permit, the applicant shall obtain approval of a PEPI permit for the construction of Lombard Street and any associated infrastructure that will be public including the proposed public wastewater line.
6. During the PEPI process, the applicant shall provide a street deed to convey the right-of-way for Lombard Street to the City.

¹⁴ Those decision are Amazon Corner – (TIA 16-7) and Delta Ridge PUD - (PDT 17-3/ ARB 17-2/ TIA 17-2). Both of those decisions were submitted into the record by the applicant.

7. In conjunction with the PEPI process, the applicant shall submit a street tree agreement application with a street tree plan to the City Urban Forester for review. Approval of the agreement will be required prior to PEPI approval.
8. Prior to the issuance of a development permit, the applicant shall demonstrate compliance with EC 9.6791 through EC 9.6797.
9. The applicant shall add the following note onto its Final Site Plans: "Parking areas shall comply with the standards at EC 9.6420."
10. The entire stall depth of the northern-most and western-most parking stall, adjacent to the north property line and near River Road access, shall be a minimum of 15 feet in depth from each corner and marked "compact", eliminated, or otherwise revised to meet EC 9.6420.
11. Final site plans shall be revised to require L-3 High Screen Landscaping along the south property line of the western-most parking area.

Fred Wilson

Hearings Official

Dated this 7th day of August 2018.

Mailed this ____ day of August 2018.

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS

Derrick Tokos

From: Sean Malone <seanmalone8@hotmail.com>
Sent: Monday, October 15, 2018 4:42 PM
To: Derrick Tokos; Mona Linstromberg; Elaine Karnes
Subject: Spring St comment 1-GP-18-A open period 1
Attachments: email exchange.pdf; Malone to Newport re Geo Appeal 10.15.18.pdf

Mr. Tokos,

Please add the attached two documents to the record.

Also, will you be sending out the new information that has been submitted in this first 7-day period?

Thank you,

Sean Malone
Attorney at Law
259 E. Fifth Ave.
Suite 200-C
Eugene, OR 97401
ph. 303.859.0403
seanmalone8@hotmail.com

Mr. Rich,

Thank you for your response. The first issue is that additional time is wasted on a 7-7-7 timeline that was not requested by any party, only the planning director. Moreover, requesting that additional open record time means that ORS 227.178 will be violated. As to the section (10), that demonstrates that intervenors and the City would be required to incur additional expenses in litigating the matter in a second venue (circuit court) when it could have been resolved before the local government. Finally, the fact that the City did not even request that the applicant submit a waiver is problematic. The City cannot force the applicant to do so, but here the City did not even ask the applicant to do so.

In 10 years of land use litigation, I have never experienced a local government so cavalierly violate this standard. It has both myself and my clients very concerned.

Thank you,

Sean Malone
 Attorney at Law
 259 E. 5th Ave, Ste 200-C
 Eugene OR 97401
seanmalone8@hotmail.com
 303-859-0403

From: Steven Rich <S.Rich@NewportOregon.gov>
Sent: Thursday, October 11, 2018 11:23:36 AM
To: 'Sean Malone'
Cc: Derrick Tokos
Subject: RE: Violation of ORS 227.178 (120-deadline) in File no. 1-GP-18

Mr. Malone:

The City appreciates your concerns. I discussed this matter with the Community Development Director just yesterday.

As you know, ORS 227.178(10) precludes the City from requiring applicants to waive the time period.

As you also know, ORS 227.179(5) provides in part: "The court shall issue a peremptory writ *unless* the governing body or intervenor shows that the approval would violate a substantive provision of the local comprehensive plan or land use regulation...The writ may specify conditions of approval that would otherwise be allowed..." The substantive rights of all the parties are adequately protected – even if the applicant should pursue the writ.

Thank you again for sharing your concerns.

Steven E. Rich

City Attorney
 169 SW Coast Highway

Newport, OR 97365
 541-574-0607
s.rich@newportoregon.gov



NOTICE OF CONFIDENTIAL COMMUNICATIONS: This email, including any attachment, may contain confidential and privileged communications protected by law under ORS 40.225 and by Attorney-Client privilege. If you receive this email in error, or are not the intended recipient, please notify the sender immediately and permanently delete the entire message without copying or disclosing the contents.

From: Sean Malone [<mailto:seanmalone8@hotmail.com>]
Sent: Wednesday, October 10, 2018 10:30 PM
To: Steven Rich <S.Rich@NewportOregon.gov>
Cc: Elaine Karnes <karnese@peak.org>; Mona Linstromberg <lindym@peak.org>
Subject: Violation of ORS 227.178 (120-deadline) in File no. 1-GP-18

Mr. Rich,

I represent several property owners opposing a geologic permit that is currently under appeal to the Planning Commission (file no. 1-GP-18). I attended the hearing before the Planning Commission on Monday (10/8/18). At the hearing, the planning director recommended leaving the record open for the routine 7-7-7 open record period, which is only typically requested by parties. I raised concerns that the City would not be able to render a final decision (including appeals) on the land use application in violation of ORS 227.178. The planning director did not appear to understand the gravity of failing to meet the deadline. I also advised that if the planning director was going to leave the record open for additional time, then a timeline waiver should be requested from the applicant. The Planning Director did not request that the applicant sign a timeline waiver. This puts the City in the position of knowing that the 120-day timeline will be violated and doing nothing to remedy the situation.

At this point, the City either needs to forego the 7-7-7 open record period or request that the applicant sign a timeline waiver. If not, the City will have failed in its obligation, violated ORS 227.178, and opened itself up to liability, including attorneys fees in the event the matter is taken up in circuit court on a writ of mandamus.

I look forward to your response and remedy to avoid violating ORS 227.178.

Thank you,

Sean Malone
 Attorney at Law
 259 E. 5th Ave, Ste 200-C
 Eugene OR 97401

seanmalone8@hotmail.com
303-859-0403

Sean T. Malone
Attorney at Law

259 E. Fifth Ave.,
 Suite 200-C
 Eugene, OR 97401

Tel. (303) 859-0403
 Fax (650) 471-7366
seanmalone8@hotmail.com

October 15, 2018

Via Hand Delivery

City of Newport
 Planning Commission
 169 SW Coast Hwy
 Newport OR 97365
 (541) 574-0629

Re: Post-Hearing Testimony in Support of Appeal of Geologic
 Permit (File No. 1-GP-18) (Lund) and in Opposition to the
 Application, Continued Hearing

On behalf of Mona Linstromberg, Elaine Karnes, Teresa Amen, and Robert Earle, please accept this testimony regarding the appeal of Geologic Permit, File No. 1-GP-18. For the following reason, the appeal should be granted and the application denied.

The problems with the report here are so basic and fundamental that the application cannot be approved. The criteria require that standard practices and particular guidelines be followed, and the applicant has not demonstrated that such criteria have been satisfied. Much of these issues were squarely raised in my 10.8.18 testimony.

Additional issues raised at the hearing include the following:

- The fact that the planning director unilaterally decided to leave the record open for the 7-7-7 period prejudices my clients' substantial rights because it ensures that City will not meet its obligations under ORS 227.178. Moreover, the County is not a party that is permitted to request the record be left open under statute. Again, this prejudices my clients' substantial rights. *See Attached Email Exchange.*
- The City will commit reversible error if it decides to defer compliance with the basic criteria to a condition of approval. At the hearing, the planning director indicated that a condition of approval could be included for additional boring holes. That position is simply wrong. Boring holes are

part of standard practices and if the local government entrusts those to a condition of approval, then the City will have precluded my clients and their experts from determining whether those new boring holes are in the correct location or whether they were performed correctly. In other words, the very issue the planning director proposed to leave to a condition of approval is the very substance of the appeal. Therefore, the applicant must demonstrate compliance with discretionary approval criteria now, not at a later time.

- Mr. Lund provided testimony about whether erosion had occurred or not. Mr. Lund has no expertise in this particular area, and it appears that Mr. Lund has been the sole source of "monitoring" thus far. If that is the case, then any monitoring of erosion that has occurred has been done by a layman and not an expert. Moreover, the April 14, 2016 (Page 4), geologic report from HG Schlicker and Associated, prepared by Mr. Gless indicates that erosion is occurring at the site:

“The site lies in an area mapped as undergoing critical erosion of marine terraces and sediments (Schlicker et al, 1973). Priest and others (1994) and Priest (1997) have determined the average annual erosion rate for the shoreline in the vicinity of the site as 1.35 +/- 0.63 feet per year.”

Thus, there is no expert support by the applicant to substantiate that no erosion is occurring in this area an unbiased expert referred to as suffering “critical erosion.”

- The applicant has repeatedly stated that more work needs to be done regarding the geologic report. If that is the case, then the application should have never been deemed complete. At this stage, if the applicant has not even completed its review, then the appellants are precluded from submitting a meaningful review of the geologic report. Again, the matter should be denied, and once the application has provided a *complete* or *final* report, then that application should move forward.
- Three reports indicate that active landslides exist on the subject property states that there is an existing and active landslide, including DOGAMI (the Oregon Department of Geology and Mineral Industries) in their O-04-09 report and the HazVu website (which acknowledges a “very high” landslide rating), the Columbia Geotechnical report (prepared by appellants’ expert, Ms. Wilmoth) and the 2016 HG Schlicker report (prepared by Mr. Gless). All three of these reports contain more weight than the statement in the applicant’s report that itself relies on an outdated and disowned report from

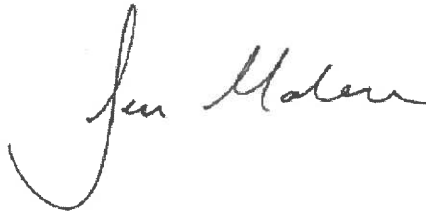
1991. Specifically, the applicant alleges cites to the 1991 report¹, alleging that it recommends:

- The old landslide area on the site is relatively stable, and
- A geotechnical investigation to confirm subsurface conditions.

June 29, 2018, K&A Report, Page 7. Thus, the applicant is relying upon a stale report and its own report that *did not rely on boring holes in the location of the dwellings* to support its proposition that the subject property is not in an active landslide area.

Again, these basic issues mean that not even the most basic information has been submitted, and as to the issue of whether the subject property is located on an active landslide, the applicant is relying upon stale data and irrelevant boring holes to the contrary findings of DOGAMI, an unbiased and uninvolved geologic report (2016 report), and appellants' report (Columbia Geotechnical). There is simply not enough to approve the geologic permit, as conceded by the applicant.

Sincerely,



Sean T. Malone

¹ Again, it is important to note that the Schlicker firm submitted an email indicating that it longer stands by the 1991 report and the 2016 report should be relied upon, which is exactly what appellants have done here. Moreover, the 1991 report is stale under the NMC, which provides that only reports that are less than 5-years old are prima facie evidence of what is therein contained. Here, the 1991 report that is relied upon by the applicant, is not such a report, and the 2016 report, which is relied upon by appellants, is such a report.

Attorney for Mona Linstromberg, Elaine Karnes, Teresa Amen, and Robert Earle


Cc:
Clients



City of Newport

Community Development Department

Memorandum

To: Planning Commission
 From: Derrick I. Tokos, AICP, Community Development Director 
 Date: October 15, 2018
 Re: File 1-GP-18-A, Bill Lund NW Spring Street Geologic Permit Application

I just have a few clarifying comments, largely with regards to testimony that Mr. Malone submitted into the record at the October 8, 2018 hearing. They are offered to assist you in rendering a decision on the appeal.

1. The Guidelines for Preparing Engineering Geologic Reports are not to be used as a checklist for the types of information that must be included in a report in order for it to be approved. This is pointed out explicitly on page 3 of the Guidelines, which states:

2. Report End Users and Reviewers

End users and reviewers of engineering geologic reports can use this guideline in their reading, review, and utilization of a particular report for their proposed project. However, this guideline is not intended as a "checklist" for the contents of any particular engineering geologic report. The actual scope of services and topics presented in a particular engineering geologic report will vary depending on the level of detail, accuracy, and complexity needed for the intended project. Each report should include sufficient data, analyses, and interpretation regarding geologic materials, structure, processes, and history to support conclusions regarding potential risks, considerations, and recommendations regarding the proposed activity, modification, or use of the site.

It is the certified engineering geologist's responsibility to identify the elements of the guidelines that are relevant to a particular site. Failure of the applicant to address a particular provision of the guidelines is not a proper basis for denial.

2. The reference in NMC 14.21.060 to a geologic report being valid as prima facie evidence of the information therein contained for a period of five (5) years is referring to the report an applicant is using to obtain approval of a geologic permit, not background studies that may be referenced in a more current geologic report. It is the K&A Engineering report that is before the Commission, not the 1991 H.G. Schlicker report. It is not uncommon for an engineering geologist to use older reports to supplement field observations, which is the case here.

3. Commissioner Hardy asked about the lack of borings where the specific foundations will be constructed. K&A Engineering, in their June 29, 2018 report, concluded that the site was suitable for the proposed development as required under NMC 14.21.050(D). That report referenced the borings they had undertaken up to that point in time. Exploratory excavations (i.e. borings) are not required under the Municipal Code; however, it is not a surprise that they were performed in this case given the historic landslide activity in the area. Borings are not always taken exactly where a foundation will be constructed. It is the engineering geologist who determines the location and number of borings based upon their technical expertise. In this case, K&A Engineering has indicated that it would be prudent for them to perform a few more borings to confirm their understanding of site specific conditions. If the Commission believes that a condition of approval to that effect should be imposed, it may do so.

4. Either NW Spring Street or the Jump-off Joe road right-of-way are of sufficient width to allow the proposed homes to be removed (ref: NMC 14.21.070(2)). The Commission can rely upon the applicant's site plan as establishing that to be the case.

The City's geologic hazards overlay is structured such that review and approval of a permit is almost entirely reliant upon the professional opinion of certified engineering geologists and geotechnical engineers. Appellant's hired Ruth Wilmoth to peer review K&A Engineering's work, and she pointed out areas that, in her opinion, warrant additional analysis. It is relevant to note that Ms. Wilmoth did not identify that the property is not suitable for the proposed development. K&A Engineering responded to the peer review, indicating that they do not agree with a number of Ms. Wilmoth's arguments and shared their reasoning as to why that is the case. The Planning Commission will need to determine which set of professional testimony they find compelling. If the Commission concurs with K&A Engineering, then the application must be approved. On the other hand, if there are points that Ms. Wilmoth made that the Commission believes have not been adequately addressed, then the question turns to whether or not they can be reasonably addressed as conditions of approval. If the answer is yes, then the application must be approved, and if the answer is no then the application must be denied.



Derrick Tokos

From: Elaine Karnes <karnese@peak.org>
Sent: Monday, October 15, 2018 9:50 AM
To: Derrick Tokos
Cc: Sean Malone; Mona Linstromberg; Phillip Johnson, Oregon Shores/CoastWatch; Rob & Teresa; Chris
Subject: Appeal 1-GP-18 Karnes October 15, 2018
Attachments: Testimony Appeal 1-GP-18 Karnes.rtf; #1.pdf; #2.pdf; #3.PDF; #4.pdf; #5.pdf; #6.pdf; #7.pdf; #8.jpg; #9.pdf; #10.pdf; #11.pdf

Please enter the attached testimony and evidence (#1-11) in the record and acknowledge receipt.

Thank you, Elaine Karnes

PUBLIC SAFETY DEPARTMENT

CITY OF NEWPORT OREGON PERMIT

INSPECTIONS DIVISION

FOR OFFICE USE ONLY

Permit 007730 X

Land Zone R-2 Type of Building IV Residence No. Families Occ. Cert. No. Motel Occupancy Group R-3 Apartment Sprinkler System or Fire Walls Required

Permit To Repair Dwg Address 1245 NW Spring Tax Lot 3700 Map 11-11-5 BC Lot 5 Block 34 Addition Ocean View

BUILDING PERMIT

Application is made to Erect Alter Repair Relocate Demolish Reroof Building Structure Residence Fill Excavation Construction Demolition Entire work when completed will cost, including labor and materials: \$ 2,500 Fee \$ 38.50

EXCAVATION & FILL

Excavation Cubic yds. Fill Cubic yds. Fee \$

MISCELLANEOUS PERMITS

Sewer Curb Cut Temporary Structures Street Opening Sign Temporary Sign Other 5% STATE \$ 1.93 Plan Review Fee \$ TOTAL FEES \$ 40.43

Owner Ivan Sundstrom Address 1409 NW Spring Phone 5-9653 Builder Same Address Exp. Date Architect Lynn McKibben Address Phone Geologist Address Phone

DESCRIPTION OF WORK Replace West 12 ft of foundation with Engineered foundation & footing 8/3/88 OK'd footing (Glee) 8/4/88 OK'd found. (Glee)

ONLY WORK DESCRIBED ABOVE INCLUDED IN PERMIT

I agree to build according to above description, plans and specifications and the Ordinances and Codes of the City of Newport.

Variance No. Date Applicant Ivan Sundstrom

Table with 3 columns: APPLICATION RECEIVED, PLANS CHECKED BY PLAN EXAMINER, PERMIT ISSUED. Includes signatures and dates for each stage.

Final Date

CITY OF NEWPORT

No 174

BUILDING PERMIT APPLICATION

Date 3 23 61

614 NW 12th

Street Address 225 NW Cove st. Lot 1 Blk. 34 Add Ocean View

Occupancy Res Type - 5- Build Zone Res Fire Zone - 3 -

Owner Ernie White Address 1606 N Coast Hwy

Contractor Self Address same as above

Plans furnished Engineer Architect Other Explain None

Erect Remodel Repair Move Demolish Other Describe

Comments On Hanger house Damage by sliding of earth. Living and dining area removed from original plat. Rearrange Garage to 2 Bedrooms

The undersigned hereby agrees to execute the foregoing described work in conformity with the plans and specifications herewith submitted and to adhere to the requirements as set forth in the Uniform Building Code and existing supplements thereto as adopted by The City of Newport.

Referral none

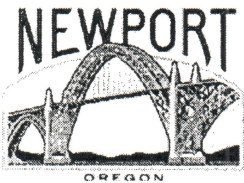
Dept. approval City Dept.

Signed Ernest C. Parker

Signed A. S. Ransing

Date 3/29/61

VALUATION 1500.00 FEE 9.00



City of Newport
 169 SW Coast Hwy
 Newport, OR 97365
 541-574-0629
 Fax: 541-574-0644

Building Permit

Residential Structural

Permit Number: 625-17-000490-STR

IVR Number: 625047946828

Web Address: www.newportoregon.gov

Email Address: permits@newportoregon.gov

Permit Issued: August 01, 2017

TYPE OF WORK

Category of Construction: Other

Type of Work: Other

Submitted Job Value: \$28,608.00

Description of Work: Repair to exiting foundation

JOB SITE INFORMATION

Worksite address

1409 NW SPRING ST
 Newport, OR

Parcel

11-11-05-BC-01802-00

Owner:

POSEIDON REALTY
 TRUST &

Address:

COCHRAN IRENE
 TRUSTEE
 APALACHICOLA, FL
 32329

LICENSED PROFESSIONAL INFORMATION

Business name

KEM LLC

License

CCB

License number

146906

Phone

541-688-7177

SCHEDULING INSPECTIONS

Various inspections are minimally required on each project and often dependent on the scope of work. Contact the issuing jurisdiction indicated on the permit to determine required inspections for this project.

Schedule or track inspections at www.buildingpermits.oregon.gov

Schedule by phone call 1-888-299-2821 use IVR number: 625047946828

Schedule using the Oregon ePermitting Inspection App, search "epermitting" in the app store

PERMIT FEES

Fee Description	Quantity	Fee Amount
Structural building permit fee		\$245.05
Structural plan review fee		\$159.28
State of Oregon Surcharge - Bldg (12% of applicable fees)		\$29.41
Total Fees:		\$433.74

Permits must be posted in clear view on the worksite. Permits expire if work is not started within 180 Days of issuance or if work is suspended for 180 Days or longer depending on the issuing agency's policy.

All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

ATTENTION - CALL BEFORE YOU DIG: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the Center at (877) 668-4001 or dial 811.

All persons or entities performing work under this permit are required to be licensed unless exempted by ORS 701.010 (Structural/Mechanical), ORS 479.540 (Electrical), and ORS 693.010-020 (Plumbing).

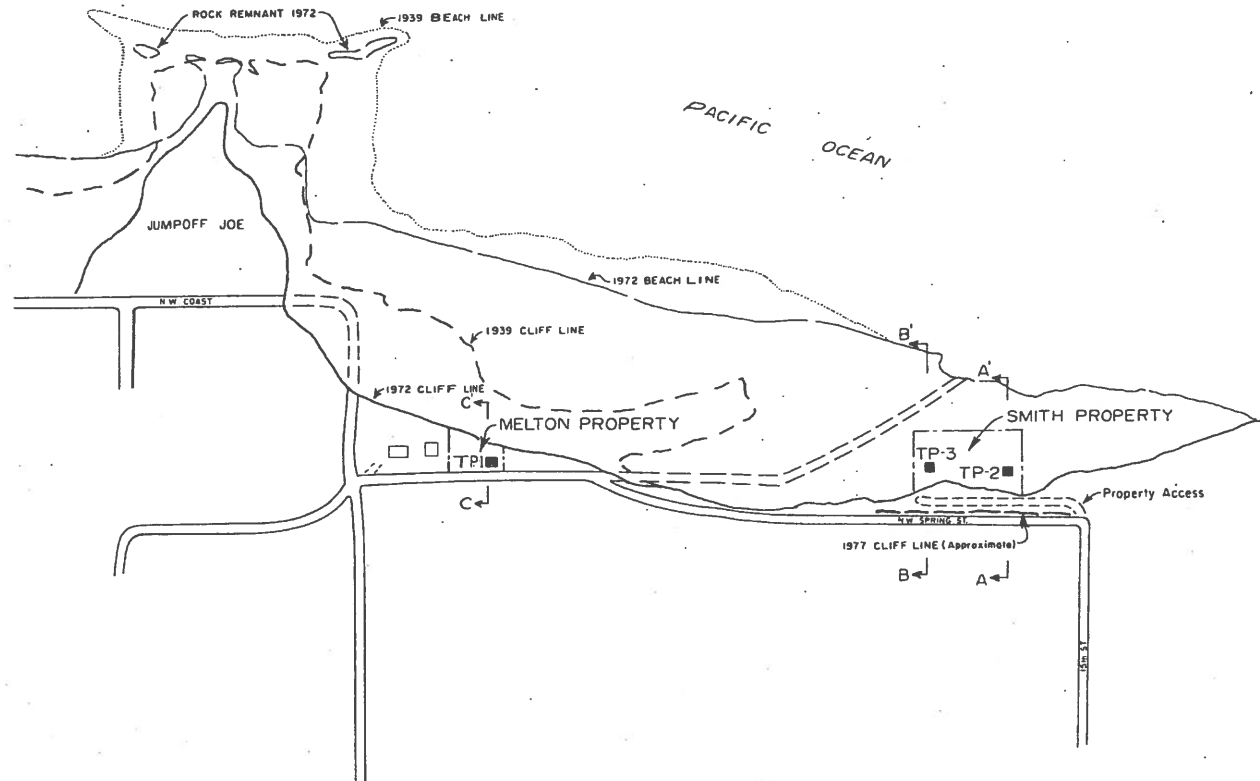




LEGEND

- TP-3 Test pits made as part of the investigation on April 18, 1977
- C C' Cross Sections, refer, Figure 3

NOTE:
This drawing is made for illustrative and locational purposes only. Particular dimensions may vary from actual survey.



SCALE: NONE

MELTON & SMITH
PROPERTIES
NEWPORT, OREGON

JUMP-OFF JOE
BEACH EROSION
1939-1972

MAY, 1977 S-334
L.R. SOQUIER INC. CONSULTING ENGINEERS
SOIL MECHANICS & FOUNDATION ENGINEERS

Tax Lot 1802

6-18-81

View to south of new construction on
14th and Spring St.
Newport, Oregon

125 ft. of rock fill put in between
Oct. 1980 and May 1981 -to stabilize the
road.

(note pilings lower right)

Oregon

RECEIVED JUN 18 1993

DEPARTMENT OF
LAND
CONSERVATION
AND
DEVELOPMENT

NEWPORT
FIELD OFFICE

June 18, 1993

Michael A. Shoberg, City Planner
City of Newport
810 SW Alder
Newport, OR 97365

Dear Mike,

"Notice of Intent to Build in a Geologic Hazard Area" was posted on Lots 1, 2, 3, 4, and 5 of block 37 on N.W. Spring Street in Newport. Pursuant to Section 2-4-7.035 of the City of Newport Zoning Ordinance, the Department of Land Conservation and Development wishes to appeal the issuance of a geologic permit on this site. We are of the opinion that the applicant's geologic report does not adequately evaluate the cause, extent, and potential hazards on the site.

To cover the appeal fee, a purchase order in the amount of \$150.00 will be sent under separate cover.

Sincerely,



John J. Marra,
Field Representative

JM/jm
<smith.appl>

cc Appeals Committee, DLCD
Eldon Hout, DLCD
Emily Toby, DLCD

Barbara Roberts
Governor



313 SW 2nd, Suite B
Newport, OR 97365
(503) 265-8869

CITY OF NEWPORT
169 SW COAST HWY
NEWPORT, OREGON 97365



phone: 541.574.0629

fax: 541.574.0644

<http://newportoregon.gov>

COAST GUARD CITY, USA

mombetsu, japan, sister city

HAND DELIVERED

November 7, 2017

William Lund
Central Coast Ent, LLC
PO Box 22
Seal Rock, OR 97376

RE: Site Grading at Anderson Property, NW Spring St (Tax Lots 1900 & 1903, 11-11-05-BC)

Dear Mr. Lund,

As you are aware, the subject property has been identified by the City of Newport as a known geologic hazards area. Earthwork is generally prohibited unless it is being performed in accordance with a city approved geologic report, prepared by a registered engineering geologist. This is necessary to protect public safety, and to minimize public and private loss attributed to earth movement.

A limited exception exists for exploratory excavations under the direction of a registered engineering geologist or geotechnical engineer. This is the provision you have been operating under since site work started on October 31, 2017.

On November 1st, our office received a letter from Michael Remboldt, P.E., G.E. with K&A Engineering, Inc. (K&A) indicating that due to the uneven terrain of the site and heavy vegetation, a temporary access route was needed to reach the proposed test locations. A map identifying the location of the test sites was attached to the letter. City staff observed that site work undertaken as of that date was consistent with the direction outlined in the K&A letter.

Additional site work has been performed since the K&A letter was issued, on the 4th and 5th of November. This includes a further extension of the temporary access to the northwest and the clearing of vegetation. The work occurred in an area that was not identified by K&A as a candidate for testing, and in talking with Mr. Remboldt on November 6th, I learned that he was unaware that additional earthwork was being performed.

At this time it appears that work is occurring that it outside the scope of what the geotechnical engineer identified as necessary in order for them to complete their test borings. **No further site work is to occur without advance, written direction from the geotechnical engineer or engineering geologist. This includes grading, placement of fill material (including gravel/rock), and the clearing of vegetation.** Copies of such correspondence shall be provided to the City of Newport Community Development Department.

The November 1st letter from K&A indicates that after they have completed their testing, they will recommend additional work be performed to the temporary access, and presumably other locations where site work has been conducted, to ensure the long term stability of the site. They note that this may include additional grading to facilitate proper drainage and mulching/seeding to minimize erosion. The implementation of these recommendations is covered under the limited exemption that allows an exploratory excavation to inform the preparation of a geologic report. They are; therefore, mandatory. The recommendations need to be provided in writing, along with a schedule for when the stabilization work is to be performed.

Sincerely,



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

xc: Michael Remboldt, P.E., G.E.
Victor Mettle, Planner
Tim Gross, City Engineer
Lonna Anderson (owner)

CITY OF NEWPORT
 169 SW COAST HWY
 NEWPORT, OREGON 97365
 COAST GUARD CITY, USA



phone: 541.574.0629
 fax: 541.574.0644
<http://newportoregon.gov>
 mombetsu, japan, sister city

December 21, 2017

William Lund
 Central Coast Ent, LLC
 PO Box 22
 Seal Rock, OR 97376

RE: Earthwork Performed at NW Spring Street Properties (Tax Lots 1900 & 1903, 11-11-05-BC)

Dear Mr. Lund,

It has now been more than a month since you received the November 17, 2017 letter from Michael Remboldt, P.E., G.E., with K&A Engineering, Inc., outlining the steps that need to be taken to stabilize areas where earthwork was performed in advance of the geotechnical drilling. On at least two different occasions, you or persons working on your behalf, have performed additional site grading, namely in the vicinity of Drill Pad No. 1 and the temporary drill rig access, in a manner that is inconsistent with Mr. Remboldt's recommendations and those recommendations remain unaddressed.

We are now into the winter months when weather on the coast is more severe, and are concerned that surface erosion attributed to storm run-off could compromise exposed embankment slopes and scour other cleared areas in a manner that could adversely impact site stability. The exemption to the City's geologic permitting requirements for exploratory excavations performed at the direction of an engineering geologist or geotechnical engineer, which you have exercised, requires that you implement their recommendations, including those relates to site stabilization as outlined in the November 17, 2017 letter. You have until **5:00 PM, on Thursday, January 4, 2018** to carry out the recommendations and submit to the city a letter from Mr. Remboldt, or another engineering geologist or geotechnical engineer of your choice, indicating that they observed the work and concur that the stabilization measures identified in the November 17, 2017 letter have been fully implemented.

If this deadline is not met then we will have no choice but to conclude that you are not working in good faith to implement the geotechnical engineer's recommendations and that the earthwork performed violates the City's geologic permitting code (NMC 14.21.030). This will result in the City issuing a citation and municipal court summons, with a civil penalty of up to \$500.00 each day after January 4, 2018 that this code violation remains unresolved.

Sincerely,

A handwritten signature in black ink, appearing to read "Derrick I. Tokos".

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

xc: Michael Remboldt, P.E., G.E.
 Victor Mettle, Planner
 Tim Gross, City Engineer

CITY OF NEWPORT
 169 SW COAST HWY
 NEWPORT, OREGON 97365
 COAST GUARD CITY, USA



phone: 541.574.0629
 fax: 541.574.0644
<http://newportoregon.gov>
 mombetsu, japan, sister city

January 8, 2018

Bill Lund
 P.O. Box 22
 Seal Rock, OR 97376

RE: Earthwork Performed at NW Spring Street Properties (Tax Lots 1900 & 1903, 11-11-05-BC)

Dear Mr. Lund,

On January 3, 2018 you received an email from Michael Remboldt, P.E., G.E. containing the attached "Quality Assurance Inspection Report." That report, dated January 2nd, contains findings from his firm's inspection of the above referenced property. The inspection was performed for the purpose of confirming that the erosion control measures outlined in their December 28, 2017 letter were properly installed.

Mr. Remboldt indicates that the recommended erosion control measures, which include the placement of an erosion control blanket on the exposed drill access fill embankment, installation of straw wattles, and the construction of a drainage dip, were not completed in accordance with the specifications included with their letter. Consequently, they have concluded that the erosion control measures, as currently installed, will function as intended for a much shorter period of time than they would have had they been properly placed (i.e. not more than 2-weeks). Mr. Remboldt goes on to outline additional work required to ensure that the erosion control measures function as intended.

The erosion control recommendations in Mr. Remboldt's December 28th letter amended those contained in his November 17th letter, which you were to have implemented by January 4th. They came about as a result of a December 22nd field visit where he observed significant surface erosion on the over-steepened fill embankment adjacent to the temporary drill access road and at the north end of the temporary road. He indicated that further site grading to achieve a 2:1 embankment slope, now that we are into the winter months, could lead to accelerated surface erosion and potentially compromise site stability. We accepted his recommendations on the premise that the erosion control measures identified in the December 28th letter would be properly installed and the site stabilized for the winter.

You have two weeks from the date Mr. Remboldt authored his January 2nd letter to carry out the corrective measures identified in the document (i.e. **5:00 PM, on Tuesday January 16, 2018**). K&A Engineering is to be notified of the date and time that the additional work is to be completed so that they can be on-site to make recommendations. They are also to provide a follow-up memo confirming that their recommendations were fully implemented. Your failure to meet this deadline will result in a citation and municipal court summons with a civil penalty of up to \$500 each day after January 16th that the recommendations remain unaddressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Derrick I. Tokos".

Derrick I. Tokos, AICP
 Community Development Director

xc: Michael Remboldt, Victor Mettle, Tim Gross

K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM



January 2, 2018

Project: 17056

Bill Lund
P. O. Box 22
Seal Rock, OR 97376

Subject: Quality Assurance Inspection Report
Erosion Control for Temporary Drill Access Road
Tax Lots 1900 and 1903, Tax Map 11-11-05-BC
NW Spring Street, Newport, Oregon

PURPOSE AND SCOPE

As requested, we have made a quality assurance inspection of recent construction of erosion control measures for the temporary drill access. We made recommendations for erosion control in our Erosion Control Supplemental Recommendations, dated December 28, 2017.

The purpose of our inspection was to check for compliance with our recommendations and to determine if further work was required to meet the intent of our December 28, 2017 recommendations.

The scope of our services has included recommendations for erosion control, on-site quality assurance inspection, and this report.

CONSTRUCTION OBSERVATIONS

FILL-EMBANKMENT EROSION CONTROL BLANKET

Thirteen (estimated) woven coconut twine blankets were placed on the west-facing side of the steep fill embankment on the south side of the temporary drill access road. Four rolls were placed in the north-south direction, parallel to the temporary access road. The remaining rolls were placed perpendicular to the temporary access road as per our original recommendations.

The blankets were secured at the top using 5 to 9-in cobbles placed every 1 to 1.5-ft (approx.). The blankets were secured at the bottom using coir wattles staked through the center using 0.75" x 1.5" stakes spaced every 3 to 4-ft. See Figure 1.

The erosion control blanket, as-constructed, differs from our recommendations as follows:

- There is no 6" overlap between blankets but instead were "stitched" together with 6-in staples,
- The blankets are were not placed longitudinally downhill, leaving several horizontal seams which could likely be opened during storm events,
- The blanket is anchored using scattered cobbles rather than embedded in a key trench as specified.



Figure 1. Erosion control blanket used in construction (orange lines indicate seam locations).

WATTLE CONSTRUCTION

Observations

Three rows of 15-ft long straw wattle were placed on the north (unpaved) section of the temporary drill access. An additional 7-ft long wattle was placed west of the three longer sections. The wattle material used complies our recommendations.

Each wattle was staked on both sides (as opposed to through the center) using 0.75" x 1.5" wooden stakes spaced approximately 4 to 5-ft O.C.

As-built wattle construction differs from our recommendations as follows:

- The wattles are placed on the ground surface, not 4" below the ground surface.
- Staking is at each side of the wattle, not through.

See Figure 2.

DRAIN DIP

A drain dip has not been constructed as of the date of our inspection. We noticed a significant amount of water ponding near where the gravel and crushed rock terminates.



Figure 2. Wattle Construction - slope must be regraded smooth with 2 to 4-percent gradient downslope.

SUMMARY AND RECOMMENDATIONS

ADDITIONAL REQUIRED WORK

Additional work should be completed to render the system to function as intended. This additional work includes:

- Placement of a 2nd layer of erosion control mesh on the fill embankment, over the mesh already in place. The additional layer should be placed as shown on the detail provided in our December 28, 2017 recommendations. The mat should be oriented downhill, with 6-inch minimum overlaps at the edges.
- Anchoring the erosion mat using by embedding the 2nd layer of mat in a key trench as shown on the detail provided in our December 28, 2017 recommendations.
- Construction of the drain dip as specified in our December 28, 2017 recommendations. The dip does not need to be more than 1-foot deep x 3-feet wide but should be graded at an angle to intercept surface runoff from the graveled section of the temporary access and route it to the native vegetated slope west of the access.
- Seat the wattling in the unpaved north section of the access at least 4-inches below the existing grade as shown on the detail provided in our December 28, 2017 recommendations.
- Stake wattling using stakes through the wattling, as specified in our December 28, 2017 recommendations

QA Inspection Report – Temporary Drill Access Road Erosion Control
NW Spring Street, Newport, Oregon
January 2, 2018 · K & A Engineering, Inc. · Project No.: 17056



TIME FRAME FOR ADDITIONAL WORK

The erosion control measures, as currently installed, will function as intended for a short period of time (approximately 2-weeks) and we recommend that the additional work be completed with 2-weeks of the date of this report.

K & A Engineering, Inc. should be notified of the date and time that the additional work is to be completed so that we can be on-site during work to make on-site recommendations.

Thank you for the opportunity to be of service. Please do not hesitate to call if you have any questions.

Sincerely,

Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.
Cc: Derrick Tokos, City of Newport



EXPIRES: DECEMBER 31, 2018



Derrick Tokos

From: Elaine Karnes <karnese@peak.org>
Sent: Saturday, October 13, 2018 5:09 PM
To: Derrick Tokos
Cc: Sean Malone; karnese@peak.org
Subject: Spring St comment 1-GP-18-A open period 1 (attachment)
Attachments: county_road_500_jump_off_joe_full_report.pdf

Derrick, please enter in the record. Please also acknowledge receipt to Elaine Karnes karnese@peak.org

My computer would not accommodate the entire 39 pages of the first attachment. Elaine will try to put the full report into the record.

Regards, Mona Linstromberg

The attached document is to be entered in the record for Mona Linstromberg.



COUNTY OF LINCOLN

Lincoln County Surveyor's
Office
Eathan D. Nicley - PLS CWRE
Deputy County Surveyor

880 NE 7th
Newport, Oregon 97365
(541) 265-4147

Investigation of the Status of Jump Off Joe Road

AKA County Road 500

Prepared December 2017 – February 2018

The following documents in chronological order the findings from research by the Lincoln County Surveyors Office into Jump Off Joe County Road (County Road 500). This research was requested by the Lincoln County Public Works Director and by County Counsel. A primary focus was the legal status of the portion of the road which "jumped off" to the Beach through Blocks 34, 37 and 48, Plat of Ocean View. The interest was roused by some land clearing in Block 37, which raises the question of whether a public right of way still exists through that block.

1866 – GLO Survey of T11S, R11W - G Mercer – Contract # 117. Includes Yaquina Bay and future Newport.

1872 – Lighthouse Built on Cape Fowlweather (now known as Yaquina Head).

1877 – GLO Survey of T10S, R11W – James A. Warner. Note: Light House Reserve is Called Cape Fowlweather at this time - not Yaquina Head.

August 26, 1893 Road records pigeon hole. Petition by Edward Stocker and Joseph Watson for a County Road. This road begins at the intersection of Coast and Boundary Streets in Newport and thence North following the course of the "present traveled road in a N.E. direction". **Note: It is not clear if this petition was granted and a road opened. this is just a time frame to pursue.**

1899 Road Record Commissioner's Court No. 1, Page 326-329. Also CCJ 2, P 161, 162, 186.

This record mentions the existing road from Newport to Cape Fowlweather and on to Sijota Creek near Siletz Bay. It declares the road open. Below is an excerpt from this record.

"Commencing at a point where the road from Newport to Cape Fowlweather crosses the North Boundary of the City of Newport and running **thence northward along the beach (or as near to a the viewers may decide) . . .** and as near the road and horse trail now existing as the nature of the ground and distance makes advisable".

The above matter is immediately followed by discussion of a Petition for a County Road beginning at the North Line of Newport and running Northerly to end in the vicinity Sijota Creek near Siletz Bay. The starting point is not clear being the North line of Newport and the center of "the County Road". When I plotted the calls from the survey by Z. M. Derrick, it appears that it likely started at the intersection of Coast and Boundary Streets and went overland to Big Creek then up the beach to Lucky Gap. **CCJ 2, Page 186, Orders this road Newport to Siletz Bay Road opened February 1899.**

J:\surveyor\PROJ\ECTS\500 Oceanview Newport\Jump Off Joe Report Title Page v2.docx

OUR GUARANTEE

"Provide friendly, efficient, land records information and interpretation for the people of Lincoln County."



COUNTY OF LINCOLN

Lincoln County Surveyor's
Office
Eathan D. Nicley - PLS CWRE
Deputy County Surveyor

880 NE 7th
Newport, Oregon 97365
(541) 265-4147

The 1906 **Nye Creek and Divide Road** CCJ 3, Page 333, orders the viewers and County Surveyor to meet "the foot of Coast Street" Nye and Thompson's Addition. In 1906 the North line of the City Limits was Pacific Street AKA Boundary Street now known as NW 8th Street. Coast and Boundary streets match the Southerly end of Jump Off Joe Road in several records. CCJ 3, Page 342, makes reference to a Road Viewer's Report and directs that the survey notes, profile, and plat of the road to be recorded. These records were not found. A sixty foot wide road is ordered opened.

1928 CCJ 8 P 528 and 558 Order to resurvey Jump Off Joe and bids to make improvements. I also find that special tax funds were ear marked for improvements to "Jump Off Joe" Road for surrounding years.

1931 May 9 CCJ 10, Page 477, 518.

Matter of Vacating the "Old Newport and Siletz Road".

1931 McMillian Map shows Jump Off Joe road runs to the Beach through blocks 34, 37 and 48, Ocean View.

1930's to 1940's

There is evidence that the portion of Jump Off Joe through Blocks 34, 37 and 48, Ocean View Addition was considered to be a County Road during the 1930's and 1940's. Notably, we find surveyor field notes, the 1931 McMillan map, and **CCJ 23, Page 131**, which refers to the portion of "Jump Off Joe County Road as laid out and established". Said CCJ 23 describes the portion of Jump Off Joe through Block 34 to be vacated. A physical road is quite visible on the old 1939 aerial photo.

At the time of the name change from Jump Off Joe to Ocean Drive (**CCJ 23, Page 300**, dated April 18, 1950), the spur portion down to the beach had already been isolated from the rest of the road by the vacation of the portion in Block 34. One could argue that the name of the isolated portion was not changed. This becomes significant in 1959 when the County transfers jurisdiction of "Ocean View Drive" to the City of Newport.

Conclusion: Though the creation is sketchy, it appears that a County Road existed. Even in 1899 a preexisting road from Newport to Cape Fowlweather (Yaquina Head) was mentioned, and was described as a route that utilized the beach where possible. In the late 1880s the rock formation known as Jump Off Joe would have been an obstacle to beach travel necessitating a localized overland route. This road may have been created even before Lincoln County was formed as a practical route to the Light House. Per the 1931 McMillian Map, Jump Off Joe Road went to the beach through Blocks 34, 37 and 48. The portion through Block 34 has been vacated. No documentation was found vacating or transferring jurisdiction to the City for the portion through Blocks 37 and 48, Plat of Ocean View.



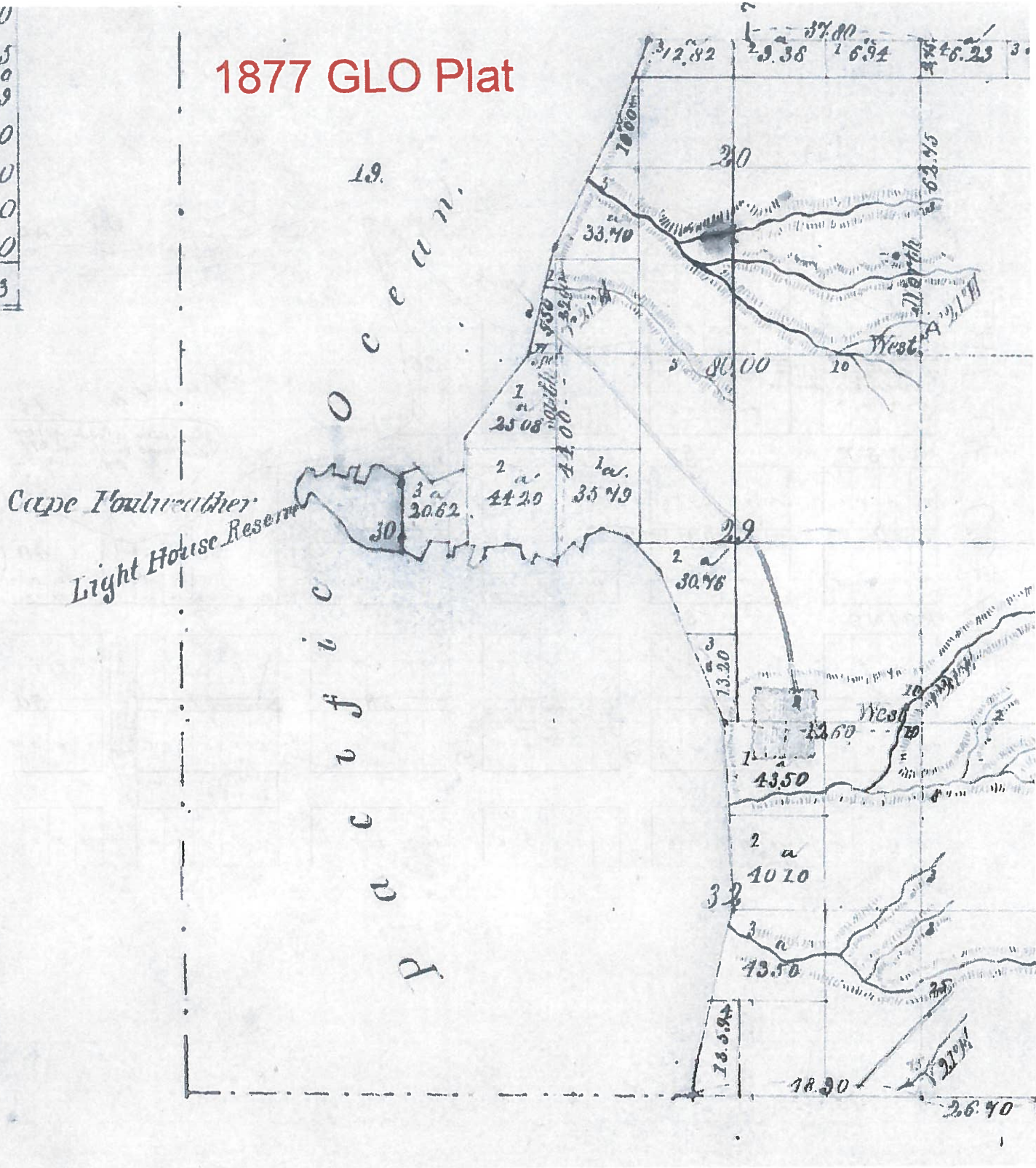
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OUR GUARANTEE

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and interpretation for the people of Lincoln County."**

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8676.73

1877 GLO Plat

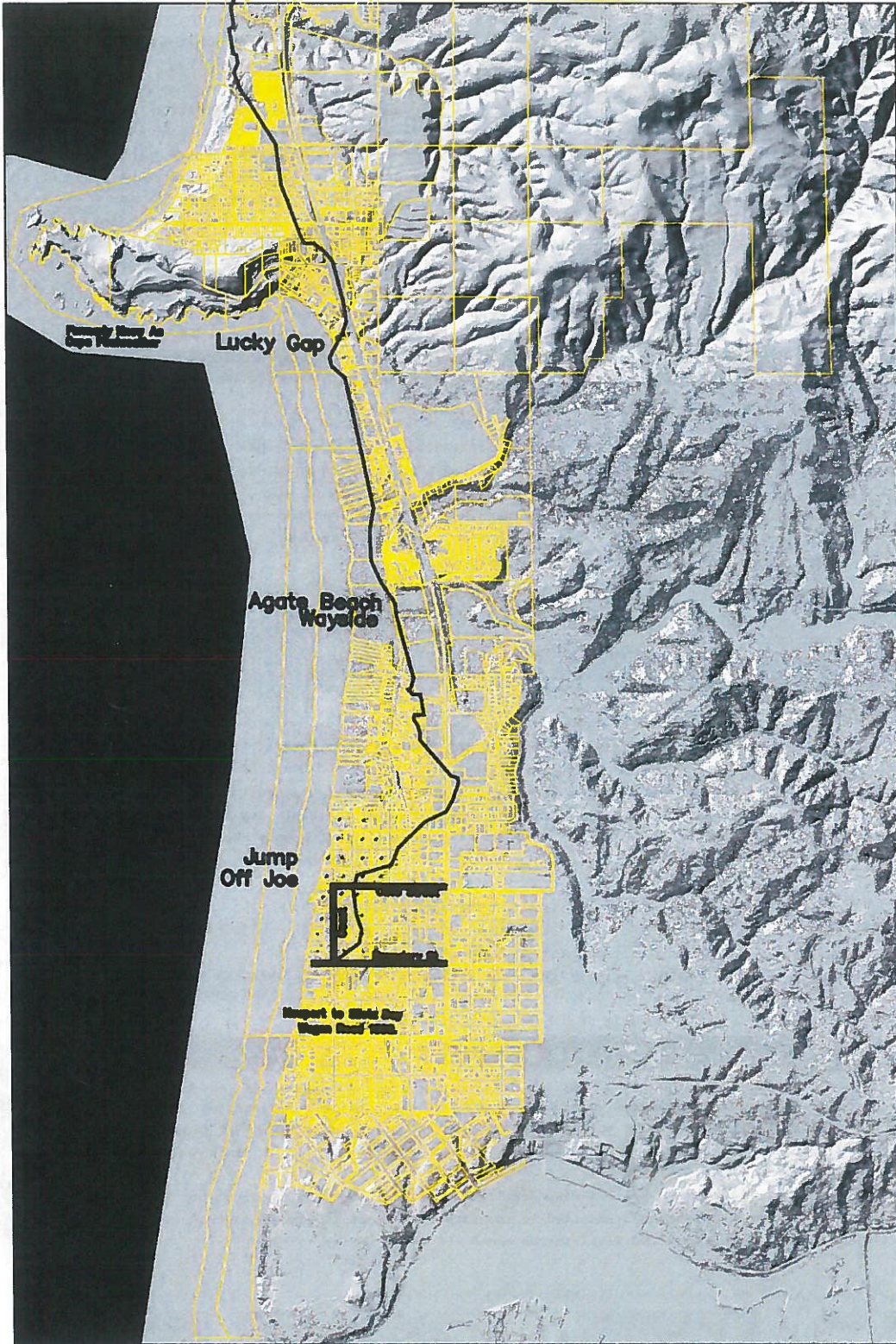


PLAT OF OCEAN VIEW



1884

1899



NEWPORT TO
SILETZ BAY RD.

in the matter of the petition of Walter Whitten Et-al for the location of a county road to be known as Nye Creek and the Divide road

At this time came on for consideration the petition of Walter Whitten Et-al praying for the location of a county road to be known as the "Nye Creek and Divide Road," and it duly appearing to the court that said petition is signed by at least twelve free holders of the county residing in the vicinity of said proposed road, which said petition specifies the place of beginning, the intermediate points and the place of termination of said road; and it further appearing from the affidavit of R. W. Faulkner, one of the signers of said petition, that due proof of notice has been given by advertisement, posted at the place of holding county court, and also at three public places in the vicinity of said road or proposed road, thirty days prior to the first day of this term of this court and to the presentation of said petition to this court, notifying all persons concerned that that application would be made to said County Court at their next session for laying out out said proposed road, and the court being fully advised in the premises, it is ordered decreed and adjudged that the board of County Road Viewers be and they are hereby instructed to proceed to lay out said road, as in said petition prayed for: And it is further ordered that Frank Preist and Walter Whitten be and they are hereby appointed Viewers in said road matter, who with the County Surveyor shall constitute said Board of County Road Viewers.

And it is further ordered that said Board of County Road Viewers proceed to lay out and establish said proposed road, and meet on the 16th day of April 1906 at the place of beginning of said proposed road at foot of Coast Street, Nye & Thompson's Add. to Newport Oregon, or on their failure to meet at the place of beginning of said road at the foot of said Coast Street, then they shall meet within five days thereafter for said purpose, and after surveying and locating said proposed road as by law provided, they make due and regular report, in all things by law required, to this court.

C. M. Brown, County Judge
George King, County Commissioner
F. A. Thompson, County Commissioner

In the matter of the petition of E. D. Earnest Et-al To have the polling place changed to the School House In District No. 37, known as the P.M. Seits School House

At this time came on for consideration the petition of E. D. Earnest Et-al praying for an order of this court to change the polling place in Five Rivers' Precinct and the Court being fully advised in the premises, It is ordered by the Court that the polling place in said Five Rivers' Precinct, be and the same is hereby changed to said P. M. Seits School House in said School District No. 37 from and after the 21st. day of April 1906.

George King, County Commissioner
F. A. Thompson, County Commissioner

Whereupon Court adjourned until Friday Morning at 9 O'Clock A. M. Friday Morning April 6th 1906, 9 o'clock A. M. Court met pursuant to adjournment, present Commissioner's King and Thompson, Absent Judge Brown.

Whereupon on this Friday April 6th 1906, the following proceedings were had to-wit

In the matter of the void sale of a part of Lot One in Block One Nye and Thomson's Addition to Newport, Oregon.

At this time came on for consideration the petition of James Beach praying for an order of this Court declaring void certain sales of the hereinafter described property for alleged delinquent taxes thereon for the year 1895, when as a matter of fact the taxes on said property had been fully paid and never became delinquent and it duly appearing to the Court therefrom:

That the taxes on the following described premises, to-wit:- beginning at the S. E. corner of Nye and Thompson's Addition to the City of Newport in Lincoln County, Oregon, and running thence west 200 feet: thence north 100 feet: thence east 200 feet:

NEWPORT TO
SULLY BAY RD

CCS-3 342

In the matter of the petition of Walter Whitten, Et-al
For the location of a county road to be known as Nye
Creek and Divide Road.

At this time came on for consideration the reports of the County Surveyor
and the Board of County Road Viewers in regard to the above entitled matter and it
duly appearing to the court therefrom that the said Board of County Road Viewers
met at the initial point of said proposed County road and on the 15th. day of April
1906. after taking an oath to faithfully and impartially discharge the duties of their
appointment took to their assistance Ray Chambers and R. G. Wygant as chain bearers
and Bert King and Roy Hendry as markers and proceeded to view, survey and lay out
said road as prayed for in the petition in said matter filed herein starting at the
initial point asked for in said petition and following the most practical route,
which in their opinion a good road could be made at a reasonable expense, taking
into consideration that utility convenience and inconvenience and expense which
might result to individuals as well as to the public, if such road should be
established and opened.

And after surveying, viewing and laying out said proposed road as by law required,
and having been found practicable, the Surveyor deposited with the County
clerk a complete set of field notes, showing the ties to the Government corners
along the route, the location and witness to the Mile posts and the beginning and
terminating points of the road which plat shows all the courses the location of all
the Mile posts the ties to the Government corners where obtainable the location
and approximate size of all Creeks, Rivers, Swamps, Outlets, and Fills.
He also deposited with the County Clerk a profile showing the Grades and their per-
cent, the location of all Watercourses Rivers Swamps, and other natural features
that were important, and all other matter as by Law provided. He also filed a report
with said Clerk, giving the estimated costs of the construction of said proposed
Road, which said set field notes, plat and report are hereby referred to and made
a part of this order

The other Members of said board also made a report, in writing and filed the same
with said County Clerk, stating their opinion in favor of said proposed road and
set forth their reasons for the same which report is hereby referred to and made
a part of this order.

And said Reports having been publicly read on two separate days of the present
term of this Court, also no remonstrance against the establishment of said proposed
Road has been filed hereto and no petition for damages having been presented to this
Court or filed with the Clerk thereof the Court is satisfied that such Road will
be of Public utility, the said reports of the viewers being favorable thereto.
And it further appears to the Court that said Board of County Road viewers
found that no property owners through whose land said Road would run will be
damaged by reason thereof. But that the establishment of said proposed Road will
be a benefit and add to the value of said land. The Court being fully advised in
the Premises and having carefully examined into said matters and reports, it is
ordered by the Court that said Survey, Profile, and Plat be recorded in suitable
Books kept for that purpose. And it is further ordered that said Road be and the
same is hereby declared to be a public highway of Sixty Feet in width and following
the route as described and set forth in said Plat and profile and it is further
ordered that said Road be opened in manner and form as by Law provided.

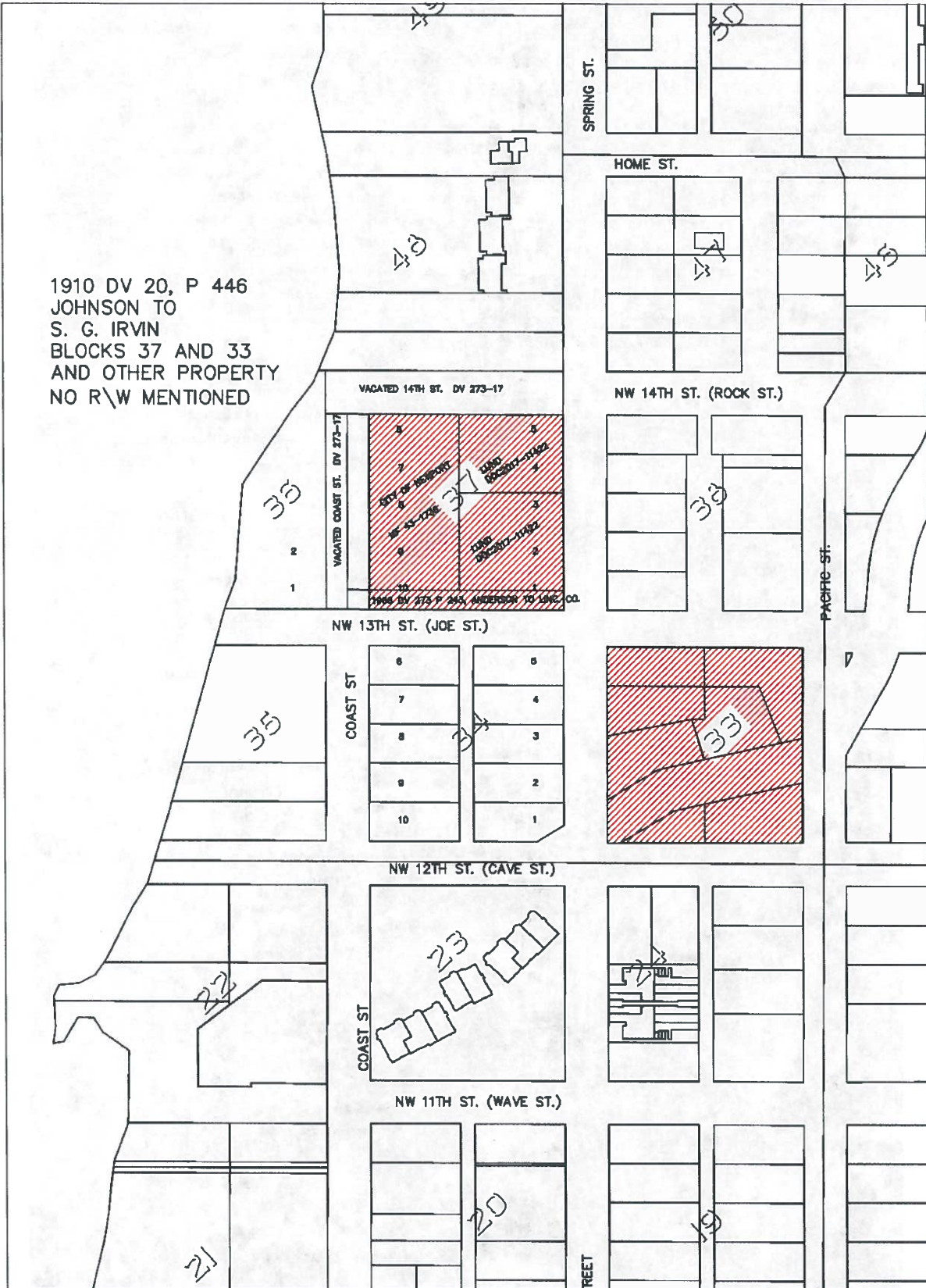
G. M. Brown, _____ County Judge.
George King, _____ Commissioner.
F. A. Thompson _____ Commissioner.

In the matter of the petition of Grant Hiscox Et-al
For the establishment of a county road.

At this time came on for consideration the petition of Grant Hiscox, Et-al
praying for the laying out and establishment of a county road as in said petition
set forth. And it appearing to the Court that said petition is signed by at least
12 free holders of the county residing in the road district where said road is to
be laid out; that said petition also specifies the place of beginning, the intermediate
points, and the place of termination of said road; and it further appearing to the

1910

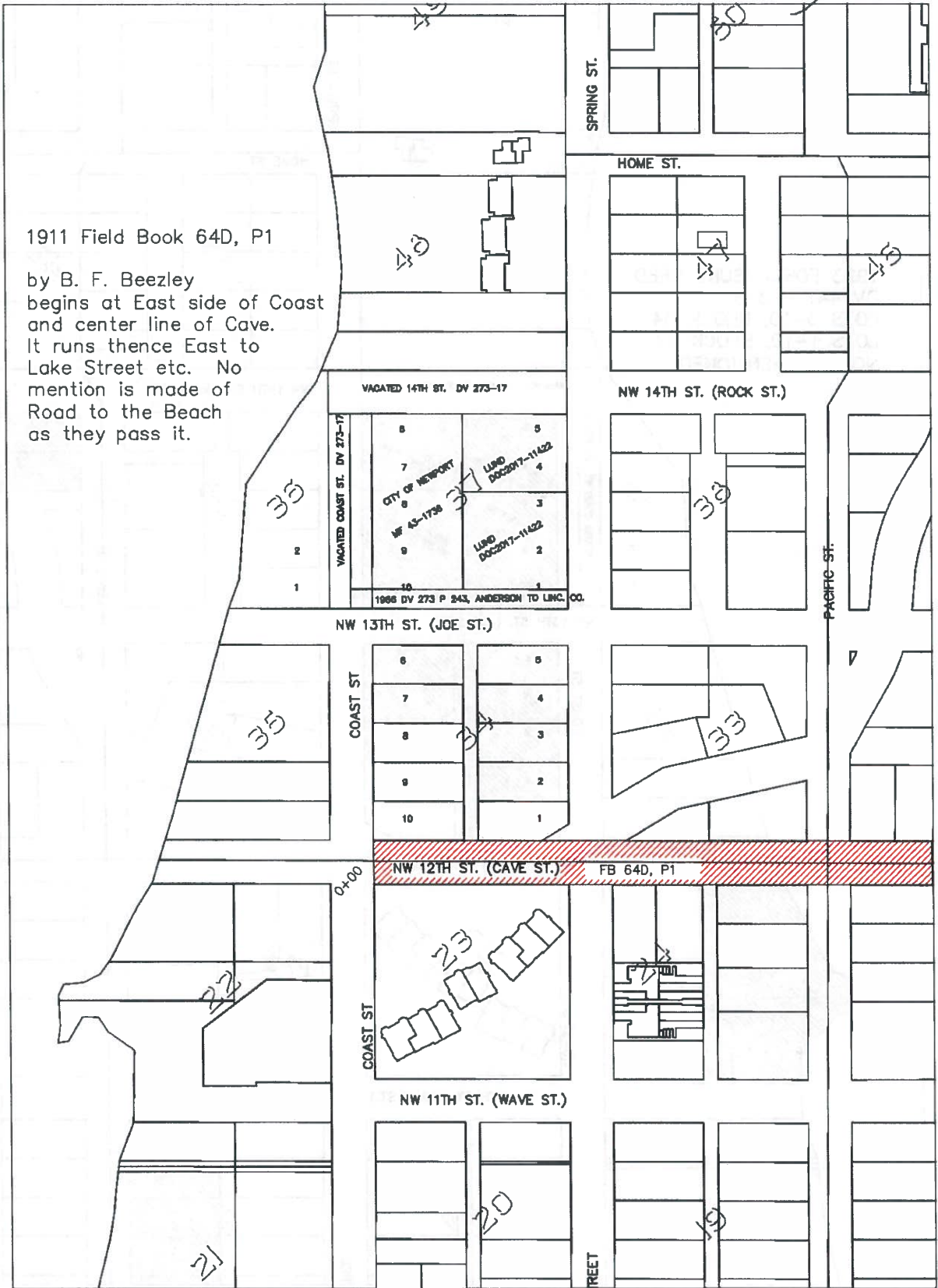
1910 DV 20, P 446
JOHNSON TO
S. G. IRVIN
BLOCKS 37 AND 33
AND OTHER PROPERTY
NO R\W MENTIONED



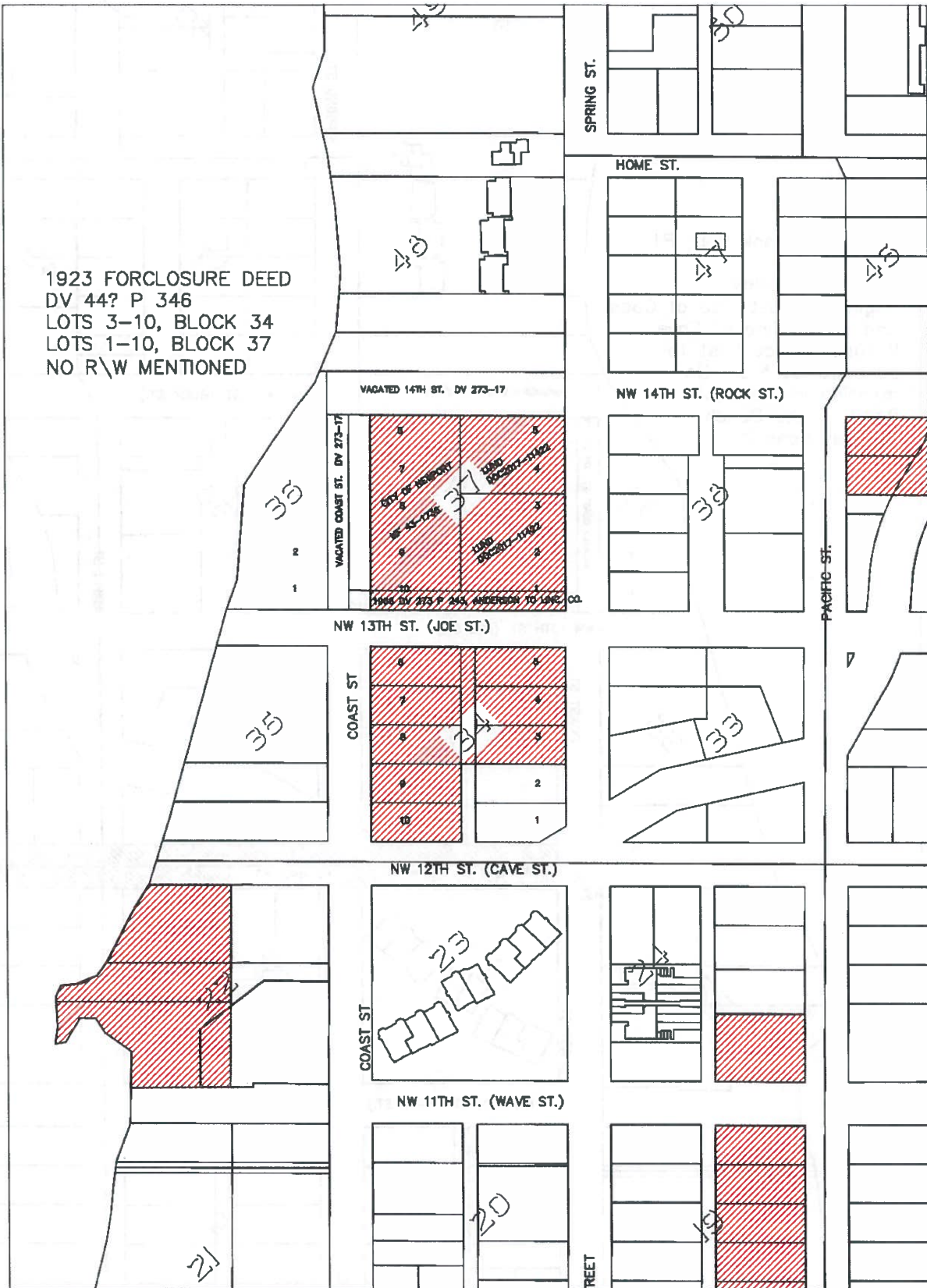
1911 Survey

1911 Field Book 64D, P1

by B. F. Beezley
begins at East side of Coast
and center line of Cave.
It runs thence East to
Lake Street etc. No
mention is made of
Road to the Beach
as they pass it.



1923 Foreclosure



The following levies were made for each Project

Hernville Road		\$ 3375 ⁰⁰
Big Creek	"	2250 ⁰⁰
Agate Beach	"	375 ⁰⁰
Osburn	"	225 ⁰⁰
Hemitvale	"	1500 ⁰⁰
Jump off Joe	"	1125 ⁰⁰
John Nye	"	600 ⁰⁰
Alexander	"	750 ⁰⁰
Otter Rock	"	1125 ⁰⁰

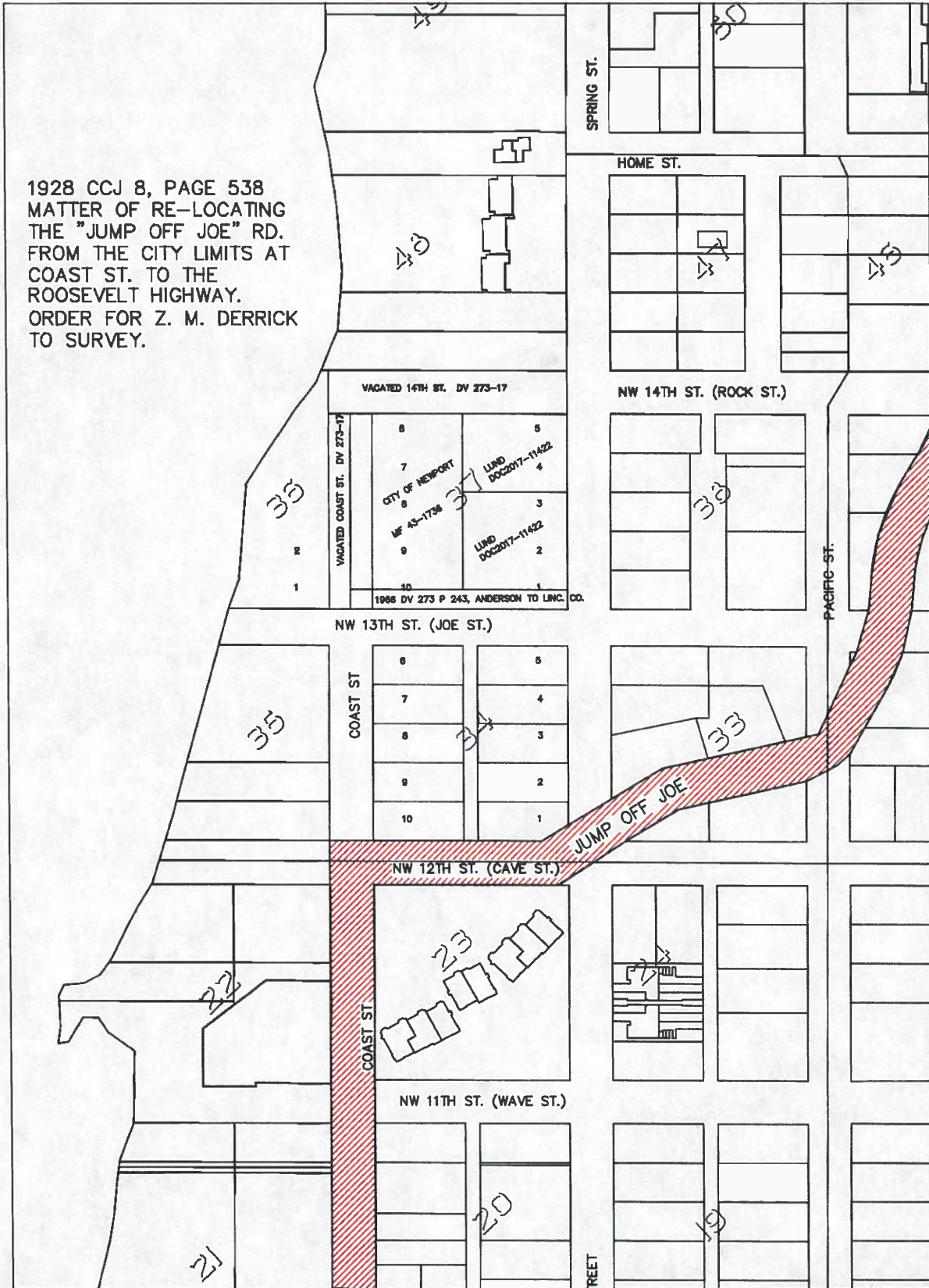
Total \$ 11,325⁰⁰

Road Dist. No. 6
Special Tax
1927

Petition
2 affidavits

1928 TO HIGHWAY

1928 CCJ 8, PAGE 538
 MATTER OF RE-LOCATING
 THE "JUMP OFF JOE" RD.
 FROM THE CITY LIMITS AT
 COAST ST. TO THE
 ROOSEVELT HIGHWAY.
 ORDER FOR Z. M. DERRICK
 TO SURVEY.



are able to assist her.

IT IS THEREFORE ORDERED that her petition for county aid be and the same is hereby denied.

In the Matter of receiving Bids for Grading a section of road to connect the Roosevelt Highway up with the Siletz River Road.

It appearing to the Court that it is necessary to clear, grub, and grade the road from the Roosevelt Highway on the north bank of the Siletz River, and extending up said Siletz River a distance of 360 feet to the beginning of Howard McMillin's Contract at Station 57 plus 00, there being 5/8 acre of clearing and grubbing, and 2300 cubic yards of unclassified excavation, and it further appearing to the court that it is necessary that said work be done immediately, and that it would not pay to advertise for bids on said road, but that several contractors would like to file bids for said work,

IT IS THEREFORE ORDERED that bids be received for the above work on Thursday March 15th, 1928, at 10 o'clock a. m., and

IT IS FURTHER ORDERED that no Notice to Bidders need be published or advertised, but that local contractors be notified and as much publicity given as possible.

In the Matter of re-locating the "Jump Off Joe" Road

It appearing to the court that Road District No. 6 of Lincoln County, Oregon, has voted special taxes to be spent in working the Jump Off Joe Road, beginning on Coast Street on the North city limits of the City of Newport and connecting with the Roosevelt Highway, and that it is necessary that said road be re-surveyed for the purpose of permanent improvement,

IT IS THEREFORE ORDERED that Z. M. Derrick, County Surveyor, survey said road, and mark same suitable for clearing, grading and rocking.

IN THE COUNTY COURT OF THE STATE OF OREGON FOR LINCOLN COUNTY.

In the Matter of Deeding Tide and Overflow lands to the Port of Newport.

RESOLUTION

WHEREAS, Lincoln County has heretofore acquired certain real property hereinafter described, by virtue of foreclosing delinquent tax certificates against said property and buying in the same; and

WHEREAS, Lincoln County is now the owner of said real property, and the Court at this time deems it to the best interest of Lincoln County to sell said real property, and

WHEREAS, the Port of Newport has offered Lincoln County the sum of Five Hundred and no/100 (\$ 500.00) Dollars for the property hereinafter described, and the Court being of the opinion that the said sum of \$ 500.00 is a reasonable price to receive for said lands,

NOW THEREFORE BE IT RESOLVED by said Court that said Court do and it does hereby authorize execution of a deed by the County Court of Lincoln County, Oregon, to

59 Jump off live road

0+00
 3+13 approx. H.P.T.
 5+00 12' curvert

 6+50

 8+00 12' curvert

 13+20 90° S.A.R.
 L.H.T.
 16+35
 15+50

Intersecting Boundary & Coast St

P.O.T.

St. Coast Street

FB 61D. SPINE SAYS 1928.
 THIS BEGINS AT BOUNDARY
 (NW 8TH ST) AND COAST
 STREET 1320' TO CAVE
 THEN EAST 260'
 WHICH MATCHES 1928
 CONSTRUCTION INVOICE.
 WORK DOES NOT RUN
 DOWN TO THE BEACH.

In the County Court of the State of Oregon for the County of Lincoln, Friday March 23, 1928, Court met at 10 o'clock A. M.

Present: Hon. C. W. James, County Judge,
Hon. Jay W. Dunn, County Commissioner.
Carl Gildereleave, County Clerk.

Whereupon the following proceedings were had, to-wit:

In the Matter of Proposals for the construction of the Jump Off Joe Road from the North end of Coast Street at City Limits of Newport, and running north 1820 feet on Coast Street, thence East 260 feet to Station 15 plus 80.

Now at this time the following proposals for the construction of the above described road having been filed:

County Court Lincoln Co. Oreg.
Proposal on Jump Off Joe Road.
.35 cents per yard including laying of Culverts & Clearing & grubbing. Culverts to be delivered by job by County.
Signed: A. J. Stocker.

Proposal Bid on Jump Off Joe Road
Clearing & laying culverts-----\$39.00
Grading per yd 40 cents.
Signed: Jack Moore.

Newport, Ore. Mar. 23, 1928.

To the County Court:
Gentlemen

I wish to submit the following bid on the Jump Off Joe grading.
I will do all grading and laying of culverts on said contract at 45 ¢ per yard.

Yours Respt.
Signed: Charles Overton.

and it appearing to the court that the proposal of A. J. Stocker is the lowest and best bid submitted, it is hereby ordered that said bid be and it is hereby accepted, and ordered that contract be entered into with said A. J. Stocker, and that he furnish a bond in the sum of \$500.00 to be approved by the court.

C. W. James
County Judge.
Jay W. Dunn
County Commissioner.

Date of Opening Bids April 6, 1927. Engineer's Estimate
 No. Bids Received 4 LINCOLN

INDEX TO ITEMIZED BID SHEETS
 LINCOLN COUNTY, OREGON

DATE	PROJECT	CONTRACTOR	BOOK
Apr 6, 1927	Mile No. 1, Lower Siletz Road	Orndorff & Steere	
Apr 6, 1927	Mile No. 2, Lower Siletz Road	Orndorff & Steere	
Apr 8, 1927	Bridge over Five Rivers near Buck Creek	Hamar & Curry	
" 8, "	Bridge over Five Rivers near Crab Creek	Hamar & Curry	
" 8, "	Bridge over Cascade Creek	Hamar & Curry	
" 9 "	Bear Creek Bridge	F R Wright	
" 9 "	Stocker Bridge over Rock Creek	W J Southwell	
" 9 "	Elk City Bridge over Yaquina River	Hamar & Curry	
" 9 "	Spencer Scott Bridge over Siletz River	Hamar & Curry	
" 15 "	Grading Schlecht road, Dist 71	E A Schlecht	
May 6, "	Mill Creek Bridge on Siletz Market Road near Camp 12, P S C	Hamar & Curry	
July 16 "	Fill on Bateman Road, east side Oldia	John Dillon	
" "	Grading 2 under crossings at Agate Beach	Jack Moore	
Aug 3 "	Beaver Creek Bridge at One	Hamar & Curry	
" 3 "	Bear Creek Road ^{Removing Bridges 2, 3, 4 & building fills etc}	Moore & Howry	
" 9 "	Fill at Bridge No 1, Toledo-Yaquina Road, Salkor River Market Road	John Dillon	
June 1 "	Grading, etc. Panther Creek Otis Section	Howard McMillan	
Sept 8 "	Grading, etc. Butterfield-Gerttula Road	Howard McMillan	
Feb 9, 1928	Fill on Norlor-Siletz Road, 1 1/2 V Nortons	Jack Moore	
Apr 3 "	Grading etc, West end Butterfield-Gerttula rd,	Jack Moore	
Mar 15, "	Clearing, etc, Road in Otter Back,	Harry Wilson	
" 23 "	Construction of Jump Off Joe Road	A J Stocker	
Apr 4, 1928	Macke Landing-ReedCreek Sec. Siletz Road	Jack Moore	

Date of Opening Bids March 23, 1928. Engineer's Estimate
 No. Bids Received 3 LINCOLN C

Section				Bids		A. J. Stocker		Charle		
Highway				Address		Newport, Ore.		Newport		
County				Dep't		District		Dist Bkt		
Length and Kind of Work				Item	Quantity	Unit	Unit Bid	Amount	Unit Bid	Amount
Construction of Jump Off Joe Road from the North End of Coast Street at City Limits of Newport, and running North Thirteen Hundred and twenty feet on Post Street thence East 260 feet to Station 15 plus 80.										
<p><i>I think where this says Post St it means Coast St.</i></p>								35¢ per yd.	43¢	
Totals										
Totals										
Totals										
Remarks								Accepted	March 23, 1928	

County of LINCOLN
STATE OF OREGON
for the

Nov. 27 1928
Paul W. Stover

From the Office of

Washington Bay News Print.

1928
Road List

Petition

Off of Derrick

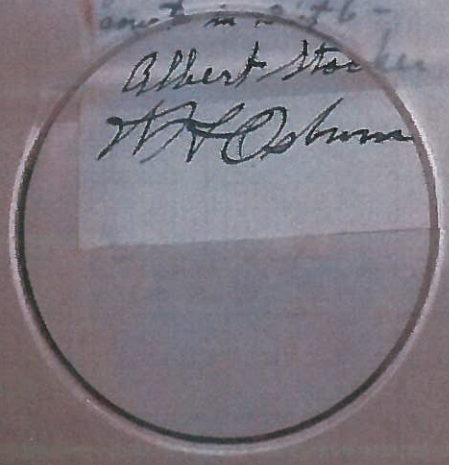
\$8200.00

Ocean Park Nov 24th 1928
It is recommended that the
Money be distributed as follows

Big Creek Road	---	\$1500.00
Kerr Villa Road	---	2250.00
Agate Beach	---	750.00
Dump off Joe Road	---	1000.00
Fruitvale Road		500.00
Alexander Road		1000.00
Otter Rock		1000.00
John Nye Road		300.00
Osburn Road		150.00
Total		\$8200.00

It was also recommended that an itemized account
of amount expended on each project from County
accounts in 1928

Albert Stover Chairman
W. H. Osburn Secretary

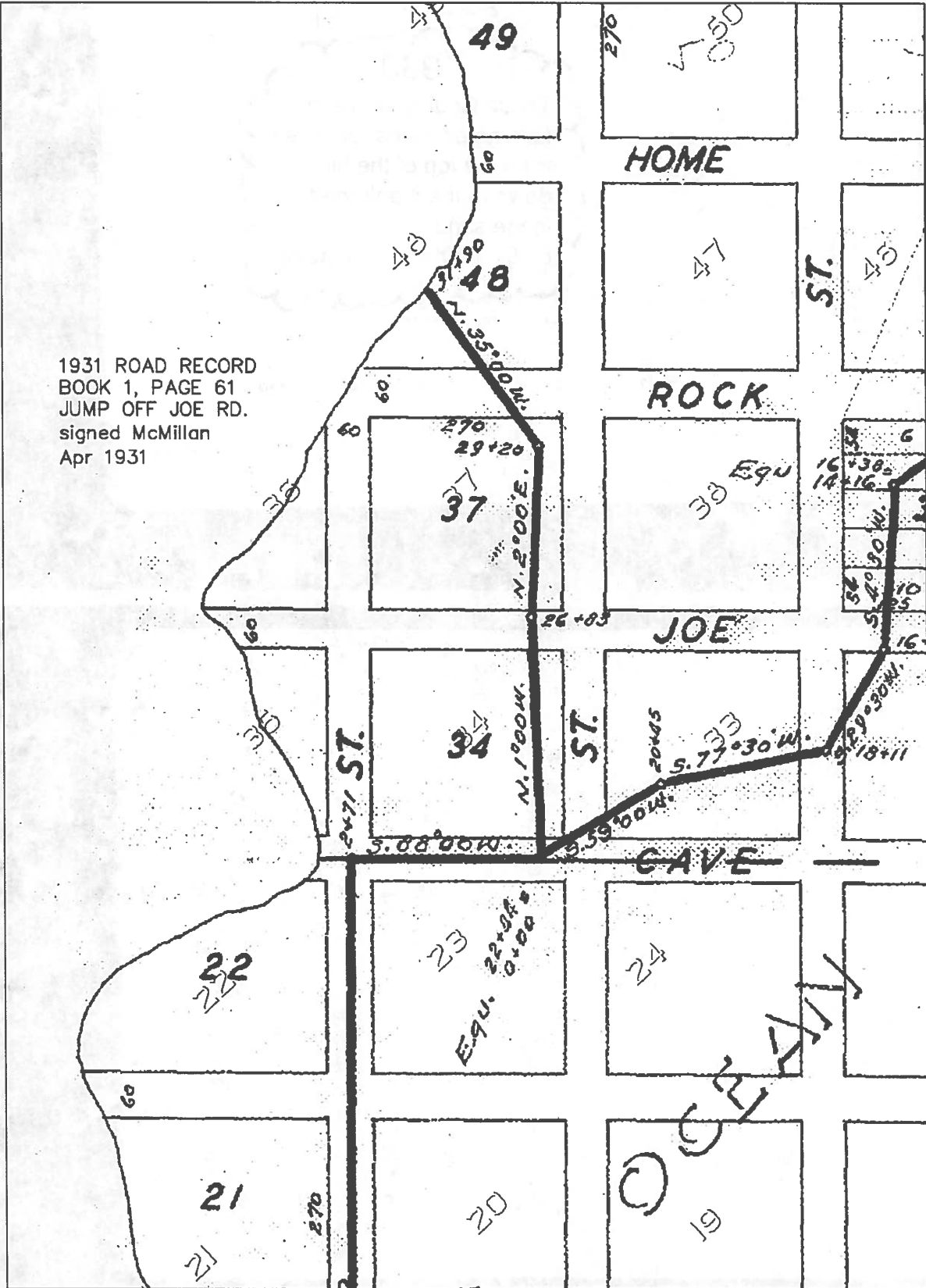


1929 SALE

1929 DV 57, PAGE 471
 LINCOLN COUNTY TO
 N. GEORGE DAVIDSON
 LOTS 4 & 5, BLK 34
 LOTS 1-10, BLK 37
 NO R/W MENTIONED.

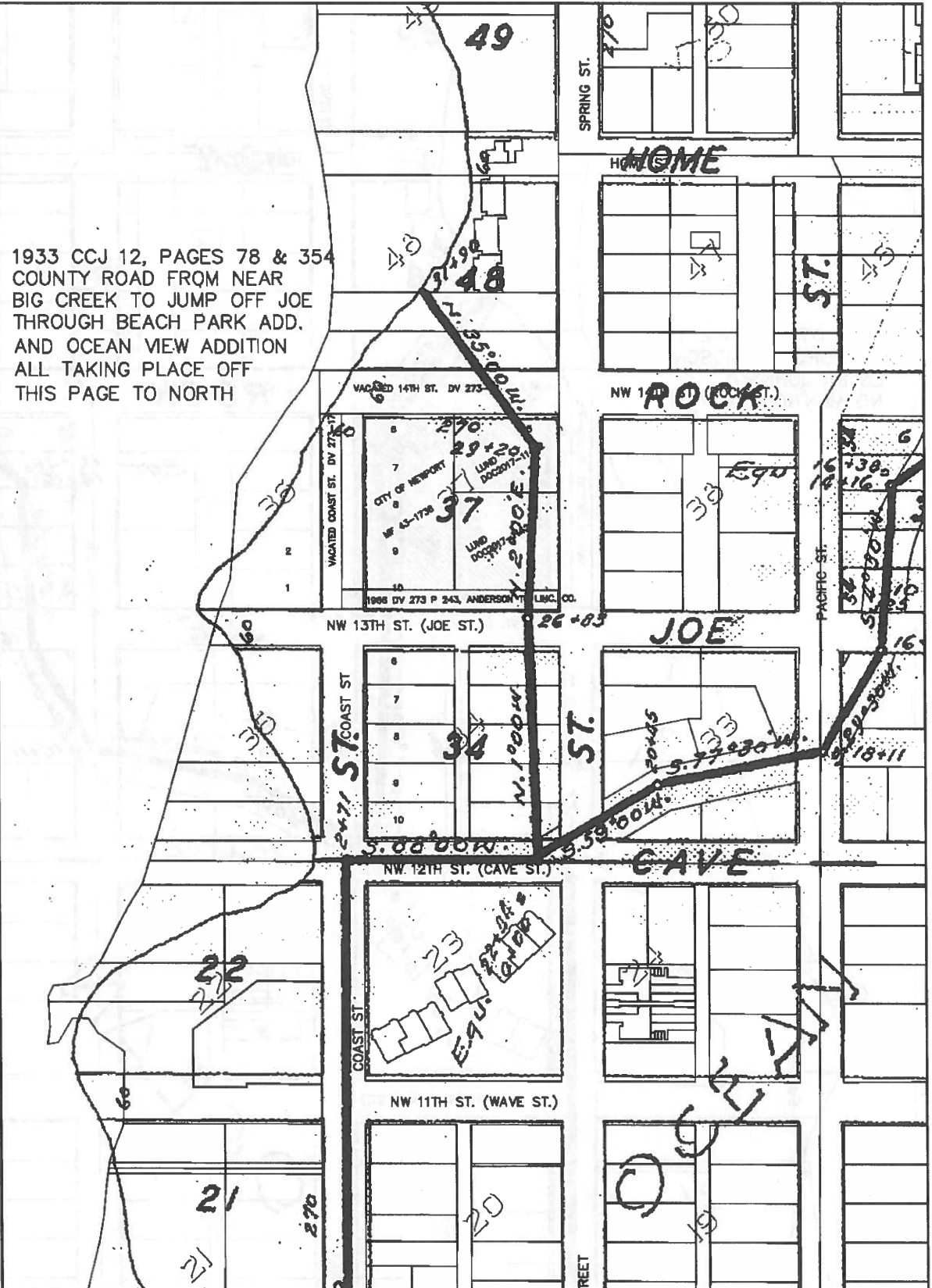


1931



1931 ROAD RECORD
 BOOK 1, PAGE 61
 JUMP OFF JOE RD.
 signed McMillan
 Apr 1931

1933 ADDL. ROW



1933 CCJ 12, PAGES 78 & 354
 COUNTY ROAD FROM NEAR
 BIG CREEK TO JUMP OFF JOE
 THROUGH BEACH PARK ADD.
 AND OCEAN VIEW ADDITION
 ALL TAKING PLACE OFF
 THIS PAGE TO NORTH

VACATED 14TH ST. DV 273
 VACATED COAST ST. DV 2737
 CITY OF NEWPORT
 MAP 43-1738
 1086 DV 273 P 243, ANDERSON, INC. CO.
 EQU
 EQU
 EQU

NW 13TH ST. (JOE ST.)
 NW 12TH ST. (CAVE ST.)
 NW 11TH ST. (WAVE ST.)
 COAST ST.
 COAST ST.
 COAST ST.

HOME

ROCK

JOE

CAVE

OCEANVIEW

SPRING ST.

ST.

PACIFIC ST.

ST.

REET

49

48

37

34

23

22

21

20

19

21

2471 ST. COAST ST

N. 1000 W

5.08+00 W.L.

5.77+30 W.L.

5.59+60 W.L.

16+38

18+16

36

5.77+30 W.L.

18+11

16

10

10

10

10

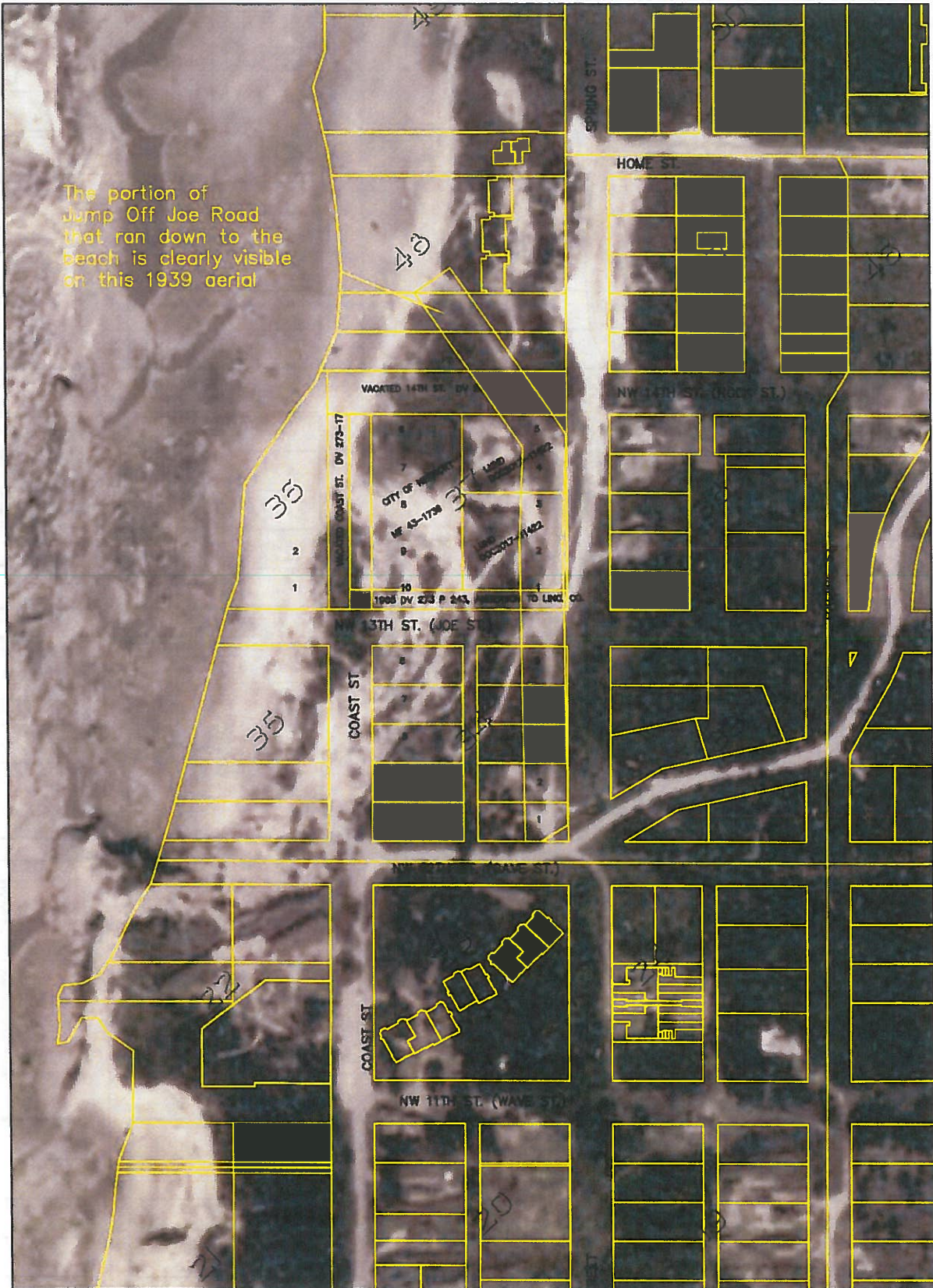
10

10

10

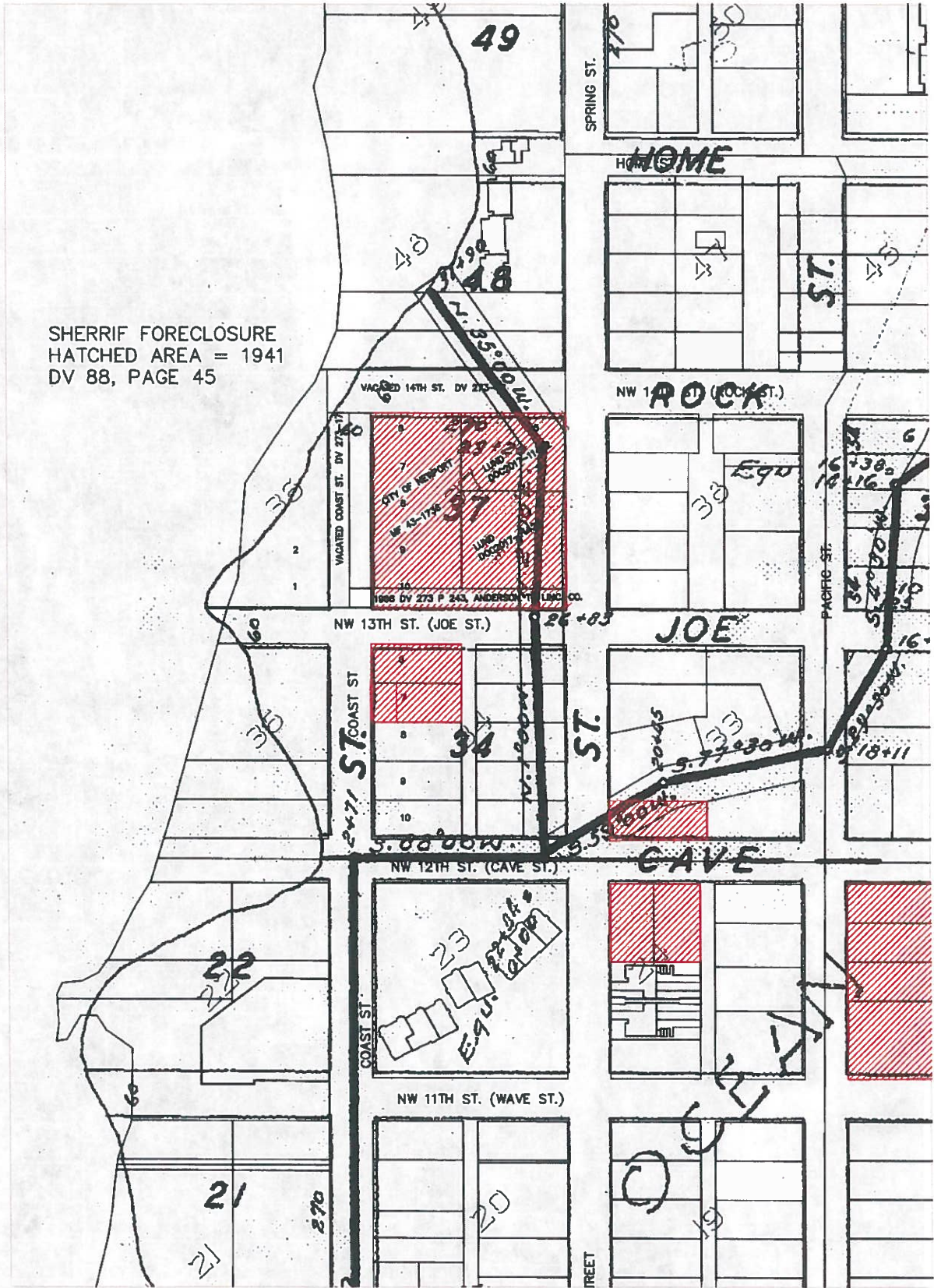
10

1939 AERIAL



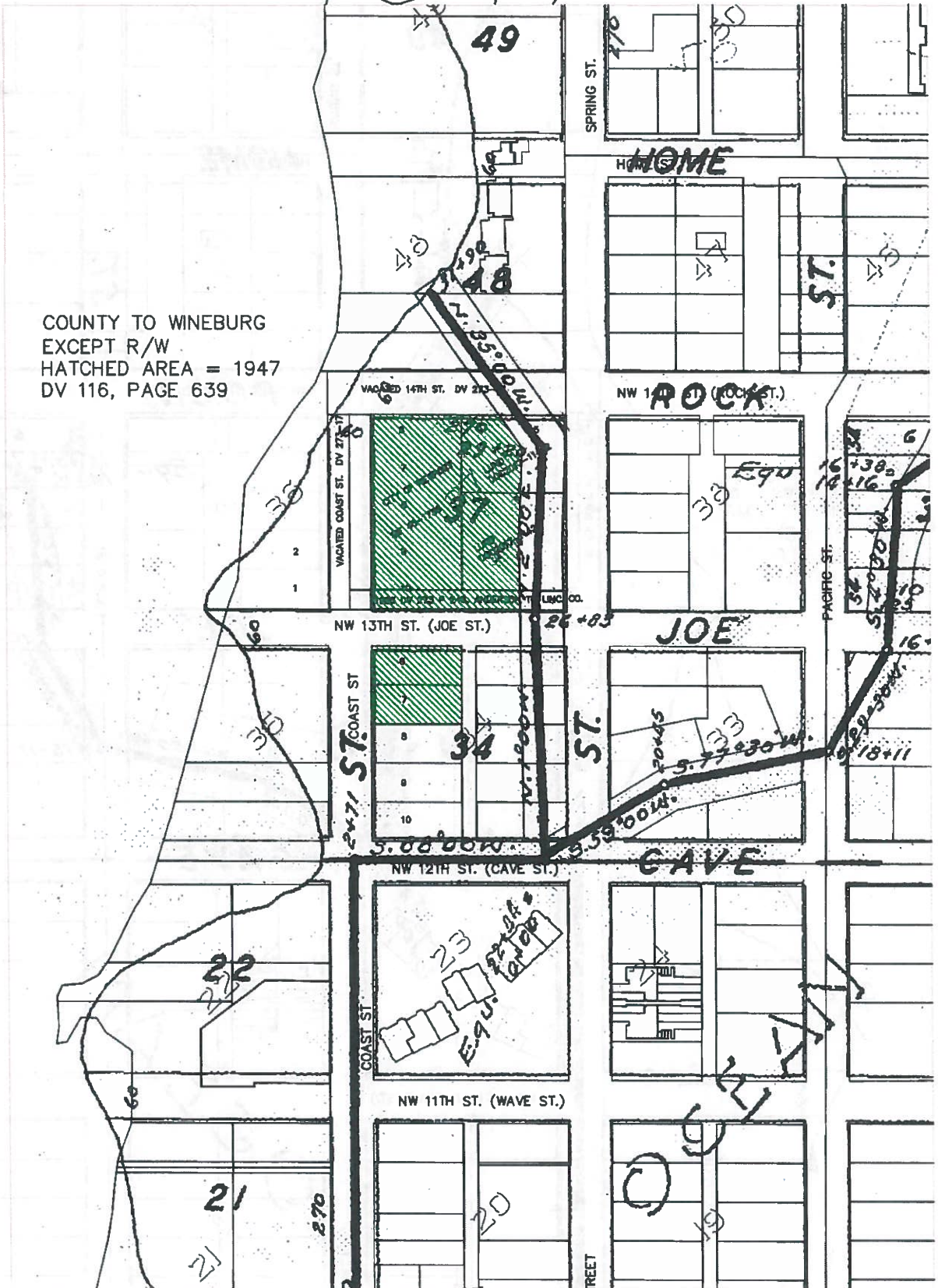
1941

SHERRIF FORECLOSURE
HATCHED AREA = 1941
DV 88, PAGE 45



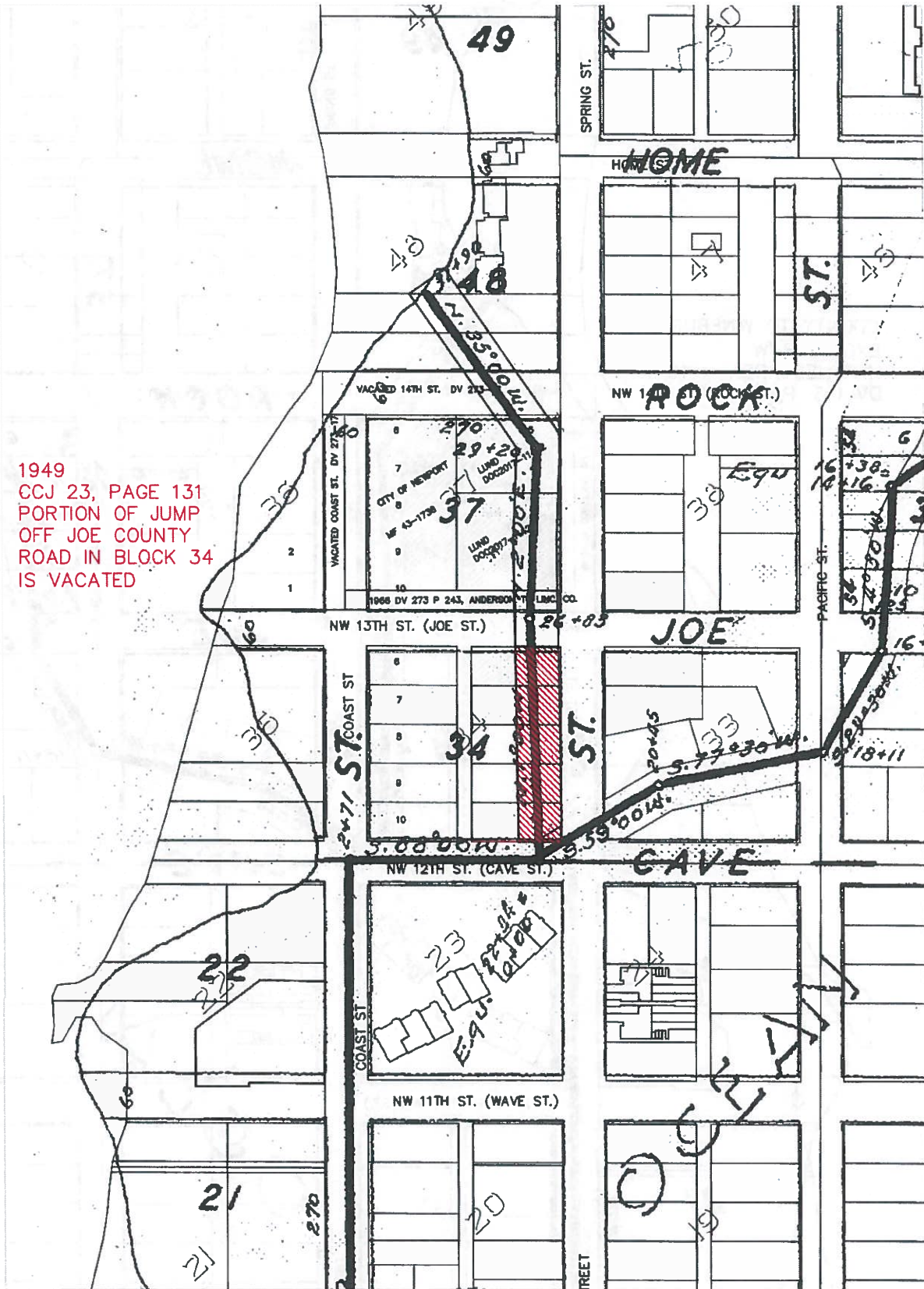
1947

COUNTY TO WINEBURG
EXCEPT R/W
HATCHED AREA = 1947
DV 116, PAGE 639



1949

1949
CCJ 23, PAGE 131
PORTION OF JUMP
OFF JOE COUNTY
ROAD IN BLOCK 34
IS VACATED



IN THE COUNTY COURT OF THE STATE OF OREGON
FOR COUNTY OF LINCOLN

IN THE MATTER OF THE VACATION OF A
PART OF JUMP OFF JOE COUNTY ROAD.

ORDER VACATING

A resolution having been duly adopted in the above entitled court and cause on June 14th, 1949 incident to the vacation of a part of Jump Off Joe County Road as therein particularly described, and

WHEREAS, the owners of the real property abutting upon said portion of road sought to be vacated have been served with notice of hearing incident to said vacation and,

WHEREAS date of hearing upon said resolution was fixed by the County Court as Tuesday, July 19, 1949 at the hour of 10 o'clock A.M. on said date at the County Court Room, Court House, Toledo, Oregon, which said notice has been given as required by law, proof of posting thereof being on file herein, and

WHEREAS, no person or party has filed any objections to the vacation of the portion of road sought to be vacated as described in said resolution and as hereinafter described and no person or party appeared at the time fixed for the hearing upon said resolution and it being to the best interests of Lincoln County that said portion of county road be vacated, it is therefore

ORDERED that the portion of Jump off Joe County Road hereinafter particularly described be vacated, to-wit:

All that portion of Jump Off Joe County Road as laid out and established through Lots 1, 2, 3, 4 and 5 of Block 34, Ocean View as recorded in Lincoln County, Oregon, being more particularly described as follows:

A strip of land 60 feet wide being 30 ft. on each side of the following described center line. Commencing at the center of the intersection of Coast Street and Cave Street as platted in Ocean View and recorded in Lincoln County, Oregon. Thence North 88° 00' east 271 feet thence north 1° 0' west 30 ft. more or less to the north line of Cave Street for the point of beginning. Thence North 1° 0' West 270 feet more or less to the South line of Joe Street as platted in said Ocean View.

Dated this 18th day of October, 1949.

W. H. Melby
County Judge.

L. T. Mont
County Commissioner.

Jack D. Batterson
County Commissioner.

ATTEST:

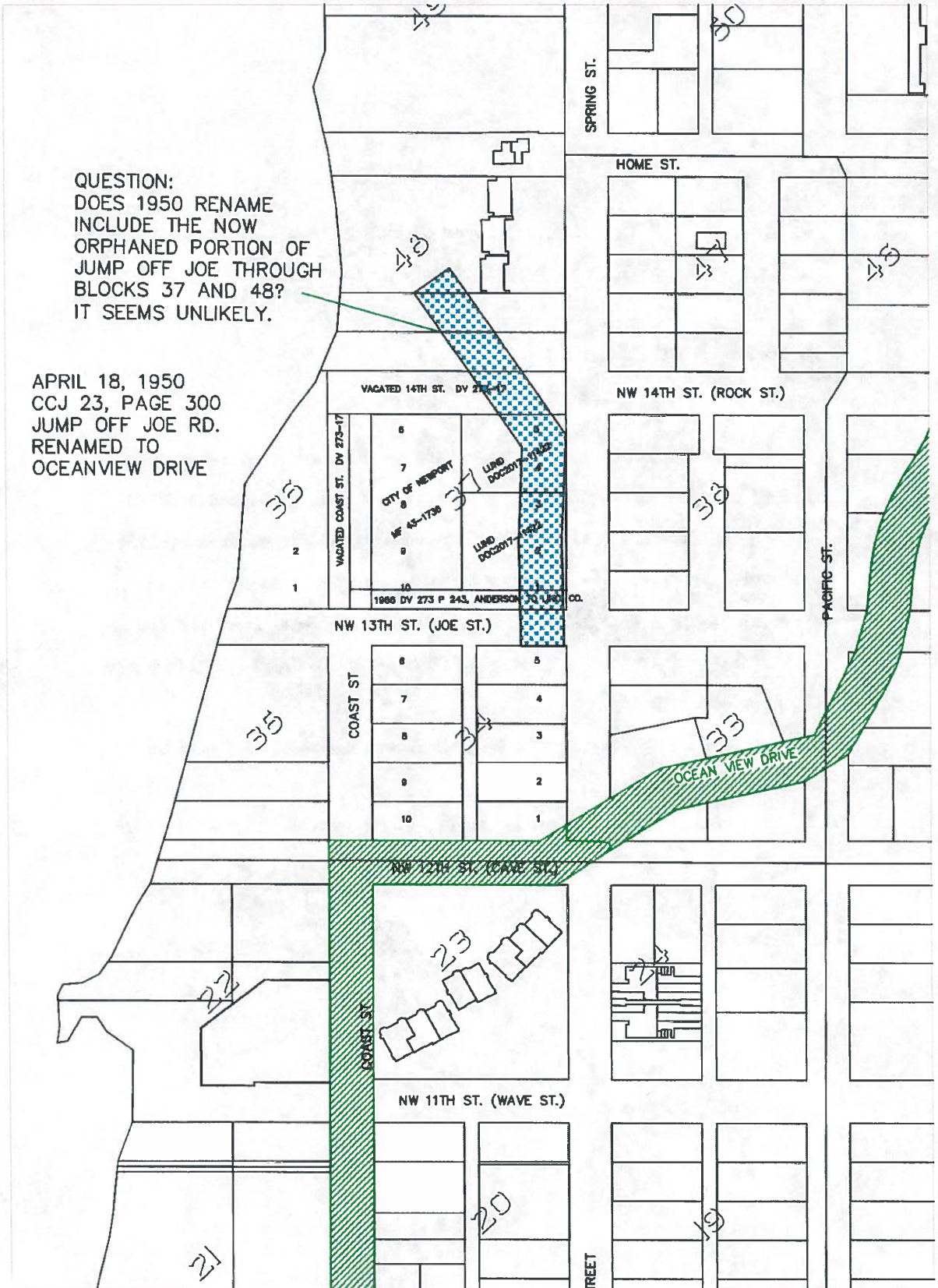
R. S. COLLINS, County Clerk.

By _____
Deputy.

1950 Rename

QUESTION:
DOES 1950 RENAME
INCLUDE THE NOW
ORPHANED PORTION OF
JUMP OFF JOE THROUGH
BLOCKS 37 AND 48?
IT SEEMS UNLIKELY.

APRIL 18, 1950
CCJ 23, PAGE 300
JUMP OFF JOE RD.
RENAMED TO
OCEANVIEW DRIVE



IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINCOLN

In the Matter of changing }
name of county road } O R D E R

COMES ON FOR CONSIDERATION the matter of changing the name of the Jump Off Joe County Road to a new name of Oceanview Drive.

IT APPEARS THAT IN May and June, 1933 and on June 8, 1934 deeds were accepted by the county court for property to be used as a county road and designated as Beach Park, Big Creek, Jump Off Joe Road. The said proceedings being in Commissioners Court Journal Number 12, page 78 and 154.

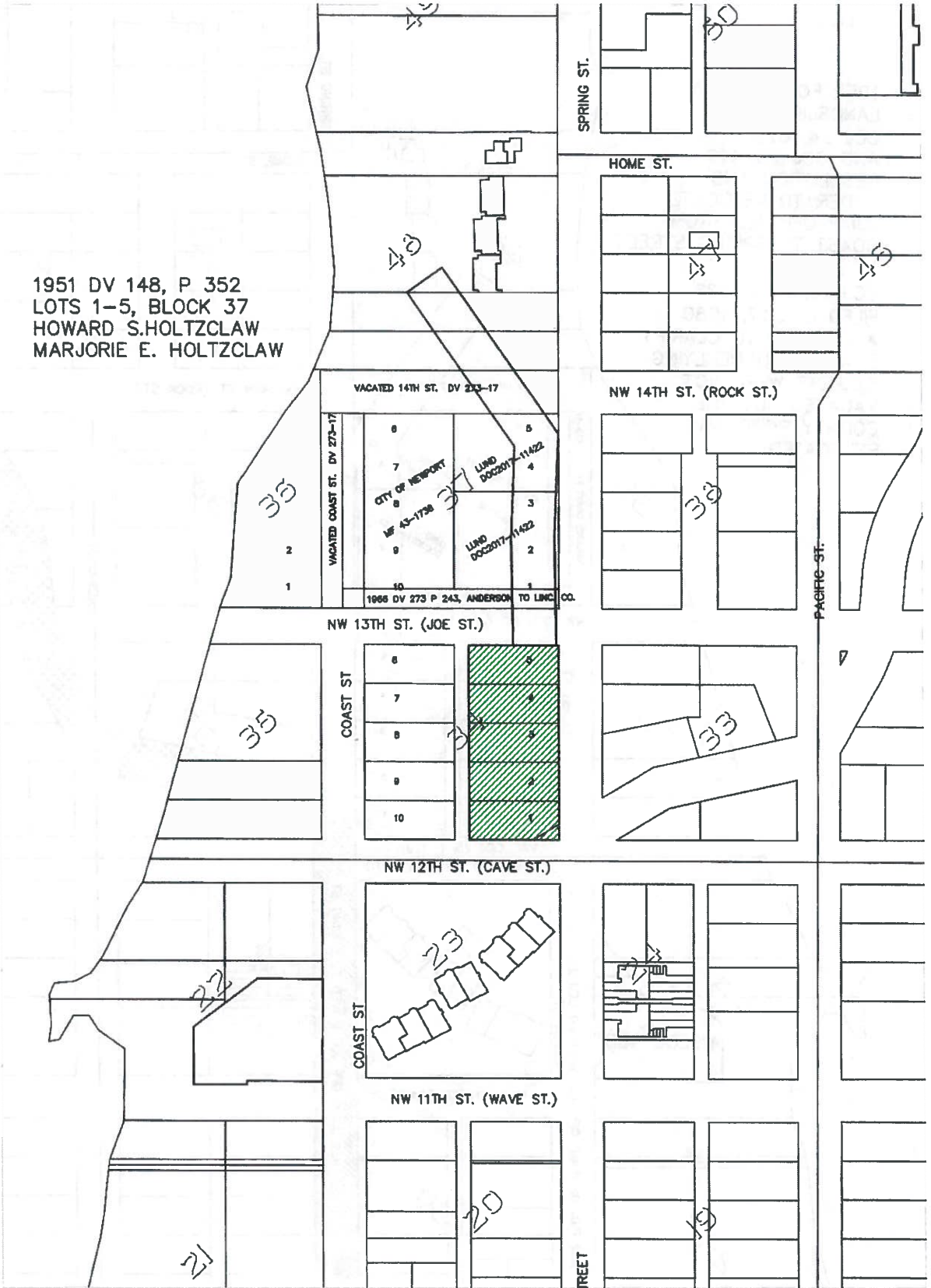
IT IS HEREBY ORDERED THAT the above named county road be known as Oceanview Drive.

Dated this 16th day of April, A. D. 1930

W. H. Kelley
County Judge
L. T. Grant
County Commissioner

1951

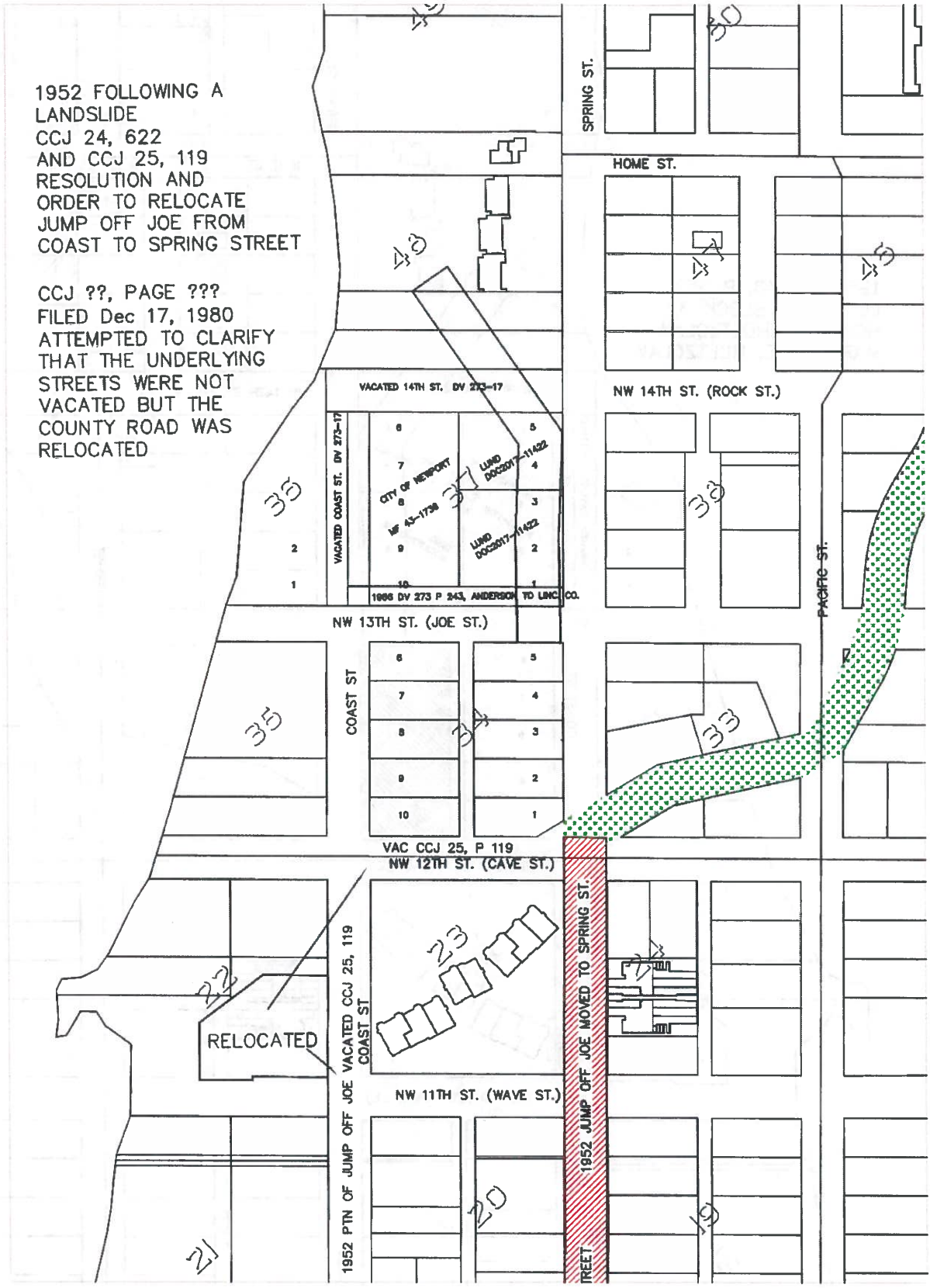
1951 DV 148, P 352
LOTS 1-5, BLOCK 37
HOWARD S. HOLTZCLAW
MARJORIE E. HOLTZCLAW



1952 RELOCATE

1952 FOLLOWING A
 LANDSLIDE
 CCJ 24, 622
 AND CCJ 25, 119
 RESOLUTION AND
 ORDER TO RELOCATE
 JUMP OFF JOE FROM
 COAST TO SPRING STREET

CCJ ??, PAGE ???
 FILED Dec 17, 1980
 ATTEMPTED TO CLARIFY
 THAT THE UNDERLYING
 STREETS WERE NOT
 VACATED BUT THE
 COUNTY ROAD WAS
 RELOCATED



1952 AERIAL



IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINCOLN

In the Matter of Abandonment, vacation
and Relocation of a Part of County
Road No. 500 also known as Jump Off Joe
Road

RESOLUTION

WHEREAS a portion of County Road No. 500, also known as Jump
Off Joe Road, has become dangerous if used by the public for road purposes
and it being impossible to reconstruct or repair said portion of road so
that it can be safely used by public and,

WHEREAS it is necessary to abandon and vacate a portion of said
road and to relocate and reconstruct that portion of said road so abandoned
and vacated, it is therefore

RESOLVED by the County Court of Lincoln County, Oregon, that Lincoln
County, Oregon do and does hereby declare its intention to abandon and
vacate that portion of the original County Road No. 500 also known as Jump
Off Joe Road as follows: A strip of land 60 feet wide being 30 feet on each
side of the following described line: Beginning at the intersection of the
center line Coast Street and the north line of Boundary Street; thence
north along the center of said Coast Street to Care Street; thence east along
the center line of Care Street to the west line of Spring Street. It being
the intention of this order to vacate all that portion of said Road 500 from
the north line of Boundary Street to the west line of Spring Street, and it is
further,

RESOLVED by the County Court of Lincoln County, Oregon, that Lincoln
County, Oregon do and it does hereby declare its intention to relocate this
portion of said County Road No. 500, also known as Jump Off Joe Road, intended
to be abandoned and vacated as hereinafore described and to construct and
maintain a public road and highway, the right-of-way for said relocated

3000 21 623

portion of said road being described as follows, to-wit: A strip of land 60 feet in width being 30 feet on each side of the following described center line, beginning at an intersection of the center line of Boundary Street with the east line of Court Street in Section 5, Twp. 11 S. R. 11 W. N. E., thence easterly on the center line of Boundary Street 340 feet to the east line of Spring Street, also beginning at the intersection of the center line of Spring Street and the north line of Boundary Street, thence northerly on the center line of Spring Street 1310 feet more or less to the center line of County Road No. 500.

BE IT FURTHER RESOLVED that a copy of this resolution, duly certified to, as such by the Clerk of this Court be posted for a period of thirty days by the County Road Master or the County Engineer or County Surveyor or a duly qualified deputy, one copy of said notice to be posted upon the Bulletin board at the front door of the Court House in Toledo, Oregon, and three copies of said resolution in three public places in the vicinity of the abandoned portion of said road and the proposed relocation thereof and that proof of said posting of said roads for said period of time be filed in the above entitled court and cause.

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to each record owner of land on or over which the proposed road, or portion thereof, is to be located and established, by registered mail, as by law required, not less than 30 days previous to the date of the presentation of this resolution to the County Court for action, and

BE IT FURTHER RESOLVED, that objections and remonstrances thereto be heard on Tuesday, the first day of July, 1952, at the hour of 10:00 a.m. on said date, at the County Court Room in the Court House at Toledo, in Lincoln County, Oregon.

DATED this 27th day of May, 1952

(COUNTY COURT SEAL)

[Handwritten Signature]
 County Clerk

Judge

Commissioner

Commissioner

Attest:

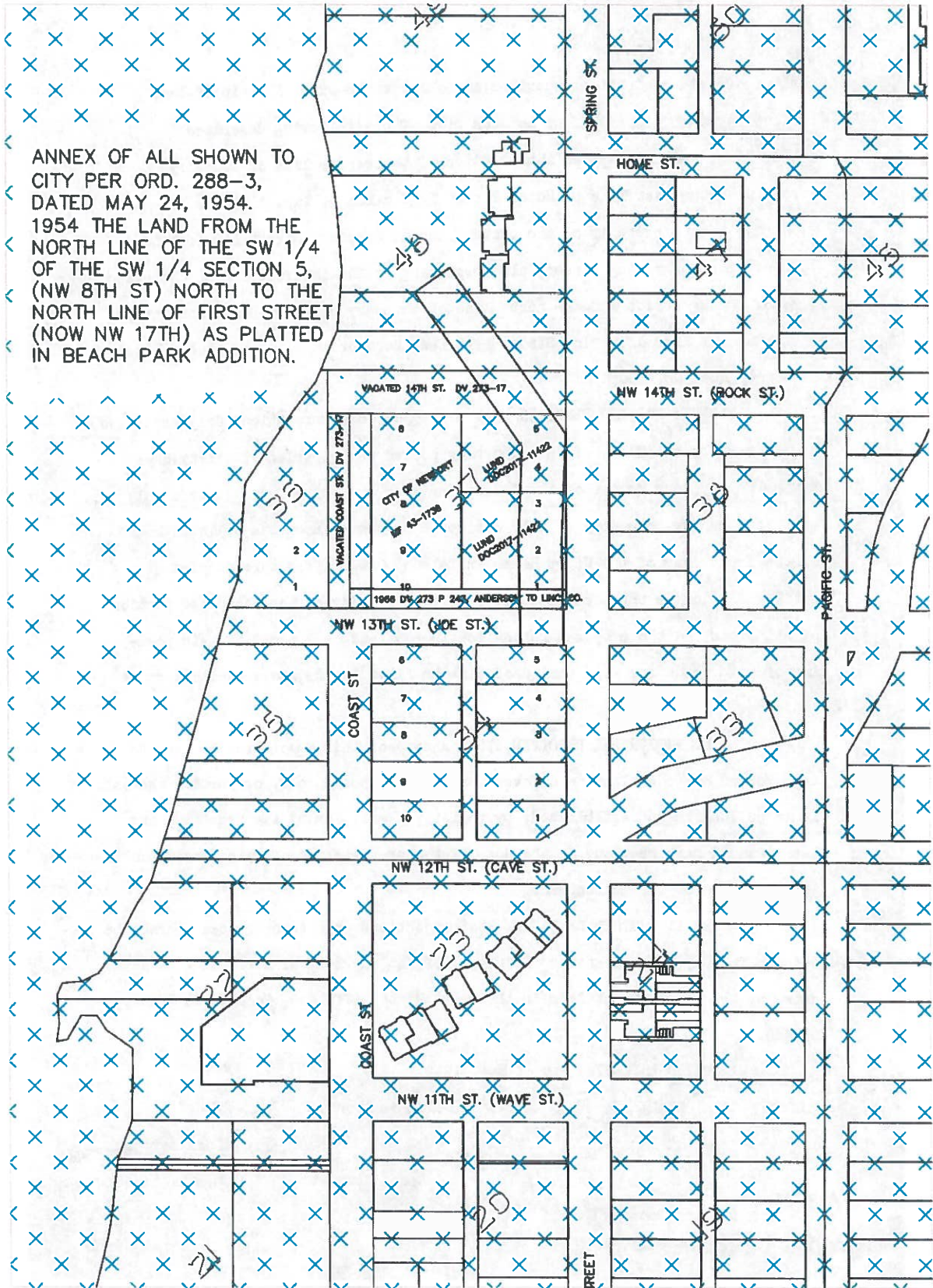
R. E. Collins, County Clerk

Deput.

[Handwritten Signature]

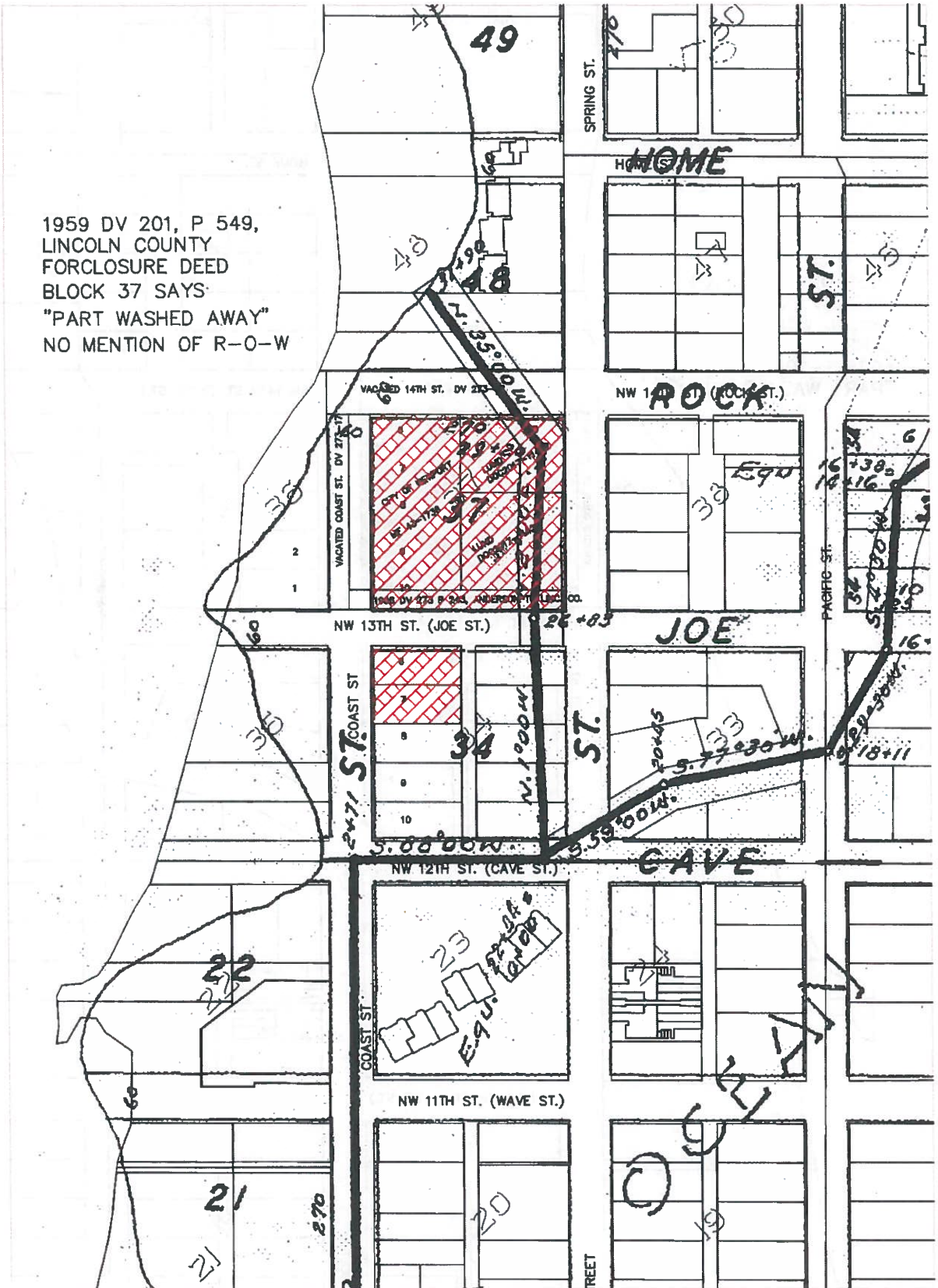
1954 ANNEX

ANNEX OF ALL SHOWN TO
 CITY PER ORD. 288-3,
 DATED MAY 24, 1954.
 1954 THE LAND FROM THE
 NORTH LINE OF THE SW 1/4
 OF THE SW 1/4 SECTION 5,
 (NW 8TH ST) NORTH TO THE
 NORTH LINE OF FIRST STREET
 (NOW NW 17TH) AS PLATTED
 IN BEACH PARK ADDITION.



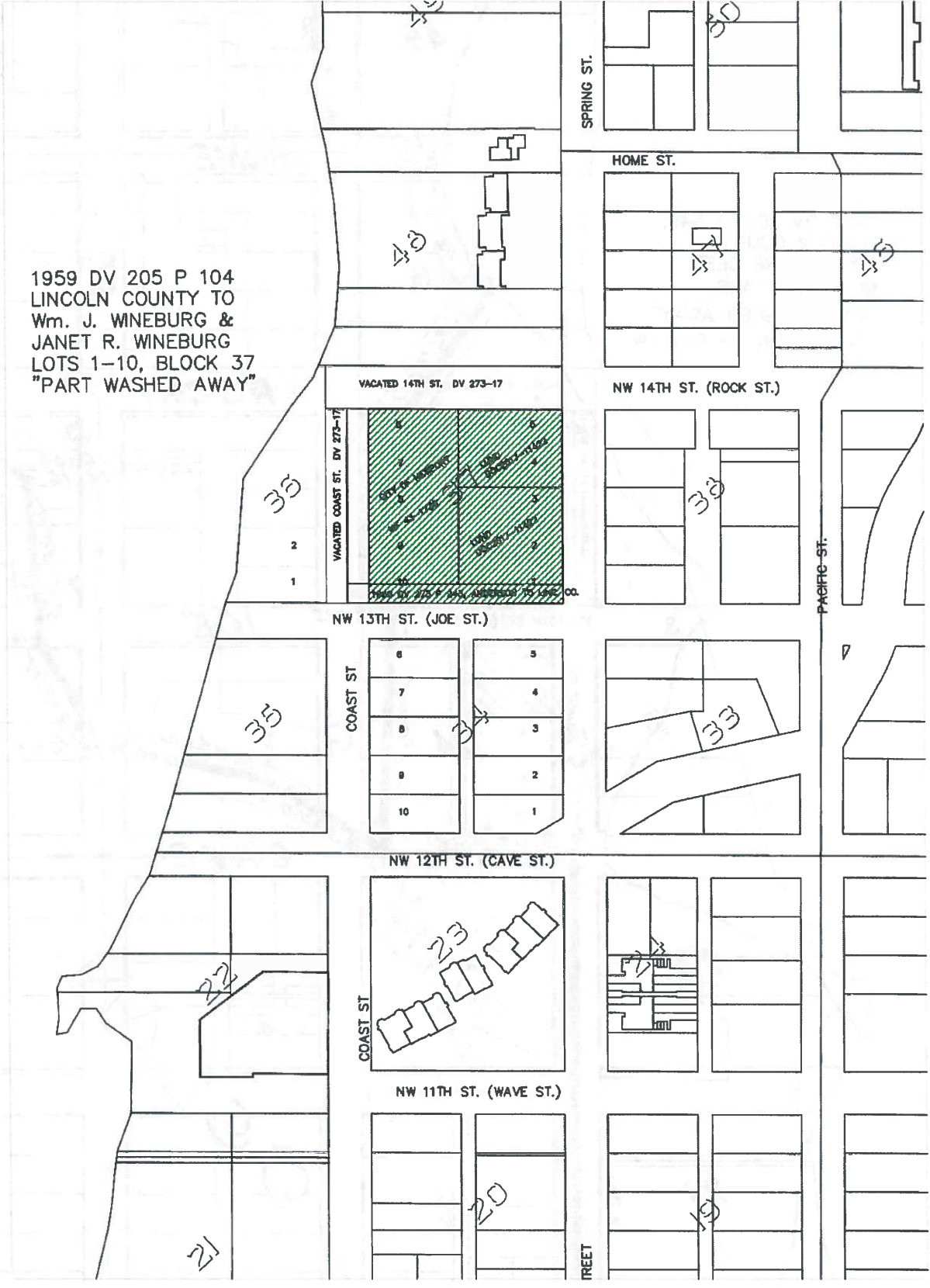
AUG. 1959

1959 DV 201, P 549,
 LINCOLN COUNTY
 FORCLOSURE DEED
 BLOCK 37 SAYS
 "PART WASHED AWAY"
 NO MENTION OF R-O-W



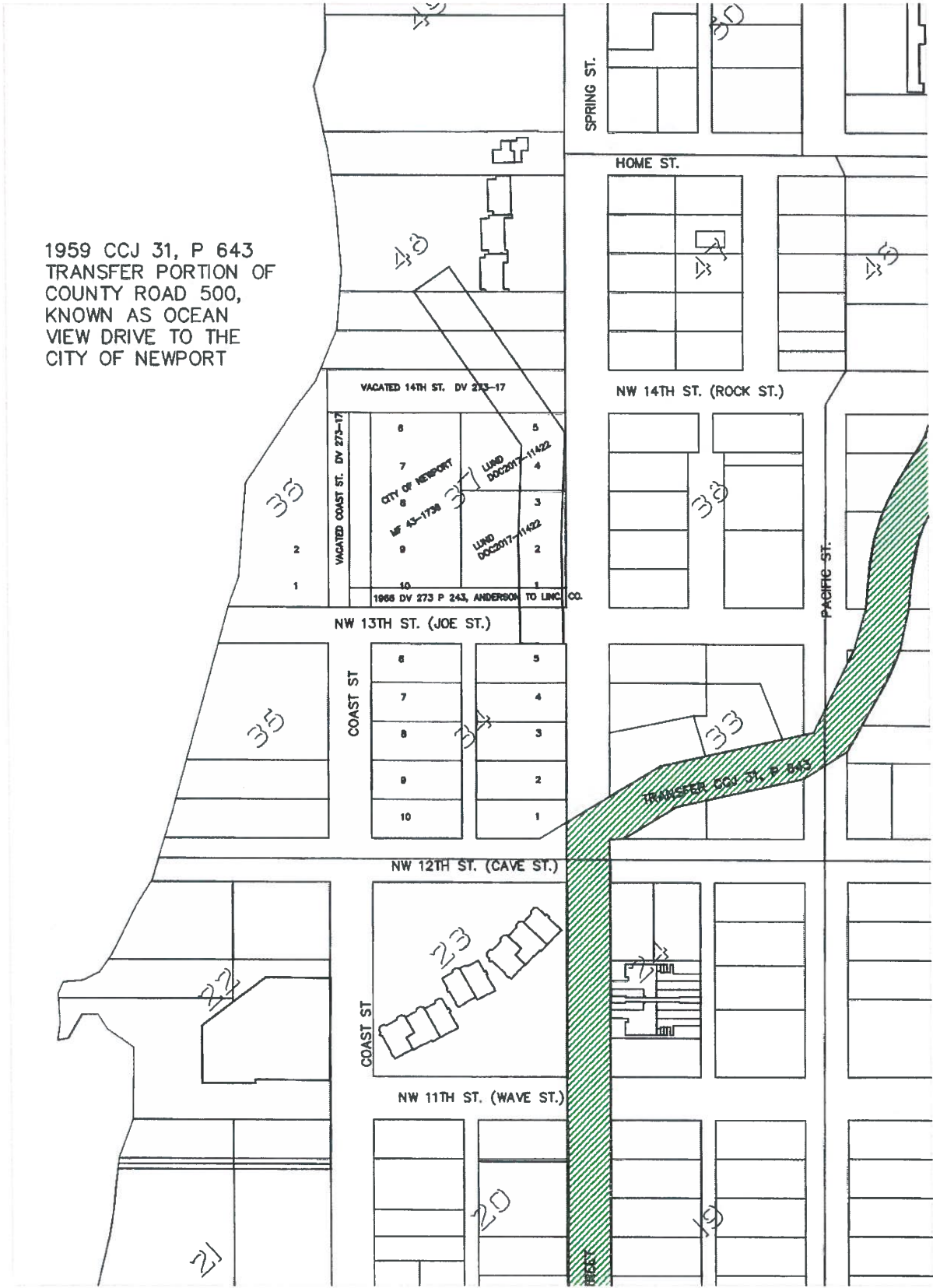
DEC. 1959

1959 DV 205 P 104
 LINCOLN COUNTY TO
 Wm. J. WINEBURG &
 JANET R. WINEBURG
 LOTS 1-10, BLOCK 37
 "PART WASHED AWAY"



JULY 1959

1959 CCJ 31, P 643
TRANSFER PORTION OF
COUNTY ROAD 500,
KNOWN AS OCEAN
VIEW DRIVE TO THE
CITY OF NEWPORT





Derrick Tokos

From: Mona Linstromberg <lindym@peak.org>
Sent: Saturday, October 13, 2018 4:49 PM
To: Derrick Tokos
Cc: Sean Malone; Elaine Karnes
Subject: Spring St comment 1-GP-18-A open period 1
Attachments: Spring St process comment with attachments revised.pdf

Derrick, please enter in the record. Please also acknowledge receipt to Elaine Karnes karnese@peak.org

My computer would not accommodate the entire 39 pages of the first attachment. Elaine will try to put the full report into the record.

Regards, Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection

October 13, 2018

Applicant – Lund
 Tax Lots – 1900, 1903, and 1800
 1-GP-18-A

Comment: Process

Process is defined as a series of actions or steps taken in order to achieve a particular end. The City of Newport has a municipal code that establishes the actions or steps to be taken to achieve a particular end. The current appeal of the planning director approval of a geologic permit is comprised of actions or steps taken to achieve an end product – approval, approval with conditions, or denial.

February 14, 2018, I was emailed the results of the *Investigation of the Status of Jump Off Joe* (CR 500, see attached report - #1) where it was determined that a sixty foot County road right of way (Old Jump Off Rd) had not been vacated, cutting a swath through tax lots 1900, 1903, and 1800. *K & A Geotechnical Engineering Report and Geologic Hazard Assessment* (a revised report, in the record) was dated June 29, 2018. July 6, 2018 (see attached email - #2) the application was deemed complete by the planning director and the 120 day clock started ticking with projected end date of November 2, 2018. Notice of Decision, approval of 1-GP-18 by the planning director, was issued July 16, 2018 (see attached - #3).¹ The deadline for appeal was July 31 and the appeal was filed on that date. Per code requirement ², appellants submitted on August 29 a peer review (in the record) by Ruth Wilmoth (Columbia Geotechnical) a geologic engineer licensed in Oregon. August 31, 2018 Notice of Public Hearing was mailed establishing September 24 (see attached - #5) as the date of the hearing. Sept. 19, the planning director was notified that a defective notice was published in the local paper (see attached email - #6). To avoid a potential remand before LUBA if not corrected, a continuance was recommended to be held Oct. 8. At the October 8

¹ In 1-SIR-18 and 1-GP-18, the required notice for comment was only mailed to those property owners within the specified 200 feet from tax lot 1800, neglecting to notice those within 200 feet from lots 1900 and 1903 by written notice (see attached #4). For the SIR, those owners had a different deadline for comment. The first example of errors in noticing procedure.

² 14.21.120 Appeals to Geologic Permits

Appellants challenging substantive elements of a Geologic Report shall submit their own analysis prepared by a certified engineering geologist. Such report shall be provided within 30 days of the date the appeal is filed. A failure to submit a report within this timeframe is grounds for dismissal of the appeal.

public hearing, it was suggested by the planning director that the planning commission keep the record open with one week (Oct 15) for new evidence, one week (Oct 22) for rebuttal, and one week (Oct 29) for the applicant to make final comment (no new evidence). This is a request usually made by the applicant or appellant. The clock is ticking.

The above paragraph details the actions or steps taken in order to achieve a particular end. Unfortunately, somewhere in the process something went awry. Essentially, the cart was put before the horse in that the applicant decided to proceed with the geologic permit prior to getting a decision on his application to vacate the Old Jump Off Joe Road (County ROW). He knew in February that the determination had been made that the ROW had not been vacated, but he plowed ahead, and K & A issued a revised site plan that tried to anticipate a solution that would satisfy either the road being vacated or not being vacated. That decision was a significant mistake: K & A did not perform the work needed for both eventualities.³ All parties knew mid-February that the ROW existed but still K & A issued a flawed report.⁴ The planning director deemed it complete. Deeming an application complete is not an assurance that the information in the application is correct. At this point, the clock starts ticking.

And this takes us to comment made by Planning Director Derrick Tokos starting at 39:14 in the on-line video of the October 8 public hearing before the planning commission. Mr. Tokos to the planning commission (not verbatim): *(if you want to impose a requirement that they do additional boring in that location that is something that can reasonably be conditioned. Boring must be performed and results confirmed by K & A. Although Sean Malone, our attorney, covered this in his remarks at the Oct. 8 public hearing, I will again point you to FN #1. We, as appellants, followed the appeal requirements and hired (action taken by us in this process) a geologic engineer for peer review. Anything demanding expert review cannot reasonably be placed as a condition for approval because it would follow that the appellants (and the City) are being deprived of corresponding expert evaluation which we, as appellants, were required by code to provide. We held up*

³ Listen to Mr. Lund's comments from the Oct 8 public hearing starting at 36:43 as to why the house needed to be moved and why Mr. Remboldt keeps talking about why more work needs to be done, including more bore holes drilled at the actual development site.

⁴ The case has been made multiple times that the two bore holes analyzed (there were actually four holes but there is no data on two of them) cannot be relied on because they are in the right of way and not on the subject property proposed for development. There is other information lacking (see Ruth Wilmoth's peer review, Lincoln County's comment, and Ruth Wilmoth's 9/28 follow-up comment – all in the record and referenced in other remarks).

our end of the bargain and the City must hold up its end of the bargain. The applicant should be responsible for his ill advised action in initiating this process before the ROW issue was finalized.

On Oct 7, I emailed (see attached #7) asking the planning director for clarification on the 120 day time line. Though Mr. Tokos has been responsive throughout this process, I did not receive that clarification. At the end of the public hearing the issue was raised by attorney Sean Malone (not the planning director) as to the potential negative ramifications of exceeding this time line and this was shrugged off by the planning director as being of little concern. He stated "...stuff can all come together sometime in the future" (on-line 1:32:05). During a normal process, the action taken would be getting a written time waiver from the applicant so nothing is left to the imagination. Please note that if the Sept. 24 hearing had been noticed correctly the time between that date and October 8 was two weeks we shouldn't have lost along with, apparently, poor scheduling.

Little in the above detail resulted in a well executed process. The applicant acted in haste to everyone's detriment. By his action, the only outcome in this process can be upholding the appeal and denying the application.

Thank you for your continued attention.

Mona Linstromberg
831 E. Buck Creek Rd., Tidewater, OR 97390

Family Home
1442 NW Spring St., Newport, OR 97365



COUNTY OF LINCOLN

Lincoln County Surveyor's
Office
Eathan D. Nicley - PLS CWRE
Deputy County Surveyor

880 NE 7th
Newport, Oregon 97365
(541) 265-4147

Investigation of the Status of Jump Off Joe Road

AKA County Road 500

Prepared December 2017 – February 2018

The following documents in chronological order the findings from research by the Lincoln County Surveyors Office into Jump Off Joe County Road (County Road 500). This research was requested by the Lincoln County Public Works Director and by County Counsel. A primary focus was the legal status of the portion of the road which "jumped off" to the Beach through Blocks 34, 37 and 48, Plat of Ocean View. The interest was roused by some land clearing in Block 37, which raises the question of whether a public right of way still exists through that block.

1866 – GLO Survey of T11S, R11W - G Mercer – Contract # 117. Includes Yaquina Bay and future Newport.

1872 – Lighthouse Built on Cape Fowlweather (now known as Yaquina Head).

1877 – GLO Survey of T10S, R11W – James A. Warner. Note: Light House Reserve is Called Cape Fowlweather at this time - not Yaquina Head.

August 26, 1893 Road records pigeon hole. Petition by Edward Stocker and Joseph Watson for a County Road. This road begins at the intersection of Coast and Boundary Streets in Newport and thence North following the course of the "present traveled road in a N.E. direction". Note: It is not clear if this petition was granted and a road opened, this is just a time frame to pursue.

1899 Road Record Commissioner's Court No. 1, Page 326-329. Also CCJ 2, P 161, 162, 186.

This record mentions the existing road from Newport to Cape Fowlweather and on to Sijota Creek near Siletz Bay. It declares the road open. Below is an excerpt from this record.

"Commencing at a point where the road from Newport to Cape Fowlweather crosses the North Boundary of the City of Newport and running **thence northward along the beach (or as near to a the viewers may decide)** . . . and as near the road and horse trail now existing as the nature of the ground and distance makes advisable".

The above matter is immediately followed by discussion of a Petition for a County Road beginning at the North Line of Newport and running Northerly to end in the vicinity Sijota Creek near Siletz Bay. The starting point is not clear being the North line of Newport and the center of "*the County Road*". When I plotted the calls from the survey by Z. M. Derrick, it appears that it likely started at the intersection of Coast and Boundary Streets and went overland to Big Creek then up the beach to Lucky Gap. **CCJ 2, Page 186**, Orders this road Newport to Siletz Bay Road opened February 1899.

J:\surveyor\PROJECTS\500 Oceanview Newport\Jump Off Joe Report Title Page v2.docx

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and interpretation for the people of Lincoln County.”**

- 1 -

note: only first two pages printed with the next
37 pages supporting detail.



COUNTY OF LINCOLN

Lincoln County Surveyor's
Office
Eathan D. Nicley - PLS CWRE
Deputy County Surveyor

880 NE 7th
Newport, Oregon 97365
(541) 265-4147

The 1906 Nye Creek and Divide Road CCJ 3, Page 333, orders the viewers and County Surveyor to meet "the foot of Coast Street" Nye and Thompson's Addition. In 1906 the North line of the City Limits was Pacific Street AKA Boundary Street now known as NW 8th Street. Coast and Boundary streets match the Southerly end of Jump Off Joe Road in several records. CCJ 3, Page 342, makes reference to a Road Viewer's Report and directs that the survey notes, profile, and plat of the road to be recorded. These records were not found. A sixty foot wide road is ordered opened.

1928 CCJ 8 P 528 and 558 Order to resurvey Jump Off Joe and bids to make improvements. I also find that special tax funds were ear marked for improvements to "Jump Off Joe" Road for surrounding years.

1931 May 9 CCJ 10, Page 477, 518.

Matter of Vacating the "Old Newport and Siletz Road".

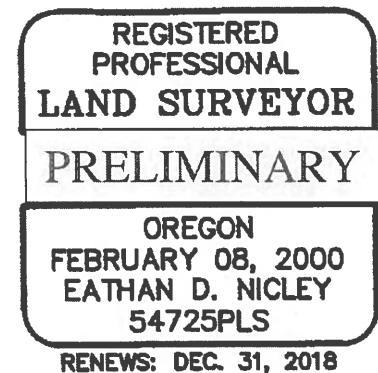
1931 McMillian Map shows Jump Off Joe road runs to the Beach through blocks 34, 37 and 48, Ocean View.

1930's to 1940's

There is evidence that the portion of Jump Off Joe through Blocks 34, 37 and 48, Ocean View Addition was considered to be a County Road during the 1930's and 1940's. Notably, we find surveyor field notes, the 1931 McMillan map, and **CCJ 23, Page 131**, which refers to the portion of "Jump Off Joe County Road as laid out and established". Said CCJ 23 describes the portion of Jump Off Joe through Block 34 to be vacated. A physical road is quite visible on the old 1939 aerial photo.

At the time of the name change from Jump Off Joe to Ocean Drive (**CCJ 23, Page 300**, dated April 18, 1950), the spur portion down to the beach had already been isolated from the rest of the road by the vacation of the portion in Block 34. One could argue that the name of the isolated portion was not changed. This becomes significant in 1959 when the County transfers jurisdiction of "Ocean View Drive" to the City of Newport.

Conclusion: Though the creation is sketchy, it appears that a County Road existed. Even in 1899 a preexisting road from Newport to Cape Fowlweather (Yaquina Head) was mentioned, and was described as a route that utilized the beach where possible. In the late 1880s the rock formation known as Jump Off Joe would have been an obstacle to beach travel necessitating a localized overland route. This road may have been created even before Lincoln County was formed as a practical route to the Light House. Per the 1931 McMillian Map, Jump Off Joe Road went to the beach through Blocks 34, 37 and 48. The portion through Block 34 has been vacated. No documentation was found vacating or transferring jurisdiction to the City for the portion through Blocks 37 and 48, Plat of Ocean View.



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Mona Linstromberg

From: "Derrick Tokos" <D.Tokos@NewportOregon.gov>
Date: Thursday, August 30, 2018 4:28 PM
To: "Mona Linstromberg" <lindym@peak.org>
Cc: "Elaine Karnes" <karnese@peak.org>
Subject: RE: Notice of Decision and Final Order and Findings for Shoreland Impact Review File No. 1-SIR-18

120-days from the date we receive a complete application.

We received a complete Geologic Report from Bill Lund on 7/6/18. We are currently on day 55. The 120 day timeframe expires on 11/2/18.

We would likely take the position that Mr. Lund's Shoreland Review was complete on 8/3/18 when he submitted the revised site plan. That puts us at day 27, with day 120 landing on 11/30/18.

Derrick

From: Mona Linstromberg [mailto:lindym@peak.org]
Sent: Thursday, August 30, 2018 4:07 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Cc: Elaine Karnes <karnese@peak.org>
Subject: Fw: Notice of Decision and Final Order and Findings for Shoreland Impact Review File No. 1-SIR-18

Maybe I missed your response to an earlier email (a couple of days ago). One more question - how many days does Newport have to process from start to finish a land use application? Where are both subject applications in this timeline. I did look on-line but gave up and every jurisdiction seems to have a different number of days.

Once again, thank you for your patience.

Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection

From: Mona Linstromberg
Sent: Thursday, August 30, 2018 3:18 PM
To: Derrick Tokos
Cc: Elaine Karnes ; Sean Malone
Subject: Re: Notice of Decision and Final Order and Findings for Shoreland Impact Review File No. 1-SIR-18

Derrick, possibly you can clarify the interaction between 1-SIR-18 and 1-GP-18 (see Conclusion #4 in the approval of 1-SIR-18). If we neighbors are successful in our appeal of 1-GP-18 (with the conclusion that the K and A geotechnical report is significantly flawed), how is that reflected in this current approval?

Also, at one point your intention was to schedule both appeals for 9/24 (tentative). At this point, if we file an appeal within the 15 day appeal period, is it feasible to have both appeals heard before the

Planning Commission at the same time?

Thanks for any clarification you can provide.

Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection

From: Sherri Marineau

Sent: Thursday, August 30, 2018 12:06 PM

To: Undisclosed recipients:

Subject: Notice of Decision and Final Order and Findings for Shoreland Impact Review File No. 1-SIR-18

Hello,

Attached is a copy of the notice of decision and final order and findings for the shoreland impact review for File 1-SIR-18 for your review. A hard copy of this notice is also being mailed to you today. If you have any questions or need anything further, please contact Derrick Tokos at 541-574-0626 or email him at d.tokos@newportoregon.gov.

Regards,

Sherri Marineau
City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0629 fax: 541.574.0644
s.marineau@newportoregon.gov



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CITY OF NEWPORT
 169 SW COAST HWY
 NEWPORT, OREGON 97365

 COAST GUARD CITY, USA



phone: 541.574.0629
 fax: 541.574.0644
<http://newportoregon.gov>

 mombetsu, japan, sister city

NOTICE OF DECISION¹

July 16, 2018

The Newport Community Development (Planning) Department received an application for a Geologic Permit as described herein, that the Community Development Director has determined was prepared in accordance with the criteria for the issuance of a Geologic Permit contained in Chapter 14.21 of the Newport Municipal Code (NMC).

FILE NO: # 1-GP-18

APPLICANT & OWNER: Bill Lund, P.O. Box 22, Seal Rock, Oregon 97376

LOCATION: West of NW Spring St (Lincoln County Assessor's Tax Map 11-11-05-BC, Tax Lots 1800, 1900 & 1903).

ACTION: Pursuant to NMC Section 14.21.030, all persons proposing development, construction, or site clearing within a known geologic hazard area shall obtain a Geologic Permit. The applicant applied for a Geologic Permit to establish three home sites on the property noted above. The application included a Geotechnical Engineering Report and Geologic Hazards Assessment dated June 29, 2018, prepared by Michael Remboldt, P.E., G.E. and Gary C. Sandstrom, C.E.G. and R.P.G (hereinafter collectively referred to as "Geologic Report"). The application materials, including the Geologic Report, are available for inspection or copies may be purchased at the Newport Community Development (Planning) Department.

CONDITIONS:

1. It shall be the responsibility of the property owner to adhere to the recommendations listed in the Geologic Report. Geologic Reports are only valid for the development plan addressed in the report.
2. Certification of compliance is required prior to final approval. NMC 14.21.130 states that no development requiring a Geologic Report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) 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.

¹ The following are being notified of this action: (1) affected property owners within 200 feet of the subject property (according to Lincoln County Tax Records); (2) affected public/private utilities within Lincoln County; (3) affected city departments; (4) affected state agencies.

3. An on-site storm drainage system shall be designed and constructed to control the release rate and sedimentation of storm run-off from all impervious surfaces for storms having a 20-year reoccurrence frequency. The property owner shall obtain City Engineer approval of the drainage system, and associated retention facilities, prior to issuance of a building permit (NMC 14.21.100).
4. The new public beach path, and 15-foot city easement partially encumbered by the path, depicted on the July 2, 2018 conceptual site plan prepared by K & D Engineering, Inc. (attached), is not a part of the Geologic Permit. This same site plan is included in a proposal the property owner is making to Lincoln County to construct the trail in exchange for the vacation of an undeveloped portion of Jump-off Joe road right-of-way. A separate Geologic Permit may be required for earthwork attributed to the trail.

THIS DECISION MAY BE APPEALED TO THE NEWPORT PLANNING COMMISSION WITHIN 15 CALENDAR DAYS (by Tuesday, July 31, 2018) OF THE DATE THIS NOTICE WAS MAILED. Contact the Community Development Department, Newport City Hall, 169 SW Coast Hwy, Newport, Oregon 97365 (541-574-0629) for information on appeal procedures. Appellant's challenging substantive elements of a Geologic Report must submit their own analysis, prepared by a certified engineering geologist, within 30-days of the date the appeal is filed.

Sincerely,



Derrick I. Tokos, AICP
Community Development Director

Mona Linstromberg

From: "Derrick Tokos" <D.Tokos@NewportOregon.gov>
Date: Wednesday, August 08, 2018 9:34 AM
To: "Mona Linstromberg" <lindym@peak.org>
Cc: "Sean Malone" <seanmalone8@hotmail.com>
Subject: RE: Notice issues - 1-SIR-18 and 1-GP-18 - #1

I will include this email in the record. You are correct that the mail notice we issued didn't pick up the six properties listed. Of those six, three received the notice via email because they were on the city's distribution list of interested parties. The remaining three will receive notice of the appeal hearing for the Geologic Permit (along with everyone else) once that hearing date is set. With regards to the Shoreland Review... we will reach out to those owners to see if they would like to provide comment.

Derrick

From: Mona Linstromberg [mailto:lindym@peak.org]
Sent: Tuesday, August 07, 2018 10:07 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Cc: Sean Malone <seanmalone8@hotmail.com>
Subject: Fw: Notice issues - 1-SIR-18 and 1-GP-18 - #1

I do apologize in that my notes on the files for 1-SIR-18 and 1-GP-18 made sense to me yesterday. This is the first of multiple emails. Maybe they will be easier to track.

First is my observation that K and D Engineering and Mr. Lund submitted comment after the July 31 deadline. This information should be most appropriately considered in an appeal of your decision.

Also, I didn't see the following email include in the record of either 1-SIR-18 or 1-GP-18. If not included in both, please do so. A procedural error is a procedural error.

Thank you,

Mona Linstromberg
 Sent via my totally safe HARD WIRED internet connection

From: Derrick Tokos
Sent: Tuesday, July 31, 2018 1:51 PM
To: 'Mona Linstromberg'
Cc: Sean Malone ; Oregon Shores/CoastWatch Phillip Johnson
Subject: RE: Notice issues - 1-SIR-18 and 1-GP-18

Hi Mona,

I will follow-up with Sherri who prepared the notice to see how she calculated the notification area. The individual you listed, Chris Schneller, provided comment on both applications. She is on the email distribution list of interested stakeholders that I used to distribute copies of the decision involving the geologic permit (File No. 1-GP-18) and the notice and opportunity to comment on the Shoreland Review (File 1-SIR-18). If there are any property owners that did not receive notice by mail or email, then we will reach out to them so that they are aware of the land use applications.

Thank you for bringing this to my attention. At this time, we do not intend to re-notice either of the permits.

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

From: Mona Linstromberg [<mailto:lindym@peak.org>]
Sent: Tuesday, July 31, 2018 1:12 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Cc: Sean Malone <seanmalone8@hotmail.com>; Oregon Shores/CoastWatch Phillip Johnson <orshores@teleport.com>
Subject: Notice issues - 1-SIR-18 and 1-GP-18

Derrick, when you sent me the 18 page 1-SIR-18 land use application, I shared it with Elaine Karnes. Shortly thereafter, Elaine commented how odd it was that Chris Schneller wasn't on the notice list. Today when we were trying to determine (to err on the side of caution) the names of those within 200', it was determined using the County website that not only was Chris left off the formal notice for people within 200 ft. but also five other properties were not noticed (see following list). It appears the City **only** used tax lot 1800 as the lot determining those within 200'

Notice for the 1-DG-18 appeal was sent to those of us who were on the City's email list. We have not seen the formal notice list for those within the 200' required to be noticed. I can only guess that the same notice list was mailed as was mailed re 1-SIR-18.

Twenty percent seems a significant number not noticed. I request that both the 1-DP-18 appeal (if, indeed, the list was the same) and comment period for 1-SIR-18 be re-noticed.

Thank you for your attention to this matter.

Mona Linstromberg

11-11-05-BC-02400-00
1310 NW Spring St.
Bauman, Mary E.
PO Box 1355
Newport, OR 97365

11-11-05-BC-03600-00
1242 NW Spring St.
Deliseo, Patricia A.
1242 NW Spring St.

Newport, OR 97365

11-11-05-BC-03701-00
1245 NW Spring St.
Weatherill, James G. & Weatherill, Lana R.
25804 NE Olson Rd.
Battle Ground, WA 98604

11-11-05-BC-03700-00
1235 NW Spring St.
Reinhard, Carol S. Trustee
21680 Butte Ranch Rd.
Bend, OR 97702

11-11-05-BC-03500-00
1234 NW Spring St.
Waffenschmidt, John L. & Schneller, Christine C.
1234 NW Spring St.
Newport, OR 97365

11-11-05-BC-03800-00
1225 NW Spring St.
Spectrum Properties LLC
301 S. Redwood St.
Canby, OR 97013

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**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 to consider an appeal of an administrative decision approving a Geological Permit Application (#1-GP-18).

File No: # 1-GP-18-A

Appellants: Mona Linstromberg, Elaine Karnes, Christine Schneller, Robert Earle, Teresa Amen & Pat Linstromberg (Power of Attorney, Leslie Hogan) (Sean Malone, Attorney, Authorized Agent).

Applicants: William Lund, P.O. Box 22, Seal Rock, Oregon 97376

Request: Appeal challenging the substantive elements of the applicant's June 29, 2018 geologic report, prepared by K&A Engineering, Inc., that concluded the site is suitable for the development of three home sites. Such report was the basis of the approved Geologic Permit. A peer review report, by Columbia Geotechnical, dated August 15, 2018, was submitted in support of the appeal.

Location: West of NW Spring St (Lincoln County Assessor's Tax Map 11-11-05-BC, Tax Lots 1800, 1900 & 1903).

Applicable Criteria: City of Newport regulations for development within mapped geologic hazards areas are contained in Chapter 14.21 of the Newport Municipal Code (NMC), and all standards listed in this chapter are relevant to the permit application on appeal. Pursuant to NMC Chapter 14.21.050(D), an application for a geologic permit must include a geologic report, prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development. Further, 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 (NMC 14.21.050(E)). Guidelines for the preparation of Geologic Reports are set forth in NMC 14.21.060 and require that reports be consistent with generally accepted scientific and engineering principals, including minimum standards identified in cited documents published by the Oregon State Board of Geologist Examiners and the Department of Land Conservation and Development. Appellants challenging substantive elements of a geologic report are required to submit their own analysis, prepared by a certified engineering geologist (NMC 14.21.120).

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision; failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to the issue precludes an appeal based on that issue; submit testimony in written or oral form; send letters to Planning Department (address under "Reports") by 5:00 p.m. the day of the hearing; oral testimony will be taken during the course of the public hearing.

Reports: The staff report may be reviewed or a copy purchased at the Newport Community Development Department, City Hall, 169 SW Coast Hwy, Newport, Oregon, 97365 seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address.

Contact: Derrick Tokos, Planning Director, Community Development Department, (541-574-0629) (address above).

Time/Place of Hearing: Monday, September 24, 2018; 7:00 p.m.; City Hall Council Chambers (address above).

MAILED: August 31, 2018.

PUBLISH: September 14, 2018/News-Times.

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

Mona Linstromberg

From: "Derrick Tokos" <D.Tokos@NewportOregon.gov>
Date: Wednesday, September 19, 2018 12:02 PM
To: "Mona Linstromberg" <lindym@peak.org>
Subject: RE: Defective notice 1-GP-18

Hi Mona... Thanks for bringing this to my attention. The mailed notice includes the time, date, and location of the hearing, as did the email that we sent out to stakeholders. I will advise that the Planning Commission conduct the public hearing on September 24th to take testimony from those in attendance and, when finished, that they continue the hearing to October 8th. That will allow time for a corrected notice to publish in the newspaper, and any persons relying upon such notice to attend.

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

From: Mona Linstromberg [mailto:lindym@peak.org]
Sent: Wednesday, September 19, 2018 11:08 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: Defective notice 1-GP-18

Derrick, I have received several calls from confused neighbors about last Friday's notice in the newspaper with no corrected notice in today's paper. I reviewed the notice in the on-line file and now see that the date, time and location of the public hearing are all omitted in the published notice. This could be a significant procedural error for those that are unable to attend because the defective notice will prejudice the substantial rights of those unable to attend as a result of the error. Since this procedural error could result in a remand, it is in the best interest of the applicant to sign a waiver (is the deadline still Nov 2?) and the City to re-notice.

Could you please let me know how you intend to proceed as we are working with our geological engineer to either attend the public hearing or arrange a conference call so she can participate directly at the hearing. If a conference call is preferable to Ms Wilmoth and fits her schedule better, at some point we will need to know how to make that arrangement.

Thank you for your attention to these matters.

Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection



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Mona Linstromberg

From: "Mona Linstromberg" <lindym@peak.org>
Date: Sunday, October 07, 2018 1:11 PM
To: "Derrick Tokos" <D.Tokos@NewportOregon.gov>
Cc: "Elaine Karnes" <karnese@peak.org>; "Chris and John" <honekiri@gmail.com>; "Sean Malone" <seanmalone8@hotmail.com>
Subject: 1-GP-18-A process

Derrick, can you clarify how the 120 day time line currently correlates with what remains of the appeals process? Your Memorandum lists several options in regards to this appeal and then there remains the potential appeal to the City Council. At one point it was indicated November 2 was the deadline, and it would be useful to know how the City anticipates meeting this timeline.

Thank you for your assistance in clarifying this matter,

Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection

NOTE: No response and planning director did not raise this issue at the public hearing.

**Derrick Tokos**

From: Janice Wickham <Bellawick@msn.com>
Sent: Saturday, October 13, 2018 6:14 AM
To: Derrick Tokos
Cc: Karnese@peak.org
Subject: Spring Street development

If David Lund wants to do the right thing as he claims, he would restore the public beach access he illegally blocked. Additionally, he would abandon his plans to build multi structures in a known historical slide area as mapped by DOGAMI. This senseless growth will impact the entire neighborhood as it undermines the road integrity and increases the slide risk for the hill. Plain and simply, it's greed. The sewer system is already overloaded as evidenced by sewage leaking onto streets and the beaches. Newport needs to focus on maintaining the infrastructure and not allowing anyone to build wherever they want. Smart growth will not cause future problems. Please show real leadership in governing our city and consider the current residential homes that will be impacted. Thank you. Janice Wickham



Teresa Amen <teresa.amen22@gmail.com>

"Joys House"

Carol Reinhard <csreinhard@icloud.com>

Tue, Oct 2, 2018 at 4:16 PM

To: Teresa Amen <teresa.amen22@gmail.com>

Cc: Carol Reinhard <csreinhard@icloud.com>, Chris and John Schneller Waffenschmidt <honekiri@gmail.com>

Hi Teresa,

Sorry to take so long to respond - I've been away, hiking in Utah.

You're right that a significant portion of the yard at Joy's House dropped - perhaps 15 feet late in the year 1999. We immediately began the process of having a retaining wall built, complete with pilings and earth anchors, in order to save the house. We also paid for such a wall to be built for the house immediately to the north of Joy's House (because the owners at that time couldn't afford to have it done - and because the stability of their lot also effect the stability of Joy's House).

We began to understand that water drainage has a huge effect on mud slides, so we had a french drain built around Joy's House, extending the drainage line all the way to the beach. Geologists were very clear at that time that for the best chance at stability, we should lead a neighborhood drainage movement. Apparently all adjacent properties affect each other. However, my time was so consumed by helping Joy during her rehabilitation, that I did not attempt to lead such a movement. Perhaps with the current neighborhood group, there might be interest in such a project - aside from the immediate threat posed by the attempted development.

In June of 2000, Joy slipped and fell into a gap between the new retaining wall and the bank. She was 80 years old at the time, and was unable to free herself - so she spent the night & the next morning trapped in that crevice! Mid morning, some boys who were walking on the beach found her & tried to get her free. Unable to do so, they knocked on doors until they found help.

As a result of that accident, Joy lost her left leg. Such a sad outcome! Even at 80, she was such a trooper, fighting her way back to independence through physical therapy. She was an inspiration to our entire family! When we visit Joy's House, we always think of her & remember our times with her.

Thanks Teresa, for representing the neighborhood interests at the Planning Commission meeting! Let me know if you have further questions,

Carol Reinhard

[Quoted text hidden]

Submitted by
Teresa Amen
on 10/9/18
for
1-GP-18-A



GeoSystems Corporation

The right choice for the DESIGN and CONSTRUCTION of GeoSystems

Retaining walls
Earth Anchors / Soil Nails
Slopes / Embankments
Landslide Restoration
Stream Crossings
Foundations
Excavation Support

February 3, 2000

Mr. Victor Mettle
City of Newport
810 SW Alder Street
Newport, OR 97365

Planning
Engineering Studies
Structural Design
Specifications
Permits
Construction
Special Inspections
Project Management

Dear Mr. Mettle:

Reference: 1235 NW Spring Street, Newport, OR

Attached please find completed forms for City of Newport licenses and checks for required fees.

GeoStandards performed a detailed geological study on the referenced project. Report copies were submitted to our client, Mrs. Joy Alpers. We have contacted our client and advised her to forward those copies to you.

The building permit is not required for this project since we are not moving any dirt or removing any vegetation. We are only building a pin-pile/ soldier pile wall with wire mesh to protect exposed bank from further erosion and sloughing. Based on our knowledge of City/County regulations, such a project does not require a building permit. If you think otherwise, kindly let us know.

We appreciate this opportunity for providing the explanation. Please contact us if you have any questions.

Sincerely,

Mr. Sam M. Adettiwar M.S., P.E.
principal
Phone: (541) 265- 6144
Fax: (541) 265- 5633



Sean T. Malone

Attorney at Law

259 E. Fifth Ave.,
Suite 200-C
Eugene, OR 97401

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

October 8, 2018

Via Hand Delivery

City of Newport
Planning Commission
169 SW Coast Hwy
Newport OR 97365
(541) 574-0629

Re: Testimony in Support of Appeal of Geologic Permit (File No. 1-GP-18) (Lund) and in Opposition to the Application, Continued Hearing

On behalf of Mona Linstromberg, Elaine Karnes, Teresa Amen, and Robert Earle, please accept this testimony regarding the appeal of Geologic Permit, File No. 1-GP-18. For the following reason, the appeal should be granted and the application denied.

The applicant proposes to develop three homesites (one single-family dwelling and two duplexes) on a vacant plot of land located north of 1245 NW Spring St., adjacent to the Jump-Off Joe outstanding natural area boundary, and within the City's Geologic Hazards Overlay. It is difficult to imagine a more irresponsible place to develop three homesites, and the geologic reports in the record are evidence of that reality. Beyond that, the application fails to comply with the standard practices of the preparation of geologic reports, as outlined by the "Guidelines for Preparing Engineering Geologic Reports in Oregon" and fails to satisfy other applicable criteria.

- I. The application is inconsistent with the purpose of the Geologic Hazards Overlay Zone (NMC 14.21.010)

The purpose of the Geologic Hazards Overlay zone is “to promote the public health, safety, and general welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related environmental damage, consistent with Statewide Planning Goal 7 and 18, and the Natural Features Section of the Newport Comprehensive Plan.” NMC 14.21.010.

As noted below, the application does not promote public safety or welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related environmental damage. Moreover, the application is inconsistent with Statewide Planning Goals 7. Statewide Planning Goal 7 requires – under implementation element B.4 – that:

“[w]hen reviewing development requests in high hazard areas, local governments should require site-specific reports, appropriate for the level and type of hazard (e.g., hydrologic reports, geotechnical reports or other scientific or engineering reports) prepared by a licensed professional. Such reports should evaluate the risk to the site as well as the risk the proposed development may pose to other properties.”

As noted below, the applicant has avoided analysis of the risks that the proposed development may have on adjacent properties, and even ignores the existing geologic issues that exist on adjacent properties. The applicant’s refusal to address those issues is evident in the applicant’s conjecture at the reasons for foundation issues that are occurring on adjacent properties. Moreover, given that the springs are occurring in the vicinity of the proposal, a hydrologic report is necessary. The springs undoubtedly affect the geologic conditions on the site and within the site’s vicinity. Problematic is the concession by the applicant that misunderstands the number of springs in the area – assuming only one when there is at least two. State law does not permit the City to interpret its provisions that implement Statewide Planning Goals inconsistent with the goals themselves. Here, without a hydrologic report of the active springs – especially in conjunction with the active landslide – and an analysis of the impacts to adjacent properties, the City would be acting inconsistently with Statewide Planning Goal 7.

II. The application is inconsistent with NMC 14.21.060

NMC 14.060 requires as follows:

“Geologic Reports shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles and shall, at a minimum, contain the items outlined in the Oregon State Board of Geologist Examiners "Guidelines for Preparing Engineering Geologic Reports in Oregon," in use on the effective date of this section. Such reports shall address subsections 14.21.070 to 14.21.090, as applicable. For oceanfront property, reports shall also

address the “Geological Report Guidelines for New Development on Oceanfront Properties,” prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development, in use as of the effective date of this section. All Geologic Reports are valid as prima facie evidence of the information therein contained for a period of five (5) years. They are only valid for the development plan addressed in the report. The city assumes no responsibility for the quality or accuracy of such reports.”

Thus, geologic reports must be consistent with “standard geologic practices employing generally accepted scientific and engineering principles” and address the criteria contained in “Guidelines for Preparing Engineering Geologic Reports in Oregon.” In addition, NMC 14.21.070 through .090 must also be addressed. Each tax lot at issue here must address the foregoing. If there is oceanfront property, “Geological Report Guidelines for New Development on Oceanfront Properties” must also be addressed. Here, tax lot 1800 is oceanfront property, and, therefore, the aforementioned guidelines must be addressed for tax lot 1800.

First, because tax lot 1800 is oceanfront property, the applicant was required to submit a report consistent with “Geological Report Guidelines for New Development on Oceanfront Properties.” The record does not contain such a report, and, therefore, the application is not consistent with NMC 14.21.060.

Second, the standard requires that all reports that are less than 5 years are valid as prima facie evidence of the information contained therein. This means that the 1991 Report by H. G. Schlicker (and relied upon by the applicant) is not considered prima facie valid because it is 27 years old. Beyond that, as noted below, even the office responsible for that report disowns the report. Indeed, the president and principal geologist and geotechnical engineer at H.G. Schlicker and Associates, Mr. J. Douglas Gless, states:

“[W]e have identified the area as what appears to be active landslide, meaning that we have seen what appears to be evidence of the area having had movement of the ground within the last few decades. In the past couple of decades there has been a buildup of the dunes at the toe of the slope which has had a stabilizing influence on the site but we don’t believe it would be prudent to rely on the assured continuation of this dune growth as these loose dune sands are highly susceptible to erosion by storm waves and rip currents. Any substantial erosion of the dunes would have a large impact on stability models that don’t account for the eroded condition.

Of the three reports, the 2016 report pertaining to TL 1800 should be considered the most up to date. That report basically concludes that the Spring Street Slide is

active as mapped by DOGAMI. The 1991 report prepared by Herbert Schlicker for Mr. Hal Smith should be considered greatly out of date and I cannot agree with the conclusions drawn in it relative to the statement, ‘the landslide rests on a nearly level surface and is not capable of further sliding.

It is important to understand that any landslide that toes out at beach level and is subject to erosion is typically at a greater risk than non-landslide oceanfront ground.”

The statement by Mr. Gless cannot be overstated. It is directly contrary to what the applicant is disclosing and reveals what the applicant is apparently hiding. Given that Mr. Remboldt’s recent attack on Ms. Wilmoth’s qualifications, I have attached Mr. Gless’ qualifications. It should also be noted that the 2016 report mentioned by Mr. Gless is less than 5 years old, and, therefore, under the City’s criteria, that report is valid, prima facie evidence of the information contained therein. Even more astonishing is that Mr. Remboldt has stated that in relation to the “Previous Geologic Report for Tax Lot 1800” that “[w]e have no idea of any report for this property.” 10.4.18, Remboldt Submission at Page 2. If Mr. Remboldt pleads ignorance of this report, then Mr. Remboldt has not actually reviewed the record before the Planning Commission, which is not surprising given the other omissions and failures by the applicant.

Third, as it relates to the requirement that geologic reports must be consistent standard geologic practices, guidelines for preparing engineering geologic reports, and NMC 14.21.070 and .090, the applicant has failed in numerous respects.

The application admittedly fails to include supporting data. Mr. Remboldt, in his 10.4.18 submission (Exhibit F-1), states that “including hundreds of pages of thousands of calculations would serve no purpose.” This is an alarming statement because these pages and calculations are, in effect, the substance of the conclusions in the report. Failing to disclose the underlying data also serves to effectively prevent peer review. Apart from that practical purpose, the requirement to include analytic and computer modeling is found in the “Guidelines for Preparing Engineering Geologic Reports in Oregon.” See Section 4.3 (“Analytical Analyses and Computer Modeling”: “Regardless of the form of the computations, the assumptions behind the analytical method being utilized should be described along with the required data and the limitations of the analytical results.”). The applicant’s refusal to submit this information should be met with skepticism because it prevents peer review and is not consistent with the standard practices.

Evidence was submitted of significant geologic problems arising on the properties to the immediate north and south of the property, resulting in significant remedial work to those properties. For example, post-development repairs to homes to the north and south

resulted in the employment of a foundation repair contractor to the tune of almost \$30,000. The geologic impacts on these properties have been ignored by the applicant. Instead of discerning the reason for these foundation issues, the applicant hides behind the following statement: “To our knowledge, they have not actual reports of investigations to determine the cause of foundation settlement. The distress and required underpinning could just as easily been caused by settlement of soils underneath the foundation due to a variety of reasons – we just don’t know ...” 10.4.18 Remboldt Submission (underline in original). Mr. Remboldt, instead of investigating the issue, merely resigns himself to conjecture, which is inconsistent with standard practices for geologic reports. The problem with that position is that is not what is required of such geologic reports. According to “Guidelines for Preparing Engineering Geologic Reports in Oregon,” adjacent properties must be addressed. *See* Section 3.2.2 (“Field Reconnaissance, Geologic Mapping, and Subsurface Investigation”: “It may be necessary for the engineering geologist to extend mapping into adjacent areas to adequately define significant geologic conditions”); Section 4 (“Assessment of Engineering Geological Conditions and Factors: “The engineering geologic assessment includes evaluation of the effects [e.g., geologic conditions, processes, and hazards] of these geologic features *upon the proposed development activity within the site and adjacent area*, and consideration of the effects of these proposed modifications upon future geologic conditions, processes, and hazards.”) (emphasis added).

Mr. Remboldt was apparently unaware – until recently – what land use was proposed for the subject property. Indeed, Mr. Remboldt acknowledges this, stating in his 10.4.18 submission that “We were unaware of the nature of the proposed structures at the time of our Geotechnical Report. This make [sic] virtually NO difference to the outcome or recommendations and is NOT a reason to deny the geologic permit.” (emphasis in original). The notion that this is not a reason to reject the permit is misplaced. Indeed, the “Guideline for Preparing Engineering Geologic Reports” requires that “[a] description of the proposed land use or development activities needing an engineering geologic study, including the regulatory framework and requirements that are addressed by the report.” Section 1, Fifth bullet point. *See* also Section 3.1 (“Known or suspected engineering geologic conditions and geologic and seismic hazards that could impact the proposed land use or development activities, including a statement regarding past performance of existing facilities in the immediate vicinity.”); Section 3.2.5 (“Special engineering geologic characteristics or concerns affecting proposed land use and development activities.”); Section 4 (“This section of the engineering geologic report is the synthesis of existing geologic data and the information obtained during site characterization as it relates to the proposed land use or development activities.”); Section 5.1 (“The Conclusions section should be focused on the geologic constraints for the proposed land use or development activity of the site.”). Given these omissions, it is

questionable whether the applicant has even reviewed the “Guideline for Preparing Engineering Geologic Reports.” That failure is fatal to the application because that guideline is effectively criteria for the subject application.

The applicant admits that its report is premature and incomplete. For that reason alone, the application must be denied. For example, at the hearing, Mr. Remboldt conceded, repeatedly, that more work is to be done: “We’ve been clear with Mr. Lund he’s going to have to do some more borings to confirm the geology in that area.” 9.24.18 Hearing Video, 1:25; we think it would be prudent to do more borings,” *id.* at 1:42:32; “There’s still some issues to be worked out. It’s really a work in progress,” *id.* at 1:43:11. The “Guideline for Preparing Engineering Geologic Reports” does not contemplate a *preliminary report or a preliminary site investigation* wherein additional information would be provided at a later time. Moreover, the NMC does not contemplate a preliminary geologic report. By the applicant’s own admission, there is more to be done, and, at this stage, the report is both premature and incomplete. As such, the application must be denied until a serious attempt at complying with the criteria has been undertaken.

It is also apparent that borings that were done by the applicant occurred in the right of way and not on the actual property. *See* Exhibit 6-A, Appendix A, Maps Drawing 2/3, Geotechnical Site Plan. This is an astounding failure by the applicant. Clearly, the basic requirements of a geologic report would entail boring on the subject property, not an adjacent right of way. As with other failures, this failure cannot be overstated.

As noted above, the applicant is attempting to rely on a stale report from 1991 that cannot be used under the plain language of the code. The 2016 report from H.G. Schlicker & Associates, however, is contained in the record and is *prima facie* evidence of the conclusions contained therein (because it is less than 5 years old). That report contains numerous references to active landslides in the vicinity and on the subject property and one is even referred to as the “Spring Street landslide”:

“The slope on the eastern area of the subject lot is part of the headscarp of an active landslide, and the lower elevation western part of the site lies on a downdropped active landslide block (Appendix A). The mapped active landslide north of the Jumpoff Joe headland which has its northernmost lateral scarp located along the eastern boundary of the adjacent lot to the north is generally referred to as the Spring Street landslide (Figure 4).

The subject site lies on a mapped active landslide block (Figure 4). The site is located about ¼ mile north of the Jumpoff Joe landslide, a well-documented translational landslide that was first noted in 1922 with substantial movement and

damage to structures in 1942 and 1943; continued movement has been observed to the present date. As noted above, the site also lies at the northern part of the more recent, large Spring Street landslide (Figure 4). Significant movement of the Spring Street landslide occurred in the 1960s and unstable conditions continued at least into the 1970s (Schlicker et al., 1973)....

The site lies on an ancient landslide that is mapped as a deep-seated active slide block. The headscarp of this active landslide, named the Spring Street landslide, is located along the eastern property boundary of the site (Figure 4). Nearby areas north and south of the site show signs of continued slow movement, and we expect the subject site to experience ongoing movement under existing conditions.

Landslide movement at the subject site and/or in the site area can be exacerbated by a large earthquake, erosion at the bluff toe, or increased groundwater levels. As ocean wave erosion continues to erode the toe of the landslide mass, the risk of larger and more rapid movement increases. The site lies within the Active Coastal Erosion Hazard Zone, defined as currently undergoing bluff recession and erosion, with a lesser risk (High-Risk Zone i.e., high risk of bluff recession within the next 60 years) in areas east of the site along N.W Spring Street. These risks should be accepted by the owner, future owners, developers, and residents/occupants of the site.

The site is on an active landslide and would be difficult and expensive to develop. Building permits for development of the site may also be difficult to obtain.”

April 14, 2016, Geologic Hazards Report by H.G. Schlicker & Associates, Pages 3-4, 6, 7. Columbia Geotechnical (Exhibit E-6) also noted the overwhelming evidence of an active landslide: “ the disturbed terrain within the fallen landslide blocks indicative of recent slope movement; high contrast of lidar images that suggest landslide blocks that have had little time to erode since they last moved; tilted shore pine within the area the planned new development; and historical distress to the two closest homes (roughly 15 ft north and 75 south of the project) on either side of the property caused by ground movement in the past 30 years or so.” Columbia Geotechnical, Exhibit E-6, Page 1-2. Despite the above evidence, Mr. Remboldt alleges there are no “deep-seated landslides” found at the site. Such a statement strains credulity.

Moreover, as is standard practice, Columbia Geotechnical advocated for monitoring in its report because:

“[o]ld landslide scarps and displaced material cannot effectively be judged to be stable based on isolated site observations alone, which represent just a snapshot in time even over the course of several months. It is common practice to set up a comprehensive monitoring system that can provide data over the course of one or more wet seasons to base the opinion of current slope stability.... Since landslides are most active during high rainfall years, the goal would be to install the geotechnical instrumentation as soon as possible and monitor over a duration that includes at least one high-rainfall season, (which make take more than one year). Premature conclusions on stability can only be avoided by monitoring through a season that exceeds normal rainfall, hopefully monitoring over a season of record rainfall.”

Columbia Geotechnical’s recommendations are backed up by the “Guideline for Preparing Engineering Geologic Reports,” which essentially acts as approval criteria here. Under “Site Investigation,” the Guideline states that “[i]nstallation and monitoring of in situ instruments such as slope inclinometers, piezometers, extensometers and settlement devices, and borehole accelerometers” should be utilized. Section 3.2; Section. 5.2 (“This section may include recommendations regarding additional work needed to supplement the report, including but not limited to monitoring of geological conditions (i.e., groundwater, slope movement, settlement), review of plans and specifications, and construction monitoring.”). Contrary to the criteria in the Guideline, Mr. Remboldt alarmingly states that “[l]ong term monitoring of precipitation is simply ridiculous and unprecedented for this project site.” If ever there were a site for monitoring, this would be it, given the problems associated with it. Moreover, while Columbia Geotechnical advocates for a cautious approach in an area of active movement (and even Mr. Remboldt alleges that “this is a high hazard zone for slope movement, and, as such, warrants great caution,” September 12, 2018, Remboldt Submission (Exhibit E-3)), Mr. Remboldt’s allegation that monitoring is “ridiculous” should be alarming and lacks the professional integrity necessary for a project such as this. Mr. Remboldt goes on to state that “[t]o my knowledge, unless a site is on an active landslide, long-term monitoring with slope inclinometers is not common practice.” The problem is that Mr. Remboldt, contrary to Columbia Geotechnical and the 2016 Schlicker report, does not recognize that there *is an active landslide*.

In Columbia Geotechnical’s Addendum to the 8/15/18 submission, the following omissions exist in the applicant’s flawed geotechnical report, all of which are components of the “Guideline for Preparing Engineering Geologic Reports”:

1. In the Site Description, there was not discussion of the evidence of past or current geologic processes and hazards and the known hazards zones were not identified;

2. In the Site Investigation, there was no boring data in the locations of the actual planned engineered structures and there was no installation and monitoring of in situ instrumentation such as slope inclinometers, piezometers, extensometers and settlement devices, and borehole accelerometers, nor was there any attempt to use geophysical surveys to better define the geologic, landslide, and groundwater contacts at depth on the property;
3. In the Analytical Analyses and Computer Modeling, the assumptions behind the method being utilized should be described along with the required data and the limitations of the results; and
4. Site map lacks accurate details on topography, planned cuts, planned fills, planned drainage, etc.”

It appears as though the applicant does not know what the standard practice for such reports is or the applicant has not utilized the “Guideline for Preparing Engineering Geologic Reports.” That is fatal to the application because the Guideline is effectively criteria for the application.

For the above reasons, as well as those presented by other testimony in opposition to the application, the applicant has failed to satisfy the criteria of NMC 14.21.060.

III. The application is inconsistent with NMC 14.21.070

NMC 14.21.070.A.2 requires that properties possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site. There has been no showing of compliance with this criterion. The failure to address this criterion is nothing more than a disturbing trend that fails to address all relevant criteria.

IV. The application is inconsistent with NMC 14.21.080

For compliance with NMC Chapter 14.21.090, the applicant’s submission has not changed since June 4, 2018, even though the applicant has conceded that necessary, additional work is yet to be done and two versions of the geologic report have issued since that date. NMC 14.21.090 requires that the Geologic Report address a variety of Erosion Control Measures, and the applicant purports to satisfy the criteria in NMC 14.21.090 through the June 4, 2018, submittal by Gary C. Sandstrom. The Sandstrom review is largely based on the flawed Remboldt report, and, therefore, the Sandstrom review is also flawed.

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;

This standard is couched in mandatory terms, using the word “shall.” The applicant’s recommendations, however, related to NMC 14.21.090(A) are largely

premised on constructing buildings one unit at a time but qualifies that this should be done “if possible.” In other words, it is not known if this approach is even feasible. In the absence of its feasibility, there is simply no proffered way in which to comply with this mandatory standard. The applicant’s equivocation is not sufficient to meet the standard. Moreover, the Remboldt report did not even purport to understand the extent of the development on the subject property, as noted above. Clearly, the number and size of the structures would govern the “possibility” of how erosion is controlled and whether the proposal could feasibly be done piecemeal.

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

Again, the applicant’s report was submitted without an actual knowledge of what the development would entail, and, therefore, the applicant cannot be heard to “minimize cut or fill” because the report was prepared without the necessary information in mind. The applicant generally alleges that the site “should be protected with retaining walls, graded slopes or terraces and other forms of protection as mentioned above,” but this answer lacks certainty and detail, likely owing to the fact that the applicant was unaware of the specific development at issue. Also, notably, the applicant’s answer here concedes that the northernmost residence “would be subject to possible flooding erosion,” which is consistent with the findings in the 2016 Schlicker Report (“Landslide movement at the subject site and/or in the site area can be exacerbated by a large earthquake, erosion at the bluff toe, or increased groundwater levels. As ocean wave erosion continues to erode the toe of the landslide mass, the risk of larger and more rapid movement increases.”).

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

It should be noted that vegetation was already removed by the applicant in its initial work on the property. That has already resulted in erosion. The applicant has not yet accounted for the damage that has already been done, let alone that damage it proposes to do in the future.

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

The applicant’s answer does not address “permanent plantings” and the notion that “modular/phased construction” will address erosion control and drainage measures is misplaced. Simply put, more is required of the applicant when it proposes to construct multiple dwellings on an active landslide and highly erosive area that has not been subject to erosion monitoring.

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;

This requirement is couched in mandatory terms (e.g., shall) but the applicant does not commit itself to anything more than what it “should” do. The applicant’s attempt to satisfy this criterion simply fails to satisfy the plain language of the provision.

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;

The answer to this provision refers back to sections A and E. This deferred answer is insufficient because the standard is couched in mandatory terms but the answers to sections A and E are couched in hortatory terms. Again, the applicant has not satisfied the plain language of the provision.

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.

Again, in response to this criterion, the applicant sets forth recommendations instead of commitments or conditions of approval. Moreover, the applicant has not demonstrated an understanding of what would be required to adequately carry runoff from a twenty-year frequency storm. The applicant has not engaged in any monitoring that would bring certainty to the applicant’s generalized non-mandatory recommendations.

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;

The applicant defers an answer to the answer for Section E. Again, the applicant is not committing itself to any mandatory conditions but rather alleging generalized recommendations that are not, in any way, mandatory. This fails to satisfy the criterion.

I. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not 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;*

The applicant again defers to sections A and E. This provision is couched in mandatory terms rather than permissive terms. However, the applicant's answer to these criteria are loose recommendations devoid of any actual commitment. This repeated deferment and failure to actually commit itself to remedial actions is insulting not only to the City but to the neighbors that will have to live with the adverse effects of this irresponsible development.

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

Here, the applicant does little more than parrot the standard without so much as a plan as to how to deal with the spoils or stockpiled material. It is all the more insulting that this is occurring in a highly erosive area that contains an active landslide.

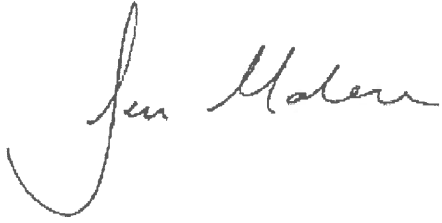
K. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

Even for this relatively straightforward provision, the applicant fails to commit itself to mandatory requirements. Instead, again, the applicant alleges that it "should" do certain things, not that it "shall" do particular things.

V. Conclusion

For the foregoing reasons, the application must be denied. The applicant proposes to rely on the most dated geologic report in the record, even at the express request that such report not be used by the firm that prepared it; fails to address all relevant criteria; and fails to accord its attempts to satisfy the criteria with the plain language of that criteria. In setting forth this application, the applicant not only puts itself but also those surrounding property owners at a significant risk.

Sincerely,

A handwritten signature in cursive script that reads "Sean T. Malone". The signature is written in black ink on a white background.

Sean T. Malone
Attorney for Mona Linstromberg, Elaine Karnes, Teresa Amen, and Robert Earle

Cc:
Clients



OREGON SHORES
CONSERVATION COALITION



Monday, October 8, 2018

City of Newport Planning Commission
c/o Community Development Director Derrick Tokos
Newport Community Development Department
169 SW Coast Hwy
Newport, Oregon 97365
Via Email to:
D.Tokos@NewportOregon.gov

Re: File No. 1-GP-18-A, Lund Geologic Permit Application

Additional Comments from Oregon Shores Conservation Coalition

Dear Chair Patrick and Planning Commission members,

We are aware of comments made by Michael Remboldt, casting aspersions on the comments by the Oregon Shores Conservation Coalition in the matter of the Lund Geologic Permit Application. We won't take up the commission's time with a detailed reply—we stand by our comments, and believe they speak for themselves.

However, we did want to make a few observations about the assumptions Mr. Remboldt appears to make, and what they say about the process and his perspective.

He is of course correct that our comments don't offer anything new in terms of the geological evidence—we aren't geologists and don't pretend to have expertise in this area. Our comments point to questions raised both by geologists and by residents of the area which are most definitely not adequately addressed in the geologic report being appealed, despite Mr. Remboldt's protestations. We are not presuming to make a definitive geologic report—we are arguing that the geologic report submitted by Mr. Lund is not sufficiently definitive, and should be rejected.

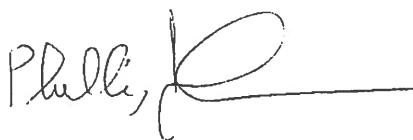
Mr. Remboldt's disparagement of the geologists who did offer comments is another matter. We're sure Ms. Wilmoth and Mr. Cross can defend themselves adequately against his disrespectful statements, but we would point to what this says about Mr. Remboldt's blinkered point of view. He complains that Ms. Wilmoth isn't qualified to conduct a "peer review," but this is not a peer review of a scientific paper, a matter just among professional colleagues in one niche of geology. This is a public planning process, and these are highly knowledgeable citizens providing well-founded testimony. His type of very narrow-minded credentialism is inimical to

the democratic process. The issue here isn't whether Mr. Remboldt has jumped through just the right hoops to satisfy his circle of technical consultants; the issue is whether the report adequately addresses public concerns about health and safety, costs to the public of failed development, and preservation of natural values. All citizens should be able to offer their own expertise, without someone waving a piece of paper at them and sneering at them because they don't have the right credentials.

Which leads to Mr. Remboldt's repeated complaints that Oregon Shores' comments are "embellished." The points directly to his false assumption, which again is that this is all about a "peer review." The "embellishments" to which he refers are actually the fundamental purpose of our comments. We don't claim expertise in geology, but we do claim expertise in planning and land use law. The thrust of our comments is to place the geologic report and the geologic testimony on the record in the context of code requirements. We demonstrate that the submitted report does not meet the required standards—but again, we'll let our original comments speak for themselves on this point. Mr. Remboldt may genuinely not grasp that this is not an internal debate among geologists, a debate which in his view only those with a certain credential should be admitted, but a public process through which the citizens of a community are making decisions about its future, and which includes planning and legal considerations that don't fall entirely within the scope of geologic technicians.

In dismissing concerns about the risks of developing in a coastal hazard zone, Mr. Remboldt sounds a good deal like the comedian Richard Pryor, whose stock line was "Who you gonna believe, me or your lyin' eyes." Mr. Lund's development is proposed for an area known to geologists as the "Spring Street Landslide." It sits on a landslide block. It is adjacent to the Jump-off Joe landslide complex. Neighbors have pointed out that there is a good deal of observed spring flow across the property not documented in the report. This property is highly landslide-prone, whatever Mr. Remboldt would like to have us believe. Any development here is extremely questionable, but at the least, it should not be allowed to proceed without an adequate geologic review that addresses the long-term questions that have been very plausibly raised.

Sincerely,

A handwritten signature in black ink that reads "Phillip Johnson". The signature is written in a cursive style with a long horizontal line extending to the right.

Phillip Johnson, Executive Director



Derrick Tokos

From: Elaine Karnes <karnese@peak.org>
Sent: Sunday, October 07, 2018 10:02 AM
To: Derrick Tokos
Cc: Mona Linstromberg; Rob & Teresa; Chris; Phillip Johnson, Oregon Shores/CoastWatch; Matt and Lisa Thomas
Subject: Evidence for Appeal of Geologic Permit (1-GP-18-A)
Attachments: DOGAMI Bulletin 81, title page.pdf; DOGAMI Bulletin 81, page 90.pdf; DOGAMI Bulletin 81, page 89.pdf; DOGAMI Bulletin 81, page 123.pdf; DOGAMI Bulletin 81, page 127.pdf

Please enter the attached evidence [DOGAMI Bulletin 81, Environmental Geology of Lincoln County, Herbert G. Schlicker] into the record (Appeal Geologic Permit 1-GP-18-A) and please acknowledge receipt.

The entire document can be accessed using the following link: <https://www.oregongeology.org/pubs/B/B-081.pdf>

Respectfully, Elaine Karnes

STATE OF OREGON
DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES
1069 State Office Building, Portland, Oregon 97201

BULLETIN 81

ENVIRONMENTAL GEOLOGY
of
LINCOLN COUNTY, OREGON

Herbert G. Schlicker, Oregon Department of Geology and Mineral Industries,
Robert J. Deacon, Shannon & Wilson, Engineers, Inc.,
Gordon W. Olcott and John D. Beaulieu, Oregon Department of Geology and Mineral Industries,

* * * * *

The preparation of this report was financed in part through a Comprehensive Planning Grant from the Department of Housing and Urban Development, under the provisions of Section 701 of the Housing Act of 1954, as amended, in partial fulfillment of HUD contract CPA-OR-10-16-1006.

* * * * *

Prepared under Contract No. LGR 72-04-05 for
OREGON DISTRICT 4 COUNCIL OF GOVERNMENTS
LINCOLN, BENTON, LINN COUNTIES



GOVERNING BOARD
R. W. deWeese, Chairman, Portland
William E. Miller Bend
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STATE GEOLOGIST
R. E. Corcoran

September 1973



Photo 45. Spring Street dislocated by landslide movement. Water flowing down right side of street comes from spring, indicating the disturbed subsurface drainage of the landslide mass.



Photo 46. Jumpoff Joe landslide in Newport began in 1922, but major displacement occurred in 1942. A number of houses were situated on the down-dropped block of land.

GEOLOGIC HAZARDS - LANDSLIDES

89



Photo 43. Active landslide at Spring Street just north of Jumpoff Joe in Newport creates a jumble of unstable ground involving many acres of land.



Photo 44. Close-up of part of the large landslide scarp exposed behind house on Spring Street. Extensive damage to house began in 1961 and slide mass continues to be unstable.



Photo 73. Jumpoff Joe in three stages of erosion: in 1900 (top), marine terrace remnant has a small arch; in 1913 (middle), surface eroded and arch enlarged; in 1926 (bottom), arch gone and outer rock an isolated sea stack. (Photos courtesy of Pacific Studio, Newport)

SUMMARY AND RECOMMENDATIONS

The geologic and climatic environment of Lincoln County is attended by a variety of natural hazards that have the potential for creating serious problems involving property and, possibly, lives. On the other hand, an understanding of these hazards and a sensible approach to coping with them in the planning stages of development can eliminate much of the grief that might otherwise transpire.

The information and recommendations in this report are presented as basic guidelines for the County so that planning and development can proceed in such a way as to avoid the losses induced by geologically hazardous conditions. It must be emphasized that the report is general in scope, delineating only broad areas where hazardous geologic conditions exist. Local sites should be evaluated by qualified geologists and soils engineers responsible to the County or cities in order to protect the individual land owners and investors. Developers of problem areas should be required to employ qualified consultants.

The following discussion reviews the areas in Lincoln County that are subject to geologic hazards and suggests ways these problems can be avoided or corrected. The report also reviews the available mineral resources needed for continued growth of the County.

Areas Subject to Geologic Hazards

Marine terraces

Most of the coastal communities and recreational developments of Lincoln County are situated on the marine terraces. These elevated platforms, representing former strandlines of the sea, extend the full length of the County, interrupted only by headlands and bays. The terrace materials consist of weakly cemented sand, silt, and pebbly sand which are overlain in many areas by old, fairly stable dunes. Bedrock beneath the terrace and dune sediments is tilted sharply seaward and is exposed in sea cliffs in some places.

The margins of these terrace areas adjacent to the ocean are attractive places to build, and many small beach cottages, permanent homes, condominiums, and motels occupy these locations. Unfortunately the sea cliffs at the terrace margins are slowly but continually receding. Wave erosion during storms and high tides undermines the cliffs, while rain, wind, and frost loosen the upper portions; as a result, masses of terrace material slip seaward at unpredictable rates and in unexpected places.

In general, marine terrace margins can be expected to retreat from 6 inches to 1 foot per year; however, in certain areas, recession can average more than 10 feet per year. In some locations, erosion may not be evident for a decade and then 10 or 15 feet of the cliff may drop off in a single season. Occasionally very large areas involving a number of acres of land may slide seaward, such as in the Jumpoff Joe area of Newport.

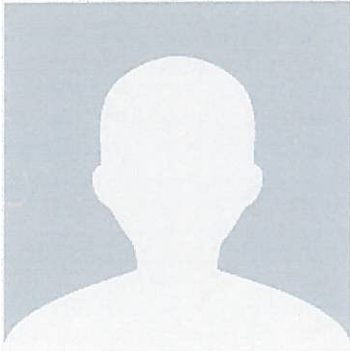
Excessive slippage along terrace margins is due to sliding of weakened, water-saturated bedrock along its seaward-tilted bedding planes. Of course, the overlying terrace sediments move with it. Particularly vulnerable to bedding-plane failure is the Nye Mudstone in the Newport area. This type of movement may have vertical and horizontal components of only 2 feet to as much as 50 feet. At first the surface of the slide block is not disrupted, but it is generally back-tilted, or rotated down, on the landward side. Water often accumulates in a sag pond at the back of the slide.

The surface of these slump areas may range from 50 to 100 feet wide and from 200 to 1,000 feet long. To the untrained eye, such apparently level areas of ocean frontage might appear to be desirable building sites. Unfortunately, however, these areas are extremely unstable since the ground surface must adjust to constant wave erosion at the toe of the slide. In a short time, the entire slump block can be eroded away. During the limited life of the slump block, home owners will be plagued with continual problems of settlement, such as cracks in walls, jammed doors and windows, and water- and sewer-line difficulties.



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President/Principal Geologist, H.G. Schlicker & Assoc., Inc.
Oregon City, Oregon | Civil Engineering

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- Previous** Portland State University, California Division Of Mines And Geology, USDA Forest Service
- Education** Portland State University
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David Mount
Principal at Mahlum Architects



Satya Ganti
President & CEO at Sarva Bio Remed, LLC



Russ Kazmierczak
Natural Resource Specialist/Geologist at State of Oregon



Jim Coppernoll
Principal Environmental Geologist at GeoConsulting, Inc.



Alison Faust
Principal Geologist at Statoil



Pete Jones
Senior Engineering Geologist at Jones GeoLogic



Steve Ladavat, P.G.
Project Geologist at AECOM



Mark Molinari
Principal Engineering Geologist at GeoEngineers, Inc



Mike Lubrecht
Senior Geologist at Directed Technologies Drilling, Inc.



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Back in mid January on a

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**I'm excited to be headed out
this weekend. https://lnkd...**

Nothing helps mitigate future disasters like
past disasters. And so as Mexico works to
rebuild in...

J. Douglas Gless, MSc, RG, CEG, LHG liked
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Summary

As President and Principal Geologist, I direct professional services, business development, staffing and budgeting at H.G. Schlicker & Associates, Inc., a 39 year old consulting firm. I have managed and conducted investigations for groundwater exploration and development, soil and groundwater contamination and remediation, phase I and II property transfer assessments, slope stability, hydroelectric sites, aggregate resources, geophysics, shallow and deep foundations, earthfill dams, wetlands, oceanfront studies, route studies for high voltage lines, roads and highways, seismic analysis and stream sediment source studies.

H.G. Schlicker & Associates, Inc. has provided geologic services for exploration, evaluation and development of aggregate resource sites, mineral lands and petroleum leases. My goal is to continue to improve my managerial and technical skills while providing the highest quality service to others.

Specialties: Engineering geology, hydrogeology, geotechnical investigation, design and monitoring, terrain analysis, geologic hazards, groundwater, land use geology, seismic analysis, and aerial photo and LiDAR interpretation.

Experience

Include this LinkedIn profile on other websites



**J. Douglas Gless, MSc,
RG, CEG, LHG**
President/Principal Geologist,
H.G. Schlicker & Assoc., Inc.

Portland State University

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January 1984 – Present • 34 years 10 months
607 Main Street, Suite 200, Oregon City, Oregon 97045

Providing geologic, geotechnical, environmental, and groundwater consulting services for planning, investigation, design & construction.

As the Principal Engineering Geologist at HG Schlicker & Associates, Inc. I provide expertise in:

- ~Geologic Investigations
- ~Terrain Analysis
- ~Land Use Geology
- ~Route Planning
- ~Landslide Identification, Investigation, and Repair
- ~Geotechnical Investigations
- ~Design of Shallow and Deep Foundations
- ~Underpinning Design
- ~Design of Retaining Walls
- ~Design of Oceanfront Protective Structures
- ~Design of Dams and Reservoirs
- ~Groundwater Investigation, Development and Remediation
- ~Contaminated Earth Remediation
- ~Aggregate, Industrial Minerals, and Precious Metals Mining
- ~Timber Harvesting
- ~Residential, Commercial, and Industrial Land Development
- ~Environmental Sciences
- ~Laboratory Testing Program Management
- ~Employee Training, Proposal Preparation, and Budgeting



Geologist
Portland State University
1983 – 1984 • 1 year
Portland, Oregon

Sampling and mapping tuff beds in the Chumstick and Teanaway Formations in central Washington, while in graduate school. Conducted elemental analysis on samples using INAA technique.

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[Sign in](#)[Join now](#)**California Division Of Mines And Geology**

June 1981 – January 1982 • 8 months

San Francisco, California

Contract geologic mapping of more than 200 square miles in the Western Paleozoic and Triassic Belt, and the Jurassic Galice Formation of the Klamath Mountains Province in northern California, for the California State Geology Map.

**Engineering Geologist**

USDA Forest Service

1978 – 1980 • 2 years

Medford, Oregon

Engineering geologist on projects involving timber sales, aggregate mines, major dam sites, water wells, roads, retaining walls, GIS landslide inventories and landslide repairs.

Education**Portland State University**

Master Of Science, Geology (Engineering, Groundwater, and Environmental)

1982 – 1989



Emphasis in engineering geology, including geotechnics, soil and rock mechanics, and groundwater.

Southern Oregon University

Bachelor Of Science, Geography (Land Use Planning)

1973 – 1979

**Southern Oregon University**

Bachelor Of Science, Interdisciplinary Studies (Geology & Planning)



Tehran American School

10th through 12th grades

1970 – 1973

Attended and graduated from high school in Tehran, Iran while my father was temporarily employed there as an engineer and geologist for Chevron.

Skills & Endorsements



Join LinkedIn to see J. Douglas' skills, endorsements, and full profile

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Certifications

Certified Engineering Geologist

State Of Oregon, License E-902

Licensed Engineering Geologist

State Of Washington, License 150

Licensed Geologist

State Of Washington, License 150

Licensed Hydrogeologist

State Of Washington, License 150



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OSHA 40-Hour Hazardous Materials Certificate

Occupational Health and Safety Administration

OSHA 8-Hour Hazardous Waste Site Supervisor

Occupational Health and Safety Administration

Registered Geologist

State Of Oregon, License G-902

US EPA Hazardous Materials Incident Response Certificate

United States Environmental Protection Agency

Projects

Statement Of Qualifications

Starting January 1980

Team members: J. Douglas Gless, MSc, RG, CEG, LHG

Recommendations

A preview of what LinkedIn members have to say about J. Douglas:

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“ *I had the honor of having Doug as my first mentor after finishing graduate school. I attribute most of my engineering geologic and geotechnical skills directly to his...*




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250

Derrick Tokos

From: Mona Linstromberg <lindym@peak.org>
Sent: Saturday, October 06, 2018 5:45 PM
To: Derrick Tokos
Cc: Sean Malone
Subject: Spring St Comparison K & A 9/12 rebuttal/Columbia Geotechnical peer review
Attachments: Spring St K & A Sept 12 Rebuttal.pdf

1-GP-18-A

Please enter the attachment in the record and acknowledge receipt.

Thank you, Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection

October 6, 2018

1-GP-18-A

Applicant: Lund

Tax Lots: 1900, 1903 & 1800

Comment: K & A September 12, Rebuttal of August 15, 2018 Peer Review

After attending the September 24 public hearing and then going back and listening to the hearing on the City's website, I have deduced that neither the applicant nor K & A have taken the time to thoroughly review the existing record. That and the glossing over of observations (e.g. lack of supporting data) in the Columbia Geotechnical peer review make for an inadequate rebuttal of that review.

In K & A's rebuttal (**Item 4, Geologic Setting**) dated September 12, 2018 of the peer review (Ruth Wilmoth, Columbia Geotechnical) and during the September 24th public hearing, Mr. Remboldt referenced the 1991 Schlicker report. Is it possible that Mr. Remboldt never read Mr. Gless' (Schlicker and Assoc.) July 25 email: "*The 1991 report prepared by Herbert Schlicker for Mr. Hal Smith should be considered greatly out of date and I cannot agree with the conclusions drawn in it relative to the statement, "the landslide rests on a nearly level surface and is not capable of further sliding."*"¹ K & A's rebuttal (again, Item 4), references a report by Mr. Gless dated March 12, 2015 and, in relationship to that March report, K & A is dismissive of the peer review comments. However, the peer review refers to a 2016 report on adjacent property. Mr. Gless in his email provides a link to the actual report (most definitely not dated March 12, 2015). Two Schlicker reports in addition to the 1991 report are in the record, Tax Lot 1800 and 1409 NW Spring Street.

K & A's rebuttal (**Item 5, Slope Movement**) addresses the 15 degree quandary raised in Mr. Cross' comment, in the peer review report, and during the public hearing. The peer review report states in part "*...(t)he calculation sheets and assumptions in their model are not included in the report for our review, but there does appear to be some errors in the design model that would result in a reduced stability from that which is shown,*" At the public hearing, Ms Wilmoth reiterated several times (e.g. see video at 2:04:50) that data was missing from K & A's report that would be needed to assess K & A's conclusions. Again in the record, in Lincoln County's comments dated July 26, 2018 this issue of missing data was also raised; "*(w)hile the field investigation addresses*

¹ See also Elaine Karnes' fuller discussion, dated October 2, of the Schlicker reports.

Comment: K & A September 12, 2018 Rebuttal

most of the issues regarding questionable soils, the GER does not provide all the boring logs from their field work.” In addition. “(t)est results showing the Plasticity Index, Expansion Index and ASTM D are not included in this report nor are there results of any compression strength tests.” Though the County did not recommend denial, there is a pervasive pattern in the evidence that strongly supports denial of this application.

K & A (**Item 7, Liquefaction**) states “(n)one of the borings or probes found conditions conducive to liquefaction...” since in Item 5 K & A blatantly admits “...additional borings at the home sites will need to be made to extend the geologic profile, provide data for design of the foundation support system, and allow us to evaluate global stability in the constructed condition.” (emphasis added).² A valid conclusion cannot be reached regarding liquefaction at the home sites when the results were based on borings located elsewhere. This is another indication of insufficient data being provided.

Items 9 through 12 from General Foundation Recommendation through Foundation Pads have not been adequately addressed by K & A. The “can” is being kicked down the road to when the “can” is no longer subject to public scrutiny (or peer review). NMC 14.21.120 requires the hiring of a licensed geologic engineer for appeal purposes then denies her access to information needed to formulate a complete assessment.

Items 13a, 13b, and 13c are all lumped together by K & A with the justification the concept is met by doing so. I would specifically like to have the observations made in the peer review under Field Review Cross Section addressed by K & A.³

Item 14 Appendix C Slope Stability Analysis, per K & A is “difficult” to interpret, but, obviously, not impossible. Code requires that the appellants retain a licensed geologic engineer. Mr. Remboldt exhibited poor judgment. This is another example of not providing the data needed to assess the conclusions drawn. A note: I do not see the Slope Stability Analysis for Tax Lot 1800.

Item 15 Appendix D Geologic Hazard Assessment by Gary C. Sandstrom. At the very beginning of K & A’s rebuttal of the peer review a distinction was made between a geotechnical engineer and a geologic engineer and states “(a)s such, we assume that any

² See also Elaine Karnes’ fuller discussion, dated October 2, of bore holes.

³ See page 10 in the Oregon Shores comment dated September 21, 2018

valid peer review made by Ms. Wilmoth is limited to those aspects covered in the Geologic Hazard Assessment made by Mr. Gary C. Sandstrom, C.E.G., R.P.G. – a licensed professional engineering geologist and geologist in the state of Oregon.” Given K & A’s response to the peer review observations to the Geologic Hazard Assessment, Mr. Remboldt appears to both diminish the information provided in Mr. Sandstrom’s report and forget his initial admonishment of Ms. Wilmoth, C.E.G., P.E. If Mr. Sandstrom, not a licensed geotechnical engineer, can correctly evaluate the cited studies in his report as to their geotechnical value, then it would appear Mr. Sandstrom is treading on Mr. Remboldt’s turf. Concluding that “(s)uch studies are not meant to be used as a tool to approve or deny development in the area” would seem to indicate that K & A should not be relying on that cited literature in proving its case.

The process of comparing the peer review by Columbia Geotechnical side by side with K & A’s rebuttal of that review was enlightening. The above in no way includes all the absent data addressed by Ms. Wilmoth in her peer review and subsequent comments. Please see her comment dated September 28, 2018 provided to me after the public hearing on the 24th. This geologic permit must be denied as there is not the data needed to support many of K & A’s conclusions that are the foundation of its Geotechnical Engineering Report.

Thank you for your attention,

Mona Linstromberg



Derrick Tokos

From: Mona Linstromberg <lindym@peak.org>
Sent: Friday, October 05, 2018 8:10 PM
To: Derrick Tokos
Subject: Spring St. comment on Mr. Roth's 9/25 email


I feel compelled to note there is irony in Mr. Roth's comment. While executing his first amendment rights and participating in the process as encouraged under Goal 1 of the Statewide Planning Goals, he himself did not address applicable criteria directly. Be careful of what you criticize. Citizen participation takes many forms and lends perspective. This decision will be based on applicable criteria and there is sufficient evidence in the record to deny this approved geologic permit.

Please enter in the record an acknowledge receipt.

Regards, Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection

Memorandum

To: Newport Planning Commission
From: Derrick Tokos, Community Development Director 
Date: October 4, 2018
Re: Supplemental Hearing Memo for Appeal of Geologic Permit (File No. 1-GP-18)

Included with this memo is written testimony and other relevant information submitted into the record after the staff report was prepared for the September 24, 2018 hearing. As previously noted, appellants have challenged substantive elements of the applicant's June 29, 2018 geologic report by K&A Engineering that concluded the applicant's property is suitable for the development of three home sites. Appellant's retained the services of Columbia Geotechnical to peer review K&A Engineering's work, and the results of the peer review are summarized in an August 15, 2018 report. Both K&A Engineering and Columbia Geotechnical provided supplemental testimony at the September 24, 2018 hearing and additional written testimony after the hearing. New public testimony has been submitted as well. The subject site is situated on the west side of NW Spring Street, and is identified by the County Assessor as tax lots 1800, 1900, and 1903 of map 11-11-05-BC.

The hearing on Monday is a continuance of a hearing that was held on September 24, 2018. A script will be prepared for the Planning Commission Chair addressing the conduct and order of the proceedings in a manner consistent with the City of Newport's adopted procedures (NMC 14.52.080). Signup sheets will be provided for those wishing to speak at the hearing. The sheets will include a statement asking that persons identify the criteria they believe the applicant has or has not satisfied before they provide their testimony.

Prior to the conclusion of the hearing, any participant may request an opportunity to present additional evidence, arguments or testimony. If such a request is made, the Commission must, at a minimum, leave the record open for receipt of written materials for a period of 7 days. Unless waived, the City must also afford the applicant at least 7 days after the record is closed to all other parties to submit final written argument in support of the application.

Once the record is closed, the Planning Commission will need to render a decision. If the Commission agrees with K&A Engineering, then it must affirm the Director's decision as written, or with modifications it believes are needed to ensure K&A Engineering's recommendations are followed and the provisions of NMC Chapter 14.21 are met. Alternatively, if the Commission finds all, or a portion of, the peer review by Columbia Geotechnical to be compelling, then it must determine whether or not the issues raised by Columbia Geotechnical can be reasonably addressed through the imposition of conditions of approval, or require that the application be denied. The Commission may rely upon other testimony provided it relates to the approval criteria and does not contradict comments made by licensed experts, where the Municipal Code requires the expert testimony be treated as compelling. A


final order and findings in support of the Planning Commission’s decision will be presented in approval 2-weeks after the Commission renders its verbal decision.

Exhibits

The case record is organized chronologically, with the most recently submitted information listed first. Documents submitted after the date of this memo will be distributed to Commission members at the hearing. The following materials were submitted after the staff report was prepared for the September 24, 2018 hearing:

Exhibit #	Description
F-1	Letter from Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., with K&A Engineering, dated 10/4/18, responding to testimony submitted on or after the 9/24/18 hearing
F-2	Letter from Elaine and Robin Karnes, submitted by email on 10/2/18, expressing concerns with the K&A Engineering analysis
F-3	Email from Bill Lund, dated 10/1/18, arguing that there has been no recent erosion or slope movement on the property, with attached photographs
F-4	Letter from Ruth Wilmoth to Mona Lindstromberg, dated 9/11/18, stating reasons why she believes the report wasn’t prepared in accordance with “Guidelines for Preparing Engineering Reports in Oregon”
F-5	“Guidelines for Preparing Engineering Geologic Reports in Oregon,” adopted by the Oregon State Board of Geologist Examiners, dated 5/30/14
F-6	Public notice of the October 8, 2018 hearing, published in the News-Times on 9/28/18
F-7	Letter from Lisa Thomas, dated 9/26/18, requesting the Commission carefully evaluate Mr. Lund’s plans and potentially bring in outside help from Oregon State University
F-8	Email from Tim Roth, dated 9/25/18, outlining reasons why he believes the approval of Mr. Lund’s geologic permit should be approved
F-9	Email submitted by Mona Linstromberg at the 9/24/18 hearing. The email. From 9/19/18 notes a deficiency in the newspaper notice for the 9/24/18 hearing
F-10	Photographs of the beach in the vicinity of the subject property, submitted at the 9/24/18 hearing
F-11	Email and letter from the Oregon Shores Conservation Coalition, dated 9/21/18, explaining why they believe the application should be denied
F-12	Email from Elaine Karnes, dated 9/19/18, with attached News-Times newspaper article from 6/16/93 related to what at that time was a proposed development in the vicinity of Jump-off Joe

Memorandum

To: Newport Planning Commission
From: Derrick Tokos, Community Development Director 
Date: September 17, 2018
Re: Appeal of Geologic Permit (File No. 1-GP-18)

Enclosed is a copy of the written record, including the staff decision and notice of appeal. Please treat the staff decision, and this memo, as the staff report for the appeal hearing. As this is a geologic permit, analysis performed by certified engineering geologists, geotechnical engineers, and licensed engineers is of particular relevance. To that end, the record includes submittals by K&A Engineering and K&D Engineering on behalf of the applicant, peer review by Columbia Geotechnical on behalf of appellants, and comments by H.G. Schlicker and Associates regarding reports they have authored involving the property and other parcels in the area. The subject site is situated on the west side of NW Spring Street, and is identified by the County Assessor as tax lots 1800, 1900, and 1903 of map 11-11-05-BC.

Appellants have challenged substantive elements of applicant's June 29, 2018 geologic report by K&A Engineering that concluded the applicant's property is suitable for the development of three home sites (Exhibit A-6). The August 15, 2018 peer review report by Columbia Geotechnical identifies potential issues with K&A Engineering's analysis (Exhibit E-6). K&A Engineering responded to the peer review comments in a letter dated September 12, 2018 (Exhibit E-3).

City of Newport regulations for development within mapped geologic hazards areas are contained in Chapter 14.21 of the Newport Municipal Code (NMC), and all standards listed in this chapter are relevant to the permit application on appeal. Applications for geologic permits must include a geologic report, prepared by a certified engineering geologist, establishing the site is suitable for the proposed development (NMC 14.21.050(D)). Further, 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 (NMC 14.21.050(E)). Statements by these licensed individuals should be viewed by the Commission as expert testimony on these matters.

Staff concluded that the June 29, 2018 geologic report by K&A Engineering and accompanying conceptual site plan by K&D Engineering satisfied the approval standards with conditions and issued a decision to that effect on July 16, 2018 (Exhibit A-3). The decision was appealed on 7/31/18, with appellants asserting that the June 29, 2018 report by K&A Engineering contained inconsistencies, errors, and omissions that they would highlight with their own analysis prepared by a certified engineering geologist (Exhibit C-4). This was accomplished with the peer review report by Columbia Geotechnical, which appellants submitted on August 29, 2018. The appeal and peer review report were filed in accordance with the deadlines set forth in NMC 14.21.120. In deciding this appeal, the Planning Commission should consider any and all evidence in the record it believes to be relevant to criteria for approval of geologic permits, and may ask the applicant and/or the appellant to provide responses from K&A Engineering or Columbia Geotechnical to issues that it feels need clarification.

With respect to the procedures for Monday's hearing, a script will be prepared for the Planning Commission Chair addressing the conduct and order of the proceedings in a manner consistent with the City of Newport's

adopted procedures (NMC 14.52.080). Signup sheets will be provided for those wishing to speak at the hearing. The sheets will include a statement asking that persons identify the criteria they believe the applicant has or has not satisfied before they provide their testimony.

If, after taking testimony, the Commission believes that it has sufficient information to render a decision on the appeal then it may provide direction to staff to prepare findings of fact for consideration at its next meeting. The Commission should identify the direction it wants staff to take in preparing the findings (e.g. approve the application in a manner consistent with the staff decision, approve the application but include alternative findings addressing specific issues, or deny the application). If the Commission is inclined to deny the application, it is reasonable for it to ask that the appellant prepare the findings. The Commission must approve the application (i.e. deny the appeal) if it believes the approval standards have been met or can be met through the imposition of reasonable conditions. It must deny the application if it believes the approval standards cannot be met, even with reasonable conditions.

The Commission may, at the request of a participant or on its own accord, continue the hearing to a date certain to provide an opportunity for persons to present and rebut new evidence, arguments or testimony related to the approval criteria. If, after taking testimony, the Commission believes that additional information is needed in order for it to approve the application then this would be an option that it could pursue. In such a case, the Commission should be clear about the additional information that it wants to see submitted. Prior to the conclusion of the hearing, any participant may request an opportunity to present additional evidence, arguments or testimony. If such a request is made, the Commission must, at a minimum, leave the record open for receipt of written materials for a period of 7 days. Unless waived, the City must also afford the applicant at least 7 days after the record is closed to all other parties to submit final written argument in support of the application.

Exhibits

The case record is organized chronologically, with the most recently submitted information listed first. Documents submitted after the date of this memo will be distributed to Commission members at the hearing.

Materials Submitted After the Appeal

Exhibit #	Description
E-1	Email from Elaine Karnes, dated 9/17/18, expressing concern with the geologic report and slope stability, with attached photographs
E-2	Letter from Chris Schneller, dated 9/16/18, expressing that they believe the applicant has failed to establish the site is suitable for the proposed development
E-3	Letter from Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., dated 9/12/18, responding to the peer review by Columbia Geotechnical
E-4	Email from Carol Reinhard, dated 9/11/18, expressing her opinion that the analysis by K&A Engineering was incomplete and faulty
E-5	Letter from Mona Linstromberg, dated 9/10/18, with comments on the conceptual site plan prepared by K&D Engineering, revised 7/2/18. Attached are full size copies of the plan to be distributed to the Commission members (plan to be distributed separately)
E-6	Geotechnical Peer Review by Ruth Wilmoth, C.E.G., P.E., with Columbia Geotechnical, dated 8/15/18 (submitted 8/29/18)

E-7	Email from Mona Linstromberg, dated 8/29/18, with chapter from a book by Paul Komar, titled Jump-off Joe Fiasco
E-8	Email from staff to Mona Linstromberg, dated 8/8/18, regarding issues with the notice of decision on the geologic permit
E-9	Email from Mona Linstromberg, dated 8/7/18, asking that a letter from the Oregon Shores Conservation Coalition related to the applicant's shoreland resource impact review application be included in the record (letter attached)
E-10	Email from Mona Linstromberg, dated 8/7/18, asking that a letter from Lisa Potter Thomas, related to the applicant's shoreland resource impact review application, be included in the record (letter attached)
E-11	Email from Mona Linstromberg, dated 8/7/18, asking that a letter she submitted related to the applicant's shoreland resource impact review application, be included in the record (letter attached)
E-12	Email from Mona Linstromberg, dated 8/7/18, asking that a letter she submitted with additional testimony related to the applicant's shoreland resource impact review application, be included in the record (letter attached)
E-13	Email from Mona Linstromberg, dated 8/7/18, asking that Tim Cross's credentials be included in the record. Includes enclosed resume
E-14	Email from Mona Linstromberg, dated 8/7/18, asking that Tim Cross's letter (Exhibit B-10) be included in the record
E-15	Email from Chris Schneller, dated 7/31/18, taking issue with Gary Sandstrom's conclusions related to the "design life of the structure"
E-16	Email from Chris Schneller, dated 7/31/18, expressing concerns with the design of the drainage system for the proposed development
E-17	Email from Ann Sigleo, dated 7/31/18, indicating that she believes the applicant's geologic report was thorough, but that additional details are needed for the beach access plan

Notice of the Appeal Hearing

Exhibit #	Description
D-1	Email from staff, dated 9/12/18, sent to persons on an email distribution list that asked to be kept apprised of land use matters involving the property. The email included the appeal hearing notice as an attachment
D-2	Notice of appeal hearing mailed to appellants, property owners within 200-feet of the subject property, and affected agencies. Notice was mailed on 8/31/18 and includes map and mailing list
D-3	Notice of the appeal hearing published in the Newport News-Times on 9/14/18

Appeal Documents

Exhibit #	Description
C-1	Email from Sean Malone, Attorney, dated 7/31/18, indicating that he is representing appellants in the appeal of the geologic permit
C-2	Email from Leslie Hogan advising of Pat Linstromberg's interest in signing on to the appeal. The email is dated 7/31/18
C-3	Email from Teresa Amen, dated 7/31/18 confirming that they own property on Spring Street
C-4	Appeal from Mona Linstromberg, Elaine Karnes, Christine Schneller, Robert Earle, Teresa, and Leslie Hogan (Power of Attorney for Pat Linstromberg), filed 7/31/18

Documents Submitted After Decision and Prior to Appeal

Exhibit #	Description
B-1	Email from Teresa Amen, dated 7/29/18, with attached letter from Robert Earle and Teresa Amen, Mary Bauman, and Nancy Luther opposing the proposed development
B-2	Email from Brent Bunker, dated 7/27/18, expressing concerns with the geologic stability of the subject property
B-3	Email from Ann Howell, dated 7/27/18 with an article about a house in Maryland that she views as an example of "just because you can do it, doesn't mean you should"
B-4	Email from staff to Chris Schneller, dated 7/27/18 related to road access permits the applicant will need to obtain if and when the geologic report becomes final
B-5	Email from Mona Linstromberg suggesting that K&A Engineering might want to revisit aspects of their report. The email is dated 7/26/18
B-6	Email from Mona Linstromberg, dated asking if the applicant might consider accepting an extension to the appeal period
B-7	Letter from Wayne Belmont, Attorney, Roy Kinion (Road Official) and Steve Hodge, P.E. with Lincoln County. The letter, dated 7/26/18, indicates that earthwork supported by an approved Geologic Permit can occur within County road right-of-way subject to an access permit. County Engineer comments relate to his conclusion that the geologic report is consistent with the 2014 Oregon Structural Specialty Code
B-8	Email from staff to the applicant, dated 7/26/18, with the letter from Mr. Cross regarding K&A Engineering's analysis
B-9	Email from Doug Gless, R.G., C.E.G, L.H.G., with H.G. Schlicker and Associates, dated 7/25/18, advising as to the relative weight readers should give to three reports that they prepared involving the subject property and adjacent parcels. Referenced reports are included with this exhibit

B-10	Letter from Tim Cross, dated 7/23/18, expressing concern with K&A Engineering's analysis
B-11	Email from Elaine Karnes, dated 7/20/18, summarizing issues discussed with staff

Record up to Issuance of City Decision

Exhibit #	Description
A-1	Email from staff, dated 7/16/18, to individuals that requested notice of the decision
A-2	Written notice and mailing list of individuals and agencies that received notice of the decision via first-class mail. Notice is dated 7/16/18
A-3	Notice of decision approving the geologic permit, dated 7/16/18
A-4	Email from Michael Remboldt, P.E., G.E., dated 7/6/18, transmitting the 6/29/18 report
A-5	Conceptual site plan for the subject property, prepared by K&D Engineering, Inc., dated 7/2/18 (11x17 reduced copy)
A-6	Geotechnical Engineering Report and Geologic Hazard Assessment, by Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., R.P.G, dated 6/29/18 and received by the City on 7/6/18
A-7	Email from staff advising the applicant that the transmitted report, which was intended to be an update, was in fact an older version. Email is dated 7/5/18
A-8	Email from staff indicating that the application was incomplete, dated 6/21/18
A-9	Geotechnical Engineering Report and Geologic Hazard Assessment, by Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., R.P.G, dated 6/12/18
A-10	Email from Bill Lund dated 5/4/18 requesting a meeting to discuss outstanding issues with the application
A-11	Email from Derrick Tokos, Newport Community Development Director (staff) to Mr. Lund, dated 5/4/18, advising that the application was incomplete
A-12	Email from Bill Lund seeking confirmation that the application is being processed. Email is dated 5/4/18
A-13	Copy of Newport Municipal Code (NMC) Chapter 14.21, Geologic Hazards Overlay
A-14	Geotechnical Engineering Report for property identified as Tax Lots 1800, 1900 and 1903, Tax Map 11-11—05-BC, by Michael Remboldt, dated 11/30/17
A-15	Letter from Michael Remboldt, P.E., G.E. related to the impact of the 60-foot Jump-off Joe road right-of-way on their 11/30/17 Geotechnical engineering Report
A-16	Land use application by William Lund, property owner, submitted 5/3/18

PLANNING STAFF REPORT

1. **APPLICANT:** Dylan and Celeste McEntee (Nye Beach Holdings, LLC, owner).
2. **REQUEST:** Approval of a four lot residential townhouse subdivision. 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.
3. **LOCATION:** The property is located at the northwest corner of SE 5th street and SE Moore Drive. Its address is 847 SE 5th Street (Tax Lot 3100 of Lincoln County Assessor's Tax Map 11-11-09-BC).
4. **LOT SIZE:** Approximately .48 acres, per Lincoln County Assessor's records.
5. **STAFF REPORT**
 - A. **REPORT OF FACTS**
 - i. **Plan Designation:** Low Density Residential.
 - ii. **Zone Designation:** R-2/"Medium Density Single-Family Residential."
 - iii. **Surrounding Land Uses:** Single family and mixed density residential to the north, south, east and west. Commercial property to the east, including Oregon Coast Bank.
 - iv. **Topography and Vegetation:** Moderate to steep slopes rising in elevation from the southeast to the northwest. The site includes scattered trees and shrubbery.
 - v. **Existing Structures:** None. A home and garage with an apartment were removed after the property was sold in 2016.
 - vi. **Utilities:** All utilities are available to the site.
 - vii. **Development Constraints:** The property is within a mapped geologic hazards area.
 - viii. **Past Land Use Actions:** None.
 - ix. **Notice:** The application was noticed for an October 22, 2018 public hearing with the understanding that a geologic report would be submitted prior to that date so that its findings could be addressed in the staff report. The Planning Commission continued the hearing to November 13, 2018 to provide additional time for the geologic report to be completed. Public notice of the application and initial hearing date was mailed to surrounding property owners within 200 feet of the subject property and public entities and agencies on October 2, 2018. Notice of the public hearing was also published in the Newport News-Times on October 12, 2018.

- x. **Pre-application Meeting:** The applicant met with city staff informally on multiple occasions before submitting the application.
- xi. **Planning Staff Report Attachments:**
- Attachment "A" – Application form
- Attachment "B" – Lincoln County Assessor Property Report
- Attachment "C" – Tentative Subdivision Plan for “5th Street Lofts” by Gary Nyhus, PLS, dated 9/11/18
- Attachment "D" – Townhouse Site Plan by Oceanquest Design, dated 8/1/17
- Attachment "E" – Letter from Central Lincoln PUD, dated 8/6/18
- Attachment "F" – Ownership and Encumbrance Report by Western Title, effective 7/2/18
- Attachment "G" – Geologic Report by H.G. Schlicker and Associates, dated 11/6/18
- Attachment "H" – Zoning Map
- Attachment "I" – Notice of Public Hearing
- B. **Explanation of the Request:** Applicants Celeste and Dylan McEntee, are seeking approval of a four lot, residential townhouse subdivision plat to accommodate the same number of townhomes. The units will be constructed in pairs, with eight feet of separation between the structures. Access to the site is available off of SE 5th Street. 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.
- C. **Evaluation of the Request:**
- i. **Comments:** Notice of the request was mailed on October 2, 2018, to affected property owners and various City departments, public/private utilities and agencies within Lincoln County, and other individuals. No comments were received in response to the notice.
- ii. **Applicable Criteria:** 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 14.31, townhomes.
- iii. **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.*

This standard applies to new streets, and the applicant’s tentative subdivision plan (Attachment "C") shows that no such streets will be needed to serve the townhouse development. Each unit will obtain access off of SE 5th Street.

(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.

SE 5th Street is paved to a width of 36-feet and is contained within a 60-foot right-of-way. This standard has been 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.*

No new streets are proposed; therefore, this standard does not apply. 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.*

No new streets are proposed; therefore, this standard does not apply.

- (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.*

This standard applies to new streets, and since no new streets are proposed it is not applicable to the application.

- (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.*

No new streets are proposed; therefore, this standard does not apply.

- (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's tentative subdivision plan (Attachment "C") shows that there are no streets within the proposed land division. It does; however, abut SE 5th Street and that street is not currently improved with sidewalk. There is sufficient area within the road right-of-way to construct sidewalk; therefore, it would be reasonable for the Commission to impose a condition requiring the installation of sidewalk along the property frontage prior to final plat approval. This standard can be met with a condition of approval.

- (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.

No cul-de-sacs are proposed; therefore, this standard does not apply.

- (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.

No new streets are proposed; therefore, this standard does not apply.

- (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.

The land division does not front along an arterial street; therefore, this standard does not apply.

- (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.

The applicant's tentative subdivision plan (Attachment "C") shows that the applicant is not creating any new blocks. This standard does not apply.

- (a) *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.

No new sewer or water mains are proposed with this development. The proposed lots will be served by main lines located within the SE 5th Street road right-of-way. This standard is met.

- (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 does not border land within a subdivision or partition plat. This standard does not apply.

- (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 watercourse; therefore, this standard does not apply.

- (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.

Since this is a townhouse development, lot area is calculated based upon the size of the parent property. At 22,039 sq. ft., the parcel is large enough to accommodate four units given the 5,000 sq. ft. of land area per unit density limit of the R-2 zone district. 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.

The applicant's tentative subdivision plan (Attachment "C") shows that each lot will possess at least 25-feet of frontage along SE 5th Street. 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 applicant's tentative subdivision plan (Attachment "C") shows that the land division will not result in any through lots being created. This standard 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 the applicant's tentative subdivision plan (Attachment "C"). 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.*

There are no special setback lines listed in the Newport Municipal Code that would be applicable to this project. The applicant hasn't proposed any special setbacks and the Engineering Geologic Hazards and Geotechnical Investigation by H.G. Schlicker and Associates (Attachment "G") does not recommend such setbacks. 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 applicant's tentative subdivision plan (Attachment "C"), the largest lot planned is ±7,947 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 Engineering Geologic Hazards and Geotechnical Investigation by H.G. Schlicker and Associates (Attachment "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 applies to the construction of new streets and is; therefore, not applicable.

- (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.*

SE 5th Street currently possesses the 36-foot of pavement width; however, it lacks curb and drainage structures along the property frontage. There is sufficient road right-of-way for the applicant to construct curb, drainage improvements, and driveway aprons where the new lots front SE 5th Street, so it would be reasonable for the Commission to impose a condition of approval requiring that they be completed. This standard can be met with a condition of approval.

- (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.*

The applicant's tentative subdivision plan (Attachment "C") illustrates that the property slopes to the south toward SE 5th Street where surface drainage will be directed into a structured public drainage system. Specific direction for the design of on-site drainage systems is contained in the Engineering Geologic Hazards and Geotechnical Investigation by H.G. Schlicker and Associates

(Attachment "G"), and it would be appropriate for the Commission to impose a condition of approval requiring H.G. Schlicker and Associates' recommendations be followed. This standard can be met with a condition of approval.

- (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.

Sewer laterals tying into the main in SE 5th Street will need to be installed to serve each lot. The lots possess sufficient street frontage for this to occur, so it is feasible that the applicant can complete the improvements. This standard can be met with a condition of approval.

- (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.

As with the sewer laterals, water service lines tying into the main in SE 5th Street will need to be extended to each lot. The lots possess sufficient street frontage for this to occur, so it is feasible that the applicant can complete the improvements. A hydrant is in place at the southwest corner of the property. This standard can be met with a condition of approval.

- (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).*

The applicant has indicated that they intend to construct all four units at the same time, so it is unlikely they will elect to enter into an improvement agreement to defer the sidewalk construction. There is sufficient right-of-way adjacent to the subject property to accommodate the sidewalk improvements, so it is feasible that it can be built. This standard can be met with a condition of approval.

- (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 understands that they must 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 understands that public improvements are subject to inspection and acceptance by the city. 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.*

A letter from Central Lincoln PUD, dated 8/6/18 confirms that power is available to serve the four townhomes (Attachment "E"). Considering that the surrounding area is fully developed, it is feasible that phone service is also available, so it would be reasonable for the Commission to impose a condition of approval requiring service confirmation letter from the phone service provider (i.e. CenturyLink) prior to sign-off of the final plat. This standard is met with a condition 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.

The property is served by a 6-inch water main and 8-inch sewer main in SE 35th Street. Impervious surface attributed to the townhouse development is roughly equivalent to what was on the property in 2016 when it was developed with a large home, garage and apartment; therefore, the city does not anticipate an increase in run-off into the public system. At 36-feet in width, SE 5th Street is adequately sized to handle traffic generated from the proposed development. This standard is met.

(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.

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

(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.

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

- (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 placed in new land divisions to assure adequate lighting of streets and sidewalks within and adjacent to the land division.*

No new streets are proposed; therefore, this standard is not applicable.

- (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.*

No new streets are proposed; therefore, this standard is not applicable.

- (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.*

This standard applies to projects that involve the construction of new public street surfaces and is; therefore, not applicable.

- (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.*

The findings contained herein address this requirement. This standard is satisfied.

- (uu) *NMC Section 13.05.085(B). Any required 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.*

An Engineering Geologic Hazards and Geotechnical Investigation by H.G. Schlicker and Associates is enclosed as Attachment "G". The report is stamped by a Certified Engineering Geologist and includes the information

required by the City for a Geologic Report. A condition of approval is recommended requiring a Certified Engineering Geologist 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.*

This standard is advisory and is addressed with a condition of approval.

- iv. **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.

The required report is included as Attachment "G". It has been stamped by a Certified 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.*

The report, included as Attachment "G", 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 H.G. Schlicker and Associates report (Attachment "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 applicant's tentative subdivision plan (Attachment "C"), site plan (Attachment "D") and other information contained in the case record is sufficient to address this requirement. The standard has been 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*

Grading recommendations contained in the H.G. Schlicker and Associates report (Attachment "G") are sufficient to address this requirement. This standard 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 geologic report for the property is included as Attachment "G". The 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 geologic report for the property is included as Attachment "G". This report is stamped by Certified 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 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 geologic report for the property is included as Attachment "G". This report is stamped by a Certified 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.

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

(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.

Recommendations contained in the H.G. Schlicker and Associates report (Attachment "G") are sufficient to address this requirement. This standard is met.

- (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.*

Driveway may exceed this threshold, in which case retention may be needed. There is sufficient area on the property to construct storm water retention facilities; therefore, it is reasonable for the Commission to conclude that they can be built and that a condition be imposed requiring the improvements if the slope of driveways, parking areas, or other "at grade" impervious surfaces exceed 12 percent. This standard is met with a condition of approval.

v. **Compliance with NMC Chapter 14.31, Criteria for Approval of Townhomes.**
The criteria for townhouse development have been addressed as follows:

- (a) NMC Section 14.31.020(B), Definition of Townhouse. *A single-family dwelling in a row of at least two units in which each unit has its own front and rear access to the outside, no unit or portion thereof is located over another unit or portion thereof except for parking spaces or garages, each unit is separated from any other unit by one or more common walls, and each unit has its own underlying townhouse lot.*

The applicant's site plan (Attachment "D") demonstrates that the units will be townhouses situated on individual lots in conformance with this standard.

- (b) NMC Section 14.31.030, Zoning Districts Where Townhouses are Located. *Townhouse are an outright permitted use in the R-2, R-3, and R-4 zoning districts subject to the standards contained in this section.*

The zoning map (Attachment "H") shows that the property is zoned R-2, a district where townhomes are permitted.

- (c) NMC Section 14.31.040, Density. *The overall density of a townhouse development shall not exceed the density allowed in the underlying zoning district and shall be computed on the parent lot.*

The property is 22,039 sq. ft. in size per the tentative subdivision plan prepared by the applicant (Attachment "C"). Per NMC 14.13.010, the R-2 zone district has a density limit of 5,000 sq. ft. per house, meaning that four units are permissible on a parcel of this size. This standard has been met.

- (d) NMC Section 14.31.050, Number of Units in Building. *No separate building in a townhouse development may exceed six townhouse units.*

The applicant's site plan (Attachment "D") shows that each building will have a total of two units. This standard is met.

- (e) NMC Section 14.31.060, Development Standards. *All townhouse developments shall meet the following:*

A. Minimum lot size: None.

B. Maximum parent lot coverage: Underlying zone (57 percent).

C. Maximum height: Underlying zone (30-feet).

D. Minimum outdoor open space or patio: 150 square feet per townhouse.

E. Minimum parking: 1.5 spaces per townhouse.

F. Minimum parent lot frontage: 25 feet.

G. Minimum parent lot setback: Underlying zone. (15 ft. front, 5 ft. side, 10 ft. rear)

H. Utilities: Each dwelling unit shall be served by separate utilities.

The applicant's site plan and tentative subdivision plan (Attachments "C" and "D") show that these standards can be met, with the exception of building height. A number of different designs can meet a 30-ft building height, and it is reasonable for the Commission to condition approval on townhouse development on satisfying this requirement. This standard is met, as conditioned.

- (f) *NMC Section 14.31.070, Access. The parent lot shall have a minimum of 25 feet of frontage onto a street. For purposes of this section, a street can be either a public or private way dedicated for street purposes. Townhouse lots are not required to have frontage on a street, but in no case may a townhouse lot be further than 100 feet from a street. For townhouse developments where frontage for townhouse lots is not provided, an adequate turnaround as determined by the Fire Marshal on the parent lot is required. In addition, townhouse lots with no frontage shall have a perpetual easement across any and all lots that have frontage and any intervening lot.*

The applicant's tentative subdivision plan (Attachment "C") shows that each of the lots will possess the requisite frontage along SE 5th Street; therefore, this standard is met.

- (g) *NMC Section 14.31.080, Deed Covenant and Maintenance Agreement. The developer of a townhouse development shall provide the city with copies of any deed restrictions, covenants and conditions, and any maintenance agreements to the Community Development Director prior to final plat approval. Such documents shall be approved by the City Attorney and Community Development Director to assure that adequate provisions are contained in those documents for maintenance of buildings, utilities, landscaping, parking areas, common areas, private streets or drives, and other items held in common.*

Covenants and maintenance agreements are typically needed when shared common areas are proposed. The tentative subdivision plan does not show any such areas. Nonetheless, the developer may choose to adopt covenants or maintenance agreements, in which case this requirement would be applicable. The standard can be addressed as a condition of approval.

- (h) *NMC Section 14.31.090, Process. Townhouse developments are permitted in the R-2, R-3, and R-4 zoning districts as an outright permitted use. However, since a townhouse development will require a segregation of lots, a partition or subdivision, as applicable, will be required with its appurtenant requirements as per the City of Newport Subdivision Ordinance (No. 1285, as amended).*

The application includes a request for subdivision approval. This standard has been satisfied.

- D. **Conclusion:** If the Planning Commission finds that the applicant meets the criteria established in the Municipal Code for granting the Tentative Subdivision Plat and Geologic Permit for this townhouse development, then it can approve the request. The Commission may attach reasonable conditions of approval, which the Commission finds are necessary to satisfy the approval criteria. Conditions of approval need to be relate to the applicable criteria and request (must have a rational nexus) and need to be roughly proportional to the impact created by the development in order to be constitutionally permissible as conditions of approval. The burden on demonstrating that conditions of approval have both a rational nexus and are roughly proportional is on the government, not the applicant. If, on the other hand, the Commission finds that the request does not comply with the criteria and cannot be made to comply through reasonable conditions of approval (as required by ORS 197.522), then the Commission should make findings for denial.
- E. **Staff Recommendation:** Findings contained in this report establish that the application can satisfy City approval standards provided the following conditions are imposed:
1. It shall be the responsibility of the property owner to adhere to the recommendations contained in the Engineering Geologic Hazards and Geotechnical Investigation, prepared by H.G. Schlicker and Associates, dated November 6, 2018 (the “Geologic Report”).
 2. Certification of land division compliance with the Geologic Report (e.g. site grading, buried utilities, condition of existing walls, 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 the affected areas returned to their original or equal condition prior to the final approval of the plat for recording.
 4. Developer shall install curb, gutter, and sidewalk along the stretch of SE 5th Street that abuts the subject property and is responsible for constructing water and sewer service laterals to serve each townhouse lot. All public improvements shall be accepted by the Public Works Department prior to approval of the plat for recording.
 5. Developer 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.

6. Developer shall control the release rate of run-off from driveways, parking areas, or other “at grade” impervious surfaces in areas of 12% slope or greater. Such 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 and is to be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.
7. The maximum building height for the townhouse units shall be 30-feet, unless an alternative standard is established through an adjustment or variance process.
8. Developer shall provide the city with copies of any deed restrictions, covenants and conditions, and any maintenance agreements, and such documents shall be reviewed and approved by the Community Development Director and city Attorney prior to the final approval of the plat for recording.
9. 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.
10. 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 developer shall make all necessary arrangements with the serving utility to provide the underground service.
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. A map showing public improvements “as-builts” shall be filed with the city upon completion of the improvements.

14. 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.



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

November 9, 2018

KU Extensiors
#164 286 250



City of Newport Land Use Application

Applicant Name(s):	Property Owner Name(s) <i>if other than applicant</i>
Celeste McEnkee & Dylan McEnkee	
Applicant Mailing Address:	Property Owner Mailing Address:
449 SE Scenic Loop Newport Oregon 97365	
Applicant Phone No.	Property Owner Phone No.
541-961-4626 541-270-7785	
Applicant Email	Property Owner Email
Celeste 88@me.com	
Authorized Representative(s): <i>Person authorized to submit and act on this application on applicant's behalf</i>	
Authorized Representative Mailing Address:	
Authorized Representative Telephone No.	
Authorized Representative Email.	

Project Information

Property Location: <i>Street name if address # not assigned</i>	
847 SE 5th Street Newport OR 97365	
Tax Assessor's Map No.:	Tax Lot(s):
Zone Designation:	Legal Description: <i>Add additional sheets if necessary</i>
Comp. Plan Designation:	
Brief description of Land Use Request(s):	
<i>Examples:</i> 1. Move north property line 5 feet south 2. Variance of 2 feet from the required 15-foot front yard setback	
Existing Structures: if any None	
Topography and Vegetation:	

Application Type (please check all that apply)

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

FOR OFFICE USE ONLY

File No. Assigned: 2-sub-18		
Date Received: 7/30/18	Fee Amount: 1,214.-	Date Accepted as Complete:
Received By: sm	Receipt No.	Accepted By:

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



City of Newport Land Use Application

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

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

Applicant Signature(s)	Date
Property Owner Signature(s) (if other than applicant)	Date
Authorized representative Signature(s) (if other than applicant)	Date

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

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

Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R418216	Neighborhood:	NENB	Owner and	NYE BEACH HOLDINGS LLC
Map Taxlot:	11-11-09-BC-03100-00	Property Class:	101	Mailing Address:	449 SE SCENIC LOOP NEWPORT, OR 97365
Tax Map:	11s11w09BC			Site Address(es):	847 SE 5TH ST ;843 SE 5TH ST
Web Map:	View Map				
Info:	TWNShp 11, RNg 11, ACRES 0.48, 2016-17 VALUE ORDERED BY BOPTA, DOC201600136				
Tax Code:	104				
Acres:	0.48				

Improvements	Value History																																
No Inventory	<table border="1"> <thead> <tr> <th>Year Imp.</th> <th>Land</th> <th>Total Market</th> <th>Total Assessed</th> </tr> </thead> <tbody> <tr> <td>20170</td> <td>199,620</td> <td>199,620</td> <td>199,620</td> </tr> <tr> <td>20160</td> <td>200,000</td> <td>200,000</td> <td>200,000</td> </tr> <tr> <td>2015167,720</td> <td>221,010</td> <td>388,730</td> <td>387,680</td> </tr> <tr> <td>2014150,190</td> <td>220,010</td> <td>370,200</td> <td>370,200</td> </tr> <tr> <td>2013156,680</td> <td>220,010</td> <td>376,690</td> <td>376,390</td> </tr> <tr> <td>2012158,910</td> <td>220,010</td> <td>378,920</td> <td>365,430</td> </tr> <tr> <td>2011181,190</td> <td>260,940</td> <td>442,130</td> <td>354,790</td> </tr> </tbody> </table>	Year Imp.	Land	Total Market	Total Assessed	20170	199,620	199,620	199,620	20160	200,000	200,000	200,000	2015167,720	221,010	388,730	387,680	2014150,190	220,010	370,200	370,200	2013156,680	220,010	376,690	376,390	2012158,910	220,010	378,920	365,430	2011181,190	260,940	442,130	354,790
Year Imp.	Land	Total Market	Total Assessed																														
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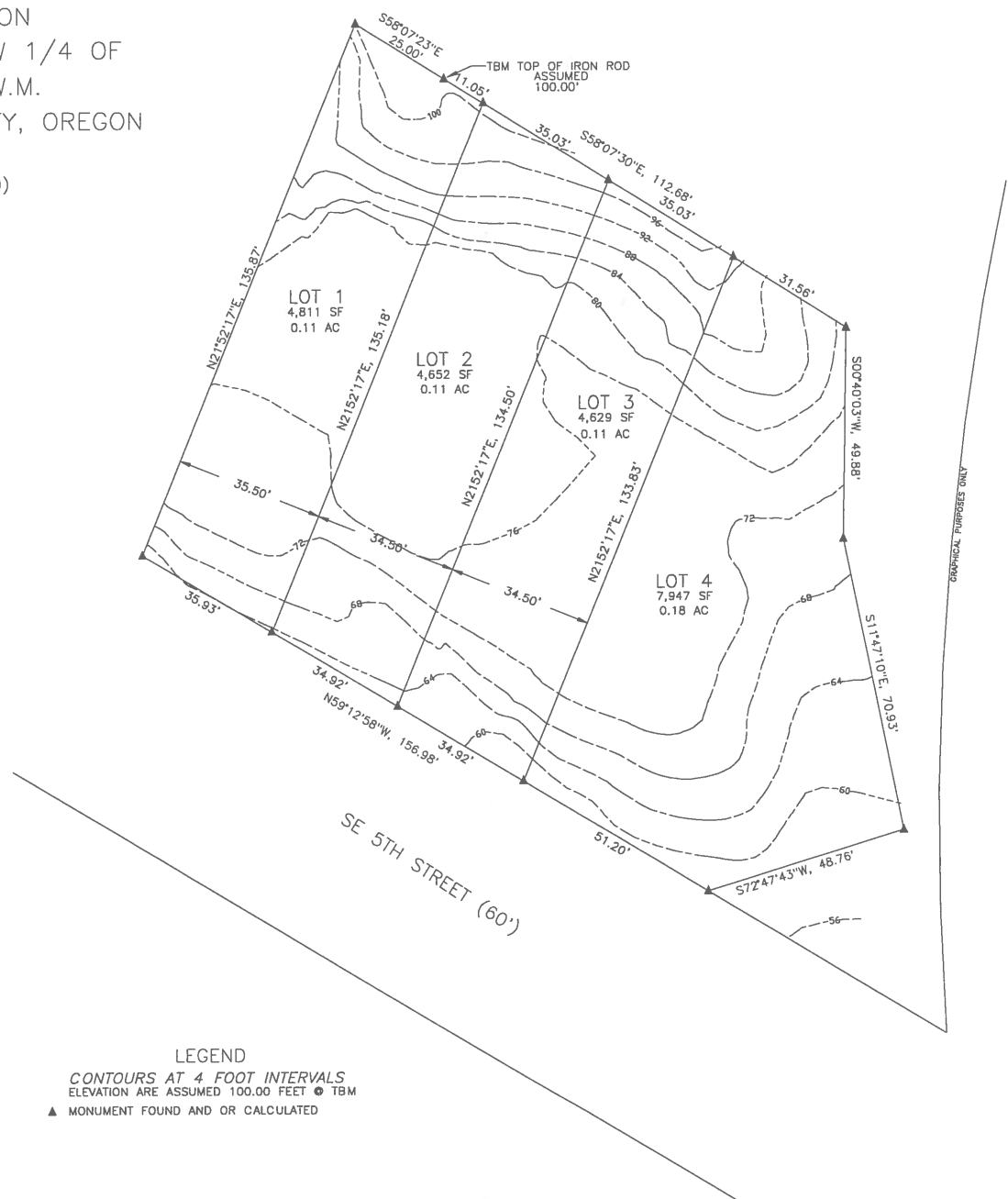
Sales History				
Sale Date	Price	Document	Type	Code
01/07/2016	\$200,000	201600136	23	WD
07/15/1993	\$217,500	MF265-0143	33	WD

Land		Related Accounts	Disclaimer
Description	Acres	Market Value	Special Use Value
DEV BAYVIEW SITE	0.23	173,120	
SITE DEVELOPMENT		26,500	

For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information.
Tax data exported 10/2017.

Today's Date: 11/08/2018

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. THISSSELL 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 / 76ZPRO	



SE MOORE DRIVE (60')

AREA CALCULATIONS
22,077- LOT SQ. FT.

FLOOD INSURANCE RATE MAP (FIRM) INFORMATION					
COMMUNITY NUMBER	PANEL NUMBER	DATED	SUFFIX	ZONE	DATE OF FIRM INDEX

LEGAL DESCRIPTION

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

SITE PLAN



1" = 30'-0"

Serving Portions of Coos, Douglas, Lane, and Lincoln counties on Oregon's



2129 N. Coast Hwy • P.O. Box 1126 • Newport, Oregon 97365-0090 • 541-265-3211 • clpud.org

08/06/2018

847 SE 5th
Newport, Oregon

Celeste Mcentee,

I have reviewed the service/facilities to 847 SE 5th Street in Newport Oregon and there is adequate power available to serve the installation of 4 townhouses.

Sincerely,

Brandy Gwynn
Distribution Engineering Technician
541-574-3643(Office)
541-272-7845 (Cell)

Western

255 SW Coast Highway, Suite 100
(541)265-2288

OWNERSHIP AND ENCUMBRANCES REPORT WITH GENERAL INDEX LIENS
Informational Report of Ownership and Monetary and Non-Monetary Encumbrances

To ("Customer"): Celeste McEntee
449 SE Scenic Look
Newport, OR 97365

Customer Ref.: _____
Order No.: WT0159841
Effective Date: July 2, 2018 at 05:00 PM
Charge: \$200.00

The information contained in this report is furnished by Western Title & Escrow Company (the "Company") as a real property information service based on the records and indices maintained by the Company for the county identified below. THIS IS NOT TITLE INSURANCE OR A PRELIMINARY TITLE REPORT FOR, OR COMMITMENT FOR, TITLE INSURANCE. No examination has been made of the title to the herein described property, other than as specifically set forth herein. Liability for any loss arising from errors and/or omissions is limited to the lesser of the charge or the actual loss, and the Company will have no greater liability by reason of this report. THIS REPORT IS SUBJECT TO THE LIMITATIONS OF LIABILITY STATED BELOW, WHICH LIMITATIONS OF LIABILITY ARE A PART OF THIS REPORT.

THIS REPORT INCLUDES MONETARY AND NON-MONETARY ENCUMBRANCES.

Part One - Ownership and Property Description

Owner. The apparent vested owner of property ("the Property") as of the Effective Date is:

Nye Beach Holdings, LLC, an Oregon limited liability company

Premises. The Property is:

(a) **Street Address:**

847 SE 5th Street, Newport, OR 97365

(b) **Legal Description:**

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

Part Two - Encumbrances

Encumbrances. As of the Effective Date, the Property appears subject to the following monetary and non-monetary encumbrances of record, not necessarily listed in order of priority, including liens specific to the subject property and general index liens (liens that are not property specific but affect any real property of the named person in the same county):

EXCEPTIONS

1. Property taxes in an undetermined amount, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2018-2019.

2. Unpaid Property Taxes are as follows:

Fiscal Year: 2016-2017
Amount: \$3,735.30, plus interest, if any

Unpaid Property Taxes are as follows:

Fiscal Year: 2017-2018
Amount: \$3,698.04, plus interest, if any
Levy Code: 104
Account No.: R418216
Map No.: 11-11-09-BC-03100

Prior to close of escrow, please contact the Tax Collector's Office to confirm all amounts owing, including current fiscal year taxes, supplemental taxes, escaped assessments and any delinquencies.

3. City Liens, if any, in favor of the City of Newport.
4. Rights of the public to any portion of the Land lying within roads, streets and highways.
5. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of: Adjacent Property
Recording Date: May 31, 1978
Recording No: Book 88, Page 356
Affects: Parcel I

6. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$280,000.00
Dated: April 11, 2016
Trustor/Grantor: Nye Beach Holdings, LLC, an Oregon limited liability company
Trustee: Western Title & Escrow
Beneficiary: The William E. Ekman Rev. Living Trust
Recording Date: April 14, 2016
Recording No.: 2016-03598
(Affects Parcel I and II and includes additional property)

Partial assignment of the beneficial interest under said deed of trust which names:

Assignee: Carolyn L. Oakley as to 28.6% of the beneficial interest
Recording Date: April 18, 2016
Recording No.: 2016-03715

Western Title & Escrow Company
Order No. WT0159841

Partial assignment of the beneficial interest under said deed of trust which names:

Assignee: Carolyn L. Oakley as to 50% of the beneficial interest
Recording Date: May 23, 2017
Recording No.: 2017-04825

An agreement to modify the terms and provisions of said deed of trust as therein provided

Recording Date: October 30, 2017
Recording No: 2017-10617

7. The Company has on file a copy of the Operating Agreement for Nye Beach Holdings, LLC, dated May 25, 2007. A copy of any amendments subsequent to the date of said Operating Agreement should be furnished for review prior to closing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

**NOTE: The Oregon Corporation Commission record show that as of July 9, 2018, Nye Beach Holdings, LLC is a dissolved limited liability company.
Date of Dissolution: January 25, 2018**

End of Reported Information

There will be additional charges for additional information or copies. For questions or additional requests, contact:

Anya Kirkes
541-574-1511
anna.kirkes@westerntitle.com

Western Title & Escrow Company
255 SW Coast Highway, Suite 100
Newport, OR 97365

EXHIBIT "A"
Legal Description

PARCEL I:

Commencing at the meander corner between Section 8 and 9, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, which point is at the Southeast corner of Block 4, OLSSON'S SECOND ADDITION TO NEWPORT; thence North along the East line of the City of Newport, 166.33 feet to the Northerly right of way line of the Newport-Yaquina County Road No. 515; thence South 64° 54' East, along said right of way 129.09 feet; thence North 25° 06' East, 99.61 feet; thence North 72° 10' East, 161.60 feet to a 5/8 inch rod with angle iron, which point is the true point of beginning of the tract herein to be described; thence South 59° 13' East, 132.0 feet to a 5/8 inch rod; thence North 13° 35' East, 137.6 feet to a 1/2 inch rod; thence North 57° 52' West, 112.17 feet to a 1/2 inch rod; thence continuing North 57° 52' West 25 feet to the Northwest corner of the Charles E. Scott, et ux tract conveyed by instrument recorded February 24, 1959, in Book 197, page 595, Film Records; thence South 21° 57' West 135.7 feet to the North line of S.E. 5th Street; thence South 59° 13' East along the Northerly line of said street to the true point of beginning.

EXCEPTING that portion, if any, lying within S.E. 5th Street.

PARCEL II:

Commencing at the meander corner between Sections 8 and 9, Township 11 South, Range 11 West, of the Willamette Meridian, in Lincoln County, Oregon, which point is at the Southeast corner of Block 4, OLSSON'S SECOND ADDITION TO NEWPORT; thence North along the East line of the City of Newport, 166.33 feet to the Northerly right of way line of the Newport-Yaquina County Road No. 515; thence South 64° 54' East, along said right of way, 129.09 feet; thence North 25° 06' East 99.61 feet; thence North 72° 10' East, 161.60 feet to a 5/8 inch rod with angle iron; thence South 59° 13' East 132.00 feet to a 5/8 inch rod; which point is the true point of beginning of the tract herein to be described; thence South 59° 13' East 66.20 feet; thence North 12° 02' West, 120.40 feet to a 1/2 inch iron rod; thence North 0° 40' East, 50.00 feet, more or less, to the Northeast corner of the tract conveyed to Charles E. Scott recorded in Microfilm Volume 61, page 603, Deed Records for Lincoln County, Oregon; thence South 13° 35' West, 137.60 feet to the true point of beginning.

EXCEPTING THEREFROM those portions, if any, lying within S.E. 5th Street or S.E. Moore Drive.

ALSO EXCEPTING THEREFROM that portion conveyed to City of Newport, a municipal corporation by Quitclaim Deed recorded July 19, 1993 in Book 264, page 2413, Film Records.

LIMITATIONS OF LIABILITY

"CUSTOMER" REFERS TO THE RECIPIENT OF THIS REPORT.

CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE EXTENT OF LOSS WHICH COULD ARISE FROM ERRORS OR OMISSIONS IN, OR THE COMPANY'S NEGLIGENCE IN PRODUCING, THE REQUESTED REPORT, HEREIN "THE REPORT." CUSTOMER RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL LIABILITY WHICH COULD ARISE FROM SUCH ERRORS OR OMISSIONS OR NEGLIGENCE. THEREFORE, CUSTOMER UNDERSTANDS THAT THE COMPANY IS NOT WILLING TO PROCEED IN THE PREPARATION AND ISSUANCE OF THE REPORT UNLESS THE COMPANY'S LIABILITY IS STRICTLY LIMITED. CUSTOMER AGREES WITH THE PROPRIETY OF SUCH LIMITATION AND AGREES TO BE BOUND BY ITS TERMS

THE LIMITATIONS ARE AS FOLLOWS AND THE LIMITATIONS WILL SURVIVE THE CONTRACT:

ONLY MATTERS IDENTIFIED IN THIS REPORT AS THE SUBJECT OF THE REPORT ARE WITHIN ITS SCOPE. ALL OTHER MATTERS ARE OUTSIDE THE SCOPE OF THE REPORT.

CUSTOMER AGREES, AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE REPORT AND TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS AND ALL OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS FOR ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, LOSSES, COSTS, DAMAGES AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY'S FEES, HOWEVER ALLEGED OR ARISING, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM BREACH OF CONTRACT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF WARRANTY, EQUITY, THE COMMON LAW, STATUTE OR ANY OTHER THEORY OF RECOVERY, OR FROM ANY PERSON'S USE, MISUSE, OR INABILITY TO USE THE REPORT OR ANY OF THE MATERIALS CONTAINED THEREIN OR PRODUCED, SO THAT THE TOTAL AGGREGATE LIABILITY OF THE COMPANY AND ITS AGENTS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS SHALL NOT IN ANY EVENT EXCEED THE COMPANY'S TOTAL FEE FOR THE REPORT.

CUSTOMER AGREES THAT THE FOREGOING LIMITATION ON LIABILITY IS A TERM MATERIAL TO THE PRICE THE CUSTOMER IS PAYING, WHICH PRICE IS LOWER THAN WOULD OTHERWISE BE OFFERED TO THE CUSTOMER WITHOUT SAID TERM. CUSTOMER RECOGNIZES THAT THE COMPANY WOULD NOT ISSUE THE REPORT BUT FOR THIS CUSTOMER AGREEMENT, AS PART OF THE CONSIDERATION GIVEN FOR THE REPORT, TO THE FOREGOING LIMITATION OF LIABILITY AND THAT ANY SUCH LIABILITY IS CONDITIONED AND PREDICATED UPON THE FULL AND TIMELY PAYMENT OF THE COMPANY'S INVOICE FOR THE REPORT.

THE REPORT IS LIMITED IN SCOPE AND IS NOT AN ABSTRACT OF TITLE, TITLE OPINION, PRELIMINARY TITLE REPORT, TITLE REPORT, COMMITMENT TO ISSUE TITLE INSURANCE, OR A TITLE POLICY, AND SHOULD NOT BE RELIED UPON AS SUCH. THE REPORT DOES NOT PROVIDE OR OFFER ANY TITLE INSURANCE, LIABILITY COVERAGE OR ERRORS AND OMISSIONS COVERAGE. THE REPORT IS NOT TO BE RELIED UPON AS A REPRESENTATION OF THE STATUS OF TITLE TO THE PROPERTY. THE COMPANY MAKES NO REPRESENTATIONS AS TO THE REPORT'S ACCURACY, DISCLAIMS ANY WARRANTY AS TO THE REPORT, ASSUMES NO DUTIES TO CUSTOMER, DOES NOT INTEND FOR CUSTOMER TO RELY ON THE REPORT, AND ASSUMES NO LIABILITY FOR ANY LOSS OCCURRING BY REASON OF RELIANCE ON THE REPORT OR OTHERWISE.

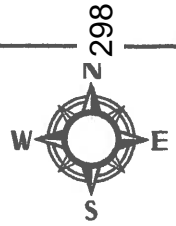
Western Title & Escrow Company
Order No. WT0159841

IF CUSTOMER (A) HAS OR WILL HAVE AN INSURABLE INTEREST IN THE SUBJECT REAL PROPERTY, (B) DOES NOT WISH TO LIMIT LIABILITY AS STATED HEREIN AND (C) DESIRES THAT ADDITIONAL LIABILITY BE ASSUMED BY THE COMPANY, THEN CUSTOMER MAY REQUEST AND PURCHASE A POLICY OF TITLE INSURANCE, A BINDER, OR A COMMITMENT TO ISSUE A POLICY OF TITLE INSURANCE. NO ASSURANCE IS GIVEN AS TO THE INSURABILITY OF THE TITLE OR STATUS OF TITLE. CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES IT HAS AN INDEPENDENT DUTY TO ENSURE AND/OR RESEARCH THE ACCURACY OF ANY INFORMATION OBTAINED FROM THE COMPANY OR ANY PRODUCT OR SERVICE PURCHASED.

NO THIRD PARTY IS PERMITTED TO USE OR RELY UPON THE INFORMATION SET FORTH IN THE REPORT, AND NO LIABILITY TO ANY THIRD PARTY IS UNDERTAKEN BY THE COMPANY.

CUSTOMER AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS, AND ALL OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES AND SUBCONTRACTORS BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, INCOME, SAVINGS, DATA, BUSINESS, OPPORTUNITY, OR GOODWILL, PAIN AND SUFFERING, EMOTIONAL DISTRESS, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, BUSINESS INTERRUPTION OR DELAY, COST OF CAPITAL, OR COST OF REPLACEMENT PRODUCTS OR SERVICES, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE, OR OTHERWISE AND WHETHER CAUSED BY NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE OR ANY OTHER CAUSE WHATSOEVER, AND EVEN IF THE COMPANY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY FOR SUCH DAMAGES.

END OF THE LIMITATIONS OF LIABILITY



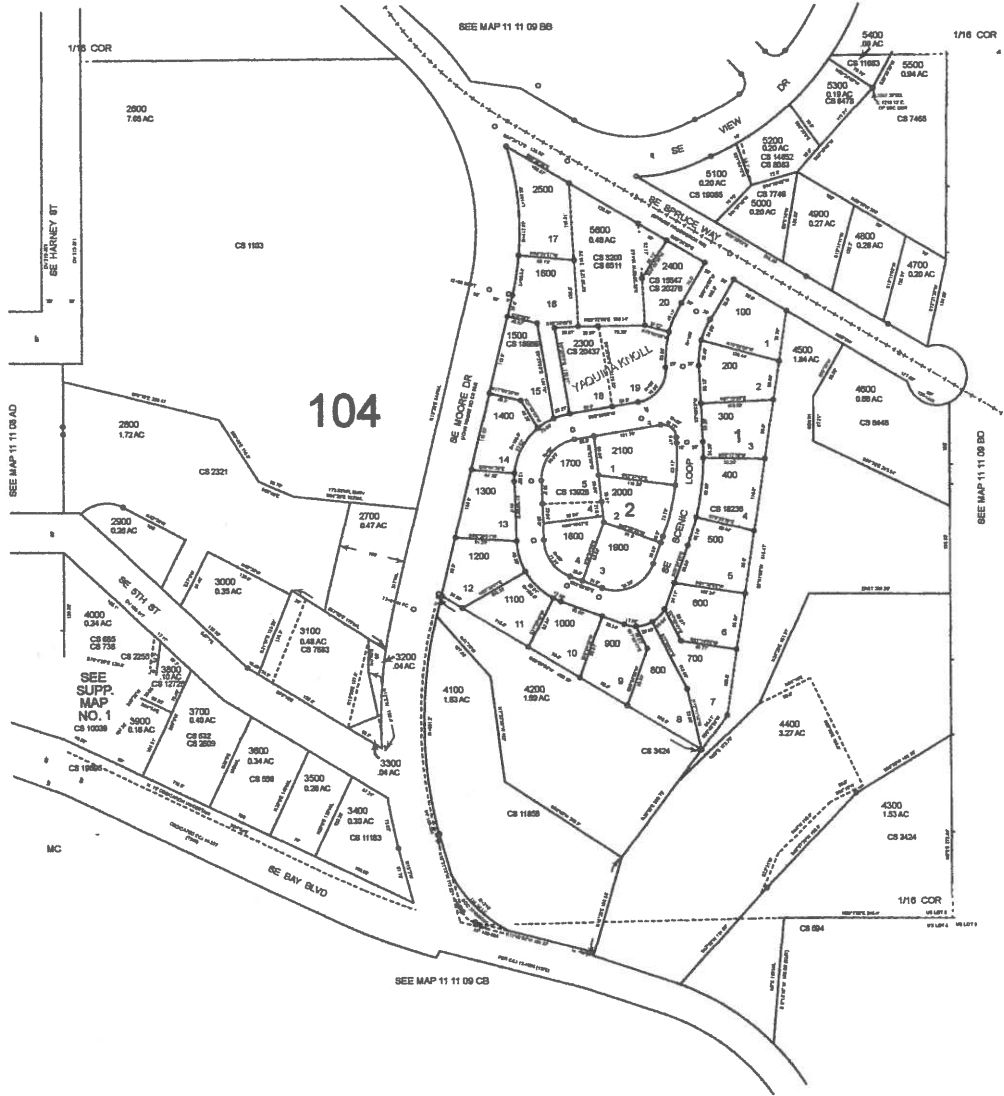
THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY



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



Revised: SAO
01/31/2018

NEWPORT
11 11 09 BC

**Engineering Geologic Hazards and
Geotechnical Investigation
Tax Lot 3100 Map 11-11-09BC
S.E. 5th Street
Newport, Oregon**

**Prepared for:
Celeste & Dylan McEntee
449 S.E. Scenic Loop
Newport, Oregon 97365**

Project #Y184196

November 6, 2018



Project #Y184196

November 6, 2018

To: Celeste & Dylan McEntee
449 S.E. Scenic Loop
Newport, Oregon 97365

Subject: Engineering Geologic Hazards and
Geotechnical Investigation
Tax Lot 3100, Map 11-11-09BC
S.E. 5th Street
Newport, Oregon

Dear Mrs. & Mr. McEntee:

The accompanying report presents the results of our geologic hazards investigation with geotechnical recommendations for the above subject site.

After you have reviewed our report, we would be pleased to discuss it and to answer any questions you might have.

This opportunity to be of service is sincerely appreciated. If we can be of any further assistance, please contact us.

H.G. SCHLICKER & ASSOCIATES, INC.



J. Douglas Gless, MSc, RG, CEG, LHG
President/Principal Engineering Geologist

JDG:mgb

Project #Y184196

November 6, 2018

TABLE OF CONTENTS

	<u>Page</u>
1.0 Introduction and General Information	1
2.0 Site Description.....	1
2.1 Existing Site Conditions	2
3.0 Geologic Mapping, Investigation and Descriptions.....	2
3.1 Structures	3
4.0 Slope Stability and Erosion.....	3
5.0 Regional Seismic Hazards	4
6.0 Flooding Hazards	5
7.0 Climate Change.....	5
8.0 Conclusions and Recommendations	6
8.1 Site Preparation.....	7
8.2 Soil Bearing Capacities.....	7
8.3 Footings	8
8.4 Slabs-On-Ground.....	8
8.5 Retaining Walls.....	9
8.6 Seismic Requirements.....	10
8.7 Structural Fills.....	10
8.8 Groundwater	11

TABLE OF CONTENTS

	<u>Page</u>
8.9 Erosion Control.....	11
8.10 Cut and Fill Slopes.....	11
8.11 Drainage.....	12
8.12 Plan Review and Site Observations.....	13
9.0 Limitations.....	13
10.0 Disclosure.....	14
11.0 References.....	14

FIGURES

- Figure 1 – Location Map
- Figure 2 – Plat Map
- Figure 3 – Site Topographic Map
- Figure 4 – Slope Profiles A-A' and B-B'

APPENDICES

- Appendix A – Site Photographs
- Appendix B – Test Pit Logs
- Appendix C – Checklist of Recommended Plan Reviews and Site Observation



H.G. Schlicker & Associates, Inc.

607 Main Street, Suite 200 · Oregon City, Oregon 97045
 (503) 655-8113 · FAX (503) 655-8173

Project #Y184196

November 6, 2018

To: Celeste & Dylan McEntee
449 S.E. Scenic Loop
Newport, Oregon 97365

Subject: Engineering Geologic Hazards and
Geotechnical Investigation
Tax Lot 3100, Map 11-11-09BC
S.E. 5th Street
Newport, Oregon

Dear Mrs. & Mr. McEntee:

1.0 Introduction and General Information

At your request and authorization, a representative of H.G. Schlicker and Associates, Inc. (HGSA) visited the subject site on September 10 and 24, 2018 to complete an engineering geologic hazards and geotechnical investigation and report for Tax Lot 3100, Map 11-11-09BC, located at S.E. 5th Street in Newport, Oregon (Figures 1 and 2; Appendix A). Previously we completed a geologic hazards investigation and report for the site dated November 9, 2015. It is our understanding that you are considering construction of townhomes on the property.

This report addresses the geotechnics and geologic hazards at the site with respect to the construction of four townhomes. The scope of our work consisted of site visits, site observations and measurements, review of our previous report (HGSA Y153863), 8 test pit excavations, limited review of the geologic literature, interpretation of topographic maps, lidar and stereo aerial photographs, and preparation of this report which provides our findings, conclusions, and recommendations.

2.0 Site Description

The site is located in the eastern part of Newport, Oregon on a hillside overlooking Yaquina Bay to its south (Figure 1). The site consists of an irregular-shaped, approximately 0.48 acre lot (Tax Lot 3100) that lies along a southwesterly graded slope of approximately 20 to

30 degrees (Figures 2 and 3). Prior to our site visit the demolition of a house and detached garage was completed at the site. The site is bounded to its north and northwest by adjacent developed residential lots, to its south by S.E. 5th Street which provides driveway access, and to its east by the driveway of the adjacent lot, then S.E. Moore Drive (also known as John Moore Road). The site is vegetated with grasses, small trees, ornamentals, and brush.

2.1 Existing Site Conditions

The previous house at the site consisted of one and two story levels with 2 attached and 1 detached garages. The lowest floor had a partial crawlspace beneath it. The previous building area of the site is accessed by 2 sloping driveways. Construction and landscaping debris, plumbing pipe, wire, and the remnants of concrete and asphalt flatwork were observed across the surface of the site. Drainage pipes were observed on the hillside, near the northern property line and may be related to the neighboring properties stormwater disposal system.

An approximately 53 inch high poured concrete retaining wall is present and was part of the foundation wall at the north side of the previous garage. It is unknown if this wall was engineered to retain soil or if it was built as a typical stemwall for the former garage. To the east of this wall, an approximately 25 feet long wet stacked rockery wall was observed, tapering in height down to the east. This wall was generally obscured by vegetation but showed signs of distress. An approximately 4½ feet high (maximum) post and lagging retaining wall is stepped up the hillside above the southern driveway (Appendix A). The wall is tied back with cables, appears to be tilting and leaning, and is in need of repair or replacement. Rock boulder landscaping is present along the uphill side of the northern driveway which is performing well.

3.0 Geologic Mapping, Investigation and Descriptions

The site lies in an area which has been mapped as Quaternary Marine Terrace deposits overlying early Miocene-aged Nye Mudstone (Schlicker et al., 1973). The Quaternary Marine Terrace deposits consist of up to 75 feet of semi-consolidated, uplifted beach sand overlain locally by fine-grained, dune sand deposits. The uplifted marine terrace sediments are typically high-energy near shore marine deposits capped by beach sand (Kelsey et al., 1996). The Nye Mudstone consists of massive to indistinctly-bedded, gray, clayey siltstone and very fine-grained sandstone with some calcareous concretions, and sandstone interbeds near the base. Locally, the Nye Mudstone dips to the southwest from 10 to 13 degrees.

At the time of our site visit, we completed subsurface explorations by excavating 8 test pits with a Caterpillar 305.5E2 CR trackhoe, to approximately 10 feet depths. The excavations were logged by a geologist from our office who visually classified the soils encountered according to the Unified Soil Classification System (USCS). The approximate locations of the

test pits are shown on Figures 3 and 4. Detailed explanations of subsurface conditions can be found in Appendix B.

In general we encountered 3 to 10 feet of uncontrolled fill and debris which was underlain by fractured, weathered mudstone.

3.1 Structures

Structural deformation and faulting along the Oregon Coast is dominated by the Cascadia Subduction zone (CSZ) which is a convergent plate boundary extending for approximately 680 miles from northern Vancouver Island to northern California. This convergent plate boundary is defined by the subduction of the Juan de Fuca plate beneath the North America Plate, and forms an offshore north-south trench approximately 60 miles west of the Oregon coast shoreline. A resulting deformation front consisting of north-south oriented reverse faults is present along the western edge of an accretionary wedge east of the trench, and a zone of margin-oblique folding and faulting extends from the trench to the Oregon Coast (Geomatrix, 1995).

The nearest mapped potentially active faults are the Yaquina Bay Fault located approximately 1,100 feet southeast of the site, and the Yaquina Head Fault located approximately 3 miles north of the site. The Yaquina Bay Fault is a generally east-northeast trending oblique fault that also has left-lateral strike-slip and either contractional or extensional dip-slip offset components (Personius et al., 2003). This fault is believed to extend offshore for approximately 7 to 8 miles and may be a structurally controlling feature for the mouth of Yaquina Bay (Goldfinger et al., 1996; Geomatrix, 1995). At Yaquina Bay, a 125,000 year old platform has been displaced approximately 223 feet up-on-the-north by the Yaquina Bay Fault. This fault has the largest component of vertical slip (as much as 2 feet per 1,000 years) of any active fault in coastal Oregon or Washington (Geomatrix, 1995). Although the age for the last movement of the Yaquina Bay Fault is not known, the fault also offsets 80,000 year old marine terrace sediments. The Yaquina Head Fault is an east-trending oblique fault with left-lateral strike-slip and either contractional or extensional dip-slip offset components (Personius et al., 2003). It offsets the 80,000 year old Newport marine terrace in the area of the site by approximately 5 feet, indicating a relatively low rate of slip, if still active (Schlicker et al., 1973; Personius et al., 2003).

4.0 Slope Stability and Erosion

The site is located along a generally south-facing hillside overlooking Yaquina Bay, on a marine terrace which has been shaped and modified by past landsliding and erosion. The subject site and vicinity are mapped as landslide topography and part of a large complex of Holocene landslides north of McLean Point and along the northern and eastern slopes facing Yaquina Bay (Schlicker et al., 1973; Walker et al., 1989; Priest and Allan, 2004). The City of Newport

Geologic Hazards Map (accessed October 17, 2018) shows the subject site in an area designated as “Other Landslide Hazard Areas” based on Priest’s 1994 mapping. The site is mapped lying in an area of very high (existing landslide) susceptibility based on the DOGAMI methodology (Burns, Mickelson, and Madin, 2016).

The steeply sloping areas north of the northern driveway and along S.E. 5th Street are moderately vegetated but still have the potential for shallow sloughing and surface erosion when subjected to heavy or concentrated precipitation or stormwater flow.

5.0 Regional Seismic Hazards

Abundant evidence indicates that a series of geologically recent large earthquakes related to the Cascadia Subduction Zone have occurred along the coastline of the Pacific Northwest. Evidence suggests that more than 40 great earthquakes of magnitude 8 and larger have struck western Oregon during the last 10,000 years. The calculated odds that a Cascadia earthquake will occur in the next 50 years range from 7–15 percent for a great earthquake affecting the entire Pacific Northwest, to about a 37 percent chance that the southern end of the Cascadia Subduction Zone will produce a major earthquake in the next 50 years (OSSPAC, 2013; OSU News and Research Communications, 2010; Goldfinger et al., 2012). Evidence suggests the last major earthquake occurred on January 26, 1700 and may have been of magnitude 8.9 to 9.0 (Clague et al., 2000; DOGAMI, 2013).

There is now increasing recognition that great earthquakes do not necessarily result in a complete rupture along the full 1,200 km fault length of the Cascadia subduction zone. Evidence in the paleorecords indicates that partial ruptures of the plate boundary have occurred due to smaller earthquakes with moment magnitudes (M_w) < 9 (Witter et al., 2003; Kelsey et al., 2005). These partial segment ruptures appear to occur more frequently on the southern Oregon coast, as determined from paleotsunami studies. Furthermore, the records have documented that local tsunamis from Cascadia earthquakes recur in clusters (~250–400 years) followed by gaps of 700–1,300 years, with the highest tsunamis associated with earthquakes occurring at the beginning and end of a cluster (Allan et al., 2015).

These major earthquake events were accompanied by widespread subsidence of a few centimeters to 1–2 meters (Leonard et al., 2004). Tsunamis appear to have been associated with many of these earthquakes. In addition, settlement, liquefaction and landsliding of some earth materials are believed to have been commonly associated with these seismic events.

Other earthquakes related to shallow crustal movements or earthquakes related to the Juan de Fuca plate have the potential to generate magnitude 6.0 to 7.5 earthquakes. The recurrence interval for these types of earthquakes is difficult to determine from present data, but estimates of 100 to 200 years have been given in the literature (Rogers et al., 1996).

Based on the 1999 Relative Earthquake Hazard Map of the Newport area (Madin and Wang, 1999), the subject site lies in an area designated as Zone C which is defined as having low to intermediate hazards associated with earthquakes. The degree of relative hazard was based on the factors of ground motion amplification, liquefaction, and slope instability.

6.0 Flooding Hazards

Based on the 2009 Flood Insurance Rate Map (FIRM, Panel #41041C0368D) the site lies in an area rated as Zone X which is defined as determined to be outside the 0.2% annual chance floodplain.

The area of the subject site has also had a Preliminary Flood Insurance Rate Map prepared for it (FIRM Panel #41041C0368E, dated 08/05/2016) which is still awaiting adoption. Based on this Preliminary FIRM mapping, the site also lies in Zone X (outside the 0.2% annual chance floodplain).

The slope at the north portion of the site directs surface water runoff towards the subject site and to the south-southeast.

Based on Oregon Department of Geology and Mineral Industries mapping (DOGAMI, 2013) the site lies within the tsunami inundation zone resulting from an 9.1 and larger magnitude Cascadia Subduction Zone (CSZ) earthquake. The 2013 DOGAMI mapping is based upon 5 computer modeled scenarios for shoreline tsunami inundation caused by potential CSZ earthquake events ranging in magnitude from approximately 8.7 to 9.1. The January 1700 earthquake event (discussed in Section 5.0 above) has been rated as an approximate 8.9 magnitude in DOGAMI's methodology. Other earthquakes source zones can also generate tsunamis.

7.0 Climate Change

According to most of the recent scientific studies, the Earth's climate is changing as the result of human activities which are altering the chemical composition of the atmosphere through the buildup of greenhouse gases, primarily carbon dioxide, methane, nitrous oxide, and chlorofluorocarbons (EPA, 1998). Although there are uncertainties about exactly how the Earth's climate will respond to enhanced concentrations of greenhouse gases, scientific observations indicate that detectable changes are underway (EPA, 1998; Church and White, 2006). Global sea level rise, caused by melting polar ice caps and ocean thermal expansion, could lead to flooding of low-lying coastal property, loss of coastal wetlands, erosion of beaches and bluffs, and saltwater contamination of fresh groundwater. It can also lead to increased rainfall which can result in an increase in landslide occurrence.

8.0 Conclusions and Recommendations

The main engineering geologic concerns at the site are:

1. The site lies on and adjacent to a steep slope, in terrain mapped as ancient landslide complex.
2. Uncontrolled fill materials, up to 10 feet thick, construction debris and remains of asphalt flatwork are present within the proposed building area and will need to be removed or foundations will need to extend to depths below the fills. Footings and slabs should not be constructed on these fills.
3. During our test pit excavations we encountered buried cables and pipes of unknown origin. Communication with the local PUD suggests that a stormwater/sewer manhole, line and/or easment may be present along the western property line.
4. Four separate walls were observed at the site, these walls vary in size, materials, and design. The concrete, wet stacked rockery, and wood lagging walls exhibit signs of distress and are in need of repair or replacement.
5. It our understanding that significant grading and cuts will be required for the proposed development of the site. We have not yet been provided a grading plan for the project.
6. There is an inherent regional risk of earthquakes along the Oregon Coast which could cause harm and damage structures. Past large earthquake events may have contributed to instability of the ancient complex landslide in the Newport area and could do so again. The site lies inside the mapped tsunami inundation hazard zone; a tsunami impacting the Newport/Yaquina Bay area could cause harm, loss of life and damage to structures at the site. These risks must be accepted by the owner, future owners, developers and residents of the site.

Recommendations

1. The use of a private utility locating service to identify the location of buried private and public utilities is recommended prior to excavation or grading.
2. Any new or existing permanent cut and/or fill slopes steeper than 2H:1V shall be retained with an engineered retaining wall.

The following recommendations shall be adhered to during design and construction:

8.1 Site Preparation

We recommend that soft/loose soils and all uncontrolled, undocumented fills exposed during excavation be removed from foundation, slab, and driveway areas and replaced with properly compacted structural fill to achieve desired grades.

Building loads may be supported on individual or continuous spread footings bearing in undisturbed native, non-organic, firm rocky silty soils, in-place mudstone rock if encountered, or properly designed and compacted structural fill placed on these soils. All footing areas should be stripped of all organic and loose/soft soils, existing fills, and debris. We anticipate that rock will be encountered at depths of 3 to 10 feet and greater, however depths will vary.

Any tree stumps, including the root systems, should be removed from beneath footing, slab and pavement areas, and the resulting holes backfilled with compacted non-organic structural backfill placed in lifts not exceeding 8 inches and compacted to a dry density of at least 90 percent of the Modified Proctor maximum dry density (ASTM D1557).

8.2 Soil Bearing Capacities

Footings bearing in undisturbed, native, non-organic, firm soils or properly compacted structural fill placed on these soils may be designed for the following:

ALLOWABLE SOIL BEARING CAPACITIES	
Allowable Dead Plus Live Load Bearing Capacity ^a	1,500 psf
Passive Resistance	200 psf/ft embedment depth
Lateral Sliding Coefficient	0.35
^a Allowable bearing capacity may be increased by one-third for short term wind or seismic loads.	

8.3 Footings

Our recommended minimum footing widths and embedment depths are as follows: MINIMUM FOOTING WIDTHS & EMBEDMENT DEPTHS			
Number of Stories	One	Two	Three
Minimum Footing Width	12 inches	15 inches	18 inches
Minimum Exterior Footing Embedment Depth ^a	12 inches	18 inches	24 inches
Minimum Interior Footing Embedment Depth ^b	6 inches	6 inches	6 inches
^a All footings shall be embedded as specified above, or extend below the frost line as per Table R301.2(1) of the 2014 ORSC, whichever provides greater embedment. ^b Interior footings shall be embedded a minimum of 6 inches below the lowest adjacent finished grade, or as otherwise recommended by our firm. In general, interior footings placed on sloping or benched ground shall be embedded or set back from cut slopes in such a manner as to provide a minimum horizontal distance between the foundation component and face of the slope of one foot per every foot of elevation change.			

8.4 Slabs-On-Ground

All areas beneath slabs shall be excavated a minimum of 6 inches into native, non-organic, firm soils. The exposed subgrade in the slab excavation shall be cut smooth, without loose or disturbed soil and rock remaining in the excavation.

SLABS-ON-GROUND	
Minimum thickness of 3/4 inch minus crushed rock beneath slabs	6 inches
Compaction Requirements	92% ASTM D1557, compacted in 8-inch lifts maximum

The slab excavation shall then be backfilled with a minimum of 6 inches of ¾ inch minus, clean, free-draining, crushed rock placed in 8-inch lifts maximum which are compacted to 92 percent of the Modified Proctor (ASTM D1557). Reinforcing of the slab is recommended and the slab shall be fully waterproofed in accordance with structural design considerations. An underslab drainage system is recommended for all slabs, as per the architect’s design recommendations. Where floor coverings are planned, slabs shall also be underlain by a suitable moisture barrier.

8.5 Retaining Walls

For static conditions free standing retaining walls shall be designed for a lateral static active earth pressure expressed as an equivalent fluid density (EFD) of 35 pounds per cubic foot, assuming level backfill. An EFD of 45 pounds per cubic foot shall be used assuming sloping backfill of 2H:1V. At rest retaining walls shall be designed for a lateral at-rest pressure expressed as an equivalent fluid density (EFD) of 60 pounds per cubic foot, assuming level backfill behind the wall equal to a distance of at least half of the height of the wall. Walls need to be fully drained to prevent the build-up of hydrostatic pressures.

The EFDs below assume static conditions, and no surcharge loads from vehicles or structures. If surcharge loads will be applied to the retaining walls, forces on the walls resulting from these loads will need to be added to the pressures given above.

For seismic loading a unit pseudostatic force equal to $15.8 \text{ pcf} (H)^2$, where H is the height of the wall in feet, shall be added to the static lateral earth pressure. The location of the pseudostatic force can be assumed to act at a distance of 0.6H above the base of the wall.

RETAINING WALL EARTH PRESSURE PARAMETERS	
Static Case, Active Wall (level backfill/grades)	35 pcf ^a
Static Case, Active Wall (2H:1V backfill/grades)	45 pcf ^a
Static Case, At-Rest Wall (level backfill/grades)	60 pcf ^a
Seismic Loading (level backfill/grades)	$15.8 \text{ pcf} (H)^2$ ^b
^a Earth pressure expressed as an equivalent fluid density (EFD). ^b Seismic loading expressed as a pseudostatic force, where H is the height of the wall in feet. The location of the pseudostatic force can be assumed to act at a distance of 0.6H above the base of the wall.	

Free-draining granular backfill for walls shall be placed in 8-inch horizontal lifts and machine compacted to 92 percent of the maximum dry density as determined by ASTM D1557. Compaction within 2 feet of the wall shall be accomplished with light weight hand operated compaction equipment to avoid applying additional lateral pressure on the walls. Drainage of the retaining wall shall consist of slotted drains placed at the base of the wall on the backfilled side and backfilled with free-draining crushed rock (less than 5% passing the 200-mesh sieve using a washed sieve method) protected by non-woven filter fabric (Mirafi® 140N or equivalent) placed between the native soil and the backfill. Filter fabric protected free-draining crushed rock shall extend to within 2 feet of the ground surface behind the wall, and the filter fabric shall be overlapped at the top per the manufacturer's recommendations. All walls shall be fully drained to prevent the build-up of hydrostatic pressures. All retaining walls shall have a minimum of 2 feet of

embedment at the toe, or be designed without passive resistance. The EFDs provided above assume that free draining crushed rock will be used for the retaining wall backfill.

8.6 Seismic Requirements

The structure and all structural elements shall be designed to meet current Oregon Residential Specialty Code (ORSC) seismic requirements. Based on our knowledge of subsurface conditions at the site, and our analysis using the guidelines recommended in the ORSC, the structure shall be designed to meet the following seismic parameters:

SEISMIC DESIGN PARAMETERS	
Site Class	D
Seismic Design Category	D ₂
Mapped Spectral Response Acceleration for Short Periods	S _S = 1.644 g
Site Coefficients	F _a = 1.200 F _v = 1.700
Design Spectral Response Acceleration at Short Periods	S _{DS} = 1.315 g

8.7 Structural Fills

Structural fills supporting building loads or slabs shall consist of granular material, free of organics and deleterious materials, and contain no particles greater than 1½ inches in diameter so that nuclear methods (ASTM D2922 & ASTM D3017) can be easily used for field density and moisture testing. All areas to receive fill shall be stripped of all soft soils, organic soils, organic debris, existing fill, and disturbed soils.

STRUCTURAL FILL	
Compaction Requirements	92% ASTM D1557, compacted in 8-inch lifts maximum, at or near the optimum moisture content (± 2%).
Benching Requirements ^a	Slopes steeper than 5H:1V that are to receive fill shall be benched. Fills shall not be placed along slopes steeper than 3H:1V, unless approved by H.G. Schlicker & Associates, Inc.
^a Benches shall be cut into native, non-organic, firm soils. Benches shall be a minimum of 6 feet wide with side cuts no steeper than 1H:1V and no higher than 6 feet. The lowest bench shall be keyed in a minimum of 2 feet into native, non-organic, firm soils.	

Proper test frequency and earthwork documentation usually requires daily observation during stripping, rough grading, and placement of structural fill. Field density testing shall generally conform to ASTM D2922 and D3017, or D1556. To minimize the number of field and laboratory tests, fill materials shall be from a single source and of a consistent character. Structural fill shall be approved and periodically observed by HGSA and tested by a qualified testing firm. Test results will need to be reviewed and approved by HGSA. We recommend that at least three density tests be performed for every 18 inches or every 200 cubic yards of fill placed, whichever requires more testing. Because testing is performed on an on-call basis, we recommend that the earthwork contractor schedule the testing. Relatively more testing is typically necessary on smaller projects.

8.8 Groundwater

Groundwater was not encountered during test pit excavations. However, groundwater may be encountered at shallow depths in excavations during the wet season. If groundwater is encountered, unwatering of the excavation is required and shall be the contractor's responsibility. This can typically be accomplished by pumping from one or more sumps, or daylighting the excavations to drain.

8.9 Erosion Control

Vegetation shall be removed only as necessary and exposed areas shall be replanted following construction. Disturbed ground surfaces exposed during the wet season (November 1 through April 30) shall be temporarily planted with grasses, or protected with erosion control blankets or hydromulch.

Temporary sediment fences shall be installed downslope of any disturbed areas of the site until permanent vegetation cover can be established.

Exposed sloping areas steeper than 3 horizontal to 1 vertical (3H:1V) shall be protected with a straw erosion control blanket (North American Green S150 or equivalent) to provide erosion protection until permanent vegetation can be established. Erosion control blankets shall be installed as per the manufacturer's recommendations.

8.10 Cut and Fill Slopes

Temporary unsupported cut and fill slopes less than 9 feet in height shall be sloped no steeper than 1 horizontal to 1 vertical (1H:1V). If temporary slopes greater than 9 feet high are desired, or if water seepage is encountered in cuts, our firm shall be contacted to provide additional recommendations. Temporary cuts in excess of 4 feet high and steeper than 1H:1V will likely require appropriate shoring to provide for worker safety, per OSHA regulations. Temporary cuts shall be protected from inclement weather by the use

of plastic sheeting to help prevent erosion and/or failure.

TEMPORARY AND PERMANENT CUTS	
Temporary Cuts	1H:1V (maximum) ^a
Permanent Cuts	2H:1V (maximum) ^a
^a All cuts greater than 9 feet high, or cuts where water seepage is encountered, shall be approved by a representative of H.G. Schlicker & Associates, Inc.	

If the above cut slope recommendations cannot be achieved due to construction and/or property line constraints, temporary or permanent retention of cut slopes may be required, as determined by a representative of HGSA.

Permanent unsupported cut and fill slopes shall be constructed no steeper than 2 horizontal to 1 vertical (2H:1V). Permanent cut slopes steeper than 2H:1V shall be retained with an engineered retaining wall. Fill slopes steeper than 2H:1V shall be retained or be mechanically reinforced using geogrids, or other suitable products as approved by HGSA. Areas that slope steeper than 5H:1V and are to receive fill shall be benched. Benches shall be cut into native, non-organic, firm soil. The lowest bench shall be keyed a minimum of 2 feet into native, firm soil, and be a minimum of 6 feet wide.

8.11 Drainage

Surface water shall be diverted from building foundations and walls to approved disposal points by grading the ground surface to slope away a minimum of 2 percent for 6 feet towards a suitable gravity outlet to prevent ponding near the structures. Permanent subsurface drainage of the building perimeter is recommended to prevent extreme seasonal variation in moisture content of subgrade materials and subjection of foundations and slabs to hydrostatic pressures.

Perimeter drains shall be installed adjacent to the perimeter footings and sloped a minimum of 1.0 percent to a gravity outlet. A suitable perimeter drain system would consist of a 4-inch diameter, perforated PVC pipe (typical) embedded below and adjacent to the bottom of footings and backfilled with approved drain rock. The type of PVC pipe to be utilized may depend on building agency requirements and shall be verified prior to construction. HGSA also recommends lining the drainage trench excavation with a non-woven geotextile filter such as Mirafi® 140N or equivalent, to increase the life of the drainage system. The perimeter drain excavation shall be constructed in a manner which prevents undermining of foundation or slab components or any disturbance to supporting soils.

In addition to the perimeter foundation drain system, drainage of any crawlspace areas is required. Each crawlspace shall be graded to a low point for installation of a drain that is tied into the perimeter footing drain and tightlined to an approved disposal point.

All roof drains shall be collected and tightlined in a separate system independent of the footing drains, or an approved backflow prevention device shall be used. All roof and footing drains shall be discharged to an approved disposal point. If water will be discharged to the ground surface, we recommend that energy dissipaters, such as splash blocks or a rock apron, be utilized at all pipe outfall locations. Water collected on the site shall not be concentrated and discharged to adjacent properties.

8.12 Plan Review and Site Observations

We shall be provided the opportunity to review all site development, foundation, drainage, and grading plans prior to construction to assure conformance with the intent of our recommendations (Appendix C). The plans, details and specifications shall clearly show that the above recommendations have been implemented into the design.

We shall observe the basement excavation and footing excavations prior to placing structural fill, forming and pouring concrete to assure that suitable bearing materials and recommended setbacks have been achieved (Appendix C). Please provide us with at least five (5) days' notice prior to any needed site observations. There will be additional costs for these services.

9.0 Limitations

The Oregon Coast is a dynamic environment with inherent unavoidable risks to development. Landsliding, erosion, tsunamis, storms, earthquakes and other natural events can cause severe impacts to structures built within this environment and can be detrimental to the health and welfare of those who choose to place themselves within this environment. The client is warned that, although this report is intended to identify the geologic hazards causing these risks, the scientific and engineering communities knowledge and understanding of geologic hazards processes is not complete. This report pertains to the subject site only, and is not applicable to adjacent sites nor is it valid for types of development other than that to which it refers. Geologic conditions including materials, processes and rates can change with time and therefore a review of the site and/or this report may be necessary as time passes to assure its accuracy and adequacy.

The test pit logs and related information depict generalized subsurface conditions only at these specific locations and at the particular time the subsurface exploration was completed. Soil and groundwater conditions at other locations may differ from the conditions at these locations.

Our investigation was based on engineering geological reconnaissance and a limited review of published information. The information presented in this report is believed to be representative of the site. The conclusions herein are professional opinions derived in accordance with current standards of professional practice, budget and time constraints. No warranty is expressed or implied. The performance of this site during a seismic event has not been evaluated. If you would like us to do so, please contact us. This report may only be copied in its entirety.

10.0 Disclosure

H.G. Schlicker & Associates, Inc. and the undersigned Certified Engineering Geologist have no financial interest in the subject site, the project or the Client's organization.

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- Priest, G. R., Myers, E., Baptista, A. M., Fleuck, P., Wang, K., Kamphaus, R. A., and Peterson, C. D., 1997, Cascadia Subduction Zone tsunamis: Hazard mapping at Yaquina Bay, Oregon, final technical report to the National Earthquake Hazard Reduction Program: Oregon Department of Geology and Mineral Industries, Open-File Report O-97-34.

Project #Y184196

Page 16

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Rogers, A. M., Walsh, T. J., Kockelman, J., and Priest, G. R., 1996, Earthquake hazards in the Pacific Northwest - an overview: U.S. Geological Survey, Professional Paper 1560, p. 1- 54.

Schlicker, H. G., Deacon, R. J., Olcott, G. W., and Beaulieu, J. D., 1973, Engineering geology of Lincoln County, Oregon: Oregon Department of Geology and Mineral Industries, Bulletin 81.

Witter, R. C., Kelsey, H. M., and Hemphill-Haley, E., 2003, Great Cascadia earthquakes and tsunamis of the past 6700 years, Coquille River estuary, southern coastal Oregon: Geological Society of America Bulletin, v. 115, p. 1289-1306.

It has been our pleasure to serve you. If you have any questions concerning this report, or the site, please contact us.

Respectfully submitted,

H.G. SCHLICKER AND ASSOCIATES, INC.



EXPIRES: 11/01/2019

J. Douglas Gless, MSc, RG, CEG, LHG
President/Principal Engineering Geologist

JDG:mgb

Max Bortal, MSc, GIT
Project Geologist

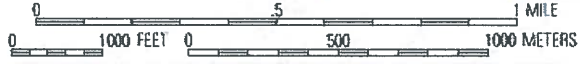
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44°39.000' N
44°38.000' N
44°37.000' N

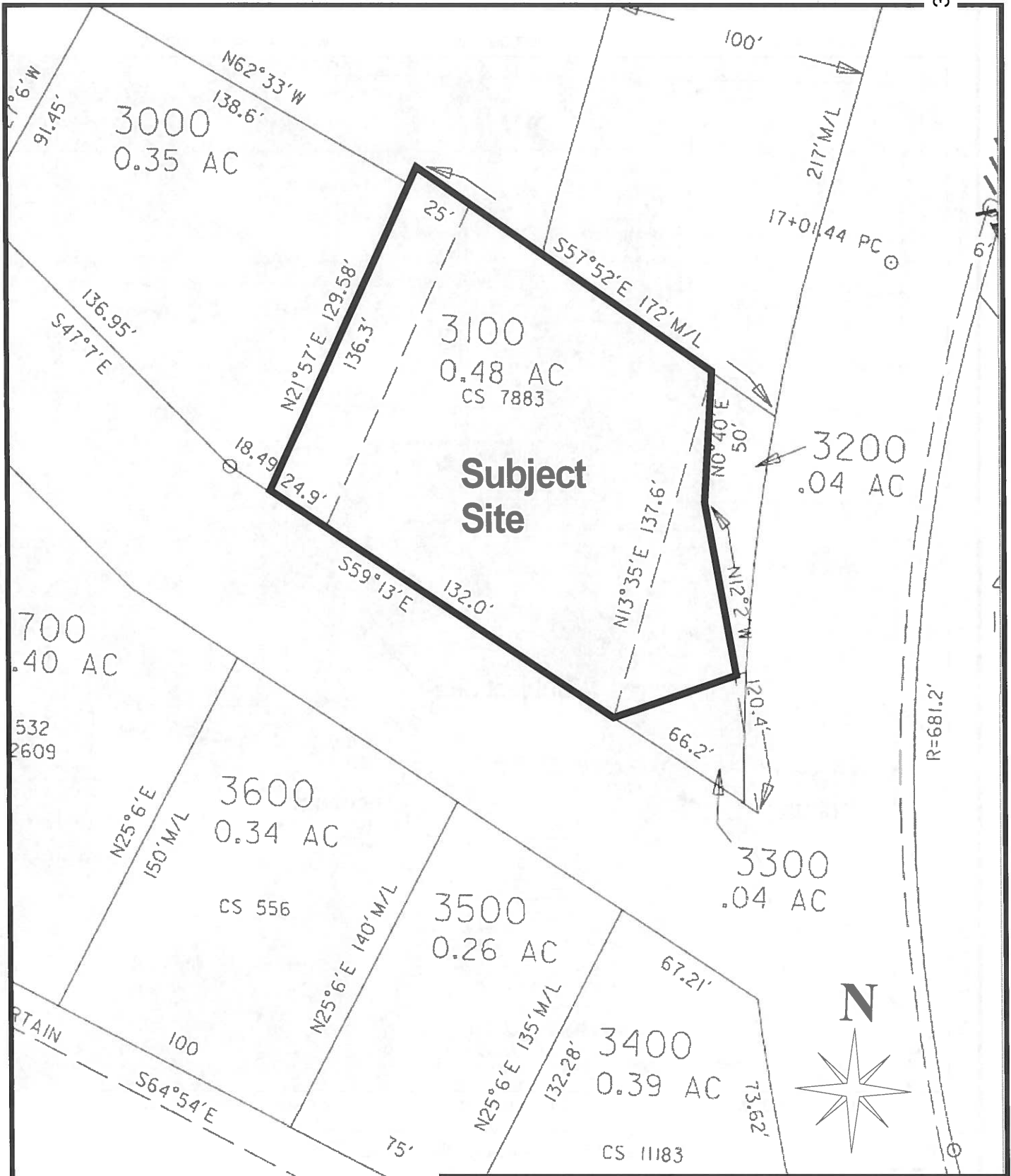
44°39.000' N
44°38.000' N
44°37.000' N



124°04.000' W 124°03.000' W WGS84 124°02.000' W




Date: 11/06/2018	Project #Y184196	Prepared by: MGB
Scale: 1" = 2,000'		Approved by: JDG
Location Map Tax Lot 3100, Map 11-11-09BC S.E. 5th Street, Newport, Oregon		
H.G. Schlicker & Associates, Inc.		Figure 1



Date: 11/06/2018	Project #Y184196	Prepared by: MGB
Scale: 1" = 50'		Approved by: JDG
Plat Map Tax Lot 3100, Map 11-11-09BC S.E. 5th Street, Newport, Oregon		
H.G. Schlicker & Associates, Inc.		Figure 2

Modified from the Lincoln County assessor's plat T11S, R11W, Sec. 9.
All locations and dimensions are approximate.



 = Approximate location of test pit
TP-1

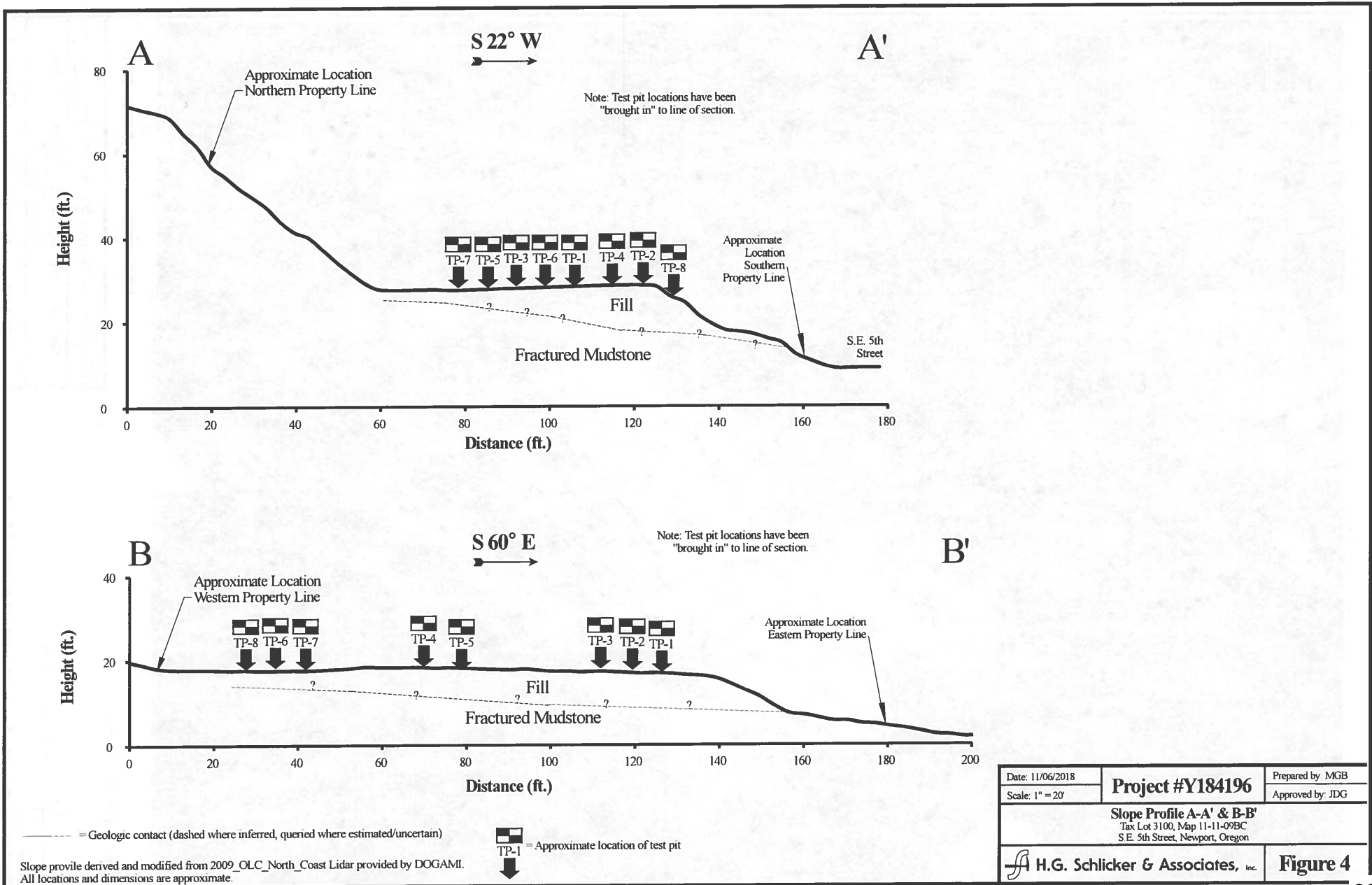
 = Approximate trend of profile line

Imagery from Google 2016
Topographic lines derived from 2009_OLC_North_Coast Lidar provided by DOGAMI.
All locations and dimensions are approximate.

Date 11/06/2018	Project #Y184196	Prepared by: MGB
Scale As shown		Approved by: JDG

Site Topographic Map with Profile Lines A-A' & B-B'
Tax Lot 3100, Map 11-11-09BC
S E 5th Street, Newport, Oregon

 **H.G. Schlicker & Associates, Inc.** **Figure 3**



Appendix A
- Site Photographs -

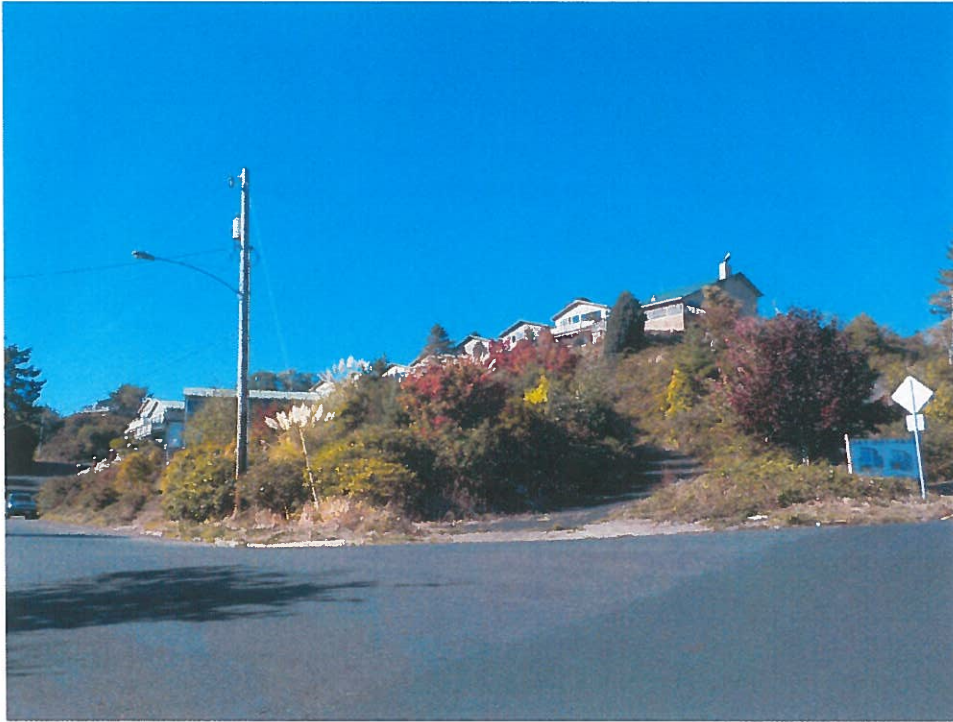


Photo 1 – Northwesterly view of the site taken from the intersection of S.E. 5th Street and S.E. Moore Drive.

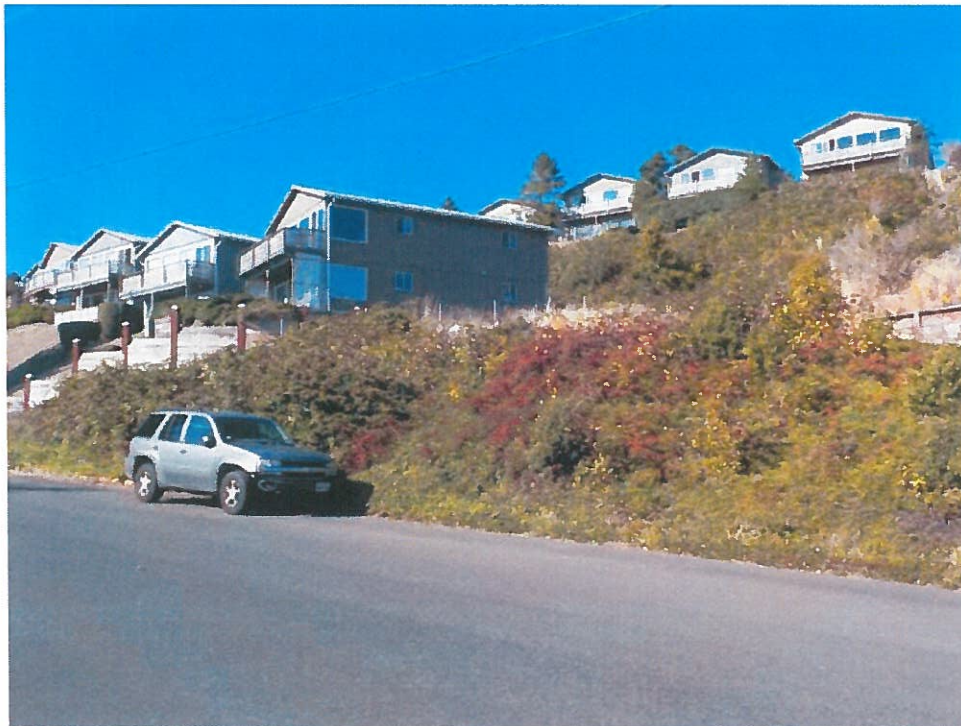


Photo 2 – Northwesterly view of the site taken from S.E. 5th Street.



Photo 3 – Southeasterly view of the bridge and Yaquina Bay from the site.



Photo 4 – View of organic-rich silt and landslide colluvium exposed in the first 4 feet of Test Pit 1.



Photo 5 – Close-up view of orange stained clumps of landslide colluvium.



Photo 6 – View of buried wires exposed during the excavation of Test Pit 2.



Photo 7 – View of pipe and drain rock layer exposed in Test Pit 7 at approximately 3 feet.



Photo 8 – Close-up view of large fragments of fractured mudstone recovered from below disturbed soils during test pit excavations.



Photo 9 – Close up view of a clam fossil in a mudstone fragment excavated from Test Pit 6.



Photo 10 – Close up view of the silt with smaller weathered fractured mudstone fragments encountered during test pit excavations.



Photo 11 – View of the concrete wall near the northwest corner of the site.



Photo 12 – Close up view of the wet stacked rockery wall at the base of the steep slope along the northern portion of the site.



Photo 13 – View of the stacked boulder wall along the eastern driveway.



Photo 14 – Close up view of damage typical of the wood lagging wall.

Appendix B
- Test Pit Logs -

TEST PIT LOG EXPLANATION

UNIFIED SOIL CLASSIFICATION SYSTEM (USCS), ASTM D2487			
MAJOR DIVISIONS		GROUP SYMBOL *	GROUP NAME
COARSE-GRAINED SOILS	GRAVELS	GW	Well-graded gravel
		GP	Poorly-graded gravel
		GM	Silty gravel
		GC	Clayey gravel
	SANDS	SW	Well-graded sand
		SP	Poorly-graded sand
		SM	Silty sand
		SC	Clayey sand
FINE-GRAINED SOILS	SILTS AND CLAYS Liquid Limits Less than 50	ML	Silt with low plasticity
		CL	Clay with low plasticity
		OL	Organic silt or organic clay with low plasticity
	SILTS AND CLAYS Liquid Limits 50 or more	MH	Silt with high plasticity
		CH	Clay with high plasticity
		OH	Organic silt or organic clay with high plasticity
HIGHLY ORGANIC SOILS		PT	Peat, Muck, and other highly organic soils.

* NOTE: the symbol RK (not within the USCS system) is used in our logs to denote rock materials.

TEST PIT LOGS

TP-1

<u>Depth (ft.)</u>	<u>USCS</u>	<u>Description</u>
0 – 4.0	ML (Fill)	SILT, dark brown, moist, soft, with fragments of orange stained mudstone.
4.0– 7.0	ML (Fill)	SILT, brown, moist, soft, with fragments of weathered dark brown red mudstone
7.0 – 10.0	ML (Disturbed)	SILT, brown, moist, loose, with fragments of mudstone and gray/orange stained clumps of landslide colluvium.

TP-2

<u>Depth (ft.)</u>	<u>USCS</u>	<u>Description</u>
0 – 2	ML (Fill)	SILT, dark brown, moist, soft, with construction and landscape debris encountered
2.0– 3.0	RK (Fill)	Mudstone, brown, moist, soft, with construction debris.
3.0– 8.0	ML (Fill)	SILT, brown, moist, soft, with fragments of weathered fracture brown mudstone
8.0 – 10.0	ML (Disturbed)	SILT, brown, moist, loose, with fragments of mudstone and orange stained clumps of landslide colluvium.

TP-3

<u>Depth (ft.)</u>	<u>USCS</u>	<u>Description</u>
0 – 3.0	ML (Fill)	SILT, brown, moist, soft, with 1" to 6" fragments of orange stained mudstone. Fragments of bricks recovered.
3.0 – 4.0	SP (Fill)	Sand, brown, moist, loose, fine to very fine grained.
4.0– 10.0	ML (Disturbed)	SILT, brown, moist, loose, with fragments of mudstone and gray/orange stained clumps of landslide colluvium.

TP-4

<u>Depth (ft.)</u>	<u>USCS</u>	<u>Description</u>
0 – 2.0	ML (Fill)	SILT, brown, moist, loose.
2.0 – 3.0	RK (Fill)	Mudstone, dark brown, moist, soft, weathered, orange stained fractured fragments.
3.0– 4.0	ML (Fill)	SILT, brown, moist, soft, gray/orange stained clumps of landslide colluvium with fragments of weathered fracture brown mudstone.
4.0 – 10.0	ML (Disturbed)	SILT, brown, moist, soft, with 10" minus fragments of mudstone. Construction debris recovered at 8 ft.

TP-5

<u>Depth (ft.)</u>	<u>USCS</u>	<u>Description</u>
0 – 4.0	ML (Fill)	SILT, brown, moist, soft, with 6" minus fragments of weathered orange stained mudstone.
4.0 – 10.0	ML (Disturbed)	SILT, brown, moist, loose, with fragments of mudstone and up to ~ 12" gray/orange stained clumps of landslide colluvium.

TP-6

<u>Depth (ft.)</u>	<u>USCS</u>	<u>Description</u>
0 – 1.0	ML (Fill)	SILT, light brown, moist, soft, with organic matter.
1.0 – 2.0	RK (Disturbed)	Mudstone, brown, highly weathered and highly fractured.
2.0 – 4.0	ML (Disturbed)	SILT, brown, moist, soft, fragments of weathered fracture brown mudstone with organic matter.
4.0– 10.0	RK	Mudstone, brown, moist, soft, fractured and weathered mudstone with silt. Increasing in fragment size with depth. Clam fossil recovered.

TP-7

<u>Depth (ft.)</u>	<u>USCS</u>	<u>Description</u>
0 – 2.0	ML (Fill)	SILT, light brown, moist, soft, with organic matter and construction debris.
2.0 – 2.5	GW (Fill)	Gravel, dark gray, moist, angular 1" minus with drain pipe.
2.5 – 10.0	RK	Mudstone, brown, soft to hard, highly weathered and fractured increasing in fragment size and competency with depth.

TP-8

<u>Depth (ft.)</u>	<u>USCS</u>	<u>Description</u>
0 – 5.0	ML (Fill)	SILT, light brown, moist, soft, with organic debris and roots with weathered mudstone fragment 0.5" to 6" in size.
5.0 – 10.0	RK	Mudstone, brown, soft to hard, highly weathered and fractured increasing in fragment size and competency with depth.

Appendix C
- Checklist of Recommended Plan Reviews and Site Observations -

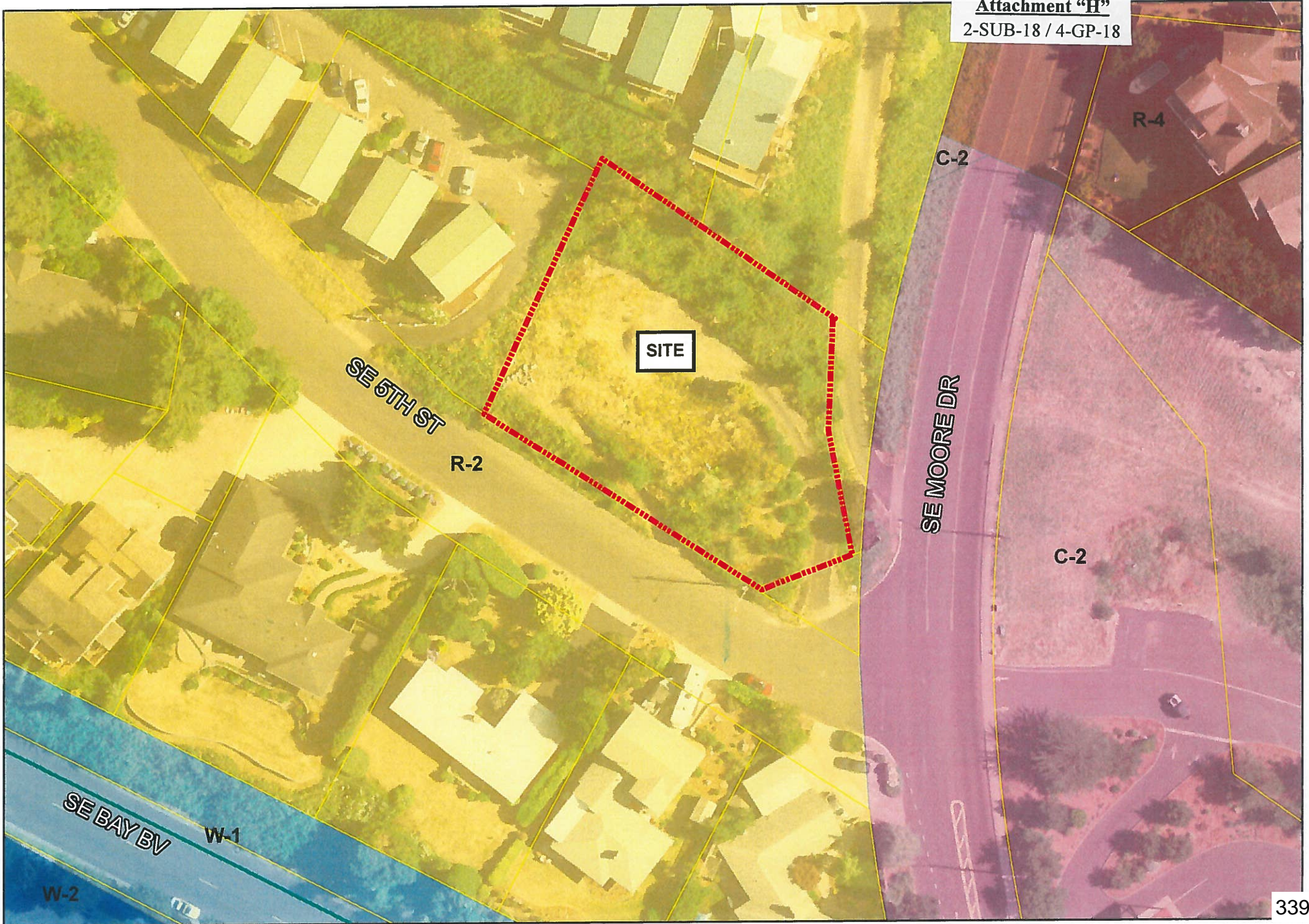
Project #Y184196

APPENDIX C
Checklist of Recommended Plan Reviews and Site Observations
To Be Completed by a Representative of H.G. Schlicker & Associates, Inc.

Item No.	Date Done	Procedure	Timing
1*		Review site development, foundation, drainage, grading and erosion control plans.	Prior to construction.
2*		Observe foundation excavations.	Following excavation of foundations, and prior to placing fill, forming and pouring. **
3*		Review Proctor (ASTM D1557) and field density test results for all fills placed at the site.	During construction.

* There will be additional charges for these services.

** Please provide us with at least 5 days' notice prior to all site observations.



SITE

SE 5TH ST

R-2

C-2

SE MOORE DR

R-4

C-2

SE BAY BV

W-1

W-2

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

**CITY OF NEWPORT
NOTICE OF A PUBLIC 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").

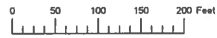
Time/Place of Hearing: Monday, October 22, 2018, 7:00 p.m. in the Newport City Hall Council Chambers (address above in "Reports/Application Materials").

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.

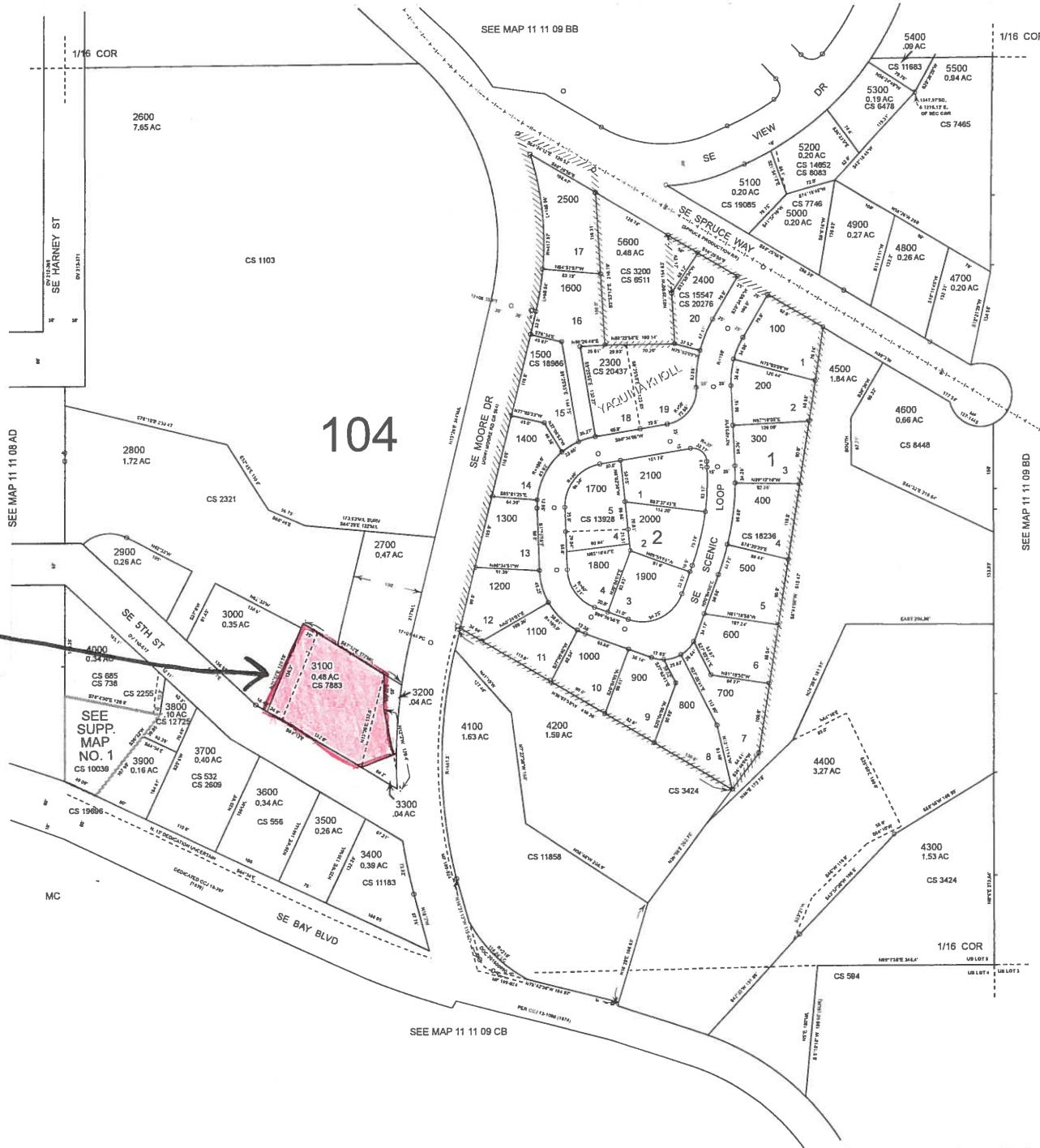
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY



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



104

Subject Property
File 2-548-18/4-GP-18

SEE MAP 11 11 09 CB

SEE MAP 11 11 09 BD

SEE MAP 11 11 08 AD

Revised: 01/31/ 341

NEWPORT
11 11 09 BC

MEMO

City of Newport
Community Development Department



(delivered via email)

Date: October 2, 2018

To: Spencer Nebel, City Manager
Tim Gross, Public Works
Rob Murphy, Fire
Jason Malloy, Police
Mike Murzynsky, Finance
Jim Protiva, Parks & Rec.
Ted Smith, Library
Rachel Cotton, Associate Planner
Joseph Lease, Building Official
Public Utilities

From: Sherri Marineau, Executive Assistant

RE: Files # 2-SUB-18 / 4-GP-18

I have attached a copy of a public notice concerning a land use application. The notice contains a brief explanation of the request, a property description and map, and a deadline for comments. Please review this information to see if you would like to make any comments.

We must receive comments prior to the last day of the comment period in order for them to be considered. **Should no response be received, a “no comment” response will be assumed.**

sm

Attachment

BARTON RUTH CLAIRE
862 SE 5TH ST
NEWPORT, OR 97365

BAYSTONE CONDO
ASSOCIATION OF UNIT OWNERS
822 SE 5TH ST
NEWPORT, OR 97365

BRACE ROBERT A COTSTEE &
CHEUNG CECILIA Y COTSTEE
2350 NW SAVIER
#414
PORTLAND, OR 97210

BRICE ROBERT M ESTATE
ATTN MCMANUS DENNIS CPA
PO BOX 1802
NEWPORT, OR 97365

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

CLAGHORN JAMES &
CLAGHORN JERE N
4504 TEAS ST
BELLAIRE, TX 77401

HENDRICKSON DEAN A TSTEE &
HENDRICKSON JEAN A TSTEE
854 SE 5TH ST
NEWPORT, OR 97365

HULET BRETT B &
HULET JENNIFER J
1001 SW HURBERT ST
NEWPORT, OR 97365

LATTA JUDY L
810 SE 5TH ST
NEWPORT, OR 97365

LINCOLN COUNTY SCHOOL DIST
PO BOX 1110
NEWPORT, OR 97365

NYE BEACH HOLDINGS LLC
449 SE SCENIC LOOP
NEWPORT, OR 97365

OREGON COAST BANK INC
PO BOX 2280
NEWPORT, OR 97365

PERSINGER HAROLD D TRUSTEE
844 SE 5TH ST
NEWPORT, OR 97365

SCHUTTPELZ HAROLD J &
SCHUTTPELZ BEVERLY Y
826 SE 5TH ST
NEWPORT, OR 97365

Exhibit "A"
Adjacent Property Owners Within 200 ft

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

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

Charter Communications
ATTN: Keith Kaminski
355 NE 1st St
Newport OR 97365

Oregon Division of State Lands
775 Summer St NE
Salem OR 97310-1337

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

CenturyLink
ATTN: Corky Fallin
740 State St
Salem OR 97301

PIONEER TELEPHONE
ATTN: GARY VICK
PO BOX 631
PHILOMATH OR 97370

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

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

Lincoln County Assessor
Lincoln County Courthouse
225 W Olive St
Newport OR 97365

Lincoln County Surveyor
880 NE 7th St
Newport OR 97365

WVCC
911 Dispatch
555 Liberty St SE Rm P-107
Salem OR 97301-3513

Lincoln County Clerk
Lincoln County Courthouse
225 W Olive St
Newport OR 97365

US Post Office
ATTN: Postmaster
310 SW 2nd St
Newport OR 97365

OR Parks & Recreation Dept.
5580 S Coast Hwy
South Beach OR 97366

Lincoln County Planning Dept
210 SW 2nd St
Newport OR 97365

Secretary of State
136 State St Capitol
Salem OR 97310

Joseph Lease
Building Official

Rob Murphy
Fire Chief

Tim Gross
Public Works

Rachel Cotton
Associate Planner

Jason Malloy
Police Chief

Mike Murzynsky
Finance Director

Ted Smith
Library

Jim Protiva
Parks & Rec

Spencer Nebel
City Manager

EXHIBIT 'B'
(Affected Agencies)

(2-SUB-18 / 4-GP-18)

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(FOR PUBLICATION ONCE ON FRIDAY, OCTOBER 12, 2018)

BOYS SOCCER

4A Oregon West

- Woodburn, 10-1 (9-1) +68
- Stayton, 9-1 (10-1) +56
- Newport, 6-5 (5-4), +6
- Philomath, 5-4-3 (4-4-2) +6
- Sisters, 3-8-1 (3-6-1) -32
- Cascade, 2-8-1 (2-6-1) -26
- Sweet Home, 0-10 (0-9) -85

3A Special District 2

- Western Christian, 7-3-2 (7-2-2) +18
- Dayton, 6-1-4 (6-1-4) +15
- Blanchet Catholic, 6-2-3 (6-2-3), +10
- Gervais, 6-5-1 (6-4-1) +9
- Taft, 6-3-3 (5-3-3), +20
- Delphian, 4-4-1 (4-4-1), +0
- Salem Academy, 1-9 (1-9), -27
- Yamhill-Carlton, 0-10 (0-10), -44

GIRLS SOCCER

4A Oregon West

- Stayton, 8-1-2 (8-0-1) +29
- Philomath, 9-2-1 (8-1-1), +20
- Woodburn, 4-5-2 (4-3-2) +3
- Newport, 4-6-1 (3-5-1) -15
- Sisters, 4-8 (3-7) -17
- Cascade, 2-6-3 (2-4-3) -17
- Sweet Home, 0-9-1 (0-8-1) -44

3A Special District 2

- Yamhill-Carlton, 10-1-1 (10-1-1), +48
- Blanchet Catholic, 8-1-3 (8-1-3), +32
- Dayton, 8-2-1 (8-2-1), +25
- Western Christian, 7-3-2, (6-3-2), +24
- Salem Academy, 4-7 (4-7), -13
- Taft, 2-8-2 (2-7-2), -28
- Gervais, 2-10 (2-10) -39
- Amity, 1-10-1 (1-10-1), -51

games against Monroe, Knappa, Coquille, Glide — all top-10 teams — finishing the season with a winning record should be enough for a postseason berth.

Call 541-265-6080

Cost for this section is only \$69.00 in this listing.

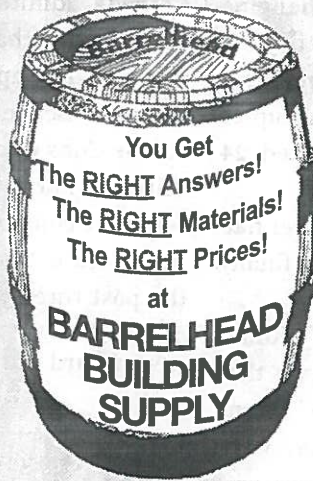
Deadline is **Wednesday, October 10** 50 words. **Listing must be pre-pa**

For more information,

News-Times, P.O. Box 96 or email your inform Please include "Holid

BARRELHEAD BUILDING SUPPLY

Located Just East of Hwy. 101



Building Materials from Local People You Know & Trust - Every Day!

Lincoln County's oldest locally owned building supply company

3551 SE FERRY SLIP RD. SOUTH BEACH 541-867-7681



Holid

ORGANIZATION: _____

DATE (S) OF EVENT: _____

LOCATION: _____

TIME (S): _____

FEATURED ITEMS OR ATTRACTI

PUBLIC NOTICES

LEGAL DEADLINES:

WEDNESDAY EDITION: 5:00pm Thursday Prior

FRIDAY EDITION: 5:00pm Tuesday Prior

PUBLIC SALE
Safe-Lock Storage located at 3639 SE Ash St, South Beach, OR 97366 will hold a public foreclosure sale on Saturday, October 27 at 10:00 AM. Personal property of the following people will be sold:
B16 - Scott Hamrick
D22 - Jeff DeBusk
G17 - Bradley Martin
M20 - David Jessee
S03 - Robert Jones
The persons mentioned above may contact us prior to the sale at (541) 867-4607.
O-05, O-10, O-12, O-17 (38-17).

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING
The City of Newport Planning Commission will hold

a public hearing on Monday, October 22, 2018, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 2-SUB-18 / 4-GP-18, a request submitted by Celeste & Dylan McEntee, property owners, for the following amendments: 2-SUB-18: Approval for the Tentative Subdivision Plan to subdivide a parcel of land into four townhouse lots; and 4-GP-18: Approval for a Geological Permit to allow future development, construction, and site clearing within a known geologic hazard area. The location of the subject property is Tax Lot 3100 of Lincoln County Assessor's Tax Map 11-11-09-BC (847 SE 5th Street). The application must be consistent with those approval crite-

ria 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 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, City Hall, 169 SW Coast Hwy, Newport, OR 97365, 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. The staff report may be reviewed or a copy purchased at the Newport Community Development (Planning) Department (address above) seven days prior to the hearing. The application materials (including the application and all documents and evidence submitted in support of

the application), the applicable criteria, and other file material are available for inspection at no cost or copies may be purchased for reasonable cost at this address. Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above), O-12 (42-12).

NOTICE OF SALE OF ABANDONED MANUFACTURED HOME
Longview Hills MHC, LLC will sell the below-described manufactured home by private sealed bid for the highest offer received. The home has been abandoned. The home, tenant and owner are described below. Bids for cash payment will be accepted until 10:00 am, October 22, 2018. Interested parties may contact Longview Hills Manager at (541)265-3576 to make arrangements to inspect the home. Bids may be

submitted to Longview Hills MHC, LLC, 450 NE 58th Street, Newport, Oregon 97365, for the following home: 1990 Golden West Homes, Home ID #263686, X-Plate #X210641, manufacturer's ID #CC662R4AB; located at 638 NE 59th Street, Space 38, Newport, Oregon 97365; owner/tenant: Betty Lucille Owens, Jack David Owens, David Owens, personal representative. O-12, O-19 (43-19).

PUBLIC NOTICE
The Pacific Communities Health District Board of Directors will hold a Regular meeting on Monday, October 15, at 4:00 p.m. in the Education Conference Room at Samaritan Pacific Communities Hospital, 930 SW Abbey St., Newport, Oregon. The meeting agenda includes meeting minutes, financial reports and facility reports.
Lisa Ely, Recorder

PACIFIC HEALTH
For ad contact www.pacifichealth.org
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PLANNING STAFF MEMORANDUM
FILE No. 5-Z-17

- I. **Applicant:** City of Newport (Initiated by motion of the Newport Planning Commission).
- II. **Proposal:** Draft Ordinance No. 2144, amending City of Newport regulations for short-term rentals. The draft ordinance is the product of about 10-months' worth of work by a group of volunteers that served on an "Ad-Hoc Work Group" formed by the Newport Planning Commission to assess how the existing rules could be improved. A schedule of their meetings, listed below as Attachment "G," includes a link to the committee webpage, where there is a list of the materials they reviewed.

There were a number of key policy areas where the Ad-Hoc Work Group could not reach consensus. They are framed as policy alternatives in the draft ordinance, and the Planning Commission will attempt to narrow these down to a set of preferred alternatives after taking public testimony. The Planning Commission makes a recommendation to the City Council who, in turn, will hold one or more public hearings before an ordinance is adopted.

- III. **Findings Required:** This is a legislative action whereby the City Council, after considering a recommendation by the Newport Planning Commission, must determine that the changes to the Municipal Code are necessary and further the general welfare of the community (NMC 14.36.010).
- IV. **Planning Staff Memorandum Attachments:**

Attachment "A" – Two-page summary of potential changes
Attachment "B" – Table of Ordinance No. 2144 changes with policy rationale
Attachment "C" – Clean copy of draft Municipal Code Chapter 4.25 (Ordinance No. 2144)
Attachment "D" – Clean copy of draft Municipal Code Chapter 14.25 (Ordinance No. 2144)
Attachment "E" – Allowed location map alternatives
Attachment "F" – Spacing requirement map alternatives
Attachment "G" – Ad-hoc Work Group meeting schedule
Attachment "H" – Minutes from the 10/3/18 Ad-hoc Work Group meeting, and the 10/8/18 and 10/22/18 Planning Commission work sessions
Attachment "I" – Public hearing notice mailed to property owners within the city limits (full mailing list is included in the case record)
Attachment "J" – Legal notice of the 11/13/18 public hearing published in the News-Times
Attachment "K" – Written comments received as of 11/8/18

- V. **Notification:** The Department of Land Conservation & Development was provided electronic notice of the proposed legislative amendment on 10/5/18 in accordance with OAR 660-018-0020. Since the draft amendments may prohibit vacation rentals in certain areas, mail notice of the 11/13/18 Planning Commission hearing was provided to all property owners within the city in a manner that conforms to the requirements of ORS 227.186 (Attachment "I"). Notice of the public hearing was published in the Newport News-Times on 11/7/18 consistent with NMC Section 14.52.060 (Attachment "J").

- VI. **Comments:** Written comments submitted in response to the public notice are included as (Attachment "K"). Comments received after this staff report was prepared will be distributed to Commission members at the hearing.
- VII. **Discussion of Request:** In the fall of 2017, the Newport City Council received a significant amount of public testimony that the City's regulations for short-term rentals needed to be updated to protect the character of residential neighborhoods and to preserve the City's long term housing supply. Short-term rentals include bed & breakfast facilities, home share arrangements, and the rental of entire dwelling units (i.e. vacation rentals) where the tenancy is less than 30 days. In response, the City Council directed the Planning Commission to assess how the rules could be improved and the Commission, in turn, pulled together an Ad-Hoc Work Group of interested persons to assist the city in developing a package of recommended changes.

The Ad-Hoc Work Group met 15 times between January and October of 2018 to review the City's rules, evaluate best management practices employed by other jurisdictions, and to develop policy options for revising the city's codes. The policy options were vetted with the public at open houses on 8/15/18 and 8/22/18 and then refined into the code amendments contained in Ordinance No. 2144. At its last meeting on 10/3/18, the Ad-Hoc Work Group made the following motion to pass the draft amendments along to the Planning Commission for its review:

Motion was made by Dailey, seconded by Ferber that the committee find the draft revisions to the Newport Municipal Code related to short-term rentals, as amended at this meeting, reflect the information reviewed and discussed by the ad-hoc work group and are generally consistent with the policy direction provided by the group. There are a number of policy alternatives involving topic areas where we were unable to reach consensus. The Planning Commission and City Council will need to resolve them and we, as individuals, may advocate for those we feel strongly about as the amendments move toward formal adoption.

Additional work is needed to improve enforcement and monitoring of short-term rentals and the ad-hoc work group strongly recommends the city further evaluate, and possibly retain the services of a third-party vendor to develop a centralized complaint system that facilitates transparency and citizen access to information.

We recommend that the draft code, policy option documents, summaries and verbatim comments from the open houses, and all other information reviewed by the ad-hoc work group be forwarded to the Planning Commission for its consideration.

The Planning Commission made refinements to the code amendments at work sessions on 10/8/18 and 10/22/18 (Attachment "H") before a public hearing date was set, and notice mailed to property owners within the city limits on 10/23/18 (Attachment "I").

Ordinance No. 2144 creates a new Chapter 4.25 of the Newport Municipal Code that provides an administrative framework for licensing short-term rentals, and it amends the land use regulations for short-term rentals contained in Chapter 14.25. A table listing the changes, with a corresponding policy rationale, is included as Attachment "B" to this report. Clean copies of both code chapters have also been provided (Attachments "C" and "D"). Alternatives have been provided where the Ad-Hoc Work Group could not come to agreement. They relate to the following topic areas:

- Transferability of Business License Endorsements
- Guest Registry Requirements
- Allowed Locations
- Density Limits (i.e. setting a cap on the number of licenses issued in the City)
- Spacing Standards
- Occupancy
- Parking Standards
- Rules for Pre-existing or Non-Conforming Rentals

This public hearing is an opportunity for the Planning Commission to take testimony on the proposed amendments, including these policy alternatives. When considering the draft amendments and testimony, Commission members should keep in mind the purpose of the regulations, as it must be able to conclude that the regulations are a public necessity and further the general welfare of the community. Specifically, the regulations have been developed to:


- Provide an administrative framework for licensing the annual operation of short-term rentals;
- Ensure the safety of renters, owners, and neighbors;
- Protect the character of residential neighborhoods;
- Protect the City's supply of needed housing;
- Address potential nuisance impacts associated with vacation rentals; and
- Strike a reasonable balance between limiting short-term rental operations while also recognizing the benefits short-term rentals provide to the community in terms of recreation and employment opportunities, as well as transitional housing for tourists, employees of businesses, and others in need of housing for limited durations.

Careful consideration should be given to the relationship between policy alternatives. For example, transferability is relevant only if a cap is placed upon the number of licenses issued in the City. Similarly, if a map alternative is selected that prohibits vacation rentals in R-1 and R-2 zoned areas, spacing standards requiring such units be dispersed in those areas would no longer be needed.

The Ad-Hoc Work Group is recommending that the City of Newport further evaluate the possibility of retaining the services of a third-party vendor to support enforcement efforts. They felt that a portion of the cost of implementing and enforcing the City's regulations should be borne by short-term rental operators. This would be accomplished with licensing fees, and the draft ordinance notes that such fees will be set by City Council resolution. The cost of a third-party vendor contract is likely to be \$20,000 to \$30,000 a year. This was discussed with the Ad-Hoc Work Group, as was a license fee of \$200 and \$250 a year per short-term business license endorsement, in addition to the business license renewal fee that is currently \$105 a year. The conversation centered on the fee being used to cover third-party expenses, with the City covering all other implementation and enforcement costs. Commission members should carefully consider the resources the City will likely need to implement the provisions and policy alternatives contained in the draft code and it would be reasonable for it to advise the City Council about whether or not a third party vendor is best positioned to address those needs and what an appropriate fee should be for short-term rental licenses. It might be most effective for the Commission to have that discussion after it has weighed public testimony and settled on a list of preferred policy alternatives.

VIII. **Conclusion and Recommendation:** Staff recommends the Planning Commission open the 11/13/18 public hearing and take testimony on Ordinance No. 2144. If the Commission is unable to accommodate all persons wishing to testify that evening then it should continue the public hearing to 11/26/18 to ensure all interested persons are afforded that opportunity. Once everyone has testified, the Commission may want to announce that it is continuing the hearing to a regularly scheduled meeting date that is set out far enough that it can hold at least one work session in advance to discuss public feedback, and winnow down the policy alternatives to a set of preferred alternatives that it wants to put forward to the public at the next hearing. A staff recommendation on how this can be accomplished would be provided at that time. Dates for the follow-up hearing could be 12/10/18 or would be 1/14/19. Once the Commission has selected its preferred alternatives, staff would provide notice to persons who testified, orally or in writing, at the initial hearing(s) so that they have an opportunity to review and comment on the changes.

The City Council asked if it would be possible to hold Council hearings on the draft ordinance before the end of the calendar year. Staff put together a calendar to achieve that objective, and the schedule was reviewed by both the Council and Commission. At this time, it does not appear that it will be possible to move the draft ordinance through a hearings process that quickly. At its October work sessions, the Planning Commission expressed concerns with the tight hearing schedule, pointing out that the Ad-Hoc Work Group hadn't reached consensus on a number of key issues and that they would need time to adequately consider public testimony and refine the draft amendments. The process outlined above responds to that concern.



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

November 8, 2018

CITY OF NEWPORT
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NEWPORT, OREGON 97365

COAST GUARD CITY, USA



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mombetsu, japan, sister city

Fall 2018

City of Newport Vacation Rental Code Update Summary of Potential Changes

Overview

In the fall of 2017 the City Council received a significant amount of public testimony that the City's regulations for Vacation Rental Dwellings (VRDs) need to be updated to protect the character of residential neighborhoods and to preserve the City's long term housing supply. In response, the City Council directed the Planning Commission to assess how the rules could be improved and the Commission, in turn, pulled together an Ad-hoc Work Group of interested persons to assist city staff in developing a package of recommended changes.

Ad-hoc Work Group's Responsibilities

- Review the City's existing vacation rental regulations
- Evaluate Best Management Practices used by other jurisdictions
- Discuss policy options for revising the City's codes
- Select policy alternatives for presentation to the public
- Conduct open houses to obtain public feedback (occurred 8/15/18 and 8/22/18)
- Review public comments and determine how best to integrate responses into the policy alternatives
- Propose a package of legislative code amendments, based upon the policy alternatives, for review by the Planning Commission and City Council as part of a formal public hearings process.

Proposed Policy Alternatives

Focus Efforts on Units that are not Occupied by Permanent Residents

- Distinguish "home shares" where an owner rents rooms in a dwelling unit where they reside, and Bed and Breakfast (B&B) establishments where an owner or manager lives on the premises, from VRDs where the entire unit is rented for transient purposes.
- Exempt home shares and B&Bs from location and density limits, because the presence of a permanent resident mitigates potential nuisance issues and does not impact the supply of long term housing.

Limit Areas Where VRDs are Allowed

- Limit vacation rental uses to areas that possess tourist amenities
- Provide policy makers with multiple options for drawing the boundaries, including:
 - Alternative No. 1: Recommends US 101 and US 20 be used as an easily understood break point, with VRDS allowed west of US 101 and south of US 20 (least restrictive)
 - Alternative No. 2: Similar to first option, but limits VRDs west of US 101 and south of US 20 to areas in close proximity to ocean views, beach access, and tourist commercial uses.
 - Alternative No. 3: Limit VRDs to areas where tourist commercial uses are concentrated
 - Alternative No. 4: Limit VRDs to areas outside of R-1 and R-2 residential zones (most restrictive)

Establish License and Density Limits

- Limit the total number of vacation rental licenses to preserve the City's long term housing supply.
- Apply a hard cap on licenses issued between 200 and 300 (roughly 4% - 5% of the total housing stock).
- Provide that the City Council may adjust the license cap by resolution.
- Limit transferability of licenses, upon sale, to commercial zones (or areas adjacent to commercial zones)
- Institute proximity limits to avoid concentration of VRDs to the point that they change the character of residential neighborhoods:
 - Allow only one VRD per street face segment in R-1 and R-2 zones;
 - Limit VRDs in R-3 and R-4 zones to one multi-family or single family dwelling per street face segment

Improve Enforcement

- Develop a centralized complaint system that facilitates transparency and citizen access to information.
- Engage with a third party vendor to provide a 24/7 complaint hotline and to provide ongoing monitoring of vacation rentals for permit and tax collection compliance.
- Structure progressive enforcement to achieve “three strikes and you are out.”
- Establish a two year cooling off period for before an individual that had a license can reapply
- Require VRD operators to have a local contact capable of responding to the premises in 30 minutes.

Refine Approval Standards

- Reduce overnight occupancy from (2) per bedroom plus two to simply 2 per bedroom. Exempt children ages 3 and under from overnight occupancy limit.
- Retain parking standard of one space per bedroom, but require applicants show that spaces are sized such that they meet City parking stall dimensional standards. Allow off-street parking to extend into undeveloped public right-of-way with stipulation that license will be revisited if street is improved.
- Update safety standards to reflect current building and fire code requirements
- Require VRD operators to post a sign in plain view of the street identifying the unit as a vacation rental with a phone number of the designated contact.
- Prohibit special events at VRDs in excess of occupancy.

Require Annual Licensing

- Operator's to provide proof of insurance and update designated contacts with annual license.
- Licenses to automatically expire if inactive to prevent “license hoarding” under a hard cap.

Phase Out Non-Compliant VRDs

- Conditional use permits that allowed alternative standards will not be grandfathered.
- Permit licensed VRDS in areas where they are no longer allowed to continue to operate for a 5 year period of time to realize a return on investment. Licensed VRDs in areas that exceed density limits to phase out as licenses expire (or through 5-year amortization).

Next Steps

The Ad-hoc Work Group has forwarded the “policy alternatives” as potential code changes to the Planning Commission, who will hold its first public hearing at 7:00 p.m. on November 13, 2018 at the Newport City Hall. The Commission provides a recommendation to the City Council, who will hold its own public hearing(s).

Additional Information

A complete copy of the draft changes, identified as “Ordinance No. 2144,” and its supporting materials, are available on the City of Newport website at: <http://newportoregon.gov/>. Questions or concerns may also be directed to Derrick Tokos, Community Development Director at 541-574-0626 or d.tokos@newportoregon.gov

Draft Short-Term Rental Code Amendments (Version No. 1 was the original draft presented to the Ad-Hoc Work Group. Changes made by that group, the City Council, and Planning Commission since the initial draft was released are shown with a <u>double underline</u> where language is added and strikethrough where language is deleted.)	Rationale for Changes (An Ad-hoc Work Group met 15 times over a ten month period to develop a package of amendments to the City's short-term rental regulations. Version No. 1 of this draft was the culmination of that effort. The rationale below explains why the changes are needed, including the purpose behind subsequent revisions by the Ad-hoc Work Group, Planning Commission and Council.)
<u>CHAPTER 4.25 SHORT-TERM RENTAL BUSINESS LICENSE ENDORSEMENTS</u>	A new chapter is being created in the business license section of the Municipal Code. It will include administrative, safety, and enforcement related provisions that are not required to be in a zoning ordinance. This change also allows the short term rental endorsement requirements to be in the same chapter as the standards for other business license endorsements.
<u>4.25.005 Purpose</u> A short-term rental business license endorsement is a permission to operate a short-term rental on property within the City of Newport. This chapter provides an administrative framework for licensing the annual operation of a short-term rental, in order to ensure the safety and convenience of renters, owners, and neighboring property owners; protect the character of residential neighborhoods; protect the City's supply of needed housing; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and <u>nuisances (e.g. accumulation of refuse, <u>light pollution, etc.</u>)</u> . It is the intent of these regulations to strike a reasonable balance between the need to limit short-term rental options within neighborhoods to ensure compatibility, while also recognizing the benefits of short-term rentals in providing recreation and employment opportunities, as well as transitional housing for tourists, <u>employees of businesses</u> , and others who are in need of housing for a limited duration.	The purpose statement outlines the reason for the regulations contained in this chapter. Language borrows from concepts contained in Newport's existing code and the recently adopted Hood River ordinance. It also addresses the concepts listed under "Rationale for Regulating" in the Committee's "Policy Options by Topic Area" document. This chapter contains administrative provisions for regulating short-term rentals. A similar purpose statement will be included in NMC Chapter 14.25, which will include the more substantive, land use regulations. Reference to nuisance provisions and light pollution added at the ad-hoc work group's request on 9/26/18. Clarification that short-term rentals provide housing for employees of businesses was made at the request of the Planning Commission at its 10/22/18 work session.

<p>4.25.010 Definitions</p> <p>The following definitions apply in this chapter.</p> <p><u>Authorized Agent.</u> A property management company or other entity or person who has been designated by the owner to act on their behalf. An authorized agent may or may not be the designated point of contact for complaints.</p> <p><u>Bed and Breakfast Facility.</u> An owner occupied, A single-family dwelling <u>used as a short-term rental</u> where <u>the operator resides on the premises and</u> meals are provided for a fee on a daily or weekly room rental basis, not to exceed 30 consecutive days.</p> <p><u>Bedroom.</u> A habitable room that (a) is intended to be used primarily for sleeping purposes; (b) contains at least 70-square feet; and (c) is configured so as to take the need for a fire exit into account.</p> <p><u>Dwelling Unit.</u> A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.</p> <p><u>Home share.</u> A short term rental, other than a Bed and Breakfast Facility, where a portion of a dwelling unit is rented while the homeowner is present. For the purposes of this definition, “present” means the homeowner is staying in the dwelling overnight <u>for the duration of the rental.</u></p> <p><u>Owner.</u> Means the natural person(s) or legal entity that owns and holds legal or equitable title to the property.</p>	<p>Definitions are included for key terms. A definition for authorized agent has been added at the request of the City Attorney so that it is clear that the regulations apply to intermediaries and not just the property owner. A definition for short-term rental is included as a catch-all for transient rental uses (i.e. B&Bs, vacation rentals, and home shares). The definition for dwelling unit aligns with the definition of the same term contained in the 2017 Oregon Residential Specialty Code</p> <p>A definition for bedroom does not exist in the Newport Municipal Code or Building Code. The new definition aligns with the definition for this term contained in the Residential Landlord and Tenant Law statute (ORS 90.262(4)(a)).</p> <p>A definition for home share has been provided, as requested by the ad-hoc work group and it contains language stipulating that the owner reside within the dwelling when the rental is occurring.</p> <p>Definitions for owner, licensee, and transfer have been added to provide added context given that the proposed code will include a cap on the total number of annual business licenses issued.</p> <p>Clarification of the “home share” and “vacation rental” definitions made at the request of the ad-hoc work group on 9/26/18.</p> <p>Definition of “Transfer” expanded to “Sale or Transfer” and amended to clarify actions that constitute a sale or transfer. The new definition is similar to the one used by Lincoln City, a jurisdiction that imposes limitations on the number of short-term rental licenses it issues in certain areas. New definition does not consider rights of survivorship benefiting a spouse or domestic partner as a sale or transfer. Further, it stipulates that transfers to business entities and trusts are exempted only if the transferor</p>
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Short Term Rental. A dwelling unit that is rented to any person on a day to day basis or for a period of less than thirty (30) consecutive nights.

~~Transfer. Means the addition or substitution of owners not included on the original business license endorsement application, whether or not there is consideration. If multiple owners exist on a license, individual owners may be removed from the license without constituting a transfer.~~

~~Sale or Transfer. Means any change of ownership during the period of time that a license is valid, whether or not there is consideration, except a change in ownership where title is held not as tenants in common but with the right of in survivorship (e.g., survivorship estates recognized in ORS 93.180, such as with a spouse or domestic partner, or transfers on the owner’s death to a trust which benefits only a spouse or domestic partner for the lifetime of the spouse or domestic partner).~~

Exceptions:

~~1. A license holder may transfer ownership of the real property to a trustee, a limited liability company, a corporation, a partnership, a limited partnership, a limited liability partnership, or other similar entity and not be subject to license termination so long as the transferor lives and remains the only owner of the entity. Upon the transferor’s death or the sale or transfer of his or her interest in the entity to another person, the license held by the transferor shall terminate.~~

~~2. A license holder may transfer ownership of the real property to the license holder and a spouse or domestic partner with the right of survivorship and not be subject to license termination.~~

Vacation Rental. A short term rental, other than a Bed and Breakfast Facility or Home share, where the entire dwelling unit is rented for less than 30 consecutive days.

remains the only owner of the entity/trust. Situations where a license holder adds a spouse or domestic partner to the title of the property are also excluded from the definition of sale or transfer. This alternative definition has been added in response to concerns raised at the 10/15/18 City Council work session related to the potential use of business entities to skirt a license cap (if a cap is adopted).

Definition for Bed and Breakfast facility clarified to no longer require that the permanent resident be the owner. Change was requested by the Planning Commission at its 10/22/18 work session.

<p>4.25.015 Annual Short-Term Rental Business License Endorsement Required</p> <p>No owner of property within the Newport city limits may advertise, offer, operate, rent or otherwise make available for occupancy or use a short-term rental without a business license with a short-term rental endorsement. Advertise or offer includes through any media, whether written, electronic, web-based, digital, mobile or otherwise.</p>	<p>Establishes that a business license endorsement is required to advertise, offer, operate, rent or otherwise make available for occupancy or use a short-term rental. Incorporates concepts currently listed under NMC 14.25.020(A) and NMC 14.25.090(A) and (B).</p>
<p>4.25.020 Application Information and Filing Fee</p> <p>A. Applications for short-term rental business license endorsements are to be on forms provided by the City, and shall include the following:</p> <ol style="list-style-type: none"> 1. <u>Owner Information.</u> Owner’s name, permanent residence address, telephone number, email address (if available) and short-term rental address and telephone number. 2. <u>Authorized Agent.</u> The name, telephone number, mailing address and email of a property management company or other entity or person who has been designated by the owner to act on their behalf. 3. <u>Representative Information.</u> The name, telephone number, mailing address and email of a local representative who can be contacted concerning use of the property or complaints related to operation of the short-term rental. For the purposes of this requirement, local means the representative’s address is within 30 minutes travel time of the subject property. 	<p>This section sets out the information that must be submitted to the City of Newport Finance Department to obtain a new business license endorsement, or to renew an existing endorsement. The requirement that owners possess liability insurance for the short-term rental is new, and has been added at the ad-hoc work group’s request. The Community Development Department will be responsible for verifying that the land use standards in NMC 14.25 have been met. This will be handled as a Land Use Compatibility Statement (LUCS). The LUCS includes substantive criteria, such as verification that a unit is being located in a permissible area, that there is room within a license caps, and that standards such as proximity limits, parking, and landscaping will be met. Checklists establishing that fire safety and structural safety standards have been met must also be completed prior to an application being accepted. If a cap is put in place, then the City will reserve a license spot for 90-days to allow time for these approvals to be obtained.</p> <p>A proof of residential use requirement applies to home shares and B&Bs, since they must establish that there is a permanent resident in the unit. Sample “good neighbor guidelines” are attached. A Newport version will be developed, based upon whatever final version of these code amendments is adopted. Given available resources, it is likely that building inspections will occur when there is a change in ownership.</p>

<p>4. <u>Liability Insurance.</u> <u>Letter of intent to insure (for new applications) or cCertificate of insurance (for renewals)</u> establishing that the owner <u>will have or</u> has liability insurance which expressly covers the vacation rental operations on the subject property in the amount of \$1,000,000 combined single limit for bodily injury and property damage. <u>Where letters of intent to insure are provided, certificate of insurance shall be submitted to the city prior to use of the unit as a short-term rental.</u></p> <p>5. <u>Land Use Authorization.</u> A land use compatibility statement, signed by the Community Development Director or designee and that is current within 90-days, indicating that the short-term rental satisfies the land use standards for short-term rentals listed in NMC Chapter 14.25.</p> <p>6. <u>Occupancy.</u> Occupancy limits and number of bedrooms (as specified in the Land Use Authorization).</p> <p>7. <u>Parking.</u> Statement that required <u>off-street</u> parking spaces are available, with a dated photo(s), <u>dated within the last 90 days, submitted</u> of interior and exterior parking spaces. A site plan including a parking diagram of the parking spaces shall also be provided.</p> <p>8. <u>Proof of Residential Use (for Home shares and Bed and Breakfast Facilities).</u> At least two of the following items shall be submitted as evidence that the dwelling is the primary residence of the owner.</p> <ul style="list-style-type: none"> a. A copy of the voter registration b. A copy of an Oregon Driver’s License or Identification Card 	<p>Fire Inspections will probably occur annually, or on a lottery basis. Both provisions have been drafted to provide flexibility.</p> <p>Draft language borrows concepts from the existing Newport code, and from samples codes adopted by Bend, Hood River, and Lincoln City.</p> <p>Liability insurance provision clarified to recognize that new applicant’s will not necessarily have insurance in place at the time a business license endorsement is filed. Change made at the request of the ad-hoc work group on 9/26/18.</p> <p>Parking provision clarified to indicate that photo(s) must be dated within the last 90-days. This change was requested by the planning Commission at its 10-8-18 work session. Provision was further clarified to apply to off-street parking spaces per discussion at 10-15-18 Council work session.</p> <p>Language noting that certificate of insurance for new short-term rentals must be submitted before a unit may be used as a short-term rental was added at the request of the Planning Commission on 10/22/18.</p>
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c. A copy of federal income tax return from last tax year (page one only and financial data should be redacted)

9. Good Neighbor Guidelines. Acknowledgement of receipt and review of a copy of the good neighbor guidelines. In addition, evidence that the good neighbor guidelines has been effectively relayed to short-term rental tenants, by incorporating it into the rental contract, including it in the rental booklet, posting it online, providing it in a conspicuous place in the dwelling unit, or a similar method.

10. Listing Number. For renewals, the listing numbers or website addresses of where the short term rental advertises.

11. Fire Safety. Completed checklist identifying that the unit complies with the fire safety standards listed in NMC 4.25.030(C)(5).

12. Structural Safety. Completed checklist identifying that the unit complies with the Structural safety standards listed in NMC 4.25.030(C)(6).

13. Waste Management. Proof of garbage service as required in NMC 4.25.030(C)(7).

14. Other Requirements. Such other information as the City Manager or designee deems reasonably necessary to administer this chapter.

B. Incomplete Application. If a license application does not include all required materials, the application will be considered incomplete and the City will notify the applicant, in writing, explaining the information required. If the applicant provides the missing required information

<p>within 30 calendar days of the date of the notice, the application will be reviewed. If the applicant does not provide the required information, the application will be deemed withdrawn and the City will refund the application fee.</p> <p>C. <u>License Fee.</u> The fee for the application of a short-term rental business license endorsement, and any of its components requiring city action, shall be established by resolution of the City Council.</p>	
<p>4.25.025 Term of Annual Business License Endorsement and Transferability</p> <p>A. <u>Term.</u> A short-term rental business license endorsement shall be issued for a period of 12-months, effective July 1st of each year, and may be renewed annually by the owner provided all applicable standards of this chapter are met.</p> <p>POLICY ALTERNATIVES</p> <p>B.1. <u>Transferability.</u> The business license endorsement shall be issued in the name of the owner(s) and is not transferable.</p> <p>or</p> <p>B.2. <u>Transferability.</u> The business license endorsement shall be issued in the name of the owner(s) and is transferrable only in those cases where the property is commercially zoned.</p> <p>or</p>	<p>Establishes that business license endorsements are valid for a period of 12-months, as the ad-hoc work group discussed. Transferability is particularly relevant if a license cap is imposed. Alternatives listed reflect the options discussed with the ad-hoc work group.</p>

<p>B.3. <u>Transferability.</u> The business license endorsement shall be issued in the name of the owner(s) and is transferrable in those cases where the property is within, or across the street from, a commercial zone.</p>	
<p>4.25.030 Business License Endorsement and Endorsement Renewal.</p> <p>A. <u>Endorsement Must Be Obtained.</u> An endorsement to a business license for a short-term rental shall be obtained and renewed as required in this section. The ability to operate a short-term rental in the City of Newport shall be discontinued for failure to obtain or renew an endorsement to operate as provided in this chapter.</p> <p>B. <u>Application and Renewal Application Process.</u> A person engaging in a short-term rental who has not yet obtained a business license endorsement, or who is required to renew an existing endorsement, shall do so as follows:</p> <p>1. Time of Application.</p> <p>a. <u>Existing Non-Conforming Short-Term Rentals.</u> A business license endorsement renewal application completed in accordance with the provisions of NMC 4.25.020, is due on July 1, 2019 and annually every year thereafter.</p> <p>b. <u>New Short-Term Rentals.</u> A business license endorsement for a short-term rental shall be obtained before beginning operations. Endorsement applications, completed in accordance with the provisions of NMC 4.25.020, may be submitted and issued at any time. The endorsement may be renewed annually thereafter on July 1st of each year.</p>	<p>Approval standards must be met at the time of application or renewal. Those listed are administrative in nature, as this chapter is not intended to contain land use regulations. Timing for applications and renewals aligns with how the Finance Department handles business licensing. A firm deadline is provided for renewals, after which an endorsement will expire.</p> <p>The ad-hoc work group wanted designated contacts to be local, to help improve response times. The new language includes a requirement that they be able to respond to the premises within 30-minutes.</p> <p>Two options are provided for notice. The city does not have staff to provide annual mailings to property owners within 250-feet of every short-term rental. The purpose of a mailing requirement is to provide neighbors with contact information should they have concerns. That need is addressed with the new sign posting requirement. An alternative gives the owner the option of posting a sign or distributing contact information to neighbors on an annual basis.</p> <p>Non-illuminated signs up to 2 square feet in size are currently permitted in R-1 and R-2 zones, which contains the most restrictive provisions (NMC 10.10.075(A)). Signs of this size also appear to be in line with what other jurisdictions require for short-term rentals.</p> <p>The fires and building safety standards listed in this section were reviewed by, or discussed with, the ad-hoc committee. Many of the safety standards were already in place, and they are being updated with this package of code amendments. At its 10/22/18 work session the Planning Commission requested the GFCI outlet provisions be extended to cover other regulated spaces such as laundry areas.</p>

c. Sale or Transfer of Property. For business license endorsements that are eligible to be transferred pursuant to NMC 4.25.025(B). Upon change in ownership of a property subject to a short-term rental endorsement, it is the obligation and responsibility of the new owner to obtain a new endorsement in order to operate the short-term rental. The new owner shall have 60 days from the date of ownership (closing of the sale) to apply for and receive a new operating-business license endorsement. The business license endorsement obtained by the prior owner shall remain in effect during the 60-day period within which the new owner must obtain an endorsement.

2. Notice. On or about July 1st of each year, the City shall send notice to owners of property with short-term rental endorsements informing them that the endorsement must be renewed no later than August 15th of each year and that failure to do so will result in expiration of the endorsement. Notice shall be sent by first-class mail to the address the owner provided with the endorsement on file with the City.

3. Expiration of Endorsement. Failure of an owner to renew an endorsement by August 15th shall result in expiration of the endorsement, and the ability of the owner to operate shall be conclusively presumed to be discontinued with no further action by the City. For new owners, once the 60 day grace period to apply for a license expires, as referenced in NMC 4.25.030(B)(1)(c) of this section, the ability to operate shall be conclusively presumed to be discontinued with no further action by the City.

C. Approval Standards. The owner or authorized agent has the burden of proof to demonstrate compliance with standards for the approval or renewal of an endorsement. The approval standards also serve as

New language is added committing the City to making Short-term rental information available electronically to improve citizen access to the information. This is something the ad-hoc work group believes is needed to improve transparency.

Proof of use requirements are new and intended to ensure that license holders are actually using units as short-term rentals. This concerns about “license hoarding” under a cap system.

Endorsements that are revoked or subject to a 2-year cooling off period are not eligible for newel. This is new language request by the ad-hoc work group.

Sale of property provision is relevant if transferability options B2 or B3 are selected. The sale of property provision will be removed if business license endorsements are not transferable (transferability option B1). Language has been added to make it clear that the old endorsement will remain in effect during the 60-day period. Language in the “contact information” clause has been clarified such that a qualified person must be close enough that they can reach a unit within 30 minutes. The “notice to neighbor” option two has been eliminated as there was consensus amongst the ad-hoc work group that signs should be required for all short-term rentals. Proof of use language revised to 30 days in a fiscal year. Changes were requested by the ad-hoc work group at its 9/26/18 meeting.

continuing code compliance obligations of the owner. To receive approval, an owner or authorized agent must demonstrate that the approval standards listed below have been satisfied:

1. Zoning. The property is in compliance with requirements of NMC Chapter 14.25.

2. Contact Information. The owner or authorized agent has provided information sufficient to verify a qualified person will be available to be contacted about use of the short-term rental during and after business hours. The qualified person shall be available to be contacted by telephone to ensure a response to the short-term rental address at all hours (24 hours a day, seven days a week) while the dwelling unit is occupied for rent. The qualified person must be able to ~~respond~~reach the premises within 30 minutes. The individual identified as the “qualified person” may be changed from time to time throughout the term of a license. To do so, the license information shall be revised with the city at least 14-days prior to the date the change takes effect, except when the failure to do so is beyond the owner or authorized agent’s control. In an emergency or absence, contact forwarding information to a qualified person may be provided to the owner or authorized agent. In the case of home shares, the contact person shall be the permanent resident who will be hosting the transient accommodations.

POLICY ALTERNATIVES

3.1 Notice to Neighbors. The owner or authorized agent shall post a small, non-illuminated sign on the premises, ~~not to exceed~~between 1 and 2 square feet in size, containing the owner and/or representatives contact information. Such sign shall be placed in a location clearly visible from the adjacent street. In the event the City establishes a 24/7 hotline for dispatching calls to operators of

short-term rentals, then the contact information contained on the placard or sign shall be that of the firm providing the dispatch service.

~~or~~

~~3.2 Notice to Neighbors. The owner or authorized agent shall either: (a) provide an annual mailing or otherwise distribute by hand, a flier to neighbors within a 250-foot radius of the short-term rental property containing the owner and/or representatives contact information, or (b) post a small, non-illuminated sign on the premises, not to exceed 2 square feet in size, in a location clearly visible from the adjacent street that contains the owner and/or representatives contact information. In the event the City establishes a 24/7 hotline for dispatching calls to operators of short-term rentals, then the contact information contained on the flier or placard/sign shall be that of the firm providing the dispatch service.~~

4. Electronic Availability. The City will make a database electronically accessible within which any person can enter in an address of a short term rental ~~operator~~ and obtain the owner, authorized agent, and/or representative's name, telephone number, and email address.

5. Fire and Emergency Safety. A completed checklist for fire safety (fire extinguishers, smoke alarms, carbon monoxide detectors, unobstructed exits, etc.) shall be required with each new endorsement and renewal. The owner or authorized agent shall be responsible for completing the fire safety checklist and ensuring continued compliance. Verification by the City of Newport Fire Marshall shall be required prior to issuance of a new endorsement and may be required for renewals at the City Manager's discretion.

6. Structural Safety. A completed checklist, signed by the City of Newport Building Official, indicating that the short-term rental has been inspected and complies with the building safety standards listed below. Such checklist shall be completed prior to issuance of a new endorsement and may be required for renewals at the City Manager’s discretion.

a. Bedrooms shall have an operable emergency escape window or exterior door with a minimum opening size of 5.7 sq. ft. (5.0 sq. ft. at grade floor), with minimum net clear dimensions of 20-inches in width and 24-inches in height and having a sill height not more than 44-inches above the finished floor.

b. All stairs with 4 or more risers shall have a handrail on at least one side. Handrails shall be secure, continuous, and have returns at each end.

c. The open sides of stairs, decks, porches or other walking surfaces more than 30-inches above grade or the floor below shall have guardrails configured such that a 4-inch sphere cannot pass through.

d. Windows within a 24-inch arc of doors and glass within bathtub or shower enclosures shall be safety glazed, or have an equivalent means of protection.

e. Wood frame decks shall be structurally sound. In cases where a deck supports a hot tub or other features of a similar size and weight, engineering analysis of the supports may be required.

f. Electrical plug-ins and light switches shall have ~~faces~~
plates~~faceplates~~.

g. Electrical breaker boxes shall have all circuits labeled, and empty breakers spaces must be plugged.

h. GFCI (Ground Fault Circuit Interrupter) protection shall be provided for exterior outlets, kitchens, garages, laundry areas, and bathroom receptacles.

i. Functioning smoke detectors shall be installed in all bedrooms and outside each bedroom in hallways or other rooms providing access to bedrooms, and on each story including basements.

j. Functioning carbon monoxide alarms shall be installed if the unit (a) contains a heater, fireplace, appliance or cooking source that uses coal, kerosene, petroleum products, wood or other fuels that emit carbon monoxide as a by-product of combustion; or (b) includes an attached garage with an opening that communicates directly with a living space. Such alarms shall be installed in compliance with State Fire Marshal Rules and any applicable requirements of the State Building Code, and there shall be available in the premises a written notice containing instructions for testing the alarm.

k. Water heaters shall be strapped and secured in accordance with seismic protections standards, with a TEP (Temperature and Pressure Relief) line that is run to an approved location.

l. A 2A10BC fire extinguisher shall be provided on each floor.

m. Address numbers shall be posted and visible from the street.

<p>n. Any violation of applicable codes that the Building Official determines to be hazardous shall be corrected prior to use of the dwelling as a vacation rental.</p> <p>7. <u>Proof of Use</u>. For renewals, room tax remittance records <u>must</u> show that the unit has been rented at least <u>30 days once during the previous within the -12 months fiscal year</u>.</p> <p>8. <u>Room Tax Compliance</u>. The unit shall be in compliance with room tax requirements of Chapter 3.05 of the Newport Municipal Code.</p> <p>9. <u>Violations</u>. A short-term rental business license endorsement that is suspended or revoked <u>may shall</u> not be renewed. An owner whose endorsement has been revoked shall not be eligible to reapply for a new endorsement involving the same property for a period of two years.</p>	
<p>D. <u>Additional Ongoing</u> Operational Requirements</p> <p>1. <u>Complaints</u>. The owner or representative shall respond to neighborhood <u>questions, concerns, or complaints in a timely manner within one hour</u> and shall maintain a written record of complaints, the dates they were received, and efforts taken to resolve issues that have been raised. The written record shall be provided to the City upon request.</p> <p>POLICY ALTERNATIVES</p> <p>2A. <u>Guest Registry</u>. Owner or designee shall maintain a guest and vehicle register for each tenancy. The register shall include the name, home address, and phone number of the primary tenant; the</p>	<p>These operational requirements are ongoing obligations that short-term rental operators must meet (as opposed to Approval Standards which are checked by the Finance Department at time of application or renewal).</p> <p>Information related to the handling of complaints, guest registry requirements, emergency information, and noise are similar to existing city rules. Mandatory posting requirements are explicit instructions for the type of information that must be reflected on an endorsement.</p> <p>Ongoing obligations for parking, occupancy, landscaping and waste management are spelled out. The section also includes the event prohibition requested by the ad-hoc work group.</p> <p>Compliance with nuisance codes and the requirement that liability insurance be maintained were added so that it is clear that they are</p>

total number of occupants; vehicle license plate numbers of all vehicles used by the tenants, and the date of the rental period. This information shall be provided to ~~city~~ emergency responders upon request.

or

2B. Guest Registry. Owner or designee shall maintain a guest and vehicle register for each tenancy. The register shall include the name, home address, and phone number of the primary tenant; the total number of occupants; vehicle license plate numbers of all vehicles used by the tenants, and the date of the rental period. This information shall be provided to emergency responders and non-emergency city personnel upon request.

3. Mandatory Postings. The short-term rental business license endorsement issued by the City shall be displayed in a prominent location within the interior of the dwelling adjacent to the front door. The endorsement will contain the following information:

- a. A number or other identifying mark unique to the short-term rental endorsement which indicates that it was issued by the City of Newport, with date of expiration.
- b. The name of the owner ~~or~~ and authorized agent and a telephone number where the owner ~~or~~ and authorized agent may be contacted.
- c. The property address.
- d. The number of approved parking spaces.

ongoing obligations. A policy alternative was added for guest registry standards that would make the information available to city departments, not just emergency service providers. An example would be the City’s finance department, if they were to need the information for room tax auditing purposes. Language has been added requiring designated parking be used by tenants and the events provision was revised to state that group events are permitted as long as room occupancy limits are not exceeded. Reference to “valet service” aligns with how Thompson Sanitary describes that service. Changes requested by ad-hoc committee on 9/26/18 and 10/3/18. Eliminated reference to “overnight” (typo flagged at 10-15-18 work session).

Reference to complaints being responded to in a “timely manner” is viewed as vague and the Commission, at its 10/22/18 work session, requested the language be change to a one hour response period.

At its 10/22/18 work session, the Planning Commission requested that contact information for the owner and authorized agent be included on mandatory postings.

Group events modified to state that occupancy limits cannot be exceeded at any time during the rental period. Change was requested by the Planning Commission at its 10/22/18 work session.

<p>e. The maximum overnight occupancy permitted for the short-term rental.</p> <p>f. Any required information or conditions specific to the operating license.</p> <p>g. The City of Newport official logo.</p> <p>4. <u>Emergency Information.</u> Owner or designee shall provide information within the dwelling unit to inform and assist renters in the event of a natural disaster, power outage, or other emergency. Required information includes, but is not limited to:</p> <p>a. A tsunami evacuation map produced by Lincoln County Emergency Services, Oregon Department of Geology and Mineral Industries or other agency with similar authority.</p> <p>b. Phone numbers and addresses for emergency responders and utility providers.</p> <p>c. Other information as established by resolution of the City Council.</p> <p>5. <u>Noise.</u> Noise levels shall conform to the requirements of Chapter 8.15 of the Newport Municipal Code.</p> <p><u>6. Nuisance. The short-term rental shall not be used in a manner that creates a public nuisance as defined in Chapter 8.10 of the Newport Municipal Code.</u></p> <p>67. Required Parking. Off-street parking spaces approved for short-term rental use shall be available and are to be used by tenants at all times that the unit is rented. A parking diagram of</p>	
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illustrating the location of the approved parking spaces shall be provided to tenants and be available in a prominent location within the short-term rental dwelling.

~~78.~~ Occupancy. Maximum ~~overnight~~ occupancy shall be limited to that which is specified in the Land Use Authorization.

~~89.~~ Landscaping. Required landscaping shall be maintained. Changes may be made to the type and location of required landscaping as long as 50% of the front yard, and 40% of the total lot area remains landscaped.

~~910.~~ Solid Waste Management. Weekly solid waste disposal service shall be provided while the dwelling is ~~occupied-used~~ as a short-term rental. The owner or authorized agent shall provide for regular garbage removal from the premises, and trash receptacles shall be stored or screened out of plain view of the street. City may require that an owner or authorized agent utilized ~~d~~ solid waste collection valet service ~~with assisted pick-up~~ in circumstances where there have been verified complaints that a short-term rental is not adhering to these requirements. For the purpose of this section, ~~assisted pick-up~~ valet service means the collection driver retrieves the cart from where it is stored, rolls it out for service, and then places it back in its original location.

11. Liability Insurance. Liability insurance is required that expressly covers vacation rental operations on the subject property in the amount of \$1,000,000 combined single limit for bodily injury and property damage.

~~1012.~~ Group Events Prohibited. Company retreats, weddings, rehearsal dinners, family reunions and similar gatherings are ~~prohibited~~ permitted on the premises of a short-term rental during

<p>periods of transient use <u>provided the total number of individuals does not exceed occupancy limits at any time during the rental period.</u></p>	
<p>4.25.035 Inspections</p> <p>Dwelling units for which a short-term rental business license endorsement is being sought, or has been obtained, shall be subject to initial inspection, and periodic re-inspection, by the City to ensure compliance with the provisions of this chapter. The timeframe for such inspections is subject to the City’s discretion and available resources.</p>	<p>This section establishes the City’s right to perform inspections. It is similar to existing language in 14.25.060(C).</p>
<p>4.25.040 Appeals.</p> <p>A decision on a <u>new</u> short-term rental business license endorsement application, or renewal <u>of an endorsement, or the revocation of an endorsement</u> may be appealed as provided in NMC 4.05.075.</p>	<p>Appeals of business licenses and business license endorsements are addressed under NMC 4.05.075, Appeal, which states:</p> <p>A. Any person aggrieved by the City Manager’s (i) denial of a business license application; (ii) revocation of a business license; (iii) assessment of business license application fee or business license annual fees; or (iv) application of any rules or regulations pertaining to this Chapter; shall have the right to appeal to the City Council. The applicant or licensee shall file with the City Council a written statement setting forth fully the grounds for the appeal within twenty (20) calendar days after either: (i) the day the notice of denial is issued or the day the of revocation is mailed; (ii) the day the disputed fees are assessed; or (iii) the day that the rules or regulations were misapplied according to the applicant’s or licensee’s allegation.</p> <p>B. The City Council shall set a time and place for a hearing on the appeal within thirty (30) calendar days after receiving the appeal. Notice of the appeal hearing shall be mailed to the applicant or licensee’s last known address at least ten (10) calendar days prior to the hearing. During the hearing, the applicant or licensee shall have an opportunity to</p>

	<p>present in writing or orally the grounds for the appeal. The decision and order of the City Council on such appeal shall be final and conclusive.</p> <p>Language clarified to include revocation of a permit as an action that can be appealed to the City Council (10-15-18 Council work session discussion).</p>
<p>4.25.045 Violations.</p> <p>Penalties, as specified in section 4.25.050, may<u>shall</u> be imposed for one or more of the following violations:</p> <p>A. Advertising; renting; using; or offering for use, occupancy or rent; a short-term rental where the owner does not hold a valid endorsement issued pursuant to this section.</p> <p>B. Advertising; renting; using; or offering for use, occupancy or rent; a short-term rental in a manner that does not comply with the endorsement requirements of NMC Chapter 4.25.</p> <p>C. Failure to comply with the endorsement standards and operational requirements of NMC Chapter 4.25.</p> <p>D. Failure by the owner to pay the transient room tax required by NMC Chapter 3.05.</p> <p>E. Failure of the owner or owner’s representative to respond to tenant, citizen or City complaints or inquiries. “Failure to respond” occurs if City staff is unable to reach the owner or designated representative after three attempts <u>within a 48-hour period</u>, using the information that the owner or designee has on file with the City.</p>	<p>This language is taken from NMC 14.25.090 and are the existing violation provisions. The 48-hour provision added at the request of the ad-hoc work group on 10/3/18.</p>

<p>4.25.050 Penalties.</p> <p>Penalties for a violation of subsection 4.25.040(A) shall be a civil infraction to be enforced pursuant to the provisions listed in NMC Chapter 2.15. Where the owner possesses a valid short-term rental endorsement, the penalties for violations of subsections 4.25.040 (B-E) shall be as follows:</p> <p>A. For the first violation within a 12-month period, City shall issue a written warning to owner.</p> <p>B. For the second violation within a 12 month period, City shall suspend owner’s short-term rental endorsement for 30 days.</p> <p>C. For the third violation within a 12-month period: 1) City shall revoke owner’s short-term rental endorsement; and 2) where an endorsement includes a Conditional Use Permit, city shall also initiate the revocation procedure as outlined under section 14.52.150.</p>	<p>While a license can be revoked administratively, state land use laws specify that different rules must be followed by jurisdictions when revoking final land use decisions. That language reads as follows:</p> <p>14.52.150 Revocation of Decisions In the event an applicant, or the applicant’s successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the city’s approval, the city may institute a revocation proceeding under this section.</p> <p>A. Type I, Type II, and Type III decisions may be revoked or modified if the Planning Commission determines a substantial likelihood that any of the following situations exists:</p> <ol style="list-style-type: none"> 1. One or more conditions of the approval have not been implemented or have been violated: or 2. The activities of the use, or the use itself, are substantially different from what was approved or represented by the applicant. <p>B. A revocation shall be processed as a Type III decision. The Community Development Department or any private complaining party shall have the burden of proving, based on substantial evidence in the whole record, that the applicant or the applicant’s successor has in some way violated the city’s approval.</p> <p>C. Effect of revocation. In the event that the permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty days of the date the revocation final order is approved by the Planning Commission, unless the decision provides otherwise. In the event the Planning Commission’s decision on a revocation request is appealed, the requirement to terminate the use shall be stayed pending a final, unappealed decision.</p>
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<p>CHAPTER 14.25 SHORT-TERM RENTAL LAND USE REGULATIONS</p>	
<p>14.25.005 Purpose</p> <p>This chapter establishes criteria by which short-term rental uses may be permitted in order to ensure the safety and convenience of renters, owners, and neighboring property owners; protect the character of residential neighborhoods; protect the City’s supply of needed housing; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and <u>nuisances (e.g. accumulation of refuse, <u>light pollution, etc.</u>)</u>.</p> <p>It is the intent of these regulations to strike a reasonable balance between the need to limit short-term rental options within neighborhoods to ensure compatibility, while also recognizing the benefits of short-term rentals in providing recreation and employment opportunities, as well as transitional housing for tourists, <u>employees of businesses</u>, and others who are in need of housing for a limited duration.</p>	<p>Similar to the purpose language in 4.25.005, except that this chapter contains the land use criteria used to establish if a short-term rental use is permissible (as opposed to the administrative framework for licensing them).</p> <p>Changes to purpose section mirror those made to the Chapter 4.25 provisions as requested by ad-hoc work group on 10/3/18.</p> <p>Clarification that short-term rentals provide housing for employees of businesses was made at the request of the Planning Commission at its 10/22/18 work session.</p>
<p>14.25.010 Approval Authority</p> <p>A. Upon receipt of a request by an owner or authorized agent to complete a land use compatibility statement for a short-term rental the Community Development Director, or designee, shall determine if the request satisfies the standards of section 14.25.030. If the request satisfies the standards, then the Director shall sign the statement confirming that short-term rental is a permitted use. Such action is ministerial and, as a non-discretionary act, is not subject to appeal.</p>	<p>Sets out the steps for how the Community Development Department will respond to requests for Land Use Compatibility Statement (LUCS) sign-off. Language is similar to the existing process outlined in NMC 14.25.030. Conditional Use Permit approval continues to be an option if an approval standard cannot be met.</p> <p>Ad-hoc work group expressed some concern about leaving the conditional use permit option open ended. The Planning Commission should consider whether or not any of the standards in NMC 14.25.030 should be ineligible for conditional use</p>

<p>B. In the event that the Community Development Director or designee, determines that an application does not meet one or more of the standards of section 14.25.030, then the land use compatibility statement shall not be signed.</p> <p>C. If one or more of the standards under section 14.25.030 cannot be met, an owner may seek relief from those standards through a conditional use permitting process, pursuant to section 14.34.010. Such an application is subject to review by the Planning Commission via a Type III decision making process, consistent with section 14.52.010, and is to be limited in scope to those standards that cannot be satisfied.</p> <p><u>D. A Conditional Use Permit may authorize more than one vacation rental on street segments where 10 or more lots or parcels front the street. In such cases, no more than one vacation rental may be permitted for every five lots or parcels fronting the street.</u></p> <p>DE. An approved Conditional Use Permit that grants relief from, or provides alternative requirements to, one or more of the standards of section 14.25.030 shall serve as evidence that standards have been satisfied so that the Director can sign the land use compatibility statement.</p>	<p>approval. If spacing standards are adopted in line with the options listed in NMC 14.25.030(B), then it is appropriate to allow for the approval of additional vacation rentals in excess of those spacing standards in cases where there are long blocks. This was discussed with the ad-hoc work group, and the language has been added addressing the issue. The proposed language is similar to that which is used by the City of Durango, but has been adjusted to more closely align with Newport’s pattern of street blocks.</p>
<p>14.25.015 Submittal Requirements</p> <p>Land use compatibility statements shall be submitted on a form provided by the Community Development Department, and shall include the following:</p> <p>A. Site plan, drawn to scale, showing the dimensions, property lines, existing buildings, landscaped area, and off-street parking locations.</p>	<p>This section identifies the items an owner or their authorized agent must submit with a LUCS form. Borrows from NMC 14.25.040, but include additional requirements, such as providing a floorplan identifying the rooms to be rented, and a requirement that legal documents be provided when relying upon shared access. The information listed is needed so that the City can confirm that the approval standards of section 14.25.030 are met.</p>

<p>B. Floorplan of the dwelling unit that identifies the rooms dedicated to short-term rental use.</p> <p>C. If the dwelling unit is within a residential zone, a calculation of the percentage of front yard and total lot area maintained in landscaping.</p> <p>D. If the dwelling unit relies upon shared parking areas, a copy of a covenant or other binding legal instrument detailing unit owner rights and responsibilities related to the parking areas.</p>	
<p>14.25.020 Establishment of a Vacation Rental Overlay Zone</p> <p>A Vacation Rental Overlay Zone is hereby established identifying areas within the city limits where vacation rentals have been identified as compatible uses and areas where they are prohibited in order to protect the City’s supply of needed housing and character of residential neighborhoods. The sole purpose of the Vacation Rental Overlay Zone is to identify where vacation rentals are permitted uses and does not alleviate a vacation rental from having to satisfy requirements that are otherwise applicable under the Newport Municipal Code.</p>	<p>This provision or something similar to it is needed if the City intends to put in place an overlay zone.</p>
<p>14.25.025 Allowed Locations</p> <p>POLICY ALTERNATIVES</p> <p>A.1.a. Home share and Bed & Breakfast Facility use of a dwelling unit is permitted in all residential and commercial zone districts.</p> <p>A.1.b. Vacation rental use of a dwelling unit is permitted in those areas where they are identified as allowed uses on the Vacation Rental Overlay Map (Select Map Alternative).</p>	<p>This section identifies where short term rental uses are allowed in the city. The first alternative notes that bed and breakfast facilities are allowed in dwelling units throughout the city. Vacation rentals are limited to areas where they have been identified as allowed uses, depending upon which of the three <u>four</u> map alternatives, or a hybrid of one of the alternatives, is selected. The second alternative assumes that there will not be an overlay.</p>

<p>or</p> <p>A.2. Short-term rental use of a dwelling unit is permitted in all residential and commercial zone districts.</p>	<p>Ad-hoc work group requested fourth map alternative that would prohibit vacation rentals in R-1 and R-2 zones. Rationale is that those areas are the most removed from commercial activities and the larger lot sizes make them more prone to large gatherings and nuisance impacts that can be associated with such gatherings.</p>
<p>14.25.030 Approval Standards</p> <p>POLICY ALTERNATIVES</p> <p>A.1. Density. The total number of vacation rentals shall be capped at level not to exceed five (5) percent of the dwelling units within the city. A specific cap number shall be established by City Council resolution.</p> <p><u>or</u></p> <p><u>A.2. Density. The total number of vacation rentals shall be capped at level not to exceed four (4) percent of the dwelling units within the city. A specific cap number shall be established by City Council resolution.</u></p> <p><u>or</u></p> <p><u>A.3. Density. The total number of vacation rentals shall be capped at level not to exceed three (3) percent of the dwelling units within the city. A specific cap number shall be established by City Council resolution.</u></p> <p>POLICY ALTERNATIVES</p> <p>B.1 Spacing. In the R-1 and R-2 zones, not more than one vacation rental shall be located on a parcel or lot that abuts a street segment. For corner lots, this standard applies to both street segments that abut that</p>	<p>This section sets out the land use approval standards for short-term rentals. It included a number of alternatives discussed by the ad-hoc work group.</p> <p>A density limit sets a cap on the number of permissible vacation rentals. It does not apply to home shares or bed and breakfast facilities. This would be a new provision, and the ad-hoc work group discussed establishing a hard cap between 220-200 and 275-300, which is roughly 4- 5% of the City’s housing stock. This option allows the Council to specify the specific number and adjust it from time to time as additional housing units are constructed. Alternatives include adjusting the percentage, applying the cap to specific geographic areas, or not imposing a density limit. The Planning Commission added a 3% option at its 10/22/18 work session, which equates to about 165 units.</p> <p>For spacing standards, two options have been developed, one of which is limited to R-1 and R-2 zones and the other which also applies to R-3 and R-4 zones. Maps have been developed showing how this would be implemented city wide. The rules are mirrored after the code developed by the City of Durango, Colorado. Some additional refinement to the standards may be needed for R-3 and R-4 zoned areas.</p> <p>Three options have been developed for overnight occupancy. One retains the existing standard of two persons per bedroom, plus two</p>

corner lot and only one vacation rental is permitted on the corner lots that abut the intersection.

or

B.2 Spacing. In the R-1 and R-2 zones, not more than one vacation rental shall be located on a parcel or lot that abuts a street segment. For corner lots, this standard applies to both street segments that abut that corner lot and only one vacation rental is permitted on the corner lots that abut the intersection. In R-3 and R-4 zones, where both sides of the street segment are zoned for residential use, the same standards apply as those specified for R-1 and R-2 zones with the exception being that one multi-family dwelling or single dwelling is permitted per street segment.

POLICY ALTERNATIVES

C.1. Occupancy. Maximum ~~overnight~~ occupancy for a short-term rental shall be two (2) persons per bedroom, plus two additional persons per property.

or

C.2. Occupancy. Maximum ~~overnight~~ occupancy for a short-term rental shall be two (2) persons per bedroom, excluding children under three (3) years of age.

or

C.3. Occupancy. Maximum ~~overnight~~ occupancy for a short-term rental shall be two (2) persons per bedroom.

14.25.050(A). The second alternative drops the plus two but exempts young children. The last option drops the plus two and does not include a child exemption.

Parking includes two options, one of which allows short-term rentals in parking districts to utilize on-street spaces to address parking needs just like other uses in the district, without the need for a Conditional Use Permit. The second option would require short-term rentals in parking districts obtain approval of conditional use permits if they want to use on-street parking (current process). The parking standards clarifies how off-street parking works for driveways that connect to under-developed streets, as discussed with the ad-hoc work group.

Guestroom limitations are included for home shares and vacation rentals. Landscaping and shared access provisions are similar to existing requirements listed in 14.25.050(E) and (K).

Eliminated reference to overnight occupancy. Maximum occupancy now applies to the maximum number of persons allowed in the rental at any time. Second option for density set at a maximum of four percent. Both added at the request of the ad-hoc work group on 10/3/18.

D. Guestroom Limitations. The following limitations apply to the number of bedrooms within a dwelling unit that may be occupied by guests staying at a short-term rental.

1. Vacation Rentals. A maximum of five (5) bedrooms.
2. Home shares. A maximum of two (2) bedrooms.

POLICY ALTERNATIVES

E.1. Parking Standards. One (1) off-street parking space per bedroom that is dedicated to short-term rental use. Parking spaces shall comply with the dimensional standards of subsection 14.14.090(A). Off-street parking on driveways that extend into underdeveloped rights-of-way may be used to satisfy this requirement provided a stipulation is placed on the endorsement that the authorization may be revoked if the street is improved and driveway shortened.

or

E.2. Parking Standards. One (1) off-street parking space per bedroom that is dedicated to short-term rental use, unless the dwelling unit is within a parking district as defined in section 14.14.100, in which case on-street parking may be used to meet the one (1) space per bedroom requirement provided the parking is allocated in accordance with the requirements of the parking district. Parking spaces shall comply with the dimensional standards of subsection 14.14.090(A). Off-street parking on driveways that extend into underdeveloped rights-of-way may be used to satisfy this requirement provided a stipulation is placed on the endorsement that the authorization may be revoked if the street is improved and driveway shortened.

<p>F. Shared Access. Short-term rentals that rely upon use of shared access and parking areas may only be permitted if a covenant or other binding legal instrument establishes that the owner of the unit maintains exclusive use of the required parking space(s).</p> <p>G. Landscaping. For short-term rentals situated on individual lots or parcels in residential zones, at least 50% of the front yard and 40% of the total area shall be landscaped. No more than 50% of the front yard landscaping may be impervious surfaces, such as patios and decks. Driveway and parking areas shall not satisfy any portion of these landscaping requirements.</p>	
<p>14.25.035 Non-Conforming Short-Term Rentals</p> <p>POLICY ALTERNATIVES</p> <p>A.1. The non-conforming use provisions of NMC Chapter 14.32 shall apply to all short-term rentals that received endorsements prior to the effective date of this ordinance.</p> <p>or</p> <p>A.2. The non-conforming use provisions of NMC Chapter 14.32 shall apply to all short-term rentals licensed prior to the effective date of this ordinance for a period of five (5) years, after which dwelling units shall comply with all applicable provisions of this chapter, except the spacing requirements of subsection 14.25.030(B).</p> <p>or</p> <p>A.3. The non-conforming use provisions of NMC Chapter 14.32 shall apply to all short-term rentals licensed prior to the effective date</p>	<p>This section includes three alternatives for addressing how existing short-rentals are impacted by these changes. The first alternative is a grandfathering clause. They would be allowed to continue to operate, without having to satisfy the standards in NMC Chapter 14.25, until the use is discontinued for a one year period. The second alternative include amortization language that requires compliance with NMC Chapter 14.25 within 5-years, except for the spacing standards, which would be satisfied over time as licenses are not renewed. The third option requires that all standards must be met in 5-years. Under this option the oldest license would be used to resolve compliance issues with spacing standards.</p>

<p>of this ordinance for a period of five (5) years, after which dwelling units shall comply with all applicable provisions of this chapter. In cases where there are two or more vacation rentals along a street segment, the vacation rental with the oldest endorsement date shall be acknowledged as satisfying the spacing requirement of subsection 14.25.030(B).</p>	
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CHAPTER 4.25 SHORT-TERM RENTAL BUSINESS LICENSE ENDORSEMENTS

4.25.005 Purpose

A short-term rental business license endorsement is a permission to operate a short-term rental on property within the City of Newport. This chapter provides an administrative framework for licensing the annual operation of a short-term rental, in order to ensure the safety and convenience of renters, owners, and neighboring property owners; protect the character of residential neighborhoods; protect the City's supply of needed housing; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and nuisances (e.g. accumulation of refuse, light pollution, etc.).

It is the intent of these regulations to strike a reasonable balance between the need to limit short-term rental options within neighborhoods to ensure compatibility, while also recognizing the benefits of short-term rentals in providing recreation and employment opportunities, as well as transitional housing for tourists, employees of businesses, and others who are in need of housing for a limited duration.

4.25.010 Definitions

The following definitions apply in this chapter.

- A. Authorized Agent. A property management company or other entity or person who has been designated by the owner to act on their behalf. An authorized agent may or may not be the designated point of contact for complaints.
- B. Bed and Breakfast Facility. A single-family dwelling used as a short-term rental where the operator resides on the premises and meals are provided for a fee on a daily or weekly room rental basis.
- C. Bedroom. A habitable room that (a) is intended to be used primarily for sleeping purposes; (b) contains at least 70-square feet; and (c) is configured so as to take the need for a fire exit into account.

- D. Dwelling Unit. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- E. Home share. A short term rental, other than a Bed and Breakfast Facility, where a portion of a dwelling unit is rented while the homeowner is present. For the purposes of this definition, "present" means the homeowner is staying in the dwelling overnight for the duration of the rental.
- F. Owner. Means the natural person(s) or legal entity that owns and holds legal or equitable title to the property.
- G. Short Term Rental. A dwelling unit that is rented to any person on a day to day basis or for a period of less than thirty (30) consecutive nights.
- H. Sale or Transfer. Means any change of ownership during the period of time that a license is valid, whether or not there is consideration, except a change in ownership where title is held not as tenants in common but with the right of in survivorship (e.g., survivorship estates recognized in ORS 93.180, such as with a spouse or domestic partner, or transfers on the owner's death to a trust which benefits only a spouse or domestic partner for the lifetime of the spouse or domestic partner).

Exceptions:

1. A license holder may transfer ownership of the real property to a trustee, a limited liability company, a corporation, a partnership, a limited partnership, a limited liability partnership, or other similar entity and not be subject to license termination so long as the transferor lives and remains the only owner of the entity. Upon the transferor's death or the sale or transfer of his or her interest in the entity to another person, the license held by the transferor shall terminate.

2. A license holder may transfer ownership of the real property to the license holder and a spouse or domestic partner with the right of survivorship and not be subject to license termination.

I. Vacation Rental. A short term rental, other than a Bed and Breakfast Facility or Home Share, where the entire dwelling unit is rented for less than 30 consecutive days.

4.25.015 Annual Short-Term Rental Business License Endorsement Required

No owner of property within the Newport city limits may advertise, offer, operate, rent or otherwise make available for occupancy or use a short-term rental without a business license with a short-term rental endorsement. Advertise or offer includes through any media, whether written, electronic, web-based, digital, mobile or otherwise.

4.25.020 Application Information and Filing Fee

A. Applications for short-term rental business license endorsements are to be on forms provided by the City, and shall include the following:

1. Owner Information. Owner's name, permanent residence address, telephone number, email address (if available) and short-term rental address and telephone number.
2. Authorized Agent. The name, telephone number, mailing address and email of a property management company or other entity or person who has been designated by the owner to act on their behalf.
3. Representative Information. The name, telephone number, mailing address and email of a local representative who can be contacted concerning use of the property or complaints related to operation of the short-term rental. For the purposes of this requirement, local means the representative's address is within 30 minutes travel time of the subject property.
4. Liability Insurance. Letter of intent to insure (for new applications) or certificate of insurance (for renewals) establishing that the owner will have, or has, liability

insurance which expressly covers the vacation rental operations on the subject property in the amount of \$1,000,000 combined single limit for bodily injury and property damage. Where letters of intent to insure are provided, certificate of insurance shall be submitted to the city prior to use of the unit as a short-term rental.

5. Land Use Authorization. A land use compatibility statement, signed by the Community Development Director or designee and that is current within 90-days, indicating that the short-term rental satisfies the land use standards for short-term rentals listed in NMC Chapter 14.25.
6. Occupancy. Occupancy limits and number of bedrooms (as specified in the Land Use Authorization).
7. Parking. Statement that required off-street parking spaces are available, with a photo(s), dated within the last 90 days, of interior and exterior parking spaces. A site plan including a parking diagram of the parking spaces shall also be provided.
8. Proof of Residential Use (for Home shares and Bed and Breakfast Facilities). At least two of the following items shall be submitted as evidence that the dwelling is the primary residence of the owner.
 - a. A copy of the voter registration
 - b. A copy of an Oregon Driver's License or Identification Card
 - c. A copy of federal income tax return from last tax year (page one only and financial data should be redacted)
9. Good Neighbor Guidelines. Acknowledgement of receipt and review of a copy of the good neighbor guidelines. In addition, evidence that the good neighbor guidelines has been effectively relayed to short-term rental tenants, by incorporating it into the rental contract, including it in the rental booklet, posting it online, providing it in a conspicuous place in the dwelling unit, or a similar method.

10. Listing Number. For renewals, the listing numbers or website addresses of where the short term rental advertises.
 11. Fire Safety. Completed checklist identifying that the unit complies with the fire safety standards listed in NMC 4.25.030(C)(5).
 12. Structural Safety. Completed checklist identifying that the unit complies with the Structural safety standards listed in NMC 4.25.030(C)(6).
 13. Waste Management. Proof of garbage service as required in NMC 4.25.030(C)(7).
 14. Other Requirements. Such other information as the City Manager or designee deems reasonably necessary to administer this chapter.
- B. Incomplete Application. If a license application does not include all required materials, the application will be considered incomplete and the City will notify the applicant, in writing, explaining the information required. If the applicant provides the missing required information within 30 calendar days of the date of the notice, the application will be reviewed. If the applicant does not provide the required information, the application will be deemed withdrawn and the City will refund the application fee.
- C. License Fee. The fee for the application of a short-term rental business license endorsement, and any of its components requiring city action, shall be established by resolution of the City Council.

4.25.025 Term of Annual Business License Endorsement and Transferability

- A. Term. A short-term rental business license endorsement shall be issued for a period of 12-months, effective July 1st of each year, and may be renewed annually by the owner provided all applicable standards of this chapter are met.

 POLICY ALTERNATIVES

B.1. Transferability. The business license endorsement shall be issued in the name of the owner(s) and is not transferable.

or

B.2. Transferability. The business license endorsement shall be issued in the name of the owner(s) and is transferrable only in those cases where the property is commercially zoned.

or

B.3. Transferability. The business license endorsement shall be issued in the name of the owner(s) and is transferrable in those cases where the property is within, or across the street from, a commercial zone.



 4.25.030 Business License Endorsement and Endorsement Renewal

A. Endorsement Must Be Obtained: An endorsement to a business license for a short-term rental shall be obtained and renewed as required in this section. The ability to operate a short-term rental in the City of Newport shall be discontinued for failure to obtain or renew an endorsement to operate as provided in this chapter.

B. Application and Renewal Application Process: A person engaging in a short-term rental who has not yet obtained a business license endorsement, or who is required to renew an existing endorsement, shall do so as follows:

1. Time of Application.

a. Existing Non-Conforming Short-Term Rentals. A business license endorsement renewal application completed in accordance with the provisions of NMC 4.25.020, is due on July 1st, 2019 and annually every year thereafter.

- b. New Short-Term Rentals. A business license endorsement for a short-term rental shall be obtained before beginning operations. Endorsement applications, completed in accordance with the provisions of NMC 4.25.020, may be submitted and issued at any time. The endorsement may be renewed annually thereafter on July 1st of each year.
 - c. Sale or Transfer of Property. For business license endorsements that are eligible to be transferred pursuant to NMC 4.25.025(B), it is the obligation and responsibility of the new owner to obtain a new endorsement in order to operate the short-term rental. The new owner shall have 60 days from the date of ownership (closing of the sale) to apply for and receive a new business license endorsement. The business license endorsement obtained by the prior owner shall remain in effect during the 60-day period within which the new owner must obtain an endorsement.
 2. Notice. On or about July 1st of each year, the City shall send notice to owners of property with short-term rental endorsements informing them that the endorsement must be renewed no later than August 15th of each year and that failure to do so will result in expiration of the endorsement. Notice shall be sent by first-class mail to the address the owner provided with the endorsement on file with the City.
 3. Expiration of Endorsement. Failure of an owner to renew an endorsement by August 15th shall result in expiration of the endorsement, and the ability of the owner to operate shall be conclusively presumed to be discontinued with no further action by the City. For new owners, once the 60 day grace period to apply for a license expires, as referenced in NMC 4.25.030(B)(1)(c) of this section, the ability to operate shall be conclusively presumed to be discontinued with no further action by the City.

C. Approval Standards.

The owner or authorized agent has the burden of proof to demonstrate compliance with standards for the approval or renewal of an endorsement. The approval standards also serve as continuing code compliance obligations of the owner. To receive approval, an owner or authorized agent must demonstrate that the approval standards listed below have been satisfied:

1. Zoning. The property is in compliance with requirements of NMC Chapter 14.25.
2. Contact Information. The owner or authorized agent has provided information sufficient to verify a qualified person will be available to be contacted about use of the short-term rental during and after business hours. The qualified person shall be available to be contacted by telephone to ensure a response to the short-term rental address at all hours (24 hours a day, seven days a week) while the dwelling unit is occupied for rent. The qualified person must be able to reach the premises within 30 minutes. The individual identified as the “qualified person” may be changed from time to time throughout the term of a license. To do so, the license information shall be revised with the city at least 14-days prior to the date the change takes effect, except when the failure to do so is beyond the owner or authorized agent’s control. In an emergency or absence, contact forwarding information to a qualified person may be provided to the owner or authorized agent. In the case of home shares, the contact person shall be the permanent resident who will be hosting the transient accommodations.
3. Notice to Neighbors. The owner or authorized agent shall post a small, non-illuminated sign on the premises, between 1 and 2 square feet in size, containing the owner and/or representatives contact information. Such sign shall be placed in a location clearly visible from the adjacent street. In the event the City establishes a 24/7 hotline for dispatching calls to operators of short-term rentals, then the contact information contained on the placard or sign shall be that of the firm providing the dispatch service.

4. Electronic Availability. The City will make a database electronically accessible within which any person can enter in an address of a short term rental and obtain the owner, authorized agent, and/or representative's name, telephone number, and email address.
5. Fire and Emergency Safety. A completed checklist for fire safety (fire extinguishers, smoke alarms, carbon monoxide detectors, unobstructed exits, etc.) shall be required with each new endorsement and renewal. The owner or authorized agent shall be responsible for completing the fire safety checklist and ensuring continued compliance. Verification by the City of Newport Fire Marshall shall be required prior to issuance of a new endorsement and may be required for renewals at the City Manager's discretion.
6. Structural Safety. A completed checklist, signed by the City of Newport Building Official, indicating that the short-term rental has been inspected and complies with the building safety standards listed below. Such checklist shall be completed prior to issuance of a new endorsement and may be required for renewals at the City Manager's discretion.
 - a. Bedrooms shall have an operable emergency escape window or exterior door with a minimum opening size of 5.7 sq. ft. (5.0 sq. ft. at grade floor), with minimum net clear dimensions of 20-inches in width and 24-inches in height and having a sill height not more than 44-inches above the finished floor.
 - b. All stairs with 4 or more risers shall have a handrail on at least one side. Handrails shall be secure, continuous, and have returns at each end.
 - c. The open sides of stairs, decks, porches or other walking surfaces more than 30-inches above grade or the floor below shall have guardrails configured such that a 4-inch sphere cannot pass through.

- d. Windows within a 24-inch arc of doors and glass within bathtub or shower enclosures shall be safety glazed, or have an equivalent means of protection.
- e. Wood frame decks shall be structurally sound. In cases where a deck supports a hot tub or other features of a similar size and weight, engineering analysis of the supports may be required.
- f. Electrical plug-ins and light switches shall have faceplates.
- g. Electrical breaker boxes shall have all circuits labeled, and empty breakers spaces must be plugged.
- h. GFCI (Ground Fault Circuit Interrupter) protection shall be provided for exterior outlets, kitchens, garages, laundry areas, and bathroom receptacles.
- i. Functioning smoke detectors shall be installed in all bedrooms and outside each bedroom in hallways or other rooms providing access to bedrooms, and on each story including basements.
- j. Functioning carbon monoxide alarms shall be installed if the unit (a) contains a heater, fireplace, appliance or cooking source that uses coal, kerosene, petroleum products, wood or other fuels that emit carbon monoxide as a by-product of combustion; or (b) includes an attached garage with an opening that communicates directly with a living space. Such alarms shall be installed in compliance with State Fire Marshal Rules and any applicable requirements of the State Building Code, and there shall be available in the premises a written notice containing instructions for testing the alarm.
- k. Water heaters shall be strapped and secured in accordance with seismic protections standards, with a TEP (Temperature and Pressure Relief) line that is run to an approved location.
- l. A 2A10BC fire extinguisher shall be provided on each floor.

- m. Address numbers shall be posted and visible from the street.
 - n. Any violation of applicable codes that the Building Official determines to be hazardous shall be corrected prior to use of the dwelling as a vacation rental.
7. Proof of Use. For renewals, room tax remittance records must show that the unit has been rented at least 30 days within the 12 month fiscal year.
 8. Room Tax Compliance. The unit shall be in compliance with room tax requirements of Chapter 3.05 of the Newport Municipal Code.
 9. Violations. A short-term rental business license endorsement that is suspended or revoked shall not be renewed. An owner whose endorsement has been revoked shall not be eligible to reapply for a new endorsement involving the same property for a period of two years.

D. Additional Operational Requirements

1. Complaints. The owner or representative shall respond to neighborhood complaints within one hour and shall maintain a written record of complaints, the dates they were received, and efforts taken to resolve issues that have been raised. The written record shall be provided to the City upon request.

POLICY ALTERNATIVES

- 2.1. Guest Registry. *Owner or designee shall maintain a guest and vehicle register for each tenancy. The register shall include the name, home address, and phone number of the primary tenant; the total number of occupants; vehicle license plate numbers of all vehicles used by the tenants, and the date of the rental period. This information shall be provided to emergency responders upon request.*

or

1 ✓

2.2. Guest Registry. *Owner or designee shall maintain a guest and vehicle register for each tenancy. The register shall include the name, home address, and phone number of the primary tenant; the total number of occupants; vehicle license plate numbers of all vehicles used by the tenants, and the date of the rental period. This information shall be provided to emergency responders and non-emergency city personnel upon request.*

3. Mandatory Postings. The short-term rental business license endorsement issued by the City shall be displayed in a prominent location within the interior of the dwelling adjacent to the front door. The endorsement will contain the following information:
- a. A number or other identifying mark unique to the short-term rental endorsement which indicates that it was issued by the City of Newport, with date of expiration.
 - b. The name of the owner and authorized agent and a telephone number where the owner and authorized agent may be contacted.
 - c. The property address.
 - d. The number of approved parking spaces.
 - e. The maximum occupancy permitted for the short-term rental.
 - f. Any required information or conditions specific to the operating license.
 - g. The City of Newport official logo.
4. Emergency Information. Owner or designee shall provide information within the dwelling unit to inform and assist renters in the event of a natural disaster,

- power outage, or other emergency. Required information includes, but is not limited to:
- a. A tsunami evacuation map produced by Lincoln County Emergency Services, Oregon Department of Geology and Mineral Industries or other agency with similar authority.
 - b. Phone numbers and addresses for emergency responders and utility providers.
 - c. Other information as established by resolution of the City Council.
5. Noise. Noise levels shall conform to the requirements of Chapter 8.15 of the Newport Municipal Code.
6. Nuisance. The short-term rental shall not be used in a manner that creates a public nuisance as defined in Chapter 8.10 of the Newport Municipal Code.
7. Required Parking. Off-street parking spaces approved for short-term rental use shall be available and are to be used by tenants at all times that the unit is rented. A parking diagram illustrating the location of the approved parking spaces shall be provided to tenants and be available in a prominent location within the short-term rental dwelling.
8. Occupancy. Maximum occupancy shall be limited to that which is specified in the Land Use Authorization.
9. Landscaping. Required landscaping shall be maintained. Changes may be made to the type and location of required landscaping as long as 50% of the front yard, and 40% of the total lot area remains landscaped.
10. Solid Waste Management. Weekly solid waste disposal service shall be provided while the dwelling is occupied as a short-term rental. The owner or authorized agent shall provide for regular garbage removal from the premises, and trash receptacles shall be stored or screened out of plain view of the street. City may require that an owner or authorized agent

utilize solid waste collection valet service in circumstances where there have been verified complaints that a short-term rental is not adhering to these requirements. For the purpose of this section, valet service means the collection driver retrieves the cart from where it is stored, rolls it out for service, and then places it back in its original location.

11. Liability Insurance. Liability insurance is required that expressly covers vacation rental operations on the subject property in the amount of \$1,000,000 combined single limit for bodily injury and property damage.
12. Group Events. Company retreats, weddings, rehearsal dinners, family reunions and similar gatherings are permitted on the premises of a short-term rental during periods of transient use provided the total number of individuals does not exceed occupancy limits at any time during the rental period.

4.25.035 Inspections

Dwelling units for which a short-term rental business license endorsement is being sought, or has been obtained, shall be subject to initial inspection, and periodic re-inspection, by the City to ensure compliance with the provisions of this chapter. The timeframe for such inspections is subject to the City's discretion and available resources.

4.25.040 Appeals

A decision on a new short-term rental business license endorsement application, renewal of an endorsement, or the revocation of an endorsement may be appealed as provided in NMC 4.05.075.

4.25.045 Violations

Penalties, as specified in section 4.25.050, shall be imposed for one or more of the following violations:

- A. Advertising; renting; using; or offering for use, occupancy or rent; a short-term rental where the owner does not hold a valid endorsement issued pursuant to this section.

- B. Advertising; renting; using; or offering for use, occupancy or rent; a short-term rental in a manner that does not comply with the endorsement requirements of NMC Chapter 4.25.
- C. Failure to comply with the endorsement standards and operational requirements of NMC Chapter 4.25.
- D. Failure by the owner to pay the transient room tax required by NMC Chapter 3.05.
- E. Failure of the owner or owner's representative to respond to tenant, citizen or City complaints or inquiries. "Failure to respond" occurs if City staff is unable to reach the owner or designated representative after three attempts within a 48-hour period, using the information that the owner or designee has on file with the City.

4.25.050 Penalties

Penalties for a violation of subsection 4.25.040(A) shall be a civil infraction to be enforced pursuant to the provisions listed in NMC Chapter 2.15. Where the owner possesses a valid short-term rental endorsement, the penalties for violations of subsections 4.25.040 (B-E) shall be as follows:

- A. For the first violation within a 12-month period, City shall issue a written warning to owner.
- B. For the second violation within a 12 month period, City shall suspend owner's short-term rental endorsement for 30 days.
- C. For the third violation within a 12-month period: 1) City shall revoke owner's short-term rental endorsement; and 2) where an endorsement includes a Conditional Use Permit, city shall also initiate the revocation procedure as outlined under section 14.52.150.

CHAPTER 14.25 SHORT-TERM RENTAL LAND USE REGULATIONS

14.25.005 Purpose

This chapter establishes criteria by which short-term rental uses may be permitted in order to ensure the safety and convenience of renters, owners, and neighboring property owners; protect the character of residential neighborhoods; protect the City's supply of needed housing; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and nuisances (e.g. accumulation of refuse, light pollution, etc.).

It is the intent of these regulations to strike a reasonable balance between the need to limit short-term rental options within neighborhoods to ensure compatibility, while also recognizing the benefits of short-term rentals in providing recreation and employment opportunities, as well as transitional housing for tourists, employees of businesses, and others who are in need of housing for a limited duration.

(Staff note: the following definitions will be added to, or will update terms defined in Chapter 14.01. They are included here for reference.)

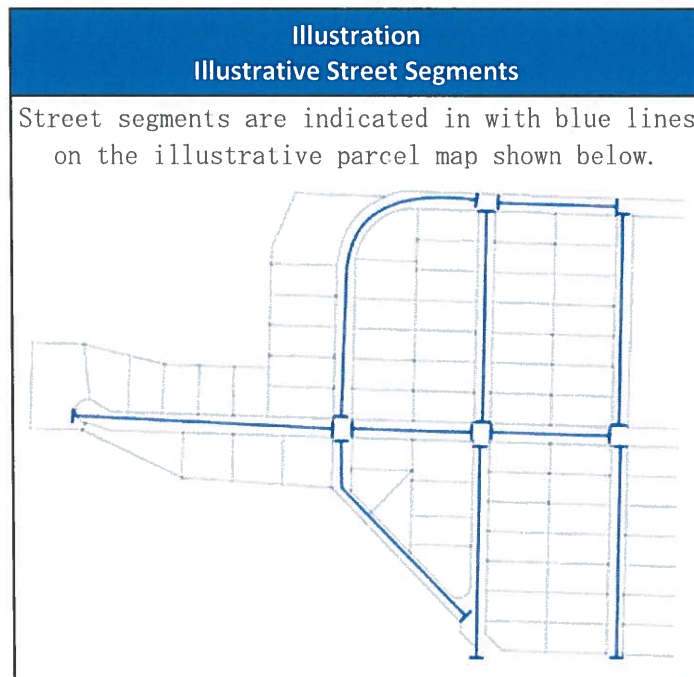
14.01.010 Definitions

The following definitions apply in this chapter.

- A. Authorized Agent. A property management company or other entity or person who has been designated by the owner to act on their behalf. An authorized agent may or may not be the designated point of contact for complaints.
- B. Bed and Breakfast Facility. An owner occupied, single-family dwelling where meals are provided for a fee on a daily or weekly room rental basis, not to exceed 30 consecutive days.
- C. Bedroom. A habitable room that (a) is intended to be used primarily for sleeping purposes; (b) contains at least 70-square feet; and (c) is configured so as to take the need for a fire exit into account.
- D. Dwelling Unit. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- E. Home share. A short term rental, other than a Bed and Breakfast Facility, where a portion of a dwelling unit is rented

while the homeowner is present. For the purposes of this definition, “present” means the homeowner is staying in the dwelling overnight.

- F. Owner. Means the natural person(s) or legal entity that owns and holds legal or equitable title to the property.
- G. Short Term Rental. A dwelling unit that is rented to any person on a day to day basis or for a period of less than thirty (30) consecutive nights.
- H. Street Segment. A portion of a local or collector street which is located between two intersections, or between an intersection and the end of a cul-de-sac or dead-end. See *Illustration: Illustrative Street Segments, below*.



- I. Transfer. Means the addition or substitution of owners not included on the original business license endorsement application, whether or not there is consideration. If multiple owners exist on a license, individual owners may be removed from the license without constituting a transfer.
 - J. Vacation Rental. A short term rental, other than a Bed and Breakfast Facility, where the entire dwelling unit is rented for less than 30 consecutive days.
-

14.25.010 Approval Authority

- A. Upon receipt of a request by an owner or authorized agent to complete a land use compatibility statement for a short-term rental the Community Development Director, or designee, shall determine if the request satisfies the standards of section 14.25.030. If the request satisfies the standards, then the Director shall sign the statement confirming that short-term rental is a permitted use. Such action is ministerial and, as a non-discretionary act, is not subject to appeal.
- B. In the event that the Community Development Director or designee, determines that an application does not meet one or more of the standards of section 14.25.030, then the land use compatibility statement shall not be signed.
- C. If one or more of the standards under section 14.25.030 cannot be met, an owner may seek relief from those standards through a conditional use permitting process, pursuant to section 14.34.010. Such an application is subject to review by the Planning Commission via a Type III decision making process, consistent with section 14.52.010, and is to be limited in scope to those standards that cannot be satisfied.
- D. A Conditional Use Permit may authorize more than one vacation rental on street segments where ten or more lots or parcels front the street. In such cases, no more than one vacation rental may be permitted for every five lots or parcels fronting the street.
- E. An approved Conditional Use Permit that grants relief from, or provides alternative requirements to, one or more of the standards of section 14.25.030 shall serve as evidence that standards have been satisfied so that the Director can sign the land use compatibility statement.

14.25.015 Submittal Requirements

Land use compatibility statements shall be submitted on a form provided by the Community Development Department, and shall include the following:

- A. Site plan, drawn to scale, showing the dimensions, property lines, existing buildings, landscaped area, and off-street parking locations.
- B. Floorplan of the dwelling unit that identifies the rooms dedicated to short-term rental use.

- C. If the dwelling unit is within a residential zone, a calculation of the percentage of front yard and total lot area maintained in landscaping.
- D. If the dwelling unit relies upon shared parking areas, a copy of a covenant or other binding legal instrument detailing unit owner rights and responsibilities related to the parking areas.

14.25.020 Establishment of a Vacation Rental Overlay Zone

(Staff note: this subsection is only required if one of the four map alternatives, or a variation of one of the maps, is selected as the basis of an overlay. It will be removed if policy makers decide that an overlay is not needed.)

A Vacation Rental Overlay Zone is hereby established identifying areas within the city limits where vacation rentals have been identified as compatible uses and areas where they are prohibited in order to protect the City's supply of needed housing and character of residential neighborhoods. The sole purpose of the Vacation Rental Overlay Zone is to identify where vacation rentals are permitted uses and does not alleviate a vacation rental from having to satisfy requirements that are otherwise applicable under the Newport Municipal Code.

14.25.025 Allowed Locations

POLICY ALTERNATIVES

A. 1.a. Home share and Bed & Breakfast Facility use of a dwelling unit is permitted in all residential and commercial zone districts.

and

A. 1.b. Vacation rental use of a dwelling unit is permitted in those areas where they are identified as allowed uses on the Vacation Rental Overlay Map (Select Map Alternative).

or

A.2. Short-term rental use of a dwelling unit is permitted in all residential and commercial zone districts.

14.25.030 Approval Standards

POLICY ALTERNATIVES

→ A.1. Density. *The total number of vacation rentals shall be capped at level not to exceed five (5) percent of the dwelling units within the city. A specific cap number shall be established by City Council resolution.*

or

A.2. Density. *The total number of vacation rentals shall be capped at level not to exceed four (4) percent of the dwelling units within the city. A specific cap number shall be established by City Council resolution.*

or

A.3. Density. *The total number of vacation rentals shall be capped at level not to exceed three (3) percent of the dwelling units within the city. A specific cap number shall be established by City Council resolution.*

(Staff Note: The density limit alternatives are specific to vacation rentals and would not apply to home shares or bed and breakfast facilities. The Ad-hoc work group discussed establishing a hard cap between 200 and 300, which is roughly 4- 5% of the City's housing stock. This option allows the Council to specify the specific number and adjust it from time to time as additional housing units are constructed. At its 10/22/18 work session, the Planning Commission put forth a third option of 3%, which is about 165 units or 80% of the number of short-term rentals currently licensed in the city. Alternative approaches include adjusting the percentage, applying the cap to specific geographic areas, or not imposing a density limit.)

POLICY ALTERNATIVES

→ B.1 Spacing. *In the R-1 and R-2 zones, not more than one vacation rental shall be located on a parcel or lot that abuts a street segment. For corner lots, this standard applies to both street segments that abut that corner lot and only one vacation rental is permitted on the corner lots that abut the intersection.*

or

B.2 Spacing. In the R-1 and R-2 zones, not more than one vacation rental shall be located on a parcel or lot that abuts a street segment. For corner lots, this standard applies to both street segments that abut that corner lot and only one vacation rental is permitted on the corner lots that abut the intersection. In R-3 and R-4 zones, where both sides of the street segment are zoned for residential use, the same standards apply as those specified for R-1 and R-2 zones with the exception being that one multi-family dwelling or single dwelling is permitted per street segment.

POLICY ALTERNATIVES

C.1. Occupancy. Maximum occupancy for a short-term rental shall be two (2) persons per bedroom, plus two additional persons per property.



or

C.2. Occupancy. Maximum occupancy for a short-term rental shall be two (2) persons per bedroom, excluding children under three (3) years of age.

or

C.3. Occupancy. Maximum occupancy for a short-term rental shall be two (2) persons per bedroom.

D. Guestroom Limitations. The following limitations apply to the number of bedrooms within a dwelling unit that may be occupied by guests staying at a short-term rental.

- 1. Vacation Rentals. A maximum of five (5) bedrooms.*
- 2. Home shares. A maximum of two (2) bedrooms.*

POLICY ALTERNATIVES

E.1. Parking Standards. One (1) off-street parking space per bedroom that is dedicated to short-term rental use. Parking spaces shall comply with the dimensional standards of subsection 14.14.090(A). Off-street parking on driveways that extend into underdeveloped rights-of-way may be used to satisfy this requirement provided a stipulation is placed on the

endorsement that the authorization may be revoked if the street is improved and driveway shortened.

or

E.2. Parking Standards. One (1) off-street parking space per bedroom that is dedicated to short-term rental use, unless the dwelling unit is within a parking district as defined in section 14.14.100, in which case on-street parking may be used to meet the one (1) space per bedroom requirement provided the parking is allocated in accordance with the requirements of the parking district. Parking spaces shall comply with the dimensional standards of subsection 14.14.090(A). Off-street parking on driveways that extend into underdeveloped rights-of-way may be used to satisfy this requirement provided a stipulation is placed on the endorsement that the authorization may be revoked if the street is improved and driveway shortened.



F. Shared Access. Short-term rentals that rely upon use of shared access and parking areas may only be permitted if a covenant or other binding legal instrument establishes that the owner of the unit maintains exclusive use of the required parking space(s).

G. Landscaping. For short-term rentals situated on individual lots or parcels in residential zones, at least 50% of the front yard and 40% of the total area shall be landscaped. No more than 50% of the front yard landscaping may be impervious surfaces, such as patios and decks. Driveway and parking areas shall not satisfy any portion of these landscaping requirements.

14.25.035 Non-Conforming Short Term Rentals

POLICY ALTERNATIVES

A.1. *The non-conforming use provisions of NMC Chapter 14.32 shall apply to all short-term rentals that received endorsements prior to the effective date of this ordinance.*

or

A.2. *The non-conforming use provisions of NMC Chapter 14.32 shall apply to all short-term rentals licensed prior to the effective date of this ordinance for a period of five (5) years, after which*

dwelling units shall comply with all applicable provisions of this chapter, except the spacing requirements of subsection 14.25.030(B).

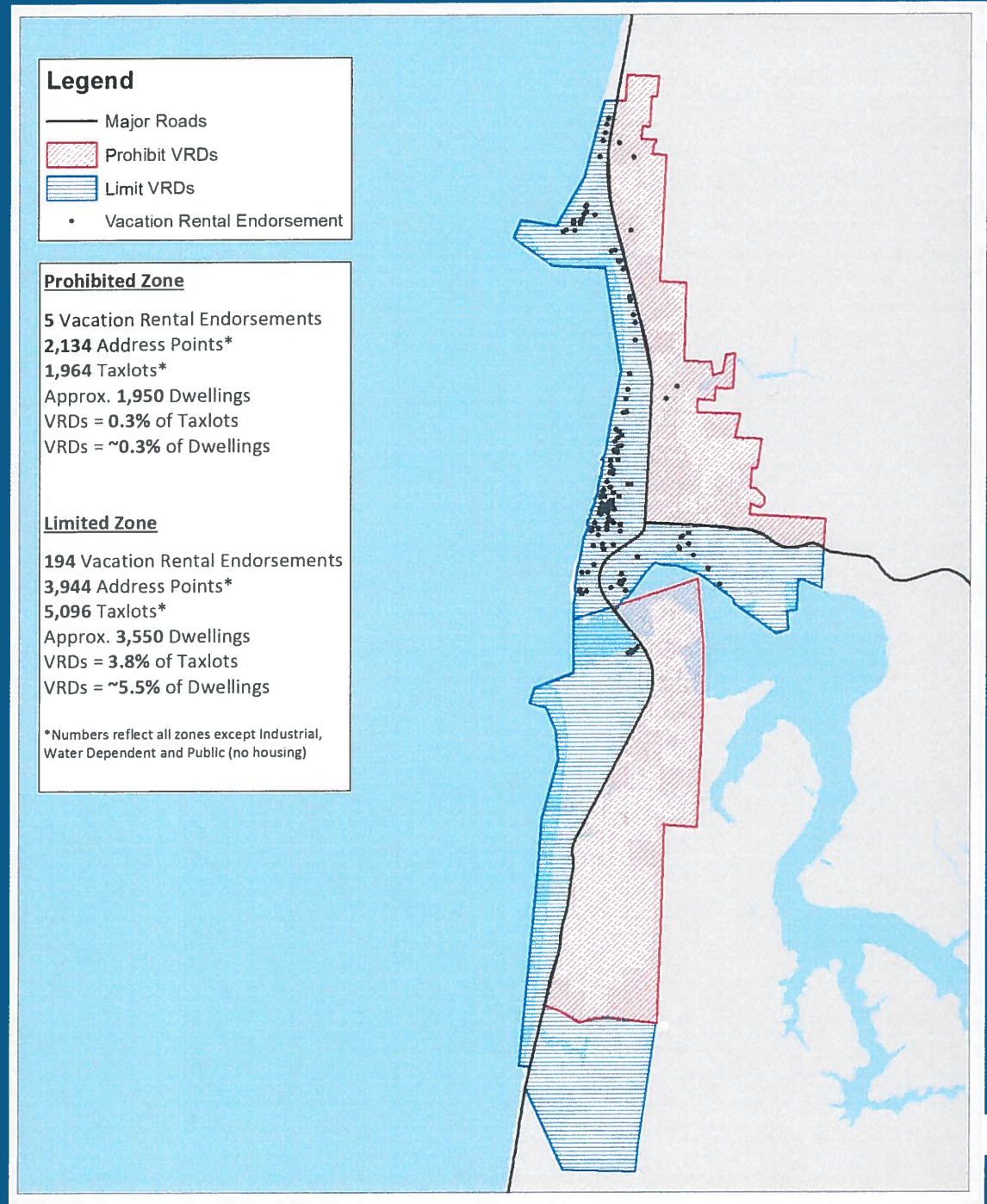
or

A.3. The non-conforming use provisions of NMC Chapter 14.32 shall apply to all short-term rentals licensed prior to the effective date of this ordinance for a period of five (5) years, after which dwelling units shall comply with all applicable provisions of this chapter. In cases where there are two or more vacation rentals along a street segment, the vacation rental with the oldest endorsement date shall be acknowledged as satisfying the spacing requirement of subsection 14.25.030(B).

DRAFT

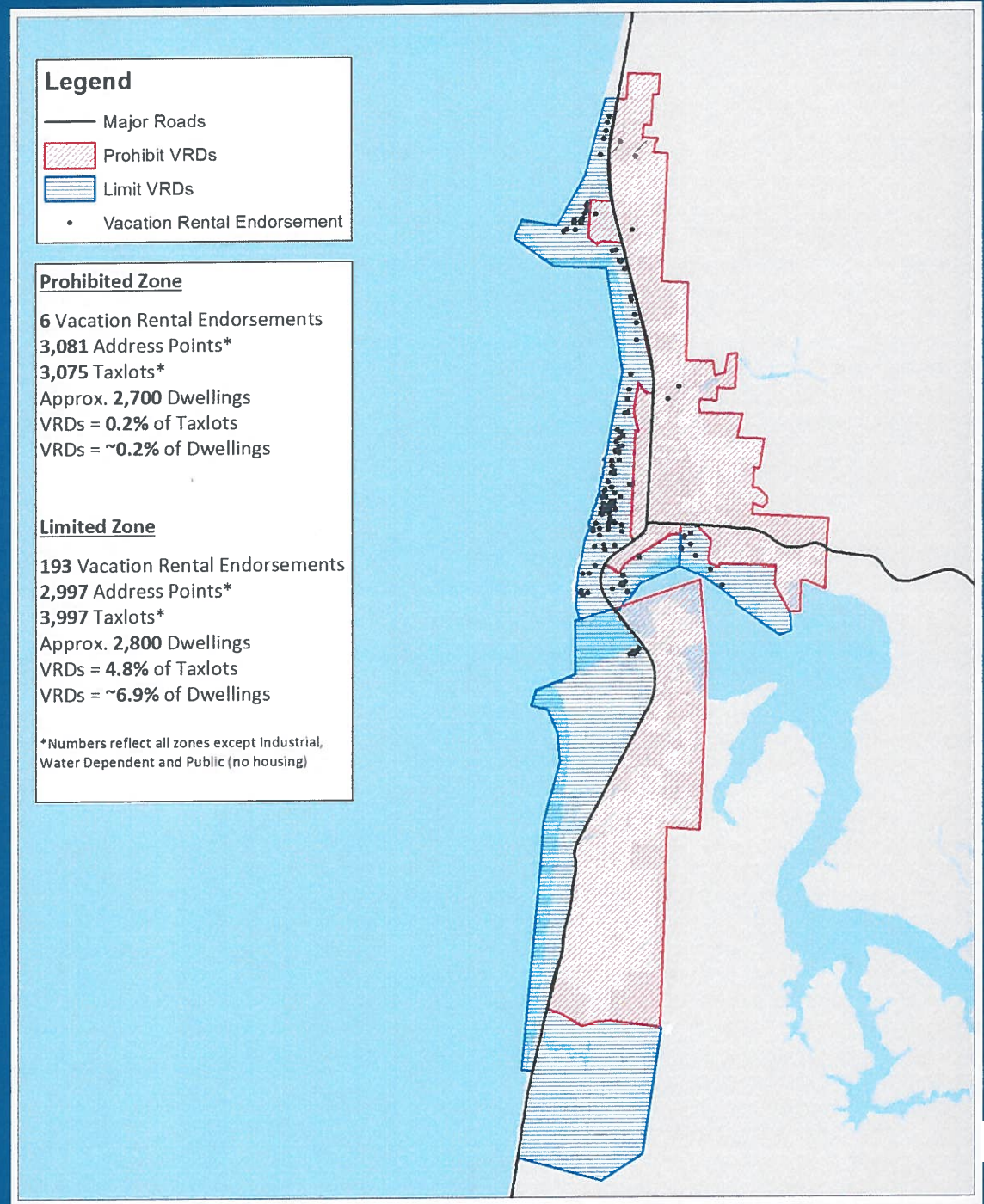
MAP ALTERNATIVE I

- VRDs ALLOWED WEST OF US 101 AND SOUTH OF US 20
- UNITS IN PROHIBITED AREAS TO BE PHASED OUT OVER TIME
- CAP TO BE IMPOSED ON MAXIMUM NUMBER OF VRDs IN LIMITED AREAS
- SPACING REQUIREMENTS FOR VRDS IN RESIDENTIAL ZONES



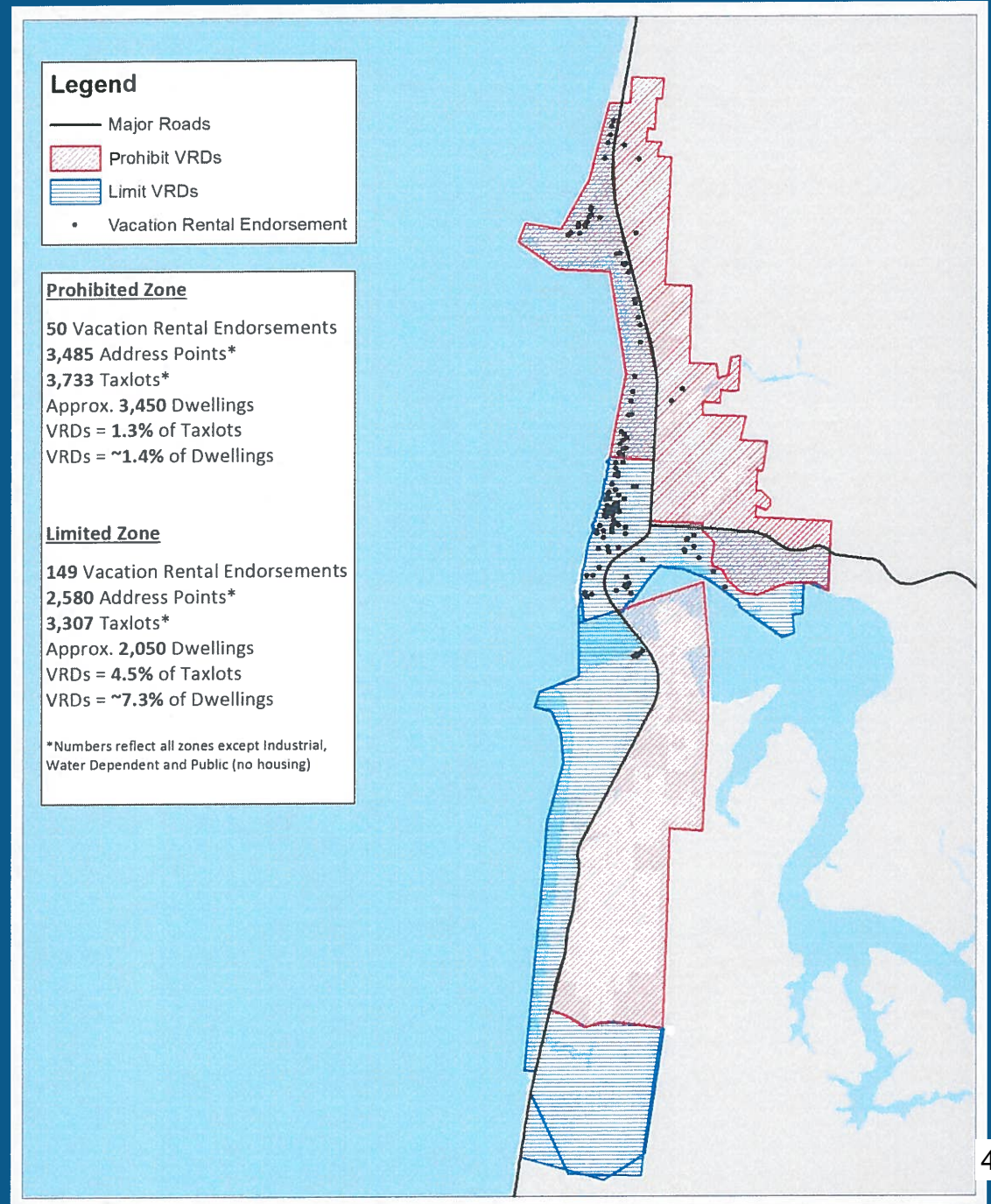
MAP ALTERNATIVE II

- HIGHWAY ORIENTATION SIMILAR TO MAP ALTERNATIVE I
- EXTENDS WEST OF US 101 AND SOUTH OF US 20 WHERE NEIGHBORHOODS LACK VRDs OR VRD AMENITIES
- CAP AND SPACING REQUIREMENTS TO BE APPLIED WHERE VRDs ARE ALLOWED



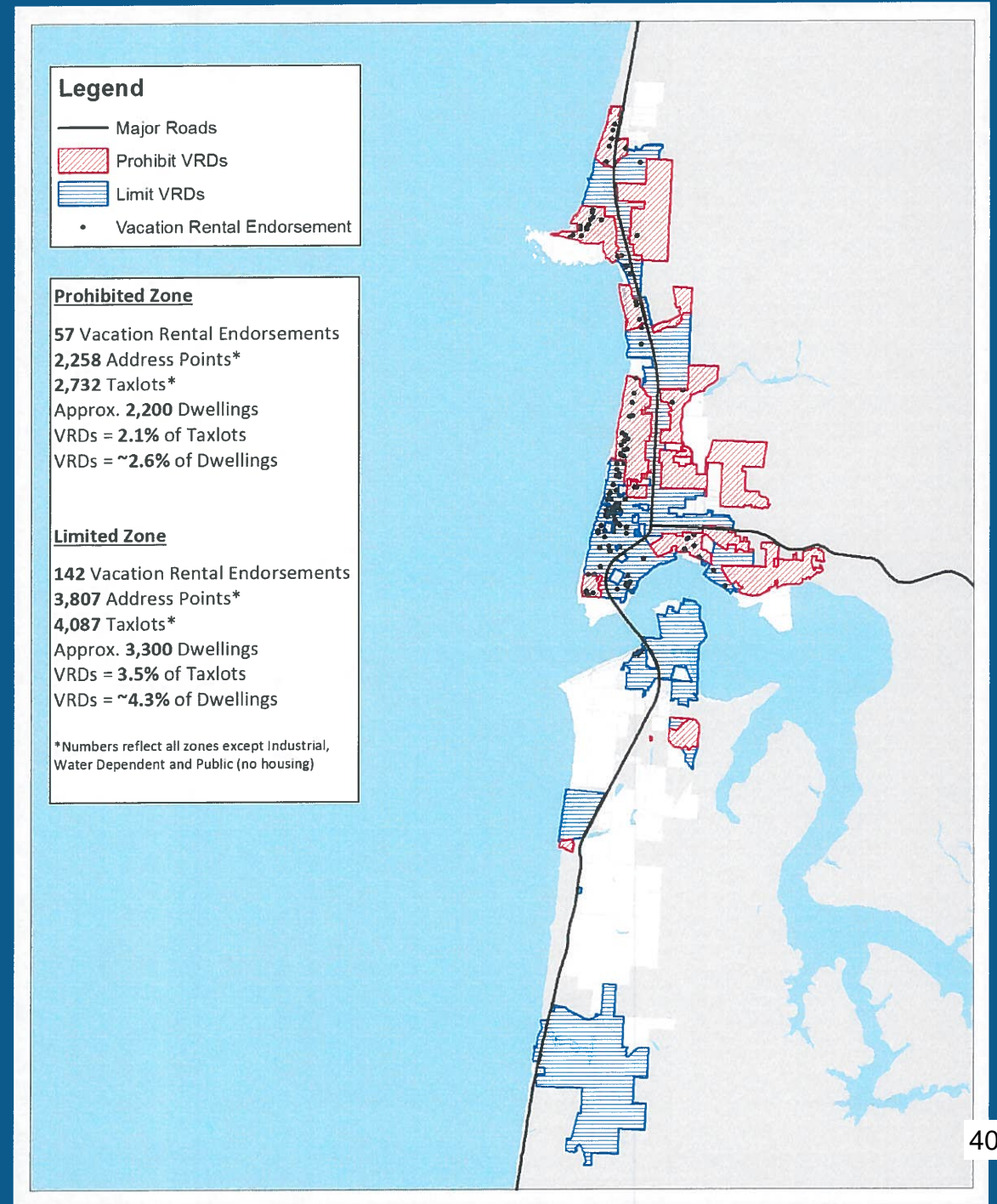
MAP ALTERNATIVE III

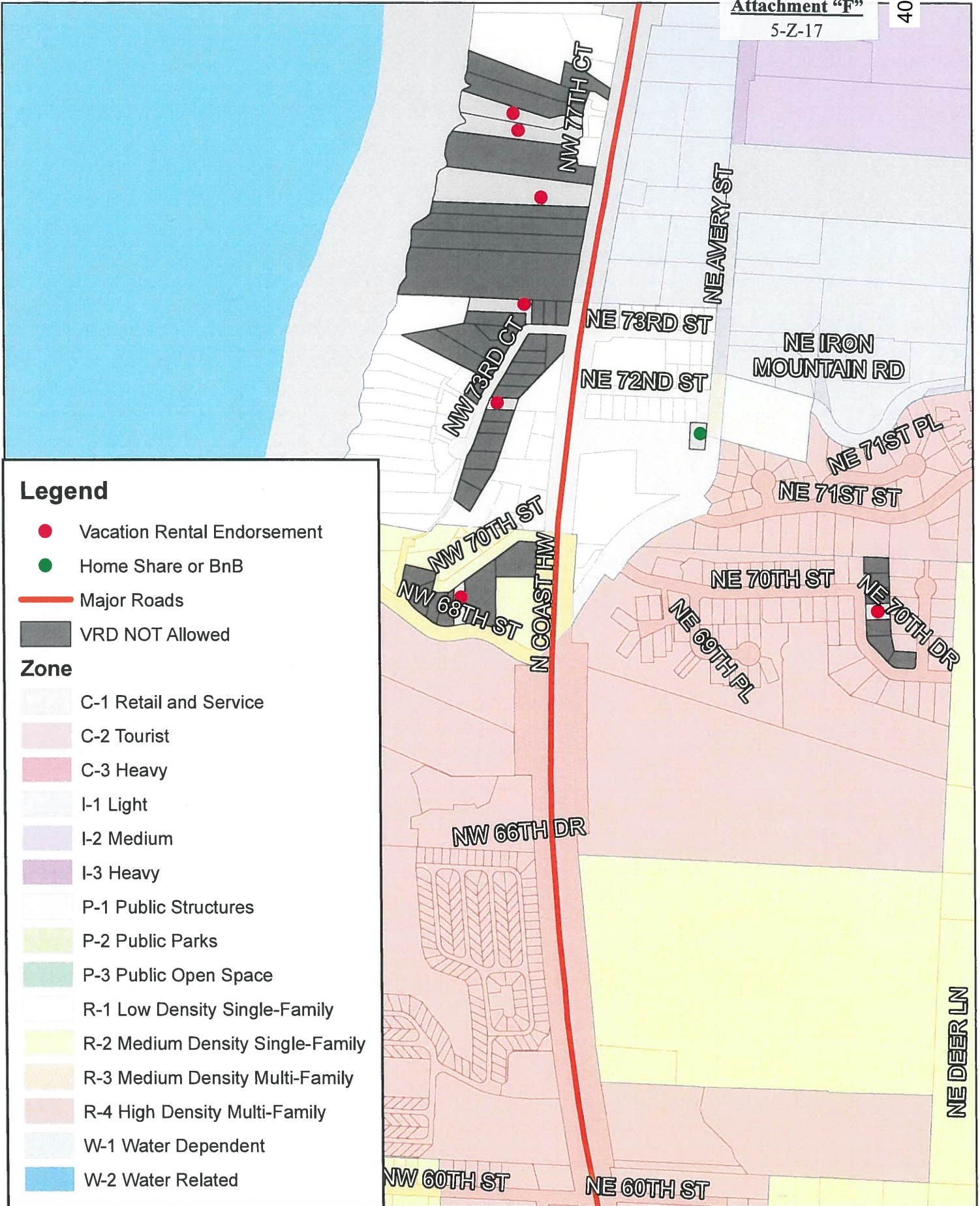
- LIMITS VRDs TO AREAS CLOSE TO TOURIST COMMERCIAL USES
- CAP AND SPACING REQUIREMENTS TO BE APPLIED WHERE VRDs ARE ALLOWED
- SIGNIFICANT NUMBER OF EXISTING VRDs IN PROHIBITED AREAS WHERE THEY WOULD BE PHASED OUT OVER TIME



MAP ALTERNATIVE IV

- PROHIBITS VRDs IN R-1 AND R-2 ZONED AREAS
- RATIONALE IS THAT THESE AREAS ARE THE MOST REMOVED FROM COMMERCIAL ACTIVITIES AND THE LARGER LOT SIZES MAKE THEM MORE PRONE TO NUISANCE IMPACTS FROM LARGE GATHERINGS
- CAP AND SPACING REQUIREMENTS MAY BE APPLIED WHERE VRDs ARE ALLOWED IN R-3/R-4
- SIGNIFICANT NUMBER OF EXISTING VRDs IN PROHIBITED AREAS WHERE THEY WOULD BE PHASED OUT OVER TIME





Legend

● Vacation Rental Endorsement

● Home Share or BnB

— Major Roads

■ VRD NOT Allowed

Zone

C-1 Retail and Service

C-2 Tourist

C-3 Heavy

I-1 Light

I-2 Medium

I-3 Heavy

P-1 Public Structures

P-2 Public Parks

P-3 Public Open Space

R-1 Low Density Single-Family

R-2 Medium Density Single-Family

R-3 Medium Density Multi-Family

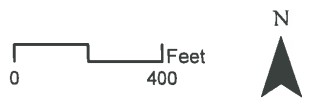
R-4 High Density Multi-Family

W-1 Water Dependent

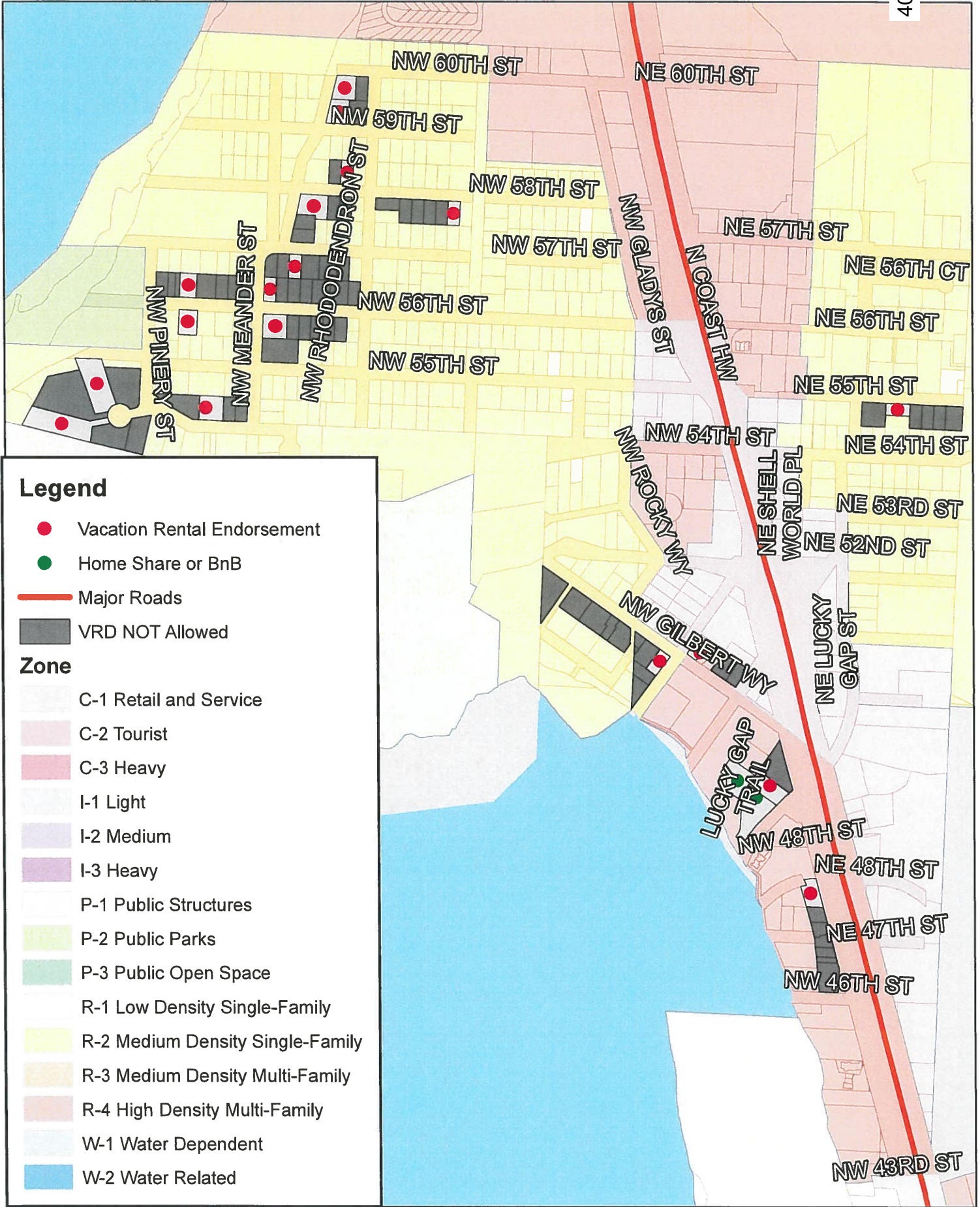
W-2 Water Related

Residential Zones # 1 - VRD Allowances

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



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Legend

- Vacation Rental Endorsement
- Home Share or BnB
- Major Roads
- VRD NOT Allowed

Zone

- C-1 Retail and Service
- C-2 Tourist
- C-3 Heavy
- I-1 Light
- I-2 Medium
- I-3 Heavy
- P-1 Public Structures
- P-2 Public Parks
- P-3 Public Open Space
- R-1 Low Density Single-Family
- R-2 Medium Density Single-Family
- R-3 Medium Density Multi-Family
- R-4 High Density Multi-Family
- W-1 Water Dependent
- W-2 Water Related

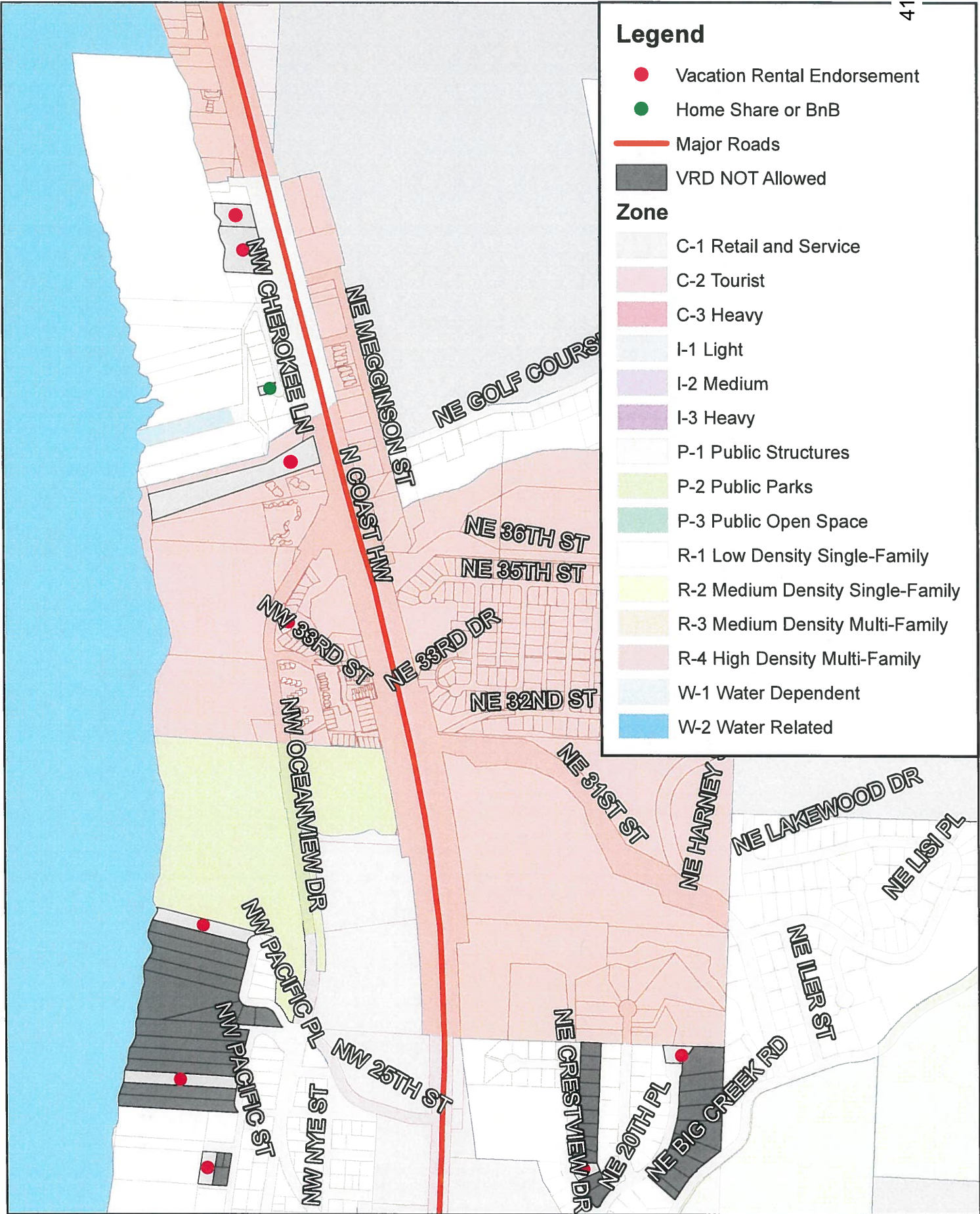


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 Newport, OR 97365
 Phone: 1.541.574.0629
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Residential Zones # 2 - VRD Allowances



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Residential Zones # 3 - VRD Allowances



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Legend

- Vacation Rental Endorsement
- Home Share or BnB

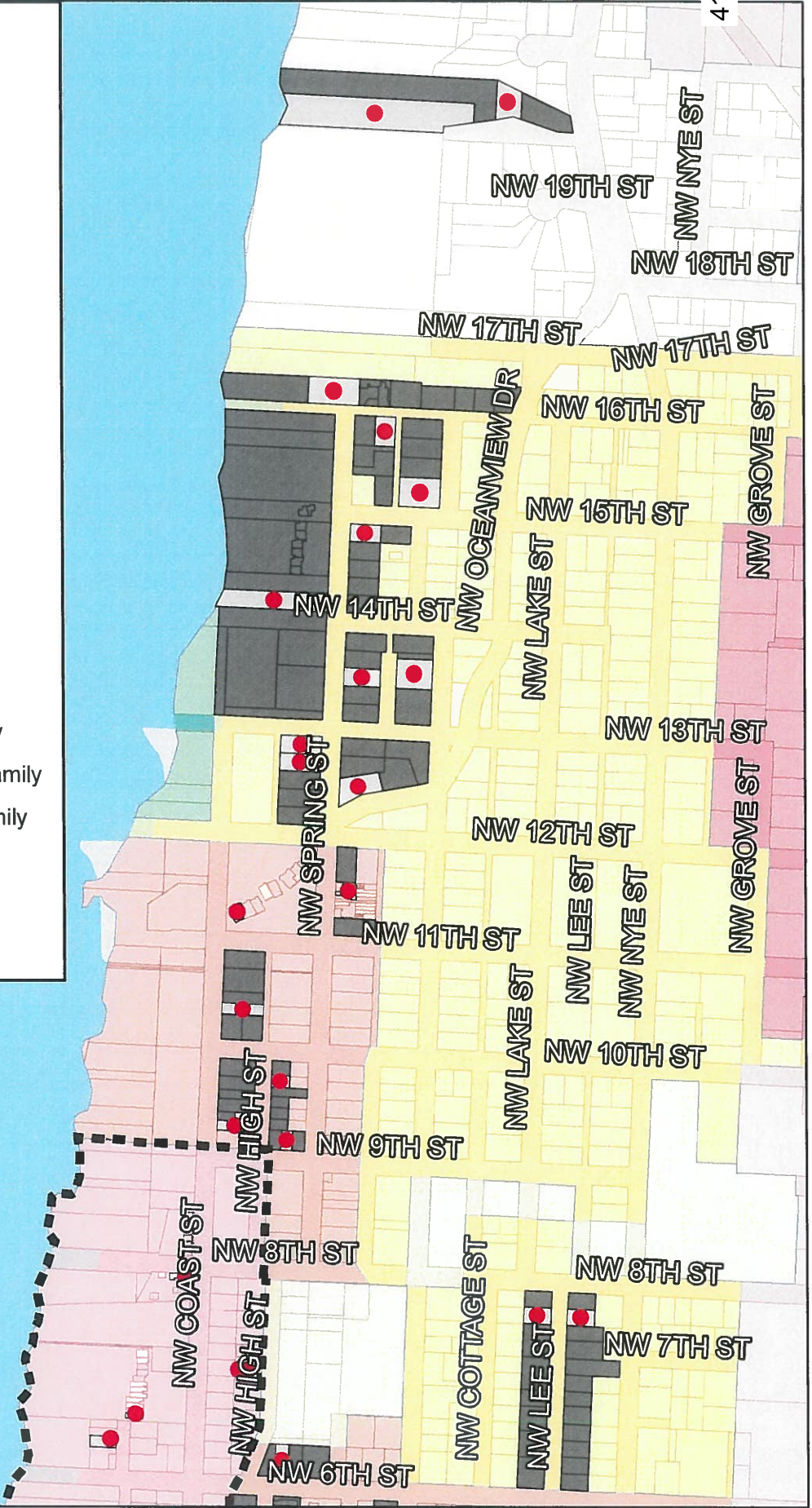
— Major Roads

■ VRD NOT Allowed

⬢ C-2 Zone

Zone

- C-1 Retail and Service
- C-2 Tourist
- C-3 Heavy
- I-1 Light
- I-2 Medium
- I-3 Heavy
- P-1 Public Structures
- P-2 Public Parks
- P-3 Public Open Space
- R-1 Low Density Single-Family
- R-2 Medium Density Single-Family
- R-3 Medium Density Multi-Family
- R-4 High Density Multi-Family
- W-1 Water Dependent
- W-2 Water Related



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 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 Phone: 1.541.574.0629
 Fax: 1.541.574.0544

Residential Zones # 4 - VRD Allowances



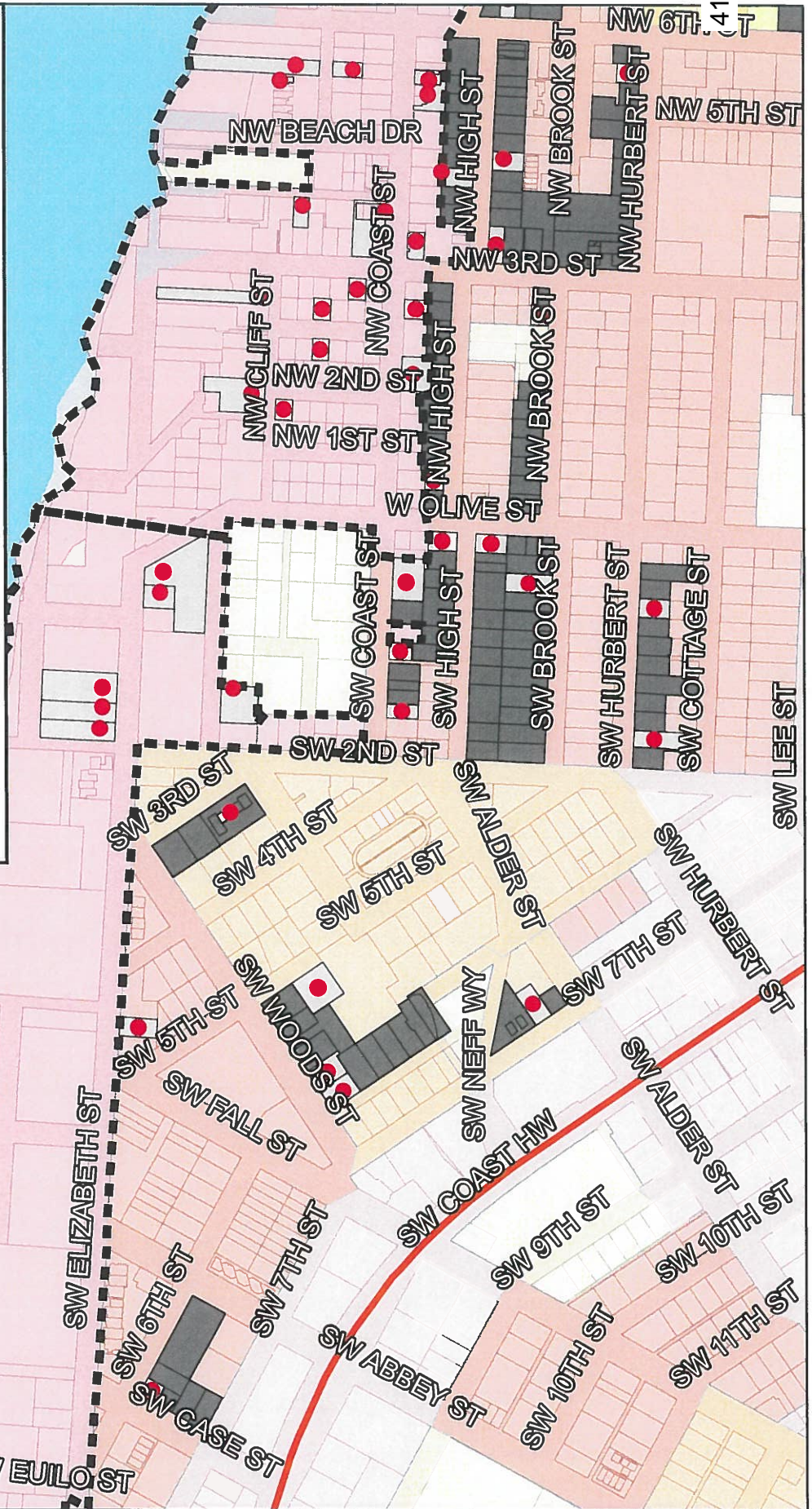
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Legend

- Vacation Rental Endorsement
- Home Share or BnB
- C-2 Zone
- Major Roads
- VRD NOT Allowed

Zone

- C-1 Retail and Service
- C-2 Tourist
- C-3 Heavy
- I-1 Light
- I-2 Medium
- I-3 Heavy
- P-1 Public Structures
- P-2 Public Parks
- P-3 Public Open Space
- R-1 Low Density Single-Family
- R-2 Medium Density Single-Family
- R-3 Medium Density Multi-Family
- R-4 High Density Multi-Family
- W-1 Water Dependent
- W-2 Water Related

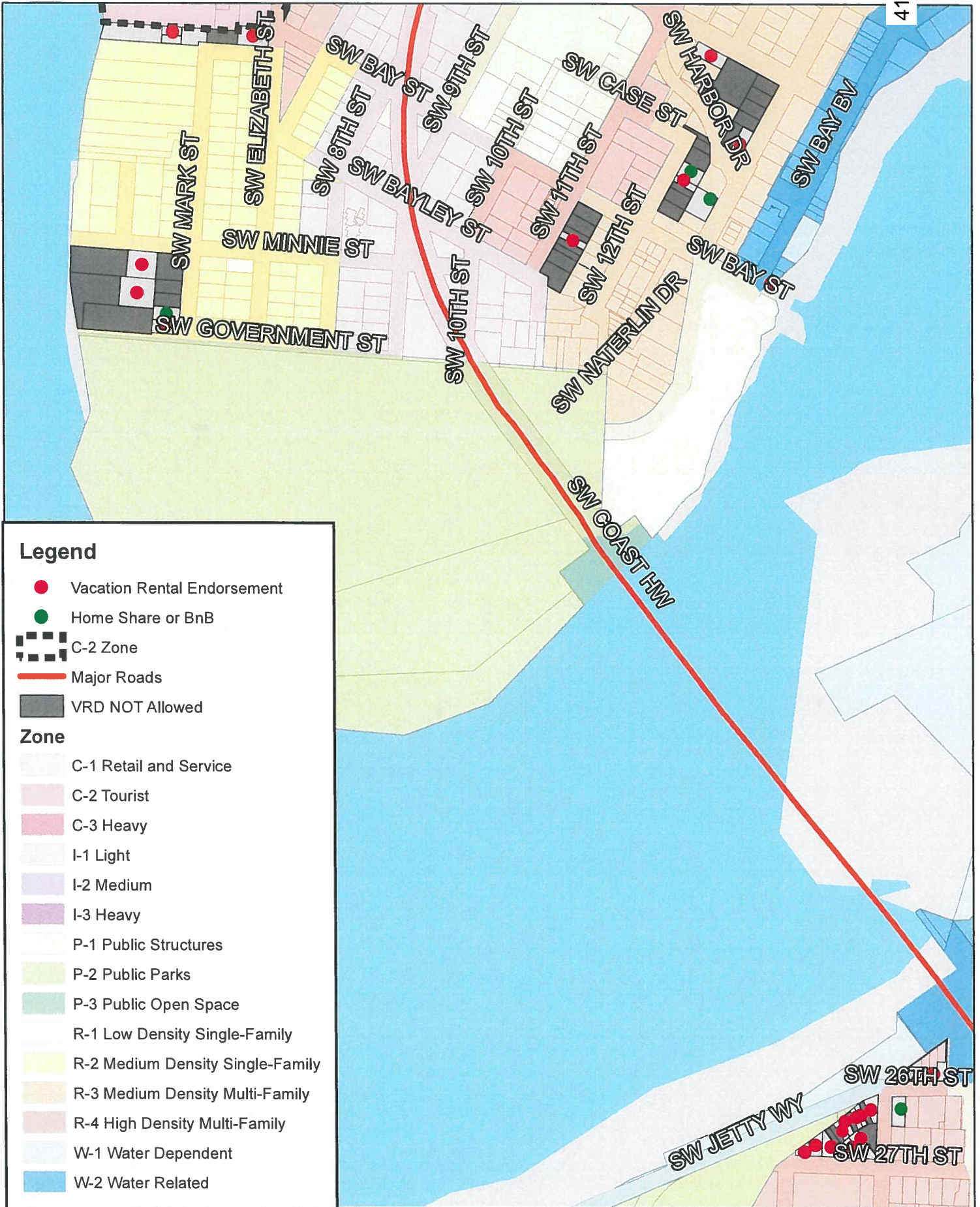


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Residential Zones # 5 - VRD Allowances



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Legend

- Vacation Rental Endorsement
- Home Share or BnB
- C-2 Zone
- Major Roads
- VRD NOT Allowed

Zone

- C-1 Retail and Service
- C-2 Tourist
- C-3 Heavy
- I-1 Light
- I-2 Medium
- I-3 Heavy
- P-1 Public Structures
- P-2 Public Parks
- P-3 Public Open Space
- R-1 Low Density Single-Family
- R-2 Medium Density Single-Family
- R-3 Medium Density Multi-Family
- R-4 High Density Multi-Family
- W-1 Water Dependent
- W-2 Water Related

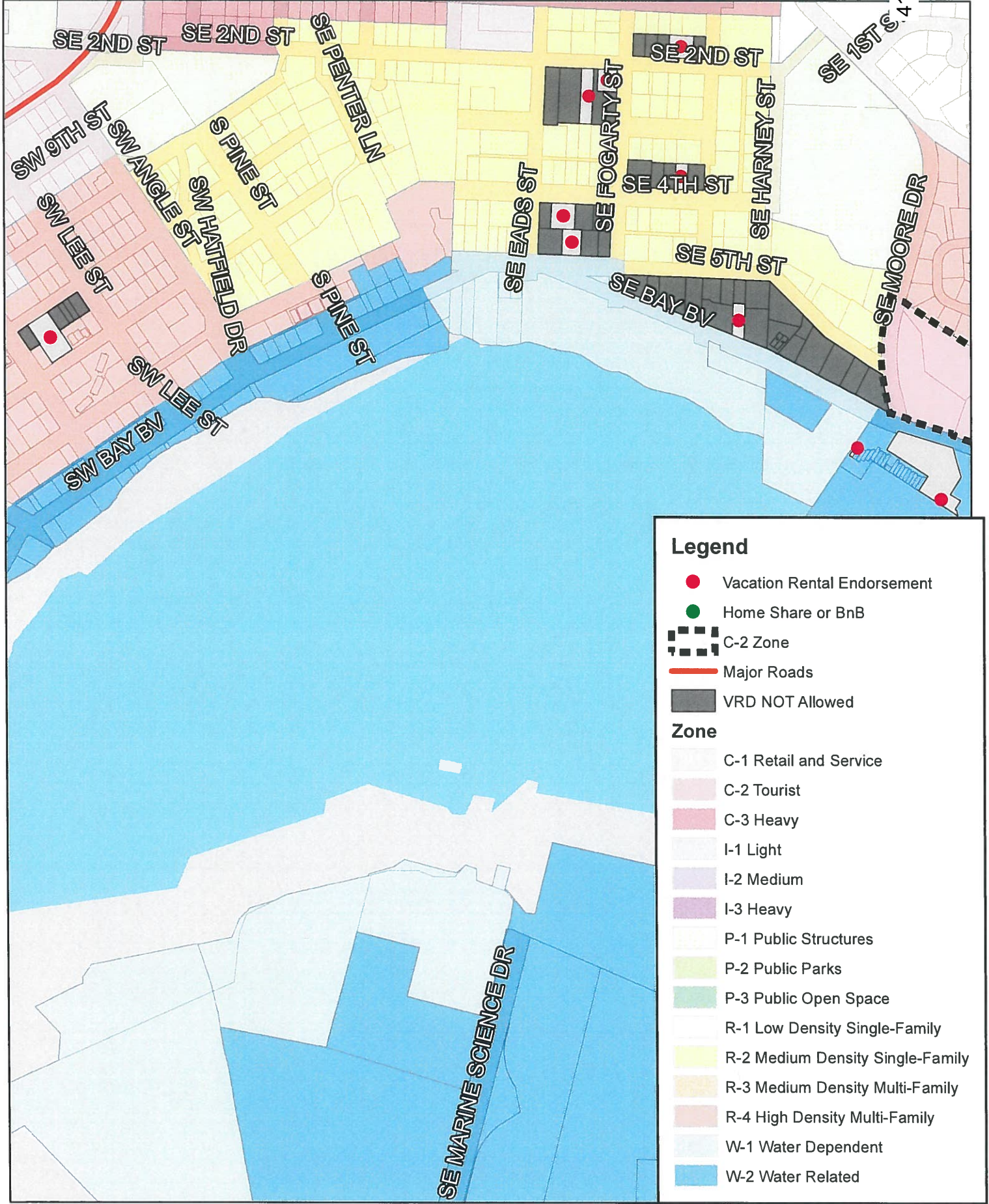


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Residential Zones # 6 - VRD Allowances

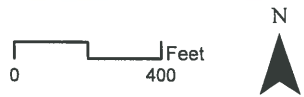


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Residential Zones # 7 - VRD Allowances



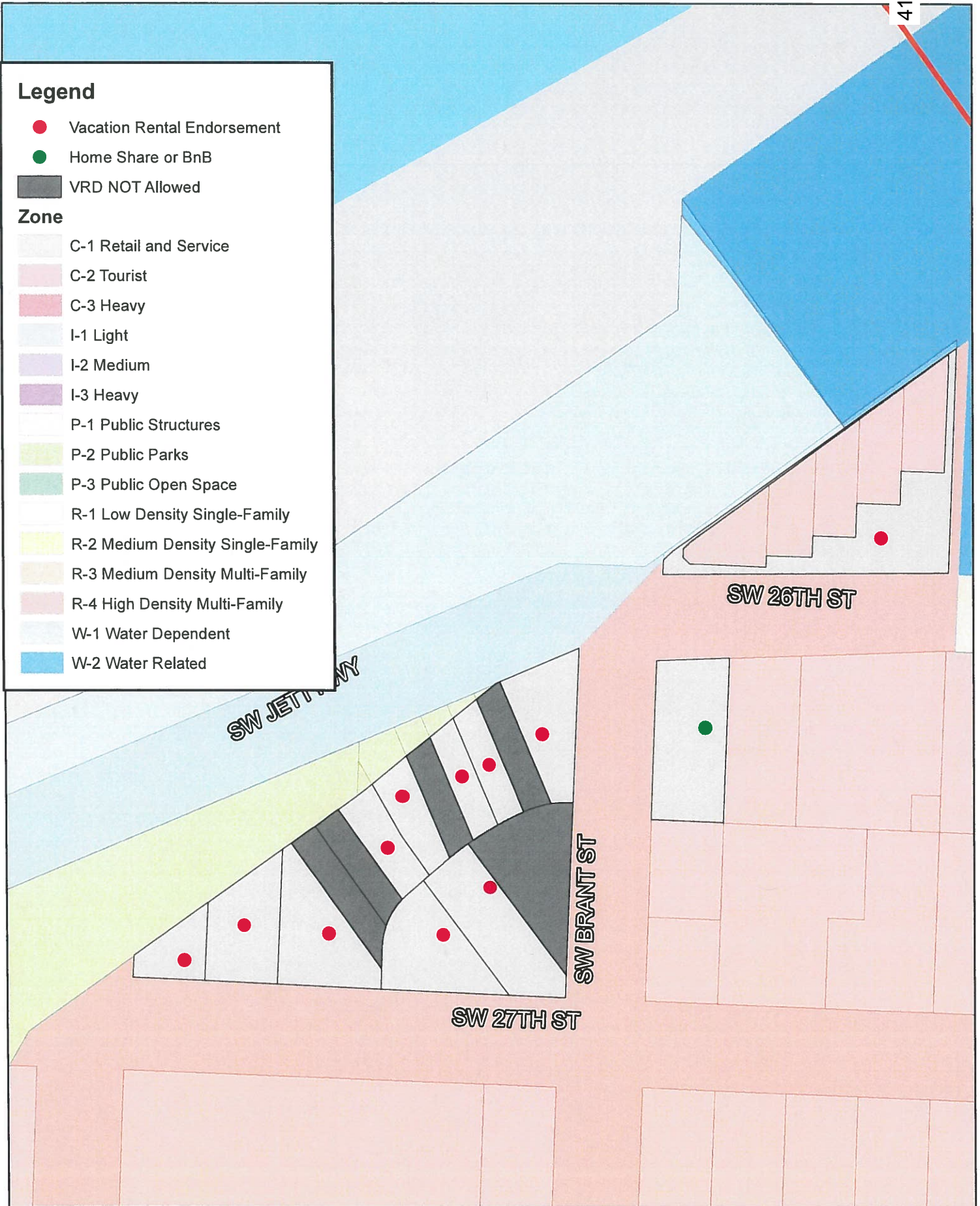
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Legend

- Vacation Rental Endorsement
- Home Share or BnB
- VRD NOT Allowed

Zone

- C-1 Retail and Service
- C-2 Tourist
- C-3 Heavy
- I-1 Light
- I-2 Medium
- I-3 Heavy
- P-1 Public Structures
- P-2 Public Parks
- P-3 Public Open Space
- R-1 Low Density Single-Family
- R-2 Medium Density Single-Family
- R-3 Medium Density Multi-Family
- R-4 High Density Multi-Family
- W-1 Water Dependent
- W-2 Water Related



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South Beach - R-4 Problem Street Segment Example



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City of Newport – Vacation Rental Ad-Hoc Committee Schedule

Meeting #1	January 31, 2018
<ul style="list-style-type: none"> • Committee Organization and Responsibilities • Future Meeting Schedule and Topics • History of VRD Regulations in Newport 	
Meeting #2	February 14, 2018
<ul style="list-style-type: none"> • Review and Discuss VRD Best Management Practices 	
Meeting #3	February 28, 2018
<ul style="list-style-type: none"> • Rationale for Regulating • Safety Requirements (Building Official / Fire Dept. Attended) • Definitions 	
Meeting #4	March 14, 2018
<ul style="list-style-type: none"> • Off-Street Parking Requirements 	
Meeting #5	April 4, 2018
<ul style="list-style-type: none"> • Continued Discussion Off-Street Parking • Landscaping / Waste Management / Noise / Signage 	
Meeting #6	April 18, 2018
<ul style="list-style-type: none"> • Maximum Overnight/ Daily Occupancy / Residency Requirements • Locational Concerns – Mapping Exercise 	
Meeting #7	May 2, 2018
<ul style="list-style-type: none"> • Locational Concerns Map (Rendered in GIS with Dwelling Unit Count and Zoning) • Allowed Locations / Density Limits / Tenancy Limitations 	
Meeting #8	May 16, 2018
<ul style="list-style-type: none"> • Enforcement Overview (Police Department Staff to Attend) • Discuss Enforcement Policies / License Renewal and Expiration 	
Meeting #9	June 13, 2018
<ul style="list-style-type: none"> • Continued Discussion License Renewal and Expiration • Approval Process / Posting Requirements / Effect on Existing Rentals / Room Tax & Fees 	
Meeting #10	June 27, 2018
<ul style="list-style-type: none"> • Revisit Occupancy Limits & Tenancy Limitations / Cap Levels / Proximity Limits • Locations for B&Bs and Home shares / Options for Nye Beach Tourist Commercial 	
Meeting #11	July 11, 2018
<ul style="list-style-type: none"> • Wrap up Topic Area Assessments • Discuss Structure of Public Open Houses 	
Meeting #12	July 25, 2018
<ul style="list-style-type: none"> • Review Materials for Open Houses 	
Outreach	<i>Public Open Houses (8/15 and 8/22)</i>
Meeting #13	September 5, 2018
<ul style="list-style-type: none"> • Reconvene to Review Feedback and Adjust Recommended Alternatives, as Needed 	
Meetings #14/#15	September 26, 2018 & October 3, 2018
<ul style="list-style-type: none"> • Review Draft Code Amendments for Consistency with Policy Alternatives • Recommendation to Planning Commission (Start Formal Legislative Adoption Process) 	

* All meetings to be held 1 – 3pm in Newport City Hall Council Chambers unless otherwise noted on agenda.

** Mtg materials will be posted to the Committee webpage at: <http://newportoregon.gov/citygov/comm/vr.asp>

Draft MINUTES
City of Newport
Vacation Rental Ad-Hoc Committee Meeting #15
Newport Recreation Center, Room 124-B
Wednesday, October 3, 2018

AC Members Present: Carla Perry, Norman Ferber, Jamie Michel, Margaret Dailey, Bill Posner, Bonnie Saxton, Martha Winsor, Don Andre, and Pam McElroy.

AC Members On Phone: Cheryl Connell

AC Members Absent: Lauri Hines, Charlotte Boxer, Braulio Escobar,

Planning Commission Liaison Present: Jim Hanselman.

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

Public Members Present: Wendy Engler, CM Hall, Bill Branigan, Rod Croteau, and Frank DeFilippis

1. **Call to Order.** The meeting was called to order at 1:00 p.m.
2. **Disclosures.** Tokos asked for conflicts of interest. Saxton, Ferber, and Michel disclosed they had potential conflicts of interest. Dailey, Hanselman, Perry, Posner, Connell, McElroy, and Winsor stated they had no conflicts.
3. **Approval of Minutes from the September 26, 2018 Meeting.** Tokos asked for input on the minutes. None were heard.

MOTION was made by Michel, seconded by McElroy to approve the September 26, 2018 Vacation Rental Ad-Hoc meeting minutes as presented. The motion carried unanimously in a voice vote.

4. **Review Agenda, and Revise as Needed.** Tokos asked for Items 4 and 5 on the agenda to be swapped to make sure everything is wrapped up.
5. **Committee Requests.** Tokos reviewed the adoption schedule that was handed out to the AC. Posner asked how the elections for the City Council (CC) would affect the schedule. Tokos said it depended on timing and explained what would happen during the timeline. Michel asked if the work session meetings were open to public. Tokos said yes. Ferber was concerned that Planning Commission (PC) and CC meetings overlapped. Tokos explained that it would give the CC a chance to review before the final hearings. Ferber thought the VRD amendments were a significant issue and wanted to make sure they didn't get short shifted.

Andre entered the meeting and sited a potential conflict of interest.

6. **Review Draft Code Amendments for Consistency with Policy Direction.** Tokos reviewed what was discussed at the previous meeting as far as the review of rationale of changes. Dailey suggesting having the Proof of Use be a fiscal year instead of a year. Tokos to change.

Tokos started the conversation on additional operation requirements. Posner suggested defining timely manner. A discussion ensued on the response time for complaints and whether a compliance vendor would cover complaints. Tokos said it was a policy maker decision and would mean a complaint would go through the third party and then on to the owner. Michel was concerned that putting the onus of tracking the complaints on who is receiving the complaints wasn't good. Dailey said there could be a requirement for both a diary by owner and tracking through an enforcement vendor. Tokos said the recommendation to have a third party vendor for a centralized complaint system would mean it would have a record of the complaint.

Michel suggested to removing "questions" on the list issues to respond to in a timely manner. The AC was in general agreement. Winsor suggested adding that they are required to tell the complainant there is a third party vendor or city website for them to register the complaint with. Perry asked if any language in the document that addresses complaints through a complaint system. Tokos said there was language for an electronic availability of VRD information online but no language to commit the city to a third party vendor as an ordinance. It would be an independent action. Michel wanted to make sure there was a centralized complaint department and enforcement officer at the city. Tokos said it was included in the draft motion he put together for the AC to recommend that the City retain a third party vendor to do this. He said it would go

under electronic availability. Perry requested it also be under complaints. Hanselman wanted it referenced that it had to be recorded and the complaint number is also included on the sign posted outside the VRD. Connell said part of the language was to have all VRD post numbers outside property. She wanted to make sure it was a venue for people to call with complaints and then have the VRD company number to track this was important. She thought both needed to be in place. A discussion ensued regarding requiring the city to have an option to log complaints. Hanselman wanted to make sure an infraction was not only dealt with but was recorded. A discussion ensued regarding the three strikes rule for VRDs with problems, and how complaints would be addressed and recorded. Tokos to add language that the city would make a centralized venue commitment. It would appear under complaints or another spot that made sense.

Tokos reviewed the guest registry next. McElroy was concerned that if there were changes in the guest registry it needed to be reported to the management. She was concerned that information for emergency responders wouldn't be accurately recorded. Hanselman wanted guest registry information to be available to other necessary city staff. Tokos said the discussion was to have it available for emergency responders but it could be redrafted. He would put two options to have the information available for city staff and emergency responders.

Tokos reviewed mandatory posting next. Dailey requested they add the number and location of designated parking. Connell wanted the approved and required onsite parking to be added. Tokos to add. Tokos reviewed emergency information and noise levels next. Dailey suggested a nuisance separate provision under the additional operations category. Tokos would add and include examples such as light pollution.

Occupancy, landscaping, and solid waste management was reviewed next. Perry asked to have the term "valet service" added. The AC was in general agreement to add this.

Prohibited events were covered next. Michel didn't think it was the City's place to dictate what was going on in the unit. She felt the catchall was in the other licensing compliance requirements. A discussion ensued regarding different types of events and whether or not to include the language. Michel suggested changing "overnight" occupancy to "at any time" in occupancy. Ferber thought the nature of the gathering was different and he was okay with family reunions. A discussion ensued regarding whether or not to prohibit events, or limit to licensed occupancy at all times. Dailey suggested "We don't allow events in excess of occupancy". Perry suggested "Exceeding the maximum occupancy at any time". Tokos thought that exceeding occupancy can be enforced reasonably by police. Michel asked if they could take out "overnight" occupancy to be amended to just "occupancy". Dailey suggested "group events in excess of occupancy". Tokos would change the occupancy to maximum occupancy, not overnight, and change to group event and make an example that they are limited to occupancy of the unit. He said by changing it to occupancy, it was enforceable.

Inspections, appeals, violations and penalties were covered next. Perry suggested changing "may" to "shall". Ferber didn't want it changed to make sure those who had violation in error weren't charged. Tokos said there would be a warning first. Hanselman asked how many warnings were given before violations. Tokos said people are very responsive to warnings and typically took care of violations. A discussion ensued regarding how the City was notified on the corrections to violations. Tokos suggested adding a "48 hour" reference to response time to the violation in the language under penalties. McElroy asked what the rolling timeframe was. Tokos said the timeframe would start from the first violation and why it was structured as a 12-month period. Hanselman suggested the time period be longer than 12 months and set at 24 months. Tokos said the AC was tightening things up with a cooling off period. A potential for a cap would help with this and they should leave it as it was. Dailey wanted something added to say that if they lost their license twice they can't get an endorsement again. Michel questioned how the licenses of owners with multiple units would be handled when there was a violation at just one of their units. Perry said there were no fines under penalties and asked if they could be mentioned. Tokos said they would make sure that it was referenced to fine language.

Tokos reviewed the short-term rental land use regulations, purpose, and approval authority next. Dailey said that under the "C" where it says if one or more of the standards cannot be met, it doesn't lend itself to just parking. Tokos asked if it should just be for parking. Connell asked what standards were eligible for a Condition Use permit (CU). Tokos said the only thing that had been applied for a CU was parking and landscaping. Connell didn't think owner should get a CU to decrease parking and landscaping requirements. Tokos said they should consider long street blocks for CUs to allow a second VRD on a street face. Perry asked if they were trying to limit CUs did they need to include it in this section. Tokos said typically CUs were offered because rules didn't always apply perfectly. Michel wanted it as an option at all times. Connell thought CUs shouldn't be an option. Tokos said he would note that there was some concern by some of the AC that it should be tailored or limited in terms of what can qualify for CU review.

Tokos reviewed the submittal requirements and overlay zones next. Perry thought there had been a decision to no permit VRDs in residential zones (R-1 and R-2). A discussion ensued regarding why VRDs shouldn't be allowed in R-1 and R-2 zones. Tokos asked for the rationale for not allowing VRDs in those zones. Saxton said a reason to prohibit VRDs was that R-3 and R-4 zones were more prone to have more affordable housing than in R-1 and R-2 zones. Hanselman said most of

the public feedback said to prohibit VRDs in R-1 and R-2 zones. He felt it was the AC's duty to listen to the public. Connell said that R-1 and R-2 zones were designed to have less traffic than R-3 and R-4. The burden on R-1 and R-2 zones was excessive because they weren't designed for this. She thought that if VRDs were allowed in R-1 and R-2 zones, they needed to be limited to a maximum number of days rented. A discussion ensued regarding the impact of VRDs on traffic of residential neighborhoods. Tokos would add the language for prohibiting in R-1 and R-2 zones as a fourth alternative and create an alternative map to illustrate where these zones were.

Tokos reviewed the approval standards next. Hanselman questioned included the "4-5%" cap in the text. Tokos said the CC would want something to provide them council on how to set the cap total number basis. A discussion ensued regarding what the AC agreed upon for the cap numbers. Tokos would add the language to say a discussion was to set the cap number between 200-300 with an alternative of just 4 percent.

Tokos reviewed spacing alternatives next. Dailey wanted a definition of what a long segment street was. Occupancy alternatives were covered next. Michel reminded that "overnight" should be taken out for maximum occupancy.

Tokos reviewed the parking standards alternatives, shared access, landscaping and non-conforming short-term rental alternatives next. Tokos explained that once the new rules went in to place, all licensed VRDs were non-conforming because they were lawfully licensed but didn't meet the current rules. He explained how each of the three alternatives would work for non-conforming uses.

Tokos noted the transient room tax sheets provided to the AC. He noted that Airbnb was paying the largest amount of online booking transient room tax payments. Tokos noted the documents shared with the AC that included an article from Escobar, the Oregonian Article, the Washington Post Article, Wendy Engler's letter, and Dailey's article.

He asked for a motion.

Motion was made by Dailey, seconded by Ferber that the committee find the draft revisions to the Newport Municipal Code related to short-term rentals, as amended at this meeting, reflect the information reviewed and discussed by the ad-hoc work group and are generally consistent with the policy direction provided by the group. There are a number of policy alternatives involving topic areas where we were unable to reach consensus. The Planning Commission and City Council will need to resolve them and we, as individuals, may advocate for those we feel strongly about as the amendments move toward formal adoption.

Additional work is needed to improve enforcement of short-term rentals and the ad-hoc work group strongly recommends the city further evaluate, and possibly retain the services of a third-party vendor to develop a centralized complaint system that facilitates transparency and citizen access to information.

We recommend that the draft code, policy option documents, summaries from the open houses, and all other information reviewed by the ad-hoc work group be forwarded to the Planning Commission for its consideration.

Perry wanted it noted that possible hiring of a third party vendor would do monitoring, and asked to have "monitoring" be added to the motion. Connell wanted the last sentence to add that "the summaries and comments as written were submitted". Hanselman asked to add to second paragraph for the PC and CC look at the Nye Beach overlay. Ferber thought this was another conversation. Tokos said as a PC member, Hanselman had the power to raise this and ask for it to be moved on after taking testimony at the Planning Commission level. He said it wasn't specifically discussed as the AC group and this group's mandate was for VRDs and was not a broader issue. Winsor said she appreciated the thought of adding something like this but it didn't seem to be something appropriate to include. The AC was in general agreement to add Perry and Connell's additions to the motion.

7. **Public Comment.** Rod Croteau addressed the PC. He noted that they had never defined occupancy before. He said there was strong evidence that the affordable housing issue expanded in all zoning issues and should forget this. He thought zoning was a blunt tool for what they were addressing here.

Frank DeFilippis addressed the AC. He was concerned about single point of contact and reporting back. He wanted to see a single point to minimize the impact on neighbors when reporting. DeFilippis said that if called multiple times in one day they should be counted as multiple violations. He thought zoning didn't make sense and felt VRDs should be more channeled for more commercial. DeFilippis noted what the occupancy rate of displacement for the community by VRDs. Was concerned limiting growth of Newport.

Wendy Engler addressed the AC as a public member. She wanted to address the caps and asked what the concept was. Tokos explained the difference between caps and prohibitions in areas. Engler asked if the license transferability would be

addressed. Tokos said there were three options that were discussed at the last meeting. Engler pointed out that the reason that so many lots were R-3 & R-4 was because the lots were so small. She congratulated the AC.

Michel addressed the AC as a public member and spoke as an employer of 45 year round employees that mostly resided in Newport. She stated that the industry did provide a lot of jobs and wanted it on record.

CM Hall addressed the AC. She commended the AC on what they had done. She asked how the cap at 200 would go. Tokos said they would look at how that options went depending on what alternatives were decided on. Hall wanted consistent signage across VRDs. She noted the article about the Manzanita where the person was being sued for two million dollars with people with friends and family coming in and out. She didn't want the City of Newport to get into this situation.

8. **Adjournment.** The meeting adjourned at 3:27 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

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, 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 as 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 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 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 of 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 if 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
Work Session
Newport City Hall Conference Room A
October 22, 2018
5:30 p.m.

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

Planning Commissioners Absent: Mike Franklin (*excused*)

PC Citizens Advisory Committee Members Present: Dustin Capri.

Public Members Present: Carla Perry, Pam McElroy, Jamie Michel, Frank DeFilippis, Wendy Engler, and Janet Webster.

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 5:35 p.m.
2. **Unfinished Business.**
- A. **Continued Review Draft VRD Code Amendments.** Tokos reviewed the notice for the public hearing and told the PC that the hearing on November 13th because of the holiday. The PC was in agreement to start the regular session meeting at 6 p.m. without a work session meeting. Tokos said the notices for the hearing would be mailed out on Wednesday, October 24, 2018.

Tokos reviewed the markup language and the changes that the City Council (CC) suggested. Croteau thought the B&B definition needed to be looked at and asked if owner occupied had to be just the owner or if it could be an authorized agent. Berman thought this deserved a change. Tokos would update. He noted the definitions of sale or transfer would be tightened up if a cap was in place and noted it was what constituted a sale of transfer with a corporation. Hardy asked how a change could happen. Tokos said it would be the original licensed holder. Hardy suggested saying “name of owner” doing business as.

Croteau said the exemption should be added on Page 3 of 27. Tokos said it would be going from an individual to a spouse. Hanselman asked if homeshares would need an endorsement license. Tokos said yes. Hardy asked if the city changed its agreement with Airbnb on how they reported who paid room taxes. Tokos said the City did away with the agreement because the State passed a law that did away with agreements with intermediaries.

Tokos noted that under parking there was a change to say that photos of off-street parking needed to be within 30 days of time of application. Croteau said there needed to be some sort of proof/certificate under liability. Tokos said this was the certificate for renewals. Hanselman suggested requiring a letter of intent at application, then before they picked up the endorsement license they had to have proof. Croteau said to take off “listing” from the number on residential proof.

Tokos reviewed the transferability provisions. Croteau asked what would happen if the license went with the sale and there was someone waiting in line for another license if caps were in place. Tokos said if there was a cap, then these wouldn’t free up for residential. As licenses were given up for sale they would open up spots. A discussion ensued regarding the three options for transferability. Croteau asked why the AC didn’t want transferability in residential. Tokos said the thought was that people in residential areas didn’t want the feeling that once a VRD, always a VRD. There was more of an expectation of this in a commercial area. Croteau asked where this was located in the language. Tokos said it was implied.

Capri asked how the voting on the amendments would happen. Tokos explained that there would be two public hearings, and on the second hearing the PC would take vote and provide recommendations to the CC on where they thought they should go. Capri was concerned about the PC taking testimony and then voting that same night. Tokos said the public testimony would allow the PC to hear input on the options and then they would be able to make a recommendation to the CC. A discussion ensued regarding how to take testimony and voting on recommendations. Tokos reminded the PC that the schedule was tentative. The first hearing was noticed and the PC could gauge the testimony and decide what they want to do next after public testimony. The PC was in general agreement with this. Janet Webster addressed the PC and questioned if the public would understand the public notice and what the criteria was. Tokos said these were the

standards for legislative changes. Wester thought this was important and suggested looking at it again to make sure it was easy to understand. Patrick noted that there was a lot of changes that were dependent on other changes and until everything was reviewed the PC couldn't make decisions.

A discussion ensued regarding how the PC would do vetting. Tokos suggested taking testimony and having a work session before another hearing to vote. He noted that all licensed VRDs would be nonconforming once the amendments were in place. Hardy asked if all VRDs would be noticed. Tokos confirmed they would.

Tokos explained that the endorsement renewal would happen during the normal business license renewal at the beginning of the fiscal year. Owners would have between July 1st and August 15th before the license would be presumed to be discontinued without any further action. Hanselman asked if the 45 day grace period was a State requirement. Tokos said it was a city requirement. Berman asked if it would be a two-step renewal process every year. Tokos confirmed it was.

Tokos reviewed approval standards next. He noted that the noticing for new VRDs to neighbors would be shifted away from a mailing notice to requiring a posted sign. Berman asked if the primary contact had been defined. Tokos said it wasn't defined but they would need to be able to respond within 30 minutes. Tokos said the Ad-hoc Work Group (AC) was in pretty much consensus that the 3.1/Frank Peters was the way to go. Hardy was concerned that a sign would have the potential of notifying residents that the unit was not occupied full time. Tokos said the AC had discussed this. Croteau asked about the thought to expand the 500 feet notice. Tokos said the AC was good with a sign posting as a replacement for mailing notices. Branigan wondered if there should be a color requirement for the signs. Croteau thought the sign should be required to be in English. Hanselman thought it should be Spanish as well. Patrick asked if there had been thoughts to numbering endorsement licensing. Tokos said this was already required to be posted. Capri asked if a condition use option for parking was granted for a VRD, would they have to reapply every year for it. Tokos said if it was a conditional use authorization, it ran with the property. Berman asked what "1-2" meant for the size of the sign. Tokos said it needed to be between one and two square feet. Berman thought the sign should be reflective if not illuminated.

Tokos covered fire/structural inspections. Capri asked if the Building Official was okay with the structural safety element. Tokos said yes, it was the Building Official's recommendation.

Tokos covered proof of use next. Croteau suggested taking out "must" show proof of use. Tokos would take it out. He reviewed the two year cooling off period next. Hanselman noted he had asked for information on how many days each VRD unit was used but the city didn't have this data. Hardy said the current report form didn't include the number of days rented. Hanselman thought there needed to be a proper data form in order for this information to be collected. Tokos thought this could be put on forms. Carla Perry addressed the PC and asked if the AC would see these forms and if they would reassemble to see if the information was actually covered in the form. Tokos said the administrative documents would be put together after the ordinance was passed. Perry asked that the AC be included and notified when those forms were ready.

Hanselman asked to add on the building inspection that the laundry room be required to have a GFCI if there was a sink by the receptacle. Patrick said they left this up to the Building Official to call out on his inspections.

Tokos reviewed the complaints next. Perry suggested there needed to be some mention of fines in this section. She said the AC was in agreement with enforcement but it wasn't in the document. Tokos said there were provisions but on this particular one they should consider defining what "timely manner" was. Branigan suggested one hour to respond. Jamie Michel addressed the PC and reported that if they were talking about the concern of the neighbors, her management company would reach out to the guest by phone or come to the unit. She said they would then respond to the neighbor and let them know how the concern was responded to. Hanselman stated they had to rely on the owner/manager to respond to concerns because the police couldn't respond. Michel thought an hour was reasonable for response time. Pam McElroy addressed the PC and asked how this would work with a central complaint reporting. Tokos said they planned on going with a third party vendor which would create the complaint system with a 24 hour dispatch. He noted that they couldn't control who chose to use that service and who the public contacted. If the public went through the central complain service, it would be dispatched to whomever was the designated contact. Berman asked if the third party complaint contact information needed to be on the sign. Hardy thought it should if it existed. The PC was in general agreement to say that timely manner was within one hour. Tokos said that "respond" meant getting back to the owner.

Tokos reviewed the guest registry next. Berman thought it was important to have the log available to the city so they could review the rental log. Croteau agreed and thought under 2.B is should say "emergency responders and the city" should have the rental log made available to them for a disaster. Hanselman suggested changing 3.B from "or" to "and"

so the owners couldn't hide behind the manager's name. Perry suggested changing D to add "off-street" to the number of approved parking spaces.

Berman asked if it was a violation if tenants parked on the street. Tokos said it wasn't a violation for on-street parking, it would be a violation that they didn't use the designated off-street parking. Berman was concerned about RVs parking on the streets for rentals. Tokos said the language by the AC said the renters had to use the designated off-street parking first. If there were more vehicles than this, they could use the on-street parking.

Croteau suggested changing "while occupied" to "while the dwelling was used". Tokos would change this. Croteau asked if it should say that liability was required. Hanselman suggested saying "required liability insurance". A discussion ensued regarding on the premises occupancy. McElroy said it should say that occupancy was "at any time". Perry said the AC agreed to add that statement at the end. A discussion ensued regarding occupancy limits. Tokos said the CC asked for clarification on appeals and it was added.

Berman said on Sections 45 and 50 there were three different ways the Municipal Code was referred and suggested that it be made consistent throughout to say "NMC". Tokos would change this. Branigan suggested putting in definitions that NMC meant Newport Municipal Code.

Tokos covered penalties next and the three strikes you're out language. Croteau asked if there would be language on fines included. Tokos said there wouldn't be if they had an endorsement because it would be the three strikes you're out risk. Berman asked if a violation went on for three days, would it be considered one or three violations. He thought it was an issue and needed to be defined. Tokos said they could run into issues when counting each day towards a three strikes rule. Frank DeFilippis addressed the PC and suggested defining duration. Tokos explained that owners would get one notice and if they didn't change things, it would be a citation.

Tokos reviewed the land use authorizations next. Croteau said under "purpose", he didn't like it saying "housing for a business". Tokos would change to "housing for employees of businesses".

Tokos reviewed the conditional use language and clarifying language for blocks that were long. Hanselman thought long streets might create an issue but didn't think a street with five houses should be considered a long street. A discussion ensued regarding standard blocks and street segments and how to factor them. They also discussed conventional blocks versus non-conventional blocks. Perry said that the AC agreed that the long blocks could be addressed in this way but there was never a number. She wanted to see long blocks be 20 houses.

The PC took a break to hold their scheduled regular session meeting at 7:02 p.m. and reconvened at 7:15 p.m.

Patrick asked if CC&Rs were checked for parking restrictions. Tokos said they would be private agreements that had to be enforced. All they were looking at for the shared parking was that the covenants included something that said the space they were claiming was reserved for them. Berman asked if water zones were considered commercial. Tokos said yes.

Tokos reviewed the cap alternative and how it would work. Croteau said anytime there was a percentage there needed to be a number. Tokos said that 200 to 300 was this range. Hanselman said that the AC had requested that it not be 220 to 300 and noted there was not a vote on this. He thought a lower number of 163 to 200 should be a number that could be used, but there wasn't consensus. Hanselman was concerned that he heard Tokos say this number range could be used but it wasn't included. He used 163 because that was the number of VRDs when the moratorium was in question. Tokos said there were two policy options with a top end and the PC could decide what the number should be. A discussion ensued regarding the maximum number of consensus. Hanselman didn't want the number to be listed on the right hand column. He felt it should be a percentage of the zone count, not a number. Tokos reminded the PC they would be adjusting the language as they whittled down the other areas. Hanselman was concerned that the AC had no consensus on the number or percentage. Croteau said most of the language would be determined on what map alternative was chosen. There was a discussion on what number was agreed upon at the AC meetings. Hanselman said there was no consensus on percentage but wanted the range to go from 163 to 275. Tokos reminded the PC that the way the code was structured was to give the percentage top end for the CC and by resolution. He thought the most efficient way was to move these forward and make a recommendation on what the numbers should be once they knew what map alternative to go with. Croteau and Patrick suggested having another alternative to be three percent. Capri noted that if the constraints were on street segments, this wouldn't matter. Tokos said they could use the spacing and cap together as well. He reminded the PC that the choice of alternative maps would give direction on what other things would go away. Hanselman said they were failing to recognize that a nerve was hit at 163 VRDs and wanted it to be recognized. Berman didn't feel 163 was a relevant number, but the percentage in a neighborhood was more relevant. Hanselman thought they couldn't put a number range when they didn't know where VRDs were going to be allowed. He was concerned

that that the AC was tasked with goals to protect the housing and neighborhoods and didn't feel that was included in the document. Tokos read the responsibilities the AC agreed to when they signed on. Capri was concerned there weren't options that showed how things were contingent on other things and felt it needed to be figured out because it was so confusing. Tokos noted they would go through policy option by policy option to find out where there was consensus, and give a recommendation to the CC. Croteau said after the public hearing the PC would have to sift through and provide a road map that was mixed in terms of options to the CC. He said he would be calling for a recorded vote on different alternatives to tell the CC on why they agreed or disagreed on things. This could be discussed in a work session then voted on in a regular session. Croteau said that the document needed to reflect what the PC wanted. Berman asked if it would show what the PC voted down. Tokos said it would.

Croteau asked what the best way to review was. Tokos suggested holding a public hearing to narrow the options, do another public hearing with the narrowed options, and then go to a vote. A discussion ensued regarding how the PC could narrow the options and how to come to consensus on decisions without a vote. Hanselman asked if the CC could ask for a moratorium on VRDs. Berman said the CC had already voted it down. Hanselman said that was then and it might be a more appropriate time to consider this. Tokos said there was a time and a place to look at either a moratorium or way to address additional applications and they needed to look at what the package should look like.

Perry asked about the language saying VRDs were permitted in all zones. Tokos said this was language for if there was a cap in place. Capri asked how many VRDs there would be if there was one per street. Tokos said they would get into problems when talking about areas where there were condos. Berman asked if there should be something about a frequency on how often the CC should review the ordinance. Tokos said things could be reviewed when the CC wanted to see it happen.

Tokos reviewed the spacing requirements next. Berman asked for clarification on the statement about only one VRD being allowed if it abutted a corner lot. Tokos would clean up the language. He reviewed the concept of treating a condominium unit as one unit and said there were challenges on townhouses in South Beach. Tokos reviewed occupancy next. The PC was in general agreement to go with "children 3 and under".

Tokos reviewed the parking standards next. Berman thought that if the VRD couldn't meet the parking standards, they should reduce their occupancy. He was concerned that there wasn't any language saying anything about this. Hanselman said the AC talked about occupancy being set on number of rooms and parking. Tokos said it would be one off-street parking space, per bedroom for use. Berman wanted this included in the language. Tokos would review the language. Berman suggested adding it to D.1 saying "maximum of five bedrooms, not to exceed the number of off-street parking spaces". Tokos said E.1 had a conditional use and E.2 was saying that they fell in a parking district and could use public parking to meet requirements.

Tokos reviewed non-conforming short term rentals next and the alternatives. Croteau thought they should do three to five years for amortization. Tokos said the City Attorney advised not to go below five years for legal defensibility. A discussion ensued regarding taking public testimony and how to use it to make decisions on policy options. Hardy suggested that the PC take a harder look at the premise they were working under because the idea of protecting housing and the character of neighborhoods was prejudicial and inaccurate. She said the character of neighborhoods and the problems from VRDs were things that were common across Newport.

Tokos reminded the PC that the notice would be mailed out by October 24th for the November Planning Commission public hearing.

3. **New Business.**
4. **Director's Comments.** No Director comments.
5. **Adjournment.** Having no further discussion, the meeting adjourned at 8:15 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

CITY OF NEWPORT
169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA



Attachment "I"
5-Z-17

428

phone: 541.574.0629
fax: 541.574.0644
<http://newportoregon.gov>

mombetsu, japan, sister city

PUBLIC NOTICE OF POTENTIAL LAND USE CHANGE

This is to notify you that the City of Newport has proposed land use regulations that may affect the permissible uses of your property and other properties. Specifically, the land use regulations relate to circumstances under which dwelling units may be used as vacation rentals. The proposed changes are contained in draft Ordinance Number 2144.

The City of Newport has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone districts, and may change the value of your property.

On Tuesday, November 13, 2018, the City of Newport Planning Commission will conduct a public hearing regarding the adoption of Ordinance Number 2144. The hearing will be held at 6:00 p.m. in the Newport City Hall Council Chambers, located at 169 SW Coast Highway.

Newport Municipal Code Section 14.36.010 allows city land use regulations to be amended by the City Council, upon recommendation of the Planning Commission, when it is determined that such changes are required by public necessity and the general welfare of the community. These are the approval criteria for the proposed land use regulations, and testimony and evidence must be directed toward these criteria or other criteria, including criteria within the Newport Comprehensive Plan and its implementing ordinances, which persons believe apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to an issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue.

Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, and testimony from proponents and opponents to draft Ordinance Number 2144. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing.

Draft Ordinance Number 2144, and related materials, are available for inspection and may be purchased for reasonable cost at the Community Development Department, Newport City Hall, located at 169 SW Coast Hwy, Newport Oregon 97365. A copy of draft Ordinance Number 2144 may also be downloaded from the City of Newport website at: <http://newportoregon.gov/>.

For additional information concerning draft Ordinance Number 2144, you may contact Derrick Tokos, City of Newport Community Development Director, at 541-574-0626 or d.tokos@newportoregon.gov. Testimony may also be submitted via this email address.

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

The Newport Planning Commission will hold a public hearing on Tuesday, November 13, 2018, at 6:00 p.m. in the City Hall Council Chambers to consider File No. 5-Z-17, regarding the adoption of Ordinance Number 2144, land use regulations related to circumstances under which dwelling units may be used as vacation rentals. Newport Municipal Code Section 14.36.010 allows city land use regulations to be amended by the City Council, upon recommendation of the Planning Commission, when it is determined that such changes are required by public necessity and the general welfare of the community. These are the approval criteria for the proposed land use regulations, and testimony and evidence must be directed toward these criteria or other criteria, including criteria within the Newport Comprehensive Plan and its implementing ordinances, which persons believe apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to an issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Draft Ordinance Number 2144, and related materials may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above).

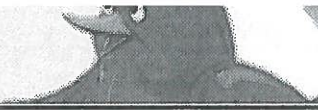
(FOR PUBLICATION ONCE ON WEDNESDAY, NOVEMBER 7, 2018)

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541-265-8571



LEGAL NOTICES

LEGAL ADLINES:

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WEDNESDAY EDITION:
1pm Tuesday

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NOTICE OF SHERIFF'S SALE #18-1806

On December 18, 2018, at the hour of 10:00 a.m., at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 1053 Southwest 14th Street, Lincoln City, OR 97367. The court case number is 17CV17238. Specialized Loan Servicing, LLC, plaintiff(s) vs. The Unknown Heirs and Devises of Phillip I. Banner aka Phillip Ivan Banner; Lewis Keith Banner; Kenneth Lee Banner; Jennifer Nicole Banner; Linda Marie Banner; Bank of America, N.A.; Pacific West Ambulance; Occupants of the Property defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> N-07, N-14, N-21, N-28 (68-28).

NOTICE OF SHERIFF'S SALE #18-1816

On December 18, 2018, at the hour of 10:00 a.m., at the Lincoln County Sheriff's Office, 225 W Olive St., Rm 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 691 E Barclay Meadows Road, Waldport, OR 97394.

The court case number is 15CV26378. Nationalstar Mortgage LLC D/B/A Champion Mortgage Company, plaintiff(s) vs. The Unknown Heirs and Devises of Anne L. Salmen; The Unknown Heirs and Devises of Robert S. Salmen; United States of America; State of Oregon; The Roban Trust Dated April 15, 1992; Kathleen Bagley; Occupants of the Property defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to <http://www.oregon-sheriffssales.org/county/lincoln/> N-07, N-14, N-21, N-28 (69-28).

BOARD NOTICE

A regular meeting of the Board of Directors of Central Lincoln PUD will be held at 10:00 a.m. on Wednesday, November 14, 2018 at Central Lincoln's Northern Operations Center located at 7501 NE Avery St. Newport. The Board will begin its meeting with a public hearing on the standards, criteria and policy directives to be adopted as part of the hiring of a new General Manager. The Board will then hear a 30% design update on a possible new Headquarters building and hear a presentation on the utility's FY18 Audit. The Board will approve hiring criteria for General Manager Recruitment; consider a contract award for a three-year insurance agent of record contract, a contract award for two service trucks and a resolution to approve a procurement policy. The Board will also hear a status report on the utility's energy efficiency programs, review a report detailing Central Lincoln's property tax payments and discuss employee health care benefits & board compensation and conduct other business as it arises. To review the meeting agenda, please go to clpud.org. N-07 (70-07).

IN THE CIRCUIT COURT

OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN PROBATE DEPARTMENT ESTATE OF ARTHUR JAMES LANGGUTH, DECEASED CASE NO. 18PB08191 NOTICE TO INTERESTED PERSONS

Notice is given pursuant to ORS 113.155 that Alfred Langguth has been appointed personal representative of the above estate. All persons having claims against the estate are required to present them within four (4) months after the date of the first publication of this Notice, or their claims may be barred. Claims are to be presented at the address of the attorney for the personal representative, set forth below. All persons whose rights may be affected by this estate proceeding may obtain additional information from the records of the Circuit Court, the personal representative, or Jeffrey C. Hollen, attorney for the personal representative. Date of first publication: November 7th, 2018. Jeffrey C. Hollen, OSB #761757 Attorney for Personal Representative Ouderkirck & Hollen P. O. Box 1167 615 SW Hurbert Street, Suite A Newport, OR 97365 N-07, N-14, N-21 (71-21).

CITY OF TOLEDO OREGON REQUEST FOR PROPOSAL TOLEDO FIRE HALL CONSTRUCTION RENOVATIONS

The City of Toledo is interested in receiving written proposal estimates from local, qualified building contractors for desired "Construction Renovations" at the Toledo Fire Station located at 285 NE Burgess Road Toledo, OR 97391. If you are interested in learning more about this project and desire to submit a written proposal for

such, you are invited to attend a MANDATORY site visit and facility walk-through currently scheduled for Thursday November 8, 2018 beginning at 8:30 a.m. You, or an authorized representative of your firm, MUST BE in attendance of this onsite walk-through to be eligible to submit written proposal. For further information concerning the above project please contact Toledo Public Works Director via email only at pwdirector@cityoftoledo.org DATED this 1st day of November 2018 N-07 (72-07).

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The Newport Planning Commission will hold a public hearing on Tuesday, November 13, 2018, at 6:00 p.m. in the City Hall Council Chambers to consider File No. 5-Z-17, regarding the adoption of Ordinance Number 2144, land use regulations related to circumstances under which dwelling units may be used as vacation rentals. Newport Municipal Code Section 14.36.010 allows city land use regulations to be amended by the City Council, upon recommendation of the Planning Commission, when it is determined that such changes are required by public necessity and the general welfare of the community. These are the approval criteria for the proposed land use regulations, and testimony and evidence must be directed toward these criteria or other criteria, including criteria within the Newport Comprehensive Plan and its implementing ordinances, which persons believe apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to an issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral

form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Draft Ordinance Number 2144, and related materials may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above). N-07 (73-07).

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

REVISED HEARING DATE: The City of Newport Planning Commission will hold a public hearing on Monday, November 26, 2018, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 4-NCU-18 and will take place instead of the previously scheduled hearing date. The request submitted by Douglas E & Verna L Fitts, Trustees (Dennis L. Bartoldus, authorized representative) is for approval of a request per Section 14.32/"Nonconforming Uses, Lots, and Structures" of the Newport Municipal Code, for the alteration and expansion of a nonconforming use. The property is currently being used as a mobile home park (Surfside Mobile Village). Specifically, the applicants are requesting to be allowed to add one additional permanent space to the mobile home park. The

subject property is located at 392 NW 3rd St (Lincoln County Assessor's Map 11-11-05-CD; Tax Lots 10500, 10600, 10501, 10700, 10800, 10300, 10200, 10100, 9900, 9800, 9700, and 9500). Pursuant to NMC Section 14.32.060(A), the approval authority shall determine that the structure was legally established at the time the Zoning Ordinance was enacted or amended, and that the use has not been discontinued for a continuous 12 month period. The approval authority must also verify the nature and extent of the nonconforming use, considering (1) a description of the use; (2) The types and quantities of goods or services provided and the activities conducted; (3) The scope of the use (volume, intensity, frequency, etc.) including fluctuations in the level of activity; (4) The number, location and size of physical improvements associated with the use; (5) The amount of land devoted to the use; and (6) Other factors the approval authority may determine appropriate to identify the nature and extent of a particular use (NMC Section 14.32.060(B)). Pursuant to NMC Section 14.32.070, after verification of the status of a nonconforming use pursuant to subsection 14.32.030, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood when considering the following factors: (A) (1) The character and history of the use and of development in the surrounding area; (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood; (3) Adequacy of infrastructure, including sewer, water, and streets, to accommodate the use; (4) The comparative numbers and kinds of vehicular trips to the site; (5) The

comparative amount and nature of outside storage, loading, and parking; (6) The comparative visual appearance; (7) The comparative hours of operation; (8) The comparative effect on solar access and privacy; (9) Other factors which impact the character or needs of the neighborhood. (B) The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood. (C) To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, an alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to: (1) Surfacing of parking areas and landscaping; (2) Exterior design of structures; and (3) Outdoor displays, storage, and signage. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances that the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. Letters sent to the Newport Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public

hearing. The hearing will include a report by staff, testimony (both oral and written) from the applicant and those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased for reasonable cost at the Newport Community Development Department (address above) seven days prior to the hearing. The application materials, the applicable criteria, and other file material are available for inspection at no cost; or copies may be purchased for reasonable cost at this address as well. Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (mailing address above). N-07 (74-07).

PUBLIC NOTICE

N41. The Lincoln County Sheriff's Office has in its possession the unclaimed personal property described below. If you have ownership interest in any of this unclaimed property you must file a claim with the Lincoln County Sheriff's Office within 30 days from the date of the publication of this notice or you will lose interest in this property: Lamps, Schwinn bicycle, knives, keys, oxygen tank, tablets, Galaxy 6 phone, picnic set, iPhone 6, personal property to Devan LaFontaine, Devon Miller, Joseph DeRenzo, Concepcion Edelmiria Resendez, Abraham Bonney, Justin Eppinghaus, Hayley Petts, Eric Messersmith, Daniel Morford, Sydney Fry, Caitlin Miskey, Daniel Murphy, Ki Schroeder, Nicholas Daued, and Richard Byrd. N-07 (75-07).

11/7/18

Derrick Tokos

From: Derrick Tokos
Sent: Wednesday, November 07, 2018 2:09 PM
To: 'Philarney's Beach House'
Subject: RE: Draft Ordinance Number 2144

Hi Julia,

Thanks for reach out. Licensing requirements will change and while there are "grandfathering concepts" included as policy options, none of them would exempt existing vacation rental operators from the new licensing requirements.

I will provide a copy of your email to the Planning Commission so that they are aware of your concerns. Please don't hesitate to drop me an email if you have other thoughts you would like to share with them.

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

From: Philarney's Beach House [mailto:philarneys@gmail.com]
Sent: Wednesday, November 07, 2018 1:49 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: Draft Ordinance Number 2144

Hello Mr. Tokos,

I received the Public Notice of Potential Land Use Change related to draft Ordinance Number 2144. I currently have a vacation rental house, licensed by the City of Newport, Nyevana at 135 SW Coast Street in Newport, Oregon. As I understand the proposed changes to be discussed at the upcoming public hearing, my permit would remain the same as we are in a neighborhood with tourism facilities and adjacent to commercial zone of Nye Beach merchants. Please let me know if I have misunderstood.

My primary areas of concern are:

- potential limit of overnight occupancy to 2 people per bedroom, a reduction of 2 people
- potential limit due to parking constraints

Nyevana has a living room couch that converts to a bed, which easily sleeps two people. As a historic house on a relatively small lot, such as they are in the historic Nye Beach neighborhood, we only have space for the one car garage. That garage is original to the house, and as such it might not meet the current City parking stall dimension standards. There is ample street parking in front of Nyevana, as the playground and Performing Arts Center are literally across the street.

Nyevana went through all the proper permitting processes, maintains a current license with the City of Newport, and pays City of Newport taxes monthly. It is my understanding that our licensing requirements should not

change with the proposed Ordinance Number 2144, at least so long as the property ownership stays the same. Is that correct?

Thank you!

Julia Rask, Owner of Nyevana

Derrick Tokos

From: miyoko muneyuki <miyokomuneyuki@yahoo.co.nz>
Sent: Wednesday, November 07, 2018 8:39 AM
To: Derrick Tokos
Subject: November 13th Hearing
Attachments: Short term vacation rentals.pdf

Dear Community Development Director Derrick I. Tokos

We would like to send our concerns for coming November 13th hearing as we do not seem to be able to attend.

I have attached a PDF file to contribute our thoughts (my husband, Samer Abufadil and myself, Miyoko Abufadil).

We would appreciate if you are able to take it as a consideration and pass it to the committee.

Miyoko Abufadil
cell 503-984 4068
736 NW 3rd Street

Miyoko Abufadil
 Home owner of
 736 NW 3rd Avenue, Newport 97365

To Director Derrick I. Tokos
 The City of Newport Community Development Department

Re: limiting short term vacation rentals.

We are writing to let the committee know how we feel and think about short term vacation rentals.

We live in Portland, and have a vacation home in Nye beach. Before we purchased the house, we had always liked Newport and wanted to stay around the area. However, whenever we had been in Newport, we could not find any vacant accommodations. They were always booked out. Therefore, we had been unable to stay in Newport and we stayed in Lincoln city or other areas instead.

There is a lack of accommodations in Newport, OR which means tourist do not dine, shop or go sightseeing because, they do not stay long periods of time.

Having strong tourism supports the local economy such as restaurants, stores, gas stations, builders and building supplies, interior designers, architects and contractors. It creates more jobs and brings money to the city. That is not all, tourism brings property values up, and even when homeowners are not in town, the town will not be empty; houses will be maintained by vacation rental companies instead of been abandoned.

Moreover, if short term vacation rentals are not allowed, some people may not be able to afford to have vacation homes in Newport since nobody will help to pay part of their mortgage. In addition, private investors will not invest in Newport properties since they cannot get a return on their investment. Instead, large developers will build large complex and spoil the quaintness of the city.

Pros of short term/ vacation rentals:

- ✓ Strong effect to the city's economy- supports local businesses, creates more jobs, increases property values, more revenue for the city, brings more businesses and developments->more employment-> more populations.
- ✓ Prevents the city from becoming abandoned -> safe city
- ✓ Keeps properties clean-> more attractive city
- ✓ Supports art/ visual art center and aquarium through tourism

Negative impacts of limiting vacation rentals

- Property owners may not be able to afford properties
- Less businesses can survive

- Less revenue to the city
- Negative impact to the local economy
- Less employment opportunities -> drop in population due to exodus or more unemployed people
- Abundant /foreclosure properties -> unsafe city
- General drop in the value of Newport properties

In order to support strong tourism and all the benefits that come with it, the city of Newport needs various style of accommodations for tourists that have various purposes. We are worried about limiting vacation rentals in the city that will reduce the influx of owners and limit the growth of the city.

We do not support the idea of limiting short term vacation rentals.

Thank you for consideration of our concerns.

Gary & Judy Smith

Residence: 2535 NW Pacific St, Newport, OR

Mailing Address: 2226 N Coast Hwy, #37, Newport, OR 97365

10/29/18

CITY OF NEWPORT

City of Newport- Planning Commission

NOV 05 2018

169 SW Coast Hwy

RECEIVED

Newport, OR 97365

Attention: Newport Planning Commission members

Re: Scheduled 11/13/18 hearing on draft ordinance # 2144- potential land use change-
vacation rentals within the City of Newport

Members:

Please enter this letter into the permanent record for the above referenced hearing. Also, since we will be out of town on 11/13 and therefore not able to attend the hearing we are giving copies of this letter to our neighbors John and Meredith Gilbert of 2510 NW Pacific Street and Maria Hunter of 2540 NW Pacific and asking that one of these neighbors hand the letter to the Commission....and read our letter aloud on our behalf at the hearing, if this is allowed.

My wife and I live in a private residence at 2535 NW Pacific Street, Newport. We have owned our home since building it in 1999-2000. Over a year ago our next door neighbors to the north at 2545 NW Pacific Street moved out of State and sold their private residence home to an individual residing in the Seattle area. We assumed he would be moving to Newport and that we would have a new neighbor. Then we were advised by the City of Newport that he did not intend to move to Newport...but instead had applied to the City to allow the private residence home to become a "daily vacation rental". We along with other neighbors on our street voiced serious objections to this arrangement and sent letters to the City...to no avail... I never even received a response to mine. The Seattle owner was given approval by the City for the rental. Our objections were (and are) based on the following problems and potential problems with having a "daily vacation rental" residence on our street and in our neighborhood:

1. Pacific Street is a long, very narrow winding street with significant slope from north to south. Parking cars on our street, especially if parked directly across from one another creates a significant risk that the fire department may not be able to have full and quick access for their large fire trucks to drive the length of the street and have access to fire hydrants in case of a fire. The fire department has shared this view. Also, medical personnel could have access problems for EMT ambulances in the case of someone living on the street needing immediate emergency help---such as for a heart attack or stroke. Other vehicles may have very difficult access when many cars and trucks are parked on the street, including large UPS and FedEx trucks, Thompson garbage trucks, City street sweeper vehicles, etc.

2. The lots on Pacific Street, especially the ocean front lots like the one at 2545 are small and very narrow (barely 50' wide), extending from the street...west to the 70' high cliff. This cliff is completely unfenced and there is potential that a young, unsupervised child could easily fall off of the cliff down the steep slope all the way to the beach. A child would be badly hurt or killed in such a fall and this would be a real tragedy. I have voiced this issue with the owner of the "rental" property and he has shown little interest in doing anything about it, including the posting of signs warning of the danger. In addition, significant liability issues for the City of Newport and Lincoln County could be involved in the above referenced circumstance...especially after being appraised of the danger. There is just no way to adequately "fence" this bluff, as such "fencing" would not only be very difficult if not impossible to construct but would look unsightly. Also fencing could adversely affect the re-sale value of the property and surrounding properties due to such fencing infringing on the unobstructed ocean and lighthouse views. And drilling large post foundation holes in this west bank for concrete footers and the pouring of significant amounts of heavy concrete could affect the physical integrity of the cliff itself. Pacific Street is just not a residential street where the lots/residences are suitable for daily rentals. The 2545 property should never have been considered for such a use in the first place, in our opinion.

3. Unsupervised children, especially small children allowed to run out on the street could result in another tragedy if they were to be hit by a passing vehicle. The extensive trees, brush and overgrowth on the lot at 2545 totally block the view north or south of the street from the narrow driveway.... and of anyone existing the property, on foot, bicycle or by vehicle. In addition we have witnessed

unsupervised small children swimming and playing in the large 5' deep swimming (wave) pool located at the lower west end of the 2545 lot. This could also be another tragedy waiting to happen. In our view an adult needs to be out there at this pool at all times when children are present or the pool completely drained and covered....or removed. Here again, significant liability for the owner and the City could be involved here if a child were to drown in this pool.

4. Loud barking dogs and sometimes large, aggressive dogs not leashed by renters of the property...roaming lose up and down the neighborhood are creating problems and repeated requests for the renters to correct this problem have been ignored. These animals have been observed relieving themselves on adjacent properties, including ours. Renters have even gone so far as to tell neighbors that it is none of our business what they (the renters) do with their pets. One even suggested that the City could not require him to put his dog on a leash because it was some kind of "service" animal or "comfort" animal to help him cope with "anxiety" (I guess the "anxiety" he was referring to was that caused by renting an ocean front daily rental in Newport, Oregon!!!) Anyone who is bitten or otherwise injured by one of these unleashed animals could have a significant lawsuit not only against the owner of the animals and the owner of 2545 but also the City of Newport for allowing this to continue.
5. The constant stream of daily vacation renters moving in and out; parties with loud music; late night drinking, etc. are disturbing the peaceful enjoyment of our property and other owner's enjoyment of their properties along the street. Lights inside of this house and disturbing outside spotlights are constantly left on...sometimes all night. We have noted the presence of some young people, kids in their 20's it appears, staying at the property. I spoke with one who said he was a college student from OSU. The owner of 2545 advises us to "contact my property manager in Newport" if we have any problems or issues with his renters...while he sits up at his residence in the Seattle area. He apparently never had any intention to move here and just views the property as some kind of "cash cow" investment regardless of how it affects neighbors.
6. We have observed as many as 7 vehicles parked on the driveway and two car garage, overnight at the property, campers unhooked from vehicles and set up with generators in the driveway for people to stay in; large vehicles so wide that

they had to be partially parked on the street and in the front yard, etc. (photos enclosed). Many times large #'s of people are observed on the outside decks and in the hot tub. We have no way of knowing if they are staying at the house or just visiting. But judging from the # of cars observed in the early mornings we assume they are staying there....certainly more than allowed by the City code. On occasion we have found cigarette butts, empty beer cans and other debris tossed from the decks of this property over on our property, for us to pick up.

7. If other homeowners along our street decide to "jump on the bandwagon, sell or convert their homes to "daily vacation rentals" we will have a very negative, zoo-like atmosphere along our heretofore quiet residential street, with serious traffic and other problems, such as referenced above.

We are requesting that the permit for this "daily vacation rental" be rescinded immediately and the owner encouraged to either move to his property, sell it to someone who will, or rent it out to a long term renter (for a year or more at a time, on a lease). And that no additional "daily vacation rental" permits be granted for any such rentals along Pacific Street.

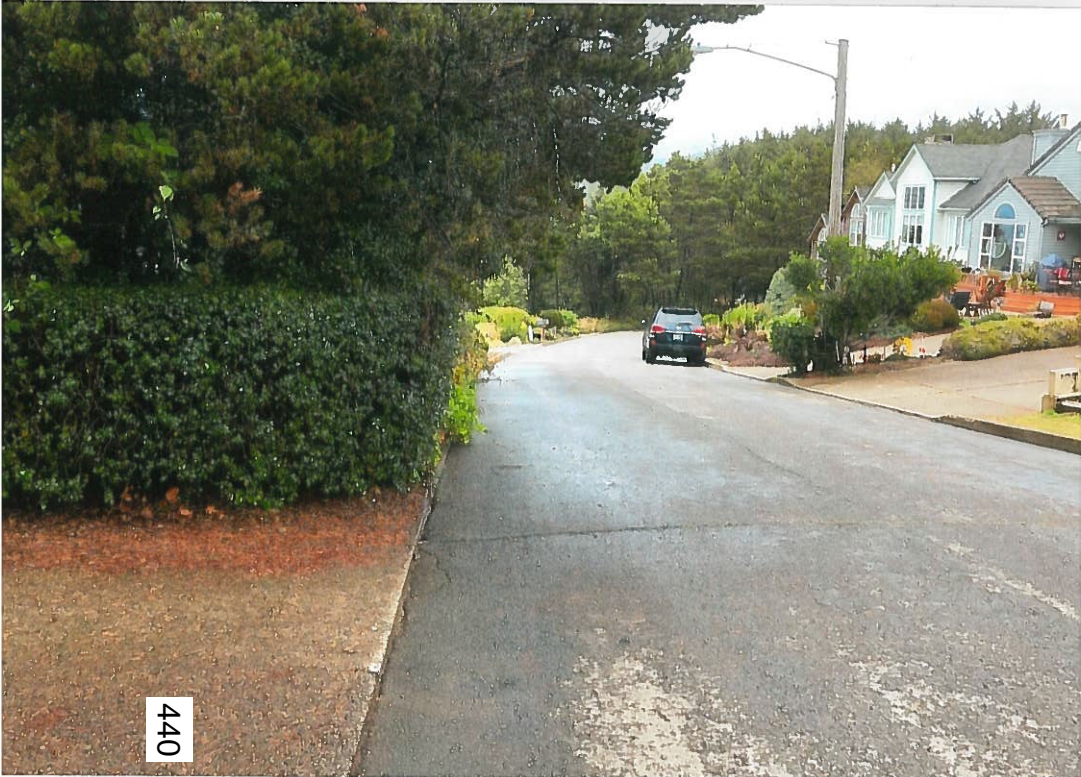


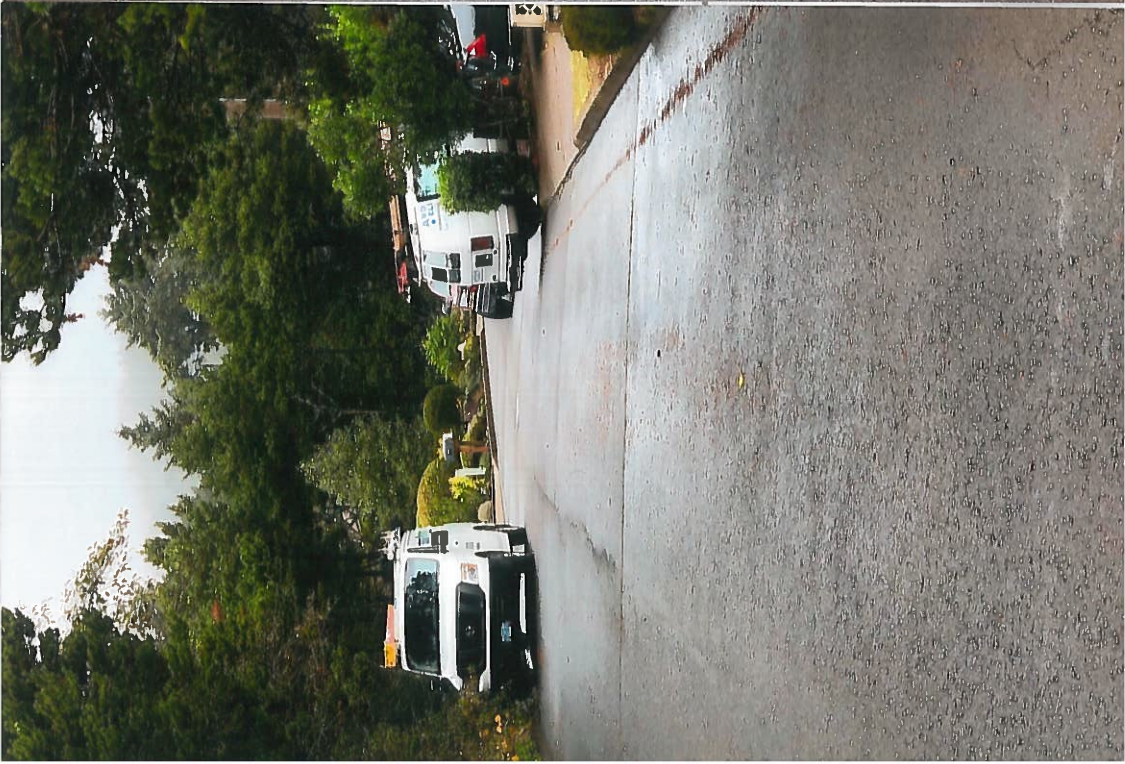
Gary and Judy Smith

Enclosures: several recent photos

Cc: John and Meredith Gilbert

Maria Hunter













Derrick Tokos

From: chena2@ak.net
Sent: Friday, November 02, 2018 7:48 PM
To: Derrick Tokos
Subject: Contact Us - Web Form

City of Newport, OR :: Contact Us - Web Form

The following information was submitted on 11/2/2018 at 7:48:28 PM

To: Derrick Tokos
Name: William and Ruth Hutmacher
Email: chena2@ak.net
Phone: 541-265-2426
Subject: Draft Ordinance No. 2144 - VRD changes

Message: We strongly support the draft ordinance No. 2144 regarding Vacation Rental Dwellings. We recommend that the Planning Commission approve the draft using Alternative 4 (most restrictive). Residential areas (zones R-1 and R-2) are for residences, NOT businesses.

Derrick Tokos

From: Betty Willis <0817betty@gmail.com>
Sent: Friday, November 02, 2018 2:29 PM
To: Derrick Tokos
Subject: Against VRD restrictions

I'm writing regarding proposed changes to the Newport city code restricting (or at least controlling) vacation rental dwellings.... like mine.

I'm sitting down to write this letter to the commissioners, cautioning them to go easy on restrictions, not to punish the owners but rather the offending renters, and to remind them that without tourists, for the most part, Newport is just another poor fishing community that appears unwelcoming to visitors. I'm not buying the argument that VRD's are the cause of a lack of housing inventory in the low-income range. I'm also suspicious that the proposed restricted areas center around current motels and resorts.

Even if I was not allowed to have a VRD, I would not be renting my home long term, so no long term rental would be gained by trying to take away my VRD status. By being a VRD, I am able to use my home when I desire and have it occupied with dollar spending tourists when I am not there. This is good for the city's economy and for the local Nye Beach shopping and restaurant area that is a short 2 block walk from my house.

I am against restrictions.

Thank you,
Sincerely,
Betty Willis
610 NW 9th Newport, Oregon (no mail received at this address)
Contact via email 0817betty@gmail.com
or phone 530-410-1391

November 1, 2018

Newport Planning Committee City Hall Newport, OR

Ref: Vacation Rental Dwellings

My wife and I currently reside at 3904 NW Cherokee Lane Newport, OR. We wish to voice our strong opposition to allowing VRD's in either R1 or R2 zones within the city limits of Newport.

Our home is on NW Cherokee Lane where we currently have one VRD operating on our short dead end street. Fortunately, the home is occupied full time by the owner and she rents out the other part of the home on a short time basis. Due to the owner residing in the home the problems associated with most VRD's (noise, parking problems and property upkeep) do not exist for the most part. With parking extremely problematic on our narrow dead end street any additional VRD's would be nightmare.

There is no question that VRD's owned or managed by out of town owners can cause serious problems in residential neighborhoods. We can see no reason why these commercial enterprises are allowed to operate in R1 or R2 zones. Just as motels, hotels and other business are not allowed in these zones VRD's should be treated no differently. There are plenty of commercial zones within the city limits of Newport for these operations to exist where they do not cause problems with owner occupied residences.

We purchased our property, as I am sure many other single family homeowners did, because it is quiet neighborhood. Why should any citizen be plagued with the problems VRD's bring by their nature. Zoning is designed for a reason. What is the benefit of allowing VRD's in residential zones?

Let's get this right. Ban VRD's from R1 and R2 zones and only allow them in commercial zones and then with appropriate rules to monitor their violations.

Ken and Denise Doerfler

3904 NW Cherokee Lane Newport, OR

CITY OF NEWPORT

NOV 05 2018

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CITY OF NEWPORT
 169 SW COAST HWY
 NEWPORT, OREGON 97365
 COAST GUARD CITY, USA



phone: 541.574.0629
 fax: 541.574.0644
<http://newportoregon.gov>
 mombetsu, japan, sister city

PUBLIC NOTICE OF POTENTIAL LAND USE CHANGE

This is to notify you that the City of Newport has proposed land use regulations that may affect the permissible uses of your property and other properties. Specifically, the land use regulations relate to circumstances under which dwelling units may be used as vacation rentals. The proposed changes are contained in draft Ordinance Number 2144.

The City of Newport has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone districts, and may change the value of your property.

On Tuesday, November 13, 2018, the City of Newport Planning Commission will conduct a public hearing regarding the adoption of Ordinance Number 2144. The hearing will be held at 6:00 p.m. in the Newport City Hall Council Chambers, located at 169 SW Coast Highway.

Newport Municipal Code Section 14.36.010 allows city land use regulations to be amended by the City Council, upon recommendation of the Planning Commission, when it is determined that such changes are required by public necessity and the general welfare of the community. These are the approval criteria for the proposed land use regulations, and testimony and evidence must be directed toward these criteria or other criteria, including criteria within the Newport Comprehensive Plan and its implementing ordinances, which persons believe apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to an issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue.

Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, and testimony from proponents and opponents to draft Ordinance Number 2144. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing.

Draft Ordinance Number 2144, and related materials, are available for inspection and may be purchased for reasonable cost at the Community Development Department, Newport City Hall, located at 169 SW Coast Hwy, Newport Oregon 97365. A copy of draft Ordinance Number 2144 may also be downloaded from the City of Newport website at: <http://newportoregon.gov/>.

For additional information concerning draft Ordinance Number 2144, you may contact Derrick Tokos, City of Newport Community Development Director, at 541-574-0626 or d.tokos@newportoregon.gov. Testimony may also be submitted via this email address.

CITY OF NEWPORT

NOV 05 2018

RECEIVED

Community Development (Planning)

Attn: Newport Planning Committee

City Hall

Newport, OR 97365

We did not build our house and duplex to become neighbors to vacation renters -- We have 2 rentals to help with the housing shortage and if more of the people with vacation rentals would rent to residents instead of vacationers, it would solve a lot of our housing shortage.

Isn't that what motels and houses built on the beach are there for?

Duane & Rena Phibbs

CITY OF NEWPORT

OCT 31 2018

RECEIVED

F. Duane Phibbs
464 NE 9th St.
Newport, OR 97365-2812

451

29 OCT 2018 PM 4 L



City of Newport

169 S.W. Coast Hwy

Newport, OR

97365

Planning Commission

October 28, 2018

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

CITY OF NEWPORT

OCT 31 2018

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RE: Ordinance Number 2144

I am writing to submit comments about the proposed draft of ordinance 2144 regarding land use regulations relating to vacation rental dwellings. There are some features that I agree are necessary and welcome, and others that are highly questionable. To help organize this, I will proceed by listing specific comments and suggestions in the order presented in your "Markup And Rationale For Vacation Rental Code Amendments ver. 3.0 10/23/18".

First, one general comment to the Commission; I urge you to approach this matter with the needs of the Newport economy in mind. Without tourists, Newport is just another poor coastal community with excellent but underutilized natural features. Not every individual or family wants to (or is able to) stay in a motel or resort during their visit. While controls and regulations are necessary to strike a balance between owners, neighbors and neighborhoods, choking off this stream of income for owners and the Newport community is a shortsighted solution. The money VRD renters bring to Newport is spent locally and spent many times over. Rental income brings about increases in property values, which brings more tax dollars for all projects needed and desired.

Second, a word about VRDs in actual practice. Several of the proposed rule changes seem to regard the VRD owner as an independent operator, managing the rental process and property on their own with no help from anyone. That is simply not the case, and the proposals should take that into account. The vast majority of VRD owners today contract with VRD management agencies, such as: Vacasa Inc, Meredith Lodging, VRBO, Beachcombers NW and Flipkey, to mention just a few. Yes, firms like AirBnB and HomeAway do have a small number of listings, but nothing approaching the numbers affiliated with management companies that manage the listings, bookings, collections and even maid service. These VRD management agencies should be made to step up and do their jobs of rules enforcement, noise abatement and monitoring the property. There are many opportunities to do that within the framework of the proposed ordinance.

4.25.030 Business License Endorsement and Endorsement Renewal

Regarding notifications... In your explanation, you state, "The city does not have staff to provide annual mailings to property owners within 250 feet of every short-term rental." This brings up a concern about exactly what the City of Newport is taking on with this increased regulation. An increased staff and the expenses that come with it MUST be a concern because it will become a necessity. You are making it so with these changes. If the Planning Commission does not consider it, the City Council absolutely must do so. And it isn't just the simple things like notifications; electrical and structural inspections, fire inspections by the NFD, will all require more people to do that job, especially if you create one date when all licenses come due (consider staggering those annual application dates or you'll swamp your already overburdened staff!).

Here again is another example of making the VRD management agencies do their job. One of the changes should be, where a local VRD management agency is employed by the owner, that the agency must make the notifications to surrounding neighbors as a requisite to do business in Newport. Where the owner is on their own, it will be up to them either electronically, by using signage or by US Mail.

“Endorsements that are revoked... are not eligible for renewal”. That isn’t as easy as it sounds, nor is it as legally enforceable as it sounds. Have a discussion with the city attorney about that. Should someone bring a lawsuit asking for a fair hearing and reconsideration, it would be a very expensive undertaking for the city, one in which they would likely lose the case – this is a due process issue. Consider instead a “reconsideration hearing” in which the owner may present a case showing remediation, new professional management or even a new plan for managing the VRD but still may be turned down if given criteria are not met.

Transferal of VRD endorsement along with the sale of the property should not be allowed. It should be handled much like a liquor license, where the new owner must apply anew and be judged on their merits. If a property was grandfathered in under the original owner, it could still be considered for VRD endorsement unless the phase-out process is in force, but the new owner gets one chance, along with everyone else in their restricted area, to gain that endorsement with their application. If they either choose not to apply at or near the time of sale or make an application that does not meet requirements, then the VRD eligibility rule at that time holds.

The endorsement application issue brings about a question that was not addressed at all... if these restrictions on VRDs per street, block, etc., what will the criteria be to select one owner from several applicants for a VRD endorsement in a restricted area, say one street or city block? What will be the determining factor as to who gets the endorsement? I think you’ll have a big, expensive problem on your hands unless you make that process very clear and very fair.

“Contact information” – this section should be rewritten to include specific mention of a VRD management agency contracted by the owner, should one be used. Failure of the agency to respond appropriately to a complaint or emergency at the property may (and should) lead to disqualification as an approved management agency in the city of Newport. Do not punish the owner – punish the responsible agency.

“9 – Violations” – again, there should be a specific mention of a VRD management agency, should one be employed by the owner. If a short-term rental business license endorsement be revoked as a result of action taken or omitted by the VRD management agency, that agency loses their right to do business in the city of Newport. If the violation is an owner violation, then that owner should at least have one chance to make repairs or changes to operations and present them in a hearing to determine if they lose their endorsement for good.

“Guest Registry” – this new section does not go nearly far enough to identify tenants and to hold them responsible for legal and property violations. I believe, in addition to a registration of guest names, addresses and license plate numbers, all VRD tenants must post a deposit with the City of Newport against any response by law or code enforcement personnel. It would also work to have the VRD management agency responsible for posting a bond with the city of Newport for every tenant, refundable after a successful stay. If, for example, a VRD tenant is cited for excessive noise, they must not only be immediately evicted from the VRD rental by either the management agency or the owner, the tenant should lose that deposit plus be responsible for any costs the violation brings including all court costs. Again, punish those who cause the problems, not the owner of the property.

I am very pleased to see specifics written into the code regarding the number of people allowed in the VRD at any time (two per bedroom, no more) as well as for parking. I would also like to see the maximum number of people allowed in any VRD capped at six, no matter how many bedrooms and bathrooms are available (this may have already been written in and I did not see it).

14.25.030 Approval Standards

Density – I disagree with the use of a general percentage standard to establish a cap on VRD endorsements in the city of Newport. If, as stated earlier in your rationale, part of the reason in going through all this in the first place is to preserve more housing stock for local renters and low income tenants, then your cap plan is flawed from the start.

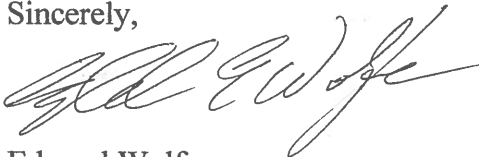
Not every VRD home falls within what might be called low-income available housing. To the contrary, a greater percentage of VRD homes are actually higher-market homes, those with some or all of the following; a favorable location with a view, beach access, near shops and attractions, near trails or the harbor. They have three, four or more bedrooms, with a similar number of bathrooms. They come with hot tubs, pool tables, cable TV, internet service and a family room full of electronics. These homes and condo units are typically valued thousands of dollars higher than homes away from those amenities, and these are the homes where tourists look to stay during their visit. These are NOT the stock of homes in the Newport area that would be available to those employed in many local lower-income trades. In short, while I strongly agree that Newport needs more mid- and low-income housing for both sale and rent, this is absolutely not the way to solve the problem. It is a fallacy, a false argument with a faulty presumption and it will not achieve the goal you desire.

In addition, look at what happens when someone buys a distressed or dilapidated property and turns it into a VRD property. If it is going to be a success, it must be updated inside and out, made attractive in a competitive rental market. I understand my observations are anecdotal, but what I typically see is a big improvement made by the update of a home, which brings about an improvement in the neighborhood in which it is located. Property values are increased all around, which brings in more tax dollars for needed projects. Local businesses get those remodel business dollars, local workers get paid for carpentry, floors, roofs and painting. I am all for the incentive to improve local properties provided by VRD income. There is not room here for me to launch into what does improve availability of mid- and low-income housing, but I will tell you again... limiting VRD properties by blind cap numbers is not the way to do it.

....

In conclusion, there is one more aspect of VRD ownership that has been overlooked. Where would the Newport housing market be without buyers? Not every buyer comes to Newport the day after retirement with a pocketful of cash fresh from selling their house, ready to be spent on a retirement residence. Many of us discover Newport along the way, decide it's the place where we want to spend the last third of our lives, and we work hard to make it happen. Making the commitment to buy a home, remodel and update it, then rent it out either for short-term rentals or long-term stays is the only way many near-retirees can make that dream happen. This is a positive for the Newport economy – more money to businesses, contractors and local government. Higher home values and cleaned-up neighborhoods make Newport an even more desirable place to be. More tourists means more business income, more people spreading good news back home about the beautiful city on the Oregon coast, and that brings in even more people. It's a great, positive cycle to be in. Do not choke it off by punishing owners for the transgressions of a very small percentage of tenants.

Sincerely,



Edward Wolfe
11820 North Lancelot Drive
Spokane, WA 99218
Owner, 616 NW 9th Newport, OR

October 22, 2018

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

CITY OF NEWPORT
OCT 30 2018
RECEIVED

Dear Mr. Tokos,

We would like to express our support for the Vacation Rental Advisory Committee’s efforts to update the rules governing the City’s Vacation Rental Dwellings. Please forward this letter to the Committee for consideration as our neighborhood has been significantly impacted by this issue.

NW Pacific Pl is a short, dead end street of 13 oceanfront and ocean view homes. Additionally it has relatively easy access to the beach. In April 2017, 2767 NW Pacific Pl was granted VRD status. This has led to a dramatic increase in traffic as well as excessive parking blocking, at times, access to mailboxes and even homes themselves. We’ve posted “Please Slow Down” signs to try to mitigate the risk to pedestrians from cars traveling at excessive speeds, especially on the semi-blind curves at the beginning of the street. Unfortunately these signs are, for the most part, ignored. Many of us no longer feel safe walking in our neighborhood.

Recently the properties at 2725 and 2755, also on the streets’ west side, have changed hands. It has been learned, through sources both direct and indirect, that the new owners intend to apply for VRD or B&B status. We understand that this is a way to offset the expenses of owning and maintaining a home. We also understand the significant impact tourism has on our local economy and having short-term rentals in desirable locations can be profitable for both the homeowner and city. But we also feel that, as people who live and work in Newport, we are entitled to consideration as well. NW Pacific Pl is a neighborhood of people who have lived here for years, even decades. A rare place where everyone knows and cares for each other. We are like a family in the best possible sense. We built and bought our homes because we want to be in a residential single family neighborhood as this street is zoned. That should be our right and it shouldn’t be taken away from us.

Protections must be put in place to preserve the character and integrity of Newport’s neighborhoods. Allowing only one VRD per street face segment in zoned low-density residential areas (R-1 and R-2), as proposed by the committee, seems reasonable. **There must also be safeguards established so that VRD and B&B applications aren’t “snuck in” under the wire before these protections can be implemented.**

Sincerely,

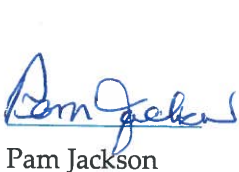

Debi Furay

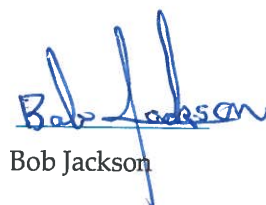

Arzu Wooten


Larry Wooten


Roy Peterson


Pat Crowe


Pam Jackson


Bob Jackson

Debi Furay
2735 NW Pacific Pl
Newport, OR 97365

PORTLAND OR 972

27 OCT 2018 PM 3 L



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

97365-380669



CITY OF NEWPORT

OCT 24 2018

RECEIVED

Norm Ferber
 Owner Fairhaven Vacation Rentals
 29 SW Coast Street , Newport
 541-574-0951
 10/24/18
 Residence 5726 NE Big Creek Road, Newport Oregon

To the entire City Council , planning commission as well as the city administration.

Transferability:

1. There doesn't seem to be any recognition that there have been some of us (even if it is only me) who have made a decision, made not solely as a business decision, but rather a composite of several inputs to create a business entity that uses vacation rentals medium to create that entity.

A. I made the decision to pursue conditional use permit to operate my vacation rentals as a business.

B. The community of Nye Beach in the early 90's and prior was a slum.

The visual arts center was built in 1983

The performing arts center was built in 1988

Neither one became the catalyst for development that transformed the area.

In 1990 I made the decision to experiment with vacation rentals specifically as opposed to work force apartment style housing.

In 1995 when I had accumulated sufficient funds and thought the economic climate acceptable enough to experiment I built my first vacation rental.

It wasn't until 1998 when building my second vacation rental did I witness my first actual family walking down coast street. (I know this because I was so struck by the phenomenon that I called my wife to say I think we might make it)

People with a short time perspective take this phenomenon for granted. Nye Beach was not an area, at least as I experienced it during the period of 1973-1998, as a worker utopian family oriented residential zone. During that period I rented my 15 rental units (comprised of old motel units and run down housing) to first friends, some on drugs some not, then a period of Hispanic families , then single Hispanic and low income people Caucasians some on drugs some not.

But the rental units were old 30's and 40's style motels in need of a lot of renovation. They had clay tile sewer lines, knob and tube wiring, screw in fuse boxes, galvanized water lines, and post and pier foundations and aged

cedar shingle roofs . And this was the entire area not just the property I owned and still is the case for much of the area.

During that period I fixed my units up and replaced every thing I mentioned above. And this all cost me money a lot of money, But that did not bring families to my homes. Don Davis once specifically called me an idiot for remodeling my homes. (he didn't know I was standing right next to him) .

I made the decision to build the homes I built for several reasons .

1. I was tired of monthly rentals I wanted to try something different.
2. I wanted to built something to benefit the community , to add value and beauty . I wanted to test and expand my skills as a builder . I wanted people to stop and pause and point at something they didn't see every day. I wanted people to come and remember that the beach was just a block away . I didn't need to build Victorian homes , I didn't need to hand cut each ginger bread shingles , and design and create both elaborate interior and exterior trims for my homes. I could have used cedar bevel siding or T111. And built 1500 sq foot three bedroom apartments . Similar to what is found all over town. But does any one actually think a vibrant alternative tourist community and shopping community that benefit's the entire town would of built up around that . (Witness the area east of the entire motel strip located along Elizabeth Street.) Do you see a lot of tourists and there families or for that matter members of the greater community and there money spending the day walking through that entire zone of multiple family units .

I am in no way suggesting I was the catalyst but I was certainly one of several who stepped in and took a chance with ones own money and time. And I use the word several as opposed to many because you could count those willing to take that chance sometimes on your two hands. Even to this day the transformation of Nye Beach is still taking place. There are still many eyesores and empty lots .

One of the reasons I never built the next two homes I intended to was the imitation by others who tried to duplicate my success. So was that a bad thing for the community? (The fact that others were willing to step up and take a chance with their money and time) Isn't that what the city had hoped for in building the Visual Arts Center and Performing Arts Center. A re-emergence of the area.

Which one of you want to be held accountable by the worst examples of members of our society. There will always be bad actors , but are we all

collectively responsible for the inability of those people to manage responsibly in society?

The reasoning behind this is I feel that there needs to be some acknowledgment that there is a categorical difference in those of us who sought to create a business and others who have simply taken an opportunity to for what ever reason, augment there income or lessen their mortgage payment. (and I am in no way suggesting that reason alone is inadequate) And for that matter those of us who have acted as responsible owners and managers and those of us who have not.

Having said all that why shouldn't I have the right to create value and transfer that as an entity to some one interested in buying a successful business?

As regards minimum days of operation: Is that a requirement city wide for any business to operate? Why should I as a business be forced to operate to any schedule that does not harmfully impact the community? As I have aged my needs to stay open have evolved. Do you require any other business to stay open as a requirement of their licensing?

This explanation or argument or point of view is a work in progress but because I was unable to attend the last two meetings and have listened to them I wanted to add my observations .

Norm Ferber

Norm Ferber
 Owner Fairhaven Vacation Rentals
 29 SW Coast Street , Newport
 541-574-0951
 10/26/ 18
 Residence 5726 NE Big Creek Road, Newport Oregon

To the entire City Council , planning commission as well as the city administration.

Version 2.0 10-26-19

1.

I understand that there is an attempt here to legislate good management practices. That there have been bad actors , new and amateur managers and property owners who have poorly managed their own properties or have been misled by professional management organizations.

Promises of large money pay outs with little necessary personal input , absentee management and little to no oversight by owners and their appointees.

But I and others have managed our properties respectfully. I can personally attest that over the 26 years that I have managed my properties that the results being targeted by these measures I have been guilty of . Who among us have not made mistakes during the creation and development of our goals.

In 2012 I testified that there would be a resultant growth of amateur managers and a learning curve and weeding out during that learning curve. I testified against the expansion into R-1 and R-2 not to enrich the value of my own properties but because it has not been my experience that you solve a problem by making the scale of that problem larger.

I think that we can all agree that this has proven to be an accurate prediction .

Further , name any other business in this community that has to pass a litmus test in order to be sold as such. A wine shop owner selling her business does not ask the buyer to first prove his or her qualifications.

A person selling a personal residence does not ask the buyer if they intend to keep it as a personal residence or establish a Vacation Rental.

A shop or restaurant owner doesn't have a set of qualifications that they must first establish the new owners possess before they pass on the value they have added to the real estate + value they have created during their learning curve.

Without transferability my property is just that property. No value added to a lifetime of intentional and motivated learning. The accumulation of a loyal customer base.

It is fundamentally unfair that I am being asked to sell a lifetime of business creation as merely and solely the value of the real estate.

To be continued . Norm Ferber owner Fairhaven Vacation Rentals

CITY OF NEWPORT

OCT 26 ;

RECEIVED

October 22, 2018

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

COPY

Dear Mr. Tokos,

We would like to express our support for the Vacation Rental Advisory Committee's efforts to update the rules governing the City's Vacation Rental Dwellings. Please forward this letter to the Committee for consideration as our neighborhood has been significantly impacted by this issue.

NW Pacific Pl is a short, dead end street of 13 oceanfront and ocean view homes. Additionally it has relatively easy access to the beach. In April 2017, 2767 NW Pacific Pl was granted VRD status. This has led to a dramatic increase in traffic as well as excessive parking blocking, at times, access to mailboxes and even homes themselves. We've posted "Please Slow Down" signs to try to mitigate the risk to pedestrians from cars traveling at excessive speeds, especially on the semi-blind curves at the beginning of the street. Unfortunately these signs are, for the most part, ignored. Many of us no longer feel safe walking in our neighborhood.

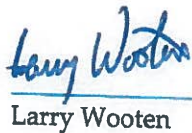
Recently the properties at 2725 and 2755, also on the streets' west side, have changed hands. It has been learned, through sources both direct and indirect, that the new owners intend to apply for VRD or B&B status. We understand that this is a way to offset the expenses of owning and maintaining a home. We also understand the significant impact tourism has on our local economy and having short-term rentals in desirable locations can be profitable for both the homeowner and city. But we also feel that, as people who live and work in Newport, we are entitled to consideration as well. NW Pacific Pl is a neighborhood of people who have lived here for years, even decades. A rare place where everyone knows and cares for each other. We are like a family in the best possible sense. We built and bought our homes because we want to be in a residential single family neighborhood as this street is zoned. That should be our right and it shouldn't be taken away from us.

Protections must be put in place to preserve the character and integrity of Newport's neighborhoods. Allowing only one VRD per street face segment in zoned low-density residential areas (R-1 and R-2), as proposed by the committee, seems reasonable. **There must also be safeguards established so that VRD and B&B applications aren't "snuck in" under the wire before these protections can be implemented.**

Sincerely,


Debi Furay

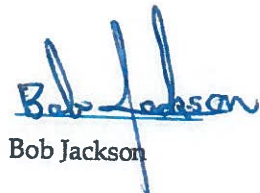

Arzu Wooten


Larry Wooten


Roy Peterson


Pat Crowe


Pam Jackson


Bob Jackson

Nye Place, LLC
13999 S Clackamas River Drive
Oregon City, OR 97204
503.970.3998
nyeplace@gmail.com; stephenlmadkour@gmail.com

November 7, 2018

By Email: d.tokos@newportoregon.gov

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

Re: Draft Ordinance No. 2144

Dear Mr. Tokos and Members of the Planning Commission:

My wife and I and another couple recently bought a house in Newport's historic Nye Beach district. It's a great place and we enjoy it as much as we can. To offset our expenses, we went through the city's application process and obtained approval to make the property a lawfully registered and established short-term rental.

We consider ourselves as good stewards of the property, responsible owners and law-abiding and discerning hosts. Naturally, we have no desire to host any individuals in our home who would not show both respect and civility to the property, the neighbors, and the city. Our property has experienced a very successful rental history and the comments from tenants has been overwhelmingly supportive of the area and the opportunity to stay at the property. With limited exceptions, every short-term tenant we have hosted has come from out of state to visit Newport and the Oregon coast. They rented cars; they bought fuel, and groceries. They toured the Bayfront, went shopping, whale watching, dined at local restaurants, left tips, and payed a transient lodging tax. Moreover, each one promised a return visit to Newport and its surroundings.

With that as context, we encourage the ad-hoc committee and the planning commission to be mindful of a few critical details in their review and consideration of proposed revisions to the City's VRD code.

First, I think it is important not to be swayed by the bad choices or questionable conduct displayed by a minority of short-term unit tenants or their hosts. I have reviewed the materials that were presented to and considered by the ad-hoc committee. I empathize with those property owners that have experienced disrespectful and disruptive behavior by tenants. Equally troubling is the dismissiveness or disregard expressed by some unit owners to the concerns of their neighbors. These are unfortunate situations and hopefully they are the exception. Unfortunately, it is awfully difficult to regulate against rude or boorish behavior. However, if the concern about short-terms rentals is the perceived impacts upon the quality of life in particular neighborhoods, then attention should be focused on ways in which to minimize those impacts.

Based on what I reviewed, it appears that both the ad-hoc committee and the planning commission have a number of viable options before them to make sure that the interests and concerns of the hosts and users of short-terms units, as well as neighbors, and the community are adequately addressed, satisfied, and accommodated.

I have reviewed the proposed amendments to the Newport Code with respect to VRDs. The proposed amendments are fairly extensive and between the inspection, registration, licensing, and insurance requirements they are arguably as onerous and expensive on a property owner than any other residential or related use permitted within the City.

Our primary concern with the proposals you have before you are the treatment of lawfully established and existing uses and the transferability of those uses. I encourage the Commission to be mindful of the reliance that property owners have placed on these City approvals and the expectation to be able to continue these uses without fear of having the city terminate the prior approvals or impair the transferability. To that point, we support alternative A.1 in section 14.25.035, and B.2 of 4.25.025.

While I generally respect and support regulatory requirements directed toward health, welfare, and safety, I am not so enthusiastic with proposals that unnecessarily increase costs to property owners. One of those costs would be associated with the proposal to have a local agent within 30 miles. I consider that requirement as an unnecessary burden and expense on those owners that successfully and thoughtfully manage their properties. I have reviewed the committee's minutes and failed to identify any rational basis articulated for imposing this local agent requirement. I seriously doubt its efficacy. An alternative would be to extend the distance to at least 150 miles, or perhaps to impose that requirement only after a certain number of complaints went unanswered or ignored. A blanket imposition of that requirement is unwarranted.

An additional concern of ours is the requirement that properties be posted with some signage. I know that Lincoln City and other communities have imposed this requirement. We would prefer not to use our property to advertise for Meredith or any other management group. At the time of our application, our contact information was provided to the city and property owners within 250 feet. Moreover, that information is currently available through the city.

I appreciate the efforts and contributions made by the ad-hoc committee and the commission. I believe, however, that some of the proposals before you for consideration are too drastic and burdensome on individual property owners and represent an overreaction to what appears to be a limited and quantifiable enforcement matter.

Thank you for your consideration.

Respectfully,



Stephen L. Madkour, Member
Nye Place, LLC

Nov 9th 2018

Derrick Tokos
City of Newport Community Development Director

I am strongly opposed to any ordinance that will change the land use of mine or anyone else's property here in Newport. Newport is a tourist destination that has been so for over 100 years. Families & friends have been renting homes here on the coast and supporting all the businesses that have established themselves here. All the restaurants, retail stores, entertainment, fishing, are dependant on these tourists who will not stay in hotels. Additionally when properly managed these vacation rentals are the best places in our community and add significant value to us. 100's of jobs would be lost in the form of property management, house keeper, landscapers, handymen, painters, roofers etc., home furnishings, designers, appliance stores would also suffer. Besides the estimated 20% devaluation across the board of all these properties you can expect 10's of millions in lost revenue for the communities of the people who work here.

Contrary to modern opinion there

is no lack of affordable housing in Newport. What there is a lack of are dorms for college students that should be built on the hill instead of single family homes. Many of the people seeking housing here will not ever be able to rent because of the following "bad credit", felons, substance abuse problems, bad references, no job or income, large barking dogs + also smokers

Having been a landlord for about 40 years I recently took most of ~~our~~ HUD properties away as a result of the very problematic tenants. By contrast to other tourist towns rents here are cheap. HUD provides \$760 a month for a studio and/or a one bedroom → there are essentially no takers.

The homeless situation will also not be solved by this ordinance as most of them are penniless → have the aforementioned problems and by in large over 80% are not from here.

As an alternative I would

suggest if you have problematic vacation rentals they be required to have a property manager to facilitate taking care of their home. Another alternative as mentioned earlier is building student housing/dorms near the college which is being accredited. Another solution is there are many empty commercial spaces that haven't been rented for years could be converted into housing like they did in Merced when they built the college. Another solution is to waive fees on new construction provided they build along with the main house guest quarters to house a veteran/elderly person or a young person going to school. This will generate much needed additional tax revenue instead of offering free low income housing incentives.

The cost of real estate has changed here in the past 20 years, the taxes have more than doubled, insurance & utilities have kept pace with these increases

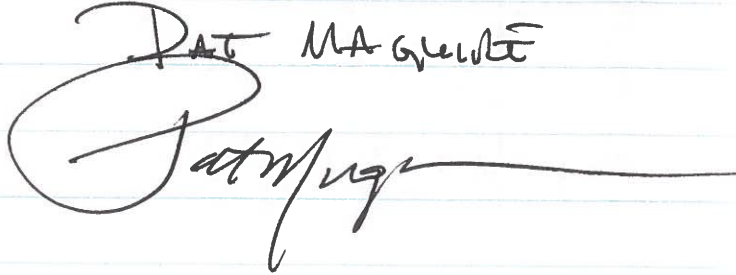
It would be impossible for someone to rent a home here to anyone for less than these costs + mortgage payments. Since a 3 bedroom typically rents for about \$1500 a month here or thereabouts that would need to be increased to \$2000 plus utilities for "these vacation rentals" which I do see by far some of the nicest properties here in Newport. I've from time to time have also rented by downstairs guest apt. short term to help pay my bills as I am on social security. For myself, my brother Paul, and all those who have vacation rental here I am strongly opposed to this proposed ordinance Number 2144.

I also reserve my right & all others rights to due process under the law before any zoning changes occur which will dramatically reduce the value of property & my ability to sell for market and trade should I wish to do so.

I'm happy to meet to discuss alternatives + other solutions but considering the ordinance precludes the construction of affordable housing in South Beach + Agate

Beach and the dorms being built for the new college near Hatfield science center. I'd recommend we abandon this proposal + revisit in a couple years to get real input from all parties effected.

When I first came to Newport in 1993 I cleaned up NYE beach, the homeless & drug problem & was bankrupt afterwards. No one has done more than myself over the years to help house & take people off the streets. still have a dozen people with roofs over their heads today because of me. lets keep Newport the #1 Tourist destination in Oregon & protect the hundreds of millions we invested here over the years to keep it Great!!

Pat Maguire


CITY OF NEWPORT

NOV 08 2018

RECEIVED

November 8, 2018

Dear Planning Commission

The housing shortage in Newport is well documented across the entire economic and employment spectrum. Housing issues are not only faced by service industry and seasonal employees, but also by medical professionals, scientists, teachers, social workers, law enforcement officers, government and business personnel and many others in critical occupations who serve this community and who wish to find housing in suitable residential neighborhoods in which to raise a family.

Map alternatives I and II prohibit of VRDs from selected residential areas of Newport ostensibly to protect these areas for "affordable housing". These areas of the City have a negligible number of VRDs as it is, and would hardly seem in need of "protection" from further VRD proliferation.

While I support the general concept of protecting residential neighborhoods from transient use, I disagree with prohibiting VRDs so selectively without equal protection to ALL residential areas of the City and ALL "work force" employment segments that are so essential to the community as noted above.

To so intentionally protect "affordable housing" for largely tourism related employment but not protect workforce housing across the much broader employment spectrum for ALL permanent residents in ALL residential zones of this community seems both unfair, unwise and without justifiable rationale. For these reasons, I believe that Map Alternatives III and IV are far better policy options that will still support the tourism industry while better serving the needs of permanent Newport residents.

Darlene Croteau
5524 NW Pinery St
Newport, OR 97365

Derrick Tokos

From: John Vann <j.vann3@live.com>
Sent: Thursday, November 08, 2018 9:04 AM
To: Derrick Tokos
Subject: VRD Discussion

Dear City Council,

I understand that before the 2012 VRD ordinance, my small agate beach R2 neighborhood had only one (non-compliant) VRD business. Now over 30% of the homes in my neighborhood are VRDs and all are operated by absentee landlords, most from out of state. The 2012 VRD ordinance promoted the corporate purchase of large homes for the operation of small motel VRD businesses. The constant turnover, increased traffic and nuisance problems created by these transient renters have significantly degraded the residential character of this R2 neighborhood. I am a voting, permanent resident of Newport and am asking you to prohibit short term vacation rentals from R1 and R2 single family residential zones, and to phase out over time the existing VRDs in these neighborhoods. The 2012 VRD ordinance made a serious mistake in allowing the unrestricted, new development of VRDs throughout the City, and this mistake must be corrected before these VRD motels destroy more residential neighborhoods.

Among the suggestions entertained in the most recent version of the VRD ordinance please emphasize the following:

1. Set occupancy levels at Bedroom availability PLUS / (and/or) off street parking spaces provided.
2. Licenses to operate a VRD should not transfer with the sale of the property.
3. No VRD's in R1 and R2 zones, especially north of NW54th. There are no tourist amenities and very little beach access.
4. Oversize vehicles such as boat trailers, RV's and utility trailers should not be allowed in VRD's. I think off street parking might be allowed in the marina for such vehicles and emphasized in advertising for these rentals. .
5. Secondary uses such as Corporate Retreats , Weddings and religious services should not be allowed.

Thank you for your time.

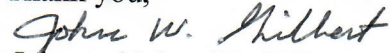
John Vann

TO: Newport Planning Commission

REGARDING: City of Newport Vacation Code update

I want to commend and thank the Ad-hoc Work Group for conducting a very thorough Study of Vacation Rental Dwellings in our city. I would also like to provide my input on their Summary of Potential Changes. I have circled my choice of the most important proposed policy alternatives that I personally would like to see in the Vacation Rental Code Update. I hope that my thoughts might be helpful in the selection for presentation to the City Council. We are full time residents at 2510 NW Pacific Street.

Thank you,



John and Meredith Gilbert

541 - 265 - 2795

CITY OF NEWPORT
169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA



phone: 541.574.0629
fax: 541.574.0644
<http://newportoregon.gov>

mombetsu, japan, sister city

Fall 2018

City of Newport Vacation Rental Code Update Summary of Potential Changes

Overview

In the fall of 2017 the City Council received a significant amount of public testimony that the City's regulations for Vacation Rental Dwellings (VRDs) need to be updated to protect the character of residential neighborhoods and to preserve the City's long term housing supply. In response, the City Council directed the Planning Commission to assess how the rules could be improved and the Commission, in turn, pulled together an Ad-hoc Work Group of interested persons to assist city staff in developing a package of recommended changes.

Ad-hoc Work Group's Responsibilities

- Review the City's existing vacation rental regulations
- Evaluate Best Management Practices used by other jurisdictions
- Discuss policy options for revising the City's codes
- Select policy alternatives for presentation to the public
- Conduct open houses to obtain public feedback (occurred 8/15/18 and 8/22/18)
- Review public comments and determine how best to integrate responses into the policy alternatives
- Propose a package of legislative code amendments, based upon the policy alternatives, for review by the Planning Commission and City Council as part of a formal public hearings process.

Proposed Policy Alternatives

Focus Efforts on Units that are not Occupied by Permanent Residents

- Distinguish "home shares" where an owner rents rooms in a dwelling unit where they reside, and Bed and Breakfast (B&B) establishments where an owner or manager lives on the premises, from VRDs where the entire unit is rented for transient purposes.
- Exempt home shares and B&Bs from location and density limits, because the presence of a permanent resident mitigates potential nuisance issues and does not impact the supply of long term housing.

Limit Areas Where VRDs are Allowed

- Limit vacation rental uses to areas that possess tourist amenities
- Provide policy makers with multiple options for drawing the boundaries, including:
 - Alternative No. 1: Recommends US 101 and US 20 be used as an easily understood break point, with VRDS allowed west of US 101 and south of US 20 (least restrictive)
 - Alternative No. 2: Similar to first option, but limits VRDs west of US 101 and south of US 20 to areas in close proximity to ocean views, beach access, and tourist commercial uses.
 - Alternative No. 3: Limit VRDs to areas where tourist commercial uses are concentrated
 - Alternative No. 4: Limit VRDs to areas outside of R-1 and R-2 residential zones (most restrictive)

Establish License and Density Limits

- Limit the total number of vacation rental licenses to preserve the City's long term housing supply.
 - Apply a hard cap on licenses issued between 200 and 300 (roughly 4% - 5% of the total housing stock).
 - Provide that the City Council may adjust the license cap by resolution.
 - Limit transferability of licenses, upon sale, to commercial zones (or areas adjacent to commercial zones)
 - Institute proximity limits to avoid concentration of VRDs to the point that they change the character of residential neighborhoods:
 - Allow only one VRD per street face segment in R-1 and R-2 zones;
 - Limit VRDs in R-3 and R-4 zones to one multi-family or single family dwelling per street face segment

Improve Enforcement

- Develop a centralized complaint system that facilitates transparency and citizen access to information.
- Engage with a third party vendor to provide a 24/7 complaint hotline and to provide ongoing monitoring of vacation rentals for permit and tax collection compliance.
- Structure progressive enforcement to achieve "three strikes and you are out."
- Establish a two year cooling off period for before an individual that had a license can reapply
- Require VRD operators to have a local contact capable of responding to the premises in 30 minutes.

Refine Approval Standards

- Reduce overnight occupancy from (2) per bedroom plus two to simply 2 per bedroom. Exempt children ages 3 and under from overnight occupancy limit.
- Retain parking standard of one space per bedroom, but require applicants show that spaces are sized such that they meet City parking stall dimensional standards. Allow off-street parking to extend into undeveloped public right-of-way with stipulation that license will be revisited if street is improved.
- Update safety standards to reflect current building and fire code requirements
- Require VRD operators to post a sign in plain view of the street identifying the unit as a vacation rental with a phone number of the designated contact.
- Prohibit special events at VRDs in excess of occupancy.

Require Annual Licensing

- Operator's to provide proof of insurance and update designated contacts with annual license.
 - Licenses to automatically expire if inactive to prevent "license hoarding" under a hard cap.

Phase Out Non-Compliant VRDs

- Conditional use permits that allowed alternative standards will not be grandfathered.
 - Permit licensed VRDS in areas where they are no longer allowed to continue to operate for a 5 year period of time to realize a return on investment. Licensed VRDs in areas that exceed density limits to phase out as licenses expire (or through 5-year amortization).

Next Steps

The Ad-hoc Work Group has forwarded the "policy alternatives" as potential code changes to the Planning Commission, who will hold its first public hearing at 7:00 p.m. on November 13, 2018 at the Newport City Hall. The Commission provides a recommendation to the City Council, who will hold its own public hearing(s).

Additional Information

A complete copy of the draft changes, identified as "Ordinance No. 2144," and its supporting materials, are available on the City of Newport website at: <http://newportoregon.gov/>. Questions or concerns may also be directed to Derrick Tokos, Community Development Director at 541-574-0626 or d.tokos@newportoregon.gov

Randy & Pamela Hoepfl
540 Collier Drive
Springfield, OR 97478
Pam@precisioncapital.net
541-954-0630

October 30, 2018

City Of Newport

We are unable to attend in person November 13, 2018 for your Planning Commission meeting, regarding Potential Land Use Change.

This letter is to urge you to continue allowing the individual owners at Pacific Shores Motor Coach RV Resort located at 6225 North Coast Highway 101, to rent out to travelers from all over the USA. This is an area that only allows new Motor Coaches, and large RV's and welcomes tourists that enjoy the Oregon Coast.

The amount of revenue that is generated from these Tourist is significant, as most of these visitors are towing vehicles and take advantage of eating out most meals, buying supplies, shopping and the beautiful scenic drives and seeing the Ocean Beaches.

Please visit the Pacific Shores RV Resort and see what a quality clientele it attracts and how well maintained the grounds are. This resort shows pride of ownership and will continue to attract quality visitors.

Respectfully,

Randy & Pam Hoepfl

CITY OF NEWPORT

NOV 08 2018

RECEIVED

November 6, 2018

Derrick Tokos
City of Newport Community Development Director

Re: Jon Tesar Written Testimony on proposed Ordinance Number 2144 (Short Term Rental Business or "VRD")

My wife and I purchased 2 properties in Newport within the past 3 ½ years with the intent that one or both could become vacation rentals. We selected Newport because of the vibrant business and tourist environment, the quality of life, and the rational approach of the City Government. Although I am generally against the degree of proposed restrictions on VRDs, the cap on total number of VRDs is particularly burdensome to me.

I currently live part-time in a home above the Bayfront. It already suffers from noise and light pollution, and it is very busy with vehicle and pedestrian traffic. But that is just the "price of admission" for being in such an interesting area. I do not see the vacation renters as a problem. I much prefer a well maintained VRD to a long term rental that could have loud and obnoxious tenants, drug transactions, squatters, nuisance animals, improper maintenance, and an obvious lack of pride of ownership. At least with a VRD, the owner is motivated to beautify the property and any problem tenants would be temporary.

If a cap is imposed on the total number of vacation rentals, it would be the only category of business that is capped in Newport. I understand that retail recreational marijuana dispensaries are the only businesses subject to a limit due to a 1,000 foot spacing requirement, and other businesses are restricted by zoning ordinances. Therefore, if the proposed regulations are adopted, VRDs would be capped, but other potentially loud or high traffic business such as bars, gas stations, cafes, apartments, and hotels would not. In addition, per section 14.03.050 of the Newport Municipal Code, the following businesses are permitted in at least one of the Residential Zones (R-1 through R-4): Multi Family Residential, Mobile Home Park, Home Occupations, Private Schools, Child Care Facility, Residential Care Homes, Nursing Homes, Rooming and Boarding Houses, Hospitals, Membership Organizations, Museums, Condominiums, Residential Facility, Assisted Living Facilities, and Bed & Breakfast Facility. Even though these businesses can be the source of excessive noise, overcrowding, illegal parking, and nuisances (e.g. accumulation of refuse, light pollution, etc.), the City does not cap the number of such businesses.

It appears to me that the proposed geographic limitations and enforcement procedures are sufficient to limit the total number of VRDs, without the need for an arbitrary limit. The precedence established by imposing a limit could lead to a limit of other types of business if some people see the business as objectionable.

It does make sense to encourage VRDs in the areas with a good view and high tourist activity. These homes are more likely to justify the additional investment to make them attractive to renters and to comply with the VRD safety standards. In addition, I believe the value of these homes would require rents that are too high for the “workforce” tenants. If the prospect of becoming a VRD is the only way an owner can justify fixing-up a dilapidated property, then I am all for it. However, if the City imposes an arbitrary limit on the number of VRDs, then an investor may not be willing to risk the investment. Even if a property owner verifies that a property would qualify for a VRD, the final qualification based on the cap would not be known until the time of application for a license, this could be months or years after the owner starts investing in the improvements. It would be a very unpleasant surprise to discover that a flood of other VRD applications caused my property to be ineligible.

In addition, I have comments on two other aspects of the proposals:

(a) Policy Alternative- “E.2. Parking Standards. One (1) off-street parking space per bedroom that is dedicated to short-term rental use, unless the dwelling unit is within a parking district as defined in section 14.14.100, in which case on-street parking may be used to meet the one (1) space per bedroom requirement provided the parking is allocated in accordance with the requirements of the parking district. Parking spaces shall comply with the dimensional standards of subsection 14.14.090(A). Off-street parking on driveways that extend into underdeveloped rights-of-way may be used to satisfy this requirement provided a stipulation is placed on the endorsement that the authorization may be revoked if the street is improved and driveway shortened.”

I encourage the City to allow off-street parking to extend into unimproved public right-of-way.

(b) Section 4.25.020 A 8, Proof of Residential Use (for Home shares and Bed and Breakfast Facilities)- The proposed primary residence verification precludes a part-time resident from operating a home share business, even though the owner is present while the property is rented. This reflects a bias against part-time residents.

Sincerely,

Jon Tesar

Royston H. Filby and Catherine A. Grimm
7381 North Coast Highway
Newport, OR 97365
Tel: (541) 265-7781

November 8, 2018

To: Members of the Newport Planning Commission

Subject: Testimony Concerning Proposed Ordinance 2144

We, the undersigned, are impacted by the proposed Ordinance 2144 relating to Vacation Rentals as our property, in an R-1 zone, is bordered to the south by a VRD and there is another VRD one property removed to the north. The Ordinance proposed by the Ad Hoc Committee is clearly a great improvement over the existing VRD Ordinance and the Committee should be applauded for its thorough work. Our comments below relate to the various alternatives prepared by the Ad Hoc Committee and submitted to the Planning Commission.

Limit Areas Where VRDs are Allowed. We strongly urge the Planning Commission to limit VRDs to areas outside R-1 and R-2 zones (Alternative 4). VRDs are intrusive businesses that, like other businesses, should not be permitted in residential zones. The Ad Hoc Committee has documented the many negative effects that VRDs have on the quality of life in residential areas. VRDs should be restricted to commercial and tourist areas of the city, as many members of the Ad Hoc Committee have recommended.

Establish License and Density Limits. We support a hard cap on the number of VRD licenses as a fixed number, (200 or current number permitted) rather than a percentage of the housing stock. We also strongly oppose transfer of a VRD license upon sale of a property in a residential zone.

Improve Enforcement. We strongly support the creation of a centralized complaint system coupled with hiring a third party vendor to monitor complaints, permitting etc., and for enforcement of code. This concept is key to satisfying residents' many complaints concerning noise, parking and garbage. The City has not effectively monitored VRDs in the past and should not have to spend scarce resources on what is a growing problem. The funding for a third party vendor should be primarily from VRD owner fees and not from city taxpayers. The requirement that a local contact be identified that can respond to complaints within 30 minutes should be enforced.

Refine Approval Standards. We support revising the occupancy limits to 2 per approved bedroom and the one parking space per bedroom. Special events should not be permitted.

Phase-Out of VRDs. Existing VRDs in residential zones should be phased out over a 3 to 5 year period.

Other Issues. There is little or no input by affected residents prior to granting a VRD license that will have significant impacts on their quality of life. The City proposes to inform residents within 200 ft after a license has been issued to a property owner. Affected residents should have the opportunity to comment and to request changes before issuing a license as is the case for building permits. This is the approach taken by Lincoln County. Similarly, residents should have the opportunity to review the operation and history of any VRD in their neighborhood and provide input prior to renewal of a license.

We appreciate the opportunity to comment on the proposed Ordinance 2144.

Sincerely

Roy Filby and Cathy Grimm

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)



July 23, 2018

Work Session

- Review Draft Transportation System Plan Scope of Work
- Review VRD Open House Materials and Coordinate Attendance

August 13, 2018

Work Session

- Conflict of Interest Training (City Attorney)
- Review Draft Zoning Text Amendment from Pacific Seafood related to Extended Stay Hotel/Motel uses

August 13, 2018

Regular Session

- Substantial Amendment No. 13 to South Beach Urban Renewal Plan
- Resolution No. 3815 Renaming the Black Box Theatre at the PAC to the David Ogden Stiers Theatre
- Resolution No. 3816 Renaming the Piano Rehearsal Room at the PAC to the Ramona Martin Piano Rehearsal Room

August 30, 2018

Special Joint Council/Commission Meeting

- Park System Master Plan Opportunities and Constraints Workshop

September 10, 2018

Work Session

- Review DOGAMI's tsunami time and distance modeling results

September 10, 2018

Regular Session

- File 1-SUB-18/2-VAR-18/3-GP-18 Fisherman's Warf Estates 11 Lot Subdivision (1005 SE Bay Blvd)
- File 3-Z-18 Zoning Text Amendment from Pacific Seafood Group related to Extended Stay Hotel/Motel uses (to be continued to 9/24/18)
- File 3-VAR-18 Height Variance for Samaritan Pacific Communities Hospital

September 24, 2018

Work Session

- Placeholder for discussing process for proceeding with VRD Code Amendment Hearings

September 24, 2018

Regular Session

- Continued hearing on File 3-Z-18 Zoning Text Amendment from Pacific Seafood Group related to Extended Stay Hotel/Motel uses (to be continued to 9/24/18)
- Continued Hearing 3-VAR-18 Height Variance for Samaritan Pacific Communities Hospital
- Appeal of Geologic Permit 1-GP-18 (NW Spring Street)

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)



October 8, 2018 Work Session

- Review Draft Short-Term Rental Code Amendments (Part 1)

October 8, 2018 Regular Session

- Interpretation of Scope of Approval for File 1-CUP-17 Sylvia Beach Hotel
- Continued Hearing Appeal of File 1-GP-18 (NW Spring Street)
- Action on File 1-SUB-18/2-VAR-18/3-GP-18 Fisherman’s Warf Estates 11 Lots (1005 SE Bay Blvd)

October 22, 2018 Work Session

- Review Draft Short-Term Rental Code Amendments (Part 2)

October 22, 2018 Regular Session

- File 2-SUB-18/4-GP-18 for 4-lot Townhouse Subdivision (847 SE 5th St) – CONTINUED TO 11/13

November 13, 2018 Regular Session

- Deliberation and Decision on Appeal of File 1-GP-18 (NW Spring Street)
- Continued Public Hearing File 2-SUB-18/4-GP-18 for 4-lot Townhouse Subdivision (847 SE 5th St)
- Hearing No. 1 Short-Term Rental Code Amendments (testimony only)

November 26, 2018 Work Session

- Short Term Rental (preferred alternatives). May shift to 12/10 if 2nd hearing is needed.

November 26, 2018 Regular Session

- Action on File 1-GP-18 (NW Spring Street) / File 2-SUB-18 Townhouse Subdivision (847 SE 5th St)
- Hearing File 4-NCU-18 for Minor Expansion to Manufactured Dwelling Park
- Hearing File 6-MISC-18 Appeal of Director’s Determination on Required Frontage Improvements
- Hearing No. 2 Short-Term Rental Code Amendments (additional testimony)

December 10, 2018 Work Session

- Review Zoning Provisions for Tiny Homes/MFDs
- Review Draft FIRM Map Amendments (Including Resolved Southshore Appeal)

December 10, 2018 Regular Session

- Hearing File 5-Z-18 Zoning Map Amendment (1465 SE Marine Drive)
- Hearing File 4-CUP-18 Further Modifications to Exterior of Historic Sylvia Beach Hotel

December 13, 2018 Tentative: Noon Joint Commission/Council Work Session

- Review and Provide Feedback on Park System Master Plan Preferred Alternatives

December 24, 2018 No Meeting