

CITY OF NEWPORT

ORDINANCE NO. 2205

**AN ORDINANCE ANNEXING TERRITORY TO THE CITY OF NEWPORT,
WITHDRAWING THE ANNEXED TERRITORY FROM THE LINCOLN COUNTY
LIBRARY DISTRICT, NEWPORT RURAL FIRE PROTECTION DISTRICT,
SEAL ROCK WATER DISTRICT AND ESTABLISHING ZONING FOR THE
ANNEXED TERRITORY**

Summary of Findings:

1. A request to annex real property into the City of Newport was filed by South Beach Church, an Oregon non-profit corporation, the owner of real property identified as Tax lots 01201 and 01400 of Lincoln County Assessor's Tax Map 11-11-17-DD. Concurrent with annexation, the real property will be withdrawn from the Lincoln County Library District, Newport Rural Fire Protection District, and Seal Rock Water District and the Newport Zoning Map will be amended to apply R-3/"Medium Density Multi-Family Residential" zoning to the property.
2. The Planning Commission of the City of Newport, after providing the required public notification, including the notification to the Department of Land Conservation & Development, held a public hearing on January 9, 2023, for the purpose of reviewing the proposed requests and providing a recommendation to the City Council. The Planning Commission public hearing was held in accordance with the appropriate provisions of the Newport Zoning Ordinance, and, after due deliberation and consideration of the proposed changes, the Planning Commission voted to recommend that the City Council approve the property owner's request.
3. The City Council of the City of Newport, after provision of the required public notification, held a public hearing on February 6, 2023, on the requested annexation and withdrawal, and the zoning of the property to be annexed.
4. The City Council decided after considering the recommendation of the Planning Commission, and the evidence and argument presented at the public hearing and in the record, that the application complies with the applicable criteria and voted to approve the requested annexation, withdrawal, and zoning designation.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. ANNEXATION, WITHDRAWAL, AND ZONING

A. Annexation. The following described territory (illustrated in Exhibit "A") is hereby annexed to and incorporated within the City of Newport, Oregon:

Tax lot 11-11-17-DD-01400-00

Beginning at the Southeast corner of the Southeast 1/4 of the Southeast 1/4 of Section 17, Township 11 South, Range 11 West of the Western Meridian, Lincoln County, Oregon; thence North 87° 11' 17.00" West along the southern boundary of Section 17, a distance of 1,350.781 feet to the Southwest corner of the Southeast 1/16 of the Southeast 1/4 of the Southeast 1/4 of Section 17, the Southwest corner of the described tract, Tax lot 01400, and the True Point of Beginning. Thence South 87° 11' 17.00" East along the southern boundary of Section 17, a distance of 599.120 feet; thence North 00° 00' 00.00" East a distance of 676.500 feet to the centerline of the abandoned Spruce Production Railroad as described in Book 122, page 89 as recorded in the Lincoln County Recorder's Office; thence westerly along the centerline of the abandoned Spruce Production Railroad along a left curve of length 65.964 feet with a radius of 478.340 feet whose chord length is 65.912 feet along a bearing of South 89° 40' 07.44" West; thence South 85° 43' 04.00" West a distance of 150.410 feet, more or less, to a point that is South of the Southwest corner of the John Bartow tract as described in Book 104, page 209, Deed Records; thence North 00° 38' 26.00" West a distance of 33.067 feet, more or less, to the northern boundary of the abandoned Spruce Production Railroad; thence South 85° 43' 04.00" West along the northern boundary of the abandoned Spruce Production Railroad a distance of 98.690 feet; thence westerly along a left curve of length 288.970 feet with a radius of 3,556.609 feet whose chord length is 288.903 feet along a bearing of South 83° 22' 06.84" West; thence South 00° 17' 50.00" East a distance of 627.837 feet to the Point of Beginning. Said tract contains 9.00 Acres (391,554 square feet), more or less.

Together with;

Tax lot 11-11-17-DD-01201-00

Beginning at the Southeast corner of the Southeast 1/4 of the Southeast 1/4 of Section 17, Township 11 South, Range 11 West of the Western Meridian, Lincoln County, Oregon; thence North 87° 11' 17.00" West along the southern boundary of Section 17 a distance of 751.661 feet to the Southwest corner of the described tract, Tax lot 01201, and the True Point of Beginning. Thence South 87° 11' 17.00" East along the southern boundary of Section 17 a distance of 309.00 feet; thence North 00° 00' 00.00" East a distance of 420.00 feet; thence North 87° 11' 17.00" West a distance of 309.00 feet; thence South 00° 00' 00.00" East a distance of 420.00 feet to the point of Beginning. Said tract contains 2.98 Acres (129,808 square feet), more or less.

B. Withdrawal. The property annexed to the City of Newport, as described in Section 1 (A) above, is hereby withdrawn from the Lincoln County Library District, Newport Rural Fire Protection District, and Seal Rock Water District, such withdrawal being deemed to be in the best interest of the City of Newport. The City of Newport also hereby elects to assume the liabilities and indebtedness, if any, against the property so withdrawn from the Lincoln County Library District, Rural Fire Protection District, and Seal Rock Water District and further elects to assume such liability to the Seal Rock Water District in the manner provided by ORS 222.520(2)(a).

C. Zoning. Ordinance No. 1308 (as amended) adopting the City of Newport Zoning Map is hereby amended to provide for a zone designation on the Zoning Map for the property annexed to the City of Newport by designating the subject property described in Section 1(A) with an R-3/"Medium Density Multi-Family Residential" zone designation.

Section 2. The findings attached as Exhibit "B" are hereby adopted in support of the annexation, withdrawal, and zoning designations as adopted in Section 1.

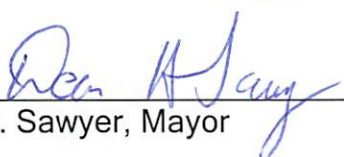
Section 3. In accordance with ORS 222.005, a copy of this ordinance shall be provided, by certified mail, to public utilities and telecommunication carriers operating within the city no later than 10 working days after passage of the ordinance.

Section 4. Once this ordinance is effective, copies of the document shall be forwarded to the Lincoln County Assessor and Oregon Department of Revenue in accordance with ORS 222.010 and ORS 308.225.

Section 5. This ordinance shall take effect 30 days after passage.

Date adopted and read by title only: February 06, 2023

Signed by the Mayor on 02-07, 2023.



Dean H. Sawyer, Mayor

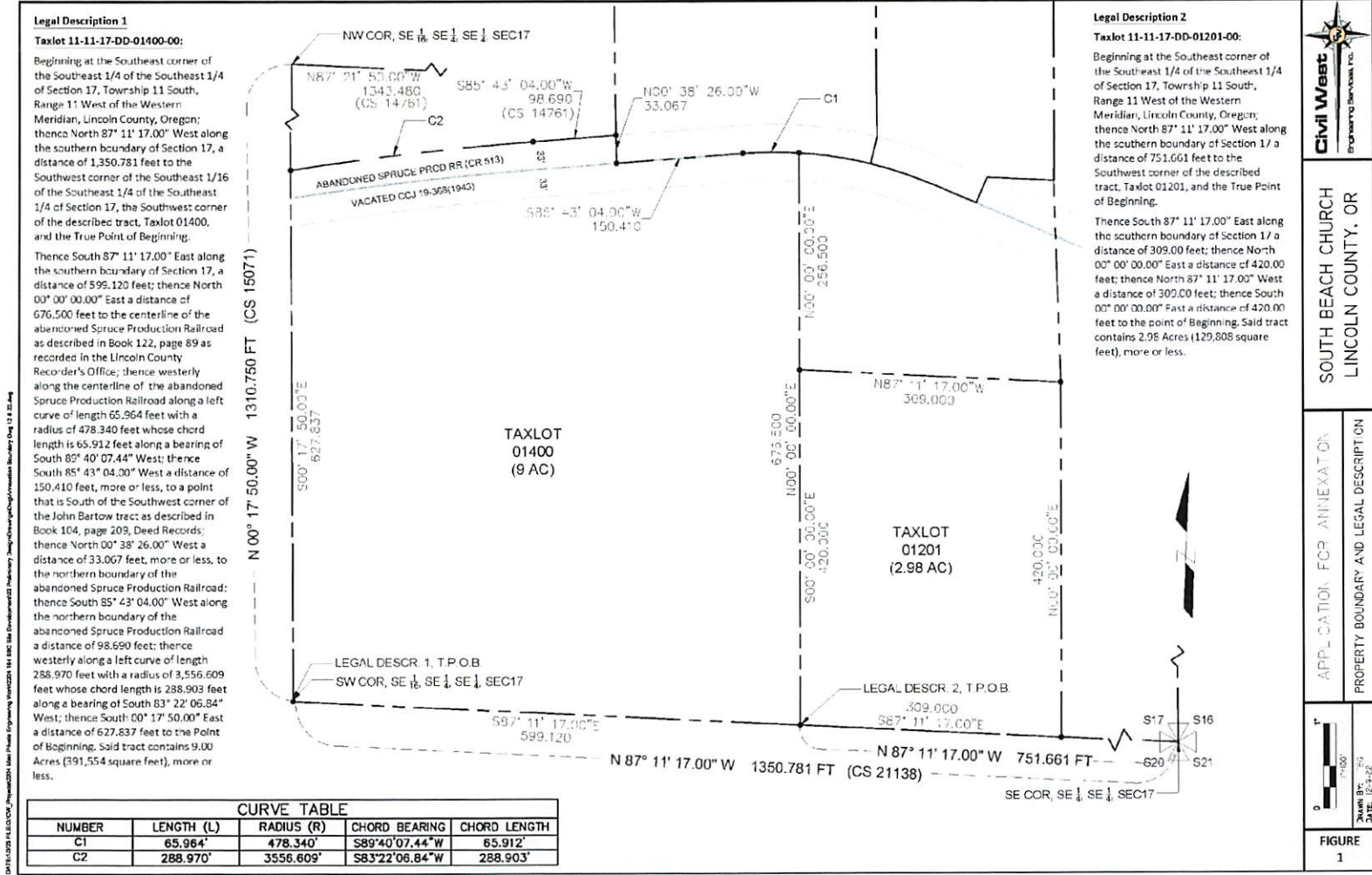
ATTEST:



Erik Glover, Asst. City Manager/City Recorder

Exhibit "A"

Ordinance No. 2205



Findings for Requested Annexation of Property, Withdrawal from the Newport Rural Fire Protection District, Newport Library District and Seal Rock Water District, and Establishment of a Zoning Designation

FINDINGS OF FACT

1. The application for annexation, withdrawal, and zoning designation (Newport File No. 3-AX-22/7-Z-22) was filed by South Beach Church, an Oregon non-profit corporation, on November 21, 2022. The application requests the City of Newport to: (1) annex approximately 11.98 acres of real property (consisting of property currently identified as Tax Lots 01201 and 01400 of Assessor's Tax Map 11-11-17-DD) into the Newport city limits; (2) amend the City of Newport Zoning Map to establish an R-3/"Medium Density Multi-Family Residential" zoning designation for the entire property consistent with the existing Newport Comprehensive Plan designation of "High Density Residential;" and (3) withdraw said territory from the Newport Rural Fire Protection District, Lincoln County Library District, and Seal Rock Water District.
2. The applicant is requesting that their property be annexed and given residential zoning so that they will have an opportunity to apply for a conditional use permit to establish a church on the site, which is their ultimate goal.
3. The property is located North of SE Harborton Street approximately 1,100 feet east of the SE 40th Street and US 101 intersection (Assessor's Map 11-11-17-DD, Tax Lots 01201 and 01400). It is 11.98 acres in size.
4. The legal description of the area to be annexed is as follows:

Tax lot 11-11-17-DD-01400-00

Beginning at the Southeast corner of the Southeast 1/4 of the Southeast 1/4 of Section 17, Township 11 South, Range 11 West of the Western Meridian, Lincoln County, Oregon; thence North 87° 11' 17.00" West along the southern boundary of Section 17, a distance of 1,350.781 feet to the Southwest corner of the Southeast 1/16 of the Southeast 1/4 of the Southeast 1/4 of Section 17, the Southwest corner of the described tract, Tax lot 01400, and the True Point of Beginning. Thence South 87° 11' 17.00" East along the southern boundary of Section 17, a distance of 599.120 feet; thence North 00° 00' 00.00" East a distance of 676.500 feet to the centerline of the abandoned Spruce Production Railroad as described in Book 122, page 89 as recorded in the Lincoln County Recorder's Office; thence westerly along the centerline of the abandoned Spruce Production Railroad along a left curve of length 65.964 feet with a radius of 478.340 feet whose chord length is 65.912 feet along a bearing of South 89° 40' 07.44" West; thence South 85° 43' 04.00" West a distance of 150.410 feet, more or less, to a point that is South of the Southwest corner of the John Bartow tract as described in Book 104, page 209, Deed Records; thence North 00° 38' 26.00" West a distance of 33.067 feet, more or less, to the northern boundary of the abandoned Spruce Production Railroad; thence South 85° 43' 04.00" West along the northern boundary of the abandoned Spruce Production Railroad a distance of 98.690 feet; thence westerly along a left curve of length 288.970 feet with a radius of 3,556.609 feet whose chord length is 288.903 feet along a bearing of South 83° 22' 06.84" West; thence South 00° 17' 50.00" East a distance of 627.837 feet to the Point of Beginning. Said tract contains 9.00 Acres (391,554 square feet), more or less.

Together with;

Tax lot 11-11-17-DD-01201-00

Beginning at the Southeast corner of the Southeast 1/4 of the Southeast ¼ of Section 17, Township 11 South, Range 11 West of the Western Meridian, Lincoln County, Oregon; thence North 87° 11' 17.00" West along the southern boundary of Section 17 a distance of 751.661 feet to the Southwest corner of the described tract, Tax lot 01201, and the True Point of Beginning. Thence South 87° 11' 17.00" East along the southern boundary of Section 17 a distance of 309.00 feet; thence North 00° 00' 00.00" East a distance of 420.00 feet; thence North 87° 11' 17.00" West a distance of 309.00 feet; thence South 00° 00' 00.00" East a distance of 420.00 feet to the point of Beginning. Said tract contains 2.98 Acres (129,808 square feet), more or less.

5. Staff reported the following information regarding the requests:

- A. Plan Designation: The subject territory is within the Newport Urban Growth Boundary and is designated as "High Density Residential" on the Newport Comprehensive Plan Map.
- B. Zone Designation: City of Newport zoning is established at time of annexation. The R-3/"Medium Density Multi-Family Residential" and R-4/"High Density Multi-Family Residential" designations are consistent with a Comprehensive Plan designation of "High Density Residential." The applicant is requesting R-3 zoning, which aligns with the designation applied to property within the City, situated immediately to the south.
- C. Surrounding Land Uses: A wetland separates the property from mixed residential uses to the north. Light industrial uses exist downslope to the west. Undeveloped residential property is situated to the south and land to the east is forested and outside the city limits.
- D. Topography and Vegetation: The central portion of the property is relatively flat, with steep slopes forming the west, north and east sides of the site. The property is forested with understory vegetation.
- E. Existing Residences/Buildings: None.
- F. Utilities: Water and wastewater service can be extended into the property from SE 40th Street via an existing curb cut in the SE Chestnut Street right-of-way (southwest corner of the property).
- G. Development Constraints: None.
- H. Past Land Use Actions: None known.
- I. Notification: Required notice to the Department of Land Conservation and Development was provided on November 30, 2022. For the Planning Commission and City Council public hearings, notification in accordance with the NMC Section 14.52.060(C) requirements included mailing notice to surrounding property owners, City departments and other public agencies and utilities, and

other individuals on December 9, 2022 and January 18, 2023, respectively. Notice of the Commission and Council public hearings was published in the Newport News-Times on December 30, 2022 (Commission) and January 25, 2023 and February 1, 2023 (Council).

6. The Planning Commission held a public hearing on the proposed request on January 9, 2023. Testimony was provided by the applicant in support of the request. No other testimony was offered at the hearing and, after considering the testimony and reviewing the staff report, the Commission voted unanimously to recommend approval of the annexation with the property being zoned R-3/"Medium Density Multi-Family Residential."
7. The City Council held a public hearing on the annexation request on February 6, 2023. A Planning Staff Report, dated December 21, 2022, was submitted to the City Council. The Planning Staff Report and attachments as follows are hereby incorporated into the findings:

Attachment "A" - Application Form
Attachment "B" - Statutory Warranty Deed Vesting the Church with Ownership
Attachment "C" - Completed Consent to Annex Form
Attachment "D" - Legal Description and Map of Area to be Annexed
Attachment "E" - Newport Comprehensive Plan Map
Attachment "F" - Newport Zoning and Aerial Map
Attachment "G" - Uses allowed in zones
Attachment "H" - Intent of Zoning Districts
Attachment "I" - Public Notice
Attachment "J" - OAR 660-012-0040
Attachment "K" - Copy of ORS 222.170 through 222.183
Attachment "L"- Copy of ORS 222.460 through 222.465 and ORS 222.524

8. At the February 6, 2023 public hearing, the City Council heard a staff report and allowed for testimony and evidence to be given on the annexation request. Following the close of the public hearing, the Council deliberated and voted to approve the request. The minutes of the February 6, 2023 public hearing are hereby incorporated by reference into the findings.
9. The approval criteria for this annexation request are as follows:
 - A. For the annexation/withdrawal portion of the annexation request, Newport Municipal Code Section 14.37.040 provides *"The required consents have been filed with the City; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits."*
 - B. For the zoning map amendment portion of the annexation request, the applicable criteria per Newport Municipal Code Section 14.36.010 are *"Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare."*

- C. When property is to be rezoned, the City must also address applicable requirements of the State of Oregon Transportation Planning Rule (OAR 660-012-0060). Pursuant to OAR 660-012-0060(1), Plan and Land Use Regulation Amendments, if an amendment to a zoning map significantly affects an existing or planned transportation facility, then the local government must put in place measures to mitigate the impact, unless the amendment is allowed under section (3), (9) or (10) of the rule. In this case, section (9) is applicable and it reads as follows:

(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.

CONCLUSIONS

1. In regard to the criteria for approval of the annexation request under Newport Municipal Code Section 14.37.040 the City Council concludes as follows:
 - A. In regard to the first criterion (*The required consents have been filed*), the City Council concludes that pursuant to Oregon Revised Statutes (ORS) 222.170(1), the City need not hold an election on the annexation of contiguous territory if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land. The applicant, South Beach Church, owns the subject territory as evidenced by a Statutory Warranty Deed, recorded November 3, 2022 under Instrument #2022-10388 (Planning Staff Report, Attachment "B"). The South Beach Church filed a completed "consent to annex form" demonstrating their desire to have the property annexed by the city (Planning Staff Report, Attachment "C"). This is sufficient evidence to establish that the requisite consent has been granted and that the city may proceed with the annexation without an election.
 - B. In regard to the second criterion (*the territory to be annexed is within the acknowledged urban growth boundary (UGB)*), The City Council concludes that City records show that the property is within the Urban Growth Boundary of the City of Newport.

- C. In regard to the third criterion (*the territory to be annexed is contiguous to the existing city limits*), the south and west boundary of the subject territory (i.e. real property) is contiguous to the existing city limits (Planning Staff Report, Attachment "F").
2. In regard to withdrawal of the Newport Rural Fire Protection District and Lincoln County Library District, the City Council finds that there are no applicable criteria and that withdrawal of the property from these districts should occur at annexation, since that is the time when the City of Newport becomes the service provider.
3. In regard to withdrawal of the property from the Seal Rock Water District, the City Council concludes that, in accordance with the City of Newport/Seal Rock Water District Urban Service Area Agreement and ORS 222.520(2)(a), the City is responsible for District indebtedness incurred against the property prior to the date it took over responsibility for water service (i.e. January 1, 2008). Such payment will be made to the District in lump sum prior to the effective date of the annexation ordinance.
4. In regard to the establishment of an R-3/"Medium Density Multi-Family Residential" zoning designation over the subject property, the City Council concludes that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare for the following reasons:
- A. The Comprehensive Plan designation for the property is High Density Residential (Planning Staff Report Attachment "E"). It is implemented by either the R-3/"Medium Density Multi-Family Residential" or R-4/ "High Density Multi-Family Residential" zoning designations. Property adjacent to the north and south is under the same Comprehensive Plan designation. Property to the north is zoned R-4 and property to the south is within an R-3 zone district (Planning Staff Report Attachment "F"). A list of uses permitted outright and conditionally in the R-3 and R-4 zones is included as Attachment "G." The intent of the R-3 and R-4 zoning districts is included as Attachment "H." The applicant's property access and orientation are to the south, where it would abut existing undeveloped R-3 zoned lands. Application of like type R-3 zoning to the subject property will allow for a range of potential uses that is compatible with future development of the nearby R-3 zoned areas.
- B. The Comprehensive Plan Map reflects the policy direction contained in the Newport Comprehensive Plan, including an Urban Growth Boundary that sets out the City's buildable land needs for a 20-year planning period, so it is appropriate to conclude that the application of a zone designation in conformance with the Comprehensive Plan, as is the case here, furthers a public necessity and promotes the general welfare.
- C. The Newport Comprehensive Plan identifies a need for housing, and annexing this property adds to the city's land base available for housing development. As noted, the applicant intends to construct a church on the property. Churches fall under the

category of Religious Institutions/Places of Worship in the Newport Zoning Ordinance and they are allowed conditionally in the City's four residential zones (Planning Staff Report Attachment "G"). While the applicant intends to seek conditional use approval of a church, that is not the question before the City Council at this time. The question before the Commission is whether or not annexing 11.98 acres of land and placing it in an R-3/"Medium Density Multi-Family Residential" zone district furthers a public necessity and promotes the general welfare. Given the City's well documented housing needs, the Council concludes that this bar has been met.

- D. With regard to Transportation Planning Rule requirements of OAR 660-012-0060, the City Council concludes that the project does not significantly affect an existing or planned transportation facility because the rule exemption provisions of OAR 660-012-0060(9) have been met. To support this conclusion, the Council notes that (a) the proposed R-3/"Medium Density Multi-Family Residential" zoning is consistent with the High Density Residential Comprehensive Plan Map designation; (b) Newport updated its Transportation System Plan (TSP) in 2011 (Ordinance No. 2045) and again in 2022 (Ordinance No. 2199) and the requested zoning is consistent with the urban scale of development that the TSP assumes will be generated from the property; and (c) the subject property was exempted from the Transportation Planning Rule because it predated the rule, being included in the City's original UGB in 1982 however, as noted, the City has subsequently adopted TSP amendments that account for the urbanized area. These facts demonstrate that the applicant's proposal satisfies the standards for an exemption as set forth in OAR 660-012-0060(9).

OVERALL CONCLUSION

Based on the staff report and attachments, the application material, and other evidence and testimony in the record, the City Council concludes that the requested annexation, withdrawal, and zone designations comply with the criteria established for approval of each of the requests under the applicable criteria as explained in the findings. The requested annexation, withdrawal, and establishment of a zone designation are hereby **APPROVED**.