



**PLANNING COMMISSION REGULAR SESSION AGENDA**  
**Monday, October 25, 2021 - 7:00 PM**  
**City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365**

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This meeting will be held electronically. The public can livestream this meeting at <https://newportoregon.gov>. The meeting will also be broadcast on Charter Channel 190. Public comment may be made, via e-mail, up to four hours before the meeting start time at [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). 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.

Anyone wishing to make real time public comment should submit a request to [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov) at least four hours before the meeting start time, and a Zoom link will be e-mailed.

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

*Jim Patrick, Bill Branigan, Lee Hardy, Bob Berman, Jim Hanselman, Gary East, and Braulio Escobar.*

**2. APPROVAL OF MINUTES**

**2.A Approval of the Planning Commission Work Session Meeting Minutes of October 11, 2021.**

[Draft PC Work Session Minutes 10-11-2021](#)

**2.B Approval of the Planning Commission Regular Session Meeting Minutes of October 11, 2021.**

[Draft PC Reg Session Minutes 10-11-2021](#)

**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. PUBLIC HEARINGS**

- 4.A File No. 1-MISC-21 (Continued): Extension of Fisherman's Wharf Tentative Subdivision.**
  - [Memorandum](#)
  - [Email from Nicole Loxley, dated October 11, 2021](#)
  - [Staff Report for File No. 1 -MISC-21, with attachments](#)

#### **5. ACTION ITEMS**

- 5.A File No. 1-MISC-21: Final Order and Findings for the Extension of Fisherman's Wharf Tentative Subdivision.**
  - [Final Order and Findings](#)

#### **6. NEW BUSINESS**

#### **7. UNFINISHED BUSINESS**

#### **8. DIRECTOR COMMENTS**

#### **9. ADJOURNMENT**

**Draft MINUTES**  
**City of Newport Planning Commission**  
**Work Session**  
**Newport City Hall Council Chambers by Video Conference**  
**October 11, 2021**  
**6:00 p.m.**

**Planning Commissioners Present by Video Conference:** Bob Berman, Lee Hardy, Braulio Escobar, Jim Hanselman, Gary East, and Bill Branigan.

**Planning Commissioners Absent:** Jim Patrick (*excused*).

**PC Citizens Advisory Committee Members Present by Video Conference:** Dustin Capri and Greg Sutton.

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

1. **Call to Order.** Vice Chair Branigan called the Planning Commission work session to order at 6:00 p.m.

2. **New Business.**

A. **Draft RFP for Newport Housing Capacity Analysis and Production Strategy Project.** Tokos reviewed Task #1 of the draft RFP for the project kick-off. Berman asked if they wanted to include the previous work that had been done on the housing needs analysis. Tokos reported it was included under background documents. Berman thought they should include it with the starting points to know what had been done before. Tokos noted that early in the project they would go through what the prior one called for and what they implemented from the recommendations. Branigan asked if grant funding would cover the costs of the consultants. Tokos reported the city would contribute around \$105,000 as well, and this would be strictly for consulting fees. There would be additional costs to the city for notices and things of that nature. Berman asked if the city's contribution would span over two fiscal years or be in the current budget. Tokos explained it was already programed in the current budget. If anything additional came up that they wanted to add, they would do a supplement in the next fiscal year. This amount would be relatively small.

Tokos reviewed Task #2 for education, outreach and engagement. He noted they would be reaching out to those in the community that were Spanish language dominant in the entire process to get them engaged. This would be done through Centro de Ayuda and others. Escobar asked who the others were. Tokos thought they could spend some time with Councilor Botello to figure out which groups they could reach out to, such as schools and religious institutions. Escobar suggested reaching out to restaurants and stores to get the message out.

Hanselman asked which properties the consultants would be looking at. Tokos reported they would look at all properties in the city as part of the Housing Needs Assessment and Buildable Lands Inventory. This would look at all vacant or partially vacant properties, and included properties in the Urban Growth Boundary.

Tokos reviewed Task #3 for the housing needs projection. This looked at socioeconomic and demographic trends to figure out what they were likely going to need over the next 20 years. They would need to try to quantify the number of people facing homelessness in the community. Hardy asked if they would be looking at the cause for homelessness. Tokos thought this would be more of the production strategy side of it and they would need to be careful on how they framed what they could reasonably do on that end. This projection was more about the quantifying side for what the population of homeless was now, and what they projected it to be in the planning period.

Capri asked when they would take into account for the underutilized properties in Newport. Tokos reported this would be reviewed under the housing needs piece and the constructability assessment. This would help to find

out which properties would be good candidates for housing, and which areas should be looked at to get the best bang for the buck for housing development.

Branigan asked if they would they look at the ability to have duplexes and fourplexes rather than single family units when they looked at where they could build. Tokos confirmed they would be looking at all housing types. Berman asked who the project advisory committee would be comprised of. Tokos thought it would be a range of community interests. This would include the Affordable Housing group, Lincoln County, the Housing Authority, and business interests to get a broad representation.

Tokos reviewed Task #4 for the buildable lands inventory, and Task #5 for the housing constructability assessment. He would be talking to developers to get an idea on the range of costs for development. Escobar asked if they were considering an expansion of Harney Street. Tokos didn't think they would because it would be difficult to serve the land because of the cost to bring the infrastructure online and make the housing affordable. Berman asked if subareas were geographic subareas or subdivisions of groups of parcels. Tokos confirmed they were geographical.

East asked if new apartments would contribute to the housing numbers. Tokos confirmed they would and the developer of the Wyndhaven Ridge Apartments would be pulled into the conversation.

Escobar asked how the community built affordable housing in light of the costs. Capri explained that subsidies were the only way to do this. Tokos reported that the Surf View Apartment project was 60 percent or lower medium area income, and 85 percent of the funding for this project was public.

Hanselman reminded that they weren't discussing water delivery. There had been water restrictions the current summer and there hadn't been discussions on increasing water supplies. Hanselman questioned how the increase to the system would be addressed. Escobar noted the City Engineer had reported the concerns of the sewer system. He thought the sewer and water infrastructure needed to be discussed in terms of housing. Tokos noted they couldn't say no connections unless they did a moratorium. If they did a moratorium, the clock would start on a resolution and the city would have to implement it in a reasonably timely manner. This was often paid by general obligation bonds which would affect taxes and the affordability of units. Capri noted that new construction significantly improved infrastructure. Berman reminded that nothing was being done about the basic improvements such as the source of water and water solutions.

Tokos reviewed Task #6 for the residential land needs analysis, Task #7 for the measures to accommodate needed housing, Task #8 for consultant deliverables, Task #9 for the Final HCA and HPS reports, and Task #10 for the adoption and timeline. Berman noted that the proposal submittal and schedule deadline on Page 12 should be changed from 2021 to 2022.

Tokos asked for a Commissioner to volunteer to review proposals. Hanselman and Berman were interested unless another Commissioner wanted to do it. Escobar was interested but since he was a new Commission member he thought he would need some guidance. Sutton expressed interest but liked the idea of Escobar doing it.

**B. Transportation System Plan Tech Memo #12, Transportation Standards.** Tokos reviewed the memo outline and the changes the consultants thought should be made. Berman noted that under recommendation 6 there was confusing text and it was missing a word. Tokos would fix this. He reviewed the transportation facilities as allowed use, the consolidation of definitions, and the edits to the definitions. Berman asked what a half street was and if it would ever be implemented. Tokos confirmed this was something that was done often in infill development. An example was when a street was underdeveloped and someone built on one side of the street where they were required to do half a street improvement. Hanselman asked if private streets and driveways were required to be kept to a certain standard for emergency vehicle access. Tokos wasn't aware of private streets where the city tried to impose some kind of quality control of the street to a certain level. There were some areas like South Shore with well-developed streets that had a good program in place to maintain the streets. There were others that didn't have anything in place.

Tokos reviewed the traffic impact analysis. He noted that as they went through the adoption process they would bring in examples of new development. Berman asked for clarification on Point F of the traffic impact analysis. Tokos explained that in this context they were talking about something that was potentially creating a safety issue that warranted further analysis. He thought they may need to be more clear on this and have it be more quantifiable.

Tokos reviewed the fee in lieu option and noted the city hadn't done this before. The Commission needed a discussion on if they wanted to do this. Berman asked why someone would want to do this. Tokos explained it involved engineering, design, and time to build a capital expense. Berman asked how they knew how much to charge them. Tokos thought they could do it formulaic and use this as a rule of thumb. He reminded that this was how they did LIDs. Berman didn't think it was a good idea.

**3. Unfinished Business.**

A. **Updated Planning Commission Work Program.** No discussion was heard.

**4. Adjourn.** The meeting adjourned at 6:59 p.m.

Respectfully submitted,

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Sherri Marineau,  
Executive Assistant

*Draft* MINUTES  
City of Newport Planning Commission  
Regular Session  
Newport City Hall Council Chambers  
October 11, 2021

**Planning Commissioners Present by Video Conference:** Bob Berman, Lee Hardy, Braulio Escobar, Jim Hanselman, Gary East, and Bill Branigan.

**Planning Commissioners Absent:** Jim Patrick (*excused*).

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

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

2. **Approval of Minutes.**

Berman reported corrections to the minutes that he shared with Marineau. The Commission requested that these corrections be shared with them before the meetings so they could review. Berman reviewed his edits and confirmed he would share his edits with the Commission in the future.

A. **Approval of the Planning Commission Work Session Meeting Minutes of August 23, 2021.**

**MOTION** was made by Commissioner Berman, seconded by Commissioner Escobar to approve the Planning Commission Work Session Meeting Minutes of August 23, 2021 with minor corrections. The motion carried unanimously in a voice vote.

B. **Approval of the Planning Commission Regular Session Meeting Minutes of August 23, 2021.**

**MOTION** was made by Commissioner Berman, seconded by Commissioner Escobar to approve the Planning Commission Regular Session Meeting Minutes of August 23, 2021 as written. The motion carried unanimously in a voice vote.

C. **Approval of the Planning Commission Work Session Meeting Minutes of September 27, 2021.**

**MOTION** was made by Commissioner Berman, seconded by Commissioner Escobar to approve the Planning Commission Work Session Meeting Minutes of September 27, 2021 with corrections. The motion carried unanimously in a voice vote.

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

4. **Public Hearings.** At 7:04 p.m. Vice Chair Branigan opened the public hearing portion of the meeting.

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

A. **File No. 1-MISC-21.**

Tokos reported that he had received public comment before the hearing from Nicole Loxley that included a request that the hearing be held open for seven days.

Tokos reviewed the staff report. Berman asked if this would be the last extension for the subdivision. Tokos confirmed that according to the code this was correct. The Commission had the authority to grant an extension for more than two years but they weren't asked to. Berman asked if anything else would come back to the Commission after the applicant complete the process. He also asked if there would be an opportunity for additional public comment on the development after this hearing. Tokos explained that the comments on the development had already been done in 2018. The question for the Commission was if they met the criteria for a twelve month extension or not. This was the only issue that could be addressed. Berman asked if there was a timeframe for geologic reports. Tokos reported that the reports could be relied upon as accurate reports for a period of five years.

Escobar thought that given the request for a continuance or to hold the record open, would it be prudent for the Commission to continue the hearing to allow the applicant to appear and respond to public comments. Tokos explained they could do both. If they did a continuance, he suggested they do a two week continuance. Tokos noted that they needed to make clear that because the application for an extension was made in a timely manner, even though a decision would be forthcoming until after it expired, they would be okay. There was no harm to continue it for two weeks. If they chose to do the open record route, there would be a one week open period, one week of rebuttal, one week of final argument, followed by the next meeting for a decision. Tokos thought either would be reasonable. Berman thought the issue was narrow for the extension. He felt the criteria for the extension had been met and any additional testimony really wasn't relevant. Berman thought they should hear Loxley's comments but they should be directed to criteria. He thought the only comments they should hear should be about granting the extension. Hanselman noted that nothing in Loxley's request reflected on anything that was of concern for the hearing that night. What she referenced was discussed in 2018 and wasn't up for discussion at the current hearing. Hanselman thought that because the applicant did everything appropriate outlined by the city code, he wanted to move on and not offer a continuance. Branigan asked if the Commission was required to do the continuance or not. Tokos explained the statute required them to do a minimum level of extending for seven days, or a continuance for two weeks with an open public hearing. In either case it would be four weeks before a final approval. The Commission couldn't vote at this current hearing because of the request for an open record.

Sharon Loxley addressed the Commission. She explained that she didn't find out about the subdivision until recently. She noted that the subdivision would block the view for the current residents in her community, and she had concerns about erosion issues. Loxley noted that if she was obstructing the meeting with the wrong kind of objection she could withdraw it. She couldn't speak to the extension but wanted to speak on the subdivision, which she understood that she couldn't at that time. Loxley stated she had misunderstood the point of the meeting. She questioned if she would withdraw her continuance request if she couldn't object to the process. Tokos noted that Loxley could withdraw her request for a continuance or extension, or she could leave it. Loxley didn't think she had anything to add that would impact the decision or have any evidence that showed the applicant was lying about the conditions for the extension. Her concerns were about the impact to the community. Berman reminded that the subdivision had already been approved and suggested Loxley work with the developer to express her concerns and try to find ways for the developer to mitigate the potential adverse effects within the design of the subdivision. The City's role was limited at this point and they were just granting an extension. Loxley reported that she understood that the applicant was waiting to purchase their community and for the Coop to fail so he could purchase it. She thought this may be why he waited to do the development in the hope that he could make the purchase. Loxley asked if this had any bearing on the decision. Tokos noted that if she believed the developer had an issue with the extension standards, then she would want to request that they leave the record open and make her case. The Commission would then look at what was submitted. Loxley asked to withdraw the continuance request but requested there be an open record period.

Sharon Beck addressed the Commission and reported she was on the Board of Directors for the Harbor Village Cooperative. She understood that the developer asked for a continuance to pause the subdivision development process. Beck asked if the developer would be allowed to retain all the permissions he received in 2018 and reactivate them in a year. Tokos reported that the applicant was saying they were unable to complete the process to complete the final plat, which was the only thing that needed to be done. The standard for a time extension was that the first extension be done by Staff, which had already be done. The second twelve month extension could be done by the Commission. Tokos read the standards to request a second extension through the Commission. The Commission would need to determine if the applicant had met the standards. Tokos explained there wasn't a substantial change in the plan. Beck asked if the extension wasn't granted did it mean the subdivision approval would be thrown out and they would not be able to proceed. Tokos reported they would not be able to proceed but they would be able to reapply for the subdivision. Beck asked if the Commission would want to hear compelling reasons from the Harbor Village Coop on why they believed the project should not be granted an extension. Tokos explained the testimony should be directed to why the applicant hadn't met the standards for the extension. Beck requested a continuance of the hearing. Loxley also requested that the hearing be continued instead of the request to hold the record open.

Escobar asked if they needed to include in the motion that the applicant submitted the request for the extension in the appropriate timeframe and the Commission wasn't able to act on the decision based on the hearing continuance request. Tokos reported they wouldn't need to include this and they were free to decide it on the merits not withstanding that it would be passed, or would otherwise be the expiration date. Escobar asked if there was a risk that there could be another continuation if the meeting was continued. Tokos reported there could be a risk of this happening. New people could come in and ask for another continuance, but it was part of the process. Hanselman asked if the continuance would extend after the extension cutoff date. Tokos reported that if the Commission granted the extension, the twelve months would be keyed off of the date when the final decision made, not off of the current extension cutoff date.

**MOTION** was made by Commissioner Escobar, seconded by Commissioner East to continue the public hearing for File 1-MISC-21 to the October, 25, 2021 meeting to be held at 7:00 p.m. Escobar was a nay. The motion carried in a voice vote.

5. **Action Items.** None were heard.
6. **New Business.** None were heard.
7. **Unfinished Business.** None were heard.
8. **Director Comments.** None were heard.
9. **Adjournment.** Having no further business, the meeting adjourned at 7:41 p.m.

Respectfully submitted,

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Sherri Marineau  
Executive Assistant

# Memorandum

To: Planning Commission/Commission Advisory Committee  
From: Derrick I. Tokos, AICP, Community Development Director   
Date: October 21, 2021  
Re: File No. 1-MISC-21, Fisherman's Wharf Estates Permit Extension Request

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On Monday, October 11, 2021, the Newport Planning Commission conducted a public hearing to consider a request by Tim Lunceford, Greyson Financial Services, Inc., on behalf of the owner, William Ekman, to extend approval of a tentative subdivision plat, variance, and geologic permit for an 11-lot residential subdivision identified as "Fisherman's Wharf Estates" for an additional 12-months. At the hearing, Nicole Loxley and Sharon Beck provided testimony and Ms. Loxley requested that the Commission continue the hearing or hold the record open for additional testimony.

The Planning Commission elected to continue the public hearing to 7:00 pm on October 25, 2021. No new written testimony or evidence has been submitted since the October 11<sup>th</sup> hearing.

Enclosed is a copy of the October 11, 2021 staff report and email from Ms. Loxley requesting a hearing continuance or open record period.

If, after taking testimony, the Commission concludes that the approval criteria for granting an extension have been met, then a final order and findings could be adopted this same evening.

Attachments

Email from Nicole Loxley, dated October 11, 2021  
Staff Report for File No. 1-MISC-21, with attachments

**Derrick Tokos**

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**From:** Nicole Loxley  
**Sent:** Monday, October 11, 2021 6:25 PM  
**To:** Derrick Tokos  
**Subject:** Fisherman's Wharf Estates Subdivision hearing

**[WARNING]** This message comes from an external organization. Be careful of embedded links.

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Dear Mr. Tokos,

As a resident of the Harbor Village RV and Mobile Home park community directly next to the proposed Fisherman's Wharf Estates Subdivision, I would like to request a continuance of the public hearing, or if you cannot do that at this late time, that you hold the record open for our additional testimony and evidence we were unable to submit prior to the hearing. This subdivision will adversely impact the 400+ residents of Harbor Village Mobile Home and RV Park, which has just incorporated as a Cooperative affordable housing community. It will block the only view of the Bay from our property, impacting all of our residents. We are seeking legal counsel regarding our rights concerning this. There are also serious erosion and drainage concerns with our our property which would most likely be worsened by the drainage from the subdivision.

If you are able to respond to this timely, please send me the videoconferencing link for the Planning Commission meeting.

Thank you,

Nicole Loxley  
Secretary of Harbor Village Cooperative Board of Directors

## PLANNING STAFF REPORT

1. **APPLICANT:** Tim Lunceford, Greyson Financial Services, Inc. (William Ekman, owner).
2. **REQUEST:** Extend approval of a tentative subdivision plat, variance, and geologic permit for an eleven-lot residential subdivision identified as "Fisherman's Wharf Estates" for an additional 12-months. The Community Development Director granted a 12-month extension on October 5, 2020, establishing an expiration date of October 22, 2021. The original final order was approved by the Newport Planning Commission on October 22, 2018 and Condition No. 15 of that order required a final plat be submitted in two years (October 22, 2020).
3. **LOCATION:** The property is located at 1005 SE Bay Boulevard, between the Harbor Village RV Park and Harbor Crescent residential subdivision (Tax Lot 400 of Lincoln County Assessor's Tax Map (11-11-09-CB)).
4. **LOT SIZE:** Approximately 1.72 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:** Harbor Village RV Park to the north and west, Harbor Crescent residential subdivision to the east, and the Embarcadero Resort to the south (across SE Bay Blvd).
    - iv. **Topography and Vegetation:** There are a few scattered trees, shrubs and other low lying vegetation on the property. The site is moderately sloped, dropping in elevation from east to west, with steeper terrain along the east, north and western perimeter of the property.
    - v. **Existing Structures:** None.
    - 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:** File No. 1-SUB-18/2-VAR-18/3-GP-18, approval of a tentative subdivision plat, geologic permit, and variance for an eleven-lot residential subdivision. File No. 3-PD-07/6-SUB-07, approval of a planned development for 19 single family detached residences. File No. 1-PD-01, approval of a planned development for 22 units (single family and duplexes). File No. 1-PD-97, approval of a planned development for 18 single-family residences and two duplexes.

ix. **Planning Staff Report Attachments:**

Attachment "A" – Completed application form

Attachment "B" – Lincoln County property report

Attachment "C" – Applicant's written narrative

Attachment "D" – Permit extension by CDD Director, dated 10/5/20

Attachment "E" – Approved plans for Fisherman's Wharf Estates

Attachment "F" – File No. 1-SUB-18/2-VAR-18/3-GP-18, Final Order and Findings, Fisherman's Wharf Estates

Attachment "G" – Public Hearing Notice

B. **Explanation of the Request:** The applicant, Greyson Financial Services, Inc., is asking that the Planning Commission extend a City issued land use decision that approved a tentative subdivision plat, variance, and geologic permit for an eleven-lot residential subdivision on the subject property. A final plat for that subdivision was to be submitted no later than October 22, 2020. The Community Development Director has authority to extend the approval once, for a 12-month period, and did so on October 5, 2020. If the extension is not granted, the land use decision will expire on October 22, 2021.

C. **Evaluation of the Request:**

- i. **Notice/Comments:** Public notice of the application and public hearing was mailed to surrounding property owners within 200 feet of the subject property and public entities and agencies on September 21, 2021. Notice of the public hearing was also published in the Newport News-Times on October 1, 2021. No comments were received in response to the notice.
- ii. **Applicable Criteria:** Requests to extend the deadline for submission of a final plat associated with a City issued land use decision must comply with Newport Municipal Code (NMC) Section 13.05.090(H).
- iii. **Compliance with NMC Section 13.05.090(H), Time Limit Between Tentative Plan and Final Plat (Extensions).** *Requests for extension of the one-year time limit for submission of final plat shall be in writing. On receipt of the written request, the community development director may grant an extension of up to one year. The Planning Commission may grant an additional one-year extension after public hearing. Notice shall be the same as the original tentative plan. The criteria for an extension are:*
  1. *An unforeseen change in the economic condition has affected the real estate market for the project; or*
  2. *The weather has prevented the physical work; or*
  3. *Other unanticipated hardship, such as change or turnover in engineering firms, contractors, or significant delays in obtaining required state or federal permits requires additional time to complete the project.*

*An extension may only be granted if the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan.*

**Staff:** As noted in the applicant's written narrative (Attachment "C"), the agent for Greyson Financial, Tim Lunceford, became severely ill in February of 2020, fell into a coma, was hospitalized for an extended period of time, and had a leg amputated in May of that same year. He notes that his recovery has been very time consuming, but that he is now ready to return to this project. The Planning Commission can reasonably find that Mr. Lunceford's circumstances qualify as an unanticipated hardship per NMC 13.05.090(H)(3). Public notice has been provided in the same manner as it was with the original tentative plan (Attachment "G"), and the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan.

- D. **Conclusion:** If the Planning Commission finds that the applicant meets the criteria established in the Newport Municipal Code for granting an extension to the time limit for submittal of a final plat, then it can approve the request. The Commission may attach reasonable conditions of approval, which the it finds are necessary to satisfy the approval criteria. 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 it should make findings for denial.
- E. **Staff Recommendation:** Findings contained in this report establish that the extension request can satisfy City approval standards provided the following conditions are imposed:
1. The time limit for submission of a final plat for the eleven-lot residential subdivision identified as "Fisherman's Wharf Estates," approved by the Planning Commission with a Final Order and Findings of Fact on October 22, 2018 (File No. 1-SUB-18/2-VAR-18/3-GP-18), is extended for 12-months from the expiration date set in an October 5, 2020 letter from the Community Development Director. The new deadline for submission of the final plat is October 22, 2022. All other conditions of the October 22, 2018 Final Order and Findings of Fact will remain in effect.



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

October 7, 2021



## City of Newport Land Use Application

<b>Applicant Name(s):</b>	<b>Property Owner Name(s) if other than applicant</b>
Tim Lunceford	Bill Ekman
<b>Applicant Mailing Address:</b>	<b>Property Owner Mailing Address:</b>
4580 Christopher Lane Albany OR 973:	Same
<b>Applicant Phone No.</b>	<b>Property Owner Phone No.</b>
541-974-0682	541-979-6240
<b>Applicant Email</b>	<b>Property Owner Email</b>
tim@greysonfinancial.com	Same <i>Arbille Kentel @ 9740 Can</i>
<b>Authorized Representative(s): Person authorized to submit and act on this application on applicant's behalf</b>	
Tim Lunceford	
<b>Authorized Representative Mailing Address:</b>	
4580 Christopher Lane Albany, Oregon 97322	
<b>Authorized Representative Telephone No.</b>	
541-974-0682	
<b>Authorized Representative Email:</b> tim@greysonfinancial.com	

**Project Information**

<b>Property Location: Street name if address is not assigned</b>	
Fisherman's Wharf 1005 SE Bay Boulevard Newport, OR	
<b>Tax Assessor's Map No.:</b> 11-11-09-CB	<b>Tax Lot(s):</b> 400
<b>Zone Designation:</b> R-2	<b>Legal Description:</b> Add additional streets if necessary
<b>Comp. Plan Designation:</b>	
<b>Brief description of Land Use Request(s):</b>	
<i>Examples:</i> 1. Move north property line 5 feet south 2. Variance of 2 feet from the required 15-foot front yard setback <b>Permit extension</b>	
<b>Existing Structures: if any</b>	
none	
<b>Topography and Vegetation:</b>	
sloped	

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 checked="" type="checkbox"/> Other

**FOR OFFICE USE ONLY**

<b>File No. Assigned:</b>		
<b>Date Received:</b>	<b>Fee Amount:</b>	<b>Date Accepted as Complete:</b>
<b>Received By:</b>	<b>Receipt No.</b>	<b>Accepted By:</b>

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



### City of Newport Land Use Application

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

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

*[Signature]* 9/20/2021  
Applicant Signature(s) Date

*Bill Brown* owner 9-24-2021  
Property Owner 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.

*BE*

09/20/2021

RE: Fisherman's Wharf permit Extension

To Beth Young,

Beth, attached is my filled out application form asking for permit extension. I am requesting this extension due to a delay in our construction process. We were prepared to begin construction in early 2020. In February I was taken ill and fell into a coma for 17 days. I remained in the hospital for 67 days and my leg was amputated at the end of May. My recovery has been very time consuming. I have now returned to this project, but need additional time to arrange for contractors and acquire new bids. Engineering also informs me that there are some additional details to be worked out per the Cities request.

We will also need to consider weather during construction with a proposed start date of late spring 2022.

AKS Engineering has been involved in this project for a number of years and assures me they will complete project as approved.

Thank-you for your consideration.



Tim Lunceford.

BE

**Attachment "B"**

1-MISC-21

## Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R132556	Neighborhood:	NWNB	Owner and	EKMAN WILLIAM
Map Taxlot:	11-11-09-CB-00400-00	Property Class:	100	Mailing Address:	300 NW WEDRICK DR WHITE SALMON, WA 98672
Tax Map:	11s11w09CB			Site Address(es):	1005 SE BAY BLVD
Web Map:	View Map				
Info:	TWNShp 11, RNg 11, ACRES 1.72, DOC201600169				
Document:	DOC201600169				
Tax Code:	104				
Acres:	1.72				
<b>Improvements</b>					
No Inventory					
<b>Value History</b>					
Year	Imp.	Land	Total Market	Total Assessed	Levied Tax
2020	0	215,280	215,280	214,640	3,957.72
2019	0	208,390	208,390	208,390	3,788.10
2018	0	215,670	215,670	207,250	3,761.06
2017	0	201,100	201,100	201,100	3,725.44
2016	0	201,100	201,100	201,100	3,755.86
2015	0	201,100	201,100	201,100	3,586.47
2014	0	201,100	201,100	201,100	3,610.92
2013	0	201,100	201,100	201,100	3,526.91
2012	0	228,520	228,520	201,220	3,488.96
<b>Sales History</b>					
Sale Date	Price	Document	Type	Code	
01/05/2016	\$200,000	201600169	34	BSD	
03/14/2007	\$550,000	200703765	27	WD	
06/20/1997	\$185,000	MF341-0226	13	WD	
<b>Land</b>		<b>Related Accounts</b>		<b>Disclaimer</b>	
Description	Acres	Market Value	Special Use Value	For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information. Tax data exported 10/2020.	
UNDEV BAYVIEW SITE	1.72	215,280			
Today's Date: 09/21/2021					

SEP 21 2021

RECEIVED

09/20/2021

RE: Fisherman's Wharf permit Extension

To Beth Young,

Beth, attached is my filled out application form asking for permit extension. I am requesting this extension due to a delay in our construction process. We were prepared to begin construction in early 2020. In February I was taken ill and fell into a coma for 17 days. I remained in the hospital for 67 days and my leg was amputated at the end of May. My recovery has been very time consuming. I have now returned to this project, but need additional time to arrange for contractors and acquire new bids. Engineering also informs me that there are some additional details to be worked out per the Cities request.

We will also need to consider weather during construction with a proposed start date of late spring 2022.

AKS Engineering has been involved in this project for a number of years and assures me they will complete project as approved.

Thank-you for your consideration.



Tim Lunceford.

**Attachment "D"**

1-MISC-21

**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

October 5, 2020

Lyle Misbach, PE, CFM  
 AKS Engineering & Forestry, LLC  
 3700 River Road North, Suite 1  
 Keizer, Oregon 97303

**RE: Request for 12-month Extension of Fisherman's Wharf Estates Land Use Decision File No. 1-SUB-18/2-VAR-18/3-GP-18)**

Dear Mr. Misbach,

Thank you for your application of September 21, 2020 requesting that the City of Newport extend its approval of the Fisherman's Wharf Estates tentative subdivision plat, variance, and geologic permit approvals for a period of 12-months. Section 13.05.090(H) of the Newport Municipal Code (NMC) authorizes the Community Development Director to extend a land use decision(s) for a period of 12-months provided:

- 1. An unforeseen change in the economic condition has affected the real estate market for the project; or*
- 2. The weather has prevented the physical work; or*
- 3. Other unanticipated hardship, such as change or turnover in engineering firms, contractors, or significant delays in obtaining required state or federal permits requires additional time to complete the project.*

*An extension may only be granted if the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan.*

Included with your application was a letter, dated September 10, 2020, in which you explain that progress towards developing the subdivision has been delayed due to the owner and developer having had significant health issues this spring and summer, coupled with the economic uncertainty attributed to nationwide health and political issues (which I understand to be the COVID-19 pandemic). This explanation is in keeping with Criterion No. 1 and Criterion No. 3 above. Additionally, the City of Newport has not amended its Comprehensive Plan, Zoning Ordinance, or Subdivision Ordinance in a way that would substantially affect the original tentative plan.

The City of Newport's final order approving the tentative subdivision plat, variance, and geologic permit was issued October 22, 2018. Condition No. 15 of the final order requires that a final plat be submitted within two years (October 22, 2020). Since the criteria for a 12-month extension under NMC 13.05.090(H) have been met, please accept this letter as confirmation that an extension has been granted. The new deadline for the submittal of a final plat is October 22, 2021.

**NOTICE OF THIS DIRECTOR'S DECISION WILL BE PROVIDED IN THE SAME MANNER AS THAT WHICH WAS PROVIDED WITH THE ORIGINAL DECISION, AND IT MAY BE APPEALED TO THE NEWPORT PLANNING COMMISSION WITHIN 15 CALENDAR DAYS (5:00 P.M. ON TUESDAY, OCTOBER 20, 2020).** Persons interested in filing an appeal may contact the Community Development (Planning) Department, Newport City Hall, 169 SW Coast Hwy, Newport, Oregon 97365 (541-574-0629) for information on appeal procedures.

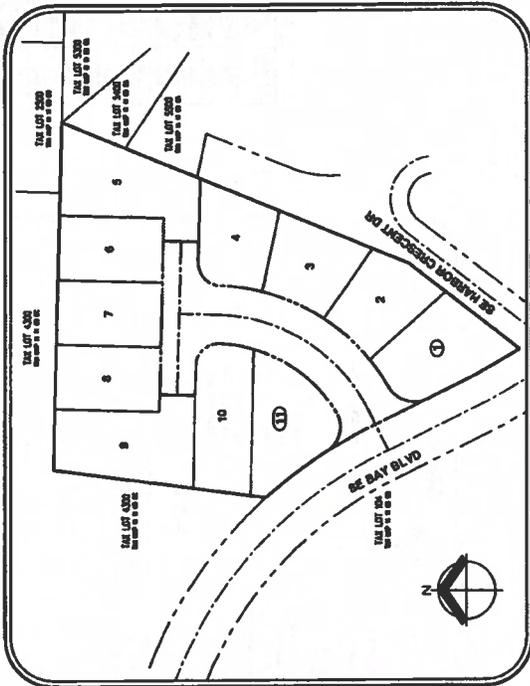
Sincerely,



Derrick I. Tokos, AICP  
Community Development Director  
City of Newport  
ph: 541-574-0626

xc: William Eckman (owner)  
Tim Lunceford (applicant)  
File

# FISHERMAN'S WHARF PRELIMINARY SUBDIVISION PLANS



**APPLICANT OWNER**  
GROSSMAN FINANCIAL SERVICES, INC.  
440 1ST AVENUE E, 3<sup>RD</sup>  
ALBANY, OR 97321

**PROPERTY OWNER**  
WILLIAM BRAMAN  
200 FERRY STREET SW  
ALBANY, OR 97321

**PROPERTY DESCRIPTION:**  
1005 SE BAY BOLLEWAD  
NEWPORT, OREGON 97365  
TAX LOT 400, LINCOLN COUNTY  
ASSESSOR'S MAP 11 11 09 C9

**PLANNING/  
CIVIL ENGINEERING /  
SURVEYING FIRM**  
AUS ENGINEERING & FORESTRY, LLC  
PLANNER: CLAYTON FISHER  
ENGINEER: DAVID KARR, PE, FLS  
4300 CHERRY AVE NE  
KEIZER, OR 97303  
PH: 503-400-0008  
FAX: 503-400-7772

### SHEET INDEX

- C0 COVER SHEET
- C1 EXISTING CONDITIONS
- C2 PRELIMINARY PLAT
- C3 PRELIMINARY GRADING AND TREE PRESERVATION PLAN
- C4 PRELIMINARY GRADING AND EROSION CONTROL PLAN
- C5 PRELIMINARY STREET PLAN AND TYPICAL SECTIONS
- C6 PRELIMINARY STREET PROFILES
- C7 PRELIMINARY COMPOSITE UTILITY PLAN

**VERTICAL DATUM**  
VERTICAL DATUM ELEVATIONS ARE BASED ON NGS BENCHMARK  
NO. V 711, LOCATED AT THE NE CORNER OF SE 300 ST AND  
NE 600 ST. ELEVATION = 171.77 FEET (NAVD 83).

**PROJECT LOCATION**  
EAST OF SE MOORE DRIVE, NORTH OF  
SE HARBOR CRESIDENT DRIVE AND SE  
BAY BLVD.

**EXISTING LAND USE**  
VACANT

**PROJECT DESCRIPTION:**  
11 LOT SUBDIVISION FOR RESIDE  
SINGLE-FAMILY HOMES AND/OR DUPLEXES

LEGEND	
EXISTING	PROPOSED
EXISTING LOT	PROPOSED LOT
EXISTING CURB	PROPOSED CURB
EXISTING SIDEWALK	PROPOSED SIDEWALK
EXISTING DRIVE	PROPOSED DRIVE
EXISTING STREET	PROPOSED STREET
EXISTING UTILITY	PROPOSED UTILITY
EXISTING TREE	PROPOSED TREE
EXISTING EROSION CONTROL	PROPOSED EROSION CONTROL
EXISTING GRADING	PROPOSED GRADING
EXISTING TREE PRESERVATION	PROPOSED TREE PRESERVATION
EXISTING STREET PROFILE	PROPOSED STREET PROFILE
EXISTING COMPOSITE UTILITY	PROPOSED COMPOSITE UTILITY

**AKS**  
ARCHITECTS & ENGINEERS  
1000 NE 10TH AVE, SUITE 200  
NEWPORT, OREGON 97365  
PH: 503-400-0008  
FAX: 503-400-7772

**FISHERMAN'S WHARF  
ESTATES SUBDIVISION**

**NEWPORT  
OR**

**COVER SHEET**

**C0**  
SHEET

5801

NOT FOR CONSTRUCTION











96

SHEET

1695

NOT FOR CONSTRUCTION

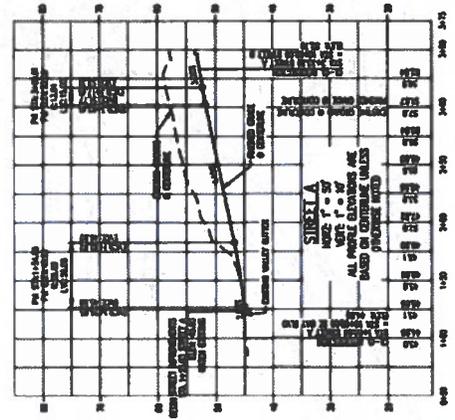
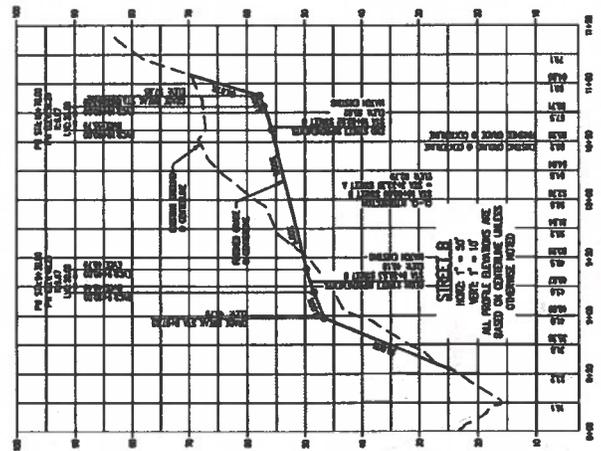


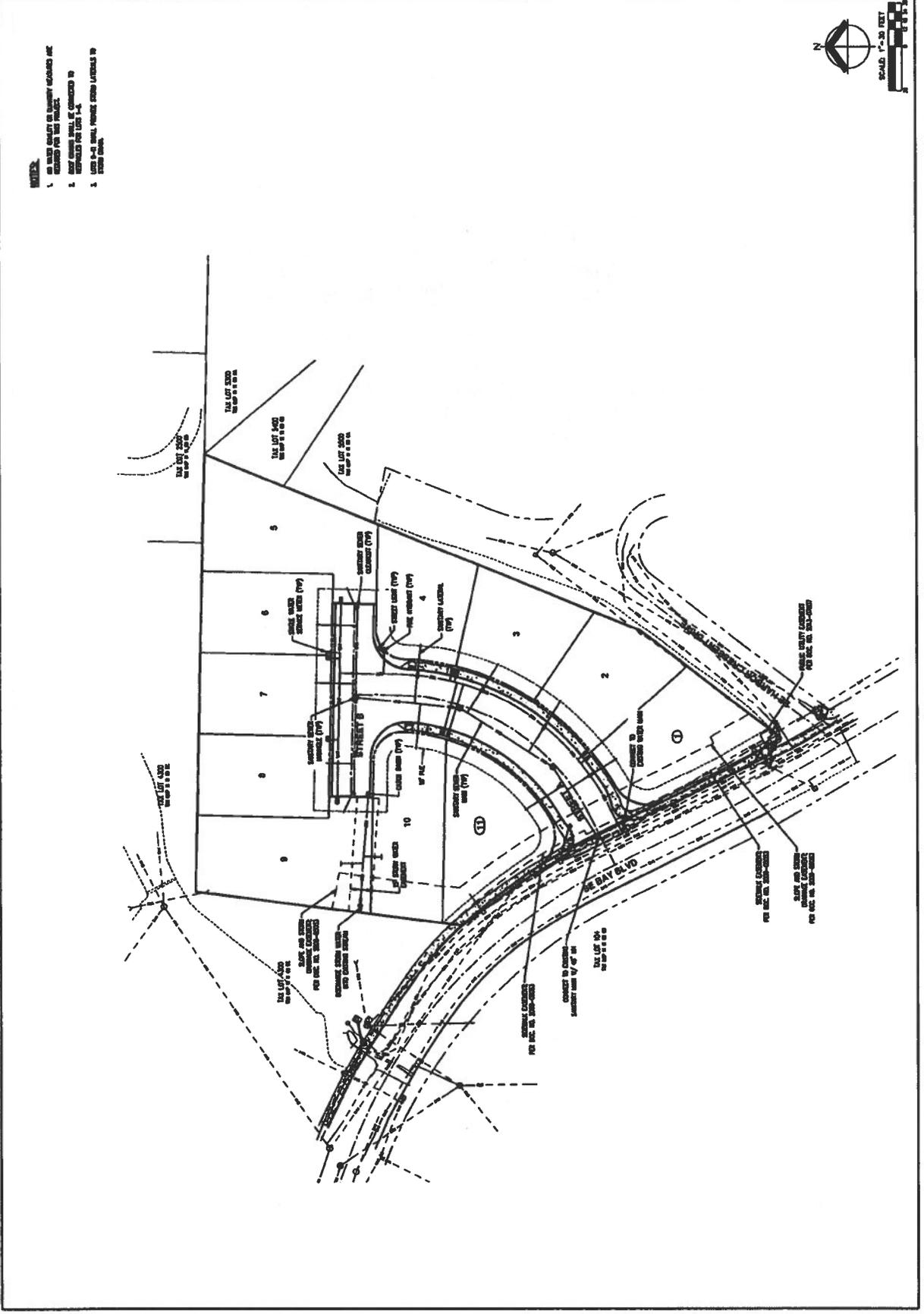
DATE: 12/15/03  
SCALE: AS SHOWN  
PROJECT: PRELIMINARY STREET PROFILES

# PRELIMINARY STREET PROFILES

## FISHERMAN'S WHARF ESTATES SUBDIVISION

NEWPORT  
OR  
FISHERMAN'S WHARF ESTATES SUBDIVISION  
OR  
AKS CONSULTING & ENGINEERING, LLC  
1000 NE 10TH AVENUE, SUITE 200  
PORTLAND, OR 97232  
503.281.1440  
www.aks-engineering.com  
ENGINEERING - SURVEYING - DESIGN - PLANNING - LANDSCAPE ARCHITECTURE





1. ALL DIMENSIONS SHOWN SHALL BE IN FEET AND INCHES.  
 2. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.  
 3. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.  
 4. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.  
 5. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.  
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 8. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.  
 9. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.  
 10. ALL DIMENSIONS SHALL BE TO THE CENTERLINE UNLESS OTHERWISE NOTED.

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

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

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

**WHEREAS:**

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

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

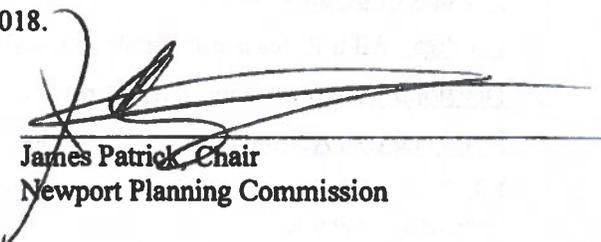
1. It shall be the responsibility of the property owner to adhere to the recommendations contained in the Geotechnical Investigation for Fisherman's Wharf Estates, prepared by Foundation Engineering Inc., dated October 19, 2007, as updated by letters dated June 12, 2018 and September 13, 2018 (collectively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

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

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

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

Accepted and approved this 22<sup>nd</sup> day of October, 2018.

  
James Patrick, Chair  
Newport Planning Commission

Attest:

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

**EXHIBIT "A"**

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

**FINDINGS OF FACT**

1. On July 30, 2018, Greyson Financial Services, Inc. (William Ekman, owner, Rhonda Meisenburg, AKS Engineering & Forestry, LLC, authorized representative) submitted an application for approval of an eleven lot residential subdivision identified as "Fisherman's Wharf Estates." A Type III variance is requested to allow the hammerhead portion of the proposed street to be built without sidewalk. Additionally, a geologic hazard report has been submitted outlining measures that will be taken to safeguard against existing hazards given that the subject property is within a mapped geologic hazard area.
2. The property is located at 1005 SE Bay Boulevard, between the Harbor Village RV Park and Harbor Crescent residential subdivision (Tax Lot 400 of Lincoln County Assessor's Tax Map (11-11-09-CB). It is approximately 1.72 acres in size per Lincoln County Assessor's records.
3. Staff reports the following facts in connection with the application:
  - a. Plan Designation: Low Density Residential
  - b. Zone Designation: R-2/"Medium Density Single-Family Residential."
  - c. Surrounding Land Uses: Harbor Village RV Park to the north and west, Harbor Crescent residential subdivision to the east, and the Embarcadero Resort to the south (across SE Bay Blvd).
  - d. Topography and Vegetation: There are a few scattered trees, shrubs and other low lying vegetation on the property. The site is moderately sloped, dropping in elevation from east to west, with steeper terrain along the east, north and western perimeter of the property.
  - e. Existing Structures: None.
  - f. Utilities: All utilities are available to the site.
  - g. Development Constraints: The property is within a mapped geologic hazards area.
  - h. Past Land Use Actions:

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

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

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

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

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

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

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

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

Exhibit "A" – Application Forms and Checklists

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

Exhibit "C" – Lincoln County Assessor's Maps

Exhibit "D" – 200-Foot Notification List

Exhibit "E" – Service Provider Letters

Exhibit "F" – Subdivision Guarantee Report

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

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

Attachment "C" – Zoning Map

Attachment "D" – Notice of Public Hearing and Map

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

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

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

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

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

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

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

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

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

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

## CONCLUSIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No reserve strips are planned. This standard is met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Applicant acknowledges this standard and it can be met.

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

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

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

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

*(uu) NMC Section 13.05.085(B). Any 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.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*1. Energy absorbing devices to reduce runoff water velocity;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **OVERALL CONCLUSION**

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

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

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

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

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

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

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

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

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

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

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

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

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

**This meeting will be conducted by video-conference. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate in the hearing.**

The Planning Commission of the City of Newport, Oregon, will hold a public hearing in the City Hall Council Chambers at 7:00 p.m. on Monday, October 11, 2021, to consider File No. 1-MISC-21, which is a request submitted by Bill Eckman (Tim Lunceford, representative). The request is for an approval to extend the approval of the Fisherman's Wharf Estates tentative subdivision plat, variance, and geologic permit approvals (File No. 1-SUB-18/2-VAR-18/3-GP-18) for a second period of 12-months. The subject property is located at 1005 SE Bay Blvd (Lincoln County Assessor's Map 11-11-09-CB; Tax Lot 400). Per Newport Municipal Code Section 13.05.090(H): Requests for extension of the one year time limit for submission of final plat shall be in writing. On receipt of the written request, the community development director may grant an extension of up to one year. The Planning Commission may grant an additional one year extension after public hearing. Notice shall be the same as the original tentative plan. The criteria for an extension are: 1) An unforeseen change in the economic condition has affected the real estate market for the project; or 2) The weather has prevented the physical work; or 3) Other unanticipated hardship, such as change or turnover in engineering firms, contractors, or significant delays in obtaining required state or federal permits requires additional time to complete the project. An extension may only be granted if the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. 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 12:00 p.m. (Noon) the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from 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 at the Newport Community Development Department (address above) 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, Community Development Director, [d.tokos@newportoregon.gov](mailto:d.tokos@newportoregon.gov), (541) 574-0626 (address above).

**(FOR PUBLICATION ONCE ON FRIDAY, October 1, 2021)**



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

**This meeting will be conducted by video-conference. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate in the hearing.**

**NOTICE IS HEREBY GIVEN** that the Newport Planning Commission will hold a public hearing on October 11, 2021 to consider the following request.

**File No:** # 1-MISC-21

**Applicant & Owner:** Bill Eckman (Tim Lunceford, representative)

**Request:** A request to extend the approval of the Fisherman's Wharf Estates tentative subdivision plat, variance, and geologic permit approvals (File No. 1-SUB-18/2-VAR-18/3-GP-18) for a second period of 12-months.

**1-SUB-18:** Approval for the Tentative Subdivision Plan (proposed name of "Fisherman's Wharf Estates") including 11 single family residential lots.

**2-VAR-18:** Type III Variance approval request to allow the hammerhead portion of the proposed street to be constructed without a sidewalk.

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

**Location:** 1005 SE Bay Blvd (Lincoln County Assessor's Map 11-11-09-CB; Tax Lot 400).

**Applicable Criteria:** NMC Section 13.05.090(H): Requests for extension of the one year time limit for submission of final plat shall be in writing. On receipt of the written request, the community development director may grant an extension of up to one year. The Planning Commission may grant an additional one year extension after public hearing. Notice shall be the same as the original tentative plan. The criteria for an extension are: 1) An unforeseen change in the economic condition has affected the real estate market for the project; or 2) The weather has prevented the physical work; or 3) Other unanticipated hardship, such as change or turnover in engineering firms, contractors, or significant delays in obtaining required state or federal permits requires additional time to complete the project. An extension may only be granted if the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan.

**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 12:00 p.m. (noon) 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

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

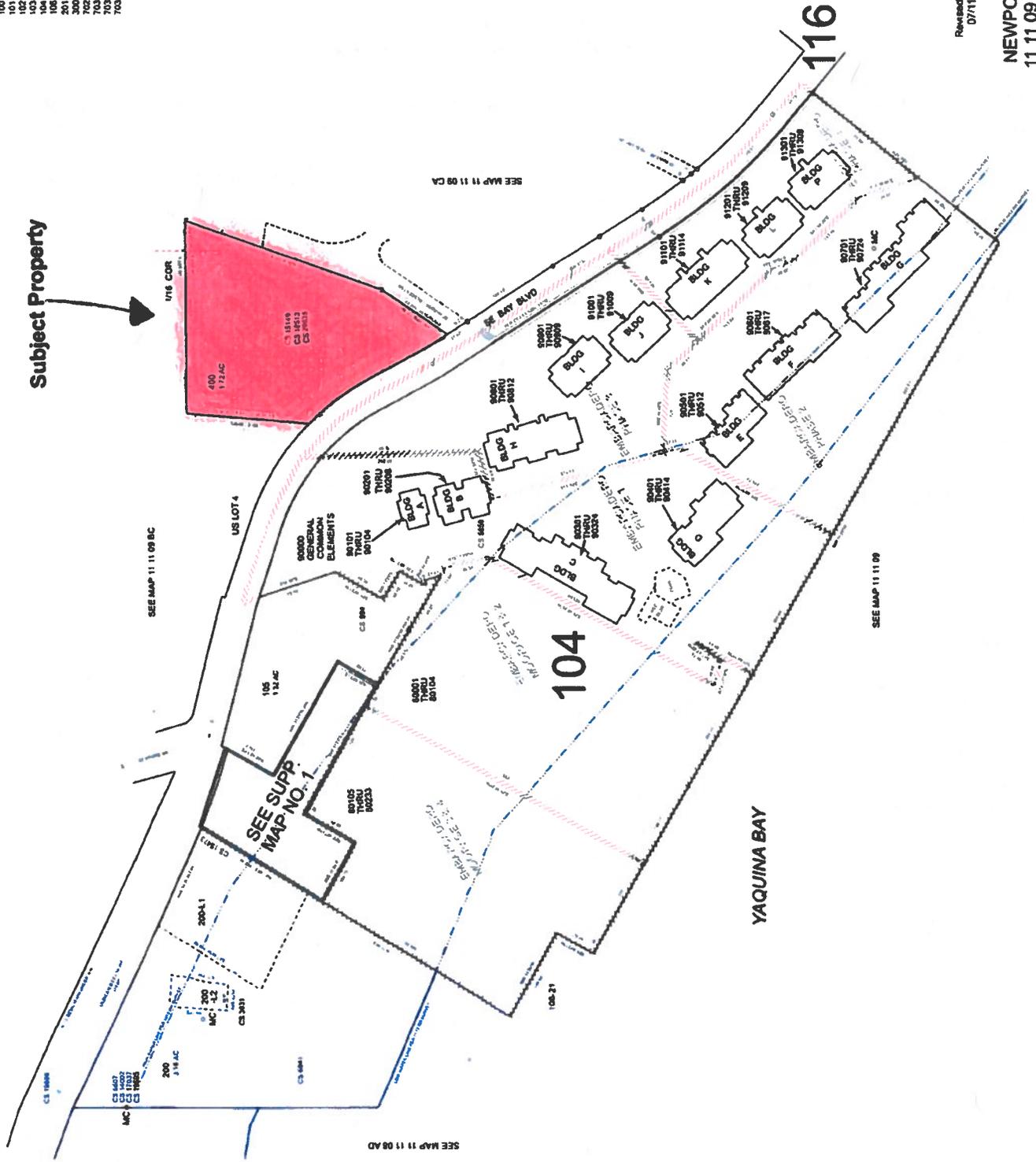


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Revised SE 07/11/201

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BELVEAL DIXIE  
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BLACKBURN PATRICIA L  
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BLACKTAIL DEVELOPMENT LLC  
3330 HAYDEN BRIDGE RD  
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BRANCH DONALD  
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BROWN KENNETH  
518 SW SMITH CT  
NEWPORT, OR 97365

BROWN RICCI &  
SHAO FENGZHI  
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BUCKLEY D PAUL  
1507 CRESTVIEW DR  
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COYLE F J &  
COYLE BARBARA  
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866 SE VISTA DR  
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39044 GOLDEN VALLEY DR  
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DATZ WILLIAM R TRUSTEE &  
DATZ PAMELA G TRUSTEE  
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OTIS, OR 97368

DEGNER GEORGE G &  
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92076 COBURG RD  
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DEMERS ANNETTE M &  
DEMERS JOHN R  
7564 SW ROANOKE DR N  
WILSONVILLE, OR 97070

DEPOE BAY FISH CO LLC  
9583 LOGSDEN RD  
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ASSN OF UNIT OWNERS  
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ERICKSON JOHN  
2154 MARION ST SE  
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ERICKSON JOHN W  
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ERISMAN JAMES S &  
ERISMAN KAREN M  
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ERISMAN JAMES STUART  
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1929 NW TIVOLI LN  
PORTLAND, OR 97229

FENSKE RICHARD &  
FENSKE LINDA  
1524 CHAPMAN HILL DR NW  
SALEM, OR 97304

FETTIG JIM &  
FETTIG LINNEA  
17705 NE CHEHALEM DR  
NEWBERG, OR 97132

FLYNN SUZANNE  
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1817 CRITESER LP  
TOLEDO, OR 97391

FRANK LUMBER COMPANY  
DRAWER 79  
MILL CITY, OR 97360

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FREY CHERYL A B TRUSTEE  
5137 NW WINN DR  
ALBANY, OR 97321

FRY ROBBIE D &  
FRY SUSIE  
38591 MOUNTAIN HOME DR  
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GLANZMAN WENDY  
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GOLDBERG URI  
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NEWPORT, OR 97365

GOOLD MICHAEL &  
GOOLD WANDA  
3859 DAKOTA RD SE  
SALEM, OR 97302

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ATTN NEWPORT MARINE CO  
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HARBOR CRESCENT HOMEOWNRS  
ASSN  
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HENDRICKS BYRON J TRUSTEE &  
HENDRICKS NANCY J TRUSTEE  
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CLEVELAND KIMBERLY T &  
CLEVELAND STEPHEN E  
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HETTMAN GARY L &  
HETTMAN MARSHA M  
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HILL TERRANCE A TRUSTEE &  
HILL JUDITH L TRUSTEE  
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RIEDL JOHN J COTRUSTEE  
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HOORNBECK BILLEE W TSTEE  
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KELLER BARBARA S TSTEE  
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ALBANY, OR 97321

KELLY KEVIN  
64100 N HWY 97  
#26  
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KELSON KATHY  
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TOLEDO, OR 97391

KLOSTER MAX B &  
KLOSTER SANDRA  
750 WYATT LN  
PHILOMATH, OR 97370

KNUTSON ERIC HENRY TTEE &  
KNUTSON PATRICIA JANE TTEE  
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NEWPORT, OR 97365

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LACKNER SCOTT  
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QU WEIWEI  
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70 NORTH 400 EAST  
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HELLMAN LAURA  
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LONG DAVID ET AL  
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MASTEN PATRICIA A TRUSTEE &  
MASTEN KENNETH D TRUSTEE  
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MCPMAHAN JERILYN L TSTEE  
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MERCER MARNE L COTTEE &  
CHADWICK LAURIE A COTTEE  
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SILVERTON, OR 97381

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MICONE SANDRA  
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MONTGOMERY CINDY  
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MOORE TAMARA  
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**NEWMAN WALTER C IV &  
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KIEFER MICHAEL  
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**NEWPORT BREWING COMPANY  
HOLDINGS LLC  
1107 SW COAST HWY  
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**NEWPORT MARINE COMPANY  
ONE SW COLUMBIA  
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**NEWPORT MARINE LIMITED PTNSHIP  
ONE SW COLUMBIA  
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ATTN CHAMPION STUART  
5331 SW MACADAM AVE  
STE 258  
PORTLAND, OR 97239**

**NOTMAN DONALD R  
200 WOODPECKER LN  
ELKTON, OR 97436**

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**NW FLEET REFINISHING INC  
10350 N VANCOUVER WAY  
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PORTLAND, OR 97217**

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**OPHEIM TAMMY &  
OPHEIM JOEL  
14151 NW WILLIS RD  
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**OREGON MINK INC  
11658 BARON RD  
MT ANGEL, OR 97362**

**OUDERKIRK J F &  
PRICE FRANK STEPHEN TSTEE &  
PRICE THERESE M WANNER TSTEE  
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PLEDGER FELICIA C  
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ROBERTS VICKY  
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ROBINSON CUTTALIYA  
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LUTZ ANN  
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**ROGERS SCOTT O &  
ROGERS MARY A  
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18075 S ABIQUA RD NE  
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CORVALLIS, OR 97330**

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MT ANGEL, OR 97362**

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SCANLON SONJA  
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SCHMOLZI WENDY M  
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SCHOPP NANCY JO  
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**SCHRANTZ JEFFREY  
152 SE VIEW DR  
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**SCHULZ EDD  
50776 DIKE RD  
SP 24  
SCAPPOOSE, OR 97056**

**SCHUTTPELZ BEVERLY  
826 SE 5TH  
NEWPORT, OR 97365**

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SCOTT TERESA ANGELA  
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**SEIDLER ROBERT E &  
SEIDLER BECKY J  
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101 DRIFT CREEK RD NE  
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**SELF KERRY E  
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BEAVERTON, OR 97003**

**SHEN FAMILY LIVING TRUST &  
SHEN PEI-JEN TRUSTEE  
1771 MANDAN PLACE  
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**SHIPWRIGHT TECHNOLOGIES LLC  
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**SILVER RIDGE NW LLC  
514 SE RUNNING SPRINGS ST  
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**SKOCH JAMES M  
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SMITH LOREN J &  
SMITH NANCY L  
30361 LOREN LN  
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SOLANO BERNADETTE  
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SPINK DANA  
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STENBAK JOHN &  
STENBAK LISA  
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STOCKTON DONALD B &  
STOCKTON JUDITH D  
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STOCKTON JUDITH DAWN &  
KICKNER SHIRLEY STOCKTON  
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SUNTERRA PACIFIC INC  
1417 116TH AVE NE  
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890 SE BAY BLVD  
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TAKUSH DONALD R TRUSTEE  
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THOMPSON SANDRA E TRUSTEE  
1449 NE YAQUINA HEIGHTS DR  
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2236 PACIFIC AVE  
FOREST GROVE, OR 97116

TILSON MURRAY M &  
TILSON NANCY K  
136 SE LARCH ST  
NEWPORT, OR 97365

TOP HAT MUSHROOMS INC  
39344 JORDAN RD  
SCIO, OR 97374

TOY HARRY A TRUSTEE &  
TOY LEOTA P TRUSTEE  
ATTN TOY ERICK  
1190 SE BAY BLVD  
NEWPORT, OR 97365

TRUONG DAN  
637 SW KECK DR  
STE 302  
MCMINNVILLE, OR 97128

TRYON VERNON L &  
TRYON SHERRIE L  
PO BOX 1058  
WALDPORT, OR 97394

TUFTS DENNIS F &  
TUFTS WILLIAM F  
PO BOX 708  
SILETZ, OR 97380

TURNER DAVID  
340 N COAST HWY  
NEWPORT, OR 97365

VANDERBECK JOHN G &  
VANDERBECK KARMEN J  
854 SE CRESCENT PL  
NEWPORT, OR 97365

VARNER DOUGLAS  
923 SE BAY BLVD  
#50  
NEWPORT, OR 97365

VELA PAUL &  
CARTER ROGER  
5134 CHERIE CT SE  
SALEM, OR 97306

VICE ROGER &  
VICE PATRICIA  
5215 FIRST ST  
CROSBY, TX 77532

**VOGEL CARL STEPHENS III  
292 W GALENA PARK BLVD  
APT #1126  
DRAPER, UT 84020**

**VTS PROGRAM REMAINDER LLC  
ATTN VACATION INTERNATIONALE INC  
1417 116TH AVE NE  
STE 100  
BELLEVUE, WA 98004**

**WALKER HOUSE LLC  
616 NW 35TH ST  
CORVALLIS, OR 97330**

**WARDELL DOUGLAS L JR TSTEE &  
WARDELL DIANNA L TSTEE  
5401 EAST RIDGE ST S  
SALEM, OR 97306**

**WEISHAR DONALD C &  
WEISHAR VIVIAN J  
37215 AGATE DR  
LEBANON, OR 97355**

**WEST HARRY B JR &  
DIECKHOFF SUSAN D  
229 EIDER AVE SE  
SALEM, OR 97306**

**WHEELER LOIS I TSTEE  
ATTN NANCY KAY GYERKO TSTEE  
1222 SE JACKSON PARK RD  
TROUTDALE, OR 97060**

**WILSON RICHARD C TSTEE  
PO BOX 928  
CORVALLIS, OR 97339**

**WILSON THOMAS D &  
WILSON SUSETTE A  
330 NW 185TH AVE  
#274  
PORTLAND, OR 97229**

**WINTERS JODY A  
1000 SE BAY BLVD  
UNIT H-6  
NEWPORT, OR 97365**

**WOLF ANDREW D  
1960 SW OLD SHERIDAN RD  
MCMINNVILLE, OR 97128**

**WOLFE BRANDON  
121 NE WILLIAMS AVE  
DEPOE BAY, OR 97341**

**WOOD STREET LLC  
5500 NE MOORE CT  
HILLSBORO, OR 97124**

**WORKMAN WILLIAM &  
BURKHARD MICHAEL  
3784 G 7/10 RD  
PALISADE, CO 81526**

**WROBEL CHARLES J  
16971 S CLACKAMAS RIVER DR  
OREGON CITY, OR 97045**

**YECK ERNEST  
PO BOX 1256  
NEWPORT, OR 97365**

**YECK FRED A TRUSTEE  
PO BOX 352  
NEWPORT, OR 97365**

**YENCHIK RONNIE J &  
YENCHIK STEPHANIE R  
818 NE GRANT ST  
NEWPORT, OR 97365**

**ZANDER SHAWN &  
ZANDER SARAH  
PO BOX 1312  
SILVERTON, OR 97381**

**ZANEVELD J RONALD V TRUSTEE &  
ZANEVELD JACQUELINE L TRUSTEE  
3835 NW GLEN EDEN DR  
CORVALLIS, OR 97330**

**ZAWALSKI RODNEY M TSTEE &  
ZAWALSKI THERESA LYNN TSTEE  
6735 GLADYS AVE  
OTTER ROCK, OR 97369**

**LUNCEFORD TIM  
4580 CHRISTOPHER LANE  
ALBANY, OR 97322**

**File No. 1-MISC-21**

**Adjacent Property Owners Within 200 Ft**

# MEMO

City of Newport  
Community Development Department



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

**Date:** September 21, 2021

**To:** Spencer Nebel, City Manager  
David Powell, Public Works  
Clare Paul, Public Works  
Chris Janigo, Public Works  
Rob Murphy, Fire  
Jason Malloy, Police  
Mike Murzynsky, Finance  
Michael Cavanaugh, Parks & Rec.  
Laura Kimberly, Library  
Beth Young, Associate Planner  
Derrick Tokos, Community Development  
Joseph Lease, Building Official  
Public Utilities

**From:** Sherri Marineau, Executive Assistant

**RE:** Miscellaneous Permit # 1-MISC-21

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Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a date for the public hearing.

Please review this information to see if you would like to make any comments. We must receive 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" will be assumed.**

sm

Attachment

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

**Email: Lisa Phipps  
DLCD Coastal Services Center  
lisa.phipps@state.or.us**

**CenturyLink  
ATTN: Corky Fallin  
740 State St  
Salem OR 97301**

**CENTRAL LINCOLN PUD  
ATTN: RANDY GROVE  
PO BOX 1126  
NEWPORT OR 97365**

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

**David Powel  
Public Works**

**Derrick Tokos  
Community Development Director**

**Joseph Lease  
Building Official**

**Clare Paul  
Public Works**

**Beth Young  
Associate Planner**

**Michael Cavanaugh  
Parks & Rec**

**Rob Murphy  
Fire Marshal**

**Laura Kimberley  
Library**

**Jason Malloy  
Police Chief**

**Spencer Nebel  
CM**

**Chris Janigo  
Public Works**

**Derrick Tokos  
CDD**

**Mike Murzynsky  
Finance Director**

**EXHIBIT 'A'  
(Affected Agencies)**

**(1-MISC-21)**



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

**IN THE MATTER OF PLANNING COMMISSION )  
FILE NO. 1-MISC-21, APPLICATION TO EXTEND TIME )  
LIMIT FOR SUBMISSION OF A FINAL PLAT FOR AN ) FINAL  
ELEVEN LOT SUBDIVISION IDENTIFIED AS ) ORDER  
“FISHERMAN’S WHARF ESTATES,” AS SUBMITTED BY )  
TIM LUNCEFORD, GREYSON FINANCIAL SERVICES, INC )**

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**ORDER APPROVING** a request to extend the time limit for submission of a final plat for the eleven-lot residential subdivision identified as “Fisherman’s Wharf Estates,” approved by the Planning Commission with a Final Order and Findings of Fact on October 22, 2018 (File No. 1-SUB-18/2-VAR-18/3-GP-18). The property is located at 1005 SE Bay Boulevard, between the Harbor Village RV Park and Harbor Crescent residential subdivision (Tax Lot 400 of Lincoln County Assessor’s Tax Map (11-11-09-CB).

**WHEREAS:**

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the extension request, with a public hearing a matter of record of the Planning Commission on October 11, 2021; and
- 3.) At the public hearing on said application, the Planning Commission received evidence and recommendations from the applicants, interested persons, and Community Development (Planning) Department staff; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, approved the extension request.

**THEREFORE, LET IT BE RESOLVED** by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") are adopted in support of approval of the extension request with the following condition of approval:

- 1. The time limit for submission of a final plat for the eleven-lot residential subdivision identified as “Fisherman’s Wharf Estates,” approved by the Planning Commission with a Final Order and Findings of Fact on October 22, 2018 (File No. 1-SUB-18/2-VAR-18/3-GP-18), is extended for 12-months from the expiration date set in an October 5, 2020 letter from the Community Development Director. The new deadline for submission of the final plat is October 22, 2022. All other conditions of the October 22, 2018 Final Order and Findings of Fact will remain in effect.

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

Accepted and approved this 25<sup>th</sup> day of October, 2021.

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James Patrick, Chair  
Newport Planning Commission

Attest:

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

**EXHIBIT "A"**

**FILE NO. 1-MISC-21**

**FINDINGS OF FACT**

1. On September 21, 2021, Tim Lunceford, Greyson Financial Services, Inc. (William Ekman, owner) submitted an application asking that the Planning Commission extend approval of a tentative subdivision plat, variance, and geologic permit for an eleven-lot residential subdivision identified as "Fisherman's Wharf Estates" for an additional 12-months.
2. The Community Development Director granted a 12-month extension on October 5, 2020, establishing an expiration date of October 22, 2021. The original final order was approved by the Newport Planning Commission on October 22, 2018 and Condition No. 15 of that order required a final plat be submitted in two years (October 22, 2020).
3. The property is located at 1005 SE Bay Boulevard, between the Harbor Village RV Park and Harbor Crescent residential subdivision (Tax Lot 400 of Lincoln County Assessor's Tax Map (11-11-09-CB). It is approximately 1.72 acres in size, per Lincoln County Assessor's records.
4. Staff reports the following facts in connection with the application:
  - a. Plan Designation: Low Density Residential
  - b. Zone Designation: R-2/"Medium Density Single-Family Residential."
  - c. Surrounding Land Uses: Harbor Village RV Park to the north and west, Harbor Crescent residential subdivision to the east, and the Embarcadero Resort to the south (across SE Bay Blvd).
  - d. Topography and Vegetation: There are a few scattered trees, shrubs and other low-lying vegetation on the property. The site is moderately sloped, dropping in elevation from east to west, with steeper terrain along the east, north and western perimeter of the property.
  - e. Existing Structures: None.
  - f. Utilities: All utilities are available to the site.
  - g. Development Constraints: The property is within a mapped geologic hazards area.
  - h. Past Land Use Actions: File No. 1-SUB-18/2-VAR-18/3-GP-18, approval of a tentative subdivision plat, geologic permit, and variance for an eleven-lot residential subdivision. File No. 3-PD-07/6-SUB-07, approval of a planned development for 19 single family detached residences. File No. 1-PD-01, approval of a planned development for 22 units (single family and duplexes). File No. 1-PD-97, approval of a planned development for 18 single-family residences and two duplexes.
  - i. Notice: Public notice of the application and public hearing was mailed to surrounding property owners within 200 feet of the subject property and public entities and agencies on September 21, 2021. Notice of the public hearing was also published in the Newport News-Times on October 1, 2021. No comments were received in response to the notice.

5. The applicant, Greyson Financial Services, Inc., is asking that the Planning Commission extend a City issued land use decision that approved a tentative subdivision plat, variance, and geologic permit for an eleven-lot residential subdivision on the subject property. A final plat for that subdivision was to be submitted no later than October 22, 2020. The Community Development Director has authority to extend the approval once, for a 12-month period, and did so on October 5, 2020. If the extension is not granted, the land use decision will expire on October 22, 2021.

6. A public hearing was held on October 11, 2021. At the public hearing, the statement of rights and relevance and applicable criteria were read. The Planning Commission disclosed any ex parte contact, conflicts of interest, and/or bias. No objections were made to any of the Planning Commissioners hearing the matter. The Planning Commission received the staff report and heard testimony from proponents and opponents of the proposal. The minutes of the October 11, 2021, meeting are hereby incorporated by reference into the findings. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" – Completed application form

Attachment "B" – Lincoln County property report

Attachment "C" – Applicant's written narrative

Attachment "D" – Permit extension by CDD Director, dated 10/5/20

Attachment "E" – Approved plans for Fisherman's Wharf Estates

Attachment "F" – File No. 1-SUB-18/2-VAR-18/3-GP-18, Final Order and Findings, Fisherman's Wharf Estates

Attachment "G" – Public Hearing Notice

7. Requests to extend the deadline for submission of a final plat associated with a City issued land use decision must comply with Newport Municipal Code (NMC) Section 13.05.090(H).

## CONCLUSIONS

After consideration of the application materials, staff report and the testimony in the record, the Planning Commission concludes as follows in regard to the criteria established in Newport's Municipal Code for approving an extension request.

**8. Compliance with NMC Section 13.05.090(H), Time Limit Between Tentative Plan and Final Plat (Extensions).** *Requests for extension of the one-year time limit for submission of final plat shall be in writing. On receipt of the written request, the community development director may grant an extension of up to one year. The Planning Commission may grant an additional one-year extension after public hearing. Notice shall be the same as the original tentative plan. The criteria for an extension are:*

1. *An unforeseen change in the economic condition has affected the real estate market for the project; or*
2. *The weather has prevented the physical work; or*
3. *Other unanticipated hardship, such as change or turnover in engineering firms, contractors, or significant delays in obtaining required state or federal permits requires additional time to complete the project.*

*An extension may only be granted if the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan.*

As noted in the applicant's written narrative (Attachment "C"), the agent for Greyson Financial, Tim Lunceford, became severely ill in February of 2020, fell into a coma, was hospitalized for an extended period of time, and had a leg amputated in May of that same year. He notes that his recovery has been very time consuming, but that he is now ready to return to this project. The Planning Commission finds that Mr. Lunceford's circumstances qualify as an unanticipated hardship per NMC 13.05.090(H)(3). Public notice has been provided in the same manner as it was with the original tentative plan (Attachment "G"), and the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan.

### **OVERALL CONCLUSION**

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

1. The time limit for submission of a final plat for the eleven-lot residential subdivision identified as "Fisherman's Wharf Estates," approved by the Planning Commission with a Final Order and Findings of Fact on October 22, 2018 (File No. 1-SUB-18/2-VAR-18/3-GP-18), is extended for 12-months from the expiration date set in an October 5, 2020 letter from the Community Development Director. The new deadline for submission of the final plat is October 22, 2022. All other conditions of the October 22, 2018 Final Order and Findings of Fact will remain in effect.