



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

February 13, 2008



TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Newport Plan Amendment
DLCD File Number 009-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: February 28, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Laren Woolley, DLCD Regional Representative
Bob Cortright, DLCD Transportation Planning Coordinator
James Bassingthwaite, City of Newport

<paa> y

FORM 2

D L C D NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision
per ORS 197.610, OAR Chapter 660 - Division 18
(See reverse side for submittal requirements)

DEPT OF

FEB 08 2008

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: City of Newport Local File No.: 4-AX-07/7-Z-07
(If no number, use none)
Date of Adoption: February 4, 2008 Date Mailed: February 7, 2008
(Must be filled in) (Date mailed or sent to DLCD)
Date the Notice of Proposed Amendment was mailed to DLCD: August 28, 2007

Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment
 Land Use Regulation Amendment Zoning Map Amendment
 New Land Use Regulation Other: Annexation/Withdrawal
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

Annexation of 82.67 acres, withdrawal of annexed property from Newport Rural
Fire Protection District and Lincoln County Library District, and designation
of City R-2/Medium Density Single-Family Residential zoning consistent with
Comp Plan map designation of Low Density Residential

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same.

Plan Map Changed from: --- to ---

Zone Map Changed from: County T0C to City R-2

Location: Assessor's Map 10-11-20- TL 1503 and 10-11-29 TL 106 and 300 Acres Involved: 82.67 (approx.)

Specify Density: Previous: --- New: R-2 allows 1 unit SFR/5,000 sq ft Duplex units possible as well

Applicable Statewide Planning Goals: 2, 10, 12

Was an Exception Adopted? Yes: --- No: X

DLCD File No.: 009-07 (16346)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: * No:

*Mailed in time for DLCD to receive 45 days prior to first ev. hearing.

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: City of Newport,

Lincoln County, Newport Rural FPD, LC Library District, ODOT

Local Contact: James Bassingthwaite Area Code + Phone Number: 541-574-0626

Address: 169 SW Coast Highway

City: Newport Zip Code+4: 97365-3806

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:
**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

CITY OF NEWPORT

ORDINANCE NO. 1947

AN ORDINANCE PROVIDING FOR THE ANNEXATION, THE WITHDRAWAL FROM THE LINCOLN COUNTY LIBRARY DISTRICT AND NEWPORT RURAL FIRE PROTECTION DISTRICT, THE ESTABLISHMENT OF ZONING, AND MAKING FINDINGS OF FACT, FOR A CERTAIN TERRITORY AS HEREIN DESCRIBED, ALL IN THE CITY OF NEWPORT, COUNTY OF LINCOLN, STATE OF OREGON

Summary of Findings:

1. A request (Newport File No. 4-AX-07/7-Z-07) was filed on August 15, 2007, by the owners of real property (MerchBanc, LLC) (Pavitt Land Use Consulting, LLC, authorized representative) to annex approximately 82.63 acres of property into the city limits and withdraw property from several districts, and to amend the Newport Zoning Map to adopt a City zone designation for the annexed property of R-2/"Medium Density Single-Family Residential" consistent with the Newport Comprehensive Plan Map designation of the property as Low Density Residential.
2. The Planning Commission of the City of Newport, after providing the required public notification, including the notification to the Department of Land Conservation & Development, held a public hearing on October 22, 2007, for the purpose of reviewing the proposed requests and providing a recommendation to the City Council,
3. The Planning Commission public hearing was held in accordance with the appropriate provisions of the city ordinances, and, after due deliberation and consideration of the proposed change, the Planning Commission, by a vote of 4-3, did recommend that the requests be approved with the requested R-2 zone designation.
4. The City Council of the City of Newport, after provision of the required public notification, held a public hearing on January 7, 2008, (following the cancellation and rescheduling of the originally noticed December 3, 2007, hearing due to severe inclement weather) on the requested annexation and withdrawal, and the zoning of the property to be annexed.
5. The Council made a determination after considering the recommendation of the Planning Commission, the Planning Staff Report, and the evidence and argument presented at the public hearing and in the record, that each of the requests were in compliance with the applicable criteria and voted unanimously on January 7, 2008, to approve the requested annexation, withdrawal, and zoning designations with a condition of approval regarding deferral of demonstration of compliance with the Transportation Planning Rule.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. ANNEXATION, WITHDRAWAL, AND ZONING

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

Beginning at the Northwest corner of the Southeast quarter of Section 20, Township 10 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon; thence South 89°50'16" East along the northerly line of said Southeast quarter of Section 20, a distance of 1311.44 feet, to the north-south centerline of said Southeast quarter of Section 20; thence South 0°24'05" West along said north-south centerline of the Southeast quarter of Section 20, a distance of 2578.54 feet, to the North line of Section 29, said Township 10 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon; thence South 0°04'21" West along the north-south centerline of the Northeast quarter of said Section 29, a distance of 2643.84 feet, to the South line of the Northeast quarter of said Section 29; thence North 89°43'00" West along said South line of the Northeast quarter of Section 29, a distance of 1318.54 feet, to the north-south centerline of said Section 29; thence North 0°13'35" East along said north-south centerline of said Section 29, a distance of 820.41 feet, to the Southwest corner of that tract of land conveyed to Donald G. Tarpley, by deed, recorded May 1, 1939, in Book 81, page 66, Deed Records for Lincoln County, Oregon; thence South 89°46'25" East along the South line of said Tarpley Tract, a distance of 88.00 feet; to the Southeast corner of said Tarpley Tract; thence North 0°13'35" East along the East line of said Tarpley Tract, a distance of 155.21 feet, to its intersection with the South line of that tract of land conveyed to Longview Hills, Inc., by deed, recorded September 29, 1983, in Book 144, page 1040, Microfilm Records for Lincoln County, Oregon; thence South 89°46'25" East along said South line of the Longview Hills, Inc. Tract, a distance of 807.67 feet, to the Southeast corner of said Longview Hills, Inc. Tract; thence North 0°13'35" East along the East line of said Longview Hills, Inc. Tract, a distance of 1005.00 feet, to the Northeast corner of said Longview Hills, Inc. Tract; said Northeast corner being on the South line of a second tract of land conveyed to Longview Hills, Inc., by deed, recorded January 18, 1991, in Book 225, page 1759, Microfilm Records for Lincoln County Oregon; thence South 89°46'25" East along said South line of the second Longview Hills Tract, a distance of 99.33 feet, to the center of the main stream flowing northwesterly into Schooner Creek; thence northerly along said stream and its continuation to the center of Schooner Creek; thence westerly along said Schooner Creek to the north-south centerline of said Section 20; thence North 0°24'06" East along said north-south centerline of said Section 20, a distance of 924 feet, more or less, to the point of beginning, containing 82.67 acres of land.

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

C. Zoning. Ordinance No. 1308 (as amended) adopting the City of Newport Zoning Map is hereby amended to provide for a zone designation on the Zoning Map for the property annexed to the City of Newport by designating the subject property described in Section 1(A) above with the zone designation of R-2/"Medium Density Single-Family Residential".

Section 2. The findings attached as Exhibit "B" are hereby adopted in support of the annexation, withdrawal, and zoning designations as adopted in Section 1 and the conditions of approval as adopted in Section 3.

Section 3. Deferral of the determination of compliance with the Transportation Planning Rule as requested by the applicant is approved with the following conditions of approval until such time as compliance with the Transportation Planning Rule has determined:

A. All development of the property for uses and the intensity of uses provided for in the city zoning are subject to subsequent land use decisions that require public notice to the Oregon Department of Transportation (ODOT) of a proposed land use decision, allow submission of testimony and a right to appeal to the Land Use Board of Appeals;

B. The annexation and zone change allows only the land uses and intensity of land use authorized within the current Lincoln County zoning;

C. Partitions, subdivisions and other divisions of land are land use decisions subject to all the other requirements;

D. A transportation impact analysis (TIA) addressing full development of the entire property as part of the first application for any land use decision (see above) shall be submitted. The TIA will need to demonstrate that full development of the property would either have no significant affect on the transportation system, or if a significant affect would result, that the requirements established in OAR 660-012-0060 have been met;

E. An application for a highway approach road permit shall be submitted to ODOT if an approach road is proposed; and

F. An application for a highway approach road permit shall be submitted to ODOT if the development would result in a change of use (as described in OAR 734-051) of an existing approach road.


Adopted on initial vote and read by title only:

February 4, 2008


Adopted on final roll call vote:

February 4, 2008

Signed by the Mayor on 2/5, 2008.


William D. Bain, Mayor

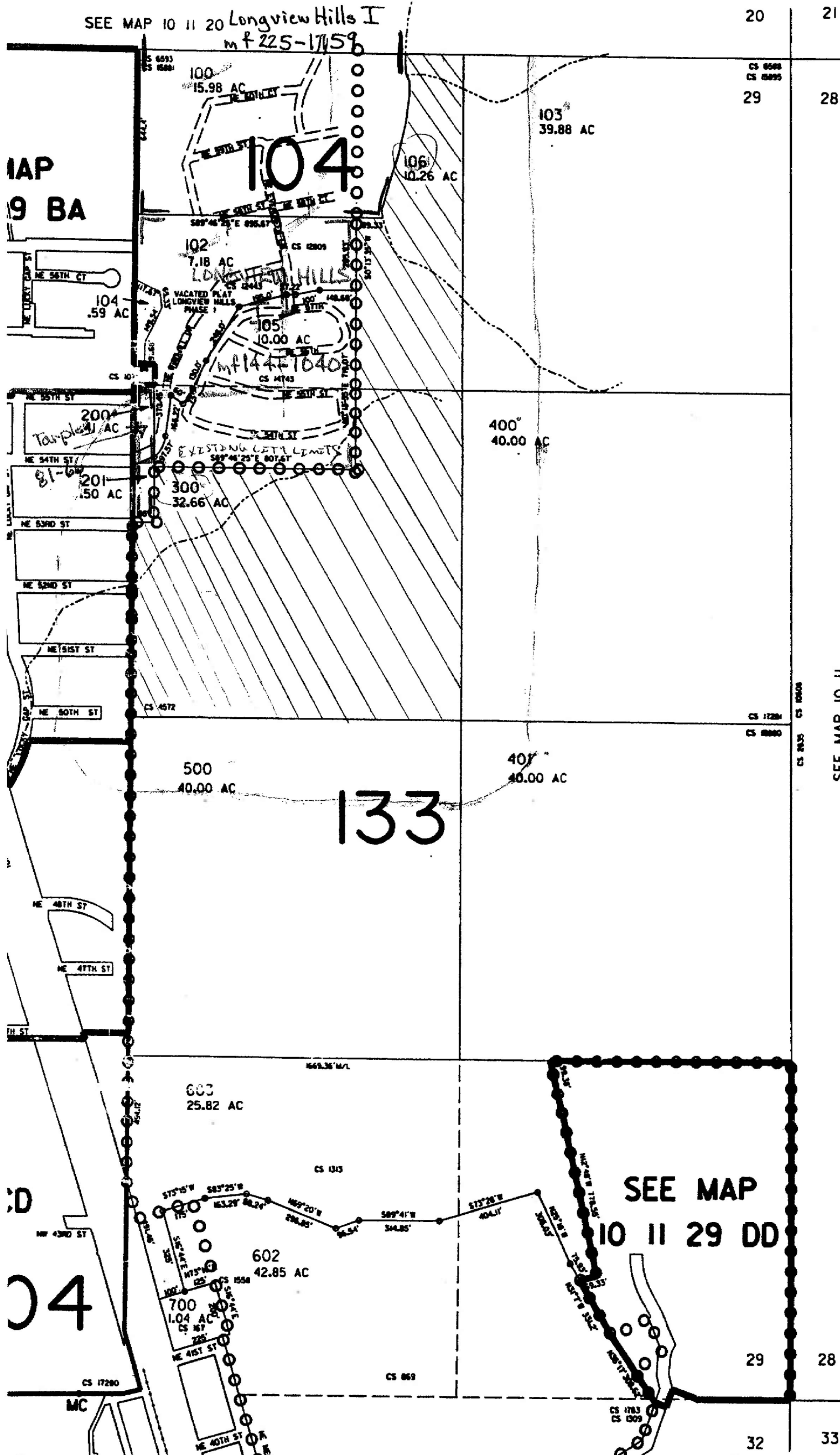
ATTEST:


Margaret M. Hawker, City Recorder


SECTION 29 TIOS RIW WM
LINCOLN COUNTY

1" = 400'

10 11 29
& INDEX
NEWPORT



CANCELLED NO.
101
202
600
601
604
605
800 THRU 3400

NEWPORT FILE NO.
4-A-07/7-2-07
SEE MAP 10 11
AREA OF
ANNEXATION = 

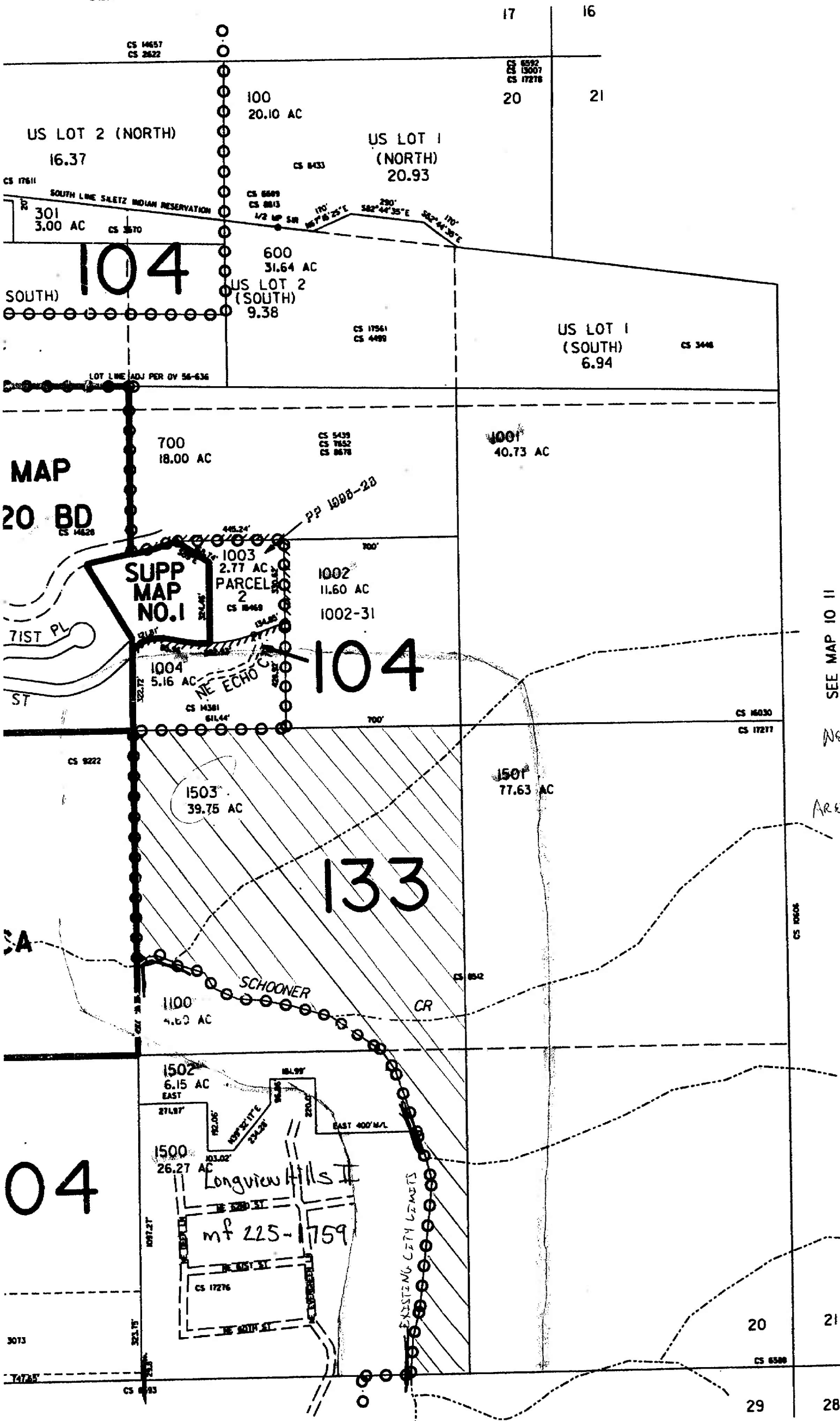
SECTION 20 T10S R11W
LINCOLN COUNTY

1" = 400'

EXHIBIT "A"

**& INDEX
 NEWPORT**

SEE MAP 10 11 17



CANCELLED NO.

- 800
- 900
- 901
- 902
- 903
- 904
- 905
- 906
- 1000
- 1200
- 1201
- 1300
- 1301
- 1302

SEE MAP 10 11

NEWPORT FILE NO. 4-A-07
 7-2-07

AREA OF ANNEXATION =

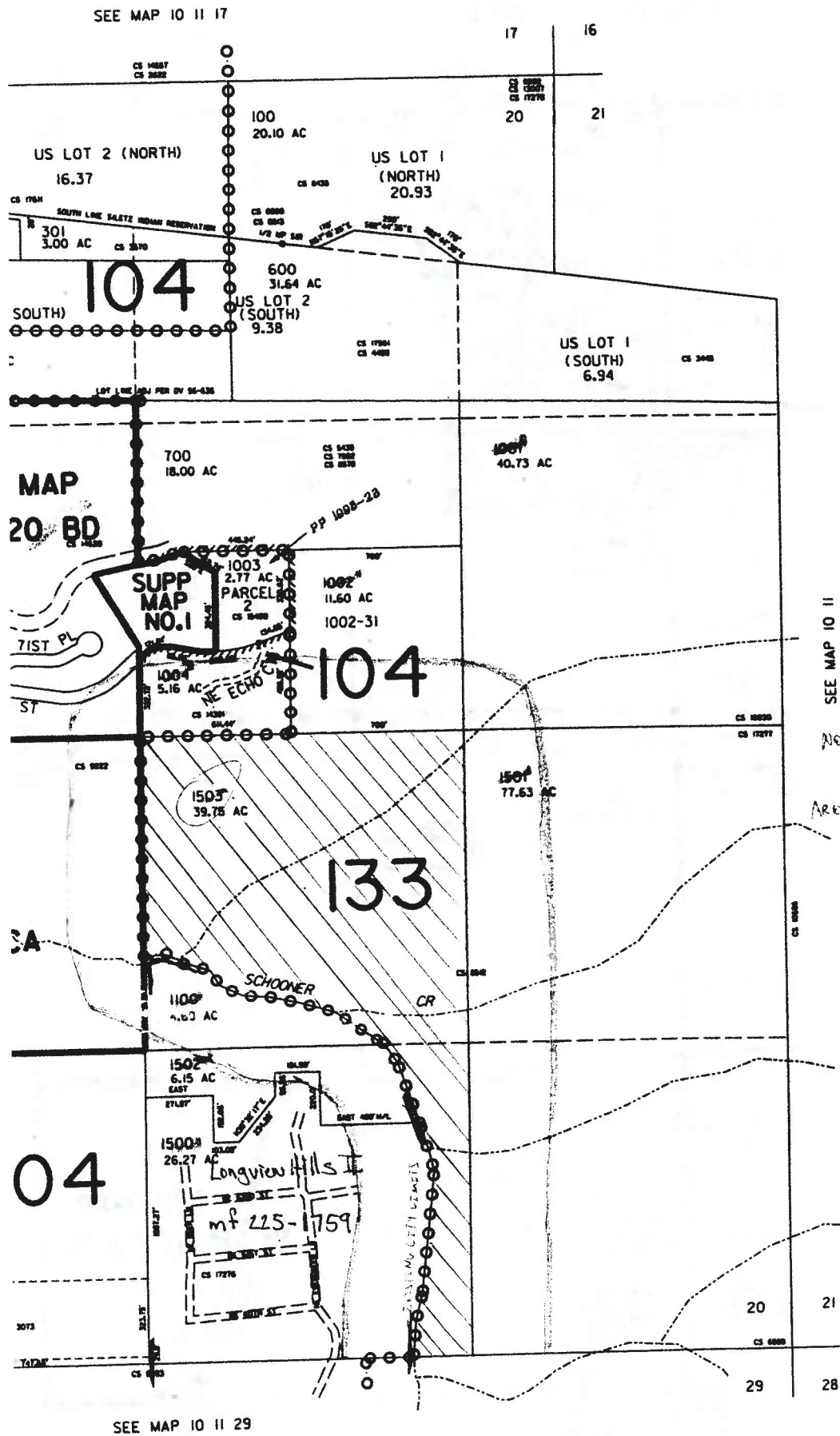
SEE MAP 10 11 29

**10 11 20
 & INDEX
 NEWPORT**

SECTION 20 T10S R11W T11N
LINCOLN COUNTY
 1" = 400'

EXHIBIT "A"

**& INDEX
 NEWPORT**



- CANCELLED NO.**
- 800
 - 900
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 - 1201
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 - 1301
 - 1302

NEWPORT FILE NO. 4-A-07
 7-2-07
 AREA OF AMBINATION = [diagonal hatching symbol]

04

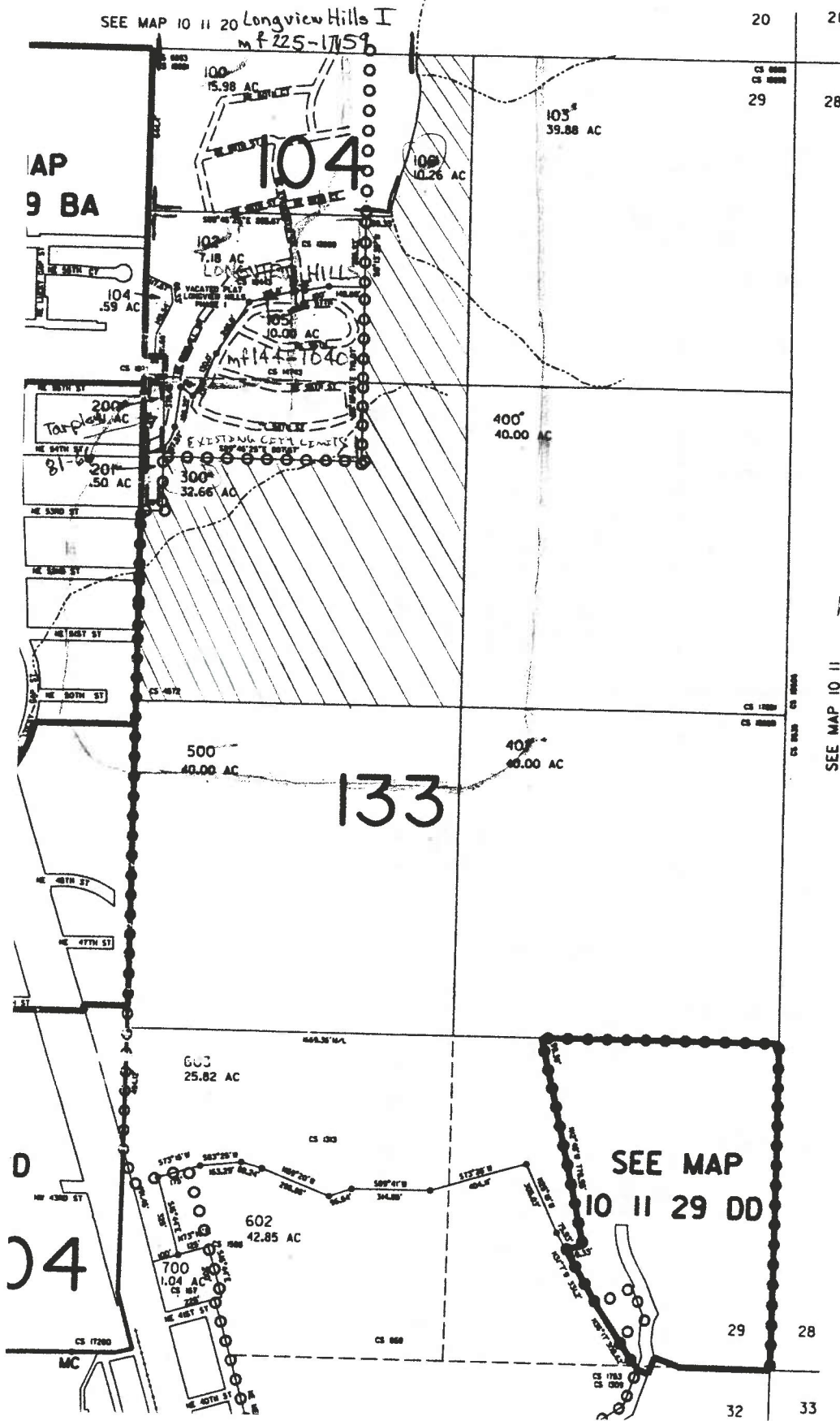
SEE MAP 10 II 29

**10 11 20
 & INDEX
 NEWPORT**

ORDINANCE NO. 1947 (Exhibit "A")

SECTION 29 T10S R11W WM
LINCOLN COUNTY

1" = 400'




10 11 29
& INDEX
NEWPORT



CANCELLED NO.

- 101
- 202
- 600
- 601
- 604
- 605
- 800 THRU 3400

NEWPORT PLOT NO.
4-A-07 (7-2-07)

SEE MAP 10 11
AREA OF
ANNEXATION = 

ORDINANCE NO. 1947 (Exhibit "A")

10 11 29

EXHIBIT "B"

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

FINDINGS OF FACT

1. The application for annexation, withdrawal, and zoning designation (Newport File No. 4-AX-07/7-Z-07) was filed by MerchBanc, LLC., on August 15, 2007 (Dawn Pavitt, Pavitt Land Use Consulting, authorized representative). The application included consideration of requests to: (1) annex approximately 82.67 acres (consisting of 32.66 acres in Tax Lot 300 and 10.26 acres in Tax Lot 106 of Assessor's Tax Map 10-11-29, and 39.75 acres in Tax Lot 1503 of Assessor's Tax Map 10-11-20 within the existing Urban Growth Boundary) into the Newport city limits. As part of the request, the applicant is proposing a condition of approval identifying restrictions to be placed on the subject property to allow deferral of the review of the project under the Transportation Planning Rule (Oregon Administrative Rule 660-012-0060) and requiring that the transportation analysis be submitted when a plan for developing the property is submitted; (2) amend the City of Newport Zoning Map to establish a zoning designation (zoning designations are established as part of the annexation process) for the subject property of R-2/"Medium Density Single-Family Residential" consistent with the existing Newport Comprehensive Plan Map designation of Low Density Residential; and (3) withdraw said territory from the Newport Rural Fire Protection District and the Lincoln County Library District.

2. The legal description of the area to be annexed is as follows:

Beginning at the Northwest corner of the Southeast quarter of Section 20, Township 10 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon; thence South 89°50'16" East along the northerly line of said Southeast quarter of Section 20, a distance of 1311.44 feet, to the north-south centerline of said Southeast quarter of Section 20; thence South 0°24'05" West along said north-south centerline of the Southeast quarter of Section 20, a distance of 2578.54 feet, to the North line of Section 29, said Township 10 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon; thence South 0°04'21" West along the north-south centerline of the Northeast quarter of said Section 29, a distance of 2643.84 feet, to the South line of the Northeast quarter of said Section 29; thence North 89°43'00" West along said South line of the Northeast quarter of Section 29, a distance of 1318.54 feet, to the north-south centerline of said Section 29; thence North 0°13'35" East along said north-south centerline of said Section 29, a distance of 820.41 feet, to the Southwest corner of that tract of land conveyed to Donald G. Tarpely, by deed, recorded May 1, 1939, in Book 81, page 66, Deed Records for Lincoln County, Oregon; thence South 89°46'25" East along the South line of said Tarpely Tract, a distance of 88.00 feet; to the Southeast corner of said Tarpely Tract; thence North 0°13'35" East along the East line of said Tarpely Tract, a distance of 155.21 feet, to its intersection with the South line of that tract of land conveyed to Longview Hills, Inc., by deed, recorded September 29, 1983, in Book 144, page 1040, Microfilm Records for Lincoln County, Oregon; thence South 89°46'25" East along said South line of the Longview Hills, Inc. Tract, a distance of 807.67 feet, to the Southeast corner of said Longview Hills, Inc. Tract; thence North 0°13'35" East along the East line of said Longview Hills, Inc. Tract, a distance of 1005.00 feet, to the Northeast corner of said Longview Hills, Inc. Tract; said Northeast corner being on the South line of a second tract of land conveyed to Longview Hills, Inc., by deed, recorded January 18, 1991, in Book 225, page 1759, Microfilm Records for Lincoln County Oregon; thence South 89°46'25" East along said South line of the second Longview Hills Tract, a distance of 99.33 feet, to the center of the main stream flowing northwesterly into Schooner Creek; thence northerly along said stream and its continuation to the center of Schooner Creek; thence westerly along said Schooner Creek to the north-south centerline of said Section 20; thence North

0°24'06" East along said north-south centerline of said Section 20, a distance of 924 feet, more or less, to the point of beginning, containing 82.67 acres of land.

3. Staff reported the following information regarding the requests as part of the Planning Staff Report:

A. Plan Designation: Lincoln County designation of DR/"Dispersed Residential". City of Newport Comprehensive Plan Land Use Plan designation of LDR/"Low Density Residential."

B. Zone Designation: City of Newport zoning is established at time of annexation. Either the R-1/"Low Density Single-Family Residential" or R-2/"Medium Density Single-Family Residential" zone designations are consistent with Comprehensive Plan designation of Low Density Residential. The applicant is requesting the R-2 zone designation. The County zone designation for the property is currently T-C/"Timber Conservation".

C. Surrounding Land Uses: Surrounding land uses in the immediate vicinity primarily include a mix of residential land uses.

D. Topography and Vegetation: See Planning Staff Report Attachment "D" (Topographical Map of Area). The area has been forested land and forestry activities have been occurring on the property.

E. Existing Residences/Buildings: None.

F. Utilities: Currently not being served with city services.

G. Development Constraints: Topographic challenges.

H. Past Land Use Actions: Lincoln County property line adjustment (Case File No. 26-PLA-06).

I. Notification: The required 45 Day Notice to the Department of Land Conservation and Development was mailed on August 28, 2007. For the Planning Commission public hearing, notification in accordance with the NZO Section 2-6-1.030 (B) requirements included mailing notice to surrounding property owners, City departments and other public agencies and utilities, and other individuals on October 2, 2007. The notice of public hearing in the Newport News-Times was published on October 12, 2007. For the originally scheduled City Council public hearing of December 3, 2007, notification in accordance with the NZO Section 2-6-1.030 (B) and the applicable ORS requirements included mailing notice to surrounding property owners, City departments and other public agencies and utilities on November 13, 2007. The notice was published in the Newport News-Times on November 16, 2007, November 21, and November 28, 2007. Notices were also posted on November 16, 2007, at the Newport City Hall, Newport Recreation Center, Newport Library, and the Lincoln County Courthouse. The

December 3, 2007, hearing was rescheduled due to cancellation of the December 3, 2007, City Council meeting because of severe inclement weather. The City Council rescheduled the hearing for January 7, 2008, at the December 17, 2007, Council meeting. Notification of the rescheduled hearing was made in accordance with the NZO Section 2-6-1.030 (B) and the applicable ORS requirements including mailing notice to surrounding property owners, City departments and other public agencies and utilities on December 18, 2007. The notice was published in the Newport News-Times on December 21, 2007, December 26, 2007, and January 2, 2008. Notices were also posted on December 21, 2007, at the Newport City Hall, Newport Recreation Center, Newport Library, and the Lincoln County Courthouse.

4. Written comments that were submitted included the following:

A. A memo dated October 4, 2007, from City Engineer Lee Ritzman, stating that the Public Works Department will expect the applicant's plats and improvement plans to complement the master plans; and the applicant will likely need to extend services and facilities to the property as well as make provision for future connections to other properties. See Planning Staff Report Attachment "E".

B. A letter dated October 4, 2007, from Forest Capital Partners, LLC, owners of adjacent forest property, asking for a condition of approval that the entire parcel be made subject to a restrictive deed covenant waiving the right to object to customary and ordinary forestry and logging activities that will continue on their adjacent land. See Planning Staff Report Attachment "G".

C. A generic comment dated November 16, 2007, from Sharon O'Brien, Qwest, noting that any costs with relocation of Qwest facilities will be borne by the developer/requesting party, any damages to Qwest facilities will be billed to developer/responsible parties, any existing Qwest easements are to be retained, and finalized plans are to be submitted to Qwest as soon as available. See Planning Staff Report Attachment "H". A more specific comment from Qwest received on January 4, 2008, regarding maintaining integrity of Qwest cables and possible damage from initial work on the property by the developer.

D. Two comments from John deTar (ODOT) dated September 11, 2007, regarding ODOT's acceptance of the applicant's proposed deferral of the Transportation Planning Rule was previously received. See Planning Staff Report Attachment "F". The other comment was a letter from John deTar (ODOT) dated November 27, 2007, that reiterated the ODOT position on the needed conditions of approval to allow for deference of consideration of the Transportation Planning Rule requirements in OAR 660-012-0060 as requested by the applicant.

E. A letter from Doug and Sue Hoffman dated December 3, 2007, and received on November 26, 2007, expressing their desire to see the applicant utilize NE 52nd Street as the main access and include plans for the future Harney By-Pass, requesting that a environmental impact statement and geologic study be submitted, that the developer be

held to high "green standards", and that the developer coordinate with PUD, phone, cable and public works on necessary facilities.

F. A letter from Jim and Ginny Ritacco dated November 29, 2007, requesting that the property owner utilize NE 52nd Street as the main access to the property because they believe it is a safer alternative and that access to the property from NE 53rd Street should only be temporary.

5. The Planning Commission held a public hearing on October 22, 2007. A copy of the relevant portion of the minutes from the Planning Commission hearing was attached as Planning Staff Report Attachment "I" (PC 10/22/07 Minutes). The Planning Commission recommended approval of the annexation request with an R-2 zone and the conditions recommended by staff related to the Transportation Planning Rule by a vote of 4-3 (with Commissioners Patrick, Brusselback, Mosley, and Rehfuss in favor, and Commissioners Newman, Eisler, and Atwill opposed). The main issue on the split in the vote of the Planning Commission revolved around whether or not to recommend an R-1 zone or an R-2 zone.

6. The City Council held a public hearing on the proposed requests on January 7, 2008, the rescheduled date established by the Council for the public hearing following the cancellation of the December 3, 2007, Council meeting at which the public hearing on the item was originally scheduled due to severe inclement weather. A Planning Staff Report with attachments was submitted to the City Council. The Planning Staff Report and attachments as follows are hereby incorporated by reference into the findings:

- Attachment "A" – Applicant Request
- Attachment "A-1" – Lincoln County File # 26-PLA-06 (App. Ex. 2)
- Attachment "A-2" – Nyhus Survey (App. Ex. 3)
- Attachment "A-3" – Newport Zoning Map (App. Ex. 9)
- Attachment "B" – Notice of Public Hearing and Map
- Attachment "C" – Newport Zoning Map
- Attachment "C-1" – Uses allowed in the R-1 and R-2 zones
- Attachment "C-2" – Intent of Zoning Districts
- Attachment "D" – Topographical Map of Area
- Attachment "E" – Ritzman 10/4/07 Memo
- Attachment "F" – deTar ODOT 9/11/07 Email
- Attachment "F-1" – Transportation Planning Rule
- Attachment "G" – Forest Capital Partners 10/4/07 Letter
- Attachment "H" – Qwest 11/16/07 Comment
- Attachment "I" – PC 10/22/07 Minutes

7. At the January 7, 2008, public hearing, the City Council heard a staff report and allowed for testimony and evidence to be given on the proposed requests. The City Council heard from Dawn Pavitt on behalf of the applicants addressing the criteria and concerns raised in the written testimony. The Council heard from Doug Hoffman raising concerns identified in his letter dated December 3, 2007. Following the close of the public hearing, the Council deliberated and voted unanimously to approve the requests. The minutes of the January 7, 2008, public hearing are

hereby incorporated by reference into the findings.

8. The applicable criteria for each of the requests are as follows:

- A. For the annexation/withdrawal portion of the requests, Newport Zoning Ordinance (NZO) Section 2-5-6.020 provides the applicable criteria: The required consents have been filed with the City; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits. There are not specific criteria for withdrawals from a district. Withdrawals are done in conjunction with the annexation when the City becomes the service provider for the property.
- B. For the zoning map amendment portion of the requests, the applicable criteria per NZO Section 2-5-6.030 & NZO Section 2-5-5.005 are: Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.

9. As part of the request, the applicant is proposing a condition of approval identifying restrictions to be placed on the subject property to allow deferral of the review of the project under the Transportation Planning Rule (Oregon Administrative Rule 660-012-0060) and requiring that the transportation analysis be submitted when a plan for developing the property is submitted. See Planning Staff Report Attachment "A" (Applicant Requests). John deTar, Senior Region Planner with the Oregon Department of Transportation (ODOT), has reviewed the language of the condition of approval with the Oregon Department of Justice (DOJ) and the Oregon Department of Land Conservation and Development (DLCD) and that the proposed condition is acceptable to ODOT. See Planning Staff Report Attachments "F" and "F-1" and Mr. deTar's letter dated November 26, 2007. The deferral of the Transportation Planning Rule until the time of development will allow the applicant to base the analysis for the Transportation Planning Rule on actual proposed development with the zone designation known, rather than a "reasonable worst case scenario" analysis that ODOT would otherwise require.

CONCLUSIONS

1. In regard to the criteria for approval of the annexation request under NZO Section 2-5-6.020, the City Council concludes as follows:

- A. In regard to the first criterion (*The required consents have been filed*), the City Council concludes that pursuant to Oregon Revised Statutes (ORS) 222.170, petitions for annexation of a territory into the city limits must have the consent of more than 50 percent of owners of land in the territory, and such owners must also own more than 50 percent of the assessed value of all real property in the subject territory. Pursuant to Oregon Revised Statutes (ORS) 222.170, petitions for annexation of a territory into the city limits must have the consent of more than 50 percent of owners of land in the territory, and such owners must also own more than 50 percent of the assessed value of all real property in the subject territory. The owner of the property is MerchBanc, LLC. The applicant has provided all signed consents and the Lincoln County Assessor's value

of all property to be annexed. See Planning Staff Report Attachment "A" (Applicant Request). The applicants provided the required signed consents to annex by property owners. All property owners have consented. There are no residents.

B. In regard to the second criterion (*the territory to be annexed is within the acknowledged urban growth boundary (UGB)*), the City Council concludes that the subject property is within the Urban Growth Boundary pursuant to the Comprehensive Plan Map of the City of Newport and is designated "Low Density Residential." See Planning Staff Report Attachment "A" (Applicant Request") and "B" (Public Notice and Map).

C. In regard to the third criterion (*the territory to be annexed is contiguous to the existing city limits*), the City Council concludes that the subject property is contiguous to the existing city limits. The subject property is contiguous to the existing city limits on the west side of the property and the north property line. See Planning Staff Report Attachment "B" (Public Notice and Map) and Planning Staff Report Attachment "C" (Zoning Map).

2. In regard to the withdrawal request, the City Council finds that there are no applicable criteria and the withdrawal of the property from the Newport Rural Fire Protection District and the Lincoln County Library District occur during annexation when the City of Newport becomes the service provider within the city limits.

3. In regard to the establishment of a City of Newport zone designation upon annexation, the City Council concludes as follows for establishment of an R-2 zone designation in regard to the applicable criteria from NZO Section 2-5-6.030 and NZO Section 2-5-5.005 (*Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.*):

A. The City Council concludes that Comprehensive Plan designation of Low Density Residential is implemented by either the R-1/"Low Density Single-Family Residential" zone or the R-2/"Medium Density Single-Family Residential" zone. The applicant is requesting an R-2 zoning designation. The uses permitted outright and conditionally in the R-1 and R-2 zones are included as Planning Staff Report Attachment "C-1". The intent of the R-1 and R-2 zoning districts is included as Planning Staff Report Attachment "C-2". The topography of the area is illustrated in Planning Staff Report Attachment "D". The applicant has submitted findings regarding the criteria for the zoning map amendment. Please see Planning Staff Report Attachment "A" (Applicant Request). The City Council finds that most of the abutting property is in an R-2 zone classification and none of the abutting property is in an R-1 zone classification. The City Council also finds that the establishment of the R-2 zone would allow the applicant more flexibility in the housing types to be developed as the R-2 zone allows for smaller lot sizes and additional permitted uses (such as duplexes, condominiums, and mobile home parks) which could provide opportunities for more affordable housing options.

B. The City Council concludes that because the Comprehensive Plan Map has designated the property to be Low Density Residential to implement the Comprehensive Plan (which establishes the limits of growth within the Urban Growth Boundary for the City of Newport to the year 2010), the City Council may conclude that the application of a zone designation in conformance with the Comprehensive Plan would further a public necessity and promote the general welfare.

4. In regard to the deferral of the consideration of the proposed annexation with the Transportation Planning Rule (Oregon Administrative Rule 660-012-0060), the City Council concludes that deferral of the consideration with the Transportation Planning Rule as requested by the applicant is permissible with the identified conditions of approval in order to allow the applicant to base consideration of the Transportation Planning Rule on the actual proposed development of the property once the zoning designation has been established and the applicant provides a development plan. The Planning Staff Report on pages 5- 6 discusses the wide range of density possible depending on the zoning and the topography of the property. The City Council concludes that tying the Transportation Planning Rule to the actual development of the property will provide a more accurate assessment of the traffic impacts rather than using a "reasonable worst case scenario" approach as would otherwise be required by ODOT for a transportation impact assessment. The City Council also notes that John deTar (ODOT) is in concurrence with the deferral and the conditions of approval required to allow for deferral.

5. In regard to the Forest Capital Partners letter (see Planning Staff Report Attachment "G"), Forest Capital Partners is requesting that the City exact from the subject property owner a condition of annexation that "the entire parcel be made subject to a restrictive deed covenant waiving the right to object to customary and ordinary forestry and logging activities on adjacent land." In denying the request by Forest Capital Partners, the City Council concludes as follows:

A. Forest Capital Partners manages adjacent property for Meriwether Northwest Oregon Land & Timber LLC. The property being requested for annexation was adjusted by property line adjustment in Lincoln County in 2006 (County File No. 26-PLA-06) by applicant Meriwether Northwest with a legal description prepared by Gary Nyhus for Forest Capital Partners apparently to separate the land owned by Meriwether Northwest that was urbanizable within the City of Newport UGB from land that was outside of the UGB. Meriwether Northwest then sold the property within the UGB. Now, Forest Capital Partners is requesting that the City condition annexation on a restrictive deed covenant. If Meriwether Northwest and Forest Capital Partners wanted such covenant, they could have sold the subject property with the restrictive covenant in place. Additionally, if they were truly concerned about residential development adjacent to their other timberland, they shouldn't have sold the property knowing that it was identified for future residential development within the Newport Urban Growth Boundary.

B. It is also unclear as to how the development of the property within the area to be annexed and already within the UGB would interfere with timber harvest on the Meriwether property (which is apparently designated T-C and for which normal forestry and logging activities are uses permitted outright under the Lincoln County Code (1.1375 Timber Conservation Zone T-C In a T-C zone the following regulations shall apply: (1) **Uses Permitted Outright**: The following uses and their

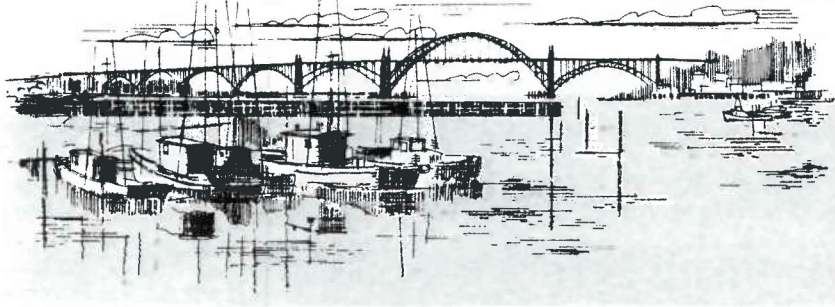
accessory uses are permitted outright, subject to applicable siting criteria, other applicable provisions of this section, and applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1901-1.1999: (a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash.) especially as there is already residentially designated and developed property in the area. Ms. Runkle does not provide sufficient information as to how interference would occur or how that is an issue that needs to be addressed relevant to the applicable criterion.

C. Such a condition imposed by the City may violate both the Oregon and U.S. constitutional guarantees of freedom of speech by attempting to restrict the ability of the current property owner and future residents on the subject property from participating in discussion about or objecting to future forest harvest practices as implemented by Meriwether Northwest.

6. In regard to the conditions of approval requested by Hoffman and Ritacco, including those recommending the use of NE 52nd Street as the main access, the annexation does not require the applicant to submit a development plan as part of the annexation. Many of the items identified by Hoffman (such as environmental and geologic constraints) are generally considered as part of the subdivision and/or planned development process. With the conditions of approval regarding the deferral of the Transportation Planning Rule, the applicant will be unable to build on the property until such time as compliance with the Transportation Planning Rule is satisfied.

OVERALL CONCLUSION

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



CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

TDD/VOICE 1-800-735-2900

OFFICE OF Community Development

**CERTIFICATE OF MAILING OF NOTICE OF ADOPTION AND THE
ADOPTED TEXT AND FINDINGS AS APPLICABLE**

Local File # 4-AX-07/7-Z-07

Date of Deposit in the U.S. Mail: February 7, 2008

Name of Person Mailing Wanda Haney

Signature of Person Mailing *Wanda Haney*



City of Newport
169 SW Coast Hwy
Newport, OR 97365

TO

Attention: Plan Amendment Specialist
DLCD
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540