



# Oregon

Theodore R. Kubongski, 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

8/14/2009

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

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** City of Newport Plan Amendment  
DLCD File Number 002-09

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:** Thursday, August 27, 2009

This amendment was submitted to DLCD for review 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

**Cc:** James Bassingthwaite, City of Newport  
Gloria Gardiner, DLCD Urban Planning Specialist  
Laren Woolley, DLCD Regional Representative

<paa> YA

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

DEPT OF

(See reverse side for submittal requirements)

AUG 07 2009

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: City of Newport Local File No.: 2-CP-09/2-Z-09 (If no number, use none)

Date of Adoption: August 3, 2009 Date Mailed: August 6, 2009 (Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: April 22, 2009

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

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

Amendment of Comp plan map and Zoning map from High Density Residential/R-4 (High Density Multi-Family Residential) to Yaquina Bay Shoreland/W-2 (Water-Related) for an approx. 0.19 acre piece of property abutting property owner's other Shoreland/W-2 property to allow W-2 permitted use of both properties.

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: High Density Residen.to Yaquina Bay Shoreland

Zone Map Changed from: R-4 (High Density Multi-Family Residential) to W-2 (Water-Related)

Location: Assessor's Map 11-11-08-AC Acres Involved: 0.19 approx. Tax Lots 12200, 12301 & 12400 res. permitted by CUP on Specify Density: Previous: 1250 sq. ft. per res. unit max New: floors other than street grade

Applicable Statewide Planning Goals: 2, 9, 10, 12

Was an Exception Adopted? Yes: No: X

DLCD File No.: 002-09 (17532) [15663]

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: X\* No:     

\*mailed in time for DLCD to receive 45 days prior to 1st 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

Local Contact: Derrick Tokos Area Code + Phone Number: 541-574-0626

Address: 169 SW Coast Hwy

City: Newport Zip Code+4: 97365-4713

## 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](mailto:Larry.French@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

# NEWPORT



169 SW COAST HWY  
NEWPORT, OREGON 97365

[www.thecityofnewport.net](http://www.thecityofnewport.net)

COAST GUARD CITY, USA

MOMBETSU, JAPAN, SISTER CITY

COMMUNITY DEVELOPMENT DEPARTMENT OREGON

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

Local File # 2-CP-09/2-2-09

Date of Deposit in US Mail: 8-6-09

Name of Person Mailing: Wanda Haney

Signature of Person Mailing: *Wanda Haney*

*8/6/09  
dropped in  
1st class mail  
w/ 2 copies of  
Ord. #1985 & exhibits  
WH*



**CITY OF NEWPORT**  
**ORDINANCE NO. 1985**

**AN ORDINANCE AMENDING ORDINANCE NO. 1621 (AS AMENDED) AND  
ORDINANCE NO. 1308 (AS AMENDED) OF THE CITY OF NEWPORT,  
OREGON, TO AMEND THE GENERAL LAND USE PLAN AND YAQUINA  
BAY ESTUARY AND SHORELANDS COMPREHENSIVE PLAN MAPS AND  
THE CITY OF NEWPORT ZONING MAP**

**Summary of Findings:**

1. A request by Front Street Marine, LLC was filed on April 9, 2009 (File No. 2-CP-09/2-Z-09) for a minor amendment to the General Land Use Plan and Yaquina Bay Estuary and Shorelands Maps of the City of Newport Comprehensive Plan (Ordinance No. 1621, as amended), and the Zoning Map of the City of Newport Zoning Ordinance (Ordinance No. 1308, as amended).
2. The proposed amendments change the Comprehensive Plan and Zoning designations of approximately 8,473 square feet of real property from High Density Residential/R-4 (High Density Multi-Family Residential) to Yaquina Bay Shoreland/W-2 (Water Related) so that the entire 14,322 square foot property identified as Tax Lots 12200, 12301 & 12400 of Lincoln County Assessor's Map 11-11-08-AC (213 SE Bay Blvd) will be designated Yaquina Bay Shoreland/W-2 (Water Related).
3. 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 public hearings on June 8, 2009, and June 29, 2009, for the purpose of reviewing the proposed amendments and providing a recommendation to the City Council. The Planning Commission voted unanimously to recommend approval of the amendments with the stipulation that a geologic and engineering report accompany any expansion on the property.
4. The City Council of the City of Newport, after providing the required public notification, held a duly noticed public hearing on July 20, 2009, and voted unanimously to accept the Planning Commission recommendation and adopt the proposed amendments as compliant with applicable criteria identified in the Planning Staff Report dated July 20, 2009.

**THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1.** Ordinance No. 1621 (as amended) is amended to establish General Land Use Plan Map and Yaquina Bay Estuary and Shorelands Map designations of "Yaquina Bay Shoreland" for approximately 8,473 square feet of real property located at the rear (north side) of Tax Lots 12200, 12301 & 12400 of Lincoln County Assessor's Map 11-11-08-AC (213 SE Bay Blvd) as illustrated in Exhibit "A."

**Section 2.** Ordinance No. 1308 (as amended) is amended to establish a W-2 (Water Related) Zoning Map designation for approximately 8,473 square feet of real property located at the rear (north side) of Tax Lots 12200, 12301 & 12400 of Lincoln County Assessor's Map 11-11-08-AC (213 SE Bay Blvd) as illustrated in Exhibit "A."

**Section 3.** The City Council adopts the findings of fact and conclusions contained in Exhibit "B," File No. 2-CP-09/2-Z-09 "Findings for Amendments to Comprehensive Plan Maps and the Zoning Map to Change the Designation of a Portion of Property," in support of approval of the amendment to the Newport Comprehensive Plan and Zoning Ordinance.

**Section 4.** The City Council adopts the following condition on the approval of the requested amendments:

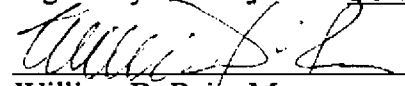
- A. Front Street Marine, LLC, shall prepare and file a deed restriction for the property subject to this amendment, requiring that a Certified Engineering Geologist be retained at the owner's expense to evaluate any expansion of development on the property. The deed restriction shall be subject to the review and approval of the City Attorney prior to the property owner recording it with the Lincoln County Clerk's Office.

**Section 5.** The effective date of this ordinance shall be either 30 days after the date the ordinance is adopted or the date of recording with the Lincoln County Clerk of the required deed restriction in Section 4(A) above, whichever date is later. If the deed restriction required by Section 4(A) above is not recorded with the Lincoln County Clerk's Office within one year from the date of adoption of this ordinance, the ordinance shall not become effective and the amendments to the Newport Comprehensive Plan and Zoning Ordinance shall be considered null and void.

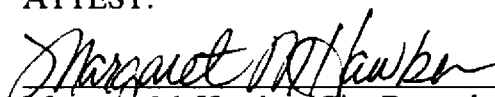
Date adopted on initial vote and read by title only: August 3, 2009

Date adopted on final roll call vote: August 3, 2009

Signed by the Mayor on August 5, 2009.

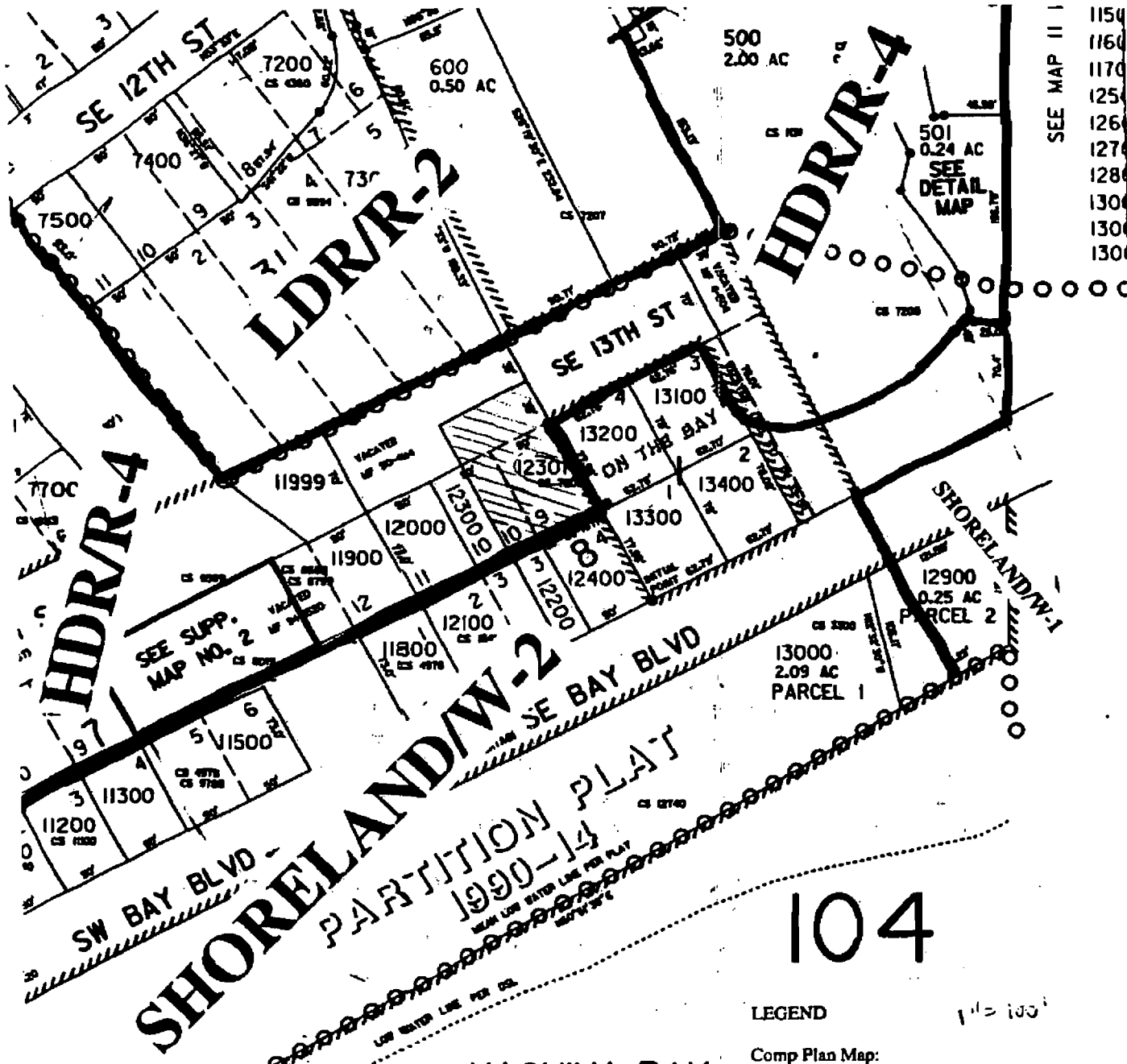
  
\_\_\_\_\_  
William D. Bain, Mayor

ATTEST:

  
\_\_\_\_\_  
Margaret M. Hawker, City Recorder

**EXHIBIT "A"**

**Newport File No. 2-CP-09/2-Z-09**



SEE MAP II I  
1154  
1160  
1170  
1254  
1264  
1274  
1284  
1304  
1304  
1304

Newport File No. 2-CP-09/2-Z-09

Subject Property:  
Assessor's Map 11-11-8-AC Tax Lot (2301)

Existing City Zoning Designation: R-4/High Density Multi-Family Residential  
Existing City Comp Plan Designation: High Density Residential  
Proposed City Zoning: W-2/Water-Related  
Proposed City Comp Plan Designation: Shoreland

Location of Subject Property: 

**LEGEND**

Comp Plan Map:  
HDR = High Density Residential  
LDR = Low Density Residential  
SHORELAND = Shoreland

Zoning Map:  
R-4 = High Density Multi-Family Residential  
R-2 = Medium Density Single-Family Residential  
W-2 = Water-Related  
W-1 = Water-Dependent

**YAQUINA BAY**

## EXHIBIT "B"

### Newport File No. 2-CP-09/2-Z-09

#### FINDINGS FOR AMENDMENTS TO COMPREHENSIVE PLAN MAPS AND THE ZONING MAP TO CHANGE THE DESIGNATION OF A PORTION OF PROPERTY

##### FINDINGS OF FACT

1. Front Street Marine, LLC (Pavitt Land Use Consulting, LLC, authorized representative), submitted a land use application on April 9, 2009, for approval of minor Comprehensive Plan Map and Zoning Map amendments. The subject property includes three tax lots which have W-2/ "Water-related" zoning adjacent to Bay Boulevard and R-4/"High Density Multi-Family Residential" zoning at the rear (north side) of the property. The Zoning map amendment is requested so that the property will be entirely zoned W-2. A Comprehensive Plan map change is requested to replace "High Density Residential" with the "Yaquina Bay Shoreland" designation in order for the land currently zoned R-4 to be designated with the requested zone change to W-2. The W-2 zoning allows for uses permitted outright and conditionally as provided for in Newport Zoning Ordinance (NZO) (Ord. No. 1308, as amended) Section 2-2-1.040 (Water-dependent and Water-related Uses).

2. The applicant's property contains an existing building that houses Local Ocean Seafood (a seafood market/restaurant) on the first floor and machinery for retail seafood on the second floor as well as other miscellaneous uses on the second floor. The applicant intends to expand the existing building to the rear, or there may be a second building attached by a ramp or stairway. The existing building is zoned W-2, and the vacant area to the north is zoned R-4. Expansion of the water-related designation would allow the entire parcel to be used for a water-related use.

3. The property is described as Tax Lots 12200, 12301 & 12400 on Lincoln County Assessor's Map 11-11-08-AC (213 SE Bay Blvd.). The northern portion of the property, which is the subject of the amendments, is roughly 8,473 square feet (0.19 acres) in size. The size of the entire ownership is approximately 14,322 square feet (0.33 acres) per the County Assessor's Map.

4. Staff reports the following facts associated with the request:

- a. Plan Designation: Shoreland – approximately 5,848 square feet (0.13 acres) and High Density Residential – approximately 8,473 square feet (0.19 acres).
- b. Zone Designation: W-2/"Water Related" – approximately 5,848 square feet (0.13 acres) and R-4/"High Density Multi-Family Residential" – approximately 8,473 square feet (0.19 acres).
- c. Surrounding Land Uses: The subject properties are on the landward side of SE Bay Blvd. The surrounding land uses include port-owned, commercial,



and water-related uses along Bay Boulevard with a variety of single-family, multi-family, and condominium residential uses to the north, west, and east. A boardwalk and port-owned property are across Bay Boulevard on the Bay Front. There is vacant land directly to the east of the subject property and just beyond that to the east are both the Port Dock 5 fisherman's parking lot and the Oregon Coast History Center's Bay Front mansion that is being developed as a maritime museum. To the west on Bay Boulevard are the "Schiewe" marine building, the former B & F Marine Electronics building, and other commercial development.

- d. Topography and Vegetation: According to the applicant, the site is level then rises abruptly above Bay Boulevard to a grassy bluff. There is little vegetation on the property except for commercial-style landscaping around the building and the grassy bluff in the rear. There is more brushy vegetation further up the hill.
- e. Existing Structures: One building housing Local Ocean Seafood on the first floor and machinery for retail seafood on the second floor as well as other miscellaneous uses on the second floor. The applicant intends to expand this building to the rear, or there may be a second building attached by a ramp or stairway.
- f. Utilities: All city services are available to the site.
- g. Development Constraints: Topography.
- h. Past Land Use Actions:

File No. 2-CUP-05: By final order 5/23/05, amended a conditional use permit issued in September 2003 by allowing outdoor seating and food grilling on a portion of the property.

File No. 7-CUP-03: By final order 9/8/03, allowed a portion of a building to be used for a food service/restaurant use in conjunction with an outright permitted seafood market.

5. The Department of Land Conservation and Development was mailed notification of the proposed amendments on April 22, 2009, using the DLCD Notice of Proposed Amendment green form. All applicable city departments and other public agencies and affected property owners within 300 feet of the subject property were notified on May 19, 2009, for the Planning Commission hearing and June 30, 2009, for the City Council hearing. Notification was published in the Newport News-Times on May 29, 2009, for the Planning Commission hearing, and on July 10, 2009, for the City Council hearing.

6. The Planning Commission reviews land use applications of this nature and makes a recommendation to the City Council. The Planning Commission held a public hearing on the proposed amendment on June 8, 2009. A request was received to leave the record open for seven days, and the Commission elected to continue the public hearing to June 29, 2009. After receiving testimony and evidence, and following deliberation at the continued hearing on June 29<sup>th</sup>, the Planning Commission voted unanimously (3-0) (Patrick, McIntyre, and Fisher) in favor of forwarding a favorable recommendation on this proposed Zoning map and Comprehensive map change to the City Council with the stipulation that a geologic and engineering report accompany any expansion on the

property. The record and minutes of the June 8<sup>th</sup> and June 29<sup>th</sup> meetings are hereby incorporated by reference.

7. Testimony received or considered at the Planning Commission meetings included:

- a. A letter, dated May 21, 2009; from Carol Jones, President, Lincoln County Historical Society (a property owner within the notification area), stating that: "Lincoln County Historical Society has no objection to the proposed change of zoning for Tax Lot 1301 from R-4/High Density Multi-Family Residential to W-2/Water-Related by Applicant Front Street Marine, LLC (File No. 2-CP-09/2-Z-09)."
- b. 2. A written "No Comment" comment from Lee Ritzman (City Engineer/Newport Public Works Director) dated May 29, 2009.
- c. Oral testimony received at the June 8<sup>th</sup> hearing from Janet Webster and Dawn Pavitt (applicant and her agent) explaining the application and testifying in favor.
- d. Oral testimony received at the June 8<sup>th</sup> hearing from John Barker, 3124 SE Tabor, Portland, OR, expressing concerns regarding the geology of the hill.
- e. Oral testimony received June 8<sup>th</sup> hearing from John Ball, 908 Crestview Place, Newport, OR, expressing concern over the possibility of expansion cutting into the bank.
- f. Supplemental written information from Dawn Pavitt responding to questions raised at the June 8<sup>th</sup> hearing.
- g. Oral testimony received at the June 29<sup>th</sup> continued hearing from Janet Webster and Dawn Pavitt (applicant and her agent) further explaining the application, addressing questions, and testifying in favor.
- h. Oral testimony received at the June 29<sup>th</sup> continued hearing from Sarah Barker Ball, PO Box 2355, Newport, OR, expressing concern about implications of future development.

8. A public hearing was held on July 20, 2009 before the Newport City Council. The City Council heard a report by staff and allowed for testimony by the applicant/owner and others in favor or opposed to the request. Janet Webster, a member of Front Street Marine, LLC, was the only party that testified. The record and minutes of the July 20, 2009 meeting are hereby incorporated by reference. A Planning Staff Report was prepared for the City Council meeting and the report with its attachments is incorporated by reference into the findings. The Planning Staff Report attachments included the following:

Attachment "A"	Applicant Request
Attachment "A-I"	Oregon Statewide Planning Goal 9

Attachment "A-2"	Denison Survey dated February 7, 2002
Attachment "A-3"	Applicant's additional submittal 6/22/09
Attachment "B"	Notices of Public Hearing and Map
Attachment "C"	Comp Plan and Zoning Designations Map
Attachment "C-1"	Uses Allowed in the R-4 Zone
Attachment "C-2"	Uses Allowed in the W-2 Zone
Attachment "C-3"	NZO Section 2-3-5 Table "A"
Attachment "C-4"	NZO Section 2-4-4
Attachment "D"	Topography Map of Area
Attachment "E"	Portion of 6/8/09 Planning Commission minutes
Attachment "F"	Portion of Draft 6/29/09 Planning Commission minutes

9. Following the public hearing and deliberation on July 20, 2009, the City Council voted unanimously to accept the Planning Commission's recommendation and approve the requested amendments.

10. The City Council finds that the applicable criteria are as follows:

- a. Findings regarding the following are required for the Proposed Comprehensive Plan Map Minor Amendment (p. 286 of the Comprehensive Plan):
  - i. Change in one or more goal or policy; and
  - ii. Demonstrated need to accommodate unpredicted population trends, housing needs, employment needs, or change in community attitudes; and
  - iii. Orderly and economic provision of key public facilities; and
  - iv. Ability to serve the subject property with City services without an undue burden on the general population; and
  - v. Compatibility of the proposed change with the surrounding neighborhood and community.
- b. Criteria for the Proposed Zoning Map Amendments (Section 2-5-5.005) of the Newport Zoning Ordinance (No. 1308, as amended):
  - i. The change furthers a public necessity.
  - ii. The change promotes the general welfare.

## CONCLUSIONS

1. The City Council concludes that the following findings demonstrate compliance with the applicable criteria for a Comprehensive Plan Map Minor Amendment.
  - a. Findings as applicable have been submitted demonstrating: "A change in one or more goal or policy".

- i. The applicant notes that the requested map amendment will affect the city inventories for both high-density residential housing and water-related land in the City of Newport to a minor degree. There is more than sufficient land in the City of Newport's buildable lands inventory for R-4 land according to the Housing Section of the Newport Comprehensive Plan. This change should not adversely affect the availability of high-density residential land. The applicant contends that the City's Economic Goal 1: "To maintain an adequate supply of land within the Newport city limits and urban growth boundary to accommodate the anticipated need" is supported by the applicant's request. The applicant further contends that the current uses on the property with the seafood market and seafood restaurant already support the approach to a well-integrated set of uses for water-related zoning. The applicant plans to build a second building to the rear of the property attached by a ramp or stairway or expand the existing building. Either way, the addition will expand on that set of well-integrated uses according to the applicant.
- ii. In 2006, the City of Newport in Ordinance No. 1891 adopted Implementation Measure 2 as part of Goal 1, Policy 1 of the Economic Section of the Newport Comprehensive Plan. This resulted in a change in one or more goal or policy. Implementation Measure 2 of Goal 1, Policy 1 addresses the future need for commercial land in Newport as follows:

North of Yaquina Bay, the City will focus on the redevelopment and/or conversion of existing areas for commercial uses to encourage efficient use of land already developed with urban level services that are currently underdeveloped or underutilized. The City will also examine areas in the downtown area down to the Bayfront and west of the downtown area between Highway 101 and the Nye Beach area for potential conversion to commercial Comprehensive Plan designations and Zones or other such designations that may provide for additional commercial opportunities.

The change from the R-4 zoning to a W-2 zoning would provide for additional commercial opportunities in a location consistent with Implementation Measure 2 of Goal 1, Policy 1 of the Economic Section.

- iii. The applicant notes that the request is further supported by Oregon Statewide Planning Goal 9 (Economic Development): "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." The applicant is requesting the expansion of the "Shoreland"

designation for W-2 zoning so that the existing building and integrated uses may be expanded.

- b. Findings as applicable have been submitted demonstrating that there is a: "Demonstrated need to accommodate unpredicted population trends, housing needs, employment needs, or change in community attitudes."
  - i. The applicant notes in the findings that the requested amendment is minor and will allow the City of Newport to continue to accommodate unpredicted population trends, housing needs, employment needs, or a change in community attitudes. The request is quite minor in size and is simply a realignment of bordering designations so that an entire piece of property may be within the same zone and managed appropriately. The request will allow the City to accommodate employment needs on the requested W-2 land.
  - ii. The updated Economic Section of the Newport Comprehensive Plan adopted in 2006 identifies a need for commercial land to provide employment opportunities. In Table 4 (Gross Need For Commercial and Industrial Land, 2005-2025) of the Economic Section, under the medium growth scenario, 14.0 acres of office commercial and 201.6 acres of retail commercial will be needed over the 20 year period. The need for retail commercial is primarily for tourist related commercial uses. The Bay Front area of Newport contains many tourist oriented commercial uses and is itself a significant draw for tourists. The requested change from R-4 to W-2 would help meet the demonstrated need for land that provides for opportunities for commercial uses, particularly tourist related uses, for employment needs in a manner that is consistent with Implementation Measure 2 of Goal 1, Policy 1 of the Economic Section.
- c. Findings as applicable have been submitted demonstrating an: "Orderly and economic provision of key public facilities."
  - i. The applicant's findings indicate that the requested map amendment is not anticipated to impact the orderly and economic provision of key public facilities. The subject property is already fully served with key public facilities due to the proximity to SE Bay Boulevard and the existing building. The realignment of the map designation will not impair the provision of facilities to adjacent or nearby properties.
- d. Findings as applicable have been submitted demonstrating an: "Ability to serve the subject property with City services without an undue burden on the general population."
  - i. The applicant notes that city services to the subject property will not be impacted by the requested amendment. The property has access via SE

Bay Boulevard, and the existing building is already served with city services.

- e. Findings as applicable have been submitted demonstrating the:  
"Compatibility of the proposed change with the surrounding neighborhood and community."
- i. The applicant anticipates that the proposed changes will not be significantly noticeable to the surrounding neighborhood and community due to the split zoning and the existing Comprehensive Plan designation for the subject parcels.

Tax Lot 12301 will be shifting to all "Shoreland" (W-2) with this request from a split of "Shoreland" (W-2) and "High Density Residential" (R-4). The applicant notes however that SE 13th Street is 70 feet wide in this location and buffers nearby residential properties from potential W-2 uses on Tax Lot 12301, and there is also a topographic break between the subject parcels and the properties to the north due to the steep rise in this location. To the west and east is a mix of residential, commercial, and water-related uses.

- ii. In 2002, by Ordinance No. 1842, the land directly abutting to the east (formerly Lots 5 and 8 of Block 8 but are now shown as Lots 4 and 3 (Tax Lots 13200 and 13100) of the On the Bay minor replat) was changed to a solely "Shoreland" designation from the split of "High Density Residential" and "Shoreland". The City found that the sole zoning of W-2 and designation of "Shoreland" were compatible with this water-related location; and the applicant believes that is true for this property as well.
- iii. The applicant notes that Local Ocean Seafood is a popular seafood market and restaurant. The thriving business needs additional support space, and it will be best to locate that support space on site. The proposed W-2 uses in the small subject area will be compatible with what the neighborhood is currently experiencing in the adjacent W-2 zone. The applicant contends that the request will not allow a large seafood processor for example to move onto the property. The lot is small and steep, which will be limiting factors for future development. Policy 1 of Goal 2 of the Economic Section of the Newport Comprehensive Plan states that: "The city will work with local business efforts seeking expansion or relocation to the Newport area." The proposed amendment would allow expansion of a local business and would therefore be consistent with Policy 1 of Goal 2 of the Economic Section.

- iv. The intent of the R-4 zone designations is to allow for limited commercial development within the R-4 zone. A number of commercial uses are permitted outright or conditionally within the R-4 zone as identified in NZO Section 2-2-1.025. Commercial types of uses permitted outright in the R-4 zone include private schools, child care facilities, residential care homes, nursing homes, rooming and boarding houses, hospitals, membership organizations, museums, residential facilities, and assisted living facilities. Commercial types of uses permitted conditionally within the R-4 zone include day care facilities, bed and breakfast inns, motels and hotels, professional offices, beauty and barber shops, colleges and universities, hostels, recreational vehicle parks, movie theaters, bicycle shops, and those uses identified as conditional uses allowed in the Historic Nye Beach Design Review District pursuant to NZO Section 2-4-16.030 (A)(10)(a). The change to the W-2 zone would expand the types of commercial uses that could occur on the subject property. See Planning Staff Report Attachment "C-1" and "C-2".
- v. The change from the R-4 to the W-2 will not increase the allowable height of a structure on the property as both zone designations contain a 35 foot maximum building height. While the R-4 zone contains front, side, and rear yard setback requirements, the W-2 zone does not normally require setbacks. See Planning Staff Report Attachment "C-3". However, where the proposed W-2 zoned property abuts a residential zone, the provisions of NZO Section 2-4-4 (Screening and Buffering Between Residential and Non-Residential Zones) are applicable in regard to the height buffer requirements in NZO Section 2-4-4.005 and the adjacent yard buffer requirements in NZO Section 2-4-4.010. See Planning Staff Report Attachment "C-4".
- vi. Neighboring property owners testified at the Planning Commission hearing that they are concerned about a northward expansion of development on the property given the steep terrain to the rear of the site. The applicant noted that an engineering and geologic report was prepared when the existing building was constructed and that the recommendations in the report were followed. She further indicated that the property owner recognizes that further construction on the property will require both a geologic report and engineered plans. Janet Webster, a member of Front Street Marine, LLC pointed out that she resides next to the site and will undertake reasonable measures to protect the hillside and their investments. Considering that the existing structure has been built based upon an engineering and geologic report, it is reasonable to assume that further development could be supported without compromising the hillside and surrounding neighborhood. Compliance can be ensured through the imposition of a deed restriction, so that future owners are aware of the need for a report.

2. The City Council concludes that the following findings demonstrate compliance with the applicable criteria for a Zoning Map Amendment:

- a. The change furthers a public necessity and promotes the general welfare.
  - i. The requested Zoning Map amendment accompanies the request for a Comprehensive Plan Map amendment. The applicant notes that the proposed requests further a public necessity by allowing the owner's parcel to be zoned in one designation. In addition, this zone change request will not create spot zoning, but will further the intended W-2 use of the building on the subject property. The existing zone line between R-4 and W-2 will be changed so that the entire parcel is zoned W-2 as is the parcel to the east. The single zone will allow both the property owner and city officials to better manage the property. Expectations and regulations of allowed uses would be significantly clearer than with the existing split zoning. There are special setbacks required between W-2 and a residential zone that will make it awkward to build a second building on the applicant's property if the zone change is not approved.
  - ii. The applicant notes that the subject property is located in the historic Bay Front district, and future development of the property will be in compliance with the guidelines suggested by the Bay Front Plan. The applicant seeks to develop that property as an allowed W-2 use and consistent with the surrounding uses. While the portion of property considered for rezoning may be considered as part of the Bay Front area and was included within the Bay Front study area boundaries as illustrated by Figure 1 on page 3 of the Bay Front Plan (page 426 of the Comprehensive Plan), the portion of the property proposed for rezoning is not, however, actually within the defined boundaries of the Bay Front Plan according to the Bay Front Plan on page 3 (page 426 of the Comprehensive Plan) as: "The Bay Front is defined as that area between the Yaquina Bay Bridge up to and including the Embarcadero Resort and between Yaquina Bay and one lot deep landward off of Bay Boulevard." The subject property is in the second row of lots off the landward side of Bay Boulevard. The provisions of the Bay Front Plan are therefore not directly applicable to the property portion proposed to be rezoned, including Policy 1, Goal 1 of the Bay Front Plan which requires retention of existing zoning designations except for certain specified areas.
  - iii. The applicant further notes that the increase of W-2 land will help Newport maintain the necessary inventory of W-2/"Water Related" land and will build a stronger existing W-2 use in the seafood market and restaurant. In regard to the inventory requirements of Statewide Planning Goal 17 (Coastal Shorelands), the proposed amendment does



not affect a designated water-dependent shoreland site as specified in OAR 660-037-0030 and therefore the provisions of Division 37 in OAR 660-037 for Goal 17 Water-Dependent Shorelands (including the requirements for maintaining a minimum inventory of water dependent designated land) are not applicable.

- iv. It will also allow the subject property to be fully within one zone rather than be developed at some future time with split zoning. The applicant contends that this request will also enable the City to better manage land use and development on that as yet undeveloped rear lot.
- v. The applicant contends that the proposed zone change is further supported by the Bay Front Plan; particularly Goal 1: "To preserve the mix of tourist, fishing, and residential uses that give the Bay Front its special charm." Consequently, the neighborhood benefits by the proposal meeting the combined objectives of the Bay Front Plan, and the applicant benefits by being able to use this property in an efficient and economically viable manner.
- vi. The restaurant/seafood market building exists, and all City services of water and sewer, natural gas, and other utilities are in place. Access is via SE Bay Boulevard. Fire protection is adequate due to proximity of facilities to SE Bay Boulevard.
- vii. Spot zoning does not result as the request is simply a shift of the existing zone designation to fully include the parcel within the adjacent zone. W-2 zoning runs along the landward side of SE Bay Boulevard in this location and on the full eastern side of the subject property. By Ordinance No. 1842, the City approved a zone/comp plan map change in 2002, which changed the split zoning on the neighboring Lots 5 and 8 (now shown as Lots 4 and 3 (Tax Lots 13200 and 13100) of the On the Bay Minor Replat) to the east from R-4/W-2 to solely W-2 finding that the proposed change met the applicable criteria. The expansion of W-2 land will allow the entire parcel to be used for a water-related use, which the applicant notes is an important component of the historical and existing uses on the Bay Front.
- viii. As noted earlier in the Staff Report, the City has adopted an updated Economic Section of the Newport Comprehensive Plan in 2006 that includes an identified need for additional retail commercial land particularly for tourist oriented uses. The proposed change in zoning from the R-4 to the W-2 zone is consistent with the direction for adding additional commercial land as identified in Implementation Measure 2 of Goal 1, Policy 1 of the Economic Section. Implementation Measure 2 was adopted to comply with the requirement of Statewide Planning Goal 9 to: "Provide for at least an adequate supply of sites of suitable sizes,

types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies." As the proposed change would implement the direction of Implementation Measure 2 of Goal 1, Policy 1, it can be concluded that the proposed change furthers a public necessity and promotes the general welfare.

- ix. The applicant notes that Local Ocean Seafood is a popular seafood market and restaurant. The thriving business needs additional support space, and it will be best to locate that support space on site. The proposed W-2 uses in the small subject area will be compatible with what the neighborhood is currently experiencing in the adjacent W-2 zone. The applicant contends that the request will not allow a large seafood processor for example to move onto the property. The lot is small and steep, which will be limiting factors for future development. Policy 1 of Goal 2 of the Economic Section of the Newport Comprehensive Plan states that: "The city will work with local business efforts seeking expansion or relocation to the Newport area." The proposed amendment would allow expansion of a local business and would therefore be consistent with Policy 1 of Goal 2 of the Economic Section.
- x. In summary, the applicant explains that the proposed change would further a public necessity and promote the general welfare. The applicant notes that the proposed change furthers the purpose of the Bay Front Plan and would allow the most appropriate use of the land due to the existing building's W-2 zoning and the proximity of the vacant land to other businesses that are zoned W-2 in the area. Further, the applicant contends that the proposed change facilitates the orderly growth of the City in that it is consistent with the growing character of the neighborhood as a tourist-related water-dependent business location.
- xi. Photographs in the record show that the rear portion of the property is steeply sloped and the fact that an engineering and geologic report was prepared for the existing structure serves as evidence of the need for such an evaluation to ensure future development does not compromise slope stability. It is reasonable to require that an engineering and geologic report be obtained by the property owner prior to further construction in order to protect the public welfare. Compliance can be ensured through the imposition of a deed restriction, so that future owners are aware of the need for a report.

3. The City Council concludes as follows regarding State Land Use Goals/  
Administrative Rule Requirements:

- a. In regard to Statewide Planning Goal 1 (Citizen Involvement), the acknowledged Newport Comprehensive Plan establishes the City of

Newport's Goal 1 program on pages 291 and 292. In regard to the specific Policies and Implementation Measures, the following information is provided demonstrating conformance with the goal of encouraging citizen involvement:

- i. Policy 1 contains at least three possible implementation measures (IM) to implement Policy 1 requirements of encouraging public involvement that may be or not be applicable depending on the nature of the proposed amendment. Policy 2 encourages the participation of citizens in the legislative stage of plan development and implementation. The implementation measures for Policy 1 are suitable for use in the legislative portion of the process rather than in a minor quasi-judicial map amendment process. The City may use any one of the three implementation methods (or combinations thereof) to meet the Policy 1 requirements of encouraging public involvement. Additionally, as the City undertakes the process of amending the Comprehensive Plan/Zoning maps, additional opportunities for public involvement will occur.
- ii. Policy 1, IM 1 (Planning Commission to serve as official Citizens' Advisory Committee to the City Council / appointment of a Citizens' Advisory Committee on major changes). Under Policy 1, IM 1, the Newport Planning Commission is the official Citizens' Advisory Committee to the City Council and the Planning Commission will hold a public hearing for the purpose of reviewing the proposed amendments and making a recommendation to the City Council. If the City Council determines that a major legislative change is under consideration, the Council may designate a Citizens' Advisory Committee for the purposes of using Policy 1 IM 1 as a means to encourage public involvement. This amendment is a quasi-judicial minor comprehensive plan amendment and therefore not a major legislative change.
- iii. Policy 1, IM 2 in the first part addresses possible City promotion or assistance to neighborhood organizations to assist in decision making. The second part of Policy 1, IM 2 relates to allowing the Council or Commission to hold meetings in neighborhoods affected by issues under consideration. Both the first and second parts are at the discretion of the Council or Commission and are not a specific requirement prior to amendment adoption.
- iv. Policy 1, IM 3 allows for the formation of an ad hoc advisory committee for the study of an important issue. As this is a quasi-judicial minor comprehensive plan amendment rather than a major legislative change, no formation of an ad hoc advisory committee is required. The City, however, did form an Employment Lands and Conceptual Land Use Planning Task Force that was part of the process that resulted in the development and adoption of the updated 2006 Economic Section of the

Newport Comprehensive Plan. The proposed quasi-judicial amendment can be viewed as the implementation of the change in policies in the Economic Section adopted by the City following the economic section update completed as part of the Employment Lands and Conceptual Land Use Planning process.

- v. Policy 2 relates to encouraging the participation of citizens in the legislative stage of plan and ordinance development rather than in the quasi-judicial stage. The proposed comprehensive plan/zoning map amendment is a quasi-judicial amendment (not a legislative amendment) and therefore this policy is not applicable.
  
- b. In regard to Statewide Planning Goal 2 (Land Use Planning), the City of Newport's Comprehensive Plan has been acknowledged as being in compliance with the Statewide Planning Goals, including Goal 2. The Newport Comprehensive Plan section entitled "Administration of the Plan" specifies how amendments to the plan are made. The proposed amendment will follow the requirements for an amendment found in the Newport Comprehensive Plan and will therefore be in compliance with Statewide Planning Goal 2.
  
- c. In regard to Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources), Goal 6 (Air, Water and Land Resources Policy), Goal 7 (Areas Subject to Natural Disasters and Hazards), Goal 8 (Recreation Needs), Goal 10 (Housing), Goal 11 (Public Facilities and Services), Goal 13 (Energy Conservation), Goal 14 (Urbanization), Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands), and Goal 18 (Beaches and Dunes), there are no applicable requirements in these goals in regard to the proposed comprehensive plan amendment. For Goal 17, the proposed amendment does not affect a designated water-dependent shoreland site as specified in OAR 660-037-0030 and therefore the provisions of Division 37 in OAR 660-037 for Goal 17 Water-Dependent Shorelands are not applicable.
  
- d. In regard to Statewide Planning Goal 9 (Economic Development), the City of Newport adopted an updated Comprehensive Plan Economic Section (File No. 2-CP-05) on June 5, 2006, in Ordinance No. 1891, which became effective on July 5, 2006. To meet the Goal 9 requirements of maintaining at least an adequate supply of commercial land consistent with plan policies, the City of Newport adopted Goal 1, Policy 1, Implementation Measures 1 and 2. The proposed Comprehensive Plan amendment is consistent with Implementation Measure 2 to increase commercial opportunities north of the Yaquina Bay through redevelopment and utilization of underutilized properties. Therefore the change to Shoreland/W-2 will be consistent with the City's adopted Economic Section implementing the Statewide Goal 9 requirements.

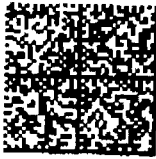
- e. In regard to Statewide Planning Goal 12 and the implementing Transportation Planning Rule requirements, the proposed amendment will not significantly affect transportation facilities pursuant to OAR 660-012-0060 (1) as the acreage involved in the amendment is very small.
- f. In regard to Statewide Planning Goal 15 (Willamette River Greenway) and Goal 19 (Ocean Resources), the proposed Comprehensive Plan map amendment will not have an impact on either of these two Goals as Statewide Planning Goal 15 involves land along the Willamette River and Statewide Planning Goal 19 involves Ocean Resources.

### **OVERALL CONCLUSION**

Based on the Planning Staff Report and attachments, and other evidence and testimony in the record, the City Council concludes that the above findings of fact and conclusions demonstrate compliance with the applicable criteria and the requested amendment is hereby **APPROVED** with a condition that a geologic and engineering report shall accompany any plans for building construction and/or expansion on the subject site.



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City of Newport  
169 SW Coast Hwy  
Newport, OR 97365



ATTN: PLAN AMENDMENT SPECIALIST  
DLCD  
635 CAPITOL STREET NE STE 150  
SALEM OR 97301-2540