



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

12/21/2009

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 013-09

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: Monday, January 04, 2010

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: Derrick Tokos, City of Newport
Gloria Gardiner, DLCD Urban Planning Specialist

<paa> YA/I

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



Jurisdiction: **City of Newport**

Local file number: **4-CP-09/11-Z-09**

Date of Adoption: **12/7/09**

Date Mailed: **12/11/09**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 10/13/09

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

The purpose of the amendment is to revise the City's estuary management regulations to allow medium and deep water port facilities to be constructed within Management Unit No. 4, which consists of the U.S. Army Corps of Engineers deep water channel. Management Unit No. 4 is already classified for development given the dredging required to keep the channel open.

Does the Adoption differ from proposal? Yes, Please explain below:

The original language would have allowed medium and deep water port facilities only where an exception had been granted by the U.S. Army Corps of Engineers. After discussing the issue with DLCD staff, the language was revised to simply note that development within the channel is subject to Corps approval.

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location: **Yaquina Bay Estuary**

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1 **2** **3** **4** **5** **6** **7** **8** **9** **10** **11** **12** **13** **14** **15** **16** **17** **18** **19**

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

U.S. Army Corps of Engineers, Division of State Lands

Local Contact: **Derrick I. Tokos, AICP**

Phone: **(541) 574-0626** Extension:

Address: **169 SW Coast Highway**

Fax Number: **541-574-0644**

City: **Newport**

Zip: **97365**

E-mail Address: **d.tokos@thecityofnewport.net**

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 Complete Copies** (documents and maps) 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. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**.
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 this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not 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 now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also 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. 1995

**AN ORDINANCE AMENDING ORDINANCE NO. 1621 (AS AMENDED)
AND ORDINANCE NO. 1308 (AS AMENDED) OF THE CITY OF NEWPORT,
OREGON, TO AMEND YAQUINA BAY AND ESTUARY PROVISIONS
OF THE COMPREHENSIVE PLAN AND ZONING ORDINANCE**

Summary of Findings:

1. A request by the Port of Newport was filed on October 13, 2009 for a minor amendment to the Yaquina Bay and Estuary Section of the City of Newport Comprehensive Plan (Ordinance No. 1621, as amended), and Section 2-2-13, Management Unit Districts, of the City of Newport Zoning Ordinance (Ordinance No. 1308, as amended).
2. The proposed amendments change the City's estuary management regulations to allow deep and medium draft port facilities to be constructed within Management Unit No. 4 which consists of the U.S. Army Corps of Engineers deep water channel. Management Unit No. 4 is already classified for development, given the dredging that is required to keep the channel open. The amendments allow port facilities to extend into the channel, subject to approval by the Army Corps of Engineers, and are needed to facilitate construction of piers and docks for the new NOAA Marine Operations Center.
3. The Newport Planning Commission reviewed the proposed revisions to the Comprehensive Plan and Zoning Ordinance (Newport File No. 4-CP-09/11-Z-09) at a public hearing on November 30, 2009, and voted unanimously to recommend adoption of the amendments.
4. The City Council held a public hearing on December 7, 2009 regarding the question of the proposed revisions (Newport File No. 4-CP-09/11-Z-09), and voted in favor of their adoption after considering the recommendation of the Planning Commission and evidence and argument in the record.
5. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The Special Policies Subsection of Management Unit No. 4 of Ordinance No. 1621 (as amended) is amended to read as follows:

Special Policies: Adverse impacts of mining, mineral extraction, or other dredging operations within Management Unit 4 on existing commercial clam harvest shall be minimized. Port facilities may extend into the deep water channel subject to approval by the U.S. Army Corps of

Engineers, which maintains jurisdiction, in part, to ensure that new development does not impede navigation.

Section 2. Section 2-2-13.104, Management Unit No. 4, of Ordinance No. 1308 (as amended) is amended to read as follows:

2-2-13.104. Management Unit No. 4.

- 4.1. Management Unit 4 shall be managed to protect and maintain the channel and turning basin for deep draft navigation.
- 4.2. Adverse impacts of mining, mineral extraction, or other dredging operations within Management Unit 4 on existing commercial clam harvest shall be minimized.
- 4.3. Medium and deep draft port facilities shall be allowed subject to approval by the U.S. Army Corps of Engineers.

Section 3. Section 2-2-13.020, Permitted Use Matrices, Management Unit No. 4, of Ordinance No. 1308 (as amended) is amended to read as illustrated in Exhibit "A".

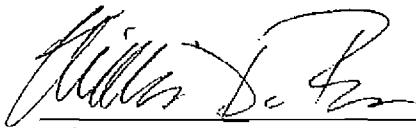
Section 4. The City Council adopts the findings of fact and conclusions contained in Exhibit "A," File No. 4-CP-09/11-Z-09 "Findings for Amendments to the Yaquina Bay and Estuary provisions of the Comprehensive Plan and Zoning Ordinance," in support of approval of the amendments to the Newport Comprehensive Plan and Zoning Ordinance.

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

Date adopted on initial vote and read by title only: December 7, 2009

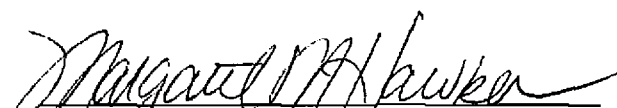
Date adopted on final roll call vote: December 7, 2009

Signed by the Mayor on December 9, 2009.



William D. Bain, Mayor

ATTEST:



Margaret M. Hawker, City Recorder

EXHIBIT "A"

Newport File No. 4-CP-09/11-Z-09

FINDINGS FOR AMENDMENTS TO THE YAQUINA BAY AND ESTUARY PROVISIONS OF THE COMPREHENSIVE PLAN AND ZONING ORDINANCE

FINDINGS OF FACT

1. The Port of Newport (Don Mann, General Manager, authorized representative), submitted a land use application on October 13, 2009, for approval of minor Comprehensive Plan text amendment and Zoning Ordinance text amendment. The purpose of the amendment is to revise the city's estuary management regulations to allow medium and deep draft port facilities to be constructed within Management Unit No. 4, which consists of the U.S. Army Corps of Engineers deep water channel. Management Unit No. 4 is already classified for development, given that it is periodically dredged in order to keep the channel open. The amendment will allow port facilities to extend into the channel, subject to approval by the U.S Army Corps of Engineers. These changes are needed to facilitate construction of piers and docks for the new NOAA Marine Operations Center.
2. The amendments apply to all submersed lands within Management Unit No. 4 (the deep water channel). The Port property where the NOAA Marine Operations Center is to be developed is identified as Tax Lot 100 of Lincoln County Assessor's Map 11-11-17 (2000 SE OSU (Marine Science Dr.)).
3. The Port property is roughly 9.66 acres in size per the Assessor's Map.
4. Staff reports the following facts associated with the request:
 - a. Existing Plan Designation: Yaquina Bay Shoreland.
 - b. Existing Zone Designation: W-1/"Water-Dependent" for the Port property where the NOAA Marine Operations Center is to be developed.
 - c. Surrounding Land Uses: The Port property is surrounded by other water-related and water-dependent uses.
 - d. Topography and Vegetation: The deep water channel is relatively close to the Port property, as illustrated on the applicant's site plan. The terrain appears to drop gradually to the north, and more steeply as you approach the deep water channel. In-water vegetation includes eel grass beds.
 - e. Existing Structures: In-water improvements on the Port property include docks and piling.

- f. Utilities: All city services are available to the Port site.
 - g. Development Constraints: None.
 - h. Past Land Use Actions: None.
5. The Department of Land Conservation and Development was mailed notification of the proposed amendments on October 13, 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 November 3, 2009, for both the Planning Commission and the City Council hearings. Notification of the Planning Commission hearing was published in the Newport News-Times on November 20, 2009, and notice of the City Council hearing was published on November 28, 2009.
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 November 30, 2009. After receiving testimony and evidence, and following deliberation, the Planning Commission voted in favor of forwarding a favorable recommendation on the proposed Comprehensive Plan and Zoning text amendments to the City Council. The record and minutes of the November 30, 2009 meeting is hereby incorporated by reference.
7. Testimony received or considered at the Planning Commission meetings included:
- a. A letter dated November 2, 2009, from Matt Spangler of DLCD, stating that the proposed amendment consistent with Goal 16.
 - b. A "no comment" from Lee Ritzman of the Newport Public Works Department, dated November 4, 2009.
8. A public hearing was held on December 7, 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. The record and minutes of the December 7, 2009 meeting are hereby incorporated by reference. Planning staff prepared a summary of this agenda item for the meeting and that summary with its attachments is incorporated by reference into the findings.
9. Following the public hearing and deliberation on December 7, 2009, the City Council voted 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 minor text amendment that does not involve a change to a policy or implementation strategy (p. 287-288 of the Comprehensive Plan):

1. *New or updated information.*
- b. Findings are also required addressing the Yaquina Bay Estuary Section, Implementation Measure 2 (p. 68 of the Comprehensive Plan):

Implementation Measure 2: The City shall continue to maintain the management unit classification system delineated in this plan and the Zoning Ordinance. The permitted use matrices contained in the Zoning Ordinance shall be maintained as is unless sufficient evidence can be presented to warrant change. Any change in the permitted uses matrices shall be considered an exception to Statewide Planning Goal 16 and shall be processed as such.

- c. For the Zoning Ordinance text amendment, the Newport Zoning Ordinance (NZO) (No. 1308, as amended) Section 2-5-5.005 requires findings addressing the following:
 1. *The change furthers a public necessity.*
 2. *The change promotes the general welfare.*

CONCLUSIONS

1. The City Council concludes that the following findings demonstrate compliance with the applicable criteria for a minor Comprehensive Plan Text Amendment.
 - a. Findings as applicable have been submitted addressing: "new or updated information."
 - i. The existence of new or updated information is not required to justify a text amendment. This criterion simply requires that any new or updated information be addressed.
 - ii. This application has not been filed to respond to new or updated information. The Management Unit designations in the City of Newport Comprehensive Plan and Zoning Ordinance draw from the Lincoln County Estuary Management Plan, prepared in September of 1982. That Plan and the city's implementing policies and ordinances designate the deep water (navigable) channel as Management Unit No. 4 and classify it for development given that the area is periodically dredged for shipping. The objective of this Management Unit is to protect the channel and turning basin for deep water navigation. With that in mind, allowed uses are limited to those that will not obstruct shipping. Port facilities are not currently listed as allowed.
 - iii. The Port of Newport indicates in their application that the new pier and dock for the NOAA Marine Operations Center needs to extend into the deep water channel to accommodate the NOAA vessels that will be mooring there. In

preparing their offer to NOAA, the Port requested and received feedback from the Corps regarding the viability of extending the pier into the navigation channel. This is the subject of the Corps letter, in which they note that the new pier construction will occur in an area with extra width that was designed into the channel when logging ships used the upstream berthing; and, as this is no longer the case, a small encroachment in this area would have a negligible effect on using traffic.

- iv. Given that Port facilities are essential infrastructure needed to support shipping and that it is possible for such structures to encroach into the deep water channel without impeding ship traffic, as noted in the Corps letter, it is appropriate for the city to include port facilities as a permitted use in the Management Unit. Encroachments may not be appropriate in all locations along the channel. In keeping with the objective of the Management Unit, which is to protect deep water shipping, the city should stipulate that all encroachments are subject to approval by the U.S. Army Corps of Engineers.
- v. The Port's application requests that the city add language allowing encroachments where an exception has been granted by the Army Corps. This is consistent with staff's advice to the Port. In hindsight, this language could put the Port or other applicants in a "catch 22" if the Army Corps is unwilling to issue a permit without a sign-off from the city. To avoid this, language should be added to the special policy section for Management Unit No. 4 of the Comprehensive Plan (page 247) that allows the city to permit the encroachment prior, but subject to, Corps approval. The specific language reads as follows:

"Port facilities may extend into the deep water channel subject to approval by the U.S. Army Corps of Engineers, which maintains jurisdiction, in part, to ensure that new development does not impede navigation."

- a. Findings as applicable have been submitted addressing the requirement that "The city shall continue to maintain the management unit classification system delineated in this plan and the Zoning Ordinance. The permitted use matrices contained in the Zoning Ordinance shall be maintained as is unless sufficient evidence can be presented to warrant change. Any change in the permitted uses matrices shall be considered an exception to Statewide Planning Goal 16 and shall be processed as such."
- i. Matt Spangler, with DLCD, submitted a letter on November 2, 2009 noting that Yaquina Bay Management Unit No. 4 is an acknowledged development management unit. Uses permitted in development management units by Statewide Planning Goal 16 include structural alterations for docks, piling, dolphins, and piers. The current limitations on structural alterations in Management Unit No. 4 contained in the City's plan are more restrictive than required by Goal 16. DLCD states that the city's proposal to amend the

permitted uses within Management Unit 4 to allow for structures in conjunction with deep draft port facilities is consistent with Goal 16.

- ii. Given this response, an Exception to Statewide Planning Goal 16 is not required, and analysis of the request against the exception criteria listed in Oregon Administrative Rules Chapter 660 Division No. 4 is unnecessary. The process for evaluating a Goal Exception is the same as for a Comprehensive plan amendment, and has been followed with this application.
2. The City Council concludes that the following findings demonstrate compliance with the applicable criteria for a Zoning Text Amendment:
- a. The change furthers a public necessity and promotes the general welfare.
 - i. Port facilities are critical infrastructure for water dependant uses. Adding language to the zoning ordinance allowing them to encroach into the deep water channel, in areas where the U.S. Army Corps of Engineers determines they will not impede traffic, gives the Port flexibility to construct facilities needed to attract new businesses and employment, such as the NOAA Marine Operations Center. This furthers a public necessity and promotes the general welfare. It is also consistent with Policy 4, Goal 1 and Policy 2, Goal 2 of the Economic Section of the Comprehensive Plan which look for the city to coordinate with the Port to encourage the use of water dependant lands by appropriate industries and to attract complementary businesses.
 - ii. Given the depth of the deep water channel, as illustrated on the applicant's site plan, it is appropriate to add medium and deep draft port facilities as allowed uses. The proposed text amendment is to NZO Section 2-2-13.104 (Management Unit No. 4) to add special policy 4.3 as follows: ***“Medium and deep draft port facilities shall be allowed subject to approval by the U.S. Army Corps of Engineers.”***
 - iii. An amendment is also proposed to NZO Section 2-2-13.020 (Permitted Use Matrices) for Management Unit No. 4 to add permitted uses under “Port Facilities” Deep Draft and Medium Draft for ***temporary alterations, fill, new dredging, maintenance dredging, navigation aids, breakwaters, groins/pile dikes, wharves, piers, docks, and dolphins/pilings per Special Policy 4.3.***

OVERALL CONCLUSION

Based on the 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**.

U.S. POSTAGE
PAID
NEWPORT, OR
97365
DEC 11 09
AMOUNT
\$1.73
00035099-05



97301



1000

City of Newport
169 SW Coast Hwy
Newport, OR 97365

TO

ATTN: PLAN AMENDMENT SPECIALIST
DEPT. OF LAND CONSERVATION & DEV.
635 CAPITOL STREET NE, STE 150
SALEM, OREGON 97301-2540