



# 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

August 16, 2007



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 002-07 R

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: August 30, 2007**

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 & Growth Management Coordinator  
James Bassingthwaite, City of Newport

<paa> ya/

REVISED Adoption

DEPT OF

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

AUG 10 2007

LAND CONSERVATION AND DEVELOPMENT

(See reverse side for submittal requirements)

Notice of Amendment of a Previous Ordinance Adoption Following Reconsideration after Appeal Filed with the Land Use Board of Appeals by ODOT -- Reconsideration Hearing was limited to transportation issues

Jurisdiction: City of Newport Local File No.: 1-AX-07/2-Z-07 (If no number, use none)

Date of Adoption: August 6, 2007 (Must be filled in) Date Mailed: August 9, 2007 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: March 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."

Ordinance No. 1931 amended Ordinance No. 1922 (previously adopted by the City on June 18, 2007 and provided to DLCD with a Notice of Adoption on June 25, 2007) to adopt supplemental findings and conditions of approval regarding the annexation and rezone adopted in Ord. No. 1922 to address Transportation Planning Rule issues. Following adoption of Ord. No. 1922, a Notice of Intent to Appeal the decision was filed by ODOT with LUBA. The City filed a withdrawal with LUBA to allow the City to reconsider the decision adopted in Ord. No. 1922. Following an additional public hearing the City adopted Ord. No. 1931 on August 6, 2007, amending Ord. No. 1922.

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."

Ord. No. 1931 did not change the annexation/rezone adopted in Ord. No. 1922 but provided different findings regarding TPR compliance and conditions of approval for TPR compliance.

Plan Map Changed from: to

Zone Map Changed from: as adopted in Ord no. 1922 County I-P and T-C to as adopted in Ord No. 1922 City I-3, R-1, R-2, R-3, C-1, P-1

Location: Assessor's Map 11-11-20 TL 100 Acres Involved: approx. 102.225

Specify Density: Previous: none New: 132-216 D.U. to be added on Residential zoned property per master plan

Applicable Statewide Planning Goals: For Ord. No. 1922 - Goal 12/TPR

Was an Exception Adopted? Yes: No: X

DLCD File No.: 002-07R [14360] (15994)

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:

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, ODOT

Local Contact: James Bassingthwaite 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.

CITY OF NEWPORT

ORDINANCE NO. 1931

**An Ordinance Amending Ordinance No. 1922 By Adopting New Conditions and Findings In Support of Approval of Annexation, Zone Change and Withdrawal In Planning File 1-AX-07/2-Z-07 and Declaring an Emergency**

**Findings**

1. In Ordinance 1922, the city approved the annexation of property in the South Beach area, the withdrawal of the property from certain special districts, and the rezoning of the property from county to city zoning.
2. The Oregon Department of Transportation appealed the decision to LUBA and has argued that the decision did not comply with the Transportation Planning Rule (TPR).
3. The city withdrew its decision for reconsideration so that it could adopt a new decision that unquestionably complies with the TPR.
4. The city has consulted with ODOT and the parties, and ODOT has agreed that the additional conditions adopted in this ordinance assure compliance with the TPR.
5. On reconsideration, the city council held a duly noticed public hearing, and decided to reaffirm its original decision, but add additional conditions and findings.

Based on the above findings,

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Section 2 of Ordinance No. 1922 is amended to read as follows:

The findings attached as Exhibit "B" are hereby adopted in support of the annexation, withdrawal, and zoning designations as adopted in Section 1. The *Supplemental Findings* attached as Exhibit 1 are adopted as findings in support of the annexation, withdrawal and zoning designations and provide the relevant findings necessary for demonstration of compliance with the Transportation Planning Rule.

Section 2. Section 3 of Ordinance No. 1922 is amended by adding additional conditions B through F to read as follows:

B. The 40<sup>th</sup> Street Improvements shall be constructed and operating, with an approach road permit from ODOT, prior to issuance of occupancy permits for the Annexation Territory.

C. City shall not issue building permits for land uses in the Annexation

Territory that would generate more than 180 peak hour trips (based on a Saturday mid-day peak hour in August), based upon the expected trip generation called for in the ITE Trip Generation Manual, 6<sup>th</sup> Edition.

D. Development of the Annexation Territory that creates impacts in excess of 180 peak hour trips (based on a Saturday mid-day peak hou in August) may occur only after a demonstration of compliance with the TPR. TPR compliance can be demonstrated through the amendment of the TSP and CIP, or at the time of a land use application or building permit. To comply with OAR 660-012-0060 the City will treat any building permit application as a land use application subject to the procedures used for a Type II Conditional Use permit and for all land use applications and building permits will ensure that notice is provided to ODOT, that ODOT is allowed to participate in review of the development proposal and that the final City decision regarding the development proposal with respect to compliance with OAR 660-012-0060 can be appealed to LUBA if necessary. TPR compliance means the proposal complies with OAR 660-012-0060, and a demonstration that the proposed development would not cause the Impacted Intersection to fail to meet ODOT performance standards, taking into account any mitigation required as a condition of approval as well as any completed improvements and any projects on a Capital Improvements Project list that are planned for construction and funding within the planning horizon. City may impose conditions to insure that the performance standards are met and the TPR is complied with, but any improvements to the Impacted Intersections are subject to ODOT approval.

E. The Ferry Slip Road and Highway 101 intersection will be closed after Ash Street Construction is completed.

F. Terms used in Conditions B through E shall have the meanings used for those terms in the Settlement Agreement attached to Exhibit 1.

Section 3. Ordinance No. 1922 is amended by attaching a new Exhibit 1, Supplemental Findings, in the form of Exhibit 1 to this ordinance.


Section 4. Ordinance No. 1922 is further amending by deleting Conclusion 3.D.2 from Exhibit "B" Findings of Fact and Conclusions.

Section 5. Except as expressly modified in this ordinance, all provisions of Ordinance No. 1922 as originally adopted remain in effect.

Section 6. Immediate adoption of this ordinance is needed for the immediate preservation of the peace, health and safety of the city, accordingly an emergency is declared and this ordinance shall take effect immediately upon passage.

First Reading: 8/6/07  
Second Reading: 8/6/07  
Adoption: 8/6/07

Signed by the Mayor on 8/6, 2007.

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

ATTEST:

  
\_\_\_\_\_  
City Recorder

## EXHIBIT 1

### SUPPLEMENTAL FINDINGS File No. 1-AX-07/2-Z-07 (Ordinance No. 1922 as Amended)

#### Findings

##### *Procedural Findings*

1. After Ordinance No. 1922 was adopted approving the annexation, withdrawal and zoning designation of property in File No. 1-AX-07 and 2-Z-07, the Oregon Department of Transportation (ODOT) appealed the decision to the Oregon Land Use Board of Appeals.
2. After discussions with ODOT about ODOT's concerns with the decision and what it would take to address ODOT's concerns, the city withdrew the decision for reconsideration. After the appeal was filed, representatives of the applicants, ODOT and City staff met to discuss possible resolution of the appeal issues. Discussions continued after the decision was withdrawn, and the representatives present at the meetings reached agreement regarding an acceptable solution to ODOT's concerns. A copy of agreement as agreed to be the representatives is attached and the recitals of that agreement are incorporated as findings. Final agreement by the parties consistent with the agreement of the representatives is anticipated.
3. The city held a duly noticed hearing on the decision on reconsideration on August 6, 2007.
4. After considering all evidence and arguments, the Council decided to uphold the original decision as modified with additional conditions that resolve all of ODOT's concerns.

##### *Substantive Findings*

5. The record includes a letter from Christian Snuffin dated July 20, 2007, with the subject line: "40<sup>th</sup> Street TIA/Revised Analysis" (the "Supplemental TIA"). Mr. Snuffin is a licensed professional traffic engineer. Mr. Snuffin is an experienced and knowledgeable profession and well qualified to analyze traffic impacts of development. The city accepts that the Supplemental TIA is a reliable professional analysis of traffic impacts.
6. The Supplemental TIA demonstrates that, on development of the planned improvements to the 40<sup>th</sup> Street/Highway 101 intersection, development in the annexed area resulting in up to 180 Saturday mid-day peak hour trips in August may occur without causing any transportation facility to fall below acceptable standards, including ODOT mobility standards.

7. The City will soon update its Transportation System Plan (TSP) and Capital Improvements Project (CIP) list. The City anticipates that the TSP and CIP will provide for construction and funding of Ash Street between 40<sup>th</sup> Street and Ferry Slip Road and the closure of the current intersection of Ferry Slip Road and Highway 101 by 2021.

*Conclusions*

8. The TPR requires governments to assure that planning decisions do not increase the impact on transportation facilities to the extent that the transportation facilities fail to meet applicable performance standards.

9. The Supplemental TIA demonstrates that applicable performance standards will be met at all relevant transportation facilities if development is limited so that the total trips generated from the annexed area do not exceed 180 peak hour trips.

10. The decision imposes conditions of approval limiting development by placing a cap on the number of trips. The conditions of approval assure that development in the annexed and rezoned area will not cause any transportation facility to fail to meet applicable standards.

11. Construction of Ash Street between 40<sup>th</sup> Street and Ferry Slip Road and closure of the Highway 101/Ferry Slip Road is reasonably likely to be provided within the planning period, in compliance with the TPR (OAR 660-012-0060(4)(b)(E)).

12. As conditioned, the decision complies with the TPR.



**SETTLEMENT AGREEMENT  
CITY OF NEWPORT ANNEXATION AND ZONE CHANGE FOR SOUTH BEACH  
NEIGHBORHOOD ORDINANCE NO. 1922, FILE NO. 1-AX-07/2-Z-07**

DATED: August 6, 2007

BETWEEN: CITY OF NEWPORT (“City”)

AND: THE STATE OF OREGON, by and through the OREGON  
DEPARTMENT OF TRANSPORTATION (“ODOT”)

AND: EMERY INVESTMENTS, INC., an Oregon corporation (“EI”)  
LANDWAVES, INC., an Oregon corporation (“LW”)

AND: GVR INVESTMENTS, (“GVR”)

AND: OREGON COAST COMMUNITY COLLEGE DISTRICT (“OCCC”)

RECITALS:

A. City annexed and rezoned approximately 102 acres of real property owned by EI and GVR by Ordinance No. 1922, File No. 1-AX-07/2-Z-07 (“Annexation Approval”).

B. The property involved in the Annexation Approval is adjacent to State Highway 101, a Highway under the jurisdiction and control of ODOT.

C. The approximately 85 acres of real property owned by EI is legally described in Exhibit A (“EI Property”), and is expected to be developed with the first phase of the South Beach Neighborhood Plan, including OCCC’s new campus, residential and commercial uses. Through the Annexation Approval, the EI Property was rezoned from Timber Conservation (Lincoln County zoning) to Public, Commercial, High Density Residential and Low Density Residential (City zoning).

D. The approximately 16.5 acres of real property owned by GVR is legally described in Exhibit B (“GVR Property”). Development is not immediately planned for the GVR Property, although it may be used in the future for an industrial use such as a concrete batch plant. Through the Annexation Approval, the GVR Property was rezoned from Planned Industrial (Lincoln County zoning) to Industrial (I-3) (City zoning).

E. The EI Property and GVR Property are collectively referred to as the “Annexation Territory.”

F. ODOT appealed the Annexation Approval to the Oregon Land Use Board of Appeals (“LUBA”) because ODOT does not think that the Annexation Approval complies with Transportation Planning Rule (“TPR”). In particular, ODOT is concerned about the functioning of three intersections with Highway 101 including the proposed Highway 101 40<sup>th</sup> Street

intersection, the Highway 101/32<sup>nd</sup> Street intersection and the Highway 101/Ferry Slip Road intersection (collectively, the “Impacted Intersections”).

G. As part of the development of the South Beach Neighborhood Plan, a loop road off of Highway 101 will be constructed, with an intersection at Highway 101 and 40<sup>th</sup> Street. At this time, no signal at the intersection of Highway 101 and 40<sup>th</sup> Street is warranted or authorized by ODOT for installation. The improvements to the intersection of Highway 101 and 40<sup>th</sup> Street that are needed to accommodate the traffic generated by the Annexation Territory include a southbound left turn lane on Highway 101, a northbound right turn lane on Highway 101 and a left turn lane from 40<sup>th</sup> Street to Highway 101 southbound (“40<sup>th</sup> Street Improvements”). An approach road permit for 40<sup>th</sup> Street at Highway 101 will be required by ODOT and may include other requirements of OAR Chapter 734, Division 51.

H. Ferry Slip Road currently has a stop-controlled intersection with Highway 101. By 2021, it is expected that the intersection of Highway 101 and Ferry Slip will be closed and Ash Street will be extended from Ferry Slip Road to 40<sup>th</sup> Street to accommodate some of the traffic from the closed Ferry Slip Road intersection (“Ash Street Construction”).

I. City is currently updating its Transportation System Plan (“TSP”) and intends to adopt a Capital Improvement Plan (“CIP”). The 40<sup>th</sup> Street Improvements and Ash Street Construction are expected to be included in the TSP and CIP. The TSP and CIP are expected to be adopted in 2008. The TSP is expected to consider the traffic impacts from the Annexation Territory under City zoning, in compliance with the TPR. The CIP will set out a funding mechanism to ensure that the Ash Street Construction will be provided by 2021.

J. The construction of OCCC’s new campus is dependant upon a timely resolution of ODOT’s appeal of the Annexation Approval.

K. The Parties desire to enter into a settlement agreement that will insure that the Annexation Approval will not have a significant effect on Highway 101, or that any effect is mitigated as required by OAR 660-012-0060.

L. City has withdrawn the Annexation Approval from LUBA under ORS 197.839(13)(b). City intends to reconsider the proposed annexation and rezoning of the Annexation Territory, and adopt a new ordinance that is supported by additional findings and conditions consistent with this Settlement Agreement that will replace the Annexation Approval (“Revised Annexation Approval”).

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

## SECTION 1. TRIP CAP CONDITION

1.1 The Parties agree that the Saturday mid-day peak hour in August is the peak hour ("peak hour") that shall be used to determine if the Impacted Intersections meet ODOT mobility standards.

1.2 The July 20, 2007 supplemental traffic impact analysis, attached as Exhibit C, analyzed how many peak hour trips could be generated by the Annexation Territory while maintaining compliance with ODOT's mobility standards for the Impacted Intersections.

(1.2.1) The supplemental traffic impact analysis demonstrates that 180 peak hour trips can be generated from the Annexation Territory and the Impacted Intersections will continue to operate within ODOT mobility standards through the build year of 2011, assuming (1) the 40<sup>th</sup> Street Improvements are constructed and (2) the Ash Street Construction has not occurred.

(1.2.2) The Parties agree that the Revised Annexation Approval will comply with the TPR if it includes the following conditions of approval:

(a) The 40<sup>th</sup> Street Improvements shall be constructed and operating, with an approach road permit from ODOT, prior to issuance of occupancy permits for the Annexation Territory.

(b) City shall not issue building permits for land uses in the Annexation Territory that would generate more than 180 peak hour trips, based upon the expected trip generation called for in the ITE Trip Generation Manual, 6<sup>th</sup> Edition.

(c) Development of the Annexation Territory that creates impacts in excess of 180 peak hour trips may occur only after a demonstration of compliance with the TPR. TPR compliance can be demonstrated through the amendment of the TSP and CIP, or at the time of a land use application or building permit. To comply with OAR 660-012-0060 the City will treat any building permit application as a land use application subject to the procedures used for a Type II Conditional Use permit and for all land use applications and building permits, City will ensure that notice is provided to ODOT, that ODOT is allowed to participate in review of the development proposal and that the final City decision regarding the development proposal with respect to compliance with OAR 660-012-0060 can be appealed to LUBA if necessary. TPR compliance means the proposal complies with OAR 660-012-0060, and a demonstration that the proposed development would not cause the Impacted Intersection to fail to meet ODOT performance standards, taking into account any mitigation required as a condition of approval as well as any completed improvements and any projects on a Capital Improvements Project list that are planned for construction and funding within the planning horizon. City may impose conditions to insure that the performance standards are met and the TPR is complied with, but any improvements to the Impacted Intersections are subject to ODOT approval.

(d) The Ferry Slip Road and Highway 101 intersection will be closed after Ash Street Construction is completed.

(1.2.3) The first phase of development of the EI Property is expected to generate 140 peak hour trips. An industrial use of the GVR Property is expected to generate less than 40 peak hour trips. EI, LW and GVR agree to enter into a separate agreement to allocate the peak hour trips allowed by the Trip Cap Condition.

## SECTION 2. 40<sup>th</sup> STREET

2.1 EW, LW, GVR, OCCC and City are currently negotiating an agreement to allocate the costs of constructing the 40<sup>th</sup> Street Improvements. It is expected that LW will construct the 40<sup>th</sup> Street Improvements, utilizing real property dedicated by GVR and financial assistance from City and OCCC.

2.2 As explained in Recital I, the 40<sup>th</sup> Street Improvements are expected to be included in the TSP and CIP.

2.3 Access to OCCC's new campus is expected to rely upon the 40<sup>th</sup> Street Improvements. Accordingly, LW and GVR intend to apply for an Approach Road Permit to Highway 101 for 40<sup>th</sup> Street and the 40<sup>th</sup> Street Improvements prior to August 15, 2007 (the "Approach Road Permit").

2.4 ODOT agrees to process an Approach Road Permit application filed pursuant to OAR 734-051 *et seq.* immediately upon receipt of an application filed by Landwaves and/or GVR.

## SECTION 3. ASH STREET CONSTRUCTION

As explained in Recitals H and I, the Ash Street Construction is expected to be included in the TSP and CIP, and is expected to be complete by 2021. Accordingly, the Parties agree that the completion of the Ash Street Construction is reasonably likely to be provided within the planning period, in compliance with the TPR. OAR 660-012-0060(4)(b)(E).

## SECTION 4. REVISED ANNEXATION APPROVAL

4.1 As explained in Recital L, City intends to adopt the Revised Annexation Approval.

4.2 ODOT agrees to not appeal the Revised Annexation Approval if the decision includes:

(4.2.1) The conditions of approval described in Section 1.2.2.

(4.2.2) Findings that the Ash Street Construction is reasonably likely to be provided within the planning period, in compliance with the TPR (OAR 660-012-0060(4)(b)(E)), as provided in Section 3.

SECTION 5. GENERAL PROVISIONS

5.1 Time. Time is of the essence of this Agreement.

5.2 Successors. The terms of this Agreement shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

5.3 Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.4 Exhibits. All exhibits attached to this Agreement are incorporated herein by this reference.

5.5 Recitals. All Recitals to this Agreement are incorporated herein by this reference.

5.6 Complete Agreement. This Agreement constitutes the complete agreement of the parties with respect to the subject matter of this Agreement, except any contemporaneous written agreement between the parties relating to the same, and supersedes and replaces all prior oral and written agreements.

5.7 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute an original. This Agreement may also be executed by signature transmitted by facsimile and conformed with an original signature thereafter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY: CITY OF NEWPORT

By: \_\_\_\_\_

Title: \_\_\_\_\_

ODOT: OREGON DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

EI: EMERY INVESTMENTS, INC., an Oregon corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

LW: LANDWAVES, INC., an Oregon corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

GVR: GVR INVESTMENTS

By: \_\_\_\_\_  
Title: \_\_\_\_\_

OCCC: OREGON COAST COMMUNITY COLLEGE DISTRICT

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF EMERY INVESTMENTS, INC. PROPERTY

**Parcel I:**

R364534            11-11-20-00-00100-00

The East one-half of the Northeast one-quarter of Section 20, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon

**Parcel II:**

R481032            11-11-21-00-01300-00

R464454            11-11-21-00-00700-00

The South one-half of the Southeast quarter; the Northwest quarter; the North one-half of the Southwest quarter; the Southeast quarter of the Southwest quarter; and the Southwest quarter of the Southwest quarter. Section 21, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, EXCEPT tract conveyed to Port of Newport by deed recorded in Book 100, Page 158, Deed Records.

**Parcel III:**

Parcel I

That portion of the Northwest quarter of the Northeast quarter of Section 20, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, described as follows:

Beginning at the intersection of the North line of said Section and the Easterly right of way line of the Oregon Coast Highway 101; thence East, on said North section line, to the Northeast corner of the Northwest quarter of the Northeast quarter; thence South, on the East line of the said Northwest quarter of the Northeast quarter 700.00 feet, more or less, to the Northeast corner of the tract conveyed to Jack Stocker et ux, by deed recorded February 10, 1961 in Book 214, Page 134, Deed Records; thence North 88 deg. 54' West 900.0 feet, more or less, to the Easterly right of way of the former U.S. Spruce Production Railroad right of way, described in deed to Henry J. Stocker et ux, recorded November 18, 1947 in Book 122, Page 89, Deed Records; thence Northerly, following the said Easterly right of way line to a point that is 30.0 feet from, when measured at right angles to, the North line of said Section; thence West 30.0 feet from and parallel to, said North line of said Section to the Easterly right of way line of the Oregon Coast Highway; thence Northerly along said Highway right of way line, to the point of beginning.

Parcel 2:

Commencing at the Southeast corner of Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon; thence North 87 deg. 14' 17" West along the Southerly line of Section 17, a distance of 1353.62 feet to the true point of beginning; thence continuing along said section line, North 87 deg. 20' 22" West a distance of 83.75 feet; thence North 51 deg. 00' 00" East to the Easterly right of way of SE Chestnut Street a distance of 107.29 feet; thence South 00 deg. 13' 26" East along said Easterly right of way, a distance of 71.41 feet to the point of beginning.

Tax Parcel Number: R347233 and R509944 and R518998

## EXHIBIT B

### LEGAL DESCRIPTION OF GVR PROPERTY

Real property in the County of Lincoln, State of Oregon, described as follows:

#### PARCEL 1:

That portion of the Northwest quarter of the Northeast quarter of Section 20, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, described as follows:

Beginning at the intersection of the North line of said Section and the Easterly right of way line of the Oregon Coast Highway 101; thence East, on said North section line, to the Northeast corner of the Northwest quarter of the Northeast quarter; thence South, on the East line of the said Northwest quarter of the Northeast quarter 700.00 feet, more or less, to the Northeast corner of the tract conveyed to Jack Stocker et ux, by deed recorded February 10, 1961 in Book 214, Page 134, Deed Records; thence North 88 deg. 54' West 900.0 feet, more or less, to the Easterly right of way of the former U.S. Spruce Production Railroad right of way, described in deed to Henry J. Stocker et ux, recorded November 18, 1947 in Book 122, Page 89, Deed Records; thence Northerly, following the said Easterly right of way line to a point that is 30.0 feet from, when measured at right angles to, the North line of said Section; thence West 30.0 feet from and parallel to, said North line of said Section to the Easterly right of way line of the Oregon Coast Highway; thence Northerly along said Highway right of way line, to the point of beginning.

#### PARCEL 2:

Commencing at the Southeast corner of Section 17, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon; thence North 87 deg. 14' 17" West along the Southerly line of Section 17, a distance of 1353.62 feet to the true point of beginning; thence continuing along said section line, North 87 deg. 20' 22" West a distance of 83.75 feet; thence North 51 deg. 00' 00" East to the Easterly right of way of SE Chestnut Street a distance of 107.29 feet; thence South 00 deg. 13' 26" East along said Easterly right of way, a distance of 71.41 feet to the point of beginning.

Tax Parcel Number: R347233 and R509944 and R518998



## EXHIBIT C

### JULY 20, 2007 SUPPLEMENTAL TRAFFIC IMPACT ANALYSIS



DAVID EVANS  
AND ASSOCIATES INC.

July 20, 2007

John G. deFar, Senior Region Planner  
ODOT Region 2  
3700 SW Philomath Boulevard  
Corvallis OR 97333

**SUBJECT: 40<sup>th</sup> Street TIA: Trip Cap Analysis**

Dear Mr. deFar:

This letter summarizes additional traffic operations analyses performed at each of the intersections that were evaluated in the 40<sup>th</sup> Street Traffic Impact Analysis (TIA), prepared by myself and dated May 2, 2007. This additional analysis evaluates the maximum number of peak hour<sup>1</sup> vehicle site trips that could be accommodated while simultaneously providing for adequate operations at each of the study area intersections. Results are provided for two street configuration scenarios: 1) existing Ferry Slip Road unchanged, and 2) Ferry Slip Road closed, traffic is rerouted to 32<sup>nd</sup> and 40<sup>th</sup> Street via Ash Street.

The analysis shows that an additional 40 peak hour site trips beyond the proposed South Beach Phase 1 development (for a total of 180 peak hour trips) could be added to the 40<sup>th</sup> Street approach under 2011 conditions without causing any of the study area intersections to fail to meet the ODOT mobility standard of 0.80. Furthermore, once the Ferry Slip Road/US 101 intersection is closed (which was assumed under the future analysis scenario), the analysis shows that 160 peak hour site trips (for a total of 340 peak hour site trips) could be added to 40<sup>th</sup> Street under year 2021 conditions while simultaneously meeting the mobility standard at each of the study area intersections.

This analysis is intended to establish a "trip cap" for future development associated with the properties recently annexed into the City of Newport in Case File No. 1-AX-07/2-Z-07.

#### **Background**

##### **40<sup>th</sup> Street Traffic Impact Analysis Report**

The TIA presented a proposed development for Phase I of the South Beach that consisted of 46 single-family residential units, 48 condo/townhouse units, and the central campus of the Oregon Coast Community College (OCCC) with an assumed enrollment of 1470 students. Based on data contained in ITR Trip Generation, 7<sup>th</sup> Edition, it was estimated that the proposed development would generate 140 peak hour trips. The TIA noted that Phase I was expected to be completed by year 2011. The analysis showed that all study area

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As discussed in the TIA, "peak hour" refers to Saturday mid-day. Use of this time period was required by ODOT.

intersections (consisting of US 101 at 32<sup>nd</sup> Street, Ferry Slip Road and 40<sup>th</sup> Street), could be made adequate to accommodate the proposed development under build-year conditions.

**May 10, 2007 TIA Update Memorandum**

In a memorandum dated May 10, 2007 I presented updated trip generation estimates and traffic operations analyses based on a revised Phase 1 development scenario. The land uses of the revised scenario differed somewhat from the development scenario presented in the TIA, but the trip generation did not. The purpose of the memorandum was to propose a potential alternative development scenario with a mix of uses that would result in the same number of peak hour vehicle trips as the development mix contained in the original TIA, thereby retaining the validity of the TIA analysis results. The alternative development scenario consisted of 81 single family residential units, 15 condo/townhouse units, OCCC campus with student enrollment of 200<sup>2</sup>, and a 7000 square-foot shopping center. Table 1 below provides comparative trip generation for the original and revised South Beach Phase 1 development from the TIA and the May 2007 memorandum, respectively.

**Table 1. South Beach Phase 1 Alternative Development Scenario**

Land Use	ITE Land Use Code	Unit	Original Phase 1 Development Scenario (Provided in TIA)		Alternative Phase 1 Development Scenario	
			Size	Saturday Pk Hr Trips	Size	Saturday Pk Hr Trips
Single Family Residential	210	DU	46	43	86	81
Condo/Townhomes	230	DU	48	23	31	15
Community College	540	FTE	1470	74	200	10
Shopping Center	820	1000 ft <sup>2</sup>	0	0	7	35
<b>Total Trips</b>				<b>140</b>		<b>140</b>

The development scenarios presented in Table 1 represent two land use mixes that would generate equivalent vehicle trips. There are numerous combinations of college, residential and retail land uses that could be developed with identical traffic impacts.

The May 2007 memorandum also provided analysis of the Phase 1 development alone under 2021 traffic conditions. The 1999 Oregon Highway Plan requires that the year selected for future traffic operations analysis is the greater of the planning horizon in the local transportation system plan (TSP), or 15 years, whichever is greater. A 15-year planning horizon is greater than that of the Newport TSP. Therefore, traffic operations were analyzed under 2021 conditions. The analysis showed that the existing facilities could be made adequate to accommodate Phase 1 under future traffic volume conditions.

**Revised Analysis**

The initial TIA and May 2007 memorandum both studied only property currently owned by Emery Investments, and the developer is Landwaves Inc. The owner and developer of the property, has agreed to limit the extent of the Phase 1 South Beach development to no more than what would generate 140 peak hour

<sup>2</sup> Revised enrollment estimates provided by Patrick O'Connor, OCCC president.

vehicle trips<sup>3</sup>. It is understood that additional future development proposals by Landwaves will require further traffic analysis and appropriate mitigation of traffic impacts. The annexation and zone change application also includes the 16.5 acre GVR property, which was not included in previous TIAs.

The purpose of this revised analysis is to analyze the traffic operations at the study area intersections under year-of-build (2011) and future year (2021) conditions that accounts for development of both Phase 1 of the South Beach development and the GVR parcel. Therefore, this analysis determines the maximum number of peak hour vehicle trips that could be accommodated while simultaneously providing for adequate operations<sup>4</sup> at each of the study area intersections. It is anticipated that the annexation and zone change will be conditioned on capping total trip generation potential at 40<sup>th</sup> Street so that each of the study area intersections will operate within the ODOT mobility standard.

I performed traffic operations analysis under two local street configurations and two future years:

#### **Existing Ferry Slip Road in Place**

*Analysis year: 2011*

*Maximum additional peak hour site trips at 40<sup>th</sup> Street: 40 (for a total of 180 peak hour site trips)*

This configuration assumes that the existing stop-controlled Ferry Slip Road intersection with US 101 is open to traffic. This configuration is only analyzed under year-of-build (2011) conditions, as it is assumed that the intersection will be closed prior to 2021. The results, shown in Table 2, show that with the addition of 40 peak hour site trips (in addition to the 140 Phase 1 trips) at 40<sup>th</sup> Street the v/c ratio at the intersection of US 101 and 40<sup>th</sup> Street will increase slightly over Phase 1 total conditions. All movements at this intersection are expected to remain well below the mobility standard.

The controlling intersection under this scenario is US 101 at Ferry Slip Road. The combination of background traffic growth and the South Beach Phase 1 development (140 trips) is expected to result in a v/c ratio of 0.79 for the westbound left movement. The intersection can accommodate some additional trips on the US 101 mainline with no change to the critical v/c ratio. However, when additional peak hour site trips at 40<sup>th</sup> Street exceed 40, the critical v/c ratio reaches 0.80, which is equivalent to the ODOT mobility standard. A v/c ratio in excess of 0.80 represents unacceptable traffic operations.

Therefore, assuming that the existing stop-controlled Ferry Slip Road intersection with US 101 is open, that intersection (and other study area intersections) will operate within the ODOT mobility standard if the land annexed and rezoned (Phase 1 of South Beach and the GVR Parcel) is subject to the condition that Saturday mid-day peak hour trips are limited to 180.

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<sup>3</sup> Based on average trip rates contained in ITE Trip Generation, 7<sup>th</sup> Edition for Saturday mid-day.

<sup>4</sup> The applicable mobility standard for US 101 (Statewide Highway, non freight-route) is a v/c ratio of 0.80. Source: Table 6, 1999 Oregon Highway Plan.

**Ferry Slip Road Closed**

*Analysis year: 2021*

*Maximum additional peak hour site trips at 40<sup>th</sup>: 160 (for a total of 340 peak hour site trips)*

Like the analysis contained in the original TIA, the future year analysis assumes that Ferry Slip Road will be closed and half of the vehicle trips from the former Ferry Slip Road intersection will be rerouted to 32<sup>nd</sup> and half will be rerouted to 40<sup>th</sup> Street via the future Ash Street. The analysis also assumes that the cross-section of US 101 will have one through lane in each direction, and the intersection of US 101 at 40<sup>th</sup> Street will remain unsignalized. Analysis results show that in addition to the 180 peak hour site trips from Phase 1 of South Beach and GVR, an additional 160 peak hour site trips at 40<sup>th</sup> Street could be accommodated while simultaneously providing for adequate operations at each of the study area intersections.

As Table 2 shows, with the addition of 340 peak hour site trips at the US 101/40<sup>th</sup> Street intersection, the westbound left-turning movement at the intersection would operate with a v/c of 0.70, which is less than the mobility standard. The signalized intersection of US 101 at 32<sup>nd</sup> Street would operate at an overall v/c ratio of 0.80, which is equivalent to the mobility standard. Peak hour site trips at 40<sup>th</sup> Street in excess of 340 would cause the v/c ratio at this intersection to exceed the mobility standard<sup>2</sup>.

Therefore, assuming that the existing stop-controlled Ferry Slip Road intersection with US 101 is closed, the study area intersections will operate within the ODOT mobility standard if the land annexed and rezoned (Phase 1 of South Beach and the GVR Parcel) is subject to the condition that Saturday mid-day peak hour trips are limited to 340.

**Table 2. Revised Intersection Operations Analysis Summary**

Intersection	Critical Movement	v/c Ratio						
		2006 30 <sup>th</sup> HV	Back- ground	2011 Phase 1	Phase 1 +40 Trips (180 Total)	Back- ground	2021 Phase 1 Total	Phase 1 +200 Trips (340 Total)
US 101 at 32 <sup>nd</sup> Street	n/a*	0.67	0.67	0.71	0.73	0.72	0.75	0.80
US 101 at Ferry Slip Road	WBL	0.48	0.61	0.79	0.79	--	--	--
US 101 at 40 <sup>th</sup> Street	SBL	--	--	0.55	0.55	0.60	0.60	0.60
	WBL	--	--	0.17	0.23	0.12	0.28	0.70

\* Signalized intersection. Overall intersection values shown.

**Potential Industrial Development**

It should be noted that much of the land of concern (i.e. beyond the control of Landwaves, Inc.) is zoned for industrial uses. As such, the trip generation potential is relatively low in general, and very low during the design hour, which is Saturday mid-day. Of particular concern is the GVR parcel, which consists of 16.5 acres adjacent to the proposed 40<sup>th</sup> Street. Due to topographical constraints, the usable area is closer to 14.5 acres. The owners have indicated their intent to develop this property as a concrete batch plant. Based on review of similar land use types, a typical employment density can be expected to be 3-5 per acre for this type

<sup>2</sup> Because of the trips rerouted from Ferry Slip Road, total peak hour trips at 40<sup>th</sup> is expected to be higher than 340.

John deTar  
July 20, 2007  
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of use. This translates to roughly 20-30 vehicle trips during the PM peak hour<sup>6</sup>. Very little published trip generation data exists for the Saturday mid-day peak period. However, industrial trip generation is typically lower during weekends than during weekdays. Therefore, it is reasonable to conclude that if a concrete batch plant is constructed, the combined trips generated from the plant and Phase 1 of the South Beach development will be less than the 180 trip cap (and significantly less than the 340 trip cap, once Ferry Slip Road is closed).

#### **Conclusion**

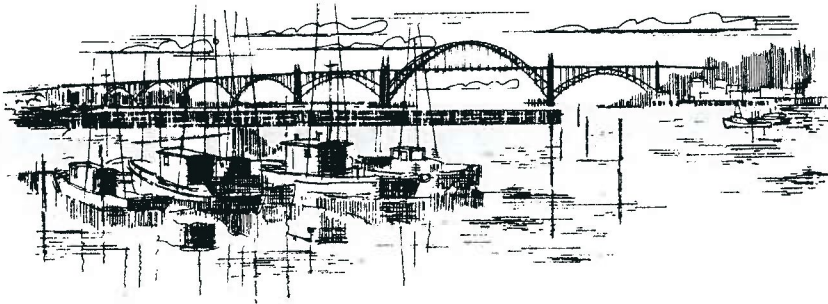
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Sincerely,

**DAVID EVANS AND ASSOCIATES, INC.**



Christian Smulfin, PE  
Transportation Engineer



# 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 # 1A-0762-07  
(ON RECONSIDERATION)

Date of Deposit in the U.S. Mail: August 9, 2007

Name of Person Mailing JAMES BASS WILKINSON

Signature of Person Mailing [Handwritten Signature]