



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

03/03/2014

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 006-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. 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: Wednesday, March 26, 2014

This amendment was submitted to DLCD for review prior to adoption with less than the required 35-day notice. 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Derrick Tokos, City of Newport  
Gordon Howard, DLCD Urban Planning Specialist  
Patrick Wingard, DLCD Regional Representative  
Gary Fish, DLCD Transportation Planner  
Matt Spangler, DLCD Regional Representative

<paa> YA



## NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.: 006-13 (20129)  
[17781]  
Received: 2/26/2014

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Newport

Local file no.: **3-AX-13/6-Z-13**

Date of adoption: 2/3/14

Date sent: 2/25/2014

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 12/11/13

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

The original notice incorrectly referred to Sections 2(B), 2 (C) and 2(D).

Local contact (name and title): Derrick I. Tokos, AICP, Community Development Director

Phone: 541-574-0626

E-mail: d.tokos@newportoregon.gov

Street address: 169 SW Coast Hwy

City: Newport

Zip: 97365-

### PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

#### For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

#### For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

**If the comprehensive plan map change is a UGB amendment** including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**If the comprehensive plan map change is an urban reserve** amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

Sections 3(B), 3(C), and 3(D) of Ordinance No. 1922, as amended by Ordinance No. 1931 were eliminated. These ordinance sections relate to the 2007 annexation and zoning of 102.23 acres in Newport. The provisions can be removed because the required improvements have been completed and the "trip cap" is no longer needed to comply with the TPR considering recent amendments the city made to its TSP and a new mobility standard that the State put in place for the affected stretch of US 101.

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

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List affected state or federal agencies, local governments and special districts: ODOT

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

Copies of Ordinances 1922, 1931 and 2045, excluding attachments. Each of these ordinances is referenced in the current City action.

**CITY OF NEWPORT**  
**ORDINANCE NO. 2062**

**An Ordinance Amending Ordinance No. 1922, as amended by  
Ordinance No. 1931,  
Relating to the 2007 Annexation  
of 102.23 acres in South Beach**

**Summary of Findings:**

- 1. On June 18, 2007 the Newport City Council adopted Ordinance No. 1922, an ordinance providing for the annexation and zoning of 102.23 acres of property in South Beach.**
- 2. Annexed property included a site for the Oregon Coast Community College, which has since been developed, along with Phase 1 of the "Wilder" planned development, then owned by Emery Investments, Inc. and Landwaves, Inc., and a vacant industrial property owned by GVR Investments.**
- 3. The Oregon Department of Transportation (ODOT) appealed the City of Newport's decision arguing that it did not comply with Oregon's Transportation Planning Rule (TPR), which is codified in Chapter 660, Division 12 of the Oregon Administrative Rules.**
- 4. Affected parties entered into a Settlement Agreement to resolve the appeal, which required that certain improvements be made to the transportation system, including upgrades to the intersection of SE 40<sup>th</sup> Street and US 101. Further, the Agreement imposed a limitation ("trip cap") of 180 peak hour vehicle trips attributed to new development at this improved intersection.**
- 5. On August 6, 2007 the Newport City Council adopted Ordinance No. 1931, amending Ordinance No. 1922 to incorporate operable provisions of the Settlement Agreement, including supplemental findings to establish that the 180 peak hour vehicle trip cap and associated improvements to the intersection of SE 40<sup>th</sup> Street and US 101 complied with the TPR.**
- 6. Section 3(B) of Ordinance No 1922, as amended, stipulated that improvements to the SE 40<sup>th</sup> Street and US 101 intersection were to be constructed and operating, under an approach road permit from ODOT, prior to issuance of occupancy permits within the annexed territory. An approach permit was issued by ODOT and the City and State have accepted the street improvements; therefore, the conditions imposed by Section 3(B) of Ordinance No. 1922, as amended, have been satisfied and are no longer needed.**

7. Section 3(C) of Ordinance No. 1922, as amended, prohibits the City from issuing building permits for land uses in the annexed territory that would generate more than 180 peak hour trips based upon a Saturday mid-day peak hour in August. While this limitation has not been exceeded to date, it has been replaced by recent changes to the City of Newport Transportation System Plan (Ordinance No. 2045); Lincoln County Transportation System Plan (Ordinance No. 470), and the State of Oregon Highway Plan. These changes put in place new, more flexible mobility targets for US 101; a plan and program for financing needed enhancements to the transportation system for the next 20-years; a trip budget program that allocates a total of 1,237 pm peak hour trips attributed to new development in the area within which the annexed territory is located; standards that outline when transportation improvements are required in conjunction with new development; and standards for when traffic impacts attributed to new development must be analyzed in detail. City Ordinance No. 2045, County Ordinance No. 470, and the amendment to the Oregon Highway Plan are supported by findings of compliance with the TPR.
8. Section 3(D) of Ordinance No. 1922, as amended, sets out parameters for when and how analysis is to be performed to establish compliance with the TPR in the event the annexed territory creates impacts in excess of 180 peak hour trips. As discussed above, in Finding No. 7, a new program has been adopted that no longer hinges upon the 180 peak hour trip threshold as the determining factor for when additional TPR analysis is required. The new program includes specific provisions that address when TPR compliance is required and how TPR compliance is to be achieved; therefore, the Section 3(D) trip limitation and associated procedures are no longer needed.
9. Consistent with Chapter 14.36.020.A of the Newport Municipal Code, the Newport City Council initiated the legislative process to carry out revisions contained within this Ordinance by motion at a meeting on December 16, 2013.
10. On January 14, 2014, the Newport Planning Commission held a public hearing to consider an amendment to Ordinance No. 1922, as amended, repealing Sections 3(B), 3(C), and 3(D), and voted to recommend adoption of the amendment.
11. On February 3, 2014, the Newport City Council held a public hearing regarding the question of the proposed amendment and voted in favor of its adoption after considering the recommendation of the Planning Commission and all evidence and argument in the record.
12. 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 Hearings

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

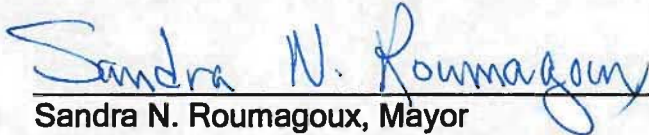
**Section 1.** The above findings, and those adopted in support of City of Newport Ordinance No. 2045, Lincoln County Ordinance No. 470 and the associated State Highway Plan Amendment are hereby adopted as support for this Ordinance.

**Section 2.** Sections 3(B), 3(C), and 3(D) of Ordinance No. 1922, as amended by Ordinance No. 1931, are hereby repealed.

**Section 3.** This ordinance shall take effect 30 days after passage.

Adopted by the Newport City Council on February 3, 2014.

Signed by the Mayor on February 7, 2014.

  
Sandra N. Roumagoux, Mayor

ATTEST:

  
Margaret M. Hawker, City Recorder

Approved:

  
City Attorney

**CITY OF NEWPORT**

**ORDINANCE NO. 1922**

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

**WHEREAS**, a request (Newport File No. 1-AX-07/2-Z-07) was filed by the owners of real property (Emery Investments, Inc, and GVR Investments) (Landwaves, applicant) to annex a portion of the property into the city limits and withdraw property from several districts, and to amend the Newport Zoning Map to adopt a City zone designation for the annexed property,

**WHEREAS**, the Planning Commission of the City of Newport, after providing the required public notification, including the notification to the Department of Land Conservation & Development, held a public hearing on May 14, 2007, for the purpose of reviewing the proposed requests and providing a recommendation to the City Council,

**WHEREAS**, the above said public hearing was held in accordance with the appropriate provisions of the city ordinances, and, after due deliberation and consideration of the proposed change, the Planning Commission, by a unanimous vote did recommend that the proposed requests be approved;

**WHEREAS**, the City Council of the City of Newport, after provision of the required public notification, held a public hearing on June 4, 2007, on the requested annexation and withdrawal, and the zoning of the property to be annexed,

**WHEREAS**, the City Council, after receiving testimony in regard to the proposed requests at the hearing on June 4, 2007, continued the public hearing to the June 18, 2007, City Council meeting,

**WHEREAS**, the Council made a determination after considering the recommendation of the Planning Commission, the staff memorandum, and the evidence and argument presented at the public hearing and in the record, that each of the requests were in compliance with the applicable criteria and voted 6-0 to approve the requested annexation, withdrawal, and zoning designations with condition(s) of approval,

**NOW, THEREFORE, THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1. ANNEXATION, WITHDRAWAL, AND ZONING**

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

*A parcel of land situated in the North half of the Northwest quarter, East half of Northeast quarter of Section 20 and a portion of the West half of the Northwest quarter of Section 21 all in Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon and also being a portion of that property described in Statutory Special Warranty Deed to GVR Investments, an Oregon General Partnership in Document Number 200516482, as recorded on October 14, 2005 and along with a portion of property described in Special Warranty Deed to Emery Investments, Inc., an Oregon Corporation in Book 250, Page 2296 as recorded on September 24, 1992, Lincoln County Book of Records, Lincoln County, Oregon and being described as follows:*

*Beginning at the Northeast corner of Section 20, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon said point being a found 1 1/2" iron pipe with a 3" brass cap as recorded in Survey Number 2401, Lincoln County Survey Records; thence on the East line of said Section 20 South 03°56'17" West, a distance of 46.44 feet; thence leaving the said East line South 39°05'17" East, a distance of 215.49 feet; thence South 01°56'14" East, a distance of 458.64 feet; thence South 10°13'22" West, a distance of 474.86 feet; thence South 01°14'34" East, a distance of 314.61 feet; thence South 18°55'03" West, a distance of 659.32 feet to the East line of said Section 20; thence on the said East line South 03°56'17" West, a distance of 477.78 feet to 1 1/2" iron pipe with 2" brass cap at the East quarter corner of said Section 20, as recorded in Survey Number 5392, Lincoln County Survey Records, said point also being the on South line of said Book 250, Page 2296; thence on the said South line North 85°19'10" West, a distance of 1356.05 feet to the Southwest corner of said Book 250, page 2296, said point also being on the East line of that property described in Warranty Deed to Lincoln County (Mike Miller Park) in Book 183, Page 478, of said Lincoln County Book of Records; thence on the said East line North 04°03'36" East, a distance of 1823.70 to the Northeast corner of Partition Plat 2006-26, Lincoln County Plat Records, Lincoln County, Oregon; thence on the North line of said Partition Plat 2006-26 North 86°22'17" West, a distance 900.76 feet more or less to the Southwest corner of that property described in said Document Number 200516482; thence on the West line of said Document Number 200516482 North 01°30'30" East, a distance of 747.85 feet to a point 30.00 feet Southerly and parallel with the North line of said Section 20; thence parallel with and perpendicular to the North line of said Section 20 North 84°43'27" West, a distance of 204.08 feet to the Easterly right-of-way line of U.S. Highway 101 (Oregon Coast Highway); thence on the said easterly right-of-way line North 27°39'35" East, a distance of 32.44 feet to the North line of said Section 20; thence on the said North line of Section 20 South 84°43'27" East, a distance of 2476.15 feet to the point of beginning containing 4,452,926 square feet or 102.225 acres, more or less.*

*The basis of bearing for this legal description is Oregon State Plane (NAD 83/98) North Zone grid bearing (Survey Number 18043 Lincoln County Survey Records).*

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



provided by ORS 222.520(2)(b).

C. Zoning. Ordinance No. 1308 (as amended) adopting the City of Newport Zoning Map is hereby amended to provide for a zone designation on the Zoning Map for the property annexed to the City of Newport by designating the subject property described in Section 1(A) above with the zone designations as illustrated in Exhibit "C".

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

**Section 3.** As a condition of annexation, the following condition of approval is attached:

A. The portion of the GVR Investment property identified as High Density Residential by Ordinance No. 1899 (adopting the South Beach Neighborhood Plan) as illustrated in Exhibit "D" shall be designated with a City of Newport Zoning Map designation of I-3 but with the condition that the adoption of an ordinance amending the Comprehensive Plan map designation of High Density Residential to Industrial occurs within 18 months of the effective date of this ordinance. If after 18 months of the effective date of this ordinance, no such ordinance amendment has been adopted, the designation of the subject property in Exhibit "D" shall be R-4/"High Density Multi-Family Residential" consistent with the High Density Residential Comprehensive Plan map designation adopted by Ordinance No. 1899. If an appeal is filed in conjunction with ordinance amendment adoption, the 18 month period shall be extended until such time as the ordinance becomes final without further appeal.


Introduced and passed the first reading at a regular meeting of the City Council of the City of Newport, Oregon, held on the 15<sup>th</sup> day of June, 2007.

Passed to the second reading, placed on final passage, and adopted by the City Council of the City of Newport, Oregon, held on the 18<sup>th</sup> day of June, 2007.

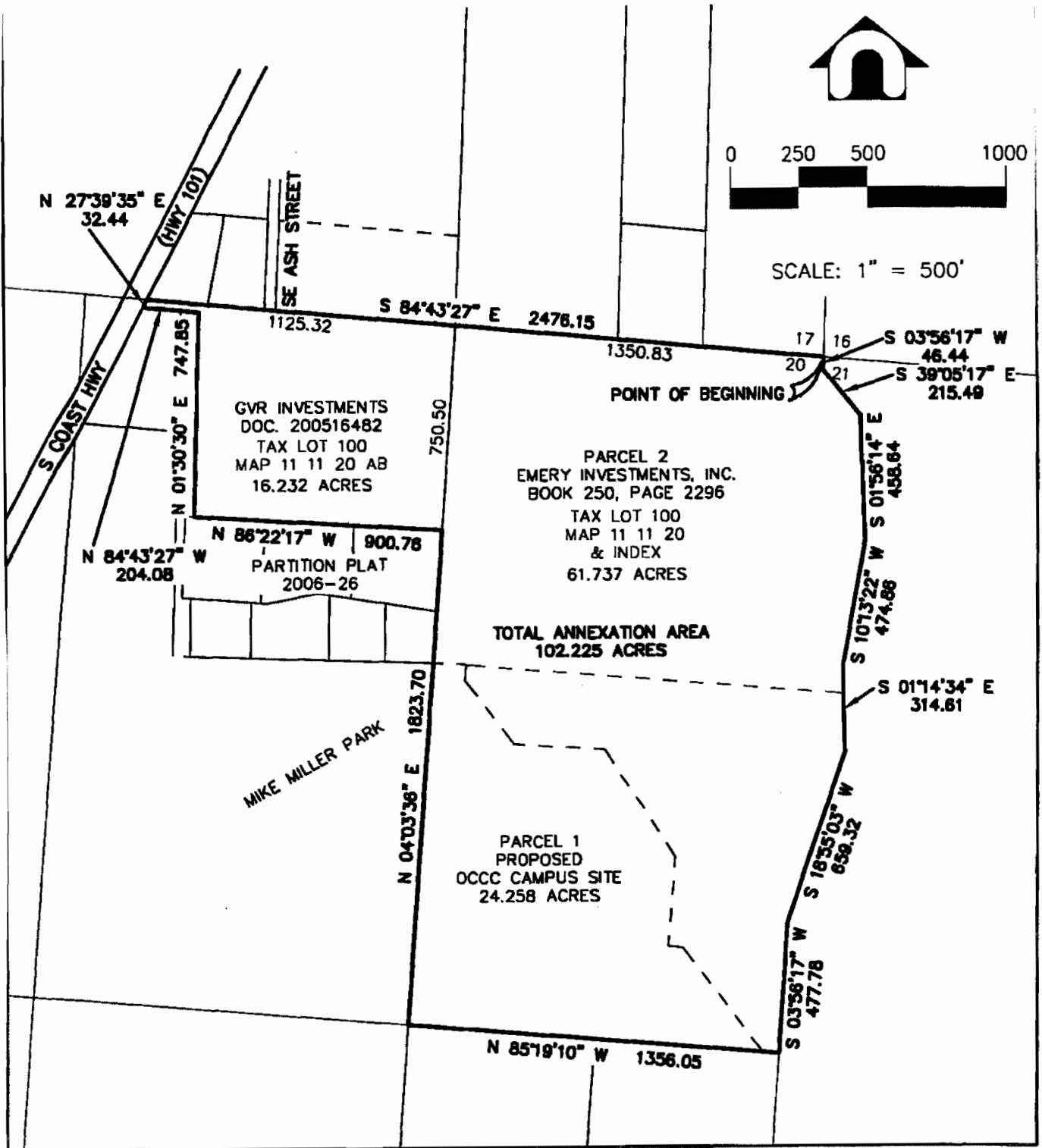
Approved by the Mayor of the City of Newport, Oregon, this 18<sup>th</sup> day of June, 2007.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY RECORDER

# EXHIBIT "A"



## EXHIBIT "B"

### File No. 1-AX-07/2-Z-07

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

#### **FINDINGS OF FACT AND CONCLUSIONS**

1. An application for annexation, withdrawal, and zoning of property (Newport File No. 1-AX-07/2-Z-07) was submitted on March 2, 2007, by applicant Landwaves, Inc. (John Stutesman, authorized representative) for property owned by Emery Investments, Inc., and GVR Investments. The requests were to: (1) annex approximately 96.5 (subsequently determined to be 102.225 acres upon completion of a revised legal description of the property to be annexed) including approximately 80 acres (subsequently determined to be approximately 86 acres upon completion of revised legal description of the property to be annexed) of property owned by Emery Investments, Inc. (approximately 75 acres of Tax Lot 100 of Assessor's Tax Map 11-11-20 and approximately 5 acres of Tax Lot 700 of Assessor's Tax Map 11-11-21) and approximately 16.5 acres of property owned by GVR Investments (generally described as Tax Lot 100 of Assessor's Map 11-11-20-AB) into the Newport city limits; (2) amend the City of Newport Zoning Map to establish zoning designations (zoning designations are established as part of the annexation process) for the subject property consistent with existing Newport Comprehensive Plan Map designations and those designations adopted as part of the South Beach Neighborhood Plan (as adopted by Newport Ordinance No. 1899) including Low Density Residential (implemented by a zoning designation of R-1/"Low Density Single-Family Residential" and/or R-2/"Medium Density Single-Family Residential" – both R-1 and R-2 designations requested as part of the application with approximately 24.2 acres proposed for R-1 and 5.8 acres proposed for R-2), High Density Residential (implemented by a zoning designation of R-3/"Medium Density Multi-Family Residential" and/or R-4/"High Density Multi-family Residential" – R-3 zoning requested as part of the application for approximately 15.3 acres), Commercial (implemented by a zoning designation of C-1/"Commercial Retail and Services", C-2/"Tourist Commercial" and/or C-3/"Heavy Commercial" and approximately 2.1 acres to be designated with a commercial zoning designation), Public (proposed implementation of P-1/"Public Structures" for approximately 25 acres of property to be utilized for the Oregon Coast Community College central campus site), and Industrial (I-3/"Heavy Industrial" requested as part of the application for the GVR Investment property of approximately 16.5 acres). Note: Acreage figures for zoning designations do not appear to always include land to be utilized for public right-of-way purposes. Uses permitted outright and conditionally for the subject zones are identified in Newport Zoning Ordinance (NZO) (No. 1308, as amended) Section 2-2-1.025 (Residential Uses), NZO Section 2-2-1.035 (Commercial and Industrial Uses), and NZO Section 2-2-1.045 (Public Uses); and (3) withdraw property to be annexed from the Newport Rural Fire Protection District and the Lincoln County Library District.

2. The GVR Investment property (generally described as Tax Lot 100 of Lincoln County Assessor's Map 11-11-20-AB) is currently identified with an address of 4003 South Coast Hwy (Hwy 101) and is located directly south of the Central Lincoln PUD facility and substation at 3807 SE Ash Street. The Emery Investment property (generally described as approximately 75 acres of Tax Lot 100 of Assessor's Tax Map 11-11-20 and approximately 5 acres of Tax Lot 700 of Assessor's Tax Map 11-11-21) abuts the GVR Investment property and Mike Miller Park to the east.

3. Pursuant to Policy 1, Implementation Measure 3 of the South Beach Neighborhood Plan, the applicant was required to submit a Master Development Plan (such as that provided for through the Planned Development process) in conjunction with a request for annexation and development of the subject property owned by Emery Investments. Applications for preliminary approval of a planned development plan (Newport File No. 1-PD-07) and final planned development plan approval (Newport File No. 2-PD-07) for the portion of the subject property that would contain the Oregon Coast Community College central campus site were filed along with the annexation requests. The Planning Commission, after a duly noticed public hearing held on May 14, 2007, voted to approve the related preliminary approval of a planned development (File No. 1-PD-07) of Phase I of the Emery Investments, Inc., property and final planned development plan approval (File No. 2-PD-07) for a portion of Phase I of the Emery Investments, Inc., property for the proposed Oregon Coast Community College central campus site. Final Orders on File No. 1-PD-07 and File No. 2-PD-07 were adopted at the May 29, 2007, Planning Commission meeting. The Final Orders of the Planning Commission on File No. 1-PD-07 and File No. 2-PD-07 are hereby incorporated by reference into the record. Pursuant to NZO Section 2-5-4.075 (D) no buildings can be constructed within the planned development except for areas of the planned development that have received final planned development plan approval. Final planned development plan approval has only been authorized for File No. 2-PD-07, which consists of the proposed Oregon Coast Community College central campus site. Final planned development plan approval for the remaining portion of Phase I of the Emery Investment property to be annexed will need to demonstrate compliance with the applicable zoning ordinance criteria found in NZO Section 2-5-4.075, including demonstrating that the streets are adequate to serve the anticipated traffic.

4. The Planning Commission held a public hearing on the proposed annexation and rezone request on May 14, 2007. John Stutesman, Dennis Bartoldus, and Patrick O'Connor provided testimony on behalf of the applicants at the public hearing. In addition to written testimony submitted by Crandall (see Planning Staff Report Attachment "E") and Schell (see Planning Staff Report Attachment "E-1") in favor of the annexation/rezone request with a few identified considerations, additional testimony in support at the hearing came from Stephen Salisbury. The Planning Commission voted unanimously (6-0 with Commissioner Atwill absent) in support of forwarding the proposed annexation and rezone request to City Council subject to compliance with the TPR, that the GVR property be designated I-3, and effective only upon the acknowledgement of the SBNP. See attached portion of Planning Commission May 14<sup>th</sup> draft minutes (Planning Staff Report Attachment "H").

5. A Planning Staff Report (hereby incorporated by reference with attachments into the findings) was prepared for the June 4, 2007, City Council. The following facts and attachments were contained within the Planning Staff Report:

A. **Plan Designation:** For the GVR Investment property, the City Comprehensive Plan Designation is "Industrial". Ordinance No. 1899 adopting the South Beach Neighborhood Plan also identifies a portion of the property to be "High Density Residential". For the Emery Investment property, Ordinance No. 1899 adopting the South Beach Neighborhood identifies the property with a mix of Comprehensive Plan Designations including Public, Commercial, High Density Residential, and Low Density Residential.

B. **Zone Designation:** The current Lincoln County zone designation for the GVR Investments property is I-P/"Planned Industrial." The current Lincoln County zone designation for the Emery Investment property is T-C/"Timber Conservation." City of Newport zoning is established at time of annexation.

C. **Surrounding Land Uses:** The South Beach neighborhood contains a mix of public, commercial, water-dependent and water-related, industrial and residential uses. Land uses in the area near the subject property include a mix of developed and undeveloped industrial land, residential zoning that allows for single-family and multi-family uses, a trailer park, a mix of commercial uses, the Central Lincoln PUD warehousing and substation facility, and public uses such as Mike Miller Park and the Newport Waste Water Treatment facility.

D. **Topography and Vegetation:** The subject property contains a mix of level and steep sloped property. There is typical coastal brushy vegetation and wooded areas on the property. The GVR Investment site was previously developed and utilized as an industrial site. See also Planning Staff Report Attachment "D" (Topographical Map).

E. **Existing Residences/Buildings:** None.

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

G. **Development Constraints:** Portions of property with steep slopes.

H. **Past Land Use Actions:** File No. 1-CP-06/1-UGB-06/2-CP-06/2-Z-06 (South Beach Neighborhood Plan as adopted in December 2006 by Newport Ordinance No. 1899).

I. **Notification:** The required 45 Day Notice to the Department of Land Conservation and Development was mailed on March 28, 2007. For the Planning Commission public hearing, notification in accordance with the NZO Section 2-6-1.030 (B) requirements included mailing notice to surrounding property owners, City departments and other public agencies and utilities, and other individuals (including individuals who had submitted written comments on the South Beach Neighborhood Plan and individuals who had served on the Employment Lands and Conceptual Land Use Plan Ad Hoc Advisory Committee) on April 24, 2007. The notice of public hearing in the Newport News-Times was published on May 4, 2007. For the City Council public hearing, notification in accordance with the NZO Section 2-6-1.030 (B) requirements included mailing notice to surrounding property owners, City departments and other public agencies and utilities,

and other individuals (including individuals who had submitted written comments on the South Beach Neighborhood Plan and individuals who had served on the Employment Lands and Conceptual Land Use Plan Ad Hoc Advisory Committee) on May 15, 2007. The notice was published in the Newport News-Times on May 18, May 25, and May 30, 2007.

J. **Attachments**: The following attachments were included in the Planning Staff Report:

- Attachment "A" – Applicant Request
- Attachment "A-1" – Bartoldus 3/13/07 Letter
- Attachment "A-2" – South Beach Village Phase I Master Plan (Applicant Exhibit C)
- Attachment "A-3" – 40<sup>th</sup> Street Traffic Impact Analysis Report 5/2/07
- Attachment "A-4" – 40<sup>th</sup> Street TIA Update Memo 5/10/07
- Attachment "A-5" – Applicant Presentation from 5/14/07 PC Hearing
- Attachment "B" – Notice of Public Hearing and Map
- Attachment "C" – Newport Zoning Map
- Attachment "D" – Transportation Planning Rule Requirements
- Attachment "E" – Crandall 4/25/07 and 5/18/07 Letters
- Attachment "E-1" – Schell 5/11/07 Letter
- Attachment "E-2" – Forest Capital Partners 5/21/07 Letter
- Attachment "F" – Employment Lands and Conceptual Land Use Planning Project Timeline (Through March 14, 2007)
- Attachment "G" – Newport Ord. No. 1899 Exhibit "E" (Map 1)
- Attachment "G-1" – Newport Ord. No. 1899 Exhibit "F" (Map 3)
- Attachment "H" – Planning Commission 5/14/07 Draft Minutes

6. Pursuant to NZO Section 2-6-1.040/"Public Hearing Procedures", all actions that have the City Council as the approving authority (with the exception of withdrawals) shall first be referred to the Planning Commission for review and recommendation. The petitioners are requesting the City Council to include certain territory into the city limits of Newport and to change the zoning designation of the subject property. Consequently, a public hearing by the Planning Commission is required to make recommendations to the City Council regarding the request.

7. As part of the annexation and as provided for in Oregon Revised Statutes (ORS) 222.524, the subject property would be withdrawn from the Newport Rural Fire Protection District and the Lincoln County Library District as the City of Newport provides these services. The property is currently within the Seal Rock Water District and withdrawal from the Seal Rock Water District is not proposed at this time. Representatives of the City of Newport and Seal Rock Water District have been in discussion regarding the City of Newport becoming the water service provider in this area and it is anticipated that the discussions on this issue will reach fruition in the near future.

8. ORS 197.625 (When amendment or new regulation considered acknowledged; application prior to acknowledgement) (3)(a)-(d) specifies that post-acknowledgment plan amendments

become effective on the date specified by local ordinance or charter and that approval of land use decisions subject to an unacknowledged amendment to a comprehensive plan shall include findings of compliance with those land use goals applicable to the amendment. Newport Ordinance No. 1899 (adopting the South Beach Neighborhood Plan) and Lincoln County Ordinance No. 447 (concurring in the adoption of the UGB adjustment as part of the South Beach Neighborhood Plan) provide the required findings of compliance for the statewide land use planning goals applicable to the proposed applications with the exception of the findings of compliance related to the Transportation Planning Rule (TPR) requirements under Statewide Planning Goal 12 (Transportation) as set forth in Oregon Administrative Rule (OAR) 660-012-0060 (Plan and Land Use Regulation Amendments). See Planning Staff Report Attachment "D" for the TPR requirements. The requirements for findings of compliance with the TPR were deferred under Newport Ordinance No. 1899 as the 268 acre area added to the Urban Growth Boundary was not rezoned as part of the South Beach Neighborhood Plan but remained in the Lincoln County Timber-Conservation designation until annexation of the property. No change in use of the 268 acre area added to the UGB occurred with the adoption of Newport Ordinance No. 1899 and therefore the amendment did not significantly affect a transportation facility under the OAR 660-012-0060 definition.

9. The following written comments were submitted prior to the June 4, 2007, public hearing:

A. Allan and Kathleen Crandall by letter dated April 25, 2007, noting that they hold a way of necessity over Tax Lots 100 of Assessor's Tax Map 11-11-20 and Tax Lot 700 of Assessor's Tax Map 11-11-21 and that they support the South Beach Village and College Plan. See Planning Staff Report Attachment "E" (Crandall 4-25-07 and 5-18-07 Letters).

B. Toby Cole, Newport Fire Department, by comment dated April 26, 2007, stating that: "It is the expectation of Newport Fire Department that the requirements of the 2007 Oregon Fire Code will be met with regard to fire apparatus access roads and infrastructure for fire hydrant location and distribution, for this subdivision."

C. Greg Schaecher, Newport Public Works, a "No Comment" comment dated May 1, 2007, and Lee Ritzman, Newport Public Works, a "No Comment" comment dated May 16, 2007.

D. Steven Schell, by letter dated May 11, 2007, representing Marion and Ocie-Ellen Gardner Trust, the Caroline and Robert Bently Trust, and David Brewer, property owners within the area added to the UGB by the South Beach Neighborhood Plan in support of the annexation and requesting urban services be provided to their property. See Planning Staff Report Attachment "E-1".

E. Janet Runkle, Land Use Specialist with Forest Capitol Partners, LLC, by letter dated May 21, 2007, on behalf of Meriwether Northwest Oregon Land & Timber LCC which she asserts owns land somewhere to the east of the annexed property and requests that no development occur on the property until such time as plan can be developed and implement that gives Meriwether additional rights over the subject property in regard to forestry practices and requests the granting of asserted prescriptive easement rights over

the property. See Planning Staff Report Attachment "E-2".

F. A preliminary review (DOR 21-P18-2007) dated June 1, 2007, of the proposed annexation legal description and map by the Oregon Department of Revenue Cadastral Information Systems Unit was received finding that the proposed legal description and map met the requirements for use with an ordinance.

G. John deTar, Oregon Department of Transportation, by letter dated June 4, 2007, raising several issues regarding several of the assumptions in the May 10, 2007, Traffic Impact Analysis (TIA) Update and a concern regarding potential uses allowed in the City I-3 zoning to be applied to the GVR Investment property and the lack of what ODOT calls a "reasonable worst case" traffic generation analysis for uses allowed in the I-3 zoning. Mr. deTar indicates that if the uses identified in the I-3 zone were restricted so that these uses were not possible, then ODOT would agree that no significant effect would result.

10. A public hearing before the City Council was held on June 4, 2007. At the public hearing, staff entered a number of items into the record, including affidavits of mailing, publishing and posting notice, the complete set of annexation application file materials, the complete set of file materials for the planned development requests (File No. 1-PD-07 and File No. 2-PD-07), and complete copies of Newport Ordinance No. 1899 and Lincoln County Ordinance No. 447. Testimony in favor of the requests was presented by John Stutesman, Patrick O'Connor, Dennis Bartoldus, Sandra Ramigoux, Chris Chandler-DiTorricce, and Joshua Dodson. At the conclusion of the public hearing, in order to allow time to respond to the ODOT June 4, 2007, letter, the hearing was continued to the June 18, 2007, City Council meeting. The minutes of the June 4, 2007, Council meeting are hereby incorporated by reference.

11. At the continued public hearing on June 18, 2007, the City Council allowed for additional testimony and evidence to be submitted. Following the submission of additional testimony and evidence, the City Council closed the public hearing, deliberated, and voted to approve the requests. The minutes of the June 18, 2007, public hearing and the written material submitted at the June 18, 2007, hearing are hereby incorporated by reference into the findings.

12. The City of Newport received approval from the Oregon Department of Land Conservation and Development of Newport Ordinance No. 1899 and Lincoln County Ordinance No. 447 by letter dated June 11, 2007 (DLCD Order 001728). The South Beach Neighborhood Plan amendments, which included the adjusted Urban Growth Boundary that included the subject Emery Investment property, have been officially acknowledged.

13. The applicable criteria are as follows:

A. Annexation/Withdrawal: Newport Zoning Ordinance (NZO) Section 2-5-6.020: The required consents have been filed with the City; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits. Note: There are not specific criteria for withdrawals from a district. Withdrawals are done in conjunction with the annexation



when the City becomes the service provider for the property.

B. Zone Map Amendment: Zone Map Amendments (as per NZO Section 2-5-6.030 & NZO Section 2-5-5.005): Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.

C. Ordinance No. 1899 (adopting the South Beach Neighborhood Plan): Section 7 (B): Findings of compliance with the Transportation Planning Rule requirements found in Oregon Administrative Rule (OAR) 660-012-0060.

### **CONCLUSIONS**

1. In regard to the annexation criteria (Newport Zoning Ordinance (NZO) Section 2-5-6.020: *The required consents have been filed with the city; the territory to be annexed is within the acknowledged urban growth boundary (UGB); and the territory to be annexed is contiguous to the existing city limits.*), the City Council concludes as follows:

A. The City Council concludes that the required consents have been filed. Pursuant to Oregon Revised Statutes (ORS) 222.170, petitions for annexation of a territory into the city limits must have the consent of more than 50 percent of owners of land in the territory, and such owners must also own more than 50 percent of the assessed value of all real property in the subject territory. The owners of the subject property are Emery Investments, Inc. (approximately 75 acres of Tax Lot 100 of Assessor's Tax Map 11-11-20 and approximately 5 acres of Tax Lot 700 of Assessor's Tax Map 11-11-21) and GVR Investments (approximately 16.5 acres of property owned by GVR Investments generally described as Tax Lot 100 of Assessor's Map 11-11-20-AB). The applicant has provided all signed consents and the Lincoln County Assessor's values of all properties to be annexed. See Planning Staff Report Attachment "A" (Applicant Request).

B. The City Council concludes that the territory to be annexed is within the acknowledged urban growth boundary (UGB). The GVR Investment property is currently within the Urban Growth Boundary pursuant to the Comprehensive Plan Map of the City of Newport. The Emery Investment property has been added to the Urban Growth Boundary as part of the South Beach Neighborhood Plan process with approval from the City of Newport (Ordinance No. 1899 – adopted December 4, 2006) and with approval from Lincoln County (Ordinance No. 447 – adopted April 18, 2007). The Department of Land Conservation and Development completed a review of the South Beach Neighborhood Plan approvals from the City of Newport and Lincoln County and by letter dated June 12, 2007, from DLCDC (Order 001728) "acknowledged" the adjusted Urban Growth Boundary.

C. The City Council concludes that the territory to be annexed is contiguous to the existing city limits. The subject property is contiguous to the existing city limits with property within the city limits abutting the GVR Investment property on the north side. See Planning Staff Report Attachment "A" (Applicant Request), Planning Staff Report Attachment "B" (Public Notice and Map) and Planning Staff Report

Attachment "C" (Zoning Map).

D. The revised legal description and map prepared for the annexation ordinance by David Evans & Associates and submitted on May 29, 2007, on behalf of the applicant contains additional land outside of the area of annexation for which notice was provided but the City Council concludes that the adjustment is relatively minor and the annexation is still consistent with the notice submitted as the notification area was not impacted. A revised legal description was submitted June 1, 2007, by David Evans & Associates to bring the description into compliance with the state requirements for use in the ordinance was made pursuant to a preliminary review by the Cartography Department of the Oregon State Department of Revenue.

2. In regard to the Zoning map amendment criteria (Zone Map Amendments (as per NZO Section 2-5-6.030 & NZO Section 2-5-5.005): Findings that the proposed zoning is consistent with the Comprehensive Plan Map, furthers a public necessity, and promotes the general welfare.), the City Council concludes as follows:

A. The zone designations requested for the Emery Investment property (see Planning Staff Report Attachment "A-2" which illustrates the proposed zoning designations on the Emery Investment property) are consistent with the Newport Comprehensive Plan designations that would apply to the property as identified in Ordinance No. 1899 adopting the South Beach Neighborhood Plan (see Planning Staff Report Attachment "G" (Newport Ord. No. 1899 Exhibit "E" (Map 1))). The Commercial portion of the property is not identified with a specific Commercial designation, but the applicant has indicated that a C-1/"Retail and Service Commercial" designation is to be applied. The City Council will therefore apply the zoning designations for the annexed area of the Emery Investment property consistent with the Comprehensive Plan map designations as adopted by Ordinance No. 1899 consistent with the criterion that the proposed zoning is consistent with the Comprehensive Plan Map. The applicant has indicated through the Power Point presentation material that some changes to the Comprehensive Plan map and Zoning map designations may be needed and those changes can be processed as amendments at a later date.

B. The Zoning Map designation of I-3/"Heavy Industrial" is requested for the GVR Investment property consistent with the Newport Comprehensive Plan designation of Industrial for the subject property. An explanation of the zone designation request for GVR Investments was submitted by Dennis Bartolodus on behalf of GVR Investments. See Planning Staff Report Attachment "A-1". The South Beach Neighborhood Plan did amend the Comprehensive Plan Map designation of a portion of the GVR Investment property on the southeast corner of the property (approximately 1.5 acres) to include a portion of the property as High Density Residential. See Planning Staff Report Attachment "G-1" (Newport Ord. No. 1899 Exhibit "F" (Map 3)). As part of the South Beach Neighborhood Plan process, GVR Investments had requested that that portion of the property be High Density Residential. If the property is to be designated as I-3, an amendment to the Comprehensive Plan designation adopted by the South Beach Neighborhood Plan

would need to be completed. The identification of the I-3 zone designation was included in the original application materials and was a part of the public notification process. It is likely that there will be several other minor amendments to the Comprehensive Plan designations as part of the overall development of the property added to the UGB, and this could be completed as part of those amendments as well. The ordinance approving the annexation and zone designations will contain a condition of approval addressing this issue.

C. Because the Comprehensive Plan Map has designated the property with land use designations to implement the Comprehensive Plan (which establishes the limits of growth within the Urban Growth Boundary for the City of Newport to the year 2010 as amended by the South Beach Neighborhood Plan), the City Council concludes that the application of a zone designation in conformance with the Comprehensive Plan as amended by the South Beach Neighborhood Plan would further a public necessity and promote the general welfare. The South Beach Neighborhood Plan and the OCCC central campus site have both had extensive public involvement in the development process and the annexation and zoning implementation would both further a public necessity and promote the general welfare. See Planning Staff Report Attachment "F" regarding the time line and public involvement in the Employment Lands and Conceptual Land Use Planning project (resulting in the South Beach Neighborhood Plan) and the Oregon Coast Community College central campus project.

D. In regard to the Schell letter (Planning Staff Report Attachment "E-1"), the property owners whom he represents are free to pay for the extension of urban services to their property at such time as they would like the services. The Council may consider as a separate matter as part of the overall development of the area added to the UGB a provision for a local improvement district or a reimbursement district that could provide a reimbursement mechanism to Emery Investments, the City, or other property owner/entity that pays to oversize an urban level facility in order to accommodate anticipated development from other property owners who would then utilize the facility but have not yet contributed to the facility. As the Schell property owners have not yet submitted an annexation request with the required master planning, their property remains in a Timber-Conservation designation and at the present time it would be hard to know what levels of services are specifically needed for their proposed development, if any.

E. In regard to the Forest Capital Partners letter (see Planning Staff Report Attachment "E-2"), Ms. Runkle does not identify where to the "east" the property of Meriwether Northwest Oregon Land & Timber LLC is located. The current UGB leaves a substantial area of land designated with the existing Timber-Conservation (T-C) designation along the west side of King Slough. There are only two properties owners with property in a T-C designation between the UGB and King Slough (Emery Investments and King Slough Enterprises). The Meriwether property would then presumably be located somewhere to the east of King Slough, so it is unclear as to how the development of the property within the area added to the UGB would interfere or add operating costs to timber harvest on the Meriwether property (which is apparently designated T-C and for which normal forestry and logging activities are

uses permitted outright under the Lincoln County Code (**1.1375 Timber Conservation Zone T-C** In a T-C zone the following regulations shall apply: (1) **Uses Permitted Outright:** The following uses and their accessory uses are permitted outright, subject to applicable siting criteria, other applicable provisions of this section, and applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1901-1.1999: (a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash.). There is already residentially designated and developed property along the King Slough portion of Idaho Point. Ms. Runkle does not provide sufficient information as to how interference or increased costs would occur, or how that is an issue that needs to be addressed relevant to the applicable criterion. In regard to the prescriptive easement assertion, Ms. Runkle provides no basis for her assertion of prescriptive easements nor is the City Council the appropriate forum for resolving prescriptive easement issues.

3. In regard to the Transportation Planning Rule requirements (*Ordinance No. 1899 (adopting the South Beach Neighborhood Plan): Section 7 (B): Findings of compliance with the Transportation Planning Rule (TPR) requirements found in Oregon Administrative Rule (OAR) 660-012-0060*), the City Council concludes as follows:

A. The required findings for the TPR need to be completed as part of the annexation/rezone request as required by Newport Ordinance No. 1899. In regard to the Transportation Planning Rule requirements, the City as part of the approval of the South Beach Neighborhood Plan in Ordinance No. 1899 has adopted a condition of approval regarding the subject Emery Investment property that was added to the Urban Growth Boundary as part of the South Beach Neighborhood Plan in Section 7 (B) of Ordinance No. 1899 that states:

As part of any future annexation and rezone proceeding for the property added to the Urban Growth Boundary as identified in Section 3 (B) above, an additional criterion for the annexation and rezone shall be a requirement to make findings as applicable in regard to compliance with the Transportation Planning Rule requirements found in Oregon Administrative Rule (OAR) 660-012-0060.

B. The subject Emery Investment property is currently designated with a Timber Conservation designation in the County and was added to the Urban Growth Boundary as part of the South Beach Neighborhood Plan. The subject GVR Investment property was already within the Newport UGB prior to the South Beach Neighborhood Plan and is currently identified with a Planned Industrial (I-P) designation on the Lincoln County Comprehensive Plan and Zoning Map.

C. The applicant submitted as part of the application a Traffic Impact Analysis dated October 31, 2006. Both the Oregon Department of Transportation and the Department of Land Conservation and Development had previously reviewed the October 31, 2006, report as part of the South Beach Neighborhood Plan amendment process and a number of deficiencies with the 10/31/06 TIA Report were identified. A meeting was held on March 21, 2007, that included John Stutesman (Landwaves), members of David Evans and Associates, ODOT (including John deTar and Gerry Juster), and the City of Newport to review the corrections necessary to the October 31, 2006, TIA. Laren Woolley and Bob Cortright of DLCD were invited to attend the March 21, 2007, meeting but were

unable to do so. The applicant has subsequently submitted a new Traffic Impact Analysis Report dated May 2, 2007, (see Planning Staff Report Attachment "A-3") and memo dated May 10, 2007, from David Evans and Associates (DEA) (see Planning Staff Report Attachment "A-4") that is intended to address the deficiencies previously identified with the report. The 5/2/07 TIA Report was submitted to both ODOT and DLCD on May 2, 2007, and the 5/10/07 TIA Update memo was distributed on May 11, 2007. A meeting with ODOT staff, City staff, and representatives of Landwaves was held on May 31, 2007, to discuss the 40<sup>th</sup> Street transportation analysis and the need for an approach road permit.

D. The 5/2/07 TIA describes the Phase 1 analysis on page 10 to include 46 single family units, 48 high density residential dwelling units and the OCCC central campus. However, the Preliminary Phase 1 Planned Development application (File No. 1-PD-07) identifies a higher number of dwelling units proposed (between 132-216 dwelling units) for Phase 1, includes approximately 10,000-20,000 square feet of floor area for Commercial uses, and also includes the OCCC central campus. The differences between the proposed uses in the 5/2/07 TIA Phase I analysis and the proposed uses in the File No. 1-PD-07 South Beach Village Phase I in the planned development application needed to be reconciled. The 5/10/07 TIA Update DEA memo identifies on page 2 (Table 2) an alternative Phase 1 development scenario (included would be 86 single-family residences, 31 condo/townhomes, community college, and 7,000 square feet of commercial) that would allow for a portion of the annexation Phase 1 to develop under the existing 5/2/07 TIA analysis with additional development beyond the uses identified requiring further transportation analysis.

1. The applicant proposes to construct access to the subject Emery Investment property by the construction of a new street (referred to as SE 40<sup>th</sup> Street) that would connect with Highway 101 and would cross along the northerly edge of the subject GVR Investment property. No existing public right-of-way currently exists for the proposed SE 40<sup>th</sup> Street. The proposed SE 40<sup>th</sup> Street is identified in the adopted and acknowledged South Beach Neighborhood Plan but is not identified in the City of Newport Transportation System Plan (TSP). As part of the South Beach Neighborhood Plan, SE 40<sup>th</sup> Street would serve as a part of a loop road system through the area added to the UGB in the South Beach Neighborhood Plan and would connect into SE 50<sup>th</sup> Street as illustrated in the South Beach Neighborhood Plan on page 105. The proposed looped road system including SE 40<sup>th</sup> Street would be designated as either a collector or minor arterial under the current standards of the Transportation System Plan. The public right-of-way needed under either classification would be 60 feet based on the TSP street design standards in Figure 5 (page 13) of the TSP. The South Beach Neighborhood Plan identifies the proposed looped road system including SE 40<sup>th</sup> Street is identified as a recommended amendment to the Transportation System Plan for which an amendment to the TSP is required to implement the looped road system. The City is currently in the process of updating the Transportation System Plan (TSP) and implementing ordinances with a grant from the Transportation & Growth

Management Program. The update of the Transportation System Plan can include the proposed SE 40<sup>th</sup> Street and transportation improvements identified in the South Beach Neighborhood Plan and would involve additional public notice and land use hearings. Additional comments regarding the adequacy of the proposed SE 40<sup>th</sup> Street and transportation planning issues would be permitted through the Transportation System Plan update. The completion of the TSP update is expected to occur prior to the acceptance of the City of Newport of public right-of-way for the SE 40<sup>th</sup> Street. The development of SE 40<sup>th</sup> Street may begin as a private approach road as identified by the applicant.

2. A related application for a final development plan (File No. 2-PD-07) for a portion of File No. 1-PD-07 (South Beach Village Phase I) for the OCCC central campus site has been approved. The remaining development proposed for Phase I of the subject Emery Investment property will require another public hearing and notice before the Planning Commission prior to final development plan approval. Until such time, no buildings may be erected pursuant to NZO Section 2-5-4.075 (D) for an area within a planned development except for an area of the planned development for which final development plan approval has been issued.

3. Currently, only a building permit for the OCCC central campus facility for the subject Emery Investment property may be issued until such time as the rest of the subject Emery Investment property receives final development plan approval and meets the applicable criteria, which requires in part that "Access shall be designed to cause minimum interference with traffic movement on abutting streets" (NZO Section 2-5-4.075 (B)(4)) and that "The streets are adequate to serve the anticipated traffic." (NZO Section 2-5-4.075 (C)(3)). The provision of master planning such as that through the City's planned development process was included as an implementation measure (Implementation Measure 3 of Policy 1) in the South Beach Neighborhood Plan for the property added to the Urban Growth Boundary as part of Ordinance No. 1899.

C. The 5/2/07 TIA Report on page 27 concludes that: "Analysis of year 2011 conditions under build-out of Phase 1 shows that the transportation system can be made adequate to efficiently and safely accommodate the proposed development and will satisfy all City and State performance standards for traffic operations. Phase 1 development [as defined in the 5/2/07 TIA] will not have a 'significant effect' on the transportation system as defined by the state's Transportation Planning Rule."

D. John deTar, ODOT, by letter dated June 4, 2007, identified a number of issues related to the Transportation Planning Rule (OAR 660-012). A response prepared by Christian Snuffin, PE, Transportation Engineer with David Evans & Associates to Mr. deTar's concern was received on June 15, 2007, and submitted to the City Council which included discussion about ODOT's authority under OAR 734-051 (Division 51) regarding the permitting of the proposed SE 40<sup>th</sup> Street. Because the proposed SE 40<sup>th</sup> Street has not been dedicated to the public for a right-of-way, the

proposed street would be considered a private approach road and ODOT has the ability to regulate the uses that would utilize the private approach road. Given that an approach road permit for the proposed SE 40<sup>th</sup> Street improvements has not been granted by ODOT, further review of the approach road will be conducted by ODOT prior to the permitting of a connection with Highway 101 with the proposed SE 40<sup>th</sup> Street.

1. In regard to the Phase 1 improvements evaluated as part of the TIA Update of part of the Emery Investment property, Mr. Snuffin identifies the improvements necessary in his needed improvement section of his letter received on June 15, 2007. For the proposed development in Phase 1 of the TIA Update, Mr. Snuffin states that the minimum improvements required consist of:

- 1) A southbound left-turn lane from Highway 101 to 40<sup>th</sup> Street
- 2) A northbound right-turn lane from US 101 to 40<sup>th</sup> Street; and
- 3) A two-lane approach on 40<sup>th</sup> Street to Highway 101

As noted in Mr. Snuffin's letter, the developer is committed to providing the identified improvements (with possible financial assistance from the City's Urban Renewal Agency).

2. Mr. deTar notes in his June 4, 2007, letter regarding the GVR Investment property that most of the many of the uses in the I-3 zone within the City appear to be the same as those uses allowed within the County zoning designation. However, Mr. deTar contends that the restrictions in regard to the City provision of sewer outside the City limits creates a different type of use potential once the property is within the City limits than is possible outside the City limits when consideration of limits on development outside of the general land uses allowed by the zoning. Mr. deTar notes in his letter that: "If the uses are not possible, no significant affect would result." Mr. Snuffin in his letter received June 15, 2007, identifies the provision of OAR 734-051-0045 in his response which allows ODOT to regulate private approaches and changes of uses of an approach. Mr. Snuffin notes that "The rules and procedures outlined in OAR 734-051 (Division 51) provide a mechanism for ODOT to ensure that developers construct suitable transportation improvements even if the zoning permits the land use outright." The GVR Investment property currently has direct access to Highway 101 from a private approach. As the GVR Investment property is currently vacant, the uses for which Mr. deTar has expressed a concern in his June 4, 2007, letter would trigger the requirements for an ODOT approach road permit. As Mr. deTar has indicated that regulatory limitations on a general land use permitted in a zone is relevant to the TPR analysis in the determination of whether or not there is a significant affect under OAR 660-012-0060 and as no approach road permit has been issued for any of the proposed uses for the GVR Investment property, the City determines that there is not a significant affect from the

annexation of the GVR Investment property for the uses identified by Mr. deTar as there has not been an ODOT issued approach road permit to allow for those uses on the GVR Investment property.

### **OVERALL CONCLUSION**

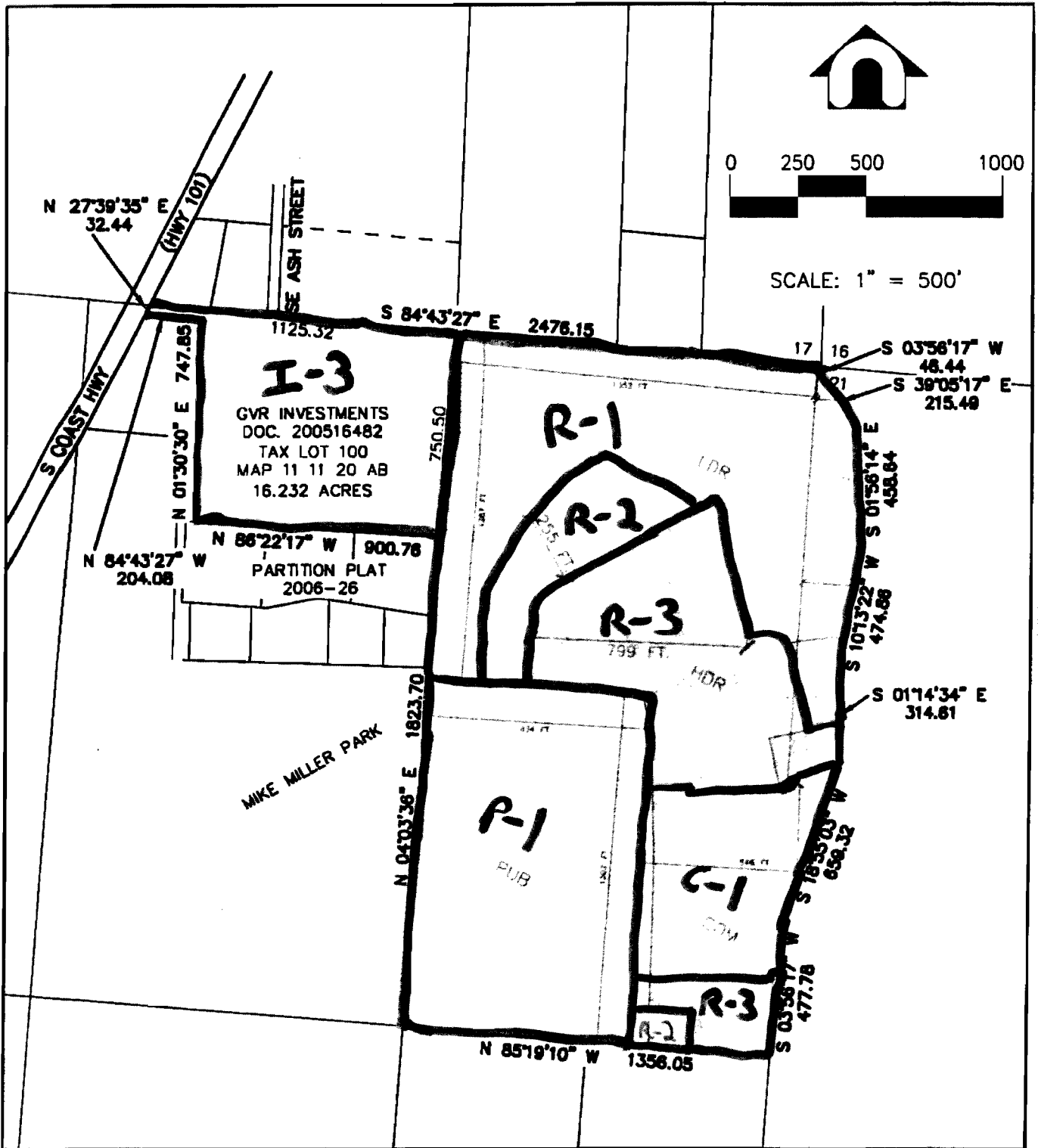
Based on the staff report and attachments, the application material, and other evidence and testimony in the record, the City Council concludes that the requested annexation, withdrawal, and zone designations comply with the criteria established for approval of each of the requests under the applicable criteria as explained in the findings. The requested annexation, withdrawal, and establishment of zone designations are hereby **APPROVED** with the following condition(s):

A. The portion of the GVR Investment property identified as High Density Residential by Ordinance No. 1899 (adopting the South Beach Neighborhood Plan) as illustrated in Exhibit "D" shall be designated with a City of Newport Zoning Map designation of I-3 but with the condition that the adoption of an ordinance amending the Comprehensive Plan map designation of High Density Residential to Industrial occurs within 18 months of the effective date of this ordinance. If after 18 months of the effective date of this ordinance, no such ordinance amendment has been adopted, the designation of the subject property in Exhibit "D" shall be R-4/"High Density Multi-Family Residential" consistent with the High Density Residential Comprehensive Plan map designation adopted by Ordinance No. 1899. If an appeal is filed in conjunction with ordinance amendment adoption, the 18 month period shall be extended until such time as the ordinance becomes final without further appeal.



EXHIBIT "C"

Zoning Map Designations applied to portion of annexed Emery Investment and GVR Investment Property

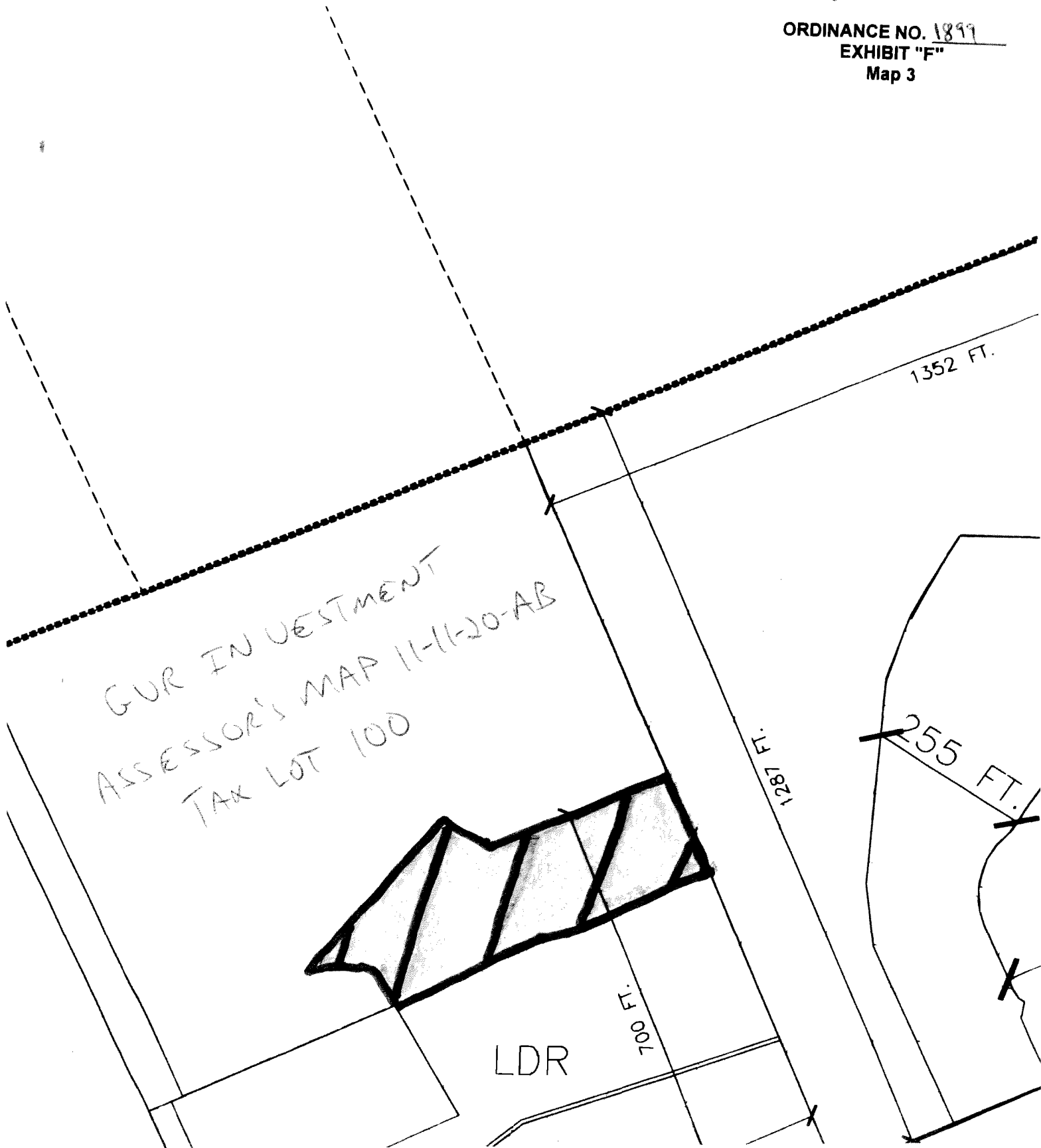


**EXHIBIT "D"**

PORTION OF GVR INVESTMENT PROPERTY SUBJECT TO CONDITION OF APPROVAL =



ORDINANCE NO. 1899  
EXHIBIT "F"  
Map 3



**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 hour 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.

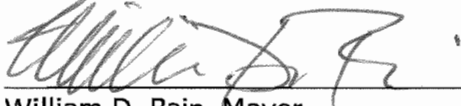
Section 4. Ordinance No. 1922 is further amending by deleting Conclusion 3.D.2 from Exhibit "B" Findings of Fact and Conclusions.

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. deTar, 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. deTar:

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 ITE 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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<sup>1</sup> 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: 49 (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>5</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>5</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>5</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**

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 site 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.

Sincerely,

**DAVID EVANS AND ASSOCIATES, INC.**



Christian Snuffin, PE  
Transportation Engineer

CITY OF NEWPORT

ORDINANCE NO. 2045

AN ORDINANCE TO REPEAL AND REPLACE THE TRANSPORTATION  
SYSTEM PLAN ELEMENT OF THE NEWPORT COMPREHENSIVE PLAN, AND  
TO AMEND RELATED PROVISIONS OF THE  
NEWPORT ZONING AND SUBDIVISION CODES  
(Newport File No. 2-CP-11)

Summary of Findings:

1. Since 2006 the City of Newport, Lincoln County, and Oregon Department of Transportation (ODOT) have worked collaboratively to update the Transportation System Plan (TSP) element of the Newport Comprehensive Plan, Newport Zoning Ordinance, and Newport Subdivision Ordinance to put in place policies and implementation strategies for establishing a coordinated, multi-modal transportation network that meets Newport's current and future needs. The last comprehensive update to the Newport TSP occurred in 1997.
2. This collaboration led to the adoption of a local street plan for areas north of the Yaquina Bay Bridge and resulted in a comprehensive update to the City of Newport's Bike and Pedestrian Plan. Both of these plans were completed in 2008.
3. As these plans were prepared, it became evident that much of the future growth in Newport will occur in its South Beach neighborhood. The parties further recognized that capacity limits of the Yaquina Bay Bridge and ODOT's existing mobility standard for US 101 severely restrict long term growth opportunities in this portion of the City.
4. An alternate mobility standard is a tool that ODOT can use to allow more vehicle trips to be generated onto US 101 than is permissible under current state law. ODOT indicated a willingness to develop such a standard as part of a coordinated effort with the City, County and stakeholders in South Beach to identify future transportation system enhancements needed to improve the flow of traffic on the highway. This effort was undertaken considering a 20 year planning period, in accordance with Statewide Planning Goal 12 and the Transportation Planning Rule contained in Chapter 660, Division 12 of the Oregon Administrative Rules (OARs).
5. The proposal assumes that the Yaquina Bay Bridge will not be replaced within 20 years, and, further, that this constraint to traffic flow justifies establishing the alternate mobility standard. At some point; however, the bridge will need to be replaced and the City of Newport will continue to engage with ODOT to develop

10. The finalized proposal includes the repeal and replacement of the TSP element of Chapter 5 of the Newport Comprehensive Plan (Ordinance No. 1621 (as amended)) with a new plan that sets out policies in support of an alternate mobility standard for US 101 to allow higher levels of congestion on the highway. In turn, this will provide increased opportunities for economic development and reduce the costs of transportation system improvements associated with development. New policies and related revisions include:

- a. Direction to establish a trip budget program for lands within the Newport Urban Growth Boundary (UGB) located between the Yaquina Bay Bridge and SE 62<sup>nd</sup> street to more effectively track where growth is occurring to ensure that it is progressing in line with projections and to allow for adjustments if it is not.
- b. Updates to Functional Classification Maps that illustrate the City's existing and future transportation system.
- c. Identification of enhancements that should be made to the transportation system in South Beach to improve traffic flow along US 101. This includes likely funding sources, and constitutes the maximum level of improvement that can be made short of replacing or expanding the Yaquina Bay Bridge.
- d. Support for the establishment of traffic impact analysis standards that apply to new development anywhere in the City so that decision makers will have information they need to fully understand the impacts and effectiveness of proposed mitigation on the transportation system.
- e. Street frontage improvement requirements for new development to the extent that such requirements are proportional to the impact of the project.
- f. Adoption by reference of transportation refinement plans that have been completed since the TSP was last amended, including the South Beach Peninsula Transportation Refinement Plan (2010), the Agate Beach Wayside Improvements Concept Plan (2011), and the Coho/Brant Infrastructure Refinement Plan (2012).
- g. Updates to project tables to reflect 2012 cost estimates, align priorities with current policy direction and likely funding sources, and to eliminate completed or redundant projects.
- h. A commitment from the City of Newport to find long term solutions that sufficiently address the existing capacity and structural limitations of the Yaquina Bay Bridge, particularly in light of the Oregon Department of Transportation's decision to place the bridge on the "Weight-Restricted Bridges on Major State Routes" list.

11. The proposed new Chapter 14.43 to the Zoning Ordinance element of the Newport Municipal Code (Ordinance No. 1308 (as amended)) describes the mechanics of how the trip budget program will work. It creates a zoning overlay district for lands inside the Newport UGB between the Yaquina Bay Bridge and SE 62<sup>nd</sup> Street. The overlay is divided into Transportation Analysis Zones (TAZs). Each TAZ is allocated a total number of trips that is based upon the amount of growth projected within a 20 year timeframe. City will be responsible for deducting trips from the budget as new development occurs. The new code anticipates variations in growth and holds back 10% of the trips across all TAZs as a reserve that can be allocated where needed. Further, the code requires that a comprehensive review be performed by the City and State in 10 years or upon allocation of 65% of the trips in any TAZ. A developer may also mitigate a project's impact on the transportation system or enhance the system such that additional vehicle trips would be permitted.

12. The proposed new Chapter 14.44 to the Zoning Ordinance element of the Newport Municipal Code (Ordinance No. 1308 (as amended)) authorizes the City to require frontage improvements for new development or redevelopment that require a building permit and places demands on transportation facilities or city utilities. It includes standards for determining the types of needed improvements, authorizes the City to charge a fee in lieu of requiring the installation of frontage improvements in certain circumstances, identifies processes by which public right-of-way can be created, and sets out requirements for creating access easements. The provisions of this chapter would apply citywide.

13. The proposed new Chapter 14.45 to the Zoning Ordinance element of the Newport Municipal Code (Ordinance No. 1308 (as amended)) requires that developers conduct traffic impact analysis for projects that significantly impact the transportation system. It identifies how the analysis is to be performed and the process the City is to use to evaluate requests. Further, this new chapter sets out criteria for evaluating the analysis to ensure that transportation facilities are adequate to handle the additional traffic; requires that improvements be made by a developer proportional to the project's impacts if the transportation system is not adequate; and provides developers the option of paying a fee in lieu of constructing needed transportation system improvements, in certain circumstances. The provisions of this chapter would apply citywide.

14. Targeted revisions are proposed to the Subdivision Ordinance element of the Newport Municipal Code (Ordinance No. 1990 (as amended)). They include clarifications for when public improvements are required in association with a subdivision plat and how the improvements can be guaranteed; an allowance for payment in lieu of constructing a required improvement as outlined in the new Chapter 45; and a requirement that traffic impact analysis be conducted and trips allocated to new subdivision lots consistent with the provisions of new Chapters 43 and 45.

15. When considered as a whole, analysis performed by Parametrix demonstrates that the City of Newport can anticipate significant increases in vehicle traffic and other transportation modes over the next 20 years. The resulting recommendations identify a range of transportation system improvements that can reasonably be made to accommodate this demand and facilitate traffic flow along US 101 and US 20 to the extent possible recognizing the bridge's capacity limitations.

16. The proposed amendments to the zoning and subdivision ordinances are a public necessity which furthers the general welfare of the citizens of Newport. The proposed measures establish a method for the City to more accurately assess where growth is occurring and how it is impacting the transportation system. The revisions ensure that new development offsets impacts to the transportation system in an equitable manner and put in place a trip budget program that quantifies available capacity on US 101, while providing persons interested in developing in South Beach with a clear, predictable path for doing so. This promotes economic development and increases opportunities for commercial and industrial uses to locate in South Beach. In turn, this may decrease local users' reliance on the bridge for needed services and employment over the long term.

17. Detailed findings have been prepared showing how the proposed amendments satisfy procedural and substantive requirements for amendments to the City's Transportation System Plan and related implementing ordinances, as well as applicable Statewide Planning Goals and the Transportation Planning Rule. The findings are contained in a document titled "*Newport South Beach Findings to Support Comprehensive Plan and Code Amendments*," prepared by Angelo Planning Group on August 24, 2012 and adopted herein to supplement these findings.

18. In August of 2007, a settlement agreement was signed by the State of Oregon, City of Newport, Emery Investments, Inc., Landwaves, Inc., GVR Investments, and the Oregon Coast Community College District (Settlement Agreement). The Settlement Agreement authorized a specific number of vehicle trips to be generated onto US 101 at SE 40<sup>th</sup> Street from South Beach properties annexed with Ordinance No. 1922. In performance of its obligations under the Settlement Agreement, the City will reserve trips out of the TAZ trip budget for this area for the exclusive use of these properties. Since the Settlement Agreement does not have an explicit expiration date, it is appropriate that the trips be reserved for a period of ten years from the date that final plats for the properties were recorded, or preliminary plat approval in the case where no final plat has been recorded. This approach is consistent with limitations contained in ORS 92.040 regarding vesting of prior land use regulations with land division approvals. Any unused trips would be returned to the TAZ trip budget once the ten year period has lapsed.



19. On August 27, 2012, the Newport Planning Commission held a public hearing on the proposed amendments and voted to recommend adoption of the amendments.

20. On July 9, 2012, the Department of Land Conservation & Development (DLCD) was properly provided notice of the proposed legislative amendments. Notice of the City Council hearing was provided to stakeholders and interested parties in the South Beach area; public/private utilities and agencies; and affected city departments on October 4, 2012. Notice of the hearing was published in the Newport News-Times on October 10, 2012.

21. The City Council held a work session on September 17, 2012 and public hearing on October 15, 2012, regarding the question of the proposed amendments. The Council voted in favor of its adoption after considering the recommendation of the Planning Commission and all evidence and argument in the record.

22. In adopting these amendments, the Council recognizes that successful implementation of the trip budget program set forth in the proposed Chapter 14.43 requires close coordination with Lincoln County and the Oregon Department of Transportation. Both organizations will need to adopt rule changes. For Lincoln County, this involves amendments to its land use plans and regulations to put in place the trip budget for unincorporated areas that fall within the boundaries of the South Beach Transportation Overlay Zone and to authorize the City to track consumption of trips associated with new development on these lands. With regards to ODOT, the Oregon Transportation Commission must amend the Oregon Highway Plan to put in place the alternate mobility standard for US 101 that provides the additional trip capacity built into the trip budget program. The City cannot reasonably implement a trip budget until these organizations have acted.

23. 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 above findings, those contained in the document titled "*Newport South Beach Findings to Support Comprehensive Plan and Code Amendments*," prepared by Angelo Planning Group on August 24, 2012, as set forth in Exhibit A, and technical memorandums prepared by Parametrix, listed as Exhibits B1 through B5, attached and incorporated herein, are hereby adopted as support for this Ordinance and the Council's following amendments.

Section 2. The Transportation System Plan Element (§5; pps 152a - 152ab) of Chapter 5 "Public Facilities" of the City's Comprehensive Plan, Ordinance No. 1621 (as amended) is hereby repealed and replaced with the text entitled "Newport

Transportation System Plan”, as set forth in Exhibit C, attached and incorporated herein by this reference.

Section 3. Title XIV, Chapters 14.43, “Procedural Requirements,” through 14.51, “Fees” of the Zoning Ordinance element of the Newport Municipal Code (Ordinance No. 1308 (as amended)) are hereby renumbered as Chapters 14.46 through 14.54, respectively.

Section 4. Title XIV, the Zoning Ordinance element of the Newport Municipal Code (Ordinance No. 1308 (as amended)), is hereby amended to include a new Chapter 14.43 entitled “South Beach Transportation Overlay Zone (SBTOZ)” as set forth in Exhibit D. The overlay zone is as described on the map and legal description prepared by John Thatcher, PLS, dated October 30, 2012, attached and incorporated herein as Exhibit E.

Section 5. Title XIV, the Zoning Ordinance element of the Newport Municipal Code (Ordinance No. 1308 (as amended)), is hereby amended to include a new Chapter 14.44 entitled “Transportation Standards”, as set forth in Exhibit F, attached and incorporated herein by this reference.

Section 6. Title XIV, the Zoning Ordinance element of the Newport Municipal Code (Ordinance No. 1308 (as amended)), is hereby amended to include a new Chapter 14.45 entitled “Traffic Impact Analysis,” as set forth in Exhibit G, attached and incorporated herein by this reference.

Section 7. The introductory language of Subsection 13.05.040(A) and Subsection 13.05.040(A)(5), of Title XIII, Land Division, the Subdivision Ordinance element of the Newport Municipal Code (Ordinance No. 1990 (as amended)), are hereby amended as follows:

“A. The following public improvements are required for all land divisions, except where a subdivision plat is reconfiguring or establishing rights-of-way for future public streets:”

“5. Sidewalks. Required sidewalks shall be constructed in conjunction with the street improvements except as specified below:

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

of sidewalk installed compared with the cash bond deposited and any interested earned on the deposit.

- b. Commencing three (3) years after filing of the final plat, or a date otherwise specified by the city, the city engineer shall cause all remaining sections of sidewalk to be constructed, using the remaining funds from the aforementioned cash bond. Any surplus funds shall be deposited in the city's general fund to cover administrative costs. Any shortfall will be paid from the general fund.
- c. Notwithstanding the above, a developer may guarantee installation of required sidewalks in an Improvement Agreement as provided in Section 13.05.090(C)."

Subsections 13.05.040(A)(1) - (4) remain unamended and in full force and effect.

Section 8. Subsection 13.05.070(A) of Title XIII, Land Division, the Subdivision Ordinance element of the Newport Municipal Code (Ordinance No. 1990 (as amended)), is hereby amended, to insert new Subsections A(13) and (14), and to renumber existing Subsection A(13) as A(15), as follows:

- "13. A Trip Assessment Letter, if required by Chapter 14.43.
- 14. A Traffic Impact Analysis, if required by Chapter 14.45.
- 15. Other materials that the applicant believes relevant or that may be required by the city."

All other subsections of 13.05.070(A) and Subsections (B) - (E) of that section remain unamended and in full force and effect.

Section 9. Subsection 13.05.090(B) of Title XIII, Land Division, the Subdivision Ordinance element of the Newport Municipal Code (Ordinance No. 1990 (as amended)) is hereby amended as follows:

"B. Provision of Improvements. It shall be the responsibility of the developer to install all required improvements and to repair any existing improvements damaged in the development of the property. The installation of improvements and repair of damage shall be completed prior to final plat approval. Except as provided in Subsection C., or where payment in lieu of constructing a required improvement is allowed by City and has been paid by developer per Chapter 14.45, the final plat will not be approved until improvements are installed to the specifications of the city and "as constructed" drawings are given to the city and approved by the city engineer. The developer shall warrant the materials and

workmanship of all required public improvements for a period of one year from the date the city accepts the public improvements.”

Section 10. City shall reserve trips out of the TAZ budget for properties annexed with Ordinance No. 1922, per the Settlement Agreement, as follows: For properties owned by Emery Investments, Inc. and/or Landwaves, Inc. 130 weekday PM peak hour trips, plus an additional 127 trips at such time as Ash Street is improved between Ferry Slip Road and SE 40<sup>th</sup> Street. With respect to properties owned by GVR Investments, 47 trips will be reserved, plus an additional 43 trips once Ash Street is improved. The City will reserve 20 trips for the Oregon Coast Community College property, once the Ash Street improvements are constructed. These trips will be reserved for a period of ten years from the date that final plats for the properties were recorded, or preliminary plat approval in the case where no final plat has been recorded. Any unused trips will accrue back to the TAZ trip budget once this ten year period has lapsed.

Section 11. Section 4, adopting Chapter 14.43, of this ordinance shall take effect at such time as both Lincoln County adopts corresponding implementation measures for unincorporated lands with the boundary of the zoning overlay and the Oregon Transportation Commission amends the Oregon Highway Plan to put in place the alternate mobility standard for US 101.

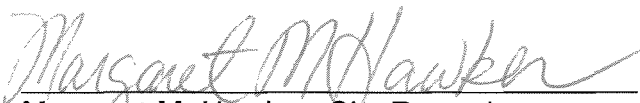
Section 12. Except as provided in Section 11, this ordinance shall take effect 30 days after passage.

Date adopted and read by title only: November 5, 2012

Signed by the Mayor on November 6, 2012.

  
\_\_\_\_\_  
Mark McConnell, Mayor

ATTEST:

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