

1                                   **BEFORE THE BOARD OF COMMISSIONERS**

2                                   **FOR LINCOLN COUNTY, OREGON**

3                                   ORDINANCE # 480

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5  
6 **Amending the Lincoln County Comprehensive Plan Map to provide a designation of**  
7 **Suburban Residential and a Zoning Map designation of RR-10 (Rural Residential, 10**  
8 **acre minimum) on property located off of SE 98<sup>th</sup> Street in South Beach and further**  
9 **identified on Lincoln County Assessor’s Map 12-11-05-00 as Tax Lot 801 (County Case**  
10 **File #2-LUPC-PC-14); and declaring an emergency.**  
11 \_\_\_\_\_  
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13           WHEREAS applicants Terry Lettenmaier and Laurie A. Weitkamp requested  
14 amendments to the Lincoln County Comprehensive Plan and Lincoln County Zoning  
15 Ordinance to designate a parcel of land they own in South Beach as Suburban Residential  
16 under the Plan and apply an RR-10 (Rural Residential 10 acre minimum) zone to the property;  
17 and

18           WHEREAS the subject property is located off of SE 98<sup>th</sup> Street in South Beach and is  
19 further identified on Lincoln County Assessor’s Map #12-11-05-00 as Tax Lot 801; and;

20           WHEREAS on October 13, 2014 after legal notice was given in accordance with law,  
21 the Lincoln County Planning Commission held a public hearing on the subject request. The  
22 Planning Commission voted unanimously to recommend approval of the request. On  
23 December 16, 2014 the Planning Commission adopted Findings, Conclusions and Final Order  
24 recommending that the request be approved. A copy of the Final Order is attached hereto and  
25 incorporated herein as Exhibit 1. The recommendations of the Planning Commission were not  
26 appealed. The planning record in this matter is found in Case File #02-LUPC-ZC-14 and by  
27 this reference is incorporated herein as if fully set forth; and

1 WHEREAS after legal notice was given in accordance with law, a public hearing was  
2 held by the Board of Commissioners on May 20, 2015, to consider whether or not to grant the  
3 request; and

4 WHEREAS at the close of the hearing and after deliberations, the Board unanimously  
5 approved the recommendation of the Planning Commission to amend the Lincoln County  
6 Comprehensive Plan Map and Lincoln County Zoning Map as requested by the applicant.

7 NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

8 **SECTION 1.**

9 1. The Planning Commission's recommendations are adopted, and the Lincoln County  
10 Comprehensive Plan Map is amended to Suburban Residential and Lincoln County Zoning  
11 Map is amended to RR-10 (Rural Residential, 10 acre minimum) on a parcel of land located  
12 off of SE 98th Street in South Beach and further described as Lincoln County Assessor's Map  
13 #12-11-05-00 as Tax Lot 801, (Case File #02-LUPC-ZC-14).

14 2. The findings and conclusions supporting these actions are adopted as set forth in  
15 Exhibit 1.

16 3. Copies of this ordinance shall be forwarded to the County Surveyor; County  
17 Assessor; County Counsel; and Lincoln County Department of Planning and Development.


18 4. The Department of Planning and Development shall amend the official maps in the  
19 Lincoln County Clerk's Office and shall forward a copy of this ordinance to the Department of  
20 Land Conservation and Development.

21 **SECTION 2.**

22 In accordance with the Findings supporting this request, this Ordinance being necessary  
23 for the immediate preservation of the public peace, health and safety, an emergency is declared  
24 to exist and this Ordinance shall take effect upon its passage.

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10<sup>th</sup>   
DATED this 9<sup>th</sup> Day June, 2015.

LINCOLN COUNTY BOARD OF COMMISSIONERS

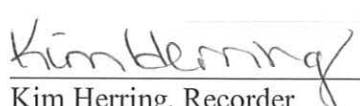
  
\_\_\_\_\_  
Doug Hunt, Chair

  
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Terry Thompson, Commissioner

  
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Bill Hall, Commissioner

ATTESTED TO:

APPROVED AS TO FORM:

  
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Kim Herring, Recorder

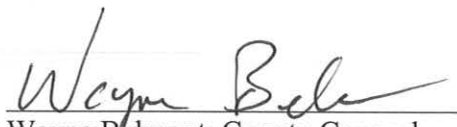
  
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Wayne Belmont, County Counsel

EXHIBIT "1"  
ORDINANCE 480

BEFORE THE PLANNING COMMISSION

OF

LINCOLN COUNTY, OREGON

Applicant: Terry Lettenmaier	)	Case No. 02-LUPC-ZC-14
and Laurie A. Weitkamp	)	Findings, Conclusions, and Final Order
	)	
Agent: J. Christopher Minor	)	

Nature of the Proceedings

This matter came on regularly for hearing on October 13, 2014, pursuant to application for amendments to the Lincoln County Zoning Map and to the Comprehensive Plan, to designate the Applicants' parcel (the Property) as RR-10 (rural residential) under the Lincoln County Zoning Ordinance and as Suburban Residential under the Lincoln County Comprehensive Plan.

Nature and Purpose of the Application

The Property was once part of the planned Wolf Tree Destination Resort (Wolf Tree) located entirely within the city limits of the City of Newport. At the request of the Applicants and after legal proceedings, the City of Newport withdrew the Property from inclusion in the Destination Resort Overlay Zone and at the same time, de-annexed the Property from the incorporated city limits of the City of Newport. As a result, the Property remains within the City of Newport urban growth boundary, but under the jurisdiction of Lincoln County. Presently, there is no comprehensive plan or zone designation assigned to the Property.

The Applicants request the Property be assigned a comprehensive plan designation of SR (Suburban Residential) and a zone designation of RR-10 (Rural Residential) under provisions of the Lincoln County Code. Their intent is to develop the Property by construction of a personal single-family dwelling (although the Applicants have no plans or present intent to do so, at some time in the future, it would be possible to apply for a land division allowing the creation of lots each having an area of not less than ten acres.

Hearing

This matter came on for hearing before the Planning Commission of Lincoln County, Oregon, on October 13, 2014. Applicant Lettenmaier appeared in person, and gave oral testimony, and oral testimony was presented by his attorney, J. Christopher Minor. Mr. Minor requested, and the Commission approved, receipt of Applicants' written Application, and the Addendum thereto (together with the maps, City of Newport minutes and ordinances, and other materials listed as Exhibits in section 5 of the Addendum which was submitted as part of the Application) originally submitted to the Lincoln County Planning Department, as testimony and evidence of the matters therein asserted. No appearance was made, and

no testimony or argument was presented, in opposition to the Application, either in person, at the hearing, or by written submission. Based on the Application and the accompanying materials, the testimony at the hearing and the Planning Department Staff Report, the Commission makes the findings of fact, conclusions and decision set forth below.

### Relevant Facts

The Commission hereby makes the following findings of fact:

1. **Lot Size:** The Property is approximately 71.39 acres in size.
2. **Property Location:** The Property is located southeast of Newport proper, off of SE 98th St. and is further identified on Lincoln County Assessor's Map #12-11-05 as tax lot 801.
3. **Zoning Designation:** The Property was recently de-annexed from incorporated City of Newport city limits. The Applicant is requesting a zone designation of RR-10 under provisions of the Lincoln County Code.
4. **Plan Designation:** The Property was recently de-annexed from incorporated City of Newport city limits, but remains inside the Urban Growth Boundary. The Applicant is requesting a comprehensive plan map designation of SR (Suburban Residential) under provisions of the Lincoln County Code.
5. **Surrounding Land Use:** The Property is located east of Highway 101, off of SE 98th St. in an area of rural residential homesites, land area inside city limits, and forestlands.
6. **Development Constraints:** None identified.
7. **Agency Comments:** a. Department of Land Conservation and Development: No comment was received.
8. The matters set forth in Applicants' Application and the addendum thereto are found to be true and correct, and the same are by this reference made a part of this order and these findings
9. The Applicants purchased the Property in 2011, with the intent of building a personal residence (single- family dwelling). They have been and still are the owners of the Property since their purchase in 2011. The Property was part of the Wolf Tree Destination Resort (Wolf Tree), adopted by the City of Newport (City) in 1987. The City of Newport Urban Growth Boundary was amended and the whole of the proposed Wolf Tree Destination Resort was annexed into the City. Wolf Tree was planned to be developed in several stages, but the project never got off the ground, and nothing was ever built. Nevertheless, the City of Newport land use designations remained in place. The purpose of the Wolf Tree overlay was to ensure that the Destination Resort use be established. However, the overlay designation prohibited any development on the property that fell short of the full amenities of the Wolf Tree planned community. This circumstance prohibited the Applicants from building one single-family dwelling.

10. To accomplish their goal, the Applicants first approached the City. In electing to initiate the withdrawal of the Property from city limits, the City Council determined that the public interest was furthered and that the Property was not critical to the orderly development of the Wolf Tree Destination Resort. The City Council did determine a need to allow utilities to be extended across the Property to potentially serve the adjacent high density property at some future date. The City Council approved withdrawal of the Property from the corporate city limits, which was to take effect 30 days after the date an easement was recorded for extension for utilities to the Wolf Tree area. The utility easement was granted and recorded accordingly in 2013 and de-annexation followed. Given the proximity of the Property to potential urban development and need for future public utilities, it is appropriate that the Property remains within the urban growth boundary.
11. This property has been "urbanized" by reason of determinations made in the City of Newport planning process, and for many years has been, and remains, within the Urban Growth Boundary of the City of Newport. The Suburban Residential Comprehensive Plan Classification historically has been considered a "holding zone" for property lying within the urban growth boundary of a city, and thus destined for development, the density of which cannot clearly be predicted.
12. The City of Newport applied appropriate criteria in urbanizing the Property originally. Attached to City of Newport Ordinance No. 1522 is "Exhibit A" captioned "Findings and Conclusions," including information respecting the request, the reason for the request, and determination of compliance of the request with applicable criteria, which findings are hereby approved, adopted and by this reference made a part hereof.

In that ordinance, the request to add the Property to the City's UGB, and to annex the Property into the City (along with some additional property) was found to be "...consistent with the original County and City approvals for the Wolf Tree resort and ... the City's Comprehensive Plan policy..."

The Exhibit continues with a careful examination of the relevant criteria applicable to the change in the urban growth boundary (and in particular, the requirements of Goal 14), and the criteria of the City's Comprehensive Plan.

13. The City continues to anticipate the development of a destination resort or other high density development on the property adjacent to the Applicants Property, as evidenced by the imposition of a requirement that the Applicants provide a utility easement across their Property to accommodate future development of the remaining portions of the destination resort property. The easement has been completed and recorded.
14. Due to the fact that urban utilities are not available at this time, the Property, and its use for construction of a home, would be best served if zoned at a lower density than any existing City of Newport residential zone. This is the underlying reason for the de-annexation and the Applicants' request for Lincoln County RR-10 zoning and Suburban Residential Comprehensive Plan Designation. Such zoning and Plan designation is consistent with the fact that the Property has been urbanized, but will not result in high density development of the Property. This will effectively create a buffer between existing forest land (T-C zone) and the possible of creation of

a future destination resort or other high density development on the remainder of the Wolf Tree Destination Resort Site. Also, to the North of the Property, there now exist a number of small lots, upon which some homes have been constructed.

#### Relevant Criteria

Inasmuch as the City of Newport and Lincoln County both have acknowledged comprehensive plans, State Land Use Goals and Guidelines are implemented through the Comprehensive Plan and Zoning Ordinance. The following criteria from the Lincoln County Comprehensive Plan and Zoning Ordinance are deemed applicable:

1. Land Use Planning Goals; (Section 1.0010)
  - (a) To identify activities, issues and problems of land use.
  - (b) To ensure that all growth is orderly and efficient
  - (c) To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land, and to assure an adequate factual basis for such decisions and actions.
  
2. Urbanization Policies; (Section 1.0030).
  - (a) Land use decisions affecting urban growth areas outside city limits shall be made after the affected city is given the opportunity to make a recommendation. The city and county plans shall be coordinated for these areas.
  - (b) Within city urban growth boundaries, subdivisions and partitions shall be to the city=s urban densities as set out in the city=s plan designation for the affected property or be at interim densities of five acres or greater so long as lots do not interfere with efficient urbanization.
  - (c) Within urban growth boundaries and outside of city limits, the Lincoln County land use designations shall apply prior to annexations. After annexations, the city land use designations shall apply.
  
3. Plan Designations- Suburban Residential: (Section 1.0190(6)): Building and facilities must be in place at the time of adoption of this plan or be inside of an established Urban Growth Boundary to acquire this designation. If a small residential lot lies along an improved road between two lots with buildings it is also considered committed. Water must be available either by individual or community system. These represent the minimum; if more facilities are present then the area is further justified as built and committed, primary uses are single-family residential, multi-family residential where urban facilities and services are available, and existing public recreation facilities. Secondary uses such as community facilities, new public recreation facilities, government uses and similar uses may be included by County review.
  
4. RR-10 (Rural Residential): Section 1.1357: In the RR-10 zone the following regulations shall apply
  - (1) Uses Permitted Outright: The following uses and their accessory uses are permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, and 1.1901 to 1.1999: (a) One single-family dwelling unit. (b) Farm and forest use. (c) A recreational vehicle or other approved temporary housing to be used to dwelling purposes, during the construction of a single-family residential dwelling unit for which a building permit has been

issued. The use shall not exceed a period of one year. (d) Beachfront protective structures. (2) Conditional Uses Permitted: The following uses may be permitted subject to the applicable provisions of LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999: (a) Cemetery. (b) Church, non-profit religious or philanthropic center. (c) Community center. (d) Day nursery, nursery school-kindergarten, day care center, or similar facility. (e) Governmental structure or use. (f) Home occupation. (g) Nursing home, retirement home or similar facility. (h) Golf course and ancillary uses, but excluding Page-2 Terrance Lettenmaier Case File #02-LU PC-ZC-14 golf driving range, miniature golf course or similar facility. (i) Private school. (j) Public or private utility facility. (k) Radio or television transmitter or tower. (l) Transfer station. (m) Excavating, filling, dredging or wetland drainage. (n) Recreational vehicle on an individual lot. (o) Aquaculture facilities. (p) Mining. (q) Boarding of horses for profit. (r) Pilings, piers, docks, and similar in-water structures. (s) Heliports. (t) Recreational vehicle park. (u) Bed and Breakfast Inns. (3) Standards: Except as provided in LCC 1.1401 to 1.1499, 1.1501 to 1.1599, 1.1601 to 1.1699, and 1.1901 to 1.1999 the following standards shall apply: (a) Lot Size: The minimum lot size shall be 10 acres. (b) Yards, Special Setbacks: Yards and special setbacks shall be the same as required in an R-I zone. (c) Height: No structure shall exceed 30 feet in height. (d) Lot Width to Depth Ratio: Lots shall have an average width to depth ratio not in excess of 1 to 6.

5. Lincoln County Land Use Code, Section 1.1235, Quasi-Judicial Amendments: A quasi-judicial amendment to the Comprehensive Plan and Zoning Maps may be authorized provided that the proposal satisfies all applicable requirements of this Chapter and also provided that the Applicant, in a quasi-judicial hearing, demonstrates that:
  - 1) The change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals; and
  - 2) There has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone; or
  - 3) The zoning previously adopted for the area was in error; or
  - 4) There is a public need for the change being sought.

#### Analysis

1. Land Use Issues. ORS 222.460, which sets forth the City withdrawal procedure, does not provide any guidance as how to zone designations which should be applied to the withdrawn Property. As stated, the Property remains within the City of Newport Urban Growth Boundary and is designated high density residential/destination resort in the City of Newport Comprehensive Development Plan. One might argue that this designation should follow the Property in some manner, but in fact, such a designation would be most inappropriate, since it will not be part of any possible destination resort. The Property is adjacent to the remaining property earmarked for resort development, but also is adjacent to resource property on the East. It would be best, and in the public interest, to zone this as RR-10, providing a transitional buffer between the potential Wolf Tree Planned Destination Resort and the forest land in the area. Applicants are agreeable to such a zoning designation, and by this Application are requesting that it be granted. With the RR-10 zoning, there should be a Suburban Residential Comprehensive Plan designation.
2. Comprehensive Plan. As indicated in the findings of fact, above, this Property has been

"urbanized" through the City of Newport planning process, and for many years has been, and remains, within the Urban Growth Boundary of the City of Newport. Lincoln County Comprehensive Plan section 1.0190(6) is clear that this Property, being within the Urban Growth Boundary of the City of Newport, should be designated Suburban Residential. This designation, consistent with the City's placement of the Property in its Urban Growth Boundary, is consistent with Section 1.0030 of the Lincoln County Comprehensive Plan and Zoning Regulations (Urbanization Policies), which calls upon Lincoln County to "work with citizens and cities of Lincoln County in the ... maintenance ... of Urban Growth Boundaries."

3. **Statewide Planning Goals.** The requested action is consistent with the approved Lincoln County Comprehensive Plan, and therefore with the Statewide Planning Goals.
4. **Criteria for Zone Change.** Application of the normal zone change criteria is difficult in this circumstance, since Applicant is seeking to establish a Lincoln County zoning designation where there currently is no designation at all. When this Property was taken into the City of Newport, it was given a high density residential zoning designation, with a destination resort overlay. The City determined that it was appropriate for the Property to be zoned high density residential because of public need. It was contemplated then that urban utilities would be provided by reason of the construction of a destination resort, which has never gone forward, and of which the Property will no longer be a party if it does go forward. Applicants believe that the RR-10 zoning designation is appropriate, under all of the applicable criteria:
  - (1) In the course of proceedings to withdraw the Property from the City, the zoning designations "high density residential" and "destination resort" were determined by the City of Newport to be inappropriate for this Property, since the original resort plan had not moved forward, and did not appear likely to move forward in the near future. Municipal utilities were unlikely to become available, making it unsuitable for high density residential use but still suitable for residential use (change in circumstances). The Property remains in the City's urban growth boundary, and any type of designation as a resource zone would be inappropriate.
  - (2) The destination resort overlay as previously imposed by the City was in error, insofar as the destination resort proved not to be feasible in the time frame contemplated at the time of adoption, in fact did not occur, and appears unlikely to occur in the foreseeable future. The City zoning ordinance has no truly low density rural zoning designation, as would be appropriate for this property, while still allowing the construction of one single family residence on this large parcel. The City advised it would be best to withdraw the Property from the City boundaries, so the Property could be assigned a lower density residential designation under Lincoln County land use codes, and the City did proceed with and complete the withdrawal (de-annexation). Since the Property remains in the urban growth boundary, a residential zoning designation under the County ordinance seems most appropriate, and RR-10 zoning is appropriate, given that this Property lies adjacent to the high density residential zone property which remains in the City of Newport, and will likely be developed in the future, and at the same time is adjacent to a timber conservation zone. The RR-10 designation creates an appropriate buffer between these two zones. There are also a number of small lots which have been created to the

north of this Property.

- (3) There is a public need for the imposition of a zone upon this Property, since the Property currently has no zoning designation under the County code. This action cannot truly be characterized as a "change" in the zone, but there is a public need for the Property to have a zone designation, and that which is proposed is the most appropriate.

#### Conclusions

1. The RR-10 zone designation and Rural Residential Comprehensive Plan designation requested by the Applicants are in accord with the Comprehensive Plan goals and policies; and
  - (1) There has been a substantial change in the character of the area since the original City of Newport zoning was adopted, and in fact there is no existing zoning designation or Comprehensive Plan designation for this Property, requiring the application of appropriate zoning and Comprehensive Plan designations; and
  - (2) The RR-10 zone designation and Rural Residential Comprehensive Plan designation requested by the Applicants appear to be the most appropriate for this Property and this time; and
  - (3) The zoning previously adopted for the area was in error, in that after the elapse of many years it is not, nor is it likely to be, developed as a Planned Destination Resort or for any high density residential use; and
  - (4) There is a public need for the change being sought.

The record and findings support the conclusion that the Application for a suburban residential designation under the Lincoln County Comprehensive Plan, and an RR-10 zoning designation under the Zoning Ordinance, complies with the applicable criteria of the Lincoln County Code, and should be approved.

#### Order

Based on the conclusion that the record as a whole demonstrates that the Application for a suburban residential designation under the Lincoln County Comprehensive Plan, and an RR-10 zoning designation under the Zoning Ordinance, complies with the applicable criteria of the Lincoln County Code, it is ORDERED by the Lincoln County Planning Commission that the Application in Case File #02-LUPC-ZC-14 be approved, and that the Property which is the subject of the Application be so designated, and the plan and zoning maps be modified accordingly.

This ORDER was presented to, and approved by, the Lincoln County Planning Commission on Dec 16<sup>th</sup>, 2014.

  
Cris Torp, Chair  
Lincoln County Planning Commission