

ORIGINAL

ORDINANCE NO. 1058

AN ORDINANCE OF THE CITY OF NEWPORT, WASHINGTON, ANNEXING CERTAIN REAL PROPERTY TO SAID CITY, DESIGNATING THE VARIOUS ZONES OF THE ANNEXED PROPERTY, DIRECTING MODIFICATION OF THE OFFICIAL ZONING MAP AND FIXING THE EFFECTIVE DATE OF ANNEXATION.

WHEREAS, Wes Mendenhall has provided notice to the City of his desire to commence annexation proceedings and has presented a Petition for Annexation which includes requested zoning classifications within the property proposed to be annexed, said property is more particularly described in Exhibit A, which is attached hereto and incorporated herein by this reference, and

WHEREAS, following legal notice as required by law, Mr. Mendenhall presented his proposal to the City Planning Commission which forwarded the Petition and related documents to the City Council with the recommendation that the Council generally approve the annexation request, provided various identified issues could be resolved, and

WHEREAS, after notification as required by law, Mr. Mendenhall presented his request for annexation to the City Council, and the City Council indicated that it would look favorably upon the request if an acceptable Annexation Agreement could be reached with Mr. Mendenhall, and

WHEREAS, Mr. Mendenhall and the City of Newport have completed negotiations and executed an Annexation Agreement dated July 28, 2009 which is attached hereto as Exhibit B and incorporated herein by this reference, and

WHEREAS, the Annexation Agreement, including the proposed zoning classifications within the property, addresses the issues raised by the Planning Commission and the City Council and is acceptable to all parties,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWPORT, WASHINGTON DO ORDAIN AS FOLLOWS:

SECTION 1: DESCRIPTION OF ANNEXED PROPERTY:

The real property described in Exhibit A, situated in Pend Oreille County, Washington, is hereby annexed to the City of Newport subject to the specific terms and conditions contained in the Annexation Agreement between Wes Mendenhall and the City of Newport which is attached hereto as Exhibit B and incorporated herein in its entirety.

SECTION 2: ZONING:

The annexed property shall be zoned R-1 Single-Family Residential Zone, R-3 Multifamily Residential Zone, C-2 Highway Commercial Zone, I Industrial Zone and OS Open Space Zone as set forth in Exhibit C, a map, which is attached hereto and incorporated herein by this reference.

SECTION 3: MODIFICATION OF TEXT AND OFFICIAL MAP:

Pursuant to the City of Newport Development Regulations, Chapter 17.02, the text and official map of the City of Newport will be amended to include the property described above which has been annexed into the city, and in accordance with that Chapter, the Mayor and City Clerk shall promptly add the area annexed to the official map, designate the zoning as shown on Exhibit C and sign the amended map.

SECTION 4: DUTY OF CITY CLERK: The City Clerk is directed to provide: (1) the Pend Oreille County Auditor a certified copy of this ordinance, a map of the Property, related legal description including designated zoning, and request that the above be maintained on file in the office of the Auditor; and (2) a certified copy of this Ordinance to the Pend Oreille County Board of County Commissioners, pursuant to RCW 35A.14.140.

SECTION 5: SEVERABILITY:

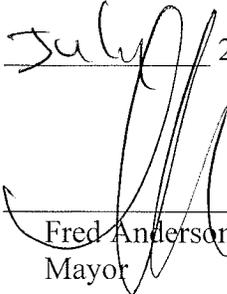
If any part of this Ordinance is held by a court of competent jurisdiction to be unconstitutional or otherwise unenforceable, such finding shall not invalidate any other part of this Ordinance.

SECTION 6: EFFECTIVE DATE:

Pursuant to the City of Newport Development Regulations, Chapter 17.06.039(H), this annexation shall be final and conclusive 21 days following publication of the Notice of Decision, unless the original applicant or a party adversely affected by the decision

makes proper application to a court of competent jurisdiction seeking to reverse or modify the annexation.

PASSED AND ADOPTED THIS 28 DAY OF July 2009.

By: 
Fred Anderson
Mayor

ATTEST:


Nickole Schutte
City Clerk/Treasurer

APPROVED AS TO FORM:

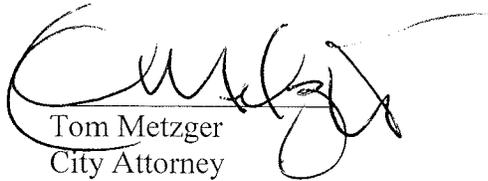

Tom Metzger
City Attorney

EXHIBIT "A"

Legal Description for Boundary of "Black Rail Ridge"

July 13, 2009

All those portions of Sections 23, 24 and 26, Township 31 North, Range 45 East, Willamette Meridian, Pend Oreille County, Washington. More particularly described as follows:

Beginning at the Southeast Corner of said Section 23; thence $S89^{\circ}49'31''W$, along the South line of said Section 23, 1330.51 feet to the Southeast corner of Parcel #453123-52-0013 as recorded in Quit Claim Deed #0302161; thence $N0^{\circ}07'44''W$ 76.58 feet to the Northeast corner of said Parcel #453123-52-0013; thence $S89^{\circ}49'31''W$ 654.51 feet to the Northwest corner of said parcel #453123-52-0013; thence $S47^{\circ}23'52''W$ 113.51 feet, more or less, to a point on the South line of said Section 23 (also being the Northeast corner of Parcel #453126-52-0002 as recorded in Quit Claim Deed #0302162); thence $S47^{\circ}23'52''W$ 148.22 feet to the Southeast corner of said Parcel #453126-52-0002; thence $S89^{\circ}49'31''W$ 511.13 feet to the Southwest corner of said Parcel #453126-52-0002; thence $N33^{\circ}14'26''E$ 119.80 feet to a point on the common line between Sections 23 and 26 (also being the Northwest corner of said Parcel 453126-52-0002); thence $N89^{\circ}49'31''E$, along said Section line, 460.24 feet; thence Northerly, along a curve to the right, 248.15 feet ($\Delta = 10^{\circ}17'06''$, radius = 1382.39 feet, chord = $N40^{\circ}21'24''E$, 247.82 feet); thence Northerly, along a spiral curve to the right (chord = $N48^{\circ}10'40''E$, 196.47 feet); thence $N49^{\circ}29'57''E$ 907.80 feet; thence Northerly, along a curve to the right, 470.43 feet ($\Delta = 7^{\circ}09'00''$, radius = 3769.72 feet, chord = $N53^{\circ}04'27''E$, 470.12 feet); thence $N56^{\circ}38'57''E$ 252.47 feet to the Northwest corner of Lot 14 (as shown on Revised-Survey for Cliff Balcom, Instrument #219168); thence $S89^{\circ}46'52''W$ 412.08 feet to the Southerly Right-of-Way line of the Great Northern Railroad; thence $N55^{\circ}57'23''E$, along said Right-of-Way line, 314.13 feet; thence continuing, along said Right-of-Way line, along a spiral curve to the right (chord = $N57^{\circ}23'38''E$, 396.12 feet); thence continuing, along said Right-of-Way line, along a curve to the right 435.86 feet ($\Delta = 9^{\circ}37'32''$, radius = 2594.46 feet, chord = $N65^{\circ}06'09''E$, 435.35 feet) to a point on the common line between Sections 23 & 24; thence $S0^{\circ}04'19''E$, along said Section line, 53.31 feet; thence Easterly, along a curve to the right, 69.84 feet ($\Delta = 1^{\circ}34'21''$, radius = 2544.46 feet, chord = $N70^{\circ}17'09''E$, 69.84 feet); thence along a spiral curve to the right (chord = $N73^{\circ}58'30''E$, 392.34 feet); thence $N75^{\circ}24'20''E$ 2290.57 feet, along said Right-of-Way line, to its intersection with the North-South Center Section line of said Section 24; thence $S0^{\circ}03'09''W$, along said Center Section line, 1874.54 feet to the Northeast corner of the $SE\frac{1}{4} SE\frac{1}{4} SW\frac{1}{4}$ of said Section 24; thence $S89^{\circ}43'01''W$, along the North line of said $SE\frac{1}{4} SE\frac{1}{4} SW\frac{1}{4}$, 664.07 feet to the Northwest corner of said $SE\frac{1}{4} SE\frac{1}{4} SW\frac{1}{4}$; thence $S0^{\circ}01'17''W$, along the West line of said $SE\frac{1}{4} SE\frac{1}{4} SW\frac{1}{4}$ of Section 24, 661.49 feet to the Southwest corner of said $SE\frac{1}{4} SE\frac{1}{4} SW\frac{1}{4}$; thence $S89^{\circ}40'09''W$, along the Southerly line of said Section 24, 663.72 feet to the Southeast corner of the $S\frac{1}{2} SW\frac{1}{4} SW\frac{1}{4}$ of said Section 24; thence $N0^{\circ}00'35''W$, along the Easterly line of said $S\frac{1}{2} SW\frac{1}{4} SW\frac{1}{4}$, 662.04 feet to the Northeast corner of said $S\frac{1}{2} SW\frac{1}{4} SW\frac{1}{4}$; thence $S89^{\circ}43'01''W$, along the North line of said $S\frac{1}{2} SW\frac{1}{4} SW\frac{1}{4}$, 1328.14 feet to the Northwest corner of said $S\frac{1}{2} SW\frac{1}{4} SW\frac{1}{4}$ of Section 24; thence $S0^{\circ}04'19''E$, along the West line of said $S\frac{1}{2} SW\frac{1}{4} SW\frac{1}{4}$ of said Section 24, 663.14 feet to the point of beginning.

ANNEXATION AGREEMENT

THIS AGREEMENT is made effective this 28th day of July, 2009 (the "Effective Date"), by and between the *City of Newport, 200 S. Washington Ave., Newport WA 99156*, a municipal corporation organized pursuant to the laws of the State of Washington, hereinafter termed the "City," and *Mendenhall Properties LLC, 4400 S. Schilling Loop, Post Falls ID 83854*, a limited liability company in the State of Idaho, hereinafter termed the "Owner".

WHEREAS, the Owner owns a tract of land adjacent to the City limits of the City of Newport, which the Owner wishes to develop in accordance with zoning designations applied by the City of Newport. Said property for which annexation is requested and the zoning for various areas within said property is more particularly described in Exhibit A which is attached hereto and incorporated herein by this reference.

WHEREAS, the Mayor and City Council of the City of Newport have determined it to be in the best interests of the City to annex the lands described above (hereinafter, Described Lands), subject to the Owner performing the covenants and conditions hereafter set forth;

WHEREAS, the Owner has earnestly worked with the City of Newport and Pend Oreille County to amend the Urban Growth Boundary, present conceptual development plans, propose appropriate zoning classifications and otherwise prepare the property for potential annexation; and

WHEREAS, RCW 36.70B.070 provides the City may enter into this Agreement to further the proposed annexation of the Described Lands.

NOW THEREFORE, IN CONSIDERATION of the covenants and conditions set forth herein, the parties agree as follows:

1. **Purpose:**

Owner enters into this Agreement to facilitate annexation of the Described Lands and mitigate the effects of annexation of the Described Lands. Owner acknowledges the City in its sole legislative discretion may annex the Described Lands. The term "Owner" is deemed to include any assigns and successors in interest in the Described Lands.

2. **Procedure:**

The City, by authority of RCW 35A.14.120 – 35A.14.150 has considered annexation of the Described Lands pursuant to the direct petition method of annexation. Owner has provided notice to the City of its desire to commence annexation proceedings and has presented a Petition for Annexation. Following legal notice as required by law, the Owner presented its proposal to the City Planning Commission which forwarded the Petition to the City Council with the recommendation that the Council generally approve the annexation request, provided various identified issues could be resolved. After notification as required by law, the Owner presented his request for annexation to the

City Council, and the City Council indicated that it would look favorably on the request if an acceptable Annexation Agreement could be reached with the Owner. This Annexation Agreement addresses the issues raised by the Planning Commission and the City Council. Following execution of this Annexation Agreement by the City of Newport and Mendenhall Properties LLC, the City Council agrees to approve and pass an Annexation Ordinance which annexes the property subject to the terms and conditions of this Agreement.

Development Standards:

- 3.1 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:
- A. "Applicable Rules" means those provisions set forth in Titles 12 through 18 of the City of Newport Code ("CNC") as amended. Applicable Rules also include, without limitation, Chapter 43.21 RCW [environmental]; the City Comprehensive Plan including applicable policies and procedures (including LOS and any other written policy). Applicable Rules shall not include any provisions of the state building code including any building, fire, plumbing or electrical codes.
 - B. "Subsequent Rules" means all ordinances, resolutions, codes, rules, regulations and official policies of city, amended or adopted after the Effective Date and prior to the expiration or termination of this Agreement which amend any Applicable Rules, are inconsistent with any Applicable Rules or are inconsistent with this Agreement, EXCEPT for subsequent changes regarding 1) further subdivision of platted lots, 2) building height restrictions in residential areas and 3) rules prohibiting accessory dwellings above detached garages, all of which shall be considered "Applicable Rules".
 - C. "Subsequent Project Approvals" means all approvals required by the City after approval of this Agreement to use, construct or occupy the Described Lands including, but not limited to, Clearing and Grading Permits, Preliminary and Final Subdivision approval, Binding Site Plan approval, Building Permits and Occupancy Permits as required by the Applicable Rules or State law.
- 3.2 Right to Develop. During the Term and subject to the terms and conditions of this Agreement, including the reservations of authority set out in Section 3.6 herein below, Owner shall have a vested right to develop, construct and repair improvements on the Described Lands in accordance with, and to the extent of the Applicable Rules and this Agreement; provided all such development, construction, and repair shall be subject to Subsequent Project Approvals pursuant to the Applicable Rules of this Agreement. Except as expressly set forth herein, this Agreement shall not be construed as a waiver of any of the conditions of development or use of the Described Lands, nor shall this Agreement relieve Owner from Owner's obligations to comply with rules and regulations applicable to the Described Lands and Owner's development of the same, and to secure such authorizations and permits as may be imposed as a condition of any use or work on the Described Lands.

- 3.3 Effect of Agreement on Subsequent Rules. Subsequent Rules shall not be applicable to the Described Lands except as otherwise provided in this Agreement, including Section 3.5(a) – (d).
- 3.4 Changes and Amendments. Any Subsequent Project Approval involving a change or amendment of the improvements on the Described Lands but which do not create new significant environmental impacts under SEPA all as set forth in Chapter 197-11 WAC, shall not require an amendment to this Agreement and shall be subject to the Applicable Rules. Any Subsequent Project Approval involving a change or amendment of the improvements on the Described Lands that may have a probable significant adverse environmental impact not evaluated under SEPA shall be subject to the Subsequent Rules.
- 3.5 Reservations of Authority. Notwithstanding any other provision of the Applicable Rules and this Agreement, the following shall apply to the Development of the Described Lands.
- (a) Procedural regulations which are not substantive relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.
 - (b) Regulations governing construction standards and specifications as follows: the Uniform Building Code, Uniform Plumbing Code, National Electric Code, and Uniform Fire Code.
 - (c) Taxes, fees or assessments (including mitigation) adopted after the Effective Date which apply uniformly throughout the City or within a defined area of benefit which includes the Described Lands.
 - (d) Regulations which the City and Owner mutually agree, by written consent, can be applied to development of the Described Lands. In the event that the City and Owner desire to apply a Subsequent Rule, the City shall provide public notice of the proposed application of the Subsequent Rule to the Project and shall provide an opportunity for public comment. The City shall take any public comments into account prior to written consent to apply such regulation to the Project.
- 3.6 Modification or Suspension by State or Federal Law. In the event that state or federal laws or regulations, enacted after the Effective Date, prevent or preclude either party from complying with one or more of the provisions of this Agreement, then to the extent feasible such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. Upon enactment of any such new law or regulation, the parties shall meet and confer in good faith to determine the feasibility of any such

modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement.

4. *Miscellaneous:*

4.1 Term. This Agreement shall commence on the Effective Date. In the event of any appeal by a third party of the City's approval of this Agreement, the Effective Date shall be automatically extended to the date that any such appeal is finally resolved. Owner shall have ten (10) years from the Effective Date in which to apply for all Subsequent Project Approvals unless this Agreement is sooner terminated or extended by mutual written consent of the City and the Owner. An issued building permit for an improvement on the Described Lands shall continue until such building permits (including any extension to the term of the building permits which the City may grant) expire or said improvements are complete, whichever occurs first.

4.2 Permitted Delays. In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time before termination or expiration of this Agreement by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, national shortages of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties or any other cause beyond the reasonable control of the delaying party. Delaying Party shall promptly notify the other party in writing of any delay hereunder as soon as possible after the same has been ascertained.

4.3 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Mutual agreement of the parties; or
- (b) expiration of the Term.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement.

5. *Owner Covenants:*

Owner Covenants and Agreements. Owner hereby covenants and agrees to the following:

- 5.1 (a) Development Approval. Owner shall (i) prior to a subsequent Project Approval transfer and complete the matters set forth in Section 6 herein and (ii) obtain all required permits prior to commencing construction on the Described Lands.
- (b) SEPA. Along with permit application, Owner shall submit all required documentation for the purpose of evaluating the environmental impacts and providing for reasonable mitigation as determined according to state law and City policy.
- 5.2 Utilities. Owner shall use Newport water supply system and Newport sanitary sewer system to serve future development of the Described Lands and to be responsible for design and construction of infrastructure necessary to serve the Described Lands including payment of all required fees and charges including all connection and/or capitalization charges generally applicable at the time service is requested. At present the property subject to this Agreement is located within the upper Newport water service area. Water service shall be provided in accordance with rules and regulations of the City of Newport. City does not warrant that sanitary sewer and water capacity will be available at the time Owner requests connection to the specified public systems and Owner holds the City harmless if sewer and water capacity is not available. Owner recognizes that City operates its sanitary sewer and water systems in a proprietary capacity.

Owner shall, as a condition of receiving City Utility services, grant and convey easements on, over and across the Described Lands for the purpose of receiving and facilitating such service all at no cost to the City.

- 5.3. Construct to City Standards. Owner agrees that all improvements required by this Agreement or by City codes shall be built to City standards or to the standards of any public agency providing service to the development, adhering to all City policies and procedures; including, but not limited to the sanitary sewer improvements, water lines, fire hydrants, flood works, storm water management, curbs, sidewalks, and roads. Such policies include extending the utility lines in a manner acceptable to the City to make service available to adjoining lands and to maintain continuity of municipal systems at minimal public cost.

If Owner fails to comply with applicable laws in the course of constructing improvements, public or otherwise, on the lands subject to this Agreement, Owner consents to suspension of issued permits, or denial of certificates of occupancy until such compliance is attained.

- 5.4 Phasing of Project. All parties recognize that consistent with current City policy, all public improvements to be completed by Owner may be completed in phases consistent with the development of each phase such that each phase can stand alone should the project or development not otherwise be completed. The phasing of any development shall be the subject of separate agreement, unless otherwise provided by law.

- 5.5 As-Built Drawings/Testing and Inspection. As-built drawings stamped by a licensed professional engineer shall be provided to the City within thirty (30) days of the date of substantial completion of construction. If as-builts are not provided as required by this agreement, City is authorized to suspend further issuance of building permits upon the Described Lands or to discontinue utility service. In no event shall City accept public improvements for maintenance or allow occupancy of constructed improvements upon the Described Lands until suitable "as-builts" are provided and until planned improvements have complied with inspection requirements and have been accepted for public maintenance or approved for private use. The use of sureties may be allowed when in the public interest and consistent with City code requirements.

All required public improvements associated with development of the Described Lands shall be inspected and tested during construction by Owner's engineer with all such costs of testing and inspection to be borne by the Owner. The Owner shall provide the City Engineer with inspection field reports and test results accompanied by a certification that the improvements have been installed in compliance with applicable City requirements. A representative of the City shall be present at the pressure testing of water mains and sanitary sewer mains. The City shall be notified at least twenty-four (24) hours before testing.

- 5.6 Undeveloped Property. The Described Lands shall be maintained free and clear of all noxious weeds, debris, equipment and other improvements which are inoperable or in a state of disrepair so as to constitute a nuisance under City or State Law. Upon notice from the City, owner shall take all reasonable action necessary to cure the nuisance, which for purposes of this paragraph includes the elimination of noxious weeds, in a manner satisfactory to the City.

6. ***Consideration:***

Owner agrees to provide the following to the City at the times specified herein. The consideration specified are deemed by the parties to be reasonable.

- 6.1 Water Rights. Prior to commencement of any development of the property, to include a Subsequent Project Approval, Owner shall transfer, convey and grant to the City all water rights associated with the Described Lands. Owner shall take all necessary action to maintain the validity of the water rights and shall continue the beneficial use of the same. Owner may use the water right until such time that City Water Service is available, at which time Owner shall discontinue any use of the water right for any other purposes.
- 6.2 Feasibility studies prior to development. Prior to commencement of development of the property, Owner shall conduct the following studies that address the following areas of concern identified by the City of Newport;
- a) Transportation Impact Analysis that addresses ingress/egress to the property, Washington Department of Transportation requirements for access to the

highway, railway crossing, fire access and proposed roads and circulation within the development phases.

- b) Water and Sewer Studies that address the availability and capacity of water service, fire flows and wastewater collection and treatment and the proposed routing of water and sewer service to and within the phases of development.
- c) Wetlands Study that delineates and analyzes wetlands on the project site, including any permit requirements that may be necessary with development.
- d) Cost/Benefit Analysis that will address the anticipated cost to the City of Newport to provide services to proposed development and the anticipated benefit from taxes and fees from the developed property.

6.3 Hold Harmless. Owner hereby agrees to and shall hold City harmless from any claim, suit or liability for costs, fees, expenses or damage due to inability to provide water or sewer services as a result of lack of volume or capacity, rights, permission or permits issued by a governmental authority or any other cause beyond the reasonable control of the City. The City will exercise good faith to resolve capacity limitations and any governmental agency controls that would limit the continued development of the Described Lands as permitted by law.

6.4 Covenants Run With the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Described Lands, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Described Lands hereunder, (a) is for the benefit of such properties and is a burden upon the Described Lands, (b) runs with the Described Lands, and (c) is binding upon each successive owner during its ownership of Described Lands or any portion thereof, and each person having any interest therein derived in any manner through any owner of the property or any portion thereof, and shall benefit such party and the Described Lands hereunder, and each other person succeeding to an interest in such Described Lands.

7. Reservation of Authority:

This Agreement is not intended to, nor shall it be, a waiver of the City's right and duty to exercise its police power authority pursuant to the State Constitution, Article 11, Section 11, related State Law and all other authority reserved to the City for the preservation of the public health, safety and welfare. Said reservation includes the right of the City to enact moratoria, interim zoning regulations, and

take all other legislative and administrative action that relates to the use and development of the Described Lands. The City, in its sole and absolute discretion, may decline, delay or condition utility service to the Described Lands.

- 8.1 Relationship of Parties. It is understood and agreed by the parties hereto that the contractual relationship created between the parties hereunder is that Owner is an independent contractor and not an agent of City. Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owner joint venturers or partners.
- 8.2 Notices. All notices under this Agreement shall be in writing and shall be effective when personally delivered or 48 hours after deposit in the United States mail first-class, as registered or certified mail, postage prepaid, return receipt requested, to the following representatives of the parties at the addresses indicated below:

To City:

City of Newport
200 S. Washington Ave.
Newport, WA 99156

and:

To Owner:

Wesley Mendenhall
Mendenhall Properties LLC,
4400 S. Schilling Loop,
Post Falls ID 83854,

Either party may change its address by giving notice in writing to the other party.

- 8.3 Entire Agreement. This Agreement is complete and sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.
- 8.4 Amendments. This Agreement may only be amended in writing signed by the City and the Owner.
- 8.5 Recordation of Agreement. This Agreement and any amendment or termination to it shall be recorded with the County Auditor.

- 8.6 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable by a court of competent jurisdiction the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement or the rights and obligations of the parties have been materially altered or abridged.
- 8.7 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of Washington.
- 8.8 Assignment. The parties acknowledge that Owner of the Described Lands likely will involve sale, conveyance, or assignment of all or portions of the Described Lands to third parties who will own, develop and/or occupy portions of the Described Lands and buildings thereon. Owner shall have the right from time to time to assign or transfer all or any portion of its respective interests, rights, or obligations under this Agreement or in the Described Lands to other parties acquiring an interest or estate in all or any portion of the Described Lands, including a transfer of all interests through foreclosure (judicial or nonjudicial) or by deed in lieu of foreclosure. Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement.

In any such transfer or assignment, if the transferee or assignee agrees in writing to assume the obligations herein pertaining to the Described Lands transferred or assigned, then the transferee or assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and Owner who has so transferred or assigned its rights, shall be thereupon be deemed released of liability under this Agreement for the property transferred or assigned, whether or not such release is expressly stated in such transfer or assignment; provided, however, that such Owner shall remain liable for any breach that occurred prior to the transfer or assignment of rights to another party and for those portions of the Described Lands still owned by such Owner.

- 8.9 No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
- 8.10 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

8.11 Voluntary Agreement. The Parties hereby represent and acknowledge that this Agreement is given and executed voluntarily and is not based upon any representation by any of the Parties to another Party as to the merits, legal liability, or value of any claims of the Parties or any matters related thereto.

8.12 Authority. The undersigned covenant and represent that they are fully authorized to enter into and to execute this Agreement.

9. ***Enforcement - Attorney's Fees***: Should either party require the services of legal counsel to enforce compliance with the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and related costs of enforcement.

10. ***Default:***

In the event of a default or failure to perform any of the duties, obligations and covenants contained in this Agreement, the City or Owner shall have the right to enforce this Agreement, both at law and in equity, including lawsuits for an injunction and/or specific performance. The Parties stipulate that damages are not an adequate remedy available at law. Either Party's failure to perform its obligations set forth in this Agreement, shall be deemed a breach of contract with the right to terminate upon written notice to the other party, notwithstanding Section 4.3 herein.

11. ***Mediation:***

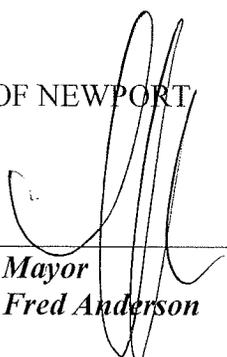
Prior to any Party filing an action in a court of law to enforce any term of this Agreement or to defend the right of any Party hereto, the Parties shall first meet and confer to include a sponsored mediation. The cost of Mediation shall be shared between the Parties.

IN WITNESS WHEREOF, the City of Newport has caused this Agreement to be executed by its Mayor and City Clerk, and the Owner has executed this Agreement to be effective the day and year first above written.

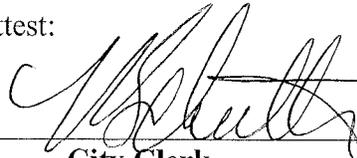
[Signature Page to Follow]

CITY OF NEWPORT

By: _____

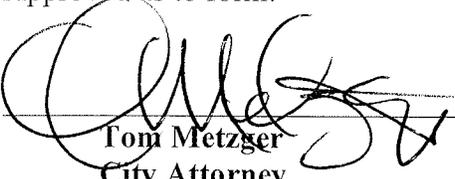

*Mayor
Fred Anderson*

Attest:



**City Clerk
Nickole Schutte**

Approved as to form:



**Tom Metzger
City Attorney**

OWNER:

By _____

*Wesley Mendenhall, Owner
Mendenhall Properties, LLC*

SECTIONS 23, 24 and 26, TOWNSHIP 31 NORTH, RANGE 45 EAST, W.M.

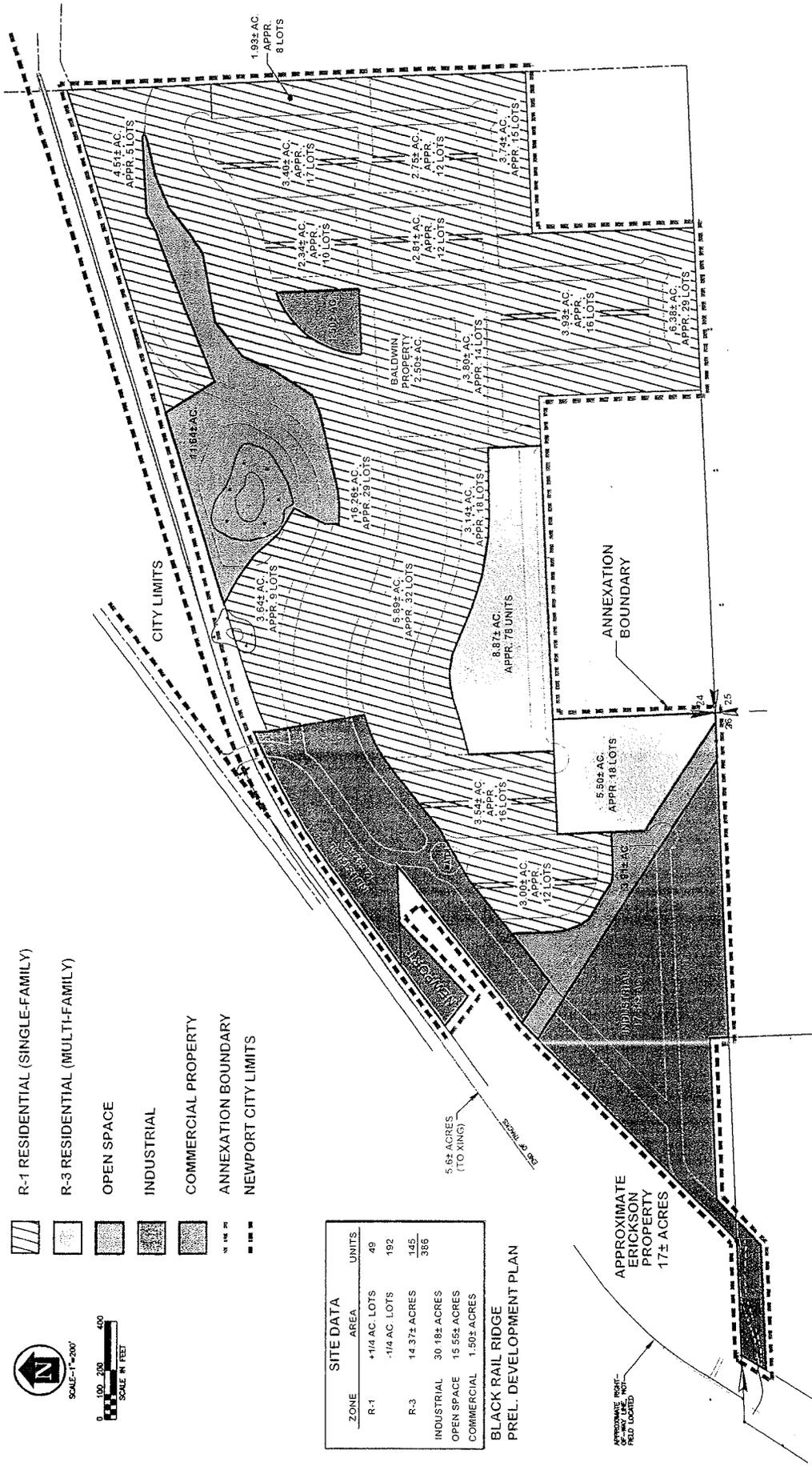
PEND OREILLE COUNTY, WASHINGTON

-  R-1 RESIDENTIAL (SINGLE-FAMILY)
-  R-3 RESIDENTIAL (MULTI-FAMILY)
-  OPEN SPACE
-  INDUSTRIAL
-  COMMERCIAL PROPERTY
-  ANNEXATION BOUNDARY
-  NEWPORT CITY LIMITS



ZONE	AREA	UNITS
R-1	+114 AC. LOTS	49
R-1	-114 AC. LOTS	192
R-3	14.37± ACRES	145
R-3	366	366
INDUSTRIAL	30.18± ACRES	
OPEN SPACE	15.58± ACRES	
COMMERCIAL	1.50± ACRES	

BLACK RAIL RIDGE
PREL. DEVELOPMENT PLAN



NOTES:

THE DATA COLLECTION PROCEDURES ARE DESIGNED TO MEET THE COMBINED REQUIREMENTS OF NATIONAL MAP ACCURACY STANDARDS. ALL CONTOURS WILL BE WITHIN 1/2 A CONTOUR INTERVAL EXCEPT WHERE SPECIFIED. THE HORIZONTAL POSITIONS SHALL BE WITHIN 1/20 OF ONE INCH AT THE SPECIFIED MAP SCALE, AND FEDERAL HIGHWAY ADMINISTRATION STANDARDS (DATE OF ALL SPOT ELEVATIONS SHALL BE WITHIN 1/10000 OF THE FLIGHT HEIGHT FOR PHOTOGRAPHY EXCEPT WHERE INDICATED).

EXHIBIT 'C'

SHEET TITLE: EXHIBIT DRAWING FOR MENDENHALL PROPERTIES, LLC

JAMES L. SWEET & ASSOCIATES, INC.
CONSULTING ENGINEERS
NEWPORT, WASHINGTON, 99156
(509) 447-3626

ENGINEER'S STAMP
DATE: _____
REVISION: _____
NO. _____

SHEET: 2-23-09
SCALE: 1"=200'
DATE: 11/11/09
PROJECT NO.: 13085-00-002
JOB NO.: 13085-00-002
SHEET 1 OF 1