



1           acres. Of the 900 tax lots, approximately 706 are developed with residential uses. The  
2           remaining lots are undeveloped.

3           E. Individual properties in the Annexation Area receive City water service as a special  
4           service under the terms of LCMC §§13.12.040-13.12.050 and related provisions.

5           F. The Annexation Area is served by the Roads End Sanitary District. The City by  
6           agreement treats the waste from the RESD system and disposes of such waste.

7           G. With the exception of the Roads End State Park which is zoned PF, the current zoning  
8           for the Annexation Area is Lincoln County Residential Zone R-1-A.

9           H. The City Council has considered, in relation to annexation of the Annexation Area, a  
10          number of matters including but not limited to:

- 11          1. The need for orderly, economic provision for public facilities and services;
- 12          2. The urbanization of the area which is presently developed with more than 700  
13          homes;
- 14          3. The agreement between the City of Lincoln City and the Roads End Sanitary  
15          District, under which the City maintains and repairs the sanitary sewer, and treats  
16          and disposes of waste from properties in the RESD;
- 17          4. The agreement between the City of Lincoln City and the (original) Roads End  
18          Water District which expired in 2003, under which the City provided water as a  
19          special service to individual properties in the urban growth area of Roads End. The  
20          City has provided water service pursuant to adopted ordinances that provide for  
21          water service in exchange for the property owner's consent to annex, with an  
22          agreement to waive the time limitation on such consent;
- 23          5. The applicable provisions of the City's Comprehensive Plan, Comprehensive Plan  
24          Urbanization Policy 5(g), which states: "Annexation of sites within the UGB shall  
25          be reviewed by the planning commission and shall be in accordance with relevant  
26          Oregon Statutes";
- 27          6. Comprehensive Plan Public Services and Utilities Policy, Individual Public Facility  
28          Policy I(1), which states: "Connection to or extension of public facilities (i.e. water  
29          and sewer) to areas outside existing city limits, but within the adopted Urban  
30          Growth Area boundary shall be conditional upon annexation to the City of Lincoln  
31          City, unless such service is provided for by written contract executed prior to

1 December 1, 1990. The requirement for annexation may be satisfied by the  
2 execution and recording of an irrevocable consent to annexation and waiver of time  
3 limitation of such annexation consent by the owner(s) of record”;

- 4 7. The need to annex land that is largely urbanized and developed and appropriate for  
5 receiving services from the City, which has planned to provide such services;
- 6 8. The need for an annexed area to be of adequate dimension so as to maximize the  
7 utility of the land resource and enable the logical and efficient extension of services  
8 to the annexed area.

9 I. ORS 215.130 states that county land use ordinances shall continue to apply unless and  
10 until the city adopts land use ordinances for the annexed area. Lincoln City Municipal  
11 Code §17.12.050 provides that: “Areas annexed to the City will be classified with the  
12 underlying county zoning designation until rezoned by the City.” The City Council  
13 interprets LCMC §17.12.050, read together with Comprehensive Plan Urbanization  
14 Policy 5(g) and the provisions of Title 17, Zoning, Chapters 17.12 Zoning Districts  
15 Established and Chapter 17.88 Amendments, to mean that:

- 16 1. Property in the Annexation Area, if annexed, will have the Lincoln County zoning  
17 designation of Residential Zone R-1-A, (with the exception of the Roads End State  
18 Park, which will retain county PF zoning) and as provided by LCMC §17.12.050,  
19 will retain that zoning designation, rather than having a standard Lincoln City Title  
20 17 Zoning designation, until and unless rezoned by ordinance adopted by the City  
21 Council;
- 22 2. Under Comprehensive Plan Urbanization Policy 5(g) and LCMC §17.12.050, an  
23 annexation ordinance automatically, and without any other action required, adopts  
24 the applicable Lincoln County underlying zoning designation for the Annexation  
25 Area and the associated Lincoln County regulations for that underlying zoning  
26 designation, and does not require any express amendment of the Comprehensive  
27 Plan and Zoning Ordinance text and maps.
- 28 3. The Annexation Area, if annexed, will retain all Lincoln County land use provisions  
29 until such time as the Annexation Area becomes subject to City zoning ordinances,  
30 through the rezoning process adopted by ordinance under City procedures.

- 1 J. LCMC Chapter 17.88 establishes procedures for amendments to the City  
2 Comprehensive Plan text and map, the Zoning Ordinance text, and the zoning map  
3 affecting areas that are already within the City’s boundaries. It does not establish  
4 procedures for annexation decisions. Rather, in accord with Comprehensive Plan  
5 Urbanization Policy 5(g): “Annexation of sites within the UGB shall be reviewed by  
6 the Planning Commission and shall be in accordance with relevant Oregon statutes”;  
7 therefore, proposed annexations must be reviewed by the Planning Commission but in  
8 all other respects, the only required procedures for annexation decisions are those  
9 established by state statute, in this case ORS 222.170(1), including by cross-reference  
10 ORS 222.120.
- 11 K. Notices of the proposed annexation and withdrawal of territory from the Lincoln  
12 County Library District, Roads End Sanitary District, and Roads End Water District  
13 and the City Council public hearing and Planning Commission public hearing on these  
14 proposals were published in the Lincoln City News Guard for two successive weeks  
15 before the hearings.
- 16 L. Notices of the proposed annexation and withdrawal of territory from the Lincoln  
17 County Library District, Roads End Sanitary District, and Roads End Water District  
18 and the City Council public hearing and Planning Commission public hearing on these  
19 proposals were posted in at least four locations in the City for two successive weeks  
20 before the hearings.
- 21 M. Individual notice of the proposed annexation and withdrawal of territory from the  
22 Lincoln County Library District, Roads End Sanitary District, and Roads End Water  
23 District and the City Council public hearing and Planning Commission public hearing  
24 on these proposals was mailed to the owners of property in the Annexation Area as  
25 reflected in the most recently available Lincoln County tax assessment roll, as well as  
26 owners of property located within 250 feet of the boundary of the Annexation Area.
- 27 N. The Planning Commission reviewed the proposed annexation and withdrawal of  
28 territory from the Lincoln County Library District, Roads End Sanitary District, and  
29 Roads End Water District and conducted a public hearing on these proposals on  
30 November 6-7, 2012, at which time the Planning Commission heard testimony and  
31 received exhibits into the record. Based on the findings in the staff report, supporting

1 documentation, and the testimony and evidence presented at the public hearing, the  
2 Planning Commission unanimously recommended the City Council annex the  
3 Annexation Area by triple majority consent-to-annex process. (Planning Commission  
4 Final Recommendation No. 2012-01.)

- 5 O. The City Council reviewed the Planning Commission recommendation on the proposed  
6 annexation and withdrawal of territory from the Lincoln County Library District, Roads  
7 End Sanitary District, and Roads End Water District and conducted a public hearing on  
8 these proposals November 19-20, 2012, at which time the City Council heard oral  
9 testimony and received written testimony into the record. At the conclusion of the  
10 public hearing the City Council directed staff to return with a final order of annexation  
11 for City Council consideration and adoption.

12 **Section 2. Findings – Triple Majority Consent to Annex.**

- 13 A. The City Councils of the City since 2003 have consistently expressed the desire to  
14 annex the Roads End Area, an area within the urban growth boundary to which the City  
15 has been providing water service as a special service since 1978, by agreement with the  
16 water customer pursuant to an intergovernmental agreement between the City of  
17 Lincoln City and the Roads End Water District. That IGA expired in 2003. The City  
18 Council adopted resolutions to terminate water service in the event the area was not  
19 annexed. In 2004 the City amended its requirements for water service outside the City  
20 to require a consent to annex when the name on the utility bill changed. Subsequently,  
21 due to protests submitted or refusals to submit the required consent documents, the City  
22 sought a declaratory judgment to determine whether its annexation program and  
23 consent-to-annex requirements were lawful; *City of Lincoln City v. Roads End Sanitary*  
24 *District et al*, Civil No. 06-1001-TC (2008).

- 25 B. “Here, the City is conditioning the provision of water on property owners consenting to  
26 annexation whenever there is a change in the payor of the water bill. ...The relationship  
27 between the new person and the City is the functional equivalent of the relationship  
28 between the City and the previous payor at the time of the initial water hook-up.  
29 Defendants agree that obtaining consents in the latter scenario would be lawful. The  
30 attempted distinction based on already existing water service to a predecessor payor is  
31 without merit.

1           Based on the foregoing, the fact that the water system and water service are  
2 already in existence does not make the City's annexation program invalid. There is no  
3 legal impediment to the City's action under Oregon statutes, law and constitution."  
4 (U.S. Magistrate Judge Thomas M. Coffin), Order in Civil No. 06-1001-TC, p. 6-7.

- 5 C. "Defendants argue that the "forced" consents are unconstitutional because the City's  
6 actions severely interfere with "rights" to vote on the annexation issue ....However,  
7 ...Lincoln City's intended method of annexation involves only the consents of  
8 landowners and does not require consents from electors (registered voters)." Order,  
9 Civil No. 06-1001-TC, p. 7. The judge concluded that if defendants Morden, Sozzi and  
10 Falk did not comply with the requirements of the annexation program, the City had the  
11 right to terminate water to their Roads End properties.
- 12 D. In Ordinance No. 2010-10 the City Council amended LCMC §13.12.050 for water  
13 service outside the city to require a consent to annex from a property owner in  
14 exchange for continued water service, where the City had not yet received such consent  
15 to annexation.
- 16 E. The City's policy since 1980 allows only one connection to a lot or parcel unless  
17 exception is made, with water service provided as a special service and provided the  
18 owner consents to annexation, waives the 1-year time limit on consent, and signs a  
19 water service agreement. These documents are recorded in Lincoln County.
- 20 F. In 2011 and 2012 the City received letters from various Roads End customers and  
21 property owners generally expressing a variety of opinions including the owner's  
22 consent was coerced or derived by threat of water turnoff. Some letters state in effect  
23 the owner revoked the owner's consent to annex; however the City finds some owners  
24 did not provide a consent to annex, or a prior owner had provided a consent. The City  
25 has not received a request to terminate water service from any owner and customer who  
26 sent a letter of protest or notice of tort claim.
- 27 G. The City Council concludes an owner's attempt to revoke the owner's agreement to  
28 consent to annex in exchange for water service is not well taken and without legal  
29 effect, absent a contemporaneous request from the owner that the City cease or  
30 terminate delivery of water service to the owner's property. The 519 consents to annex  
31 received by the City and counted for purposes of ORS 222.170(1) are valid.

1 H. Of the 906 tax lots in the Annexation Area, 900 are counted for purposes of counting the  
2 number of tax lots, the area, and the number of owners. The six tax lots not included in  
3 the triple-majority calculation are those lots that are publicly-owned real property; ORS  
4 222.170(4).

5 **Section 3. Findings - Lincoln County Library District.** The City Council finds:

6 A. The Annexation Area is within the Lincoln County Library District. A description of  
7 the area to be withdrawn from the Library District in conjunction with annexation is  
8 described in “Exhibit D”, attached hereto and incorporated herein by reference as if  
9 fully set forth.

10 B. The Library District is intended to cover only areas in the County that are not inside  
11 cities. The District raises funds through a property tax operating levy. The County then  
12 distributes the funds raised to cities within the County that have libraries, with the  
13 payers of the property tax levy having the right to use the library in the closest city that  
14 has a library.

15 C. In the event of annexation of the Annexation Area, the owners of the annexed property,  
16 in paying City property taxes, will contribute their fair share to the cost of operating the  
17 City’s Driftwood Library. It is not appropriate that they also pay the Library District  
18 property tax, since that will result in their paying more than their share of the Driftwood  
19 Library operating costs and is contrary to the purpose for which the Library District  
20 was established.

21 D. The testimony provided by the Library District did not provide specific numbers but  
22 made estimates based on 739 properties with an address and calculated that all libraries  
23 in the district will probably lose some funding. The City finds that any estimate based  
24 on such a calculation significantly overstates the loss in funding, due to the large  
25 number (75% or more) of second homes in the Roads End Area. The Library District  
26 did not otherwise oppose the annexation proposal and the City finds while there may be  
27 some District-wide impact, the impact to the City support of the Driftwood Library  
28 would be some loss in the City’s general fund but likely not in excess of approximately  
29 \$20,000. The City will continue to coordinate with the Library District on funding of  
30 services by the Library District.

1 E. Withdrawal of the Annexation Area from the Library District is in the best interests of  
2 the City.

3 **Section 4. Findings – Roads End Sanitary District.** The City Council finds:

4 A. The Annexation Area is within the Roads End Sanitary District. A description of the  
5 boundaries of the Sanitary District is shown on “Exhibit E”, attached hereto and  
6 incorporated herein by reference as if fully set forth.

7 B. The Sanitary District is intended to cover areas in the County that are not inside cities.  
8 The Sanitary District owns and operates sewer lines in the District. By agreement with  
9 the Sanitary District, the City maintains and repairs the sewer lines in the District, and  
10 treats and disposes of all waste from the Sanitary District.

11 C. The Sanitary District raises funds through a property tax operating levy.

12 D. In the event of annexation of the Annexation Area, the owners of the annexed property,  
13 in paying City property taxes, will contribute their fair share to the cost of operating the  
14 City’s sewer system. It is not appropriate that they also pay the Sanitary District  
15 property tax, since that will result in their paying more than their share of the cost of  
16 operating the sanitary sewer system and is contrary to the purpose for which the  
17 Sanitary District was established.

18 E. Under ORS 222.520 and 222.524, the City has the authority to withdraw annexed  
19 property from the Sanitary District.

20 H. Withdrawal of the Annexation Area from the Sanitary District is in the best interests of  
21 the City.

22 **Section 5. Findings – Roads End Water District.** The City Council finds:

23 A. The Annexation Area is within the (new) Roads End Water District. A description of  
24 the boundaries of the Water District is shown on “Exhibit F”, attached hereto and  
25 incorporated herein by reference as if fully set forth.

26 B. The Water District is intended to cover areas in the County that are not inside cities.  
27 The Water District does not own a water source or water system.

28 C. Beginning in 1978 by intergovernmental agreement with the then existing (predecessor  
29 or original) Water District, the City provided water service as a special service to  
30 individual properties in the Roads End area. The Water District was then dissolved in  
31 1978, with the City receiving its assets.

1 D. The successor (new) Water District was formed in 2001 in part for the purpose of  
2 negotiating with the City of Lincoln City due to the impending expiration in 2003 of the  
3 agreement between the (original) Water District and the City. The Water District raises  
4 funds through a property tax operating levy, although the Water District does not  
5 provide water and does not have a water source or delivery system.

6 E. In the event of annexation of the Annexation Area, the owners of the annexed property,  
7 in paying City property taxes, will contribute their fair share to the cost of operating the  
8 City's water system. It is not appropriate that they also pay the Water District property  
9 tax, since that will result in their paying more than their share of the cost of operating  
10 the water system and is contrary to the purpose for which the Water District was  
11 established.

12 F. Under ORS 222.520 and 222.524, the City has the authority to withdraw annexed  
13 property from the Water District.

14 G. There was testimony that customers in the District subsidize City water service and the  
15 City mistakenly attributes the cost of system improvements to the Roads End area. The  
16 City has itemized the approximate cost of improvements to the City-wide system in  
17 letters to the Water District and Roads End customers, as summarized by David  
18 Hawker, City Manager, by Memorandum dated November 19, 2012, and finds that the  
19 City has invested heavily in providing water to the Roads End Area and that the out-of-  
20 city rates and charges for water service as a special service to Roads End Customers do  
21 not compensate the City for the cost of required system and service delivery  
22 improvements considering the water service area that comprises the Roads End Area.

23 **Section 6. Land Use Findings.**

24 Additional findings addressing the applicable Comprehensive Plan provisions and applicable  
25 Statewide Planning Goals are hereby adopted as set forth in "Exhibit G", attached hereto and  
26 incorporated by reference herein.

27 **Section 7. Annexation Declared; Effective Date.**

28 Pursuant to ORS 222.120(4)(b) and 222.170(1), and based on the adopted findings of this  
29 ordinance, the Annexation Area as shown in "Exhibit A", "Exhibit B", and "Exhibit C" is  
30 hereby annexed to the City of Lincoln City effective July 1, 2013. Pursuant to ORS 222.180  
31 (1), the annexation shall be complete from the date the City Manager files with the Secretary

1 of State the annexation records as provided in ORS 222.177 and 222.900. Thereafter the  
2 annexed territory shall be and remain a part of the city to which it is annexed.

3 **Section 8. Withdrawal of Annexation Area from Lincoln County Library District.**

4 Based on the adopted findings of this ordinance including Section 3 the City of Lincoln City  
5 hereby withdraws the Annexation Area from the Lincoln County Library District, effective as  
6 of the effective date of the annexation of land declared in Section 7.

7 **Section 9. Withdrawal of Annexation Area from Roads End Sanitary District.**

8 Based on the adopted findings of this ordinance including Sections 1 through 5, the City of  
9 Lincoln City hereby withdraws the Annexation Area from the Roads End Sanitary District,  
10 effective as of the effective date of the annexation of land declared in Section 7.

11 **Section 10. Withdrawal of Annexation Area from Roads End Water District.**

12 Based on the adopted findings of this ordinance including Sections 1 through 5, the City of  
13 Lincoln City hereby withdraws the Annexation Area from the Roads End Water District,  
14 effective as of the effective date of the annexation of land declared in Section 7.

15 **Section 11. Ordinance Effective Date.**

16 This ordinance takes effect 30 days after the date of its adoption.

17 **Section 12. Customer Designation for Purposes of Municipal Water Service or Special  
18 Water Service.**

19 A. Property owners in the Annexation Area shall be designated customers “within the city”  
20 for purposes of municipal water service under Lincoln City Municipal Code §§13.12.060 and  
21 13.12.080 on the date the annexation is effective July 1, 2013. The customer designation  
22 change from “outside the city” to “inside the city”, and the right to water as a municipal  
23 service, is expressly conditioned, however, on the effectiveness and validity of the annexation  
24 declared by Section 7 of this ordinance.

25 B. If a judicial or administrative order is issued ordering a stay of this ordinance or the  
26 effective date of the annexation declared in Section 7, then the “customer within the city”  
27 designation approved by Section 12A shall not apply unless and until an order lifting the stay  
28 is issued and the annexation takes effect.

29 C. If a court of competent jurisdiction rules the annexation declared in Section 7 is not valid,  
30 then the customers in the Annexation Area shall be responsible for the full amount of payment  
31 for water service as a special service that otherwise would have been due to the City from the

1 property owner as a customer outside the city, excepting only that period, if any, that the  
2 owner paid property taxes to the City that are not subject to refund. The uncollected amount  
3 due for payment for water service provided to a customer outside the city shall be  
4 immediately due and payable by the customer in full. In the event that a court ultimately rules  
5 the annexation is valid, and after exhaustion of any appeal rights, the City Council shall enter  
6 an order waiving the amount due in excess of that paid by customers within the city for water  
7 service and deeming owners in the Annexation Area to be customers within the city.

8 **Section 13. Severability.**

9 The provisions of this ordinance are severable. If a court of competent jurisdiction rules any  
10 portion of this ordinance is invalid, then to the extent provided by law, the determination that  
11 a specific part is invalid will not affect the validity and effect of the remaining valid  
12 provisions, provided that without the invalid provision the remaining provisions can  
13 reasonably apply and be in full force and effect as intended.

14 **Section 14. Phase in of property taxes.**

15 Pursuant to ORS 222.111, the rate of ad valorem real property taxation for city purposes on  
16 property in the annexed territory shall be:

17 For the tax year commencing on July 1, 2013 - 70% of the ad valorem real property tax  
18 levied inside the city outside of the annexed territory;

19 For the tax year commencing on July 1, 2014 - 85% of the ad valorem real property tax  
20 levied inside the city outside of the annexed territory;

21 For the tax year commencing on July 1, 2015 and thereafter - 100% of the ad valorem real  
22 property tax levied inside the city outside of the annexed territory.

23 **Section 15. Application of Vacation Rental Dwelling License.**

24 LCMC §5.14 requirements for vacation rental dwelling licenses shall take effect with regard  
25 to property in the annexation area on December 1, 2013, and applications for vacation rental  
26 dwelling licenses are required to be submitted to the City no later than January 31, 2014.

27 Vacation rental dwellings lawfully existing on the effective date of this annexation shall not  
28 be subject to the ownership limitation in the definition of “person” in LCMC 5.14.020(B) and  
29 as set forth in LCMC 5.14.060(D). Notwithstanding this provision, the city retains the right  
30 to impose such a limitation or other requirements in the future.

31 **Section 16. Application of Transient Room Tax.**

1 In the Annexation Area, no transient room tax under LCMC Chapter 3.04 shall be due until  
2 the commencement of overnight occupancy occurring on or after January 1, 2014.

3 **Section 17. Implementation.**

4 The City Council delegates to the City Manager the authority to take any actions necessary or  
5 required to execute or administer the approvals adopted by this ordinance.

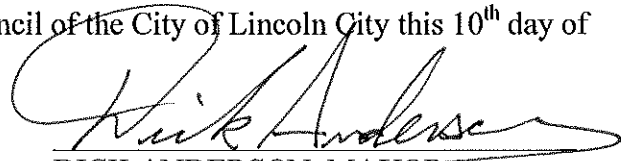
6 **Section 18. Interpretation; Delegation of Authority to Correct Minor Errors in Exhibits.**

7 In the event of any conflict between the Annexation Area map and legal description, or  
8 Annexation Area map and list of tax lots, the Annexation Area map adopted as Exhibit B shall  
9 control over the legal description of the Annexation Area or list of tax lots. The City Council  
10 delegates authority to the City Manager, in conjunction with the surveyor contracted to  
11 provide the legal description, to address and correct any minor discrepancies in the legal  
12 description or otherwise conform the legal description to the map. The City Council also  
13 delegates to the City Manager the authority to make any minor corrections to Exhibit A, in  
14 coordination with the Lincoln County Tax Assessor or Oregon Department of Revenue, as  
15 may be necessary or required to conform Exhibit A to Exhibit B.

16 **Section 19. Findings Adopted.**

17 The findings of this ordinance as expressly stated in Sections 1 through 6, incorporated into  
18 this section by reference as if fully set forth herein, are adopted in support of this legislative  
19 action.

20 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 10<sup>th</sup> day of  
21 December, 2012.

  
DICK ANDERSON, MAYOR

22  
23  
24 ATTEST:

25   
26 CATHY STEERE, CITY RECORDER  
27  
28

29 EXHIBIT A – LEGAL DESCRIPTION OF ANNEXATION AREA

30 EXHIBIT B – MAP OF ANNEXATION AREA

31 EXHIBIT C – LIST OF LINCOLN COUNTY TAX LOTS IN ANNEXATION AREA

32 EXHIBIT D – AREA WITHDRAWN FROM LINCOLN COUNTY LIBRARY DISTRICT

33 EXHIBIT E – DESCRIPTION OF ROADS END SANITARY DISTRICT

34 EXHIBIT F – DESCRIPTION OF ROADS END WATER DISTRICT

35 EXHIBIT G – LAND USE FINDINGS