

CITY OF LINCOLN CITY

LINCOLN CITY COUNCIL AGENDA

MONDAY OCTOBER 12, 2020 6:00 PM

6:00 PM - The Lincoln City Council for October 12, 2020 will be held via Zoom. The City Council Chambers will be open and the meeting will be broadcast live in the Council Chambers. It will also be live on Channel 4 and through streaming on the web at www.lincolncity.org.

Public comments can be submitted to publiccomment@lincolncity.org, by attending the City Council meeting, or by attending through Zoom invitation.

Public comments submitted by email to publiccomment@lincolncity.org will summarized and entered into the record.

Citizens present in the Council Chambers will be given the opportunity to comment via Zoom. Laptops will be set up for those comments. Citizens present in the Council Chambers will be required wear a face covering and must observe social distancing. A member of the Information Technology staff will be present during the meeting to assist with any technical issues.

Citizens requesting to give public comment via Zoom must email publiccomment@lincolncity.org no later than 12 pm on the meeting day. The request must include the person's name, the subject the person wishes to address and the Zoom screen name the person intends to use for the meeting. A Zoom invitation will be sent to the person requesting prior to the meeting.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to the City Recorder, 541-996-1203.

The Lincoln City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

All information for this meeting is available at www.lincolncity.org under "Agenda, Packets & Video". This meeting will be televised on Channel 4. For additional rebroadcast times, please consult the Channel 4 guide on the hour.

- A. CALL TO ORDER**
- B. ROLL CALL**
- C. PLEDGE OF ALLEGIANCE**
- D. CONSENT AGENDA**
 - 1. Regular Meeting – Minutes of Regular Meeting – September 28, 2020 6:00 PM
 - 2. Approval of Final Order 2020-03 - The Cove Phase 3
 - 3. THIRD AMENDMENT TO LICENSE AGREEMENT FOR NELSCOTT DECK (SCOTT PLAZA)
- E. COUNCIL DELIBERATIONS**
- F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS**
 - 4. Public Comments via publiccomment@lincolncity.org
- G. PRESENTATIONS**
- H. PUBLIC HEARING / ORDINANCE**
- I. PUBLIC HEARINGS / PUBLIC COMMENTS**
- J. ORDINANCES**
- K. RESOLUTIONS**
- L. SPECIAL ORDER OF BUSINESS**
 - 1. Review of Sustainability Committee Recommendations
 - 2. Criteria for Installing Traffic Calming Devices
 - 3. OPTION AGREEMENT - TAFT SCHOOL DISTRICT PROPERTY
 - 4. ORDER NO. 2020-04 AN ORDER APPROVING A SIX MONTH LEASE EXTENSION FOR MCKAY'S MARKET, INC.
 - 5. COVID-19 Update
 - 6. Echo Mountain Complex Update
- M. CITY MANAGER/CITY ATTORNEY REPORTS**
- N. ACTIONS, IF ANY, BASED ON WORK SESSION OR EXECUTIVE SESSION**
- O. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS**
- P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL**
- Q. ADJOURNMENT**

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF MEETING

September 28, 2020, 6:00 PM

The final minutes for this meeting are supplemented by an electronic recording of the meeting, which may be viewed online at www.lincolncity.org under the tab "Agendas, Packets and Videos". The staff reports, resolutions, ordinances and other documents related to this meeting are also available at the same location. This meeting is rebroadcast on Cable Channel 4. (See Channel 4 guide on the hour at <http://www2.lincolncity.org/program-guide/>).

APPROVED BY CITY COUNCIL

DATE:

A. CALL TO ORDER

B. ROLL CALL

Attendee Name	Title	Status	Arrived
Dick Anderson	Mayor	Present	6:00 PM
Judy Casper	Councilor Ward 3	Present	6:00 PM
Diana Hinton	Councilor Ward 1	Present	6:00 PM
Riley Hoagland	Councilor Ward 2	Present	6:00 PM
Rick Mark	Councilor Ward 3	Present	6:00 PM
Mitch Parsons	Councilor Ward 1	Present	6:00 PM

Staff Present: Ron Chandler, City Manager; Richard Appicello, City Attorney; Alison Robertson, Urban Renewal and Economic Development Director; Tony LaSoya, I.T. Director; Richard Townsend, Interim Planning Director; Jerry Palmer, Lincoln City Chief of Police

C. PLEDGE OF ALLEGIANCE

As this meeting was held remotely, the Pledge of Allegiance was skipped.

D. CONSENT AGENDA

1. Regular Meeting – Minutes of Special Meeting – September 21, 2020 10:00 AM

MOTION:	Motion to approve the Consent Agenda (Minutes of September 21, 2020)
MOVER:	Rick Mark, Councilor Ward 3
SECONDER:	Diana Hinton, Councilor Ward 1
AYES:	Anderson, Casper, Hinton Hoagland, Mark, Parsons
NAYS:	Hinton
RESULT:	Passed by Voice Vote

E. COUNCIL DELIBERATIONS

2. APP 2020-05 The Cove Phase III Appeal

Mayor Anderson said that the record closed on September 28, 2020 at 5 pm. Since the September 21 public hearing, additional materials were received from the public, the applicant, and staff.

Mayor Anderson asked Council if any Councilor wished to declare a bias in this matter. No Councilor declared a conflict of interest or a personal bias.

Mr. Housley, attorney for applicant, waived the opportunity to submit final written argument after the close of the record.

Mr. Appicello said that Mr. Townsend sent a memo to Council with an additional condition of approval. The memo was entered into the record and the applicant agrees with the additional condition of approval.

Councilor Mark said that a public comment was entered into the record with a statement from the fire marshal. Councilor Mark asked if Council could get an answer from the developers regarding that statement? Mr. Appicello advised that the applicant could not respond since the record is closed; however, staff can comment at this time. Mr. Appicello said the statement from the fire marshal is clear and he believes the public commenter took liberties with interpreting that statement. Mr. Townsend said there is a condition of approval regarding no parking. Mr. Townsend said that he believes the fire marshal would like to see no parking on the length of SE Marine. Mr. Townsend said that SE Marine could be a no parking road if the City wishes. Mr. Appicello agreed, explaining that the City Manager can issue a no parking order.

Councilor Hinton asked about a traffic impact analysis and preserving as many trees as possible. She also asked about a full landscaping plan and a cut and fill plan. Councilor Hinton wants the roads in the development to be public roads and to make sure there's room at each developed property for three garbage bins. Councilor Hinton would like to see a buffer between the project and North Lincoln Sanitary Service. Councilor Hinton wants assurance that these units will be built. Councilor Hinton would like to see neighbors get treated with respect during the excavation and logging phases of the project. Councilor Hinton asked about whether the applicant would fix any damage to the roads at the end of the project? Mr. Townsend confirmed the applicant would have to fix any damages they do to the roads as part of the Conditions of Approval.

Mayor Anderson asked Mr. Townsend if Councilor Hinton's items of concern are addressed in the existing conditions of approval? Mr. Townsend said the full landscaping plan will be addressed. There's not a condition of approval that requires a traffic impact analysis. The law says that the applicant must keep as many trees as possible. A cut and fill plan must be provided, but there's no requirement for absolute balance. Mr. Townsend said that SE Marine and SE 16th are public roads; the two private roads are "A" and "B". Council could impose a condition that "A" and "B" be public roads. Mr. Townsend said

this project doesn't go right up against North Lincoln Sanitary Service, but there likely will be noise in the development from North Lincoln Sanitary Service. Mr. Townsend said a condition for a buffer could be added at Council's discretion. Mr. Townsend said he didn't know legally how Council could require that the development get built out within 5 years.

Councilor Hoagland said that the traffic impact study has crash data from 2018. He would like the study to be updated to 2020.

Councilor Mark asked about public vs private roads. Mr. Townsend explained that public roads are built to City standards and are maintained by the City. Private roads do not have to be built to City standards and they're not maintained by the City. Private roads can be built to a lower standard than City streets. Mr. Appicello said that HOA's, or a developer, can be responsible for private road maintenance. Councilor Mark is concerned about the narrowness of some of the roads and expressed concern about the cost of private road maintenance. Mayor Anderson said that buyers would be aware of the private roads in the development.

Mayor Anderson asked about staff's suggestion on the 5 year build out. How does this help things? Mr. Appicello said this is a requirement of the Planned Unit Development portion of the code. The condition is consistent with the applicant's proposal for this development. If the applicant doesn't complete construction in 5 years, then the development gets re-reviewed by the City.

Mayor Anderson asked about the age of submitted traffic studies. Mr. Appicello said a traffic study was not required; however, the applicant submitted traffic information in an attempt to address concerns.

Mr. Appicello asked Mr. Townsend if the \$50,000 offered by the applicant for road improvements made it into the list of conditions of approval? Mr. Townsend said it did not; however, the offer is in the record so it is before Council at this time for consideration.

Councilor Mark asked if building plans would need to be submitted after this approval and if the fire marshal still has a say on approving new construction? Mr. Townsend said that Condition of Approval #6 says that plans have to meet the 2019 fire code.

Mayor Anderson asked Councilor Hinton about the sound buffer she would like between the development and North Lincoln Sanitary Service. Mayor Anderson said that a sound buffer would be desirable for the developer's marketing. Why does Councilor Hinton feel that the City needs to design this? Councilor Hinton said this points to a need to update our Comprehensive Plan for zone transitions between industrial and residential zones, particularly when the business activity starts early in the morning.

Councilor Casper asked about public vs private roads in this development. Is there an advantage to the City to make the roads public? Mayor Anderson said it will cost the City more money to maintain a public road. Councilor Casper doesn't understand why the City would build public roads in this development. Mr. Appicello said that making the roads public is not a current condition of approval.

Councilor Mark asked about nearby apartments with private roads. These apartments have landlords and property managers. This development has private owners and private roads. Are there any other developments like this in town? Mr. Townsend said there were. Councilor Hinton said that private roads in these kinds of developments aren't always well maintained. Also, there's no HOA in this development yet. Mr. Appicello said that this development is likely developer controlled at the moment, hence the roads have not yet been passed to HOA control.

Mayor Anderson asked Council if a traffic impact study should be added as a condition of approval. Mr. Appicello said a traffic impact study is not required and how would it be used as a condition of approval? Councilor Hinton said it could be used for a traffic light, more signage, and for future development in this area. Councilor Mark said that he had been advised by ODOT that the likelihood of getting a light at the more trafficked SE 19th St was next to nil, and so getting a light at SE 16th would be even less likely. Mayor Anderson asked Council for a motion about this. No motion was made.

Mayor Anderson asked Council about public or private roads? Councilor Mark asked Mr. Appicello how he could make this a condition of approval. Mr. Appicello said he wasn't sure how to do this in this instance. Mayor Anderson said Councilor Mark's concerns were valid but buyers have the eventual responsibility to make the decision. Councilor Casper doesn't see this as an issue for the City to be concerned about.

FAILED MOTION

Councilor Hinton made a motion to make streets "A" and "B" built to public standards and maintained by the City. Councilor Mark seconded the motion. The motion failed, with Mayor Anderson and Councilors Casper, Hoagland, and Parsons saying "nay".

Mayor Anderson asked for a motion re: a buffer between the development and North Lincoln Sanitary Service. Councilor Mark said this should be the developer's responsibility.

FAILED MOTION

Councilor Hinton moved to add as a condition that when developed the duplexes closest to North Lincoln Sanitary have a sound buffer. The motion was not seconded and, accordingly, died.

Mayor Anderson asked about adding the \$50,000 voluntary contribution as a condition of approval? Mr. Townsend said this could be added, with a time period requirement if Council would like. Mr. Appicello said that having the contribution after grading would make sense since then logging and excavating would have been completed. Mr. Townsend concurs. Mr. Appicello recommends that the \$50,000 be contributed to the City 60 days after final plat approval.

SUCCESSFUL MOTION

Councilor Casper moved to add the \$50,000 voluntary contribution as a condition of approval. Councilor Parsons seconded the motion. All were in favor.

Mayor Anderson asked if Council wished to re-word the condition of approval regarding tree preservation? Mr. Townsend reviewed the current relevant conditions of approval. Council did not pursue further changes.

SUCCESSFUL MOTION

Councilor Casper moved to accept the conditions of approval, with amendments discussed. Councilor Parsons seconded. Councilors Hoagland and Mark were also in favor, as was Mayor Anderson. Councilor Hinton voted nay.

MOTION: Motion to approve the tentative plan for 2020-05 as submitted subject to conditions of approval
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Judy Casper, Councilor Ward 3
AYES: Anderson, Casper, Hoagland, Mark, Parsons
NAYS: Hinton
RESULT: Passed by Roll Call Vote

MOTION: Motion to approve the preliminary master plan for The Cove Phase III with the identified conditions
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Anderson, Casper, Hinton, Hoagland, Mark, Parsons
RESULT: Passed by Roll Call Vote

MOTION: Motion to approve the Final Master Plan for the Cove Phase III, provided that conditions are met
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Judy Casper, Councilor Ward 3
AYES: Anderson, Casper, Hinton, Hoagland, Mark, Parsons
EXCUSED: Kusz
RESULT: Passed by Roll Call Vote

F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS

Fran Lonnon - Ms. Lonnon discussed the evaluation response. She asked when letters received from the public regarding the evacuation will go on the website? Mayor Anderson said these comments are being collected for an after action meeting and the Council will see them at that time. Ms. Lonnon asked who the project coordinator would be? Mayor Anderson said this wasn't a time for back-and-forth, but the City has asked the public to provide documents to Ken Murphy, Emergency Preparedness Coordinator, or Jerry Palmer, Chief of Police. Ms. Lonnon asked who would be invited to the work session? Mayor Anderson said information is being gathered and the City will put forth information to the County.

Lisa Corzine - Ms. Corzine wanted to see if Council had any discussion about cutting the budget for North Lincoln Fire Department? Mayor Anderson said the City has nothing to do with North Lincoln Fire's budget as the Fire District is its own entity. They are not a department of the City. Ms. Corzine asked if Urban Renewal is taking money from the Fire District? Mayor Anderson said it was not.

Mr. Chandler said 6 comments have come in. 1 is regarding the 24-hour lodging hold, asking where the science is in this decision. 5 are regarding the Echo Mountain Fire. Mr. Chandler summarized the comments. The comments will be attached to the minutes after they are approved by Council.

Councilor Hinton said that she had received several comments from citizens saying they hadn't heard their comments in full. Mr. Chandler said that he would be happy to read them in full if Council wishes. Councilor Hoagland agrees with Councilor Hinton, saying that he thinks that citizens should have their comments read in full. Councilor Parsons said he agrees with Councilors Hoagland and Hinton. Councilor Parsons would like to have citizens join the Zoom meetings for their public comments.

Councilor Mark appreciates when people come in to Council Chambers and address Council in person. Councilor Mark said reading comments in full would be time consuming and he would rather see members of the public come in and make their statements. Councilor Casper agrees with Councilor Mark. Councilor Casper said she enjoys receiving emails from citizens and also is happy to have phone conversations with constituents. Councilor Parsons said that we are asking the public to do what many of the Councilors are not doing - to come in to Council Chambers. Councilor Parsons would like the comments read today but in the future he would like the public to have the ability to join the Zoom meetings. Councilor Hoagland asked if the public could submit pre-recorded video messages?

Mayor Anderson asked Mr. Chandler to read the public comments. Mr. Chandler proceeded to do so.

G. PRESENTATIONS

H. PUBLIC HEARING / ORDINANCE

5. STATUTORY DEVELOPMENT AGREEMENT incorporating ANNEX 2020-01 CPA/ZC 2020-02 - request to annex approximately 11.15 acres with a comprehensive plan map designation of Single-Family Residential District and a zone of Single-Family Residential (R-1-5)

Mayor Anderson asked if any Council member wished to declare a conflict or bias? Councilor Hinton said she doesn't have a bias; however, she wants to acknowledge that the Acting Planning Director (Mr. Townsend) was the consultant working on behalf of these property owners. Councilor Hinton said a consultant was hired by the City for this matter. The changes made on this project were reviewed for Lincoln City by the consultant, not Mr. Townsend.

No challenges were made to the qualifications of a particular Councilor to participate in this matter.

No challenges were made to the Council's jurisdiction.

AnneMarie Skinner from PBS Engineering was hired by the City as a consultant to review this matter. Ms. Skinner read the substantive criteria for Council to consider. Mr. Appicello also reminded Council that the statewide goals regarding annexation also had to be considered.

Mayor Anderson summarized the public hearing procedures.

STAFF REPORT

Ms. Skinner presented this to Council, describing where the property is located. This is a 11.15 acre site consisting of 2 undeveloped lots. The property is currently in Lincoln County, and has County zoning R-1A. The applicant wants to annex both tax lots into Lincoln City, with zoning being changed to Lincoln City R1-5 (single family residential). Ms. Skinner said the Planning Commission heard this project in February 2020 - they recommended approval of the annexation and denial of the comprehensive plan amendment and zone change. Ms. Skinner said that most goals are met on the face of the annexation and zone change application. The statutory development agreement came in after the Planning Commission hearing. A separate report has been prepared analyzing the agreement.

Ms. Skinner said that the City had not given Ms. Skinner proof that the fees for the statutory development agreement had been submitted. Without proof of fees, one condition is not met. That could be easily remedied with payment of the fees. Ms. Skinner said the development agreement does not currently address accessory and other permitted uses in the R1-5 zone, and Ms. Skinner recommends that the development agreement be changed to explicitly allow these. If the intent is only to allow

permitted uses then the development agreement needs to be rewritten. The development agreement does not meet building height and lot size requirements.

The development agreement does not include any dedications of buildings, land, as required by Chapter 17. At a minimum the development should have public-right-of-way dedications. Any wetlands on the property should be preserved as a open space common area. There should be a requirement that the development comply with all traffic mitigation measures as identified in the traffic impact study.

10% of the development will be offered to sale to people earning 120% AMI (area median income). Ms. Skinner recommends defining AMI better in this report. In addition, the 10% workforce housing stipulation should be in perpetuity or at least that a timeframe be defined for it. The development agreement does not currently say how long this provision will last.

Ms. Skinner states the completion of the project should also be listed in the development agreement. No phasing is proposed and no construction dates are defined. Ms. Skinner recommends that the project be completed in one phase and that all dwelling units be completed within 5 years.

Ms. Skinner recommends that specific terms and conditions pertinent to the project be added to the development agreement.

If these changes are made, Ms. Skinner says the development agreement will meet all necessary goals.

QUESTIONS OF STAFF

Councilor Hinton asked Ms. Skinner about zoning. R1-7.5 abuts this development. The Lincoln Palisades neighborhood above this proposed development is settled and cohesive. Councilor Hinton thinks R1-7.5 would be a better fit for this area considering traffic, noting the evacuation problems that occurred in this area. Mr. Appicello said only R1-5 zoning has been noticed at this time. Mr. Appicello said the development agreement could limit the number of units regardless of zoning. Ms. Skinner agreed with Mr. Appicello. Ms. Skinner does not recall during the pre-application conference if R1-5 or R1-7.5 zoning was discussed. The R1-5, R1-7.5, and R1-RE are all in the same comprehensive plan designation. Ms. Skinner said that the outside lots of the proposed development could be made to comply with R1-7.5 designations, with inner lots complying with R1-5 zoning requirements.

Councilor Hinton said that she was concerned about building height. There are no residential buildings in that area that are 35 feet tall. Ms. Skinner said Council could make the maximum height of buildings in this proposed subdivision 30 feet.

Councilor Hinton asked who was representing the applicant. Mr. Appicello said that the applicant was represented by legal counsel. Mr. Appicello said legal counsel for the applicant would likely negotiate with the City Attorney going forward. Ms. Skinner said this was fairly typical. Councilor Hinton thanked Ms. Skinner.

Councilor Hoagland thanked Ms. Skinner for her report and asked about the identified inadequacies. Will this development have VRDs? Mr. Appicello asked Council to give direction to Mr. Appicello to discuss this with counsel for the applicant. Mr. Appicello said this development doesn't have proposed conditions of approval or a site plan, but conditions can be set for future approvals as this development progresses.

Councilor Hinton said that no comments so far have been received in support of this project.

APPLICANT'S PRESENTATION

Steve Hultberg with Rather White Parks and Alexander presented to Council. Mr. Hultberg said that usually he would appear before Council with a fully fledged development agreement; however, City comments were not presented to him until last Wednesday. There's been limited ability to discuss issues with staff. Mr. Hultberg says he will return with a fully fledged development agreement for Council in the future. Mr. Hultberg said that Mr. Townsend has been out of the loop on this project since Mr. Townsend took the Interim Planning Director position with the City. Mr. Hultberg would like to leave the written record open after this hearing to address outstanding issues.

Mr. Woods (owner of applicant) said this is the first step in a lengthy process. Mr. Woods said this property is in a great location, surrounded by City property. The property is within walking distance of shopping, the casino, and the beach. Phase 1 is going to be 8 separate buildings with 4 to 5 plex units along Logan Road. 10% of these units will be workforce housing. Mr. Woods' plan is to make the workforce housing last for a 10 year period. Mr. Woods said perpetuity is too long for him. Phase 2 will be single family units near the water tank. Phase 3 will be on the east side of the property up on a ridge, with houses there having ocean views. Mr. Woods plans to include a large lower area as a parklike setting for children and dogs. Mr. Woods said walking paths will go down to that area. A covered structure might be built. Picnic tables might be installed, along with a barbecue area. Mr. Woods said a lot of prep work has been done. They will remove the invasive species and the stumps and brush piles left after the previous owners logged it. Currently the property is ugly, and everyone who goes to Roads End sees this ugly property. Mr. Woods would like to build a beautiful development that everyone is proud of. Mr. Woods said the Olivia Beach architect is interested in getting involved in this project. Mr. Woods said he'll move further on getting a PUD together once he knows the property will be annexed into Lincoln City.

Mr. Hultberg said that the development agreement and annexation gets the property into Lincoln City. Shortly thereafter, they will be filing for a PUD. This is a discretionary process where items such as building height get discussed. The details of the development are critically important and those will follow, along with conditions of approval that Council approves.

Mr. Hultberg says he believes the City and the developer are close at this point. He will define AMI. Mr. Hultberg thinks the dedications of right-of-way and streets are premature. It makes no sense to dedicate property until it's clear the City will approve development on the property. Mr. Hultberg understands the need for a easement to the water tower. However, it's premature to define where the easement will go because the developer doesn't know if overflow might come down into the development. It's also too early to discuss the dedication of open space until a wetland delineation study is completed. Conditions of approval will help resolve these issues.

Mr. Hultberg said that it is unreasonable to require a workforce housing component in perpetuity. If you look at affordable housing programs the affordability periods are far less and don't require a perpetual restriction.

Mr. Hultberg said that the right-of-way dedication will happen, but at this point the applicant doesn't know if it's going to be 10 feet, 50 feet, or a different amount. The applicant also doesn't know where access roads will go at this point.

Mr. Hultberg has seen previous traffic studies for this project. Without a formalized proposal, it's not appropriate for the City to ask for a traffic impact study and he won't advise his client to mitigate any issues found at this point.

Mr. Hultberg asked if Council had any questions. Mayor Anderson said he appreciated Mr. Hultberg's comments on affordable housing. Mayor Anderson is assuming the developer plans to build rental units. Mr. Woods said that several of the units would be priced for purchase by a person in the 120% AMI income range. Other units would be rental units. Mayor Anderson doesn't want these units to be the smallest units. Mayor Anderson said the City has a need for 2 and 3 bedroom units and asked the developer to keep this in mind. Mr. Woods said these units will look much like the other units- however, one unit may be luxuriously finished while the other unit has Formica countertops.

Councilor Mark asked about traffic. On the map there is a proposed street that would route to NE Port Lane to get people to the NE Voyage area. Would Annabella Lane, pointing south, dead end? Would this tie in with the City's plan to connect 44th and 47th? If the idea of keeping 10% of the housing at a workforce level is doable for 10 years, what's the mechanism for ensuring that the properties are kept at the workforce housing level? Councilor Mark referred to property sales in his discussion.

Mr. Hultberg said there can be deed restrictions and covenants that can bind the property to keep units affordable.

Councilor Mark then asked why the developer couldn't offer workforce housing for longer than 10 years? Mr. Hultberg said it's a matter of financial returns. This burden isn't put upon other property owners in the City and it's not equitable to do this.

Councilor Hinton said there are a significant amount of vacation rentals in the area. About 11 am on Sundays and throughout the summer there's large amounts of traffic coming from the north past the property. Councilor Hinton also said people in the Voyage area use NE Port and Logan Road to get to Safeway. Councilor Hinton also commented on the evacuation, saying that it took people 2 to 3 hours to get through Logan Road. Traffic is of utmost importance in this area.

Mr. Hultberg said he would like to leave the record open, but asked Mr. Appicello for his opinion. Mr. Appicello said that he would be willing to leave the record open until Wednesday October 21 at 5 pm.

COMMENTS IN SUPPORT

Laura Quillman - Ms. Quillman is neutral on this development. Ms. Quillman thinks it's important that new developments have street widths that accommodate on-street parking and meet fire codes.

Mr. Chandler read a comment from Bruce Robinson. Mr. Robinson said emergency preparedness should be more important than new construction. Mr. Robinson likes the proposal, generally. The project satisfies the City's need for higher density housing. He believes the traffic circle at Logan and Port would be dangerous and a traffic impact study should be required. Mr. Robinson said the Windward Place development is similar to this one in scope. They are nice inside but not attractive on the outside. This new development will be the entrance to Roads End. Mr. Robinson asks that it looks nice.

COMMENTS IN OPPOSITION

No-one was present in Council Chambers.

Mr. Chandler read comments against the development from:

Sandra Shivers (asking for delay of this development due to health, safety, evacuation, and a lack of beach parking)

Janet Knipe (the development is inconsistent with city and state planning goals, impacts the sewer and water systems, and it impacts public safety, traffic, and pedestrian use)

Dana Manning (concerned about increased traffic and taxing of existing systems)
Louise Umbarger (concerned about traffic)
Margaret Harvey (concerned about roads, sewer, water and traffic)
Jim Stovall
James and Wanda Barry (concerned about traffic, water, sewer)
Ken Mergentime (concerned about traffic and infrastructure)
Ernie Rose (concerned about traffic and utilities)
Sheryl Fullerton (development is unnecessary, dangerous, traffic issues, bad for pedestrians, utilities, reduces property values)
John Cheek (traffic)
Marie McFarland (traffic and utilities)
Patrick Dunne (is against previous deforestation but isn't against the development as a whole)
Patti Kroen (traffic, infrastructure, environmental impacts, potential conflict of interest)
Cynthia Thompson and Elaine Walsh (traffic, utilities, the present lot is not blighted)
Doreen Thirkell (traffic, utilities)
Elaine Starber (traffic, infrastructure, resources, potential conflict of interest)
Susan Wahlke (zoning is inconsistent with neighboring properties; traffic concerns)
Midge Hovig (traffic and sewer issues).
Carrie Eggers (traffic)
Chuck and Betty Pritchard (traffic)
Sally Kissel (traffic, water and sewer issues)
Robert Sherwood (water, sewer, traffic)
Bill and Judith Flynn (agrees with Patti Kroen and REIA position opposing development due to traffic, utility concerns)
Victoria McComie and Robert Crouch (lack of safe roads and sidewalks, traffic, agrees with REIA)
Annette Guido (traffic congestion, limited workforce development, no development agreement and negotiation)
Julia Porcaro (traffic congestion, wildlife, potential sprawl)
Connor Schultz (traffic congestion, limit development to 20 houses)

There were no representatives of public agencies in Council Chambers with comments. Mr. Chandler received no comments from public agencies.

REBUTTAL

Mr. Hultberg said that the property is in the City's UGB and at some point it will be developed. He understands the traffic concerns and says a traffic study is important. Mr. Hultberg concurred with leaving the record open until October 21. Mr. Appicello said he'd re-thought his proposal. He'd like to close the record to the applicant on October 19, giving the public time to comment on new material until October 26 at 5 pm. Mr. Hultberg agreed with that. Ms. Skinner asked Mr. Appicello about the 120 day rule regarding the zone change? Mr. Appicello said that the zone change is subject to a land use change, so the 120 day rule is void in this instance.

Mr. Woods said his wife grew up in Lincoln City and he has 2 properties in Neskowin. He understands there is a traffic problem on Logan Road; however, there's already 900 houses in Roads End so this new development is less than 10% of that. He would like another exit road from Roads End but he doesn't know how to route it. The congestion issue existed a long time before he purchased the property.

Mr. Woods said he had been advised not to make any improvements to the lots until the City approves development. Mr. Woods wants to make a beautiful community in the area and, at some point, someone will build a development in the community. If the City wants a park in the area, the City should

approach Mr. Woods with an offer. He'll sell the property for a park to the City at the price he paid for it. Mr. and Mrs. Woods thanked Council for their time.

Mr. Appicello said that the record should be left open until October 26, with the applicant having until October 19 to submit further information. Council Deliberations will take place on October 26.

MOTION:	Motion to close the public hearing and leave the record open until 5pm on October 26, with the applicant having until October 19 to submit new information.
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Riley Hoagland, Councilor Ward 2
AYES:	Anderson, Casper, Hinton, Hoagland, Mark, Parsons
RESULT:	Passed via Voice Vote

I. PUBLIC HEARINGS / PUBLIC COMMENTS

J. ORDINANCES

1. ORDINANCE NO. 2020-22 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 9 (PUBLIC PEACE, MORALS, AND WELFARE), REVISING CHAPTER 9.34 (SIGNAGE) TO ADD ADDITIONAL EXEMPTIONS FOR SIGNAGE TO BE CONSISTENT WITH TITLE 17 (ZONING).

Mr. Appicello performed 2nd Reading of this ordinance. Mr. Appicello asked Council if he could change the allowance from 4 political signs during the election period to 8 political signs. The current law has no limit on election signs. Council agreed with this change.

MOTION:	Motion to approve 2nd Reading of Ordinance 2020-22 as modified and adopt the ordinance
MOVER:	Riley Hoagland, Councilor Ward 2
SECONDER:	Mitch Parsons, Councilor Ward 1
AYES:	Anderson, Casper, Hoagland, Mark, Parsons
NAYS:	Hinton
RESULT:	Passed by Roll Call Vote

K. RESOLUTIONS

2. RESOLUTION NO. 2020-22 A RESOLUTION OF THE CITY OF LINCOLN DECLARING AN EMERGENCY AS A RESULT OF THE ECHO MOUNTAIN COMPLEX FIRE WHICH DISPLACED LINCOLN COUNTY RESIDENTS FROM THEIR HOMES

Mr. Appicello confirmed that this resolution is actually 2020-22, not 2020-20 as listed in the packet. Mr. Appicello explained that this resolution allows emergency residential RV park use. The resolution declares there's a shortage of housing due to the Echo Mountain Fire.

Councilor Hinton asked if this is only for RVs? There is a need for FEMA trailers and this doesn't mention those. Mr. Appicello said this resolution is before Council because two private property owners came forward to offer their property for temporary RV park use. Regarding publicly owned property, Staff asked that Devils Lake State Park be designated for emergency RV park use; that is being discussed with the State.

The Community Center and the existing designated spot in the Urban Renewal lot are also in this resolution, however, a future order will determine how the publicly owned properties will be used.

Mr. Townsend said that staff is aware of the need to accommodate FEMA trailers and staff is working on that.

Mayor Anderson asked about including the Villages in the publicly owned property list? Mr. Appicello said that information on FEMA trailers would be brought back to Council at a different time.

Mr. Chandler said the FEMA trailer matter will take longer to develop and will not need to have a City Manager order ratified by Council.

Councilor Mark asked about infrastructure needed for FEMA trailers. Mr. Chandler said that the City is considering using the Fernwood property for these, but the water and sewer lines would need to be extended. The Fernwood Road might also need to be paved.

MOTION:	Motion to Approve Resolution 2020-22
MOVER:	Rick Mark, Councilor Ward 3
SECONDER:	Judy Casper, Councilor Ward 3
AYES:	Anderson, Casper, Hinton, Hoagland, Mark, Parsons
RESULT:	Passed by Roll Call Vote

L. SPECIAL ORDER OF BUSINESS

3. COVID-19 Update

Mr. Chandler said that Lincoln County moves to Phase 2 of re-opening on Tuesday September 29. This will impact the Community Center and Library.

The election is coming up and ballot boxes come to City Hall on October 19. Staff are discussing how to make the election process as normal and routine as it has been in other years. Mr. Chandler will bring more information to Council on this at a future meeting.

Governor Brown extended her executive order preventing property evictions through December 31. It was scheduled to expire on September 30.

Mayor Anderson asked if Council could come back to the Chamber for Phase 2? Mr. Chandler said he was discussing Phase 2 changes with Mr. Murphy and Mr. Chandler will have more information for Council next week.

4. Echo Mountain Complex Fire After-Action Review

Mr. Chandler said that Lincoln County is now focusing on the recovery process. There are 459 applicants in the FEMA system. FEMA have inspected 174 sites for wind and fire damage. The County is working on transitional housing, debris management, water systems and setting up more specific disaster recovery centers.

Councilor Hinton said she's joined the Governor's Regional Solutions Task Force. Mr. Chandler and Mr. Murphy are members of this. Kaety Jacobson represents Lincoln County. She asked Council to share information with her on this topic. Mayor Anderson thanked Councilor Hinton for serving on this Task Force.

M. CITY MANAGER/CITY ATTORNEY REPORTS**5. Parking Restriction - Residential Parking Passes & No Parking Zones**

Mr. Chandler discussed how he was going to gather public input. He's going to use the Lincoln City Facebook page, the City website, his blog, a press release, and email. Mr. Chandler will hold small group meetings. Meetings will be held via Zoom, at City Hall (with face coverings, social distancing, and limited numbers), and on-site, complying with COVID requirements, if weather permits.

Mr. Chandler said that the City is now ready to launch its Facebook page. This was going to be delayed until after the election but after the fire emergency the City has decided to launch sooner. The parking restrictions will be the first discussion point.

Councilor Parsons said he was for launching the Facebook page.

Mr. Chandler also asked Council about public comments. Mr. Chandler said that he heard Council say tonight that they wanted to have the public testify before them via Zoom or in person. Should Mr. Chandler discontinue the publiccomment email practice?

Councilor Parsons said that he wanted to still get comments through email, but those would be summarized by Mr. Chandler at the meeting. Other comments should be made through Zoom or in person.

Councilor Mark said he agreed with Councilor Parsons and he hoped that Council could resume meeting in the Council Chambers.

Councilor Hoagland said the publiccomment email shouldn't be eliminated. He would like to see video recordings of comments.

Councilor Hinton said not everyone is comfortable with leaving their home. Councilor Hinton says Zoom meetings are working for her.

Mayor Anderson asked Mr. Chandler to discuss Zoom or pre-recorded video messages with Mr. LaSoya. Mr. LaSoya said he will talk with his staff and build a process that allows for citizens to join the meeting via Zoom.

N. ACTIONS, IF ANY, BASED ON WORK SESSION OR EXECUTIVE SESSION**O. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS**

Patti Kroen- Ms. Kroen said she would like the public to be allowed to comment via Zoom.

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Councilor Casper said the 24 hour hold issue is moot. Also, on October 2, Alan Evans is opening up a new center at the Wapato Jail in Multnomah County with Jordan Schnitzer, using the same model as he is using in Lincoln City.

Councilor Parsons said that Mr. Woods mentioned that he had noxious weeds on his property. The County and City both have noxious weed ordinances and Councilor Parsons would like to see more enforcement of those ordinances.

Councilor Mark said that staff is meeting tomorrow to discuss the evacuation response. Councilor Mark asked if the public could let Council know if they would have responded to the emergency differently if they had been provided more / different information?

Mayor Anderson asked the public to contact Mr. Murphy at kmurphy@lincolncity.org with more information.

Councilor Hoagland asked Chief Palmer to talk about Sgt. Weaver. Chief Palmer said that Sgt. Weaver has been with the Lincoln City Police Department for 30 years this year. He's an amazing resource, very knowledgeable, and knows his job inside out.

Councilor Hinton has been researching information for emergency situations. There is an Oregon State Emergency Communication Plan. Councilor Hinton has a list of stations that are nearby. Councilor Hinton wants to talk about a municipal radio station in the future.

Q. ADJOURNMENT

DICK ANDERSON, MAYOR

ATTEST:

CATHY STEERE, CITY RECORDER

Council Communication

Approval of Final Order 2020-03 - The Cove Phase 3

Meeting Date:	October 12, 2020	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Planning Department	Secondary Contacts:	Richard Townsend
Approval:	Ronald F Chandler	Estimated Time:	5 minutes

Question(s):

Should the City Council approve the Final Order approving the tentative subdivision plat, the Planned Unit Development Preliminary Master Plan, and the Planned Unit Development Final Master Plan for the Cove Phase III? [Appeal from the Planning Commission (APP 2020-03)]

Staff Recommendation:

Staff recommends Council approve the Final Order 2020-03,

Authority:

LCMC Chapter 17.76.

Background:

The City Council conducted a *de novo* hearing at a special meeting on September 21, 2020 on the subject application and appeal. After the close of the hearing and the record, Council deliberated and made a tentative oral decision to approve the tentative subdivision plat, the Planned Unit Development Preliminary Master Plan, and the Planned Unit Development Final Master Plan for the Cove Phase III.

Council Options / Potential Motions:

1. Approve the Final Order.
2. Reject the Final Order.
3. Approve the Final Order with the following changes: _____.

Attachments:

final order revised 1218 (DOCX)

**BEFORE THE CITY COUNCIL OF
THE CITY OF LINCOLN CITY**

OCTOBER 12, 2020

In the Matter of an Appeal of the Decision of the)	
City of Lincoln City Planning Commission’s)	FINAL ORDER
Denial of an Application for Tentative Subdivision)	No. 2020-03
Plat, PUD Preliminary Master Plan and Final)	
Master Plan Approval for “The Cove Phase III”)	

I. NATURE OF PROCEEDING

This matter came before the Lincoln City City Council for an appeal hearing. The appeal was from a decision of the Lincoln City Planning Commission in its case file SUB 2020-01 and PUD 2020-01, denying approval of a tentative subdivision plat, a Planned Unit Development Preliminary Master Plan, and a Planned Unit Development Final Master Plan for a 40-lot development known as “The Cove, Phase III.” The City Council heard the appeal in a *de novo* hearing.

Based upon the evidence in the whole record, the City Council makes the following findings of fact and conclusions of law:

II. FINDINGS OF FACT

1. The Nature of Proceeding set forth above is true and correct and is incorporated herein by this reference.
2. The subject of the appeal is a proposal to develop a 40-lot planned unit development subdivision on a 3.39 acre site south of SW 16th Street approximately 630 feet east of the SW 16th Street intersection with Highway 101. The property is shown on Lincoln County Assessor’s map 07-11-22-AA as tax lot 06800.
3. The comprehensive plan designation of the subject property is High-Density Residential District (R-M) and the zoning designation of the property is Multiple-Family Residential (R-M) zone.
4. The Planning Commission held a public hearing on the application and denied

the application.

5. The City Council held a public hearing on the appeal on September 21, 2020, at which time the council closed the public hearing. All persons were given an opportunity to testify orally and in writing.
6. At the request of a participant in the hearing the City Council held the record open until 5:00 p.m. on September 28, 2020.
7. The City Council deliberated in its meeting on September 28, 2020 and made a tentative decision.
8. On March 20, 2020, Planning and Community Development staff requested applicable agencies to provide written comments regarding the project no later than 5:00 p.m. March 30, 2020. North Lincoln Fire & Rescue District #1, Lincoln City Public Works, Lincoln County Survey Department, North Lincoln Sanitary, Oregon Department of Transportation (ODOT), and Oregon Department of State Lands (DSL) provided comments. All agency comments were included in the record before the City Council.
9. There is an existing pressurized main water line in both SE 16th Street and SE Marine Avenue, with five service lines from the pressurized main line and a blow off valve in the northeastern area of the site. There is an existing fire hydrant in the public right-of-way, adjacent to the northeastern corner of the site. There is an existing sanitary sewer gravity main line in both SE 16th Street and SE Marine Avenue, with five services lines from the gravity main line. There is an existing sanitary sewer manhole in the northeastern portion of the site, as well as five manholes in the SE 16th Street and SE Marine Avenue rights-of-way. There are two unverified storm catch basins located in the stub street in the northeastern corner of the site, as well as a private culvert approximately 33 feet south of the midpoint of the northern property line.
10. The applicant submitted a tentative plan, along with a tree preservation and removal plan, demolition plan, grading and erosion and sediment control plan, composite utility plan, street plan and cross sections, street profiles, and an aerial photograph plan.
11. The submitted preliminary subdivision plat shows the location, widths, and approximate radii of curves of the two proposed private streets. Public drainage easements, public utility easements, private storm drainage easements, and private pedestrian access easements are shown. The dimensions of the proposed lots are shown, along with proposed lot and block numbers and lot size. Lots will be used for attached single-unit dwellings. Tracts are shown for storage areas, private streets, and the recreation area.
12. Sheet P-03 of the submitted plan provides the following information pertaining to area coverage.

Total area =	147,668 square feet
Total anticipated future land coverage =	32,002 square feet
Total anticipated future land coverage =	22%
Streets =	27,509 square feet
Recreation area =	10,505 square feet
Storage area =	2,261 square feet

13. The submitted materials include a draft of the declaration of covenants, conditions, and restrictions for the development. Sheet P-08 of the submitted plan set is the preliminary street plan. Sheet P-09 of the submitted plan set is the preliminary street profile. Sheet P-07, which is the composite utility plan, shows the proposed sanitary sewer, storm drains, and water lines. The existing fire hydrant in the northeastern corner of the site will remain. Existing water services and sanitary sewer laterals will remain. Storm water filtration planters are proposed, along with storm water cleanouts, a 10-foot-wide private storm drainage easement, single water service and meters for each lot, and single sanitary sewer services for each lot. The plans do not show any property intended for dedication to the city or public, and no such dedications are required.
14. The requested density of 40 lots does not exceed the maximum allowable density of 64 lots, so no residential density bonuses or affordable housing bonuses are requested or needed. The allowable density requirement is met.
15. The property is owned by The Cove at Lincoln City, LLC, and that it is anticipated that ownership will remain unchanged until future homes are constructed and sold.
16. A preliminary landscape plan is included in the submitted plan set, identified as Sheet P-15 Preliminary Landscape Plan. There is a note on Sheet P-15 that states: "All on-site areas outside of planned impervious areas, future building footprints, and stormwater facilities to be landscaped per LCMC 17.52.100." The preliminary landscape plan does not provide planting details, irrigation details, species or numbers of plants to be planted, existing vegetation to remain, trees to be planted, or trees to remain. The submitted preliminary landscape plan does not provide enough detail to determine if it meets the code requirements or not.
17. The applicant stated the following in the completeness response letter: "A conceptual neighborhood circulation plan is included in the Preliminary Plans. This application involves the creation of a subdivision for the future construction of 40 attached single-family homes. 40 attached single-family units creates 22 pm peak hour trips based on ITC Category 220 (10th Edition Trip Generation Manual). This does not meet the requirements for a Traffic Impact Study as detailed in Section 17.52.300 of the Lincoln City Municipal Code. As shown on the chart in the 10th Edition Trip Generation Manual for ITC Category 220 (copy enclosed), the

average rate of pm peak hours is 0.56. Therefore 40 attached single-family homes would be anticipated to generate 22 pm peak hour trips, well under the threshold requirements for a TIS pursuant to Section 17.52.300 of 50 pm peak hour trips. This is consistent with the direction provided by City engineering staff at the pre-application conference.”

18. Staff confirmed the proposed project does not meet any of the thresholds listed in LCMC 17.52.300 that require a traffic impact analysis. The required circulation plan is included with the applicant’s submitted plans as Sheet P-14, showing the traffic flow entering and exiting the proposed development.
19. The applicant supplemented the original application with a traffic memo that addressed the traffic concerns raised at the Planning Commission.
20. Regarding phasing, the applicant stated: “This application includes concurrent processing of a Preliminary and Final Master Plan and is intended to be completed in one single stage. The Applicant intends to begin construction as soon as practicable and as the market allows.”
21. Sheet P-04 of the applicant’s submitted plan set is labeled as the “Preliminary Tree Preservation and Removal Plan” showing the topography of the site, the existing trees to be preserved, the existing trees to be removed, and the tree protection method during construction. The sheet showed that the majority of the trees on the site would be removed in the course of preparing the property for installation of infrastructure and dwellings.
22. Sheet P-04 of the applicant’s submitted plan set showed tree protection/construction fencing around the tree protection areas containing the existing trees to be preserved. A detail of the protection/construction fencing is also shown, along with three notes pertaining to the tree protection device, installation of said tree protection, and maintenance of said fencing throughout construction.
23. The applicant did not provide any information in the landscaping plan regarding tree plantings. As a condition of approval, a detailed final landscaping plan showing proposed tree plantings shall be submitted as part of the final engineering plans.
24. With the exception of a detailed landscape plan and a specific date for completion, all required information was submitted. The requirement for the detailed final landscape plan (which includes tree planting details) and a date for substantial completion are not waived and are addressed in a condition of approval.
25. The lots to the north of the subject site are part of The Cove at Lincoln City, platted in 2009, and The Cove at Lincoln City, Phase II, platted in 2018, and zoned R-M. These two subdivisions total 28 lots that were developed for attached

- single-family dwellings. The infrastructure is installed, and six of the 28 lots have dwellings constructed on them leaving 22 lots ready for construction.
26. The properties to the south of the subject site are zoned R-M and are developed as apartments. The properties to the east of the site are zoned R-1-7.5. The parcel to the northeast is owned by the Confederated Tribe of Siletz Indians and is undeveloped. Allowed uses in the R-1-7.5 zone include attached and detached single-family dwellings, duplexes, manufactured homes, cottage housing developments, and four-flat dwellings. The lots to the southeast are part of a developed subdivision (Pacific Ridge, 31 lots, platted in 1999) for detached single-family dwellings, and most of the lots have existing structures.
 27. The properties to the west of the site are zoned R-M. The parcel to the northwest is zoned R-M and contains a dwelling. The parcel immediately adjacent to the western boundary of the site is zoned R-M and is an undeveloped narrow rectangular strip of land. Further west are three parcels, all of which are zoned PI. Two of the three have businesses, and the third is undeveloped.
 28. The areas immediately adjacent to the site are zoned for residential uses. Most of the immediately-adjacent areas are platted subdivisions for either attached or detached single-family dwellings and either currently contain dwellings or are ready for construction upon submittal and issuance of a structural permit. The exception is the undeveloped parcel to the northeast, but this parcel is a residential zone which allows for attached single-family dwellings should the property owner so desire. The proposed project is for 40 lots for future construction of attached single-family dwellings, with lot sizes similar to the lot sizes of the adjacent subdivisions to the north. This is compatible with the developments and allowed uses of the immediately-adjacent properties, since they are all residential in use (or zone if not yet developed).
 29. The applicant did not provide a date for completion, only stating "as soon as practicable and as the market allows" and in one phase. The ordinance states the planning commission shall establish an expiration date for the preliminary master plan approval, not sooner than two years after approval of the preliminary master plan and may impose a condition requiring that a final master plan be submitted for commission review not sooner than one year after approval of the preliminary master plan. Development of the project in one phase over the next two years, with completion of infrastructure and final plat recording no later than two years from the date of preliminary master plan approval, meets this criterion. A condition of approval sets a two-year completion period.
 30. The impacts to the surrounding area from the activities related to the installation and construction of the required infrastructure and the site's development must not be unreasonable. The municipal code sets some requirements that limit such

impacts, and the applicant will be required to comply with them. The municipal code prohibits open burning. The municipal code has prohibitions and limitation on construction track-out. The municipal code has a noise ordinance limiting noise between specified hours. Grading and filling can have adverse impact on properties in close proximity; however, this is a relatively small subdivision to be completed in one phase, and a grading and erosion control plan that meets city standards must be adhered to all times during the construction of the project to reduce potential negative impacts to adjacent properties.

31. The impacts of the development itself once completed and in use, as opposed to the impacts experienced while the development is under construction, also must not be unreasonable. Once the development is completed and in use, those properties that will experience the greatest impact will be the immediately-adjacent lots and parcels, which are those in The Cove at Lincoln City, The Cove at Lincoln City Phase II, Pacific Ridge, Cedar Crest Townhomes, and the single-family dwelling to the northwest of the site. This project will necessitate the removal of the existing trees and vegetation for required infrastructure improvements, installation of sewer and water lines and services to the lots, and placement of houses and driveways, thus removing the existing natural vegetative cover between the project site and the adjacent properties. The preliminary landscaping plan does not specify the number, types, or locations of new or replacement plantings, but it does state that all on-site areas outside of planned impervious areas, future building footprints, and stormwater facilities will be landscaped per LCMC 17.52.100 as well as showing that undisturbed areas will maintain their natural vegetation. The city's landscape standards require landscaping on each individual lot as part of the construction process of the new dwelling.
32. The submitted circulation plan shows that residents of the dwellings will enter and exit the development in one of two ways. The site is accessed via SE 16th Street, which itself has access to Highway 101. Both are two-way, public streets. The site is also accessed from SE Marine Avenue via SE 14th Street. SE 14th Street intersects with Highway 101. Both SE Marine Avenue and SE 14th Street are two-way, public streets. SE 16th Street, SE 14th Street, and SE Marine Avenue will see an increase in traffic as a result of the 40 new attached single-family dwellings, once they are all constructed occupied. However, pursuant to LCMC 17.52.300, a traffic impact study is not required as this project does not involve an amendment to the comprehensive plan or zoning map; a new direct property approach road to Highway 101; generation of 50 or more p.m. peak-hour trips on Highway 101, or 100 or more p.m. peak-hour trips on the local transportation

system according to the Institute of Transportation Engineers (ITE) Trip Generation Manual; use on any street or direct property approach road intersecting with Highway 101 increasing by 10 vehicles or more per day that exceed 20,000 pounds gross vehicle weight; an existing or proposed access driveway that does not meet minimum spacing or sight distance requirements; or a change in internal traffic patterns.

33. The submitted street plans, profiles, and sections show construction of required street frontage improvements. The required improvements include paving, curb, gutter, and sidewalk along the site's SE 16th Street frontage and SE Marine Avenue frontage. City standards do not require street frontage improvements to portions of any street that do not front the subject site.
34. Comments were received from Gary Hunt regarding removal of the trees on the site and the impact of the traffic, specifically regarding the narrow width of Marine Avenue and the lack of traffic being able to flow if a car is parked on each side of the street across from each other. The city code has provisions for removal of trees for development. The city code has standards for public streets. The project does not meet the criteria for requiring a traffic impact study.
35. Comments were received from Laura Quillman. Ms. Quillman wondered about the number of lots and the type of structures proposed, as well as a question related to changes to allow safe egress and ingress from the development onto a street that currently allows parking along the curb on the north side. The number of proposed lots meets the density requirements for the Multiple-Family Residential (R-M) zone. Attached single-family dwellings are proposed, and they are a permitted use in the R-M zone. There are no design requirements for attached single-family dwellings other than providing two features as specified LCMC 17.52.260. The width of streets, the placement of approaches, and designated "no parking" zones are determined by city standards administered by the Public Works Department.
36. Comments were received from Tina French expressing concern with future residents being concerned with the noise from the nearby North Lincoln Sanitary Service business. Staff notes that North Lincoln Sanitary Service is a permitted use in the zone in which it is located, the Planned Industrial (PI) zone. The subject property is in the R-M zone, and the proposed use of attached single-family dwellings is a permitted use in the R-M zone.
37. The code does not require a traffic impact study for the project. There is a developed public street system in place to access the site. The code has requirements for development to construct its proportionate share of any street

frontage improvements. The proportionate share is that street frontage adjacent to the site. Larger projects that trigger a traffic impact study may have larger proportionate shares of street frontage improvements, but in this case, a traffic impact study is not required due to the small size of the development.

38. The site is served by city water. The city's water system has capacity to accommodate an additional 40 houses without negative impact to the site, the surrounding area, or the city itself.
39. The site is served by city sewer. The city's sewer system has capacity to accommodate an additional 40 houses without negative impact to the site, the surround area, or the city itself.
40. The site has an unnamed creek that flows through wetlands along much of its length. These wetlands are on the city's Natural Resource Overlay Zone maps as significant wetlands. Staff is unaware of any problems with this drainage way.
41. LCMC 17.46.040.B prohibits activities that would alter the hydrology of a significant wetland, or that would introduce sediment or lead to erosion. The applicant has submitted a drainage plan that will maintain pre-development water flow from the site, storing water during storms, then releasing it at a rate no greater than the pre-development rate. Staff has determined that because the applicant has shown the project has the capability, through the engineering of appropriate drainage facilities, to avoid adding flooding or overflow to the surrounding area, and is required to do so, that this part of this criterion is met.
42. The proposed streets appear to be adequate with respect to capacity for the proposed project. City standards govern the design of the streets. The applicant submitted a preliminary street plan that has been reviewed by the Public Works Department, North Lincoln Fire and Rescue, North Lincoln Sanitary Service, and the Department of State Lands. Those departments or agencies have provided comments and recommended conditions of approval pertinent to the street plan.
43. The applicant included preliminary utility plans showing utility services to each lot. City standards govern the design of the water, sewer, drainage, drainage pre-treatment, and storm water detention facilities. The plans have been reviewed by the Public Works Department, North Lincoln Fire and Rescue, North Lincoln Sanitary Service, and the Department of State Lands. Those departments or agencies have provided comments and recommended conditions of approval pertinent to the utility plan.
44. The maximum allowable density for the site is 64 lots. The project proposes only 40 lots. The gross area of the site is 147,688 square feet and 15 percent of 147,688 is 22,153.2. The submitted preliminary plat states the total site area and the square footages for

streets, recreation area, storage area, and anticipated future structures, but it does not list the percentage of area devoted to landscaping or protected resource areas.

45. The final master plan does not include a detailed landscape plan. However, given that the landscaping requirements are clear and objective and require no discretion to determine whether they are met, this may be addressed through a condition of approval and such a condition of approval is provided.
46. Since the preliminary master plan and the final master plan are the same plan, the final master plan is consistent with the preliminary master plan.

III. CONDITIONS OF APPROVAL

1. The project shall be developed in one phase, with completion of required infrastructure and final plat recording by October 12, 2022.
2. A detailed final landscaping plan that shows compliance with the landscaping requirements listed in city code shall be submitted to the Planning Department concurrent with the submittal of the final engineering plans to the Public Works Department. Specifically, the detailed final landscaping plan shall show at least 22,153.20 square feet of the site devoted to landscaping, of which the wetland area may be included.
3. Trees to be removed shall be removed in compliance with Lincoln City Municipal Code 17.52.220.F.9.
4. The project shall comply with the Oregon Department of State Lands (DSL) removal fill law, including requirements noted in DSL's response to this project.
5. With submittal of the final engineering plans, the applicant shall submit a waste disposal plan that has been approved by North Lincoln Sanitary Service that allows sufficient accessibility for collection vehicles to service the development. Approval from North Lincoln Sanitary Service shall consist of Lon French's signature and date of signature on the waste disposal plan, with a statement that he has approved the plan as shown.
6. The project plan set submitted with the request for review of the final engineering plans shall show compliance with 2019 Oregon Fire Code 503 and Appendix D for Fire Apparatus Access Roads, and 2019 Oregon Fire Code 507 and Appendix C for Fire Protection Water Supplies for one- and two-family dwellings.
7. The applicant shall submit two copies of engineering plans for all public improvements and site development to the Department of Public Works for review and approval. These shall either be approved as submitted or modified in accordance with requirements of the City Engineer. Plans shall be stamped by a licensed professional engineer. The City Engineer's review and any required modifications shall be for assuring that the improvements shall be consistent with

Lincoln City Public Works Standards and the provisions of this condition of approval.

8. Prior to issuance of any structural permits, any site work, any construction activity, or any demolition, clearing, grubbing, or excavating, a Combined Public Works Permit application shall be submitted. The Combined Public Works Permit application shall be submitted with each and every structural permit application. All right-of-way work planned shall be noted on the approved plans and performed as shown.
9. The approved plan set and permits shall be kept on the site, at all times, until construction is complete and all final inspections have been passed. Any changes to the approved engineering plans affecting public improvements or utilities shall be submitted to the Lincoln City Public Works Department for approval prior to construction of altered facilities.
10. **Within 30 days after construction**, field verified, engineer stamped as-builts for all public improvements, including relevant survey data, shall be provided to the Lincoln City Public Works Department in AutoCAD format. All discovered utilities and changes to the approved engineering plans shall be noted with callouts indicating location, depth, and material. **The record drawings shall be established in model space using the state plan coordinate system, Oregon North Zone 3601, with horizontal survey control of NAD 83 and vertical control of NAVD 88.**
11. The applicant shall submit two copies of erosion control plans to the Lincoln City Public Works Department. The City Engineer will review all erosion control plans and approve if compliant with city standards. Approved soil erosion control measures must be in place and inspected by the Lincoln City Department of Public Works prior to any construction activities.
12. The project site exceeds one or more acres of land disturbance throughout construction. The applicant is responsible for application for, acquisition of, and compliance with an Oregon DEQ 1200-C Stormwater permit.
13. A net cut/fill calculation shall be completed and submitted with the application. If net cut exceeds 5,000 CY, the proposed permitted fill disposal site shall be identified by the applicant.
14. Compaction procedures, including proposed compaction method, implementation plan, and compaction testing plan shall be submitted with the engineered grading plan.
15. Planting and slope stabilization shall be completed per the final landscape plan for finished slopes prior to final approval by the Lincoln City Public Works Department. Additional planting and slope stabilization measures for grades exceeding 1:2 shall be implemented by the applicant as needed.

16. New sidewalk, curb, and gutter, and necessary pavement repair shall be completed along the site's SE Marine Avenue street frontage in compliance with LCMC 17.52.230. All city right-of-way work planned shall be noted on the approved engineering plan set and performed as shown and approved. Work shall include:
 - a. Construction of sidewalk improvements per LCPW standards along the full subdivision boundary of SE Marine Ave. This shall include ADA-accessible transitions at all sidewalk terminations, ADA compliant directional curb ramp installation on both sides of the intersection of Private Street "A" and SE Marine Ave, and sidewalk/driveway compliance with state and federal Public Right-of-Way Accessible Guidelines.
 - b. Full roadway improvement per LCMC 17.52.230 shall be constructed on SE Marine Avenue and SE 16th Street for all right-of-way adjacent to the subject site's boundaries. This shall include construction of sidewalk, curb, gutter, and 20-foot-wide asphalt concrete paving (4" depth over 10" compacted aggregate base). Asphalt termination ramp shall be paved at the end of the walk heading west on SE 16th St.
17. The extents of SE Marine Ave being cut for multiple utility installations shall be repaired with a minimum 1 ½" overlay. Grinding shall be completed as needed to maintain curb exposure, drainage, and smooth transitions to the existing pavement. Trench cuts shall have a finished asphalt depth of 4 inches minimum.
18. Required clear vision triangle areas shall be maintained in site plan layout and shall be shown on final engineering plans.
19. All materials shall adhere to LCPW standards including, but not limited to: asphalt paving depth, aggregate base, striping, pipe, fittings, and structures.
20. Required street signage shall be provided and installed by the property owner, including street name signs, stop signs, and no parking signs.
 - a. "No Parking" signs shall be displayed on either side of each roadway for Private Street "A," "B," and SE Marine Ave adjacent to the subdivision boundary.
 - b. "Stop" signs and thermoplastic stop bars shall be added on Private Street "A" and "B" at the proposed "tee" intersections.
 - c. Street signs indicating the approved street names and SE Marine Ave shall be placed on treated, 4"x4" posts at back of walk.
21. Any and all street lighting shall be the responsibility of the developer and maintained by the HOA.
22. Private Street "A" and "B" maintenance responsibility shall be clearly delegated to the HOA formed for the planned unit development.

23. Private Street "B" shall be constructed with a standard curb return, consistent with adjacent subdivisions and Lincoln City Public Works street standards. Curb return radius shall be a minimum of 15 feet, according to the local-to-local LCPW Streets Design Standards.
24. Vehicle traffic generated from construction shall be restricted from utilizing SE 16th St as ingress and egress during subdivision development. If the use of SE 16th St is desired as regular ingress and egress, the developer shall notify Lincoln City Public Works and agree to maintenance and upkeep of the street throughout the course of construction, including but not limited to replacement of gravel.
25. All new impervious paving shall be treated according to the Lincoln City Public works Stormwater Design Standards. Treatment shall be sized according 50% of the 2-year, 24-hour rain event.
26. All increase from the existing sites total impervious area shall be detained according to Lincoln City Public Works Stormwater Design Standards: 2-year, 10-year, 25-year 24-hour rain event OR calculations shall be submitted demonstrating dispersion to pre-development flows prior to storm system termination.
27. Calculations for conveyance, infiltration, detention, water quality, and drainage facilities shall be submitted with permit application and demonstrate that the system is capable of handling the increased flows and/or proposed work on the system will adequately increase system size.
28. Curb breaks and/or catch basins shall be noted in gutter line to identify roadway flow into the proposed stormwater planters.
29. Engineered Detail & Typ. Cross-section of proposed stormwater filtration planters shall be submitted with the final engineering plans. Detail shall be adequate for future construction and, at a minimum, shall address (1) proposed construction, material, media, & depth of planter (2) sizing & fulfillment of stormwater detention requirements, (3) adequate accommodation of slopes proposed around infiltration planters, and (4) proposed piping into & out of planters.
30. No blind tees or bends shall be installed in sewer systems. Manholes or cleanouts shall be placed at all bends. (See private street "A")
31. All Sanitary Sewer access points shall be pre-cast, 48" diameter manholes with standard frame and lid (two-hole) constructed per Oregon standard detail RD338. No cleanouts shall be allowed.
32. Cleanouts shall be installed at the property line as noted. End of pipe shall be marked with green painted 2"x4" set flush with finished grade.
33. Sanitary Sewer plans shall be additionally submitted to Oregon DEQ for approval. Applicant shall be responsible for adhering to any additional approval conditions. After construction, facilities shall be flushed, pressure tested, TV-ed, and mandrelled according to the 2018 ODOT Standard specification. Manholes shall

be vacuumed tested according to the 2018 ODOT Standard specification. TV footage and testing reports shall be submitted to LCPW with submission of required as-builts prior to final acceptance by LCPW.

34. The applicant is responsible for ensuring that requested fire and domestic service ensures adequate flow & pressure for required water supply. The applicant shall be responsible for conducting any flow tests required to establish water pressure and flow information. The applicant shall give the Public Works Department 48 hours advance notice of any flow testing to be performed. A water distribution city staff member shall be on site at the time of flow testing
35. Applicant is responsible for the verification of existing private infrastructure and any repairs required. Applicant shall be responsible for verification of existing utilities proposed for use.
36. All connections to the public water system, assemblies, and service line location shall be designed and completed according to Lincoln City Public Works Design Standards.
37. Material submittals for all public water improvements shall be submitted to LCPW for review and approval in accordance with LCPW Water Distribution standards.
38. All water meters shall be placed at back of walk, outside of the sidewalk.
39. Owner shall be responsible for all chlorination, pressure testing, and coordination with LCPW water distribution staff according to LCPW Standards.
40. All serviced lots must have frontage on proposed public utilities. Long service laterals parallel to the roadway will not be allowed.
41. Water line shall be looped between Private Streets "A" and "B" or an alternate as agreed to by the city engineer. Combination air vacuum/relief valves shall be placed as needed. Remaining dead end lines shall be sized appropriately for service and blow-offs designed at termination points according to LCPW water distribution standards.
42. Private roads shall note the required blanket utility and access easements on the final plat.
43. A Public Access/Stormwater/Utility easement shall be dedicated for any sidewalk/storm/sewer/water public infrastructure on private property. The easements shall be noted on the approved engineering plans as well as noted on the final plat.

44. Pursuant to LCMC 17.52.210, the timetable of development for the Planned Development must be reasonable. As the development is proceeding with concurrent Final Plan Approval, the code-required one year timetable for final plat applies, (with allowance for extension per the code). Infrastructure must be completed as provided per Title 16 and per applicable plat requirements (e.g. contract for construction). As for the vertical construction authorized in the Planned Development, a reasonable period of time for completion of all vertical construction is set at 5 years from the date of final subdivision plat approval. If the developer fails to meet this completion deadline, the developer must apply to the Planning Commission for reevaluation of as-yet-unbuilt portions of the development, for conformity with then-existing city zoning ordinance requirements in relation to then-existing conditions.

IV. ORDER

In sum, the City Council finds and determines that the applications and supporting documents in the record for files SUB 2020-01 and PUD 2020-01, consisting of a tentative subdivision plat, a Planned Unit Development Preliminary Master Plan, and a Planned Unit Development Final Master Plan for a 40-lot development known as "The Cove, Phase III" to be located on the subject property, complies with the applicable criterion in the Lincoln City Municipal Code.

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, ***and expressly subject to the above specifically incorporated 44 conditions of approval, together with the applicant's offer of a \$50,000 voluntary contribution for improvements to 16th street, (said contribution to be received not later than 60 days after final plat approval)***, the City Council hereby APPROVES the tentative subdivision plat, a Planned Unit Development Preliminary Master Plan, and a Planned Unit Development Final Master Plan for files SUB 2020-01 and PUD 2020-01. Strict compliance with the conditions of approval is required. Further, if any one or more of the conditions set forth or referenced above are found to be invalid, for any reason whatsoever, then this approval is denied.

ADOPTED THIS 12th DAY OF OCTOBER 2020.

City of Lincoln City

Dick Anderson, Mayor

Signature authorized by vote of the full Council this 12th Day of October 2020

ATTEST:
City Recorder

Approved as to form:

_____ Date: _____
City Attorney

Council Communication

Third Amendment to License Agreement Nelscott Deck (Scott Plaza)

Meeting Date: October 12, 2020 Primary Staff Contact: Richard Appicello
 Department: City Attorney E-Mail: RAppicello@lincolncity.org
 Secondary Dept: Urban Renewal Agency Secondary Contacts: Alison Robertson
 Approval: Ronald F Chandler Estimated Time: 5 mins.

Question:

Should City Council approve a one year extension of the license agreement for the Nelscott deck (originally constructed by Urban Renewal and referred to as Scott Plaza) or terminate the arrangement and remove or sell the public improvement?

Background:

The concept for Scott Plaza, a wooden elevated deck between two existing buildings in the Nelscott Business Strip, came out of the 2006 Nelscott Community Vision Plan. The intention of the project was to create a community space providing users ease of access from both the street and sidewalk but also to both adjacent, existing businesses. In this Public/Private Partnership and through a License Agreement, the Urban Renewal Agency provided the design, permitting and construction of the plaza. The City of Lincoln City committed to maintenance and the private property owners committed their properties to public use. The plaza is essentially a 1,400 sf deck overlooking Nelscott's Baldy Creek.

In 2009, Quade Construction won the construction contract and built the deck using cedar decking at a total cost of \$106,298.

This project became an example to show property owners what could be done to increase business opportunities on the west side of buildings that overlook Baldy Creek. One of the buildings associated with the Plaza was sold to a local business owner and the new owner is contemplating extending the square footage of the deck along the west side of the buildings in the future.

Maintenance: Public Works, and now Parks & Recreation, have maintained the deck replacing boards here and there, pressure washing and re-sealing/re-staining once a year. This amounts to approximately \$350 for materials and 28 employee hours annually.

Summary of license terms:

City staff has again requested that the owners of the underlying property extend the license agreement to use the real property on which the Nelscott deck (Scott Plaza) is constructed for

another year while the parties discuss options (e.g. dedication of land to the public, (*preferred*), long term lease, license, sale of the improvement or removal of improvement). Given the COVID-19 emergency –public gatherings (rental and use) in the area has been suspended- so discussions have been suspended. Nevertheless, staff requests Council and the owners extend the license – rather than remove the improvement.

The improvement was originally constructed by Urban Renewal. The construction was unusual as the City did not own the property – the city has only a license (*Staff would likely not recommend this today*). Typical to Urban Renewal public improvement projects, maintenance and operations of those projects become City responsibility. The deck is available for free (non-exclusive) use but can be rented (on a nondiscriminatory basis) with an exclusive use permit (after payment of the Council established fee) from the City Parks and Recreation Department.

Staff is simply making the Council aware of the available options - but will proceed with the assumption that Council desires to continue to own, operate, and maintain the improvement.

Authority:

The Manager has delegated authority to enter into various license agreements; however the Council is being made aware of the available options.

Fiscal Impacts:

The City Parks crew maintains the deck and will continue to do so if the license is extended.

Staff Recommendation:

Staff Recommends approval of the requested license extension.

Council Options:

1. Approve the license.
2. Do not approve the license terminate (sell) or (remove) the improvements.

Potential Motions:

Council:

1. Motion to approve the Third Amendment to the license agreement.

Attachments:

Third Amendment to September 2 2008 License Agreement_Final (PDF)

THIRD AMENDMENT TO LICENSE AGREEMENT

RECITALS

A. The Lincoln City Urban Renewal Agency, The City of Lincoln City, together with Lincoln City Two LLC, and Donna M. Cairo (Parties) entered into a LICENSE AGREEMENT (original license) effective September 2, 2008 for the use of certain real property identified in Exhibit C to the original License; and

B. The term of the License Agreement after automatic extensions was from September 2, 2008 through September 2, 2018. The Agreement provides for further extension by written amendment for an additional term of any period of time; and

C. The Parties agreed in December 2018 to extend the License for an additional year to September 2, 2019 while the parties discussed other options.

D. The Parties agreed in August of 2019 to extend the License for an additional year to September 2, 2020.

The Parties have not reached any agreement and additional time is needed; and

E. If the Parties do not extend the Agreement, under the terms of the original license agreement, the City and Agency may upon termination, enter into a new agreement, sell the project, or remove the Nelscott Deck project from the license property.

F. The parties agree that the License Agreement should be immediately extended so that there is no interruption in maintenance and insurance coverages associated with the public's use of the property; and

G. A one year extension is proposed to provide time for the parties to meet and discuss the License arrangement and for negotiation and drafting of new agreements, if any;

NOW, THEREFORE, with reference to the above recitals, in consideration of the promises, representations, and covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals

The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Term

The term of the license, as set forth in paragraph 5 of the original license and, as amended by the First Amendment and the Second Amendment, is hereby extended for a period of one year from September 2, 2020 to September 2, 2021.

3. Miscellaneous

All other provisions of the original license not amended are fully affirmed and reinstated and shall continue in full force and affect.

When signed, this Third Amendment shall be added to the original license and made a part thereof.

This Amendment may be executed in counterparts, and a facsimile copy of any signature shall be treated as the original.

This Amendment is effective beginning September 2, 2020 and this revocable license need not be recorded in the County Deed records.

City of Lincoln City

Ronald F. Chandler, City Manager

Date

Approved as to Form:

Attest:

Richard Appicello, City Attorney

City Recorder

Lincoln City Two LLC / Lincoln City One LLC

Ronald L. Rubin, member

Date

Witness

Donna M. Cairo

Donna M. Cairo

Date

Witness

Per contract with Lincoln City One LLC

Heladio Huesca

Date

Witness

Council Communication

Public Comments

Meeting Date:	October 12, 2020	Primary Staff Contact:	Ronald F Chandler
Department:	Administration	E-Mail:	RChandler@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Ronald F Chandler	Estimated Time:	

Attachments:

public comment 10-12-2020_Redacted (PDF)

Ronald Chandler

From: Ronald Chandler
Sent: Wednesday, October 7, 2020 11:17 AM
To: Public Comment
Subject: FW: Agenda item for next Council meeting

-----Original Message-----

From: Fran London [REDACTED]
Sent: Wednesday, October 7, 2020 7:55 AM
To: Ronald Chandler <rhandler@lincolncity.org>
Cc: [REDACTED]
Subject: Agenda item for next Council meeting

Good Morning Mr. Chandler,

I would like to add an agenda item for the next council meeting.

Report from Ken Murphy on the status of the evacuation plan.

Thank you very much
Fran Lonnon

Sent from my iPad

Council Communication

Review of Sustainability Committee Recommendations

Meeting Date: October 12, 2020 Primary Staff Contact: Ronald F Chandler
Department: Administration E-Mail: RChandler@lincolncity.org
Secondary Dept: Secondary Contacts:
Approval: Ronald F Chandler Estimated Time: 1 hour 45 minutes

On February 10, 2020 the City Sustainability Committee presented their recommendations for "Going Green in Lincoln City." These recommendations included 1) plastics reduction, 2) sustainable landscaping and 3) local – sustainable food.

The purpose of this meeting is to review the Sustainability Committee's recommendations and answer three questions.

- 1) Should the City implement a plan for reducing plastics and, if so, what elements should be included in that plan?
- 2) Should the City implement a plan for sustainable landscaping and, if so, what elements should be included in that plan?
- 3) Should the City implement a plan for local, sustainable food and, if so, what elements should be included in that plan?

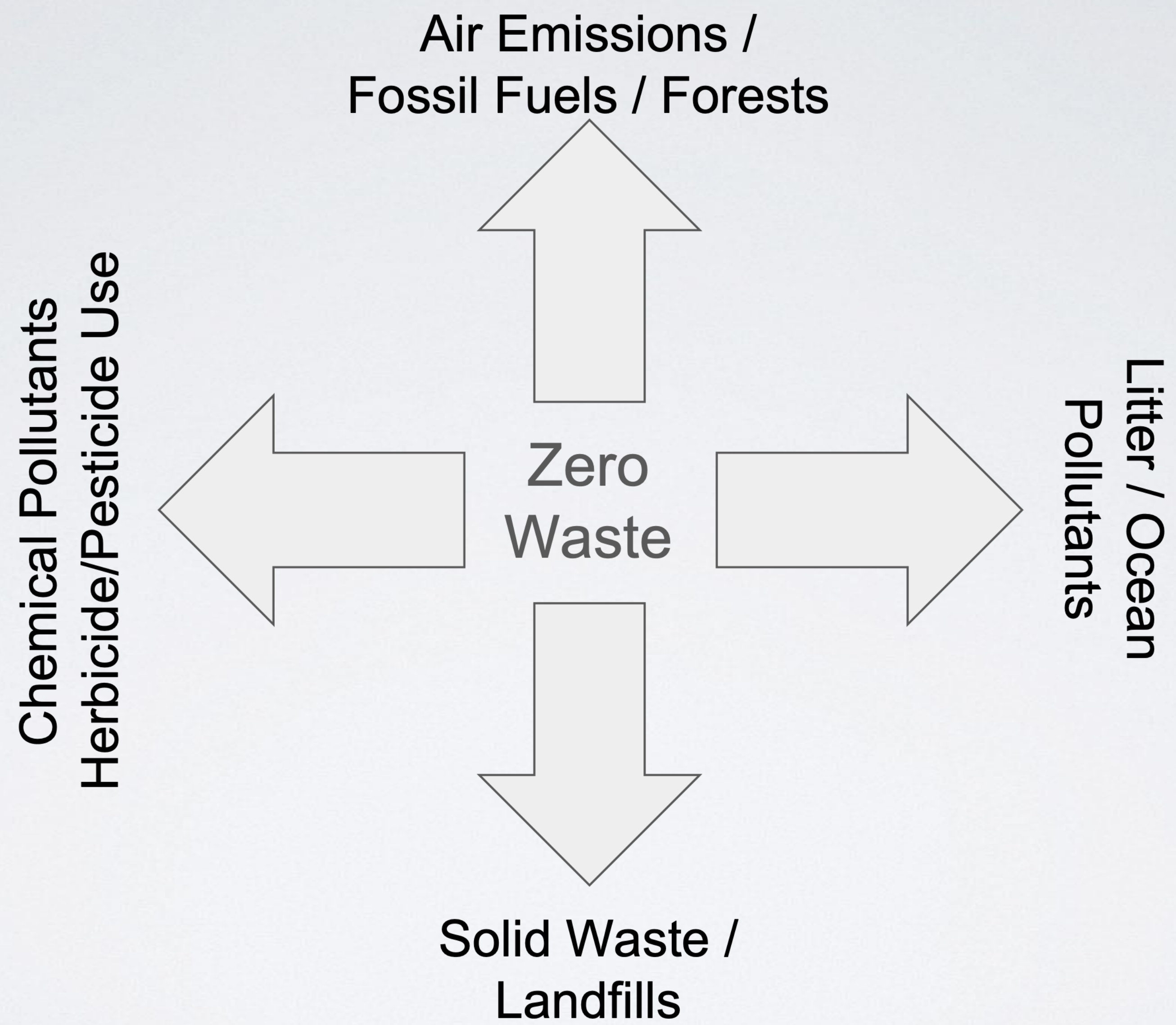
The Sustainability Committee's power point presentation and project proposal is attached.

Attachments:

cc_agenda_sustainability committee recommendations (PDF)

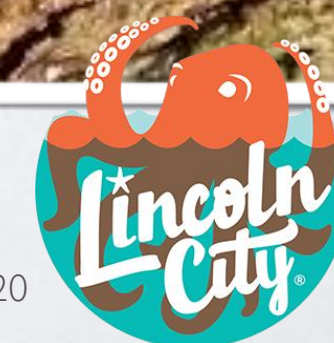
Lincoln City
Target: **Zero** Waste





Going Green in Lincoln City

1. Plastics reduction
2. Sustainable landscaping
3. Local, sustainable food



Going Green in Lincoln City

Local, sustainable food



*At the Lincoln City Farmers & Crafters Market
August 2005*

Going Green in Lincoln City

Flavors 101 Event

- Week-long food fest
- Culinary Center/Explore LC
- Appeal to locals & tourist
- Featuring food & recipes
 - Local & sustainable
 - Healthy & easy

*Enjoying fresh mussels at NW 15th St
May 2016*



Going Green in Lincoln City

Sustainable landscaping



Going Green in Lincoln City

Sustainable Landscaping

- Reduce/Eliminate pesticides
- Reduce/Eliminate herbicides
- Encourage use of native plants
- Protect groundwater



Going Green in Lincoln City

Sustainable Landscaping

- Education is the key
- Make it fun & interesting
- Information about alternatives
- Educational videos
- Recruit Partners (Earthwise Inst., etc.)
- Offer classes & workshops
- Signage for yards



Going Green in Lincoln City: Plastics Reduction

Every city needs an identity.
What is ours?
What could it be?

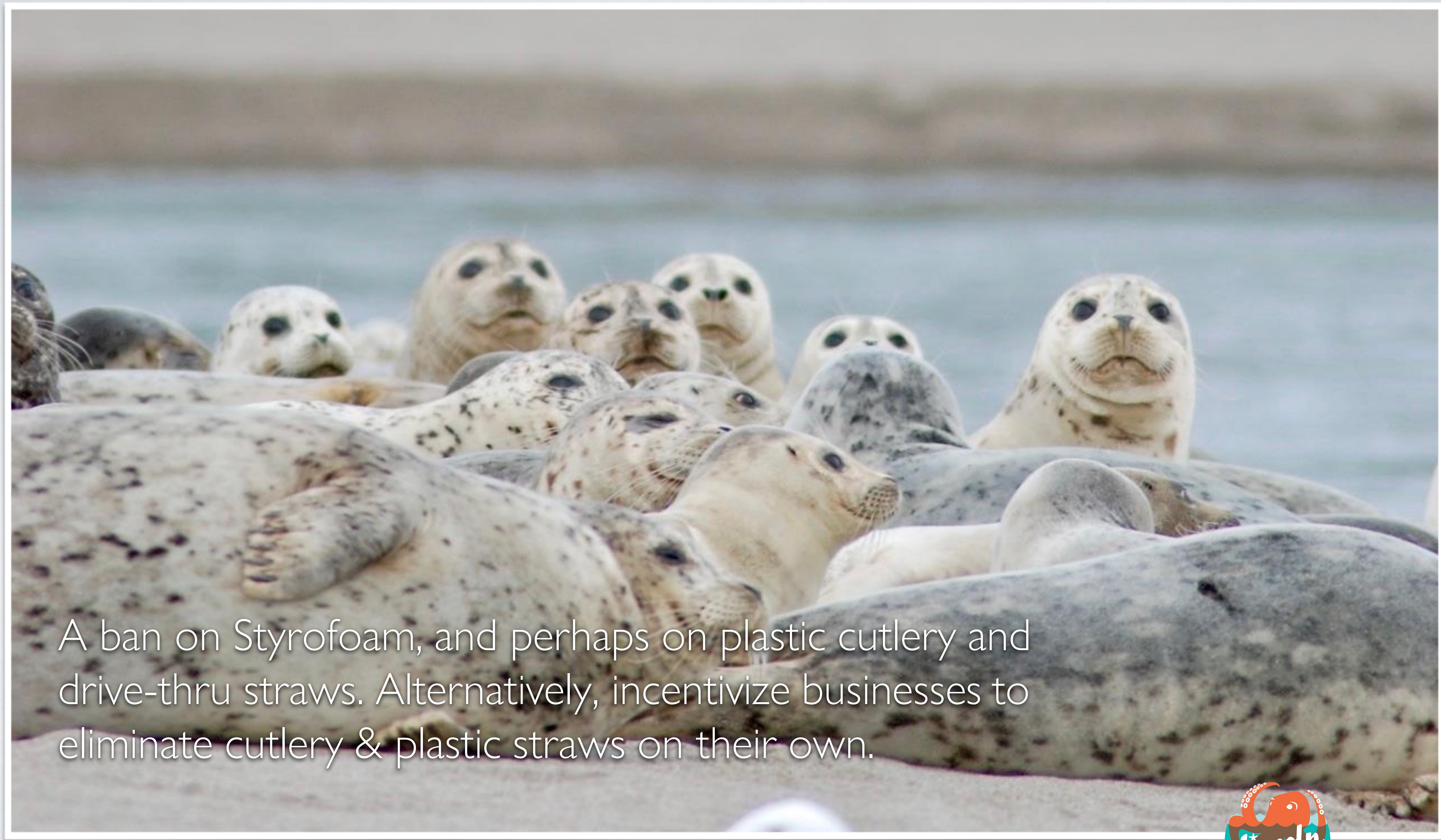






Identity: 'Oregon's Greenest Beach'





A ban on Styrofoam, and perhaps on plastic cutlery and drive-thru straws. Alternatively, incentivize businesses to eliminate cutlery & plastic straws on their own.



A photograph of a sunset over the ocean. The sky is filled with vibrant orange, red, and purple clouds. The sun is low on the horizon, casting a golden glow. In the foreground, there is a dark building with a sign that reads "ENTER CANY" and "D WEEK ECIAL".

ENTER
CANY
D WEEK
ECIAL

How to earn the title? **Walk the talk.**
Ex: *“75% of restaurants & lodging properties offer paper or compostable products in lieu of plastic straws and utensils.”*





Why?
Because too little separates Lincoln City from other beach towns. And, because consumers will care. And, because it's the right thing to do.





Also, because 71% of consumers are motivated to make purchasing decisions based on environmental and sustainability issues. Another 16% are moderately motivated.



CONSUMER PROFILES: CORE TO PERIPHERY

MID-LEVEL

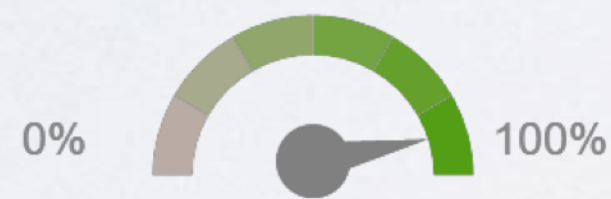
The Mid-level (**58%**) represents the majority of consumers and thus the biggest opportunity.



CORE

The Core is most intensely involved in sustainability. Promoting sustainability for the benefit of the greater good — rather than personal benefit — is a defining feature of their values, consistently driving decision making.

Approximate % of Sustainable Products in Pantry



Sustainable Products

Plant-based meat/cheese alternatives and functional beverages are more popular among the Core, who tend to see animal products as less sustainable. The Core tend to eat at home for more control over their diets. Their purchasing does suggest more home cooking, as they are more likely to buy fresh perishables and cooking staples.



INNER MID-LEVEL

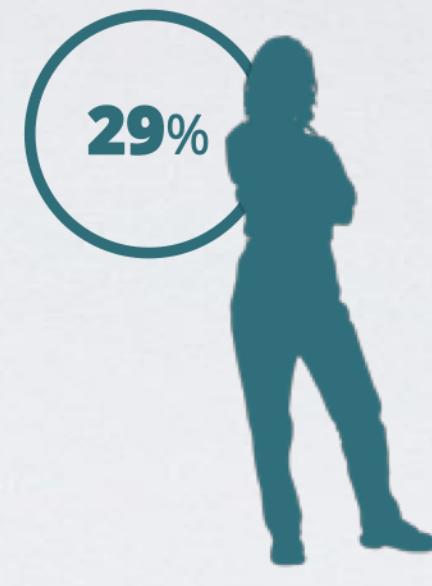
Inner Mid-level consumers adopt Core attitudes and behaviors pragmatically and are often more driven by personal benefits.

Approximate % of Sustainable Products in Pantry



Sustainable Products

While fresh foods — such as produce, meat, and dairy — are top of mind, Inner Mid-level consumers go for more convenience and indulgence than their more engaged Core counterparts, with a taste for frozen breakfast items and frozen desserts. These choices likely reflect their greater prioritization of taste and convenience.



OUTER MID-LEVEL

Outer Mid-level consumers are occasionally influenced by sustainability in their purchases when it intersects with personal benefits.

Approximate % of Sustainable Products in Pantry



Sustainable Products

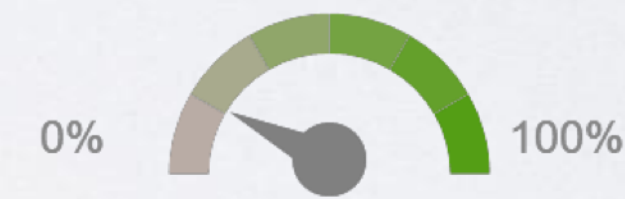
Outer Mid-level consumers buy less fresh produce, eggs, and dairy than other segments, suggesting less scratch cooking. More motivated by personal health, price, convenience, and other priorities, they factor sustainability into their purchasing as a quality cue.



PERIPHERY

The Periphery is least involved in sustainability. Periphery consumers rarely consider sustainability explicitly in their decision making, but it does play a role in their value system more generally.

Approximate % of Sustainable Products in Pantry



Sustainable Products

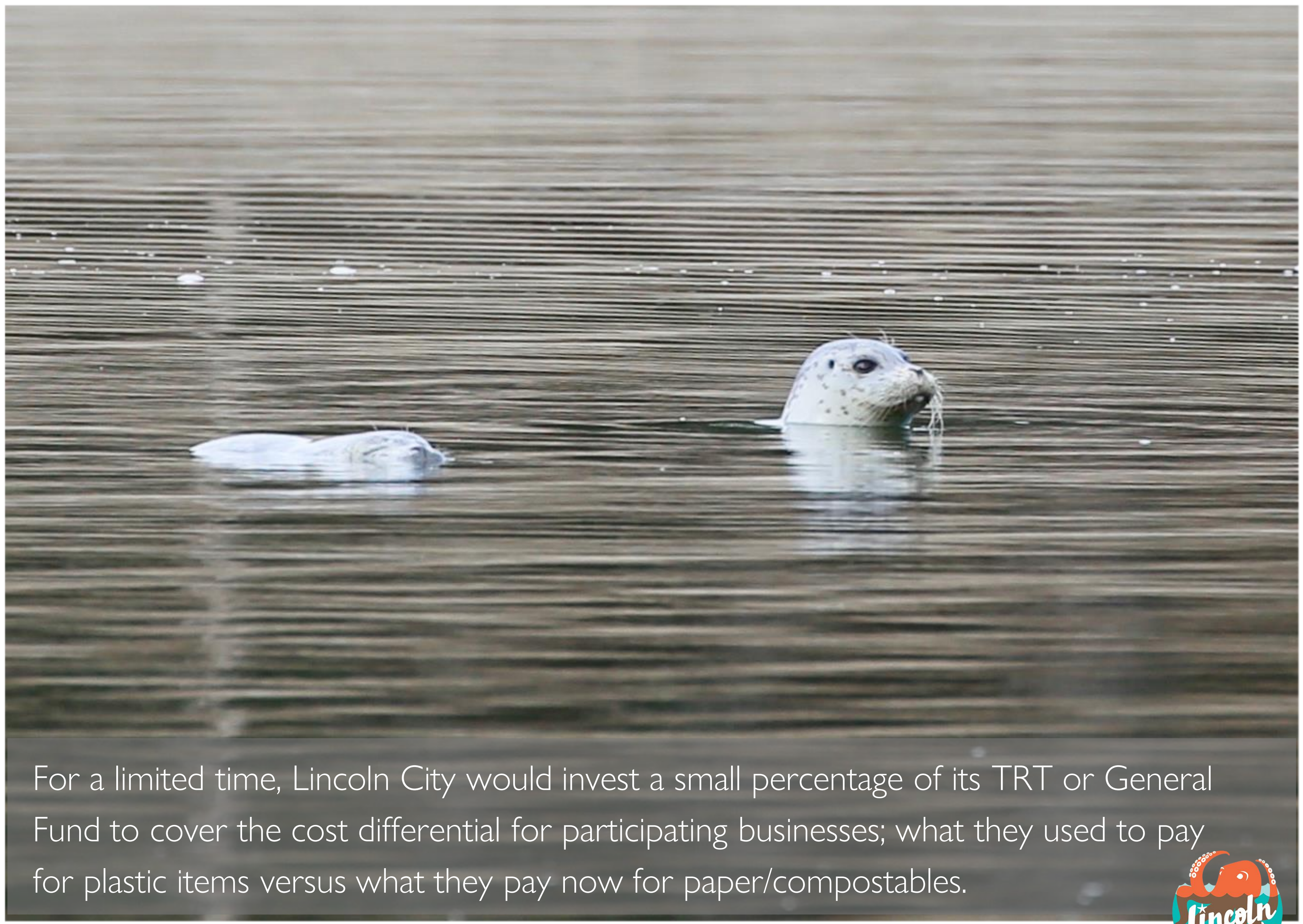
Compared to other segments, Periphery consumers' kitchens reflect a desire for convenient cooking. They buy more ready-made, shelf-stable, and frozen food. They also are more likely to choose snack foods and sweets. Similarly, frozen items in their shopping basket are more likely to include pizza than produce.





One problem: Plastic = cheaper.
One solution: Change that equation.





For a limited time, Lincoln City would invest a small percentage of its TRT or General Fund to cover the cost differential for participating businesses; what they used to pay for plastic items versus what they pay now for paper/compostables.



Net increased cost to businesses is zero, for introductory period (18 mos.? 36?)





What's in it for businesses?

More business. More publicity.

A more devoted and loyal customer base. Higher profits.





Oregon's Greenest Beach

What's in it for Lincoln City?

More business. More publicity. More Transient Room Tax.

Less plastic debris on the beach, in the lake, and in the ocean.





sustainability committee | 2020

Sustainability Project Proposals

#1 Plastics Reduction

Project Purpose

The Lincoln City Sustainability Committee is charged with advising the Lincoln City City Council. It is the shared belief of the committee (a unanimous agreement) that:

- The City has the responsibility, by simple virtue of its location on the very edge of the Oregon Coast, to protect the environment on which it depends for tourism business and on which we all ultimately depend – for everything.
- The City has an opportunity to gain competitive advantage among other coastal destinations vying for tourism dollars by establishing itself as the leader in sustainability on the Oregon Coast. Such a step would establish shared values between the city and repeat visitors who seek out destinations, experiences, and businesses that share their core values. Such connections will yield more repeat visits and firmer, more personal connections between visitors and the City.
- The City council should schedule a public hearing to discuss an outright ban of single use plastics offered in a limited set of areas. And, further, that the council should follow that public process with a definitive vote on a city-wide ban of single-use plastics. The precise scope of the ban would be the city's to decide, but the committee suggests the ban apply to:
Prepared food available for takeout or in-store consumption purchased at Lincoln City restaurants, grocery deli counters, convenience store deli counters, and lodging facilities (i.e. breakfast bars)

Plastics Reduction: Situational Analysis

Target businesses:

- Restaurants
- Lodging Businesses (Hotels)
- Groceries with Delis (Prepared food available for takeout or in-store consumption)
- Convenience stores with Delis (see above)

One report recently suggested there are 83 restaurants/foodservice businesses in Lincoln City. (The Committee does not have access to this precise data and would rely on the city for an accurate count, of these types of businesses, as well as hotels – excluding VRDs.)

Prior to scheduling the public hearing, the Committee recommends the city **survey** these businesses to determine: How many are currently using paper/compostable packaging and the reasons why some businesses are using Styrofoam and other plastic alternatives.

Using City website (and any relevant/updated Explore LC restaurant/lodging mailing lists), the City collects answers to some basic questions, which may include:

- Does your restaurant/business use plastic (clear clamshell, polystyrene (Styrofoam) containers) for to-go and take-out orders of prepared food/beverages?
- How many such containers does your business use per month (on average – we appreciate that volume changes dramatically with the seasons)?
- Do you provide plastic cutlery with such orders?

- Do you provide to-go and self-service cups that are Styrofoam or plastic?
- If 'yes' to any of the above, please select any of the following reasons that apply:
 - They are cheaper than paper/compostable alternatives
 - They work best for the food/beverages we serve
 - Other _____

Plastics Reduction: Business Support

The Sustainability Committee includes retirees, community volunteers, and entrepreneurs. The group isn't blind to business concerns – in fact, the Committee is united in its belief **that this step will enhance the volume of business** for Lincoln City firms of all sorts, and will help to hedge against the inevitable future recessions, by forging personal and lasting relationships with consumers who share our community's values – not simply a love for a sandy beach.

Our goal is that the city work to support businesses, not penalize them. To that end, we suggest the Lincoln City Finance Department research the cost of certain paper and compostable products and, working with certain businesses – for example, those that already partner with Explore Lincoln City on certain programs – determine reasonable estimates of the cost differential between Styrofoam (and similar) packaging compared to the more expensive paper and compostable alternatives.

Based on this data, we propose the City devote a small portion of its budget to helping businesses offset the cost of switching to sustainable alternatives, for every business participating before the ban is implemented. The use of City funds is entirely justifiable in that the sustainable packaging could and should be incorporated into the city's targeted advertising to win new business from like-minded consumers in the Portland metropolitan area and beyond.

Implementation note: While our all-volunteer committee will not suggest precise mechanics of how this program should be implemented, we believe it would be a reasonably light lift, of limited duration. For example, a limited period of 18 months of support. One method would be to set a baseline of Styrofoam (or clear plastic, etc.) product costs at varying volume levels and compare that baseline with quarterly statements submitted by the businesses. The difference between those invoiced amounts and the cost of using plastic alternatives would be issued to the businesses, thus negating any price difference. The city could set reasonable caps on sustainable product costs and could even provide a list of approved vendors who would offer bulk discounts to city customers in exchange for increased volume. Depending on how these arrangements are structured, they could involve the city (i.e. an RFP process) or not. The Sustainability Committee is confident the city's talented legal and finance teams could find an equitable and auditable system to achieve the simple goal of eliminating any increased costs to participating businesses during the introductory period.

Project #2: Sustainable Landscaping Proposal

The Lincoln City Sustainability Committee is charged with advising the Lincoln City City Council. It is the shared belief of the committee that the City needs to protect its groundwater through the reduced use of pesticides and herbicides.

The key to reducing the need for pesticides and herbicides is understanding what is growing and replacing non-native plants with natives. How can individuals and households be guided and encouraged to garden organically?

Steps to get there - Making it fun and interesting

1. Inform households on alternatives
2. Educational videos
 - a. Understanding native and non-native plants
 - b. Identifying, growing, and using native and naturalized plants for health and well-being
 - c. How to garden with them without pesticides and herbicides
3. Utilize videos, brochures, and posts on Earthwise Institute linked to Lincoln City's website
4. Educational programs and classes on alternatives
 - a. Adult classes at college
 - b. City-sponsored workshops with partners such as Earthwise Institute (a nonprofit headed by a Sustainability Committee member)
5. Signage for yards, e.g., "Pesticide Free"
6. Public education on the dangers of pesticides and herbicides and other threats to our groundwater.

We realize this effort would involve multiple city departments and citywide planning, and that it would require a long-term roll-out and year round program both regarding education and application. For example, note that spring and summer are the height of much of the planting and growing, but also that fall is the best time to be planting berries and trees.

Project #3: Sustainable Food Event Proposal

The Lincoln City Sustainability Committee is charged with advising the Lincoln City City Council. The Committee would like the Council to consider encouraging local, sustainable food by holding a local food event.

Buying, growing, and preparing locally-sourced, sustainable food supports the community, reduces reliance on transported products, provides healthy, nutrient-rich alternatives to packaged food, and reduces food waste.

The committee proposes an event, Flavors 101: a weeklong food fest for locals and tourists that showcases our local chefs preparing dishes, and distributing the recipes, at the intersection of four aspects:

- Sustainable,
- Local,
- Healthy, and
- Easy.

Potential partners include:

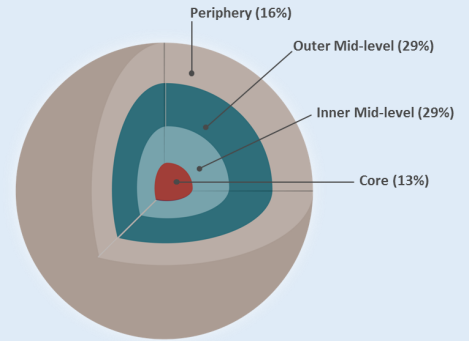
- Lincoln City Culinary Center
- Explore Lincoln City & Others

The committee recognizes that the expertise for event management, planning, and marketing, exists in the city's Explore Lincoln City department, and not on the shoulders of our small group of volunteers, and that such an event could only happen with city support and involvement. Should the city pursue this idea, we do invite the city to request assistance from the Sustainability Committee to the extent we can provide it.

Inside the Pantry: Sustainable Food & Beverage Products in the Household

THE WORLD OF SUSTAINABILITY

Almost all consumers, 87 percent, are considered within The Hartman Group's *World of Sustainability*, meaning that sustainability-related concerns impact their values, attitudes, and actions in at least some measure. Within this World, we segment consumers based on the intensity of their involvement and how closely their aspirations match their actions.



CONSUMER PROFILES: CORE TO PERIPHERY

MID-LEVEL

The Mid-level (**58%**) represents the majority of consumers and thus the biggest opportunity.



CORE

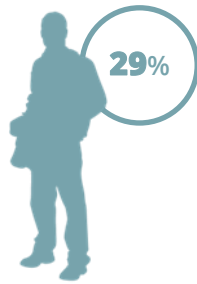
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Sustainable Products

Outer Mid-level consumers buy less fresh produce, eggs, and dairy than other segments, suggesting less scratch cooking. More motivated by personal health, price, convenience, and other priorities, they factor sustainability into their purchasing as a quality cue.



PERIPHERY

The Periphery is least involved in sustainability. Periphery consumers rarely consider sustainability explicitly in their decision making, but it does play a role in their value system more generally.

Approximate % of Sustainable Products in Pantry



Sustainable Products

Compared to other segments, Periphery consumers' kitchens reflect a desire for convenient cooking. They buy more ready-made, shelf-stable, and frozen food. They also are more likely to choose snack foods and sweets. Similarly, frozen items in their shopping basket are more likely to include pizza than produce.

Council Communication

Speeding

Meeting Date:	October 12, 2020	Primary Staff Contact:	Ronald F Chandler
Department:	Administration	E-Mail:	RChandler@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Ronald F Chandler	Estimated Time:	

The City staff is asked from time-to-time to install traffic calming features due to excessive speeding. The intent of this agenda item is to discuss the criteria that can be used to determine if traffic calming measures are needed and typical traffic calming measures

Background Information

Speed Limit – See the attached pamphlet published by ODOT

Common Traffic Calming Infrastructure & Practices

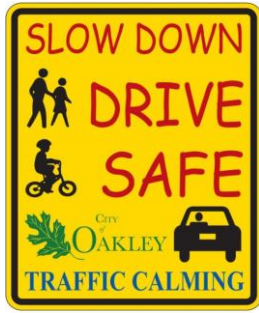
- Police ticketing



- Electronic or photo ticketing



- Signage



- Speed radar signs



- Narrow Roads



- Street Striping



- Speed Humps



- Bulb Outs



- Round-a-bouts



- Center Islands



- Ballards



- Pinchpoints



- Tree lined streets



Current Traffic Calming Infrastructure & Practices

- Police Patrol
- Speed limit radar signs
- Narrow roads
- Bulb outs
- Speed humps
- Round-a-bouts

Criteria – Typical criteria is as follows.

- Speed
- Traffic volumes
- Collisions
- Proximity to schools or other land uses where high numbers of children could be present, such as parks and playgrounds
- Lack of Sidewalks
- Designated bicycle routes.

Locations and conditions where it's not appropriate

- Non-residential areas or streets
- On major roads, bus routes or primary emergency response routes
- Roads with 85th percentile speeds of 45 mph or more

Process

- By Application
- Traffic study – collect data.
- Public meeting if criteria is met.
- Determination of the appropriate traffic calming measure

Attachments:

speed limits in oregon (PDF)

Speed zoning, when used with an overall traffic plan, helps traffic move more safely and efficiently. However, it does not provide a quick fix for land-use problems or poor traffic patterns. Instead, speed zoning reflects a reasonable balance between the needs of drivers, pedestrians and bicyclists using public roads for travel and for those who live along these roads.



SETTING SPEEDS



Setting speed zones on Oregon's highways and streets is often a controversial and emotional issue.

Many citizens believe that lowering the speed will improve traffic safety on their street or in their community. On the other hand, speed zones that are unrealistic are often disregarded by a majority of motorists who are normally careful and law-abiding drivers.

If you have questions about speed zoning, please contact:
Oregon Department of Transportation
State Traffic Engineer
4040 Fairview Industrial Drive SE
Salem, OR 97302-1142
Phone: (503) 986-3568
Fax: (503) 986-3749
Or visit our Web site at:
www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/speed_zone_program.shtml



THE LOGIC OF SPEED ZONES

Extensive studies from around the U.S. show that traffic moving at a speed that is reasonable for the

road and weather conditions results in fewer accidents. Drivers are more patient because a reasonably uniform speed allows progress with less passing, less delay and fewer rear-end collisions. Lowering the speed does not necessarily result in fewer crashes.

SPEED ZONE STANDARDS

In the absence of posted speed limits, Oregon state law gives motorists the following designated speeds:

- 15 mph - Alleys, narrow residential streets
- 20 mph - Business districts, school zones
- 25 mph - Residential districts, public parks, ocean shores;
- 55 mph - Open and rural highways, trucks on interstate highways
- 65 mph - Autos on interstate highways

THE BASIC RULE

Designated and posted speeds are not the final word in Oregon, for all travel on public streets and highways is subject to the Basic Rule. The Basic Rule is both a safety valve and an acknowledgement that drivers are able to act independently, reasonably and with good judgment.

The Rule states that a motorist must drive at a speed that is reasonable and prudent at all times by considering other traffic, road and weather conditions, dangers at intersections and any other conditions that affect safety and speed.



The Basic Rule does not allow motorists to drive faster than the posted speed or designated speed. Instead, the Rule expects drivers to be responsible for their own actions.

WHAT HAPPENS WHEN A SPEED ZONE CHANGE IS REQUESTED?

The Oregon Department of Transportation has the responsibility to investigate most public roads at the request of the road authority.

When a city or county asks the Department to review a speed zone, an engineering study is started. The road is surveyed for the following:

- lane and shoulder widths
- signals and stop signs
- number of intersections and other accesses
- roadside development
- parking and bicycle lanes

Other analysis includes:

- number and type of vehicles
- number of pedestrians and cyclists
- crash history
- speed checks

Radar and laser are used in speed checks, recording free flow traffic. Recognizing that most motorists are generally safe, the speed at or below which 85 percent of the drivers travel is one nationally recognized factor proven by repeated studies as a fair and objective indication of safe and reasonable speeds.

When the investigation is completed, a report is prepared. All of the above considerations are evaluated in deciding whether to propose a change, or retain the existing posted speed. The report is then sent to the agency with road authority for review.

WHO DECIDES?

If the road authority agrees with the recommendation, the speed zone is established. If not, ODOT reviews the road authority's objection and any additional information, and then if possible comes to a mutual agreement. If mutual agreement can't be reached, the case is referred to the Speed Zone Review Panel.

SPEED ZONE REVIEW PANEL

The Speed Zone Review Panel hears contested speed zone cases. The panel reviews the speed zone recommendation and receives testimony from the local agency and interested parties.

The panel consists of representatives from the League of Oregon Cities, Association of Oregon Counties, Oregon Transportation Safety Committee, Oregon State Police and ODOT.



Council Communication

Option Agreement Taft school district property

Meeting Date: October 12, 2020 Primary Staff Contact: Richard Appicello
Department: City Attorney E-Mail: RAppicello@lincolncity.org
Secondary Dept: Parks and Recreation Secondary Contacts: Jeanne Sprague
Approval: Ronald F Chandler Estimated Time: 5 mins.

Question:

Should City Council approve entering into the attached option to purchase school district property?

Background:

The School District has provided the attached Option to Purchase agreement regarding school property in Taft. This matter may be discussed in executive session under ORS 192.660(2)(e).

Council Options:

1. Approve the Option agreement and authorize the Mayor, manager and attorney to execute all documents necessary to complete the acquisition.
2. Do not approve the Option.

Potential Motions:

Council:

Motion to approve the option agreement and authorize the mayor, manager and attorney to execute all documents necessary to complete the acquisition.

Attachments:

img-X06163032-0001 (PDF)

WAARVICK & WAARVICK
ATTORNEYS AT LAW

JEFF WAARVICK
LOUISE SMITH WAARVICK (Retired)

924 SW Hurbert St.
P.O. Box 1144
Newport, OR 97365
phone 541-265-8553
fax 541-265-8556
waarvick@waarvick.com

October 6, 2020

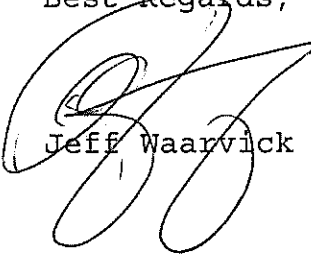
Richard Appicello
City Attorney
City of Lincoln City
P.O. Box 50
Lincoln City, OR 97367

Re: Lincoln County School District/Lincoln City/Taft
Elementary School Property

Hello Rich:

Attached is a draft of the Option.

Best Regards,



Jeff Waarvick

JDW:mm
Attachment
cc: Client

OPTION AGREEMENT

DATE: October 15, 2020 (“Effective Date”)

FROM: Lincoln County School District (“Owner”)

TO: City of Lincoln City, Oregon (“Optionee”)

RECITALS

Owner is the record owner of the real property described in Exhibit “A”, which is attached hereto and by this reference incorporated herein, together with all other rights, hereditaments, and tenements appurtenant to the real property, which are collectively referred to herein as the “Property.”

Optionee desires to acquire an option to purchase the Property on the terms and conditions herein stated.

Owner has agreed to grant Optionee an exclusive option to purchase the Property, and the parties desire to evidence their agreement regarding the option.

The parties therefore agree as follows:

AGREEMENT

Section 1. Grant of Option

Owner, in consideration of the sum of \$1.00 paid to Owner by Optionee in cash, receipt of which is acknowledged by Owner, grants to Optionee the sole and exclusive option to purchase the Property (the “Option”) in the manner and for the price stated in this Agreement.

Section 2. Option Terms

2.1 Term. The initial term of the Option (the “Initial Term”) commences on the Effective Date and will continue for a period of two months, terminating on December 15, 2020 . However, the parties may, by mutual agreement in writing, extend the term of the Option. This extension period (the “Extension Term”) will commence on the date that the Initial Term expires. The Initial Term and the Extension Term (if any) are referred to collectively in this Agreement as the “Term”. If the last day of the Initial Term or the Extension Term falls on a Saturday, a Sunday, or a holiday recognized by the federal government or the State of Oregon, all of Optionee’s rights during either such time period will extend through the next business day.

2.2 Exercise of Option. The Option must be exercised, if at all, by written notice (the “Exercise Notice”) given by Optionee to Owner at any time during the Initial Term or the Extended Term, stating that Optionee has elected to exercise the Option. The Option may be exercised only with respect to the entire Property, and nothing contained herein will be construed as permitting Optionee to purchase less than all of the Property under this option. Upon exercise of the Option,

Optionee will be obligated to purchase the Property from Owner, and Owner will be obligated to sell the Property to Optionee, for the price and in the manner herein set forth.

2.3 Failure to Exercise Option. If Optionee fails for any reason to exercise the Option in the manner set forth herein, Optionee will have no further claim against or interest in the Property or any of the Option Money Payments, unless Optionee is entitled to a refund of the Option Money Payments under another provision of this Agreement. In the event of the failure to exercise the Option, Optionee will provide Owner with any instruments that Owner reasonably deems necessary for the purpose of removing from the public record any cloud on title to the Property that is attributable to the grant or existence of the Option.

Section 3. Option Money

In payment for Owner's grant of this Option, Optionee has paid or will pay Owner the following sums (the "Option Money Payments"):

(1) Contemporaneously with the execution of this Agreement, Optionee has paid Owner the cash sum of \$1.00 as stated in Section 1, the receipt of which is acknowledged by Owner. No other Option Money Payments are due or payable during the Initial Term.

(2) At the commencement of a mutually agreed upon Extension, if such agreement exists, Optionee shall pay the further sum of \$1.00 to Owner.

If Optionee fails to pay Owner any Option Money Payment on or before the date on which the payment is due, TIME BEING OF THE ESSENCE OF THIS AGREEMENT, then the Option and all of Optionee's rights under this Agreement will automatically and completely terminate without any act or action by Owner. If the Option is exercised and the Property is acquired by Optionee, then the Option Money Payments paid by Optionee will be credited against the Purchase Price at Closing (as those terms are defined below).

Section 4. Amount of Acreage

Although Owner believes that the Property contains approximately 6.7 acres of land, neither party considers the precise amount of acreage contained in the Property to be material to the purchase or sale of the Property.

Section 5. Purchase Price

5.1 Purchase Price. The purchase price for the Property (the "Purchase Price") will be in the amount of \$421,006.

5.2 Payment of Purchase Price. The purchase price for the Property will be payable as follows:

5.2.1 Optionee will be given credit for the Option Money Payments actually paid by Optionee to Owner.

5.2.2 The entire balance of the Purchase Price will be paid in cash at closing.

Section 6. Remedies

6.1 Optionee. If Owner breaches any term or provision of this Agreement, then Optionee, as its exclusive remedy and in lieu of any other relief, may either (1) terminate this Agreement and obtain the return of all Option Money Payments previously paid to Owner or (2) tender performance of the obligations of Optionee and specifically enforce all obligations of Owner under this Agreement. Except as noted in Section 6.3 and any specific remedies reserved elsewhere in this Agreement, Optionee waives the right to pursue any remedy in law or equity against Owner other than the remedies specified above, including any action for damages, in the event of a default by Owner.

6.2 Owner. If Optionee breaches any term or provision of this Agreement, and regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise of the Option, then Owner, as its exclusive remedy and in lieu of any other relief, will be entitled to terminate this Agreement by giving Optionee written notice of termination and to retain all Option Money Payments paid by Optionee. Owner acknowledges (1) the adequacy of this exclusive remedy and (2) that this limitation of remedies is an essential part of this Agreement from the perspective of Optionee. Except as noted in Section 6.3 and any specific remedies reserved elsewhere in this Agreement, Owner expressly waives the right to pursue any other right or remedy in law or equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Optionee. Optionee and Owner have established the foregoing remedy in favor of Owner because of the difficulty and inconvenience of ascertaining the actual damages Owner may suffer as a result of a breach of this Agreement by Optionee.

6.3 Other Remedies. The limitations on remedies set forth in this section do not apply to any cause of action accruing after Closing or preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property.

Section 7. Conditions Precedent to Closing

In addition to any other conditions contained in this Agreement, set forth below are certain conditions precedent for the benefit of Optionee (the "Conditions"). The Conditions are intended solely for the benefit of Optionee and Optionee will have the right to waive, by written notice, any of the Conditions, at its sole discretion; giving the Exercise Notice will not constitute such a waiver. If any Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Optionee will have the right to terminate this Agreement, at its sole election, by giving Owner notice of termination before the deadline expires, to obtain the return of the Option Money Payments paid, and to exercise any remedy available to Optionee (subject to Section 6.1 herein) if the subject Condition was not satisfied by reason of a breach of this Agreement by Owner. If Optionee does not give Owner notice of termination before the applicable deadline, then Optionee will be deemed to have waived the termination privilege with respect to the Condition in question. The Conditions specifically delineated in this section are the following:

7.1 On the Closing Date, the Title Company (defined below) will be ready, willing, and able to issue, and will issue to Optionee on recordation of the Owner's deed mentioned below, the title insurance policy required by Section 9.6.

7.2 On or before the Closing Date, Owner will have performed all the covenants, conditions, agreements, and promises to be performed by it under this Agreement.

Section 8. Title

As soon as possible following the Effective Date, Owner will deliver to Optionee, at Owner's expense, a preliminary title report (the "Title Report") covering the Property. The Title Report will be issued by the Title Company (defined in Section 9.1). The Title Report will be accompanied by legible copies of all plats and exceptions to title referenced in the Title Report (the "Exceptions"). Within 20 days of receiving the Title Report and the Exceptions, Optionee shall execute a document accepting all encumbrances, including the standard exceptions, contained in the Title Report. In the event Optionee does not execute such a document, this Option Agreement shall be terminated and be of no further force and effect. Exceptions that are shown on the Title Report are referred to as the "Permitted Exceptions". Owner and Optionee agree that the Title Report is prepared by a Title Company in the business of (among other things) researching the conditions of title and issuing title insurance policies. Owner and Optionee agree that while Optionee shall not be responsible for any voluntarily imposed (by Owner) encumbrances consisting of monetary liens, other exceptions which may be considered encumbrances may arise during the Term of the Option. Should such "other exceptions" arise, such exceptions shall be considered Permitted Exceptions. Should Optionee exercise the option to purchase the Property, Optionee shall take the Property subject to such Permitted Exceptions, notwithstanding the fact that they were not listed in the preliminary title report (Title Report).

Section 9. Closing

9.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") will occur on a date (the "Closing Date") selected by Optionee, but in all events the Closing will occur on or before December 29, 2020. The escrow for the Closing will be established at the office of Western Title and Escrow Company (the "Title Company"), at Newport, Oregon.

9.2 Closing Obligations. On the Closing Date, Owner and Optionee will deposit the following documents and funds in escrow, and the Title Company will close escrow in accordance with the instructions of Owner and Optionee.

9.2.1 Owner will deposit the following:

- (1) The conveyance documents described in Section 10, duly executed and acknowledged;
- (2) A duly executed affidavit certifying that Owner is not a foreign person pursuant to the requirements of IRC §1445(b);
- (3) Such other documents and funds, including escrow instructions, that are required of Owner to close the sale in accordance with this Agreement.

9.2.2 Optionee will deposit the following:

- (1) The cash payment specified in Section 5, minus any credits due Optionee under the terms of this Agreement;

(2) Any documents that Owner or the Title Company may require to evidence the authority of Optionee to consummate the transaction contemplated; and

(3) Any other documents and funds, including (without limitation) escrow instructions, that are required of Optionee to close the sale and purchase of the Property in accordance with this Agreement.

9.3 Costs. Optionee and Owner each will pay one-half of the escrow fee of the Title Company with respect to the Closing. Owner will pay the premium for the title insurance policy that Owner is obligated to provide to Optionee, and Owner will pay all conveyance payable by reason of the purchase and sale of the Property. Optionee will pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

9.4 Prorations. All items of expense incurred by Owner with respect to the Property will be paid by Owner at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs will be prorated between Owner and Optionee as of the Closing Date.

9.5 Tax Exemption. Owner has advised Optionee that the Property is exempt from taxation. Optionee hereby assumes all risks of a termination of said exemption and Owner shall not be liable for any additional costs in any way relating to such termination.

9.6 Title Insurance Policies. As soon as practicable after closing, Owner will cause the Title Company to issue its standard form Owner's Title Insurance Policy, in the amount of the Purchase Price, insuring fee simple title to the Property is vested in Optionee, subject only to the Permitted Exceptions and the standard printed exceptions.

Section 10. Conveyance

At the Closing, Owner will execute, acknowledge, and deliver to Optionee a Statutory Bargain and Sale Deed conveying the Property to Optionee, and Owner and Optionee shall close the sale at the Newport office Western Title and Escrow Company in Newport, Oregon.

Section 11. Possession

Optionee will be entitled to exclusive possession of the Property on and after the Closing Date, except for the maintenance building located on Parcel 3 on Exhibit "B" of the attached EES. Owner shall have a maximum of thirty days to remove its property from said maintenance building.

Section 12. Access to Property

Owner grants to Optionee and its agents the right to enter on the Property at any reasonable times before the Closing Date for the purpose of conducting tests or studies that Optionee may deem necessary or appropriate in connection with its acquisition of the Property. No soil tests or drilling will be undertaken without first obtaining Owner's approval with respect to the agents retained to perform the work and the location and purpose of the tests or drilling. Optionee will protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Optionee's activities on the Property. If Optionee fails to exercise the Option and purchase

the Property, Optionee will fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Optionee's activities under this paragraph. If Optionee fails to exercise the Option, Optionee will deliver to Owner a legible copy of any reports, studies, and drawings owned by Optionee that relate to the Property.

Section 13. Covenant of Owner

During the Term, Owner will not sell or contract to sell the Property or any part of it, nor grant an option to any third party to acquire all or any portion of it.

Section 14. Easement and Equitable Servitude

Owner discloses to Optionee that the attached Easement and Equitable Servitude ("EES") encumbers the Property described in Exhibit "A", except for Parcels IX, X, and XI. This option and any conveyance of the Property is subject to the terms and conditions of the EES. **Optionee agrees to indemnify, defend and hold Owner harmless from all claims, demands, lawsuits and judgments arising out of the activities of Optionee on the property before and after closing, and from any act or failure to act by Optionee relating to the obligations of "Grantor" as set forth in the EES. In the event Optionee purchases the Property, this indemnity shall survive the closing of the sale by Owner to Optionee.**

Section 15. Recording

This Option Agreement shall not be recorded,

Section 16. Waiver

Failure by Owner or Optionee to enforce any right under this Agreement will not be deemed to be a waiver of that right or of any other right.

Section 17. Successors and Assigns

All of the rights granted by Owner to Optionee are personal to Optionee and no right or interest of Optionee may be assigned to any other person or entity without the prior written consent of Owner. Any such conveyance or assignment of Optionee's rights hereunder or any interest in the Property by Optionee absent the prior written consent of Owner shall be void and of no force and effect. Any attempt by Optionee to convey or assign any of Optionee's rights in this Agreement or in the property subject to this Agreement shall, at the election of Owner, shall serve to terminate any and all of Optionee's rights in this Agreement or in the property subject to this Agreement.

Section 18. Notices

All notices required or permitted to be given will be in writing and will be deemed given and received on personal service or two business days after deposit in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed as follows:

To Owner: Lincoln County School District
Attn: _____

To Optionee: City of Lincoln City
Attn: _____

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above will be effective when received by the party for whom it is intended.

Section 19. Attorney Fees

If litigation is instituted with respect to this Agreement (including any litigation undertaken in the context of bankruptcy proceedings), the prevailing party will be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, the amount to be set by the court before which the matter is heard.

Section 20. Integration, Modification, or Amendments

This Agreement contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Owner and Optionee, in writing.

Section 21. Representation

This document has been prepared by an attorney representing Owner. Optionee has the opportunity to consult with independent counsel prior to executing this Agreement.

Section 22. Counterparts; Pronouns

This Agreement may be executed in one or more counterparts, all of which will be considered one and the same Agreement and will be effective when one or more counterparts have been signed and delivered by Owner and Optionee. With respect to any pronouns used, each gender used includes the other gender and the singular and the plural, as the context may require.

Section 23. Governing Law; Interpretation

This Agreement is governed by the laws of Oregon. If a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Owner and Optionee intend that (1) that portion of this Agreement be enforced to the extent permitted by law and (2) the balance of this Agreement remain in full force and effect.

Section 24. Time Is of the Essence

Time is of the essence of this Agreement.

Section 25. Authority to Execute

Each person executing this Agreement on behalf of Owner and Optionee, respectively, warrants his or her authority to do so.

Section 26. Statutory Disclaimer

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Executed on the day and year first above written.

OWNER:

OPTIONEE:

Lincoln County School District, by:

City of Lincoln City, by:

**EXHIBIT A
TO
OPTION AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
(CITY OF LINCOLN CITY/LINCOLN COUNTY SCHOOL DISTRICT)**

PARCEL I:

Beginning at a stake 9.08 chains South and 4.08 chains West of the 1/16 stake, North of the corners of Sections 27, 26, 34 and 35 in Township 7 South, Range 11 West, Willamette Meridian; thence running South 3.15 chains; thence West 3.15 chains; thence North 3.15 chains; thence East 3.15 chains to place of beginning all situated in Section 27, Township 7 South, Range 11 West of the Willamette Meridian in Lincoln County, Oregon.

EXCEPT any portion of the above lying within public streets or highways.

PARCEL II:

Beginning at a point 808.3 feet South and 269.3 feet West of 1/16 Stake North of the corner of Sections 26, 27, 34 and 35 in Township 7 South, Range 11 West, Willamette Meridian, said point being the Southeast corner of School District # 75 present school site; thence running South 313.5 feet; thence West 209 feet; thence North 313.5 feet to Southwest corner of District # 75 present site; thence East along said South boundary 209 feet to place of beginning all in Section 27, Township 7 South, Range 11 West of the Willamette Meridian in Lincoln County, Oregon.

EXCEPT any portion of the above lying within public streets or highways.

PARCEL III:

Beginning at a point 1116.8 feet South and 269.3 feet West of the 1/16 Stake North of the corner common to Sections 26, 27, 34 and 35, Township 7 South, Range 11 West, Willamette Meridian in Lincoln County, Oregon, said point being a stone 6" x 6" x 8" marked X, running thence South 100 feet; thence West 209 feet; thence North 100 feet to the South line of the Taft High School property;; thence East along said line 209 feet to the place of beginning.

EXCEPT any portion of the above lying within public streets or highways.

PARCEL IV:

Beginning at the Southwest corner of Lot 12, Block 3, FIRST ADDITION TO TAFT; thence West 80 feet on the extended South line of said Lot 12; thence North 500 feet on a line parallel to the West line of said Lot 12; thence East to the Northwest corner of Lot 21 in said Block 3; thence South to the place of beginning, in Section 27, Township 7 South, Range 11 West, Willamette Meridian, in Lincoln County, State of Oregon.

EXCEPT any portion of the above lying within public streets or highways.

PARCEL V:

Lots 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, Block 3, FIRST ADDITION TO TAFT in Lincoln County, Oregon.

TOGETHER WITH that portion of vacated Rhododendron Avenue which inured thereto by vacation recorded December 13, 1937 in Book 78, page 513, Lincoln County Deed Records.

PARCEL VI:

Lots 8, 9, 10, 11, 12 and the South 42.1 feet of Lot 13 and the North 22.4 feet of Lot 7, Block 5, FIRST ADDITION TO TAFT, in Lincoln County, Oregon.

TOGETHER WITH that portion of vacated Rhododendron Avenue which inured thereto by vacation recorded December 13, 1937 in Book 78, page 513, Lincoln County Deed Records.

PARCEL VII:

Lots 14, 15, 16, 17 and the North 7.9 feet of Lot 13, Block 5, FIRST ADDITION TO TAFT, in Lincoln County, Oregon.

TOGETHER WITH that portion of vacated Rhododendron Avenue which inured thereto by vacation recorded December 13, 1937 in Book 78, page 513, Lincoln County Deed Records.

PARCEL VIII:

Lots 1, 2 and 3, Block 5, FIRST ADDITION TO TAFT, in Lincoln County, Oregon.

PARCEL IX:

Lot 4, Block 5, FIRST ADDITION TO TAFT, in Lincoln County, Oregon.

PARCEL X:

Lot 5, Block 5, FIRST ADDITION TO TAFT, in Lincoln County, Oregon.

PARCEL XI:

Lots 6 and 7, EXCEPT the North 22.4 feet of Lot 7, Block 5, FIRST ADDITION TO TAFT, in Lincoln County, Oregon.

DOC-E Cnt=1 Pgs=7 Stn=29
\$35.00 \$11.00 \$60.00 \$10.00 \$7.00 - Total = \$123.00



I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



Space above this line for Recorder's use.

After recording, return to:

Grantee
Oregon DEQ, Salem Office
4026 Fairview Industrial Dr. SE
Salem, Oregon 97302
Attn: Jim Glass

Grantor
Lincoln County School District
295 N Burgess Road
Toledo, OR 97391

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes (EES) is made on September 26, 2019, between Lincoln County School District, the ("Grantor") and the Oregon Department of Environmental Quality ("DEQ" or "Grantee").

RECITALS

A. The Grantor is the owner of certain real property located at 1545 SE 50th Street & 4916 SE Keel Avenue, Lincoln City, Oregon, (the "Property"). The legal description of the Property is set out in Exhibit A and the location is shown on Exhibit B to this EES. This site is referenced under the file name The Taft Elementary-Middle School, USTC #21-96-4114, in the files of DEQ's Environmental Cleanup Program at DEQ's Western Region office located at 4026 Fairview Industrial Dr. SE, Salem, Oregon 97302, and telephone (503) 378-8240. Interested parties may contact the Western Region Salem office to review a detailed description of the residual risks present at the Property and described in the Cascade Environmental Solutions, LLC report entitled "Risk-Based Closure Report" dated September 2019.

B. Based on the September 2019, Conceptual Site Model, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in this EES for the Property. The remedial action selected requires institutional controls: Groundwater Use Restriction, Use of Property Restriction, Maintenance of Protective CAP, Notice of Property Transfer, and Notice of filing for initiating rezoning designation.

C. Based on the September 2019, Conceptual Site Model, the Grantor entered into an agreement (**Agreement**) with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls.

D. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

Easement and Equitable Servitudes
Lincoln County

1. DEFINITIONS

- 1.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.2 "Engineering control" has the meaning set forth in OAR 340-122-0115
- 1.3 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.

2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's issuance of a risk-based corrective action remedy, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property described in Exhibit A to this EES, is now subject to and shall in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

3.1 **Groundwater Use Restrictions.** Owner may not extract through wells or by other means or use the shallow groundwater within the area located in the northeast corner of the property to approximately 250 feet south of SE 47th Street and to approximately 250 feet west of SE 51st Street for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage wastewater according to applicable laws. Extraction of groundwater from a deeper aquifer is also prohibited unless that use is reviewed and approved by

the DEQ Leaking Underground Storage Tank program or its successor prior to construction. Any such plans must consider the August 2019, Conceptual Site Model and the site-specific Contaminated Media Management Plan for any contaminated soil or groundwater that may be encountered

3.2 Land Use Restrictions. The following operations and uses are prohibited on the Property: ground floor and below-ground level urban residential/residential use of any type.

3.3 Use of the Property. Owner shall not occupy or allow other parties to occupy the ground floor, below-ground level of the Property for urban residential/residential purposes. Prior to any additional development or re-development of the Property that might encounter soil or groundwater, Owner must submit professionally prepared plans for the proposed development to DEQ for review and approval prior to construction (UST/WREC¹ or its successor). Any such plans must consider the September 2019, Conceptual Site Model and the site-specific Contaminated Media Management Plan for any contaminated soil or groundwater that may be encountered.

3.4 Contaminated Media Management Plan. The owner must comply with the approved *Contaminated Media Management Plan*. The CMMP defines a portion of the property in which certain requirements are to be followed in order to protect the health of construction and excavation workers. The contaminated media management plan must be followed for all work within the defined area that breaks the ground surface. A copy of the approved CMMP should be maintained at the Property, is on file with DEQ, and can be made available upon request or by visiting DEQ's project web site at: www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp, using the project file number "21-96-4114", the file name "Taft Elementary-Middle School", or property file address "1540 Schooner-Creek Rd".

3.5 Protective Cap. Except upon prior written approval from DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that removes the low permeability cap at the Property or will jeopardize the cap's protective function as an engineering control that prevents the infiltration or storm-water into the subsurface. Owner will maintain the cap in a condition that minimizes the amount of storm-water entering the subsurface. Owner will report annually to DEQ, including photo documentation, to confirm that this critical engineering control remains in-place. The annual reporting requirement shall remain in effect until DEQ has provided written authorization to stop.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours

¹ UST/WREC: Underground Storage Tank/Western Region Environmental Cleanup Programs

before DEQ entry to the Property. DEQ may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this EES, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

5. RELEASE OF RESTRICTIONS

5.1 Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2 Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

6. GENERAL PROVISIONS

6.1 **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2 **Zoning Changes.** Owner must notify DEQ no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the Lincoln County zoning code or any successor code. As of the date of this EES, the base zone of the Property is Residential within the (R 1-7.5 – minimum lot size 7,500 square feet).

6.3 **Cost Recovery.** Owner will pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the Owner to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. DEQ will provide the Owner with a monthly statement and direct labor summary. DEQ costs will include

direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this EES and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

6.4 Inspection and Reporting. Owner will submit inspector records to DEQ within 30 days of receipt of a notice letter from DEQ of its periodic review of compliance with this EES. Reports provided to DEQ in response to this notification must include sufficient detail to allow DEQ to determine compliance with EES requirements, and include a photographic log that supports the report's narrative.

6.5 Reference in Deed. A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

6.6 Effect of Recording. Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.7 Enforcement and Remedies. Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this EES as provided in the Agreement or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

IN WITNESS WHEREOF Grantor and Grantee have executed this EES as of the date and year first set forth above.

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

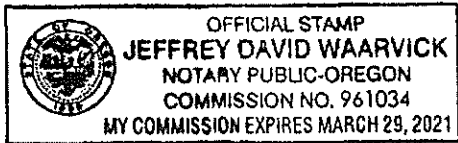
GRANTOR: Lincoln County School District

By: [Signature] Date: October 18, 2019

Richard Belloni for and on behalf Lincoln County School District.

STATE OF OREGON)
County of Lincoln) ss

The foregoing instrument is acknowledged before me this 18th day of October, 2019, by Richard Belloni, of Lincoln County School District, for and on behalf of Grantor.



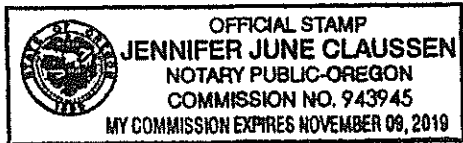
[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: 3/29/2021

GRANTEE: State of Oregon, Department of Environmental Quality

By: [Signature] Date: 11/6/2019
Michael E. Kucinski, Western Region Environmental Cleanup Manager

STATE OF OREGON)
County of Marion)

The foregoing instrument is acknowledged before me this 6th day of November, 2019, by Michael E. Kucinski, of Oregon DEQ, for and on behalf of Grantee.



[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: 11-9-2019

EXHIBIT A

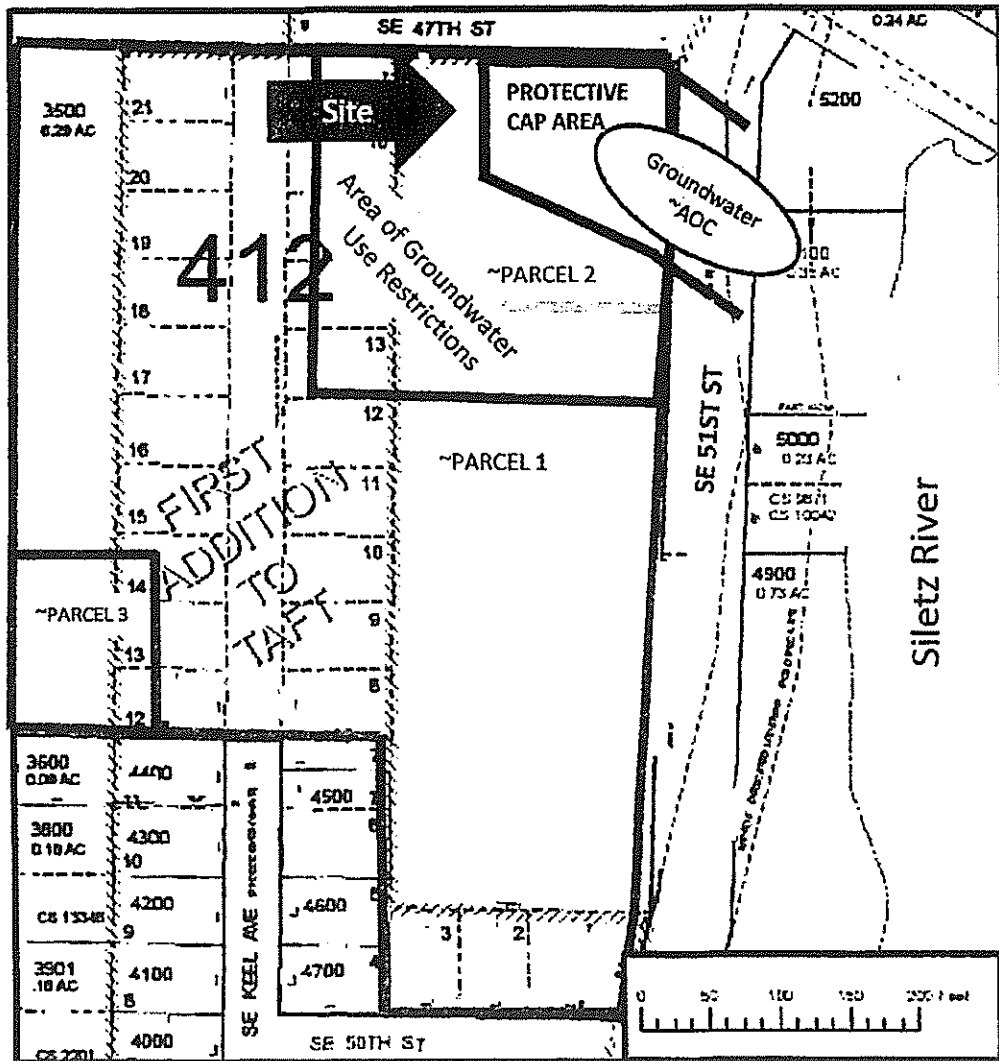
Address: 1545 SE 50th Street & 4916 SE Keel Avenue, DEQ - Leaking Underground Storage Tanks Program release address 1540 Schooner Creek Road, Lincoln City, Lincoln County, Oregon.

Parcel Number: Lincoln County Tax Map #07S11W27DD Tax Lot 03500

Public Land Survey: Tax lot 03500 in Section 27 of the SE Quarter of the SE Quarter of Township 7 South, Range 11 West, W.M.

Legal Property Description: TAFT - 1st ADDN BLOCK 3, LOT 12-21, BLK 5, LOTS 1-3,8-17, PTN OF 7, ADJ TT & PTN VAC ST, ACRES 6.29, DOC201006682

EXHIBIT B
PROPERTY TAX LOT MAP



Easement and Equitable Servitudes
Lincoln County School District

Council Communication

Order 2020-04 - Lease Extension McKay's

Meeting Date:	October 12, 2020	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:	Administration	Secondary Contacts:	Ronald Chandler
Approval:	Ronald F Chandler	Estimated Time:	5 mins.

Question: Should the City Council approve Order 2020-04 granting a six month lease extension for McKay's Market, Inc. under the same terms and conditions?

Staff Recommendation:

Staff recommends Council approve Order 2020-04 to facilitate negotiations between the parties on a new lease.

Authority:

ORS 271.360 (A lease must be approved by Order or Ordinance of the City Council).

Background:

The current Price and Pride (McKay's) Lease expires October 16, 2020. A new lease has been provided for review and comments have been received. As it appears likely an agreement will not be reached before the expiration, City staff recommends an extension be granted under the same terms and conditions as the existing lease.

Council Options:

1. Approve extension.
2. Do not approve extension.

Potential Motions:

Motion to approve Order 2020-04 granting a six month extension of the existing lease under the same terms and conditions.

Attachments:

McKay's lease extension -3-18-20 ra (DOC)

1 ACCEPTED AND APPROVED BY MCKAY'S MARKET, INC., THIS ____ day of _____,
2 2020.

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By: _____

McKay's Market's Inc. dba "Price 'N Pride"
226 Hall Avenue
P.O. Box 1080
Coos Bay, Oregon 97420
Title:

Council Communication

COVID-19 Update

Meeting Date:	October 12, 2020	Primary Staff Contact:	Ronald F Chandler
Department:	Administration	E-Mail:	RChandler@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Ronald F Chandler	Estimated Time:	

Staff will provide an update on the COVID-19 pandemic.

Council Communication

Echo Mountain Complex Update

Meeting Date:	October 12, 2020	Primary Staff Contact:	Ronald F Chandler
Department:	Administration	E-Mail:	RChandler@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Ronald F Chandler	Estimated Time:	

Staff will provide an update on the Echo Mountain Complex emergency.