



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

9/21/2010

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Lincoln City Plan Amendment
DLCD File Number 002-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Monday, October 04, 2010

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

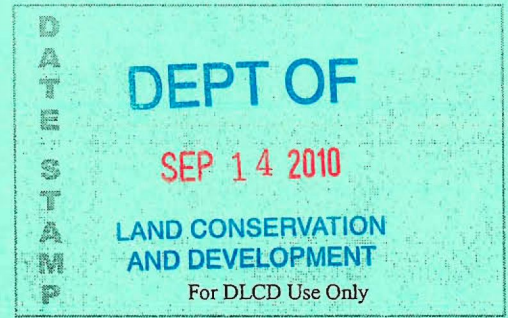
***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Debra Martzahn, City of Lincoln City
Gloria Gardiner, DLCD Urban Planning Specialist
Matt Spangler, DLCD Regional Representative

<paa> YA

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
 WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: City of Lincoln City Local file number: ZOA 2010-01
 Date of Adoption: August 23, 2010 Date Mailed: September 13, 2010
 Date original Notice of Proposed Amendment was mailed to DLCD: March 19, 2010

- | | |
|---|---|
| ☐ Comprehensive Plan Text Amendment | ☐ Comprehensive Plan Map Amendment |
| ☒ Land Use Regulation Amendment | ☐ Zoning Map Amendment |
| ☐ New Land Use Regulation | ☐ Other: _____ |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

_____ The ordinance amends Chapter 17.52.220 – Tree Protection and Removal, of the Municipal Code. Substantive _____
 _____ amendments reorganize the 2008 ordinance to clarify and simplify it and to adjust notice procedures. Other _____
 _____ changes allow the owners of all single-family lots, not just those developed before September 2008, to cut trees _____
 _____ without a permit; give owners of lots capable of subdivision an exemption from the permit requirement within 50 _____
 _____ feet of their dwelling; reduce the size of required replacement trees from 2 ½-inch caliper to 1 ½-inch caliper, _____
 _____ decreasing cost by about one-third; modify requirements for tree replacement. _____

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME".
 If you did not give Notice for the Proposed Amendment, write "N/A".

_____ Similar in large part; see attached staff reports to both Planning Commission and City Council for additional _____
 _____ detail. _____

Plan Map Changed from: n/a to: _____

Zone Map Changed from: n/a to: _____

Location: city-wide Acres Involved: _____

Specify Density: Previous: n/a New: _____

Applicable Statewide Planning Goals: 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19

Was and Exception Adopted? ☐ YES ☒ NO

DLCD File No.: 002-10 (18190) [16324]

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing?

☒ Yes

☐ No

If no, do the statewide planning goals apply?

☐ Yes

☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes

☐ No

Affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: Debra Martzahn

Phone: (541) 996-1228 Extension: _____

Address: PO Box 50

City: Lincoln City

Zip Code + 4: 97367-

Email Address: dmartzahn@lincolncity.org

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **maru.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

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The City Council finds:

A. Tree regulations in Ordinance No. 2008-16 need to be clarified and updated.

B. Proposed amendments to the tree regulations are in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in the findings attached as Exhibit “A” and incorporated by reference.

C. The amendments are in conformance with the Zoning Ordinance, including, but not limited to required initiation, processing and noticing requirements.

D. The Planning Commission held a public hearing on May 4, 2010, considered proposed revisions and voted unanimously to recommend them to the City Council.

E. The City Council opened its public hearing on the proposed amendments on May 24, 2010, continued the hearing to June 28, 2010 and concluded the hearing on July 12, 2010.

F. All interested persons were given an opportunity to provide written and oral testimony on the proposed ordinance amendments.

THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

Section 1. Lincoln City Municipal Code Section 17.52.220, Tree Protection and Removal, is amended to read as follows:

SECTION 17.52.220, Tree protection and removal.

- A. Scope
- B. Purpose
- C. Definitions
- D. Protection and Maintenance of Trees
- E. Tree Removal
- F. Replacement of Lawfully Removed Trees
- G. Incentives for Retention
- H. Tree Protection and Replacement Plan Required.
- I. Protection Standards Related to Construction
- J. Violations
- K. Tree Board

1 A. Scope. This section applies to all large and protected trees, as defined in subsection C, within
2 the city wherever located.

3 B. Purpose. This purpose statement provides a general philosophy to guide the specific
4 enforcement and implementation of provisions and criteria in this section.

5 1. Value of Trees. The city benefits from a large number of trees. These trees of varied types
6 add to the aesthetic beauty of the community and provide important environmental benefits
7 including: help clean the air, help control erosion, maintain water quality and provide noise
8 barriers.

9 2. Intent. The intent of this section is to protect trees, including taking reasonable measures in
10 development to avoid tree removal, and to prohibit damage, mutilation, and destruction of
11 valuable trees. Protection of trees is preferred over replacement. This section aims to:

- 12 a. Establish regulations to protect trees;
- 13 b. Encourage the preservation, planting and replacement of trees in the city;
- 14 c. Require the preservation, planting and replacement of trees on property subject to
15 development approval;
- 16 d. Provide incentives for tree retention and protection;
- 17 e. Set standards for removal and replacement of trees;
- 18 f. Control problems of soil erosion, destruction of scenic values and wildlife habitats;
- 19 g. Improve air quality;
- 20 h. Protect water quality;
- 21 i. Protect land from erosion; and
- 22 j. Limit the types of commercial forestry allowed in the urban environment.

23 3. Need for Exceptions. The city recognizes that, at the time of development, removing
24 certain trees may be necessary to accommodate structures, street utilities, and other needed or
25 required improvements within the development. The burden of proof is on the applicant to
26 show removal is necessary, and that other alternatives are not feasible. Cost shall not be the
27 sole factor in determining whether an alternative is feasible.

28 C. Definitions. The following definitions apply to regulations governing the preservation and
29 removal of trees contained in this section exclusively:

30 "Arborist, Certified" means a licensed tree care consultant, who is certified as an arborist by
31 the International Society of Arboriculture.

32 "Caliper" means diameter of tree measured at four and one-half feet above grade on the
33 uphill side. In the case of multi-stemmed or trunked trees, the diameter shall be the sum of
34 diameters of all individual stems or trunks, measured at a point no more than six inches
35 above the surrounding grade or measured six inches from the point where the stems digress
36 from the trunk, whichever produces the larger measurement. If a tree has been removed and
37 only a stump shorter than four and one-half feet remains, diameter shall be measured as the
38 diameter of the top of the stump.

1 “Canopy cover” means the area above ground that is covered by under the trunk and
2 branches of the tree.

3 “Commercial forestry” means the removal of 10 or more trees per acre per calendar year for
4 sale. Tree removal undertaken by means of an approved tree removal plan under subsection
5 (D) of this section is not considered commercial forestry under this definition.

6 “Cut” means to fell or remove a tree or to do anything that has the natural result of causing
7 the death or substantial destruction of a tree, including girdling and topping.

8 “Girdling” means the cutting or removal of the outer bark and conducting tissues of a tree,
9 potentially causing death by interrupting the circulation of water and nutrients.

10 “Hazardous tree” means a tree that by reason of emergency conditions, disease, infestation,
11 age, or other condition presents a known and immediate hazard to persons or to public or
12 private property.

13 “Pruning” means the cutting or trimming of a tree in a manner consistent with recognized
14 tree maintenance practices.

15 “Removal” means cutting or removing 50 percent or more of the crown, trunk or root system
16 of a tree, or any action that results in the loss of aesthetic or physiological viability or causes
17 the tree to fall or be in immediate danger of falling. “Removal” includes topping, but shall
18 not include pruning performed to required standards.

19 “Significant natural resource areas” means those lands described at Chapter 17.46 LCMC.

20 “Topping” means the severe cutting back of the tree’s crown limbs to stubs to such a degree
21 so as to remove the natural canopy and disfigure the tree.

22 “Tree” means a perennial woody plant, typically of eight feet or more in height, with a single
23 main stem (the trunk or bole), or in some cases, multiple trunks from which branches and
24 twigs extend to form a characteristic crown of foliage.

25 “Large tree” includes any tree that has a trunk at least six inches in caliper (see definition
26 of caliper).

27 “Protected tree” includes any tree preserved in a tree protection or landscape plan, any
28 tree planted as mitigation for removed trees, any tree planted to fulfill a requirement of
29 the city code, and any tree planted to replace protected trees that died or were removed.

30 “Mitigation tree” includes any tree required by this section as a replacement for a tree
31 removed.

32 D. Protection and Maintenance of Trees. The following standards apply to all activities affecting
33 trees throughout the city:

1. Pruning activities shall be guided by the most recent version of the ANSI A300 Standards for Tree, Shrub, and Other Woody Plant Maintenance. Information on these standards shall be available upon request from the planning department.

2. Topping is prohibited, except where necessary for utility work or public safety, in which case, it requires a tree removal permit. The burden of proof is on the applicant to demonstrate in the permit application that topping is necessary, the only means of accomplishing the task, and preferable to removal.

3. Protected trees shall be maintained according to tree protection plans, CC&Rs (conditions, covenants and restrictions) and other recorded agreements.

E. Tree Removal.

1. Tree Removal Permit Not Required. A tree removal permit under this subsection is not required for any of the following. Removal of trees shall be conducted in a manner consistent with LCMC 12.08.050 (B), which regulates land-disturbing activities.

a. Removal of trees less than six inches in caliper, unless they are Protected trees.

b. Tree removal by utility or city public works personnel to remove vegetation and trees that present a danger to life or property, to restore utility services, or to reopen a public thoroughfare to traffic.

c. Removal of trees and groundcover by city public works personnel that are deemed nuisances under Chapter 8.12 LCMC, Nuisances, or for the removal of trees and other vegetation necessary to install or maintain improvements on parklands, streets, sewers, or utilities within publicly owned and dedicated rights-of-way or public utility easements.

d. Removal of a tree that is a hazard or a nuisance, affecting public safety as defined in LCMC 8.12.080, as demonstrated to the satisfaction of the director of planning and community development in consultation with the city engineer, as applicable to the circumstances.

e. Removal of trees planted by a licensed Christmas tree production business for the sole purpose of sale as Christmas trees, or removal of trees on land registered with the Lincoln County assessor's office as a tax-deferred tree farm or small woodlands, provided trees do not stand on significant natural resource areas or steep slopes of 25 percent or greater or unstable ground.

f. The removal of trees on a single lot developed with a single family dwelling, duplex or two-family dwelling, or attached single family dwelling, provided:

i. Either the lot is not capable of further land division due to size or configuration, or if the lot is capable of further division, trees to be removed are within 50 feet of the dwelling; and

- 1 ii. No Protected tree shall be removed without a permit. Exception: Any tree planted to
2 fulfill the landscaping requirements in LCMC 17.52.100 for lots with single and
3 two-family dwellings may be removed, if replaced by a plant or plants with equal
4 plant unit value, as described in LCMC 17.52.100.G(1).

5 2. Tree Removal Prohibited. Removal of trees in wetlands or as part of commercial forestry
6 operations, as described in this subsection, is prohibited and enforceable as a Class A
7 violation:

- 8 a. Commercial Forestry. Commercial forestry, excluding subsection (E)(1)(e) of this
9 section, is not permitted.
10 b. Trees and vegetation within wetlands that fall under the jurisdiction of state or federal
11 government removed without concurrence from those state and/or federal agencies
12 that have jurisdiction thereof.

13 3. Tree Removal Permit Required. Except as allowed in E(1), no person shall engage in or
14 cause land clearance or tree removal without first having obtained a tree removal permit
15 issued by the city.

- 16 a. A tree removal permit shall be issued only for one or more of the following purposes:

17 i. Disease. Removal of diseased tree(s) weakened by age, storm, fire or other injury.
18 If a visual inspection by the city staff cannot establish that the tree is dead or
19 diseased, the applicant shall, at the applicant's cost, obtain the services of a certified
20 arborist to make that determination. If the arborist determines that the tree is dead or
21 diseased and cannot be saved, the director of planning and community development
22 shall approve its removal.

23 ii. Solar Access. Removal of tree(s) from a lot to allow solar access, as defined in
24 ORS Section 227.190, to the south face of buildings on that lot, which cannot be
25 accomplished by pruning;

26 iii. Surveyor Access. Selective removal of tree(s) and vegetation to allow
27 reconnaissance surveys, topographical determinations of a project site, coring to
28 permit geotechnical evaluation and soil surveys, and similar efforts, to the extent the
29 applicant demonstrates such removal is necessary to perform such surveys;

30 iv. Spread of Disease, Insects and threat of natural hazard. Where removal is
31 necessary to prevent the spread of disease or insects declared to be a nuisance by a
32 government agency or certified arborist, or to correct or eliminate a verified natural
33 hazard to the property owner, surrounding properties, or the community at large.

34 v. Development. Removal of tree(s) for the placement of structures and other
35 improvements, according to subsection (E)(4) and provided:

- 36 1) a site plan, subdivision, planned unit development or building permit has been
37 approved;

2) a tree protection plan, if required by subsection (H), has been approved; and
3) removal and protection of preserved trees is conducted as required by this section.

b. Conditions. Every tree removal permit shall be subject to such conditions as are appropriate to assure that the tree removal is conducted in a manner consistent with this section and LCMC 12.08.050(B), which regulates land disturbing activities. Where conditions of a permit conflict with requirements of this section, the more restrictive shall apply.

c. Review Process. If part of a larger project that requires subdivision review, site plan review, or a conditional use permit, the permit for tree removal shall be processed as part of development or conditional use permit review. Other tree removal applications shall be reviewed by the director of planning and community development. All permit applications shall be reviewed and decided, based on the following approval criteria:

i. Removal of the tree must not have a measurable negative impact on erosion, soil stability, flow of surface waters or water quality, as evidenced by an erosion control plan that precludes:

a. Deposits of mud, dirt, sediment or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge or as a result of the action of erosion; and

b. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes where the flow of water is not filtered or captured on site using the techniques of an approved plan under LCMC Chapter 12.08, Grading and Erosion Control, and rules issued by the public works department;

ii. Within significant natural resource areas, no trees may be removed or pruned except as provided in LCMC Chapter 17.46; and

iii. Where a tree protection plan is required for development review, the city shall not issue a tree removal permit until the applicant has demonstrated compliance with all conditions of the development approval that are required to be met prior to the start of any land clearing, grading, or construction.

d. Fee. The city council may adopt by resolution a fee to cover the actual or average costs of reviewing or issuing a tree removal permit.

e. Authority to Issue Permit. The city manager or the city manager's designee, including the director of planning and community development in the case of development approval, or the public works director in the case of a public works permit, is authorized to issue, extend, enforce, and revoke a tree removal permit.

1 f. Permit Notice and Appeal.

- 2 i. The city shall not issue a tree removal permit until approval has first been granted
3 by the director of planning and community development or the planning
4 commission. Notice of decision or hearing shall be provided in conjunction with
5 the required notice for subdivision, partition, site development review, planned
6 development or conditional use and in accordance with LCMC Chapter 17.76,
7 Administrative Procedures. Notice shall not be required for other tree removal
8 permits.
- 9 ii. Appeals of a tree removal permit shall be as provided in this title for quasi-
10 judicial land use decision. Administrative decisions by the director of planning
11 and community development may be appealed to the planning commission, which
12 shall be the final appeal. Decisions of the planning commission, not including
13 appeals of administrative decisions, may be appealed to the city council in the
14 same manner as provided for in LCMC Chapter 17.76.
- 15 iii. The city shall not issue a tree removal permit approved in conjunction with a
16 development review until 12 calendar days have passed following the approval
17 and no possible appeal has been filed, or after all appeals have been exhausted.
18 An appeal must be filed in writing within the 12-day appeal period. The timely
19 filing of an appeal shall have the effect of suspending the issuance of a permit
20 pending the outcome of the appeal.

21 g. Display of Permit – Inspection. The tree removal permit grantee shall display the
22 permit on site conspicuously and continuously during permitted activities. The permit
23 grantee shall allow city representatives to enter and inspect the premises at any
24 reasonable time, and failure to allow inspection shall constitute a violation of this section.

25 h. Duration. A tree removal permit shall be effective for 18 months from the date of
26 approval. Upon written request by the applicant prior to the expiration of the existing
27 permit, a tree removal permit shall be extended for a period of up to one year if the
28 approval authority finds that the applicant is in compliance with all prior conditions of
29 permit approval and that no material facts stated in the original application have changed.

30 4. Tree Removal for Development. Removal of tree(s) for the placement of structures and
31 other improvements shall comply with the following:

32 a. Timing of permit issuance.

- 33 i. A tree removal permit shall not be issued under this subsection for removal due
34 to installation of street, gutter, curb, sidewalk, sanitary sewer, storm sewer, and
35 water system improvements until the city engineer has given final approval to the
36 design of the improvements, and, to the extent otherwise required by this section
37 or this code, the owner has entered into a public infrastructure improvement
38 agreement for the improvements and provided financial security therefor,
39 including for tree replacement; and a tree protection and replacement plan, if
40 required, has been approved by the director of planning and community

development. For phased developments, a separate tree removal permit is required for each phase of infrastructure development, which will not be issued until such time as public works approves commencement of grading for the phase. Tree removal permits issued for infrastructure development shall apply only to the minimum area necessary to accommodate the improvements.

ii. A permit for tree removal from building lots shall be issued in conjunction with, and not prior to, issuance of the building permit.

b. Tree removal shall conform to the approved Tree Protection and Replacement Plan, if required by Section H, and to Section I, Protection Standards Related to Construction.

c. Re-vegetation. Immediately following completion of the improvements, areas disturbed by tree removal shall be re-vegetated and replacement and mitigation requirements of this section shall be met;

d. Bond Required. Whenever trees are removed that according to this chapter require replacement, if removal is in conjunction with a development, the anticipated cost of replacement trees and vegetation required shall be covered by the bonding mechanism approved for the development, or a separate bond expressly for the purpose of required tree replacement.

F. Replacement of Trees Lawfully Removed.

1. Applicability. The standards of this section apply to trees removed with a permit required by subsection (E). If the tree being removed is dead, dying, diseased or dangerous to life or property, mitigation is encouraged, but not required, unless the tree is a Protected tree, in which case, mitigation is required.

2. Replacement Requirement. Removed trees six-inches or more in caliper must be replaced in accordance with the following formulas, based on pre-removal conditions:

a. Retention of large trees whose combined calipers equal less than 25 percent of the sum of calipers of all existing large trees requires a replacement program that results in no net loss in the number of large trees;

b. Retention of large trees whose combined calipers equal 25 percent to 50 percent of the sum of calipers of all existing large trees requires replacement of two-thirds of the number of large trees to be removed;

c. Retention of large trees whose combined calipers equal 50 percent to 75 percent of the sum of calipers of all existing large trees requires replacement of 50 percent of the number of large trees to be removed;

d. Retention of large trees whose combined calipers equal 75 percent or greater of the sum of calipers of all existing large trees requires no replacement.

1 3. Pre-Development Tree Removal. Any trees removed within one year prior to application
2 for a tree permit shall be included in the calculations in subsection (F)(2), and the owner
3 shall replace the removed trees accordingly. Estimated size of removed trees shall be based
4 on the diameter of stumps, or, if no stumps remain, the average size of nearby trees that
5 appear similar in the city's most recent aerial photograph.

6 4. Tree Replacement Specifications: Species, Size and Location. When replacement of a tree
7 or trees legally removed is required by subsection (F)(2), the number, species and size shall
8 be governed by all of the following:

9 a. Species. The city prefers native trees, including conifers; however, the planning
10 commission or director of planning and community development shall take into
11 consideration site compatibility as well as the property owner's preference, provided the
12 species of replacement tree is expected to mature to approximately the same
13 environmental and aesthetic value as the tree being removed.

14 b. Size. The minimum caliper size of a replacement tree shall be one and one-half inches.
15 The planning and community development director or planning commission may adjust
16 the size requirement for tree species where the applicant demonstrates to the satisfaction
17 of the director of planning and community development that the minimum size would be
18 unreasonable or impractical in the circumstances.

19 c. Location. Trees shall be replaced according to a planting plan provided by the
20 applicant and approved by the director of planning and community development,
21 showing all preserved and replacement trees.

22 5. Planting Site. The preferred replacement site shall be on the property from which a tree is
23 being removed. Provided one or more of the replacement trees cannot be located viably on
24 the property from which a tree is removed, the director of planning and community
25 development may either require that a) the applicant pay an in-lieu payment into the city tree
26 fund an amount equivalent to the value of the replacement trees after installation, as provided
27 in this subsection, or that b) the applicant plant one or more replacement trees on other
28 private or public property within the city, with the consent of the owner and under a
29 management plan approved by the city. The planting location of mitigation trees on city
30 property shall be determined by the city council, whose authority is hereby delegated to the
31 city manager. The city manager, in conjunction with staff, shall select an appropriate planting
32 site on open space, a park, or other public land suitable for new trees.

33 6. In-Lieu Payment. The in-lieu payment amount shall be equivalent to the cost of the
34 replacement trees, plus the cost of delivery, installation, and maintenance for a period of one
35 year. The in-lieu payment approved and received shall be used by the city for planting and
36 maintenance of mitigation trees on city-owned property. Any unspent funds shall be carried
37 forward from year to year for the purpose of meeting the intent of this chapter to maintain the
38 city's urban forest.

7. Responsibility to replace mitigation trees. The planting of replacement trees shall take place in such a manner as to reasonably ensure that the trees grow to maturity. Any mitigation tree planted on private property dying within one year of the date of planting shall be replaced by the owner of the property.

8. Timing of Replacement. Replacement trees, including trees meant to replace a previously planted mitigation tree that has died within one year, shall be planted within six months of the date of issuance of a tree removal permit or death of a mitigation tree, unless the director of planning and community development has granted an extension of time no longer than six months due to season or unforeseen circumstances. Failure to complete mitigation within the allotted time frame shall be considered a violation of this chapter and subject to the penalties provided for in subsection (J).

G. Incentives/Design Modifications for Tree Retention.

1. Incentives. To assist in the preservation and retention of existing trees, the director of planning and community development may apply one or more of the following incentives as part of development review approval and the provisions of a tree protection plan. A modification to development requirements granted under this section shall not conflict with any other restriction on the use of the property, including but not limited to easements and conditions of development approval.

a. Density Bonus. Preservation of existing tree canopy cover equal to two percent (2%) of the project site shall entitle the owner to a one percent (1%) density bonus in the number of dwelling units allowed in the development, according to its zoning district. No more than a twenty percent (20%) bonus may be granted for any one development and this bonus shall not be in addition to bonuses offered for planned unit developments. This bonus is not applicable to trees preserved in areas of floodplain, slopes greater than twenty-five percent (25%), drainage ways, or wetlands that would otherwise be precluded from development;

b. Lot Size Averaging. To retain existing trees over six inches (6") in caliper in the development plan, for any land division under LCMC Title 16, the planning commission may approve lots less than the minimum lot size allowed by the underlying zone as long as the average lot area for all lots and the amount of private open space is not less than allowed. No lot area shall be less than eighty percent (80%) of the minimum lot size allowed in the zone;

c. Lot Width and Depth. To retain existing trees over six inches (6") in caliper in the development plan for any land division under LCMC Title 16 (including subdivisions for planned unit development approved under this title), lot width and lot depth may be reduced up to twenty percent (20%) of that required by the underlying zone;

d. Landscaping credit. Existing trees may be counted toward landscape requirements, if they meet the specifications.

2. Design Modifications of Public Improvements. The planning commission, with input from the city engineer, may adjust design specifications of public improvements to accommodate tree retention where possible and where it would not interfere with safety.

H. Tree Protection and Replacement Plan Required.

1. Applicability. Requirements of this subsection apply to any lot, parcel or combination of lots or parcels for which an application for a subdivision, site plan review, planned unit development or conditional use is filed.

2. Elements of a tree protection plan. The owner of lots or parcels specified in subsection (H)(1) shall provide a tree protection plan for the planting, maintenance, removal and protection of trees, prepared by a certified arborist to meet the approval of the director of planning and community development and the city engineer. The tree protection plan shall include all of the following; however, the director of planning and community development and the city engineer may waive an application document where the required information already has been made available to the city, or is not necessary to review the application.

a. Identification of the location, size and species of all existing, large trees and protected trees, indicating trees designated as significant by the city.

b. An accurate topographical survey, subdivision map or plat map that bears the signature of a qualified, registered surveyor or engineer, and showing:

i. The shape and dimensions of the property; and the location of any existing and proposed structures or improvements;

ii. The location of the individual large trees and protected trees on the site, and indicating species, approximate height, caliper, canopy spread and common name; and

iii. The location of existing and proposed easements, as well as setbacks required by existing zoning requirements.

c. In lieu of the map or survey required in subsection (H)(2)(b), an applicant proposing to remove trees may provide aerial photographs with overlays, GIS documentation, or maps approved by the director of planning and community development, that clearly indicate the information required by this subsection.

d. Arborist Report. The report, prepared by a certified arborist, shall describe all large trees and all protected trees on the site and any large or protected trees removed within the period of one year prior to application for a tree permit. The report shall include the following:

i. information on the health and condition of all large trees and protected trees;

- ii. information on species, common name, caliper, and approximate height and age of all large trees and protected trees; and
- iii. indication of those subject to removal or transplanting;

e. Tree Identification. Unless specifically exempted by the director of planning and community development and the city engineer, a statement that any trees proposed for removal will be identified by a method obvious to a site inspector, such as tagging, painting, or flagging, in addition to clear identification on construction documents.

f. Replacement Plan. A detailed description and map of the proposed tree replacement program, meeting the standards of subsection (F)(2) and including the information on the number, size, species, and cost.

g. Covenants, Conditions and Restrictions (CC&Rs). Where the applicant is proposing to remove trees on common areas in a recorded subdivision or planned unit development, the applicant shall provide a copy of the applicable CC&Rs, including any landscaping provisions.

h. Tree Protection Program. A program describing how preserved trees will be protected during tree removal and construction that meets the requirements of subsection I, unless specifically exempted by the director of planning and community development. The tree protection program shall commit the property owner to a maintenance plan that promotes the vitality of all protected trees.

3. Recording of tree protection plan. Approved tree protection plans shall be recorded, either separately or included in development agreements required in Titles 16 and 17 for Planned Unit Developments (PUDs) and subdivisions. The property owner shall record a deed restriction as a condition of approval of any development permit affected by this section to the effect that trees preserved and planted in accordance with an approved tree protection plan may be removed only with a permit and only for the reasons described in subsection (E), in which case, the tree shall be replaced. The form of this deed restriction shall be subject to approval by the director of planning and community development and the city attorney. Except as provided in this subsection, removal of a tree designated for protection under a tree protection plan recorded as a condition of development approval shall constitute a Class A violation.

I. Protection standards related to construction.

1. Applicability. These standards apply to all construction or development that requires a tree removal permit.

2. Standards.

- a. All trees required to be protected must be clearly labeled as such.
- b. The property owner shall give notice to the city a minimum of two (2) business days (at least 48 hours) in advance of any grading or clearing of the site.

- 1 c. The property owner shall permit the city to enter the site at any time to review
2 compliance with the tree protection plan and tree removal permit.
- 3 d. No person may conduct any construction activity likely to be injurious to a tree
4 designated to remain, including, but not limited to placing solvents, building material,
5 or construction equipment, or depositing soil, or placing irrigated landscaping, within
6 the drip line, unless a plan for such construction activity has been approved by the
7 director of planning and community development or the planning commission based
8 upon the recommendation of an arborist.
- 9 e. No person shall attach any device or wire to any tree unless needed for tree labeling
10 or protection.
- 11 f. Protective Barrier.
- 12 i. Before development, land clearing, excavation, filling, or any land alteration for
13 which a tree removal permit is required, the developer shall delineate clearly the
14 exterior property lines of the project.
- 15 ii. The developer shall erect and maintain barriers adequate to prevent incursion of
16 machinery within driplines of trees the tree protection plan identifies to be
17 preserved in and within drip lines of trees on adjoining properties.
- 18 iii. Barriers must be sufficiently substantial to withstand nearby construction
19 activities, and the most appropriate and protective barrier shall be utilized. Plastic
20 tape or similar forms of markers do not constitute "barriers." For street rights-of-
21 way and utility easements, however, barriers may consist of stakes set a maximum
22 of fifty feet (50') apart along the outside perimeters of areas to be cleared and
23 connected with ribbon, plastic tape rope, or similar material used for demarcation.
- 24 iv. Selection and installation of demarcations and barriers must be approved by the
25 director of planning and community development or the city engineer prior to
26 commencement of grading or tree removal. Protective barriers shall remain in place
27 until the city authorizes their removal or issues a final certificate of occupancy,
28 whichever occurs first.
- 29 g. Arborist Required during Grading, Clearing, and Removal. For projects required by
30 subsection (H)(1) to have tree protection plans, the developer shall be responsible for
31 retaining an arborist to be present on the project site at all times when land-disturbing
32 activities including, but not limited to, grading, clearing, or tree removal are taking place.

33 J. Violation -- Enforcement.

34 1. Responsibility/Liability. The owner and the owner's agents and contractors, including but
35 not limited to an arborist, contractor, engineer or other person responsible for clearing,
36 grading, construction or tree removal on a project, are responsible for meeting the
37 requirements of this section and shall have joint and separate liability for any violation of this
38 section.

39 2. Violations Defined. A violation of this chapter includes cutting, damaging, or removing a
40 tree:

- 41 a. Without a valid tree removal permit; or

1 b. In noncompliance with, or breach of, any condition of approval of a tree removal
2 permit, tree protection plan, or tree maintenance plan; or

3 c. In noncompliance with any condition of any city permit including but not limited to a
4 building permit, public works permit, approved tree protection plan, covenants, codes and
5 restrictions (CC&Rs) imposed by a condition of approval and required to be reviewed
6 and approved by the city, or other development approval that results in damage to, or
7 contributes to the decline or failure of, a tree or its root system; or

8 d. In noncompliance with any recorded covenant; or

9 e. In noncompliance with any other section of this title or code.

10 3. Remedies. If the city manager or the city manager's designee has reason to believe that a
11 violation of this chapter has occurred, then he or she may do any or all of the following:

12 a. Require the owner of the land on which the tree was located to submit sufficient
13 documentation, which may include a written statement from a certified arborist,
14 demonstrating that removal of the tree was authorized by law;

15 b. Issue a stop work order, as provided in subsection (J)(4);

16 c. Issue a citation pursuant to LCMC, Chapter 1.16 with an expedited hearing;

17 d. File an action to temporarily restrain and/or permanently enjoin the owner from
18 continuing to violate this section;

19 e. Take any other action allowed by law.

20 4. Authorization to Enforce Compliance. The director of planning and community
21 development, the building official, and the public works director are each authorized to issue
22 a stop work order, withhold approval of a final plat or public works permit, or withhold
23 issuance of a certificate of occupancy, permits or conduct of required inspections or
24 acceptance of work until the provisions of this section, including any conditions attached to a
25 public works permit, tree protection plan or tree removal permit have been fully met.

26 a. Use of Stop Work Order. In the event any grading, clearing, excavation, filling,
27 construction or land-disturbing activity on the property is about to occur, is occurring or
28 has occurred in such a manner that preserved trees or trees required to be protected on the
29 site are in imminent danger of damage or removal from such activities, any person
30 authorized to enforce this chapter may order all work on the site to cease until adequate
31 safeguards are in place as follows:

32 i. Notification. Based on sufficient evidence that activities on site are likely to cause
33 or have caused harm to trees required to be protected, city staff shall immediately
34 notify any responsible person on the project that a stop work order is imminent and

1 that all work on the site shall cease. Staff shall make reasonable attempts to inform
2 the owner and developer by any means, including, but not limited to telephone,
3 facsimile, or electronic communication;

4 ii. Written Form. The order shall be in written form, copied to the property owner,
5 and include a brief description of the violations or imminent harm that are required to
6 be immediately addressed;

7 iii. Posted Sign. A sign declaring the stop work order shall be posted on the site;

8 iv. Duration. The stop work order shall not be lifted until adequate safeguards,
9 including any amendments to an agreement between the applicant and the city, a
10 development approval, a tree protection plan, a tree removal permit, a public works
11 permit, or other applicable permit, are reviewed and approved by the city.

12 v. Removal of Stop Work Order. The stop work order shall be removed after the city
13 staff responsible for the matter has determined there is no longer a need for the order.

14 vi. Settlement. Whenever the city has issued a citation for violation of this code in
15 connection with activities leading to issuance of a stop work order or order to cease
16 and desist activities on land, the city and owner may agree to resolve the citations by
17 means of settlement in lieu of further prosecution. Any monies paid in lieu of fines
18 shall be deposited in the city tree fund. Any such settlement agreement shall be
19 approved by the city council.

20 5. Violation - Penalties. A violation of this section shall be enforced as a Class A civil
21 infraction pursuant to LCMC Chapter 1.16. Any person convicted of a violation of this
22 section shall be subject to civil penalties including a fine up to the maximum amount
23 provided by this code, with illegal removal of or damage to one tree constituting a single
24 violation. In addition to the monetary fine, a person convicted of a violation under this
25 section shall be required to remedy any damage caused by the violation.

26 a. Upon conviction of a violation of this section, a person shall be required to mitigate
27 the unlawful tree cutting or removal by replacing the removed trees with like kind trees.
28 If the director of planning and community development makes a determination one or
29 more of the replacement trees cannot be located viably on the property from which a tree
30 is removed, the municipal court judge shall impose as a penalty a forfeiture in the amount
31 of money equivalent to the cost of the replacement trees, plus the cost of delivery,
32 installation, and maintenance for a period of one year.

33 b. In the event replacement trees are required to be planted as mitigation for unlawfully
34 removed or damaged trees, the replacement trees must be planted in accordance with the
35 specifications for tree replacement in subsection (J)(5)(7).

1 c. The municipal court judge is authorized to impose an enhanced penalty of twice the
2 value of the unlawfully removed or damaged trees where the tree removal was conducted
3 in violation of this section and in disregard of any Lincoln City permit or approval.

4 6. Alternative Sentence for Multiple Violations. In the event a person is convicted of more
5 than one violation of this section, the following alternative sentence may be imposed:

6 If a person has gained money or property through the commission of an offense under this
7 section, then upon conviction thereof, the municipal court judge may sentence the person to
8 pay an amount, fixed by the court, not to exceed double the amount of the gain from the
9 commission of the offense. "Gain" is defined as the amount of money or value of property
10 derived from the commission of the violation, less the amount of money or value of
11 property seized by or surrendered to the city. "Value" shall be the greater of the market
12 value or replacement cost as determined by a licensed professional in the tree, nursery, or
13 landscape field.

14 7. Specifications for Replacement of Unlawfully Removed Trees. Replacement of a tree
15 removed in violation of this ordinance shall be according to the following:

16 a. Species. A replacement tree shall be a substantially similar species, taking into
17 consideration site characteristics. If a replacement tree of the species of the tree removed
18 or damaged is not reasonably available, the director of planning and community
19 development may allow replacement with a different species of equivalent or greater
20 natural resource value; and

21 b. Size and number. If a replacement tree of the size cut is not reasonably available on the
22 local market or would not be viable, the director of planning and community
23 development shall require replacement with more than one tree of the maximum size
24 reasonably available and viable, so that the sum of the calipers is equal or greater than the
25 estimated caliper of the tree removed or damaged. If this number of trees cannot be
26 located viably on the subject property, the director of planning and community
27 development may require one or more replacement trees to be planted on other property
28 within the city, either public property or, with the consent of the owner, private property,
29 or may accept fees in lieu of planting as described in subsection (F)(4); and

30 c. Manner of planting. The planting of a replacement tree shall take place in a manner
31 reasonably calculated to allow growth to maturity.

32 8. Allocation of Fines and Payments. After deduction of any mandatory costs and
33 assessments, any fines and penalties paid under this subsection shall accrue to the city tree
34 fund.

35 9. Exclusivity. The remedies set out in this section shall not be exclusive, and the city may
36 take any action authorized by law to enforce this section.

10. Any person designated to enforce violations of city ordinances may enforce this section of the municipal code.

K. Tree Board.

1. Purpose. An advisory board is hereby established to advise staff and city council on matters relating to trees.

a. The tree board shall make recommendations on a tree manual implementing the requirements of this section and that establishes guidelines for tree selection, installation, and maintenance, using best practices. The city council shall adopt the tree manual by resolution.

b. The tree board shall make recommendations on suggested tree species for use in planting and landscaping in Lincoln City, Oregon.

c. The tree board shall make reports from time to time as it deems advisable on ordinance revisions and enforcement, information concerning tree disease or infestation, and other matters related to trees.

2. Members. The city council by ordinance shall establish the number of members and any membership qualifications of the tree board. (Ord. 2008-16 § 1; Ord. 2002-09 § 2; Ord. 92-17 § 4; Ord. 84-2 § 4.220)

Section 2. Delegation of Authority to Correct Errors. The City Council delegates to the City Recorder the authority to make any required corrections due to scrivener's errors, including but not limited to cross-references, and to make such changes prior to codifying this ordinance.

Section 3. Severance. In the event that any provision of this ordinance is determined by a court of competent jurisdiction to be invalid or unenforceable, such invalid provision shall be severed and the remaining provisions of the ordinance that have not been held invalid or unenforceable shall continue to be valid and enforceable to the fullest extent permitted by law.

PASSED AND ADOPTED by the City Council of the City of Lincoln City on this 23rd day of August, 2010.


LORI HOLLINGSWORTH, MAYOR

ATTEST:


CATHY STEERE, CITY RECORDER

Exhibit A

A. Statewide Planning Goals

- (1) Goal 1: "Citizen Involvement" All proposed documents were made available for public review and purchase and assistance was available to interpret and explain the technical information. Hearing notices were published in local papers in accordance with notice requirements.

This ordinance clarifies the notice requirements for tree removal permits. The ordinance, as currently written, states that "Notice of decision or hearing [regarding tree permit] shall be provided in accordance with Chapter 17.76 LCMC." The amendment changes the requirement to state that "Notice of decision or hearing shall be provided in conjunction with the required notice for subdivision, partition, site development review, planned development or conditional use in accordance with Chapter 17.76 LCMC. Notice shall not be provided for other tree removal permits." Decisions regarding other tree removal permits, which include those approved because of disease or spread of insects or disease, those south of a building to allow solar access, and those interfering with surveyor access, are non-discretionary. Therefore, the amendments are consistent with Goal 1.

- (2) Goal 2: "Land Use Planning" This goal is to establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to insure an adequate factual basis for such decisions and actions. The Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, were adopted by the City Council of Lincoln City after public hearings and have been reviewed on a periodic cycle to take into account changing public policies and circumstances. Opportunities were provided for review and comment by citizens and affected governmental units during preparation, review, and revision of the plan and implementing ordinances. Review of these proposed amendments in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions establishes conformance with this goal.
- (3) Goal 3: "Agricultural Lands" The areas affected by the proposed amendments are located within the City's Urban Growth Boundary. No agricultural lands will be affected by the amendments. Therefore, Goal 3 is not applicable.
- (4) Goal 4: "Forest Lands" The areas affected by the proposed amendments are located within the City's Urban Growth Boundary. The area is zoned for urban development and does not include designated forestlands. Therefore, Goal 4 is not applicable. That being said, the tree ordinance protects the "urban forest." It prohibits commercial forestry, but allows tree removal for Christmas tree production, from tree farms or, with limitations, from small woodlands.

- (5) Goal 5: "Open Spaces, Scenic and Historic Areas and Natural Resources" Old-growth forests outperform landscape lawns, farms and gardens in greenhouse gas/global warming mitigation. The purpose of the tree ordinance is to protect trees, an important natural resource and component of our open spaces. These amendments clarify and strengthen the regulations; therefore, the proposed amendments are consistent with Goal 5.
- (6) Goal 6: "Air, Water and Land Resources Quality" Trees improve the environment by storing carbon, preventing erosion and runoff, and providing shade. The ordinance and these amendments protect, preserve and require planting of trees in the city. It prohibits tree removal that would negatively impact natural resource areas, or erosion, soil stability, flow of surface waters or water quality. Therefore, the proposed amendments are consistent with Goal 6.
- (7) Goal 7: "Areas Subject to Natural Disasters and Hazards" Through their environmental benefits, trees guard against runoff and erosion that can increase natural hazards. The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees; therefore the proposed amendments are consistent with Goal 7.
- (8) Goal 8: "Recreational Needs" The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees, which contribute greatly to parks and open spaces that serve the community's recreational needs. Therefore, the proposed amendments are consistent with Goal 8.
- (9) Goal 9: "Economic Development" The proposed amendments do not affect the availability of land suitable for industrial and commercial development. They do ensure maintenance of a natural resource that is attractive to tourists, an important component of Lincoln City's economy. Therefore, the proposed amendments are consistent with Goal 9.
- (10) Goal 10: "Housing" The proposed amendments clarify regulations regarding tree cutting on residential properties, but do not affect the number or density of units, and therefore, are consistent with Goal 10.
- (11) Goal 11: "Public Facilities and Services" Trees help to stabilize soils and landforms, thus limiting erosion and runoff that can have negative impacts on sewer systems. The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees; therefore, they are consistent with Goal 11.
- (12) Goal 12: "Transportation" Trees help to stabilize soils and landforms and limit erosion and runoff that can have negative impact on streets. The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees; therefore, they are consistent with Goal 12.

- (13) Goal 13: "Energy Conservation" Large trees provide shade and wind protection, which keep the environment naturally comfortable, and thus help to conserve energy. The ordinance and amendments protect large trees and require planting of replacement trees where removal is necessary. Therefore, the proposed amendments are consistent with Goal 13.
- (14) Goal 14: "Urbanization" The proposed amendments do not change any uses already allowed, nor add to those uses, nor increase or decrease densities allowed, and accordingly do not tend to promote the expansion of the Urban Grown Boundary. Therefore, the amendments are consistent with Goal 14.
- (15) Goal 15: "Willamette River Greenway" The affected areas are not located within the Willamette River Greenway. Therefore, Goal 15 is not applicable.
- (16) Goal 16: "Estuarine Resources" The affected areas of the proposed amendments include some areas adjacent to designated estuarine resources. Trees help to stabilize soils and landforms, thus limit erosion and runoff that can have negative impact on estuarine resources. The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees; therefore, the amendments are consistent with Goal 16.
- (17) Goal 17: "Coastal Shorelands" The city's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean higher-high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries. Trees help to protect the coastal shorelands by stabilizing soils and landforms, thus limiting erosion and runoff, and by mitigating the negative effects of high winds. The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees; therefore the proposed amendments are consistent with Goal 17.
- (18) Goal 18: "Beaches & Dunes" Trees help to protect beaches and dunes by stabilizing soils and landforms, thus limiting erosion and runoff, and by mitigating the effect of high winds that also can have negative impact on beaches and dunes. The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees; therefore the proposed amendments are consistent with Goal 18.
- (19) Goal 19: "Ocean Resources" The proposed amendments will not affect the nearshore ocean and continental shelf other than to the extent that they stabilize soils and reduce erosion runoff. Therefore, the proposed amendments are consistent with Goal 19.

B. Comprehensive Plan Goals

(1) Planning Goal

"To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."

The Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, was adopted by the City Council of Lincoln City after public hearing and has been reviewed on a periodic cycle to take into account changing public policies and circumstances. Opportunities were provided for review and comment by citizens and affected governmental units during preparation, review, and revision of the plan and implementing ordinances. Review of these amendments in accordance with the Lincoln City Comprehensive Plan and the applicable zoning ordinance provisions, establishes conformance with this goal.

(2) Citizen Involvement Goal

"Develop a Citizen Involvement Program which ensures the continued participation of citizens in the land use planning process."

The City has developed a Citizen Involvement Program. In addition, the public hearing process, with notice to the public and property owners and review of the proposed amendments by the Planning Commission (a citizen board), and the City Council (a citizen board) establishes conformance with this goal.

This ordinance clarifies the notice requirements for tree removal permits. The ordinance as currently written states that "Notice of decision or hearing [regarding tree permit] shall be provided in accordance with Chapter 17.76 LCMC." The amendment changes the requirement to state that "Notice of decision or hearing shall be provided in conjunction with the required notice for subdivision, partition, site development review, planned development or conditional use in accordance with Chapter 17.76 LCMC. Notice shall not be provided for other tree removal permits." Decisions regarding other tree removal permits, which include those approved because of disease or spread of insects or disease, those south of a building to allow solar access, and those interfering with surveyor access, are non-discretionary. Therefore, the amendments are consistent with this goal.

(3) Public Services and Utilities Goal

"To plan and develop a timely, orderly, and efficient arrangement of public facility and services which compliment the area and serve as a framework for urban and rural development."

Public services and utilities generally already are in place in the areas affected by the proposed amendments. The tree ordinance and amendments accommodate the needs of the utility workers by allowing tree removal where necessary to perform work, and application for a permit for tree topping, if necessary. The ordinance regulates removal and replacement where necessary to install new services. The goal is satisfied.

(4) Urbanization Goal

"To promote an orderly and efficient transition of land uses from rural to urban."

The proposed amendments do not affect the densities of properties in Lincoln City, because they do not authorize or prohibit any particular development. For purposes of development, the tree ordinance allows for tree removal in a timely and careful manner that preserves remaining trees and does not negatively impact neighboring uses, natural resource areas, or erosion, soil stability, flow of surface waters or water quality. This goal is satisfied.

(5) Natural Hazard Goal

"The City shall control development in hazardous areas to protect life and property from natural disasters and hazards."

The areas affected by the proposed amendments include some identified Natural Hazards areas. Through their environmental benefits, trees guard against runoff and erosion that can increase natural hazards. The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees. This goal is satisfied.

(6) Housing Goal

"To provide for the housing needs of all citizens."

Because the proposed amendments do not change what uses, including residential uses, are allowed under the existing zoning ordinance, they will not affect the density or availability of adequate numbers of needed housing units at price ranges and rent levels commensurate with the local area. Therefore, the housing goal is not applicable.

(7) Economy Goal

"To support the tourist industry and achieve a degree of diversity in the community which will allow a balanced economy that will, in turn, support an adequate level of services for all members of the area."

The amendments ensure that a natural resource attractive to tourists as well as property owners and prospective businesses is preserved and protected, and therefore, meet the goal.

(8) Aesthetic Goal

"To develop a livable and pleasing city which enhances man's activities while protecting the exceptional aesthetic quality of the area."

The ordinance, in its purpose statement, describes the value of trees and how they add to the aesthetic beauty of the community. The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees. This goal is satisfied.

(9) Transportation Goal

"To provide a safe, convenient and rapid transportation network to facilitate the movement of goods and people."

The ordinance and proposed amendments allow for tree removal where necessary for installation and maintenance of streets. The ordinance and amendments protect, preserve and require plantings of tree, which, through their environmental benefits, guard against runoff and erosion that can damage streets. Therefore, this goal is satisfied.

(10) Energy Goal

"To conserve energy."

Large trees provide shade and wind protection, which keep the environment comfortable naturally, and thus help to conserve energy that might otherwise be used for heating and cooling. This ordinance and amendments protect large trees and require planting of replacement trees where removal is necessary. Therefore, the goal is satisfied.

(11) Overall Environmental Goal

"To achieve a balance between the need to provide housing and services and the need to protect and enhance the natural environment of the city."

The ordinance benefits the environment by protecting and preserving trees and by requiring replacements for trees that must be removed for development and other reasons. It is structured to balance need for tree removal in specific cases with the need to maintain a healthy and distinctive urban forest. The amendments provide tighter control over timing of tree removal for development, and clarify

replacement requirements and penalties for removal without a permit. This goal is satisfied.

(12) Shoreland, Beaches, Dunes, Estuary and Ocean Resources Goal

"To conserve, protect, and enhance the coastal resources of the city."

The city's coastal shorelands include all land west of Highway 101, land within 500 feet of the ordinary high-water elevation of Devils Lake and Spring Lake, and land within 1,000 feet of the shoreline mean higher-high-water elevation of Schooner Creek, Drift Creek, and Siletz Bay estuaries. Trees help to protect coastal resources by stabilizing soils and landforms, thus limiting erosion and runoff, and by mitigating the effect of high winds that also have negative impact. The proposed amendments clarify and strengthen regulations that protect, preserve and require plantings of trees; therefore, the proposed amendments are consistent with this goal.

PLANNING COMMISSION STAFF REPORT

MEETING DATE: May 4, 2010

ZOA 2010-01: Amendment of Chapter 17.52.220 Tree Protection and Removal

Staff proposes an amendment updating Section 17.52.220 of the *Lincoln City Municipal Code*, to clarify the ordinance generally, adjust notification requirements and modify permit requirements for single family and duplex residences.

Project Information

Project Applicant

City of Lincoln City

Public Notice

On April, 2010, a public hearing notice was published in the *News Guard*. On April 12, 2010, a notice was mailed to all city property owners. On March 19, 2010, a Notice of Proposed Amendment was mailed to the Department of Land Conservation and Development pursuant to ORS 197.610.

Relevant Criteria

Statewide planning goals, the City's comprehensive plan, and the unamended portions of the city's zoning ordinance.

Summary Information

The amendment would refine the tree ordinance adopted in September 2008 through reorganization of sections and editing. It would expand protection of large trees by requiring permits for removal from single-family and duplex lots, and clarify notification procedures for decisions regarding tree removal permits.

Background Information

The tree ordinance, adopted in 2008, accomplishes the following:

- Requires a tree plan as part of the development application, which includes trees removed within one year prior to a development application;

- Requires mitigation (replacement) for legally removed trees;
- Provides incentives for tree retention are provided in the form of bonuses;
- Limits removal of a tree after development approval by accordance with the plan or condition of approval;
- Requires tree removal permits, but provides exemptions for removal of trees less than six-inches in caliper, nuisance or hazardous trees, Christmas trees and trees on single-family or duplex lots.
- Establishes criteria for approving tree removal permits, including to remove a diseased tree, to prevent spread of disease or insects, to make way for development, for visual clearance or solar access.

The ordinance has been effective in preserving trees. Its complexity, however, has led to some confusion about what is required and the notification policy. The ordinance has allowed unlimited cutting of trees of any size on lots of single-family and duplex dwellings.

Analysis

The majority of the proposed amendments would edit and reorganize this section and not change current requirements. Following are the noteworthy differences that the amendments propose.

Clarify tree replacement requirements. The amendments clarify the distinction between replacement requirements for trees removed with a permit and replacement for those that are removed illegally in violation of the ordinance. Currently, replacement of *legally* removed trees is at most one 2½ -inch caliper tree planted for each tree of six-inch or greater caliper that is removed. The amendment proposes to reduce the minimum size of the replacement trees to 1½-inch caliper. For trees removed *illegally*, if a replacement of the size cut is not reasonably available on the local market or would not be viable, replacement shall be trees of the maximum size reasonably available and viable, so that the sum of their calipers (i.e., diameters) is equal or greater than the estimated caliper size of the tree removed or damaged. As an example, one 1½ inch caliper tree could replace one *legally* removed six inch tree; however, four 1½ inch caliper trees may be required to replace one six-inch caliper tree *illegally* removed.

Require permits for tree removal on single-family and duplex lots. The ordinance now allows removal of any number of trees from single-family and duplex lots “provided a lawful dwelling exist[ed] on the lot as of September 22, 2008, and the lot is not capable of additional development.” The amendments require a permit for removal of trees over six inches caliper, even for single-family and duplex uses, but adds that a permit may be issued to a single-family and duplex owner to remove one tree per year simply to improve the residential landscape.

Adjust notice procedures. The ordinance as currently written states that “Notice of decision or hearing [regarding tree permit] shall be provided in accordance with Chapter

17.76 LCMC.” The amendment changes the requirement to state that “Notice of decision or hearing shall be provided in conjunction with the required notice for subdivision, partition, site development review, planned development or conditional use in accordance with Chapter 17.76 LCMC. Notice shall not be provided for other tree removal permits.”

Recommendation

Staff advises the Planning Commission to recommend that the City Council approve the amendments of Section 17.52.220 Tree Protection and Removal, included as Exhibit 1.

Exhibit 1: Draft Amendments to Section 17.52.220.

PLANNING & COMMUNITY DEVELOPMENT
CITY OF LINCOLN CITY
PO Box 50
LINCOLN CITY, OR 97367



Attn: Plan Amendment Specialist
Dept. of Land Conservation/Dev.
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540