



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

AMENDED NOTICE OF ADOPTED AMENDMENT

December 21, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Hood River Plan Amendment
DLCD File Number 008-07



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: January 4, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. 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 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.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Gary Fish, DLCD Regional Representative
Amanda Punton, DLCD Natural Resource Specialist
Carmel Bender, Compensation Claim Planning Specialist
Cindy Walbridge, City of Hood River

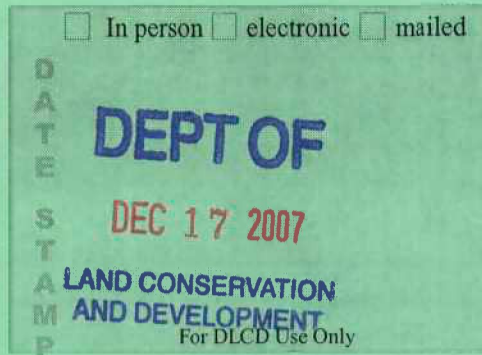
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PROF 2

DLCD

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: **Hood River**

Local file number: **2007-47**

Date of Adoption: ~~12/10/2007~~ **12/12/07**

Date Mailed: **12/14/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 8/20/2007

- | | |
|---|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

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

Amendment to Chapter 17.22 - Natural Resource Overlay - Columbia River Infill Waterfront Area of the Hood River Municipal Code to eliminate non-conforming uses and modify a portion of the setback for CO-R1

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **na** to: **na**

Zone Map Changed from: **na** to: **na**

Location: **CO-R1**

Acres Involved: **0**

Specify Density: Previous: **na** New: **na**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

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

008-07(16325)

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Port of Hood River, Department of Fish & Wildlife, Corps of Engineers

Local Contact: **Cindy Walbridge**

Phone: (541) 387-5217 Extension:

Address: **PO Box 27**

Fax Number: 541-387-5289

City: **Hood River**

Zip: 97031-

E-mail Address: **cindy@ci.hood-river.or.us**

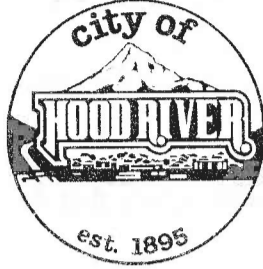
ADOPTION SUBMITTAL REQUIREMENTS

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 Complete Copies (documents and maps) 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. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
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 now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

Mayor
Linda Storch
Councilors:
President: Paul Cummings
Carrie Nelson
Paul Blackburn
Ann Finkel
Martin Campos Davis
Laurent Picard



301 OAK STREET
P.O. BOX 27
HOOD RIVER, OREGON 97031

(541) 386-1488

December 14, 2007

NOTICE OF CITY COUNCIL DECISION

TO: All Participating Parties
FROM: Cindy Walbridge, Planning Director
SUBJECT: Legislative changes to Title 17 - Ordinance 1938.

Applicant: City of Hood River, File Number 2007-47

Proposal: Ordinance Number 1938: (An ordinance amending Chapter 17.22 of the Hood River Municipal Code to eliminate nonconforming uses and modify a portion of the setback for CO-R1)

Description of Action: The City Council **approved** an ordinance amending Chapter 17.22 at a public hearing on **Monday, December 10, 2007**. The decision was signed on **December 13, 2007**.

Appeal: The decision of the City Council shall be final unless the decision is appealed to the Land Use Board of Appeals in accordance with the appeal procedures in ORS 197.830 to 197.869.

A copy of the Findings and Conclusions as well as a copy of all documents and evidence in the record on which the decision is based, are available for inspection at no cost and copies will be provided at the cost of \$.37 per page at the City Planning Department, 301 Oak Street, between the hours of 8 a.m. to 5 p.m. Monday through Friday.

If you have questions, please call (541) 387-5210.

Sincerely,

Cindy Walbridge
Planning Director

ORDINANCE NO. 1938

(An ordinance amending Chapter 17.22 of the Hood River Municipal Code to eliminate nonconforming uses and modify a portion of the setback for CO-R1)

WHEREAS, the City adopted Ordinance 1874 on January 23, 2006, pursuant to Goal 5 of the Statewide Goals and implementing rules thereof;

WHEREAS, Ordinance 1874 adopted Chapter 17.22—Natural Resource Overlay into Title 17 of the City’s Code;

WHEREAS, Chapter 17.22 is intended to protect and restore wetlands and water bodies and their associated riparian areas (water bodies and their associated riparian areas are referred to as “riparian corridors”);

WHEREAS, development in wetlands is generally subject to permitting under federal and state law and development in riparian corridors generally is subject to permitting under Chapter 17.22;

WHEREAS, nonconforming structures in wetlands and riparian corridors are generally considered permitted and allowed to remain but may not be expanded;

WHEREAS, the Columbia River waterfront area is specifically designated as the Columbia River Infill Waterfront Area (“CRIWA”) in Chapter 17.22 and subject to regulation separately from other riparian corridors in Section 17.22.030;

WHEREAS, toxins from stormwater contaminants are present in the Columbia River and pollutants, chemicals, and other contaminants from other sources of runoff may pose a risk to the public health, safety and welfare. The setbacks and limits on development imposed by Section 17.22.030 are intended, in part, to protect against and limit the amount toxins that reach the Columbia River;

WHEREAS, Section 17.22.030 allows legal nonconforming structures to remain, but not expand;

WHEREAS, the status of a structure as a nonconforming use may lower the value of the structure;

WHEREAS, application of the setback imposed by Section 17.22.030 to real property owned by D.M. Stevenson Ranch, LLC (“DMSR) creates a nonconforming structure, which together may diminished the value of the land;

WHEREAS, Best Western Hood River Inn and Felix Tomlinson appealed Ordinance 1874 to the Land Use Board of Appeals on February 9, 2006;

WHEREAS, Best Western Hood River Inn has agreed to withdraw from the appeal to LUBA if the amendments to 17.22.030 set forth below are approved;

WHEREAS, the City Council adopts the findings of fact and conclusions of law set forth in the Staff Report dated November 8, 2007 as supplemented by the Supplemental Staff Report dated November 26, 2007, and attached as Exhibit B.

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Section 17.22.030 of the Hood River Municipal Code is amended to read as follows:
[deletions shown in ~~strike-out~~ and additions shown in underline]

17.22.030 Columbia River Infill Waterfront Area

A. **Purpose.** The Columbia River Infill waterfront Area and portions, identified on the Columbia River Infill Waterfront map, within the City of Hood River are valuable economic, recreational, scenic and natural resources for the community. The Columbia River Waterfront Infill Area is intended to conserve and enhance the natural resource values of areas along the Columbia River and a portion of the Hood River within the city by;

1. Conserving and restoring habitat for wildlife, fish and other aquatic life;
2. Protecting and enhancing water quality for human use and aquatic life;
3. Controlling erosion;
4. Improving coordination between the city and agencies regarding development activities near waterways;
5. Promoting development that is compatible with the purpose of the Columbia River Infill waterfront Area;
6. Promoting the preservation and restoration of native riparian vegetation;
7. Conserving and protecting property values; and
8. Encouraging development, preservation and enhancement of reasonable public access to major waterways for recreational use and visual enjoyment.
9. Protecting the Columbia River and its users from stormwater contaminants that pose a threat to the health and safety of the users.

B. **Applicability.**

Provisions of this section apply to all property within the boundaries of the Columbia River Infill waterfront Area within the City of Hood River, as identified on the Columbia River Infill Waterfront Map. Many parcels within the Columbia River Infill waterfront Area are affected by more than one sub-zone. Where this is the case, applicable development standards for each sub-zone shall apply within that

sub-zone's boundaries. Standards of this section shall apply in addition to applicable standards of the underlying zone. Where there are conflicts between sub-zone standards, the more restrictive standard shall apply.

C. **Permitted Uses.** The following uses are permitted outright in the Columbia River Infill waterfront Area:

1. Resource enhancement and restoration activities.
2. Land divisions, subject to requirements in Title 16.
3. Removal of non-native or invasive vegetative species.
4. Maintenance of existing roads.
5. Temporary emergency procedures necessary for the protection of property.
6. Actions taken by the City to correct or abate a nuisance.
7. Approved storm water discharge.
8. Existing lawn within the riparian area may be maintained, but not expanded into the resource area.
9. Existing utility lines.
10. Existing legal non-conforming structures. Replacement of non-conforming structures shall comply with this title.

D. **Ministerial and Administrative Review Approval.** The following uses are permitted in the Columbia River Infill Waterfront Area, subject to Ministerial or Administrative Review approval as may be applicable under the circumstances, including compliance with other natural resource agencies:

1. Repair, maintenance and replacement of existing utility lines.
2. Fencing.
3. Removal of a hazardous tree.
4. Maintenance of streambank stabilization and flood control structures.
5. ESEE Analysis Findings and Conclusion – The ESEE Analysis Findings and Conclusions identified in the Hood River Waterfront Goal 5 ESEE Analysis provide site specific exceptions to protection measures based on conflicting uses and mitigating consequences of implementation. The sites are specific to the Hood River Waterfront Goal 5 ESEE Inventory and Map.

E. **Conditional Uses** shall be pursuant to the zoning designation of the subject parcel.

F. **Prohibited Uses.**

1. New development on significant natural resource sites and property, except as permitted in the Hood River Waterfront Goal 5 identified above in the ESEE.
2. Removal of native vegetation from resource areas identified in the Hood River Waterfront Goal 5 ESEE.

Reach CO-R1

Basin: Columbia River
Size of Site: 0.74 acres
Location: East end of the water front, stretching from I-84 to the east opening of the marina.

Description of Resource:

CO-R1 is the shoreline of the Columbia River that extends from I-84 at the east end of the study area west to the marina. This reach is 1,895 feet long. The shoreline and riparian area are composed of fill material that was placed after construction of the Bonneville Dam in the 1930s. The entire riparian area is developed with a hotel, restaurants, parking lots, and access roads. The only vegetation is limited to mowed lawn and a few ornamental plants. The ornamental shrubs are primarily in front of the restaurants and are pruned to prevent them from growing too tall to obstruct views.

Existing Uses:

- Hood River Inn Hotel- Current use is a commercial business. Possible expansion in the future.
- Windsurfing school- Operates seasonally at the sandy beach on the east end of the reach. Public trail- Exists along the top of the rip rap.
- Public access for event staging.

ESEE ANALYSIS

The following table indicates the impacts on the resource of fully allowing the conflicting uses to occur, limiting the conflicting use, or prohibiting the conflicting use.

Conflicting Use	Prohibit	Limit	Allow
C-2	<ul style="list-style-type: none"> • loss of capitalized amenity values from water features • reduces employment opportunities • reduces expansion opportunities for recreation uses • retains the screening and buffering benefits • protects the functional value of the resource • preserves water quality • preserves fish habitat • loss of flexibility for new development or redevelopment 	<ul style="list-style-type: none"> • conserves functional value of resource • improves water quality • limits habitat loss and possibly improves habitat quality • supports visual variety and impact • supports increase screening and buffering benefits • allows for maintenance of existing facility • supports educational and recreational values • provides for flexibility for new development or redevelopment 	<ul style="list-style-type: none"> • retains development flexibility • supports services and employment opportunities • supports recreational values • decreases screening and buffering • detracts from site's scenic qualities • vegetation removal and increased impervious surfaces degrade water quality and quantity • soil erosion and bank destabilization • loss of sediment trapping capacity • habitat fragmentation and fish habitat loss

CONCLUSION

The amenities of the Columbia River are extremely valuable from an economic, social, and environmental perspective. The Columbia River is an economic amenity to commercial development. Protecting the view of the Columbia River and access to it will provide a higher property value, which will have a positive consequence to the City tax base. However, providing resource protection could directly affect the development potential.

The public trail and water access provides recreational and education opportunities. Expansion of the trail and adding amenities would provide an opportunity for the community to explore the recreation and education potential of the resource. The opportunity to provide educational and visual opportunities would be lost if development were allowed to occur without limits.

The Columbia River supports several listed salmonid species. Fish habitat generally deteriorates as land use becomes more intensive. Development along the Columbia River ~~results of this site would result in~~ increased run-off, pollutant loading and sedimentation to the Columbia River, which ~~would negatively impacts~~ fish populations. However, this reach (CO-R1) is already developed, as noted above, with a hotel, except for portions between the existing hotel and the water's edge, and on the eastern end of the reach.

Prohibiting conflicting uses would have a negative social and economic consequence to the City of Hood River. These uses (ie., the uses permitted in the C-2 Zone) shall be allowed to

continue with limits placed on them to protect the environment and provide for visual, recreation and education opportunity growth.

ESEE DECISION

Development shall be allowed to occur with certain limits. In addition to meeting current development standards, conflicting uses shall be allowed to occur provided the following limits are met to protect the resource:

- Any bank stabilization or bank alteration will be done using bio-engineering techniques.
- Stormwater runoff from all new impervious surfaces needs to be treated to DEQ stormwater discharge standards for the Columbia River prior to discharge off of the site. No runoff from swimming pools or decks into the Columbia River is permitted and all runoff and water from the pool must be directed to the sanitary sewer system in accordance with applicable rules and regulations.
- Public view points, benches and educational information shall be provided at regular intervals with a minimum of every 0.5 miles of trail.
- A public trail and water access shall be provided for recreational and educational opportunities.
- The use of herbicides and pesticides shall be limited to non-persistent, biodegradable products that are used according to the manufacture's recommendations.
- Except as modified in this ESEE Decision, there is a 75 foot setback from top of bank for all structures, expansion and redevelopment for Reach CO-R1.
- For the portion of Reach CO-R1 located within 3N 11E 30 Tax Lot 200 as shown on Exhibit A, the setback from top of bank is located at the footprint of the existing buildings (excluding decks) along the Columbia River as of the date of Ordinance 1938. An additional 10' may be used to satisfy federal and state health and safety requirements, but may not be used to otherwise expand the footprint. This setback does not apply to a dock and associated facilities located on a dock. This setback does not apply to temporary structures or materials erected or placed on a temporary basis not to exceed 120 days per year, such as tents, shelters, or pavers or other water-permeable patio material.
- Subject to administrative review, one swimming pool and associated decks, enclosures for pool mechanical facilities, and an enclosure for the pool may be located within the setback southeast of the buildings existing as of the date of Ordinance 1938, but shall not occupy more than 7,000 square feet of the setback area, and shall

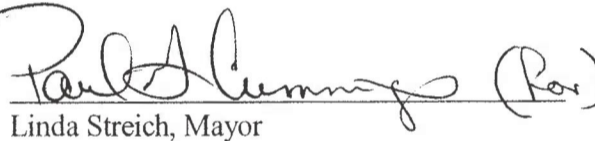
be located no less than 21 feet from the top of bank. The enclosure for the pool must be clear on at least two sides, not cover more than one-third of the pool, and must be located over the portion of the pool furthest from the Columbia River. As noted above, any other development is subject to a setback of 75 feet. Riparian enhancement within the portion of Reach CO-R1 shown on Exhibit A is required at a 3:1 replacement to loss ratio. Enhancement shall include, but not be limited to planting native riparian vegetation, placement of large woody debris, or controlling erosion. A riparian enhancement plan consistent with this provision and chapter prepared by a qualified professional must be submitted for review and approval in conjunction with the development proposal for the swimming pool.

- The setbacks do not apply to structures associated with these specific uses: non-motorized water sport schools and rentals and landscaping.

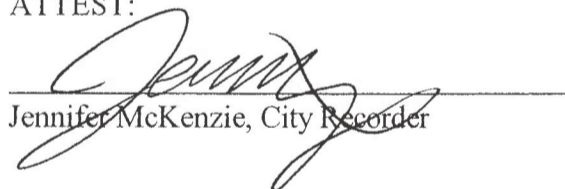
Read for the first time: November 26, 2007.

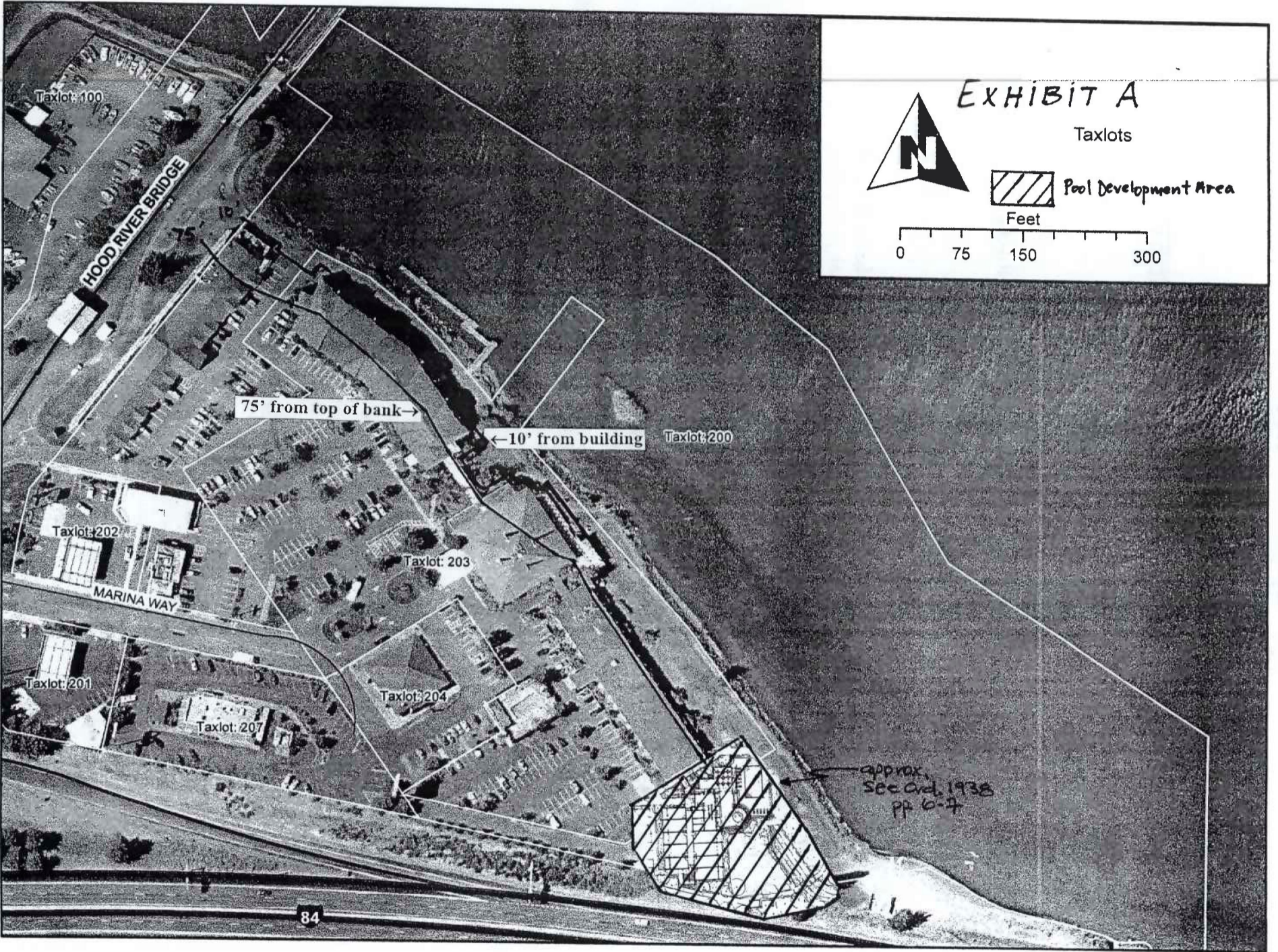
Read for the second time and passed: December 10, 2007, to become effective thirty (30) days hence.

Signed December 12, 2007.


Linda Streich, Mayor

ATTEST:


Jennifer McKenzie, City Recorder



CITY COUNCIL AGENDA ITEM COVER SHEET

Supplemental Staff Report

Meeting Date: November 26, 2007

Subject: Ordinance 1938—Amendment to 17.22.030 for CO-R1 (Hood River Inn)

Background:

Procedural Posture:

On November 13, 2007, the City Council opened the public hearing and heard the staff report and public testimony on proposed Ordinance 1938. At the conclusion of public testimony, the Mayor continued the hearing to November 26, 2007, leaving the written record open until November 20, 2007, at the request of the property owner, DM Stevenson Ranch, LLC, and Hood River Inn.

The City received additional written testimony during the period in which the record was left open. That testimony is included with this packet. In addition, staff prepared two revised versions of Ordinance 1938, which are also included with this packet. These additional written submissions and the revised ordinance contain new evidence. Consequently, when the hearing is reconvened on November 26, the Mayor will need to begin with public testimony to allow the opportunity to address the new evidence.

10 Foot Issue:

At the November 13th proceedings, the Council questioned staff during testimony whether the 10 foot additional encroachment into the 75 foot impact area from the building footprint was necessary. The 10 feet were proposed to meet any health and safety building requirements. With the inclusion of the 10 feet, any health and safety building requirement extending 10 feet or less beyond the existing footprint would not render the building a nonconforming structure. Without the inclusion of the 10 feet, any such building requirement extending beyond the footprint would render the building a nonconforming structure and would, therefore, retain some negative economic impact. For this reason, staff recommends retaining the additional 10 feet to meet health and safety requirements. As now drafted, Ordinance 1938 says that the 10 feet may be used only to meet these requirements and may not be used to otherwise expand the footprint.

DLCD Response:

Following the November 13th proceedings, staff and the property owner and Hood River Inn's representative, Dan Chandler, also held a conference with DLCD staff members Gary Fish and Amanda Punton to discuss Ordinance 1938 and DLCD staff's response to including a mitigation provision. Following that conference, DLCD staff expressed support for the amendment with the inclusion of mitigation and accompanying findings in this staff report.

The addition of a mitigation requirement at a 3:1 ratio for new development within the 75 foot impact area and within the portion of the reach owned by DM Stevenson Ranch, LLC, provides environmental resources enhancement at least commensurate with the impact of the additional development that could occur as a result of the revised setback. So, to the extent that relocating the setback from 75 feet to footprint or footprint plus 10 feet has a measurable negative impact on the environmental resource, mitigation will enhance and support the resource and provide a counterbalancing or positive net impact.

Supplemental ESEE Findings:

These findings further address DLCD's concern with the adequacy of the original findings and explain what has changed since the passage of Ordinance 1874 and why those changes warrant a revision to the setback for Reach CO-R1. At the time the City adopted Ordinance 1874, the City believed it was making the correct decision based on the information it had, and based on public testimony in favor of protecting the City's waterfront. The information at hand at the time stated that Reach CO-R1 was fully developed and provided little environmental resource value. Public testimony favored strongly protecting that remaining value and there was no information regarding the impact on the economic value that would result from imposing strong protections of the environmental value. Consequently, the Council sought to protect the remaining resource value by imposing the 75 foot setback.

The new information provided during these proceedings is that the strong protection provided by the 75 foot setback carries with it significant negative economic impacts. During these proceedings, the Council has the opportunity to weigh these economic impacts against the remaining environmental value to be protected.

As the record shows, there is some remaining environmental value to be protected, but it is relatively minimal due to the level of existing development on the site. Environmental impact can occur between the top of bank and the edge of the existing development (footprint) and in the area at the southeast end of the reach. The proposed versions of Ordinance 1938 would (1) limit new development within the setback to water's side of the existing structure's footprint plus or excluding an additional 10 feet to meet health and safety requirements; (2) limit development of a swimming pool; and (3) impose a 3:1 mitigation requirement. Together, these provisions would alleviate the negative economic impact of the 75 foot setback and would provide some positive environmental impact.

Public testimony has taken issue with the reference to "minimal value" and argues that the value is not minimal. The use of the word "minimal" here does not refer to the quality (protection of fish and water) but rather to the quantity. In other words, there is little protective value left to a site that is developed and if the economic value of the site is valued, then only the remaining environmental value needs to be protected. With the addition of mitigation, there will be added remaining environmental value.

2 Versions of Ordinance 1938:

The 2 proposed versions of Ordinance 1938 address the 10 foot issue and include a mitigation provision. The following is a summary of the two versions.

Setback at Footprint Plus 10 feet, with Pool. This proposed version of Ordinance 1938 moves the setback from 75 feet to the footprint of the structures as they exist today (excluding decks) with an existing 10 feet solely for health and safety requirements. The pool along with decks and enclosures for pool facilities would be allowed to be located in the area as shown on Exhibit A. Any other development would be subject to a setback of 75 feet. Mitigation by providing riparian enhancement at a 3:1 ratio is required for any development resulting in loss of riparian area—ie., new development within the 75 foot setback area.

Setback at Footprint no 10 feet, with Pool. This proposed version of Ordinance 1938 moves the setback from 75 feet to the footprint of the structures as they exist today (excluding decks), but without the additional 10 feet. The pool is treated the same as above and mitigation is also required. Any other development would be subject to a setback of 75 feet.

Staff Recommendation: Staff recommends approval of one of the versions of Ordinance 1938, subject to any modifications made at the hearing.

Suggested Motion: I move that we read Ordinance 1938 [setback at footprint plus 10 feet with pool] or [setback at footprint no 10 feet with pool] for the first [and second] time by title only with the following modifications [describe modifications] and direct staff to prepare the accompanying Exhibit A to scale.

Alternatives: See above.

Fiscal Impact: None.

**BEFORE THE CITY OF HOOD RIVER CITY COUNCIL
HOOD RIVER, OREGON**

In the Matter of an Amendment)
to HRMC 17.22.030 and ESEE) **STAFF REPORT**
modification for CO-R1) **November 8, 2007**

I. BACKGROUND:

- A. **REQUEST:** This is a City-initiated amendment to HRMC 17.22.030 and the accompanying ESEE Analysis for a portion of reach CO-R1 of the Columbia River Waterfront riparian area. Proposed Ordinance 1938 is **attachment "A."**
- B. **APPLICANT AND OWNER:** Applicant: City of Hood River; Owner: DM Stevenson Ranch, LLC
- C. **PROPERTY LOCATION:** The address is 1108 East Marina Way; 3N 11E 30 tax lot 200. **See attachment "B".**
- D. **PARCEL SIZE:** The subject parcel is approximately 13.38 acres.
- E. **HISTORY:**
1. Adjacent Property Owners notices sent August 29, 2007, for Planning Commission and City Council public hearings.
 2. Amended DLCD Notice sent August 31, 2007.
 3. Public hearing before the Planning Commission November 5, 2007. Public hearing before the City Council November 13, 2007.
- F. **ADJACENT PROPERTY OWNERS COMMENTS:** Property owners within 250 feet of the subject parcels were notified of this request, as of the writing of this report no letters have been received.
- G. **AGENCY COMMENTS:** DLCD has provided written comments. **See attachment "C."**

II. FINDINGS

- A. **HRMC 17.09.040 – Quasi-Judicial Actions**
- (1) *Section 17.09.040 – Quasi-Judicial Actions: Quasi-Judicial zone changes or plan amendments may be initiated by the owner or representative of the subject property.*

This amendment is made at the request of the property owner.
 - (2) *Section F – Public Hearings*

The requisite public hearings are being held before the Planning Commission and City Council.

(3) *Section G – Notice*

Notice of the public hearings was mailed to property owners within 250 feet of the subject property on August 29, 2007, more than 20 days prior to the date of the first evidentiary hearing. Notice was published in the Hood River News on September 5, 2007, more than 20 days prior to the date of the first evidentiary hearing. Amended notice was sent to DLCD on August 31, 2007, more than 45 days prior to the first evidentiary hearing.

B. Background

1. The Subject Property.

The proposed amendments to HMRC 17.22.030 and the ESEE Analysis pertain only to the portion of Columbia River Waterfront Reach CO-R1 shown on Exhibit A of Attachment A. The entire CO-R1 reach is shown on Attachment “B” and is described in the ESEE Analysis as follows:

CO-R1 is the shoreline of the Columbia River that extends from I-84 at the east end of the study area west to the marina. This reach is 1,895 feet long. The shoreline and riparian area are composed of fill material that was placed after construction of the Bonneville Dam in the 1930s. The entire riparian area is developed with a hotel, restaurants, parking lots, and access roads. The only vegetation is limited to mowed lawn and a few ornamental plants. The ornamental shrubs are primarily in front of the restaurants and are pruned to prevent them from growing too tall to obstruct views.

This description described the reach as it existed in 2003-2004, at the time the ESEE Analysis was undertaken and then adopted. This description continues to apply today and still aptly describes the portion of the reach affected by the proposed amendment.

2. Ordinance 1863

On October 12, 2004, the City passed Ordinance 1863 pursuant to the City’s Periodic Review Work program for Goal 5. Ordinance 1863 implements the Statewide Planning Goal 5 and included HRMC Section 17.22.030, the Columbia River Waterfront provisions and ESEE Analysis. The Ordinance has been deemed acknowledged by the Department of Land Conservation and Development (DLCD).

Rather than using a site-by-site analysis, Ordinance 1863 designated the entire Columbia River Waterfront as significant riparian area under the safe harbor provisions of OAR 660-023-0090(5)(a). However, because a significant area of the City’s Columbia River Waterfront is substantially developed, and zoned for commercial or industrial uses, the City chose to develop a specific program of protection for the Columbia River Waterfront by not only creating specific ordinance provisions in Chapter 17.22 for the Columbia River Waterfront, but also by dividing the Columbia River Waterfront into designated “reaches.” For each of these reaches the City adopted an Economic, Social, Environmental, and Energy (ESEE) analysis under OAR 660-023-0040. Together, the analyses for all of the reaches are called the ESEE Analysis, which was adopted as part of Ordinance 1863. Development of a reach is consequently governed by the Columbia River Waterfront provisions in Section 17.22.030 and the ESEE Analysis.

For reach CO-R1, Ordinance 1863 did not impose any setback from the top of bank but instead required mitigation at a 3:1 ratio for any development within an impact area described as 75 feet from top of bank. In other words, this provision allowed development up to the top of bank, but required mitigation elsewhere on the reach for development located within the 75 foot impact area. It should be noted that neither Hood River Inn nor DM Stevenson Ranch, LLC, participated orally or in writing during the proceedings for Ordinance 1863.

3. Ordinance 1874

In March of 2005, Ordinance 1863 was referred to the voters and approved. However, because land use decisions cannot be made via the initiative and referendum process, the approval of the referendum did not affect the validity of Ordinance 1863. Notwithstanding the fact that Ordinance 1863 was not affected, the City Council took approval of the referendum as direction to review Ordinance 1863 to re-examine the resource protection for the Columbia River Waterfront.

Ordinance 1874 was the result of this review. The City Council adopted Ordinance 1874 on January 21, 2006, as a Post-Acknowledgement Plan Amendment (PAPA). This ordinance amended the ESEE Analysis for each of the Columbia River reaches. For reach CO-R1 (and all other reaches with mitigation provisions), Ordinance 1874 removed the mitigation provisions and imposed a 75-foot setback (from top of bank) in which only very limited development specified in the ESEE Analysis could occur.

Following adoption of Ordinance 1874, the Hood River Inn and Felix Tomlinson appealed Ordinance 1874 to the Land Use Board of Appeals. Accordingly Ordinance 1874 is effective, but not acknowledged. ORS 197.625(1). The proceedings before LUBA have been stayed as the City, Hood River Inn and DM Stevenson Ranch, LLC, have sought to address the property owner and Hood River Inn's objections to Ordinances 1863 and 1874 for reach CO-R1. It should also be noted here that neither the Hood River Inn nor DM Stevenson Ranch, LLC, participated orally or in writing during the proceedings for Ordinance 1874.¹

4. Proposed Ordinance 1938

DM Stevenson Ranch, LLC, and the Hood River Inn object to the restrictions placed on CO-R1 by Section 17.22.030 and the ESEE Analysis because: (1) the prohibition on development within 75 feet of top of bank, except for the limited uses permitted in the ESEE Analysis, does not take into account existing structures and uses;² (2) the location of the 75-foot setback through existing structures creates nonconforming structures; (3) nonconforming structures reduce property value and limit further development and/or redevelopment of the site.

Ordinance 1938 is the second of two attempts by the City to resolve DM Stevenson Ranch, LLC, and the Hood River Inn's concerns with the restrictions placed on CO-R1 by Section 17.22.030 and the ESEE Analysis. The first effort, in 2006, resulted in withdrawal of the application. This effort follows on the filing of a Measure 37 (2005) claim by DM Stevenson Ranch, LLC, against the City and direction from the City Council, following an executive session, to prepare an ordinance amending 17.22.030 and the ESEE Analysis for CO-R1 to address the objections listed above.

¹ Hood River Inn and DM Stevenson Ranch, LLC, state that this lack of participation in the Ordinance 1874 proceedings was due to the fact that the public notice for Ordinance 1874 did not reference Reach CO-R1.

² The limited uses and structures permitted within the 75 foot setback are: non-motorized water sport schools and rentals, with associated structures, and landscaping. A public trail and water access is also permitted within the 75 foot setback.

Proposed Ordinance 1938 replaces the 75-foot setback with a smaller setback for most of CO-R1 as shown on Exhibit A to the Ordinance. The new setback is located 10 feet toward the top of bank from the existing structures' footprints.³ Along the east end of the reach, the setback is drawn to accommodate a planned hotel expansion and swimming pool. This revised setback eliminates the resulting nonconformities and would allow for limited new development. The purpose of placing the setback 10 feet toward the top of bank as opposed to exactly on the structures' footprints is to accommodate any external improvements needed to meet health and safety standards (ADA, Building Code, etc.). Proposed Ordinance 1938 also specifies that for reach CO-R1, the setback does not apply to docks and associated facilities located on a dock, to temporary structures (120 days max.), or one swimming pool, and that the 75 foot setback applies to those portions of the reach not shown on Exhibit A.

C. OAR 660-023– Goal 5 Planning Rule

1. OAR 660-023-0060 - Notice and Land Owner Involvement

Local governments shall provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notification and involvement of landowners, citizens, and public agencies should occur at the earliest possible opportunity whenever a Goal 5 task is undertaken in the periodic review or plan amendment process. A local government shall comply with its acknowledged citizen involvement program, with statewide goal requirements for citizen involvement and coordination, and with other applicable procedures in statutes, rules, or local ordinances

Findings:

- The City's Citizen Participation Policy is outlined in Goal 1 of the City's Comprehensive Plan.
- The City complied with its acknowledged citizen involvement program which is specified in the Hood River City Citizen Participation Policy outlined in Goal 1 of the City Policy Document as demonstrated by the above-listed citizen involvement activities.
- The City complied with statewide goal requirements for citizen involvement and coordination as outlined in Goal 1 (Citizen Involvement) of the statewide planning goals by compliance with the noticing procedures in Chapter 17.09, as shown by the above-listed citizen notice and public hearing activities.

Conclusion: The City has complied with the procedures and requirements in OAR 660-023-0060.

2. ESEE Analysis

Because the proposed ordinance impacts a significant resource, the City must analyze the Economic, Social, Environmental, and Energy (ESEE) consequences of the proposed change. OAR 660-023-0040(1) states that the ESEE analysis need not be lengthy or complex, but shall enable reviewers to gain a clear understanding of the conflicts and the consequences expected. In particular with respect to Ordinance 1938, DLCDC has suggested that the City consider how DM Stevenson Ranch, LLC's economic concerns with respect to the 75 foot setback can be addressed without compromising the environmental and social values of the reach.

³ DLCDC's comments inadvertently refer to the proposed setback as a 21 foot setback. This mistake may be due to the fact that staff has referred to the proposed revised setback as the "21 foot setback," although this is clearly a misnomer.

a. Conflicting Uses and Impact Area.

The ESEE Analysis identifies the uses allowed according to the zoning designation of a reach as the conflicting uses to be evaluated in determining the negative impacts to a reach of allowing development. Existing land uses, including legal nonconforming uses are also evaluated.

CO-R1 is zoned General Commercial (C-2). The uses generally allowed in CO-R1 under the Hood River Municipal Code are as follows:

A. Permitted Uses.

- 1. Single-family dwellings and accessory structures*
- 2. Townhouse projects*
- 3. Duplexes and triplexes*
- 4. Rooming and boarding houses*
- 5. Manufactured homes*
- 6. Home occupations*
- 7. Bed and breakfast*
- 8. Family day care*
- 9. Residential care facility*
- 10. Group residential, if less than 15 persons*
- 11. Transportation facilities pursuant to 17.20.050(A)*
- 12. Accessory dwelling units*

B. Permitted Uses Subject to Site Plan Review.

- 1. Commercial uses*
- 2. Industrial uses incidental and essential to an on-site commercial use (Refer to the section below, "K")*
- 3. Change of use*
- 4. Parking lots of four (4) or more spaces, new or expanded , and or the equivalent of paving equal to four (4) or more parking spaces*
- 5. Multi-family dwellings*
- 6. Group residential, if fifteen (15) or more persons*
- 7. Transportation facilities pursuant to 17.20.050(B)*

C. Conditional Uses.

- 1. Hospitals, sanitariums, rest homes, nursing or convalescent home*
- 2. Schools and day care facilities*
- 3. Public parks, playgrounds, and related facilities*
- 4. Utility or pumping substations*
- 5. Churches*
- 6. Planned unit developments*
- 7. Public facilities and uses*
- 8. Hostels*
- 9. Townhouse projects*
(Section 17.03.050)

Lawfully established non-conforming uses and structures are generally allowed to continue or remain, but may not expand, enlarge, or move so as to increase the nonconformity. (Chapter 17.05).

OAR 660-023-0040(3) required that the City determine an impact area for each significant resource site. The impact area determined for CO-R1 is “*the riparian area and 75 feet landward from the top of the bank⁴ on resource site property and properties which abut the resource site.*” (ESEE Analysis, p. 10).

Once the conflicting uses and impact area are identified, the City has three choices for determining whether and to what extent to allow conflicting uses within the impact area:

One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

OAR 660-023-0040(3)

b. Determinations in Ordinances 1863 and 1874

In deciding which of those choices listed above to follow, the City analyzed the ESEE consequences of allowing conflicting uses. Acknowledged Ordinance 1863 fully allowed conflicting uses with mitigation. Ordinance 1874 prohibited them to the extent of imposing a hard setback applicable to the entire impact area, including existing buildings. Ordinance 1938 represents a level of resource protection somewhere in between these two levels by allowing less conflicting uses than Ordinance 1874, but still more than Ordinance 1863.

The findings in support of Ordinance 1874 stated that:

[T]he variety and extent of intermediate and environmental goods warrant greater protection in the impact area. The Council finds that by creating a setback with limited uses for the identified reaches, the environmental goods are protected while not negatively altering the consequences with respect to social values, environmental values, or economic values. Specifically, the setback with limited uses allows for recreation and minimizes scenic or cultural impacts; it allows for uses supporting potential adjacent development which retains property values; and it minimizes impact on environmental resources.” (Ordinance 1874, Legislative Findings, p. 4).

Because the changes proposed make more allowances for conflicting uses, the findings for Ordinance 1938 analyze the changes from the foregoing findings for Ordinance 1874. However, it should be noted at the outset that the findings in support of Ordinance 1874 do not explain why the environmental resources in CO-R1 warranted greater protection less than 2 years after Ordinance 1863 was approved.

⁴ Top of bank definition shall be the ORS 660-023-0090(G) definition.

The findings do not describe any changed conditions; the record only shows that there was overwhelming public testimony in favor of providing more protection. Similarly, the findings for Ordinance 1874 did not evaluate the economic, social or energy impacts of providing more environmental protection—it simply concluded that there were no negative consequences. So, although Ordinance 1874 is the most recent iteration of the City’s Goal 5 protections for CO-R1, the findings in Ordinance 1863 will also be used to evaluate the ESEE consequences of the changes proposed by Ordinance 1938.

3. ESEE Analysis Ordinance 1938

a. Economic Consequences

Findings:

As noted above, the findings for Ordinance 1874 identified no negative economic impacts from imposing the 75 foot setback on conflicting uses in CO-R1. That finding was correct on the record before the Council because there was no evidence in the record regarding negative economic consequences. However, for the changes proposed by Ordinance 1938, the DM Stevenson Ranch, LLC, has submitted considerable evidence of the negative economic impacts of the limits on conflicting uses created by Ordinance 1874 that should have been considered. This evidence is consistent with the negative impacts identified from prohibiting conflicting uses in the ESEE Analysis. (ESEE Analysis, p. 17).

The current setback creates several negative economic consequences. The first is to the property itself. The property owner has asserted that the current setback diminishes the value of the property in several ways. The nonconforming use status creates an uncertainty for potential investors, and is a disincentive to further development. Second, it eliminates the ability of the City’s only waterfront hotel to expand. By allowing a limited expansion of the existing facility, the local economy will benefit from increased visitor days and visitor dollars.

The Columbia River is an economic amenity to commercial development. Protecting the ability of the subject property to develop will provide a higher property value, which will have a positive consequence to the City tax base. Property values are largely based on market demand. Market demand is influenced by a number of factors including infrastructure, development potential, aesthetics, surrounding development, character, and access.

Property value translates into the City taxes, which result in income for the City. Developed property in many cases adds to the property value and hence the tax base of the City. As property values fluctuate, property taxes will vary proportionally. In addition to an increased property tax, allowing limited expansion of the hotel facility will result in approximately \$32,000 per year in additional room tax at current rates.

More pristine riparian corridors support economic values associated with ecosystem services (such as flood control, clean water, recreation and amenity values). The proposed amendment has little impact on those values because of the preexisting level of development. The waterfront will remain accessible via the existing pedestrian trail and lawn.

The further development of the subject property may result in the creation of sustainable job opportunities for the City. If the full land area of a parcel cannot be developed because of protection measures it may affect the size of the business and its ability to provide employment. The property owner has stated that amending the setback as proposed will allow the creation of 8-12 Full-time equivalent jobs.

Conclusion: Based on the foregoing, there are, indeed, negative economic consequences to limiting conflicting uses to the extent provided in Ordinance 1874.

b. Social Consequences

Findings:

Similarly, as with the economic consequences of imposing a 75-foot setback on conflicting uses, the Council found no negative social consequences flowing from the 75-foot setback on the basis that there was no evidence put into the record reflecting any social consequences.

However, as seen from the following findings, there are social consequences that flow from the proposed changes.

- Reduction of the setback and allowance of temporary uses will have both positive and negative consequences to the use of the reach for recreation. There will be slightly less lawn available, but an enhanced hotel facility will provide more opportunities for guests to use the waterfront. The pedestrian pathway will, however, retain public access to the waterfront and the proposed amendment does not alter this pathway.
- The City finds that, as a waterfront community, a waterfront hotel property is a social amenity. It provides a location for conferences and enhances tourism opportunities. Allowing a limited expansion of the hotel enhances those opportunities.
- Reduction of the setback will have minimal impact on the scenic qualities of the reach because it simply acknowledges the existing development. However, the existing pedestrian path will remain open, retaining the current visual, recreational and educational opportunity. Public testimony before the Planning Commission suggested that Ordinance 1938 establish width and access standards for the pathway. While staff believes that width and access standards are desirable, this amendment would not achieve the objectives of having uniform width and access standards because Ordinance 1938 only addresses a portion of CO-R1.
- Allowing a limited expansion of the hotel facility will increase quantity and nature of employment opportunities, which will have a positive social consequence.

Conclusion: There are some social values to the reach which will not be significantly impacted by the proposed changes. The expansion of conflicting uses under Ordinance 1938 will not compromise the limited social values of the reach.

c. Energy Consequences

Findings: Energy analysis focuses on transportation, infrastructure, and the heating and cooling of structures. Keeping in mind that the analysis must focus on the impact area, the proposed amendment will have little impact on energy use. Expansion of the existing development in the impact area will require no additional transportation infrastructure. The only new structures proposed are associated with the pool, which will require heating and cooling. However, meeting a demand for additional hotel and guest facilities will have a similar energy impact no matter where those facilities are built.

Conclusion: The energy consequences of the proposed changes are minimal or neutral.

d. Environmental Consequences

Findings:

The environmental analysis is based on the inventory of the location, quantity, and quality of significant resources contained in the ESEE Analysis. Riparian resource values considered in the evaluation include:

- water quality
- threatened and endangered salmonid habitat
- wetlands
- riparian vegetation
- wildlife habitat

The environmental consequences findings in support of Ordinance 1874 state, in essence, that the 75-foot setback was required to provide greater protection to the riparian resource values listed above. The findings do not state specifically why or how the setback provided greater riparian resource protection to this reach, but the record shows considerable public testimony in support of a setback for this broad purpose for all of the Columbia River Waterfront Area.

The threshold question in evaluating environmental impacts is the nature of the environmental resource. The original adopted ESEE analysis states as follows:

The shoreline and riparian area are composed of fill material that was placed after construction of the Bonneville Dam in the 1930s. The entire riparian area is developed with a hotel, restaurants, parking lots, and access roads. The only vegetation is limited to mowed lawn and a few ornamental plants. (ESEE Analysis, page 16).

As noted in the original ESEE Analysis, the subject impact area (from top-of-bank 75 feet inward) contains no unaltered habitat. Much of it is developed with existing buildings, the remainder is pedestrian path, rip rap, and mowed lawn. There are no wetlands, there is no riparian vegetation and there is no wildlife habitat. Each of those values may be present in higher or lesser degrees in a natural riparian corridor. The habitat values of the site are minimal.

Testimony before the Planning Commission objected to these findings noting that users of the pathway along the Hood River Inn waterfront frequently see numerous bird species and fish and suggested, therefore, that the site did contain habitat. The point here, however, is that the land difference between the 75-foot setback and the proposed setback is already substantially developed (the east wing and pool development cover only approximately 5% of the site) and the resulting impact on the environmental value is correspondingly minimal. None of the testimony suggested that the 10 foot area between the buildings and proposed setback contained habitat or contributed substantially to habitat.

What the findings in support of Ordinance 1874 failed to take into account, therefore, was the nature of the environmental resource sought to be protected: a reach “composed of fill material that was placed after construction of the Bonneville Dam in the 1930s. The entire riparian area is developed with a hotel, restaurants, parking lots, and access roads. The only vegetation is limited to mowed lawn and a few ornamental plants.” (ESEE Analysis, page 16).

Consequently, when taking this into account in determining the environmental impact of conflicting uses, much of the environmental impact has already occurred. So the question becomes to what extent is there any remaining environmental value to be protected, and to what extent does allowing conflicting uses compromise that value vis a vis the other values (social, economic, and energy).

The findings above indicate that there is some, but not much, remaining environmental value to the site, and that the community values that as a resource. However, there is little if any evidence to show that placing a setback through existing development will provide significantly more protection than placing the setback as proposed in Ordinance 1938. The setback proposed in 1938 still maintains an undevelopable area between top of bank and existing development, and still limits additional conflicting uses. It allows additional development on only about 5% of the total land area on a portion of the reach located near Interstate 84.

Testimony before the Planning Commission suggested including provisions addressing landscaping to promote natural vegetation. These provisions are not necessary here because landscaping is addressed as part of the development review process and the City's landscaping provisions already allow the City to require native and site specific vegetation as part of a landscaping plan.

In addition, the City's nonconforming structure provisions do allow repair and replacement of nonconforming structures when damaged by any means, which includes demolition for remodeling and replacement. Consequently, placing the setback through the structure as opposed to adjacent to the structure does not provide more protection. Similarly, the City cannot prohibit improvements that extend beyond the footprint of the building when necessary to meet health, safety and accessibility standards. Locating the setback line in recognition of the potential for these types of improvements and to provide flexibility for their placement thus does not compromise the environmental values and prevents the creation of new nonconforming structures.

Finally, the addition of a dock and associated facilities and temporary structures will minimally compromise what remaining environmental value there is to the reach, especially when compared to the economic and social values described above. Technically, the City's Goal 5 jurisdiction does not extend into the water, and the Oregon Department of State Lands and state and federal removal-fill laws will govern construction of a dock. However, the property owner and Hood River Inn are concerned that the limits placed on development in the ESEE Analysis could be construed against a dock. Consequently, adding the language permitting a dock and associated facilities makes it clear that the provisions are not intended to prevent such a use and, more importantly, allow access from a dock to the site. The City disagrees with DLCD's suggestion to broaden the language in Section 17.22.030 to mirror the "water-related and water-dependent uses" language in 17.22.020 because that language is even broader than the limited dock language, and disagrees that a dock and related facilities are structures associated with non-motorized water sport schools and rentals and, therefore, already allowed.

DLCD has suggested that the setback need not accommodate the proposed swimming pool because it appears there are other viable options for locating it on the Hood River Inn property. Hood River Inn has provided evidence that the proposed location along the water is the best and most viable option to locate this amenity. However, the real issue is whether locating the pool in the location proposed compromises the environmental values and provides no counterbalancing social or economic values. The proposed location actually provides social value by placing less intense development nearest the water with the hotel building located behind. If the pool were required to be located elsewhere, in order to maximize usage of the site and accommodate the additional parking needed for expansion, Hood River Inn would place the hotel addition as close to the water as possible with the pool facilities behind it. As proposed, a user of the pathway would see the pool/outdoor facilities with a building in the background. Hood River Inn also provided testimony that adding a recreational facility to a lodging facility adds economic value.

Finally, testimony before the Planning Commission suggested that the provisions addressing runoff from the pool and decks did not adequately protect environmental values. Staff believes the provisions as

drafted do provide the maximum protection available with the constraints and operating characteristics of the City's wastewater and stormwater systems, and consistent with the DEQ and the City's NPDES permit standards.

Because the ESEE Analysis describes the site as already developed and containing minimal environmental value, there is minimal environmental consequence of extending the developed area to accommodate this use in light of the economic value to be gained.

Conclusion: The evidence shows that reach CO-R1 is a developed reach with minimal environmental value remaining, but considerable economic and social value that should be retained. The proposed amendments to this reach acknowledge the existing development and accommodate a minimal amount of expansion into the impact area and staff finds that this minimal amount of expansion has significant economic value when compared to the resulting minimal impact on what remaining environmental value provided by the reach.

CONCLUSION:

In sum, staff finds that proposed Ordinance 1938 appropriately balances Economic, Social, Environmental and Energy consequences consistent with Statewide Goal 5 by allowing, but limiting, conflicting uses. This balancing allows the City to provide appropriate, site-specific protection for the area recognizing the designation of the area as a riparian resource, but also recognizing the level of existing development and the values provided by that development.

As noted in the Hood River Waterfront Riparian Inventory, the environmental values of the subject property are minimal when compared to the more pristine riparian areas. However, rather than eliminate the site from the inventory of significant resources, or re-adopting the zero setback (with mitigation) that was acknowledged in Ordinance 1863, the City chooses to adopt a setback which does not encompass existing buildings and allows a limited expansion of the hotel facilities.

ORDINANCE NO. 1938

(An ordinance amending Chapter 17.22 of the Hood River Municipal Code to eliminate nonconforming uses and modify a portion of the setback for CO-R1)

WHEREAS, the City adopted Ordinance 1874 on January 23, 2006, pursuant to Goal 5 of the Statewide Goals and implementing rules thereof;

WHEREAS, Ordinance 1874 adopted Chapter 17.22—Natural Resource Overlay into Title 17 of the City's Code;

WHEREAS, Chapter 17.22 is intended to protect and restore wetlands and water bodies and their associated riparian areas (water bodies and their associated riparian areas are referred to as "riparian corridors");

WHEREAS, development in wetlands is generally subject to permitting under federal and state law and development in riparian corridors generally is subject to permitting under Chapter 17.22;

WHEREAS, nonconforming structures in wetlands and riparian corridors are generally considered permitted and allowed to remain but may not be expanded;

WHEREAS, the Columbia River waterfront area is specifically designated as the Columbia River Infill Waterfront Area ("CRIWA") in Chapter 17.22 and subject to regulation separately from other riparian corridors in Section 17.22.030;

WHEREAS, toxins from stormwater contaminants are present in the Columbia River and pollutants, chemicals, and other contaminants from other sources of runoff may pose a risk to the public health, safety and welfare. The setbacks and limits on development imposed by Section 17.22.030 are intended, in part, to protect against and limit the amount toxins that reach the Columbia River;

WHEREAS, Section 17.22.030 allows legal nonconforming structures to remain, but not expand;

WHEREAS, the status of a structure as a nonconforming use may lower the value of the structure;

WHEREAS, application of the setback imposed by Section 17.22.030 to real property owned by D.M. Stevenson Ranch, LLC ("DMSR) creates a nonconforming structure, which together may diminished the value of the land;

WHEREAS, Best Western Hood River Inn and Felix Tomlinson appealed Ordinance 1874 to the Land Use Board of Appeals on February 9, 2006;

WHEREAS, Best Western Hood River Inn has agreed to withdraw from the appeal to LUBA if the amendments to 17.22.030 set forth below are approved;

WHEREAS, the City Council adopts the findings of fact and conclusions of law set forth in the Findings and Decision dated _____ and attached as Exhibit B.

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Section 17.22.030 of the Hood River Municipal Code is amended to read as follows:
[deletions shown in ~~strike-out~~ and additions shown in underline]

17.22.030 Columbia River Infill Waterfront Area

- A. **Purpose.** The Columbia River Infill waterfront Area and portions, identified on the Columbia River Infill Waterfront map, within the City of Hood River are valuable economic, recreational, scenic and natural resources for the community. The Columbia River Waterfront Infill Area is intended to conserve and enhance the natural resource values of areas along the Columbia River and a portion of the Hood River within the city by;
1. Conserving and restoring habitat for wildlife, fish and other aquatic life;
 2. Protecting and enhancing water quality for human use and aquatic life;
 3. Controlling erosion;
 4. Improving coordination between the city and agencies regarding development activities near waterways;
 5. Promoting development that is compatible with the purpose of the Columbia River Infill waterfront Area;
 6. Promoting the preservation and restoration of native riparian vegetation;
 7. Conserving and protecting property values; and
 8. Encouraging development, preservation and enhancement of reasonable public access to major waterways for recreational use and visual enjoyment.
 9. Protecting the Columbia River and its users from stormwater contaminants that pose a threat to the health and safety of the users.

B. Applicability.

Provisions of this section apply to all property within the boundaries of the Columbia River Infill waterfront Area within the City of Hood River, as identified on the Columbia River Infill Waterfront Map. Many parcels within the Columbia River Infill waterfront Area are affected by more than one sub-zone. Where this is the case, applicable development standards for each sub-zone shall apply within that sub-zone's boundaries. Standards of this section shall apply in addition to applicable standards of the underlying zone. Where there are conflicts between sub-zone standards, the more restrictive standard shall apply.

C. Permitted Uses. The following uses are permitted outright in the Columbia River Infill waterfront Area:

1. Resource enhancement and restoration activities.
2. Land divisions, subject to requirements in Title 16.
3. Removal of non-native or invasive vegetative species.
4. Maintenance of existing roads.
5. Temporary emergency procedures necessary for the protection of property.
6. Actions taken by the City to correct or abate a nuisance.
7. Approved storm water discharge.
8. Existing lawn within the riparian area may be maintained, but not expanded into the resource area.
9. Existing utility lines.
10. Existing legal non-conforming structures. Replacement of non-conforming structures shall comply with this title.

D. Ministerial and Administrative Review Approval. The following uses are permitted in the Columbia River Infill Waterfront Area, subject to Ministerial or Administrative Review approval as may be applicable under the circumstances, including compliance with other natural resource agencies:

1. Repair, maintenance and replacement of existing utility lines.
2. Fencing.
3. Removal of a hazardous tree.
4. Maintenance of streambank stabilization and flood control structures.
5. ESEE Analysis Findings and Conclusion – The ESEE Analysis Findings and Conclusions identified in the Hood River Waterfront Goal 5 ESEE Analysis provide site specific exceptions to protection measures based on conflicting uses and mitigating consequences of implementation. The sites are specific to the Hood River Waterfront Goal 5 ESEE Inventory and Map.

E. Conditional Uses shall be pursuant to the zoning designation of the subject parcel.

E. Prohibited Uses.

1. New development on significant natural resource sites and property, except as permitted in the Hood River Waterfront Goal 5 identified above in the ESEE.
2. Removal of native vegetation from resource areas identified in the Hood River Waterfront Goal 5 ESEE.

Reach CO-R1

Basin: Columbia River
Size of Site: 0.74 acres
Location: East end of the water front, stretching from I-84 to the east opening of the marina.

Description of Resource:

CO-R1 is the shoreline of the Columbia River that extends from I-84 at the east end of the study area west to the marina. This reach is 1,895 feet long. The shoreline and riparian area are composed of fill material that was placed after construction of the Bonneville Dam in the 1930s. The entire riparian area is developed with a hotel, restaurants, parking lots, and access roads. The only vegetation is limited to mowed lawn and a few ornamental plants. The ornamental shrubs are primarily in front of the restaurants and are pruned to prevent them from growing too tall to obstruct views.

Existing Uses:

- Hood River Inn Hotel- Current use is a commercial business. Possible expansion in the future.
- Windsurfing school- Operates seasonally at the sandy beach on the east end of the reach. Public trail- Exists along the top of the rip rap.
- Public access for event staging.

ESEE ANALYSIS

The following table indicates the impacts on the resource of fully allowing the conflicting uses to occur, limiting the conflicting use, or prohibiting the conflicting use.

Conflicting Use	Prohibit	Limit	Allow
C-2	<ul style="list-style-type: none"> • loss of capitalized amenity values from water features • reduces employment opportunities • reduces expansion opportunities for recreation uses • retains the screening and buffering benefits • protects the functional value of the resource • preserves water quality • preserves fish habitat • loss of flexibility for new development or redevelopment 	<ul style="list-style-type: none"> • conserves functional value of resource • improves water quality • limits habitat loss and possibly improves habitat quality • supports visual variety and impact • supports increase screening and buffering benefits • allows for maintenance of existing facility • supports educational and recreational values • provides for flexibility for new development or redevelopment 	<ul style="list-style-type: none"> • retains development flexibility • supports services and employment opportunities • supports recreational values • decreases screening and buffering • detracts from site's scenic qualities • vegetation removal and increased impervious surfaces degrade water quality and quantity • soil erosion and bank destabilization • loss of sediment trapping capacity • habitat fragmentation and fish habitat loss

CONCLUSION

The amenities of the Columbia River are extremely valuable from an economic, social, and environmental perspective. The Columbia River is an economic amenity to commercial development. Protecting the view of the Columbia River and access to it will provide a higher property value, which will have a positive consequence to the City tax base. However, providing resource protection could directly affect the development potential.

The public trail and water access provides recreational and education opportunities. Expansion of the trail and adding amenities would provide an opportunity for the community to explore the recreation and education potential of the resource. The opportunity to provide educational and visual opportunities would be lost if development were allowed to occur without limits.

The Columbia River supports several listed salmonid species. Fish habitat generally deteriorates as land use becomes more intensive. Development along the Columbia River ~~results of this site would result in~~ increased run-off, pollutant loading and sedimentation to the Columbia River, which ~~would negatively impacts~~ fish populations. However, this reach (CO-R1) is already developed, as noted above, with a hotel, except for portions between the existing hotel and the water's edge, and on the eastern end of the reach.

Prohibiting conflicting uses would have a negative social and economic consequence to the

City of Hood River. These uses (ie., the uses permitted in the C-2 Zone) shall be allowed to continue with limits placed on them to protect the environment and provide for visual, recreation and education opportunity growth.

ESEE DECISION

Development shall be allowed to occur with certain limits. In addition to meeting current development standards, conflicting uses shall be allowed to occur provided the following limits are met to protect the resource:

- Any bank stabilization or bank alteration will be done using bio-engineering techniques.
- Stormwater runoff from all new impervious surfaces needs to be treated to DEQ stormwater discharge standards for the Columbia River prior to discharge off of the site. There shall be no runoff from swimming pools or decks into the Columbia River and all such runoff shall be directed to a stormwater or sanitary sewer system in accordance with applicable rules and regulations.
- Public view points, benches and educational information shall be provided at regular intervals with a minimum of every 0.5 miles of trail.
- A public trail and water access shall be provided for recreational and educational opportunities.
- The use of herbicides and pesticides shall be limited to non-persistent, biodegradable products that are used according to the manufacture's recommendations.
- Except as shown on Exhibit A, there shall be a 75 foot setback for all structures from top of bank with the exception of structures associated with these specific uses: non-motorized water sport schools and rentals and landscaping.
- With respect to the portion of this reach shown on Exhibit A, there shall be a setback for all structures from top of bank as shown on Exhibit A with the exception of (a) structures associated with non-motorized water sport schools and rentals; (b) a dock and associated facilities located on a dock; (c) one swimming pool; and (d) landscaping. The setback does not apply to temporary structures or materials erected or placed on a temporary basis not to exceed 120 days per year, such as tents, shelters, or pavers or other water-permeable patio material.
- To the extent that an existing structure is located within the setback, the setback does not apply to development or redevelopment within the footprint of the existing structure as of March 1, 2006. For purposes of this subsection, the footprint does not include deck areas.

Read for the first time: _____, 2007.

Read for the second time and passed: _____, 2007, to become effective thirty (30) days hence.

Signed _____, 2007.

Linda Streich, Mayor

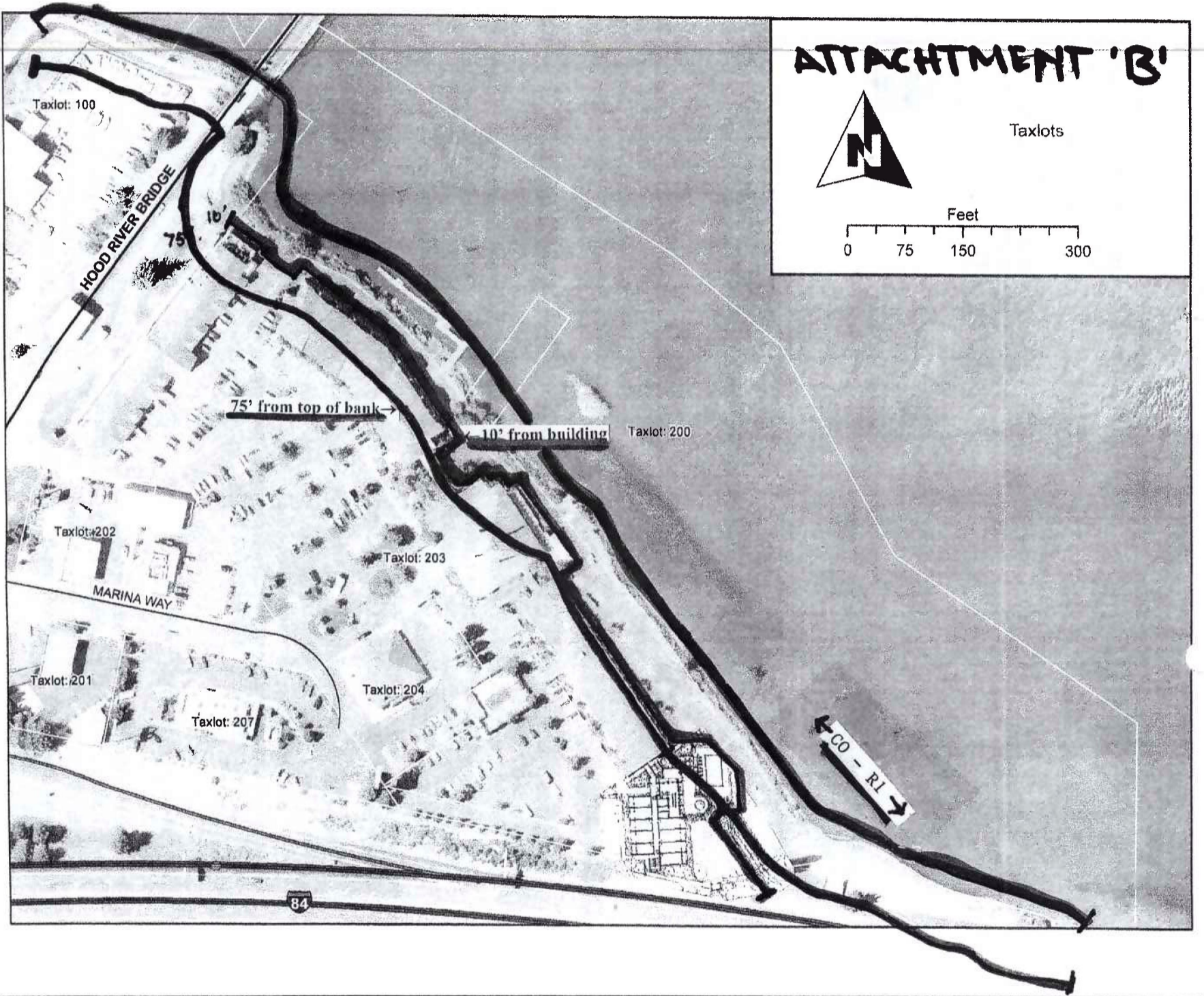
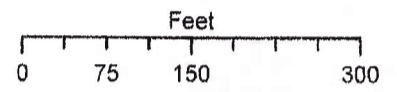
ATTEST:

Jill Rommel, City Recorder

ATTACHMENT 'B'



Taxlots





Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

September 24, 2007



Cindy Walbridge, Planning Director
City of Hood River
P.O. Box 27
Hood River, OR 97031

SUBJECT: Amendments to Chapter 17.22 - Columbia River Infill Waterfront Area – Natural Resources Overlay

DLCD PAPA file #008-07
City of Hood River file #2007-47

Dear Cindy:

Thank you for the opportunity to comment on the above reference post-acknowledgement plan amendment (PAPA) to amend Chapter 17.22 – Natural Resources Overlay – Columbia River Infill Waterfront Area of the Hood River Municipal Code to eliminate nonconforming uses and modify a portion of the setback for river reach CO-R1. Based on the information provided for our review, we submit the following comments. Please enter these comments into the record of the planning commission hearing(s) and any subsequent hearing(s) on the PAPA application.

Natural Resources – Statewide Planning Goal 5

The department understands that the intent of the proposed PAPA is to remove restrictions on the use of the Hood River Inn complex that are perceived to be a burden for the property owner. Of primary concern are: 1) the non-conforming status of the existing structures on the site, which may prohibit future improvements to these structures, including potential external improvements needed to meet health and safety standard; and 2) restrictions on the placement of new structures within 75 feet from top of bank.

The remedy proposed by the PAPA is to:

- Move the setback for all structures to a line approximately 21 feet from the river's top of bank.
- Remove the setback requirement for some specified structures i.e., "a dock and associated facilities located on a dock, one swimming pool. (We note that the current code already exempts new structures associated with non-motorized water sport schools and rentals from setback requirements.)"

ATTACHMENT "C"
City Council Packet 11/13
File No. 2007-47

- Exempt temporary structures that are erected for no more than 120 days per year from any setback requirement. Examples of temporary structures are listed as tents, shelters, pavers, or other water permeable patio material.
- Exempt development or redevelopment within the footprint of a structure that existed as of March 1, 2006 from setback requirements.

ESEE Analysis

The department believes that the submittal materials sent to the department with the PAPA notice do not include adequate findings or an adequate decision in support of the proposed change in policy to alter the limits placed on development along the CO-R1 reach of the Goal 5 significant riparian corridor.

It is clear in the Hood River Waterfront Goal 5 Economic, Social, Environmental, and Energy Analysis (ESEE) that the city concluded it was inappropriate to prohibit conflicting uses along this developed reach of the Columbia River. The ESEE analysis for the CO-R1 reach states that conflicting uses "shall be allowed to continue with limits placed on them to protect the environment and provide for visual, recreational and education opportunity growth" (page 19). At a minimum, any changes to the limits placed on conflicting uses within the Columbia River Infill Area must be supported with findings that this standard, of protecting the environment and providing for visual, recreational and education opportunity, be maintained.

Other Alternatives

After reviewing the proposed amendments to the city's Goal 5 zoning code, the department believes that the burden the Columbia River Infill Waterfront Area overlay zone places on the applicant may be overstated. In addition, the proposed remedy for the perceived burden appears to be excessive. In keeping with the intent of the original ESEE analysis the city should evaluate which of the restrictions on the economic value of the site raised by the applicant can be relaxed without compromising the environmental and social values of the site.

For example:

- It may be relatively easy to make findings that all repairs and improvements to existing structures within the building footprint support the economic values of the site without compromising environmental and social values of the site. To the extent such actions are not allowed by current interpretation of code, the city may want to consider other amendments.
- Improvements that extend beyond the footprint of the building required to meet state and federal health, safety and accessibility standards, if not allowed by current code, may be justified to support the economic values of the site.
- The city may want to reconsider the treatment of water dependent uses within the zone in response to the applicant's concerns. Municipal Code Title 17 Part-2 17.22.020 (D)(1)(e) allows "water-related and water-dependent uses (for example boat launch, fishing dock)." A similar provision in the CO-R1 reach may be consistent with the ESEE conclusions.
- It will be difficult to justify a change to the Goal 5 zoning code to allow construction of a swimming pool within 75 feet of the up of bank as it appears there are other viable locational options for locating a swimming pool elsewhere on the site.

There are other elements of the proposed remedy that may also be unnecessary:

- The department understands that tents are currently considered “structures” by the city code for purposes of permitting? If this is the case, it may prove beneficial to re-exam this portion of the city’s zoning and building code, or to revise a current interpretation by city staff to address this perceived issue.
- The existing code allows new impervious surfaces, provided the stormwater discharged to the Columbia River is treated to meet DEQ standards. Thus, we believe that the placement of new paved pathways or other areas are already allowed on a temporary or permanent basis.
- “Other permeable patio material” that does not fall under the definition of structure is also allowed.
- The provisions of the Columbia River Infill Water Front Area Overlay extend from the Columbia River’s top of bank landward. Docks, to the extent that they are installed from the top of bank toward the river, are not restricted by the existing code.

In processing this application for a post acknowledgment plan amendment, DLCD encourages the city to discern what, if any, conflicting uses allowed in the underlying C2 zone have been curtailed such that “negative social and economic consequences to the City of Hood River” could ensue (Hood River Waterfront Goal 5 ESEE Analysis, Page 16). Then, in keeping with the conclusions of the ESEE analysis for the CO-R1 reach, consider remedies that will have the least impact on the other values of the reach. Moving the setback for structures along the entire reach as proposed in Diagram-A appears to be an excessive remedy.

The department recommends that the City of Hood River not approve the post-acknowledgment plan amendment as proposed.

Measure 37

To the extent that the city is evaluating the proposed plan amendment in relation to the potential impact from a Measure 37 claim, the following issues should be considered:

1. A development proposal based on a local waiver of HRMC 17.22 will also require a state waiver of Goal 5. Currently, there is no record that D.M. Stevenson Ranch, LLC has submitted a claim with the state.
2. Effective December 4, 2006, when a Measure 37 claim is submitted, it must show that the applicant applied for, and was denied, its intended development by the local government, based on application of the current land use regulations.
3. A state waiver granted pursuant to Measure 37 is limited in scope to authorize only the intended use identified in the claim, and only to the extent it was allowed under laws at the time the property was acquired by the current owner.

Cindy Walbridge
Planning Director

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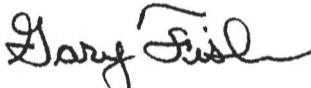
September 24, 2007

4. When a development application based on Measure 37 waivers is accepted, it must be reviewed for compliance with the land use regulations that existed at the time the current owner acquired the property, as well as with current regulations that are exempt from waiver under ORS 197.352(3). These exemptions include laws intended to protect health and safety, such as the water quality and erosion control provisions of Ordinance 1874 and proposed Ordinance 1938.

Development of the applicant's property utilizing a Measure 37 waiver is subject to many variables. It is not possible to determine the potential impact without a specific development proposal. It appears unwise to base a decision to amend the city's code based on the speculative outcome of a Measure 37 claim.

Thank you again for the opportunity to comment on this post-acknowledgment plan amendment. Please don't hesitate to contact me by phone at (503) 373-0050, ext. 254, or by e-mail at gary.fish@state.or.us, if you have any questions regarding our comments.

Yours truly,



Gary Fish
Regional Representative

cc: Alexandra E. Sosnkowski
City of Hood River Attorney
208 3rd Street
Hood River, OR 97031

Darren Nichols (DLCD e-mail), Amanda Punton (DLCD e-mail), Carmel Bender (DLCD e-mail), Central files

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