



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

November 16, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Hood River County Plan Amendment
DLCD File Number 002-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT OR DEADLINE TO APPEAL: November 28, 2007

This amendment was not submitted to DLCD for review prior to adoption. Pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

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 DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist
Gary Fish, DLCD Regional Representative

<paa>

FORM 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

(See reverse side for submittal requirements)

DEPT OF

NOV 08 2007

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: Hood River County Local File No.: 07-354
(If no number, use none)

Date of Adoption: 11-05-07 Date Mailed: 11-07-07
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: Not applicable

Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment
 Land Use Regulation Amendment Zoning Map Amendment
 New Land Use Regulation Other: _____
(Please Specify Type of Action)

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

This was an amendment to Article 65 (Non Conforming Uses) of the Hood River County Zoning Ordinance to add criteria for determining whether a development has attained a vested right status.

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.

Not applicable

Plan Map Changed from : _____ to _____

Zone Map Changed from: _____ to _____

Location: _____ Acres Involved: _____

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: The goals are not applicable to this amendment.

Was an Exception Adopted? Yes: _____ No: **X**

DLCD File No.: 002-07 (NOA)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**. Yes: _____ No: **X**

If no, do the Statewide Planning Goals apply. Yes: ___ No: **X**

If no, did The Emergency Circumstances Require immediate adoption. Yes: ___ No: **X**

Affected State or Federal Agencies, Local Governments or Special Districts: **None.**

Local Contact: Michael Benedict **Area Code + Phone Number:** 541-387-6840

Address: Planning Department, 601 State Street

City: Hood River, OR **Zip Code+4:** 97031

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 A Notice of Adoption is sent to DLCD.
6. In addition to sending the A 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 Larry.French@state.or.us - **ATTENTION: PLAN AMENDMENT SPECIALIST.**

HOOD RIVER COUNTY
ORDINANCE NO. 282

**AN ORDINANCE AMENDING THE HOOD RIVER COUNTY
ZONING ORDINANCE AND REPEALING ALL PRIOR
ORDINANCES AND MAPS INCONSISTENT WITH SUCH
AMENDMENTS.**

WHEREAS, a public hearing was held before the Hood River County Planning Commission on Wednesday, October 24, 2007, at 7:00 p.m. in the County Board of Commissioners Conference Room (1st floor), 601 State Street, Hood River, Oregon, to hear a proposed amendment to the Hood River County Zoning Ordinance, Article 65 (Non Conforming Uses) that would add the required criteria needing to be met before a land use could be considered as vested; and

WHEREAS, due notice was given of the public hearing before the Planning Commission. A quorum was present. The qualifications of the members of the Planning Commission were determined and all of the commissioners present participated in the hearing. The Chair of the Planning Commission presiding at the hearing described the rules and procedure of the hearing; and

WHEREAS, Michael Benedict, Planning Director, presented a staff report, County Counsel presented a report on the applicable case law regarding the issue of vested rights in Oregon; and

WHEREAS, testimony was given in favor of and in opposition to the proposed amendment; and

WHEREAS, the Hood River County Planning Commission, through the hearings process, received written and oral testimony and Staff reports, and incorporated changes into the proposed amendments, based on the testimony and material received. The Planning Commission then approved a proposed amendment for recommendation to the Board of County Commissioners; and

WHEREAS, after providing such notice as require by law, the Hood River County Board of County Commissioners held a public hearing on November 5, 2007 and, through the hearings process, received written and oral testimony and Staff reports, incorporated changes into the proposed amendments, based on the testimony and material received, and voted to adopt a proposed amendment to Article 65 of the Hood River County Zoning Ordinance.

NOW, THEREFORE, it is hereby

ORDAINED by, the Board of County Commissioners of **HOOD RIVER COUNTY** that the amendments to the Hood River County Zoning Ordinance, as recommended by the Hood River County Planning Commission to Article 65 of the Hood River County Zoning Ordinance, attached hereto as Exhibits "A" and by this reference incorporated herein, be adopted; and it is further

ORDAINED that all prior ordinance provisions inconsistent with amendments herein are repealed; and it is further

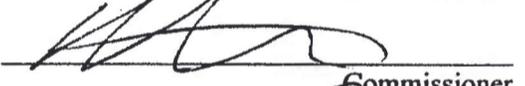
DATED this 5th day of November , 2007

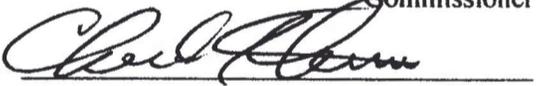
**BOARD OF COMMISSIONERS FOR
HOOD RIVER COUNTY, OREGON**


Chair

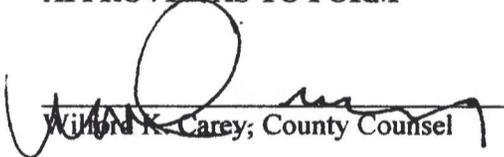

Commissioner


Commissioner


Commissioner


Commissioner

APPROVED AS TO FORM


Wilford K. Carey; County Counsel

ARTICLE 65 – NON-CONFORMING USE

(Revised 2-17-04 as part of the Riparian Corridor HRC Ord. #253 effective 3-17-04)
Revised by BOC 11/5/07

Section 65.00 - Purpose & Intent

It is necessary and consistent with the establishment of this zoning code that all uses of land, or uses of structures not permitted in a zone, be regulated and permitted to exist under controls, the ultimate purpose of which is to phase out or change each non-conforming use to a conforming status.

A lawfully established structure, which does not meet the site development standards of a zone in which it is located, is considered a nonconforming structure. The provisions of this article do not apply in this instance unless the structure also contains a nonconforming use. The action of replacing or expanding a nonconforming structure, in which a site development standard(s) remains unmet, shall be subject to the provisions of Article 66 – Variances.

Section 65.10 - Nonconforming Lots or Parcels

- A. In zones other than those specified in provisions B below, in which a single family dwelling is permitted, a single family dwelling and accessory uses may be erected on any lot or parcel otherwise conforming to the requirements or all applicable County laws at date of this ordinance or its amendments making the lot or parcel non-conforming.
- B. A single family dwelling proposed on a non-conforming lot or parcel in a Forest Zone shall be subject to provisions in Article 5 - Forest (F-1), and Primary Forest (F-2) Zones and a single family dwelling proposed on a nonconforming lot or parcel in the Exclusive Farm Use zone shall be subject to provisions in Article 7 – Exclusive Farm Use (EFU) Zone.
- C. If the proposed use or structure as outlined in A or B above fails to comply with setback or height requirements, the procedure outlined in Article 66 - Variances shall apply.

Section 65.20 - Nonconforming Use of Land or Use of Structure

- A. The lawful use of land or use of a structure existing at the effective date of this ordinance or its amendments may be continued, although such use does not conform to the provision thereof, however, if such a use is discontinued for a period of one year, any such future use of such land or structure shall comply with the provisions of this ordinance.
- B. The Planning Director may authorize the reinstatement of a nonconforming use only where it is demonstrated that such resumption or reinstatement is necessary to allow reasonable amortization of a capital investment. The procedure for reinstatement shall be the same as for Conditional Use Permits, conditions may be imposed if reinstatement is allowed.

Section 65.30 – Maintenance, Expansion or Replacement of a Nonconforming Use of Land or Structure

- A. The maintenance, or replacement in kind, or a nonconforming use of land, or a nonconforming use of a structure is permitted. In kind replacement is considered to be in the same footprint and to the same or lesser extent as the existing use.
- B. The Planning Director may authorize expansion, or replacement that is not in kind, of a nonconforming use of land, or a nonconforming use of a structure when it is found that such expansion or replacement will have no greater adverse impact on the neighborhood and will meet the site development standards of the zone in which it is located. The Application shall be reviewed under the procedures found in Article 72 (Planning Director's Review Procedure).

Section 65.40 – Vested Rights

- A. Allowance of non-conforming uses and structures applies not only to those in existence but also to those which are in various stages of development when a change in the law no longer allowing the use or structure occurs.
- B. Hood River County desires to clarify the test of whether a vested right has been established. The test of whether a landowner has developed land to the extent that a vested right is acquired is defined in Hood River County by compliance with all of the following:
 - 1. The property must have an approved land use permit for the type of development undertaken, i.e. must be platted as a partition or subdivision lot or qualify as an existing parcel with a land use permit for the proposed use or structure.
 - 2. If required, a building permit has been issued for the proposed structure.
 - 3. Proper access and utilities, including water, electricity, sewer or a site evaluation report approving the site for wastewater treatment and other utilities essential to the use must be in place, extended to, and ready to serve the proposed structure.
 - 4. The property owner acted in good faith in obtaining the required permits and making the improvements.
 - 5. The expenditures must be related directly to the nature of the improvements and the ultimate use of the completed project.
- C. If qualified as a vested right, the structure must be completed within one (1) year from the time the building permit expires.



Hood River County Planning & Building Services
601 State Street, Hood River OR 97031

MICHAEL BENEDICT, DIRECTOR
(541) 387-6840 • FAX (541) 387-6873
E-mail: plan.dept@co.hood-river.or.us

DEAN A. NYGAARD, BUILDING OFFICIAL
(541) 386-1306 • FAX (541) 387-6878
E-mail: building@co.hood-river.or.us

November 7, 2007

Department of Land Conservation and Development
Attn: Plan Amendment Specialist
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

DEPT OF

NOV 08 2007

**LAND CONSERVATION
AND DEVELOPMENT**

Re: Amendment to Hood River County Zoning Ordinance text

Dear Plan Amendment Specialist;

Enclosed please find a DLCD Form-2, the County Commission order, and two copies of a Zoning Ordinance text amendment adopted by the Hood River County Board of Commissioners on November 5, 2007. The purpose of the amendment is to provide clear and objective criteria to determine if a development can be considered as having attained vested property rights.

DLCD was not given 45 days notice on this amendment as I found that the Goals did not apply to the change.

Sincerely,

Mike Benedict
Planning & Building Director

Cc: All persons that participated in the legislative process for this amendment