ORDINANCE NO. 2048

An Ordinance Approving a Quasi-judicial Zone Change from OS/PF to R-3 for Parcel (3N 10E 26DB, Tax Lot 700) – Morrison Park, with Conditions.

The Hood River City Council adopts the following findings:

WHEREAS, on August 26, 2016 the City of Hood River as owner and applicant, initiated application for a quasi-judicial zone change for the Morrison Park property (Tax Lot 700, 3N 10E 26DB) from Open Space/Public Facilities (OS/PF) to Urban High Density Residential (R-3);

WHEREAS, City provided DLCD with 35-day pre-hearing notice on August 26, 2016 and mailed notice of the proposal and an October 17, 2016 Planning Commission hearing to owners of property within 250 feet of the subject site on September 23, 2016; and

WHEREAS, the initial evidentiary hearing was duly noticed and held before the planning commission on October 17, 2016 and continued to February 21 and then to April 17, 2017, after which the planning commission recommended approval of the rezone request, subject to three conditions; and

WHEREAS, the City Council considered the planning commission's recommendation at a duly noticed de novo public hearing on May 11, 2017, at which time the Council accepted written and verbal public testimony from anyone on any relevant topic, at the end of which the City Council left open the record and continued the matter to May 22, 2017; and

WHEREAS, at the May 22, 2017 continued hearing, the Council accepted the further opponent presentations, after which the applicant provided final rebuttal. At the conclusion of public testimony, the record closed, Council deliberated and voted 4:2 to approve the application subject to five conditions, and the City issued notice of its decision (Ordinance 2041) on June 30, 2017; and

WHEREAS, Susan Crowley appealed the City's decision to LUBA (LUBA No. 2017-071), which affirmed the Council's rezone approval (slip op. Jan 19, 2018); and

WHEREAS, Susan Crowley then appealed to the Court of Appeals (Case No. A166978), which reversed and remanded the City's decision on a single issue, affirming LUBA and the City on all other issues raised in the appeal (*Crowley v. City of Hood River*, 294 Or App 290, 430 P3d 1113 (2018)); and

WHEREAS, the Court of Appeals remanded the City's rezone decision with instruction to apply Goal 8, Policy 1 of the Hood River Comprehensive Plan (HRCP) to Tax Lot 700, as opposed to its prior interpretation that concluded Goal 8, Policy 1 applies only to land surrounding a city park; and

WHEREAS, the City duly issued notice of the limited remand hearing on February 15, 2019 that set the hearing before Council for March 11, 2019 allowing written argument based on

the existing evidentiary record, allowed oral argument but no new evidence, and described the scope of the remand hearing as follows:

> "This is an on-the-record proceeding, but allows legal argument only on the issue of the meaning of Goal 8, Policy 1 as applied to the Morrison Park, Lot 700 property. No one may raise any issue other than the single issue on remand or present new evidence. The entire record from the prior proceeding is before the Council.

WHEREAS, at the March 11, 2019 hearing, Council accepted written and verbal public testimony from anyone on the meaning of Goal 8, Policy 1 as applied to the Morrison Park, Lot 700, at the end of which the City Council closed the record, deliberated, reached a tentative decision to approve the rezone request, and continued the matter to March 25, 2019 for consideration and adoption of written findings; and

WHEREAS, at the March 25, 2019 meeting, the Council considered draft proposed findings, conclusions and conditions, revised that document and voted to adopt written findings of fact, conclusions of law and conditions, attached hereto as Exhibit A.

NOW THEREFORE, the City Council for the City of Hood River ordains as follows:

Section 1. Incorporation of Recitals: The foregoing recitals are adopted and incorporated herein by this reference and made a part hereof in support of the City Council's action taken herein.

Section 2. Rezone Approval and Conditions. The City Council hereby approves the rezone request for Tax Lot 700, 3N 10E 26DB from Open Space/Public Facilities (OS/PF) to Urban High Density Residential (R-3), subject to the following conditions of approval:

1. A maximum of 2.76 contiguous acres of Tax Lot 700 may be developed as affordable housing, (households earning 80% AMI or less). The balance of Tax Lot 700 shall be retained and used only for park uses, including recreational amenities, and related public facilities that support park use. The park use of Tax Lot 700 north of Wasco, shall be contiguous.

2. The City shall work with the Mid-Columbia Housing Authority, Columbia Cascade Housing Corporation, or a successor agency as a partner in developing a maximum of 2.76 acres of Tax Lot 700 for affordable housing (households earning 80% AMI or less). Any such development shall be integrated with and incorporate the undeveloped balance of Tax Lot 700 as an amenity usable by the residents of this development, the surrounding neighborhood, and general public. If such an affordable housing project does not occur, the City shall retain ownership of the land.

Section 3. Adoption of Findings. In support of its decision, the City Council hereby adopts the Findings of Fact and Conclusions of Law attached hereto as Exhibit A and incorporated herein by this reference.

Section 4. Notice of Decision. The Planning Director shall issue a written Notice of this decision as required by state law and the Hood River Development Code.

READ FOR THE FIRST TIME on April 8, 2019.

READ FOR THE SECOND TIME and adopted on April 22, 2019. This Ordinance shall take effect on the 31st day following the second reading.

Paul Blackburn, Mayor

ATTEST:

Jennifer Gray, City Recorder

APPROVED AS TO FORM:

Daniel Kearns, City Attorney

Exhibit A

BEFORE THE CITY COUNCIL FOR HOOD RIVER, OREGON

In the matter of a quasi-judicial Zone Change from Open Space/Public Facilities (OS/PF) to Urban High Density Residential (R-3) of a 5.33-acre parcel under public ownership.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Morrison Park Rezone on Remand (City File No. 2016-13)

I. Summary:

This is the City Council's final decision approving this application by the City of Hood River for a zone change from Open Space/Public Facilities (OS/PF) to Urban High Density Residential (R-3) for Tax Lot 700 ("TL 700"), subject to the following conditions of approval:

1. A maximum of 2.76 contiguous acres of Tax Lot 700 may be developed as affordable housing, (households earning 80% AMI or less). The balance of Tax Lot 700 shall be retained and used only for park uses, including recreational amenities, and related public facilities that support park use. The park use of Tax Lot 700 north of Wasco, shall be contiguous.

2. The City shall work with the Mid-Columbia Housing Authority, Columbia Cascade Housing Corporation, or a successor agency as a partner in developing a maximum of 2.76 acres of Tax Lot 700 for affordable housing (households earning 80% AMI or less). Any such development shall be integrated with and incorporate the undeveloped balance of Tax Lot 700 as an amenity usable by the residents of this development, the surrounding neighborhood, and general public. If such an affordable housing project does not occur, the City shall retain ownership of the land.

II. Introduction to the Property and Application:

Applicant/Owner ..... City of Hood River
Attn: Rachael Fuller, City Manager
211 Second Street
Hood River, OR 97031

Property..... 3N 10E 26DB, Tax Lot 700, located in the northwest corner of Wasco and Jaymar/20th Streets.

Applicable Local Criteria:

1. HRMC Section 17.08.040 – Quasi-Judicial Zone Change Criteria
2. HRMC Section 17.08.050 – Transportation Planning Rule (Quasi-Judicial)
3. HRMC Section 17.09.040 – Quasi-Judicial Review Procedures
4. Goal 1 – Citizen Involvement: Policy A and Implementation Strategy B
5. Goal 2 – Land Use Planning: Policy 1 and Implementation Strategies a-d
6. Goal 8 – Recreation Needs: All
7. Goal 10 – Housing: Policies 1, 6, 11, 12, 15 & 18; and Strategies 1 & 3

Summary of the Proposal:

The City of Hood River, as owner and applicant, applied to rezone the TL 700 (~5.33 acres) portion of Morrison Park from Open Space and Public Facilities (OS/PF) to Urban High Density

Residential (R-3). The larger property, now known as Morrison Park, originally consisted of TL 100 (2.71 ac), TL 200 (3.15 ac), TL 600 (2.35 ac) & TL 700 (5.33 ac), totaling ~13.54 acres, that have been owned in fee by the City since December 19, 1939. Since then, TL 100 was developed as a skate park and specially named Rotary Park. Today, the Morrison Park site consists of TLs 200, 600 & 700 (totaling ~10.83 ac), all of which are largely undeveloped, except that TL 700 has a disc golf course installed on it, which is managed and operated by the Hood River Valley Parks and Recreation District (HRVPRD) under an interlocal cooperative agreement.

Initially and until about 1976 Morrison Park was zoned multi-family residential. The property was rezoned to Open Space in 1976 and rezoned again to Open Space/Public Facility as part of a comprehensive planning process. Consequently, all of Morrison Park has been zoned Open Space/Public Facility since 1976 and a majority of the park is currently undeveloped except for the scattered disc golf facilities on TL 700. Morrison Park was also included on a list of then-existing park sites on a 1972 inventory that was included in the City's 1983 Background Report. TL 700, which is the subject of this application, has several clusters of mature trees, and portions have a well-developed understory, but no part of today's Morrison Park, including TL 700, is an inventoried Goal 5 natural resource, habitat, scenic or open space resource.

In cooperation with the Mid-Columbia Housing Authority and Columbia Cascade Housing Corporation, the City plans to make this portion of Morrison Park (2.76 acres) available for the development of an affordable housing project (households earning 80% AMI or less), which is a use allowed in the City's R-3 zone. The Mid-Columbia Housing Authority and Columbia Cascade Housing Corporation would provide funding for the design and construction of the project and be owners in the development. As such, this development plan and the City's ultimate objective of providing part of TL 700 for such an affordable housing project, is a material component of the present zone change request. The first step in the process is to rezone TL 700 to a designation that allows multi-family residential development. Regardless of the zone designation, the City anticipates that only a portion of Morrison Park (no more than 2.76 acres of TL 700) will be developed as the affordable housing project, and ~2.57 acres of TL 700 and the balance of the Morrison Park site will be retained as an integrated park and open space amenity for the residents of this development, the greater surrounding neighborhood, and the general public, with on-site connections to the City's city-wide pedestrian/bike network.

III. Summary of the Proceeding and Scope of Remand Hearing:

The City submitted a quasi-judicial application to rezone TL 700 from Open Space/Public Facilities (OS/PF) to Urban High Density Residential (R-3) on August 26, 2016. Planning staff provided DLCD with 35-day pre-hearing notice on August 26, 2016 and mailed notice of the proposal on September 23, 2016 to owners of property within 250 feet in advance of the October 17, 2016 Planning Commission hearing. The initial evidentiary public hearing was duly noticed and held before the Planning Commission on October 17, 2016, February 21 and April 17, 2017, which approved the request with conditions. The City Council considered the Planning Commission's recommendations at a duly noticed *de novo* public hearing on May 11 and 22, 2017 and approved the proposal with conditions.

One opponent to the project (Susan Crowley) appealed the Council's decision to LUBA (LUBA No. 2017-071), which affirmed the Council's rezone approval (slip op. Jan 19, 2018). Petitioner then appealed to the Court of Appeals (Case No. A166978), which reversed and remanded the decision on a single issue, affirming LUBA and the City Council on all other issues raised by the petitioner. *Crowley v. City of Hood River*, 294 Or App 290, 430 P3d 1113 (2018). In particular, the Court of Appeals remanded the Council's rezone decision to apply Goal 8, Policy 1 of the Hood River Comprehensive Plan (HRCP) to Tax Lot 700, as opposed to its prior interpretation that concluded Goal 8, Policy 1 applies only to land surrounding a city park.

In response to the remand, the City issued notice for a March 11, 2019 Council hearing to respond to the Court of Appeals' remand order and render a new decision. The sole issue before the Council on remand is a legal interpretation: to apply HRCP Goal 8, Policy 1 to TL 700 (as opposed to the land surrounding TL 700), and the Council's task is to then render a new decision on the rezone request in light of Goal 8, Policy 1. Because the sole issue before the Council is a question of law, no new evidence was allowed on remand, and the Council renders its decision based on the evidentiary record compiled during the prior proceeding. Accordingly, the entire record from below is incorporated herein. Only legal argument as to the proper meaning of Goal 8, Policy 1 as it applies to this rezone request was allowed or accepted at the March 11th remand hearing. At the conclusion of the March 11th hearing, the Council closed the public testimony portion of the hearing, deliberated and voted to approve the rezone request, with two conditions. Written findings were presented by staff and considered by the Council at its March 25th and April 8th meetings, but no new evidence or testimony was accepted at either meeting. Final written findings and a form of ordinance were adopted at the Council's April 8, 2019 meeting.

IV. Findings:

The sole legal issue in this remand is the proper meaning of Goal 8, Policy 1 as it applies to TL 700, which is just a portion of today's Morrison Park site and an even smaller portion of the original Morrison Park site. All other criteria addressed in the Council's original decision and findings adopted therein were either appealed and affirmed by LUBA or were not challenged. As such, all findings on all criteria other than HRCP Goal 8, Policy 1 are regarded as "law of the case" and are not at issue in this remand proceeding. In particular, we incorporate herein by reference our findings related to Goal 10 from our prior decision because it is our balancing of our Goal 10 affordable housing objectives against Goal 8 that compels our decision today.

A. Procedural issues: The following procedural issues arose at the start and during the Council's March 11th remand hearing, and we resolve them as follows:

1. Challenge to Councilor McBride's participation. One witness challenged Councilor McBride's impartiality by asserting that her husband was on the board of the Mid-Columbia Housing Authority. Councilor McBride responded by stating that her husband's board position was unpaid; therefore, there was no conflict of interest. She also asserted that she was unbiased, impartial and had not prejudged this rezone application. While she supported increasing the availability of affordable housing in and around Hood River, she could and would render an impartial decision based on the evidence in the record, the applicable rezone approval criteria and the arguments presented at the hearing and in writing. After that statement, no one at the hearing persisted in challenging Councilor McBride's participation.

2. Challenge to Councilor Metta's participation. Councilor Metta disclosed that, while this rezone application was pending before the Planning Commission in 2017, she submitted a letter on behalf of her employer, the Columbia Gorge Tech Alliance, supporting an increase in affordable housing. One witness challenged Councilor Metta's impartiality because of this letter, to which Councilor Metta responded that the letter reflected her employer's views on the zone change and not her own and that she had not expressed a personal view on the zone change. Moreover, she stated that she had never previously been asked to decide the specific legal question at issue in this remand proceeding and had never previously expressed an opinion on it. The letter she submitted for her employer also did not address the legal question of the meaning of City Goal 8, Policy 1 as applied to TL 700. Councilor Metta stated that she could and would render an impartial decision based on the evidence in the record, the applicable rezone approval criteria and the arguments presented at the hearing and in writing.

   Another witness challenged Councilor Metta's impartiality to decide the matter because of statements she made during the recent (November 2018) election about affordable housing and

the suitability of TL 700. Councilor Metta responded that her statements during the reelection campaign did not reflect prejudgment on the legal question currently before the Council or the zone change, but rather a general policy position that favored the creation of more affordable housing in the city. Councilor Metta stated that she could and would render an impartial decision based on the evidence in the record, the applicable rezone approval criteria, and the arguments presented at the hearing and in writing. After that statement, no one at the hearing persisted in challenging Councilor Metta's participation.

3. Challenge to Mayor Blackburn's participation. One witness challenged Mayor Blackburn's impartiality to decide the matter because of statements he made during the recent (November 2018) election in support of increasing affordable housing and rezoning TL 700. Mayor Blackburn responded that his statements during his reelection campaign reflected the vote he had cast the first time the Council was asked to decide the rezone. His statement did not reflect prejudgment on the legal question currently before the Council, but rather a general policy position that favored the creation of more affordable housing and use of public lands, even park lands, to provide for that public need. Mayor Blackburn stated that he could and would render an impartial decision based on the evidence in the record, the applicable rezone approval criteria, and the arguments presented at the hearing and in writing. After that statement, no one at the hearing persisted in challenging Mayor Blackburn's participation.

4. Challenge to Council Member Tim Counihan's participation. One witness challenged Councilor Counihan's impartiality to decide the matter because of statements he made during the recent (November 2018) election about affordable housing and rezoning TL 700. Councilor Counihan responded that his statements during his reelection campaign did not reflect prejudgment on the legal question currently before the Council, but rather a general policy position that favored the creation of more affordable housing. Councilor Counihan stated that he could and would render an impartial decision based on the evidence in the record, the applicable rezone approval criteria, and the arguments presented at the hearing and in writing. After that statement, no one at the hearing persisted in challenging Councilor Counihan's participation.

5. Request for a continuance or to keep open the record for further argument. Several witnesses cited ORS 197.763 and requested that the hearing be continued to allow further public testimony and that the record remain open to admit more written argument. The Council declined this request because this remand hearing is not the initial evidentiary hearing, and in fact it is not an evidentiary hearing at all. The record was reopened for this remand proceeding to allow new legal argument only directed to the sole legal issue identified by the Court of Appeals and upon which it remanded the Council's earlier decision. Nothing in ORS 197.763 requires the Council to continue the hearing or keep open the record in this limited remand, and the Council declines to do so.

6. Request to open the record to new evidence. Several witnesses requested that the Council open the record to new evidence during the remand proceeding. The Council declines to allow new evidence because nothing in the Court of Appeals' remand order calls for or requires additional evidence. The single legal issue upon which the Court remanded the Council's decision can and shall be addressed based on the evidentiary record compiled during the first proceeding.

7. No new evidence and scope of the Record on remand. As stated in the City's notice of the March 11 hearing, the evidentiary record is closed, and all interested people were invited to submit argument only addressing City Goal 8, Policy 1 based on evidence in the record. While some witnesses introduced information that appears to be "new evidence," nearly all of it is already in the record in some form or another. Our decision in this matter, however, is limited strictly to evidence in the record from the prior (pre-LUBA appeal) process, and we do not take into account any new evidence that was inadvertently introduced through written submissions or oral

testimony. To the extent that new factual evidence has been presented to us, we reject it, accord it no weight, and it does not influence our decision in this matter.

8. Post-hearing documents and argument specifically rejected. Several people attempted to testify and submit written documents at the Council's March 25th and April 8th meetings at which it considered findings. This proceeding, however, was based on the evidentiary record compiled from the prior (pre-LUBA appeal) hearings and no new evidence was allowed on remand. Moreover, the Council closed the hearing to public testimony at the conclusion of the March 11 hearing. We specifically reject all such evidence, argument and written submissions that people offered after public testimony ended on March 11, and none of those materials or arguments are part of this record or affect our decision.

B. Hood River Comprehensive Plan Goal 8. ORS 197.175 requires findings of compliance with the City's Comprehensive Plan. In this remand proceeding, only Goal 8, Policy 1 is at issue, and Goal 8 provides as follows:

> *Goal 8 – Recreational Needs: To satisfy the recreational needs of the citizens of the community and visitors to the area.*
>
> *POLICIES:*
> 1. *Existing park sites will be protected from incompatible uses and future expansion alternatives at some sites will be developed.*
> 2. *When feasible, recreational opportunities and park sites will be located so as to be accessible to a maximum number of people.*
> 3. *The development of parks which are accessible by means of walking or bicycling is encouraged.*
> 4. *Participation by neighboring residents will be encouraged to contribute to park development and maintenance.*
> 5. *Encourage low—maintenance park and recreation use of floodplains and drainage.*
> 6. *As parcels of land are annexed from the UGA into the City, some land will be designated Open Space/Public Land for the development of new parks and public facilities, including access ways, to serve the recreational needs of the community.*
> 7. *Because the growth of the windsurfing industry and other-recreational activities comprise a significant portion of Hood River's recreational and tourist industry, the establishment of recreational facilities may be allowed in appropriate locations in the City."*

First, in its original decision, the City Council concluded that Goal 8, Policy 1 was ambiguous because it was susceptible to more than one interpretation or meaning. We affirm that position in this decision. While the Court of Appeals provided guidance as to the scope of Policy 1, the fact remains that Goal 8, Policy 1 is ambiguous and in need of interpretation in the context of this application.

As a starting point, Morrison Park is an "existing park site" within the meaning of Policy 1 because it is listed on the 1972 Recreational Resource Inventory, attached to the 1983 Background Report to the Comprehensive Plan. We note that the Inventory does not indicate Morrison Park's size at the time or what tax lots comprise the park site. Evidence in the record, however, shows that Morrison Park as originally configured was ~13.54 acres; TL 100 was subsequently and separately developed as a skate park and named Rotary Park. Today, the Morrison Park site is composed of at least TLs 200, 600 & 700, which total 10.83 acres. This zone change application pertains only to the TL 700 (~5.33 acres) portion of today's Morrison Park site, and the affordable housing development that we anticipate will occupy only 2.76 acres of the Morrison Park site.

Second, the operational directive of Policy 1 is that such park sites "be protected from incompatible uses." For several reasons, we do not interpret the term "protected" to preclude approval of this rezone or the development of an affordable housing project on a portion of this park site. First, even though we limit our decision to developing the R-3 portion of the site with an affordable housing project, this rezone does not necessarily approve any particular use or development. A rezone is not a development approval or a "permit," which is the "discretionary approval of a proposed development of land." ORS 227.160(2). No such development is allowed in either the OS/PF or the R-3 zone without site plan approval. In support of our conclusion that a rezone is not a development, that it does not approve a particular development, and that R-3 zoning is compatible with TL 700's status as part of a park site, we note that city parks are conditionally allowed uses in all residential zones, including the R-3 zone. The city code and Comprehensive Plan do not prescribe a particular zone for any of the parks listed in the Recreational Resource Inventory in the Background Report to the 1983 Comprehensive Plan. In fact, "Public parks, playgrounds, and related facilities" are conditionally allowed in the City's R-3 Zone, which suggests that an R-3 zoned park is consistent with the Comprehensive Plan, including Goal 8. *See* HRMC 17.03.030(B)(3). Thus, even under our interpretation, Policy 1 does not preclude a zone change of this portion of the Morrison Park site from OS/PF to R-3 because no particular use or development can be approved by this proposal – only a new zone is applied.

Third, the operative term "protect" is defined in the Comprehensive Plan to mean "Save or shield from loss, destruction, or injury or for future intended use." We do not interpret the term "protect" to mean the prohibition of non-park uses because the code clearly anticipates that certain non-park uses are appropriate for park sites and are even allowed in the City's primary park zone (OS/PF). This is why Policy 1 requires existing park sites to be "protected" from incompatible uses and does not simply prohibit all non-park uses. Also, the definition of "protect" anticipates the need to protect park sites for future intended uses, which we interpret to include future intended park as well as non-park uses. From this, we conclude that some non-park uses are appropriate "future intended uses" and can be made compatible with underlying park uses. As such, the focus of the protection requirement is on incompatible non-park uses and not on all non-park uses generally. Moreover, if the term "protected" meant to prevent or prohibit all non-park uses on existing park sites it would say so. Instead, Policy 1 specifies that park sites are to be protected only from incompatible uses. We construe this directive to call for measures that achieve the policy's protection objective, which we conclude allows the imposition of mitigating conditions designed to render a potentially incompatible non-park use compatible with the general park use of the site. Accordingly, we adopt limiting conditions as part of this rezone to provide the requisite measure of protection for Morrison Park and which make an affordable housing project compatible with this existing park site. These conditions limit the type of non-park use allowed on TL 700 to an affordable housing project only, and we limit the amount of land that can be devoted to such a non-park use to a maximum of 2.76 acres of TL 700. Conditions also require the balance of TL 700 and the rest of the Morrison Park site to improve the park with the construction of pedestrian and bicycle connections through TL 700 to other city parks and pathways. We find that, through the imposition of these conditions, Morrison Park will be "protected" from incompatible uses as required by Goal 8, Policy 1. Further, the Comprehensive Plan defines "recreation" as "any experience voluntarily engaged in largely during leisure (discretionary time) from which the individual derives satisfaction." Based on this definition, the Council concludes that the remainder of Tax Lot 700 and balance of Morrison Park will be more accessible to people under this conditioned approval, helping to achieve Goal 8 and the protection sought under Policy 1.

Fourth, while the affordable housing project that is envisioned for a portion of Morrison Park is a non-park use, we find that it is not "incompatible" with use of TL 700 as a city park, especially when conditioned to ensure that it is compatible with park uses on the balance of TL 700. Several other Goal 8 policies provide important context and support this conclusion. In particular, Goal 8, Policy 2 requires that "recreational opportunities and park sites will be located so as to be accessible to a maximum number of people." Policy 3 calls for the "development of parks which are accessible by means of

walking or bicycling." Our reliance on these Goal 8 policies as context for the application of Policy 1's protect principle are informed by the geographic reality that city parks, such as Morrison Park, are inherently urban in nature, located on urban land, in an urban context, where people live and work in relatively high urban densities. The fundamentally urban nature of parks within the city limits is a legal reality and requirement of Oregon's land use program that Hood River implements through its Comprehensive Plan and zoning regulations. It is critical, in our view, that urban density housing, such as the affordable housing project anticipated for part of this site, be located in close proximity to and integrated with city parks such as this one. City parks are supposed to be an amenity used by urban dwellers, and the population that city parks are supposed to serve includes low income residents, whose recreational opportunities are limited by an inability to afford other high cost options. As the Council aptly observes, the users of Morrison Park may change as a result of this decision, but overall more people with limited means will be served by this urban park if they live adjacent to the remaining park space that will be integrated into the non-park use. Our decision today limits the extent of non-park development in the Morrison Park site to 2.76 acres of TL 700 and requires the balance of TL 700 to be retained for park use. By limiting the extent of non-park development to 2.76 acres, we achieve Goal 8, Policy 1's directive to protect today's 10.83-acre Morrison Park site from incompatible uses, and, consistent with Policies 2 and 3, this affordable housing project will be integrated with this existing park site to foster walking and bicycle use by the future residents, improving the park's accessibility to meet the recreational needs of Hood River's citizens and visitors. We also note that TL 100, the 2.71-acre portion of the original Morrison Park site remains developed today as the City's skate park. As conditioned below, we find that such a housing project will be compatible with use of the Morrison Park site, the adjacent skate park on TL 100, and the remainder of TL 700 as a park, along with other Hood River urban parks through the connected trail system consistent with Goal 8, Policy 1.

Fifth, our view of what are appropriate uses for city parks and the range of compatible uses that includes suitably conditioned urban density affordable housing projects, is consistent with the range of recreational opportunities surrounding (outside of) the city. Few cities in the country are blessed with the outdoor recreational opportunities that Hood River has. The City is surrounded by thousands of acres of public recreational land – the Mt. Hood National Forest, the Columbia River, and Columbia River Gorge National Scenic Area, Mt. Adams to the north, designated wilderness areas and Wild and Scenic Rivers associated with both mountains – all open and available for a broad range of outdoor recreation. It is unreasonable to suggest that outdoor recreational opportunities will be significantly diminished by an affordable housing development that might occupy a portion of this city park. In the context of the City's existing and remaining city parks, trails, rivers and streams, the substantial park resources managed by the Hood River Parks and Recreation District, the Port of Hood River, not-for-profit land trusts, and the vast area of undeveloped public land outside the city, all available for recreation, we reject the argument that Goal 8, Policy 1 prohibits all non-park development of city parks or that all city parks must be preserved solely and entirely for park uses. Goal 8, Policy 1 is not worded in such absolute or comprehensively proscriptive terms, and we decline to interpret it that way. In so concluding, we acknowledge that some non-park uses are so incompatible with a park site that they cannot be conditioned sufficiently to protect the park site for future intended uses, and thus cannot be allowed. An affordable housing project on no more than 2.76 acres of today's 10.83-acre Morrison Park site (~55% of TL 700) and a much smaller proportion of the original 13.54-acre Morrison Park site, however, is sufficiently conditioned to render it compatible and to "protect" this park site to the extent required by Goal 8, Policy 1.

Finally, as a matter of general policy, we do not interpret any of the Goal 8 policies as prohibiting the Council from making the policy decision that a portion of particular park property is suited to a non-park use and rezoning it for a future non-park development, so long as that non-park use is suitably conditioned to render it compatible and protect the park. As a home rule charter City, Hood River has plenary authority to own and manage its own lands and devote them to specific and general purposes, consistent with state law, as competing policy interests dictate. In that vein, we interpret these Goal 8 policies as empowering the Council with tools for protecting its parks listed on the 1983 Background

Report that the Council, as a matter of policy, desires to retain as parks. For those parks listed in the 1983 Background Report, such as this one, the Council has identified a different use and weighed its competing policies and goals (even mandatory ones like Goal 8, Policy 1) to allow a path forward for a future affordable housing development that is a compatible, non-park use. We do not interpret Goal 8 or any of its policies as precluding our rezoning at least a portion of an existing park site to allow a compatible non-park use. In short, these policies do not apply as an absolute bar to non-park uses in inventoried parks when properly conditioned and, as a matter of policy, the Council has decided to rezone TL 700 and allow 2.76 acres to be put to a non-park use if the contemplated development occurs or remain as a park in a zone that allows parks. We interpret Policy 1, in particular, as allowing certain suitably conditioned non-park uses in existing park sites, so long as the conditions ensure that the non-park use is compatible with and protects park use on the balance of the larger park site.

As an argument related to Goal 8, several opponents assert that Morrison Park has a protected status as a park in the City's Comprehensive Plan, and therefore the zoning for TL 700 cannot be changed without a Comprehensive Plan amendment to change the Background Report. To the extent this argument informs how the Council is meant to interpret Goal 8, Policy 1, which the Council does not find to be the case, those arguments are misplaced as to the status of Morrison Park, the protections afforded it by the Comprehensive Plan, and the scope of the Council's authority to rezone publicly owned land such as this. The opponents' policy argument assumes that the status of Morrison Park as a city park is enshrined permanently in the Comprehensive Plan's Background Report that cannot be altered without a plan amendment. We disagree. Hood River has not adopted within the Comprehensive Plan or elsewhere, a Parks Master Plan or a Statewide Planning Goal 8 Parks Plan. The only mention of parks and recreational needs in the Comprehensive Plan are the Goal 8 policies and inclusion of a 1972 Recreational Resource Inventory in the Background Report for the 1983 Comprehensive Plan. This inventory represents only a list of parks that existed in 1983 and does not impart any sort of absolute prohibition of non-park uses in these park sites. Likewise, inclusion of Morrison Park on the 1972 inventory and 1983 Background Report does not preclude the City Council from making a policy decision to rezone a portion of it to allow a suitably conditioned non-park use as anticipated here.

Also, the opponents' argument about a Comprehensive Plan amendment assumes that rezoning Morrison Park to R-3 requires that it be removed from the 1983 Background Report's inventory of then-existing parks. As we found above, city parks can have any zone, and no particular zone is required for land to be a public park. Thus, Morrison Park shall remain a city park and may permissibly remain on the 1983 inventory list even if a portion is zoned R-3. There is no necessary or legal reason why the Morrison Park site must be removed from the 1983 park list before rezoning a portion of it to R-3. The 1972 Inventory does not include acreages, and we do not interpret our code or comprehensive plan to impose such a requirement.

In conclusion under Goal 8, we hereby make the policy decision to rezone a portion of Morrison Park to R-3 and eventually to entertain and allow a non-park use for this part of TL 700. We decline to interpret our Comprehensive Plan or Development Code to tie our hands or deny us the policy discretion to make that decision for non-park uses that can be made compatible with the balance of TL 700 as a park. The only regulations or protections for parks in Hood River are those listed in Goal 8, and we specifically interpret those protections as applying to properties that the City Council, as a matter of policy, has decided to retain as parks. That intention is shown through OS/PF <u>and</u> residential zoning. We hereby make the policy decision to rezone a portion of the larger Morrison Park site to accommodate an integrated affordable housing project limited to 2.76 acres. We find that an affordable housing development of that size is a compatible non-park use that protects the larger Morrison Park site for future intended uses. Such a decision is allowed by, and consistent with, Goal 8, Policy 1 as we have interpreted it.

Two additional points merit discussion. Many opponents to this rezone argued that it is bad policy to start a process that will eliminate a city park by rezoning it to a non-park designation, that the

city's population is growing, that the demand for neighborhood and in-city parks will only increase, and it is very difficult and expensive for a city to replace any park that is lost to a non-park use. We understand and agree with these sentiments about the importance of city parks to the City's residents and visitors. We live here too and value all of our city parks, and there is no dispute on this point. If the only priority at issue were parks and how to obtain and retain more parks, the City would not have initiated the application to rezone TL 700 to R-3, and even after the testimony presented had we been convinced otherwise, we would deny this rezone request. However, we are tasked with balancing competing policy objectives, and in this case, we have a significant unmet need for affordable housing and an insufficient supply of adequately zoned land for multi-family housing competing with the need for urban parks. In this particular case and with this particular property, we find that the balance in this debate tips in favor of rezoning part of this park, TL 700, to a non-park designation for the specific purpose of promoting an integrated public-private affordable housing development. Rezoning a portion of Morrison Park as conditioned to allow for this particular development strikes this balance. In this particular situation, we reluctantly reject these policy arguments to retain this 2.76 acres of Tax Lot 700 in favor of a rezone that will lead to an increase in the number of affordable housing units developed in close proximity to Morrison Park, while retaining the balance of this park site for park use.

Several opponents point to the City's Goal 8 objective to "satisfy the recreational needs of the citizens of the community and visitors to the area" and argue that a rezone of Morrison Park violates this goal. Again, we disagree. Hood River has an extremely active, outdoor and recreation-oriented population that attracts a large number of seasonal visitors in the summer and winter because of our outdoor recreational opportunities. As we emphasized above, the city is surrounded by an abundance of undeveloped public land generally available to a broad range of recreational uses. We find that this rezone to accommodate a reasonably conditioned future affordable housing development achieves the City's recreational goals and objectives by integrating the balance of Morrison Park with a segment or our population that needs and deserves access to city parks.

V. Decision and Conditions:

Based on the foregoing findings and except as conditioned below, this rezone application is approved in general conformance with the application and its supporting materials. This approval is subject to the requirements that the owner or subsequent developer shall comply with all of the City's applicable code provisions, laws and standards and the following conditions of approval, which shall be interpreted and implemented consistently with the foregoing findings:

1. A maximum of 2.76 contiguous acres of Tax Lot 700 may be developed as affordable housing, (households earning 80% AMI or less). The balance of Tax Lot 700 shall be retained and used only for park uses, including recreational amenities, and related public facilities that support park use. The park use of Tax Lot 700 north of Wasco, shall be contiguous.

2. The City shall work with the Mid-Columbia Housing Authority, Columbia Cascade Housing Corporation, or a successor agency as a partner in developing a maximum of 2.76 acres of Tax Lot 700 for affordable housing (households earning 80% AMI or less). Any such development shall be integrated with and incorporate the undeveloped balance of Tax Lot 700 as an amenity usable by the residents of this development, the surrounding neighborhood, and general public. If such an affordable housing project does not occur, the City shall retain ownership of the land.