

City of John Day Planning Commission:

This is my response to the PROPOSED REGULATION: AMD-22-04 that the City of John Day has chosen to address. I am 100% opposed to this action by the city. First off, in the ORS 222.750(2), that is cited for the avenue of this action, states in the second line of my notification document that ..." the city **may** annex the territory" which means that they do not have to. The narrative for my unincorporated County Tax lot #200 should not take the avenue of a mandate to start the conversation. The narrative the city has taken is one of mandates, and this commission should take this statement and my personal choice first and foremost. I have chosen to be out of the city because of situations like this would come up someday, with an onerous administration and the mandates (laws/Taxes/fees) that comes with them. (Introduce Grandfathered legal clause) and (read narrative provided by a victim)

Under ORS 222.750 (3) it also has exemptions of this ORS.

(a) Is surrounded entirely by water; or

(b) Is surrounded as provided in subsection (2) of this section, **BUT** a portion of the corporate boundaries of the city that consists only of a public right of way...constitutes more than 25% of the perimeter of the territory.

Enclosed is a Map obtained from the County planning department. The perimeter of my place is approx. 900 feet. 225 feet would be required portion (25%) of the perimeter of my property to be exempt from the City's annexation. The city has public easement access on Patterson bridge road (to the west of my property) of 150 feet. There is public access along the 300-foot border to the south with the river bordering me. I own 17' by the Bridge into the river and my entire south side boundary goes well into the river sandbar. My north/south boundary on the East side extends into the river also. This totals way over the 25% threshold to PREVENT this annexation. I will go over this using the documents that I have provided you tonight.

The STAFF REPORT: 5-4.10.05(A): The statement therein "annexation conforms or can be **made to conform through the imposition of conditions,**". Sounds like a mandate to me. And examples as given above can, and I feel will be, used at will to the City's advantage, not mine.

Under findings, Mr. Green quotes the Code "City water and sewer services will not be provided unless an area has been annexed into the city" ...or a consent to annex has been set forth and approved by the city". I bought this Tax lot in

1973- when the city had an administration that believed in individual rights. A person should be able to live a life by making his own decisions in life with the private property which he has acquired. In late 70's early 80's under the management of Bill Diest, the city, was building an industrial area north of my house as well as upgrades in the wastewater treatment plant. The Dept. of DEQ had problems with their plan and the city then come to me and the neighboring Tax lot to furnish us with potable water as a mitigation effort. It was proven at the time that the new wastewater settling ponds would go directly into the same aquifer that our shallow wells were getting water for our residences. They then attempted, in good faith, to drill a deep well for our residences. No deep water was struck, so they attempted to put in a chlorination system in our houses and did not work because the outcome turned the hard water into solid brown water. Bill Diest, at the time put in for a grant then to put sewer and water into the aforementioned Industrial area. The grant was received and the mitigation for our lots was solved in one stroke. This was beneficial to everyone. **Therefore Mr. Green's statement in the FINDINGS paragraph stating that annexation of Tax Lot #200 should have been annexed prior to my water hookup is OPINION and adds nothing to this action taken by the city.** Work was done in a timely manner, and I am sure my hook-ups were done within the city rules and regulations at the time. So, Mr. Green's previous statement **should be disregarded.** Rules applied 40 years ago, when accomplished under good faith, are like promises and should not be broken.

The **CURRENT** zoning map that Mr. Green furnished in my request for documents has the County zoning wrong on Tax lot 200. He has it zoned as GI-General Industrial. I have a county statement (included), that at the present, my land is zoned General Commercial. These two designations have a world of difference as far as my uses are concerned and it could affect the current purpose that I use my real estate for. The differences should have been referenced in this action. I see none. The differences also matter to me as my aging process continues and my ability to support myself under a plan which suits me due to any forced condition in my life. We the people call that security. The burden of proof is upon the City of John Day, and they failed to bring forth correct facts to present to you, and I see they are still included in the findings today.... Also offering opinion as testimony.... As the only citizen involved in this action, I do feel it is singling one person out. This action should be a unanimous NO vote on this ordinance. The plan has stated no negative issues for the City by leaving my property as it is..... nor positive issues for that matter.

I have pointed out many areas not covered and one area that states by rule that the city cannot do it. When they cut out the plan for councilor Adair, they themselves created an ISLAND which is within the high-water mark. Island is the term they use to describe my Tax Lot 200. The City's Island is 100% within the control of the State of Oregon and is public accessible through the State of Oregon as in the documents that I have shown. Between that perimeter line of approximately 300' and the public access of Patterson Bridge Road of approx. 150' far exceeds the 25% required to force the annexation of my Tax lot. City of John Day, by ORS-222.750 Using section (2)..... is nullified in the section (3)(b) rules in this STATUTE.

Also included are some planning issues that need to be brought up. These include the plan for John Day- 84-40-3

Goal 9-economy-Commercial and Industrial Land needs. If you read the highlighted section, it states the # of acres in a percentage for a target to get the needs for the community. Nothing exists in any of the City's plans presented. Facts needed for a steady growth in the right direction.

IX—County/City same ordinance that the city adopted in 1984. Again Highlighted.

Goal 9- Economic Development of Oregon's statewide goals- Highlighted section.

It is my hope you will deny this AMD-22-04. The main point is the ORS-222.750 rule which has a "DOES NOT APPLY" clause that I first brought to your attention and again a couple of minutes ago in detail.

Grandfathered Land Use Rights

It is not uncommon for someone to own a property that later becomes rezoned. For instance, a residential property owner's land is later rezoned for commercial use. In the future, if the owner wants to continue using the property for the previous use or transfer the property, he or she should technically be grandfathered into the old zoning scheme. However, most municipalities will not make it easy for you to obtain approval and the necessary permits. You may have to fight a legal battle to do what you want with your property.

Further, a grandfathered use (known as a "lawful prior nonconforming use") will not allow you to upgrade, expand, or return to nonconforming use after you have transferred the property to the use the land is zoned to allow.

<https://www.chenowethlaw.com/real-estate-land-use/legal-non-conforming-grandfathered-land-use-rights/>

April 2020

A \$500/day fine on Good Friday was issued to RHP for 2 loads of rock claiming that RHP was using the rock as fill near the John Day River. A duplicate citation was issued on July 7th, 2020, with a court date of July 28th, 2020. After spending about \$4,000 in defending RHP's actions, RHP attended the court date to which the City of John Day never submitted the citation nor did it provide a courtesy call regarding the twice cited offense in not being pursued, I believe these actions were ***disingenuous***.

City Boundary Changes

ORS 222.750

Annexation of unincorporated territory surrounded by city

• delayed annexation for certain property

(1) As used in this section:

- (a) "Creek" means a natural course of water that is smaller than, and often tributary to, a river, but is not shallow or intermittent.
- (b) "River" means a large, continuous and natural stream of water that is fed along its course by converging tributaries and empties into an ocean, lake or other body of water.

(2) When territory not within a city is surrounded by the corporate boundaries of the city, or by the corporate boundaries of the city and the corporate boundaries of another city, the ocean shore, a river, a creek, a bay, a lake or Interstate Highway 5, the city may annex the territory pursuant to this section after holding at least one public hearing on the question for which notice has been mailed to each record owner of real property in the territory proposed to be annexed.

(3) This section does not apply if the territory not within a city:

- (a) Is surrounded entirely by water; or
- (b) Is surrounded as provided in subsection (2) of this section, but a portion of the corporate boundaries of the city that consists only of a public right of way, other than Interstate Highway 5, constitutes more than 25 percent of the perimeter of the territory.

(4) Unless otherwise required by the city charter, annexation by a city under this section must be by ordinance or resolution subject to referendum, with or without the consent of any owner of real property within the territory or resident in the territory.

(5) For property that is zoned to allow residential use as a permitted use in the zone and is in residential use when annexation is initiated by the city under this section, the city shall specify an effective date for the annexation that is at least three years and not more than 10 years after the date the city proclaims the annexation approved. The city recorder or other officer performing the duties of the city recorder shall:

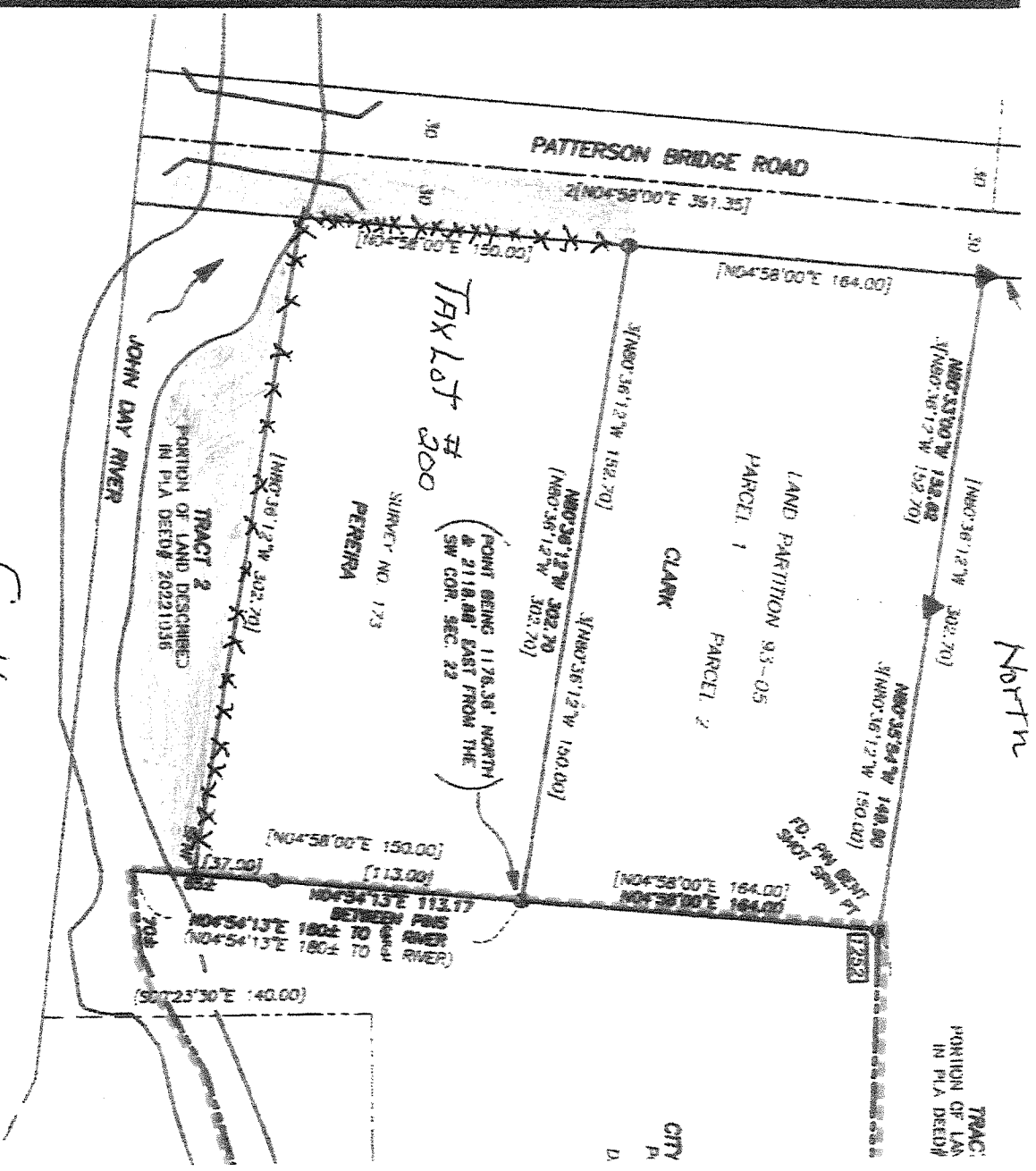
- (a) Cause notice of the delayed annexation to be recorded by the county clerk of the county in which any part of the territory subject to delayed annexation is located within 60 days after the city proclaims the annexation approved; and
- (b) Notify the county clerk of each county in which any part of the territory subject to delayed annexation is located not sooner than 120 days and not later than 90 days

West

North

East

South



REFERENCES

RECORD MAP OF SURVEY NO.'S 173, 841, 1024, 1042, 1282
 DEED RECORD INSTRUMENT NO.'S 20171037, 20171038, 20221035 & 20221036

REGISTERED
 DATE: 11/11/2022

8/22/22, 6:55 PM

Department of State Lands : Use of State-Owned Waterways : Waterways & Wetlands : State of Oregon

According to a 2005 Oregon Attorney General opinion, on waterways that have not been determined to be state-owned, the public is allowed to use the surface of the waterway for any legal activity unless the waterway isn't wide, deep or long enough for a boat to pass along it.

Additionally, the opinion states that if the waterway meets the above criteria, the public has the right to use the submerged and submersible land below the line of ordinary high water for water-dependent uses (such as swimming, boating and fishing), and "uses incidental to a water-dependent use such as camping when travelling a long distance and walking while fishing." In cases of emergency or if it is necessary to travel around a navigational barrier, the public may temporarily go above the line of ordinary high water.

On a Navigable River or Lake:

You may use any navigable waterway, as well as the submerged and submersible land along it, for any legal activity. For example, you may pull your canoe or kayak up on the land below the line of ordinary high water for a short period of time. Similarly, below the line of ordinary high water, you may picnic, walk, fish, play or sunbathe on the land. However, you are not allowed to go above the line of ordinary high water, unless it is necessary to travel up or down the waterway, nor may you cross privately owned land to get to the river or lake. To do so constitutes a trespass for which law enforcement officers may cite you.

In addition, you are not allowed to use the land in a way that you would if you owned it. That is, you cannot build a structure, place a dock, operate a business, put up fencing or prevent other people from entering the area you are using on submerged or submersible land.

You may only use the submerged and submersible land underlying the segment indicated as navigable in the ways described in this brochure.

Oregon Navigable Rivers*

The following table lists some of the tidally affected and non-tidal portions of rivers in Oregon that have been determined to be navigable for title through legislative, judicial or administrative proceedings. None of the waterways listed has been determined to be navigable over its entire length.

Waterway	Segment	Waterway	Segment
Chetco River	RM 0 to "at least" RM 11 (about one mile upstream from the mouth of Elk Creek)	Klamath River	RM 208 to RM 233 (California border to Keno)
Columbia River	RM 0 to RM 309 (Oregon-Washington border)	McKenzie River	RM 0 to RM 37 (Dutch Henry Rock)
Coos River	RM 0 to RM 4.5 (mouth of the Milliloma River)	Rogue River	RM 0 to RM 68.5 (Grave Creek)
Coquille River	RM 0 to RM 36.3 (confluence of the North Fork and South Fork)	Sandy River	RM 0 to RM 37.5 (confluence of the Salmon River)
John Day	RM 10 (Turnwater Falls) to RM 184 (Kimberly)	Snake River	RM 176 to RM 409 (Oregon-Idaho border)
		Umpqua River	RM 0 to RM 111.5 (confluence of the North and South Forks)
		Willamette River	RM 0 to RM 187 (confluence of the Coast and Middle Forks)

RM = River Mile

*This list is current as of 12/07; other waterways may be declared navigable in the future.

A complete list of the tidally affected segments of rivers and navigable lakes in Oregon is available on the Department of State Lands' Web site: www.oregonstatelands.us (click on Waterway Navigability).



On a Non-Tidal River or a Lake, Where No Navigability Determination Has Been Made:

Many of Oregon's waterways have not yet had a navigability determination. In 2005, the Oregon Attorney General issued a formal opinion describing what public rights exist to use waterways, even if they are not title navigable (not owned by the state).

This opinion relied on numerous Oregon Supreme Court rulings between 1869 and 1936, and states that the public is allowed to use the surface of a waterway in Oregon for any activity unless the waterway isn't wide, deep or long enough for a boat to pass along it, or unless the activity is illegal. Allowed uses include fishing, navigation, recreation and other activities requiring the use of water.

For example, this means you may swim in a waterway that is large enough to boat in. It also means that if the waterway is large enough to boat in, you may fish. However, be sure to check the Oregon Department of Fish and Wildlife's regulations to see when and how you may fish from a boat on any waterway or lake.

Remember: This opinion reflects the Attorney General's advice to the Department of State Lands. It has not been fully tested in the courts. If you decide to use a waterway that has not been determined to be navigable, you risk a possible citation for trespass.

Additionally, the opinion states that you may have the right to walk on the land above the line of ordinary high water in the least disruptive or damaging way possible, using the shortest and most direct route available, if it is necessary to travel up or down the waterway.

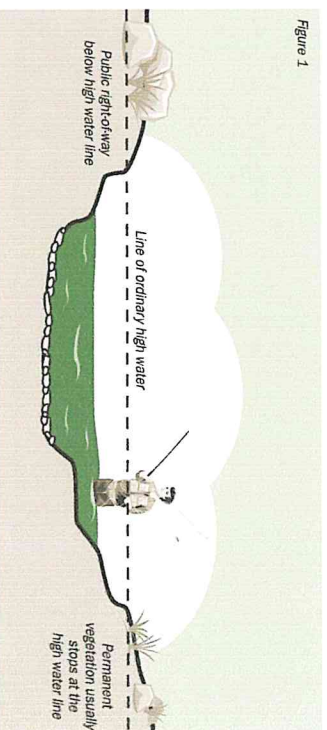


Figure 1

Determining the Line of Ordinary High Water

The ordinary high water line is defined by Oregon state law as a line on the bank made by the water when it rises to its highest level each year to the limit of upland vegetation. It is not the flood line. Figure 1 shows how the line of ordinary high water is established.

Be Respectful!

If you use Oregon's rivers or lakes for recreational purposes, be respectful of landowners and their private property rights.

- Get the landowner's permission to use private property or water structures such as docks.
- Never cross private property with a "No Trespassing" sign.
- Never leave your litter behind or damage private property – clean up!
- Obey all laws concerning the use of publicly owned land, fire, firearms and alcohol consumption.