

ORDINANCE NO. NS-2261

AN ORDINANCE AMENDING THE BEND AREA GENERAL PLAN MAP TO CHANGE THE DESIGNATION OF 5.36 ACRES OF PROPERTY FROM PUBLIC FACILITIES (PF) TO RESIDENTIAL MEDIUM DENSITY (RM) ALONG WITH A ZONING MAP AMENDMENT FROM RESIDENTIAL STANDARD DENSITY (RS) TO RM. THE PROPERTY IS LOCATED ON THE EAST SIDE OF THE FUTURE EXTENSION OF EMPIRE AVENUE/27TH STREET, NORTH OF BUTLER MARKET ROAD.

Findings

- A. On April 21, 2015, the City of Bend submitted a Type III Quasi-judicial application to change the designation of 5.36 acres of city-owned property from Public Facilities (PF) to Residential Medium Density (RM) along with a Zoning Map Amendment from Residential Standard Density (RS) to RM for consistency with the proposed General Plan designation.
- D. The Bend City Council held a public hearing on August 19, 2015, to consider the Hearings Officer recommendation and conduct a first reading. On September 2, 2015 the Council adopted Ordinance No. NS-2249 approving the application.
- E. The decision was appealed to the Land Use Board of Appeals, which through its December 24, 2015 Final Opinion and Order found several of the findings to be insufficient and remanded the decision to the City for further consideration of those particular issues,
- F. The Council held a public hearing on February 17, 2016 to consider the issues on remand and conduct a first reading of this ordinance. On March 2, 2016 the Council adopted Ordinance No. NS-2261 approving the application, including the incorporation and adoption of the supplemental findings attached to this ordinance as Exhibit C. This ordinance also adopts and incorporates the findings adopted by Ordinance No. NS-2249 which were not subject to the appeal to LUBA, as well as those findings LUBA accepted as sufficient in that appeal.
- E. The amendments to the Bend Area General Plan Map and Zoning Map approved by this Ordinance meet all applicable Development Code criteria, policies of the Bend Area General Plan, Oregon Statewide Planning Goals, and the Transportation Planning Rule.

THE CITY OF BEND ORDAINS AS FOLLOWS:

- Section 1. The Bend Area General Plan Map is amended to change and Zoning Map are amended to change the designation of 5.36 acres of property from PF to RM as contained in Exhibit A.
- Section 2. The Bend Zoning Map is amended to change the zoning of 5.36 acres of property from RS to RM for consistency with the proposed General Plan designation as contained in Exhibit B.
- Section 3. The City Council adopts the supplemental findings in support of this ordinance as contained in Exhibit C, as well as the findings adopted by Ordinance No. NS-2249 which were accepted by LUBA through its December 24, 2015 Final Opinion and Order, and those findings that were not subject to that appeal.

First reading: February 17, 2016.

Second reading and adoption by roll call vote: March 2, 2016.

YES: Jim Clinton, Mayor
Doug Knight
Victor Chudowsky
Sally Russell
Nathan Boddie
Casey Roats
Barb Campbell

NO: None



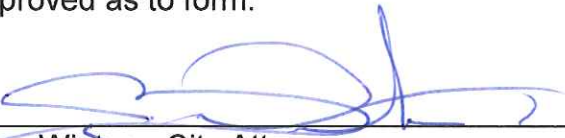
Jim Clinton, Mayor

Attest:



Robyn Christie, City of Bend Recorder

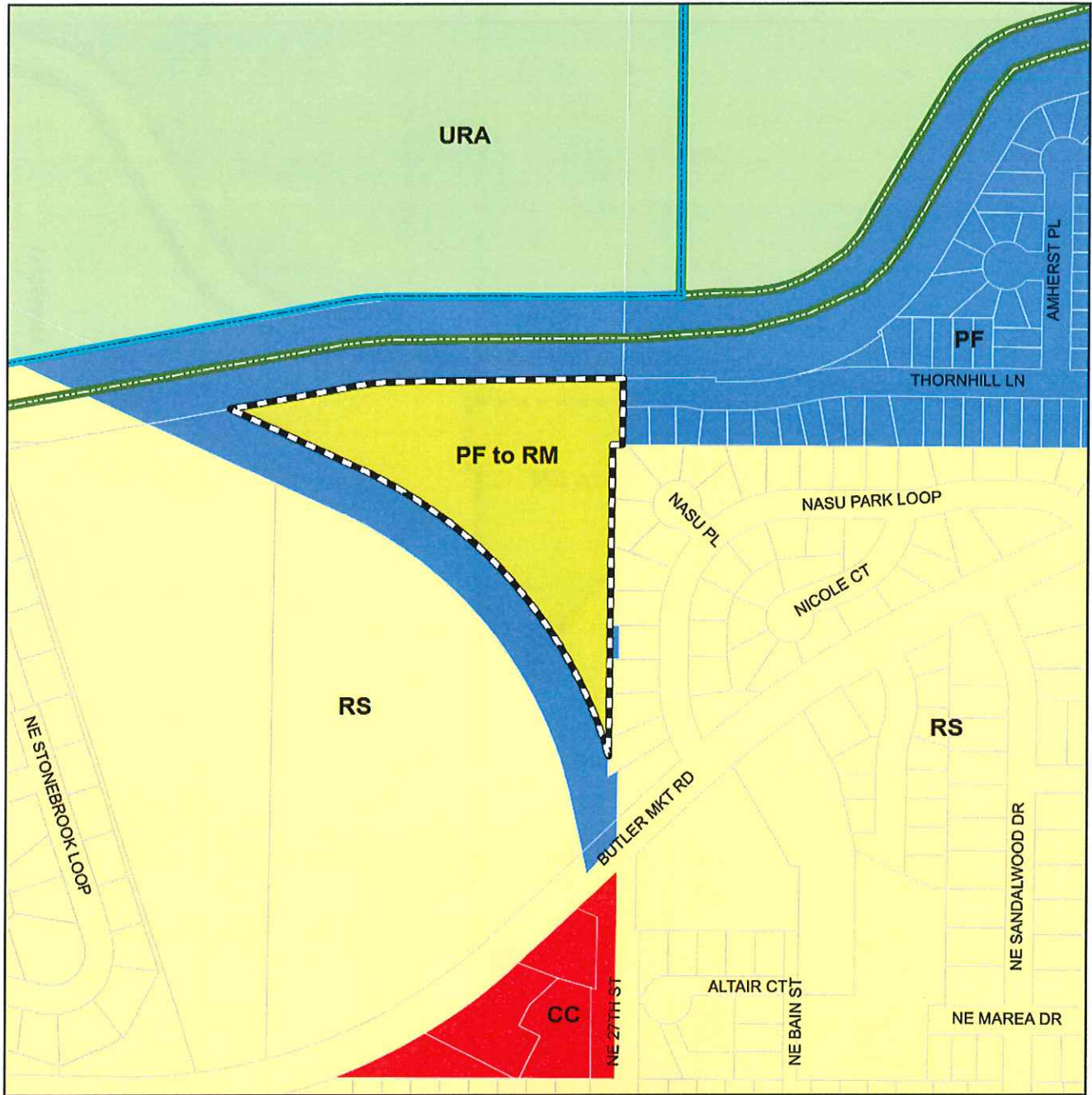
Approved as to form:



Mary Winters, City Attorney




Exhibit A. General Plan Map Amendments

PZ-15-0391 Empire and Thornhill Plan Amendment and Zone Change



Legend



-  Proposed Area for Amendment
-  City Limits
-  Urban Growth Boundary

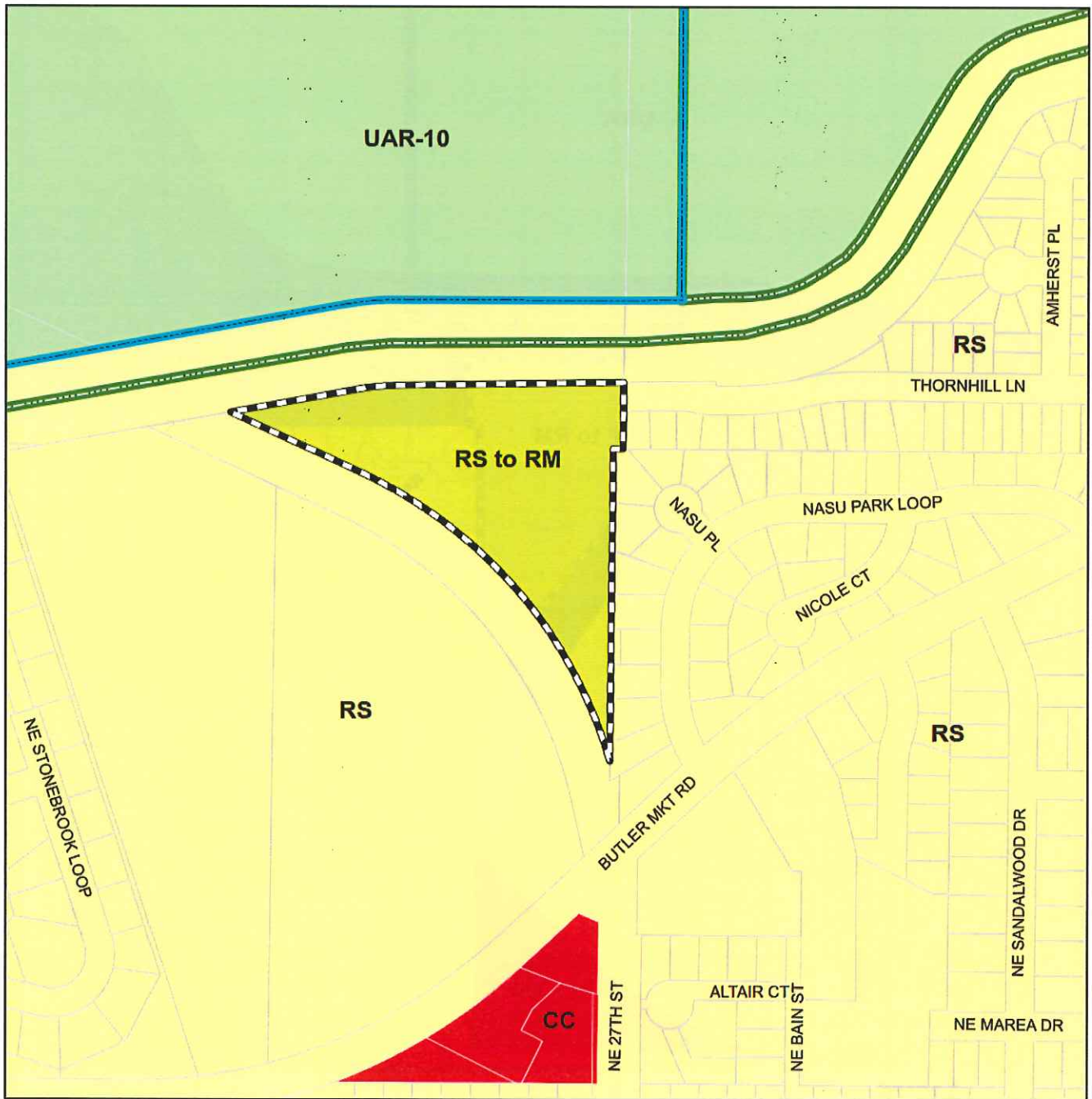
-  Convenience Commercial
-  Public Facilities
-  Residential Medium Density
-  Residential Standard Density
-  Urban Reserve Area



Map of Proposed General Plan Map Amendments
 Prepared Aug. 4, 2015 by R. Ruppel, City of Bend
 Planning Division, Community Development Dept.

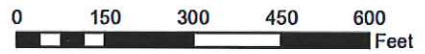
Exhibit B. Zoning Map Amendments

PZ-15-0391 Empire and Thornhill Plan Amendment and Zone Change



Legend

-  Proposed Area for Amendment
-  City Limits
-  Urban Growth Boundary
-  Convenience Commercial
-  Medium Density Residential
-  Standard Density Residential
-  Urban Area Reserve 10-Ac Min.



Map of Proposed Zoning Map Amendments
 Prepared Aug. 4, 2015 by R. Ruppel, City of Bend
 Planning Division, Community Development Dept.

EXHIBIT C
SUPPLEMENTAL FINDINGS
PZ 15-0391

APPLICABLE PROCEDURES AND CRITERIA ON REMAND

Applicable Criteria

Bend Development Code (BDC)

Chapter 4.6, Land Use District Map and Text Amendments

Bend Area General Plan

Applicable Procedures

BDC Chapter 4.1, Land Use Review and Procedures

Chapter 1, Policy 5

The city and county will encourage compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled and facilitate non-automobile travel.

The Council finds that this policy is intended to encourage and facilitate a mix of uses, where appropriate, and that the Residential Medium (RM) designation is especially appropriate for this site precisely because it promotes that diversity in an area of the city where a greater integration of land uses is needed. Having such a mix can generally help to reduce trips, vehicle miles traveled, and facilitate non-automobile travel, because compact development helps limit sprawl and provides options for uses and activities within a particular area. As the discussion for subsequent findings will show, this area has a variety of land uses, from Convenience Commercial (CC) directly to the south, to Industrial Light (IL) employment lands just over a ½ mile to the west, a large regional park abutting the site to the north, a church and private school directly across the street to the west, a public elementary school ½ mile to the north, a public high school ½ mile to the south, and the major medical district for the city less than 1 mile to the south. This area is otherwise dominated by neighborhoods developed with single-family detached dwellings. There is almost no multifamily development in the area. Therefore, changing the designations to RM for this site to allow for multifamily development will bring to the area an element it is currently lacking, something that is consistent with and achieves the goals in this policy of integrating land uses, where appropriate, to reduce reliance on automobile travel and provide people options that will reduce the distances and frequency of automobile trips. It will integrate the multi-family development with the other existing land uses, creating a mix of uses in closer proximity to each other consistent with and implementing this policy.

Chapter 5, Policy 1

Future development and local development standards shall recognize and respect the character of the existing areas.

The character of the area to the east and southeast of the subject site is residential, but there are commercial areas to the direct south and west (CC zone and Trinity Lutheran Church and School), and Pine Nursery Park to the north. The proposed development will also be residential, and as such will be more consistent with the character of the nearby residential areas than commercial development. The Council also notes that the proposed plan amendment will change the designation from PF, a designation which would allow a variety of public facility developments which would be more industrial or commercial in character. Thus, several of the other options, including leaving the designation unchanged, would be less consistent with the character of the existing area, and potentially less respectful of that character.

Although the proposed change to RM is higher density than the RS designation of the residential area nearby, the Council finds that having different residential densities in the same area does not equate to a conclusion that the character of an existing area is not being recognized or respected. Indeed, the Council notes that other policies, such as Chapter 1, Policy 5, by their nature encourage and result in a mix of uses and designations through integration of different land uses in order to accomplish important goals, such as the reduction of vehicle miles traveled. Here, considering the current nature of the subject site, its current plan designation, the lack of need for public facilities at the site, the potential compatibility of those public facility uses with the existing area, and other factors, the Council finds that changing the plan designation to RM is consistent with recognizing and respecting the character of the existing area, and finds that it will most likely enhance it. Finally, this policy connects itself to the creation and maintenance of the standards in the Bend Development Code, which regulates future development, including features such as building heights, lot coverage, permitted uses, transitional buffers, and others to ensure compatibility and respect for the character of existing areas.

Chapter 5, Policy 21

Densities recommended on the Plan shall be recognized in order to maintain proper relationships between proposed public facilities and services to the population distribution.

The Council finds that the history of this site is instructive in demonstrating why the proposed change is consistent with and meets this policy. The subject site was acquired by the City from the Bend Parks and Recreation District in 2006, in part because the District had no need of the land for a park. The City has the land it needs for the planned 27th Street/Empire Avenue extension, and has no need of the land for other public facility uses. The decision to seek a change to the density recommended on the plan is due in part to a desire to increase the residential population component in this area. Put another way, while the policy may be intended to ensure that an area's population is not underserved by public facilities, this area is currently one where the relationship between population and public facilities is skewed in the *opposite* direction because there is insufficient population in the area to take advantage of the adequate public facilities, such as Pine Nursery Park to the north and the nearby schools. Therefore, there is no need for more of those facilities even with the anticipated increase in population that would come with higher density residential housing.

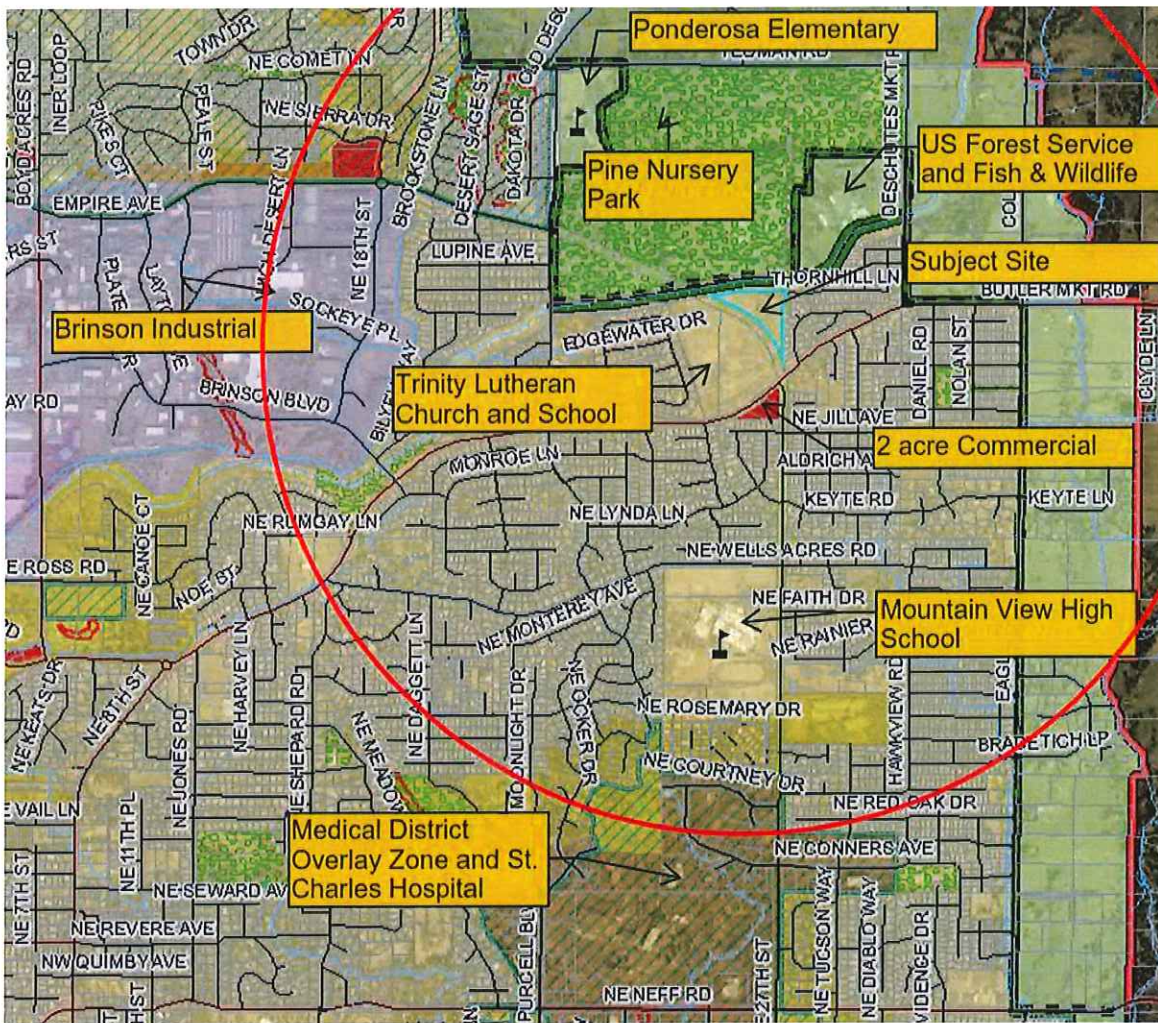
The Council therefore finds that the application is consistent with and will facilitate a better and more appropriate relationship between public facilities and services to the population distribution.

Chapter 5, Policy 31 and Chapter 7, Policy 6.9.1

Medium and high density developments shall be located where they have good access to arterial streets and be near commercial services, employment and public open space to provide the maximum convenience to the highest concentrations of populations.

The language in these plan policies is essentially identical with only minor variations which are not material to the meaning. The language from Chapter 5, Policy 31 is produced above.

The CC zone immediately to the south of the subject site is just over 2 acres and contains an array of commercial services, including a 3,196 square foot dentist office, two commercial/retail buildings (4,000 square foot and 2,400 square foot, respectively) with multiple tenants including a small market, two restaurants, a gun shop, a hair salon, a nearly 2,000 square foot gas/service station, and a drive-through coffee purveyor. An overview of the area around the subject site is helpful in understanding the location:



Approximately 1 mile radius —



Trinity Lutheran Church & School is also near, within walking distance. The school (elementary through high school) employs approximately 33 teachers and administrative staff.



Just to the northeast across the irrigation canal is the Bend Pine Nursery Administrative Site which contain administrative facilities for the USDA Forest Service and US Fish and Wildlife agencies.



Approximately ½ a mile to the north, separated from the site by the Pine Nursery Park, is Ponderosa Elementary School which employs approximately 51 staff including teachers, administration, and custodial, and has an enrollment of around 577 students.

Less than a ½ mile to the south on 27th Street is Mountain View High School which employs almost 100 staff including teachers, administration, and custodial.

Just south of the high school, less than 1 mile from the subject site, is the 220 acre Medical District Overlay zone, which includes St. Charles Hospital and a variety of medical offices and support services.

Also, just over ½ mile to the west, accessed both from Butler Market Road (existing arterial just south of site) and from the planned 27th Street/Empire Avenue arterial extension bounding the site on the west, is approximately 180 acres of industrial employment land with a variety of industrial and recreation uses and support services. While these economic lands are surrounded by residential lands, there is almost no multifamily development in this area. The only housing stock available within a ¾ mile radius of the subject property are single-family detached dwellings.

The Council finds that these various commercial services, employment and public open spaces are near the site and sufficient to satisfy this criterion.

This criterion also requires that the site have “good access to arterial streets.” The Council interprets “good access” to an arterial street as being met when the site is in reasonably close proximity and has access, whether direct or indirect, to the arterial. The policy language uses the term “good” to describe the requisite access, which is distinct from a requirement that the access be “direct”. Further, the policy language does not specify that it refers solely or even primarily to “vehicle” access.

In fact, both the plan and Development Code limit direct vehicle access to arterial and collector streets. Arterial and collector street standards require infrastructure for multi-modal transportation with sidewalks and bicycle lanes on both sides of the street, and often include existing or future planned transit routes and stops. The subject site will have direct pedestrian and bicycle system connections to this planned arterial, and potentially a direct vehicle access as well. Such bike and pedestrian connections will be required to be provided concurrently with development of the site, even if the larger City arterial street project is not yet constructed at the time of site development.

Even without considering the 27th Street/Empire Avenue extension, the south end of the site is less than 200 feet north of Butler Market Road (arterial street), and vehicle access from the site to Deschutes Market Road (collector street) is approximately 1/3 of a mile (green line below).



The subject site directly abuts the planned connection of two major arterial streets; 27th Street (south of Butler Market Road), and Empire Avenue (north of Butler Market). This arterial will connect Highway 97 at the Empire Avenue interchange to the Medical District which is less than a mile south of the subject site, and a major commercial area less than 2 miles south of the subject site (Costco, Forum Shopping Center, etc.) This is the major north/south corridor on the east side of town. The missing ½ mile section of this corridor adjacent to the subject site is a critical, high-priority infrastructure project that the City intends to undertake in the near future. The City acquired the subject site specifically for the purpose of creating the right of way needed for the project which was slated to be constructed just as the recession hit in 2007. However, due to the scope of this project, which will include a reconstruction of the intersection of 27th and Butler Market, likely with a roundabout, this project will be far too large for a developer to undertake and will likely be done as a City infrastructure project.

The applicant's TIA shows that the existing street infrastructure (not including the future 27th St/Empire Ave extension) is adequate to serve build out of the site with multifamily development at maximum RM zone density.

Accordingly, the Council determines that the current, existing access to arterial streets is sufficient to constitute good access, given the language of the plan policy. The high priority of the 27th Street/Empire Avenue extension is informative, but its future funding and construction is not a necessary basis for determining that the current access is sufficient.

BDC 4.6.300.B.3

The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

The area's need for public facilities, and the adequacy of the area's services and public facilities, is addressed in the findings to the other relevant criteria. The Council finds that the property and the affected area is presently provided with adequate public facilities and services to support the use.

With regard to transportation networks, LUBA focused on an identified need for a second access point to the property for safety reasons, although the record establishes that the existing transportation system has adequate capacity to serve development of the site at maximum RM zone density, and there are sewer and water mains stubbed to the site that have adequate capacity as well.

No specific infrastructure needs (streets, sewer or water) were identified as needed to support the additional density. For instance, in some cases of plan amendments, the increase to the transportation system anticipated from the additional density triggers required mitigation at nearby intersections such as changes to signalization or additional turn lanes. The applicant's TIA did not identify any mitigation needed related to this proposed change, noting that:

- *The proposed rezone has the potential to increase the trip generation of the subject property by 29 weekday p.m. peak hour trips.*
- *The impact of the rezone will not meet significance thresholds at any of the area intersections.*
- *Thornhill Lane will continue to function as a local street with the rezone to RM.*

Additional findings and recommendations in the TIA are related to items that may need to be addressed with future development or future construction of the 27th Street/Empire Avenue extension:

- A new public street connection through the property of Thornhill Lane to the future Empire Avenue extension will be required to meet City block length and perimeter requirements. This connection was identified within the 2006 Empire Avenue plan and should be accommodated within future Empire Avenue extension designs.
- Consistent with the Empire Avenue Extension study, the connection to Empire Avenue will need to be located and designed to provide adequate sight lines north toward the vertical curve of the future bridge and south along the horizontal curve.

The Council finds that there are adequate public facilities, services and transportation networks to support the use that would be enabled under the RM designation. However, looking forward, any subsequent development of the site will be required to go through a Type II land use approval, either a Subdivision and/or Site Plan Review. The standards required for either subdivision or Site Plan Review ensure that adequate public facilities, services and transportation networks to support the use are provided concurrently with the development of the property.

It is likely that fire codes will require a second point of access with development of the site. However, where the access will be located and how it is provided will depend on the specific development proposal. It is premature and impracticable to require a specific condition of approval without a development plan. Further, as discussed below, a condition of approval is not needed as the review procedures and the applicable criteria and standards of the Development Code will ensure that adequate transportation networks are present.

Nevertheless, the Council observes that the 100 feet of public right-of-way for the future extension of 27th Street/Empire Avenue exists adjacent to the site and could easily accommodate a secondary emergency vehicle access and/or pedestrian and bicycle connections in the interim period before the full arterial street build-out. Because there is no proposal for development at this time, it is premature to speculate on what specific levels of infrastructure might be required with development, thus making it impossible to accurately craft specific conditions of approval on a plan amendment and zone change. These requirements *are planned to be provided concurrently with the development of the property* as required under BDC Chapter 3.4 which must be addressed and met with development of the site through the Type II Site Plan Review and/or Subdivision application processes which are *required* prior to development.

The Council finds that BDC 3.4.100 establishes that, even if the facilities, services, and transportation networks are not presently provided, they will be planned, provided, and required concurrently with the development of the property. BDC 3.4.100.B provides that development shall not occur unless the public improvements serving the development comply with the public facility requirements of Chapter 3.4. In addition, BDC 3.4.100.D mandates that no development shall occur unless required public facilities are in place or guaranteed.

Based on reading these Development Code provisions along with BDC 4.6.300.B.3, the Council finds that the provisions in BDC 3.4.100 effectively condition any development of the subject site on the presence of adequate public facilities, services, and transportation networks

concurrent with the development of the property, and that the application thus satisfies the requirements of BDC 4.6.300.B.3.

The Council also finds that BDC 4.6.300.B.3 may and should be read in light of the Application and Review Procedures in BDC 4.2, and that these aspects of the development code may be harmonized. Based on the anticipated use in this circumstance and the application and review procedures that would be concurrent with and applied to any future development proposal, the Council finds that those application and review procedures and the attendant requirements and standards for future development are tantamount to a condition that all public facilities, services and transportation networks will need to be provided at an adequate level concurrent with the future development of the property.

