

ORDINANCE NO. NS-2324

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN MAP AND ZONING MAP TO CHANGE A 0.20-ACRE PORTION OF A 0.30-ACRE PROPERTY AT 69 NW NEWPORT AVE FROM RESIDENTIAL STANDARD DENSITY (RS) TO CENTRAL BUSINESS (CB).

Findings

- A. On September 27, 2018, Cavanagh Inc. d/b/a Newport Asset Holding LLC initiated an amendment to the Bend Comprehensive Plan Map and Zoning Map to change a 0.20-acre portion of a 0.30-acre property at 69 NW Newport Avenue from Residential Standard Density (RS) to Central Business (CB).
- B. On December 13, 2018, the Hearings Officer held a public hearing on the proposed amendment, with public notice provided in accordance with BDC 4.1.400. On January 3, 2019, the Hearings Officer issued a recommendation that the City Council adopt an Ordinance to amend the Comprehensive Plan Map and Zoning Map to change a 0.20-acre portion of the subject property from Residential Standard Density (RS) to Central Business (CB) as described in Exhibit A and shown on the map in Exhibit B, along with the findings in Exhibit C.
- C. The Bend City Council held a public hearing on February 6, 2019, to consider the Hearings Officer's recommendation, with public notice provided in accordance with BDC 4.1.400.
- D. The requested map amendments approved by this Ordinance meet all applicable Bend Development Code criteria, policies of the Bend Comprehensive Plan, Oregon Statewide Planning Goals, and the Transportation Planning Rule.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend Comprehensive Plan Map and Zoning Map are amended to change a 0.20-acre portion of the subject property from Residential Standard Density (RS) to Central Business (CB) as described in Exhibit A and shown on the map in Exhibit B.


Section 2. The City Council adopts the Findings in support of this ordinance as contained in Exhibit C.

First reading: February 6, 2019.

Second reading and adoption by roll call vote: February 20, 2019.

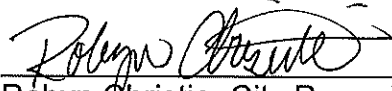
YES: Bruce Abernethy
Barb Campbell
Bill Moseley
Justin Livingston
Gena Goodman-Campbell
Chris Piper

NO: none



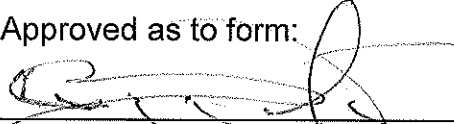
Bruce Abernethy, Mayor Pro Tem

ATTEST:



Robyn Christie, City Recorder

Approved as to form:

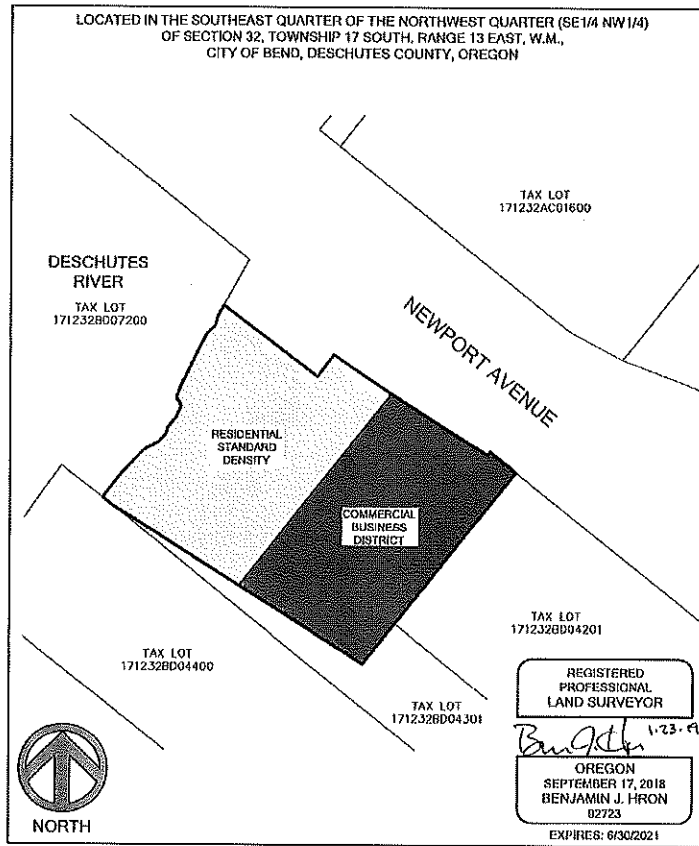


City Attorney's Office

EXHIBIT A

A parcel of land containing 0.2 acres more or less, located in the Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4) of Section 32, Township 17 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being that portion of the lands as more particularly described in Bargain and Sale Deed, recorded June 5, 2017 as Instrument Number 2017-21593, Deschutes County Official Records, lying within the Residential Standard Density zone.

EXHIBIT B



(CHANGE TO CENTRAL
BUSINESS DISTRICT)

EXHIBIT C

FINDINGS IN SUPPORT OF COMPREHENSIVE PLAN MAP AND ZONING MAP AMENDMENTS PZ-18-0791

PROJECT NUMBER: PZ-18-0791 (Plan Amendment & Zone Change)

HEARING DATE: December 13, 2018 at 1:00 p.m.
City of Bend Council Chambers
710 NW Wall St., Bend, Oregon

HEARINGS OFFICER: Will Van Vactor

**APPLICANT/
OWNER:** Sean Cavanagh, Cavanagh Inc.
Newport Asset Holding, LLC
1696 NW Albany Avenue
Bend, OR 97703

**PRIMARY
CONTACT:** Greg Blackmore
Blackmore Planning & Development, LLC
19454 Sunshine Way
Bend, OR 97702

LOCATION: 69 NW Newport Avenue; 171232BD04300

REQUEST: Type III Comprehensive Plan Map and Zoning Map Change from Standard Density Residential (RS) to Central Business District (CB) for a 0.15-acre portion of a 0.30-acre parcel at 69 NW Newport Ave. The proposal is the first step in the process to entitle the property for a new commercial use. Additional steps include Site Plan Review, Central Business District Design Review, Waterway Overlay Zone Review, and Variance approval.

STAFF REVIEWER: Aaron Henson, AICP, Senior Planner
541-383-4885, ahenson@bendoregon.gov

APPLICABLE CRITERIA, STANDARDS, AND PROCEDURES:

- (1) City of Bend Development Code
 - (a) Chapter 2.1, Residential Districts (RS)
 - (b) Chapter 2.2, Commercial Zoning Districts (CB)
 - (c) Chapter 4.1, Development Review and Procedures
 - (d) Chapter 4.6, Land Use District Map and Text Amendments
 - (e) Chapter 4.7, Transportation Analysis
- (2) Bend Comprehensive Plan
- (3) Oregon Administrative Rules
 - (a) Chapter 660-012-0060, Plan and Land Use Regulation Amendments
 - (b) Chapter 660-015-0000, Statewide Planning Goals and Guidelines

FINDINGS OF FACT:

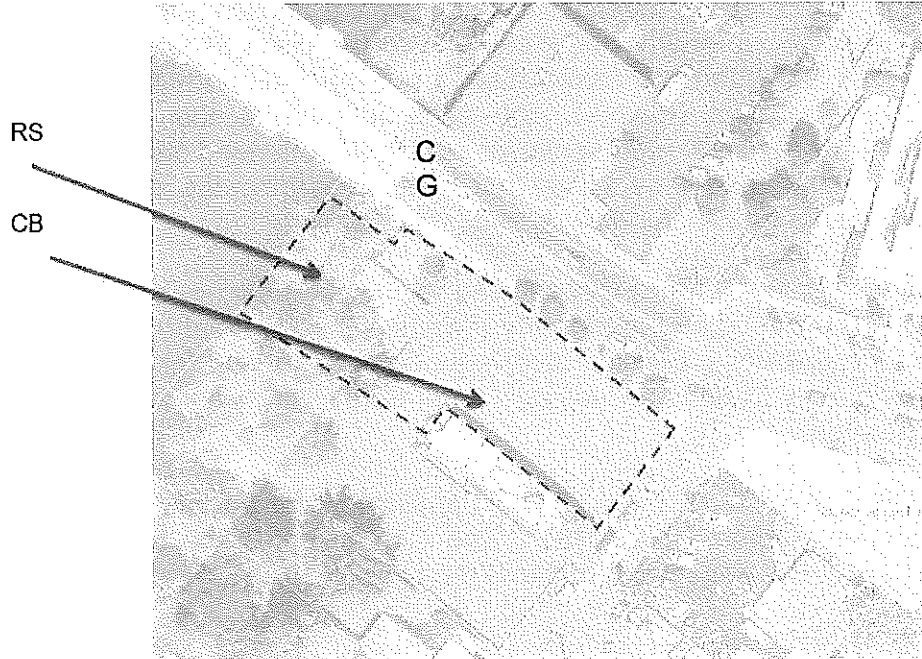
1. **LOCATION:** The subject property is located at 69 NW Newport Avenue. It is also identified as Tax Lot 4300 on Deschutes County Assessor's Tax Map 17-12-32BD.



2. **EXISTING ZONING & GENERAL PLAN DESIGNATION:** As shown in the map on the following page, the subject property is split-zoned, with the eastern portion located within the Central Business (CB) Zone, and the western portion located within the Residential Standard Density (RS) Zone on the Bend Zoning Map and Comprehensive Plan Map. The westernmost 100 feet of the subject property is also located within Waterway Overlay Zone (WOZ).
3. **SITE DESCRIPTION & SURROUNDING USES:** The Deschutes River forms the property's western boundary. The subject property is located on the south side of Newport Avenue, at the east end of the Newport Bridge, and west of Brooks Street. The property contains a 2-story house with an attached carport, and it has established trees and undergrowth surrounding the house. The area of the proposed Comprehensive Plan Map Amendment and Zone Change abuts the Deschutes River, is roughly 0.15-acres in size, and contains two distinct topographic levels, which are separated by a slope. The property contains native riparian vegetation and an unmaintained dirt path near the Deschutes River. Adjacent Tax Lot 4201 to the east is undeveloped and vacant, and it has been graded and cleared of vegetation.

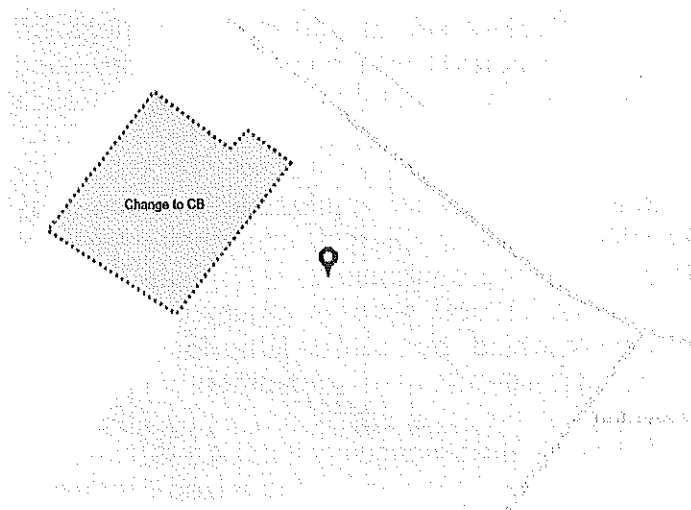
The topography of the surrounding area slopes upward, away from the river, to the east and north; the intersection of NW Wall Street and NW Newport Avenue is approximately 10-12 feet above the highest elevation of the subject property.

Existing Zoning and Comprehensive Plan Designations



4. **PROPOSAL:** Type III Comprehensive Plan Map and Zoning Map Change from Standard Density Residential (RS) to Central Business District (CB) for a 0.15-acre portion of a 0.30-acre parcel at 69 NW Newport Avenue.

Proposed Zoning and Comprehensive Plan Designations



5. PUBLIC NOTICE AND COMMENTS: The applicant held a neighborhood public meeting on June 21, 2018. Notice of the meeting was sent by the applicant to all property owners within 500 feet of the subject property boundary, and to the River West Neighborhood Association and the Old Bend Neighborhood Association. The subject property is located in the River West Neighborhood Association (RWNA). The applicant's Verification of Public Meeting forms indicate that no designated representative of RWNA attended the meeting¹, but four other neighbors did attend, and they raised questions regarding the proposed uses, pedestrian connections, parking, architectural style, and project timing.

On November 21, 2018, the City mailed a public hearing notice to the River West Neighborhood Association and to property owners within 250 feet of the subject property. Prior to the hearing, the Planning Division received a letter of support for the Plan Amendment/Zone Change from Journey Church, as well as a letter from RWNA. No other comments or concerns have been received.

6. APPLICATION ACCEPTANCE DATE: This application for a Plan Amendment/ Zone Change was submitted on September 27, 2018. The City accepted the application as complete on November 5, 2018. It is not subject to the 120-day clock.

CONDITIONS OF APPROVAL

The applicant and staff are in agreement about most of the facts and findings related to this request. The one debate relates to the suggested conditions of approval as stated in the Staff Report. Since the Hearings Officer agrees with the proposed factual findings prepared by staff, the most important issue for the Hearings Officer to address in this Decision is whether or not all of the suggested conditions of approval should be included.

Each condition of approval will be addressed as part of the Hearings Officer's findings under the section in which the condition of approval was originally recommended by staff. However, the Hearings Officer wants to explain the general legal context in which each condition of approval is analyzed.

Generally speaking, conditions of approval are appropriate to ensure that the application will meet all of the approval criteria. Additionally, in Oregon, cities have the express authority to impose conditions of approval on zone change applications. *Willamette Oaks v. City of Eugene*, 232 Or App 29, n1 (2009), *citing* ORS 227.175(4). Also, in regard to site specific plan amendment and zone changes that are accompanied by applications for specific development, the Bend Development Code allows the site-specific plan amendment and zone change to be conditioned upon initiation of the development proposal within a specific time period to ensure no greater intensity of use than contemplated in the proceeding. BDC 4.1.427.

Generally speaking, a government may, upon approving a land use application, require a condition of approval if the government demonstrates: (1) a nexus between a governmental interest that would furnish a valid ground for the denial of the permit and the condition, and (2) that the nature and extent of the condition are roughly proportional to the effect of the proposed development. *Hill v. City of Portland*, 293 Or App 283, 284-285 (Or. App., 2018) *citing* *Brown v. City of Medford*, 251 Or App 42, 47, 283 P3d 367 (2012). Generally, if there is some link between the government

¹ Although there was some initial concern from RWNA whether it received notice of the public meeting, RWNA has since indicated it feels the process should continue and provided some design suggestions to the applicant. The applicant may wish to address and respond to the design suggestions in the site plan review or variance applications, but they are not relevant to this Comprehensive Plan and Zone Change request.

demand and a stated policy or regulation, there will be the required nexus. Most often, it is more difficult to determine whether the government's condition is roughly proportional to the effect of the proposed development. The purpose of these rules is to "enable permitting authorities to insist that applicants bear the full costs of their proposals while ..." ensuring governments do not go too far in their demands. *Koontz v. St. Johns River Water Management Dist.*, 570 US 595, 606, 133 S Ct 2586, 186 L Ed 2d 697 (2013).

APPLICATION OF THE CRITERIA:

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

This Plan Amendment/Zone Change application is a Type III quasi-judicial land use application. All applicable criteria and policies related to the request are addressed in the findings below and the applicant's burden of proof statement. The application follows the procedures identified in BDC 4.1.400. In addition, all of the criteria identified in BDC 4.6.300 are addressed below.

CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

4.6.300 QUASI-JUDICIAL AMENDMENTS

B. Criteria for Quasi-Judicial Amendments

Criterion #1. Approval of the request is consistent with the relevant Statewide Planning Goals that are designated by the Planning Director or designee;

FINDING: The relevant Statewide Planning Goals, along with Hearings Officer's proposed findings of consistency, are listed below.

Goal 1 - Citizen Involvement, "To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."

Conformance with Goal 1 is achieved in the City of Bend through *Chapter 1 – Plan Management and Citizen Involvement* of the Comprehensive Plan, and through the implementation procedures that have been adopted in the Bend Development Code. Chapter 1 of the Comprehensive Plan identifies the Bend Planning Commission as the official Citizen Involvement Committee for the City of Bend. The Bend City Council, upon the recommendation of the Planning Commission, adopted the procedures in the Development Code, and those procedures have been acknowledged by the Land Conservation and Development Commission (LCDC). The adopted Development Code contains provisions to ensure an appropriate level of citizen involvement for all land use application types, which for this application is the Type III Quasi-Judicial Review procedure. The Development Code's adopted citizen involvement procedures will be followed throughout the City's review of this application.

The first step for citizen involvement in the City of Bend is a Public Meeting required by Section 4.1.215 of the Development Code. Documentation that a Public Meeting was held in accordance with BDC 4.1.215 has been submitted into the record. In addition to the Public Meeting requirements of BDC 4.1.215, citizen involvement is ensured by two public hearings, which are duly noticed, held, and conducted according to the Type III procedures of BDC 4.1.400. Type III procedures require that citizens be informed about the public hearings through posted notice, individual mailed notice, and neighborhood association contact. The referenced notices inform citizens about the hearings and indicate that any interested party may participate by submitting written or verbal testimony. The procedures in the City's adopted Development Code ensure consistency with Statewide Planning Goal 1.

Goal 2 – Land Use Planning, “To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.”

FINDING: An adequate factual base is required for the City’s review of the proposed Plan Amendment/Zone Change for a 0.15-acre portion of the subject property. The applicant’s proposal will be reviewed in accordance with the planning processes and policy framework that have been established in the adopted Bend Development Code (an acknowledged local land use regulation). By following the adopted Development Code procedures, the City’s review of this proposal will be consistent with Statewide Planning Goal 2.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces, “To protect natural resources and conserve scenic and historic areas and open spaces.”

FINDING: The western portion of the property is located within the Waterway Overlay Zone (“WOZ”), which is a mapped Goal 5 Resource in the City of Bend. The Riparian Corridor Sub Zone is protected by BDC 2.7.620, which defines the boundaries of the Sub Zone and restricts particular types of development within the defined area, to ensure an appropriate level of protection. Throughout the City, the Riparian Corridor is located in residentially zoned areas, commercially zoned areas, and mixed-use zoned areas. The currently proposed map amendments (RS to CB) will not alter the Riparian Corridor location or allowed development within the boundaries of the protected resource.

Furthermore, all future development will be required to conform to all provisions of the WOZ, including the Riparian Corridor Sub Zone.

The property does not contain or impact any other Goal 5 protected natural resources, scenic or historic areas, or open spaces. Because the Riparian Corridor Sub Zone will continue to be protected by BDC 2.7.620 and no other Goal 5 protected resources will be impacted, the proposal is consistent with Statewide Planning Goal 5.

Goal 6 – Air, Water, and Land Resources

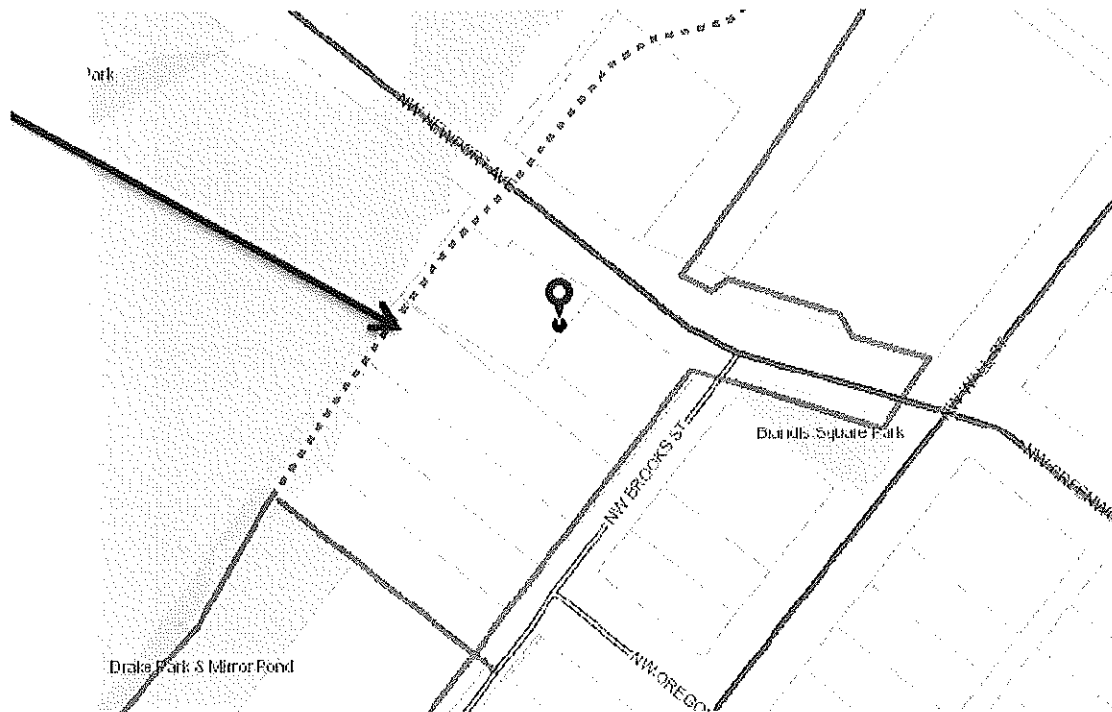
FINDING: The Plan Amendment/Zone Change will convert a small portion of subject property from RS to CB. The majority of the RS designated property is also protected by the City’s WOZ, wherein development opportunities are limited. Only about 3,000 square feet of the area is actually “buildable”. Given design, development, and building permit requirements, uses that are permitted upon the property are anticipated to have similar impacts to air, water, and land resources as other uses in this area and throughout the City. As shown on the applicant’s conceptual Site Plan, the planned development of the property can comply with the applicable Development Code requirements. The application of adopted Development Code requirements will ensure that Air, Water, and Land Resources will be protected during the entitlement phase of the City’s review, as required by this Goal. Furthermore, air and water quality are regulated by the Oregon Department of Environmental Quality, outside of the City’s land use review process.

Goal 8 – Recreational Needs, “To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.”

FINDING: The subject property has not been listed in any statewide inventory of recreational needs, it is not a destination resort, and is not needed to provide recreational needs of the citizens of the state. That said, the Bend Area Transportation System Plan (TSP) identifies a future multi-use trail along the west side of the subject property – the Bend Park and Recreation District’s

("Park District") Deschutes River Trail. The applicant has worked closely with the Park District and has agreed to dedicate an easement as needed by the Park District to accommodate a trail connection along the riverfront segment of the subject property. A letter from the Park District recognizing pre-submittal correspondence and general agreement is included in the record. No other parks or recreational needs have been identified on the subject property. At the time of development, a right-of-way dedication or an access easement will be required pursuant to BDC 3.1.300(C)(1). Providing an easement for the planned trail connection will accommodate City and Park District needs, while ensuring consistency with Goal 8.

Map of Deschutes River Trail Extension



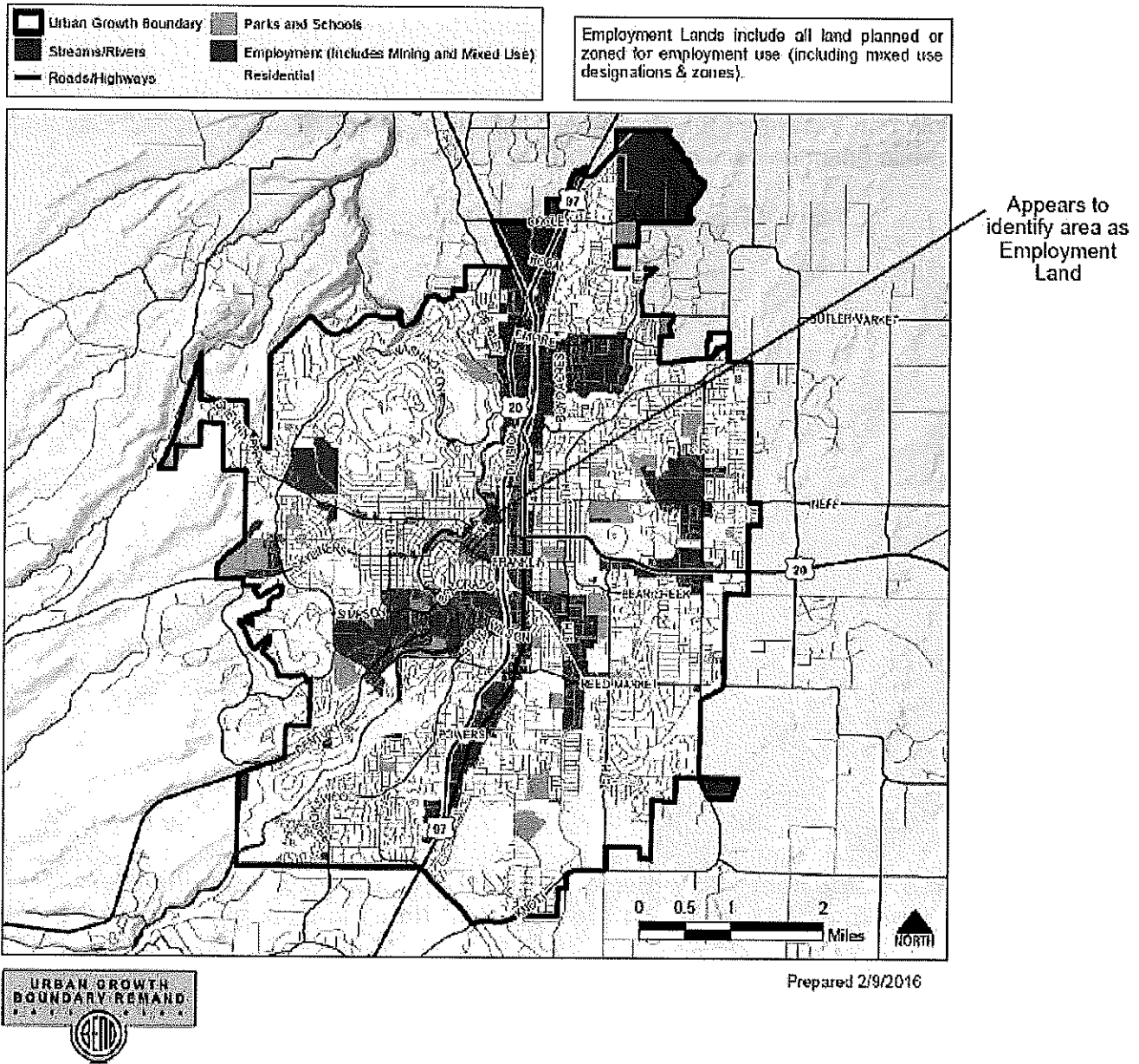
Goal 9 – Economic Development, “To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.”

FINDING: The proposal will change the Comprehensive Plan Map designation and Zoning of approximately 0.15-acres of the subject property from Residential Standard Density (RS) to Central Business District (CB), a commercial zone. The proposal is the first step in the process to entitle the property for a commercial use. Additional steps will include Site Plan Review, Central Business District Design Review, WOZ Review, and Variance approval. The proposal and associated review steps will ultimately result in development occurring on the site as directed by the Development Code, which will improve economic opportunities in Bend, in conformance with this goal.

Furthermore, for the sake of land needs, it appears that the area of the Comprehensive Plan Map Amendment and Zone Change is considered employment land. In July 19, 2016, the City of Bend completed the “Bend Buildable Lands Inventory”. *Figure EX-2, Bend Residential and Employment Land* and *Figure 5, Employment BLI Status* appear to identify the property as Employment Land.

Ultimately, the proposal will allow economic development to occur and will thus contribute to economic development, which is consistent with Goal 9.

Figure EX-2. Bend Residential and Employment Land



Goal 10 – Housing, “To provide for the housing needs of Citizens of the state.”

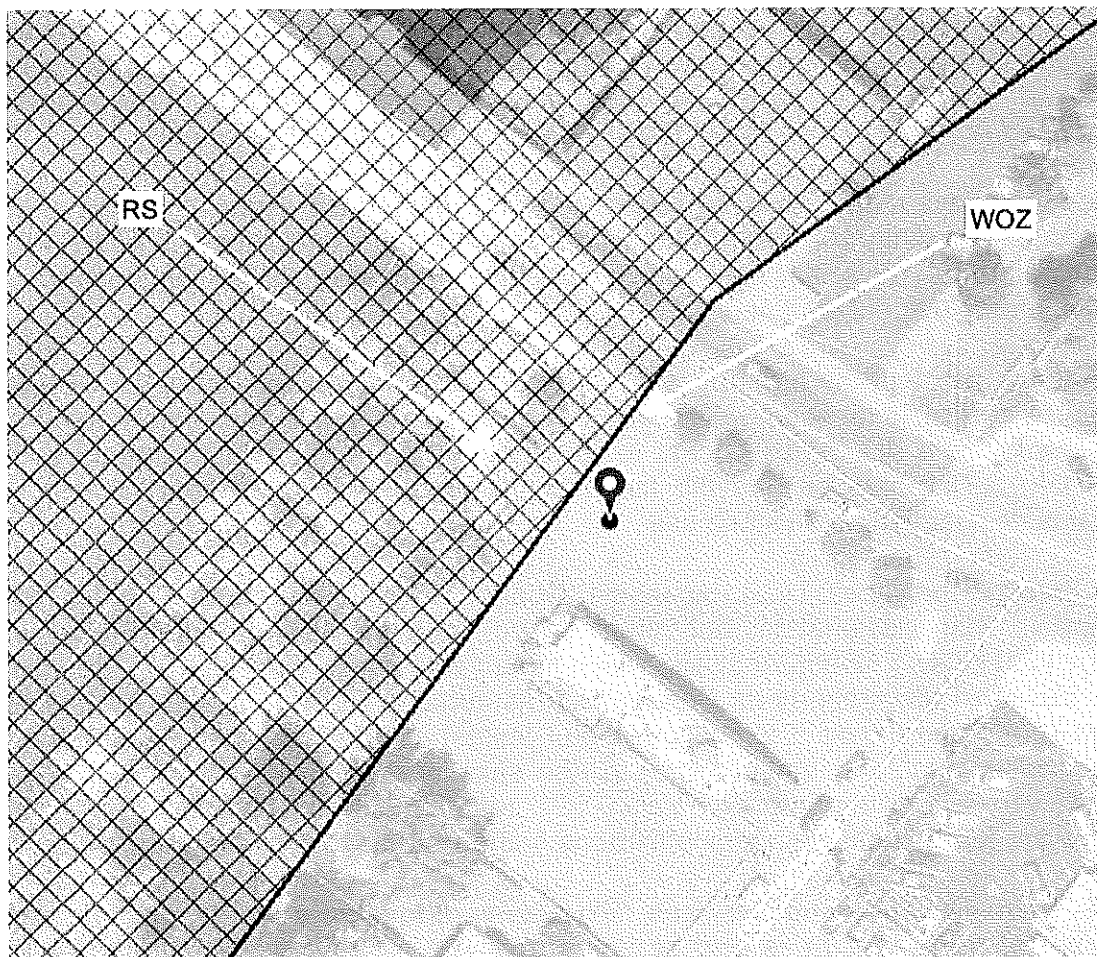
FINDING: Goal 10 ensures that steps are taken, including inventories and plans, to encourage the availability of needed housing units at price ranges and levels that are commensurate with the financial capabilities of Oregon households. Through recent UGB planning efforts, that City was required to ensure that a 20-year supply of housing be provided in Bend. To ensure an adequate supply of residential lands, the City completed multi-tiered assessments, including the Buildable Lands Inventory (BLI), the Housing Needs Analysis, and the Urbanization Study. The Housing Needs Analysis and Urbanization Study are based upon the BLI.

As detailed in the Executive Summary and throughout the BLI report, the BLI includes four major steps: (1) Calculate Physical Constraints, (2) Define and Categorize Residential Land, (3) Define and Categorize Employment Land, and (4) Assign Developable Acres.

In regard to defining and categorizing residential lands, it is clear that properties identified with an RS designation (such as the subject property) fall within the "Residential BLI Category". Thus, initially it would appear that the proposed Plan Amendment/Zone Change would reduce the amount of residential lands that were calculated as needed to meet the 20-year need (by 0.15 acres). However, when looking closely at the location of the property and the defined "Physical Constraints" of Step 1, it is clear that the RS designated area of the subject property (approximately 0.15-acres) falls into the "physically constrained" category, and thus was determined to be unbuildable for the purposes of the BLI, along with the Housing Needs Analysis and the Urbanization Study.

Documentation of Physical Constraint:

Area of Map Amendments:



BLI – Executive Summary, Page ii

Step 1: Calculate Physical Constraints

Land that is physically constrained is not assumed to be "buildable". Land was identified as constrained if it: has 25% or greater slopes; is within the Federal Emergency Management Agency (FEMA) 100-year floodplain; is within a river or upland Area of Special Interest (ASI); or is within the Waterway Overlay Zone (WOZ) and within 100 feet of the Deschutes River, where building setbacks may apply³. The total area affected by one or more of the constraints was calculated for each tax lot in Bend. There are roughly 1,420 acres of physically constrained land within the UGB, of which roughly 1,170 are within tax lots.

³Bend's WOZ combines four different sub-areas: the Deschutes River Corridor Design Review overlay; the Floodplain Combining Zone; Goal 5 Riparian Corridor protection; and River Corridor ASIs. Each sub- area has its own set of standards and setbacks for protection. Setbacks vary from 30 to 100 feet depending on the stretch of river and the sub-zone; some are measured from ordinary high water, while others are measured from the canyon rim. Because the setbacks are not mapped in detail, the generalized assumption was made that development restrictions are likely within 100 feet of the mapped edge of the river throughout its length. Detailed information about the WOZ is included in Appendix B.

BLI – Chapter 2: Buildable lands Inventory, Page 21 of 29

Step 4 – Assign Developable Acreage

After assigning a BLI category to residential and employment land, the next step is to identify how much of the land that has some remaining development potential is available. To this end, this BLI uses three attributes related to development capacity for each parcel: "Vacant Acres," "Developed Acres," and "Constrained Acres". "Vacant Acres" are available for development; "Developed Acres" are developed but may potentially undergo redevelopment; and "Constrained Acres," such as steep slopes or floodplains, are undevelopable.

As noted on the above map, and in the referenced sections, the RS designated area of the subject property is situated within 100 feet of the ordinary high-water mark, thus within the WOZ, which was determined to be "physically constrained" and "undevelopable" for the purposes of calculating residential and employment land needs.

In addition to the fact that the property was determined to be "undevelopable" for the purposes of calculating residential land needs, *Figure EX-2. Bend Residential and Employment Land* and *Figure 5. Employment BLI Status* appear to identify the property as "Employment Land" and not residential land.² This may be due the fact that the property is split-zoned and predominately commercial in designation and historic use.

Ultimately, through the recent UGB Expansion, Goal 10 was found to be met not just through the Comprehensive Plan designation, but rather based upon the Urbanization Study, which was informed by the Housing Needs Analysis, which in turn was based upon the BLI. Because the BLI may have classified the property as Commercial (as noted in *Figure EX-2. Bend Residential and Employment Land* and *Figure 5. Employment BLI Status*) and definitely calculated the property as "physically constrained" and "unbuildable" for the sake of determining citywide land availability, changing the very small area (approximately 0.15 acres) from RS to CB will not decrease the City's ability to provide for the housing needs of citizens of the state as required by Goal 10.

Goal 11 – Public Facilities and Services, "To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."

FINDING: OAR 660-11 implements Goal 11, and notes, "[c]ities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons..." The City of Bend exceeds 2,500 people and has adopted water, wastewater, and transportation master plans. In addition to the adopted public facilities plans, the City has adopted the Bend Development Code.

² The Hearings Officer inquired what the applicant means by it "appears" that the BLI identifies the property as employment land. The applicant explained at the hearing that it sought detailed, property-by-property maps of the BLI. However, the BLI map is not that detailed. Thus, there is no detailed, site specific map showing the subject property as employment land. The Hearings Officer agrees, though, that the BLI map, which is a city wide map, does "appear" to show the property as designed for employment land.

The area surrounding the property is fully developed with public facilities and the subject property is already partially commercially designated (with only a small, 0.15-acre portion, that is RS designated). The proposed Plan Amendment/Zone Change is consistent with the public facilities and services goal that requires the City to plan and develop land in a timely, orderly and efficient fashion, based upon the availability of public services. All needed public facilities and services are available to serve the property, as detailed in the corresponding Site Plan Review application. Fully improved streets surround the property, and water and sewer services are available in the abutting rights of way. The Site Plan Review application includes analyses of water, sewer, and transportation impacts, confirming that there are no capacity issues for the planned development. Additionally, emergency services are available in the area through City of Bend Fire and Police Departments.

The Site Plan submitted to the City (and the conceptual Site Plan in the record for this application) conforms to the applicable Development Code standards. As noted in the plans and as required by the Development Code, the proposed development will extend public facilities to the property in accordance with adopted Development Code requirements. The adopted Development Code provisions dictate that a timely, orderly, and efficient arrangement of public facilities be provided in a manner that is consistent with the adopted public facilities master plans. With development (in association with the Site Plan), the applicant will be required to install all public facilities necessary to serve the development.

Collectively, the adopted local land use regulations provide a framework that ensures that a timely, orderly, and efficient arrangement of public facilities and services are achieved throughout the City. By ensuring conformance with the adopted public facilities plans and the Development Code regulations, consistency with Goal 11 will be ensured.

Goal 12 – Transportation, “To provide and encourage a safe, convenient and economic transportation system.”

FINDING: Goal 12 is implemented through the TPR, OAR 660-12-0060, in addition to local land use regulations. The current proposal includes a TPR Analysis, detailed findings of which are included under BDC 4.6.600 below. As detailed in the TPR Analysis, the proposed Map Amendment will not significantly impact a transportation facility, and therefore will comply with the TPR. The City of Bend TSP is implemented through adopted policies of the Comprehensive Plan, along with the standards and criteria of the Bend Development Code. As addressed below, the proposal is consistent with all applicable policies of the Comprehensive Plan, thus is consistent with the TSP.

Additionally, the proposal is accompanied by a Site Plan Review application. In association with the Site Plan Review, the applicant has studied the transportation system, and the planned development is shown to operate in conformance with the Bend Development Code (including Chapter 4.7). Because the proposal complies with the TPR and is consistent with all Comprehensive Plan Policies related to transportation, and further because the associated Site Plan conforms to all Development Code requirements (including those related to access and transportation), the proposal is consistent with Goal 12.

Goal 13 – Energy, “To conserve energy.”

FINDING: The proposal will convert a small, approximately 0.15-acre area of land from RS to CB. The associated Site Plan is shown to comply with all Development Code requirements and future development will be required to meet all adopted Building Code requirements. Furthermore, by placing the commercial designation in an area in close proximity to a Commercial Zone, the

opportunity for compact development is improved, decreasing vehicle miles traveled, increasing opportunities for walking, biking, and public transit, and decreasing the reliance on automobiles. Overall, with the proposed Plan Amendment/Zone Change, the adopted Development Code and Building Code requirements will continue to ensure that energy will be conserved to a level commensurate with the goals of the City. With the proposed Map Amendment, the opportunity for compact development and reduced vehicle miles traveled will increase opportunities for conservation of energy, consistent with Goal 13.

Goal 14 – Urbanization, “To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”

FINDING: The subject property is located within the urbanized city limits in the downtown area. Concerns regarding transitioning from rural to urban lands are not present in this case. The Plan Amendment/Zone Change, as noted above, will allow for urban employment inside the urban growth boundary and will allow for efficient use of the land.

Criterion #2. Approval of the request is consistent with the relevant policies of the Comprehensive Plan that are designated by the Planning Director or designee;

FINDING: As described in the *Format of the Plan*, described in the Preface of the Comprehensive Plan, the term “policy” has a specific meaning; a policy is a statement of public policy. As described on Page P-5 of the Preface: *“These statements of Policy shall be interpreted to recognize that the actual implementation of these policies will be accomplished by land use regulations such as the city’s zoning ordinance, subdivision ordinance and the like.”*

The Comprehensive Plan establishes a set of policies at the end of each chapter. As described below, the proposed Plan Amendment/Zoning Change conforms to all relevant Comprehensive Plan policies.

Relevant Policies of the Comprehensive Plan

Chapter 1 - Plan Management and Citizen Involvement

Development within the Urban Growth Boundary

1-6 New developments shall pay to extend planned sewer, water, and transportation facilities to and through the property if the development occurs prior to the scheduled construction of those facilities shown in the capital improvement plan.

FINDING: The property is situated in the heart of downtown Bend. This area is served by water, sewer, and transportation systems consistent with the City’s Public Facilities Plans. The property is split-zoned and has historically been developed with both residential and commercial uses. Upon redevelopment, water, sewer and transportation facilities will need to be extended and/or improved as required by Development Code standards.

In association with this Plan Amendment/Zone Change, the applicant has submitted a separate Site Plan Review application. The proposed Site Plan for the redevelopment of the subject property includes new water and sewer laterals to serve the new buildings and uses. Furthermore, the Comprehensive Plan Map Amendment and Zone Change proposal includes the dedication of a public access easement for a primary trail along the Deschutes River, which has been coordinated with the Park District and the City of Bend (which will be built by the Park District in association

with a Mirror Pond Bank and Trail Improvement project). The referenced trail is not on a CIP, thus additional payment is not necessary at this time.

Because water and sewer mains are located within the rights of way abutting the property in conformance with the adopted Public Facilities Plans, because the abutting rights of way are improved to City Standards, because redevelopment of the site will be required to occur in conformance with the adopted Development Code, and because the proposal includes the dedication of a public access easement for a primary trail along the Deschutes River, the proposal is consistent with this policy.

1-7 The City 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.

FINDING: With the current RS designation and associated WOZ restrictions, the buildable area of the RS designated area is only approximately 3,000 square feet. The buildable area (of the Map Amendments area) could likely only accommodate one single family home. Retention of the RS Zone would directly conflict with this policy, as it would force the separation of uses (the opposite of integration of land uses) and would discourage compact development. The proposed Plan Amendment/Zone Change will allow for more efficient development of a small area of land that otherwise has limited development potential. The property is served by water, sewer, and transportation systems, and being along a transit corridor, is an identified "opportunity area". It is within downtown Bend, an area that provides opportunities for public parking, a mix of uses, opportunities to reduce vehicle miles traveled, and facilitates non-auto traffic (it is along a transit route). Allowing the proposed Map Amendments would be consistent with this policy.

1-8 The City and county will encourage infill and redevelopment of appropriate areas within Bend Central Core, Opportunity Areas and transit corridors (see Figure 11-1).

FINDING: The property is located in downtown Bend. It is located along a major transit route and identified as an Opportunity Area in the Comprehensive Plan (Chapter 11 – Figure 11-1); therefore, this policy encourages infill and redevelopment. A major hurdle to developing this property is the RS designation on a small portion of the property. With the RS designation, the area of development is restricted. On top of the location of the RS designation, "transition standards" (between commercial and residential zones) would apply, further reducing the economic viability of developing the remainder of the property (the CB-designated area). Providing a zone and plan designation that is commensurate with the surrounding area and expected use type, is an action that the City can take to encourage infill and redevelopment of the property. Also, given the property location (within downtown, along a transit corridor, along an arterial street, along a planned trail, and with the Deschutes River as a natural barrier / geologic feature of separation), redevelopment of this site with a commercial use is appropriate. Approving the Plan Amendment/Zone Change is consistent with this policy.

Citizen Involvement

1-16 The City will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, Planning Commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process.

FINDING: The proposed Plan Amendment/Zone Change will include hearings before both a Hearings Officer and the City Council, as prescribed in the BDC 4.1.400, Type III review process.

Following the City's established Type III Quasi-Judicial Review procedures will ensure consistency with this policy.

Chapter 2 – Natural Features and Open Space

Natural Features and Open Space

2-2 The City and Bend Metro Park and Recreation District shall share the responsibility to inventory, purchase, and manage public open space, and shall be supported in its efforts by the city and county.

Deschutes River Corridor

2-15 The City shall seek opportunities to retain the banks and canyon of the Deschutes River as public or private open space throughout its entire length within the planning area.

Chapter 3 – Community Connections

Parks and Recreation Facilities

3-8 The City shall refer to the park district, for its review and recommendations, all development proposals that include or are adjacent to existing or proposed parks or trails.

Urban Trails

3-9 The City will continue to work with the county, irrigation districts, state and park district to develop a series of trails along the Deschutes River, Tumalo Creek, and the major canals so that these features can be retained as an asset in the urban growth boundary and urban reserve area.

3-10 The trails designated on the Bicycle and Trail System map shall be the basis for developing a trail system that serves the recreational and transportation needs of the community.

FINDING: Both the City of Bend Transportation System Plan (TSP) and the Park District Trail Plan identify a primary trail along the Deschutes River, crossing the western portion of the subject property. The applicant has coordinated with the City and the Park District and proposes to dedicate a public access easement over the western portion of the property, upon which a primary trail will be constructed by the Park District in association with the Mirror Pond Bank and Trail Improvements Project (currently in the design stage). The Park District supports the Comprehensive Plan Map Amendment/Zone Change, and they have submitted a letter indicating their support for the referenced public access easement.

Staff made the following recommended condition of approval in its Staff Report:

Prior to the issuance of any building permits on the subject property, the applicant shall dedicate a public access easement over the western portion of the property, upon which a primary trail will be constructed by the Park District in the future.

The applicant objects to this condition of approval, in short, because it believes the condition is unnecessary since the Bend Development Code will require the easement. Specifically, the applicant contends that BDC 3.1.300(C) requires an easement at the time of development.

The Hearings Officer understands that the applicant and BPRD are engaging in good faith negotiations regarding the trail easement. BPRD did not attend the hearing to explain why the easement needs to be required as part of the zone change, and not with the Site Plan Review decision as contemplated by the BDC. For these reasons, the Hearings Officer is uncomfortable interjecting the City into the easement negotiations between the applicant and BPRD prematurely.

Since BDC 3.1.300 will require either a dedication or an easement at the time of development, the Hearings Officer believes the above policies are met.

3-11 The City, when practical, shall require connecting links to the urban trail system from all adjacent new developments.

FINDING: Based upon its conversations with the Park District and review of preliminary designs of the Mirror Pond Bank and Trail Improvement Project, the applicant anticipates that the Newport Avenue sidewalk system will provide a direct connection to the Deschutes River Trail at the northwest corner of the subject property. The planned location is logical and provides the best access for visitors to downtown Bend. The Park District has commented that an accessible crossing of Newport Avenue at Brooks Street is also required, as an accessible alternative to the Deschutes River Trail in this section.

Staff suggested the following recommended condition of approval in the Staff Report:

With development of the site, the applicant shall design and build an accessible crossing of Newport Avenue at Brooks Street.

For the same reason that the Hearings officer did not feel it was appropriate to require a trail easement as a condition of approval for this Plan Amendment/Zone Change, the Hearings Officer likewise does not believe it is necessary to require the Newport Crossing as a part of the Plan Amendment/Zone Change.

Moreover, the Hearings Officer is concerned that the development plans may change. The Hearings Officer assumes, and the parties may wish to address this in front of City Council, that a crossing of Newport Avenue will be significant in cost. The Plan Amendment/Zone Change will not, alone, effect the community connections this policy protects, since a zone change does not include physical development of the subject property. Thus, it is not clear to the Hearings Officer that the Newport Avenue crossing is roughly proportional to the Plan Amendment/Zone Change. The Newport Avenue crossing may very well be roughly proportional to the proposed development being considered through Site Plan Review, but that application is not before the Hearings Officer now.

Chapter 5 – Housing

Housing Mix, Density, and Affordability

5-4 The City will apply plan designations, zoning districts and development code regulations to implement the mix of housing indicated in the adopted Housing Needs Analysis.

FINDING: The Housing Needs Analysis is based upon the land availability assessment documented in the BLI. As previously noted, the BLI appears to have identified the RS portion of the subject property as Employment Land and the BLI definitely identified the RS portion of the subject property as “physically constrained” and “unbuildable” for the purposes of the calculating land needs for the HNA. Therefore, while the Comprehensive Plan Map and Zoning Map identify

the small portion of the property with a RS designation, the property was not calculated as a property that would provide needed housing. As such, allowing the RS designated portion of the property to be re-designated and used as commercial land, will not decrease the forecast supply or mix of housing that was found to be able to be accommodated in Bend. The proposal is therefore consistent with this policy.

5-23 Of necessity, nonresidential uses may abut residentially planned and zoned areas in different parts of the community. In these instances, nonresidential uses will be subjected to special development standards such as setbacks, landscaping, sign regulations, and building design that harmonize and provide transitions consistent with the primary purposes of the adjacent zones.

FINDING: The property is currently split-zoned, where a residentially designated area abuts a commercially designated area. The proposal moves the line of interface to the west (to the property line/Deschutes River). The Commercial Zoning District Standards of BDC Chapter 2.2 include setback requirements, buffering requirements, and residential transition requirements. In addition, the referenced standards, the property is located within the WOZ, where additional restrictions apply (which are intended to preserve the River Corridor). As detailed in the corresponding applications for Site Plan Review, Central Business District Design Review, Waterway Overlay Zone, and Variance approval, it is possible for development to occur on the site in accordance with all of the adopted setbacks, landscaping requirements, and building design regulations. Conformance with the Development Code and the Sign Code will ensure consistency with this policy.

Chapter 6 – Economy

General Policies

6-1 Bend's economic lands (commercial, industrial and mixed use) serve Bend residents and the needs of a larger region.

6-2 Bend is a regional center for health care, art and culture, higher education, retail, tourism, and employment. The economic land policies recognize Bend's role in the region, and the need to support uses that bolster the local and regional economy:

- ***Commercial and Mixed Use-designated lands support retail, tourism, and arts and culture uses to serve a local and regional role.***

FINDING: This policy notes that Bend's economic lands serve a regional purpose. It can be further argued being at its core, the downtown serves a primary location for regional art, culture, retail, tourism and employment. The subject property is in a unique location; it is in the heart of downtown Bend, it abuts the Deschutes River, and it abuts a planned trail. A visiting guest to a restaurant on the subject property can enjoy in multiple facets of the Bend lifestyle and Bend's economy from this one location. A visitor could attend an art and cultural event downtown, walk to the subject property, enjoy a meal, after which they could walk along the Deschutes River/Mirror Pond. Alternatively, an office employee could ride his or her bike using the nearby trail system or ride a bus, walk to downtown restaurant for lunch or take a run along the Deschutes River/Mirror Pond during a lunchbreak, and then walk to a nearby venue that is offering music or visual art after work. Overall, the property is uniquely located to bring together multiple elements of the Bend culture and the Bend economy (including retail, tourism, and arts and culture). This policy informs the community that the purpose of Bend's economic lands are not just to serve City needs, but instead to serve the broader community also, which the proposed CB designation could achieve much better than the RS Zone and single-family home on the property.

6-7 Bend will diversify its economic base to withstand expansions and contractions in the business cycle.

FINDING: According to Compass Commercial Real Estate's "Compass Points 2017 Summary/2018 Forecast" (submitted by the applicant), the Downtown Core has a 0% vacancy rate for retail use (which includes restaurants) and a 4.1% vacancy rate for offices. The extremely low vacancy rates provide opportunities for landowners to charge high premiums in the area, which limits diversification and lessens the ability for businesses of all types and sizes to locate in the downtown. It also makes withstanding negative business cycles more difficult. The proposed Plan Amendment/Zone Change will allow for an increased supply of leasable space in Downtown Bend, which may lessen the rate of rent increases. It will provide more commercial space options, which will help a more diverse business base withstand expansions by stabilizing the market. The Hearings Officer believes the proposed Plan Amendment/Zone Change provides an opportunity for the City to carry out this policy.

6-8 The City will recognize the statements of the City's overall economic development objectives and desirable types of employment contained in the 2016 Economic Opportunities Analysis (EOA).

FINDING: The following is a summary of the City's overall economic development objectives as detailed in the EOA:

Bend's General Economic Objectives

State law requires a city to adopt policies stating Bend's community economic development objectives (OAR 660-009-0020). While this EOA does not, nor is it intended to, fully comply with the requirements of OAR 660-009-0020, this EOA partially addresses this objective by bringing together concepts in Chapter 6 of the Bend Comprehensive Plan (Economic Development), statements in recent economic visioning projects, Bend's economic advantages, and Bend's recent economic growth trends. The following expression of Bend's economic development objectives is from the "Bend 2030, A Visioning Project by and for the People of Bend, Oregon". This narrative is considered in the EOA, and is implemented through policies of the Comprehensive Plan, and represents the City's general economic development objectives.

"Bend has a diversified economy that provides healthy work environments and sufficient living wage jobs to support our local population. Our economic vision has attracted people, resources, and investment focused on diverse industries that offer economic opportunity, longevity in the global market, and a clean and sustainable environment. Bend is a leader in 'green' building materials and technology, and sustainable energy. An established university and research center in Bend promote creativity, innovation, and entrepreneurship that empower and advance a skilled and competitive local workforce. Our access to the global marketplace is efficient and viable due to enhancements of local and regional communications and transportation systems including air, rail, highways, and alternative modes of travel."

The city is required to identify particular types of desirable employment to develop during the planning period as part of the general economic objective. The following list reflects desirable employment uses identified in the "2030 Vision" as well as employment types Bend is well positioned to continue to grow into the future:

- 1. Employment in Downtown Bend – opportunities for businesses, shops, restaurants, and housing should be expanded while preserving downtown's unique character.*

2. *Employment in targeted industries – the “2030 Vision” suggests expanding employment opportunities in industries identified as “target industries” by the “2005 Economic Sector Targeting” exercise. Target industries include:*
 - a. *Leisure and hospitality uses*
 - b. *Higher education*
 - c. *Health care*
 - d. *Secondary wood products*
 - e. *Aviation-aerospace*
 - f. *Renewable energy resources*
 - g. *Recreation equipment*
 - h. *Specialty manufacturing*
 - i. *Information technologies*
3. *Employment in tourism – the “2030 Vision” supports building year-round tourism through developing a diverse mix of arts, entertainment, sports, and natural and cultural attractions. Projects to improve employment in the tourism industry include constructing a new performing arts center and museum of fine arts.*
4. *Employment in higher education – higher education enables and provides diverse employment options. The “2030 Vision” supports the Central Oregon Community College and a new University. The University should ideally provide an attractive learning environment, include a research emphasis, offer graduate programs and scholarship opportunities, and serve existing residents while attracting a diverse student body.*
5. *Small neighborhood centers – small service-oriented employment centers should be located so the city’s residents can walk or bike to employment opportunities, public gathering places, parks, recreational facilities, and other services.*
6. *Mixed-use development – these uses should be located along key corridors and in designated centers, or as buffering uses.*
7. *Opportunity for all economic levels – the “2030 Vision” promotes economic and housing opportunities for all income levels so that all groups are able to live here.*
8. *In addition to economic uses stated in the “2030 Vision” and “2005 Economic Sector Targeting” work, the following economic uses are desirable and suitable to expand during the planning period based on the findings of the EOA:*
 - a. *Regional employment centers for public agencies, health care providers, and retail uses*
 - b. *Employment in professional office and service uses*
 - c. *Employment in leisure and hospitality uses*

The primary element of the referenced economic development objectives and desirable types of employment that this Plan Amendment/Zone Change application addresses is “*Employment in Downtown Bend.*” The proposed Plan Amendment/Zone Change allows for reasonable economic opportunities in downtown Bend. By changing an inefficient RS zone on a portion of the site, it will allow for a unique development, in an appropriate area, that will maintain and enhance the character of Downtown Bend. The structural design (shown in the associated Site Plan Review, Central Business District Design Review, Waterway Overlay Zone Review, and Variance applications) is appropriate for the site. As detailed in the development proposal, structural design on the property is regulated by the Central Business District design standards (BDC 2.2.800) and the property must comply with the Waterway Overlay Zone design standards (BDC 2.7.600) for all

development within 100 feet of the ordinary high-water mark of the Deschutes River. The CB zone and WOZ standards, along with residential transition standards, ensure that development can occur and that the established downtown character is maintained. As designed, the proposed Plan Amendment/Zone Change, along with compliance with the adopted Development Code design standards, ensure consistency with this policy.

6-10 The City will seek opportunities to designate or allow additional sites for employment use and increase the use of existing employment land within the existing urban growth boundary prior to expanding the UGB.

FINDING: While the City is not currently looking to expand its UGB for employment lands, the current proposal provides an opportunity to designate and allow an additional area (albeit a very small area) to increase the employment land within the UGB. The property has a clear topographic feature (the Deschutes River) that separates it from residential uses, thus the location is appropriate. Furthermore, for the sake of calculated land needs, the property has been identified as "physically constrained" and "unbuildable" (per the BLI), thus although a portion of the land can be developed, changing the Comprehensive Plan designation will not decrease the amount of land that was calculated as being needed to meet the 20-year housing need. Changing the Plan designation and Zoning is consistent with this policy.

6-11 The City will periodically review existing development and use patterns on industrial and commercial lands. The City may consider modifying Comprehensive Plan designations and Zoning to better respond to opportunities for redevelopment and revitalization of employment lands in underutilized areas.

FINDING: The proposed Plan Amendment/Zone Change provides an opportunity to respond to a specific redevelopment proposal on a unique site in Bend. Pursuant to this policy, the City may modify the Comprehensive Plan designation and Zoning. This Plan Amendment/Zone Change application is the first step of the development plan for this property. The applicant has also submitted a Site Plan application to the City. While the complete application and record for that application is not a part of the record on this zone change, a general description of the proposed development has been provided. What is in the record here, shows how redevelopment and revitalization will occur. The Hearings Officer believes that the requested plan amendment and zone change will allow the City to respond and take advantage of a plan to develop employment lands and underutilized areas.

Short Term Supply Policies

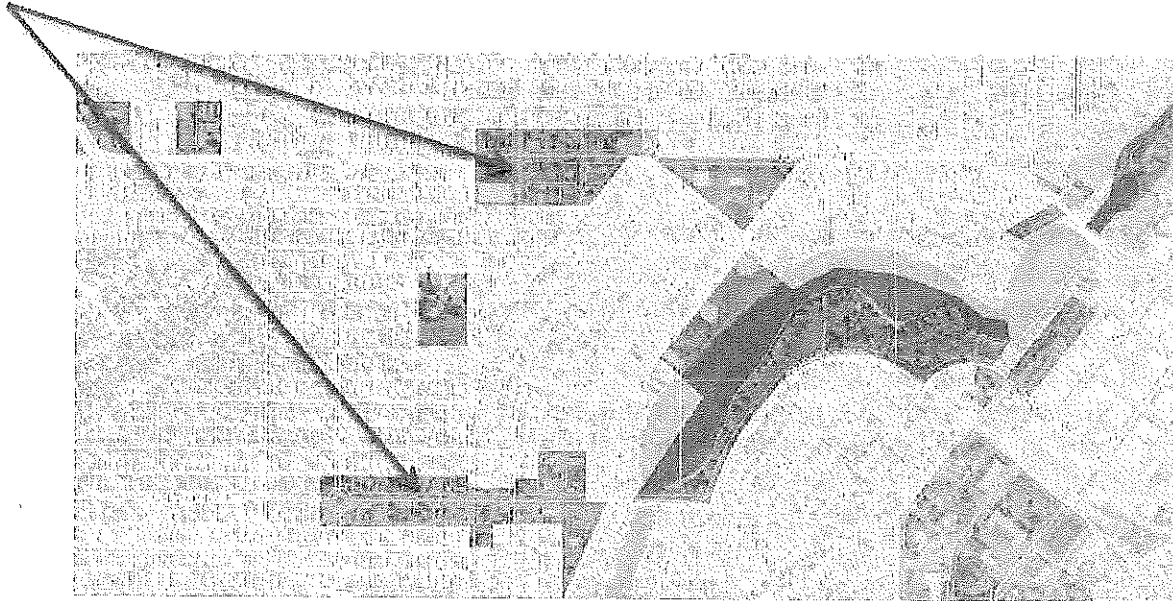
6-12 The City establishes a goal to have at least 25% of the predicted economic land need identified in the adopted EOA qualify as competitive short-term land supply.

FINDING: The EOA indicates that in the City of Bend, 62% of employment lands meet the definition of short term-supply, none of which are in the CB Zone. With the proposed Plan Amendment/Zone Change, along with the removal of the existing home, the property will add to the competitive short-term land supply and contribute to this policy.

Commercial Development

6-26 The existing pattern of commercial plan designations shown on the Comprehensive Plan Map along arterial and collector streets including Newport Avenue and Galveston Avenue will not be extended into residentially designated areas unless approved through an Area Plan.

FINDING: This policy is intended to prevent commercial areas from sprawling into abutting Residential Zones. The direct references to Newport and Galveston Avenues appear to be directed to the two areas identified in the image below:



These areas have frontage along the referenced arterials, and they do not all have clear features (such as streets, alleys, or other topographic features) separating them from the abutting residential zones. Unlike the areas noted in the image above, the subject property has a significant topographic feature separating it from residential development to the west (the Deschutes River), it is abutted by commercially designated property to the north, and commercially developed properties to the south.



As shown in the figure above, the existing Comprehensive Plan Map includes a commercial designation extending along the Newport Avenue arterial all the way to the Deschutes River (on the north side of Newport Avenue). On the south side of Newport Avenue, east of the river (the subject property), the Commercial zone stops short of the Deschutes River. Extending a commercial zone to the western edge of the subject property would be consistent with the existing pattern along Newport Avenue (to the north) and would be able to utilize the Deschutes River as a clear line of demarcation. Following the existing pattern and utilizing the Deschutes River as a separating line will not impose upon any existing developed residentially designated areas. The proposal follows the existing pattern of commercial development and therefore is consistent with this policy.

6-28 The City will encourage development and redevelopment in commercial corridors that is transit-supportive and offers safe and convenient access and connections for all transportation modes.

FINDING: The subject property is situated along Cascades East Transit Route 3, which has bus stops within ¼ of a mile in both the east and west directions. Furthermore, the subject property is located along a planned River Trail, which will provide opportunities for pedestrians and bicyclists. Also, being within the CB Zone, the area is served by network of sidewalks and public parking facilities. Given the access to multiple modes of safe transportation, development and redevelopment of this area should be encouraged by this policy.

6-29 New commercially designated areas are encouraged to develop with mixed-use centers to include housing, open space, commercial development, and other employment uses.

FINDING: Approving this Plan Amendment/Zone Change will allow the applicant to execute the associated Site Plan. As detailed on that Site Plan, the development proposal includes commercial and employment uses, along with public and private open spaces, as encouraged by this policy.

6-30 The City shall strive to retain and enhance desirable existing commercial areas and encourage property owners' efforts to rehabilitate or redevelop older commercial areas.

FINDING: The subject property, as a part of downtown, is a desirable existing commercial area. This policy notes that the City should strive to retain and enhance this existing commercial area. Allowing an area that can currently only be redeveloped with a single-family home to be used for commercial development, will enhance the economic opportunity of the site, increase employment options, result in additional restaurant space and commercial space, and will ultimately enhance and improve the existing commercial area. The proposal is consistent with this policy.

6-32 All commercial developments shall be subject to development standards relating to setbacks, landscaping, physical buffers, screening, access, signs, building heights, parking areas, and design review.

6-35 Commercial developments that abut residential zones or residential uses shall be subject to special setback and screening provisions.

FINDING: Development on the subject property is required to comply with all Development Code standards, which implement these policies. This Plan Amendment/Zone Change application is accompanied by Site Plan Review, Central Business District Design Review, Waterway Overlay Zone Review, and Variance applications. As detailed in the associated applications, the planned development complies with all applicable setback, landscaping, buffers, screening, access, signs, building heights, parking, and design review requirements.

Chapter 7 – Transportation Systems

7-27 The City shall work with the County, State, Forest Service, Park District and public agencies to acquire, develop and maintain a series of trails along the Deschutes River, Tumalo Creek, and the canal system so that these features can be retained as a community asset. Connections between the Bend Urban Area Bicycle and Trails System should be made to the USFS trail system.

7-28 The City shall work together with the Park District to acquire, develop and maintain the primary trails designated on the Bend Urban Area - Bicycle and Pedestrian System Plan; Figure 7-2. New development shall be required to construct and dedicate Primary Trails for public use according to this plan. The alignments depicted are general in nature and shall be located according to criteria defined in TSP Section 6.3.1.3. These

trails, and future trail additions, shall support the need for non-motorized travel in the community.

7-41 The City shall work with the school and park districts to inventory, designate and protect access corridors and connector trails. The City shall refer to the Park District, for its review and recommendation, all development proposals that include or are adjacent to existing or proposed parks or trails.

FINDING: As previously noted, the Bend Area Transportation System Plan (TSP) identifies a future multi-use trail along the west side of the subject property: the Bend Park and Recreation District's Deschutes River Trail. The applicant has worked closely with the Park District and has agreed to dedicate an easement for the trail. A letter from the Park District recognizing pre-submittal correspondence and general agreement is included in the record. The trail is planned to be built by the Park District in association with the Mirror Pond Bank and Trail Improvements Project, which is currently in its design phase. According to the applicant, BDC 3.1.300(C) will require such easement as part of the Site Plan Review, so the Development Code ensures consistency with this policy.

Chapter 8 – Public Facilities and Services

8-26 The City shall work to minimize the discharge of untreated stormwater run-off from streets directly into the Deschutes River and Tumalo Creek.

8-29 The City shall reduce the quantity of runoff and discharge of pollutants to the maximum extent practicable by integrating stormwater runoff controls into new development and redevelopment land use decisions. Controls may be required to minimize illicit discharges or pollutants of concern.

FINDING: In December 1945, the City of Bend acquired a 10 ft. wide easement for a stormwater drainage pipe through the subject property, from Brooks Street to the east bank of the Deschutes River. The existing stormwater pipe located in the easement, which passes under the Bend Brewing Company before passing through the applicant's property, conveys untreated stormwater into the river. The outfall location also conflicts with the future Deschutes River Trail improvements. Therefore, the Engineering and Infrastructure Planning Department (EIPD) and the City's Stormwater Program Manager would like the applicant to replace the stormwater pipe crossing their property with a new Underground Injection Control (UIC) within the City right of way to manage the design storm event currently conveyed by the pipe. Then the City could abandon the easement.

Staff recommended the following condition of approval in the Staff Report:

With development of the site, the applicant shall replace the stormwater pipe crossing their property with a new Underground Injection Control (UIC) within the City right of way to manage the design storm event currently conveyed by the pipe. Then the City shall abandon the easement. The final design of the UIC shall consider safe passage for the 100-year storm event.

Based on staff's description, this sounds like a concern that needs to be addressed. However, the Hearings Officer believes the actual development of the subject property, through Site Plan Review, is the proper stage to impose such a condition. Right now, the requested Plan Amendment/Zone Change only impacts a small 0.15-acre portion of the subject property. Moreover, the Plan Amendment/Zone Change will not make the problem that the recommended

condition seeks to resolve worse, since there will be no development until the Site Plan Review and other land use reviews are complete.

Moreover, the applicant appears to dispute that such condition would be proper even with the Site Plan Review. The Hearings Officer is unsure. Whether or not the necessary “nexus” and “rough proportionality” tests are met will require a review of the actual development and the problem the City seeks to resolve. The Site Plan Review and related development applications need to be reviewed in detail to complete that analysis, which the Hearings Office is not in a position to do as part of this Plan Amendment/Zone Change application.

Chapter 11 – Growth Management

General Growth Management Policies

(See related policies in Chapter 1, Plan Management and Citizen Involvement and Chapter 10, Natural Forces.)

11-1 The City 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.

FINDING: The City Council has found that this policy is intended to encourage and facilitate a mix of uses, in appropriate locations. The City Council has determined that providing a mix of uses can 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.

The property is situated in the heart of downtown Bend. It is along CET Route 3, with transit stops within ¼ of a mile of the property, in both the east and west direction. Furthermore, the property is located along a planned River Trail, which will provide opportunities for pedestrians and bicyclists, and is in the CB Zone, which is served by network of sidewalks, bike lanes, and parking facilities. Also, as detailed in the recent UGB Expansion work, this area of Bend has the lowest VMT of any area of the City.

Under the existing RS designation, the potential uses and the ability to mix uses are extremely limited. Changing the designation to CB to be consistent with the remainder of the property will allow the property to be efficiently used, it will encourage a mix of uses (office, retail, and restaurant), which will encourage non-automobile travel. This policy would be better met with the proposed CB designation than with the current RS designation.

11-2 The City will encourage infill and redevelopment of appropriate areas within Bend’s Central Core, Opportunity Areas and transit corridors (shown on Figure 11-1).

FINDING: The property is located along a transit corridor. Therefore, this policy encourages infill and redevelopment. The proposed Comprehensive Plan Map Amendment and Zone Change will allow for the efficient use of the land, thereby encouraging the redevelopment of this property, consistent with this policy.

11-4 Streets in the Centers and Corridors, Employment Districts, Neighborhoods, and Opportunity Sites will have the appropriate types of pedestrian, biking, and transit scale amenities to ensure safety, access, and mobility.

FINDING: The property is situated along CET Route 3, with transit stops within ¼ of a mile in both the east and west direction. Furthermore, the property is located along a planned River Trail, which

will provide opportunities for pedestrians and bicyclists. Also, being within the CB Zone, the area is served by a network of sidewalks and parking facilities. The existing conditions, planned easement for the river trail, and public improvements associated with the development application, will ensure that pedestrian, bicycle, and transit facilities are provided in accordance with Development Code requirements, consistent with this policy.

Policies for Centers and Corridors

(See related policies in Chapter 6, Economy.)

11-7 The existing pattern of commercial plan designations shown on the Comprehensive Plan Map along arterial and collector streets including Newport Avenue and Galveston Avenue will not be extended into residentially designated areas unless approved through an Area Plan.

FINDING: This policy is intended to prevent commercial areas from sprawling into existing Residential Zones. As previously noted, the references to Galveston and Newport appear to be directed to two areas located west of the Deschutes River.

Those areas have frontage along the referenced arterials, and they do not all have clear features (such as streets, alleys, or other topographic features) separating them from the abutting residential zones. Unlike those areas to the west of the Deschutes River, the subject property has a significant topographic feature separating it from nearby residential development (the Deschutes River), it is abutted by commercially designated property to the north, and commercially developed properties to the south.

On the east side of the Newport Avenue Bridge, the pattern of Comprehensive Plan designations include a commercial designation extending along the Newport Avenue arterial all the way to the Deschutes River (on the north side of Newport Avenue). On the south side of Newport Avenue, east of the river (the subject property), the Commercial zone stops short of the Deschutes River. Extending a Commercial Zone to the western edge of the subject property would be consistent with the existing pattern along Newport Avenue (to the north) and it would utilize the Deschutes River as a clear line of demarcation. Following the existing pattern and utilizing the Deschutes River as a separating line will not impose upon any existing developed residentially designated areas. The proposal follows the existing development pattern and therefore is consistent with this policy.

11-8 New commercially designated areas are encouraged to develop with mixed-use centers to include housing, open space, commercial development, and other employment uses.

FINDING: Approving the Plan Amendment/Zone Change will allow the applicant to execute the associated Site Plan. As shown on that Site Plan, the development proposal includes commercial and employment uses, along with public and private open spaces, as encouraged by this policy.

11-9 The City will encourage development and redevelopment in commercial corridors that is transit-supportive and offers safe and convenient access and connections for all modes.

FINDING: The subject property is situated along CET Route 3, which has bus stops within $\frac{1}{4}$ of a mile in both the east and west directions. Furthermore, the property is located along a planned River Trail, which will provide opportunities for pedestrians and bicyclists. Also, being within the CB Zone, the area is served by network of sidewalks and public parking facilities. It can be argued that a property with better access to all modes of transportation could not be found within the City.

Given the access to multiple modes of safe transportation, development and redevelopment of this area is encouraged by this policy.

Policies for Employment Districts

11-13 The City will periodically review existing development and use patterns on industrial and commercial lands. The City may consider modifying Comprehensive Plan designations and Zoning to better respond to opportunities for redevelopment and revitalization of employment lands in underutilized areas.

FINDING: The currently proposed Plan Amendment/Zone Change will provide an owner-initiated opportunity to modify the Comprehensive Plan Map and Zoning to respond to a specific opportunity for revitalization and redevelopment of a unique site in Bend. Pursuant to this policy, the City may modify the Comprehensive Plan designation and Zoning. This application is accompanied by a proposed Site Plan, which specifically shows how redevelopment will occur.

Criterion #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;

FINDING: The subject property is located in the heart of Downtown Bend. It is in an area that has been developed with public facilities, services, and transportation networks since Bend's infancy. Historically, the overall property has been developed with both commercial development and residential development. Currently, the property (including both the RS area and a portion of the CB area) is developed with only a single-family home. The total area of the Plan Amendment/Zone Change is 0.15-acres, while the buildable area of the Map Amendment area is only approximately 3,000 square feet.

Public facilities and services that would potentially be affected by the Plan Amendment/Zone Change include sewer, water, police, fire, parks and transportation. Given the small amount of land under review, the difference in impacts to facilities and services from an RS designation to CB are minor.

The Bend Development Code establishes "development" as the appropriate time to extend facilities. Site Plan approval criterion 4.2.500.D.7 establishes that "*All required public facilities have adequate capacity, as determined by the City, to serve the proposed use.*" Furthermore, BDC Chapter 3.4 requires that public facilities be extended in accordance with City Standards.

The current proposal is accompanied by a Site Plan Review application for a multiple-use commercial development. The Site Plan is supported by analyses of water, sewer, and the transportation system. A comprehensive review of the Site Plan Review standards and approval criteria, impacts to public facilities, and public facility needs are detailed in the concurrent Site Plan Review application. By extending water and sewer laterals in accordance with City Standards, and providing transportation mitigation measures as detailed in the Traffic Report, the site of the new development will be provided with adequate public facilities prior to occupancy of the new development.

Regarding public services (i.e., schools, parks, fire and police), the property is within the incorporated area of the City of Bend, the Bend La Pine School District boundary, and the Bend Park and Recreation District boundary.

Schools: The Bend-La Pine School District regularly completes Facilities Plans that ensure capacity is provided throughout the District service area. The most recent Facilities Assessment was completed in 2016, and that study utilized densities forecast in the City of Bend Comprehensive Plan. The Comprehensive Plan is based upon the Urbanization Study, the Housing Needs Analysis, and ultimately on the Buildable Lands Inventory (BLI). As detailed above, the BLI assumed property within the WOZ (within 100 feet of the ordinary high way mark) was "physically constrained" and "unbuildable." Those same assumptions therefore were carried over to the 2016 Sites and Facilities Assessment. Ultimately, changing 0.15 acres and approximately 3,000 square feet of buildable area from an RS designation to a CB designation will not impact the School District's available capacity.

Parks: The subject property is located within the BPRD's boundaries. The Park District has a Comprehensive Plan to ensure park capacity is provided throughout the District's service area. The subject is in close proximity to Drake Park, Brandis Square Park, and Brooks Park. Furthermore, the applicant has coordinated with the Park District and proposes a public access easement for the Deschutes River Trail improvement and expansion. Park Facilities and Services are adequate to accommodate the change from RS to CB.

For the reasons explained above, and as noted in this section, since development is the proper time to extend services and facilities, the Hearings Officer is of the belief that the right time to require the necessary trail easement is at the time of development. In this case, that is likely with the Site Plan Review application.

Fire and Police Protection: The property is located within the City of Bend, which is served by City Police and Fire Departments. Changing the small 0.15-acre area from RS to CB will not significantly impact Fire and Police Service needs. Also, the planned development will be accommodated by an increased property tax base, which will be directed to the City's General Fund and allocated to provide police and fire services throughout the City.

The combination of the built facilities, public facilities plans, and the Development Code requirements for development (Site Plan Review and Subdivision applications) ensure that adequate public facilities are currently provided, or will be provided concurrent with development, in conformance with this approval criterion.

Since the Hearings Officer has not been tasked with reviewing the Site Plan Review application, he is not sure whether or not the proposed development is the highest impact use. The Hearings Officer is concerned that if the applicant withdraws the Site Plan Review application after receiving the zone change, that a new development could be proposed that may not be consistent with this policy.

Importantly, because the Hearings Officer is only making a recommendation and because no one addressed this issue in at the first public hearing, the Hearings Officer believes it is best to let the applicant and other interested parties, including staff, to address whether this is in fact a concern. In that regard, before issuing a final decision, the City Council may wish to consider whether a condition of approval under BDC 4.1.427 is appropriate to ensure that the proposed Site Plan Review application being reviewed by staff in a separate proceeding will be timely initiated to avoid another, more impactful use from being developed on the subject property.

Criterion #4. Evidence of change in the neighborhood or community or a mistake or inconsistency in the Comprehensive Plan or Land Use District Map regarding the property that is the subject of the application; and

FINDING: The applicant contends that there has been a change in the neighborhood, and that there is also an inconsistency in the Comprehensive Plan and supporting documents as they pertain to the subject property.

Change of Neighborhood/Community

The first adopted Comprehensive Plan Map (1979 General Plan Map) designated the subject property as Park. In subsequent Comprehensive Plan Maps, the property was identified as RS. This property has not been developed as a park, and the Park District does not identify the property on its Comprehensive Plan as a park. The property contains a single-family home, which is partially in the RS designated area and partially in the CB designated area (where it is non-conforming).

Since first being designated Park, and then later designated RS (and developed with a single-family home), a series of changes have occurred. Those changes are noted below.

City of Bend Growth and Downtown Bend Growth

Since the original Comprehensive Plan adoption and RS designation (on the small 0.15-acre area), the City of Bend overall, and downtown core in particular, have experienced a number of economic booms and busts. Over the past decade, the Bend area has ranked as one of the fastest growing communities in the state of Oregon. Bend has a current population exceeding 86,000 residents and the Bend area has an estimated long-range population of approximately 130,000 residents.

The Comprehensive Plan notes that Bend's employment lands serve the needs of the region and that Bend is the center for health care, art and culture, higher education, retail, tourism, and employment in the Central Oregon Region. Given the vibrant economy and regional center character, the City is experiencing very low vacancy rates, which impact the ability to operate business, particularly in downtown Bend. The most recent Compass Commercial Report (*Compass Points 2017 Summary / 2018 Forecast*) indicates a 4.1% vacancy rate for office use in downtown Bend and a 0.0% vacancy rate for retail (which includes restaurant space) in downtown Bend.

Adoption of the Waterway Overlay Zone

The City adopted a Deschutes River Design Review Ordinance in 1985 (NS-1414) and a Flood Plain Combining Zone Ordinance in 1987 (NS-1462), to regulate development along the Deschutes River. The main purpose of Deschutes River Design Review is to maintain the scenic quality within and adjacent to the Deschutes River. The WOZ was adopted in 2002. It combined four different subareas (the existing Deschutes River Design Review Sub Zone and Floodplain Combining Sub Zone, the new Goal 5 Riparian Corridor Sub Zone, and the River Corridor Areas of Special Interest Sub Zone) into one code section. Each sub-area has its own set of standards and setbacks for protection. The adopted WOZ standards ensure the appropriate level of development/design restrictions along the Deschutes River.

Newport Bridge Construction

In 2006, the Newport Avenue Bridge was enlarged and expanded. The larger bridge impacted potential connections, access options, and overall residential privacy along Newport Avenue. Furthermore, the bridge design and location dictate current and future Newport Avenue design options, width, and potential street improvements.

Public Transit System

Beginning in the early 2000s, the City of Bend initiated a fixed-route public transportation system. This system continues to grow, develop, and experience increases in ridership. Currently Route 3 is located on Newport Avenue, with multiple bus stops within a ¼ mile radius of the subject property.

Inconsistency

While the small 0.15-acre area of the property is designated RS on the Comprehensive Plan Map, a number of documents that support the Comprehensive Plan suggest that the subject property is often considered commercial all the way to the western boundary (to the Deschutes River), which is a significant natural feature and a reasonable line of demarcation.

Buildable Lands Inventory

Figure EX-2. Bend Residential and Employment Land

Figure EX-2. Bend Residential and Employment Land

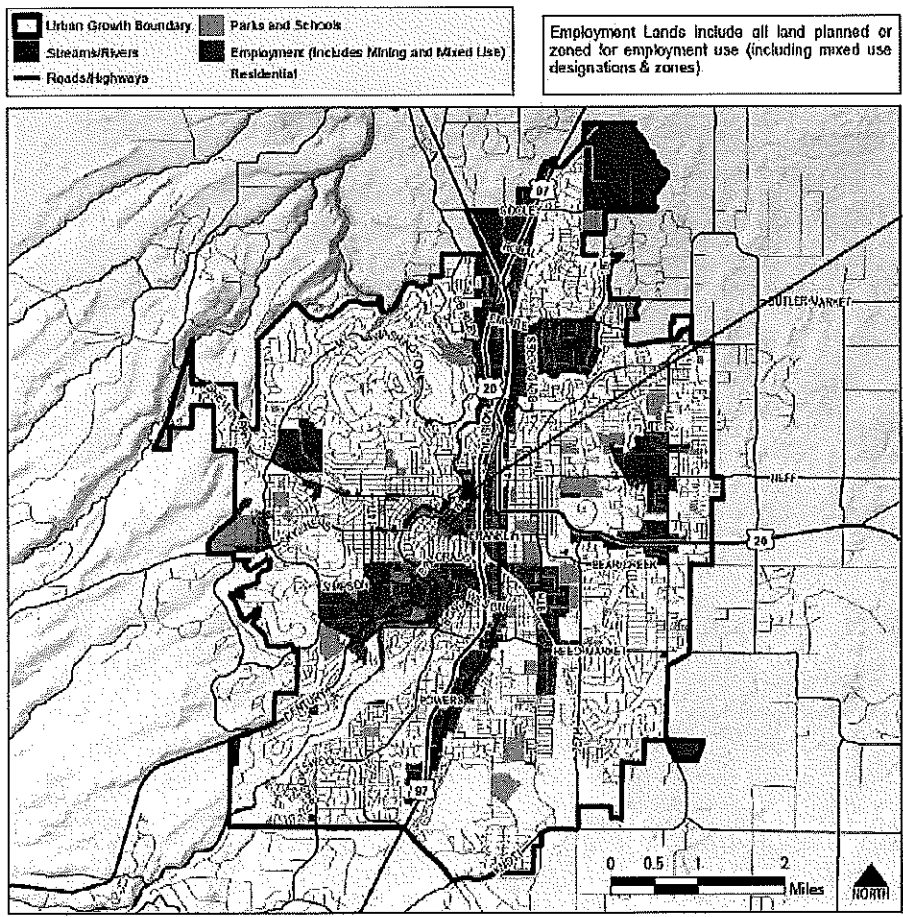
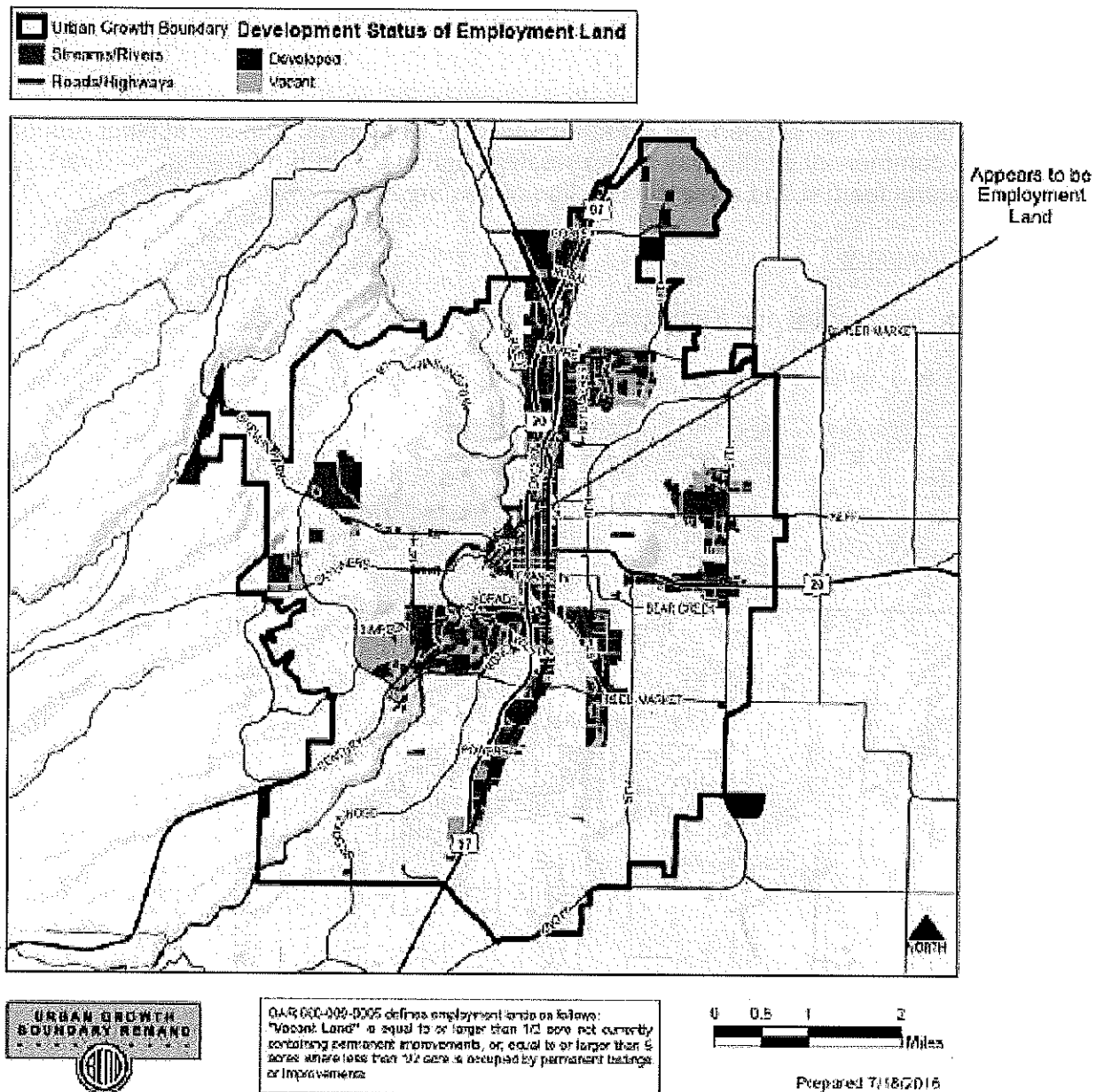


Figure 5. Employment BLI Status Map

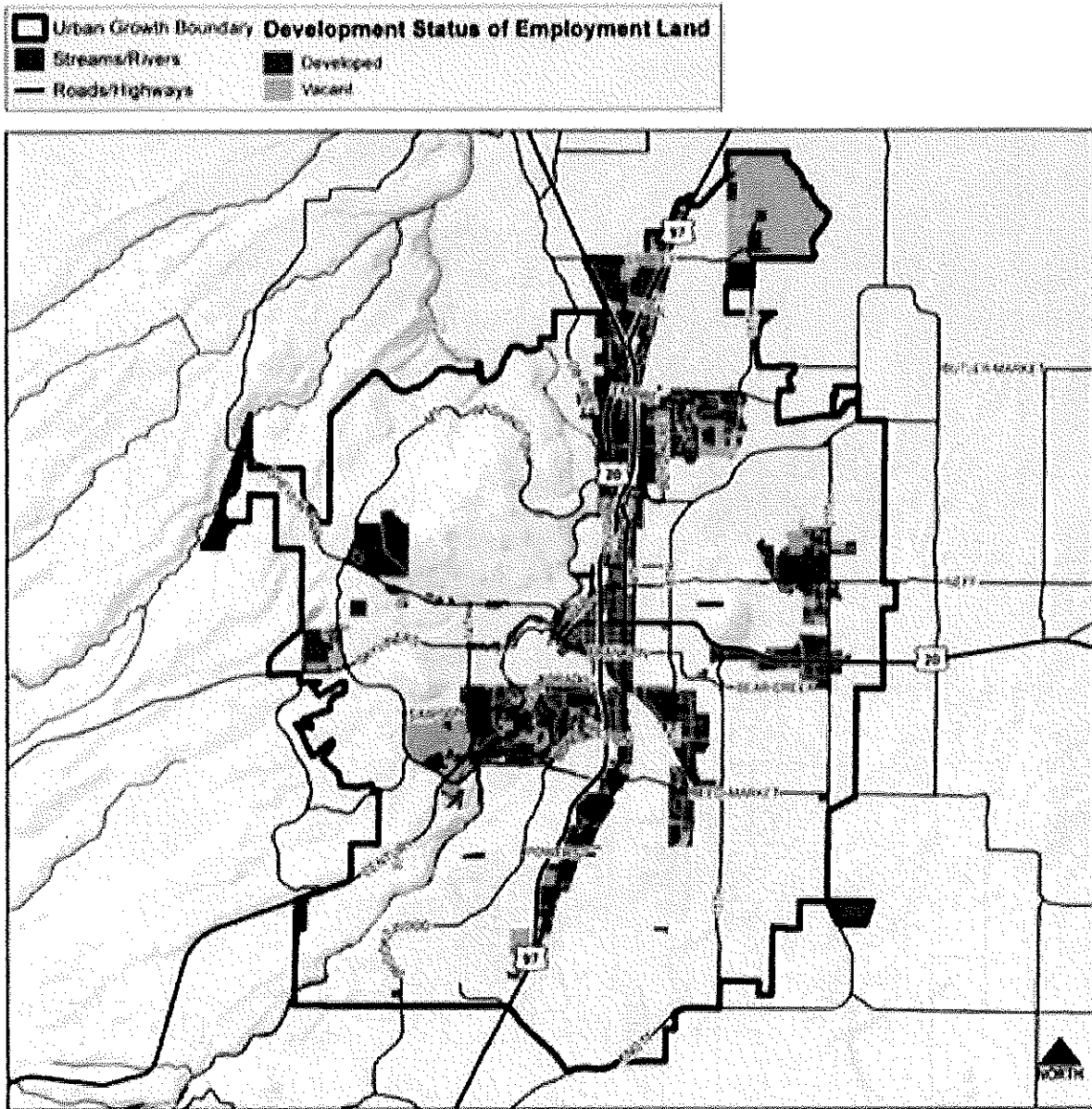
Figure 5 Employment BLI Status Map (2015)



Economic Opportunity Analysis

Map 1. Employment BLI Status

Map 1. Employment BLI Status



QAR 650-009-0005 defines employment lands as follows:
"Vacant Land" is equal to or larger than 1/2 acre not currently containing permanent improvements, or, equal to or larger than 5 acres where less than 1/2 acre is occupied by permanent buildings or improvements.



Prepared 7/18/2016

Figure 11-2

Figure 11-2: Centers and Corridors Future Urban Form Diagram

BEND FUTURE URBAN FORM DIAGRAM CENTERS AND CORRIDORS

This diagram is conceptual, non-regulatory, and subject to change.

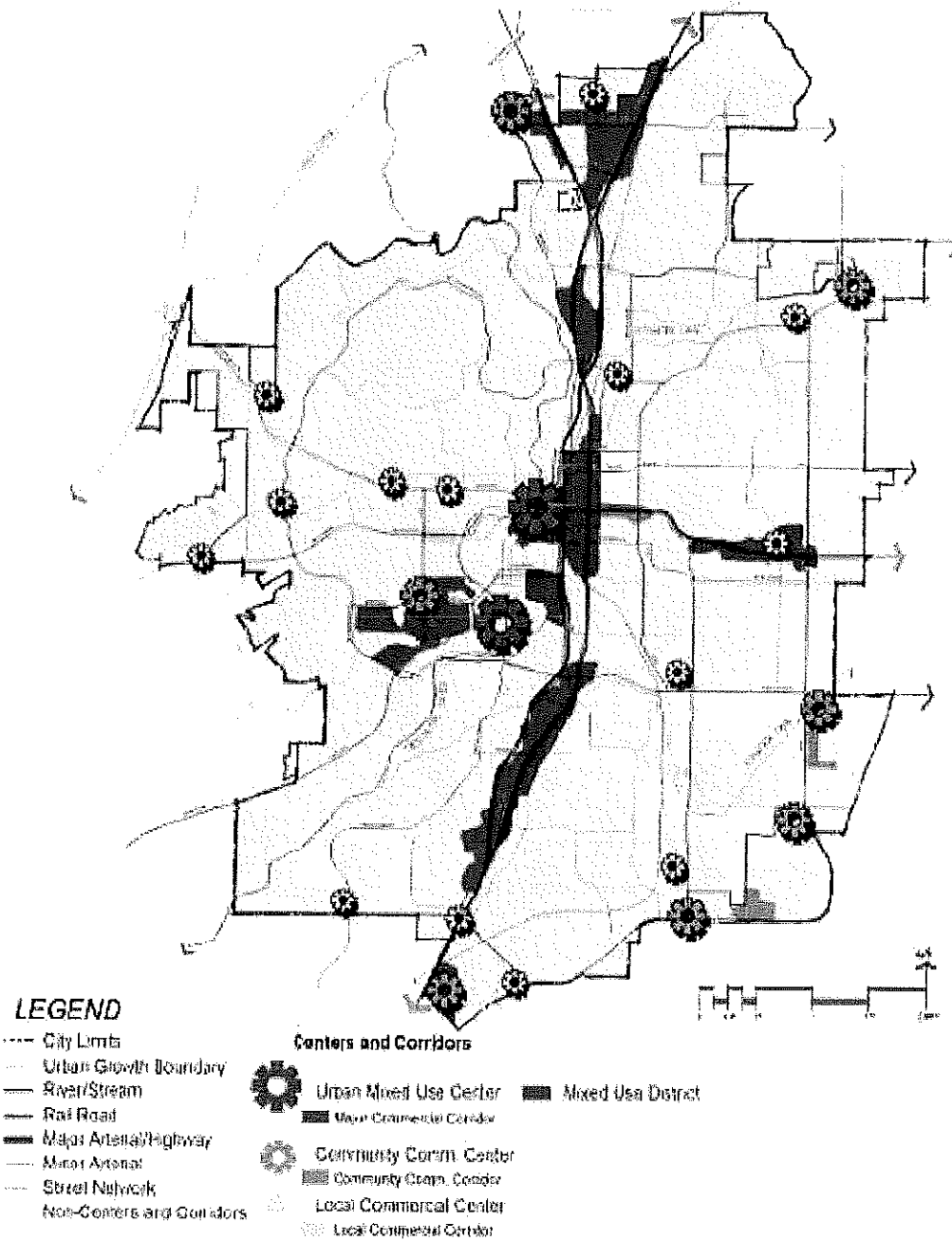
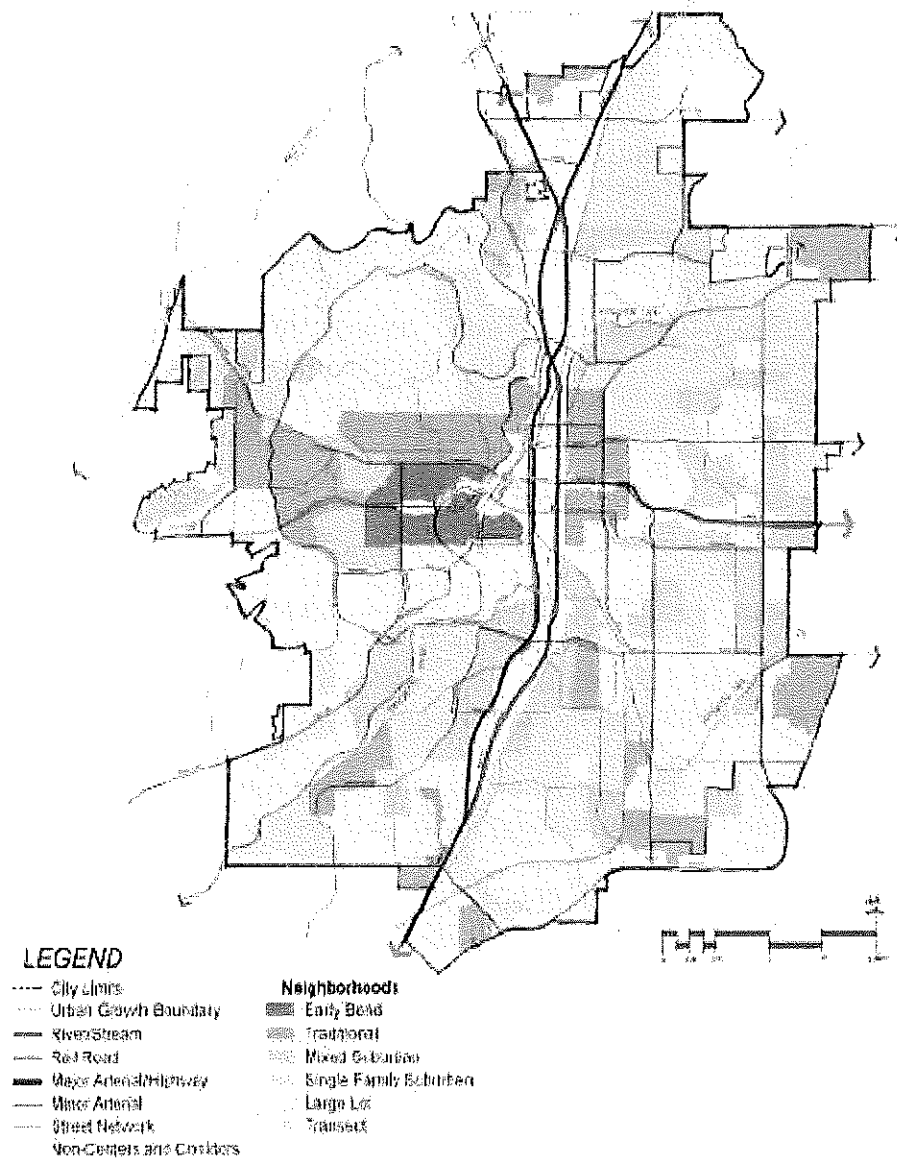


Figure 11-4

Figure 11-4: Neighborhoods Future Urban Form Diagram

BEND FUTURE URBAN FORM DIAGRAM NEIGHBORHOODS

The diagram is conceptual, non-regulatory, and subject to change.



Criterion #5. Approval of the request is consistent with the provisions of BDC 4.6.600, Transportation Planning Rule Compliance.

4.6.600 Transportation Planning Rule Compliance.

When a development application includes a proposed Comprehensive Plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

Because the applicant is proposing a Plan Amendment/Zone Change, the application is subject to compliance with the Oregon Transportation Planning Rule (OAR 660-012-0060), also known as the TPR. In general terms, the TPR requires the City to determine whether the applicant's proposal will "significantly affect" a transportation facility in one or more ways.

FINDING: The applicant submitted a Traffic Impact Analysis (TIA) prepared by Transight Consulting, LLC. The report includes a detailed assessment of the applicability of the TPR and the proposal's compliance with the TPR. As detailed in the report, the proposal will not significantly affect any existing or planned transportation facility, and therefore the proposal is consistent with the TPR.

Summary of TIA Findings

The following summarizes key findings of the proposed 69 Newport development:

- The proposed application includes two separate two-story buildings comprising approximately 10,900 square-feet of building space located on two parcels within the downtown core area.*
- Access to the site will be from shared on-street parking within the downtown core and off-street parking located between the two buildings with right-in, right-out access onto Newport Avenue.*
- All of the surrounding intersections operate acceptably today, in the future buildout year, and in the future build-out year with the proposed project.*
- No safety issues were identified within the project area. The proposed access location provides sight lines and corner clearance in compliance with AASHTO and City requirements.*
- The western parcel is split-zoned, with remnant standard density residential zoning along the riverfront. The proposal includes rezoning of this land to Central Business District, allowing the river to separate the residential uses west of the Deschutes River from the downtown core area to its east.*
- The rezone analysis did not identify a significant effect and shows that the rezone provides a more functional and compliant overall site. The application will support the extension of the Deschutes River Trail, provide an accessible crossing of Newport Avenue as identified within BPRD plans, and removes residential backing maneuvers from the arterial system.*

Project recommendations to support the proposed development:

- Access onto Newport Avenue should be provided through a driveway apron design that maintains priority for sidewalk users and clear sight lines of approaching cyclists and pedestrians. The existing driveways along Newport Avenue should be removed and replaced with new sidewalks.*

- *The site layout and design supports potential future BPRD plans to create an enhanced pedestrian corridor and Deschutes River Trail connection along NW Newport Avenue. The applicant should continue to work with BPRD to ensure appropriate accommodations are in place.*

The Hearings Officer notes that the TIA is based on the proposed use as described in the Site Plan Review application. It is unclear to the Hearings Officer, based on the record before him, whether this proposed use is the highest impact use and whether a condition of approval should be required under BDC 4.1.427 to ensure the Plan Amendment/Zone Change will not have an unintended traffic impact should the current development proposal be withdrawn. The applicant should address this concern before the City Council.

CONCLUSIONS:

The Hearings Officer finds that the proposed Comprehensive Plan Map Amendment and Zone Change from RS to CB for a 0.15-acre portion of the subject property at 69 NW Newport Avenue meets all applicable Development Code criteria and the Transportation Planning Rule.