

## RESOLUTION NO. 3178

**A RESOLUTION DECLARING THE CITY COUNCIL'S INTENT TO CHANGE THE BEND ZONING MAP TO REMOVE 2.4 ACRES FROM THE BEND CENTRAL DISTRICT AND TO AMEND THE BEND DEVELOPMENT CODE TO REFLECT SUCH REMOVAL AND RESTRICT AUTOMOBILE-DEPENDENT USES AT A SPECIFIC SITE WITHIN THE DISTRICT.**

### Findings:

- A. The applicant, Les Schwab Tire Centers, submitted a Type III application to amend the Development Code and Zoning Map to remove a 2.4-acre area of land bounded by 3<sup>rd</sup> Street, Clay Avenue, 4<sup>th</sup> Street and Burnside Avenue ("Subject Property") from the Bend Central District ("BCD"), and to restrict automobile-dependent uses on a specified site within the BCD.
- B. After a public hearing on August 26, 2019, the Planning Commission recommended denial of the application.
- C. The City Council held a public hearing on September 18, 2019, and heard testimony from the applicant and the public. The written record was left open, and was closed on October 9, 2019. The Council deliberated during their regular meeting on October 16, 2019, and reached an initial determination that the application met the criteria set forth in Bend Development Code 4.6.300 and should be approved.
- D. The Council finds that the public health and welfare and convenience will best be served by the proposed change of the zone by the adoption of an Intent to Rezone.
- E. The City Council hereby resolves that a Resolution of Intent to Rezone pursuant to Section 4.6.400 of the Bend Development Code be enacted to accomplish the removal of the Subject Property from the Bend Central District, and to amend the Bend Development Code to restrict automobile-dependent uses at the applicant's current property, 105 NE Franklin Avenue ("Existing Site"). Council further adopts and incorporates these findings and the findings in the attached Exhibit B.
- F. Because this Resolution is a binding commitment when the specified conditions are met, this Resolution is the final, appealable decision of the City.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF BEND RESOLVES AS FOLLOWS:

Section 1. The City Council of the City of Bend hereby declares its intent to amend the Bend Development Code to (1) change the zoning of the Subject Property to remove the Subject property from the Bend Central District, and (2) restrict auto-dependent uses on the existing site within the BCD, as set forth in the attached Exhibit A.

Section 2. This approval is based on the applicant's submitted application information and attachments, written and oral testimony in the record, the testimony received at the public

hearing and the continued written record, as well as the Council's deliberation and adopted findings in Exhibit B.

Section 3. This Resolution of Intent to Rezone is subject to the following special conditions (in addition to the requirements of Bend Development Code Section 4.6.400):

- A. Any substantial change to the approved development code and zoning map amendment will require a new land use application and approval. The approval is specific to the applicant, Les Schwab Tire Centers.
- B. The applicant must complete all conditions, stipulations, and limitations contained within the Resolution of Intent to Rezone prior to adoption of an ordinance effectuating the removal of the Subject Property from the BCD and restricting automobile-dependent use at the Existing Site within the BCD.
- C. All other code requirements of the BCD still apply to the Subject Property (e.g., setbacks, frontage improvements, architectural standards, etc.).
- D. The applicant must record a deed restriction, in a form acceptable to the City Attorney's office, on the 105 NE Franklin Avenue property (the Existing Site) that prohibits automobile-dependent uses at that site, prior to issuance of the building permit for development of the Subject Property or sale of the Existing Site, whichever occurs first. The deed restriction may provide that the applicant can continue its current use of the Existing Site until the certificate of occupancy is issued for the Subject Property.

Section 4. This Resolution of Intent to Rezone shall constitute a binding commitment on the City of Bend to remove the Subject Property from the BCD, to prohibit automobile-dependent uses of the Existing Site within the BCD, and to amend the Development Code accordingly, upon fulfillment by the applicant/property owner of all the terms and conditions set forth above.

Section 5. If the applicant has not completed all conditions of approval contained within this Resolution within five years of its effective date, this Resolution is void.

Adopted by roll call vote of the Bend City Council on the 6<sup>th</sup> day of November, 2019.

YES: Sally Russell, Mayor  
Bruce Abernethy  
Bill Moseley  
Justin Livingston  
Chris Piper

NO: Barb Campbell  
Gena Goodman-Campbell



Sally Russell, Mayor

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



Mary Alice Winters, City Attorney



**2.7.3200 Bend Central District (BCD).**

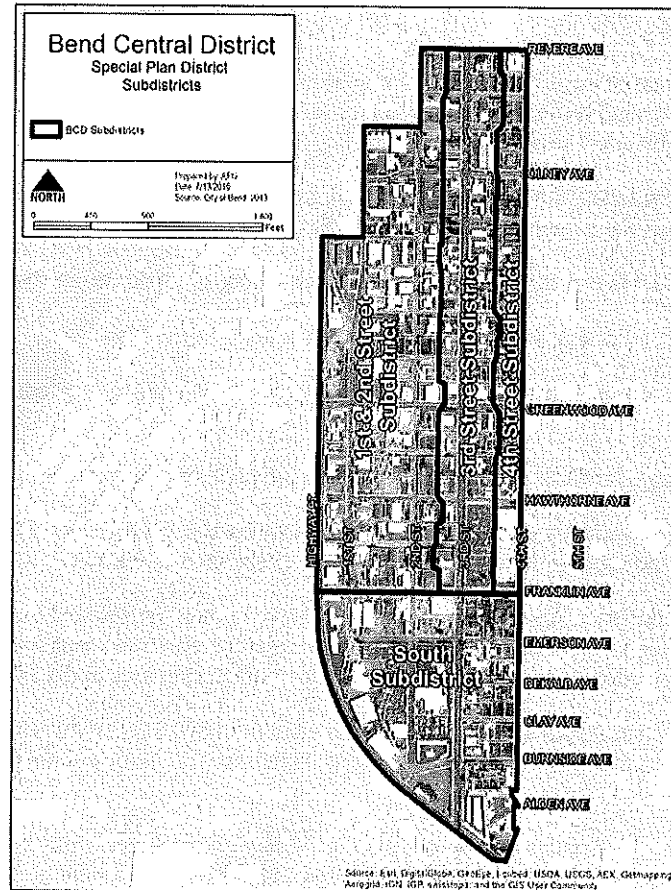
The Bend Central District is intended to implement the goals and objectives for the creative redevelopment of the central Third Street Corridor and surrounding areas west to the Parkway and east to and including 4th Street as indicated below:

- A. Provide for a wide range of mixed residential, commercial and office uses throughout the area and, depending on the parcel and its surroundings, vertical mixed use (i.e., a mix of uses within the same building), with an emphasis on retail and entertainment uses at the street level.
- B. Provide a variety of residential development types and greater density of development, with a transition area adjacent to the existing residential neighborhood east of 4th Street.
- C. Provide for development that is supportive of transit by encouraging a pedestrian-friendly environment.
- D. Provide development and design standards that support the goals of the Plan.
- E. Limit development of low-intensity uses while allowing continuation of existing industrial and manufacturing uses.
- F. Provide reduced parking standards and encourage alternative parking arrangements.

The Bend Central District has distinctly different characteristics within the Bend Central District boundary. Subdistricts that recognize and support these characteristics are established as follows:

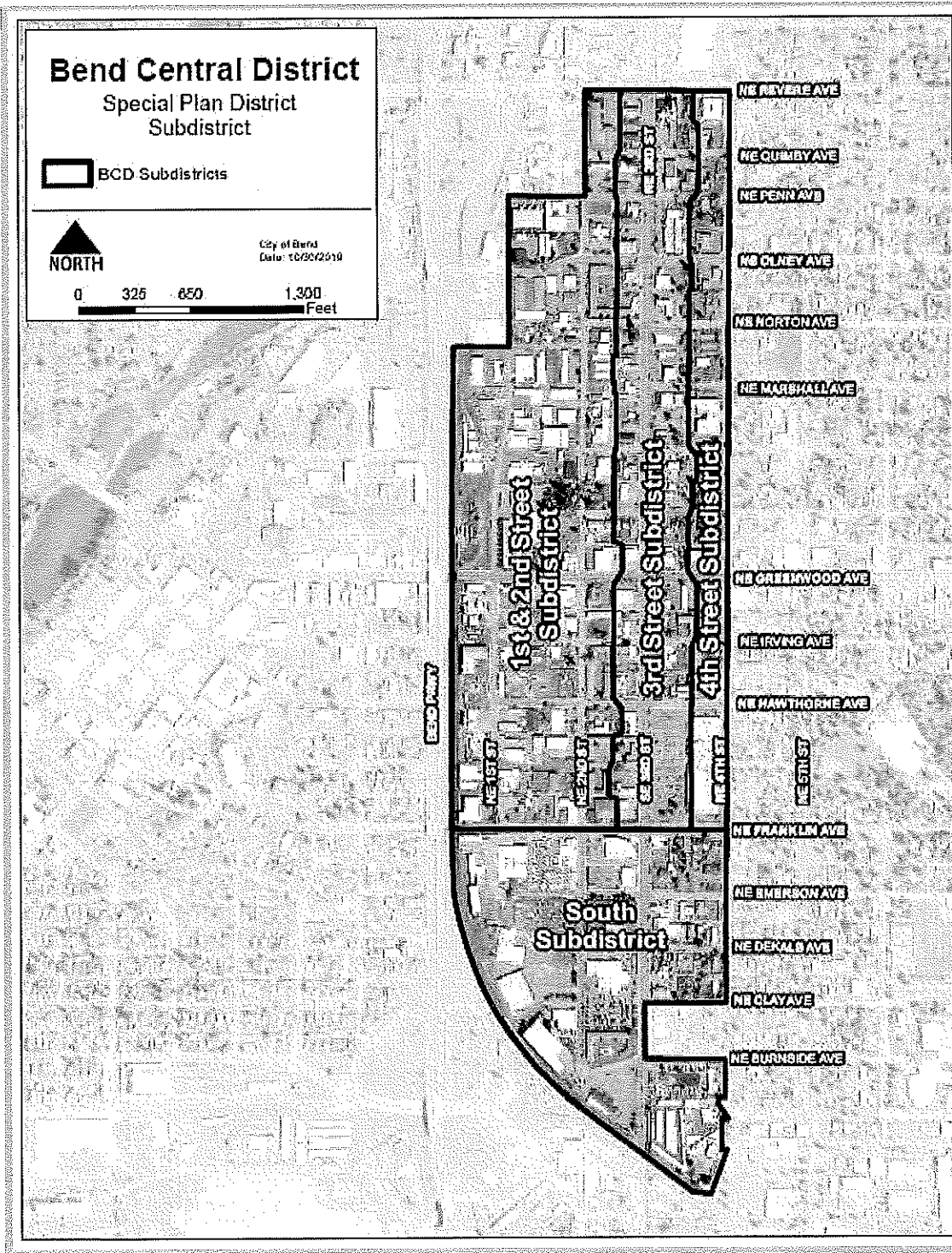
1. 1st/2nd Street Subdistrict. Applies to properties in the vicinity of 1st and 2nd Streets within the BCD and is intended to provide for a mix of office, higher density residential, live/work and small-scale retail uses while also allowing for continuation of existing light industrial/manufacturing uses in the area.
2. 3rd Street Subdistrict. Applies to properties in the vicinity of 3rd Street between Revere and Franklin Streets and is intended to provide a range of mixed uses including large-scale commercial, retail and limited residential uses.
3. 4th Street Subdistrict. Applies to properties in the vicinity of 4th Street within the BCD and is intended to provide a transition between the more intense central area and existing residential neighborhoods to the east.
4. South Subdistrict. Applies to properties south of Franklin Avenue along and between 2nd and 3rd Streets and is intended to provide a range of mixed uses including high density multifamily and office space above ground floor retail/service uses.

Figure 2.7.3210 Subdistrict Map



[Ord. NS-2271, 2016]

Figure 2.7.3210 Subdistrict Map



**2.7.3210 Applicability.**

A. Applicability. In addition to the provisions of the underlying zone, the standards and requirements of this section apply to lands within the BCD boundary as depicted on Figure 2.7.3210. These provisions modify existing standards of the Bend Development Code by applying requirements, limiting allowable uses, or allowing exceptions to general regulations. Where there is a conflict between the provisions of the BCD and those of the underlying zone or other portions of the Development Code, the provisions of this district will control. [Ord. NS-2303, 2018; Ord. NS-2271, 2016]

**2.7.3220 Land Uses.**

A. Permitted and Conditional Uses. The land uses listed in Table 2.7.3220 are allowed in BCD subdistricts, subject to the provisions of this chapter. Only land uses that are listed in Table 2.7.3220 and land uses that are approved as “similar” to those in Table 2.7.3220 may be permitted or conditionally allowed. The land uses identified with a “C” in Table 2.7.3220 require Conditional Use Permit approval prior to development, in accordance with BDC Chapter 4.4. Land uses identified with an “L” in Table 2.7.3220 are allowed with limitations in accordance with subsection (D) of this section.

B. Existing Uses. Uses and structures that are not in conformance with the provisions in this section but that were lawfully established within the BCD prior to the adoption of this code are considered a permitted use. Expansion or enlargement 25 percent or less of the above referenced uses or structures that are nonresidential will be subject to the provisions of BDC Chapter 4.2, Minimum Development Standards Review, Site Plan Review and Design Review. For expansion or enlargement greater than 25 percent, the conditional use criteria, standards and conditions within BDC Chapter 4.4, Conditional Use Permits, will also apply. Conditions of prior approvals will continue to apply unless modified in conformance with BDC 4.1.1325, Modification of Approval.

C. Determination of Similar Land Use. Similar land use determinations shall be made in conformance with the procedures in BDC 4.1.1400, Declaratory Ruling.

**Table 2.7.3220****Permitted Uses in the Bend Central District by Subdistrict**

Land Use	1st/2nd Street	3rd Street	4th Street	South
<b>Residential</b>				
Single-Family Detached Dwelling	N	N	N	N
Attached Single-Family Townhomes	N	L (see subsection (D)(1) of this section)	P	P
Multifamily Residential	L (see subsection (D)(1) of this section)	L (see subsection (D)(1) of this section)	P	P
Residential as Part of Mixed-Use Development	P	P	P	P
<u>Residential as Part of Mixed-Use Development</u>	P	P	P	P
<b>Commercial</b>				
Retail Sales and Service	L (see subsection (D)(2) of this section)	P	L (see subsection (D)(2) of this section)	P**
Retail Sales and Service (Auto Dependent*)	N	N	N	N
Retail Sales and Service (Auto Oriented*)	N	C	N	N
*Medical Marijuana Dispensary and Marijuana Retailer	L (see subsection (D)(2) of this section)	P	L (see subsection (D)(2) of this section)	P
*Marijuana Wholesale (more than 75% of sales are wholesale)	P	P	C	C



Land Use	1st/2nd Street	3rd Street	4th Street	South
*Marijuana Testing, Research and Development Facilities	P	P	L (see subsection (D)(3) of this section)	P
Restaurants/Food and Beverage Services				
– with drive-through*	N	C	N	N
– without drive-through	P	P	P	P
Offices and Clinics	P	P	L (see subsection (D)(3) of this section)	P
Production Businesses (e.g., IT support centers, biotechnology, software/hardware development, broadcast and production studios)	P	P	L (see subsection (D)(3) of this section)	P
Conference Centers/Meeting Facility Associated with a Hotel/Motel	C	P	N	C
Lodging (bed and breakfast inns, vacation rentals, boarding houses, timeshare)	P	P	P	P
Hotel/Motels	P	P	C	C
Commercial and Public Parking, structure	P	P	C	P
Commercial and Public Parking, surface lot	P	P	P	P
Commercial Storage				
– enclosed in building and on an upper story	C	C	P	N
– not enclosed in building	N	N	N	N
– enclosed in building on ground floor (i.e., mini-storage)	N	N	N	N
Entertainment and Recreation				
– enclosed in building (e.g., theater)	L/C (see subsection (D)(6) of this section)	L/C (see subsection (D)(6) of this section)	N	L/C (see subsection (D)(6) of this section)
– not enclosed (e.g., amusement)	C	C	N	C
Wholesale Sales (more than 75% of sales are wholesale)	P	P	C	C
Hospital	C	C	C	C
<b>Public and Institutional</b>				
Government – point of service intended to serve the entire City (e.g., City Hall, main library, main post office, main Department of Motor Vehicles service center)	P	P	P	P
Government – branch service intended to serve a portion of the City	P	P	P	P
Government – limited point of service (e.g., public works yards, vehicle storage, etc.)	N	N	N	N
Parks and Open Space	P	P	P	P
Schools	P	P	P	P
Institutions of Higher Education	P	P	P	P
Child Care Facility	P	P	P	P

Land Use	1st/2nd Street	3rd Street	4th Street	South
Clubs and Places of Worship	P	P	P	P
*Utilities (above ground)	P	P	P	P
<b>Industrial</b>				
Manufacturing and Production	L (see subsection (D)(4) of this section)	N	N	N
Warehouse	L (see subsection (D)(5) of this section)	N	N	N
Transportation, Freight and Distribution	C	N	N	N
Industrial Service (e.g., cleaning, repair)	L (see subsection (D)(3) of this section)	N	N	N
Marijuana Grow Sites And Marijuana Producing when Designated as Mixed-Employment, Industrial General or Industrial Light on the Bend Comprehensive Plan	L (see subsection (D)(4) of this section)	N	N	L (see subsection (D)(4) of this section)
*Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products When Designated as Commercial Limited, Mixed-Employment, Industrial General or Industrial Light on the Bend Comprehensive Plan	L (see subsection (D)(4) of this section)	L (see subsection (D)(4) of this section)	L (see subsection (D)(4) of this section)	L (see subsection (D)(4) of this section)
*Marijuana Processing of Cannabinoid Extracts When Designated as Mixed-Employment, Industrial General or Industrial Light on the Bend Comprehensive Plan	L (see subsection (D)(4) of this section)	N	N	L (see subsection (D)(4) of this section)
<b>Miscellaneous</b>				
Small Scale Alternative Energy Systems (i.e., rooftop wind turbine or solar panels)	P	P	P	P
*Small Hydroelectric Facility	P	P	P	P
Wireless and Broadcast Communication Facilities	See BDC Chapter 3.7			

**Key to Permitted Uses**

P = Permitted

N = Not Permitted

C = Conditional Use

L = Permitted with limitations, subject to subsection (D) of this section.

\* Special standards for certain uses subject to Chapter 3.6 BDC.

**\*\*Auto dependent retail sales and service are not permitted on Tax Lots 171232DA08400, 171232DD09700,****171232DD09800, 171232DD09201, 171232DA08200, 171232DA08001, 171232DA07900; the existing use provisions of BDC 2.7.3220.B may not be applied to the referenced property.****D. Limitations.** The following limitations apply to those uses identified as "L" in Table 2.7.3220:

1. New Residential Uses. In order to ensure that the subdistricts retain their established employment focused character, new residential uses in the 1st/2nd St and 3rd St subdistricts are limited as follows:

a. Residential uses that are part of a mixed-use development in which nonresidential uses occupy at least the floor area equivalent to the entire ground floor area of the development area permitted.

b. Residential uses that are part of a mixed-use development in which nonresidential uses occupy less than the floor area equivalent to the entire ground floor area of the development area are conditional.

- c. Residential uses that are not part of a mixed-use development are prohibited.
2. Retail Sales and Service. Retail sales and service uses must not exceed 30,000 square feet per business. Total area of retail sales and service uses combined must not exceed 50,000 square feet per building.
  3. Offices and Clinics and Production Businesses. Offices and clinics and production businesses must not exceed 15,000 square feet per business.
  4. Manufacturing, Production and Industrial Services. Uses must not exceed 20,000 square feet per business and must minimize potential external effects as follows:
    - a. All operations must be conducted entirely within an enclosed building.
    - b. Potential nuisances such as noise, odor, electrical disturbances and other public health nuisances are subject to BC Chapter 13.45.
    - c. Roof-mounted mechanical equipment, such as ventilators and ducts, must be contained within a completely enclosed structure that may include louvers, latticework, or other similar features. This screening requirement does not apply to roof-mounted solar energy systems or wind energy systems.
  5. Warehousing. Warehousing must be accessory/secondary to a primary permitted use (it may not be a single use) and must not exceed 15,000 square feet per building.
  6. Entertainment and Recreation. Entertainment and Recreation uses in all subzones of the BCD that are enclosed in a building shall not exceed 50,000 square feet without a conditional use permit. [Ord. NS-2303, 2018; Ord. NS-2271, 2016]



## **EXHIBIT B**

### **CITY OF BEND CITY COUNCIL FINDINGS IN SUPPORT OF INTENT TO REZONE APPLICATION**

**PROJECT NUMBER:** PZ-19-0177

**FINAL DECISION DATE:** November 6, 2019

**APPLICANT:** Les Schwab Tire Centers

**LOCATION:** The Subject Property encompasses a city block (Block 8 of Keystone Terrace), situated between NE 3<sup>rd</sup> and NE 4<sup>th</sup> Streets, south of NE Clay Avenue and north of NE Burnside Avenue. Tax Lots 4900-5500 on Assessor's Map 17-12-33CC.

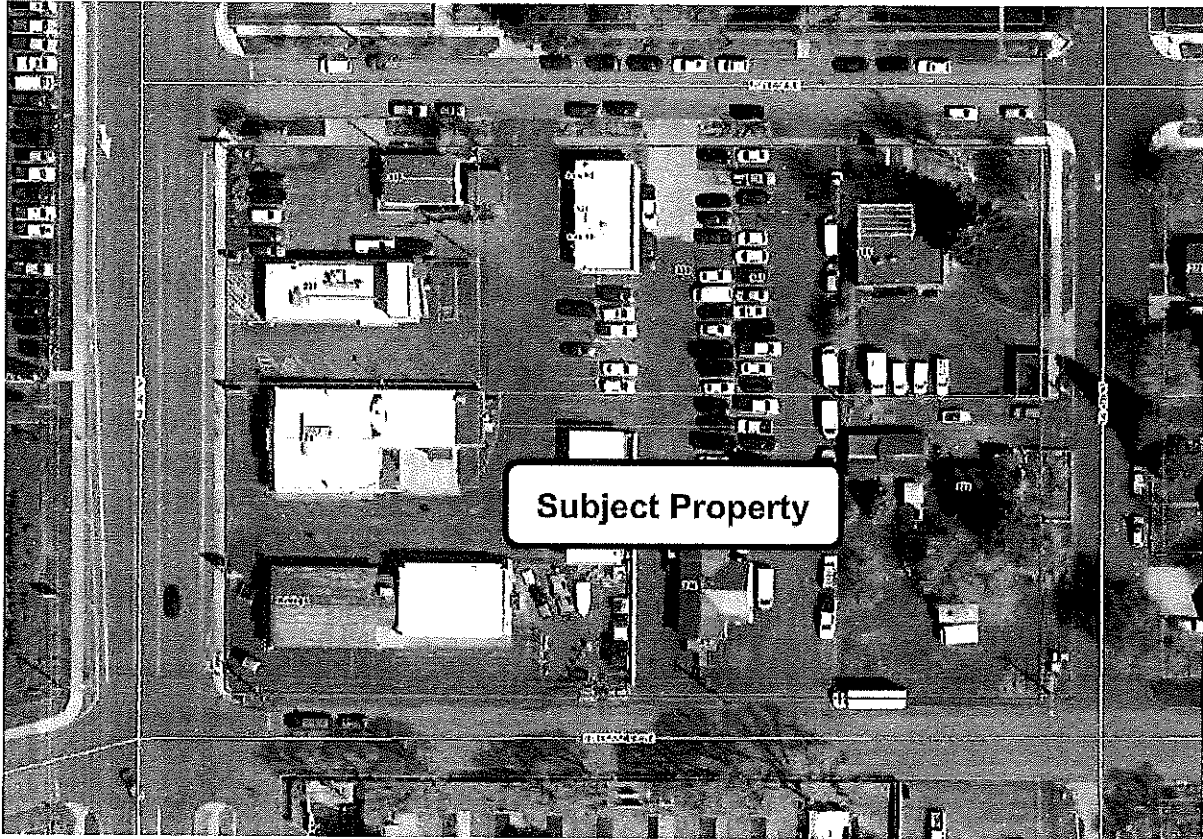
**REQUEST:** Amendment to the City of Bend Zoning Map and an amendment to Bend Central District (BDC) Figure 2.7.3210 – Subdistrict Map to remove the Subject Property from the BCD which does not allow new automobile-dependent uses. The applicant is proposing to relocate its tire sales and service operations from 105 NE Franklin Avenue to the Subject Property. As part of the request, automobile-dependent uses would be prohibited from the existing site at 105 NE Franklin Avenue after relocation through code amendments and a deed restriction. The application is an Intent to Rezone.

#### **APPLICABLE CRITERIA, STANDARDS, AND PROCEDURES:**

- (1) City of Bend Development Code
  - (a) Chapter 2.2, Commercial Zoning Districts (CG)
  - (b) Chapter 2.7, Special Planned Districts (Bend Central District)
  - (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 encompasses a city block (Block 8 of Keystone Terrace), situated between NE 3<sup>rd</sup> and NE 4<sup>th</sup> Streets, south of NE Clay Avenue and north of NE Burnside Avenue. Tax Lots 4900-5500 on Assessor's Map 17-12-33CC.



2. **EXISTING ZONING & GENERAL PLAN DESIGNATION:** The Subject Property is zoned Limited Commercial (CL) and is within the Bend Central District. The Property is also designated CL in the Bend Comprehensive Plan.
3. **SITE DESCRIPTION & SURROUNDING USES:** The 2.4 acre property encompasses one City block, Block 8 of the Keystone Terrace subdivision. It is bound on the west by NE 3<sup>rd</sup> Street, on the east by NE 4<sup>th</sup> Street, on the north by NE Clay Avenue, and on the south by NE Burnside Avenue. The site is developed with eight buildings, parking, circulation, and vehicle storage areas, along with a small amount of landscaping. The existing improvements support Enterprise Rent-a-Car, Hardy's Burgers & Ice Cream, Sangie Hair Spa, Bend Truck Toyz, Vintage Moon Antiques, Cascade Telecommunications, a single-family residence, and an abandoned building.

The properties to the north, west and south are designated Commercial Limited (CL) and the properties to the east are designated Residential High Density (RH). Also, the property extends from 3<sup>rd</sup> Street to the eastern edge of the Bend Central District.

The properties to the north are generally developed with commercial uses within older converted residences. The properties to the west across 3rd Street are developed with an adult entertainment business, a hotel, and an automobile dealership. The property to the south is developed as an RV Park, and the properties to the east are developed as residences

4. **PROPOSAL:** Amendment to the City of Bend Zoning Map and an amendment to Bend Development Code Figure 2.7.3210 – Subdistrict Map to remove the Subject Property from the BCD to allow an automobile-dependent use. The applicant is proposing to relocate tire sales and service operations from 105 NE Franklin Avenue (the “Existing Site”) to the proposed Subject Property. Under the proposal, auto dependent uses would be prohibited from the Existing Site after relocation.

The applicant has submitted a concurrent Site Plan Review application, PZ-19-0267, for a tire services and sales building and a smaller warehouse building. These site plan drawings have been uploaded to the zoning map amendment for reference, but are not the subject of this amendment application. The Site Plan Review application has not yet been deemed complete as of the date of this decision, and will be reviewed administratively by City staff when the application fee has been paid and the final decision has been issued by City Council for this zoning map and text amendment application.

5. **BACKGROUND:** The applicant was initially advised to seek a legislative amendment to the code to allow relocation of automobile-dependent uses within the district if the area dedicated to such uses is reduced. However, there was a concern that this could have set a precedent for allowing individual properties to request an exemption from the use regulations intended to implement the BCD. Instead, the applicant proposed to remove the Subject Property from the BCD while still offering to meet the other development and design requirements of the district. As it is located at the far southeastern edge of the BCD, staff believed such a request would not set a precedent for other properties within the BCD.

Per City Code, the current Les Schwab property at 105 NE Franklin Avenue could be purchased by another tire sales and service business without the need for additional City review since it would be a change in ownership and not a change of use. Therefore, the applicant also proposed that if this application is approved and a new automobile-dependent use is allowed on the Subject Property, then automobile-dependent uses would not be allowed on the Existing Site after the applicant relocates the existing business to the Subject Property, as conditioned in this decision.

In addition, as a condition of approval, an approval would be specific to the applicant only. The “Intent to Rezone” procedure would apply, and the zone change and text amendment would be implemented only upon approval and execution of the Site Plan Review application to relocate the tire store and satisfaction of other conditions, including recording of a deed restriction covering the current Les Schwab location to prevent any automobile-dependent uses at that site.

- 6. PUBLIC NOTICE AND COMMENTS:** On February 21, 2019, the applicant held a neighborhood public meeting in accordance with BDC 4.1.215, which was attended by nine members of the public. General concerns focused on on-site and street parking, sidewalk improvements, noise and hours of operation, building design, and a 3<sup>rd</sup> Street crosswalk. City staff sent the Oregon Department of Land Conservation and Development (DLCD) notice of the pending application on July 19, 2019, more than 35 days prior to the first scheduled public hearing (DLCD File No. 010-19). On July 22, 2019, the City mailed a public hearing notice to property owners within 250 feet of the Subject Property, and representatives of the Larkspur Neighborhood Association. The property was posted with public hearing notice signs on all four frontages for at least 10 days prior to the hearing in accordance with BDC 4.1.125.

Four individuals submitted comments prior to completion of the staff report, and an additional 18 individual submitted comments prior to the Planning Commission public hearing, all of which were uploaded to ePlans. The majority of the individuals noted that the request is inconsistent with the intent of the BCD, and making an exception for an auto-dependent use is contrary to the vision for the District. Other concerns centered on the additional generated traffic and the associated safety concerns with existing unsafe turning movements, proximity to the railroad underpass, and bus routes to and from Bend High School. Three of the individuals supported the proposal.

The Planning Commission held a public hearing on August 26, 2019; ten individuals provided oral testimony (nine opposed, one in support). After considering testimony and deliberation, the Planning Commission voted to recommend denial of the application (five in support of denial and one opposed to denial).

On September 3, 2019, the City mailed a public hearing notice to property owners within 250 feet of the Subject Property, the land use representative of the Larkspur Neighborhood Association, and all parties of record. The property was posted with public hearing notice signs on all four frontages for at least ten days prior to the hearing in accordance with BDC 4.1.125.

At the September 18, 2019, public hearing, the City Council closed the oral testimony portion of the hearing and extended the written record on the following schedule: all new testimony and evidence by any party by 4 p.m. on September 25; rebuttal to new evidence or testimony by any party by 4 p.m. on October 2; and any rebuttal and final written argument by the applicant by 4 p.m. on October 9. Council received 22 letters prior to the public hearing—12 in favor and 10 opposed. At the hearing ten individuals testified, five in favor, four opposed and one neutral. During the period when the written record was held open, Council received nine letters of testimony—three in favor, three opposed, one neutral and two applicant rebuttal documents. All documents received by City staff within these timeframes were uploaded to ePlans under PZ-19-0177 (subfolder Hearings Documents/Council public hearing).



- 6. APPLICATION ACCEPTANCE DATE:** This Development Code Amendment application was submitted on March 13, 2019. Additional required information was uploaded to ePlans on July 17, 2019. The application was deemed complete on July 19, 2019.

#### **APPLICATION OF THE CRITERIA:**

#### **CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE**

All applicable criteria and policies related to the request are addressed in the findings below.

#### **CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS**

##### **4.6.300 Quasi-Judicial Amendments**

- A. Applicability, Procedure and Authority.** Quasi-judicial amendments generally refer to a plan amendment or zone change affecting a single or limited group of properties and that involves the application of existing policy to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedure, as governed by BDC Chapter 4.1, Development Review and Procedures, using the standards of approval in subsection (B) and/or (C) of this section, as applicable. Based on the applicant's ability to satisfy the approval criteria, the applicant may be approved, approved with conditions, or denied.

**FINDING:** The zoning map and text amendment repeals regulations specific to the Subject Property only. Therefore, the application will be processed as a quasi-judicial amendment under a Type III procedure, using the standards of approval in subsection (B) and (C) below, as applicable.

- B. Criteria for Quasi-Judicial Comprehensive Plan Map Amendments.** The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

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

##### ***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.***

**FINDING:** Chapter 1 of the City of Bend 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 is achieved for all land use application types; which for this type of application is achieved via the Type III – Quasi-Judicial review procedures.

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 of the public meeting held in accordance with the provision of Chapter 4.1.215 is included in the applicant's submitted materials. In addition to the public meeting requirements of BDC 4.1.215, citizen involvement is provided by public hearings, which are noticed, held, and conducted according to the Type III procedures of BDC Chapter 4.1.400. Type III procedures require that citizens be informed in three different ways about the public hearings: 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 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:** The Text Amendment application will be processed in accordance with the applicable procedures in BDC Section 4.1.800. The City will review and process this application consistent with the procedures detailed in the Bend Development Code, including consideration of any public comments received regarding the application. The City's established review criteria and procedures for evaluating land use decisions ensure that the affected governmental entities and decision-making bodies are involved in the process and are aware of the factual basis for the actions and requests. The proposal includes a plan to amend the City of Bend Development Code and Zoning Map, which will to allow auto dependent uses on the Subject Property. The proposal was 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). Therefore, Goal 2 is satisfied.

### ***Goal 3, Agricultural Lands***

### ***Goal 4, Forest Lands***

**FINDING:** Goals 3 and 4 are not applicable because the proposal does not impact any agricultural land or forest land.

### ***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:** There are no inventoried Goal 5 resources on the Subject Property. Therefore, Goal 5 is not applicable to this proposal.

***Goal 6: Air, Water and Land Resources Quality***

***To maintain and improve the quality of the air, water and land resources of the state.***

**FINDING:** With the associated proposed development (concurrent Site Plan Review application PZ-19-0267), sewer and water supplies, transportation systems, and stormwater management will be provided in accordance with the adopted Development Code standards, thus development will maintain water and land resource quality on and around the property in accordance with the adopted City of Bend implementing ordinances.

Also, there are no streams or other water resources in the vicinity of the subject property that would be adversely affected by the future planned redevelopment. Furthermore, air and water quality are regulated by the Oregon Department of Environmental Quality, outside of the City's land use review process. For the above stated reasons, Goal 6 is not directly applicable to the current proposal.

***Goal 7: Natural Hazards***

***To protect people and property from natural hazards.***

**FINDING:** The subject property does not contain any lands where Goal 7 natural hazards have been identified or mapped. Therefore, Goal 7 is satisfied.

***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 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. The Property is not an identified Goal 8 resource; therefore Goal 8 is not directly applicable to the proposal.

***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 Subject Property is zoned and designated Commercial Limited (CL) within the Bend Central District. The CL zone is intended to accommodate economic development and the proposal does not decrease the amount of CL zoned land available in the City of Bend; therefore the proposal will not decrease the amount of land intended to accommodate economic opportunities in Bend, consistent with this Goal.

***Goal 10: Housing***

***To provide for the housing needs of citizens of the State.***

**FINDING:** Statewide Planning Goal 10 requires that a jurisdiction designate and zone land to accommodate a 20-year land need. As documented in the City of Bend Urbanization Report (which is an exhibit of the Comprehensive Plan and included in the record), this is accomplished in Bend through the Residential Land designations. The Urbanization Report indicates that the BCD area is anticipated to provide up to 240 housing units, through rezoning of Industrial Limited (IL) lands to Mixed-Use Employment (ME) and a higher rate of redevelopment in the BCD than in other areas of the City. The proposal does not impact any lands that are zoned residential or designated for housing.

The BCD permits residential uses as part of a mixed-use development within the 3<sup>rd</sup> Street subdistrict. Although the proposal removes the Subject Property from the BCD, the underlying zoning (CL) also allows specified residential development as part of a mixed use development. Therefore, removing the Subject Property from the BCD does not decrease the land available for housing.

One opponent to the application, Central Oregon Landwatch (COLW), argued that the project is not consistent with Goal 10. COLW cited the City Council biennial goal of getting 3,000 more housing units added to the community, and the passage of HB 3450 (which allows the rezoning of land for employment use to high density or horizontal vertical mixed-use housing). These are important high level policies, but they are not specifically relevant to this application. The Council finds that this proposal reduces by 1.8 acres the amount of automobile-dependent retail sales and service uses by consolidating automobile-dependent use on the 1.4 acre Subject Property. By amending the use table to disallow the use at the Existing Site, and conditioning the proposal on a deed restriction, this will effectively open up 3.4 acres of land at the Existing Site resulting in a net increase of one acre for the potential of residential and/or mixed use development.

Therefore, for all these reasons the proposal is consistent with 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, "Cities or counties shall develop and adopt public facilities plans 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 public facilities plans. In addition to the adopted public facilities plans, the City has adopted the Bend Development Code.

The area surrounding the Subject Property is within a generally developed subdivision that is provided with public facilities. The proposed Development Code Text Amendment and 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 Subject Property, and the facilities and services are planned to be upgraded in association with redevelopment, as detailed in the associated Site Plan Review Application. Fully improved streets surround the Subject Property (or will surround the Subject Property with associated development), and water and sewer services are available in the abutting rights of way. The associated Site Plan Review Application includes analyses of water, sewer and the transportation system confirming that with planned improvements, there will not be any capacity issues for the planned development. Redevelopment of the existing Les Schwab site at 105 NE Franklin Avenue will be required to follow the same process. Additionally, emergency services are available in the area through City of Bend Fire and Police Departments.

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 assured.

### ***Goal 12: Transportation***

***To provide and encourage a safe, convenient and economic transportation system.***

**FINDING:** Goal 12 is implemented through the Transportation Planning Rule, 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 Development Code Text Amendment and Zone Change will not significantly affect a transportation facility, and therefore will comply with the TPR.

The City of Bend Transportation System Plan (TSP) is implemented through adopted policies of the Comprehensive Plan, along with the standards and criteria of the Bend Development Code. The proposal is accompanied by a Site Plan Review application. In association with the Site Plan review, the planned development will be required to conform to the applicable transportation provisions of the Bend Development Code (including Chapter 4.7). Future development of the existing Les Schwab site will be required to follow the same process.

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 Review will be required to conform 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 remove a property from the BCD, which will allow Auto Dependent Retail Sales and Service on a specific area of land that is currently within the Bend Central District. The associated Site Plan Review application (PZ-19-0267) will be required to comply with all Development Code requirements and future construction will be required to meet all adopted Building Code requirements, which implement this policy. The same processes will be required of any redevelopment of the existing Les Schwab site.

Overall the planned development pattern of the Comprehensive Plan and Development Code, along with Building Code requirements will continue to ensure that energy will be conserved to a level commensurate with the goals of the City and this Statewide Planning Goal.

***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 Urban Growth Boundary and City Limits. Therefore this goal is not relevant to the proposed amendment.

***Goals 15 through 19 –***

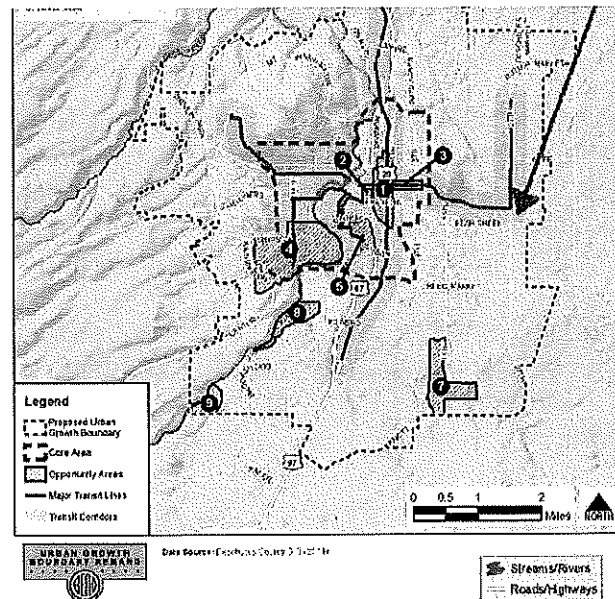
**FINDING:** These goals are not applicable because they only pertain to areas in western Oregon.

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

The submitted project narrative included a wide range of Comprehensive Plan policies that the applicant proposed were relevant to the requested Development Code text and zoning map amendments. City staff selected those Comprehensive Plan policies most pertinent to the proposal. The City Council finds these are the relevant policies.

***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:** Figure 11-1 of the City of Bend Comprehensive Plan is included below:



As detailed on the figure, the Existing Site and Subject Property are both located within the BCD (an opportunity area), along major transit routes, and identified as being within a "Transit Corridor" in the Comprehensive Plan; therefore this policy encourages infill and redevelopment of both the Existing Site and the Subject Property. The proposal will facilitate redevelopment of a Les Schwab Tire Center on the Subject Property, which would free up the Existing Site for redevelopment, consistent with the use provisions of the BCD, at a location more proximate to downtown. This policy encourages redevelopment but is not specific to use types. Therefore, both the redevelopment of the 3<sup>rd</sup> Street site, which is currently occupied with older, underutilized buildings, with a new tire center, as well as vacating the Franklin Ave site to place on the market for redevelopment meet this policy.

This record demonstrates that Franklin Avenue is being developed as the primary east/west route between downtown Bend and the BCD, to provide safe, inviting and multi-modal connections. Limiting an auto-dependent use in this area through a condition of approval (deed restriction) and amendments to the code, may encourage desirable redevelopment and infill in a unique and key area of the core suited and identified for multi-modal connectivity. The proposed Development Code Text Amendment and Zone Change will therefore create an opportunity for redevelopment that is consistent with Policy 1-8.

Third Street, on the other hand, is and will continue to be a main auto way. Third Street has been identified as a Primary Arterial on the City Transportation Plan. Removing an

automobile-dependent use from the BCD and achieving a net reduction in an automobile-dependent use acreage is consistent with the Comprehensive Plan policy related to redevelopment of appropriate areas of the Central Core and the BCD opportunity area.

The Existing Site has 3.4 acres of auto dependent uses. The 3<sup>rd</sup> Street property has .83 acres of auto dependent use. The total between the two properties in the BCD is currently 4.23 acres. This proposal will consolidate the amount of auto dependent uses to one 2.4-acre parcel. Relocation reduces the amount of auto dependent uses by 1.83 acres, thus achieving the goal of reducing auto dependent uses.

Relocation also opens up another acre of land within the BCD for redevelopment at the Existing Site, which could accommodate increased housing and infill development.

## **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:** These policies note that Bend's economic lands serve a regional purpose. It can be further argued that the downtown area serves a primary location for regional art, culture, retail, tourism and employment. Moving the Les Schwab Tire Center from its Existing Site will free up that property for redevelopment; redevelopment that can utilize all of the incentives of the BCD, including the possibility of mixed-use (ground floor commercial and upper level residential), taller buildings, lesser parking requirements, proximity to bicycle, pedestrian and public transit routes and facilities, proximity to downtown and proximity to the Makers District.

**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:** While the City is not undertaking a formal periodic review at this time, the currently proposed Development Code Text Amendment and Zone Change is an owner-initiated proposal to modify the Development Code and Zoning Map to redevelopment of site in the BCD. The proposal will provide an opportunity for redevelopment on the Existing Site in a manner that is consistent with the vision of the



BCD. In addition, the City reviewed the opportunity area in adopting the Bend Central District as part of the Urban Growth Boundary expansion process in 2016. However, development dropped off in 2015-16 in the area, and the City has not achieved the goals for the area. Reviewing and modifying the zoning as it applies to the existing area and then allowing the Subject Property to develop as proposed within the Bend Central District Opportunity Area, established in the Comprehensive Plan, provides an opportunity to trigger desired redevelopment of employment lands (CL) and to kick-start the development of underdeveloped areas along Third Street.

### ***Commercial Development***

***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:** Both the Existing Site and the Subject Property are located in transit supportive commercial corridors. The Existing Site, however, is nearer to the downtown core, with safer and more convenient access for pedestrians and bicyclists to commercial uses, parks, and public amenities, and thus is better suited for urban style mixed use development. This policy encourages redevelopment of both of the sites. The proposal will result in redevelopment of the Subject Property and provide the opportunity for redevelopment on the Existing Site.

***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 Existing Site and Subject Property are both in existing commercial areas within the Bend Central District "opportunity area". This policy establishes that the City should encourage property owners' efforts to rehabilitate or redevelop the older commercial sites. The applicant has submitted a concurrent Site Plan Review application for redevelopment of the Subject Property and plans to market the Existing Site for sale (which is the first step in redevelopment of that site). Including a deed restriction on the Existing Site, which will prohibit auto-dependent uses, will ensure that redevelopment of the Existing Site will be consistent with the intent and vision of the BCD.

***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 of the Subject Property (and the future redevelopment of the Existing Site) will be required to comply with all Development Code standards, which implement these policies. This Development Code Text Amendment and Zone Change application is accompanied by a Site Plan Review application for the Subject Property.

As detailed in the associated Site Plan Review application, the planned development is proposed to comply with applicable setback, landscaping, physical buffers, screening, access, sign, building height, parking and design review requirements. Future development on the Existing Site will be required to follow the same process. The application and associated Site Plan review process ensures consistency with these policies.

## **Chapter 7 – Transportation Systems**

### ***Bend Central District Plan (BCD):***

***7-83 The city will partner with property owners and developers to make improvements to transportation facilities within the District Overlay to improve connections for all modes of travel, including implementing a well-connected system for pedestrians, bicyclists, and transit users.***

**FINDING:** Upon approval of the Development Code Text Amendment and Zone Change (in association with development on the Subject Property), the applicant will be required to improve all abutting rights of way in accordance with the applicable City Standards and Bend Central District specific street design standards. Any future redevelopment of the Existing Site would similarly be required to improve the abutting rights of way. As proposed and as required by Site Plan Review, the proposal is consistent with this policy.

***7-84 The city will implement street designs identified in the District Plan over the long term. Improvements may be phased in over time and will be refined, as needed and appropriate, through more detailed facility design processes.***

**FINDING:** As noted above, upon approval of the Development Code Text Amendment and Zone Change (in association with Site Development Review on the Subject Property), the applicant will be required to improve all abutting rights of way in accordance with the applicable City Standard and Bend Central District specific street design standards. Any future redevelopment of the Existing Site would similarly be required to improve the abutting rights of way. As proposed and as required by Site Plan Review, the proposal is consistent with this policy.

## **Chapter 9: Community Appearance**

***9-5 Special design and landscaping requirements shall be established along streets that include, but not be limited to Highway 20 West; Highway 97 and 3rd Street; Greenwood Avenue and Highway 20 East; Franklin Avenue; Riverside Avenue opposite Drake Park; Newport Avenue; Galveston Avenue from the river to 14th Street; Century Drive to the Deschutes National Forest boundary; Reed Market Road; NE 27th Street from Reed Market Road to Butler Market Road; and Mt. Washington Drive.***

**FINDING:** The Subject Property is located along NE 3rd Street, an area that is identified as having special design and landscaping requirements. All required improvements

necessary to implement this policy will be implemented via the approval criteria of Chapter 4.2 for Site Plan Review<sup>1</sup>. The applicant has submitted a Site Plan Application (for the Subject Property) in association with this submittal. As detailed in the Plan Set of that application (and included as reference to this application) the associated development will include four access points onto the City block and make improvements to the surrounding rights of way, in accordance with City Standards. Any future development of the Existing Site will be required to follow a similar review and approval process. The adopted Development Code requirements implement this policy and the associated development application conforms to the Site Plan approval criteria; therefore the overall proposal is consistent with these policies.

## ***Chapter 11 – Growth Management***

### ***General Growth Management Policies***

#### ***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 finds that this Policy is intended to encourage and facilitate a mix of uses, in appropriate locations. Providing a mix of uses can help to reduce trips, vehicle miles traveled, and facilitation of non-automobile travel, because compact development helps limit sprawl and provides options for uses and activities within a particular area.

The Development Code Text Amendment and Zone Change Application is being submitted to facilitate the relocation of a Les Schwab Tire Center to a site that is currently within the BCD. The BCD was adopted with special standards to implement this policy, including limitations on new uses, enhanced development standards, specific parking requirements, and enhanced design provisions.

The applicant suggests that a Les Schwab Tire Center at the Subject Property would be more consistent with this policy than at the Existing Site, for the following reasons:

- Maintenance of a tire center near the Bend Central District - By maintaining the tire center in the Core Area, residents of Bend Central District and the surrounding area (with vehicles), along with individuals who work in the Bend Central District and surrounding area (with vehicles) will have access to tire sales and services. The availability of services in close proximity to residences and employment, allows for connecting trips, shorter trip length, service to occur while at work, and/or forgoing need to travel outside of the Bend Central District (or area) to have a vehicle serviced.
- Location of Existing Site- The location of the existing Les Schwab Tire Center is at a gateway between the Bend Central District and Bend's downtown core.

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<sup>1</sup> With the Transportation Facilities Report and Transportation Planning Rule Assessment, which have been completed, additional improvements have not been identified.

Transportation modeling for the City's Urban Growth Boundary expansion documented that this area experiences short trip lengths, few vehicle miles traveled, and the high levels of non-auto modes of travel. The Existing Site is well suited for a mixed-use development that would achieve the intent of this policy. The applicant has suggested that improving the Existing Site with a Les Schwab Tire Center will not maximize the potential of this site, will maintain an auto-dependent use in this key area, and will not realize/utilize all of the incentives of the Bend Central District.

- Location of the Subject Property - The Subject Property is not situated at a gateway to downtown. Further, it is located along the 3rd Street Corridor; a street that, while it will be enhanced to better accommodate pedestrians, will continue to serve vehicular travel needs of the community. Being located in an area that is not near downtown, and does not currently have pedestrian and/or safe bicycle connectivity, the ability for the Subject Property to reduce trips, vehicle miles traveled, and facilitate non-automobile travel is not as great as at the Existing Site.

Opponents to the application have suggested that this policy could also be met if Les Schwab were to relocate outside of the BCD without the proposed amendment. The applicant maintains that this is unrealistic and impractical because Les Schwab has had a presence in this area since 1955, serves this market, which includes residents of Bend's Core Area, along with residents of the west side of Bend and employees in the downtown and BCD. This would require present and future residents and employees to travel greater distances, outside of the central area of the City, to get the necessary services.

The Council finds that the potential for non-automobile-dependent use at the Existing Site, with its access to downtown, and keeping Les Schwab in the Central Core and centrally located to serve its clientele will continue to facilitate the integration of land uses within this area of Bend, with the potential for a resultant reduction of vehicle miles traveled. This is not to say that the policy could not also be met, at least to some extent, if the applicant chose to relocate its business outside of the BCD or the Core Area. However, the Council finds that the more important consideration is whether the proposed application can satisfy the policy, not whether a potential alternative is more or less likely to meet the policy than the application itself.

***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 Existing Site and the Subject Property are both located along major transit routes, and are identified as being within a "Transit Corridor" in the Comprehensive Plan. As already noted, this proposal would facilitate redevelopment of a Les Schwab Tire Center on the Subject Property, which would free up the Existing Site for redevelopment, consistent with the use provisions of the BCD, at a location more proximate to downtown. See also Finding 1-8 above, which is incorporated by reference.

**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 Bend Central District has special street standards for some streets. Upon approval of the Development Code Text Amendment and Zone Change (in association with the concurrent Site Plan Review Application), the applicant plans to improve the streets surrounding the Subject Property in accordance with the Development Code and BCD established street design standards. Any future redevelopment of the Existing Site will similarly be required to make right of way improvements in association with development.

The adopted Development Code requirements implement this policy and the associated development application (for the Subject Property) will be required to conform to the Site Plan approval criteria; therefore the overall proposal is consistent with this policy.

***Policies for Centers and Corridors***

**11-6 The City will encourage vertical mixed use development in commercial and mixed use zones, especially where those occur within the Central Core, Opportunity Areas and along transit corridors.**

**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 proposal is being submitted to accommodate redevelopment in an Opportunity Area that is transit-supportive and can be improved with public infrastructure to provide safe and convenient access for all modes of transportation; therefore these policies encourage development of the Subject Property.

The proposal will allow for redevelopment of the Subject Property and provide an opportunity for redevelopment of the Existing Site, in a manner that could use the development incentives of the BCD (which have been established to encourage mixed use development). The overall proposal therefore is consistent and/or contributes to consistency with these policies.

As noted in findings above, the Existing Site and Subject Property are both located within the BCD (an opportunity area), along major transit routes, and identified as being within a "Transit Corridor" in the Comprehensive Plan. Redevelopment of the Existing Site could occur with vertical mixed uses after relocation to the Subject Property.

The Council finds that by reducing the amount of automobile-dependent retail sales and services uses in the BCD and increasing the acreage of property that will be able to take advantage of the incentives in the Development Code (related to development, redevelopment and vertical mixed use), and in allowing the relocation of an automobile-

dependent use to a site better suited to that use, which includes transit support (along a major transit route), this policy is met.

### ***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:** While the City is not undertaking a formal periodic review at this time, the currently proposed Development Code Text Amendment and Zone Change is an owner-initiated proposal to modify the Development Code and Zoning Map to redevelopment of site in the BCD. The Council finds that the proposal will provide an opportunity for redevelopment on the Existing Site in a manner that is consistent with the overall vision of the BCD, including the option of creating the connector the City needs along Franklin Street for connectivity, safety for pedestrian and bicycle travel, and creating economic vitality from east to west. Further, allowing the relocation of an automobile-dependent use within the opportunity area will create enhancements (sidewalks, etc.) in an underdeveloped area on Third Street, creating an additional anchor to the core area and providing an opportunity to trigger the BCD to revitalize and redevelop at its south end. Les Schwab is an established local business that provides jobs and employment opportunities. The policy requires responding to opportunities for redevelopment and revitalization of underutilized areas, and approval of the application would represent an appropriate response to the opportunities presented by the applicant related to both the current site and the Subject Property.

**Conclusion:** Based upon the forgoing findings, the proposal is consistent with the relevant Comprehensive Plan Policies as noted above.

**Approval 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 in an area that has been developed with public facilities, services, and transportation networks, since Bend's infancy (Keystone Terrace was platted in 1921). The Subject Property is located in an area that has been determined to be an "Opportunity Area" and forecasted for redevelopment. Historically, the overall property has been developed with both commercial development and residential development. Currently, the site has eight buildings located upon it: Enterprise Rent-a-Car, Hardy's Burgers & Ice Cream, Sangie Hair Spa, Bend Truck Toyz, Vintage Moon Antiques, Cascade Telecommunications, a single-family residence, and an abandoned building. Since the original submittal of this application, a few of these businesses have closed or relocated outside of the Subject Property in anticipation of this application process.

Public facilities and services that are considered with applications of this type include sewer, water, police, schools, fire, parks and transportation.

The 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;..."* and the Land Division criterion 4.3.300.E.4 establishes that *"All required public facilities have adequate capacity, as determined by the City, to serve the proposed subdivision, partition or replat."* Furthermore, 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 new Les Schwab Tire Center at the Subject Property, and the application is supported by analyses of the water, sewer, and transportation systems. A comprehensive review of the Site Plan Review standards and approval criteria, impacts to public facilities, and public facility needs will be reviewed in the concurrent / associated Site Plan Review Application process.

As detailed in the Site Plan Review application for the proposed development, by extending water and sewer laterals in accordance with City Standards and providing transportation mitigating measures, as detailed in the Transportation Analysis Memo (BP-19-1355), the new development area will also be provided with adequate public facilities. The same level of review would occur with any new development on the Existing Site.

Regarding services (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 (BPRD) 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). These documents identify the Existing Site and Subject Property as designated CL, and the Public Facilities Plan accounted for students accordingly. The proposal does not modify any comprehensive plan or underlying zoning designation, thus will not impact the School District's site and facilities planning conclusions or available capacity.

Parks: The Subject Property is located within the BPRD's boundaries. BPRD has a Comprehensive Plan to ensure park capacity is provided throughout the District service area, which is generally directed at residential uses. The subject is in close proximity to Juniper Park, Jaycee Park and Vince Genna Stadium. BPRD's Comprehensive Plan reviews land use applications based on impacts to existing park facilities and the need to provide additional park facilities in the vicinity. As the Existing Site and Subject Property are developed sites, no impact to or need for park facilities is anticipated.

Fire and Police Protection: The property is located within the City of Bend, which is served by City Police and Fire Departments. Allowing the Development Code

Text Amendment and Zone Change will not impact Fire and Police Service needs. The combination of the built facilities, public facilities plans, and the Development Code requirements for development (Site Plan Review application) ensure that adequate public facilities are currently provided or will be provided concurrent with development, in conformance with this approval criterion.

**Approval 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 have been both a change in the neighborhood or community and a mistake in the Comprehensive Plan and associated Development Code provisions that implement the Bend Central District, which demonstrate compliance with this approval criterion.

#### ***Change of Neighborhood/Community***

The Bend Development Code does not define the term “community”, but it does define “neighborhood”:

BDC Chapter 1.2 Definitions: “**Neighborhood** means a geographic district or area usually having distinguishing character or boundaries, not necessarily coinciding with the acknowledged neighborhood association boundaries.

The City Council finds that for the purpose of this application, which proposes to remove a property from a district or overlay in the Bend Development Code, the term “neighborhood” means the Bend Central District. Therefore, in analyzing whether a change has occurred, the Council finds that it is appropriate to look at the District as a whole and the vision for the entire Bend Central District.

“Community” is a term that can have both a general and a more localized geographic meaning. It can be defined as society at large, as the people with common interests living in a particular area (broadly: the area itself), or a group of people with a common characteristic or interest living together within a larger society. Merriam-Webster.com (2019); <https://www.merriam-webster.com/dictionary/community>. The Council finds that in the context of this application, community means the broader community engaged in the planning effort related to the Bend Central District and Core Area, starting with the UGB process and continuing to the Current city projects and initiatives.

Since the original opening of the Les Schwab Tire Center at 105 NE Franklin Avenue in 1955, the population of Bend has grown, available land supply has diminished, and most recently the City has adopted new provisions to incentivize mixed-use development, higher density development, and alternative modes of transportation in the BCD. Most significantly, in 2016 the City adopted the Bend Central District Opportunity Area in the Comprehensive Plan, and the Bend Central District Overlay Zone in the Development Code. This occurred as part of the UGB amendment process, and established an intent and desire to change the BCD from a predominantly commercial corridor to a mixed use district. As an opportunity area in the City’s Central



Core, the BCD was and continues to be a focus of ongoing planning processes. The Central Core is considered particularly important to the City's growth management efforts, to transition from more of an urban community at appropriate locations, with increased opportunities for reducing VMT.

However, since the adoption of the Comprehensive Plan and development code as part of the UGB process, the vision for the Bend Central District has not yet been realized as the City and community desired. Development applications have been sparse and redevelopment limited. The applicant points out, and nothing in the record contradicts, that where redevelopment has occurred, it has focused in the Franklin Avenue area—a Walgreens store and several restaurants, the recent acquisition of the Murray and Holt property by Brooks Resources, a long-term Bend mixed-use developer, for a mixed use project, and the Franklin Underpass Project. City projects and initiatives, including the TSP Update and the Core Area and Neighborhood Greenways projects, confirm City and community intentions for Franklin Avenue as a multimodal corridor. The removal of the existing Les Schwab site as a potential automobile-dependent use, coupled with the recent Walgreens pedestrian-friendly development and Brooks Resources site leave only one intervening property that would allow for the full redevelopment of the south side of Franklin Avenue with uses consistent with the Bend Development Code regulations.

Amid this change, the Existing Site of the Les Schwab Tire Center (at a gateway to downtown) has experienced increased bicycle and pedestrian traffic, which is expected to further increase as the BCD vision is realized. The applicant has provided testimony that there is increased bicycle and pedestrian activity along Franklin Avenue, currently estimated at 5,000 trips per week. The initiatives and planning processes noted earlier have increased the focus on establishing Franklin Avenue as the primary east/west corridor to be developed with mixed use development and to provide a safe, multimodal connection between downtown and the BCD.

The applicant provided testimony that maintaining the automobile-dependent in the existing location could result in the potential for increased conflicts between automobiles and users of alternative modes of transportation. Given the changes within the community, the applicant states the proposed relocation of the Les Schwab in the BCD provides the following benefits:

- Maintenance of a tire center in the Bend Central District boundary- By maintaining the tire center within the current Bend Central District boundary, residents of the Bend Central District and the surrounding area (with vehicles), and individuals who work in the Bend Central District and surrounding area (with vehicles), will have access to tire sales and services. The availability of services in close proximity to residences and employment allows for connecting trips, shorter trip length, service to occur while at work, and/or forgoing need to travel outside of the Bend Central District (or area) to have a vehicle serviced.
- Location of Existing Site- The location of the existing Les Schwab Tire Center is at a gateway between the Bend Central District and Bend's downtown core. The Existing Site is well suited for a mixed-use development that would achieve the

intent of several relevant policies. The applicant suggests that improving the Existing Site with a Les Schwab Tire Center will not maximize the potential of this site, will maintain an automobile-dependent use in this key area, and will not realize/utilize all of the incentives of the Bend Central District.

- Location of the Subject Property - While located within the current Bend Central District boundary, the Subject Property is not situated at a gateway to downtown. Further, it is located along the Third Street Corridor; a street that, while it will be enhanced to better accommodate pedestrians, will continue to serve vehicular travel needs of the community.

Overall, the Council recognizes these points and also finds that the record establishes a change that includes an increased focus on establishing Franklin Avenue as the primary east/west corridor to be developed with mixed use development. Since the City has been slow in achieving the goals of the broader district (safe, multi-modal connections between downtown and the BCD), it supports the vision of the BCD to consider adjustments.

The City also finds that, at the same time, the area around the Subject Property is an area that is in need of redevelopment and revitalization. Relocation to CL property and the improvements to the new site will result in desired upgrades to the Third Street Corridor, including sidewalks and traffic improvements in the area of Bend High School and Burnside Avenue.

### ***Mistake or Inconsistency***

BDC 2.7.3220 implements the Bend Central District's intent of allowing existing uses the opportunity to exist, grow, and expand, stating:

*B. Existing Uses. Uses and structures that are not in conformance with the provisions in this section but that were lawfully established within the BCD prior to the adoption of this code are considered a permitted use. Expansion or enlargement 25 percent or less of the above referenced uses or structures that are nonresidential will be subject to the provisions of BDC Chapter 4.2, Minimum Development Standards Review, Site Plan Review and Design Review. For expansion or enlargement greater than 25 percent, the conditional use criteria, standards and conditions within BDC Chapter 4.4, Conditional Use Permits, will also apply. Conditions of prior approvals will continue to apply unless modified in conformance with BDC 4.1.1325, Modification of Approval.*

The applicant contends that this language, as written, may include a minor miscalculation, flaw, or oversight (a type of mistake) as a method to carry out the intent and vision of the BCD. The applicant argues that the current proposal highlights the potential miscalculation, flaw, or oversight. As documented throughout the submitted narrative, the applicant contends that the current proposal cannot be accommodated by the Code language but it does provide the opportunity for an existing auto-dependent business, with a 3.4 acre footprint, located in a prime location of the BCD, to relocate to a prominent vehicular corridor that has better access and is better suited for the use, while reducing the total area of land available for auto-dependent uses. Furthermore,

the applicant states that by relocating the use to a more suitable location, the proposal provides the opportunity for redevelopment of a prime site (the original site) within the BCD and to be able to redevelop utilizing all of the incentives that have been adopted to carry out the vision of the BCD. The applicant argues that the proposal results in a net reduction of roughly two acres to the amount land currently available for auto dependent uses in the BCD; improves pedestrian, bicycle, and transit improvement opportunities at the Existing Site; and lessens the interface between potentially conflicting uses at the Existing Site. The applicant argues that the proposal cannot be approved under the referenced section, thus a potential oversight (mistake).

Because the Code has no limitation on allowing existing automobile-dependent uses from expanding at their existing locations, the Council finds that, in its interpretation, it was a policy inconsistency to not recognize the possibility of moving businesses within the Bend Development Code, if the proposal would result in a reduction of auto dependent uses, conform to CP policies, meet the BCD guidelines, and otherwise enhance the District. It supports the dual goals of reducing automobile-dependent uses and allowing business flexibility, and Council does not believe it was the intent of the Code to prevent this kind of code amendment. Since the new site also allows expansion of automobile-dependent uses and the Existing Site will no longer allow such uses, there is a net reduction in the auto dependent use area. Council interprets this criterion broadly enough to include such inadvertent consequences of the Code as a policy inconsistency, which potentially prevents the City from reaching overall goals of the BCD and opportunity area as illustrated by relevant Development Code provisions and CP policies regarding the Subject Property.

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

**FINDING:** As noted below in findings under BDC 4.6.600, the Transportation Planning Rule is satisfied.

**C. Criteria for Quasi-Judicial Amendments. The applicant must submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve, approve with conditions or to deny and application for a quasi-judicial zone change must be based on meeting both of the following criteria.**

**Criterion #1. The amendment will bring the zone map into conformance with the Comprehensive Plan Map;**

**FINDING:** The underlying zoning of the Subject Property (CL), which is consistent with the CL land use designation on the Bend Comprehensive Plan Map, would not change with this proposal. The Bend Central District overlay would be removed for the Subject Property only.

**Criterion #2. The property and affected area is presently provided with adequate public facilities, services and transportation networks to**

**support the use, or such facilities, service and transportation networks are planned to be provided concurrently with the development of the property.**

**FINDING:** As noted in previous findings, the concurrent Site Plan Review application would require infrastructure improvements associated with the proposed site improvements on the Subject Property, consistent with the water and sewer analyses and Transportation Analysis Memo already completed for the proposal.

#### **4.6.400 Intent to Rezone.**

**A. If the City Council determines that the public health and welfare and convenience will best be served by a proposed change of the zone, the City Council may indicate its general approval in principle of the proposed rezoning by the adoption of a "Resolution of Intent to Rezone." This resolution shall include any conditions, stipulations, or limitations, which the City Council may feel necessary to require in the public interest as a prerequisite to final action, including those provisions which the City Council may feel necessary to prevent speculative holding of the property after rezoning. The fulfillment of all conditions, stipulations and limitations contained in said resolution, on the part of the applicant, shall make such a resolution a binding commitment on the City Council. Such a resolution shall not be used to justify spot zoning, nor to create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning.**

- 1. Content of Site Plan. Where a site plan is required pursuant to this code, it shall include the location of existing and proposed buildings, structures, accesses, off-street parking, loading spaces and landscaping; topography, existing and proposed; mechanical roof facilities, architectural perspective, layout and all elevations drawn to scale including location, area and design of signs and all landscaping.**
- 2. Resolution of Intent Binding. The fulfillment of all conditions, stipulations and limitations contained in the resolution of intent, on the part of the applicant, shall make the resolution binding on the City Council. Upon compliance with the resolution by the applicant, the City Council shall by ordinance effect such reclassification.**
- 3. Resolution of Intent Void Upon Failure to Comply. The failure of the applicant to substantially meet any conditions, stipulations or limitations contained in a resolution of intent, including the time limit placed in the resolution, shall render said resolution null and void, unless an extension is granted by the City Commission upon recommendation of the Planning Commission.**

To assure that the requested Development Code Text Amendment and Zone Change is specific to the applicant's proposed development under the concurrent Site Plan Review, and not another new automotive dependent use by another owner, the

Planning Commission recommends that if approved, the City Council adopt a Resolution of Intent to Rezone, which requires that the conditions of the Site Plan Review be fulfilled prior to the adoption of an ordinance that effectuates the approved changes.

#### **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.**

**FINDING:** The applicant submitted a Traffic Report prepared by Lancaster Engineering. The report includes an assessment of the applicability of the Transportation Planning Rule and the proposal's compliance with the Transportation Planning Rule.

The report calculates the trips generated by the all of the existing uses at 836 average daily trips, including 46 a.m. peak hour trips and 36 p.m. peak hour trips. The anticipated trips for the proposed tire store (ITE code 849) on the Subject Property are 472 average daily trips, including 31 a.m. peak hour trips and 49 p.m. peak hour trips. The net result of redevelopment of the Subject Property with a proposed tire store is a net reduction of average daily trips of 364 trips, including a net reduction of 15 a.m. peak hour trips and a net increase of 13 p.m. peak hour trips.

The report concludes that the proposed Development Code Text Amendment and Zone Change will result in a specific use on a specific site as allowed under BDC 4.6.400 above, and the use does not generate more trips than other uses that are permitted outright in the BCD; therefore the proposal will not significantly affect any existing or planned transportation facility and the proposal is consistent with the Transportation Planning Rule.

The applicable portions of the TPR are quoted in **bold** below, with findings directly following.

#### **660-012-0060, Plan and Land Use Regulation Amendments**

**(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:**

**(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**

The evidence in the Transportation Facilities Report demonstrates there is no need for any future changes to the functional classification of existing or planned transportation facilities. Accordingly, this section is not triggered.

**(b) Change standards implementing a functional classification system; or**

The evidence in this Transportation Facilities Report demonstrates there is no need for any future changes to the standards implementing the functional classification system of City of Bend transportation facilities. Accordingly, this section is not triggered.

**(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.**

**(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**

**(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or**

**(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.**

Since the proposed Development Code Text Amendment and Zone Change would not result in a potential net increase in trip generation, then none of the effects listed in (A) through (C) above will be possible. Therefore, there will be no significant effect to a transportation facility. The data contained in the Transportation Facilities Report is sufficient to address the impacts to the transportation system that will result from the removal of the Subject Property from the Bend Central District (a Special Planned District), as well as include an amendment to the City of Bend Development Code to prohibit "Auto Dependent Retail Sales and Services" uses from the site of the existing Les Schwab Tire Center within the Bend Central District. Transportation Planning Rule 660-012-0060 is satisfied for the proposed permitted land use.

**CONCLUSIONS:**

The City Council finds that the proposed text amendment and zoning map amendment to remove the Subject Property from the Bend Central District and restrict the automobile-dependent uses at the Existing Site meet all applicable Development Code criteria, with the following specific conditions of approval (in addition to the requirements of BDC Section 4.6.400):

1. Any substantial change to the approved development code and zoning map amendment will require a new land use application and approval. The approval is

specific to the applicant, Les Schwab Tire Centers.

2. The applicant must complete all conditions, stipulations, and limitations contained within the Resolution of Intent to Rezone prior to adoption of an ordinance effectuating the removal of the Subject Property from the Bend Central District and restricting automobile-dependent use at the Existing Site within the District.
3. All other code requirements of the Bend Central District still apply to the subject property (e.g., setbacks, frontage improvements, architectural standards, etc.).
4. The applicant must record a deed restriction, in a form acceptable to the City Attorney's office, on the 105 NE Franklin Avenue property (the Existing Site) that prohibits automobile-dependent uses at that site, prior to issuance of the building permit for development of the Subject Property or sale of the Existing Site, whichever occurs first. The deed restriction may provide that the applicant can continue its current use of the Existing Site until the certificate of occupancy is issued for the Subject Property.

